



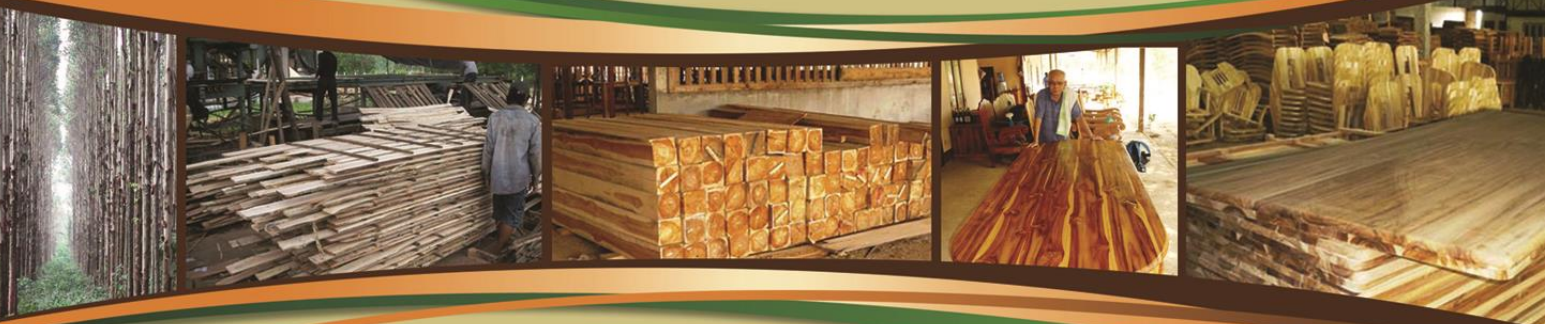
# ENHANCING KEY ELEMENTS OF THE VALUE CHAIN FOR PLANTATION GROWN WOOD IN LAO PDR

## Smallholder Plantation Legality in Lao PDR

A study to assess the legal barriers to smallholder plantations and the associated timber value chain

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**VALTIP2**

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The statements and opinions contained in the report are given in good faith but, in the preparation of this report, the authors have relied, in part, on information supplied from other sources, or from documents and interviews held in Lao and translated into English. The report has been prepared with care and diligence, however, except for those responsibilities which by law cannot be excluded, no responsibility arising in any way whatsoever for errors or omissions (including responsibility to any person for its negligence), is assumed by the authors or contributors for the preparation of this report.

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## Acronyms

|                |   |
|----------------|---|
| ACDD           | ASEAN Customs Declaration Document                        |
| ACIAR          | Australian Centre for International Agricultural Research |
| ADB            | Asia Development Bank                                     |
| AFPRC          | Agriculture and Forestry Policy Research Centre           |
| BTT            | Business Turnover Tax                                     |
| CD             | Customs Department  |
| CoC            | Chain of Custody  |
| CoO            | Certificate of Origin                                     |
| DAEC           | Department of Agriculture Extension and Cooperatives      |
| DAFO           | District Agricultural and Forestry Office                 |
| DBH            | Diameter at Breast Height                                 |
| DFO            | District Forestry Office                                  |
| DIMEX          | Department of Import and Export                           |
| DLAD           | District Land Administration Department                   |
| DOF            | Department of Forestry                                    |
| DOFI           | Department of Forest Inspection                           |
| DOL            | Department of Lands                                       |
| ESIA           | Environmental and Social Impact Assessment                |
| FS2020         | Forestry Strategy to 2020                                 |
| FSC            | Forest Stewardship Council                                |
| GOL            | Government of Lao PDR                                     |
| ha             | Hectare   |
| IPD            | Investment Promotion Department                           |
| LADD           | Land Allocation and Development Department                |
| Lao PDR        | Lao People's Democratic Republic                          |
| LFAP           | Land Forest Allocation Policy                             |
| LMD            | Land Management Department                                |
| LNCCI          | Lao National Chamber of Commerce and Industry             |
| LPTP           | Luang Prabang Teak Program                                |
| M              | million   |
| m <sup>3</sup> | Cubic metre   |
| MAF            | Ministry of Agriculture and Forestry                      |
| MOIC           | Ministry of Industry and Commerce                         |
| MOJ            | Ministry of Justice                                       |
| MONRE          | Ministry of Natural Resources and Environment             |
| MOPI           | Ministry of Planning and Investment                       |
| NA             | National Assembly   |
| NAFRES         | National Agriculture and Forestry Extension Service       |
| NAFRI          | National Agriculture and Forestry Research Institute      |
| NES            | National Export Strategy                                  |
| NGO            | Non-Government Organisation                               |
| NGPES          | National Growth and Poverty Eradication Strategy          |
| NLMA           | National Land Administration Department                   |
| NPA            | National Protected Area                                   |
| NTFP           | Non-timber Forest Product                                 |
| NUOL           | National University of Lao PDR                            |
| PA             | Protected Area  |
| PAFO           | Provincial Agriculture and Forestry Office                |
| PFA            | Production Forest Area                                    |
| PFO            | Provincial Forestry Office                                |

|            |   |
|------------|---|
| PEFC       | Programme for the Endorsement of Forest Certification                         |
| PFS        | Provincial Forestry Section   |
| PLAD       | Provincial Land Management Agency   |
| PLUP       | Participatory land Use Planning   |
| PM         | Prime Minister  |
| PMO        | Prime Minister's Office   |
| POIC       | Provincial Industry and Commerce Division                                     |
| <i>rai</i> | a unit of area, equal to 1,600 metres (40 m × 40 m), used for measuring land. |
| SFM        | Sustainable Forest Management   |
| SUFORD     | Sustainable Forestry for Rural Development Project                            |
| TLUC       | Temporary Land Use Certificate  |
| \$USD      | United States Dollar  |
| VAT        | Value Added Tax   |
| VC         | Village Committee   |
| VDF        | Village Development Funds   |
| VF         | Village forestry (or village forest)  |
| VFMA       | Village forest management area  |
| VFO        | Village Forestry Organization   |
| WREA       | Water Resource and Environment Administration                                 |

## Glossary

|                           |  |
|---------------------------|--|
| Diameter at Breast Height | Measurement of tree diameter at 1.3m above ground level.   |
| Forestland                | As define in the Forestry Law. All land with or without forest cover which are determined by the state as forestland.  |
| Forest land               | As define in the Land Law has the same meaning as Forestland.  |
| Log Landing 1             | The holding yard for logs immediately after harvesting, prior to transport to Log Landing 2.   |
| Log Landing 2             | Permanent holding yards for logs transported from Log Landing 1, where logs are measured, graded and listed prior to transport to the processing factory.  |
| Log List                  | A list of logs, made at Log Landing 2  |
| Small holder              | Common measures of a smallholder is farm size, household labour, production orientation and resource limitations including land, capital, skills and labour. In this study, smallholders are defined as households with less than 5 hectares of plantation forest. |
| Value Chain               | The full range of activities which are required to bring a product from conception, through different phases of production, delivery to final consumers and disposal (after Kaplinsky 1999; Kaplinsky and Morris 2001)   |

# 1 INTRODUCTION

Lao People's Democratic Republic (Lao PDR) has an emerging forest plantation industry, based on both smallholder and corporate growers. The Lao PDR Forestry Strategy to 2020 (FS2020) envisages a substantial forest plantation estate, with a target of a total of 500,000 hectares. Plantations and planted trees have the capacity to provide significant financial benefits to Lao PDR and to smallholder growers. The mature plantation resource could have an annual farm gate value of \$197 million at full production and would offer further value through primary and secondary wood processing (Midgley *et al.* 2011). However, there are many challenges, constraints and opportunities which need to be addressed in order to maximise returns to smallholders and support the development of competitive value-added wood industries.

This study is part of a project funded by the Australian Centre for International Agricultural Research (ACIAR) on "Enhancing Key Elements of the Value Chains for Plantation-Grown Wood in Lao PDR" (Project FST/2012/012, VALTIP2), which has an overall aim to improve livelihoods for farmers and processing workers, and the international competitiveness of Lao PDR wood industries through improved efficiency of key elements of the planted wood value chain. Specific objectives of the project are to:

1. address constraints and inefficiencies in the value chain, from harvest to processor stages, that limit returns to smallholder growers;
2. increase returns to processors and smallholders through improved efficiencies of the primary wood processing sector;
3. improve the value and quality of wood products for domestic and export markets; and
4. enhance the competitiveness and capacity of wood processing industries.

This paper addresses part of Objective 1, by describing, deconstructing and mapping the institutional and regulatory environment for the value chain for smallholder timber plantations and wood processing. It provides the background information needed to address the research question:

*'How can barriers to legal registration of smallholder planted trees be addressed, and transaction costs in their sale and delivery be diminished?'*

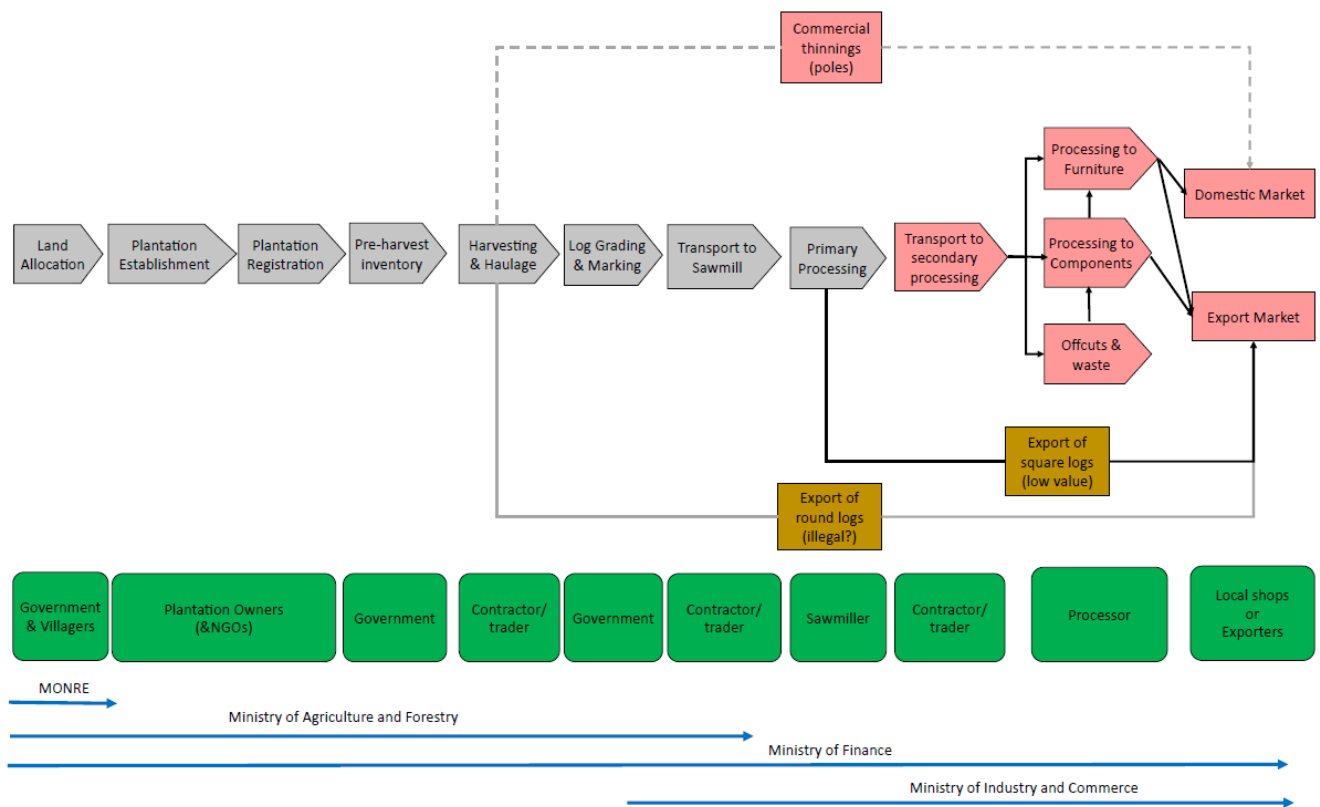
In doing so it exposes the limitations and barriers that create an ineffective and weak value chain and which inhibit participation by smallholders.

The paper follows a broad value chain (Figure 1) from the point of land allocation to timber export.

The governance structure and guiding national strategies and policies of Lao PDR are summarised to provide the broad context. The legislative environment is described and the legal framework and regulatory process for each step in the value chain are documented in detail and mapped. Recommendations with respect to improving the efficiency and effectiveness of the regulatory process and for removing barriers to participation are made.

A secondary objective of the project is to understand the nature and evolution of international and trans-national timber legality policies and their impacts on both the legal framework in Lao PDR and the consequences for smallholder plantation owners and the timber value chain. In particular the implications of regimes for timber legality assurance are examined. Understanding this broader environment reveals pressures on the Lao PDR legal system that will influence how and whether the regulatory framework can be reformed in such a way that it both maximises participation by smallholder teak growers and encourages compliance with the laws, so that market and governance expectations for legality can be met.

Figure 1: A value chain for plantation teak in Lao PDR (after Mohns 2009; Midgley 2011)



The following approaches have been used in this study:

- A description of the governance structure and legal framework has been made to establish the overarching rules operating in the value chain.
- A review of laws and legal Instruments in place and operating for the main process and products in the value chain has been undertaken. Lao and English versions of legal texts, strategies and policies were collated from a number of sources and wherever possible official English translations were used. However the vast majority of the documents accessed were only available in Lao or as unofficial translations; where necessary additional translations were made from Lao into English.
- Maps of the legal value chain were made to:
  - Visualise networks to gain an understanding of connections between actors and regulatory processes;
  - Demonstrate the interdependencies between actors and processes; and
  - Identify regulatory constraints and possible solutions at different levels in the value chain

These are depicted in the value systems diagrams provided in this report.

- A literature review of research papers, technical reports and data on smallholder plantations in Lao PDR and other countries was undertaken.
- A review of the concept and drivers of legality assurance was made.

This report is one in a series produced for the ACIAR project on “Enhancing Key Elements of the Value Chains for Plantation-Grown Wood in Lao PDR”. Others address issues, including:

- Teak Plantation Resource Mapping and Inventory
- Transaction Costs
- Grower Groups
- Certification
- International Markets and Market Trends

## 2 Governance

In Lao PDR plantation management, including by smallholder growers is governed by an array of agencies. The Ministries that have specific procedural responsibilities are:

- The Ministry of Justice (MOJ)
- The Ministry and Agriculture and Forestry (MAF)
- The Ministry of Industry and Commerce (MOIC)
- The Ministry of Natural Resources and Environment (MONRE)
- The Ministry of Finance (MOF)
- The Ministry of Planning and Investment (MOPI)
- The Ministry of Public Works and Transport (MPWT)

### 2.1 Ministry of Justice

The Ministry of Justice (MOJ) has the primary role in the preparation of legislation for the Government of Lao PDR (GoL). It also carries out a number of legal support functions including in the overall dissemination of legislation, administering the lower courts, coordinating judgement enforcement, regulating and overseeing the legal profession and the Lao Bar Association (LBA), and monitoring the work of Village Mediation Units (VMUs). The MOJ has branch offices at the Provincial and District levels (UNDP 2011).

### 2.2 Ministry of Agriculture and Forestry

The Ministry of Agriculture and Forestry (MAF) is responsible for managing agricultural Land, forest and forestland and for the sustainable conservation and development of forest and forestland resources in accordance with strategic national socio-economic development plans and relevant strategies. Its structure and functions are set out in *Decree No. 262/PM (2012) on organization and function of the Ministry of Agriculture and Forestry* and are depicted in Figure 2 (where relevant to this study).

The *Forestry Law, No 06/NA (2007)* (under review), is the principal legislation that regulates access to and use of forest and forestland, including plantation forests. It determines the basic principles, regulations and measures on sustainable management, preservation, development, utilization and inspection of forest resources and forestland, promotion of regeneration and tree planting, and the increase of forest resources in Lao PDR.

Additionally, the *Law on Agriculture, No 01-98/NA (1998)* has the function of determining principles, rules, and measures regarding the organisation and activities of agricultural production which is the basis of the country's economy, including management and preservation of agricultural activities and production.

#### 2.2.1 Department of Forestry

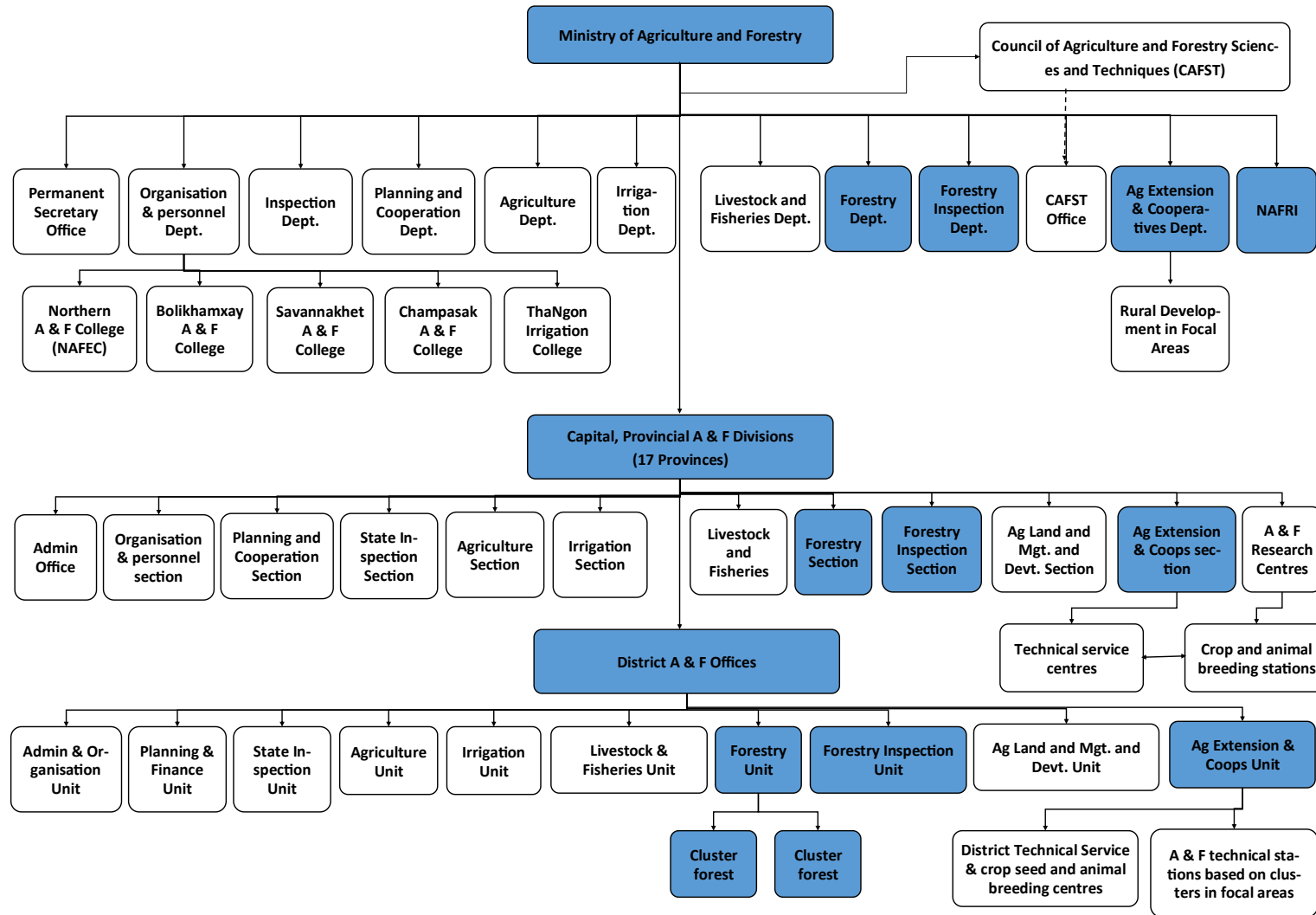
As a Central Agency the duties of Department of Forestry (DOF)<sup>1</sup> are primarily aimed at providing high level governance for forest management, protection and development to ensure the effective and sustainable use of forest resources throughout Lao PDR. The main functions of DOF are to:

- develop and implement strategies, programs and policies on forestry activities;
- formulate forestry laws and other legal instruments related to forestry and to operationalise these through regulations, policy and technical instructions;
- research and recommend policies, methods and measures on tree planting, forest regeneration, forest management, forest protection and forest resources;
- monitor, supervise and evaluate the implementation of forestry master plans, programs and projects; and
- inspect, monitor and evaluate the implementation and effectiveness of the forestry legal framework for the management, protection, use and sustainable development of forest resources.

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<sup>1</sup> These duties are specified in Ministry of Agriculture and Forestry (MAF) order No. 1060/MAF (2007).

Figure 2: Structure of the Department of Forestry and Department of Forest Inspection



### 2.2.1.1 Provincial Agriculture and Forestry Division

At the local level, the Provincial Agriculture and Forestry Division (PAFO) are responsible for implementing the functions of DOF. This includes developing the provincial harvesting quota for submission to MAF, issuing harvesting licenses, developing harvesting contracts, supervising harvesting operations, preparing log source documentation, including the scaling and grading of logs and creating the list of logs at Landing 2 (Grace *et al.* 2012).

### 2.2.1.2 District Agriculture and Forestry Office

Within each Province each District has a District Agricultural and Forestry Office (DAFO) reporting to the relevant PAFO. Its functions include the registration of plantations including plantation management planning, pre-harvest surveys, the monitoring of harvesting operations and preparing log origin documentation. DAFO measures harvested timber and compiles the logs lists for harvested material from all areas (Production Forest Areas, Infrastructure projects, Plantations, and Village Forests) (Grace *et al.* 2012).

## 2.2.2 Department of Forestry Inspection

The Department of Forestry Inspection (DOFI) was formed in 2008 with a mandate to provide official inspection of timber, forest products and wildlife. DOFI's mandate is defined in the Ministry of Agriculture and Forestry (MAF) *Agreement No. 0340/MAF* (2008), under which DOFI is the secretariat for the ministerial committee with responsibility for forestry inspection, forestland, investigation, protection of aquatic animals and wildlife and improving the effectiveness of relevant regulations, and "is responsible for the development of a comprehensive compliance system to prevent, detect, and suppress forest crimes over all forest landscapes, resources and value chains" (Bounnakeo 2009, in Flanagan *et al.* 2013).

DOFI has a role in the approval and assessment of harvesting quota, pre-harvesting inventory data, harvesting licenses, harvesting contracts, machinery use licenses and harvesting operations. The inspection function covers log lists, pre-harvesting inventory data, harvesting license, harvesting contracts, transport permits, sales invoices from the processing factories and export.

## 2.3 Ministry of Industry and Commerce

The Ministry of Industry and Commerce (MOIC) regulates all types of industry and trade in Lao PDR. It oversees the sale, transport, processing and export of logs, processed timber and finished wood products. The Departments that fall under the MOIC include

- Department of Industry
- Department of Production and Trade Promotion
- Department of Import and Export
- Department of Foreign Trade Policy
- Department of Domestic Trade
- Department of Inspection
- Lao National Chamber of Commerce and Industry
- Economic and Trade Research Institute

Through these Departments, MOIC is responsible for overseeing and implementing several relevant laws, including the *Law on Enterprise No 11/NA* (2005), the *Law on Customs No. 05/NA* (2005) and the *Law on Industrial Processing No. 01-99/NA* (1999). The role of MOIC and its departments in the forestry sector is set out *Prime Minister's Order on Strengthening Forest Management, protection and the Coordination of the management of Forest and Forestry Businesses No 17/PM*, (2008) which also clarifies its relationships with MAF.

### 2.3.1 Provincial Office of Industry and Commerce

A Provincial Industry and Commerce Division (POIC) Office is responsible for timber and forestry business in each Province. Its responsibilities commence after harvesting has occurred and logs have been transported to Log Landing 2 and POIC approves the movement of timber from Log Landing 2 through the various processing stages to export. These functions are reiterated in *Order PM/17, Notification No. 1904/MOIC.DIMEX*,

(2011) (with respect to timber from Native Forests) and *Notification No. 1791/MOIC.DIMEX* (2011) (with respect to plantation timber).

### 2.3.2 Department of Import and Export

The Department of Import and Export (DIMEX) of MOIC is responsible for issuing import and export licenses for all products that require them, as well as Certificates of Origin for countries that are part of a preferential trade agreement. It collects and maintains national statistics on imports and exports and maintains the Lao PDR Trade Portal which is the Government of Lao PDR's website that provides a single reference point for all trade related information including laws, regulations, procedures, tariffs a. The Lao PDR Trade Portal can be found at: <http://laotradeportal.gov.la>.

## 2.4 Ministry of Natural Resources and Environment

The Ministry of Natural Resources and Environment (MONRE) was established in 2011 by merging the Water Resource and Environment Administration (WREA) with the National Land Management Authority (NLMA) and the Geology Department, as well as with two Divisions previously located within DOF: Protection Conservation and Forest Protection and Regeneration (now Department of Forest Resource Management).

Within MONRE there are eleven Departments; of particular relevance to this project are the Land Allocation and Development Department (LADD) which is responsible for the administration of land, land registration, surveys and the issuing of land titles, and the Land Management Department (LMD) which is responsible for the participatory land use planning (PLUP) process during which it consults with stakeholders to propose and issue land use permits, land transfers, lands lease or land concession, and coordinates with related line agencies and local administration.

Key areas of authority are vested in MONRE through *The Land Law 04/NA* (2003), the *Environmental Protection Law 02/99* (1999) and *Decree No 112* (2010) on *Environmental Impact Assessment*.

## 2.5 Ministry of Finance

The Ministry of Finance (MOF) is responsible for the collection of tax and royalty payments and it is responsible for various laws including the *Law on Tax No. 04/NA, 2005*, the *Law on Value-Added Tax No. 04/NA, 2006* and the *Decree on Land Tax No.01/PO, 2007*.

Within the Ministry of Finance the Department of Customs is the agency tasked with determining and collecting the duties on goods exported from Laos PDR.

## 2.6 Ministry of Planning and Investment

The Ministry of Planning and Investment (MOPI) regulates foreign and domestic investment in Lao PDR. The Ministry has legislative responsibility for the *Law on Investment Promotion, No. 02/NA,<sup>2</sup> 2009* and it's implementing *Decree No 119/PM, 2011*. Other Laws with a role in regulating the promotion of investment are the *Enterprise Law No. 11/NA, 2005*, the *Customs Law No. 05/NA, 2005*, and the *Tax Law No. 04/NA, 2005* and *No. 05/NA, 2011*.

### 2.6.1 Investment Promotion Department

The Investment Promotion Department (IPD) of MOPI administers the foreign investment system and reviews investment applications. The IPD's primary functions include promoting Lao PDR as an investment destination, offering investment incentives, screening investment proposals, collecting investment data and monitoring investment practices. IPD is the lead agency in the process of assessing applications for investment activities seeking access to land through leases or concessions, and it coordinates the participation all other relevant sectoral agencies in the decision-making process such as the issuing of the concession registration certificates, including for large scale plantation establishment.

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<sup>2</sup> Superseded the Law on Promotion of Foreign Investment (2004), the Law on Domestic Investment (2004)

While focus of MOPI and IPD is on large scale investment it has a role in the governance of the smallholder plantation industry through aspects such as the regulation of access to land for large scale investment, which might compete with smallholders, the collection and use of information and statistics on the plantation sector and investment in wood processing. As the Government's main investment decision-making body, which coordinates with other line agencies during the investment decision-making process MOPI is in a unique position to ensure that decisions about the development of the economy are made with adequate consideration of environmental and social impacts (Voladet 2009).

## 2.7 Ministry of Public Works and Transport

The Ministry of Public Works and Transport (MPWT) formerly the Ministry of Communications, Transport, Post and Construction is responsible for developing national and provincial roads, civil aviation, urban transport systems, river wharves, and river and road transport. MPWT consists of six departments:

- Department of Civil Aviation,
- Department of Housing and Urban Planning,
- Department of Inland Waterways,
- Department of Planning and Cooperation, Department of Roads (DOR), and
- Department of Transport.

The Ministry has legislative responsibility across a range of laws that are of particular relevance to this study including *The Law on Land Transport, No. 03-97/NA, 1997* and *Law on Land Traffic, No. 02/NA, 2000*.

## 3 The Legislative Environment

The National Assembly is the legislative branch of Lao PDR with the right, vested to it by the Constitution, to make laws and decisions on fundamental issues for the country, and to oversee the activities of the executive, the people's courts and the Office of the Public Prosecutor.

### 3.1 Legal Hierarchy

The *Law on Making Legislation No 19/NA*, 2012 came into force on January 29, 2013 and it provides the rules for how legislation comes into force and the role of the Official Gazette of Lao PDR<sup>3</sup>. There are two types of formal legislation:

- Legislation of general application;
- Legislation of specific application.

#### 3.1.1 Legislation of General Application

Legislation of general application is legislation that governs the state, economy and society without focusing on a particular organization or individual, and is enforceable throughout the country or a certain region/area. Legislation of general application consists of:

- The Constitution;
- Laws;
- Resolutions of the National Assembly;
- Resolutions of the Standing Committee of the National Assembly;
- Ordinances of the President of the Republic;
- Decrees of the Government;
- Resolutions of the Government;
- Orders and Decisions of the Prime Minister;
- Orders, Decisions and Instructions of the Minister and Head of a Government Authority;
- Orders, Decisions and Instructions of the Provincial Governors and City Governors;
- Orders, Decisions and Instructions of the District and Municipality Chiefs;
- Village Regulations

#### 3.1.2 Legislation of Specific Application

Legislation of specific application is legislation that governs administrative activities that focus on a certain organisations or individuals. Legislation of specific application includes:

- Presidential Decrees on the Promulgation of a Law;
- Presidential Decrees, Decrees or Decisions on the award or appointment of a certain person for a certain position or specific activity;
- Notices.

#### 3.1.3 The Lao Constitution

The Constitution of Lao PDR was adopted on 15 August 1991 and was amended for the first time on 6 May 2003. This first modern Constitution of Lao PDR abolishes the former constitutional monarchy and establishes

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<sup>3</sup> After January 29, 2013, all promulgated legislation of general application at national, provincial and capital levels comes into legal force only after 15 days from the publication date in the Official Gazette (<http://laoofficialgazette.gov.la/index.php?r=site/index>). Districts/Municipalities and villages have the option to bring their legislation into legal force by publishing it on the Official Gazette or by posting their approved legislation for 15 days in other local media or in a way that people can access it easily. There is a transition period for existing legislation. All legislation of general application existing before 29 January 2013 remains in force as previously determined until no later than January 1, 2015. Such legislation must be posted on the Official Gazette by January 1, 2015 to remain in legal force. After January 1, 2015, only legislation published in the Official Gazette will be legally enforceable in Lao PDR, except for district/municipality and village legislation that has been posted in other local media or in a way that people can access it easily.

a unicameral National Assembly. The Constitution clearly delineates the powers and duties of the political regime, the socio-economic system and the rights and duties of Lao citizens.

Under the Constitution land is managed by the State on behalf of the people of Lao PDR; "land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws" (Art. 17).

## 3.2 The Justice System

Access to Justice describes people's ability to understand and exercise their rights and, in particular, to seek and obtain remedies for grievances that arise in connection with the enjoyment of those rights as determined largely by law. The effectiveness of laws in regulating a process is reflected as much by the content of the law as by the opportunities people have to respond to the failure of the law through a functioning and accessible justice system.

### 3.2.1 Courts

The Court structure of Lao PDR is established under several Laws and Regulations, primarily the *Law on the People's Court No. 05/PSA (2003)*.

- Supreme Court. The court of highest instance in Lao PDR is the People's Supreme Court. As the highest judicial organ it has the role of adjudicating cases, to administer the organisation of the people's courts and to supervise the administrative work of the local courts and the military courts as provided by the laws.
- People's Court of Appeal. The Appellate Court is the People's Court of Appeal which adjudicates on appeal the decisions at first instance of the people's provincial and city courts. The territorial jurisdiction of each appellate court over specified provinces and the location of each appellate court are as provided in specific regulations.
- People's City Courts and People's Provincial Courts. The Regional courts are the People's City Courts and People's Provincial Courts which have the role of adjudicating at first instance those cases which are not within the jurisdiction of the district and municipal courts; and to adjudicate on appeal the decisions at first instance of the district and municipal courts.
- People's District and Municipal Courts. The First Instance Courts are the People's District and Municipal Courts ('the Area courts') and their main role is to educate the people about the laws and to mediate parties' disputes; they also adjudicate minor criminal cases and small claims for civil cases, as provided by the laws.
- Other Courts include the military courts which adjudicate criminal cases involving offences that pertain to military matters or occur within the compounds of an army base.

In terms of the formal justice system the area courts are the most significant for the majority of the population in Lao PDR. This is both because of the type of cases that they handle - i.e., small disputes or minor offences - but also because of their relative proximity to where people live, particularly in the rural areas (UNDP 2011).

### 3.2.2 Office of the Public Prosecutor

The prosecution service is multi-layered with offices of the public prosecutor at the district level; provincial public prosecutors; an Appellate Public Prosecutor in the Northern, Central, and Southern regions; all headed by the Supreme Public Prosecutor. In addition to their role prosecuting in court those people charged with criminal offences, the Office retains another important function in 'the supervision of legality' and includes monitoring general compliance with the law by various bodies and citizens, investigation organisations (e.g. The Police, Department of Forests, and tax, customs or immigration inspectors), court proceedings, and places of detention (e.g. prisons), as well as investigating crimes or taking measures to prevent them. At the same time, prosecutors have an important role in ensuring the fairness of all types of dispute resolution mechanisms - both in terms of facilitating access and in the outcome, and should also act as a check on abuse of power, undue influence, or other inappropriate behaviour (UNDP 2011, 81).

### 3.2.3 Village Mediation Unit

Village Mediation Units (VMUs) are a semi-formal mechanism under technical guidance and supervision of a District's Justice Office which is under the supervision of Department of Judicial Administration of the MOJ. The MOJ aims to set up a VMU in every village, under the supervision of village's Party Committee and village administration. VMU committee members are usually drawn from relevant organizations such as: the Lao Front for National Construction, the Union of Army Veterans, the Lao Women Union, the Lao Revolutionary Youth Union, village elders or representatives of ethnic groups, and village security. The VMU assists village administration to enhance justice in the village; e.g. by disseminating law and regulations, encouraging compliance with the law, and settling minor disputes, both civil and criminal. Such dispute resolution is carried out on the basis of the law, as well as custom, but usually with the intention of reaching a negotiated, conciliatory settlement (UNDP 2011).

### 3.2.4 Petitions

Under the *Law on Petitions No. 07/NA (2005)* any individual can petition a relevant authority requesting that they consider and deal with an action or decision made that the petitioner believes infringes the law and affects the interests of the State, community, the rights or legitimate interests of the petitioner.

### 3.2.5 Customary Institutions

In addition to formal dispute resolution mechanisms a well-understood spectrum of customary adjudication and conflict resolution processes exist in Lao PDR, although these vary within and between ethnic groups. Procedures may start with informal processes including 'problem solving' within and between family members and progress to mediation by the village leader (*nai ban*) and the village mediation committee (*neoy goi geer*). A firm socio-political structure forms the basis of the informal legal system and although permanent specialised legal institutions with powers to declare laws do not exist, laws may be made by an *ad hoc* 'general committee'. Specific customary laws may exist concerning economic matters (use of market places or common natural resources), social matters (use of public social facilities such as roads, bridges, wells), or political matters (borders, relationship with external powers). The MOJ *Customary Law and Practice in Lao PDR* project describes the way that disputes are mediated and resolved through customary means by different ethnic groups (MOJ 2011).

#### Note on the use of legal texts and referencing.

In this report all types of legislation have been consulted. Wherever possible official translations from Lao into English have been used however in many cases only unofficial translations were available. While every effort has been made to interpret these accurately there may be circumstances in which the English words used do not accurately reflect the intention of the original Lao text. Appendix 1 lists the legal documents consulted in the writing of this report.

Within this document the following approach has been taken to referencing legal texts. At the point of first reference all laws are named in full and in *italics*. Subsequent references within the same section of the report may be shortened to the instrument number and date, without italics. Where necessary to avoid confusion the names of laws may be included but shortened. All legal texts are listed in full in Appendix 1. For example:

- At first reference: *Politburo Resolution on the Formulation of Provinces as Strategic units, Districts as Comprehensively Strong Units and Villages as Development Units No 03/CPP, (2012)*
- At second reference in same report section *Politburo Resolution No 03/CPP (2012)*

or,

- At first reference: *The Forestry Law NA/06 (2007)*,
- At second reference: The Forestry Law

## 4 Strategies, Plans and Policies

### 4.1 National Growth and Poverty Eradication Strategy (NGPES)

The 2004 National Growth and Poverty Eradication Strategy (NGPES) has been the guiding document for Lao PDR's overall national rural development program; it included sustainable forest management as central to both poverty eradication and economic development. The NGPES was driven by the desire to attract foreign and domestic investment and to generate trade across a range of largely industrial and agricultural sectors to provide revenue to the State budget. The NGPES prioritised agriculture and forestry sector development for achieving food security and improved livelihoods for the people of Lao PDR. Village-based natural resource management, sustainable participatory management, tree planting, capacity building and the participation of villagers in conservation activities were among the measures proposed to alleviate poverty and ensure more sustainable management of forests (Government of Lao PDR (GOL) 2003 in Katila 2008). The NGPES was subsequently incorporated into the Sixth National Socio-Economic Development Plan (2006-2010) that was adopted by the Lao National Assembly in June 2006.

The Seventh National Socio-Economic Development Plan (2011-2015) reports on the progress against the Sixth National Socio-Economic Development Plan and sets the directions and targets for socio-economic development to 2015. With respect to forestry the plan recognises that "national forest conservation management, production forests and effective utilisation of agricultural land are not widely carried out". The direction for Agriculture and Forestry under the seventh plan is to:

"Systematically develop all aspects of agriculture and forestry in line with industrialisation and modernisation priorities in areas that have favourable conditions; ensure food security; promote commodity production for domestic use and export; improve productivity and enhance end-product quality."

The target that has been set for Forestry to:

"Increase forest coverage to 65% of the total country's area by 2015, rehabilitation of 3.9 million hectares of deteriorated forest and reforest 200,000 hectares. Additionally, undertake a survey of 60% of forest cover under the three classification types. Expand the certified production forest area by 10% by 2015."

Other relevant directives emphasise the need to:

- Promote agricultural products for export so they rapidly become a source of economic growth;
- Promote Small to Medium Enterprises (SMEs), especially in products that already have access to markets and are highly competitive; promote handicraft products which represent the tradition of the Lao people;
- Establish a land use system, protect and develop land and other natural resources in a sustainable, integrated and efficient manner in order to secure land for the Lao people for housing, subsistence and agricultural and non-agricultural commercial production, as part of economic development. A target of one million systematic and regulated land titles has been set.

The Government of Lao PDR has streamlined the Millennium Development Goals (MDGs)<sup>4</sup> into its National Development Plans and the Seventh NSEDP's major themes are consistent with the Millennium Declaration and the MDGs.

### 4.2 National Export Strategy (NES) 2011-2015

The Government of Lao PDR has developed a National Export Strategy through which the government targets nine sectors that have the potential to generate foreign exchange to boost economic growth. These sectors

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<sup>4</sup> In 2000 World leaders gathered at the Millennium Summit signed the UN Millennium Declaration. This document is the foundation for the Millennium Development Goals, a set of 8 measurable goals for 2015 focused on improving human conditions around the globe. See [http://www.undp.org/content/lao\\_pdr/en/home/mdgoverview/](http://www.undp.org/content/lao_pdr/en/home/mdgoverview/)

are hydropower, tourism, organic agriculture, minerals, garments, silk and cotton handicrafts, wood products, medicinal plants and locally produced products.

### 4.3 The Strategy for Agricultural Development 2011 to 2020

The Strategy for Agricultural Development 2011-2020, written in 2010, is a long term framework for the development of the agriculture sector. The plan is intended to provide guidance rather than operational directive and sets the vision and strategic direction for the sector. The strategic direction includes ensuring a gradual transition from subsistence to commercial smallholder production with the aim of, amongst other things, reducing rural poverty by increasing productivity, challenging production inputs and finance, and facilitating links to regional and global value chains. In operational terms it is intended that the framework will translate into appropriate measures of value chain governance ensuring that smallholder and local small and medium scale enterprises can retain a fairer share of the valued added (GOL 2010). 'Pro-poor' and 'green' value chains are emphasised within the plan and an appropriate regulatory framework is viewed as essential for enabling this transition. An important observation made by the Strategy for Agricultural Development is that there is no legally established nor consistent operational definition of a 'smallholder' and that the absence of such a definition is an important barrier to achieving the goals of that Strategy as well as other national plans.

### 4.4 The Forest Sector Strategy

The Forest Sector Strategy 2020 (FS2020; GOL 2005) is concerned with the development of forestland and resources. The overall objective of FS2020 is to contribute to the indicative targets of the NGPES, to provide goods and services, to reduce dependence on and increase concrete efforts to sustainably manage the country's natural resources. It identifies 144 actions ranging from fostering village participation to improving capacity in planning and utilisation and monitoring both within the forest and by processors. It also promotes efforts to enhance biodiversity conservation and the establishment of plantation forests.

The implementation principles of FS2020 include the development of village based natural resource management and the promotion of sustainable and participatory non-timber forest product (NTFP) management and processing. The strategy aims to complete the land-forest allocation programme by 2020 (GOL 2005).

### 4.5 Department of Forest Inspection Strategy

A Forest Inspection Strategy to the Year 2020 was drafted in 2010. This strategy describes the function of DOFI and clarifies its roles in the context of existing legislation and national plans and strategies. Four key operational areas are identified<sup>5</sup>:

- Forest and mill inspections including legal harvesting and transportation of timber within the approved national quota under the Forest Management Plan; protocols for the inspection of timber approved by special permit (i.e. salvage logging), Chain of Custody governance, REDD<sup>6</sup> System and the FLEG Process.
- Wildlife inspections including the *Wildlife and Aquatic Law No. 07/NA, 2007*, the legal custody and use of wild animals and the assessment of development impacts on the environment
- Transportation inspections with respect to the establishment of a transportation inspection and compliance program throughout the seventeen Provinces of Lao PDR with an emphasis on the illegal transportation of forest and wildlife products
- International borders, particularly transportation inspection and the movement of forest and wildlife products.

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<sup>5</sup> Summarised from a Draft English Translation of the Strategy.

<sup>6</sup> REDD refers to Reduced Emissions from Deforestation and Degradation, under the United Nations Framework Convention on Climate Change

## 4.6 The *Sam Sang* “Three Pillars” Policy

In 2000 the Government of Lao PDR initiated a policy of decentralization for its development efforts. *Prime Ministerial Instruction No. 01/PM (2000) regarding the policies to building the province to become the strategic unit, the district as budget-planning unit and the village as the implementation unit* sets out the general principles to build up “provinces as strategic units, districts as planning and budgeting units, and villages as implementation units.” This was complemented by detailed recommendations by the State Planning Committee on the competence, functions, and responsibilities of the stakeholders regarding planning; and a MOF recommendation on establishing and implementing provincial budgets (OECD 2010). The decentralization policy enables the Provinces to formulate 5-year and annual socioeconomic plans and related budgets, and delegates the revenue collection tasks linked with these plans.

Through *Politburo Resolution No. 03/CP (2012) on the Formulation of Provinces as Strategic units, Districts as Comprehensively Strong Units and Villages as Development Units* (known as the *Samsang* policy or ‘three pillars’ directive), the Government of Lao PDR aims to decentralize rights and administration to the local level, although a strong centralized democracy is seen as a precondition to effective decentralization. Resolution No 03/CP acknowledges weaknesses in the current structure, and aims to systematically reform the functions and capacity of administration at all levels. Included within this is a recognised need to review laws, norms and regulations as well as decision making power and administrative responsibilities.

The decentralization strategies are relevant in both administrative and operational aspects of the smallholder teak plantation value chain and in the context of understanding and navigating the legality drivers that are influencing success. In particular they have relevance in terms of the legal framework for land allocation and entitlement which is an essential precursor to plantation and resource ownership, whereby the intention is that local institutions (at village and district level) will be in charge of functions such as land registration, tax collection, complying with land use plans, land distribution and conflict resolution.

## 4.7 The Land Policy

In recognition that land is a precious natural resource that is necessary for national socio-economic development the Lao Government is developing a Land Policy with the following purposes<sup>7</sup>:

- To protect land use rights and possession of individuals, entities, organizations, collectives and communities;
- To allocate, zone, categorize land clearly;
- To supervise/manage land in a strong, transparent and effective manner;
- To open policy to promote investment with preferential policy towards Lao expatriates and foreign investors, entitling them to buy the land use rights for residential and business purposes, contributing to the gradually-better social-economic development as well as to the sustainable protection of natural resources, in order to graduate the country from the status of least developed country in 2020.

The Land Policy establishes as principle the legal equality of all Lao citizens, ensuring their rights and interests in relation to the possession of land use rights and their lawful obtaining of land use rights for living and working purpose. It aim to protect the rights and interests of the state, organizations, individuals, entities, collectives, communities, local and foreign investors that use land, including customary land use rights of peoples.

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<sup>7</sup> Based on an unofficial translation dated 1<sup>st</sup> July 2014.

## 5 The Legal Process for Smallholder Plantations and the Plantation-Wood Value Chain

This section describes the current laws and legal instruments relevant to the value chain of small holder plantation teak. The following aspects of the value chain are considered:

- Forestry Businesses
- Land and forest classification and allocation
- Plantation establishment and registration
- Harvesting and Sales
- Haulage and Transport
- Wood Processing
- Export and Duties
- Business Taxes
- Fees and Service Charges
- Cooperatives and Associations
- Monitoring, Compliance, Enforcement and Professional Conduct

### 5.1 Forestry Businesses

Under the *Forestry Law NA/06 (2007)* (under review) individuals, households and organizations with the desire to operate businesses using forest and forest products are required to have approval from DOF and register their enterprise with the DOIC according to the *Law on Enterprise, No. 11/NA (2005)* and the *Decree on the Promotion and Development of Small and Medium Sized Enterprises No. 42/PM (2004)*. The Forestry Law (Art. 45) specifies the following authorised business operations in forests:

- Production of tree and Non Timber Forest Product (NTFP) seedlings;
- Planting trees and NTFPs;
- Felling planted trees;
- Logging and harvesting of forest products;
- Processing of timber and forest products;
- Distribution of NTFP and forest products;
- Import and export of timber and forest products;
- Transportation of timber and forest products;
- Ecotourism.

This suggests that business registration for operating a forestry business is required for all steps of the value chain including smallholder plantation growers and farmers with teak plantations established and harvested for the purpose of commercial sale.

The Law on Enterprise (Art. 13) requires that any person intending to conduct business in Lao PDR must file a notification for enterprise registration with the concerned State agencies as specified under the relevant law. The procedures for registering a business or enterprise are set out in a number of guidance documents specified in a 'Notification On Procedure for Business Registration in Lao PDR'<sup>8</sup> (but which were not available at the time of writing), and applications are based on the type and scale of the business to be registered. Fees also apply for business registration and operating licences for specific industries (Table 1).

Business Registration can be approved at different administrative levels, depending on the nature of the business. Enterprises who engage in the import of vehicles or gas or the export of wood product require approval at the Ministry (National) level. Enterprises regulated in the agriculture sector can be administered at the Provincial levels and small business can register at District offices.

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<sup>8</sup> Additional announcements No.0530/MOC, dated 10/May/2002 No.0538/MOC, dated 13/May/2002 with respect to procedures and Additional announcement No. 0341/MF, dated 21/02/2002 with respect to Fees.

Table 1: Business Registration fees

| Procedure   | Item  | Costs (Kip) | Time to complete |
|---|---|-------------|------------------|
| Apply for an Enterprise Registration Certificate      | Incorporation form  | 10,000      | 1 week           |
|   | Application form  | 70,000      |                  |
|   | Registration service fee  | 300,000     |                  |
| Apply for tax registration certificate                | Registration form for taxes   | 25,000      | 2 weeks          |
|   | Tax certificate   | 100,000     |                  |
| Apply for an Operating License from relevant Ministry | Operating License   | 50,000      | 2-3 weeks        |
| Source:   | <a href="http://www.doingbusiness.org/data/exploreeconomies/lao-pdr/registering-property/">http://www.doingbusiness.org/data/exploreeconomies/lao-pdr/registering-property/</a> |             |                  |

### Business Registration: Summary of Issues and Questions

While the need for business registration seems to be well recognised for participants in the value chain from the point of harvest onwards, it is not clear whether individual smallholders and farmers who plant teak trees are required to hold such registration or whether evidence of such registration is sought upon the sale of teak to traders or processors.

## 5.2 Land and Forest Classification and Allocation

Under *The Constitution of Lao PDR* (the Constitution) land is managed by the State on behalf of the people; "land is a national heritage, and the State ensures the rights to use, transfer and inherit it in accordance with the laws" (Constitution, Art. 17). While land cannot formally be owned by individuals, temporary and long term land use rights can be assigned to individuals and other entities by the State.

The *Land Law 04/NA* (2003) (under review) is the principle legislative instrument governing the management, protection and use of land in Lao PDR. Article 3 of the Land Law reaffirms Article 17 of the Constitution through which land is under the ownership of the national community, and the State is charged with the centralized and uniform management of land, including allocation. Land may be State land, State asset, public land/asset or land for which 'ownership' or land use rights are held by individuals, communities or other organisations. The Land Law is therefore the primary legal basis through which individuals gain access to the right to use land for plantations.

The process of land allocation including for smallholder plantations has evolved over time in response to policy developments and in line with international trends (refer Table 2). In the 1980s and 1990s, to encourage a transition from a centrally planned economy to a free market, the GoL committed to develop a land titling system to clarify tenure, establish credit markets, encourage and support private sector investment and as a source of government revenue through land tax (Carter and Heuangsavath 2007). Policy development and preparation of a legal framework for the management and utilisation of forest and land resources accelerated following the first National Forestry Conference in May 1989 and the adoption of a Tropical Forest Action Plan in 1991. Legislation introduced during the early 1990s (including Decree No 99 on Land in 1992) led to the development of the Land and Forest Allocation Programme (LFAP), which recognized the rights of communities and individuals to use and manage resources (Fujita and Phengsopha 2008). In early 1993<sup>9</sup>, the Ministry of Agriculture and Forestry started to carry out Land Use Planning and Land Allocation (LUP-LA) to increase land security by distinguishing between state production forest and village forest land through the demarcation of community boundaries, the issuing of temporary land use certificates, and by encouraging a shift from swidden to intensive farming, which it was believed would improve livelihoods, reduce poverty and

<sup>9</sup> This section is drawn directly on the 2010 Manual on Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level

protect natural resources (refer to *Ministerial Instruction to Prepare for the Complete Stopping of Slash and Burn, and Shifting Cultivation by 2010* No. 0022/MAF (2005),<sup>10</sup>).

During the period to 2006 LUP-LA continued in most provinces, after which activity reduced partly because it had been undertaken in the majority of rural villages in Lao PDR and also because there was a marked decrease in funds available. In July 2006 the Eighth Party Congress introduced new development strategies covering 11 priority programs and 111 projects within which the Ministry of Agriculture and Forestry (MAF) elaborated a policy framework of 4 Key Goals and 13 Measures for the agriculture and forestry sector. The four goals being:

1. Production for guaranteed food security
2. Commodity production
3. Stabilisation of shifting cultivation
4. Sustainable forest management

Measure II, "the survey and allocation of agriculture and forestry zones", included an activity named "completing forest and land allocation" for which three types of activities were specified;

1. improving land use planning in villages where it was not implemented properly in the past,
2. completing land use planning in villages where all the steps were not undertaken, and
3. undertaking land use planning in villages where it was not previously undertaken.

The LFAP authorises village organizations, together with local authorities, to draw up a resource management plan based on the land use categories defined under *Instruction No. 0822/AF, 1996 on Land Forest Allocation for Management and Use*. Land is then allocated to households on the basis of labour, capacity and intended use. The LFAP process involves:

- delineating village boundaries and distinguishing resource boundaries within the village, including forest, agricultural and other land;
- prescribing how different lands should be accessed, used, and managed;
- transferring resource management responsibilities to a village committee consisting of members of the village administrative organization including village leaders and members of mass organizations; and
- systematically allocating agricultural land and degraded forestland to individuals and households.

LFAP was focussed at village level and applied village-by-village through a one-time only planning exercise led by DAFO and DOF. The approach uses an adaptive methodology taking into account funds and capacity available at the time. A Village Land use planning committee was established, and the process resulted in the signing of a Village Forest Management Agreement (VFMA) with pre-defined (by DAFO) village regulations. A Village management plan approved by the district authority, the District Chief's Office and was then implemented through the village organization (see Fujita and Phanvilay 2008). The allocation of land was formalised through a land registration process which is undertaken in accordance with the Land Law 2003 (Art. 44).

The LFAP also attempted to decentralise administrative responsibility for land by legally recognising village-based institutions. The basic premise supports decentralized resource management but also redefines local resources in terms that are compatible with the central authority by categorizing them according to the Forest Law which prescribes the way that resources should be managed (Fujita and Phanvilay 2008). This was reiterated in *Prime Minister's Instruction No.09/PB* in 2004, and *Instruction No/13* (2007) on "Building Villages and Village Development Clusters" which required that: "land use planning and allocation instructions be given to provinces in order to ensure the continuity and sustainability of village and village cluster development based on the Land Law and the land and forest allocation policy". It stated further that the National Land Management Authority (NLMA) and MAF should co-ordinate with local authorities to review and evaluate the

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<sup>10</sup> Legal instruments have been translated from Lao into English and may not be an exact representation of the words or meaning of the official Lao texts.

implementation of land and forest allocation through-out the country, to improve the policy and process appropriate to new conditions, and to issue instructions and references for local authorities on appropriate land allocation. Sufficient land would be made available for village livelihoods, i.e., agriculture, grazing, fruit trees, and use forest, while conserving natural resources". In 2008, a technical advisory group was formed to develop new approaches and procedures and prepare an improved manual on Participatory Land Use Planning (PLUP) which was released in 2010.

### 5.2.1 Land Classification

The land uses and the area of land available to individuals and other entities are determined on the basis of eight land categories under the Land Law, in areas specified under a village Land and Forest Allocation Plan. The eight categories are:

- Agricultural land,
- Forest land,
- Construction land,
- Industrial land,
- Communication land,
- Cultural land,
- Land for national defence and peace keeping and
- Water-area land.

For the establishment of plantations two categories of land are most relevant: *Agricultural Land* and *Forest land*<sup>11</sup>.

The Land Law (Art. 15) defines *Agricultural Land* as land which is determined to be used for cultivation, animal husbandry, agricultural research and experimentation and for irrigation. Article 17 permits the allocation of agricultural land for the following uses:

- 1 ha/household labour force<sup>12</sup> for rice cultivation and farming;
- 3 ha/ household labour force for industrial crops/plantations, annual crops and fruit tree orchards;
- 15 ha/ household labour force for using deforested land for growing grass for grazing.

Thus, 3 ha of *agricultural land* can be allocated for tree plantations.

*Forest land* is defined as all land, with or without forest cover, which the State has determined to be forest land. Forest resources encompass all resources on forest land such as soil, flora, trees, water and wildlife (Land Law Art. 19). The Land Law authorises MAF to classify and manage forest land and to allocate it to individuals, families and others for use for the long term (Arts. 20, 21, 22).

Once classified as forest land, the Forestry Law determines the basic principles, regulations and measures on sustainable management, preservation, development, utilization and inspection. Forest classification occurs at two levels; firstly at the macro level whereby forests and forest lands are categorised into national and provincial forest categories; and subsequently at the village level whereby forests located on village lands are classified using the same categories used nationally, during the land use planning and land allocation process, as described above.

The five forest categories are:

- '*Protection Forest*', for the protection of watershed areas and the prevention of soil erosion;
- '*Conservation Forests*', for conserving biodiversity and historical, cultural or scientific values;
- '*Production Forests*', forests and forest lands for providing timber and other forest products for national socioeconomic development and for people's livelihood needs;
- '*Regeneration Forests*', young forests or fallow areas classified for rehabilitation and restoration into natural forests; and
- '*Degraded Forests*', which have been heavily damaged, i.e. are without forest cover or are barren land.

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<sup>11</sup> Under Decree No 88/PM 2008 (Art 19) there is the capacity for the Land Categories to be changed.

<sup>12</sup> Referring to each individual who is a member of a household and who is part of the family labour force.

Table 2: Policy drivers and legislative instruments relevant to land allocation, plantation establishment and registration.

| Year        | Initiative  | Objective  |
|-------------|---|--|
| from 1900's | French Occupation   | Introduction of teak in plantations and the generation of revenue from timber and forest products. Establishment of colonial forestry service in 1926; Forest code 930 including prohibition on shifting cultivation; promotion of teak and rubber plantations (see Phimmavong <i>et al.</i> 2009)   |
| 1979        | CM Instruction 74 on Forest Protection  | Promoted the development and management of tree plantations in order to reduce pressure on natural forest.   |
| 1986        | New Economic Mechanism  | National policy to promote a shift from centrally planned to an 'Open Market' economy with commodities, land markets, development projects. Internationalisation of forest policy.   |
| 1989        | National Forestry Conference  | Identified a need to achieve Sustainable Forest Management through <ul style="list-style-type: none"> <li>• preservation of forests and improvement of management to increase production;</li> <li>• rationalisation of the use of forests to increase their economic value; and</li> <li>• ending shifting cultivation and establishing permanent settlement</li> </ul> Tropical Forestry Action Plan including an activity to promote the establishment of forest plantations with a preference for fast growing species on degraded land. |
| 1989        | Decree No. 117/CPM Management and Use of Forest and Forest Land                     | Defined the forest use roles and responsibility for MAF. Allowed for the allocation of land and forest to individuals including for the planting of trees on degraded land.  |
| 1989        | No 118/CPM Control and Management of Aquatic Animals, Wildlife, Hunting and Fishing | Placed the management and ownership of wildlife under Government control.  |
| 1989        | Shifting Cultivation Stabilisation and Arranging Permanent settlement Program       | Aimed to eliminate shifting cultivation by focussing on permanent agriculture and livestock to reduce poverty; for environmental protection; forest and land allocation; promotion of "permanent occupations"; food self-sufficiency. Introduced trials of Forest and Land Allocation in some Provinces including Luang Prabang.   |
| 1992        | No 99/PM Decree on Land   | Established the rights of individuals and collectives to possess land pursuant to the forest land allocation policy program outlined by the Ministry of Agriculture and Forestry for agro-forestry and industrial production and services.   |
| 1993        | Land Use Planning and Land Allocation   | Allocated forest and agricultural land for villager use; aimed to contain and reduce shifting cultivation and promote "permanent production"   |
| 1993        | No 169/PM Decree Management and Use of Forests                                      | Reduced dependence on wood or other forest produces from natural forests as main sources of revenue. Established the rights of individuals, collectives or juridical entities who plant or maintain trees with their own labour or capital. Established the basis for forest management contracts, including for plantations.  |
| 1993        | Land Tax  | Set Land Tax rates for 'long term industrial trees' at 20,000-5,000 kip/ha. Provided exemptions for long-term industrial tree and fruit tree orchards for a period of 2-5 years from the day of planting based on the rate of yield of each type of planted trees.   |
| 1994        | No 186/PM Allocation of Land and Forests for Tree Planting and Preservation.        | Promoted the allocation of degraded and bare land for plantations, specifying fast growing species and teak. Authorized local private business entities and individuals to invest in planation of trees on their own land or to invest for the population in tree planting on the basis of contracts. Specified Land tax exemption for planted forests and agroforestry systems with no less than 1,100 trees per hectare.   |

|      |   |  |
|------|---|--|
|      |   | <p>Provided exemptions from other royalties and charges, but not income tax, in the sale of an individual's own trees.</p> <p>Provided for compensation for the loss of trees for land acquired by the state.</p> <p>Set the authority for approving tree planting on the basis of area (1-101 ha; 101-1000 ha; &gt;10001 ha) - (No approvals specified for &lt; 1ha).</p>   |
| 1995 | No 0234/ MAF Management of plantations and planted forests            | <p>Encouraged sedentary cultivation.</p> <p>Allowed for planting on an individual's own land with supporting documentation; but discouraged planting on agricultural land.</p> <p>Exempted these areas of &lt;5ha and planted with own funds from social and technical assessments; but required submission of documents to village and DAFO for land tax exemption as well as forest restoration and forest resource fees at the time of harvesting for consumption and/or sale.</p> <p>If a bank loan was used for plantations, set requirements for a technical and economic feasibility study and other documentation.</p> <p>Exempted owners of scattered plantings from restoration and forest resource fees only at the time of harvest but no exemption from land tax.</p> <p>Allowed for the inheritance, transfer and sale of standing trees BUT NOT THE LAND.</p> |
| 1995 | Guidance on LFAP in Luang Prabang                                     | <p>Specified the process for the implementation of LFAP in Luang Prabang Province to stop slash and burn, encourage permanent settlement, clarify and secure tenure, reduce land disputes, reform land management.</p> <p>Allocated not greater than 4 parcels per family.</p> <p>Allowed for the allocation of land for plating industrial trees to public servants.</p> <p>Specified 'zones' for land uses: allowed for the use of areas of 'previously used' roadsides and river banks for industrial tree plantations on 'mountains'.</p>  |
| 1996 | Forestry Law  | <p>Replaced Decree 169/PM and Decree 186/PM.</p> <p>Determined basic principles, rules, and measures relative to the administration, maintenance, use of forestry resources and forest lands, promotion of rehabilitation, planting and propagation of forestry resources in the Lao PDR.</p> <p>Reiterated the rights of ownership of planted trees.</p> <p>Set the limit 3ha of degraded forest land per labourer in a family for planting trees, with the authority of DAFO.</p> <p>Required the registration of forestry activities according to the Business Law promulgated by the State.</p>  |
| 1996 | No 03/PM Instruction on Land-Forest Allocation for Management and Use | <p>Reiterated instructions and recommendations on the continuation and expansion of Land Management and Land and Forest Allocation.</p> <p>Further promoted tree planting, specifying "denuded land and grass land, brush land, open land and degraded forest land". Reiterated exemption from land tax and the rights to use, transfer, inherit, usufruct right and the right to receive compensation at requisition of land by the state.</p>  |
| 1997 | No 01/ N 97 Land Law  | Not available  |
| 1999 | No. 1849/AF Registration of plantations and tree planting parcels     | <p>Set the criteria for eligibility for a plantation to be registered: <math>\geq 1,600 \text{ m}^2</math> (or 1 rai); &gt; 3 years old, 80% survival; specific planting patterns; documents to demonstrate rights; reiterated tax and fee exemptions; established approving authorities (&lt;5 ha DAFO; &gt; 5 ha PAFO); set the fee at 1,000 Kips per <math>1,600 \text{ m}^2</math> or 1 rai;</p>   |
| 2000 | No. 0196/MAF Development and  | Promoted the development of long-term plantations to reduce the use of timber from natural forests, encourage  |

|      |  |  |
|------|--|--|
|      | Promotion of Long Term plantations                             | investment from the public sector, organization, collectives, individuals and private sectors, with a view to widening the planting of trees, having optimal benefits, complying with the techniques, economic, ensuring the social and environmental protection.<br>Recognised two planting systems: 1. Concentrated planting system a) in a block at 1,100 trees per hectare; or in agroforestry at 800 tree per ha; 2. Scattered plantings; Set requirements for plantation >5 ha to have a technical assessment. Established silvicultural and planation management requirements. Specified land tax exemptions for System 1 plantations but not scattered trees. Reiterated resource fee exemptions; specified the calculation of compensation.   |
| 2003 | Land Law (current, being revised)                              | Determines the regime on the management, protection and use of land in order to ensure efficiency and conformity with objectives and with laws and regulations and to contribute to national socio-economic development as well as to the protection of the environment and national borders of the Lao People's Democratic Republic.<br>Provides the basis for the allocation of land to individuals; promotes land development; establishes rights associated with land allocation; establishes the categories of land and the uses of that land;<br>Allows the allocation of 3 ha per labourer of Agricultural land for industrial plantations; Allows for the allocation of 3 ha per labourer of degraded r barren forest land and the registration of those rights for three years by MAF in accordance with the Forestry Law;<br>Establishes the basis for land registration and land titling, |
| 2003 | No 96/PM Commercial tree planting and environmental protection | Promotes tree planting through exemptions from land tax, forestry restoration and natural resource fees and other duties for timber harvested from the tree plantation. Encourages investment and provides for compensation.   |
| 2005 | No. 13/ NA Forestry Law  | Revised the Forestry Law of 1996.  |
| 2007 | No. 01/PO Land Tax   | Sets land tax exemptions for registered plantations >1ha and consisting of ≥ 1,100 trees.  |
| 2007 | No NA/06 Forestry Law 2007 (current, under review)             | Replaces Forestry Law No 13/NA 2005. Sets the basic principles, regulations and measures on sustainable management, preservation, development, utilization and inspection of forest resources and forestland, promotion of regeneration and tree planting, and increase of forest resources.<br>Defines forest categories;<br>Identifies the panting of trees as a business activity;<br>Promotes the planting of trees;   |
| 2007 | No 564/NLMA Adjudication of Land Occupation and Rights         | Provides for the systematic adjudication of land rights.   |
| 2010 | PLUP Guidelines  | Provides guidance on specific steps and procedures for LUP-LA at the village cluster and clarifies the roles of MAF and MONRE agencies.  |
| 2010 | No 1374/MCAF Plantation Registration Certificates              | Reiterates the requirement for Plantation Registration and elaborates the approving agencies   |

Under the Forestry Law (Arts. 13 and 21) the State may only allocate land from the 'degraded forest land' category for tree planting. Under Article 3 several definitions are relevant:

*"'Degraded forests' are the forest areas that have been heavily damaged such as land without forest or barren forestland, which are allocated for tree replanting, agriculture- trees products, permanent animal husbandry areas or using land for other purposes in accordance with the socio-economic development plan".*

*"'Degraded Forestlands' are the forestland areas where forests have been heavily and continually damaged and degraded causing the loss of balance in organic matter, which may not be able to regenerate naturally or become a rich forest again"*

*"'Barren Forestlands' are the forestland areas without trees caused by natural or human destruction".*

However, there are neither quantitative data nor spatial information that enables the consistent interpretation of these definitions nor the identification of defined geographic areas that can be allocated to plantations.

#### 5.2.1.1 *Overlap between National Forest Categories and Village boundaries.*

The Forest Strategy 2020 (GOL 2005) recognises that there are issues with the two-tiered land classification system applied at the National and village level, resulting in overlaps between land-use types, noting that delineation of the first three forest categories, especially at national and provincial level, are made on a large scale and contain other land use types in addition to forest. Additionally there are overlaps within village areas whereby through the land and forest allocation process village boundaries, village forest and agricultural areas are delineated, and forest areas are classified into some or all of the five forest categories. Under the village forest classification, Production Forest is named Village Production Forest and is used for NTFP collection and felling of trees for domestic use. Village Production Forests may exist within nationally or provincially mapped Production and Protection Forests. However, there are no clear criteria for the delineation of agriculture areas and the classification of village forest. This becomes an issue where the classification of land under the LFAP determines which land may subsequently be used for plantations, as discussed in Section 5.3.1. The 2010 PLUP manual seeks to address some of this uncertainty which is also being reviewed under the process to reform the Forestry Law.

#### 5.2.2 Land Registration and Land Titling

Rights to use land are formalised in the Land Law, Part 2 Chapter 10 which specifies the regulations for Land Registration, Land Titling, the types of land documents and legal transaction relating to Land. The procedures for land titling and the granting of land use rights are set out in the Land Law, a number of regulations and instructions that sit under the Land Law including *Decree No. 88/PM on the Implementation of Land Law, Ministerial Instruction No 564/NLMA on Adjudication Pertaining to Land Use and Occupation for Land Registration and Titling* (2007) and, as introduced in 2010, the Manual on Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level<sup>13</sup>. They have also been described in a number of comprehensive reports by the German Technical Corporation (GTZ, now GIZ) under the Lao Land Titling Project II including:

- Study on Land Allocation to Individual Households in Rural Areas Land Policy Study No. 1 (GTZ 2004);
- Study on Land Tax and Land Fees Policy in Lao PDR Land Policy Study No. 3 (GTZ 2006);
- Study on Communal Land Registration in Lao PDR Land Policy Study No. 6 (GTZ 2007a)
- Study on Land Conflicts and Conflict Resolution in Lao PDR Land Policy Study No. 9 (GTZ 2007b)
- Study on Expropriation and Compensation in Lao PDR Land Policy Study No. 11 (GTZ 2007c).

There are two forms of land registration:

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<sup>13</sup> Based on a Memorandum of Understanding between the Department of Land Planning and Development of the National Land Management Authority, Department of Forestry, National Agriculture and Forestry Research Institute and National Agriculture and Forestry Extension Service of the Ministry of Agriculture and Forestry on the Development, Dissemination and Use of Manual for Participatory Land Use Planning and Land/Forest Allocation at Village Development Cluster Level.

- Systematic land registration, which is undertaken in a particular area where the management of land, the classification of land regions, and the classification of land categories for management have occurred under the LFAP.
- Land registration based on request, which follows applications made by any individual or organisation for the certification of land use rights, outside the LFAP process.

The general process for the allocation and titling of land is described in Figure 3.

#### 5.2.2.1 Temporary Land Use Certificates

In the past the land titling process has commenced with the issuing of Temporary Land Use Certificates (TLUCs) which were issued in villages where systematic land allocation had been conducted with the intention that they would eventually be converted to permanent certificates by the Lands Office. This would then be followed by land parcel registration and land titling. TLUC formalised the right to use land assigned to individuals or households according to their labour and financial capacity. TLUCs were issued for three years by either District or Provincial Agriculture and Forestry offices or the Land Administration Department (Land Law Article 22, Decree No. 88/PM). The 3-year TLUCs typically consisted of a land certificate (the TLUC), a land use contract and parcel (or survey) map (Soulivanh *et al.* 2004). The land use contract specified the nature and terms of the intended use (e.g. plantation) and copies of TLUCs were kept at DAFO offices and provided to District Land Administration Department offices for inclusion in the land register. After three years under a TLUC, the certificate holder had the option to apply for a long-term ('permanent') land use certificate on the basis of the procedures set out in Chapter 10 of the Land Law; however, obtaining a long term land title is not an automatic entitlement; the process includes providing evidence that the land use specified in the TLUC contract has occurred in accordance with the regulations and the TLUC contract.

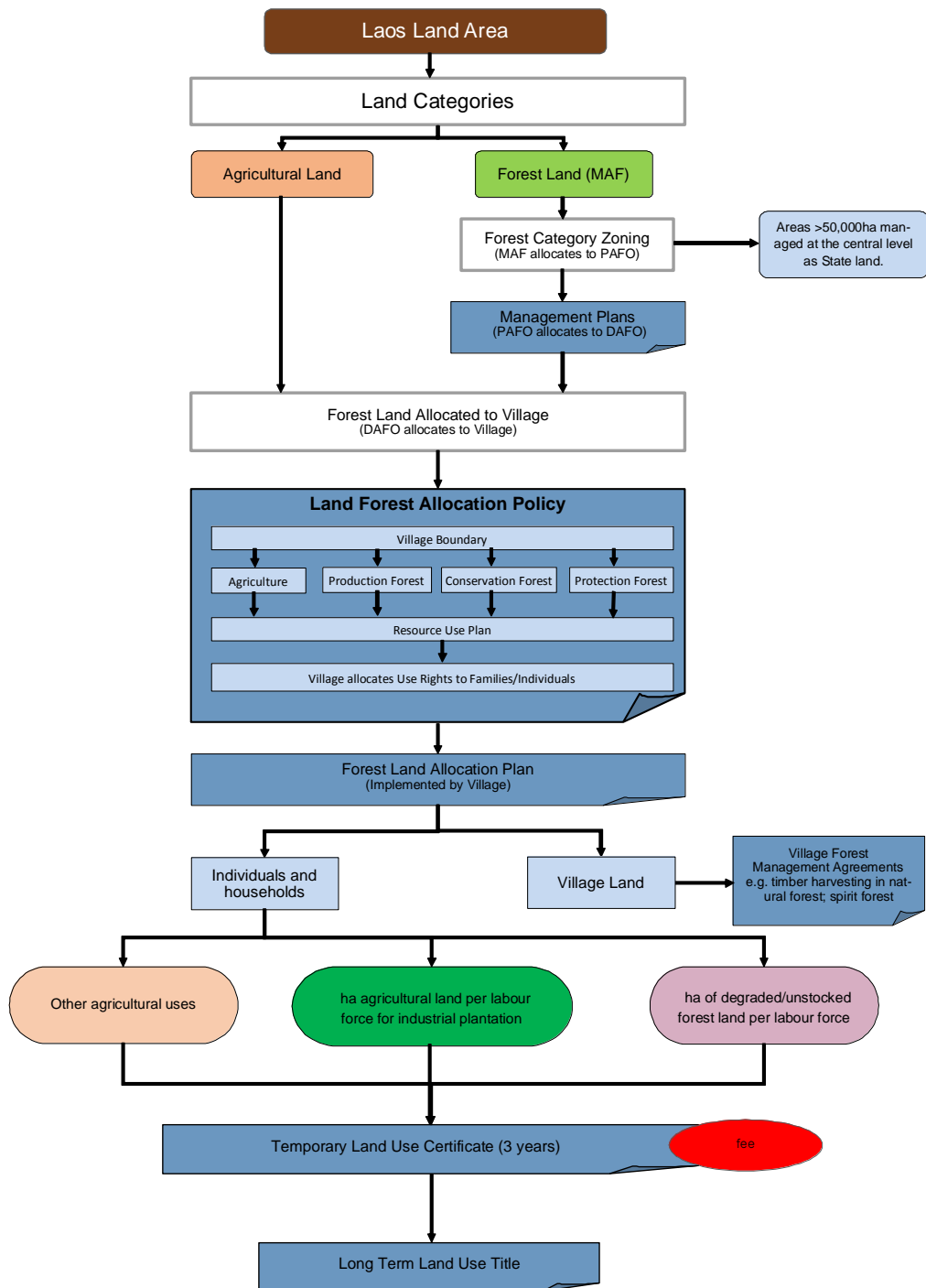
Requests for the registration of land use rights as long-term land title can be made through the village administration and the District Land Administration Department to the Provincial Land Administration Department (Land Law Art. 45) and include the following documents:

- Certificate of acquisition of the land such as a certificate of land allocation by the State, certificate of transfer or inheritance;
- The TLUC in the case of agricultural or forest land;
- The certificate of land guarantee from the original owner or from the local administration of the place where the land is located;
- Other necessary documents [unspecified].

If allocated land is not used in accordance with the regulations, the TLUC could be cancelled and the land returned to the State or reallocated. DAFO is responsible for monitoring the use of allocated land and its conformity to the land use contract. However, in practice monitoring has been very limited and undeveloped allocated land has rarely been withdrawn and reallocated (GTZ 2004 in Katila 2008).

TLUCs are still one of a number of documents that are used as evidence of land parcel "ownership" when registration of rural agricultural land is undertaken, including for plantations. However, under recent ministerial arrangements it is the intention that land titles will be issued only by MONRE as part of the rural land registration process. The 2010 Manual on Participatory Agriculture and Forest Land Use Planning at Village and Village Cluster Level (MAF/NLMA 2010) states that "In the future ... the MAF agencies need not issue any more TLUCs because land registration can be effected using other documents to verify ownership including Land Survey Certificates, Land Development Certificates and Certificates of Land Ownership History (See Decree No. 88/PM). Customary ownership is also recognised as a means of acquiring private land use rights. Therefore in the future, MAF agencies need only to undertake land use zoning within village management areas, after which the NLMA agencies will undertake land adjudication (in accordance with Ministerial Direction No. 564/NLMA, 2007) to establish ownership of village agricultural land parcels within the village agriculture and forest land use zones.

Figure 3: Forest Land Allocation and land Titling Process



The PLUP manual sets out the process by which temporary and permanent land use rights will be granted and while it is anticipated that detailed guidelines for the registration of individual and communal/collective parcels will be developed and issued in due course by NLMA, this has not yet occurred and interim procedures have been proposed. With respect to the registration of agricultural land parcels, the following objectives are given:

1. To provide land use rights (land titles) to owners of parcels of land who have undertaken permanent land development and improvements for a period of three years or more; the title can be issued in the name of the wife alone, the husband and wife or the husband alone.
2. To recognise the investment made by farmers in economic and sustainable land development activities by providing land titles.
3. To support village land use plans and economic production plans.
4. To increase village crop and livestock production by providing secure land tenure.
5. To stabilise land use with the aim of reducing the encroachment of cultivation into delineated village forest areas.
6. To provide a basis for monitoring the expansion of economic land use activities.
7. To allow villagers to use land titles as collateral for taking out bank loans.

The steps for Registering Individual or Family Agricultural Land Parcels are summarised in Table 3.

Table 3: Steps for Registering Individual or Family Agricultural Land Parcels

| Step | Activity   | Responsible Agency/Authority            |
|------|--|---|
| 1    | Explain to all villagers the objectives and benefits of land registration and the criteria that will be used for land adjudication   | DLMA and VA                             |
| 2    | Understand the land ownership and land parcel claim status of all families or individuals in the village.  | DLMA and VA                             |
| 3    | Identify the permanently developed individual plots eligible for adjudication and registration.  | DLMA and VA                             |
| 4    | Identify TLUCs, Land Tax Declarations and receipts, old Land Survey Certificates and other land documents that can be used as proof of claim.                                  | DLMA and VA                             |
| 5    | Undertake land parcel adjudication in consultation with land use rights claimants, neighbouring land use right claimants, the Village Head, and senior members of the village. | DLMA (with support from PLMA) and VA    |
| 6    | Complete an adjudication document (report) as explained in Ministerial Direction 564/NLMA, August 2007.  | DLMA (with support from PLMA) and VA    |
| 7    | Undertake accurate and appropriate cadastral surveys of agricultural land parcels which have been developed for three years or more.   | DLMA (with support from PLMA) and VA    |
| 8    | Record the details of each land parcel measured, including, name and particular of the land owner, the code number of the land parcel map, and land parcel dimensions and area | DLMA and VA                             |
| 9    | Enter survey details in the GIS and draw digital land parcel maps for all parcels surveyed   | DLMA (with support from national level) |
| 10   | Complete the Land Files and Land Parcel Register Book  | PLMA and DLMA                           |
| 11   | Issue Land Titles to families or individuals   | PLMA and DLMA                           |
| 12   | Provide statistics and cadastral maps on registered land parcels per district to the provincial level (PLMA)   | DLMA and PLMA                           |

The development of land continues to be a central feature of the allocation of permanent land use rights and MAF agencies remain responsible for issuing Land Development Certificates, based on the development plan, in order to prove that the concerned land parcel has been developed, in this context for plantations. Under Article 16 of Decree 88/PM 2008 a 'Land Development Certificate' is an official document issued by the

relevant land use management sector, based on development plans, which proves that the concerned land parcel has been developed. The certificate is required as part of the land file for applying for land registration, as stipulated in Article 18 and 43 of the Land Law”.

The criteria for verifying permanent land development for a period of three years or more to the extent required to qualify for land registration are:

- Irrigated or rain-fed paddy
- Permanent annual rain-fed cropping of any crop using conservation farming practices
- Permanent fruit trees and industrial tree crops using conservation farming practices
- Agro-forestry systems incorporating conservation farming practices
- Sedentary livestock systems
- Fish pond areas and integrated multiple cropping systems based on fish ponds
- Gardens for vegetables, medicinal plants or domesticated NTFPs

Outside the systematic land allocation process individuals or entities can make application to certify their right to use land. This is done through issue of a Survey Certificate, which becomes documentary evidence of the long-term rights to use land.

This combination of systematic and *ad hoc* allocation of land use rights, and recent reforms to the process and responsibilities for issuing land used rights, has resulted in confusion and certainly complexity in the number and types of documents that are used and taken as evidence of entitlement to land. With respect to the plantation value chain the primary importance of land certificates and documents lies in their function as a form of evidence for the plantation registration process (see section 5.3.3 for details) and demonstrating the origin of timber. This diversity has caused confusion and created loopholes in the processes for land transactions; despite the recent changes which appear to eliminate the need for TLUCs a wide variety of land documents are accepted see (Table 4). While in 2007 and 2008 steps were taken to address these issues through notification and instructions on the format and registration of legal transactions relating to land,<sup>14</sup> in the absence of systematic land allocation and registration, as is still the case in much of regional Laos<sup>15</sup>, the use of all types of land documents is likely to persist, and this may present problems when the legality of timber is examined.

Table 4: Land use right certificates

| Legal Document              | Land Use Rights  | Term  | Description  |
|-----------------------------|--|---|--|
| Long term (permanent) title | <ul style="list-style-type: none"> <li>• Protect;</li> <li>• Use;</li> <li>• Usufruct;</li> <li>• Transfer;</li> <li>• Inherit;</li> <li>• Lease;</li> <li>• Exchange;</li> <li>• Sale</li> <li>• Collateral;</li> <li>• Compensation</li> </ul> | Valid for life of holder, unless transferred through sale or exchange or lost in Court. | Non-forestland used for house or settlement, paddy or permanent agriculture.<br>No title issued for natural forest. Titles have only been issued in urban areas. |

<sup>14</sup> See for example, *Notification No 1040/PMA.NLMA 2007 on the registration of legal transactions relating to land*; and *Instruction No 1668/NLMA.CAB, 2008 on the use of new formats of land titles and new registration book*.

<sup>15</sup> Two donor funded Land Titling projects have been undertaken in Lao PDR. At the completion of the second project in 2009 almost one-third of the estimated 1.6 million land parcels, suitable for land titling, had been titled. However the vast majority of these were in the more urban areas. See World Bank 2010 Report No: ICR0001270 Implementation Completion and Results Report (IDA-38010) For the Second Land Titling Project, downloaded at: [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/07/15/000333037\\_20100715003648/Rendered/PDF/ICR12700ICR0Bo110Disclosed0July0131.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/07/15/000333037_20100715003648/Rendered/PDF/ICR12700ICR0Bo110Disclosed0July0131.pdf)

|   |  |                                    |   |
|---|--|------------------------------------|---|
| Land Survey Certificate (or Land Map Sheet) | <ul style="list-style-type: none"> <li>• Protect;</li> <li>• Use;</li> <li>• Manage;</li> <li>• Usufruct</li> <li>• Inherit;</li> </ul>                                | Until cancelled or title is issued | Certifies land utilization rights assigned according to land Category; Non-forestland used for housing, permanent agriculture. No title shall be issued for land categorized as natural forest. |
| (Temporary) Land Use Certificate            | <ul style="list-style-type: none"> <li>• Possess;</li> <li>• Restricted Use;</li> <li>• Manage;</li> <li>• Inherit;</li> </ul>   | 3 years                            | Issued on the basis of LFAP for 3 years for specified developmental land use.   |
| Land Development Certificate                | Evidence of land use   |                                    | Issued to certify the specified TLUC land use has occurred. Is required with TLUC on application for Land Title.  |
| Certificate of Land Ownership History       | Evidence of land use   |                                    | Document certifying the acquisition of land which shows the historical evolution of land use.   |
| Village Forest Management Agreement         | <ul style="list-style-type: none"> <li>• Possess;</li> <li>• Restricted Use;</li> <li>• Limited Management</li> </ul>  | No term specified                  | Natural forest zoned within village boundary as determined under the LFAP   |
| Lease or Concession                         | <ul style="list-style-type: none"> <li>• Possess;</li> <li>• Commercial Use;</li> <li>• Limited Management</li> </ul>  | 20-75 years                        | Any type of land including natural forest refer various Acts  |
| Land tax receipt                            | <ul style="list-style-type: none"> <li>• Evidence of payment of land tax.</li> <li>• Not inheritable</li> <li>• Not for sale;</li> <li>• Not for collateral</li> </ul> | Annual                             | Official Receipt for Land tax   |
| Land Tax Declaration (LTD) (No.1)           | <ul style="list-style-type: none"> <li>• Not inheritable</li> <li>• Not for sale;</li> <li>• Not for collateral</li> </ul>   | Annual                             | Land tax calculation  |
| Provisional Land Certificate                | <ul style="list-style-type: none"> <li>• Not for sale</li> <li>• Not for collateral</li> <li>• Can be leased for up to 5 years</li> </ul>                              | Until Land Title is issued         | Issued when Land Title cannot be issued due to uncertain information. After 10 years of occupation can apply for permanent Land Title.  |
| Sources                                     | Decree No 88/PM, Ministerial Instruction No 564/NLMA, GTZ 2004, ADB 2005   |                                    |   |

### 5.2.3 Land Fees

There are various fees that are collected in the process of land allocation and registration. Pursuant to *Decree on Fees and Service Charges No. 03/PO (2008)*, the *Instruction No. 3204/PMO.NLMA on the Collection of Fees and Service Charges by the Land Management Sector* specifies the process and amount for fees associated with land registration. These are summarised in Table 5.

Table 5: Summary of Land Fees and Charges

| Service  | Fee (Kip) |
|--|-----------|
| Land parcel registration and for registration of documents concerning land                                   | 15,000    |
| Fee for registration of transactions in the land parcel registration system                                  | various   |
| A fee for granting land lease or concessions   | 70,000    |
| A fee for land conversion from one use to another purpose  | Various   |
| A fee for converting natural forest  | 30,000    |
| A fee for measuring agriculture land Kip/m <sup>2</sup>  | 100-250   |
| A fee for issuing the certificate of Land Title legitimacy by the notary office for a loan                   | 20,000    |
| A fee for issuing the certificate of Land Title legitimacy by the notary office for a sale-purchase transfer | 50,000    |

Where relevant, these charges are described in further detail in Appendix 4.

## 5.2.4 Land Tax

Land use allocation and registration has facilitated the collection of land tax, which is viewed as an important source of government revenue. However, land tax exemptions have also been used to promote land titling and encourage a transition from shifting cultivation to permanent production, including through the planting of trees. Various legal instruments apply to land tax:

- *The Land Law No. 04/NA (2003)*
- *The Forestry Law No 06/NA (2007)*
- *Decree on the Implementation of the Land Law No. 88/PM (2008)*
- *Decree No 01/PO on Land Tax, (2007) (which supersedes the 1993 Decree No. 50 on Land Tax and associated Instructions and Guides)*

### 5.2.4.1 General Requirements

*Decree No. 01/PO on Land Tax (2007)* is the principal regulation for the imposition of land tax as determined in the Land Law (Art. 60)<sup>16</sup>. Decree No. 01/PO superseded *Presidential Decree on Land Tax No. 03/PO (2000)*<sup>17</sup> and all other regulations and rules which contradict it. This Decree is made with reference to the Land Law and its implementing Decree No 88/PM. Land tax is not included within the *Law on Tax No 04/NA, 2005* (discussed in section 5.8). Article 2 of Decree No. 01/PO authorises the allocation of land to individuals, families and others in accordance with the Land Law. Article 3 makes the regulation that any persons who hold the right to use land shall pay land tax on every single plot of land, as specified in Article 60 of the Land Law.

### 5.2.4.2 Land tax collection and receipts

Land tax has primarily been administered at the village level together with (in theory) the notary public, under supervision from District Department of Lands (DDOL) (GTZ 2006) (subsequently MONRE). In 2012 the Ministry of Finance (MOF) assumed oversight of the Land tax collection process and it is a stated intention that MOF will retain the process that was established by MONRE, as summarised below. While Decree No 01/PO 2007 (Chapter 4) stipulates the process for the collection of land tax, allocating this task to “the finance sector” this is contradicted by Decree No. 88/PM (2008) on the implementation of the Land Law which states under Article 14 that the Land Administration Department is responsible for collecting “land taxes, fees, tax on income from land, registration fees...and other revenues relating to land.” The general process is summarised below.

- Fees charged on land use (land tax), land rental, assignment and transfer of land use rights, tax license issuance fee, and income tax from individuals are part of the local (Provincial) budget (Law No 02/NA On the State Budget). A Budget Plan is set for each Province at the National Level. Within this, a tax revenue target is set which is then allocated downwards through district authorities to each village. Different procedures exist between and within provinces (GTZ 2004) and districts.
- The estimated tax amount is suggested by the District for each village. The suggested annual land tax is then negotiated between DDOL and the village authority.
- The village chief (*nai ban*) and the village tax collector are mainly responsible for the assessment and collection of land tax. There is regular periodic supervision from a DDOL officer. The key document in each village is the hand written tax register or ‘Book 03’ which shows the owner, approximate area, the land classification and the amount of tax payable.
- Land tax is calculated at rates per m<sup>2</sup> set by law for different categories of land in different areas.
- The amount to be paid by each household is determined within the village either via village tax meetings or by using measurements done by the villagers or self-declaration. Payments are registered in the land tax book.

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<sup>16</sup> Superseding earlier decrees including Decree 03/PO, 2000, Decree 150/PM (2000), Ministerial Directive No.1665/MoF (2000), Decree 50/PM (1993) and its implementation guidelines No. 267/MP, Decree and No 307/MOF(1993)

<sup>17</sup> A copy of Decree 03/PO could not be sourced at the time of writing.

- Once total payment has been received by the tax collector, district finance officers issue official land tax receipts.
- The village retains a proportion of the tax collected; usually ten per cent. The amount varies with the perceived degree of difficulty of collection; thus in remote rural areas it may be 15% while in urban areas only 6%. The collector (or collectors) is allowed, as their remuneration, about 60% of the retained amount. The rest is used for various village purposes.

Land Tax rates are specified in Chapter II of Decree No 01/PO and are determined on the basis of land use and the geographic location of the land. While plantations are not explicitly listed as a land use, two types of Orchard are listed: 'Industrial and Annual Crops' and 'All Types of Woods. It is assumed that smallholder plantations fall within this latter category (Table 6).

Table 6: Land Tax rates

| Land Use           | Land tax Rate (Kip/ha/year) |        |         |        |             |       |
|--------------------|-----------------------------|--------|---------|--------|-------------|-------|
|                    | Lowland                     |        | Plateau |        | Mountainous |       |
|                    | Urban                       | Rural  | Urban   | Rural  | Urban       | Rural |
| All Types of Woods | 25,000                      | 15,000 | 20,000  | 10,000 | 12,000      | 8,000 |

A common misconception is that Land tax receipts are a form of Land title, but this is not legally the case. This misconception is exacerbated because historically land tax payment, prior to formal land titling, was used as common and *de facto* evidence of a land use right. Furthermore there are circumstances in which land tax receipts are recognised as the legal basis for claims over land. For example, in cases where farmers may need to be compensated for loss of land or trees as a result of a development project the individuals seeking compensation can be the holder of land use right titles or tax receipts for occupied assets, a tenant or a lessee, non-registered tenant or landless squatter.<sup>18</sup> This is particularly relevant for those plantation owners who have plantation located along roads or the sites of future transit area (such as railways). Land Tax exemption in relation to plantations is examined further in Section 5.3.5.

## Land Allocation and Certification: Summary of Issues and Questions

The key points in the context of land classification are that:

- There is inconsistency between the Land Law and Forestry Law with respect to the categories and amount of land can be allocated for timber plantations.
- Some evidence suggests that the classification causes confusion, and because it allows the use of agricultural land for plantations the outcome is on-going conversion of natural forest for agriculture (ADB 2005).

The key points in the context of land allocation and land use rights are that:

- A large number of document types are used as evidence of legal right and land use.
- The legally required documents for evidence of land ownership for the purposes of plantation registration may not exist or may not have been issued, particularly in remote and rural areas.
- The payment of land tax and an issued land tax receipt are used to substantiate land claims for local land transactions in rural areas, although by law these papers cannot be used to claim land 'ownership'. This includes for plantation registration process and land tax exemptions.
- Land tax targets vary from village to village. It is unclear whether land tax exemptions made on the basis of plantation registration have adverse consequences where these inflate the land tax payable on other land areas in order to reach the village target. Thus residents who have land use rights that are

<sup>18</sup> See Decree No 192/PM on Compensation and Resettlement of People Affected by Development Projects, Regulation No 2432/STEA Regulations for Implementation Decree No 192/PM and Technical Guidelines on Compensation and Resettlement in Development Projects

not land tax exempt may ultimately pay more tax than owners of registered plantations.

- Informal procedures (perhaps based on customary processes and institutions) are still used in remote areas.
- The process for applying for permanent/long term land use rights was revised and clarified in 2010 but it is not clear whether this process is being applied in practice.

### 5.3 Plantation Establishment and Registration

The promotion of tree planting has been a priority policy for many years in Lao PDR; teak for example has been planted in Luang Prabang since the 1950s. Midgely *et al.* (2007) suggest that the motivations for planting trees vary but include securing title to fallow land that might otherwise be reallocated; in order to enable, or add value to, a future land or plantation sale (see for example Newby *et al.* 2012); as collateral, for emergency costs such as weddings and funerals, or as a long term investment. It is not necessarily the case that it is the intention of the grower to manage the plantation to provide a regular income stream through strategic harvesting and sales.

Since the late 1990's there has been some regulatory emphasis on plantation registration, promoted in conjunction with a number of donor supported Land Titling projects. This has coincided with attempts to reduce the illegal logging of native forests with a ban on the export of round logs, promotion of the plantation resource base as an alternative timber supply, in order to slow shifting cultivation, for reforestation and as a strategy to address poverty. The original intent behind plantation registration can be inferred from the legislation, focussing on 'efficient management' and to ensure 'quality' and 'consistency' and 'economic performance'. More recently, the protection of the rights of land owners has become a primary motivation for the registration of smallholder plantations, although this has not always been a stated purpose, with other drivers including government revenue, tax exemptions and incentives, resource security, compensation, to provide collateral for micro finance loans and most recently as a means to certify the origin of harvested timber. Overtime plantation registration has become a basic requirement to establish and demonstrate the legality of plantations and the timber they produce.

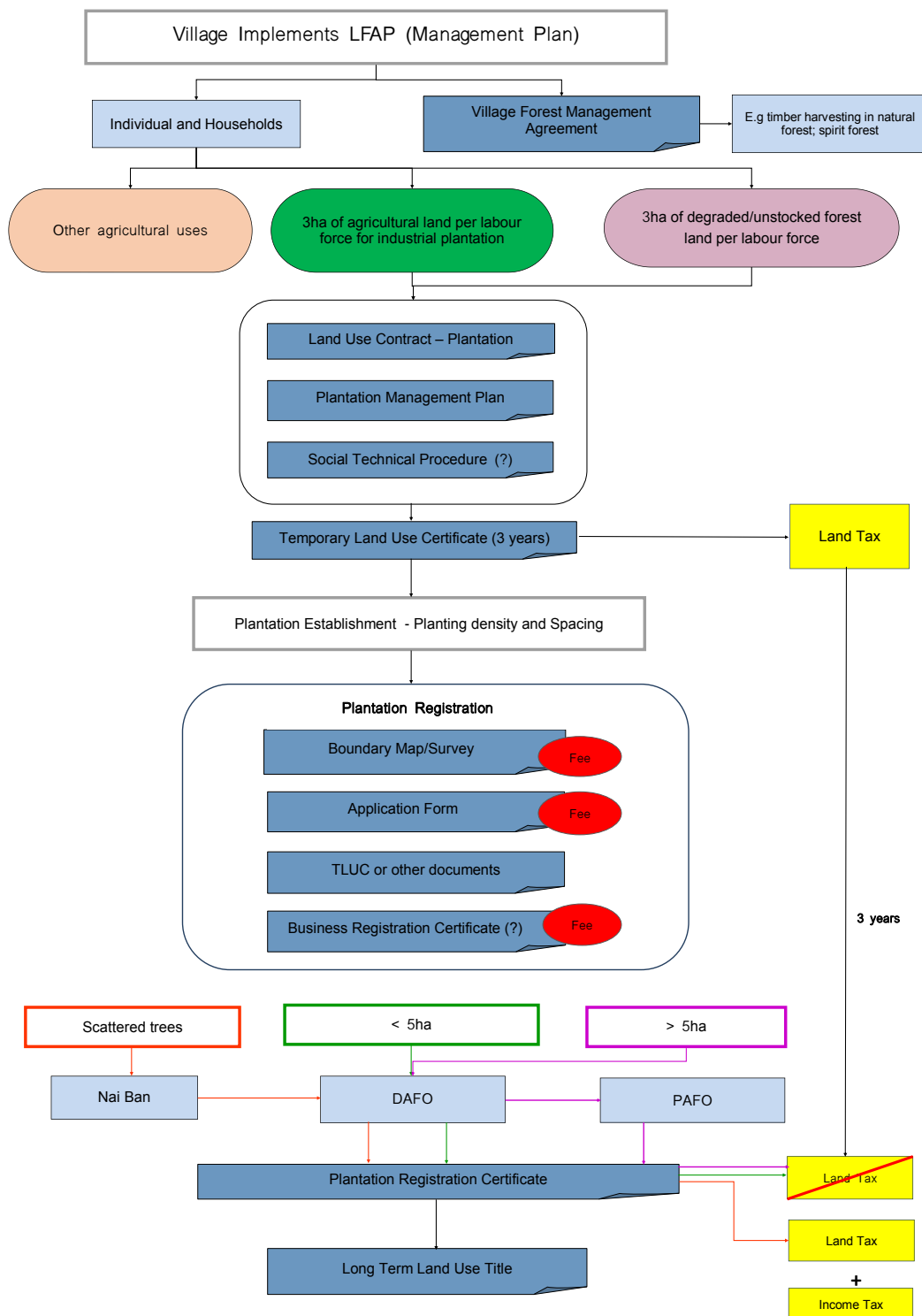
#### 5.3.1 Land Allocation for Plantations

The land allocation process for the purpose of planting trees is supported by legislation including the Land Law and the Forestry Law. Overtime specific rules for tree planting have been provided in a large number of documents and while many of the regulations have been revised and superseded they may still be applied in practice. Consequently the regulatory basis for plantation establishment and registration is complex and sometimes unclear. The process of land allocation and registration of plantations is summarised in Figure 4.

Key legal instruments include:

- *Notification No. 1374/MCAF, (2010) from the Ministerial Cabinet of the Ministry of Agriculture and Forestry on the use of plantation licence and certificate of planted timber.*
- *Notification No. 3097/MAF (2008) on the documentation needed for registering tree plantations.*
- *Guideline No 0105/MAF Concerning the Implementation of the Prime Minister's Order No. 17/PM, (2008) on the Enhancement of Strictness in Managing, Preserving Forest and the Coordination in the Management of Forest and Timber Business.*
- *Order No 17/PM, (2008) on Strengthening the Forest Management, Protection and the Coordination of management Forest and Forestry Business*
- *Guideline No. 2156/DOF, (2006) on sustainable production forest management planning*
- *Decree No. 59/2002, on sustainable management of production forest areas.*
- *Decree No. 96/PM, (2003), with regard to commercial tree planting and environmental protection*
- *Regulation No. 0196/MAF, (2000) regarding the long-term development and promotion of tree planting*
- *Directive No. 1849/AF, (1999) concerning the registration of tree planting parcels.*
- *Instruction No 0822/AF, (1996) on Land-Forest Allocation for Management and Use*
- *Directive No 0234/MAF (1995) Regarding the management of plantation and planted forest*
- *Decree No 186/PM (1994), on the Allotment of forests For Plantation and Preservation,*

Figure 4: Plantation Establishment and Registration Process



### 5.3.1.1 Land categories for use as plantation

Many of the regulations and directives for land allocation to plantations have, over time, attempted to clarify the types of land that can be used for plantations (see for example Directive 0234/MAF which differentiates individual and State land). Yet the complexities of the classifications within the Land Law and Forestry Law continue to cause confusion, and the process for, and legal basis of, the classification of land that can be used for plantations is not straight-forward.

Firstly the Land Law, (Art. 11) classifies land into eight categories, including 'Agricultural Land' and 'Forest Land'. Under this classification Article 17 authorises the State to allocate 'Agricultural Land' to individuals and families (in accordance with the LFAP), to a maximum of 3 hectares of land per labour force unit in the family for *industrial plantations*, and Articles 21 and 22 authorise the State to allocate to individuals and families 3 hectares per labour force unit per family of *degraded or unstocked* forest land, which is the specified category of land available for plantations under the Forestry law (and all subordinate provisions). In both cases 3 year TLUCs have been issued by the Land Administration Department, which can be converted to land titles for long term use, if specified conditions are met.

With respect to land that is 'Agricultural land' and which has been allocated for tree plantations (under Article 17 of the Land law) the Forestry Law makes no specific stipulations about its ongoing land classification or use. However, for land that is classified as 'forest land' under the Land Law, the Forestry Law subsequently becomes the overarching Law. This is important because once reclassified as 'Production Forests' (where Forestry Law Art 12 includes planted forests) there are consequential impacts in terms of the regulations for the future management and harvesting of those plantation areas. These are discussed below in Section 5.7.2.

The *Law on Agriculture No. 01/NA (1998)* makes no reference to plantations or timber production and it is not clear whether this is considered an agricultural activity if occurring on agricultural land. Under the Agriculture Law (Art. 2) Agriculture is: cultivation, animal husbandry and fishery for consumption and food for the public, raw materials to supply industrial processing factories, and commodities for domestic consumption and export. However, confusion occurs because despite the provisions for Agricultural land to be used for tree plantation under the Land Law, Directive No 0234/MAF (Art II, 1) requires that individuals planting trees on their own land should 'try to avoid using land which is prioritized for agricultural production' and Instruction No. 0822/AF, (1996) on *Land-Forest Allocation for Management and Use* (Art.II, A, 1) states that "...land which cannot be used for agriculture must be allocated to families or collectives for tree planting, *agricultural land is absolutely not to be used for tree planting...*", which is contradicted by the Land Law.

While it is specified that plantations must only be established on degraded or unstocked (barren) land and not on land suitable for agriculture it remains unclear therefore, whether individuals could be allocated 3 hectares of Agricultural Land for industrial plantation *plus* 3 hectares of Degraded Forestland which could also be used for plantation. This lack of clarity has the potential to create confusion, conflict and possibly opportunities, for local people in terms of identifying their rights towards land and resources at the local level (Thongphanh 2004). Areas of fallow swidden land that may be suitable for agriculture in the future, but which do not have a secure form of tenure, could be treated as degraded forestland and subsequently used for plantations (Newby *et al.* 2013) and there is some evidence that the use of potential agricultural land for plantations is resulting in the on-going conversion of natural forest for agriculture (ADB 2005). It is certainly the case that plantations are established on land that can support crops, as inter cropping is a common plantation establishment process.

## 5.3.2 Plantation Establishment

In addition to broad area restrictions on the categories of land which may be allocated for plantations, and notwithstanding the lack of clarity in the laws determining that allocation, there are specific rules that apply to the establishment of plantations.

### 5.3.2.1 What is a Plantation?

There is no specific definition of a 'plantation' in the current Forestry Law, although subordinate instruments define *planting parcels* and *planting systems*.

*Tree planting parcels* are defined in Regulation No 196/MAF (2000) as an 'operation approved by the State to plant trees on an area of degraded forestland >1600m<sup>2</sup>'.

Agroforestry (intercropping) and scattered planting systems are also recognised under MAF Regulation No. 0196/MAF, (2000) (Art. 3) which specifies that there are two tree planting systems:

- 'Planting in a parcel', which includes:
  - a *defined planting pattern* (1.5m x 1.5m or 2m x 2m or 2.5m x 2.5m), with an initial stocking of not less than 1100 trees/ha, with trees planted in a monoculture.
  - an *agroforestry planting method* with defined spacing of not more than 6m x 2m or not less than 800 trees/ha in the lowlands and 8m x 2m or not less than 600 trees/ha in the mountains, intercropped.
- 'Scattered planting' with trees planted in clusters, rows or scattered.

### 5.3.2.2 *Planting Approvals*

While approval for the establishment of tree plantations to be located on State land is required from various Government authorities based on size of the land area and the forest land category, (Regulation No 196/MAF (Art. 6) and also refer to the Forestry Law Arts. 72, 73, 75 and 76; Decree 135/PM on State Land Lease or Concession), government approval is not required for individuals and organizations who plant trees on their own land *with their own funds and labour* (Regulation No 196/MAF Art. 5). However, smallholder plantation owners do need to comply with some planting standards (Regulation No 196/MAF Art. 4), harvesting regulations, transport approvals and export permits.

### 5.3.2.3 *Plantation Management Plans*

Regulation 196/MAF, (2000) includes requirements for a technical and socio-economic analysis to be undertaken and a plantation management plan developed for plantation establishment. Article 4 requires that a technical and socio-economic study is made for plantations with an area of 5 ha or more (as one complete parcel) or in the case of communal land, where the combined area of individual plantings on that land is 5 ha or more. While most smallholders are likely to be exempt from this provision due to the size of their plantations, grower groups who might jointly register their plantations could be required to submit a technical and socio-economic study.

For areas of less than 5 ha such an assessment is not specified.

Plantation establishment activities that are regulated under Regulation No 196/MAF include:

- The import and export of seeds, parts and saplings, which require a certificate of origin and pest inspection (Art. 8);
- The transport of seeds, parts and saplings (Art. 9);
- Tree planting and site preparation in accordance with standards and instructions provided by MAF (Art. 10);
- Cleaning and pruning, which is to undertaken in accordance with the plantation management plan (Art. 11).
- Registration of a tree planting parcel (Art. 12)
- Management, inspection, monitoring and evaluation (Art 13) including that:
  - the utilization of the forest area for planting trees is in compliance with Article 36 of the Law on Forestry;
  - the quality of saplings or seedlings in the nursery follows the guidelines;
  - the site clearing, soil preparation and track construction comply with provisions of the guidelines and standards issued by MAF;
  - the implementation of related activities are in accordance with the management plan and plan of operations of the tree stands, which have been acknowledged by the authorities;
- The logging and transportation of planted trees (Art. 14).

The requirement to have a plantation management plan is reiterated in many legal instruments along the value chain although there is little evidence to suggest that these are developed or implemented in practice by smallholders. Processes that refer to or require a plantation management plan include:

- Cleaning and pruning (Regulation No 196/MAF, Art 11)
- Harvesting and Transport (Regulation No 196/MAF, Art 14)

#### 5.3.2.4 Plantation Promotion/Incentives

Through *Decree No. 96/PM, (2003, regarding commercial tree planting and environmental protection* the Government of Lao PDR promotes tree planting through the following provisions (cf Savatvong 2010):

- Land used for plantations is exempt from land tax (if planted in accordance with Article 34 of the Law on Forestry). This is presumed to be a key motivating factor for the registration of teak plantations by smallholders. The tax implications of plantation establishment are discussed in detail in section 5.8.2.
- Compensation is payable to tree growers in cases where their land is to be used for public benefits (such as roads) under Decree No. 0196/PM, (2000) (Art. 23). With regard to commercial tree planting and environmental protection, compensation is calculated according to the following formula:

*Value of tree planting parcel = value of land use area + value of land development + value of trees in the planting parcel + value of agricultural products (if available).*

- Policies exist to facilitate investment in tree planting and expedite requests for logging and export permit for planted timber;
- Exemptions from reforestation fees, forestry resources fees and other taxes in cases where the felling of planted timber is for household use and public benefits.
- Exemption from reforestation and forestry resources fees where the use of timber from plantations is for domestic use and for export; however income tax must still be paid;
- The provision of technical assistance for collecting seeds, nurseries; and
- Consideration of government supplied credit for tree planting and the supply of good quality saplings.

#### 5.3.3 Plantation Registration

Article 12 of Regulation No. 0196/MAF specifies that each individual tree *planting parcel*, whether private or owned by an organization, must be registered with the authorities concerned.

In order to be eligible for registration plantations must meet the following criteria:

- Be an area of 1,600m<sup>2</sup> or (1 rai<sup>19</sup>)
- Trees must be 3 or more years of age
- The number of trees planted must have a survival rate of 80% or more based on the total saplings planted at establishment (MAF Instruction 1849, Art 1).

Further provisions are made on the basis of tree spacing as follows:

- For planting with a spacing of 2m x 2m there must be 320 trees/1600m<sup>2</sup> or 2000+ trees/ha.
- For planting with a spacing of 3m x 2m there must be 212 trees/1600m<sup>2</sup> or 1325+ trees/ha.
- For planting with a spacing of 3m x 3m there must be 142 trees/1600m<sup>2</sup> or 880+ trees/ha.
- For planting with a spacing of 5m x 2m there must be 128 trees/1600m<sup>2</sup> or 800+ trees/ha.
- Trees planted must have attained a height of 5m+ for fast growing species and 3m+ for slow growing species.
- Tree must have a diameter at breast height (dbh, usually 1.3m) of 5cm+ for fast growing species and 2.5 cm for slow-growing species.

The process for application to DAFO and approval for registration of a tree planting parcel must be in compliance with Directive No. 1849/AF.99 in accordance with the following procedures:

- The owner of a tree planting parcel requests that the village forestry unit conducts a survey of the land parcel, define the method and spacing/system of planting and the tree species, in order to produce a sketch map and issue a certificate;
- The owner of tree planting parcel prepares an application, including:

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<sup>19</sup> The term 'rai' is taken to be 40m x 40 m however a 'rai' can also refer to a plantation or to a 'slash and burn area' (see for example the Basic Guiding Manual on Initial Land and Forest Allocation in Luang Prabang Province, 1995)

- letter of application
- a certificate of residence,
- land declaration/certificate of land ownership,
- land tax receipts, and
- the a sketch map of the planting parcel

There is an underlying premise that farmers have some form of pre-existing land use right over an area of plantation that is to be registered. TLUCs together with a contract for a plantation appear to be the primary contemporary legal pathway. However many different types of documents are used for the purposes of plantation registration including Land Use certificates, Tax receipts, Plantation Management Plans and a Land use contracts.

The relationship between registered plantations and the demonstration of land use rights is complex. TLUCs are issued for three years, and together with a plantation contract they give a farmer the right to establish a plantation on a parcel of land. Regulations and the plantation contract associated with the TLUC specify the arrangement of the plantation. If the conditions are met, after three years the plantation owner may apply for both permanent land use rights and plantation registration; however permanent land use rights are not a requirement for plantation registration and plantation registration does not confer permanent land use rights to the farmer, it is common perception that this is the case and that both plantation and land can be sold. Neither the regulations nor the plantation registration certificate specifies a term for which registration persists - for one, two or more plantation rotations or in perpetuity assuming the parcel continues to be managed as a plantation.

In 2010, *Notification No. 1374/MCAF (2010) on the use of plantation licence and certificate of planted timber* was issued with respect to the application of Directive No. 1849/AF.99 and in response to inconsistencies in the application of plantation registration process, including the low level of registration in general. The Notification establishes, as a priority, the registration of plantations and the issuing of certificates for planted timber. It aims to clarify the level of authority for plantation registration approvals on the basis of land area as follows (Arts. 3.1 to 3.3):

- For tree planting parcels with an area greater than 5ha the head of PAFO shall approve and sign the certificate on the basis of a recommendation made by DAFO.
- For tree planting parcels with an area less than 5 ha the head of the relevant DAFO office shall approve and sign the certificate.
- Additionally the Village headman shall 'certify' the planted trees within the village areas, including scattered trees, with approval from DAFO.

A form for the certification of scattered trees is provided with the Notification, which includes the following information:

- A proposal by the plantation owner
- An inspection of the plantation
- The name of the plantation owner and spouse
- The residence of the owner
- The species and number of trees
- The date of planting and the location of the trees

Notification No. 1374/MCAF is pursuant to Directive No. 1849/MAF.99 and Directive No. 115/MAF.03<sup>20</sup>. Under Notification No. 1374/MCAF, however, it is unclear as to whether the certificate provided for scattered plantings by the village head has any value as a tool for demonstrating the origin of timber for other approvals required for harvesting, sale and processing of timber sourced from the scattered plantings.

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<sup>20</sup> A copy of Directive 115/MAF.03 was not available during the writing of this report.

### 5.3.4 Plantation Registration Fees

Directive No. 1849/AF.99 (Art, 6) specifies the fees for the registration of a tree planting parcel is 1000 Kip per 1,600 m<sup>2</sup> or 1 *rai*, although it is not specifically stated what this fee is intended to cover. Other reported costs associated with plantation registration, but which are not specified in the Directive are presented in Table 7, below.

Table 7: Reported Costs associated with Plantation Registration

| Procedures.  | Fee (kip) |
|--|-----------|
| Measurement fee (Kip/m <sup>2</sup> ) (excluding travel costs) <sup>21</sup> | 400       |
| Application form   | 4,000     |
| Application Stamp  | 5,000     |
| Plantation Registration certificate  | 40,000    |
| Source: LPTP per comm  |           |

### 5.3.5 Land Tax Exemptions for Plantations

The exemption from paying land tax is considered to be a key motivating factor for plantation owners to proceed through the plantation registration process. Various legal instruments are relevant including:

- *The Land Law No. 04/NA (2003)*
- *The Forestry Law No 06/NA (2007)*
- *Notification No 1374/MCAF (2010) on applications for registering tree planting parcels timber certificates.*
- *Decree on the Implementation of the Land Law No. 88/PM (2008)*
- *Decree No 01/PO on Land Tax, (2007) (which supersedes the 1993 Decree No. 50 on Land Tax and associated Instructions and Guides)*
- *Regulation No. 0196/MAF, (2000) concerning the development and promotion of long-term plantations.*
- *Directive No. 1849/AF, (1999) concerning tree planting parcels.*

Savatvong (2010) has reviewed the process of the imposition of taxes on planted teak transactions.

Under No 01/PO, Chapter II the land tax for tree plantations ranges from 8,000 to 25,000 kip/ha depending on type and location of the land; and Article 5 specifies that plantations that are registered with MAF will receive an exemption from the payment of these land taxes as well as other taxes and charges such as maintenance, resource use tax and royalties from planted trees (MAF Reg. No 0196/MAF, Art. 20; MAF Inst. No.1849/AF.99, Art. 4). Various other business tax incentives are also in place for the forestry sector and these are described in Section 5.8.

While it is clear that tree plantations qualify for land tax exemptions there is some confusion in the law and in its application about the point at which this comes into effect and the condition of the plantation to which the exemption applies .

Chapter III, Article 5.a.4 of Decree No 01/PO, which is the most current regulation, specifies that:

“Plantation areas registered under the regulations of the agriculture and forestry sector in which 1ha consists of 1,100 trees (in minimum) shall be exempt from land tax”.

And Article 5.a.5 states that:

“Land being converted to fixed-farming through agriculture or livestock, in order to stop slash-and-burn cultivation shall be offered 3 year land tax exemption starting from the year of change.”

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<sup>21</sup> Instruction No. 3204/PMO.NLMA specifies a service charge for the measurement of agricultural land as being between 150,000 and 300,000 Kip/m<sup>2</sup>, which is 1000 times the amount for surveying construction land. It is unclear whether the amount indicated in the Instruction is accurate or a typographical error. The measurement fee of 400 Kip/m<sup>2</sup> was reported in personal communication with LPTP as a fixed fee charged by DAFO regardless of the size of plantations, exclusive of travel costs.

This could be interpreted that plantations could be eligible for land tax exemptions from the date of planting. However the rule requiring that plantations must be registered, which requires them to be at least 3 years of age (Article 12 of Regulation No. 0196/MAF) contradicts this.

Several earlier instruments also provide guidance on exemptions to land tax and they are relevant where these rules continue to be enforced despite the introduction of Decree No. 01/PO.

For example, Decree No. 96/PM, 2003 (Art. 3), with regard to commercial tree planting and environmental protection, states that there is:

“Exemption of land tax for land that is used for planting trees in accordance with Article 34 of the Law on Forestry (1996):

where by Article 34 of the 1996 Forestry Law states that:

“The state promotes individuals and organizations to widely plant trees and as groups, whether [planting specific] species of flora, short term, medium term or long term species by issuing various suitable policies for domestic and foreign investment, i.e. credit policies, taxation, species of flora and trees, lease extensions as well as increasing the leasehold area, etc., pursuant to regulations.”

Regulation No. 0196/MAF, 2000, concerning the long-term development and promotion of tree planting specifies, under Article 19, that:

“Individuals or organizations who use land areas that are under their ownership for planting trees in compliance with the procedures, from 1,600 m<sup>2</sup> or 1 rai or more, and apply the agro-forestry pattern as described in this Regulations, (i.e. 800 trees/ha in the lowlands and 600 trees/ha in the sloping areas), shall be exempted from land tax from the date the tree planting parcel is registered. For the scattered tree planting system, there will be no land tax exemption.”

Directive No. 1849/AF, 1999, concerning the registration of tree planting parcels is much more specific requiring:

- Tree planting parcels that meet the conditions for registration must possess the following criteria:
  - having an area of 1,600m<sup>2</sup> (or 1 rai) and more,
  - trees planted must be not less than 3 years old,
  - survival rate of trees must be higher than 80%,
  - spacing is dependent on tree species but must be at least 2 x 2m, 3 x 2m, 3 x 3m, 5 x 2m,
  - tree height must exceed 5m and 3m for fast growing and slow growing trees respectively.
- A tree planting parcel which is officially registered shall be exempted from land tax as well as having other rights and compensation, in case that the parcel has to be transferred back to the government. The owner of the planting parcel can sell his/her planted timber and is exempt from reforestation and forestry resources fees but must pay income tax according to the regulations. In the case of the use of timber for construction and repair of their own house or for the public benefits without commercial purposes, there will be exemption from reforestation and forestry resources fees and income tax.
- If the planting parcel is less than 5ha, the registration certificate can be endorsed by DAFO, and if more than 5ha certificate must be endorsed by PAFO on the basis of the study and a recommendation made by DAFO.
- Tree planting parcels which have been registered with the agriculture and forestry section in accordance with Directive No. 1849/AF, 1999, are exempted from land tax forever<sup>22</sup>. The land tax exemption, in this case, must be certified by the agriculture and forestry section and by agreement of the district administration.

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<sup>22</sup> It is unclear whether this literally means in perpetuity or whether in a practical sense this means for as long as the land continues to be used for plantation purposes and the original conditions attached to the exemption continue to apply - eg continuing to meet minimum stocking and spacing conditions, and also survival rate. Overtime, as timber is harvested stocking rates and spacing will alter.

By comparing the various laws, decrees and regulations for land tax exemptions for registered plantations it is apparent that overtime these have become more general in nature and the level of detail provided has diminished. As a result there are now uncertainties and inconsistencies in the application of the land tax exemption for smallholder plantation owners.

## Plantation Registration: Summary of Issues and Questions

### Land Issues

- Land and Forest Categories and allocation to plantations are unclear.
- Farmers have full rights to trees planted with their own labour and expense on land under TLUC. Farmers have sold rights to these trees within three-year term of TLUC.

### Plantation Registration

- The basis for smallholder plantation registration has become lost in a broad set of issues. Consequently the process has become complex, slow and costly and risks failing to deliver on most of the expected outcomes.
- The complexity and cost of the registration process and lack of clarity in its purpose risks poor uptake and low compliance.
- While the regulations for registering tree plantation parcels are relatively clear the requirements, or opportunity, for registering scattered trees are less clear and the implications of this for the subsequent harvesting, sale and processing of timber sourced from scattered plantings requires further research.
- The duration of the plantation registration and tax exemptions not unclear on whether they apply to one or more plantation rotations or in perpetuity.

### Plantation Management Plan

- There are requirements for both socio/technical analysis and plantation management plan, but there are no specific guidelines or codes of practice.
- A plantation owner is required to prepare a management plan and impact assessment prior to issuance of harvest and transport permits
- It is not clear whether plantation owners with less than 5ha are required to have these documents in order to get a transport permit.

### Land Tax Exemptions

- On the basis of Decree No. 01/PO (2007) any plantations which are registered under the MAF regulations 1849/AF.99 and in which 1 ha consists of 1,100 trees are exempt from land tax. But it remains unclear as to what this means for plantations that are not registered under MAF regulations and/or, were planted under a different arrangement. Regulation 196/MAF, Article 19 states that plantations > 1600 m<sup>2</sup> are exempt from land tax if they plant more than 800 trees/ha in low land and 600 trees/ha in uplands, whereas, PM Decree 01/PO, Article 5 states that plantations covered with at least 1,100 trees per hectare shall be exempt from land tax. These inconsistencies need to be clarified.
- TLUCs issued for tree planting are only valid for three years and do not provide an opportunity for land tax exemption since registration as a tree plantation is not applicable until three years after planting;
- The rights and responsibilities of Department to authorise tax exemptions are unclear. It has been suggested that MAF regulations are not recognised by MOF and that only Provincial Governors are authorised to exempt tax, on the basis of a recommendation from the district land department.

## 5.4 Harvesting and Sales

The Forestry Law, 2007 together with the *Decree 59/2002 on Sustainable Management of Production Forest Areas*, *Prime Minister's Order No 17/PM (2008), on Strengthening the Forest Management, Protection and the Coordination of Management Forest and Forestry Business*, *Regulation 0196/MAF, (2000) concerning the development and promotion of long-term plantations* and *Guideline No 0105/MAF (2008) Concerning the Implementation of the Prime Minister's Order No. 17/PM, (2008) on the Enhancement of Strictness in Managing, Preserving Forest and the Coordination in the Management of Forest and Timber Business*, are the key legislative instruments with respect to forest harvesting in Lao PDR. Subordinate regulations and guidance specify the technical requirements associated with harvesting, and include:

- *Decision No 0080/MAF, (2012) on procedures for importation, management and utilisation of chainsaws.*
- *Decision No 0116/MAF, (2007) regarding the procedure for measuring logs, tree stumps, tree burls and log quality grading.*
- *PM Order No 10/2000 Forest Management and Operations;*
- *Regulation No. 221/MAF, (2000) on Harvesting of wood and NTFPs;*
- *Agreement No. 0182/MAF on the establishment and management of timber harvest units and enterprises;*
- Draft MAF regulation on sustainable forest management of production forest areas.

Article 7 of Order No 17/PM specifies that MAF is to issue specific rules to manage plantation timber including to establish regulations on harvesting and the preparation of annual logging plans for plantation timber, on the following principles:

- 7.1. DAFO is to manage, monitor and register tree plantations, and the origin of timber harvested from the plantation is to be certified by PAFO based on the plantation registration made by DAFO.
- 7.2. The sale of plantation timber is the responsibility of the plantation owner and the buyer with negotiation on the price based on market information provided by the National Wood Processing Industry Association, giving priority to the domestic processing industry (refer Section 5.4.3 below).
- 7.3. MOIC is to develop specific rules for the sale of plantation timber. Any business entities wishing to export plantation timber in the form of logs or sawn timber must apply for approval from MOIC with the consent of MAF. Exporters must implement full export obligations in accordance to the laws (refer section 5.7 below).

Despite this the process harvesting plantation timber is not straight forward. Several steps are involved process and these are described below and summarised in Figure 5.

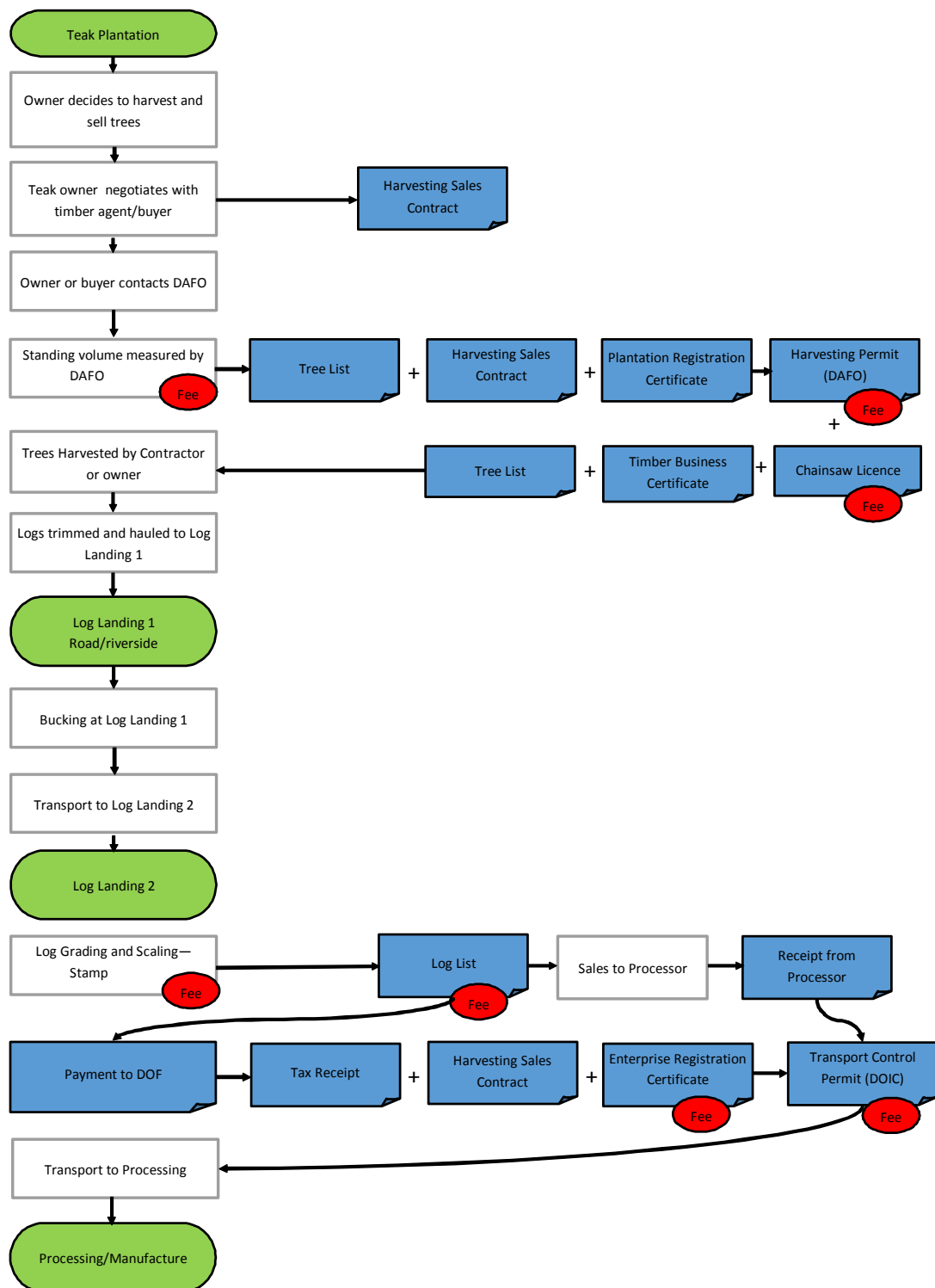
### 5.4.1 Quotas

Generally, the forest harvesting system in Lao PDR is a quota-based system. It has been described in several reports including Southavilay and Castrén (1999), Baird (2010), Barney and Canby (2010) and Grace *et al.* (2012). Historically the quota process has been based on timber availability, principally from natural forests, and processing capacity, and considerations of sustainable forest management are only recent additions.

In summary, a national harvesting plan is prepared by MAF on the basis of proposals prepared by PAFO and POIC. The source of the logging quota is specified according to the origin of the timber (production forests, infrastructure development areas, conversion forest, plantations) and the allocation of the quota to the processing sector is based on the target for production (domestic industry or export). Other criteria for establishing the harvesting plan include factors such as budgetary needs and infrastructure development. The annual quota is consolidated nationally and then allocated to the wood processing industry by MOIC in collaboration with MAF (PM Order 17/PM, Art. 9).

*Decree 59/PM (2002) on Sustainable Management of Production Forest Areas* attempted to reform the process of quota allocation by requiring the use of actual data from inventories and surveys rather than political and economic needs. Article 9 states that the "harvest of timber and forest products shall be conducted only in demarcated management areas, under official approval of required management plans focusing on sustainable management and based on regeneration rates and baseline data of pre-harvest inventories". PM Order 17/PM (Arts. 3.3, 4 and 4.1) requires pre-logging surveys to be undertaken in production forest areas (PFAs) and development project areas, and on the basis of a sustainable forest management strategy (Flanagan *et al.* 2013).

Figure 5: Timber Harvesting and Sales



With respect to plantations, Article 8 of Order 17/PM, (2008) specifies that “each year the Ministry of Agriculture and Forestry is to consolidate a logging plan for plantation(s), then collaborate with the Ministry of Industry and Commerce to inform the National Wood Processing Industry Association.” Timber from registered plantations should generally be considered within this Annual Quota (Grace *et al.* 2012)<sup>23</sup>. Guideline 0105/MAF also requires that wood from plantations is registered and included in the annual provincial harvesting proposal (Art 3.2.1) which is submitted for inclusion in the National Quota allocation. Article 3.4 of Guideline 0105/MAF emphasises the need to survey plantations owned by individuals, families and organisations and include them in an annual plan for exploitation to secure income generation and encourage them to actively participate in the forest plantation process. The collection of plantation information by DAFO is to be incorporated in the annual harvesting plan. Despite these guidelines it is not clear precisely how or whether the wood from both registered and un-registered smallholder plantations is included in quotas or how ‘opportunistic’ smallholder sales and harvesting are incorporated in national harvesting plans.

#### 5.4.2 Pre-harvest Planning and Inventory

The requirements for planning and pre-harvest inventory are largely determined by the category of forest determined under the Forestry Law. With respect to plantations, once registered plantations that are owned by individuals or organisations theoretically fall under the category of Village Production Forest, as part of a Village LFAP. The Forestry Law (Art. 18) specifies the general purpose and nature of inventory and logging surveys in Production Forests. It includes:

- Survey and inventory of standing trees of all species with an allowable circumference, together with maps showing the locations of the trees;
- Selection, marking and stamping of trees to be harvested;
- Defining logging and hauling roads and places for log landings or log yards; and
- Formulating an annual harvest plan for submission to the government for approval.

Other relevant regulations and instructions include:

- *Regulation No 196/MAF concerning the development and promotion of long-term plantations.*
- *Regulation No. 0069/MAF.02, (2002), on pre-harvesting inventory, tree marking and post-harvesting assessment*
- *Regulation No: 0108/MAF.05, (2005), on the Regulation of Forest Inventory;*
- *Guideline No: 2156/DOF, (2006) on Sustainable Production Forest Management Planning to formulate the nation-wide uniform principles and methodologies for the sustainable production forest management,*
- *Guideline No. 2155 /DOF, (2006) on Participatory Forest Inventory which provides the basis for conducting forest inventory, pre-harvesting inventory, tree marking, and post-harvesting assessment to provide forest resources information on tree species, volumes, NTFPs and other information concerned by participation of the Village Forest Organization or a Group of Village Forest Organizations in sustainable forest management.*
- *Guideline No 0105/MAF 2008 on Prime Minister’s Order No 17/PM, (2008)*
- *Guideline No 1097/DOF, on Chain of Custody Control of Timber Harvesting and Transport in Production Forest.*

Within Article 49 of the Forestry Law, the requirements for logging and harvesting (including tree marking and stamping) within production Forests are clearly articulated. This includes requirements for inventory, survey and sustainable management plans to have been completed. For harvesting Prime Minister’s Order No 17/PM, Articles 3.3, 4 and 5.2 allow quotas to be allocated only for those areas where a Forest Management Plan and pre-harvest inventory has been completed. PM Order No 17/PM (Art. 16. 1 (1)) also requires a survey to be undertaken by DAFO on tree species and associated volumes which must be incorporated into the annual logging plan.

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<sup>23</sup> In 2008-2009 the logging quota included 2,280 m<sup>3</sup> of plantation timber mostly from teak plantations in Luang Prabang and Saravane with 1,000 m<sup>3</sup> and 570 m<sup>3</sup> respectively.

Article 7 of PM Order No 17/PM, specifies that MAF is to issue specific rules to manage plantation timber, particularly to survey and register tree plantations by individuals and juridical entities in each locality; to establish regulations on harvesting and the preparation of annual logging plans for plantation timber. Under Article 7.1, DAFO is to manage, monitor and register tree plantations, whereas the origin of timber harvested from the plantation is to be certified by PAFO based on the plantation registration made by DAFO.

In accordance with Article 11 of PM Order No 17/PM, MAF, in close collaboration with local authorities, is to supervise the implementation of the logging plan, and costs of undertaking the inventory are to be paid according to the Order. Under *Guideline No. 2155 /DOF, (2006) on Participatory Forest Inventory* this can be undertaken by the Village Forestry Unit and the Guideline also provides the basic rules for conducting forest inventory, pre-harvesting inventory, tree marking, and post-harvesting assessment to provide forest resources information on tree species, volumes, NTFPs and other information.

### 5.4.3 Sales and Harvesting Approvals

The requirements for the harvesting and sale of logs are articulated in the Forestry Law, together with the PM Order No 17/PM. Other relevant regulations and rules include:

- *No. 2157/DOF Guideline on Principle of Logging in Production Forest, (2006)*
- *No. 221/MAF Harvesting of Wood and NTFPs*
- Prime Minister Order on timber harvesting and forestry business which is issued annually
- *Regulation No. 0116/MAF on timber scaling and grading, (2007)*
- *Agreement No 0182/MAF, (2009) on the establishment and Management of Timber Harvest Units and Enterprises*

For smallholder plantations the harvesting process begins with a direct sales negotiation between the plantation owner and the buyer of the wood (PM Order No 17/PM, Art. 7.2). Trees are selected by the grower, buyer or trader to meet market requirements and specifications. Prices should be based on market information provided by the National Wood Processing Industry Association. A contract between the parties is required in order that a harvesting approval can be granted by DAFO.

MOIC is required to develop the specific rules for the sale of plantation timber, and any business entities wishing to export plantation timber in the form of round logs, square logs, or sawn timber must apply for approval from MOIC with the consent of the MAF (in accordance with Article 7.3, of Prime Minister's Order No 17/PM). Once developed, the sales contract<sup>24</sup> becomes a purchasing reference that the trees are officially sold. It must be witnessed by a third party and approved by the *nai ban* of the village that the seller is living in.

Once a sales contract has been reached, a pre-harvest inventory of the trees that have been sold is required and these are to be recorded on a Log List. It is generally understood that this inventory should be undertaken by DAFO at the cost of the plantation owner, although anecdotally, this task is frequently undertaken by the plantation owner, with payment still made to DAFO. *Guideline No. 2155/DOF, (2006) on Participatory Forest Inventory* suggests that this could also be undertaken by a Village Forestry Unit.

On the basis of this inventory and the sales contract, DAFO issues a harvesting permit. Harvesting of planted timber for commercial purposes requires the plantation to be registered and harvesting should be undertaken in accordance with the felling cycle provided in the plantation management plan approved at the time of registration (Regulation 196/MAF (Art. 14)); although such plans may not be required where the plantations are less than 5 ha in size. Article 48 of the Forestry Law requires that for the felling and transport of planted trees for commercial commodities the forestry business entity must report to the village forestry unit, except in the case of prohibited tree species which require approval from DAFO and PAFO. All trees harvested through official quotas are required to be measured, graded, stamped and recorded on an official Log List at Log Landing 2 by PAFO and DAFO. At this point the harvested timber becomes the regulatory responsibility of MOIC.

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<sup>24</sup> The Law No. 02/NA 1990 on Contract comes into force.

#### 5.4.4 Harvesting

Harvesting is generally conducted by the plantation owner (for small volumes) or logging contractors engaged by the buyer of the plantation timber (traders) or by the plantation owner. Traders engage contractors that are responsible for harvesting and hauling the timber to Log Landing 2, under the supervision of DAFO (PM Order No 17/PM Art. 16.1 (1)). Contract harvesting businesses must be registered according to the Enterprise Law, (2005) (Agreement No 0182/MAF Art. 24). They are not permitted to own timber processing facilities or buy logs and conversely timber industries are not permitted to undertake logging (MAF 2009).<sup>25</sup> This provision adds a step to the value chain, filled by timber traders, which potentially reduces the price received by farmers. It also appears to prohibit the harvesting of trees and mill-gate sales by plantation owners themselves, which may be the reality for sales to small local sawmills. Whether this provision is implemented or enforced in practice requires further investigation.

Log Landing 2 is the focal point for recording and sale of all logs harvested from licensed areas in Laos. Log Landing 2 is a temporary log yard where DAFO and PAFO measure and scale logs, and use this information to develop a log list that includes log numbers, identified species, and measured diameter and length to calculate volume. Theoretically log lists and log numbers are used to track the material back to a specific licensed harvest area (registered plantation), and this has become the basis of certificates of origin used in export, although it is not clear whether this is yet functional (*cf* Grace *et al.* 2012).

Most of the smallholder plantation resource in Lao PDR is located within 500m of a road or river, and harvesting is usually completed manually using crosscut saws or axes, and occasionally chainsaws. Approaches to harvesting and transport vary with distance from the roads, steepness of the terrain, volume cut and the situation (for domestic household use or for commercial sale where someone else will pay or reimburse for harvest and transport). Most logging in smallholder plantations is selective and only in cases of clearing for infrastructure projects are plantations clear-felled. The dominance of manual labour to bring logs to the roadside, coupled with the steepness of terrain imposes a natural restriction on log size. Most harvesting systems adopt a standard 2.4m length for plantation logs which further limits options for processing (Midgley *et al.* 2007). Small piece size also facilitates hand loading onto trucks. At best, some local traders have chainsaws and improvised loading devices to handle the relatively small logs from standing tree to roadside and finally on to the trucks (Midgley *et al.* 2007). The log extraction process from plantation sites to (typically) the nearest road may involve teams of two-four men carrying logs over distances of up to 1km (Mohns and Laity 2010). Teak logs with diameters of up to 35cm are sawn into logs 3m-4m in length each weighing about 200–300kg. For larger log sizes and over greater extraction distances chainsaws are sometimes used to square the logs, reducing the weight by up to 40% (Mohns and Laity 2010).

Manual falling imposes unique restrictions and costs associated with the importation and ownership of Chainsaws. *Decision No 0080/MAF (2012) on Procedures for Importation, Management and Utilization of Chainsaws*, sets out the principles, procedures and measures for importation, management and utilization of chainsaws. Chainsaws can be purchased by individuals but must be registered with DOF and kept at provincial or district forest offices. Each individual chainsaw must be registered annually with the Department of Forestry and PAFO must be notified each time the chainsaw is to be used. PAFO also have the right to inspect chainsaws prior to each use. Registering a chainsaw attracts an annual fee, (Art. 6) as specified in the Presidential Edict on Fees and Service Charges for that period.

Importing a chainsaw also requires an import license from DOF, which in turn requires a valid Enterprise Registration Certificate issued in accordance with the Law on Enterprise. Acquiring a chainsaw licence attracts an application fee and customs charges.

#### 5.4.5 Fees and Charges

The procedures for timber harvesting and sales have official fees and service charges imposed at various stages including:

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<sup>25</sup> Ministry of Agriculture and Forestry Department of Forestry; Sustainable Forestry for Rural Development Project Additional Financing (SUFORD - AF) October 15, 2009 Timber Sales Procedures Draft.

- The measurement of standing volume by DAFO
- Application for and issuing of a harvest permit
- Annual registration and use of a chainsaw
- Log Stamping
- Issuing of Log List at Log Landing 2
- Transport permit

Actual fees paid in association with harvesting are reported in Midgley *et al.* (2011), revealed in discussions with representative of Luang Prabang Teak Project (this study) and during interviews with growers (Said *et al* forthcoming). These are summarised in Table 8 below. Additionally, where government employees are required to provide a service (for pre-harvest timber inventory) a *per diem* must be paid. Official *per diems* are stipulated in *Decision No. 2348/MOF, (2008) on Public Administrative Budget expenditure Norms (Improved)* - Annex IX.

Table 8: Reported costs associated with harvesting and haulage

| Procedures.  | Fee (kip)          | Fee (kip)                   | Paid to |
|--|--------------------|-----------------------------|---------|
| Pre harvested measurement of standing volume (Kip/m <sup>3</sup> ) | 7,700              | 7,000                       | DAFO    |
| Application for Harvesting Permit                                  | Not specified      | 10,000                      | PFS     |
| Logging certificate  | 7,700              | 10,000                      | PAFO    |
| Log Measuring and Grading (Kip/m <sup>3</sup> )                    | 40,000             | 5,000                       | DAFO    |
| Log Stamp at Log Landing 2 (Kip/m <sup>3</sup> )                   | 12,000             | 10,000 + per diem<br>35,000 | PAFO    |
| Certificate for Transport  | 7,100              | 30,000                      | PAFO    |
| Profit tax (Kip/m <sup>3</sup> )                                   | 80,000             | 20,000                      | DAFO    |
| Source   | Midgley et al 2011 | LPTP, <i>pers. Comm.</i>    |         |

The complex regulatory requirements and costs required to register, harvest and sell timber from smallholder plantations act as a deterrent to regular sales by growers and anecdotal evidence suggests that for many the main reason for planting trees is for household saving and as a safety net suggesting that teak contributes very little to overall household income (See Ling *et al.* 2013). Other studies have suggested that teak trees, for example, make a significant contribution to income (see for example Keonakhone 2006) and accumulated household wealth (Newby *et al.* 2012).

## Harvesting and Sales: Summary of Issues and Questions

It is unclear how or whether smallholder plantation volumes are included in Quotas or their allocation. This may not be an issue where the actual volume being produce is low. However, as the resource matures and supply increases the relevance of quota allocations may increase, particularly where consumer markets scrutinise the legality of products. Early resolution of this issue would be pertinent and may be facilitated by improved information on the nature of resource base.

If plantation volume is included in quota volumes, it is not clear how un-registered volume is accounted for in the value chain. What are the discrepancies between volume harvested and volume processed?

Harvesting regulations are largely based on requirements for natural forests and may be overly complex and costly for smallholder plantation owners.

Promote (training/educating) grower harvesting of thinnings to reduce tax burden associated with others doing the harvesting.

Promote Plantation Management Plans (which are a documented requirement of many steps of the process through land allocation, TLUCs, plantation registration, harvesting and certificate of origin but which no one seems to have) and argue that if a thinning operation is in a plantation management plan additional approvals and measurement costs (7500/m<sup>3</sup>) should not be required.

Examine procedures in other Provinces with a view to reforming LPG Directives which reduce competitiveness

(i.e. to encourage the market to stay in LP Province) or argue for national wide consistent procedures?

The requirement to have chainsaws registered is impractical and the mechanisms for, and level of enforcement of, chainsaw and vehicle registration is unclear.

The justification for prohibitions placed on the ability of harvesting contractors to buy logs or own mills are unclear, particular given regulatory requirements for processors to establish plantations.

Seasonal proscriptions for harvesting and haulage impacts on all value chain participants.

The complex regulator requirement and costs required to register, harvest and sell teak act as a deterrent to regular sales by growers.

## 5.5 Log Haulage and Transport

*The Law on Land Traffic 02/NA, (2000)* and the *Law on Land Transport No. 03/NA, (1997)* establish the general regulatory provisions for domestic and cross-border transport of people and goods in Lao PDR. The Forestry Law 2007 (Art. 53) provides the legislative basis for the importation and use of forestry and timber transport vehicles, the establishment and operation of timber transport businesses and the transport of forest products. Other relevant legal instruments include:

- *Order No 17/PM, (2008) on Strengthening the Forest Management, Protection and the Coordination of management Forest and Forestry Business.*
- *Guideline No. 0105/MAF, (2008) Concerning the Implementation of the Prime Minister's Order No. 17/PM*
- *Regulation No. 0196/MAF, (2000) concerning the development and promotion of long-term plantations.*
- *Instruction No. 1601/MOIC.DIMEX, (2008) on Management and movement of timber, timber products and non-timber products in domestic and for exportation.*
- *Instruction No. 1440/MOIC.DIMEX on Management of wood transport vehicle, wood extraction machinery, and wood processing machinery*
- *Decision No 1415/MOIC.DOI on the Form and Size of Timber Products*
- *Instruction Letter No. 0395/MOIC, (2011) cancelling requirements for transport authorisation letters from MOIC.*
- *Notification No 1940/MOIC.DIMEX, (2011) on the procedure to issue import and export license for timber and timber products.*
- *Notification Letter No. 2215/MOIC, (2012) Issuing further instruction with respect to Instruction Letter No. 0395/MOIC*
- *Guideline No 1097/DOF, on Chain of Custody Control of Timber Harvesting and Transport in Production Forest.*

The general procedures and approvals for log haulage and transport are presented in Figure 6 and described below.

All timber transport businesses must be registered according to the Enterprise Law and all timber extraction and transport vehicles must be registered for their purpose.

The size and type of vehicles used in the haulage and transport of timber from smallholder plantations is naturally constrained by the locations in which plantations are established. Roads, bridges and other infrastructure are often poor and impacted by seasonal conditions and restrictions which are reflected in PM Order No.17/PM. Pursuant that Order, Instruction No. 1601/MOIC.DIMEX provides the instruction on the management and movement of timber, timber products and non-timber products domestically and for exportation. These can be summarised as follows:

- DOF supervises logging and haulage from the forest, Log landing 1 and transport to Log Landing 2 (PM Order No. 17/PM Art. 16). Harvesting from production and conversion forest must be complete by 31<sup>st</sup> May each year. Any activities associated with hauling to Log Landing 1 and transport from Landing 1 to Landing 2 must cease between 1<sup>st</sup> June and 31<sup>st</sup> October (PM Order No. 17/PM Art. 11, Guideline No 0105/MAF Art 3.8)).
- After Log Landing 2, DOIC is responsible for transport to Log Landing 3, processing or export through the issuing of transport permits (controlling licenses) and through patrols (PM Order No. 17/PM Art. 17).

Instruction No. 1601/MOIC.DIMEX specifies the requirements for the approval of domestic and cross-border transportation.

Instruction No. 1601/MOIC.DIMEX specifies the responsibilities of the DOIC as being:

- Receiving and verifying from DAFO/PAFO the Log List at Log Landing 2;
- Conducting the sale-purchase contract with the wood processors;
- Issuing the controlling licence for transport;
- Inspecting and monitoring transport of wood products from Log Landing 2 to the point of exportation.

The documents accompanying the transport permit are specified and may include, depending on the type of wood product and distance of transport:

- a copy of the Enterprise Registration certificate;
- a transport controlling licence issued by DOIC;
- a copy of the log list of from Landing 2 approved by PAFO;
- a copy of the timber sales contract (signed between PAFO, POIC and buyer);
- payment receipts (Royalty, tax and fee) issued by Provincial Finance Division; and
- a receipt from the purchaser (processor distributor) that has been certified by the DOIC.

POIC is authorised to issue transport licences for timber stumps and plantation timber from Log Landing 2 to any production destination, wood processing manufacture or third log yard (Log Landing 3). POIC is also authorized to issue the transport licences for large size sawn timber, sawn timber, semi-processed timber and finished timber products from one province to another province or between districts. These product categories are based on Decision No 1415/MOIC.DOI on the Form and Size of Timber Products.

For timber that is to be exported, in addition to those documents listed above, the following approvals are also required:

- An Export licence from the DIMEX;
- A customs declaration form;
- Letters of exemption from export duties, in the case of finished products;
- A copy of the sale/purchase agreement with the foreign buyer; and
- A copy of payment receipt from the bank.

Despite Order PM/17 and Instruction No. 1601/MOIC.DIMEX, there remains some confusion on where the responsibility for approving the transport of timber lies. This is may be due to the fact that Regulation 0196/MAF allocates responsibility to DAFO for intra-provincial transport and to PAFO for inter-provincial transport and export (Art. 14) and this regulation continues to be applied in some areas. There may also be lack of familiarity with Instruction No. 1601/MOIC.DIMEX or its replacement Notification No 1940/MOIC.DIMEX (2011), which is focussed on streamlining export and import procedures (as described in 5.7 below) and it does not provide any specific instructions with respect to approvals for domestic transport of timber; because Notification No 1940/MOIC fails to clarify transport approvals there may be a tendency to fall back on procedures already in place. Additionally, revenue from the collection fees associated with the issues of transport licences may be a disincentive for government agencies (e.g. DAFO and PAFO) to forgo this activity.

In 2011, MOIC issued Instruction *Letter No. 0395/MOIC dated 25 February 2011* to Offices of Industry and Commerce throughout the country, to terminate the issuing of authorization letters for the movement of all types of goods apart from some goods that require authorization from the MOIC. This provision was implemented to allow smooth movement of goods, but officers in some departments are still demanding letters of authorization. Therefore, to ensure that this instruction is implemented effectively, MOIC issued Instruction Letter No 2215/MOIC, Dated 21 November 2011 to relevant departments both at central and provincial level instructing them to terminate the request of a letter of authorization for the transport of goods. This change was further reiterated by MOIC on 25/2/13.

Whether the termination notice has been fully implemented and whether timber is an exception to this rule is yet to be determined. As it stands, with MAF and MOIC still requestion transport control licences the financial impact on growers and traders can be substantial.

### 5.5.1 Checkpoints

Checkpoints and patrols have been used to regulate and monitor the movement of timber within Lao PDR and across international borders. The permissions required for moving timber are specified on the basis of whether District, Provincial or national borders are being crossed, and checkpoints are used to monitor these approvals.

Under Notification No. 1940/MOIC, DIMEX responsibility for the monitoring and inspection of timber is a shared responsibility of the DOIC, with other relevant agencies, which are Import and export Administration Authorities under the Decree No. 114/GOL, 2011 on Import and export of Goods; DOF and the DOFI are such authorities.

“The Industry and Commerce sector through trade inspection officers shall coordinate with the relevant agencies to monitor the movement, exportation of timber and wooden products on transportation routes, wood processing factories, storage and other places where necessary. If informed by a reliable source, trade inspection officers shall coordinate with the relevant agencies to inspect immediately and act according to the rights and authority as given by the Laws and regulations.”

In 2011, The Government Secretariat issued Notice No. 1179/PMO in order to remove 26 out of 39 road checkpoints which were deemed to be unnecessary or duplicated. This Notice, in conjunction with Instruction Letter No. 0395/MOIC, was intended to reduce the administrative burden of checkpoints and transport approvals on the movement of goods within Lao PDR and for export.

The function of various government agencies in the monitoring and enforcement of forestry and forest related businesses, including log transport, is discussed further in section 5.11.

#### Transport: Summary of Issues and Questions

Recent reform has potentially eliminated the requirement for transport permits and controlling licenses, however, these are still being requested at the Log Landing 2.

Lack of clarity and duplication persist in the functions of DOIC and DOF in the ongoing request for controlling licenses resulting in unnecessary procedural and cost impositions on growers and traders, and a potential delay in payment to plantation owners.

Issues may arise where fees and charges collected in association with transport approvals accrue to the Provincial budget, creating a disincentive for cancellation of the procedure.

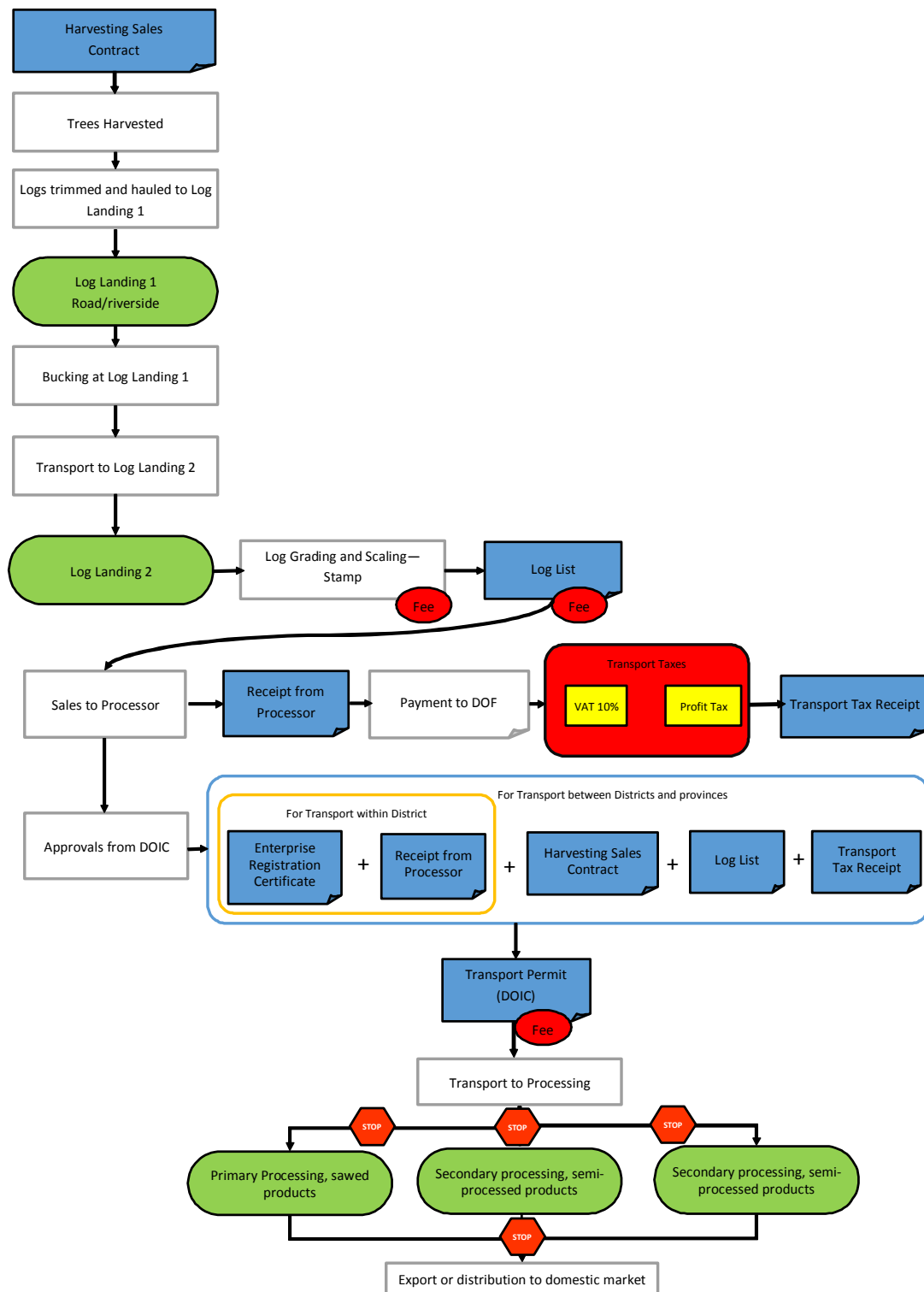
The complexities and costs associated with haulage and transport are a disincentive for processors to buy timber at the farm gate.

### 5.5.2 Work Place Safety

The *Labour Law No 06/NA (2006)* includes provisions for the protection of labour, with respect to Safety and Working Conditions (Art. 3, 42, 43), however the specific rules remain the responsibility of the employer. Instructions for implementing the enforcement of the labour law have been issued by MAF (Instruction No. 1035/MAF (2010)).

Consequently generally-accepted protective and safety measures for timber harvesting and transport are usually absent in Lao PDR. Most operators understand the need for safety equipment but lack of funds prevents purchase and issue (Midgley *et al.* 2007). Where the use of personal protective equipment remains optional take-up is limited by lack of awareness, training and by preferences for personal comfort when working in hot and humid conditions

Figure 6: Log Haulage and Transport



## 5.6 The Wood Processing Sector

### 5.6.1 Background

Dating back to the 4<sup>th</sup> Party Congress (1986) the Lao PDR policy has been to promote domestic wood-processing factories (WPF) by linking the regulation of their operations to timber harvest and quotas, and by promoting only the export of processed wood. In 1991, the 5<sup>th</sup> Party Congress called for a specific regulation on wood processing factories and in the same year, *Decree 67/PM on Logging Ban* prohibited provincial authorities from issuing logging quotas or continuation permits to wood factories not in compliance with standards in *Decree No 117 on the Management and Use of Forest and Forest Land* (since repealed). Despite this, many provinces have continued to submit applications for the approval of sawmills and wood processing factories without consideration of standards or future supply of raw material. Recent reforms have been made to streamline, modernize and improve technology and standards in an attempt to transition from export oriented production of logs and sawn timber from natural forest, to value-adding in domestic production of semi-finished and finished wood products, with an emphasis on using plantation timber as the raw material (Sigaty 2003).

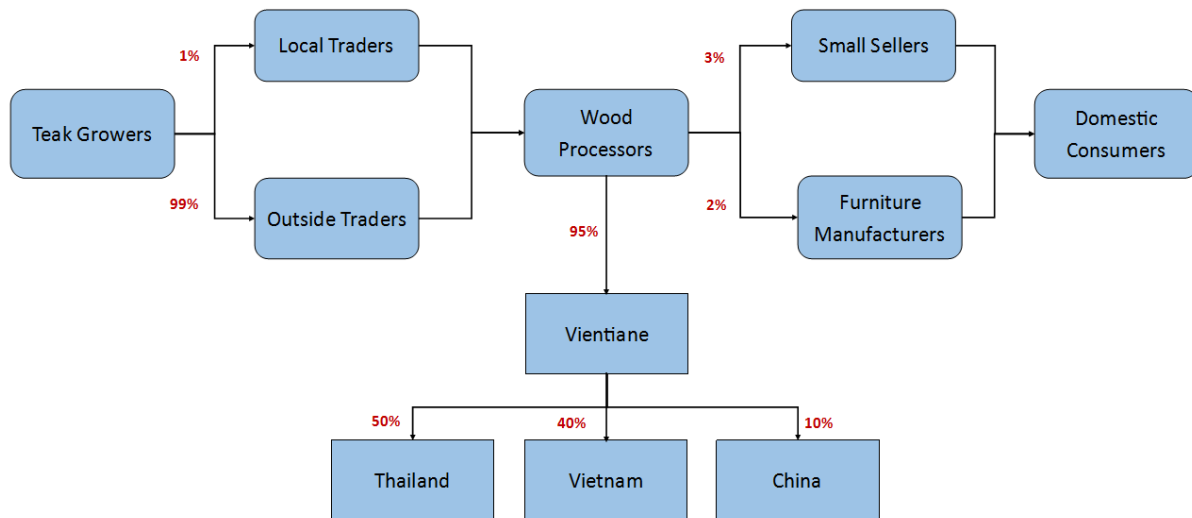
In 2000 the Government of Lao PDR issued Order No. 10/PM to ban log exports and reduce exports of sawn timber. In 2004 order No. 25/PM further limited exports to semi-finished wood products. In 2006 MOIC took over the responsibility for regulating the wood processing industry from MAF and in 2007 declared that wood-based exports must be 100 percent finished product. At the same time, MOIC issued a series of new regulations aimed at making the export of timber and wood-based products the exclusive right of the central government. These included requiring the registration of timber at sawmills and ending the practice of awarding timber harvesting quotas to provincial officials.

Other legislation has since been issued promoting development of tree plantations to supply domestic wood-processing factories. *Order No 18/PM on Forest Resource Management Policy for 2002-03* bans the export of unprocessed logs and sawn timber from natural forest and requires each wood-processing factory to have a tree plantation for internal factory use, and Decree No. 46/PM, Article. 2, bans the issuance of new foreign investment licenses to wood-processing factories intending to use natural timber as raw material.

### 5.6.2 Primary and Secondary Processing

The sawmills that process timber from planted trees vary greatly from small village operations, close to the resource that operate as required or when wood is available, to more sophisticated operations. Close to the resource sawmills process logs, whereas in centres such as Vientiane most companies purchase timber as squared logs or planks which are then sawn into boards of required dimensions. A study in 2005 analysed the marketing channels of teak logs from Luang Prabang province (Keonakhone 2006; Midgley *et al.* 2007, Figure 7). At that time, trading of round wood to processing centres was carried out by traders and intermediaries; local people were not involved in any way. Only 5% of the sawn timber remained in the local area for processing, 95% was transferred via Vientiane-based traders to Thailand, Vietnam and China. Midgley *et al.* (2007) did not find any considerable secondary processing of teak in the Vientiane region (Mohns and Laity 2010).

Figure 7: Marketing Channels (after Keonahone 2006)



### 5.6.3 Legislation Relevant to Wood-Processing Factories

The Forestry Strategy 2020 (GOL 2005) describes the regulatory environment for wood processing as follows:

“In Lao PDR, wood-processing factories are regulated primarily by MAF Regulation 261 (2000) and specific provisions in the Forestry Law, the Foreign Investment Law (1994), PM Decree 46 Implementing the Foreign Investment Law and the Processing Industry Law. Both MAF and MIH [Ministry of Industry and Handicrafts] have authority to regulate wood-processing factories; MAF on the basis of Forestry Law and MIH on the basis of Article 44 of the Processing Industry Law, which gives the right to issue operating permits to various types of processing factory. That both ministries are empowered to set operating standards and register wood processing machinery causes confusion and dialogue between the two should be strengthened.”

“To establish a wood-processing factory in Lao PDR, a local investor must obtain an enterprise registration license from the Ministry of Trade, a tax license from the Tax Department of the Ministry of Finance and an operating license from MAF and/or MIH. In addition foreign investors must obtain a foreign investment license from the FIMC. MAF Regulation No. 0261 (2000) requires wood processing factories to obtain an operation permit annually. The factory must request a license extension by September of each year in order to qualify for wood processing and trading (PM Order 15, Art. 2).”

“Pursuant to the Forestry Law, Article 22, and MAF Regulation 261, wood processing is a forest activity authorized by MAF. Specifically, MAF governs the registration and licensing of wood processing factories as well as any move, transfer or change in factory ownership. PAFOs are required to register all machinery and authorize and monitor the import and use of wood and NTFPs for factories. Lastly, DAFOs are mandated to monitor and inspect factories based on prohibitions in MAF Reg. 261, Article 23, and other relevant legislation and to submit the resulting report to MAF.”

Since the writing of this Strategy a number of significant reforms have occurred.

The Forestry Law 2006 (Art.45) recognises the processing of timber as a forestry business and (Art. 50) allows for the processing of timber and forest products in accordance with the *Law on Industrial Processing, No 1/NA*, (1999). The *Law on Investment Promotion No. 02/NA* (2009) superseded the previous *Laws on Foreign Investment NA/11* (2004) and *Law on Domestic Investment No. 10/NA* (2004).

The Law on Industrial Processing determines the principles, regulations, and measures relating to the establishment, operation and administration of industrial and handicrafts processing. Various Orders,

Regulations and Instructions issued by MOIC and MAF have been made to regulate wood processing operations and address the overlap and inconsistencies between the Ministries and their Departments, including:

- *Decree No.0719/MOIC (2009) on Standards of Wood Processing Factories*
- *Order No 17/PM, (2008) on Strengthening the Forest Management , Protection and the Coordination of management Forest and Forestry Business*
- *Decision No 1415/MOIC.DOI, (2008) on the Form and Size of Timber Products*
- *Order No. 31/PM (2006) Order of Prime Minister on increasing control in forest management, conservation, wood business and promoting the production of finished products in wood processing industry,*
- *Regulation 261/MAF, which is issued annually through which processing factories are authorised.*
- *Order No. 18/PM (2002) on Forest Management Policy for 2002-2003, which attempts streamline the wood-processing sector by requiring operations to meet prescribed standards of technology and efficiency, to plant trees according to factory size and to regulate the use of wood as an energy source.*

The Law on Industrial Processing, in the context of industrial and handicrafts processing activities, has the objective of expanding the processing and handicrafts industry and to integrate the processing industry with agro-forestry, transforming the natural economy of farmers into a goods-based economy, to increase the living standards of the people. In this context 'processing industry' refers to industry and handicrafts processing involving factory operations that transform raw materials or semi-finished products from their original state into a new product by mechanical means or by manual labour, whether within a factory or in any workplace where products can be distributed as commercial goods.

*Order No 17/PM, 2008 on Strengthening the Forest Management, Protection and the Coordination of Management Forest and Forestry Business* (Art. 12) aims to strengthen the measures for restructuring and management of the wood processing sector through improved collaboration between MOIC and MAF across a range of areas concerning the operational standards and management of wood processing, including sawmills and wood working factories and to develop regulations with respect to operation of harvesting businesses, tree plantation groups, wood and wood product merchants and wood product exporters. Under this Order (Art. 2 (4)) MOIC is responsible for the management and monitoring of sawmills, wood processing factories, furniture factories, wood products storage houses, wood energy factories and others in accordance with the Law on Industrial Processing and in collaboration with other related line agencies and local authorities.

#### 5.6.3.1 Timber Supply

Until 2011 the procurement of timber supply by processors was regulated by Notices 1887/MOIC.DIMEX 2008, 0484/MOIC.DIMEX and 1862/MOIC.DIMEX which were aimed at promoting the use of raw material from plantations and formalising the management of the plantation timber trade on the basis of the directives of government and through enhanced partnerships between growers and processors. *Notice No. 1791/MOC.DIMEX (2011) on Procedures to issue import and export license for plantation timber* superseded these notices and is intended to promote the utilisation of plantation timber in place of natural timber. However, it is effectively a procedural notice regulating the import and export of plantation timber.

Other legal interventions to promote domestic processing of semi-finished and finished wood products include:

- *Decision No 1415/MOIC.DOI on the Form and Size of Timber Products*, sets out the definition, form and type of timber produced and (Art. 1):
  - To raise awareness and understanding about timber products in Lao PDR to achieve uniformity throughout the country.
  - To ensure that the restructuring of the wood processing industry meets required standards.
  - To create value adding for the timber products that have been processed either through industrial or handicraft processes, aiming at increasing exports.
  - To administer and promote the use of log as raw material from the limited natural resource for optimum benefit and protect the environment and biodiversity for security and sustainability.

The Decision identifies primary, secondary and tertiary wood processing and three forms of wood products: sawn timber, semi-processed timber and finished products. It forms the basis of the determination of value added processing, which has taxation implications for processors.

- *Decree No.0719/MOIC on Standards of Wood Processing Factories, (2009)* is aimed at the rationalization and management of activities of the wood processing industry at all levels and sizes, including small wood-processing factories. Within this Decree Wood processing factories are classified into 2 types:
  - Wood processing factories I (type I) include sawmill, semi-finish wood product factory, with codes 1610, 1621, 1622.1, 1701.1, as: sawn wood, square, re-sawn wood, rotary veneer, slice veneer, and pulp.
  - Wood processing factories II (type II) include finished wood product factory, and furniture factory, with codes 1621, 1622.2, 1623, 1624, 1629, 1701.2, 1702, 1709, and 3100, as: wooden house, frames, door, window, stair, parquet, flooring, plywood, particle board, fibre-board, box, palette, paper, paper utensil, wooden furniture (tables, chairs, chests, beds), decorative wood, woodcrafts and carving products.

Small size wood processing factories run by households (including small wooden furniture), with less than 10 employees, and less than 5 horse power, are classified in type II, and with codes 1629, 3100, as: tables, chairs, chests, beds, wood crafts and curving products, decorative items, photo frames.

Standards of wood processing factories are proscribed as follows:

- All wood processing factories must be located outside of Forest Reserves, Protection Forests, and officially prohibited areas, with a large area, facilities for transport, security, and without affecting the environment.
- The building of a factory must be strong, equipped with good electric lighting, necessary machines for processing by different types of factories.
- All factories must have skilled technicians and employees, and organize the training of workers.
- All factories should process finished products to high quality and add value.
- All factories must take measures to establish the security of work, health and safety of employees, and protect the environment.
- All factories must make an annual production plan and annual report and submit them to Department of Industry, MOIC, before 15 January of each year.
- All types of wood processing factories must follow the Regulations of MOIC, MOF, and MAF, to obtain a license for removal of wood products throughout the country and for export.

In order to establish a wood processing facility in Lao PDR a local investor must obtain an enterprise registration license from the MOIC, a tax license from the Tax Department of the Ministry of Finance and an operations license from the MAF and/or MOIC (Forestry Law, Articles 45; Law on Industrial Processing, Arts. 9 and 44). Regulation No. 261/MAF also requires that a wood processing facility obtains an operation permit (valid for 3 years) and an agro-forestry production permit (valid for 1 year), but in practice the factories only obtain one license, renewable every year. A wood processing facility must request a license extension by September each year in order to qualify for log sales (Order No. 15/PM, Art. 2) (Sigaty 2003).

Processing facilities are able to obtain logs from different sources, including those registered at Log Landing 2 or from non-registered sources. The cost of transport licences act as a disincentive for processors to buy timber at the forest gate, or from Log Landing 2. Buying timber at the mill door potentially shifts the cost of transport and responsibility for other approvals (such as Logs lists and Certificates of Origin) back down the supply chain.

#### 5.6.4 Products

*Decision No. 1415/MOIC.DOI on the Form and Size of Timber of Timber Products* sets out the definitions, form and type of timber products. Under this Decision, timber products from primary wood processing, secondary wood processing and tertiary wood processing are divided into three forms: sawn timber, semi-processed timber, and finished products. Other products are referred to in Order 17/PM and Guideline 0105/MAF and include wood for energy, firewood, wood for charcoal and fencing and construction wood.

#### 5.6.4.1 Round Logs

Round logs are not defined in Decision No 1415/MOIC.DOI. They are unprocessed raw logs transported from the forest to Log landing 1 and Log Landing 2. Round logs are measured and graded at Log Landing 2 before transported to processing or directly for export. The Government of Lao PDR has, overtime, introduced several measures regarding the processing and export of logs in efforts to curb illegal logging and to promote domestic processing. These measures are discussed in sections 5.6 and 5.7, below.

#### 5.6.4.2 Squared Logs

Decisions No 1415/MOIC.DOI identifies 'sawn timber' as a product class through primary processing at a sawmill or factory including (Art 2.1.1), including:

1. 'large sawn timber': Large sawn timber which is derived from a log through the use of large saw machine with low value added.
2. 'Processed-sawn timber': Timber products from sawmill where large size sawn timber has been further sawn with medium sized saw machine but with low value added.

Neither definition conforms to the concept of 'square logs' which are manually trimmed in the forest or at Log Landing 1 or 2 and which are a common product from plantations. However, *Decree No.0719/MOIC on Standards of Wood Processing Factories* identifies square logs as a product class produced in type I wood processing factories.



Figure 8: Square log processing, Luang Prabang Province

#### 5.6.4.3 Thinnings

The thinning of plantations is recognised as a necessary silvicultural practice to improve wood quality and volume (Directive No 0234/MAF, 1995) however 'thinnings' are not identified or defined as a forest product. Poles are recognised as a forest product from harvesting in conversion forest or where forest is being cleared for production activities, only with permission from the Government (Forestry Law Art 43).

Under Directive No 0234/MAF (and other Directives) a plan for plantation maintenance and thinning (i.e. a Plantation Management Plan) should be developed jointly by DAFO/PAFO and the plantation owner. It is not clear from the Directive however, whether the same harvesting approvals that apply to the harvesting of logs (which are specified in Art 2.4.1) could also apply to thinnings. Regulation No 196/MAF, 2000 concerning the development and promotion of long-term plantations (Art 11), for example, states that DAFO approval is not

required for cleaning and pruning where it conforms with the plantation management plan. However plantation thinning is not mentioned in this context.

Where thinnings and prunings are of a commercial quality or volume they are subject to tax (Art 2.4.3). Land tax exemptions presumably apply where the plantation has been registered, however other tax provision may still apply depending on who undertakes the thinning operations (see Section 5.8.2). For trees which are to be used locally (i.e. in the village/domestically), and where the number of trees to be cut is 5 or less (Directive No 0234/MAF, Art 2.4.2) no harvesting permit is required and no taxes are levied, although the VFU and DAFO should be notified<sup>26</sup>.

There are number of options for managing a potential thinning resource including:

- reviewing product classes in the regulations to explicitly include primary products such as round logs, squared logs and thinnings.
- introducing tax exemptions for thinnings to promote better quality/volume wood through plantation management. This could be restricted to, for example, 12 years or <10cm, after which the responsiveness to thinning reduces.<sup>27</sup> Any risk that this would create an incentive for 'short rotation' teak plantations should be examined such that long term wood supply is not adversely impacted. Other measures such as retained stocking rates may be needed.

### 5.6.5 Standards and grading

*Order No. 31/PM, (2006) On Increasing Control in Forest Management, Conservation, Wood Business and Promoting the Production of Finished Products in Wood Processing Industry*, is aimed, in part, at improving standards in wood processing. This order authorises MOIC, in collaboration with MAF, to study and define standards for finished wood products (Art. 6) as well as standards of wood processing.

Decision No 1415/MOIC.DOI, specifies requirements for wood processing for a range of products against the International Standard Industrial Classification (ISIC).

## Processing: Summary of Issues and Questions

Local processing facilities are able obtain logs from different sources, including those registered at Log Landing 2 or from non-registered sources. Potentially illegal timber can be absorbed into the supply chain in the factory.

The cost of transport licences act as a disincentive for processors to buy timber at the forest gate, or from Log Landing 2. Buying timber at the mill door potentially shifts the cost of transport and responsibility for other approvals (such as Logs lists and Certificates of Origin) back down the supply chain.

Despite recent efforts for clarification, the relationship between MAF and MOIC remains complex and provides an opportunity for regulatory failure through loopholes. This is particularly apparent in the disconnection between the determination of wood quota by MAF and the allocation of supply to mills by MOIC on the basis of processing capacity.

While reforms have been made to clarify and formalise the supply and use of raw material from plantations, new regulations omit the detail provided in previous instruments and as a result there is lack of clarity in some areas. For example the replacement of Notices 1887/MOIC.DIMEX, No. 0484/MOIC.DIMEX and 1862/MOIC.DIMEX which were aimed at promoting the use of raw material from plantations and formalising the management of the plantation timber trade were replaced by Notice No 1791/MOC.DIMEX which is effectively a procedural notice regulating the import and export of plantation timber.

There are numerous approvals required for processing factories, from numerous departments, although it

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<sup>26</sup> This is reiterated in Regulation 0196/AF 2000; Decree 96/PM 2003;

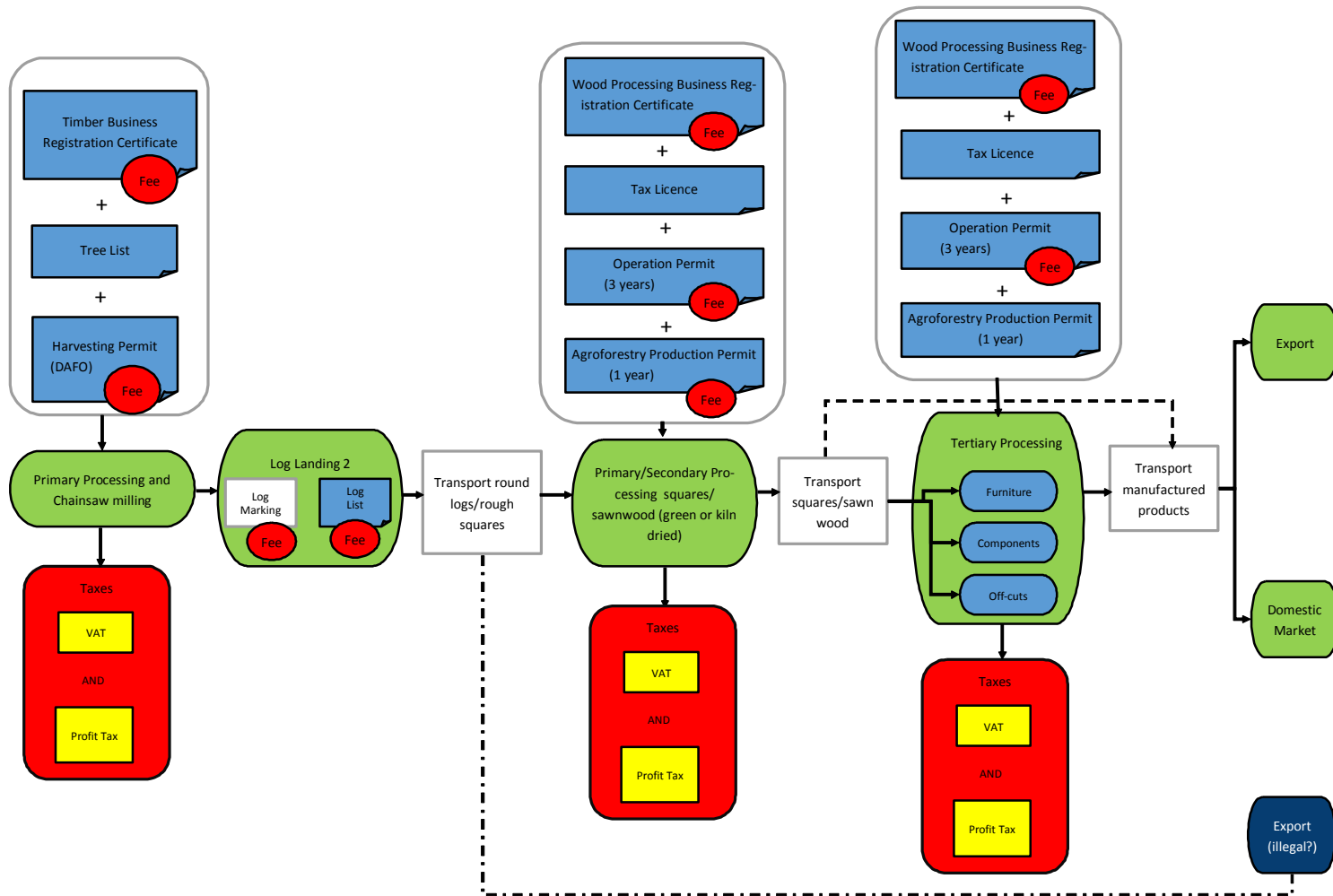
<sup>27</sup> Suggested by Savathvong at Teak management and certification meeting 3<sup>rd</sup> October 2013

remains unclear whether all of these approvals are sought and whether non-compliance is enforced.

Time consuming and complex regulatory approvals process for wood processing factories and in other areas of the supply chain means that there are still avenues for competition from illegal operators that use illegal logs and do not comply with government regulations.

A review product classes in the regulations should include primary products such as round logs, squared logs and thinnings.

Figure 9: Timber Processing



## 5.7 Export

Lao PDR has in place a Trade Facilitation Strategy for 2011-2015 through which it is committed to, amongst other things, improving import-export competitiveness by simplifying trade procedures. In 2013 DIMEX and the Legal Division of MOIC undertook a preliminary impact assessment (PIA) for simplifying the export licensing requirements for plantation timber. This section summarises the current export arrangements for plantation timber and draws on the findings and recommendations of the PIA.

With respect to the export of logs, timber and wood products the primary laws are the Forestry Law 2007 and *The Customs Law No 05/NA 2005, Decree No. 362/PM, 2007 on the Implementation of the Customs Law* and *Decree No. 114/PM, on the Import and Export of Goods*. Numerous subordinate instruments regulate the export of wood, timber, wood products and non-timber forest products including:

- *Notification No. 284/GS, (2012) on the authorization of the rights to the Department of Industry and Commerce at Provincial, Capital to approve the exportation of round wood (logs) and processed timber from plantations which are not the prohibited and special species.*
- *Notification No. 0076/MOIC.DIMEX, (2012) on goods subject to automatic and non-automatic import or export licensing*
- *Order No. 1765/MOF regarding paying more attention to timber export and the collection of revenue to the government budget in an accurate and timely manner.*
- *No 1791/MOIC.DIMEX, (2011) Procedure to issue import and export license for plantation timber.*
- *Notification No 1940/MOIC.DIMEX, (2011) Procedure to issue import and export licenses for Timber and timber products.*
- *Notification no. 0826/MOIC.DIMEX, (2011) on Automatic and Non-automatic Import and Export Licensing in Lao PDR (superseded by No 0076/MOIC.DIMEX)*
- *Additional Notification No.1324/CD, (2010) on consolidation of exportation of timber, saw log (sawn wood), semi-finished wood products (home furniture) at the Customs Department in order to issue the notification on the implementation of notification of Customs Department No. 1743/CD, dated on 3 July 2009.*
- *Notification No. 284/TSS,(2010) Authorization of the rights to the relevant Provincial and Vientiane capital Departments to approve the exportation of logs and processed timber from plantation which are not the prohibited and special species.*
- *Guidance No. 0491/MOF (2009) on the Implementation of the Customs Law No. 05/NA 2005.*
- *Notification No. 0403/CD, (2009) on exemption of the determination of customs value of exported wood products for the basis of the calculation of export royalties.*
- *Notification No. 2273/CD, (2009) on the determination of customs value of exported wood products as the basis of the calculation of export royalties.*
- *Prime Minister's Agreement No. 023/PM, (2009) giving the right to provinces to approve the export of controlled wood 1, 2, 3 sawn timber and stems.*
- *Notification No 0032/MAF on the exportation of prohibited and special plantation timbers and non-prohibited plantation timbers*
- *Notification No. 3097/DIE (2008) regarding documents for export of planted timber*
- *Order No 17/PM, (2008) on Strengthening the Forest Management, Protection and the Coordination of management Forest and Forestry Business*
- *Notification No. 1601/MOIC.DIMEX, (2008) on the Management and movement of timber, timber products and non -timber products in domestic and for exportation (superseded by Notification 1940/MOIC.DIMEX 2011)).*
- *Regulation 0196/MAF (2000) On the long term development and promotion of tree planting,*

### 5.7.1 Export Approvals

The Forestry Law states that the import or export of timber and forest products is a forestry business (Art. 45). Exporters must have approval from MAF and hold an enterprise registration certificate from MOIC under the Enterprise Law.

Article 52 of the Forestry Law states that:

“The government is the only authorized body to grant permission for export of natural logs and planted trees of prohibited species, sawn timber, tree stumps and trees. Planted trees that are not listed for prohibition and special species can be exported in compliance with the related regulations. Import and export of timber and forest products shall be in accordance to the law and regulations”.

This has been interpreted to mean that no local government is allowed to export logs and that exports without central government approval may be considered illegal (Phengsopha 2011).

Article II of Notification No. 1601/MOIC.DIMEX (superseded by Notification No 1904/MOIC. DIMEX) requires:

- 1. that the approval of the exportation of timber products shall be implemented in accordance with the Decision No.1415/MOIC.DOI, (2008) regarding to the form and size of timber products; and
- 2. that the Government prohibits the exportation of logs, stumps, large size sawn timber and sawn timber classified under ISIC Code 1610; veneer, slicing board, wood for housing, semi-processed timber classified under ISIC Code 1622.1 and wood pulp classified under ISIC Code 1701.0 in accordance with the Decision of the Minister of Industry and Commerce No.1415/MOIC.DOI. In cases where there is an export approval from the Government, the MOIC shall formally undertake the implementation, but both DOIC at Provincial and National levels can receive the payment from the finance sector before issuing the Controlling license for export. The required documents for export are specified, including a log list provided by the DOF.

Exceptions to this rule are now in place for timber harvested from development projects (Prime Minister’s Agreement No 023/PM, 2009) and for logs and processed timber from plantations which are not prohibited and special species (Notification No. 284/TSS, 2010); because teak is listed a ‘special species’ (see for example Decision No 0116/MAF (2007) specific export procures apply. However the application of these rules to plantation gown prohibited and special species is inconsistent.

For certain types of products it is necessary to obtain an export license from DIMEX. Depending on the product, the license can be either automatic or non-automatic. The rules regarding licensing are governed by Notification No. 0076/ MOIC.DIMEX which lists the products requiring licensing in its Annexes. If a product is not subject to licensing or specific sanitary/phytosanitary or technical measures, export can proceed by submitting a declaration directly to Customs. Annex B (I) of Notification No. 0076/ MOIC.DIMEX identifies “Logs, trunk, bark, rough-processed timber and semi-finished timber from plantations” as subject to automatic export licencing.

Pursuant to Notification No. 284/TSS, 2010, MOIC together with MAF have the authority to approve the export of round wood (logs) and processed timber from plantations which are not prohibited and special species. Export licenses can be issued for plantation timber for company/factories for timber included in annual harvesting plan of the Government, and are required to follow steps in accordance with Notification No 1791/MOIC.DIMEX, (2011) (note that this is pursuant to Notification No 0826/MOIC.DIMEX, but that Notification was superseded by Notification No 0076/MOIC.DIMEX):

For prohibited, special and controlled timber:

- The company/wood processing factory requesting the licence must lodge with MAF a letter of intent and other relevant documents to verify the origin of the timber after which The Permanent Office of the Ministry of Agriculture and Forestry will issue a verification letter to the Permanent Office of the Ministry of Industry and Commerce.
- DIMEX will assess the application according to the regulations and the proposal of the Permanent Office of the Ministry of Industry and Commerce.

Documents required in application include:

- The origin of timber letter from the Permanent Office of the Ministry of Industry and Commerce.
- Copy of enterprise registration for the timber business;
- A copy of Tax registration;
- The Log List acknowledged by PAFO;
- Document to release the timber from the Agriculture and Forestry Sector; and
- Tax payment and Fee Receipt.

For plantation timber that is not prohibited special and controlled timber:

- The company/wood processing factory requesting the licence must lodge with PAFO a letter of intent and other relevant documents to verify the origin of the timber and issue an inspection report, after which they will issue a verification letter to POIC.
- POIC will assess the application and associated documents and may undertake a second inspection according to the regulations.

Documents required in application include:

- The origin of timber letter from PAFO.
- Copy of enterprise registration for the timber business;
- A copy of Tax Registration;
- The Log List acknowledged by PAFO;
- Document to release the timber from the Agriculture and Forestry Sector; and
- Tax payment and Fee Receipt.

This process (summarised in Figure 10) involves multiple approvals and inspections, potentially restricting trade and deterring investment in plantation timber. Furthermore, once granted an export licence is valid for only 90 days and while it can be renewed, this requires companies to apply for export licences several times each year. Having to apply for an export licence each time reduces certainty of approval to export creating potential risks for businesses to invest longer term and possibly restricting their ability to enter into long-term supply contracts with timber traders and growers.

The treatment of plantation teak and application of tax rules to prohibited, special and controlled wood is inconsistent between Provinces. Wood Industry representatives report harvested teak may be transported between Provinces so that export can take place from a province that treats teak as a plantation species as opposed to a 'special' species, thus attracting lower tax rates and avoiding export bans. Provincial variations in the application of taxation regulations are examined further in Section 5.8.

### 5.7.2 Certificate of Origin

*Decree No. 228/PM on the Origin of Import and Export Goods*, and Directive No 1031/MIC.DIE on the implementation of this Decree provide for the issuing of certificates of origin for commodities. Certificates of Origin are used to certify the place of growth, production or manufacture of goods.

The export of timber from Lao PDR requires a certificate of origin, and evidence is required for such a certificate to be issued including the plantation registration certificate (as specified in Guideline No. 0105/MAF (2008) Art 3.4.3) and the Log List issued by PAFO at Log Landing 2.

Reforms based on certifying the origin of products have been prompted by the ASEAN free trade agreement, which Lao PDR will join in 2017, the ASEAN China Free Trade Agreement, Lao PDR's ascension to the WTO and in response to international illegal logging measures. These measures are discussed further in Section 7.

### 5.7.3 Export Declaration

All goods exported from Lao PDR must be declared to Customs.

A declaration is made by submitting a duly completed and signed ASEAN Customs Declaration Document (ACDD) Form together with the following minimum supporting documents:

- A commercial invoice or contract of sale document from the supplier of the goods
- Transport documents such as Bill of Lading or Air Way Bill
- Packing List (if available)
- Certificate of Origin
- Any export licenses or permits obtained from other ministries depending on the type of goods you are exporting

Declarations can be submitted at regional Customs offices.

## 5.7.4 Duties

Once a declaration has been submitted and accepted by Customs, duties must be paid.

The Customs Law defines principles, policies, rules and measures relating to the import, export, transit and circulation of goods within the Lao PDR with the aims of promoting and protecting domestic production of goods and domestic business operations, investments, cooperation with foreign countries and export, expanding production power efficiently, ensuring the [remittance] of revenues to the State budget and contributing to national socio-economic development.

Other relevant subordinate regulations include:

- *Order 1765/MOF with respect to Paying More attention on timber export to collect revenue to the government budget in an accurate and timely manner.*
- *Notification No. 2273/CD, (2009) Determination of Customs value of exported wood products as the basis of calculation of export royalties.*
- *Notification No. 159/....., dated on (2008) on the collection of royalties of exported saw-logs (timber), finished wood products and wooden home furniture when exporting through International Customs Checkpoint to neighbouring countries.*
- *Prime Minister's Agreement No. 23/PM, (2009) on the approval to authorize each province and Vientiane Capital to export wood product under the control 1, 2, 3*
- *No.0403/CD Exemption of Determination of Customs value of exported wood products for basis of calculation of export royalties*

Customs Law, Article 12 states that the declared value of exports is the actual cost of goods which are delivered to the border customs checkpoint where the goods are exported based on a sale-purchase contract. For unprocessed round logs this sale purchase contract is made at Log Landing 2. Article 22 specifies that customs duties and other obligations must be calculated on the basis of the declared value of goods.

### 5.7.4.1 Duty Exemption for Exports

In order to promote the export of certain types of products, including most agricultural products, products derived from natural resources or manufactured products, these products may be exempted from the payment of Customs duties. The tariff applicable to these products is listed under the relevant HS Commodity classification.

## 5.7.5 Fees and Charges

A number of administrative fees and charges apply to the export procedures. For example, the Export License form must be purchased by paying a fee of KIP 10,000 to the Finance Division of the MOIC for each application. The various fees are applied to the clearance of good at customs checkpoints are summarised in Table 9, below.

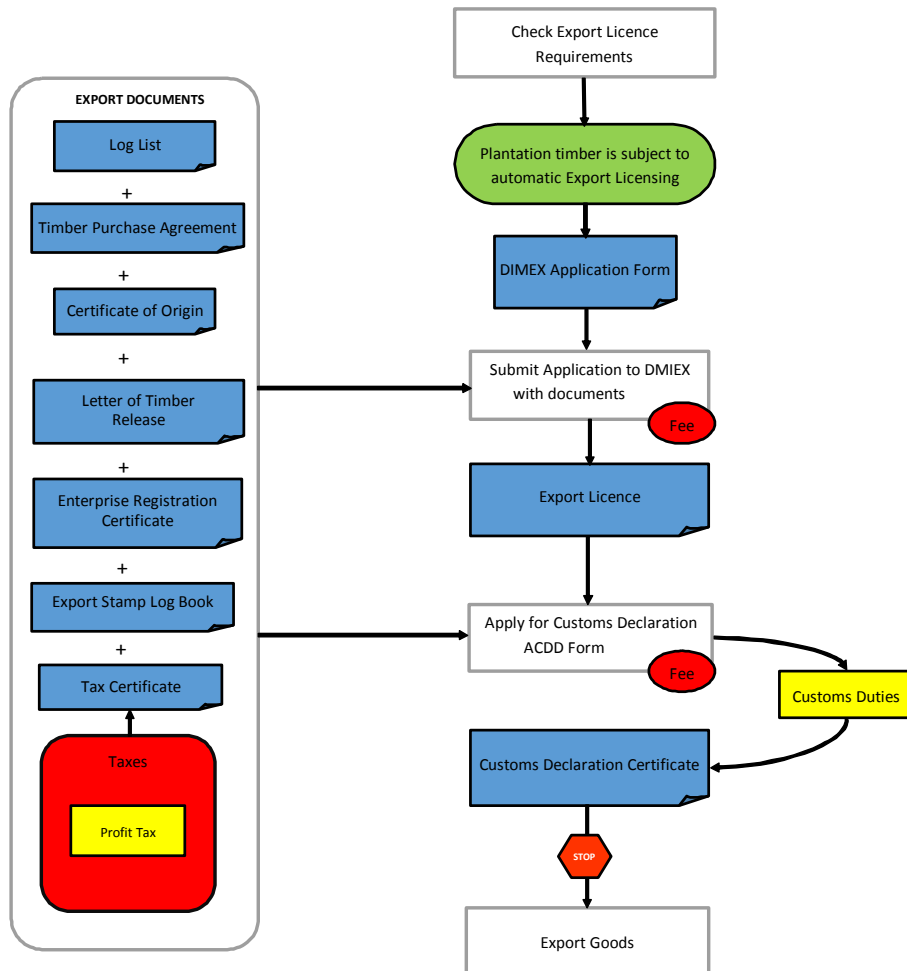
Based on evidence gathered from industry, it has been estimated that the process for applying for an export licence for plantation timber takes on average between 7-10 days, cost business between 2,500,000 –3,000,000 Kip and typically requires 8 documents. For the average business exporting 12 times per year, this equals 30-36 million Kip per year in export licence costs. Over 5 years, this adds up to 150- 180 million Kip for each of the 19 exporters of plantation timber, or 2.85-3.42 billion Kip for the entire industry (MOIC 2013).

Table 9: Customs Clearance Fees/Costs and Time

| Procedures.                             | Time to Complete | Costs     | Agency  |
|---|------------------|-----------|---------|
| Document Preparation                    | 15 days          | \$USD275  | Customs |
| Customs clearance and technical control | 2 days           | \$USD110  | Customs |
| Ports and Terminal Handling             | 4 days           | \$USD155  | Customs |
| Inland transport and handling           | 5 days           | \$USD1600 | Customs |

Source: <http://www.doingbusiness.org/data/exploreconomies/lao-pdr/registering-property/>

Figure 10: Export Approval Procedures (Source: adapted from Laos Trade Portal, DIMEX)



## 5.7.6 The Preliminary Impact Assessment

A 2013 Preliminary Impact Assessment (PIA) undertaken by MOIC on simplifying the export licensing requirements for plantation timber explores a number of options for addressing this complexity of timber export procedures including regulatory and non-regulatory examples from around the world. Of particular relevance is the notion that international forest certification standards could be used in lieu of the inspection functions undertaken by the Forestry Department. However “this option is not considered feasible, as the GOL wants to ensure the origin of timber in order to reduce the possibility of illegally logged timber being exported” (MOIC 2013, 3).

The other options explored under the PIA include regulatory approaches in other jurisdictions, non/semi-regulatory approaches, introducing simplified once-off application processes, annual export applications, and allowing MAF to issue export licences. In examining these options some concerns were raised by both exporters and MAF about opportunities for illegal logging and the need to differentiate processes for timber harvested from natural forest to that sourced from plantations.

The PIA indicates a preference for retaining a regulatory approach with a simplified once-off application processes, annual export applications, and allowing MAF to issue export licences. It estimates a total saving for the 19 exporters of plantation timber over the next 5 years would be in the order of 2,510,850,000 Kip (~\$USD318,000) (or 132,150,000 Kip (~\$16,500) per business)).

### Export: Summary of Issues and Questions

The complexity of export procedures has been recognised and reforms are underway to improve efficiencies and remove barriers in the process.

The Export PIA undertaken in 2013 may have implications for upstream processing and procedures. In particular the requirements to provide certification of origin will require a review and a consolidation of procedures before and at Log Landing 2. In particular removal of the duplication of the functions of MAF and MOIC will be required.

There are many Laws, Decrees and subordinate instruments that are being frequently updated. As Lao PDR responds to international trade drivers and market expectations, including with respect to legality, the introduction of new and amended laws may be seen as a natural response. It may not however result in the efficiencies anticipated.

There are definitional irregularities in the complex legislation that exists which potentially have implications for legality verification. For example, it is not clear whether the provisions that apply under Notification No 1791/MOIC.DIMEX, 2011 and Notification No 0076/MOIC.DIMEX apply to plantation timber for company/factories for timber if the volume supplied is not included in an annual harvesting plan or Quota of the Government. Thus the relationships between whether smallholder teak plantation volumes and harvesting are included in official quota and harvesting plans, becomes relevant at the point of export, particularly with respect to provision of a certificate of origin.

It is important to recognise that even if all internal Lao procedures are followed and legal requirement are met consumer countries may impose additional requirements to ensure due diligence and proof of legality

## 5.8 Business Taxes

The *Tax Law No. 05/NA* (2005) provides for general provisions with respect to the payment of tax in Lao PDR. The *Land Law*, *Forestry Law*, the *Law on Investment Promotion No 02/NA*, (2009), and the *Value-Added Tax Law No 04/MOF* (2006) establish the basis of the collection of taxes from Forestry Businesses. Other subordinate instruments with specific relevance to timber and wood products include:

- *Decree No. 081/PO, (2014) on the promulgation of Article 19 (amended) to replace Article 19 of the Law on Value Added Tax No. 04/NA, (2006)*
- *Decree No. 119/PM (2011) on the implementation of the Law on Investment Promotion.*

- *Decree 001/PM (2011) on the adjustment of business turnover tax, profit tax and income tax.*
- *Directive No. 0509/MF (2009) for the calculation and collection of taxes on timber and non-timber forest products*
- *Regulation No 092/MOF (2009) on revenue collection from sales of wood and NTFPs*
- *The Decree on Land Tax No 01/PO, (2007).*
- *Directive .No. 1059/MF, (2003), concerning the collection of taxes from timber and non-timber forest products*

### 5.8.1 The Tax Law

On 1 October 2012, an Amended Tax Law (No. 05/NA, 20 December 2011) was expected to come into force updating the existing Tax Law (No. 05/NA 2005). While the new legislation has been introduced much of the previous law remains in place in practice and notifications are being sequentially introduced.

The basic structure of the revised tax system is a two-tiered approach comprising:

#### Indirect Taxes

- *Value-added tax* - a tax that is collected on the proportion of value added to goods and services in all processes, ranging from production, distribution, and service supply to consumption; and on the value of goods and services imported into Lao PDR. The *Law on Value-Added Tax No. NA/04 (2006) (VAT)* defines principles, regulations, methods and measures relating to the VAT, for the collection of obligations from consumers to the State budget, aiming at promoting production and business operations, and widening the circulation of goods and services consistent with the national plan for socio-economic development and integration with the regional and international communities.
- *Excise tax* - collected from certain types of goods and services that are sold or provided within the territory of Lao PDR

#### Direct Taxes:

- *Profit tax* - a tax which is imposed on the profit of individuals or legal entities which conduct business in manufacturing, trade and services.
- *Minimum tax* - a minimum obligation of business persons and freelancers who pay profit tax based on the advanced or ordinary accounting system and who have declared a loss or have a profit under a certain level.
- *Income tax* - imposed on the income of individuals or legal entities who generate an income.
- *Fees and other service charges* – collected by State agencies, such as:
  - Tax licenses;
  - Licenses for business operations;
  - Licenses, certificates or official documents;
  - Road/communication tolls;
  - Immigration fees, visa fees, residence visas; and
  - other services in Lao PDR

Some of the key changes under the Amended Tax Law 2012 are as follows<sup>28</sup>:

- *Business Turnover Tax (BTT)*, a feature for the previous Tax law, will be abolished and replaced by the Value Added Tax (VAT). Under Ordinance No. 001/PM 2011 after January 1 2012 a single BTT rate of 10% was set but it is assumed this will be replaced by VAT.
- *Value Added Tax* - A 10% rate is applied to imported goods and services and domestically produced and consumed goods and services liable to the value added tax. In February 2014 *Decree No. 081/PO, (2014) on the promulgation of Article 19 (amended) to replace Article 19 of the Law on Value Added Tax No. 04/NA, (2006)* was promulgated. The amended Article 19 defines the rates of Value-Added Tax as a 10% rate applying to imported goods and services and domestically produced and consumed goods and

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<sup>28</sup> Source: summarised from DFDL at <http://www.dfdl.com/easyblog/entry/lao-pdr-2012-tax-planning--introduction-of-the-amended-tax-law>, downloaded on 23<sup>rd</sup> October 2013.

services liable to value-added tax with an exemption for imported goods, machines and production machinery from abroad to enable domestic production for which there is insufficient supply for use in production and investment. A zero (0%) rate is applied to goods and services for export.

- *Profit Tax*: The standard rate of Profit Tax will be reduced from 28% to 24%. A rate of 35% applies to businesses or legal entities. The profit tax rate of foreign investors is 20%.
- *Minimum Tax*: The Minimum Tax will be abolished. Previously the Minimum Tax was imposed on the revenues of all companies that either made profits below a certain level or made losses in a tax year. The practice under the Amended Tax Law is to calculate Profit Tax on an actual basis based on revenue less deductible expenses with no payment of minimum tax should the business report a loss.
- *Excise/Use Tax*: Excise Tax rates will be charged for certain categories of goods and services.
- *Personal Income Tax*: Personal Income Tax (PIT) rates will be reduced from a progressive rate of 0% to 28%, to 0% to 24%.
- *Lump Sum Tax*:
  - A new Lump Sum Tax will be introduced which will apply to small to medium businesses with revenues below Kip 400,000,000 (approximately USD 50,000).
  - Small to medium businesses with business incomes of Kip 12,000,000 or less are exempt from payment of the Lump Sum Tax.
  - Small to medium businesses with business incomes between Kip 12,000,001 and Kip 50,000,000, will pay a Lump Sum Tax which shall not exceed Kip 600,000.
  - Small to medium businesses with business incomes from Kip 50,000,001 to Kip 400,000,000, will pay various rates of Lump Sum Tax depending on the enterprise size and industry sector.

## 5.8.2 Investment Promotion: Tax incentives for Timber Businesses

The Law on Investment Promotion and its implementing Decree provide for tax and other incentives for investment, including in plantation establishment.

### 5.8.2.1 Promoted Activities

Under Article 51 profit tax incentives are provided on the basis of the type of activity and the zone in which it is undertaken. Profit tax exemptions can extend from 1 to 10 years. Additionally investors may be entitled to incentives related to other duties and taxes as specified in Article 52 including exemptions from import duties and from export duties on export products (where export of other natural resources must comply with the concerned regulations and laws). Promoted activities include: production for export, agriculture and forestry, agro-forestry and handicraft processing, activities relating to industrial processing, industry using modern technology, scientific study and analysis activities and development, activities relating to environmental protection and biodiversity, human resources development, skills development and protection of people's health, construction of infrastructure, production of raw materials and equipment to be supplied to key industrial activities, and development of tourism and transit services.<sup>29</sup>

### 5.8.2.2 Plantation and Timber Industry

Noting that the Tax reforms described above may supersede previous tax rules it is useful to understand the scope of these rules as they have applied in the past as these may continue to be applied until the new rules are well established. *Directive No. 1059/MF, (2003) concerning the collection of taxes from timber and non-timber forest products* includes the following Articles (after Savathvong 2010):

- Article 2, which stipulates that individuals or legal entities who conduct the exploitation of timber and non-timber forest products shall pay BTT at 5% of the value of the actual exploitation (noting that BTT has been abolished).
- Article 3, which stipulates that individuals or legal entities who conduct sawmilling activities, wood and rattan processing, small-scale sawmill (furniture factory), as well as those who conduct the transactions of timber and non-timber forest products and semi-finished products for export to overseas and for

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<sup>29</sup> Source: [http://www.pwccn.com/webmedia/doc/634747682685435545\\_aptn\\_jun2012\\_laos.pdf](http://www.pwccn.com/webmedia/doc/634747682685435545_aptn_jun2012_laos.pdf)

domestic consumption shall have to pay BTT at 5% of the actual selling price (noting that BTT has been abolished).

- Article 4, which stipulates that individuals or legal entities who conduct the exploitation or transaction of timber and non-timber forest products, including sawn timber shall pay profit tax at 35% of overall profits in advance, by firstly taking 10% of the overall profits of actual value of sales to be used as base for the calculation of advance profit tax payment.
- Article 8, which stipulates that BTT which the individuals or legal entities pay at the place of origin where the exploitation of timber and non-timber forest products occurred can be reimbursed at the time of collection of BTT tax on the 1<sup>st</sup> wholesale of the timber and non-timber forest products (noting that BTT has been abolished).
- Article 9, which stipulates that before transporting timber from Log Landing 2 and non-timber forest products into processing (except when there are already forestry documents), receipts of payment of all taxes to the treasury must be shown (receipt of tax on timber and non-timber forest products, receipt of business turnover tax, receipt of profit tax); valid receipts must be official receipts on the forms of the treasury, with a red inked stamp.
- Transport of sawn timber or finished products made from wood and non-timber forest products from sawmills or factories for sale (in case of already having forestry documents) must be accompanied with a receipt (invoice) which is registered and stamped by the tax authority.

*Directive No. 0509/MF of the Minister of Finance, (2009), for the calculation and collection of taxes on timber and non-timber forest products* has the following elements:

Article 1.B for Logging operators at Log Landing 1, who are permitted to cut planted timber:

- Logging or felling of the planted timber undertaken by the plantation owner is exempt from Business Turnover Tax (BTT) or Value Added Tax (VAT).
- Logging or felling timber by employing other people or companies (contractors) is subject to Business Turnover Tax or Value Added Tax at a rate of 10% of the amount of the logging service or based on logging contract, and subject to profit tax at a rate of 35% of 20% on net profit after BTT and VAT.
- Officer and workers who receive salaries or wages from logging service have to pay income tax.

Article 2. On the sale and purchase of timber at Log Landing 2:

The sale and purchase of timber at Log Landing 2 by business operators, including logging operators who participate in the bidding:

- Are subject to BTT or VAT at a rate of 10% of the transaction amount at the Log Landing 2 as imposed by the government. The tax is not deductible from BTT or VAT at the point of production or processing, but tax which is paid at Log Landing 2 shall be added as a log cost to the price of timber purchased at Log Landing 2;
- Are subject to profit tax of a rate of 35% of 20% on net profit of transaction amount at Log Landing 2 as imposed by the government, excluding BTT or VAT, and shall not be deductible from profit tax which is due to pay at the subsequent transaction points.

Article 3. Processing or sawing of natural and planted timber:

Sawmills, small-scale sawmilling factories who are employed for processing (sawing) timber for others or sawing their own timber:

- Shall pay BTT or VAT at a rate of 10% of processing cost. In case of their own factory, tax shall be based on the prevailing sawing charge as a basis for calculation. Timber processors can deduct the tax at the point of production or processing and selling for domestic consumption.
- Shall pay profit tax at a rate of 35% of 8% of the production cost or sawing cost in the case of not holding a standard accounting system or holding incorrect accounting system
- Officers and workers who receive salaries or wages shall pay income tax from salaries as imposed by the Tax Law.

Article 4. Transport of timber and sawn timber at each point:

Self-transport contractors or when employing others to transport all kinds of timber (including sawn timber) whether natural or planted timber must:

- Pay 5% BTT or VAT at a rate of 10% of the agreed transport charge and/or based on transport agreement which the party who pays for such tax can deduct from domestic sales.
- Pay profit tax at a rate of 35% of 10% of the agreed transport charge and/or based on transport agreement excluding BTT or VAT, in case of not holding a standard accounting system or holding incorrect system.
- Officers and workers who receive salaries or wages shall have to pay income tax from salaries as imposed by the Tax Law.

Article 5. Sales of logs, sawn timber and finished wood products:

A. Exporting:

1. Sales of logs, stumps, branches, stems

- Shall be exempt from BTT, but subject to value-added tax at a rate of 0%.<sup>30</sup> Business turnover tax or value-added tax to be paid at the point of export or import shall not be deductible or refundable.
- Subject to profit tax at a rate of 35% of 20% on net profit of the actual selling price or reserve price imposed by the government. In case a sole company buys timber at the Log Landing 2 and exports by itself or through other exporting companies, the profit tax which is paid at Log Landing 2 shall not be deducted from the profit tax which is due to be paid at the time of export. Tax payment at the 1st and 2nd Log Landing shall be considered as an export cost without taking into consideration whether it is individual or legal entity. In case of unpaid BTT or VAT, and profit tax discovered at the Log Landing 2, the taxes must be re-calculated and fully paid back plus a fine in accordance with the laws.

2. Sales of sawn timber:

- Shall be exempted from BTT, but subject to VAT at a rate of 0%. Business turnover tax or value-added tax paid at the point of export or import shall not be deductible or refundable.
- Subject to profit tax at a rate of 35% of 20% on net profit of the actual selling price or indicative reserve price imposed by the government. In the case a sole company buys timber at Log Landing 2 and directly exports the timber or uses and exporting company the profit tax which is paid at the Log Landing 2 may not be deducted from the profit tax which is due to be paid at the time of export. Tax payment at the 1<sup>st</sup> and 2<sup>nd</sup> Log Landing shall be considered as an export cost without taking into consideration whether it is an individual or legal entity. In the case of unpaid BTT or VAT, and profit tax discovered at the 1<sup>st</sup> and 2<sup>nd</sup> Log Landing, the taxes shall have to be re-calculated and fully paid back plus a fine in accordance with the laws.

3. Sales of finished products:

- In the case of tax payment based on the actual revenue of a company, an individual or a legal entity who holds a standard accounting system, profit tax shall be paid in accordance with the Tax Law.
- In the case of not holding an accounting system, whether it is a company, an individual or a legal entity, profit tax shall be paid at a rate of 35% of 5% on net profit of the sale/purchase value or according to the price imposed by the government.

B. Selling for domestic consumption:

1. Sales of sawn timber by sawmillers, small-scale wood factories and lumber shops:

- For companies, individuals or legal entities who hold an accounting system, the taxation shall be based on the laws and regulations of the Lao PDR, and in accordance with the nature of such business.
- In case of not holding an accounting system, whether it is a company, an individual or a legal entity, the profit tax shall be paid at a rate of 5% on net profit of total income as imposed by the Tax Law.

2. Sales of finished products at shops, exhibition places, furniture etc:

- In the case of holding an accounting system for paying tax in accordance with the laws and regulations of the Lao PDR, BTT or VAT which is paid at the place of origin when buying the products from the

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<sup>30</sup> It is not clear whether this is an error in the Lao version of the text or whether a rate of 0% is being applied noting that this is the rate being applied under the 2012 revised Tax Law.

sawmills or small-scale wood factories can be deducted from the taxes which are due to pay in that month, but not be deducted from the taxes (BTT and VAT) which are paid at Log Landings 1 or 2.

- In the case of not holding an account, whether it is a company, an individual or a legal entity, profit tax shall be paid at a rate of 5% on net profit of total income as imposed by the Tax Law.

Given the amendments to the Tax law in 2012, a new Directive to replace Directive No. 0509 will be required to ensure that taxes and exemption are consistent with that law.

### 5.8.3 Provincial Rules

There exist within the regulations provisions for Provincial Government to introduce Directives to reiterate rules enacted at the National Level. In doing so there is opportunity for specific local interpretation and application of the law.

In 2004 the Governor of Luang Prabang introduced a Directive on the Protection of the Commercial Exploitation and Trade in Timber. This Directive was aimed at registered businesses and processing factories in Luang Prabang Province, specifying rates of tax and excise to be paid. While incorporating tax rates as specified the provincial Directive also introduced the following fixed rate measures:

- The principal of the commercial interest must undertake to pay all taxes on behalf of the growers on income derived from the sale of timber within the Province of Luang Prabang. The amounts of taxes to be paid will be calculated and collected by the DAFO in which the plantation is located. The calculation will be based on the base price of a percentage of the unit price of sale of timber within the province, that is  $800,000 \text{ kip/m}^3 \times 5\% = 40,000 \text{ kips/m}^3$  of lumber.
- [The principal of the commercial interest must undertake to] Pay all taxes on business turnover figures per consignment at the rate of 5% of the sale price in the Vientiane market. The calculation will be at the average of  $1,200,000 \text{ Kip/m}^3$  of the timber, with the Finance Office doing the calculation and collection of the taxes, totalling at  $60,000 \text{ Kip/ m}^3$ .

Local taxes or variations in rules with respect to the determination of taxes provide a disincentive for industry actors to operate locally. Actions to reduce tax liability are likely to occur. Diversity and inconsistency in laws will allow and encourage 'forum shopping' through which actors will elect to move their business to areas in which tax rule are more favourable.

## Business Tax: Summary of Issues and Questions

Directives on the payment of forestry business related taxes need to be updated to reflect recent changes to the tax law.

Clarification on the authority for Provincial government to introduce local tax rules is needed to ensure that tax payments are not duplicated. Additionally, the impacts of local tax variations on the incentives for the timber industry to invest in processing should be investigated.

Where products are specified in tax laws and directives these should be consistent with other regulations.

Where taxes are calculated using on a base price of a percentage of the unit price of sale of timber products, these should be reviewed regularly and must include all relevant product types.

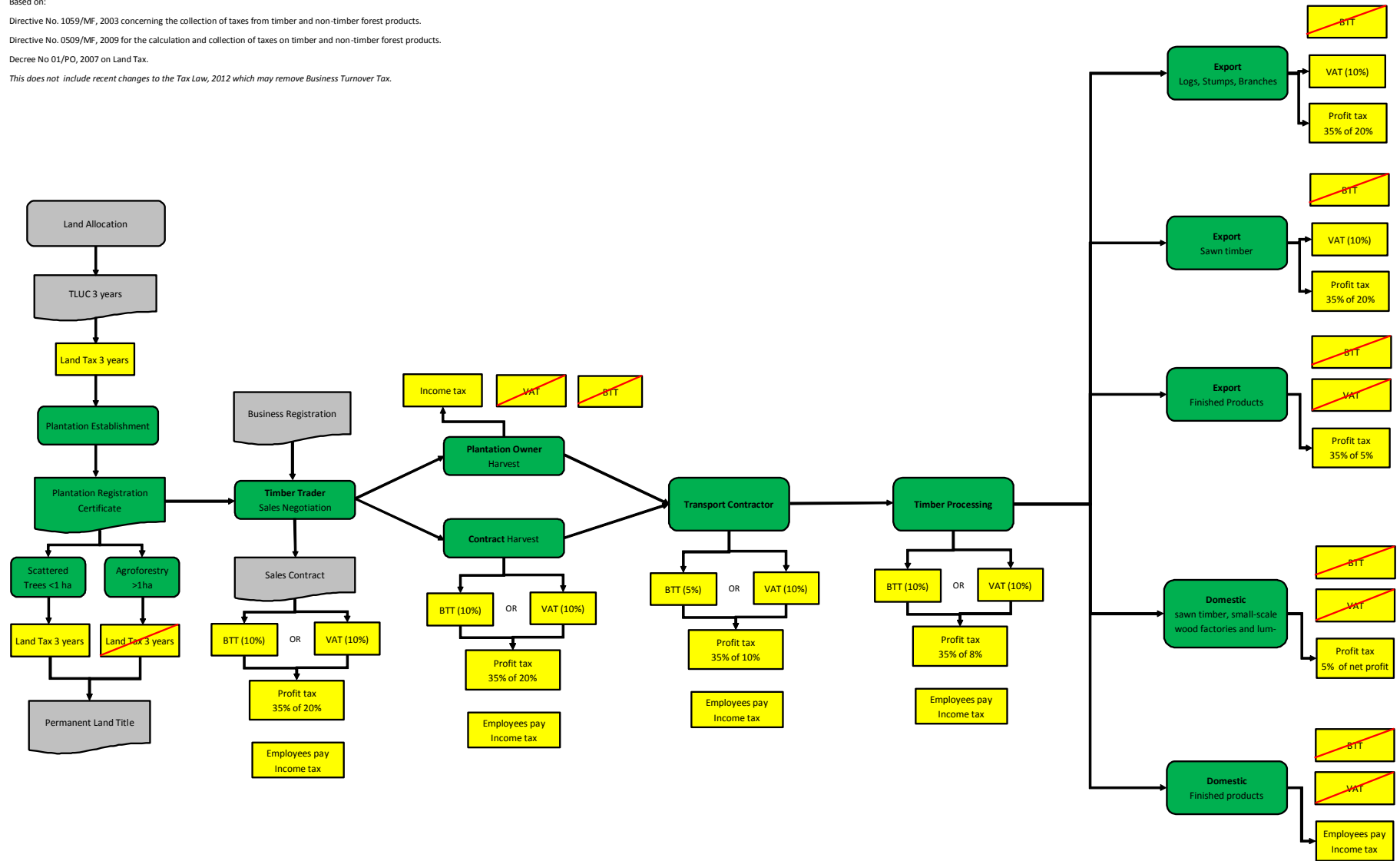
Tax incentives to promote good plantation management, such as for commercial thinnings, should be considered. This could be restricted to, for example, 12 years or  $<10\text{cm}$ , after which the responsiveness to thinning reduces. Any risk that this would create an incentive for 'short rotation' teak plantations should be examined such that long term wood supply is not adversely impacted. Other measures such as retained stocking rates may be needed.

Address the flat rate tax and Provincial variations to the National Tax Laws.

Examine the basis for the tax based on a 'unit price of sale of timber and how this could vary on the basis of product type.

Figure 11: Tax

Based on:  
 Directive No. 1059/MF, 2003 concerning the collection of taxes from timber and non-timber forest products.  
 Directive No. 0509/MF, 2009 for the calculation and collection of taxes on timber and non-timber forest products.  
 Decree No 01/PO, 2007 on Land Tax.  
 This does not include recent changes to the Tax Law, 2012 which may remove Business Turnover Tax.



## 5.9 Fees and Service Charges

Official Fees and Charges levied by the State are set by regulation. These may be general in nature such as:

- *Presidential Edict No.03/PM, (2008) on Fees and Service Charges.*
- *Decision No. 2348/MOF on Public Administration Expenditure Norms.*

or specific to particular activities, such as:

- *Instruction No. 3204/PMO.NLMA (2008) on Collection of Fees and Service Charges by Land Management Sector.*
- *Law 07/NA (2006) Court Fees*

*Presidential Edict No. 03/P (2008) concerning Fees and Services Charges* aims to control the collection of fees, charges and revenue through a centralized system. This Edict was revised and updated in 2012 but was not available at the time of writing.

In reality, fees and service charges are indicated in many regulations with regard to specific services and while some may specify an amount to be charged others do not. Evidence suggests that where these are specified they are not always applied consistently or on the basis of the anticipated service. Fees and charges related to administrative services associated with processes in the teak value chain are described in the relevant sections of this report and summarised in Table 10, below. A separate report specifically addresses transactions costs in the teak value chain (Said *et al* forthcoming).

Table 10: Examples of Regulatory Costs, Fees and Charges

| Step                    | Item  | Costs (Kip)  |
|-------------------------|---|--------------|
| Business Registration   | Incorporation Form  | 10,000       |
|                         | Application Form  | 70,000       |
|                         | Registration service fee  | 30,000       |
|                         | Registration form for taxes   | 25,000       |
|                         | Tax certificate   | 10,000       |
|                         | Apply for an Operating License from relevant Ministry                   | 50,000       |
| Land Title              | Land Parcel Registration Fee  | 15,000       |
|                         | Measuring agriculture land  | 250,000      |
|                         | Application   | 2,000        |
|                         | Issuance of the title   | 50,000       |
| Land Tax                | Depending on the area (Kip/Ha/Year)                                     | 8,000-25,000 |
| Plantation Registration | Boundary measurement fee (Kip/m <sup>2</sup> ) (excluding travel costs) | 400          |
|                         | Application form  | 4,000        |
|                         | Application Stamp   | 5,000        |
|                         | Parcel registration (per 1,600m <sup>2</sup> or 1 rai)                  | 1,000        |
| Harvesting              | Pre-harvest survey (measuring) Fee (m <sup>3</sup> )                    | 5,000        |
|                         | Application for Harvesting Permit                                       | 10,000       |
|                         | Harvesting Permit (Kip/m <sup>3</sup> )                                 | 30,000       |
|                         | Logging certificate (Kip/m <sup>3</sup> )                               | 10,000       |
|                         | Log measuring and grading Fee (Kip/m <sup>3</sup> )                     | 5,000        |
|                         | Log Stamp (Kip/m <sup>3</sup> ) excluding per diem                      | 10,000       |
| Transport               | Certificate for Transport   | 30,000       |
|                         | Checkpoints   | unknown      |
| Wood processing         | Business Registration certificate                                       | 145,000      |
|                         | Operation permit  | 50,000       |

|         |  |           |
|---------|--|-----------|
|         | Agroforestry production permit                       | unknown   |
| Export  | Export Licence application preparation (8 documents) | 2,500,000 |
|         | DIMEX application processing                         | 10,000    |
| Customs | Customs clearance and technical control              | 802,522   |
|         | Ports and Terminal Handling                          | 1,250,000 |

## Fees and Service Charges: Summary of Issues and Questions

The regulatory fees and service charges are potentially substantial and in many cases are not articulated in regulatory guidance. As such there are inconsistencies in the application of fees, charges and taxes causing uncertainty for actors in the value chain. This creates the opportunity for unofficial fees to be requested.

The Government has made efforts to clarify and document official fees and charges in other area. Increased transparency of fees would create certainty for smallholders and other value chain actors.

### 5.10 Cooperatives and Associations

The Government of Lao PDR and specifically MAF have a strong focus on the development of farmer organizations, which are seen as important actors in MAF's medium to long term vision for the Agriculture Sector Development. In 2008, a MAF Farmer Organization Working Group was established and subsequently the Agriculture Development Strategy 2011-2020 included a strong emphasis on the development of farmer organisations. The strategy specifically states:

"The strategic direction of the ANR sector is to ensure a successful and gradual transition from subsistence into commercial smallholder production.....Smallholder farmers will be assisted in the creation and operation of voluntary farmer organisations, which are based on the express needs and on the proven value-added for the individual farmers, such as formally legalized producer groups, cooperative groups or full cooperatives and commodity associations. To provide both economies of scale and fair terms of trade, these emerging farmer organizations will be supported in playing a strong role as equal trading partners"

The recent creation of the Department of Agriculture Extension and Cooperatives (DAEC), which will include a "Production Group Promotion, Cooperative and Agribusiness Division" as a replacement for The National Agriculture and Forestry Extension Service (NAFES)<sup>31</sup> emphasises the importance given to farmer organization. In 2010, MAF was also considering other measures in support of farmer organisations, such as the nomination of a high level Steering Committee for the Development of Farmer Organizations, the establishment of the FORPAD (Farmer Organization Registration, Promotion and Auditing Division) and the creation of a Farmer Organizations Development Fund, however the status of these is unknown.

The National Agriculture and Forestry Research Institute (NAFRI), through the Agriculture and Forestry Policy Research Centre (AFPRC), is currently mandated to conduct research work on "Cooperatives and Collective Action" in the agricultural and Forestry sector. The AFPRC has an overview of the situation of Farmer Organizations in Lao PDR and has a role to play in drafting policy documents related to this topic.

Through the formalisation of farmer organisations, such as cooperatives is anticipated that that farmers will be able to:

- Increase their incomes
- Connect more effectively to markets and increase their bargaining power
- Maximise the benefits from commercial agriculture development and minimise risks

<sup>31</sup> The National Agriculture and Forestry Extension Service (NAFES) had the mandate to promote the establishment of farmer groups for the purpose of accelerating the process of diffusion of new technologies to farmers (extension work). The role of NAFES concentrates on helping farmers to establish groups principally for extension purposes principally.

- Produce and provide agriculture services to their members including through increased productivity, modernization of agricultural practices and adoption of new techniques
- Invest in collective processing tools

Grower groups and cooperatives may act in various roles in the in the value chain between farmers and traders or wood processors; they may interact with buyers and traders, directly export products and transform low value raw products into high value processed products. It is also envisaged that cooperatives will contribute to the delivery of MAF strategies for agriculture and forestry. Additionally farmer organisations such as cooperatives are seen as an important mechanism for facilitating a transition of MAF's role from service provider to a regulatory body.

The most significant legislative reforms to enable these strategies are two new decrees which encourage farmers to organise themselves relatively independently of government: the *Decree on Associations No. 115/PM*, (2009) and the *Decree on Co-operatives No. 136/PM*, (2010).

### 5.10.1 Associations

Under Decree No. 115/PM of 2009 'Association' refers to a non-profit civil organization set up on a voluntary basis and operating on a permanent basis to protect the rights and legitimate interest of the association, its members or communities.

Types of Associations (Art. 7) include:

- Economic associations;
- Professional, technical and creative associations;
- Social welfare associations;
- others.

These can be classified into different levels depending on their geographic scope (National, Provincial, District, Municipality, Village).

### 5.10.2 Cooperatives

The Decree on Cooperatives No. 136/PM of 2010 defines a 'cooperative' as a collective economic organization established by a group of small entrepreneurs such as farmers, manufacturers, traders, and others which voluntarily intend to form a cooperative aimed at cooperation on capital, experiences, technology in production, trade and service to succeed their own business as well as to ensure social welfare among the members and their families.

Article 3 identifies two types of cooperatives, being:

- A cooperative of agricultural and forestry production, industrial processing and handicraft.
- A cooperative of Services namely: trade, finance, transportation, tourism, construction, medical services and other services.

Other relevant laws and regulations include the Law on Enterprise No: 11/NA, (2005) through which cooperatives must be registered, thus creating a legal entity and Decree No. 136/PM which makes general provisions with respect to membership, functions, duties, fees and dispersal of profits to members.

The relevance of cooperatives to teak grower groups is discussed by Ling et al 2014, who make the following observations:

- The concept of cooperatives is not well understood by plantation growers;
- The implementation of the Decree was thought to be the responsibility of Department of Agriculture Extension and Cooperatives (DAEC).
- There is widespread misunderstanding (including by DAFO staff) that cooperatives are a return to collective farming that had been practised following the establishment of Lao PDR in 1975.
- Even where there is some understanding (e.g. among Dept. Of Extension in PAFO) the general consensus is that the government needs to focus on making strong groups before thinking about more formal organisations.

On the basis of the law, because farmer cooperatives and enterprises must be registered under the Law on Enterprise they are likely to be subject to the fees identified in Table 1. However there are also tax incentives/exemptions associated with group enterprises, whereby the payment of value added tax and profit tax is not required, on, for example, the sale of wood.<sup>32</sup>

## Cooperatives and Associations: Summary of Issues and Questions

Despite being a concept that is used and understood worldwide the concept of cooperatives is not well understood in Lao PDR, and may be misunderstood. This will limit adoption. Communication and extension will be required to ensure the concept is well understood.

In order to facilitate the development of cooperatives, based on smallholder plantations, the development of specific laws and guidelines will be needed.

Procedures for establishing, registering and managing cooperatives will need to be efficient, straightforward and inexpensive.

Where cooperatives are enabled to provide services previously undertaken by offices within MAF the regulatory impact will need to be assessed and clear guidance issued to ensure efficiency.

## 5.11 Monitoring, Compliance and Enforcement

The Government of Lao PDR has introduced a number of laws and measures to address the issues of monitoring, compliance and enforcement across the forestry sector and to promote professional conduct amongst government employees. Nationally, the Forestry Law, *Anti-Corruption Law No. 03/NA*, 2005 and the *Law on State Inspection No. 02/NA*, 2007 are the primary legal instruments for the forestry sector.

The responsibilities and authority for monitoring, compliance and enforcement of laws and regulations relating to forestry, small holder plantations and the associated value chain are dispersed across various government departments and agencies. Specific responsibilities and authority are detailed in the specific laws, decrees and regulations. Frequently these overlap and duplicate responsibilities between agencies, although recent efforts have been made to reduce this and increase efficiencies. Table 11 summarises the main monitoring, compliance and enforcement functions and responsibilities amongst Lao PDR Government agencies.

### 5.11.1 Professional Conduct

In 2007, an Anti-Corruption Inspection Department was established under the supervision leadership of the State Inspection Authority and, significantly in 2009 the Government of Lao PDR ratified the United Nations Convention against Corruption (UNCAC). Through this Department and the relevant legislation the Government is promoting ethical and professional conduct amongst its employees.

## Monitoring, Enforcement and Anti-corruption: Summary of Issues and Questions

Monitoring, enforcement and compliance responsibilities are dispersed throughout a complex array of regulatory instruments.

There is overlap and duplication in responsibilities, particularly between MAF and MOIC.

The substantial body of documentation that is required at various processes along the value chain exacerbates the requirement for monitoring and enforcement and potentially discourages compliance.

Where financial penalties associated with infringements accrue to the enforcement agency there will be little

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<sup>32</sup> In 2014 the Ban Xiem Long grower group were exempt from paying LAK7.8M on a sale and movement of 18 m<sup>3</sup> of teak logs worth over LAK44M.

incentive to reduce these as agencies may be financially disadvantaged as a result.

The nature financial penalties should be transparent and publicised both to encourage compliance and as a disincentive to the application of 'unofficial fines'.

Table 11: Monitoring and Enforcement Functions and Responsibilities

| Activity  | Aspect   | Monitoring or Enforcement agency                       | Legislative basis   |
|---|--|--|---|
| Land Allocation   | Monitoring the fulfilment of obligations of land users and those allocated land including for the purpose stipulated in the contract (plantations) | MAF - DOF and DAF                                      | Instruction No 03/PM, 1996  |
|   | Systematic and Regular Inspection  | NLMA Department of Land Policy and Land Use Inspection | Land Law No 04/NA, art 79.  |
|   | Inspection through advanced notice   | Land Management Agency                                 | Decree No 88/PM, 2008, Art 30                                     |
|   | Inspection without notice  | NLMA   | Decree No 88/PM, 2008, Art 30                                     |
| Forestry Business   | Coordination between MAF and MOIC under Order No 17/PM   | State Inspection Authority and Government Secretariat  | Order No 17/PM, 2008 Art 26.                                      |
|   | To inspect activities...including business operations in forestry  | DOFI   | Forestry Law No 06/NA, Art 112                                    |
| Plantation Establishment                                  | Inspection of forest area, quality of seeds or saplings, clearing, soil preparation, track construction  | PAFO   | Regulation No 0196/MAF, 2000, Art 18                              |
| Plantation Registration                                   | Monitoring and evaluation of tree plantation parcels   | PAFO<br>DOFI   | Directive 1849/AF, 1999, Art 7<br>Notification No 1374/MCAF, 2010 |
| Plantation Management and Silviculture                    | Inspection of tree planting activities   | PAFO and DAFO  | Regulation No 0196/MAF, 2000                                      |
| Harvesting and Haulage                                    | To inspect logging sites and log yards   | DOFI forestry officers                                 | Forestry Law No 06/NA, Art 114                                    |
| Primary processing (chainsaw milling to logs and squares) | Inspection of wood processing factories  | DOF  | Decree No 10/PO, 1999   |
|   | Inspection of wood processing factories  | DOFI forestry officers                                 | Forestry Law No 06/NA, Art 114                                    |
|   | Inspection of wood at wood processing plant for form and size as per production plan   | DOIC   | Decision No 1415/MOIC.DOI, 2008                                   |
|   | Inspection of wood at wood processing plant for form and size as per production plan   | DOIC with DOF  | Order No 31/PM, 2006  |
| Transport - domestic                                      | Inspection of the transport of timber  | DOIC trade inspection officers                         | Notification 1940/MOIC.DIMEX                                      |
|   | Inspection of log transport routes   | DOFI forestry officers                                 | Forestry Law No 06/NA, Art 114                                    |
|   | Checkpoints  | DOIC   | PM Order 19/PM, Art 16.2 (7)                                      |

|  |   |  |   |
|--|---|--|---|
| Secondary processing (sawn wood, components and offcuts) | <p>Inspection of wood processing factories</p> <p>Inspection of wood processing factories</p> <p>Inspection of wood at wood processing plant for form and size as per production plan</p> <p>Inspection of wood at wood processing plant for form and size as per production plan</p> | <p>DOF</p> <p>DOFI forestry officers</p> <p>DOIC</p> <p>DOIC with DOF</p>  | <p>Decree No 10/PO, 1999</p> <p>Forestry Law No 06/NA, Art 114</p> <p>Decision No 1415/MOIC.DOI, 2008</p> <p>Order No 31/PM, 2006</p>   |
| Tertiary processing (Furniture manufacture)              | <p>Inspection of wood processing factories</p> <p>Inspection of wood processing factories</p> <p>Inspection of wood at wood processing plant for form and size as per production plan</p> <p>Inspection of wood at wood processing plant for form and size as per production plan</p> | <p>DOF</p> <p>DOFI forestry officers</p> <p>DOIC</p> <p>DOIC with DOF</p>  | <p>Decree No 10/PO, 1999</p> <p>Forestry Law No 06/NA, Art 114</p> <p>Decision No 1415/MOIC.DOI, 2008</p> <p>Order No 31/PM, 2006</p>   |
| Export   | <p>Focal point</p> <p>Import Export Administration Authority for agriculture and forestry.</p> <p>Export Licencing requirements</p> <p>Inspection of wood.</p> <p>Inspection of wood at Borders</p>   | <p>MOIC</p> <p>MAF</p> <p>DOIC in consultation with MAF</p> <p>DOIC trade inspection officers</p> <p>Customs officer</p> | <p>Decree 114/GOL (Art 11), 2011</p> <p>Decree 114/GOL (Art 11), 2011</p> <p>Notification 0076/MOIC.DIMEX</p> <p>Notification 1940/MOIC.DIMEX</p> <p>Order No. 1765/MOF, 2013</p> |
| Taxes, Duties, Fees                                      | <p>Fees and charges in relation to export (of timber) administration</p> <p>Fees and charges in relation to Land Management</p>   | <p>MAF</p> <p>MAF to MOF</p>   | <p>Decree 114/GOL (Art 12), 2011</p> <p>Instruction 3204/PMO.NLMA. Art 6.4</p>  |
| Anti-Corruption  | To inspect the capability, transparency and fairness of DOF and DOFI  | State Inspection Authority   | Forestry Law No 06/NA, Art 116  |
| Cooperatives and grower groups                           | To monitor, administer and promote cooperatives   | The Ministry of the relevant sector  | Decree No. 139/PM on Cooperatives, Art 49   |
| Monitoring, Enforcement and anti-corruption              | To inspect the capability, transparency and fairness of DOF and DOFI  | State Inspection Authority   | Forestry Law No 06/NA, Art 116  |

## 6 Observations and Recommendations

This study highlights the complexity and cost of the regulatory environment for smallholder plantation growers and the plantation timber value chain. In deconstructing this legal framework a number of issues, barriers and questions have been identified. These are summarised below.

### 6.1 General Observations

At the outset it should be acknowledged that while this study was being undertaken the statutory laws governing the management of land and forests were under review and several of the issues raised in this study may be revised in the new laws. Additionally inefficiencies in the regulations and processes for various aspects of the value chain have been acknowledged by the Government of Lao PDR and transitional measures were being assessed or implemented at the time of writing.

Overall, the legal framework for smallholder plantations was found to be extensive but highly complex with overlapping, out of date and often inconsistent laws. Legal reform across all sectors and agencies has resulted in new legislation, decrees and other legal instruments that are often contradictory. Superseded instruments appear to remain in force and these results in confusion and duplicated regulatory costs which add to the overall cost of production and potentially reduce the return to smallholders. This in turn serves to delegitimise the law, resulting in non-compliance.

The rapid development of new regulations may also result in slow implementation by government agencies due to lack of awareness about the regulatory changes and due to ongoing structural reforms within government departments. Where new laws impact departmental or government revenue streams this may also discourage their implementation. The recent changes to the functions and responsibilities of government departments appear to have compounded the legal complexities, particularly as responsibilities are increasingly decentralised. Addressing this issue which will depend on strength of governance and it is not yet clear what impact the *Sam sang* policy for decentralisation will have.

In 2014 the Official Lao Gazette was implemented and overtime this should go some way to minimise the slow implementation of new laws and facilitate access to the law, improving transparency in regulatory processes. However, it may not address those circumstances in which an unwillingness to implement new laws persists because they are viewed as inconsistent with local requirements, conditions or priorities.

Many of the rules that apply to the smallholder plantation value chain have been transferred from laws designed to address broader issues such as to reduce the unsustainable harvesting of natural production forests, manage the conversion of forests through infrastructure development projects or large scale industrial plantations, to stop illegal logging, reduce land clearing, address shifting cultivations or minimise negative environmental impacts. While there are risks of these impacts and activities occurring in association with the smallholder plantation value chain these are comparatively low. A general review of the risks associated with plantations of this scale would be a beneficial component of a regulatory review process to ensure that the regulatory framework is on par with the level of risk involved.

As a consequence of the complex legislative environment regulatory costs are high and act as a further disincentive for compliance throughout the value chain. This in turns adds to the burden of monitoring and enforcement.

### 6.2 Forestry Businesses

The Forestry Law requires that all forestry businesses are registered under the Law on Enterprise. While this need for business registration seems to be well recognised for participants in the value chain from the point of harvest onwards, it is not clear whether individual plantation smallholders are also required to hold such a registration, or whether registration of the plantation itself meets this requirement.

**Recommendation:** MAF and MOIC review and provide agreed joint guidance on the need for business/enterprise registration including by smallholder plantation owners and grower groups/cooperatives.

## 6.3 Land Allocation, Registration and Classification

### 6.3.1 Land Allocation and Land Tax

The suite of documents demonstrating land use rights is diverse and there are inconsistencies and contradictions within the legislation regarding the use of the different document types as evidence for land transactions. The payment of land tax and issued land tax receipts are used to substantiate land claims for land transactions in rural areas, although by law these papers cannot be used to claim land ownership. This includes in the plantation registration process.

Informal and customary procedures are still respected and used in remote areas and formal procedures for land use registration should recognise these where there is no alternative (i.e. formal land titling has not yet occurred).

The process for moving from TLUC to permanent title is not clearly described in the regulations or guidance documents.

It is unclear whether land tax exemptions made on the basis of plantation registration may have adverse consequences where these inflate the land tax payable on other land areas within villages, resulting in some residents subsidising owners of registered plantations. This issue requires clarification.

There is inconsistency between the Land Law and Forestry Law with respect to the categories and amounts of land that can be allocated for timber plantations: legally both agricultural and degraded forest land could be allocated to plantations. Some evidence suggests that this classification causes confusion, and because it allows the use of agricultural land for plantations it may perversely result in the conversion of more natural forest to agricultural land through swidden farming and in inequality, in terms of access to land, within villages.

#### Recommendations:

- MAF provide clarification on the categories and amounts of land that can be allocated to smallholder plantations.
- MONRE and MAF review and clarify the process for applying for TLUCs, land development certificates, the documents that can be used to demonstrate land use rights and apply for permanent land use certificates.
- MAF and MOF Provide clarification of the requirements for plantations to be eligible for land tax exemptions, taking into account the types of plantations that exist, the registration options and the implications of excluding some plantations from this exemption.
- It would be beneficial to establish appropriate definitions of plantation and clarify the nature and extent (size and stocking) of plantations that are eligible for registration and tax incentives.

### 6.3.2 Plantation establishment and registration

Registration of plantations is a legal requirement however few smallholder plantations have been formally registered.

The legal basis for smallholder plantation registration has become lost in a broad set of issues, and the process of registration has become complex, slow and costly which deters compliance. Lack of compliance creates a risk that the timber harvested and the processed products will not meet the legality requirements of some markets. The existence of markets with less stringent standards, however, provides potentially cost effective alternatives to farmers, which impacts domestic processing.

There are inconsistencies in the rules that determine the size and nature of plantations that can be registered and are eligible for land tax exemptions.

For small plantation parcels and scattered plantings there are fewer incentives to undergo a potentially costly and time consuming registration exercise. While the regulations for registering tree plantation parcels are relatively clear, the requirements, or opportunity, for registering scattered trees are not and the implications of this for the subsequent harvesting, sale and processing of timber sourced from scattered plantings requires further research. Scattered plantings not eligible for tax exemptions. It is also unclear whether or how

certificates of origin can be issued for timber from scattered tree plantations under the existing process of certification.

Temporary Land Use Certificates issued to villagers for tree planting activities are only valid for three years. While some land tax exemptions apply in this period these are not available to plantation growers because registration as a tree plantation cannot occur until three years after planting. However, villagers have full rights to trees planted with their own labour and at their own expense on land under TLUCs and villagers have sold rights to these trees (and sometime the land) within three-year term of the TLUC.

It is unclear whether smallholder growers are required to have in place a plantation management plan although subsequent approval and permits require such a plan. However, it is clear that transport and harvest approvals are given where no plantation management plan is in place. Where a plantation management plan is required guidance should be provided on the nature of the plan and its purpose.

Barriers to commercial thinning exist which may inhibit silvicultural management. Plantation management plans could result in improved silviculture and ultimately wood quality.

Plantation owners are required to undertake (or have undertaken) pre-harvest measurements including for thinning and pruning, which add cost to management. Plantation management plans may be a useful tool in reducing these requirements.

Any codes or standards that are developed must include specific provisions for smallholder plantations.

#### Recommendations:

- MAF review the policy basis for, and objectives of smallholder plantation registration to ensure the expected outcomes are appropriate and the costs and complexity of the process are not excessively onerous both on plantation owners and government agencies.
- MAF establish a clear definition of 'plantation' and clarify, with MoF of the nature and extent (size and stocking) that is eligible for tax benefits.
- MAF establish a clear definition for 'smallholder plantation' and ensure that it is consistently applied through regulations.
- MAF develop a clear mechanism that enables scattered tree planting to become registered or certified and ensure that certificates of origin can be issued and the wood can enter the value chain legally.
- A review of the implications of treating smallholder plantation as agricultural crop should be made.
- The requirements for PMPs and codes of practice for smallholder plantations need to be clarified. Where plans are required, consideration should be given to the use of these to reduce the need for costly pre-harvest surveys and inspections (discussed below). Any codes or standards that are developed must include specific provisions for smallholder plantations and be appropriate to scale and capacity.
- A risk-based assessment of the overall need for plantation registration should be undertaken and consideration given the treatment of smallholder plantations as an agricultural crop.
- The development and promotion of markets for intermediate products such as thinnings and poles, and the introduction of tax exemptions associated with these products could be investigated by MAF and MOF as an option for encouraging farmers to register their plantations long before harvest.

## 6.4 Harvesting and Sales

Many of the regulations for harvesting and sales have been developed for natural forests, large scale plantations and forest on land to be converted for infrastructure (conversion timber). The intent is to reduce the risk of illegal harvesting and the sale of illegally logged timber. The harvesting regulations that are based on requirements for natural forests are overly complex and costly for smallholder plantation owners.

The Quota system is designed to regulate the harvesting and supply of timber to the Lao PDR processing industry. However it is unclear how or whether smallholder plantation volumes are included. The significance of the inclusion of timber volumes in quotas is in the degree to which dependent regulations (for example chain of custody/certificate of origin) requires demonstration to this effect. That is, can the source of timber that is not included in an official quota subsequently be demonstrated and if not, what market barriers will this create?

There is an assumption that pre-harvesting and post-harvesting assessments must be made by DAFO and paid for by the plantation owner (or buyer of the wood). It is not always the case that DAFO undertakes these assessments (farmers often undertake the assessments themselves), but anecdotally, the payment must still be made in order to obtain the necessary approvals/permits. Other avenues for undertaking these assessment that are already within the regulations should be re-examined, such the role of Village Forestry Units/Committees, and other mechanisms such as grower groups or cooperatives as service providers. Harvesting provisions within plantation management plans should be investigated. Approved Plantation Management Plans, which include silvicultural and harvesting schedules could assist in reducing pre-harvest costs and promote markets for products such as thinnings. A risk based approach through post-harvest auditing, could also be applied.

The roles of DAFO and DOIC in harvesting remain unclear, despite regulatory guidance on this, and there is some duplication in efforts and costs.

Harvesting taxes and fees are inconsistently applied. Provincial variations create an incentive for wood to be transported to Provinces with more favourable tax treatment. This has adverse consequences for local downstream processing. Flat rate taxes and Provincial variation to the National Laws based on a 'unit price of sale' of timber should be reviewed taking into account any variations on the basis of product type.

Tax incentives exist for plantation owners that undertake their own harvesting. Opportunities for promoting grower harvesting of thinnings in order to reduce this tax burden is required.

#### Recommendations:

- MAF should consider the development of specific regulations for the smallholder plantation resource that reflect the level of risk associated with timber harvesting and sales.
- Review the potential roles for Village Forestry Units or grower groups to undertake pre-harvest, harvest and post-harvest assessments should be undertaken.
- Including harvesting provisions within PMPs should be investigated; approved PMPs which include silvicultural and harvesting schedules could assist in reducing pre-harvest costs, improve silviculture and promote markets for products such as thinnings. A risk based approach through post-harvest auditing, could also be applied.
- Clarification of the approvals procedures and service fees required by DAFO and DOIC is needed to reduce duplication in cost and effort, particularly at Log Landing 2.
- Review the Provincial tax and fee variations to ensure that costs are consistent with National laws, appropriate and are not unnecessarily duplicated.

## 6.5 Haulage and Transport

Informal and Formal imposts between the forest and mill act as a disincentive to smallholders

Recent reforms have potentially eliminated the requirement for transport permits and controlling licenses however, these are still being requested at the Log Landing 2 by both MOIC and MAF. The costs associated with these permits vary.

Lack of clarity and duplication persists in the functions of MOIC and MAF in the ongoing request for controlling licenses resulting in unnecessary procedural and cost impositions on traders and a potential delay in payment to plantation owners.

Issues may arise where fees and charges collected in association with transport approvals accrue to the Provincial budget, creating a disincentive for cancellation of the procedure.

The complexities associated with haulage and transport act as a disincentive for processors to buy timber at the farm gate.

Reforms have been made to reduce the number of internal checkpoints, although it is unclear whether this has been implemented.

#### Recommendations:

- MOIC and MAF jointly provide guidance to staff, farmers and industry to clarify the requirements for transport controlling licences and the authority responsible for issuing these, where necessary. This

guidance should also articulate the costs of licences to ensure that these are fairly passed through the value chain. Streamlining the haulage and transport approval processes would ensure that wood can be transported efficiently.

- Additional notifications on the number and purpose of checkpoints, and the responsibilities of government agencies to undertake inspections and monitoring at these checkpoints should be provided.
- A review of the allocation of revenue to the Provincial budget should be undertaken.

## 6.6 Wood Processing

Local processing facilities can obtain logs from different sources, including those registered at Log Landing 2 or from non-registered sources. The timber products produced can then be exported or distributed to the domestic markets and are subsequently legalized through export permits or local transport permits.

Despite recent efforts for clarification, the relationship between MAF and MOIC remains complex and provides an opportunity for regulatory failure through loopholes. This is particularly apparent in the disconnection between the determination of wood quota by MAF and the allocation of supply to mills by MOIC on the basis of processing capacity.

While reforms have been made to clarify and formalise the supply and use of raw material from plantations, new regulations omit the detail provided in previous instruments and as a result there is lack of clarity in some areas. For example Notices 1887/MOIC.DIMEX, No. 0484/MOIC.DIMEX and 1862/MOIC.DIMEX which were aimed at promoting the use of raw material from plantations and formalising the management of the plantation timber trade were replaced by Notice No 1791/MOC.DIMEX which is effectively a procedural notice regulating the import and export of plantation timber.

There are numerous approvals required for processing factories, from numerous departments, although it remains unclear whether all of these approvals are sought and whether non-compliance is enforced.

Time consuming and complex regulatory approvals process for wood processing factories, and in other areas of the supply chain means that there are still avenues for competition from illegal operators that use illegal logs and do not comply with government regulations.

It is unclear whether all primary products (e.g. squares) meet the legal definition of 'processed' and, therefore whether they meet export requirements.

Inadequate product definitions may limit market access. For example there is no legal definition of a 'squared log' that conforms with the concept of 'square logs' as a manually trimmed log in the forest or at Log Landing 1 or 2. Thinnings are not defined. Poles are recognised as a forest product from harvesting in conversion forest or where forest is being cleared for production activities, only with permission from the Government, but not from other sources.

Barriers to commercial thinning exist and this reduces plantation health and wood quality. Consideration should be given to the introduction of tax exemptions for thinnings to promote better quality/volume of wood through plantation management. This could be limited to, for example, 12 years or <10cm dbh, after which the responsiveness to thinning reduces. Any risk that this would create an incentive for 'short rotation' teak plantations should be examined such that long term wood supply is not adversely impacted. Other measures such as retained stocking rates may be needed.

### Recommendations:

- Clarify the procedures by which wood processing facilities obtain wood from registered and unregistered plantations, and the documents required to support this.
- Document the roles and responsibilities of MOIC and MAF in a guideline to improve efficiency.
- Clarify whether square logs (squares) constitute a processed wood product.
- Review product classes and standards to include primary products such as round logs, squared logs and thinnings.
- Identify and remove barriers to commercial thinning, ensuring minimal impacts on long-term wood supply across all product classes.

## 6.7 Export and Duties

The complexity of export procedures has been recognised and reforms are underway to improve efficiencies and remove barriers in the process.

The Plantation Timber Export PIA undertaken in 2013 may have implications for processing and procedures. In particular the requirements to provide certification of origin will require a review and a consolidation of procedures at Log Landing 2.

There are definitional irregularities in the complex legislation that exists which potentially have implications for legality verification. For example, it is not clear whether the provisions that apply under Notification No 1791/MOIC.DIMEX, 2011 and Notification No 0076/MOIC.DIMEX apply to plantation timber for company/factories for timber if the volume supplied is not included in an annual harvesting plan or Quota of the Government. Thus, the relationships between whether smallholder teak plantation volumes and harvesting are included in official quota and harvesting plans, becomes relevant at the point of export, particularly with respect to provision of a certificate of origin.

Teak is treated as a 'special species' based on its natural occurrence in the forests of Lao PDR. Plantation teak is not differentiated and as such faces proscriptions that do not apply to other plantation species.

It is important to recognise that even if all internal Lao procedures are followed and legal requirements are, met consumer countries may impose additional requirements to ensure due diligence and proof of legality.

### Recommendations:

- A review of export procedures for plantation timber by MOIC and consolidation into guidance for industry would be beneficial in streamlining procedures.
- Together MAF, MOIC and the timber industry should review and develop product categories that reflect plantation timber processing and market demand including for unprocessed and semi-processed products.
- A review of the treatment of plantation teak as a 'special timber' species taking into account the onerous requirements for plantation registration, log marking and log tracking that are in place should occur. Improved enforcement of these procedures could eliminate the needs for additional special treatment of plantation grown teak.

## 6.8 Tax

The Tax law has been revised however the Directives on the payment of taxes by forestry business have not been updated to reflect these changes.

The authority for Provincial governments to introduce local tax rules needs to be clarified and reviewed to ensure that tax payments are not duplicated. Additionally, the impacts of local tax variations on incentives for the timber industry to invest in local processing should be investigated.

There is opportunity to encourage improved plantation management through the introduction of tax incentives for products such as commercial thinnings. Where products are specified in tax laws and directives these should be consistent with other regulations.

The use of a fixed price taxes can provide certainty and transparency. However, where taxes are calculated using a base price of a percentage of the unit price of the sale of timber products, these should be reviewed regularly and must include all relevant product types to ensure that growers and traders are not adversely impacted.

### Recommendations:

- MOF update and communicate Directives on the payment of forestry business related taxes to reflect recent changes to the Tax law.
- An examination should be made by MOF of the tax treatment variations between Provinces to gauge the magnitude of the impact of these variations on investment potential within Luang Prabang Province (i.e. how much wood is leaving Luang Prabang Province due to adverse tax laws). Clarification should then be made of the rules that authorise Provincial government variations to tax laws.

- Examine variations between Provinces to gauge the magnitude of the impact of these variations on investment potential within Luang Prabang Province (i.e. how much wood is leaving Luang Prabang Province due to adverse tax laws).
- Together MAF, MOIC and Industry should review wood product categories to ensure consistency between regulations.
- Where taxes are calculated using on a base price of a percentage of the unit price of sale of timber products, these should be reviewed regularly and must include all relevant product types.
- Tax incentives to promote good plantation management and encourage the growing of higher quality resources should be considered.

## 6.9 Fees and Service Charges

Regulatory fees and service charges are potentially substantial and in many cases are not articulated in regulatory guidance. Consequently there are inconsistencies in the collection of fees and service charges causing uncertainty and exacerbated costs for actors in the value chain. This also creates the opportunity for unofficial fees to be charged. While the Government has made efforts to clarify and document official fees and charges in some areas increased transparency of plantation related fees would create certainty for smallholders and other value chain actors.

**Recommendations:** Fees and service charges should be justified, documented and made publically available.

## 6.10 Cooperatives and Associations

The promotion of small to medium enterprises and the formation of cooperatives has a strong policy basis in the current strategies for socio-economic development, forestry and agriculture. The smallholder plantation sector is well placed to benefit from this. In order to facilitate the development of timber cooperatives specific laws and guidelines will be needed. These must take into account lessons from farmer grower groups across a range of product sectors. Procedures for establishing, registering and managing cooperatives will need to be efficient, straightforward and inexpensive to ensure that participation is not onerous. Where cooperatives are enabled to provide services previously undertaken by offices within MAF the regulatory impact will need to be assessed and clear guidance issued to ensure efficiency.

Despite being a concept that is used and understood worldwide the concept of cooperatives is not well understood in Lao PDR, and may in fact be misunderstood which could limit adoption. The role of DAEC will

**Recommendations:**

- As the implementing ministry MAF will need to develop communication and extension material to ensure the concept of plantation cooperatives and their benefits is well understood by farmers and supporting agencies.
- Complementary regulations will need to be developed to ensure that cooperatives are able to function effectively and meet the expectations articulated in national strategies and policies.
- A review and clarification of the supporting governance structures, such as the roles of MAF and MOIC, will ensure that cooperatives can realise their potential without competing with government agencies. Where cooperatives do take up the provision of services previously performed by government agencies this must be supported by regulations. However, the impact of these regulatory reforms on agency budgets must be reviewed and understood.

## 6.11 Monitoring, Compliance, Enforcement and Professional Conduct

Monitoring, enforcement and compliance responsibilities are assigned throughout a complex array of regulatory instruments. There is overlap and duplication in responsibilities, particularly between MAF and MOIC.

The substantial body of documentation that is required at various stages along the value chain exacerbates the requirement for monitoring and enforcement and potentially discourages compliance.

Where financial penalties associated with infringements accrue to the enforcement agency there will be little incentive to reduce these as agencies may be financially disadvantaged as a result.

The nature financial penalties should be transparent and publicised both to encourage compliance and as a disincentive to the application of 'unofficial fines'.

**Recommendations:**

- Joint guidance by all agencies should be provided on the regulatory functions of each of the relevant agencies along the value chain.
- A review the complexity and extent of administrative procedures and approvals should be made to reduce opportunities and incentives for non-compliance.
- Administrative Fees and Financial penalties should be clearly articulated and enforced.
- Measures for making petitions or complaints about unjust treatment or unofficial fees or fines should be documented and made publically available.

## 7 Impact of Legality Policy Drivers

The secondary objective of this study is to understand the nature and evolution of international and trans-national timber legality policies and drivers and their impacts on both the legal framework in Lao PDR and the possible implications for smallholder timber producers and the timber value chain.

There is an increased focus within trade and aid policies to encourage developing countries to adopt higher levels of sustainability in forest management and to reduce incidences of illegal production of, and trade in, forest products. Initiatives to achieve these outcomes range from the adoption of legislated and enforceable trade and market access policies, through to voluntary and independent certification and chain-of custody systems (Flanagan 2013 unpublished).

In Lao PDR illegal logging and the export of illegal wood has occurred (see for example Barney and Canby 2011) and there is little doubt that the Government of Lao PDR has responded to international policies designed to address this issue. Given the rate at which these international policies have emerged, developing a consistent and practical governance structure and national legal framework to reduce illegal logging is no small challenge, particularly when the drivers for reform may be tied to the provision of development funding and are intended to affect not only governance structures and laws, but also domestic and export markets, and rural livelihoods.

This section briefly summarises the international policy context of timber legality and explores some of the issues faced by countries such as Lao PDR as they navigate the rapidly changing market for legal timber.

### 7.1 International and Regional Laws, treaties, obligations

That there is currently no single multilateral treaty on forests has been a key driver behind initiatives with respect to addressing the problem of 'illegal' logging and reforming what is viewed as unsustainable forest management in developing countries. One of the barriers to the formulation of an international law over forests is the perceived risk to national sovereignty for many countries who believe that their right to development (based on forests) may be diminished through international agreements or decisions that are laden with 'western' morals and are biased in favour of developed countries (see for example Tamanaha 2004); forest conservation at the expense of development is an objective that many developing countries cannot yet afford. Failure to reach agreement at the Rio Earth Summit in 2002, because it was seen as just such a potential infringement by many developing countries, has promulgated a range of other programs and initiatives through:

- International agreements such as:
  - *The United Nations Framework Convention on Climate Change*, (UNFCCC) particularly Reduced Emissions from Deforestation and Degradation (REDD+), which is being viewed as a transformational tool that can be used to reinvigorate development based law reform programs in the forest and land sectors, with particular emphasis on forest tenure. Lao PDR accepted accession to the UNFCCC on 05 January 1995.
  - *The Convention on International Trade in Endangered Species* (CITES) of Wild Fauna and Flora, which has as its purpose to ensure that international trade in specimens of wild animals and plants is legal, sustainable and traceable; and
- Regional Agreements, including:
  - *The ASEAN Wildlife Law Enforcement Network*, which is the world's largest wildlife law enforcement network across all ten ASEAN countries, with task forces that are the enforcing mechanisms of a regional network committed to stopping national and trans-regional illegal wildlife trade and illegal logging. Within Lao PDR agency members are, MAF via DOFI, the Lao PDR CITES Management and Scientific Authorities, Police, Customs, The Army, MOJ, MOIC, State Inspection and MONRE.
  - *The PanASEAN Timber Certification Initiative* which aims to encourage coordination and cooperation among the ASEAN member States in the efforts to implement credible forest certification.

- *Agreement on Cooperation for the Sustainable Development of Mekong River Basin*, which is a framework agreement designed to set out cooperation in “all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin”.

## 7.2 International law reform programs

### 7.2.1 FLEG and FLEGT

The World Bank actively supports regional forest law enforcement and governance (FLEG) initiatives and the UK, German and EU development agencies, under the auspices of FLEG, have undertaken initiatives to improve capacity building, as well as foster policy learning networks in the hope of strengthening, rather than challenging sovereignty and domestic policy development (Thang, 2008 in Cashore and Stone (2012)). The idea, buttressed by studies showing that many developing countries have numerous but largely unenforced forest practice regulations, has been to help countries develop and implement their own policy priorities and goals for sustainable forest management (Cashore and Stone 2012). The World Bank’s Forest Strategy acknowledges illegal logging and lack of appropriate forest governance as a major obstacle to the efforts of client countries to alleviate poverty, to develop their natural resources and to protect global and local environmental services and values. The FLEG process has played an increasing role in addressing economic and forestry issues during policy dialogues at ASEAN meetings since the Bali Declaration in 2001. More recently the ASEAN members adopted a FLEG Work Plan 2008-2015 to provide a guide for implementation in each country. Lao PDR has recently begun to engage with the FLEG process through the ASEAN working groups and in the preparation phase.

The FLEGT (Forest Law Enforcement Governance and Trade) Action Plan was published in 2003 in recognition of the EU’s responsibilities as one of the world’s largest markets for illegal tropical timber. The FLEGT Action Plan sets out a range of options for European institutions that wish to support global efforts to reduce market demand for cheap illegal forest products. Its architecture includes 1) negotiating bilateral agreements with producer countries to achieve broad stakeholder participation in building institutions to promote sustainable forest management and assure the export of ‘legal’ timber; 2) supporting private industry and civil society initiatives to promote sustainable forestry and timber legality in developing countries; and 3) introducing legislation that makes it an offence to place illegal timber on the EU market and obliges traders to demonstrate ‘due diligence’ that they have not done so (Overdevest and Zeitlin 2013).

In the absence of a multilateral regime governing forests, the legality licensing scheme is being implemented via a number of bilateral agreements (known as Voluntary Partnership Agreements or VPAs) between the EU and tropical timber producing countries that wish to be involved. The agreements commit the EU to funding capacity building and institutional investment that would allow countries to enforce forest law and capture revenue from planned exploitation of forest resources. Following an agreed period of investment, the EU will allow imports from these partner countries, contingent on the presentation of a legality license<sup>33</sup>.

The European Union (EU) *Regulation No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators, who place timber and timber products on the Market*, is part of the EU FLEGT Action Plan which recognises the role of both producers and consumers in curbing illegal logging and trade. The EU legislation requires all operators who first place timber products on the market to undertake due diligence, and makes it an offence to place illegal products on the EU market. The regulation obliges operators on the EU market to have systems in place that assure that the timber is of legal origin. The definition of legal is based on the law of the country of harvest.

The core of the due diligence obligation is that operators are required to undertake a risk assessment and risk management process to minimise the risk of placing illegally harvested timber or products that contain illegally harvested timber on the EU market. Each country within the EU is required to have a designated national authority for enforcing the regulation and the penalties for non-compliance. A FLEGT licence accompanies

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<sup>33</sup> [http://www.efi.int/portal/policy\\_advice/flegt/what\\_is\\_flegt/](http://www.efi.int/portal/policy_advice/flegt/what_is_flegt/)

timber exported from countries with VPAs and under the EU regulation timber accompanied by a FLEGT licence is considered to be risk free requiring no other due diligence assessment by the importer.

The EU FLEGT Asia Regional Support Programme, commonly known as "FLEGT Asia", promotes good forest governance in the Asian region and aims to strengthen regional cooperation in forest governance and by promoting and facilitating international trade in verified legal timber.

At present Lao PDR does not have a VPA or a FLEGT licence, although negotiations between the European Union and the Government of Lao PDR have commenced<sup>34</sup>.

### 7.3 Other Consumer Country Measures

A number of other timber consuming countries have implemented measures through domestic legislation to control the import of illegally sourced wood. Importers of timber from Lao PDR, whether exported directly or when used in timber processing in intermediary countries, such as Viet Nam or China, will need to comply with these measures. The anticipated response will be that trade related pressure placed on Laos will encourage it to create a robust and transparent governance framework with a clear chain of legality for its timber. Three consumer-country measures are described briefly below.

#### 7.3.1 United States

The *Lacey Act* was originally passed in 1900 to control wildlife trafficking and was amended in 2008 to include plant products, making it unlawful to import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce any plant taken or traded in violation of the laws of the United States, a US State, or relevant foreign laws.

The Lacey Act covers the entire timber value chain and illegal activity at any point means that the product may not be legally traded in the United States. The law is fact-based, not document-based which means that there is no requirement to have certification or verification of legal origin. It is up to each individual US buyer to determine how best to conduct due care and avoid illegal timber.

#### 7.3.2 Australia

The Australian *Illegal Logging Prohibition Act 2012* places a prohibition on the importation into Australia of illegally logged timber and timber products and the domestic processing of illegally logged raw logs. The Act requires importers of regulated timber products and processors of raw logs to conduct due diligence in order to reduce the risk that illegally logged timber is imported or processed and make a declaration at the border that they have undertaken this due diligence.

#### 7.3.3 China

China is the world's largest wood importer and exporter and, is a growing export destination of wood and wood products from Lao PDR, although this is still dominated by Thailand and Vietnam. Of the wood that is exported to China from Lao PDR the vast majority is as round or square logs<sup>35</sup>.

China has signed bilateral cooperation agreements with Australia, the United States and the EU. The Australia-China Agricultural Cooperation Agreement (ACACA), for example promotes cooperation on forestry issues and enhancing trade opportunities between the two countries.<sup>36</sup> China also has in place a number of measures for outward-looking investment, including in the forestry sector, and these include commitments relating to Chinese companies' compliance with domestic laws and regulations. Most are voluntary and are not monitored, and they have largely been developed in responses to allegation of illegal practices by Chinese operations abroad (Brack 2014). Examples include: 'A Guide on Sustainable Overseas Silviculture by Chinese Enterprises' which is applicable to all Chinese enterprises engaged in silviculture and related activities in

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<sup>34</sup> [http://eeas.europa.eu/delegations/laos/press\\_corner/all\\_news/news/2014/20140226\\_en\\_01.htm](http://eeas.europa.eu/delegations/laos/press_corner/all_news/news/2014/20140226_en_01.htm)

<sup>35</sup> [http://awsassets.panda.org/downloads/timber\\_trade\\_flows\\_laos.pdf](http://awsassets.panda.org/downloads/timber_trade_flows_laos.pdf)

<sup>36</sup> <http://www.daff.gov.au/forestry/international/regional>

foreign countries, 'Guide on Sustainable Overseas Forests Management and Utilization by Chinese Enterprises' which is relevant to Chinese enterprises engaged in forest harvesting, wood processing and utilization, and related activities in foreign countries and 'Guidelines for Environmental Protection in Foreign Investment and Cooperation,' which apply to all Chinese companies' activities in foreign investment and cooperation.<sup>37</sup>

China has also created its own national forest certification scheme<sup>38</sup>, which was recognised under The Programme for the Endorsement of Forest Certification (PEFC).

## 7.4 Non-legal, market-based programs

### 7.4.1 Certification

Forest certification emerged in response to the failed efforts to develop a binding multilateral agreement on forests at the 1992 Rio Earth Summit. The idea behind certification was to develop a set of wide ranging rules governing sustainable forest management and mobilize consumers of forest products to encourage adherence to the standards (Cashore and Stone 2012). Strategists reasoned that by drawing on carrots (price premiums) and sticks (naming and shaming), economic incentives might provide more enduring than short lived and ineffective boycotts of tropical wood products that had been prominent in the 1980s or international treaties.

Four features have been identified as key to understanding forest certification as a non-state market driven approach to global forest governance (Cashore and Stone 2012):

- sovereign states do not require adherence to the rules;
- wide ranging policies governing social and environmental practices are developed;
- third party auditing is used to promote verification/compliance; and
- tracking of eco-certified products is undertaken along global value chains

In general terms forest certification is a system for identifying sustainably managed forests. Products from certified forest can, through chain-of-custody certification, move into production streams through labelling that allows consumers to know that the product came from a certified forest. Third-party forest certification is generally based on field evaluation of forest management conducted by an accredited organization applying internationally developed principles and criteria with locally developed and approved standards. Certification of the chain-of-custody is a process that is undertaken to ensure accurate tracking of products from the forest to the consumer. Fully implemented, certification is a market-based instrument designed to reward superior forest management practices.

### 7.4.2 Legality Verification

Partly as a result of concerns regarding the effectiveness of global certification systems and good forest governance initiatives, 'legality verification' has emerged as a hybrid instrument with which to combat forest degradation and deforestation associated with illegal logging (Cashore and Stone 2012). Like FLEG, legality verification recognises and promotes national sovereignty but like certification it relies on third party verification. However, unlike certification, legality verification does not rely on consumer support of 'eco-friendly practices'. Rather, it aims to eliminate the supply of illegally sourced timber from global forest products and markets altogether.

Within the United States, European Union and increasingly other markets, legality verification has been championed for two primary reasons. Firstly, there is growing recognition that, even if successful, a legally binding multilateral agreement on forests would have little "on the ground" effect in those timber producing countries with limited capacity, training and enforcement. Secondly, efforts to certify the best forest practices have led, some critics assert, to simply separating markets rather than improving on the ground results. Furthermore certification programs, have been criticised for their extensive scope and resultant costs (for

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<sup>37</sup> See Bernasconi-Osterwalder *et al.* (2013) for a report on over 80 primary texts relevant to Chinese policy on Chinese outward investment.

<sup>38</sup> <http://www.cfcs.org.cn/en/index.action>

discussion on the costs and benefits see Cashore *et al.* 2006; Gullison 2003), making them often prohibitive for small market participants.

While legality verification has attempted to simplify certification, with an emphasis on conformity to national laws and regulations, it has also been criticised for focussing on a relatively narrower set of problems—*illegal timber harvesting*, rather than proscribing a wider set of environmental and social standards through broader sustainable forest management solutions (Cashore and Stone 2012, 15). Nevertheless, both consumer country measures and standards for legality verification are providing an alternative to global certification, as demonstrated by the array of legality standards that are emerging, including within the private sector and amongst non-government organisations. Examples include:

- The Forest Legality Alliance<sup>39</sup>, a joint effort of the World Resources Institute and the Environmental Investigation Agency, supported by the United States Agency for International Development and companies in the forest sector.
- The Global Forest Trade Network (GFTN)<sup>40</sup>, a WWF-led partnership designed to create a new market for environmentally responsible forest products. In 2013 GFTN, with TRAFFIC produced a 'Draft Common Framework for Assessing Legality of Forestry Operations, Timber Processing and Trade - Principles, Criteria and Indicators for Lao PDR'. This framework provides guidance for auditors in the process of verifying timber legality, including for plantation grown wood.
- The Rainforest Alliance Timber Legality Verification<sup>41</sup>, which developed a legality verification program as a progressive, two-tiered system in which companies began with Verification of Legal Origin (VLO) and moved to Verification of Legal Compliance (VLC). Legal origin verification signifies that a company has met the administrative requirements of permitting, planning, taxes or fees, and harvesting in defined areas only. Legal compliance encompasses a broad range of laws on environmental protection, wildlife, water and soil conservation, harvesting codes and practices, worker health and safety, and fairness to communities. Rainforest Alliance is currently phase out VLO certification.
- SCS Legal Harvest™ Program<sup>42</sup>, Timber Legality Verification services to demonstrate wood and timber products meet the import requirements of the United States Lacey Act and the European Union Timber Regulation with SCS timber legality verification. The program verifies timber legality, as a first step toward a more comprehensive environmental and social responsibility standard such as Forest Management or Chain of Custody Certification

## 7.5 International Trade Programs

### 7.5.1 World Trade Organisation

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business. The WTO has 33 agreements through which WTO members operate a non-discriminatory trading system that spells out their rights and their obligations. Each country receives guarantees that its exports will be treated fairly and consistently in other countries' markets. Each promises to do the same for imports into its own market. The system also gives developing countries some flexibility in implementing their commitments.

The WTO agreements include 'Rules of origin' which are the criteria used to define where a product was made. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more. Rules of origin are also used to compile trade statistics, and for "made in ..." labels that are attached to products.

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<sup>39</sup> <http://www.forestlegality.org/>

<sup>40</sup> <http://gftn.panda.org/resources/tools/?193889/interactiveguide>

<sup>41</sup> <http://www.rainforest-alliance.org/forestry/verification/legal>

<sup>42</sup> <http://www.scsglobalservices.com/timber-legality-verification>

The Rules of Origin Agreement requires WTO members to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard (in other words, they should state what does confer origin rather than what does not). In the longer term, the agreement aims for common ("harmonized") rules of origin among all WTO members. The agreement establishes a harmonization work programme, based upon a set of principles, including making rules of origin objective, understandable and predictable. The outcome will be a single set of rules of origin to be applied under non-preferential trading conditions by all WTO members in all circumstances.

Lao PDR became the 158<sup>th</sup> member of the WTO on February 2, 2013. By joining the WTO the country is binding itself to a political framework designed to help countries realise gains from trade. Lao PDR will need to meet the requirements of the WTO, including provisions for transparency in identifying the origin of timber harvested in the processes of land conversion.

#### 7.5.1.1 *WTO and Consumer Country Measures*

Criticism has been levelled at consumer-country measures on timber legality, such as those introduced by the US, EU and Australia, on the basis that they may conflict with the disciplines of the World Trade Organization (WTO). Since these measures are designed to alter the existing patterns of international trade in timber and timber products it is thought they may interact with the rules governing international trade overseen by the WTO (Brack 2009). In the absence of a test case, as there has never been a WTO dispute case dealing with illegal logging, it is difficult to predict what the outcomes of such a case would be (Brack et al 2012). However a common issue is that all three existing pieces of legislation utilise the concept of legality in the context of a sovereign nation's laws with respect to timber harvesting (although the scope of what constitutes timber harvesting varies in each case). The method ('sustainability or environmental friendliness') of the harvest is not in question; two identical products made with timber logged using an identical method would be treated differently if the timber in one product was from a country where that method was legal and the timber in the other product was from a country where that same method was illegal (see for example Mitchell and Ayers 2012).

## 7.6 Implications for the Smallholder plantation value chain

The high level of global interest in illegal logging has created a new industry focussed on certifying timber to provide consumers with some surety about its source. For both timber consumers and producers this creates an urgent need to define 'legality'. Illegal activities may relate to violation of all relevant and applicable national legal instruments, so in a country like Lao PDR that has a wide range of forestry laws and regulations, a clear definition of legality would need to consider which aspects of these instruments should apply when checking for compliance. This is important because illegal practices may relate to the allocation of land use rights, timber harvesting approvals, the source of timber, harvesting operations, transport, processing, marketing and export, the payment of royalties, fees and taxes and customs declarations. Where it is embedded in law, a definition of legality may also intersect with the concept of sustainability and in legally pluralistic societies, like Lao PDR it may also find juncture with customary law.

Almost all of the measures described above make some consideration of the notion of legality or illegality, and have a requirement that legality can be demonstrated or the risk of illegality reduced. The diversity of approaches that have been developed aim to simultaneously reduce the risk of trade in illegal timber and promote forest governance, law and enforcement and presents challenges for producers looking to penetrate international markets. Some of the approaches are summarised in Table 12.

Table 12: Definitions of Legality

| Program/Mechanism   | Definition of Legality  |
|---|---|
| Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) | Specimens that are not “in contravention of laws for the protection of fauna and flora” (CITES Art IV(2)(b)). It is not necessarily specified whether “laws for the protection of fauna and flora” encompass laws for the regulation of timber extraction and forest management.  |
| FLEGT   | The FLEGT Regulation makes it illegal to import certain types of timber and timber products into the EU from these so-called VPA partner countries unless that timber has been licensed by the exporting country as being legally harvested.  |
| ASEAN Timber Legality   | <i>Legal material</i> : wood materials satisfying the requirements of the ASEAN Criteria and Indicators for Legality of Timber.   |
| World Trade Organisation  | No specific definition relating to timber illegality  |
| International Tropical Timber Organisation (ITTO)                                       | Illegal logging refers to the removal of logs in a manner that is against the provisions of relevant laws of a particular country: i.e. national (or sub-national) laws.<br><br>Illegal trade can be domestic or international, or both, and involves not only national forest laws but also other relevant national laws and international laws, including laws on corporations, trading, banking, auditing, customs, taxes, etc.  |
| European Union, Regulation (EU) No 995/2  | ‘legally harvested’ means harvested in accordance with the applicable legislation in the country of harvest;<br>‘illegally harvested’ means harvested in contravention of the applicable legislation in the country of harvest;<br>‘applicable legislation’ means the legislation in force in the country of harvest covering the following matters: <ul style="list-style-type: none"> <li>• rights to harvest timber within legally gazetted boundaries,</li> <li>• payments for harvest rights and timber including duties related to timber harvesting,</li> <li>• timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,</li> <li>• third parties’ legal rights concerning use and tenure that are affected by timber harvesting, and</li> <li>• trade and customs, in so far as the forest sector is concerned.</li> </ul> |
| United States, Lacey Act  | “ <i>illegally sourced</i> ” is defined by the content of a sovereign nation’s own laws. The law applies equally to plants taken, harvested, transported, or exported in violation of the relevant laws of any U.S. state, territory, or tribal government, as well.  |
| Australia, Illegal Logging Prohibition Act 2012   | ‘ <i>illegally logged</i> ’, in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.  |
| Forest Stewardship Council  | Principle 1 of the FSC Principles and Criteria requires forest managers to comply with all applicable laws and regulations of the country, as well as   |

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|  | international treaties.  |
| Forest Legality Alliance                       | <p><i>'Illegal logging'</i> is the harvesting, transporting, processing, buying or selling of timber in violation of foreign, tribal, national or international laws. This definition also applies to harvesting wood from protected areas, exporting threatened plant/tree species, and falsifying official documents.</p> <p><i>'illegal wood'</i> is timber that is harvested, transported, bought or sold in contravention of foreign, tribal, national or international laws.</p> <p><i>'legal wood'</i>, timber that is harvested, transported, bought or sold in accordance with foreign, tribal, national or international laws.</p>   |
| Global Forest Trade Network (GTFN)/WWF/TRAFFIC | <p><i>Legally harvested</i> —Timber that was harvested:</p> <ul style="list-style-type: none"> <li>• Pursuant to a legal right to harvest timber in the forest management unit in which the timber was grown, and</li> <li>• In compliance with national and subnational laws governing the management and harvesting of forest resources.</li> </ul> <p><i>Legally traded</i> —Timber, or products made from the timber, that was</p> <ul style="list-style-type: none"> <li>• Exported in compliance with exporting country laws governing the export of timber and timber products, including payment of any export taxes, duties, or levies;</li> <li>• Imported in compliance with importing country laws governing the import of timber and timber products, including payment of any import taxes, duties, or levies or not in contravention of exporting country laws governing the export of timber and timber products, including payment of any export taxes, duties, or levies;</li> <li>• Traded in compliance with legislation related to the convention on international trade in endangered species (cites), where applicable.</li> </ul> <p><i>Legal right to harvest</i>—Authorization to harvest in the forest management unit</p> <ul style="list-style-type: none"> <li>• From the resource owner(s), and</li> <li>• Under a valid permit, license, or similar instrument issued pursuant to the laws and regulations governing the management and harvesting of forest resources.</li> </ul> <p><i>Illegal harvesting</i> - Timber cut or removed without the required license or in breach of a harvesting license or law. This includes logs that are stolen.</p> <p><i>Illegal logging (and related trade and corruption)</i>—Harvesting or trading of in violation of relevant national or sub-national laws, or access to forest resources or trade in forest products that is authorized through corrupt practices.</p> <p><i>Illegal trading</i> - Timber, or a product containing timber, bought, sold, exported, or imported and processed in breach of the laws, including laws implemented under the Convention on International Trade in Endangered Species.</p> |
| Rainforest Alliance                            | <p><i>Legal origin verification</i> signifies that a company has met the administrative requirements of permitting, planning, taxes or fees, and harvesting in defined areas only.</p> <p><i>Legal compliance</i> encompasses a broad range of laws on environmental protection, wildlife, water and soil conservation, harvesting codes and practices, worker health and safety, and fairness to communities.</p>   |

### 7.6.1 What is law, and which laws apply?

Understanding what is legal and which laws should or do apply is a significant hurdle to demonstrating legality. Frameworks that list laws as a 'checklist' may neglect to consider the intent of the law, the applicability of the law and the effectiveness of the law. Not only are laws frequently contested but they may also be contradictory and ambiguous making identification of 'legality' and 'illegality' difficult.

The cultural and social milieu in which laws are created and function must also be considered including who determines the laws and regulations and how well they reflect accepted social norms and values - their legitimacy. What may be 'illegal' to the government may be seen as not only 'legal' at the local level, but as a right or privilege under customary law. For example, customary law is often the *de facto* mediator of access to land and resources where statutory law has failed or is inaccessible. While the status of customary law is often tenuous under State law, there is an increasing emphasis in development programs on harmonizing the two 'institutions' and embracing legal pluralism. This in turn complicates the concept of legality further: is timber harvested in breach of customary law therefore illegal?

At the international level legality verification standards or frameworks, and the principles that lie behind them, are generally the products of consumer countries and may not be the norm in producer countries. What may be 'legal' to the producing country may be viewed as 'illegal' in the eyes of international donors or consumers, in as much because it is unpalatable as it is in breach of a law. Producer country laws that do not provide for 'international standards' of sustainable forest management (which are broad and include social, cultural and economic criteria, as well as environmental expectations), are still laws in that country. Consumer expectations about how forests 'should be' managed may not be reflected in law. Similarly something that is viewed as corrupt by a consumer country may be explained as 'the local way of doing business' in a producer country; corruption is rarely a discrete act, it involves social interactions and its seriousness is judged differently against legal and cultural norms by the perpetrators, beneficiaries and victims (for further discussion about culture and corruption see To *et al.* 2014; Larmour 2008, Larmour 2010 and Huffer 2005).

Consideration must also be given to the enforceability of the law and whether there are sufficient and effective legal institutions to arbitrate 'legality' and, where this is contested, whether there is access to justice to deal with acts of 'illegality'. Both formal and informal institutions can provide access to justice.

### 7.6.2 Limitations of Law Reform

Where governance and statutory law is viewed as inadequate to deliver the objective of sustainable forest management law reform is an often lauded solution. However, calls to create clear definitions of 'legal' and 'illegal activities' (see for example Brack 2003) are frequently complicated by desires to address socially unacceptable activities, which can be highly subjective. The, typically, international organisations which are driving measures for sustainable forest management and timber legality, are not independent of other interventions for rule of law reform nor divorced from broader development objectives which are also influenced by concepts that are presented as 'global norms' but which may not be universal ideals.

Meeting the requirements of the numerous international treaties, agreements and obligations, particularly those associated with economic development, provides much of the impetus for rule of law reform in Lao PDR. Failure to initiate reforms means taking a risk regarding the Government's domestic and international legitimacy. It is also politically advantageous to appear to move towards or stay within the boundaries of the rule of law, but what 'rule of law' looks like in Lao PDR may not ultimately meet international requirements. While the past absence of the 'Rule of Law' in Lao PDR is presented by the Government an obstacle to socio-economic development, the way rule of law is addressed may not entirely meet the expectations of rule of law advocates. The socio-political reality of Lao PDR may challenge the robustness of law reform interventions, in part because it is a single-party socialist republic that espouses Marxism and is governed by a communist politburo, but also because it has a plural legal system in which normative legal institutions continue to operate independently or semi-independently from the State.

Furthermore, while there has been an impressive and rapid development of legislation in Lao PDR the legislative and institutional complexity that has accompanied this legal transformation has created a situation in which a multitude of government agencies asserts their legal responsibilities. The convoluted and

sometimes contradictory legislation that has been created variously enables and constrains National, Provincial, District and Local authorities, creating 'gridlock' (see Katz 2010) and a sometimes seemingly unworkable governance environment. The perception may be that laws have failed to deliver their anticipated benefits, they lack legitimacy, are inaccessible, unknowable or unenforced, resulting in lack of compliance<sup>43</sup>. As a consequence pre-existing customary laws and institutions have been retained and continue to function as the *de facto* regulator of, amongst other things, access to land and forest.

Negotiating what is 'law' in such plural legal situations presents problems as well as opportunities for people, States and their international counterparts as they undertake law reform programs; different laws make competing claims of legitimacy and authority, they impose conflicting demands on norms and they have different styles and orientation. Where two or more of these meet there can be friction and the potential for competition can generate uncertainty for individuals or groups who cannot be sure in advance which legal regime will be applied in their situation. This is complicated further by the overlay of supra-state laws which are formalised in treaties to which States become signatories. While this legal diversity may create opportunities for the State, or individuals and groups within society who are well positioned to opportunistically select from among coexisting legal authorities to advance their aims, it also complicates law to such an extent that successfully navigating it becomes almost impossible for many, resulting in innocent non-compliance and illegality.

External measures to address legal issues may have un-intended consequences (or may be destined to fail), particularly where these become laden with issues they may not have originally been designed to address. The emergence of rights-based approaches within, for example, VPAs is an example of this. Following pressure from non-government organisations (NGOs) the EU Council confirmed that VPAs should, among other things "strengthen land tenure and access rights, especially for marginalised rural communities and indigenous peoples".<sup>44</sup> Whilst at face value this is not inherently a bad thing, a problem arises where interventions designed to promote one thing, run counter to other interventions. Thus, VPAs intended to facilitate the funding of capacity building and institutional investment that would allow countries to enforce forest law and capture revenue from planned exploitation of forest resources, are not necessarily focussed on rights based approaches to, for example, land tenure. Of particular difficulty is the increasing emphasis placed by advocates of rights-based approaches on customary tenure and how this is articulated within a contemporary legal apparatus which attempts to transform possibly complex, localised relationships into arrangements that are commensurable, predictable and knowable to outsiders.

Under all of these competing influences statutory law in Lao PDR continues to evolve into a complex framework with multiple, competing and sometimes contradicting instruments operating at various administrative levels. This complexity not only creates confusion, and the possibility of misinterpretation or misapplication of the law, but also facilitates opportunities for forum shopping allowing the 'choice of law' and providing multiple avenues for judicial response. Additionally the challenge to keep up with the drivers of law reform, creates a process of rapid succession in which delays to implementation of law may see the continued application of outdated subordinate instruments. The legal framework in Lao PDR is perpetuated by complex set of governance arrangements; and while efforts have and are being made to clarify and make transparent the responsibilities and rights of government agencies, inconsistencies persist in the interpretation and application of law. Consequently, while there are numerous laws, decrees, and regulations on land, plantations and forest management in Lao PDR, the reality is that 'legality' may not necessarily determine much in the way of governance, and failure to comply, resulting in illegal products, will be an unavoidable outcome.

The challenge, then, for Governments of timber producing countries, is to put in place a legal framework that meets its own national policies and strategies for economic development, poverty alleviation and forest management, is acceptable under international standards, treaties and norms and which is legitimate, accessible, practical and enforceable. The challenge for the developers of standards for legality verification or

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<sup>43</sup> See Ramcilovic-Suominen and Hansen (2012) and Ramcilovic-Suominen and Epstein (2012) regarding discussions on Forest Law compliance and why some laws are obeyed and other violated.

<sup>44</sup> See Duffield and Richards 2013 for a review of how VPAs have contributed to rights-based approaches to community forest management.

certification of sustainability is to be cognisant of the obstacles faced by Governments and producers as they attempt to access markets that are increasingly constrained by policies beyond their own control and to not embed in guidelines and standards requirements for legality where these create barriers and bottlenecks to effective participation. If markets for legal or sustainable wood are inaccessible to growers and others in the value chain, alternative markets will be sought, and if appropriate implementation or enforcement mechanisms are not in place or are ineffective, then new regulations decrees and laws will not achieve their anticipated outcomes.

Finally it is worth considering that the barriers to legal wood may not be associated with the legal institutional environment at all; but rather be socio-economic or cultural in nature. Reform that only focuses on only the institutional and formal legal environment, and which neglects the socio-economic context of everyday decision making by all actors in the value chain and the relationships between them may be unsuccessful.

## 8 Conclusions

The legal framework for forestry, plantations and timber production in the Lao PDR is extensive and complex. It has emerged in response to drivers of economic reform including for national development and poverty reduction, and international policies for development, environmental concern and law reform. A diversity of interconnected issues has created a regulatory environment that is difficult to navigate and to keep up-to-date, particularly when faced by a rapidly changing policy environment. National strategies clearly dictate support for plantation expansion, in response to deforestation and illegal logging in the natural forest estate; and the opportunity that plantations could provide smallholders in moving from subsistence to market-based production are well articulated. However, the current regulatory framework does not effectively enable this transition and new international drivers for legality assurance, which freeze unworkable regulatory frameworks at a moment in time, may serve to further alienate smallholder from some markets.

Bottlenecks in the value chain occur where complex, unclear or out-of date rules inhibit the process. Excessive regulatory complexity, with associated costs in time and money discourage participation, resulting in non-compliance; and while lack of compliance is generally associated with illegal activities, corruption, inequality and unsustainable resource use (Ramcilovic-Suominen and Hansen 2012), other factors may also be at play. Norms rather than coercive measures may impact the ability and willingness of individuals to comply with the law, and these need to be understood if a workable regulatory environment is to be created. This is true in as much for the individuals to whom the laws apply as the agents of their enforcement. These barriers are not, however, insurmountable.

For smallholder plantation growers, legal barriers to registering plantations have been identified as factors which limit their participation in, and the benefits they could derive from, the plantation timber value chain. In its current form the regulatory process for registration certainly acts as a disincentive for smallholder to enter into this process. Grower empowerment begins with transparency, understanding who pays what along the chain and within the existing regulatory processes costs are often inconsistent or hidden. However this study suggests that addressing one aspect of the legal value chain is unlikely to yield positive outcomes for growers, given the inefficiencies, bottlenecks and barriers throughout the value chain. In order to find workable solutions some inherent policy assumptions about the risks associated with smallholder plantations must be questioned and solutions will need to be tested against a set of criteria that will ultimately determine their effectiveness:

- Are the rules legitimate?
- Are the rules understandable?
- Are the rules fair?
- What are the adverse impacts?
- Are the rules defensible?
- Are they enforceable?
- How much does compliance cost the actors in the value chain?

- What are the budgetary impacts for the government?

These questions will be addressed as this project works to identify acceptable improved regulatory processes as well to understand the socio-economic process that influence smallholder uptake of legal registration requirements; and trial the implementation plantation owners and other actors in the smallholder teak plantation value chain in Lao PDR.

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## Appendix 1: Land use right certificates

| Document                                    | Land Use Rights  | Term  | Description   | Who can qualify | Issued By   | Legal Basis  |
|---|--|---|---|-----------------|---|--|
| Long term (permanent) title                 | <ul style="list-style-type: none"> <li>• Protect;</li> <li>• Use;</li> <li>• Usufruct;</li> <li>• Transfer;</li> <li>• Inherit;</li> <li>• Lease;</li> <li>• Exchange;</li> <li>• Sale</li> <li>• Collateral;</li> <li>• Compensation</li> </ul> | Valid for life of holder, unless transferred through sale or exchange or lost in Court. | <p>Non-forestland used for house or settlement, paddy or permanent agriculture.</p> <p>No title issued for natural forest.</p> <p>Titles have only been issued in urban areas.</p>                            | Lao Citizens    | Provincial or municipal LAD   | Land Law Article 49; Decree No 88/PM Art 16        |
| Land Survey Certificate (or Land Map Sheet) | <ul style="list-style-type: none"> <li>• Protect;</li> <li>• Use;</li> <li>• Manage;</li> <li>• Usufruct</li> <li>• Inherit;</li> </ul>  | Until cancelled or title is issued  | <p>Certifies land utilization rights assigned according to land Category; Non-forestland used for housing, permanent agriculture.</p> <p>No title shall be issued for land categorized as natural forest.</p> | Lao Citizens    | Provincial or District LAD  | Decree No 88/PM Art 16                             |
| Temporary Land Use Certificate              | <ul style="list-style-type: none"> <li>• Possess;</li> <li>• Restricted Use;</li> <li>• Manage;</li> <li>• Inherit;</li> </ul>   | 3 years   | Issued on the basis of LFAP for 3 years for specified developmental land use.   | Lao Citizens    | District government through the land use planning and land allocation process and request by villager | Land Law Article 40; Decree No 88/PM Art 16        |
| Land Development Certificate                | Evidence of land use   |   | Issued to certify the specified TLUC land use has occurred. Is required with TLUC on application for Land Title.  | Lao Citizens    | Agriculture and Forestry Sector   | Land Law Article 18 and 43; Decree No 88/PM Art 16 |
| Certificate of Land                         | Evidence of land use   |   | Document certifying the   | Lao Citizens    | PAFO  | Decree No 88/PM, Art                               |

|                                     |  |                            |  |  |  |                         |
|-------------------------------------|--|----------------------------|--|--|--|-------------------------|
| Ownership History                   |  |                            | acquisition of land which shows the historical evolution of land use.  |  |  | 16                      |
| Village Forest Management Agreement | <ul style="list-style-type: none"> <li>• Possess;</li> <li>• Restricted Use;</li> <li>• Limited Management</li> </ul>  | No term specified          | Natural forest zoned within village boundary as determined under the LFAP  | Village Forestry Unit  | District authorities through the land use planning and land allocation process | Forestry Law Article 83 |
| Lease or Concession                 | <ul style="list-style-type: none"> <li>• Possess;</li> <li>• Commercial Use;</li> <li>• Limited Management</li> </ul>  | 20-75 years                | Any type of land including natural forest refer various Acts   | Individual; household; Domestic and foreign investors; the State or social organisations | DOIC with approval by sectoral agencies  | Chapter 2, Land Law.    |
| Land tax receipt                    | <ul style="list-style-type: none"> <li>• Evidence of payment of land tax.</li> <li>• Not inheritable</li> <li>• Not for sale;</li> <li>• Not for collateral</li> </ul> | Annual                     | Official Receipt for Land tax  | Individual; household; Domestic and foreign investors; the State or social organisations | Department of Finance (Previously DOL)   | Land Law, 49            |
| Land Tax Declaration (LTD) (No.1)   | <ul style="list-style-type: none"> <li>• Not inheritable</li> <li>• Not for sale;</li> <li>• Not for collateral</li> </ul>   | Annual                     | Land tax calculation   | Individual; household; Domestic and foreign investors; the State or social organisations | Department of Finance (previously DOL)   | Land Law, 49            |
| Provisional Land Certificate        | <ul style="list-style-type: none"> <li>• Not for sale</li> <li>• Not for collateral</li> <li>• Can be leased for up to 5 years</li> </ul>                              | Until Land Title is issued | Issued when Land Title cannot be issued due to uncertain information. After 10 years of occupation can apply for permanent Land Title. | Individual; household; Domestic and foreign investors; the State or social organisations | PONRE (previously DOL)   |                         |
| Sources                             | Decree No 88/PM, GTZ 2004, ADB 2005  |                            |  |  |  |                         |

## Appendix 2: Laws and Legal Instruments

The following Laws and legal instruments were consulted in the writing of this report.

| Number        | Instrument  | Sector          | Year | Supersedes       | Superseded by | Dependent on or pursuant to                                 |
|---------------|---|-----------------|------|------------------|---------------|---|
| No. 105/PO    | Decree on the Promulgation of the Law on Agriculture                                  | Agriculture     | 1998 |                  |               | the Constitution; No. 01-98/NA 1998; No. 13/NASC 1998       |
| No. 03/NA     | Law on Livestock Production and Veterinary Matters                                    | Agriculture     | 2008 |                  |               |   |
| No. 01-98/NA  | No. 01-98/NA Law On Agriculture   | Agriculture;    | 1998 |                  |               |   |
| No. 03/NA     | Anti-Corruption Law 2005  | Anti-Corruption | 2005 |                  |               | The Constitution; No 26/NA 2005; No 07/NCSA 2005            |
| No. 45/PO     | Decree on the Promulgation of the Law and Anti-Corruption                             | Anti-Corruption | 2005 |                  |               | the Constitution; No. 26/NA 2005; No. 07/SCNA 2005          |
| No. 02/NA     | Law on State Inspection, 2007   | Anti-Corruption | 2007 |                  |               |   |
| No. 115/PM    | Decree on Associations 2009   | Associations    | 2009 |                  |               |   |
| No. 05/NA     | Audit Law   | Audit           | 2007 |                  |               |   |
| No. 01/PO     | Law on the State Budget   | Budget          | 2006 | No 05-94/NA 1994 |               | The Constitution; No 02/NA 2006; 01/NASC 2007               |
| No. 2348/MOF  | Decision of the Minister on Public Administrative Budget Expenditure Norms (Improved) | Budget          | 2008 | No 2397/MOF 2003 | No 0008/MOF   |   |
| No. 0008/MOF  | Minister's Decisions on Determination of Public Budget Expenses, 2010                 | Budget          | 2010 | No 2348 MOF 2008 |               | No 02/NA 2006; No 267/PM 2006; No 25/PM 2008; No 80/PM 2007 |
| No. 41/PO     | Decree On the Promulgation of the Contract Law, 1990                                  | Business        | 1990 |                  |               | No 04/PSA 1998; No 02-90/PSA 1990                           |
| No. 12/90/PSA | Law on Enterprise Accounting  | Business        | 1990 |                  | No 01/NA 2007 |   |
| No. 02/90     | The Contract Law  | Business        | 1990 |                  |               | No 04/PSA 1998; No 02-90/PSA 1990                           |
| No.12-90/APS  | Decree on the promulgation of the Law on Enterprise Accounting                        | Business        | 1994 |                  | No 01/NA 2007 |   |

| Number              | Instrument  | Sector                | Year | Supersedes      | Superseded by           | Dependent on or pursuant to  |
|---------------------|---|-----------------------|------|-----------------|-------------------------|--|
| No. 06/94           | Law on Bankruptcy of Enterprises  | Business              | 1994 |                 |                         |  |
| No. 005/94          | The Business Law 1994   | Business              | 1996 |                 | No 11/NA Enterprise Law |  |
| No. 42/PM           | Decree on the Promotion and Development of Small and Medium Sized Enterprises, 20 April 2004  | Business              | 2004 |                 |                         | No 02/NA 2003; No 03/94 1994; No 149/IH 2004                             |
| No. 29/PO           | Decree on the Promulgation of the Law on the Amendment of the Enterprise Law 2005   | Business              | 2005 |                 |                         | The Constitution; No 55/NA 2005; No 18/NASC 2005                         |
| No. 11/NA           | Enterprise Law, 2005  | Business              | 2005 | No 005/SPA 1994 |                         | The Constitution; No 55/NA 2005; No 18/NASC 2005                         |
| No. 146/PO          | Decree on the Promulgation of the Law on Accounting   | Business              | 2007 |                 |                         | The Constitution; No 40/NA 2007; No 12/SCNA 2007                         |
| No. 12/NA           | Law on Trade Unions   | Business              | 2007 |                 |                         |  |
| No. 228/PM          | Decree on the Origin of Import and Export Goods   | Certificate of Origin | 2010 | No 97/PO 1992   |                         | N 02/NA 2003; No 05/NA 2005  |
| No. 1031/MOIC.DIMEX | Instruction on the implementation of Decree on the origin of Import and export of Goods   | Certificate of origin | 2010 |                 |                         | No 228/PM 2010   |
| No. 2387/MOIC.DIMEX | Decision on Authorizing the Lao National Chamber of Commerce and Industry (LNCCI) to issue and administrate the certificate of origin (CO) for goods/products under the preferential tariffs rates  | Certificate of Origin | 2011 |                 |                         | No 228/PM 2010; No 0937/LNCCI 2010                                       |
| No. 1097/DOF        | Department of Forestry guideline on Chain of Custody (CoC) Control of transportation of timber harvested from production forest management areas Department of Forestry, Lao PDR, 2007 revised 2010 | Chain of Custody      | 2010 |                 |                         | No 13/NA 2005 (Superseded Forestry Law); No 59/PM 2002; No 0221/MAF 2000 |
| No. 0962 MAF        | Guideline on Chain of Custody (CoC) Control of Timber Harvesting & Transport in Production Forest (2010)  | Chain of Custody      | 2010 |                 |                         |  |

| Number              | Instrument  | Sector             | Year | Supersedes | Superseded by | Dependent on or pursuant to                                   |
|---------------------|---|--------------------|------|------------|---------------|---|
| No. /               | MOIC Decision on the procedures regarding Chain-of-Custody in Timber Sales and Transport (2010)   | Chain of Custody   | 2010 |            |               |   |
| No. 0377/MAF        | MAF Directive/Instruction, Customary Use of Forest Resources  | Community Forestry | 1996 |            |               |   |
| No. _____/SUFORD.04 | Guidelines and procedures in forming a village forestry committee (VFC)   | Community Forestry | 2004 |            |               |   |
| No. 192/PM          | Decree on the Compensation and Resettlement of the Development Project 2005   | Compensation       | 2005 |            |               | 02/NA 2003; No 1116/STEA 2005                                 |
| No. 2432/STEA       | Regulations for Implementing Decree 192/PM on Compensation and Resettlement of People Affected by Development Projects  | Compensation       | 2005 |            |               | No 192/PM 2005; No 68/PM 1999                                 |
| No. /               | Technical Guidelines on Compensation and Resettlement in Development Projects   | Compensation       | 2005 |            |               |   |
| No. 135/PM          | Decree on State Land Lease or Concession 2009   | Concessions        | 2009 |            |               | No 02/NA 2003; No 04/NA 2003; No 06/NA 2007; No 810/NLMA 2008 |
| No. 02/PDR          | Statute on Concession Rental, 2009  | Concessions        | 2009 |            |               |   |
| No. 20/PMO.NLMA     | National Land Management Authority Instruction As Regards the Implementation of Decree on State-owned Land Approval for Lease or Concession   | Concessions        | 2010 |            |               | No 67/PM 2004; No 135/PM 2009                                 |
| No. 13/PM           | Prime Ministers Order Regarding suspension of consideration and approval for new investment projects in connection to mineral ore exploration & survey, rubber and eucalyptus Plantation in whole country, 2012 | Concessions        | 2012 |            |               |   |
| No. 25/NA           | The Constitution of Lao PDR   | Constitution       | 2003 |            |               |   |
| No. 136/PM          | Decree on Cooperatives 2010   | Cooperatives       | 2010 |            |               | No 02/NA 2003; No 11/NA 2005; No 1293/TD 2007                 |
| No. /MAF            | MAF Strategy on Developing Farmer Associations and Cooperatives   | Cooperatives       | 2010 |            |               |   |

| Number         | Instrument  | Sector           | Year | Supersedes       | Superseded by | Dependent on or pursuant to                      |
|----------------|---|------------------|------|------------------|---------------|--|
| No. 05/NA      | Customs Law, 2005   | Customs          | 2005 | No 04-94/NA 1994 |               | The Constitution; No 28/NA 2005; No 09/NASC 2005 |
| No. 47/PO      | Decree on the promulgation of the Law on Customs  | Customs          | 2005 |                  |               | The Constitution; No 28/NA 2005; No 09/NASC 2005 |
| No. 362/PM     | Decree On The Implementation of the Customs Law 2007  | Customs          | 2007 |                  |               |  |
| No. 01/PM      | Instruction of the Prime Minister regarding the policies to building the province to become the strategic unit, the district as budget-planning unit and the village as the implementation unit 2000                                      | Decentralisation | 2000 |                  | No.16/PM 2012 |  |
| No. 13/PM      | Supplement to the Prime Minister's Order On establishing of development villages and village clusters, 2008   | Decentralisation | 2008 | No 09/PM 2007    |               |  |
| No. 03/PBP     | Instruction on the transformation of village to be development unit, and large village into small township in rural area  | Decentralisation | 2011 |                  |               |  |
| No. 7536/MONRE | Decision On the test of three developments: Develop a province to be a strategic unit; develop a district to be a strong unit in all aspects and make a Village to be a development unit in the natural resource and environmental sector | Decentralisation | 2012 |                  |               |  |
| No 16/PM       | Ordinance on Piloting the Formulation of Provinces as Strategic Units, Districts as Enhanced Capacity Units and Villages as Development Units   | Decentralisation | 2012 | No. 01/PM 2000   |               |  |
| No. 03/CPP     | Resolution of Politburo on Formulation of Provinces as Strategic Units, Districts as Comprehensively Strong Units and Villages as Development Units.  | Decentralisation | 2012 |                  |               | No 01/CPC 2011                                   |
| No. 285/PM     | Decree on Poverty and development Criteria 2010-2015, 2009  | Development      | 2009 |                  |               |  |

| Number              | Instrument  | Sector                     | Year    | Supersedes               | Superseded by      | Dependent on or pursuant to                        |
|---------------------|---|----------------------------|---------|--------------------------|--------------------|--|
| No. /               | Decree on the Implementation of the Environment Protection Law                    | Environment                | Unknown |                          |                    |  |
| No. 164/PM          | Decree Stating National Forestry Reservation Over the Country                     | Environment                | 1993    |                          |                    |  |
| No. 02-96/NA        | Water and Water Resources Law   | Environment                | 1996    |                          |                    |  |
| No. 02-99/NA        | Environmental Protection Law 1999   | Environment                | 1999    |                          |                    | The Constitution; No 02-99/NA 1999; No 04/SC 1999  |
| No. 02-99/NA        | The Law on Environmental Protection   | Environment                | 1999    |                          |                    |  |
| No. 1770/STEA       | Regulation on Environmental Assessment  | Environment                | 2000    |                          |                    |  |
| No. /STEA/PMO       | Regulation on Environmental Standards   | Environment                | 2002    |                          |                    | The Constitution; No 02-99/NA 1999; No 68/PMO 1991 |
| No. 07/NA           | Wildlife and Aquatic Law 2007   | Environment                | 2007    |                          |                    |  |
| No. 09/PO           | Decree On the Promulgation of the Environmental Protection Law 1999               | Environment                | 2008    |                          |                    | The Constitution; No 02-99/NA 1999; No 04/SC 1999  |
| No. 2734/PMO.WREA   | Agreement on the national environmental standards                                 | Environment                | 2009    |                          |                    |  |
| No. 112/PM          | Decree on Environmental Impact Assessment 2010                                    | Environment                | 2010    |                          |                    | No 02/NA 2003; No 02-99/NA 1999                    |
| NO. 008/2012        | Table of tree list of prohibited, special and controlled species                  | Environment;<br>Harvesting | 2012    |                          |                    |  |
| No. 0807/MCT        | Provision on the Implementation and Administration of the Lao-Viet Border Markets | Export                     | 1999    |                          |                    | No 24/PM 1999                                      |
| No. 0948/MOC.FTP    | Provision on Small Export Business at Borders 2001                                | Export                     | 2001    | No 465/MOCT 1993         |                    | No 24/PM 1999                                      |
| No. 1037/STEA-PMO   | Regulation On the Registration of Product and Goods                               | Export                     | 2002    | Updates No 228/STEA 1996 |                    |  |
| No. 1887/MOIC.DIMEX | Note on Purchase, production and use of wooden products from plantations          | Export                     | 2008    |                          | No 1791/MOIC.DIMEX |  |

| Number             | Instrument   | Sector | Year | Supersedes   | Superseded by     | Dependent on or pursuant to                                      |
|--------------------|--|--------|------|--|-------------------|--|
| No. 0666/CD        | Provision on Roles, Responsibilities and Rights of Divisions, Regional Customs and Customs Checkpoints   | Export | 2008 | No 7153/CD; No 7154/CD; No 7156/CD; No 7157/CD 2001; No 0101/CD 2003; No 0235/CD |                   | No 80/PM 2007; No 2498/MOF 2007; N2008                           |
| No. 3097/DIE       | Regarding documents for the export of plantation timber  | Export | 2008 |  | No.1791/MIC.DIMEX |  |
| No. 023/PM         | Agreement on giving the right to provinces to export controlled wood 1,2,3 sawn wood and stem  | Export | 2009 |  |                   | No 17/PM 2002  |
| No. 0491/MOF       | Guidance of the Ministry of Finance on the Implementation of the Customs Law No. 05/NA, dated 20 May 2005  | Export | 2009 |  |                   | No 05/NA 2005; No 362/PMO 2007; No 80/PM 2007                    |
| No. 2273/CD        | Notification Determination of Customs value of exported wood products as the basis of calculation of export royalties, 2009  | Export | 2009 |  |                   | No 05/NA 2005; No 159/GS 2008; No 23/PM 2009                     |
| No. 0403/CD        | Notification on Exemption of Determination of Customs value of exported wood products for basis of calculation of export royalties 2009  | Export | 2009 |  |                   | No 05/NA 2005; No 230/MOF 1995; No 1415/MOIC 2008                |
| No. 1226/PMO-STE A | Regulation On the Quality Inspection of Goods  | Export | 2009 |  |                   |  |
| No. 1324/CD MOF    | Additional Notification Exportation of timber, saw log (sawn wood), semi-finished wood products (home furniture) shall be consolidated at the Customs Department in order to issue the notification on the implementation. | Export | 2010 |  |                   | No 23/PM 2009; No 17/PM 2009                                     |
| No. 363/PM         | Decree on the Notification and Enquiry of Trade related Information  | Export | 2010 |  |                   | No 02/NA 2003; No 1508/MOIC.FTPD 2010                            |
| No. 1696/CD        | Instruction on Application of ASEAN Harmonized Customs Declaration Document (ACDD)   | Export | 2010 |  |                   | No 05/NA 2005; No 362/PM 2007; NO 0603/MOF 2010; No 1695/CD 2010 |
| No. 0032/MAF       | Notice concerning the handling of a mandate to PONRE to be an organization to ask for  | Export | 2010 |  |                   | No 17/PM 2002  |

| Number                              | Instrument  | Sector | Year | Supersedes              | Superseded by     | Dependent on or pursuant to                                    |
|-------------------------------------|---|--------|------|-------------------------|-------------------|--|
|                                     | permission to export timber logs and process wood from the plantation areas to abroad providing that they are not kinds of prohibited or special woods  |        |      |                         |                   |  |
| No. 0086/MAF                        | Notice concerning the prohibition of collecting and selling plant species, nursery trees , trees including stumps & roots for decoration as well as the special and prohibited tree species to abroad | Export | 2010 |                         |                   |  |
| No. 284/TSS                         | Notification on the authorization of relevant Provincials departments to approve the exportation of logs and processed timber from plantation which are not prohibited and special species.           | Export | 2010 |                         |                   | No 17/PM 2009; No 2329/IC.MIC 2009                             |
| No. 2857                            | Announcement on the Amendment of Notification No. 1904/MOIC.DIMEX, dated 30/9/2011 regarding the documents required for exporting the finished wooden products  | Export | 2011 |                         |                   |  |
| No. 114/GOL                         | Decree on Import and Export of Goods, 2011  | Export | 2011 | No 205/PM 2001          |                   | No 02/NA 2003; No 11/NA 2005; No 05/NA 2005; No 0547/MOIC 2011 |
| No. 1904/MOIC.DIMEX (Could be 1940) | Notification on Procedure to issue import and export license for Timber and timber products, 2011   | Export | 2011 | No 1601/MOIC/DIMEX      |                   | No 17/PM 2009; No 0395/MOIC 2011; No 0826/MOIC.DIMEX           |
| No. 0826/MOIC.DIMEX                 | Notification on Automatic and non-automatic Import and Export Licensing   | Export | 2011 |                         | No 0076/MOIC 2012 |  |
| No. 0973/MOIC.DIMEX                 | Notification On Prohibited Goods on Import or Export  | Export | 2011 | No 2151/MOIC.DIMEX 2009 |                   | No 188/PM 2006; No 180/PM 2009; No 114/GOL 2011                |
| No. 002/OP                          | Edict of the President of Lao PDR On List of Goods and Export Duty Rate, 2012   | Export | 2012 |                         |                   | The Constitution; No 05/NA 2005; No 01/NASC 2012               |
| No. 25/PM                           | Edict on the list of Goods and Export Duty rates  | Export | 2012 |                         |                   | The Constitution; No 05/NA 2005; No 01/NASC 2012               |

| Number              | Instrument   | Sector                  | Year | Supersedes   | Superseded by | Dependent on or pursuant to   |
|---------------------|--|-------------------------|------|--|---------------|---|
| No. 10503/CD        | Instructions for Detailed Customs Declaration by the ASYCUDA system  | Export                  | 2012 |  |               | No 04/NA 2011; No 1282/MOF 2012; No 4205/Customs 2012                     |
| No. 0076/MOIC.DIMEX | Notification on goods subject to automatic and non-automatic import or export licensing  | Export                  | 2012 | No 0826/MOIC.DIMEX   |               | No 522/PM 2011; No 144/GOL 2011; No 180/PM 2009                           |
| No. 03471/CD        | An additional instruction on the automated system for Customs Declaration with the ASYCUDA   | Export                  | 2013 |  |               |   |
| No. 04170/CD        | Guidance for the review of Customs Declaration with reference to 01470   | Export                  | 2013 |  |               |   |
| No. 1765/MOF        | Order on Paying more attention on timber export to collect revenue to the government budget in an accurate and timely manner                           | Export, Duties          | 2013 |  |               | No 04/NA 2011; No 17/PM 2009; No 47/MC 1989                               |
| No. 059             | Request for review of the payment of Royalties in order to reduce the expenses for exporting rattan baskets from Khamkeut district to European markets | Export, NTFPs           | 2011 |  |               | No 126/NCCI 2011; No 0652/BXY 2010  |
| No. 1791/MOIC.DIMEX | Procedure to issue import and export license for plantation timber   | Export; Plantations     | 2011 | No 0484/MOIC.DIMEX; No 1887/MOIC.DIMEX 2008; No 1862/MOIC.DIMEX 2008; No.3097/DIE 2008 |               | No 17/PM 2008; No 284/GS 2012; No 0395/MOIC 2011; No 0826/MOIC.DIMEX 2011 |
| No. 0395/MOIC       | Notice on elimination of obstacles which cause difficulty to the circulation of goods, 2011  | Export; Transport       | 2011 |  |               | No 2215   |
| No. 1063/MAF        | Agreement on the organization and operation of the National Agriculture and Forestry Extension Service, 2007   | Extension               | 2007 | No 0685/MAF.DP 2001  |               |   |
| No. 27/PMO          | Decree on Declaration of 8 national production forest areas in 4 province under SUFORD Project, 2006   | Forest Allocation       | 2006 |  |               |   |
| No. 38/PM           | Decree on the Forest and Forest Resource Development Fund, 2005  | Forest Development Fund | 2005 |  |               |   |
| No. 117/CCM         | Decree on the Management and Use of Forests and Forestland   | Forest Management       | 1989 |  |               |   |

| Number       | Instrument  | Sector            | Year | Supersedes                                    | Superseded by               | Dependent on or pursuant to  |
|--------------|---|-------------------|------|---|-----------------------------|--|
| No. 169/PM   | Decree on the Management and Use of Forest Land, 1993   | Forest Management | 1993 |   | Forestry Law 1996           |  |
| No. /NA      | Forestry Law  | Forest Management | 1996 | Decree No. 169/PM 1993;<br>Decree 186/PM 1994 | Forestry Law No. 06/NA 2007 |  |
| No. 0822/AF  | Instruction on Land-Forest Allocation for Management and Use, 1996  | Forest Management | 1996 |   |                             | No 99/PM 1992; 186/PM 1994; 169/PM 1993; No 22/PCM 1989; No 03/PM 1996 |
| No. 59/2002  | Decree On Sustainable Management Of Production Forest Areas, 2002   | Forest Management | 2002 |   |                             |  |
| No. 2156/DOF | Department of Forestry guideline on Production forest management planning, 2006   | Forest Management | 2006 |   |                             | No 0108/MAF 2005   |
| No. 06/NA    | Forestry Law, 2007 (under review)   | Forest Management | 2007 | No 13/NA 2005                                 |                             |  |
| No. 0105/MAF | Guideline concerning the implementation of the Prime minister order number 17/PM., dated on 22/09/2008 concerning the enhancement of stringency in managing, preserving forest and the coordination in the management of forest and Timber business | Forest Management | 2008 | No 0174/MAF 2007                              |                             | No 17/PM 2008  |
| No. 0111/MAF | MAF Minister's Order Regarding the Enhancement of Forest Regeneration in the Country Wide   | Forest Management | 2008 |   |                             |  |
| No. 17/PM    | Order of the Prime Minister on Strengthening the Forest Management, Protection and the Coordination of management Forest and Forestry Business  | Forest Management | 2008 | No 09/PM 2008                                 |                             |  |
| No. 0051/MAF | Decision of the Minister regarding the regeneration of forest   | Forest Management | 2009 |   |                             |  |
| No. 333/PM   | Decree on Protection Forests, 2010  | Forest Management | 2010 |   |                             | No 02/NA 2003; No 06/NA 2007;  |

| Number             | Instrument  | Sector                         | Year | Supersedes                    | Superseded by | Dependent on or pursuant to                      |
|--------------------|---|--------------------------------|------|-------------------------------|---------------|--|
| No. /              | Guidelines on Protection Forest Management and Planning   | Forest Management              | 2013 |                               |               |  |
| No. 0116/MAF       | Decision on Principles for measuring and grading logs, stumps and swelling part of the trunk - 2007   | Forest Management ; Harvesting | 2007 | No 0060/MAF 2003              |               | No 06/NA 2008; No 13/PM 2006                     |
| No. 60/PO          | Decree on the Promulgation of the Law on Local Administration   | Governance                     | 2003 |                               |               | The Constitution; No 48/NA 2003; No 24/NASC 2003 |
| No. 34/PO          | Decree on the Promulgation of the Law on the Government of the Lao PDR  | Governance                     | 2003 |                               |               | The Constitution; No 27/NA 2003; No 19/NASC 2003 |
| No. 47/NA          | Law on Local Administration   | Governance                     | 2003 |                               |               |  |
| No. ____/SUFORD.04 | Notes on Guidelines for the Establishment and Operation of Forest Management Unit (FMU) under DAFO  | Governance                     | 2004 |                               |               |  |
| No. 418/PM         | Decree On the organization and mobilization of the Ministry of Agriculture and Forestry, 2007   | Governance                     | 2007 | No 89/PM 1999                 | No. 262/PM    | No 02/NA 2003;                                   |
| No. 435/PM         | Decree on Establishment and Activities of the Ministry of Natural Resources and Environment   | Governance                     | 2011 | No 146/PM 2007; No 67/PM 2004 |               | No 02/NA 2003; No 107/PD 2011;                   |
| No. 3121/MONRE     | Decision regarding the Organization and Activities of the Department of Forest Resource Management  | Governance                     | 2012 |                               |               |  |
| No. 262/PM         | Decree on Organization and Function of Ministry of Agriculture and Forestry   | Governance                     | 2012 | No418/PM 2007                 |               | No 02/NA 2003; No 107/P 2011;                    |
| No. 2233/MPI       | Instructions On Piloting of Formulation of Provinces as Strategic Units, Formulations of District as Comprehensive Strong Units and Villages as Development Units of Planning and Investment Sector | Governance                     | 2012 |                               |               |  |
| No. 32/PM          | Prime Minister's Decree On adoption Meeting Minute for National Forest Conference on Forest management, Forest Inspection and Forest  | Governance                     | 2012 |                               |               |  |

| Number              | Instrument   | Sector                | Year | Supersedes       | Superseded by | Dependent on or pursuant to   |
|---------------------|--|-----------------------|------|------------------|---------------|---|
|                     | business on 25th-26th January 2012   |                       |      |                  |               |   |
| No. 02/NA           | Law on the Government of Lao PDR   | Government            | 2003 | No 01-95 1995    |               | The Constitution; No 27/NA 2003; No 19/NASC 2003                              |
| No. 67/PM           | Decree on Logging Ban  | Harvesting            | 1991 |                  |               |   |
| No. ____/3802 LA.04 | Guidelines and Procedures for Tree Marking and vine cutting  | Harvesting            | 2004 |                  |               |   |
| No. /DOF            | Guideline on Monitoring the implementation of a Code of Logging Practice: an operational field guide for forest managers | Harvesting            | 2006 |                  |               |   |
| No. _ /DOF          | Guideline on Monitoring the implementation of a Code of Logging Practice: an operational field guide for forest managers | Harvesting            | 2006 |                  |               |   |
| No. 0182/MAF        | Agreement on establishment and management of timber harvest units and enterprises  | Harvesting            | 2009 |                  |               | No 06/NA 2007; No 10/NA 2007; No 11/NA 2005; No 148/PO 2007                   |
| No. 0080/MAF        | Decision on Procedures for Importation, Management and Utilization of Chainsaw [Wood-cutting machine], 2012              | Harvesting            | 2012 | No 0005/MAF 2012 |               | No 06/NA 2007; No 11/NA 2005; No 114/GOL 2011; No 180/PM 2009; No 148/PM 2007 |
| No. 0046/MAF        | Notification on allocation and harvesting plan for Rattan in Bolikhamxay Province  | Harvesting, NTFP      | 2012 |                  |               | No 17/PM 2008; No 0552/PAFO 2012; No 0236/DoF 2012                            |
| No. 180/PM          | Decree on the Goods Import Licensing Procedures  | Import                | 2009 |                  |               | No 02/NA 2003; No 1318/MOIC.DIEX 2009   |
| No. 0451/MOIC.DIMEX | Decision on the Procedure for Timber Import 2012   | Import                | 2012 |                  |               | No 114/GOL 2011; No 180/PM 2009   |
| No. 06/PDR          | Decree on the Promulgation of the Law on Intellectual Property   | Intellectual Property | 2008 |                  |               | The Constitution; No 03/NSCA 2008   |
| No. 73/PM           | Decree on Surveying, Aerial Photography and Mapping activities, 1995   | Inventory             | 1995 |                  |               |   |
| No. _ /NAFRI        | Guidelines On Establishment And Maintenance Of The Permanent Sample Plots For Tree                                       | Inventory             | 2005 |                  |               |   |

| Number          | Instrument   | Sector          | Year  | Supersedes                     | Superseded by  | Dependent on or pursuant to                      |
|-----------------|--|-----------------|-------|--------------------------------|----------------|--|
|                 | Measurement, NTFP And Biodiversity Monitoring Purposes In Production Forest Areas      |                 |       |                                |                |  |
| No. 0108.MAF.05 | Regulation of Forest Inventory;  | Inventory       | 2005  |                                |                | No 01/96 1996; No 59/PM 2002; No 89/PM           |
| No. 73/PO       | Decree on the Law on the promulgation of the law on Foreign Investment                 | Investment      | 2004  |                                |                | The Constitution; No 11/NA 2004; No 27/NASc 2004 |
| No. 11/NA       | Foreign Investment Law   | Investment      | 2004  |                                | No. 02/NA 2009 |  |
| No. 10/NA       | Law on the Promotion of Domestic Investment  | Investment      | 2004  |                                | No. 02/NA 2009 |  |
| No. /DOF        | Instruction on feasibility study of industrial tree plantation and NTFP investment     | Investment      | 2007? |                                |                |  |
| No. 02/NA       | Investment Promotion Law 2009  | Investment      | 2009  | No 10/NA 2004; No 11/NA 2004   |                |  |
| No. 443/PM      | Decree on Special Economic Zone and Specific Economic Zone                             | Investment      | 2010  |                                |                | No 02/NA 2003; No 02/NA 2009                     |
| No. 119/PM      | Decree on the Implementation of the Investment Promotion law                           | Investment      | 2011  | No 300/PM 2005; No 301/PM 2005 |                | No 02/NA 2003; No 02/NA 2009; No 2733/MPI 2010   |
| No.119/PM       | Decree on the Implementation of the Investment Promotion Law                           | Investment      | 2011  | No 300/PM 2005; No 301/PM 2005 |                | No 02/NA 2003' No 02/NA 2009; No 2733/MPI 2010   |
| No. 06/NA       | Labour Law (Amended) and Decree 05/PO 2007   | Labour          | 2006  | No 002/NA 1994                 |                | The Constitution; No 06/NA 2006; No 05/NASC 2007 |
| No. 99/PM       | Decree concerning land, 1992   | Land allocation | 1992  |                                |                |  |
| No. 61/PO       | Decree on the Promulgation of the Amended Land Law, 2003                               | Land Allocation |       |                                |                |  |
| No. /           | Example Application for Land Use Right Lease   | Land Allocation |       |                                |                |  |
| No. /MFA        | Example Land Use Contract  | Land Allocation |       |                                |                |  |
| No. 0429/AF     | Provisions on the Rights and Duties in Forest Resource Management at the Village level | Land Allocation | 1992  |                                |                | 1st National Conference 1989; No 34/PM 1991      |
| No. 191/PM      | Decree relating to Land Titling Fees   | Land            | 1994  |                                |                |  |

| Number                              | Instrument  | Sector                     | Year       | Supersedes                                 | Superseded by | Dependent on or pursuant to                                   |
|-------------------------------------|---|----------------------------|------------|--|---------------|---|
|                                     |   | Allocation                 |            |  |               |   |
| No. 03/PM                           | Instruction on the continuation on implementing land management and land-forest allocation                              | Land Allocation            | 1996       |  |               | No 99/PM 1992; No 186/PM 1994                                 |
| No. 09/NA                           | Law on State Assets, 2002   | Land Allocation            | 2002       |  |               | The Constitution; No 72/NA 2002; No 06/SC 2002                |
| No. 04/NA                           | Land law 2003   | Land allocation            | 2003       | No 01/97 1997                              |               | The Constitution; No 48/NA 2003; No 24/NASC 2003              |
| No. 2101NLMA.DLPI; No 211/NLMA.DLPI | Letter to AUSAID/World Bank with respect to Registration of legal transactions relating to land                         | Land Allocation            | 2007       |  |               | No 04/NA 2007   |
| No. 1040/PMO.NLMA                   | Notification on Land Title and Land Transaction   | Land Allocation            | 2007       |  |               | No 04/NA 2007   |
| No. 88/PM                           | Decree On the Implementation of the Land Law, 2008  | Land Allocation            | 2008       | No 101/PM 2005                             |               | No 02/NA 2003; No 04/NA 2003; No 169/NLMA 2007                |
| No. 3204/PMO.NLMA                   | Instruction on Collection of Fees and Service Charges by Land Management Sector, 2008                                   | Land Allocation            | 2008       | No 498/PMO.NLMA 2008; No 499/PMO.NLMA 2008 |               | No 67/PM 2004; No 03/PO 2008; No 88/PM 2008                   |
| No. /PMO.NLMA                       | Instruction on the Management of State and Communal Land  | Land Allocation            | after 2008 |  |               |   |
| No. 1668/NLMA                       | Instruction on the Use of New Formats of Land Titles and New Registration Book  | Land Allocation            | 2008       |  |               |   |
| No. 564/NLMA                        | Ministerial Instructions on Adjudications Pertaining to Land Use and Occupation for Land Registration and Titling, 2007 | Land allocation; mediation | 2007       | No 997/MOF 1998; No 998/MOF 1998.          |               | No 04/NA 2003; No 01-90/NA 1990; No 06/PM 2007; No 67/PM 2004 |
| No. 302/MOF                         | Additional Explanation and Instruction on the Implementation for Decree on Taxation of Land                             | Land Tax                   | 1993       |  |               |   |
| No. 50                              | Decree on Land Tax  | Land Tax                   | 1993       | No 47/PMO (47/CCm) 1989                    | No. 01/PO     | The Constitution; No 99/PM 1992; No 47/CCM 1988;              |
| No. 267/MP                          | Guide on the Implementation of Decree No. 50/PM 1993 on Land Tax  | Land Tax                   | 1993       |  |               |   |

| Number              | Instrument   | Sector                     | Year | Supersedes        | Superseded by | Dependent on or pursuant to   |
|---------------------|--|----------------------------|------|-------------------|---------------|---|
| No. 01/PO           | Decree on Land Tax   | Land Tax                   | 2007 | No 03/PO 2000     |               | The Constitution; No 04/NA 2003; No 03/NA 1999; No 02/NA 2006; No 03/NA 2003; No 08/NC 2007 |
| No. 19/NA           | Law on Making Legislation  | Law                        | 2012 |                   |               |   |
| No. 62/PO           | Law on the People's Court  | Mediation                  | 2003 |                   |               |   |
| No. 64/PO           | Law on the Public Prosecutor   | Mediation                  | 2003 |                   |               |   |
| No. 35/PDR          | Law on Civil Procedure   | Mediation                  | 2004 | No 09-90/SPA 1990 |               | The Constitution; No 02/NA 2004; No 14/NASC 2004  |
| No. 34/PO           | Law on Criminal Procedure  | Mediation                  | 2004 | No 30/SPA 1989    |               | The Constitution; No 01/NA 2004; No 13/NASC 2004  |
| No. /               | Manual on Legislative Drafting   | Mediation                  | 2004 |                   |               |   |
| No. 44/PO           | Decree On the Promulgation of the Law on Resolution of Economic Disputes                                   | Mediation                  | 2005 |                   |               |   |
| No. 07/NA           | Law on Petitions   | Mediation                  | 2005 |                   |               |   |
| No. 02/NA           | Law on Resolution of Economic Disputes   | Mediation                  | 2005 |                   | No 06/NA 2010 | The Constitution; No 27/NA 2005; No 06/NASC 2005  |
| No. 06/NA           | Law on the Resolution of Economic Disputes   | Mediation                  | 2010 | No 02/NA 2005     |               |   |
| No. ____/3802 LA.04 | Draft Guidelines On Forest Law Enforcement Reporting System (Lers) And Case Tracking System (Cts)          | Monitoring and Enforcement | 2004 |                   |               |   |
| No. 013/PM          | Decree on the Administration of Non-Governmental Organizations (NGOs)                                      | Not-for-Profits            | 2010 | No 17/PM 1998     |               | No 02/NA 2003   |
| No. 137/PO          | Decree on the Promulgation of the Law on Petitions   | Petitions                  | 2005 |                   |               |   |
| No. 06/NA           | Law on Plant Protection  | Phytosanitary              | 2008 |                   |               |   |
| No. 226/NA          | Resolution of National Assembly of Lao People's Democratic Republic on Approval of Law on Plant Protection | Phytosanitary              | 2008 |                   |               |   |
| No. 1429/MAF        | Notification on Enhancing the Implementation of Plant Protection Functions                                 | Phytosanitary              | 2009 |                   |               |   |
| No. 1077/DOA        | Guidance on the Principle and Method for the   | Phytosanitary              | 2010 |                   |               |   |

| Number        | Instrument  | Sector                   | Year | Supersedes | Superseded by     | Dependent on or pursuant to                                      |
|---------------|---|--------------------------|------|------------|-------------------|--|
|               | Issuance of Phytosanitary Certificate   |                          |      |            |                   |  |
| No. 1077/DOA  | Notification Guiding on the Principle and Method for the Issuance of Phytosanitary Certificate  | Phytosanitary            | 2010 |            |                   |  |
| No. 1502/MAF  | Ministerial Decision on the Organization and Operation of Sanitary and Phytosanitary Enquiry Point  | Phytosanitary            | 2011 |            |                   |  |
| No. 229/GoL   | Decree Implementing the Law on Plant Protection   | Phytosanitary            | 2012 |            |                   |  |
| No. 0039/MAF  | Ministerial Decision on the basic principle for the Application of sanitary and Phytosanitary Measures in Plant and Animal Product Administration | Phytosanitary            | 2012 |            |                   |  |
| No. 3919/MAF  | Ministerial Decision regarding the management and use of plant species  | Phytosanitary            | 2012 |            |                   | No 01-98/NA 1998; No 06/NA 2008; No 01/NA 2011                   |
| No. 0837/MAF  | Ministerial order on Issuing the Phytosanitary Certificate (PC)   | Phytosanitary            | 2013 |            |                   |  |
| No. 0612/MAF  | Notification on Sanitary and Phytosanitary Measures (SPS) for EU countries  | Phytosanitary            | 2013 |            |                   |  |
| No. 0196/MAF  | Regulations concerning the development and promotion of long-term plantations   | Plantation establishment | 2000 |            |                   | No 01/96 1996; No 198/PM 1999                                    |
| No. 1374/MCAF | Notification on the application for registering tree planting parcels and grown timber certificate  | Plantation registration  | 2010 |            |                   | No 06/NA 2007; No 17/NA 2008; No 1849/MAF 1999; No 0115/MAF 2003 |
| No. 0234      | Directive of the Minister of MAF regarding the management of plantations and planted forests  | Plantations              | 1995 |            |                   | No 186/PM 1994   |
| No. 186/PM    | Decree on the Allotment of Forests For Plantation and Preservation, 1994  | Plantations              | 1996 |            | Forestry Law 1996 |  |
| No. 1849/AF   | Directive concerning the registration of tree planting parcels, 1999  | Plantations              | 1999 |            |                   | No 01/96 1996; No 11/PM 1999                                     |
| No. 96/PM     | Decree on Industrial Tree Plantations and Environmental Protection.   | Plantations              | 2003 |            |                   | No 01/95 1995; No 01/96 1996; No 0011/AF 2003                    |
| No. 1643/DOF  | On development of a feasibility study of industrial trees and NTFP investment   | Plantations              | 2010 |            |                   |  |

| Number            | Instrument  | Sector                   | Year | Supersedes            | Superseded by | Dependent on or pursuant to   |
|-------------------|---|--------------------------|------|-----------------------|---------------|---|
| No. /PM           | Decree on the Implementation of the Investment Promotion Law (Draft?)   | Processing               | ?    |                       |               |   |
| No. 10/PO         | Decree on the Promulgation of the Law on Industrial Processing 1999   | Processing               | 1999 |                       |               | The Constitution; No 01-99/NA 1999; No 03/NASC 1999                                   |
| No. 01/99/NA      | Law on the Manufacturing (Processing) Industry 1999   | Processing               | 1999 |                       |               | The Constitution; No 01-99/NA 1999; No 03/NASC 1999                                   |
| No. 31/PM         | Order of Prime Minister on increasing control in forest management, conservation, wood business and promoting the production of finished products in wood processing industry, 2006 | Processing               | 2006 |                       |               |   |
| No. 13/NA         | Law on Standards  | Processing               | 2007 |                       |               |   |
| No. 106/NA        | Resolution of the National Assembly on the adoption of the Law on Standards   | Processing               | 2007 |                       |               |   |
| No. 1415/MOIC.DOI | Decision on The Form and Size of Timber Products, 2008  | Processing               | 2008 | No 1048/MOIC.DOI 2008 |               | No 01-99/NA 1999; No 67/PM 2006; No 188/PM 2006; No 0221/MOIC 2007; No 1301/MOIC 2007 |
| No. 11/PDR        | Decree on the promulgation of the Law on Standards  | Processing               | 2008 |                       |               |   |
| No. 04/PO         | Decree on the Promulgation of the Property Law, 1990  | Property                 | 1990 |                       |               |   |
| No. 03/90/PSA     | The Law on Heritage and Basis of Inheritance, 1999  | Property                 | 1999 |                       |               |   |
| No. 63/PO         | Decree on the Promulgation of the Law on State Assets   | Property                 | 2002 |                       |               |   |
| No. 138/PO        | Decree on the Promulgation of the Law on Heritage and Basis of Inheritance, 2005  | Property                 | 2005 |                       |               |   |
| No. 08/NA         | Law on Intellectual Property  | Property                 | 2007 |                       |               |   |
| No. 101/NA        | Resolution of the Decree on the Promulgation of the Intellectual Property Law 2008  | Property                 | 2008 |                       |               |   |
| No. 03/90-PSA     | Law on Inheritance 2009   | Property                 | 2009 |                       |               |   |
| No. 0216/MAF      | Ministerial Direction Of the Minister of Agriculture and Forestry On "Establishing Agriculture and  | Research and Development | 2008 |                       |               |   |

| Number        | Instrument   | Sector           | Year | Supersedes       | Superseded by | Dependent on or pursuant to                      |
|---------------|--|------------------|------|------------------|---------------|--|
|               | Forestry Technical Service Centre", 2008   |                  |      |                  |               |  |
| No. 0652/BOLP | Decision of the Bolikhamxy Provincial Governor concerning the collection of forest resource fees and royalty on non-timber forest products           | Royalty;<br>NTFP | 2010 |                  |               | No 17/PM 2009; No 119/MAF 2010                   |
| No. 1059/MF   | Guidelines on Financial Contribution from Timber and Non-Timber Products Sector, issued by the Ministry of Finance, 2003                             | Sales            | 2003 |                  |               |  |
| No. 0092/MOF  | Guideline on the administration of revenue collection from sales proceeds of wood and non-timber forestry product, 2009                              | Sales            | 2009 |                  |               |  |
| No. /         | Timber Sales Procedures  | Sales            | 2009 |                  |               |  |
| No. 08/ST     | Decision Of The National Assembly Standing Committee pertaining to the sharing of revenue from timber harvested in the Production Forest Areas, 2012 | Sales            | 2012 |                  |               |  |
| No. 001/PR    | Decree pertaining to the sharing of revenue from timber harvested in the Production Forest Areas, 2012   | Sales            | 2012 | No.0204/MAF 2003 |               |  |
| No. 0022/MAF  | Ministerial Instruction to prepare for the complete stopping of the slash and burn, and shifting cultivation in 2010, 2005                           | Slash and Burn   | 2005 | No 2121/FA 2009  |               |  |
| No. 85/PM     | Decree on the Management of Standard and Quality of Products, 1995   | Standards        | 1995 |                  |               |  |
| No. 229/PM    | Decree on Endorsement and Declaration of the Forestry Strategy to the Year 2020 of the Lao PDR, 9 Aug 2005   | Strategy         | 2005 |                  |               |  |
| No. /PG.LP    | Directive from the Governor of Luang Prabang on the Protection of the Commercial Exploitation and Trade in Timber, 2004                              | Tax              | 2004 |                  |               |  |
| No. 46/PO     | Decree On the Promulgation of the Tax law 2005   | Tax              | 2005 |                  |               | The Constitution; No 27/NA 2005; No 08/NASC 2005 |

| Number                             | Instrument  | Sector       | Year | Supersedes                                     | Superseded by      | Dependent on or pursuant to                         |
|------------------------------------|---|--------------|------|--|--------------------|---|
| No. 04/NA                          | Tax Law, 2005   | Tax          | 2005 | No 04-95/NA 1995; No 03/NA 2001; No 10/NA 2002 |                    | The Constitution; No 27/NA 2005; No 08/NASC 2005    |
| No. 04/NA                          | Law on Value-Added Tax, 2006  | Tax          | 2006 | No 04/NA 2005                                  |                    | The Constitution; No 04/NA 2006; No 03/NASC 2007    |
| No. 03/PO                          | Decree on the Promulgation of the Value-Added Tax Law 2007  | Tax          | 2007 |  |                    | The Constitution; No 04/NA 2006; No 03/NASC 2007    |
| No. 0011/PM<br>(check this number) | Decree on the amendment of Business Turnover Tax, Profit Tax and Salary Income Tax rates  | Tax          | 2011 |  |                    | The Constitution; No 04/NA 2005                     |
| No. 3578/MoF                       | Finance Ministerial Instruction on implementation of policy on duty and taxes according to investment promotion                 | Tax          | 2012 |  |                    |   |
| No. 0509/MF                        | Directive for the calculation and collection of taxes on timber and NTFPs   | Tax          | 2009 |  |                    | No 04/NA 2005; No 04/NA 2006; No 2137/MF 2005       |
| No. /                              | Guideline on Timber Sale and Benefit Sharing from State Production Forest Areas.  | Timber sales |      |  |                    |   |
| No. 35/PO                          | Decree on the Promulgation of the Land Transport Law  | Transport    | 1997 |  |                    | The Constitution; No 03-97/NA 1997; No 16/NASC 1997 |
| No. 03-97/NA                       | Law on Land Transport 1997  | Transport    | 1997 |  |                    | The Constitution; No 03-97/NA 1997; No 16/NASC 1997 |
| No. 12/PO                          | Decree on the Promulgation of the Law on Land Traffic 2000  | Transport    | 2000 |  |                    | The Constitution; 02/NA 2000; No 06/NASC 2000       |
| No. 02/NA                          | Law on Land Traffic, 2000   | Transport    | 2000 |  |                    | The Constitution; 02/NA 2000; No 06/NASC 2000       |
| No. 1601/MOIC.DIMEX                | Notification on the Management and movement of timber, timber products and non-timber products in domestic and for exportation. | Transport    | 2008 | No 0157/MOIC.DIMEX 2008                        | No 1904/MOIC.DIMEX | No 17/PM 2008                                       |
| No. 2215/MIC                       | Notification on the cancellation of the issuing Commodity Movement Permit by the industry and                                   | Transport    | 2011 |  |                    | No 0395/MIC 2011; No 188/PM 2006                    |

| Number              | Instrument  | Sector                | Year | Supersedes | Superseded by | Dependent on or pursuant to |
|---------------------|---|-----------------------|------|------------|---------------|-----------------------------|
|                     | commerce sector   |                       |      |            |               |                             |
| No. 1179            | Notification on the cancellation of inspection station - checkpoints that improperly collect the fees and facilitation of transport of goods and passengers through international checkpoints | Export                | 2011 |            |               | No 06948/PWT 2011           |
| No. 1440/MOIC.DIMEX | Notification on the Management of wood transport vehicle, wood extraction machinery, and wood processing machinery.   | Transport; Processing | 2008 |            |               |                             |

### Appendix 3: Laws and legal instruments not available at the time of writing.

| Number          | Instrument  | Sector                | Year | Supersedes | Superseded by | Dependent on or pursuant to |
|-----------------|---|-----------------------|------|------------|---------------|-----------------------------|
| No. /MAF        | MAF Order on implementation of the PM Order on timber harvesting and forestry business which is issued annually.                        | Harvesting            |      |            |               |                             |
| No. 0010/MAF    | Order concerning the enhancement of attention on the prevention and Interception of bushfire in the dry season for the year 2009 – 2010 | Fire                  | 2010 |            |               |                             |
| No. 0019/MAF    | Agreement between MAF and MPWT  | Transport             | 2008 |            |               |                             |
| No. 0053/MAF    | Notice concerning the implementation of tree plantation and the natural forest regeneration for the year 2009 – 2010                    | Plantations           | 2010 |            |               |                             |
| No. 0060/MAF    | Decree on principles for logging and harvesting of forest products  | Harvesting            | 2003 |            |               |                             |
| No. 0063/MAF    | Decision concerning the regulation of management and use of origin source of timber species in Lao PDR                                  | Certificate of Origin | 2010 |            |               |                             |
| No. 0068/MAF    | Notice on determination and establishment of Protection forest throughout the country   | Environment           | 2010 |            |               |                             |
| No. 0069/MAF.02 | On pre-harvesting inventory, tree marking and post-harvesting assessment  | Inventory; Harvesting |      |            |               |                             |

| Number              | Instrument   | Sector                     | Year | Supersedes | Superseded by   | Dependent on or pursuant to |
|---------------------|--|----------------------------|------|------------|-----------------|-----------------------------|
| No. 0078/MAF        | The Minister agreed with the classification adopted in the woods in Lao PDR  | Forest Management          | 2008 |            |                 |                             |
| No. 0112/MAF        | Regulation regarding the logging and post logging clearing in the reservoir area of a hydropower dam   | Harvesting; Concessions    | 2008 |            |                 |                             |
| No. 0115/AF         | No. 0115/AF MAF Directive 2003   |                            | 2003 |            |                 |                             |
| No. 0142/MAF        | Decision concerning the inspection and litigation of Cases related to forest and forest resources  | Monitoring and Enforcement | 2010 |            |                 |                             |
| No. 0142/MAF        | Guideline concerning the inspection of forest, forest products, forestland, NTFPs, Aquatic and Wildlife  | Monitoring and Enforcement | 2009 |            |                 |                             |
| No. 015/MOIC        | Regulation on timber Business Activities, concerning domestic movement and export of timber, timber products and non-timber forest products, 2008                              | Export                     |      |            |                 |                             |
| No. 0167/MOIC.DIMEX | Notice on the implementation of log price at Log Landing 2, dated 27/01/2010.  | Sales                      | 2010 |            |                 |                             |
| No. 0174/MAF        | Instructions pertaining to the implementation of PMO No. 30/PM on the enhancement of the restrictions on the management of forest and forestry business for FY 2007-2008, 2007 | Business                   | 2007 |            | N 0105/MAF 2008 |                             |
| No. 02/PO           | Ordinance of the President of the Lao People's Democratic Republic on Legislative Drafting   | Law                        | 2003 |            |                 |                             |
| No. 0204/MAF        | Regulation on Establishment and Sustainable Management of Production Forests , 2003  | Forest Management          | 2003 |            | No 001/PR       |                             |
| No. 0214/MAF        | MAF agreement on Seeds sources   | Phytosanitary              | 2006 |            |                 |                             |
| No. 0221/MAF        | On Establishment and Sustainable Management of Production Forest   | Forest Management          |      |            |                 |                             |
| No. 0221/MOIC       | Decision on the Standard of Wood, Rattan and Bamboo Processing Manufacture, 2007   | Processing                 | 2007 |            |                 |                             |
| No. 0234/MAF        | Directive regarding the management of plantations and planted forest   | Management and Harvesting  | 1995 |            |                 |                             |

| Number                                     | Instrument  | Sector                             | Year | Supersedes | Superseded by         | Dependent on or pursuant to |
|--|---|------------------------------------|------|------------|-----------------------|-----------------------------|
| No. 0280/DOFI                              | Guideline concerning the management and use of PML marking hammer as a confiscating Hammer for timber that does not comply with the Forestry law  | Harvesting;<br>Chain of<br>Custody | 2008 |            |                       |                             |
| No. 03/PM                                  | Announcement for resolve foreign worker in Laos   | Labour                             | 2011 |            |                       |                             |
| No. 03/PO                                  | Decree on Fees and Charges  |                                    | 2008 |            |                       |                             |
| No. 03/PO                                  | Presidential Decree on Land Tax   |                                    | 2000 |            | No 01/PO 2007         |                             |
| No. 0340/MAF                               | Regulation on the Organization and Role of Forest Inspection Department, 2008   | Governance                         | 2008 |            |                       |                             |
| No. 0396/DOF                               | Guideline on Monitoring the Implementation of Production Forest Management  | Monitoring<br>and<br>Enforcement   | 2008 |            |                       |                             |
| No.<br>0448/MOIC.DIMEX<br>or No. 0484/MOIC | Notification on the authorization of the rights to the Department of Industry and Commerce at Provincial, Capital, to approve the exportation of round wood (logs) and processed timber from plantations which are not the prohibited and special species | Export                             | 2010 |            | No<br>1791/MOIC.DIMEX |                             |
| No. 0535/AF                                | Regulation on the Management of Village Forests   | Village Forests                    |      |            |                       |                             |
| No. 0538/MAF                               | Agreement of the Minister on Good Agriculture Practices for Environmental Management Standard   | Environment                        | 2011 |            |                       |                             |
| No. 0540/MAF                               | Agreement of the Minister on Good Agriculture Practices for Worker Health, Safety and Welfare Standard  | Health and<br>Safety               | 2011 |            |                       |                             |
| No. 060/PM                                 | Decree On the Organization and Implementation of the National Leading Board for Rural Development and Poverty Alleviation   | Development                        | 2007 |            |                       |                             |
| No. 0715/MF                                | No. 0715/MF MOF Directive 2002  |                                    | 2002 |            |                       |                             |
| No. 0806/DOFI                              | Notice concerning the inspection of Wildlife transportation to the third country  | Export                             | 2010 |            |                       |                             |
| No. 0896/MOF.CD                            | Guidelines on the special fees for export of wood and wood products   | Export                             | 2008 |            |                       |                             |
| No. 092/MOF                                | Regulation on revenue collection of sales from  | Sales                              | 2009 |            |                       |                             |

| Number        | Instrument   | Sector                     | Year | Supersedes | Superseded by            | Dependent on or pursuant to |
|---------------|--|----------------------------|------|------------|--------------------------|-----------------------------|
|               | wood and NTFPs   |                            |      |            |                          |                             |
| No. 0962 MAF  | Guideline on Chain of Custody (CoC) Control of Timber Harvesting & Transport in Production Forest (2010)   | Chain of Custody           | 2010 |            |                          |                             |
| No. 10/PM     | Order on Forest Management and Operations, 2000  | Forest Management          | 2000 |            |                          |                             |
| No. 1035/DOF  | Guideline concerning the Provincial forestry section guideline on the implementation and enforcement of Labour law and the attention on directing companies/Logging Division in order to ensure a strict implementation                    | Labour                     | 2010 |            |                          |                             |
| No. 1060/MAF  | No. 1060/MAF, 2007   |                            | 2007 |            |                          |                             |
| No. 1067/DOFI | Notice concerning the implementation of a cooperation plan in preserving, Inspecting, and Intercepting the sale and transport of Timber, NTFP and prohibited species of Plant-Animals between DOFI from Lao PDR and DOFI from S.R. Vietnam | Export                     | 2009 |            |                          |                             |
| No. 1095/PTD  | Instruction of the LP Provincial Tax Division 2007   | Tax                        | 2007 |            |                          |                             |
| No. 1140/MOIC | Decision concerning the Standard of Wood, Rattan and Bamboo Processing Industry Factories, 2007  | Processing                 | 2007 |            | No. 1791/MOIC.DIMEX 2011 |                             |
| No. 1266/DOFI | Notice concerning the implementation of Aquatic life, Wildlife and Wild plant inspection   | Monitoring and Enforcement | 2009 |            |                          |                             |
| No. 1301/MOIC | Decision on the Management of Industrial Processing Manufacture dated 30 July 2007.  | Processing                 | 2007 |            |                          |                             |
| No. 1305/DOFI | Order concerning the case litigation against people who break the Forestry Law   | Monitoring and Enforcement | 2009 |            |                          |                             |
| No. 135/GO    | Notice on the implementation of tree plantation and forest regeneration plan and timber logging  | Harvesting                 | 2012 |            |                          |                             |

| Number              | Instrument   | Sector                | Year   | Supersedes | Superseded by      | Dependent on or pursuant to |
|---------------------|--|-----------------------|--------|------------|--------------------|-----------------------------|
|                     | and NTFP harvesting plan for the year 2012-2013  |                       |        |            |                    |                             |
| No. 1455/MAF        | The proposal to determine the origin source of timber species  | Certificate of origin | 2006   |            |                    |                             |
| No. 15/PM           | Order on timber harvesting and forestry business which is issued annually.   | Harvesting            | Annual |            |                    |                             |
| No. 15/PM           | Log export ban   | Export                | 2001   |            |                    |                             |
| No. 150/PM          | Decree on the Promotion of Timber Plantation for Commercial Purposes and on Environment Protection, 2003   | Plantation            | 2003   |            |                    |                             |
| No. 157/MOIC        | Regulation on Timber Business Activities, 2008   | Business; Timber      | 2008   |            |                    |                             |
| No. 159/GSG         | Governmental Secretary-General's Notification on the collection of royalties of exported saw-logs (timber), finished wood products and wooden home furniture when exporting through International Customs Checkpoint to neighbouring countries, 2008 | Sales                 | 2008   |            |                    |                             |
| No. 1612/CD         | Monitoring and management of export wood along border checkpoints  | Export                | 2007   |            |                    |                             |
| No. 1762/MOIC.DIMEX | Regulation Buying - Selling timber   | Sales                 | 2012   |            |                    |                             |
| No. 18/PM           | Order on Forest Management Policy  | Forest Management     | 2002   |            |                    |                             |
| No. 1817/           | Minister instruction on Wholesale and retail sale  | Sales                 | 2011   |            |                    |                             |
| No. 1862/MOIC.DIMEX | Regulation for timber sale from plantation timber  | Sales                 | 2008   |            | No 1791/MOIC.DIMEX |                             |
| No. 1963/MOIC       | Regulation on Wood Sales, 2008   | Sales                 | 2008   |            |                    |                             |
| No. 1976/MOIC       | Regulation on Sales of Logs at Field II, 2007  | Sales                 | 2007   |            |                    |                             |
| No. 1976/MOIC.DIMEX | Agreement on the sale of timber and timber movement under the standards of the International Board of Forestry (FSC).  | Certification         | 2010   |            |                    |                             |
| No. 2056/MOIC       | Regulation on Wood Quota Allocation, 2008  | Harvesting            | 2008   |            |                    |                             |
| No. 2139/MPWT       | Agreement between MAF and MPWT 2008  | Transport             | 2008   |            |                    |                             |

| Number              | Instrument  | Sector                       | Year   | Supersedes | Superseded by | Dependent on or pursuant to |
|---------------------|---|------------------------------|--------|------------|---------------|-----------------------------|
| No. 2152/DOF        | Guideline on village boundary demarcation in Production forest Areas, 2006  | Village Forests              | 2006   |            |               |                             |
| No. 2157/DOF        | Guideline on Principle of Logging in Production Forest, 2006  | Harvesting                   | 2006   |            |               |                             |
| No. 2166/MAF        | Notification for informing about monitoring the use of the leftover and certified forest products   | Certification                | 2009   |            |               |                             |
| No. 22/PCM          | Provisional regulation on the management and use of agricultural land in Lao PDR, 1999  | Agriculture; Land Allocation | 1999   |            |               |                             |
| No. 2201/DOF        | Decision concerning the TOR in organizing and managing the forestry certification   | Certification                | 2009   |            |               |                             |
| No. 2203/MIC        | Instructions of the Ministry of Industry and Commerce concerning the implementation of log royalties in the year 2007-08, 2007  | Sales                        | 2007   |            |               |                             |
| No. 221/MAF         | Harvesting of wood and NTFPs  | Harvesting                   | 2007   |            |               |                             |
| No. 2227/MOF        | Minister notification on Taxation   | Tax                          | 2011   |            |               |                             |
| No. 2260/MOIC.DIMEX | Annual Guideline of Timber Quota Distribution for fiscal year 2009-2010   | Harvesting                   | 2009   |            |               |                             |
| No. 2297/MOF        | Guideline on bidding regulation for buying timber and other forest resources (Timbers, herbs, bamboos and NTFP) from state standing timbers, infrastructural areas and production forest areas at second landings | Sales                        | 2004   |            |               |                             |
| No. 25/PM           | Order on the management of forest activities and wood business  | Business                     | 2004   |            |               |                             |
| No. 261/MAF 2000    | Regulation on Processing factories need an operation permit annually  |                              | Annual |            |               |                             |
| No. 270/PM          | Decree on Declaration of 14 national production forest areas in 5 provinces, 2008   | Forest Allocation            | 2008   |            |               |                             |
| No. 281/FFRDF       | Decision concerning TOR, rights and duties of the Local Committee of Forest and Forest Resource Development Fund  | Community Forestry           | 2010   |            |               |                             |
| No. 284/GS          | Notification on the authorization of the rights to the Department of Industry and Commerce at Provincial, Capital to approve the exportation of   | Export                       | 2012   |            |               |                             |

| Number        | Instrument   | Sector                      | Year | Supersedes | Superseded by | Dependent on or pursuant to |
|---------------|--|-----------------------------|------|------------|---------------|-----------------------------|
|               | round wood (logs) and processed timber from plantations which are not the prohibited and special species, 2012 |                             |      |            |               |                             |
| No. 30/PM     | Prime Minister's Order on strengthening for forest and wood business management, 2007                          | Forest Management; Business | 2007 |            |               |                             |
| No. 321/PM    | Prime Minister Decree on the Declaration of 29 national production forest areas in 8 provinces, 2007           | Forest Allocation           | 2007 |            |               |                             |
| No. 359/MOIC  | Regulation on Timber Products and NTFP Transport and Export, 2008  | Export                      | 2008 |            |               |                             |
| No. 410/MAF   | Decision concerning the organization and operation of Department of Forest Inspection                          | Governance                  | 2009 |            |               |                             |
| No. 411/MAF   | Decision concerning the organization and operation of Provincial or Capital City Forest Inspection Section     | Governance                  | 2009 |            |               |                             |
| No. 46/PM     | Decree on incentives for sourcing wood from plantations  | Harvesting                  | 2001 |            |               |                             |
| No. 46/PM     | Management of Logging operations (quota)   | Harvesting                  |      |            |               |                             |
| No. 4704/MOIC | Annual Guideline of timber quota distribution (e.g. for fiscal year 2007-2008 No. 4704 of 24/12/2007)          | Harvesting                  | 2007 |            |               |                             |
| No. 488/MOIC  | Regulation on Wood Quota Application, 2009   | Harvesting                  | 2009 |            |               |                             |
| No. 51/MOIC   | Regulation on Form and Size of Wood products, 2009   | Processing                  | 2009 |            |               |                             |
| No. 535/MAF   | Regulation on Management of Village Forests, 2001  | Community Forestry          | 2001 |            |               |                             |
| No. 54/MAF    | Order on Customary User Rights, 1996   | Community Forestry          | 1996 |            |               |                             |
| No. 60/2003   | Decree on Approval of Annual Plan of Tree planting, Wood Harvesting and NTFP collection, 2003                  | Plantations                 |      |            |               |                             |
| No. 710/MOIC  | Regulation on Wood Fees for Small Logs, 2008   | Sales                       | 2008 |            |               |                             |
| No. 719/MOIC  | Regulation on Wood Processing Factories, 2009  | Processing                  | 2009 |            |               |                             |

| Number               | Instrument   | Sector          | Year | Supersedes | Superseded by | Dependent on or pursuant to |
|----------------------|--|-----------------|------|------------|---------------|-----------------------------|
| No. 92/MOIC (or MOF) | Guideline on Revenue Collection of Sales from Wood and NTFP, 2009  | Sales           | 2009 |            |               |                             |
| No. 934/GS           | Transfer of the responsibility for continuing the implementation of RIO conventions from the Water Resource and Environment Administration to the Ministry of Agriculture and Forestry | Environment     | 2009 |            |               |                             |
| No. 966/NLMA         | Ministerial Directive on Registration of Land Parcel Division and Land Parcel consolidation, 2007  | Land allocation | 2007 |            |               |                             |
| No. 97/MOIC          | Regulation on Wood Fees at Field II, 2001  | Sales           | 2009 |            |               |                             |

## Appendix 4: Relevant Fees and Service Charges by the Land Management Sector

Source Instruction 3204/PMO.NLMA)

Table 13: Fees for Land Parcel Registration

| No. | Land Parcel Registration Fee | Rate for each parcel Kip/Land Title |             |
|-----|------------------------------|-------------------------------------|-------------|
|     |                              | Municipal areas and peripheries     | Rural Areas |
| 1   | Systematic or sporadic       | 30,000                              | 15,000      |

Table 14: Fee for registration of document concerning land:

| No | Detail of Land Parcel Registration   | Fee Rate   |
|----|--|--|
| 1  | Issuing Land Title to the heirs who are children (offspring, adopted children, stepchildren) and relatives of direct lineage of the dead person  | 0.1% of land value obtained through land valuation process done specifically for each zone and each type of land |
| 2  | Issuing Land Title to the heirs who are relatives of direct lineage (parents or paternal grandparent and maternal grandparents or great grandparents) of the dead person   | 0.3% of land value obtained through valuation process done specifically for each zone and each type of land      |
| 3  | Issuing Land Title to the heirs who are relatives of horizontal lineage (older and younger brothers and sisters, or paternal uncles and aunts and maternal uncles and aunts, or nephews and nieces) of the dead person | 0.5% of land value obtained through valuation process done specifically for each zone and type of land           |
| 4  | Issuing Land Title to the person who receive land use rights transferred from the former owner, and the entitled heirs by will who are not in relative lineage as specified in the 1, 2, and 3 above.                  | 1% of land value obtained through valuation process done specifically for each zone and type of Land             |

Table 15: Fees for the registration of transaction in the land parcel registration system

| No | Contents of Document  | Registration Fee (Kip/time) |
|----|---|-----------------------------|
| 1  | Registration of land use right transaction relating to loan contract        | 50,000                      |
| 2  | Registration of land use right transaction relating to land lease agreement | 70,000                      |

Table 16: Service charges for measuring agricultural land

| No. | Land Parcel Registration Fee | Service Charge (Kip/m <sup>2</sup> ) |             |             |
|-----|------------------------------|--------------------------------------|-------------|-------------|
|     |                              | Municipal areas                      | Peripheries | Rural Areas |
| 1   | Low land area                | 300,000                              | 250,000     | 230,000     |
| 2   | Plateau                      | 250,000                              | 230,000     | 200,000     |
| 3   | Mountainous area             | 200,000                              | 180,000     | 150,000     |

Table 17: Service charges for issuing document attesting the accuracy of the Land Title in order to submit to the Notary Office for certifying the legitimacy of the Land Title

| No | Content of the Document   | Kip/document |
|----|---|--------------|
| 1  | Issuing a document attesting the accuracy of the Land Title in order to be used as collateral for loan contract                         | 20,000       |
| 2  | Issuing a document attesting the accuracy of the Land Title to be used as the basis for sale-purchase or transfer and exchange of land. | 50,000       |

Table 18: Fees for Registering Property

| No.   | Procedure  | Time to Complete | Costs  | Agency          |
|---|--|------------------|--|-----------------|
| Obtain the Land Title Accuracy Certificate    | <p>The seller or buyer or their appointees submit the application form for verification of correctness of the land title which is signed by the village chief where the land is located to DoNRE. Upon receipt the application form, the Vientiane DoNRE will verify the correctness of the land title compared with the Land Registry Book, Land Map and other related documents. If it is correct, the Vientiane DoNRE will issue the Certificate of Correctness of the land title.</p> <p>The application forms for verification of correctness of the land title are submitted at the same time as the application for registration of the sale and purchase agreement and transfer of the property to DoNRE</p> | 2-5 days         | LAK 2,000 for application + LAK 50,000 for issuance of the title | DoNRE           |
| Complete the LMA sale-purchase agreement form | The authorized representatives of the seller-company and buyer-company must execute a sale and purchase agreement in a form provided by DoNRE, which is signed by three witnesses and by the village chief where the land is located.  | 1-2 days         | LAK 15,000 - LAK 20,000  | DoNRE           |
| Notarize of sale-purchase agreement           | The Instruction No. 435/MoJ, dated November 11, 2011 on the Implementation of the Notary Law requires for the parties (or their duly authorised representatives) to be present at the Notary Office in order to have the sale-purchase agreement notarized. They submit the Certificate of Correctness of Land Title to Notary Office along with the original sale-purchase agreement. The signed sale and purchase agreement is certified by the Notary Office to attest that land use rights have been appropriately transferred according to the agreement.   | 2-3 days         | LAK 20,000 + LAK 5,000 per page                                  | Notary's office |

|  |  |            |  |       |
|--|--|------------|--|-------|
| Registration of the sale-purchase agreement and issuance of the new Land Title | The notarized sale and purchase agreement is submitted to the DoNRE which will be registered at the Vientiane DoNRE. The Vientiane DoNRE will thereafter issue a new land title in the name of the Buyer and send to the DoNRE | 30-60 days | LAK 135,000 (paid at the time of submission) + LAK 15,000 (land title fee) + LAK 10,000 (service fee) + 1% property value (registration fee) | DoNRE |
| Source   | <a href="http://www.doingbusiness.org/data/exploreeconomies/lao-pdr/registering-property/">http://www.doingbusiness.org/data/exploreeconomies/lao-pdr/registering-property/</a>  |            |  |       |