

LEGAL ALERT

Laos
12 September 2019

Author

Tuchakorn Kitcharoen
Senior Associate
ZICO Law Laos
tuchakorn.kitcharoen
@zicolaw.com

New Regulatory Framework for Commercial Banks

Introduction

The Lao National Assembly adopted a resolution approving the Amended Law on Commercial Bank No. 56/NA (“[Amended Law on Commercial Bank](#)”) on 7 December 2018 which was published in the Lao official gazette on 7 June 2019. The Amended Law on Commercial Bank has been in force since 23 June 2019. The amended law is the first amendment of the original version promulgated in 2007. Overall, it shows a higher degree of regulatory control across all facets of the operation of commercial banks in the attempt to maintain market stability and consumer welfare. This article discusses the changes in the Amended Law on Commercial Bank which has a significant impact to the banking industry.


Bank incorporation

The Amended Law on Commercial Bank drastically alters the process for the establishment of a commercial bank and a branch office of foreign commercial banks in Lao PDR. The volume of documents required for establishment process, the conditions in which investors are required to fulfill, and the degree of administrative power afforded to the Bank of Lao PDR (“[BOL](#)”) in bank registration process have virtually increased from the Law on Commercial Bank No. 03/NA dated 26 December 2006 (“[Law on Commercial Bank 2006](#)”). The most notable change to the process for the establishment of a commercial bank lies in the significant increase in the level of minimum registered capital from LAK100 billion (approximately USD12.5 million) to LAK500 billion (approximately USD62.5 million) for the establishment of a commercial bank and from LAK50 billion (approximately USD6.25 million) to LAK300 billion (approximately USD37.5 million) for the establishment of a branch office of foreign commercial banks.

Coupled with the requirement of the amended law that existing commercial bank shall adjust their registered capital to comply with the above minimum registered capital level, one would expect that it is not only difficult for investors to establish a new banking institute, but the continuing operations of small and medium size bank in Lao will also face the dilemma of having to comply with the new capitalisation standard.

Management structure of Bank

The amendments to the regulatory requirements on bank management structure revolve around improving the transparency and increasing the engagement of the BOL in bank management activities. With regards to the increase of transparency, the prohibitions for directors and executive members to take their office consecutively for more than three tenures and requirement for chairman of audit committee to be an external member clearly demonstrates the effort of regulators to ensure adequate level of conflict of interests in bank management. The BOL also seems to have a more supervisory role under the Amended Law on Commercial Bank, including the power to call a meeting when it deems that bank’s financial position is weakening and the authority to approve the appointment of bank directors.



Generally, however, the changes in this aspect concentrate more on adding and improving existing management mechanisms and their functions rather than introducing a new structure. Although the development in this aspect is not significantly impactful, it is important to note that commercial banks are required to comply with all the changes to management structure requirement within two years after the effective date of the amended law.

Banking business and business expansion

The Amended Law on Commercial Bank defines the scope of banking business differently from the previous law and removes most financial services from the scope of banking business. It is thus no longer possible for commercial banks to continue offering general financial services with merely a commercial bank business operation license. Nevertheless, the amended law still allows commercial banks to offer other services as permitted by the BOL. Thus, commercial banks may continue engaging with the provisions of additional financial services provided that they can secure such permission from the BOL.

The establishment of branch and representative offices and investment by commercial banks in other businesses requires prior approval from the BOL. One of the more immediate notable changes is to the business expansion structure. Under the previous law, commercial banks may engage as themselves with other financial business. Now, there is a requirement for commercial banks to have a separate legal personality or indirect investment as a shareholder in other financial institutions before they are able to invest. Another interesting change is the investment in non-financial sectors by commercial banks which is now subject to stricter limitation, such as the requirement to hold shareholding interest in other business for no more than 10% of registered capital of the commercial bank in other enterprise while the previous law allows similar type of investment up to 15% of bank's registered capital.

Other developments

In addition to the changes mentioned above, the Amended Law on Commercial Bank reforms several other aspect of commercial bank operations, such as the requirement for the production of crisis management plan, the increase of the BOL's engagement in commercial bank restructuring, either by transfer of shares, merger or asset deal. One another interesting development is the attempts to limit the situation of bankruptcy in commercial banks. The Amended Law on Commercial Bank introduces crisis prevention and remedial measures allowing banks in financial distress to try to remedy their position. The amendment also affords discretion to the BOL to take control of the situation where continual management by banks alone will deteriorate their financial standing. This more initiative approach on crisis prevention takes into account the importance of banks for markets and consumers which will significantly be damaged by the bankruptcy of commercial banks.

If you have any questions or require any additional information, please contact [Tuchakorn Kitcharoen](#) or the ZICO Law Lao partner you usually deal with.

This alert is for general information only and is not a substitute for legal advice.