

LEGAL ALERT

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Entering the Lao Import-Export Market as a Registered Foreign Trader

Introduction

Until recently, importation and exportation business in Lao PDR remains restrictive, particularly due to the existence of various trade barriers, including the requirement for foreign investor to incorporate locally with high registered capital. In order to resolve this issue, Lao PDR has introduced the process in which foreign trader may engage in importation and exportation activities without having to register as a legal personality under the Law of Lao PDR, via the adoption of the Decision on Rights of Foreign Trader No. 623/MOIC.DIMEX dated 5 June 2019 (“**Decision No. 623**”), which came into force on 27 June 2019. This article will discuss the rationale, notions, advantages and disadvantages of the implementation of the registration for foreign trading rights.

Foreign Investment in Lao Import-Export Market: Current Situation

In recent years, the Lao market and economy are experiencing rapid growth. The World Bank Group (“**WBG**”) reports that Lao GDP has increased at an average rate of 7.7% over the last decade. In 2019, it is speculated that Lao economy will advance to 6.5% from 6.3% in the previous year. WBG expects that one of the main contributors to such growth will be the wholesale and retail businesses.

Despite relying rather heavily on wholesale and retail trade, Lao PDR is virtually reluctant in fully exposing this sector to foreign engagement. There are a number of direct and indirect barriers preventing the entry of foreign investments and products with the most notable obstacle being the imposition of a high minimum registered capital for foreign investors to invest in wholesale and retail trade. The Decision on Wholesale and Retail Business No. 1005/MOIC.ITD dated 22 May 2015 (“**Decision No. 1005**”) sets out that to own 100% of equity in Lao entity operating in wholesale and retail trade, a minimum of LAK20 billion (approximately USD2.3 million) is to be contributed by the foreigner for the enterprise registration process. Even if foreign investors opt to jointly invest with a local entity in this industry, they are still subject to the requirement to contribute in the range of LAK4-10 million (approximately USD450,000-1.15 million) to engage in wholesale and retail activities, depending on the level of foreign investment in the incorporating Lao entity.

The application of Decision No. 1005 to foreign investors operating an import-export business in Lao PDR is unclear. The decision merely provides that a Lao importer may distribute imported products without the need to register as a wholesale and retail trader. This implies that in the event that a foreign importer wishes to engage in local distribution of products, it has to comply with the conditions under Decision No. 1005. Although this regulatory barrier may successfully protect local market participants from aggressive competition from foreign countries, foreign investment in Lao market in the activities is effectively deterred, thereby obstructing the introduction of foreign products and effective competition into the domestic market.



Registration of Rights of Foreign Trader

As a member of the World Trade Organisation (“**WTO**”) since 2013, maintaining internal policy to exclude foreign investors may not be in consonance with obligations to provide national treatment to foreign traders under WTO’s main instruments, including the General Agreement on Tariffs and Trade and General Agreement on Trade in Services. Nevertheless, instead of abolishing the aforementioned restrictions for incorporation of a Lao legal entity engaging in trading, including import-export activities, the government opted to introduce a new process via Decision No. 623. Decision No.623 allows foreign traders to apply for trading right in Lao PDR without having to incorporate locally with the Department of Import and Export (“**DIMEX**”), Ministry of Industrial and Commerce.

To register as a foreign trader, the applicant shall:

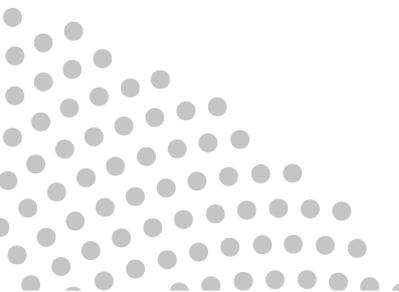
- be a lawful entity who conducts business in accordance with foreign law;
- has no criminal record in relation to trade and financial offence; and
- is from a Member State to WTO.

The registration process is to be initiated by the submission of application forms and supporting document to DIMEX, who shall issue the Certificate of Rights of Foreign Trader (“**CRFT**”) within 20 days from the date of application. Upon completion of the registration process, registered foreign traders may import and export products as specified in the CRFT issued by DIMEX into Lao PDR and trade the product with local distributors for further distribution to end-consumer. A CRFT shall be valid for a period of three years with potential extension upon request of the foreign trader.

Consideration on the Implementation of CRFT system

According to DIMEX’s records, to date, there has yet to be any application for this formality to engage in import-export trading in Lao PDR. The main reason may be due to the novelty of the process as it has recently been introduced in June 2019. Another contribution to lack of participation may be due to the fact that despite the simplicity of the process, the rights and obligations of a registered foreign trader are not fully clarified. Decision No. 623 maintains that registered foreign trader shall file tax and customs obligations according to the law of Lao PDR. However, it is important to note that registered foreign trader does not have legal personality according to the local law. The question on whether a registered foreign trader may register as local tax payer is unclear. As a consequence, complying with fiscal obligations may prove to be difficult for foreign trader under this system.

Additionally, foreign traders cannot freely trade with the end-consumer but have to distribute products through local distributors. Considering that other arrangements, particularly through the execution of distribution or franchise agreement with local suppliers, can also achieve the same result for foreign traders, investors may not consider securing this formality as a way to conduct business in Lao PDR. In fact, it appears that utilising contractual arrangements may expose a foreign trader to lower fiscal compliance risk as tax and custom obligations can be declared by local distributors or franchisees who are the parties to the agreement.





Although the implementation of the system is expected to encounter the above mentioned challenges, the CRFT system, if successfully and properly implemented, may have effect in boosting international trading in Lao market. The immediate benefit is the fact that this system allows traders to import and export product without having to incorporate in Lao PDR with the required registered capital. Given that registered foreign traders may manage customs clearance and apply for permission to import product in their own name with relevant authority, CRFT system would afford stronger negotiation powers to foreign traders in appointing distributors and franchisees as they will be less reliant on the effort of distributor in completing import formality. As a result, it may be easier for foreign traders to conclude distribution agreement without an exclusive distribution clause applicable to them, thereby allowing foreign traders to appoint more than one distributor to circulate their products. This will create competition between distributors, which will lead to reduction of price and improvement of products and services to the benefits of consumers. However, it is important to note that customs clearance and import approval are not under the direct supervision of DIMEX. Formal instruments from all relevant authorities recognising the rights of foreign traders would provide assurance to relevant parties to pursue this formality as an option to operate in trading activities in Lao PDR.

Conclusion

The introduction of the foreign trader registration system by Decision No. 623 demonstrates the willingness of Lao regulators to encourage the entrance of foreign traders into the previously conservative and restrictive Lao trading and import-export market. Nevertheless, limitations of the utility of CRFT and lack of experience of authorities with the system will be the main challenges in the implementation of the system. It is undeniable that effective CRFT system would be capable of promoting trade and consumer welfare in Lao PDR. As import-export activities are procedures subject to the control of numerous Lao authorities, consideration of all relevant Lao public sectors on associated risks of the system may also be necessary for this system to be widely recognised among foreign traders.

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

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