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老挝人民民主共和国外国直接投资政策与法律比较研究

**Comparative Studies on FDI Policy and Law
in Lao People's Democratic Republic**

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厦门大学博硕士论文摘要

ABSTRACT

Since 1986, the Lao People's Democratic Republic has opened its doors to participation in the global system by introducing the New Economic Mechanism (NEM), thus switching from a command model of economic management to one that is market oriented. The Laos government has supported a policy towards foreign direct investment (FDI) since 1988. The investment-related laws and regulations have been amended and improved from time to time in order to create more and more favorable business and investment environment in the country, as well as to better facilitate the inflow of FDI.

Foreign direct investment has come to be widely recognized over the past decade as a major potential contributor to growth and development. It can bring capital, technology, management know-how and access to new markets. In comparison with other forms of capital flows, it is also more stable, with a longer-term commitment to the host economy. The investment promotion becomes one of the key in attracting both domestic and foreign investors to do business in Lao PDR.

Recognizing that FDI can contribute to economic development, Lao government wants to attract it. The principal economic determinants are: market size and per capita income, access to regional and global markets, market growth, raw materials, skilled labor, physical infrastructure, and technology. The China's experiences also indicate that it is not the FDI-specific policies that are important but the broader economic policies including corporate taxes, trade openness and other business climate issues such as regulations.

The significant finds that the investment policies offers in attracting FDI into Laos and the main study shall be identify, comparing and the learning the issues of using incentives and investment policies and legal system on FDI for recommendation to Lao government in the future with all aspects as short term and long term for implementation investment law.

After this studying would know clearly about the investment policy effect to FDI inflows into Laos, including the policy and legal system offer on attraction FDI to Laos; the investment policy and legal relate to FDI of Laos and China; the Factor of attracting FDI in Laos; the lesson learn from China's policy and legal system on FDI issues.

Keywords: FDI, Policies, legal, a comparative study, regulations, Special Economic Zones, government of Lao PDR.

摘要

自 1986 年以来，老挝政府即打开国门将新经济体制（NEM）引入国内从而参与全球经济体系，并由计划经济模式向市场经济模式转变。老挝政府自 1988 年开始对外商直接投资（FDI）提供优惠政策。与投资相关的法律法规被多次修订以在老挝国内创造更好的商业和投资环境，同时促进外商直接投资进入老挝国内。

外商直接投资被认定为近十年来促进经济增长和发展的主要潜在因素之一。它将资本、技术、管理技巧带入新的市场。与其他资本流动方式相比，外商直接投资因为对东道国经济有较长期的承诺而更为稳定。投资促进政策成为老挝吸引国内及外国投资者在老挝国内开展商业活动的主要关键因素之一。

意识到外商直接投资能够促进经济发展，老挝政府试图吸引更多外商投资。主要的经济决定因素包括：市场规模、人均收入、地区和全球市场准入、市场增长、原材料、熟练工人、基础设施建设以及技术。中国的经验同样表明并不是特别针对外商直接投资的政策而是更为广阔的包括企业税、贸易开放程度和其他如法律规制等商业环境因素等方面的政策对吸引外资起到重要作用。

研究结果明显发现，投资政策吸引了外国直接投资进入老挝。主要研究应识别，比较和研究使用（FDI）在投资政策和法律系统对未来老挝政府的短长期在进行投资法。

从研究结果来看，投资政策明显非常效应对外国直接投资流入老挝，包括投资政策和法律体制提供了老挝吸引外国直接投资；中老投资政策和法律关于外国直接投资；老挝吸引外国直接投资的因素；借鉴中国的实施投资政策与法律体制对（FDI）的经验。

关键词： 外商直接投资、政策、法律、对比研究、规章、经济特区、老挝人民民主共和国政府。

ABBREVIATIONS

ADB	Asian Development Bank
AFTA	ASEAN Free Trade Area
ASEAN	Association of Southeast Asian Nations
CPMI	Committee for Promotion and Management of Investment
DDFI	Department of Domestic and foreign Investment, Lao PDR
DPI	Department of Promote Investment
FDI	Foreign Direct Investment
FIEs	Foreign Investment Enterprises
FIMC	Foreign Investment Management Committee
EU	European Union
GDP	Gross Domestic Product
GoL	Government of Lao PDR
GSP	Generalized System of Preferences
IPMC	Investment Promotion Management Committee
Lao PDR	Lao People's Democratic Republic
LBF	Lao Business Forum
LDC	Least Developed Country
LPFI	Law on Promotion Foreign Investment
MOF	Ministry of Finance
MPI	Ministry of Planning and Investment, Lao PDR
NEM	New Economic Mechanism
NIEs	Newly Industrialized Economics
NPC	National People's Congress of China
ODA	Official Development Assistance
OSU	One Stop Service Unit
SEZs	Special Economic Zones
SOEs	State Owned Enterprises
WB	World Bank

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Chapter 1

Introduction

1.1. Introduction

Since 1986, the Lao People's Democratic Republic (Lao PDR) has opened its doors to participation in the global system by introducing the New Economic Mechanism (NEM), thus switching from a command model of economic management to one that is market oriented. By taking into account the limited resources of the country, the Government of the Lao PDR has decided to gradually integrate its economy into the world economy.

A further step in the country's economic reform after the adoption of NEM was to integrate and liberalize trade with the region. As a result, the Lao PDR became a member of the Association of the South East Asian Nations (ASEAN) on 23 July 1997. The experience in acceding to ASEAN as well as the ASEAN Free Trade Area (AFTA) has led the Lao PDR to recognize that significant benefits are to be gained from membership of the World Trade Organization (WTO). The Government has therefore decided to take the process of economic integration and conclude for joining WTO membership in February 2013.

Laos' accession to the WTO can be regarded as the most significant and far-reaching event about Laos in the recently year, with the potential to radically transform and shape the economy and legal structures of Laos. Since 1986, Laos has been steady economic reform. Since then, the Lao Government has opened the markets gradually to overseas investment and achieved extraordinary success in attracting foreign direct investment (FDI) over the past 20 years. FDI in Laos has evolved from an almost negligible level in 1986 to about USD 228 million USD in 2008, 318 million USD in 2009, 333 million USD in 2010 and 450 million USD in 2011^①. Foreign firms, either solely-owned or as joint ventures with Lao firms, have established a ubiquitous presence in Laos. Lao people could easily feel the changes in their daily life.

The FDI plays very important role in many developing countries in generating capital, job employment and technology transferring. As a trend of FDI moves forward to country which rich in natural resources and have advantage in cheap labor, in the case of Lao PDR also no exception. The Lao PDR is a landlocked country, which is located in Southeast Asia and bordered with five countries namely: Cambodia, China, Myanmar, Thailand and Vietnam. Its land area is approximately 236,800 square kilometers. Lao PDR, however, is only lightly populated with 6.7 million people with an average growth of 2.8 percent annually, which has

^① FDI report from 1987 to 2012, Department of Investment promotion, Ministry of Planning and Investment of Laos

been thinly spread across the country. Roughly 80 percent of population is involved in agriculture, forestry and fishing, producing half of the country's GDP (52 percent of GDP), while industry and service sectors have been positively expanded with a share of 22 and 23 percent of GDP, respectively. Recently, Lao PDR is on the process of transferring its economy from centrally planned economy to market-oriented economy. Its GDP growth is around 8 percent annually. However, Lao PDR is classified as a "least-developed country" by the United Nations^①.

Lao PDR has tried to accelerate the economic development for many years to eradicate poverty and improve its people's living conditions. Since 1986, the government of Lao PDR has thus decided to launch its economic reform, namely "New Economic Mechanism". Basically, new reform is based on the transformation from the centrally planned economy to the market-oriented economy. In 1989, Lao PDR has completely opened up its country to the world. Its reform is comprised of five principles: 1) price determination and resource allocation are based on the market; 2) domestic and foreign trade is liberalized as well as the distribution of goods and capital; 3) public enterprises are privatized and local authorities are given more autonomy in decision making; 4) command-based economic planning is replaced by guidance-based planning; and 5) foreign investment is actively introduced.

With the Investment Law in 1994 onward the government of Laos PDR has paid attention in attracting FDI by improving business environment, political stability and macroeconomic policy, its commitment to be member of WTO and AFTA which giving foreign investors in flavor of investment incentive especially in tax policy and land policy. However with the implementation of Investment Law in 2004 which given huge investment incentive to foreign investors especially tax incentive, as the resulted in 2005 onward the FDI inflow has been significantly increased especially in mining sectors and hydropower sectors. In 2006 the FDI inflow rose up to US\$187 million and in 2007 increased more than 37 percent or US\$ 1,180 million.

However by comparing Laos with its neighbor in term of FDI inflow which still in small amount even the investment policies are not much different, thus my motivation is to study and analyze investment incentives to attract foreign investors especially the Investment Policy and Laws effect to FDI inflow in recent year before and after 2004 (1998 to 2004 and 2004 to 2012) to draw out investment strategic policy for recommendation to Lao

^① FDI report from 1987 to 2012, Department of Investment promotion, Ministry of Planning and Investment of Laos

government in the future with all aspects as short term and long term for implementation investment law.

1.2. Reason and Justification

FDI is increasingly being recognized as an important factor in the economic development of countries. Besides bringing capital, it facilitates the transfer of technology, organizational and managerial practices and skills as well as access to international markets. More and more countries are striving to create a favorable and enabling climate to attract FDI as a policy priority. In addition to reducing the restrictions on the entry of FDI, they are actively liberalizing their FDI regimes.

There are many scholars wrote about the relation of investment and its policy, how it attracting FDI, thus many developing countries tried to develop their own policies to promoting investment and attracting FDI. Tax incentives as the good example of FDI promotion in many developing countries, however it is questionable that, How did the investment policy effect to FDI inflow? Are the investment policy effectives? How the other investment incentive offers in term of attracting FDI? What are the challenges for investment policy given? In addition, this paper would exchange the experience from China on FDI policy to Lao PDR?

The role of incentives in promoting FDI has been the subject of many studies, but their relative advantages and disadvantages have never been clearly established. There have been some spectacular successes as well as notable failures in their role as facilitators of FDI. As a factor in attracting FDI, incentives are secondary to more fundamental determinants, such as market size, access to raw materials and availability of skilled labor. Investors generally tend to adopt a two-stage process when evaluating countries as investment locations. In the first stage, they screen countries based on their fundamental determinants. Only those countries that pass these criteria go on to the next stage of evaluation where tax rates, grants and other incentives may become important. Thus, it is generally recognized that investment incentives have only moderate importance in attracting FDI.

In some cases, and with some types of investment, however, their impact may be more pronounced. For some foreign investors, such as footloose, export-oriented investors, tax incentives can be a major factor in their investment location decision. Also, among countries with similarly attractive features the importance of tax incentives may be more pronounced. In addition, Governments can quickly and easily change the range and extent of the tax incentives they offer. However, changing other factors that influence the foreign investment location decision may be more difficult and time consuming, or even outside

government control entirely. For these reasons, investment experts, particularly from investment promotion agencies, view incentives as an important policy variable in their strategies to attract FDI for economic development.

According to the report of “Checklist for FDI Incentive Policies, OECD, 2003” which based on material assembled by Hans Christiansen, the conditions sought by foreign enterprises are largely equivalent to those that constitute a healthy business environment more generally. However, internationally mobile investors may be more rapidly responsive to changes in business conditions. The most effective action by host country authorities to meet investors' expectations is:

- Safeguarding public sector transparency, including an impartial system of courts and law enforcement
- Ensuring that rules and their implementation rest on the principle of nondiscrimination between foreign and domestic enterprises and are in accordance with international law
- Providing the right of free transfers related to an investment and protecting against arbitrary expropriation.
- Putting in place adequate frameworks for a healthy competitive environment in the domestic business sector.
- Removing obstacles to international trade.
- Redress those aspects of the tax system that constitute barriers to FDI.

In the Morisset's article (2003, p. 253), the impact of tax incentives on FDI is not obvious that it can help in promoting investment. In the past few decades the numerous studies of international investors have indicated that the tax incentives are not major factor in their investment location decision. More important factors such as infrastructure, political stability, labor and the cost of production

However investment policies also have encouraging in attracting on FDI as well, the good example is China's policy incentives have been recognized as the key in attracting foreign investors in the last few decades.

1.3. Research Objective

The broad aim of this dissertation will lie on FDI in Lao PDR However, as any casual observer of Laos might agree, the country develops and moves at such a fast pace, especially in the area of economic policy, which this paper would not be able to do justice to this complex topic.

The objective of this legal studies is to analyze the effective of investment policies and Laws offers in attracting FDI into Laos and the main study shall be identify, comparing and the learning the issues of using incentives and investment policies and Laws to draw out investment strategic policy for recommendation to Lao government in the future with all aspects as short term and long term for implementation investment law. Thus the scope of the thesis is based on investment policies and legal systems apply to FDI in Laos. Furthermore, this dissertation would raise the Lesson and experience of China's FDI, particularly, in the area of the FDI Policies, regulations.

1.4. Research problems

This dissertation looks into the questions as follows:

- How did the investment policy and Legal system effect to FDI inflow?
- Are the investment policies effective?
- What are the Factor of attracting FDI in Laos and How achievement of FDI Management in Laos?
- What lesson can Lao PDR learn from China's policy and legal system on FDI?

1.5. Expect outcome

The government of Laos (GoL) has taken steps to improve the investment climate in the country in recent years. The GoL has amended its constitution including incentives for various sectors and investment zones and updated on investment regulations, mainly decentralized investment and approval process at the central and provincial levels. Further, the investment law sets out new policy incentives including the promoted zone areas. The legislation shortens the investment application procedures and processing time The GoL promulgated the Law on Foreign investment in April 1988, which sets the procedures governing foreign investment.

Meanwhile, the FDI in China has been one of the major success stories over the past 30 years. With the rapidly increasing inflows of FDI, China's economy has experienced dramatic changes as well. The regional and sectoral distributed of FDI in China for the past three decades. Which Lao could learn from China, so this study would explain, compare and lead you to have a general expect on the history, FDI policy and Investment regulations of Laos and China. And would let you know and analyze deeply on the FDI policies and legal systems offer in attracting FDI into Lao PDR and China. Furthermore, the recommendations some lesson from Chinese FDI policy and regulation for Laos would be arisen. Specifically, these studies would point out the expect outcomes as follows:

1. Would know the investment policy and laws effect to FDI inflows into Laos, including the policy and legal system offer on attraction FDI to Laos.
2. Would know the investment policy and Law relate to FDI of Laos and China.
3. Would know the factor of attracting FDI in Laos.
4. Would know the lesson learn from China's policy and legal system on FDI issues

1.6. Research Methodology

This dissertation has employed a variety of sources mainly of secondary and qualitative origin, though quantitative data has also received attention where appropriate. The main information sources ranged from journals, newspapers, electronic databases, to books. Primary data collection was regarded as not appropriate, due to the nature of both the research question and the FDIs involved in this research, but also the proximity of events (Laos' FDI) investigated. Sufficient and foremost relevant data was obtained through this approach.

- The data and information are mainly from the concerning Ministries in Laos as essential.
- The scope of the thesis is not covering in all aspects of economic development in the country, it will focus only FDI strategic policy or investment policy and FDI related topic

This paper focuses on the effectiveness of the incentives especially investment policies and legal applied for the foreign investment in Laos.

1.7. Structure of the Dissertation

This dissertation is structured as follows: **Chapter One** will introduce Background, Problem statement, Aim and objectives, Expected outcome, Significance of study, Scope of study, Theoretical concept and Literature reviews, Methodology, Structure of the study; **Chapter Two** will introduce on **Policy and Legal system on FDI in Lao PDR**, History of FDI in Laos, FDI Policies, legal system on FDI and Major FDI types, Investment Incentive and Special Promotion Zones, **Chapter Three** will introduce about the **Policy and Legal system on FDI In China**, particularly, Policies, regulation. Then, **Chapter Four** will focus on **the Assessment and prospect of Policy and Legal system on FDI in Lao PDR**, Policies, regulation, Factors, impact or effect of FDI in Laos and in the end of this chapter will highlight the Lesson from China's Policy and legal system on FDI. Finally, **Chapter Five**, the conclusion, this dissertation, significant issues and highlights areas of possible recommendation.

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