

STREAMLINING BUSINESS REGISTRATION IN LAO PDR: REDUCING THE BURDEN OF THE COMPANY SEAL

Background

Lao PDR requires all companies to have a Company Seal. This part of the registration process accounts for a significant amount of the time needed for starting up a new business. According to World Bank's latest Doing Business study, the time required to obtain a Company Seal in Lao PDR accounts for 45 of the total of 103 days needed to start a business, which is prohibitively long.

Traditionally, the primary objective of the Company Seal was to confirm the authenticity of company documents in order to make them legally binding by affixing a stamp to an official document. In this sense, the Company Seal acts more or less as the signature of a company. However, as business practices modernize, the need for a Company Seal is diminishing, and the signatures of authorized representatives of a company are sufficient to make documents legally binding.

This Business Issues Bulletin discusses the current requirement in Lao PDR for obtaining a Company Seal and provides practical recommendations for improvement based on international best practices. As the time needed to start a new business in Lao PDR is long relative to its neighbors, reducing the burden of this cumbersome and largely unnecessary step would streamline business entry and enhance investment.

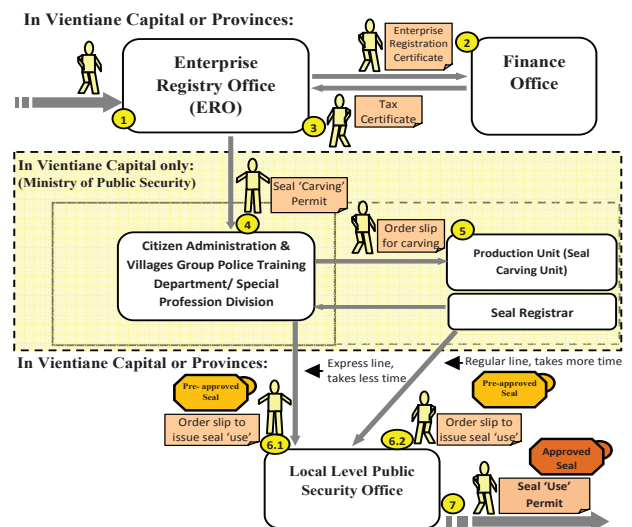
Procedures for issuing a Company Seal

Article 11 of Decree 218/PM, issued in July 2005 regulates the requirement for obtaining a Company Seal at the time of business registration. The Ministry of Industry and Commerce (MoIC) and Ministry of Public Security (MoPS) are currently involved in approving and registering each Company Seal, and are also involved in designing and producing each Seal. This is quite unusual, as most countries allow Company Seals to be designed by the applicant and produced by an approved engraver.

At present the procedure for new companies to obtain a Company Seal is as follows: The company representative must first go to the nearest office of the MoIC, which will determine the appropriate design of the Company Seal. Next, the company must obtain a permit from the MoPS to both produce the seal and to have it registered. The diagram below shows the seven-step

procedure for obtaining a Company Seal.

Procedures for Obtaining Company Seal



Procedure Explanation:

- The seal is carved at the Seal Carving Unit, located separately from the main MPS office.
- Express or priority seals are made first at the Seal Carving Unit. Then, the seals are registered and sent back to the Citizen Administration Department where applicants can collect them.
- For regular seals, they are made and registered at the Seal Carving Unit, then applicants can come and collect them.

Timeline:

- From step ① to ④ usually takes about 15 working days.
- From step ④ to ⑦ may take up to 45 days.



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The "Business Issues Bulletin" provides those interested in business issues with a short summary and analysis of a particular topic affecting the business environment in Lao PDR, and exposure to different opinions held by various stakeholders on the topic.

The statements and opinions presented here are only meant to provide additional reference material and do not reflect official opinion of the Lao National Chamber of Commerce and Industry (LNCCI) or IFC.

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The official cost for issuing a Company Seal is currently LAK120,000 (approximately US\$15), making it one of the more costly steps in the business start-up procedure in Lao PDR. Additionally, the 45 day period is a breach of Decree 301/PM of October 2005, which clearly states that Company Seals should be issued within five working days (see Article 43).

As the table below shows, Lao PDR compares unfavorably with many neighboring countries in regard to the time required for obtaining Company Seals. The nearest comparison is Vietnam, where the Company Seal issuance process currently takes less than a third of the time. However, at the time of the writing of this Bulletin, Vietnam issued a new regulation (Decree 31/2009/ND-CP) on the management and use of Company Seals. Thus, from June 1, 2009 Vietnamese companies will only need to register a sample of their Company Seal with the police. This simplified procedure is expected to reduce the time involved from seven days to two days, making Lao PDR's 45 days even more distant from regional norms.

Time and Cost of Obtaining Company Seal: Comparing Countries in Asia

	Company Seal is a Mandatory Requirement	Days Required to Obtain a Company Seal	Cost (US\$ approx.)
Lao PDR	Yes	45	14.25
Vietnam	Yes	13	10.57
China	Yes	2	43.92
Cambodia	Yes	1	15.00
Thailand	No	4	8.59
Indonesia	No	Not required	Not applicable
Philippines	No	Not required	Not applicable
Kyrgyz Rep.	No	3	27.92
Timor-Leste	Yes	2	No charge
Malaysia	Yes	1	42.37
India	Yes	1	7.17
Bangladesh	Yes	1	1.00
Azerbaijan	Yes	1	4.98 to 49.77
Kazakhstan	Yes	1	16.51 to 31.75
Mongolia	Yes	1	34.52 for express

Source: *Doing Business 2009*. (US\$ exchange rate as of mid-January, 2009).

If the period for obtaining a Company Seal in Lao PDR could be shortened, it would have a considerable and positive impact on the overall time required to start a new company. For example, if Lao PDR could reduce the time required to obtain a Company Seal to a level closer to the average in Asia – e.g. around five working days, as called for in Decree 301/PM – it would result in a 40% time saving; a big improvement without the need for major reforms.

What would this mean for Lao PDR's ranking in the World Bank's annual 'Doing Business' survey? All other things being equal, if the time required to obtain a Company

Seal was reduced to five working days, we could expect to see Lao PDR rise two places in the overall ease of doing business rankings, and six places on the 'Starting a Business' indicator, from 92nd to 86th. If the Company Seal was completely removed as a **mandatory** element of the enterprise registration procedure, Lao PDR would rise three places in the overall rankings and no less than 21 places – from 92nd to 71st – in the 'Starting a Business' indicator.

Options for change

There are a number of ways in which the procedures for issuing Company Seals could be streamlined in Lao PDR, based on the experiences of other countries. There are two broad categories of possible reforms: i) keeping the Company Seal as a mandatory requirement of business start-up, but reforming the procedures involved; and ii) moving towards a non-mandatory regime.

Under the **first reform category**, the simplest option would be to bring the Company Seal issuance and registration process into conformity with Decree 301/PM to ensure a turnaround time of five working days bringing the time required closer to regional norms.

There are a number of ways this might be achieved. One recommendation would be to shift responsibility for Company Seal issuance to the Enterprise Registry Office (ERO), as part of the company registration process. This would allow for substantial efficiency gains, as then just one government agency would be responsible for this task, and the Company Seal could be issued simultaneously with the registration certificate. Numerous countries allow the government agency responsible for enterprise registration to approve (and register) Company Seals, without any recourse to a public security agency.

If relinquishing responsibility for Company Seal issuance and registration is not acceptable to MoPS, another option would be to relocate this task to the ERO office, with MoPS continuing to provide this function. This could in fact be one element of a process to establish a 'one-stop-shop' approach for enterprise registration and business start-up, particularly if the tax registration procedures were also included. However, the efficiency gains of this option would be fairly limited unless MoPS were able to significantly reduce the time required to process the Company Seal.

A third way to accelerate the Company Seal issuance process would be to allow approved service providers to produce the Company Seal, so that this burden is removed from MoPS. If multiple service providers were approved, it is likely that the time required to produce the Company Seal would be reduced. This is done in Azerbaijan, for example, where numerous firms provide a Company Seal making service. In China, Company Seals can be made by anyone holding a 'Shanghai

special industry permit (company seal carving purpose)'. Once the MoPS in China has issued a 'notice of carving permission', the Company Seal can be made by an outside firm holding this permit. However, much would still depend on the time MoPS requires to approve and register the Company Seal. Thus, a reduction in the overall time needed is not automatically assured by selecting this option.

Another policy option, albeit less attractive, would be to establish an official 'express' Company Seal issuance procedure (whether at MoPS or ERO), whereby applicants pay a higher fee in order to get their Company Seal more quickly. Azerbaijan, the Kyrgyz Republic, Lithuania and Mongolia are examples of countries offering such express services (the fastest being two hours in the Kyrgyz Republic). The main drawback with this option is that it would raise the cost of business entry, potentially putting smaller businesses, lacking the financial resources to pay a premium fee for express service at a disadvantage.

Under the **second reform category**, one policy option would be to follow the example of numerous countries by removing the mandatory requirement for Lao companies to use Company Seals. This has been done in Estonia, Latvia, the Kyrgyz Republic, Thailand, Indonesia and the Philippines, among many others. If this option were pursued, it would remove – with a single reform – the most time-consuming element of the start-up process for new businesses in Lao PDR. Companies could still opt to have a Company Seal, if they wished, but by no longer making it a mandatory requirement, it would immediately shave 45 days off the time required to complete business start-up procedures.

A second option would be to allow new companies to complete all the other procedures needed to commence business operations without having the Company Seal in hand. This is done in Bulgaria, where the Company Seal procedure can be completed simultaneously with other steps in the enterprise registration process (and the Company Seal takes just one day to be issued in Bulgaria). In effect, this is similar to shifting the Company Seal from being a mandatory requirement to an optional one, by de-linking Company Seal issuance from the other elements of the start-up process.

Alternatively, in Bhutan, a new business is only required to get its Company Seal within one year of commencing registration, and its possession of a Company Seal is checked as part of the firm's first annual inspection. This pragmatic option removes the Company Seal issuance procedure from the business start-up process making it faster and cheaper for an entrepreneur to begin operations of a new business.

Conclusion

In order to ease the time-consuming and complicated Company Seal issuance procedures, which will in-turn

simplify the whole business start-up process, two options should be considered. A first and more incremental option is for the government to find ways to speed up the process for issuing the Company Seal by streamlining procedures to make them easier and faster. A second and more comprehensive reform option proposed here is to remove the requirement for the Company Seal as part of the business start-up process. Either option will improve Lao PDR's business entry procedures making it easier, faster and less expensive for entrepreneurs to start a new business.

Viewpoints

"The goal of the Enterprise Registry Office (ERO) is to make the enterprise registration process simple and quick. From ERO's point of view, it is legally necessary for businesses to follow procedures under the Ministry of Public Security (MoPS) to obtain their Company Seal and permit. However, the process of getting a seal carving permit and producing the seal are currently centralized at a single place for the whole country, managed by MoPS (Department of Citizens Administration and Training for Villages Group Police). The MoPS then issues a letter to local public security authorities, where the enterprise is located, to consider and issue a seal 'use' permit at a later stage. This practice is considered a constraint for businesses.

The following options would streamline procedures for obtaining a Company Seal and other related permits:

- 1. Expand seal-making units under MoPS to every province nationwide, or at least to each region.*
- 2. Give businesses an option to choose whether they want to use their Company Seal and when, at their own discretion. Alternatively, they may choose to use the signature(s) of senior management on some documents.*
- 3. Give businesses an option to make their own Company Seal, based on conditions set by the relevant public security authority. Then register this seal with relevant agencies, or with ERO, when businesses submit their registration applications.*

Adopting one or more of these proposed solutions would greatly facilitate business start-up procedures."

Nivone Nhoysaykham
Director of Enterprise Registry Office

"Private investment is a key factor driving economic growth in Laos and is encouraged consistently by the government. And yet establishing a company is time-consuming and requires a lot of effort. Investors wishing to create a company must go through many complicated and lengthy processes, involving various ministries, including Ministry of Planning and Investment (MPI) for investment license, MoIC for company registration, Ministry of Finance (MoF) for tax registration, and MoPS for Company Seal registration.

Recently, the procedures for obtaining an investment license, as well as enterprise and tax registration procedures were streamlined with the intention to significantly reduce the time it takes for approval. However, in practice, it still takes a long time to get a Company Seal, mainly because of limited capacity to make and design the seal. On the other hand, the registration time could be reduced considerably if investors were allowed to design their own seals, and production was out-sourced to a specialized company based on certain criteria set by relevant authorities. In Lao PDR, it is unrealistic to abrogate the use of the Company Seal, so it is important to find a way to make this process easier.”

**Mr. Soutsaka Bounmanit, Managing Director
Soutsaka College of Management and Technology**

“A sound regulatory environment for the establishment of enterprises is a key factor to encouraging investment in Lao PDR. Under the 2005 Enterprise Law, the Government of Lao PDR has made great strides in this respect, particularly with the recent implementation of new processes for company name subscription and enterprise registration with the Enterprise Registry Office (ERO) of the Ministry of Industry and Commerce. However, these steps represent only two aspects of the company establishment process, and there are other steps in this process that can be streamlined, such as the issuance of Company Seals.

The requirement for all companies to have a Company Seal in Lao PDR is important to ensure that the legal acts of companies are validly authorized, and to provide some measure of protection against fraud. Making the ERO responsible for the issuance of Company Seals, and implementing a five business day turnaround timeframe, would make the company establishment process more efficient for investors. Alternatively, transferring responsibility for the design and carving process to certain regulated private sector actors would free up limited government resources, and may reduce the time that it takes to establish an enterprise in Lao PDR. Reforming the Company Seal process should be encouraged, as this is a straight forward and inexpensive way of improving the regulatory environment for the establishment of enterprises in Lao PDR and for encouraging both foreign and domestic investment.”

**Chris Manley
Country Managing Director, Mekong Law Group**

“Company Seals are, in many ways, vestiges of a bygone era when companies communicated with each other and with customers mostly on paper. Today, even many basic transactions take place electronically, making Company Seals obsolete. Rather than making

a Company Seal mandatory, a more effective way to establish the identity of a company would be to implement an effective e-signature law, which over 100 countries have already done. As a result, a minority of jurisdictions worldwide now require a seal -- even though the requirement is still ‘on the books’ in many Asian countries. Electronic signatures cost nothing, and they are much more difficult to forge than seals.

Even if the Company Seal requirement is not to be eliminated right away, getting a Seal should not present a bottleneck for entrepreneurs trying to start a business. In Singapore, for example, where private companies are authorized to make Company Seals, fulfilling the Seal requirement takes only one day. Allowing private parties to provide Seals in Lao PDR could significantly ease the process of starting a company.”

**Justin Yap, Regulatory Economist,
Doing Business Reform Unit, Investment Climate
Department/FIAS, World Bank Group**

“It can often be a challenge for a developing country to find practical ways to improve the enabling environment for companies without expending quite considerable energy and costs. But occasionally it is possible to identify a relatively simple initiative that can have a substantial impact – rather like low-hanging fruit that can be easily harvested without too much effort. This is the case with the Company Seal issuance and registration process in Lao PDR.

For those countries that still require all new businesses to have a Company Seal, most take no more than a few days to issue it; indeed, in some developing countries, it takes just a few hours. But in Lao PDR, the 45 days it takes to get a Company Seal is perhaps the longest processing period in the world. Therefore, there is little doubt that these 45 days could be reduced very substantially, and relatively easily.

I would suggest that responsibility for approval and registration of new Company Seals is passed to Enterprise Registry Office (ERO), as part of a move towards a ‘one-stop-shop’ service for new businesses. It would then be ERO’s duty to abide by Prime Minister’s Decree 301, which limits the Company Seal issuance period to no more than five working days. That would immediately remove 40 days from the company start-up procedures in Lao PDR, and serve as a positive signal to investors that the country is becoming more and more business friendly.”

**Nick Freeman,
FDI and Private Sector Development Specialist**