

## CHAPTER VII INSTITUTIONAL FRAMEWORK

### 7.1 Legal and Regulatory Framework

#### (1) Principles of SEZ Establishment

In order to overcome the institutional and operational constraints pointed out in Section 5.6 and improve the investment climate for FDI, some basic principles have to be introduced into SEZ in Savannakhet. They will include:

##### Basic Principles in SEZ Establishment

- Maintain the consistency of the policies
- Secure the transparency both in policy making and operations
- Ensure the accountability to the investors
- Provide the investors with the accessibility to information required
- Keep the ultimate independence in respect of the principles of economic operations, systems, institutions and/or organizations

#### (2) Legal base for the SEZ

A new legal base is required to introduce the SEZ scheme as free trade zone and separate customs territory and to set up an independent organization for operation of the planned SEZ.

Article 60 of the Customs Law of 1994 stipulates that the National Assembly shall approve the creation of duty free zones on the Government's proposal. Further, a new SEZ Authority, namely Lao Economic Zone Authority (hereinafter referred to as "LEZA"), will have to be allowed to make and implement its own independent policies, which may otherwise conflict with other organizations' interests. The LEZA, therefore, may require the power equivalent to the ministries or provinces and be attached to the higher office of the government, preferably to the Prime Minister's Office.

In this context, a legal base necessary for the planned SEZ shall be a new Law, such a new law will be named as the "Special Economic Zone Law" (hereinafter referred to as the "SEZ Law").

#### (3) The SEZ Law

##### 1) Purposes of the SEZ Law

A new SEZ Law should be enacted for the following purposes:

### **Objectives of New SEZ Law**

- Clarify purpose and objectives of the SEZ
- Declare the establishment and nature of the SEZ
- Identify the SEZ zones or areas
- Define the legal status and functions of the SEZ
- Adopt its own economic and financial principles
- Establish governing structures of the SEZ (the SEZ Authority)
- Regulate its organization and respective powers, roles and responsibilities
- Define the operational rules and procedures and provide investment incentives
- Regulate the relationship with national government and other entities.

The new SEZ Law also aims at offering the following system and facilities, among others, to attract foreign investors and activate the economies in the zone:

### **Systems and Facilities offered by The SEZ Law**

- Economic freedom based on the market economy
- More rational company operation system
- Full range of investment incentives
- Freer transaction of foreign currencies
- Simpler and clearer license approval system
- More adequate accounting system
- Transparent and freer land leasing and use system
- Flexible labor relations and use of foreign labor
- Assurance on security of the investment

## 2) Sample draft of SEZ Law

The sample provisions of the SEZ Law were drafted during the course of this Study, with references to the special economic zone laws, acts and /or regulations of the Philippines, China, Thailand, and Vietnam and is proposed as reference for future legislation work of the government of Lao PDR. The whole provisions of the sample draft of Special Economic Zone Law are provided in Appendix 4, of which the blank parts are to be filled in by the government during the course of modification of the sample draft.

Some of the proposed provisions of the sample draft of the SEZ Law are as follows:

### Proposed Provisions of New SEZ Law

- The SEZ is a selected area with highly developed or which have the potential to be developed into industrial, tourist or recreational, commercial, servicing agro-industrial, investment and financial center.
- An SEZ shall contain all of the following: export processing zones, free trade zones, free logistics center and tourist or recreational center.
- Enterprises within the SEZ are granted preferential tax treatment and immigration laws are more lenient.
- The first SEZ is to be established within 2.5 kilometers on both side from the Second Mekong Bridge access road and Route 9, starting from the gate of the Lao Check Point near the New Mekong Bridge to the intersection of Route 9 and 13.
- The SEZ can be developed by private, public or the mixed of those initiatives.
- Criteria for the development of other SEZ
- The SEZ shall be developed into a decentralized, self-reliant and self-sustaining center with minimum government interventions.
- Foreign citizens or companies in whatever proportion and Lao citizens or companies may set up enterprises in the SEZ, either by themselves or in joint venture in any sector of industry.
- The SEZ shall be operated and managed as separate customs territory.
- The Lao Economic Zone Authority (LEZA), an independent public corporation attached to the Prime Minister's Office, will be responsible for policy-making, operations and management of the SEZ.
- Fiscal incentives such as tax holidays of 3-8 years, profit tax reduction to 10-15%, exemption of turnover tax, utilization tax, minimum tax, import and export duties, reduction of personal income tax to 5%. Other fees and charges may be reduced for the SEZ enterprises.
- Minimum investment is required to be qualified as SEZ enterprises: US\$100,000 or more for foreign companies and US\$50,000 or more for domestic companies.
- The SEZ shall be given an offshore status in order to make the foreign currency control freer.
- Free remittance of after tax profits
- Land leasing of minimum 30 years and maximum 75 years for foreign investment, minimum 30 years and maximum 50 years for domestic investors and transparent leasing rates.
- Establishment of One Stop Shop Center for facilitating investment license, export/import licenses and other permits necessary for business activities
- Set-up of Labor Relations Center for assisting the mediating labor disputes
- Master Employment Contract for unifying the working conditions in the SEZ enterprises
- Freer use of foreign workers up to 25% of total workforce
- 100% deduction of the value of training expense incurred by the SEZ enterprises for developing skills or managerial abilities of Lao citizens from the taxable income.

### 3) Alteration or Amendment to Existing Legal System

In order to provide such systems and facilities as mentioned above, it is necessary to introduce new provisions in the SEZ Law, which may amend or surpass the existing laws and/or regulations. As a trial examination, “Law on Promotion and Management of Foreign Investment”, “Land Law”, “Council of Ministers’ Decree No.53 governing The Management of Foreign Exchange and Precious Metals”, “Tax Law”, “Business Law” and “Labor Law” have been studied as noted below. “Customs Law” should also be reviewed in a same manner for modification to fulfill the purpose of the SEZ Law.

Some of the following recommendations are adopted in the sample draft of SEZ Law in Appendix 4. The section numbers shown in the right column of the tables below indicate the article of the sample draft of the SEZ Law where such recommendations are referred. Other recommendations, without references to the section numbers of the SEZ Law, shall be examined in details by the government of Lao PDR further and regulated in the Implementation Rules.

**Table 7.1 Law on Promotion and Management of Foreign Investment of 1994:**

Items	Law on Promotion and Management of Foreign Investment	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Restricted fields of foreign investment	Article 2: Fields detrimental to national security, national environment, public health or national culture	Too vague. Provide the category of restricted industries in Negative List.	Section 7, 26
Nationalization of investment	Article 3: No property or investment nationalized without payment of compensation	Indicate the base for calculating the compensation amount and currencies to be paid.	(Implementation Rules)
Joint venture	Article 6: Minimum 30% of foreign capital	No minimum equity required	Section 7
Conversion of foreign capital into Lao currency	Article 6: Obligatory	No obligation to convert	Section 27
Wholly foreign-owned enterprises	Article 7: Permitted. Must be a new company, a branch, or a representative office.	Do not have to a new company.	Section 7
Articles of Association of branch or representative office	Article 8: Articles of Association of a branch or a representative office be consistent with Lao laws	Theoretically, a branch or representative office is a part of headquarters. Articles of Association of headquarters are not always consistent with Lao laws.	(Implementation Rules)
Land lease	Article 10: Possible to lease land and transfer the leasehold interests, to own the improvements on land and other moveable property and to transfer those ownership interests	Lease rates have to be clearly quoted in public.	Section 30
Freedom from the government interference	Article 10: The government shall not interfere in the business management.	Clearer provision needed.	Section 7
Employment	Article 11: Hiring priority to Lao citizens and investors' obligation to upgrade Lao employees skills through training	Freer employment of foreign workers within targeted and limited ratio and duration. Set up the measures to monitor the investors' obligation to upgrade Lao employees skills.	Section 40
Personal income tax	Article 12: A flat rate of 10% of the income earned in Lao PDR	10% is not low at all. 5% is recommended.	(Implementation Rules)
Accounting system	Article 14: Obligatory use of Lao financial accounting system	Subject to conformity of Lao system with international accounting system required.	(Refer to "Tax Law")

Items	Law on Promotion and Management of Foreign Investment	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Profit remittance	Article 15: In conformity with the “law and regulations governing the management of foreign exchange and precious metals”, repatriation of investment earning, capital, personal income may be done.	After tax profits and other earnings of foreign investment have to be remitted freely in the equivalent foreign currencies as invested. Exemption or reduction of remittance tax, if it is compulsory	Section 24 Section 28
Corporate tax and other taxes, duties and fees	Article 16: A flat rate of 20%	Introduction of tax holiday and further reduction in tax rate. Clear statement to name other duties, charges or fees, if any.	Section 23 (Refer to Table 4.4 in Chapter IV) (Implementation Rules)
Import duties	Article 17: 1% on equipment, means of production, spare parts and other materials used in the investment projects or productive enterprises. Exempted for raw materials and intermediate components for processing and then re-exported.	Clearer conditions for exemption.	Section 24 (Refer to Table 4.4 in Chapter IV) (Implementation Rules)
Export duties	Article 17: Exempted for all exported finished products.	Clearer conditions for exemption.	Section 24 (Refer to Table 4.4 in Chapter IV) (Implementation Rules)
Special duty reduction	Article 17: Eligible for raw materials and intermediate components for import substitution processing	Exemption clause to be introduced	Section 24 (Refer to Table 4.4 in Chapter IV) (Implementation Rules)
Tax holidays	Article 18: Granted on case-by-case base.	SEZ is the case for special treatment.	Section 24 (Refer to Table 4.4 in Chapter IV) (Implementation Rules)
Reserve funds	Article 19: Foreign investor shall devote a portion of its profit to various reserve funds	If they are compulsory, specify the amount to be reserved.	(Implementation Rules)
Health and safety of labors	Article 20: Investors take all measures necessary and appropriate to protect workers health and safety and to contribute to social insurance and welfare programs for the workers	Who shall determine the measures to be taken are necessary or appropriate. Clear statement of the programs and possible allotment needed. Deduction of such amount in the calculation of taxable income.	Section 39 Section 42

Items	Law on Promotion and Management of Foreign Investment	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Labor relations center		Labor relations center is recommended to set up for recruiting and dispute settlement.	(Implementation Rules)
Disputes	Article 21: First seek to settle through consultation or mediation	Workers strike shall be prohibited in the SEZ. The SEZ authority shall be responsible for dispute settlement.	Section 38
One-stop service center	Article 23: FIMC (or presently CIC) as an one-stop service center for FDI	SEZ Authority offers one-stop service to FDI	Section 36
Investment application	Article 25: An application and supporting documents for FIMC	An investment license for SEZ shall be submitted to the LEZA.	Section 13
Responsibility for monitoring a foreign investment	Article 28: FIMC is responsible to coordinate with concerned ministries and provincial authorities for monitoring and enforcement the implementation of foreign investment.	The LEZA will be responsible for these.	Section 13
Screening of an investment application	Article 26: The duration needed by FIMC (or CIC) for approval: 60 days	The stated duration has to be kept. The shorter the required duration is, the better. Preferably the automatic approval of investment application is admitted.	(Implementation Rules)
Foreign investment approval procedures	No clear guidance for approval and conditions to be applied to each case of investment.	Necessary to make it clearer and simplified. Avoid that different conditions and incentives may be applied for different parties in different situation (discretionary licensing). Approval standards and conditions have to be unified.	(Implementation Rules)
Duration of foreign investment license considered case by case	Now 15 years duration is under consideration of the government.	15 years are too short. It is desirable there is no limitation on license period.	(Implementation Rules)
Investment license renewal	No standards stated for renewal of the investment license	Renewal standards have to be clearly stipulated, in case needing to limit the license duration	(Implementation Rules)

**Table 7.2 Land Law of 1997**

Items	Land Law	Recommendation for modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Land leasing period for Lao citizens	Article 13: Max. 30 years lease term between the State and Lao citizen	Lao citizens or firms going to invest in the SEZ have to be approved for a longer period. (Minimum 30 years, Maximum 50 years)	Section 30
Authorization of leasing	Article 64: Foreign investors need to get prior authorization for leasing from the Administrative Authority of the province, municipality or special zone. Finance Ministry reserves final decision right.	The SEZ Authority will reserve the right for approval of acquisition and transfer of leasing right.	Section 30
Land leasing period for foreign investors	Article 65: Maximum land leasing period of 50 years for foreign investors and 75 years in SEZ. The actual leasing period shall be determined based on the characteristic, size and condition of the operation.	The maximum periods in the SEZ (75years) are long enough but not foreseeable how much duration is actually approved. The standard leasing period has to be set up in advance for SEZ according to the use purpose. (Minimum 30 years and maximum 75 years)	Section 30
Land leasing price	No description	The prices of land leasing rights have to be determined basing on the market value and to be opened for foreign investors in SEZ. It does not seem to be an appropriate manner to decide the rates by negotiation.	Section 30
Sale, sublease, assignment or transfer of leasing rights	Article 64: There is no provision clearly admitting the foreigners the rights of subleasing, assigning, transferring or selling the leasing rights.	Admit such rights, subject to the prior screening on the basis of formality assessment by SEZ Commissioner.	Section 30



**Table 7.3 Council of Ministers' Decree No.53 dated September 7 1990,  
governing The Management of Foreign Exchange and Precious Metals**

Items	Council of Minister's Decree (Foreign exchange)	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Use and possession of foreign currencies	Article 5: No one authorized to use foreign exchange directly for transactions in the Lao PDR.... Holders of foreign currency shall present it to a bank or authorized dealer for exchange into Kip.	Free use and possession of foreign currencies in the SEZ.	Section 27
Purchase and sale of foreign currencies	Article 6: Limitation on purchase and sale of foreign currencies	Any firm, shop, restaurant, hotel and individual person can use foreign currencies freely in the SEZ.	Section 27
Exchange rate	Article 9: Exchange rate decided by the Bank of Lao PDR	Any one can decide the exchange rate for use in the SEZ.	Section 27
Obligation of use of Kip	Article 11: Use of Kip for domestic expenditure and prohibition of holding the convertible Kip account	Entirely free use of foreign currencies to be admitted.	Section 27
Travelling expenses	Article 16.1(1): Resident traveller bringing out the foreign exchange within the limit set by the Bank of the Lao PDR	Not limited by the Bank of Lao PDR.	Section 27
Payment by foreign currencies	Article 17: Payment for imports and exports of goods and services, remittance of profit and income require an application in accordance with requirements and regulations of the Bank of the Lao PDR.	Automatically approved by any banks in the SEZ when there is no defect in formalities of the documents, provided that the Bank of the Lao PDR licenses those banks and such foreign investment is registered with the Bank.	Section 27 and 28
Foreign investment	Article 22: Foreign investment be authorized by the Government	Foreign investment from the SEZ is regulated by the LEZA.	Section 27

**Table 7.4 Tax Law of 1995**

Items	Tax Law	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Turnover tax	Article 12: Collected from imports, sales of goods and general services at the rates of 3-15%	Exempted for exports and reduction to a half rates for the promotional sectors	Section 23 Section 24 (Implementation Rules for details)
Utilization tax	Article 23: Collected from some consumer goods at the rates of 10-50%	Exempted for exports and reduction to a half rates for the promotional sectors	Section 23 Section 24 (Implementation Rules)
Profit tax (Corporate or independent business tax)	Article 38: 35% for corporation (Discount to 20% in case promoted by the government and located in city) 10-45% for individuals	Corporate profit tax down to 10-15% both for foreign and domestic investment	Section 23 (Implementation Rules)
Income tax (Personal income tax)	Article 38: Salaries equal to \$625/month or more: 40%	Personal income tax down to 5% for the foreigners	Section 23 (Implementation Rules)
Deductible expenses	Article 34 & 35: Travel costs shall not exceed 0.2% of the annual sales or not more than 6 million Kip per year. Gifts, allowances, presents or prizes shall not exceed 0.15% of the annual sales or not more than 4 million Kip per year. Entertainment fee: None	The actual cost of business trip and guest reception and entertainment expenses of maximum \$500 shall be deducted from the taxable income.	Section 23 (Implementation Rules)
Accelerated amortization	Article 34: Regulation on the amortization period and methods	The amortization period shall be shortened as follows: Machines and equipment: 5 years to 3 years Land transport facility: 5 years to 3 years Office instrument and other supplies: 10 years to 3 years Installation and decorations: 10 years to 3 years Passenger plane: 20 years to 10 years Industrial and trade premises: 20 years to 10 years	Section 23 (Implementation Rules)
Non-deductible expenses	Article 35: Salary and interest paid to share holders or employers cannot be deducted from the annual profit.	They shall be allowed to deduct in the SEZ enterprises.	Section 23 (Implementation Rules)

Items	Tax Law	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Carry-over of the loss	Article 36: Possible to carry over the operation loss for three years	Change to five years	Section 23 (Implementation Rules)
Minimum tax	Article 55: 0.5% of annual business income with turnover tax deducted.	Exempted or reduced to a half rate of 0.25%	Section 23 Section 24 (Implementation Rules)
Other charges and fees	Article 58: Tax registration, business permissions, approvals, certificates and other official documents, using of transport roads, travels to enter or exit the country, issuing the entry-exit visas, utilization of satellite telecommunications systems, TV utilization, installation of advertising posters or boards, name-plate of stores, or other services	All charges and fees have to be notified to the public in advance.	(Implementation Rules)
The rates of the above	Article 59: Determined by the Presidential Provision in conformity with real social-economic situation	Those charges and fees shall be exempted or reduced for the SEZ enterprises according to the recommendation of the SEZ authority. All the rates have to be clearly noticed to the public.	Section 23 Section 24 (Implementation Rules)

**Table 7.5 Business Law of 1994**

Items	Business Law	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Negative list	Article 12: Business inconsistent with the laws and regulations of the Lao PDR are prohibited. Article 14: Business reserved for Lao citizens will be determined separately by the government.	These businesses prohibited for the foreign investment shall be clearly stated in the negative list.	Section 7 Section 26 (Implementation Rules)
Reserve funds	Article 23: Limited company shall establish reserve funds appropriate at five to ten percent from their net profit.	No regulation needed.	(Implementation Rules)
Bylaws	Article 27: All companies shall have written bylaws including ----, duration of the company, organization chart, distribution of dividends and responsibility of losses	The profit seeking companies do not have any pre-determined duration of the operation, except the special cases. Organization may be modified frequently. Distribution of dividends may vary every year. Delete those items from bylaws.	(Implementation Rules)
Funds raising from public market	Article 29: Only the public company may mobilize funds from public market and issue debentures.	Private limited company in the SEZ can also raise funds from public market and issue debentures.	(Implementation Rules)
Number of shareholders in a limited company	Article 45: A limited company is a type of company with two or more founding shareholders. The shareholders of a limited company shall not exceed twenty persons.	A limited company can be established by one or more shareholders and the number of shareholders shall not be limited.	(Implementation Rules)
Transfer of shares	Article 47: Transfer of shares to outside personnel shall require the approval of the majority of shareholders representing at least two thirds of the company capitals.	Such transfer of shares shall be approved according to the rules set forth by the general meeting of shareholders and shall not be regulated by the law.	(Implementation Rules)
Minimum capital	Article 48: The company's minimum registered capital shall not be less than 5,000,000 Kips.	In the SEZ the minimum capital (or the amount of the investment) shall be US\$100,000 for foreign investment and US\$50,000 for domestic investors.	Section 7 (Implementation Rules)

Items	Business Law	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Chief Executive Officer (CEO)	Article 51: CEO shall be dismissed by decision of the general meeting of shareholders representing over half in the company's total shares.	Dismissed by decision of two thirds of participants at the general meeting, which can be effectively held when shareholders representing more than half of the capitals attend.	(Implementation Rules)
Calling-up of the general meeting of shareholders	Article 53: The shareholders representing half of the company's capitals have the right to convene a general meeting of shareholders.	Shareholders representing more than 10% of the total capitals can convene the general meeting.	(Implementation Rules)
Resolution of the general meeting of shareholders	Article 54 and 56: The resolutions of the general meeting of shareholders are effective when approved by over half the company's capital, except for the modification of the bylaws and approval of new shareholders, which will require two thirds of the votes from the company capital.	The general resolutions can be effective when approved by more than half of attendants at the general meeting. The special resolutions such as modification of Articles of Corporation or Bylaw shall be resolved by the approval of two thirds of the attendants representing more than half of the total capital. Approval of new shareholders shall be resolved according to each company's rule.	(Implementation Rules)

**Table 7.6 Labor Law of 1994**

Items	Labor Law	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Labor union	Article 3: Right to organize mass and social organizations	Any labor strike shall be prohibited in the SEZ and the SEZ authority has to organize arbitral committee to settle labor problems with unions	Section 38
Employment of foreign workers	Article 7: Any labor unit may employ foreign workers with authorization of labor administration when necessary, if no appropriate workers available in the Lao PDR. Detailed scheme shall be established for the transfer of skills to Lao workers	Employment of foreign workers shall be approved by the SEZ authority up to 25% of total workers when job vacancies are not filled with Lao citizens.	Section 40
Labor protection	Article 10: State labor administration shall be responsible for labor protection.	The SEZ committee shall promulgate and inspect the implementation of the labor protection regulations.	Section 37
Role of trade union	Article 11: Negotiations regarding working conditions	Working conditions shall be decided by the SEZ authority and written in Master Employment Contract.	Section 39 (Implementation Rules)
Dismissal of worker to reduce the workers for improving the operation	Article 16: The employer shall draw up a list of dismissed workers in consultation with trade union. Dismissal compensation: More than 10% or 30% of the monthly salaries for total employed period	The employer can decide the workers to be dismissed. The SEZ authority shall regulate the internationally common compensation rate such dismissals in Master Employment Contract.	(Implementation Rules)
Limitation of employer's right to terminate an employment contract	Article 17: An employer is not entitled to terminate employment contract when; Sick and under medical treatment, pregnant, given birth within last 9 months	Some kind of limit such as reduction in wages or restriction of approved period of absence has to be introduced in Master Employment Contract.	Section 39 (Implementation Rules)
Special rights of workers during the notice period	Article 18: The period of treatment of sickness shall not be counted as notice period.	Same as above	Section 39 (Implementation Rules)

Items	Labor Law	Recommendation for Modification in New SEZ Law	Corresponding Article in Draft SEZ Law
Termination measures of employment contract	Article 22: Unilateral termination of contract or dismissal of worker is prohibited unless the opinion of the labor administration has been requested or trade union has been notified.	The termination notice shall be addressed to the SEZ authority and become effective without having the approval of the SEZ.	(Implementation Rules)
Time counted as working hours	Article 26: Hourly break of less than 15 minutes in shift work. At least 5 to 10 minutes break in every two hours.	More efficient, flexible and productive break schedule has to be introduced in Master Employment Contract.	(Implementation Rules)
Sick leave	Article 29: Worker shall be entitled to sick leave with full pay for up to 30 days per year.	Too generous. Shorter period must be adopted in Master Employment Contract.	(Implementation Rules)
Determination of the level of remuneration	Article 40: Workers or trade union or worker's representative shall have the right to negotiate with the employer in respect of salary or wage level.	The level of salary or wage shall be determined by the SEZ authority and described in Master Employment Contract.	Section 39
Settlement of labor disputes over rights and interests	Article 56 and 58: The employer or its delegate shall urgently consider dissolving the claim directly with the claimant.	The Labor Service Center shall be responsible for dissolving the claim.	Section 37

(4) The Rules and Regulations for the Implementation of the SEZ Law

Upon the enactment of New SEZ Law, “the rules and regulations for the implementation of the SEZ Law” (hereinafter referred to as “Implementation Rules”) shall be legislated to provide the detail explanations, procedures and guidelines relating to each provision of the SEZ Law and be issued, probably as a Prime Minister’s Decree.

Such Implementation Rules shall include the following:

- i) Definition and basic guidelines: Definition of terms in details
- ii) Basic right and guarantees: Protection of investment such as government’s guarantee on the repatriation of investment, remittance of earnings and freedom from expropriation and requisition of investment.
- iii) Detailed procedures for application and registration as SEZ enterprises

- iv) Criteria of the establishment of the SEZ and method of the development
- v) Lease of lands and buildings in the SEZ: Terms and conditions for leasing or acquisition of lands or buildings, permits of the construction.
- vi) Tax treatment of merchandise brought into the SEZ
- vii) Entry and exit of goods to and from the SEZ: Approval, permits, marking, certificate and the procedures of loading and unloading
- viii) Inventory system of finished products, raw materials and other assets
- ix) Defense, security and firefighting forces in the SEZ
- x) Provided incentives and application and entitlement for the incentives: Detailed explanation of the incentives for each industrial sector.
- xi) Employment of foreign nationals: Entitlement, length of employment and training requirement for Lao citizens.
- xii) Procedure of remittance of earnings
- xiii) Special accounting treatment and taxation procedures
- xiv) Visa treatment
- xv) Labor and management relations: Labor Relations Center, Master Employment Contract and other requirement for labors.
- xvi) Negative List regarding the foreign investment
- xvii) Business termination procedures, examination procedures of records and premises, investigations, police functions and penalties
- xviii) Other terms and conditions to be located in the SEZ

## **7.2 SEZ Implementation and Management**

### **(1) Organizations Concerned with SEZ Development and Management**

The organizations currently related to industrial, commercial and other service sector development and management are briefly reviewed. They include State Planning Committee, Foreign Investment Management Cabinet, Ministry of Industry and Handicrafts, Ministry of Commerce, Ministry of Finance, and Ministry of Labor and Social Welfare.



1) State Planning Committee (SPC)

Responsibilities of SPC include the coordination, research, supervision and implementation of socio-economic development, international cooperation, and foreign investment. SPC is not the agency for project implementation and management.

2) Foreign Investment Management Cabinet (FIMC)

FIMC is one of the agencies attached to the Prime Minister's Office. FIMC has approximately 50 staff. It has the authority to approve foreign investment under the Promotion and Management of Foreign Investment Law of 1994. FIMC prepared a leaflet called "Policy Guidelines". According to the leaflet, no target industry is specified. Any investment is welcome as long as it contributes to export promotion, foreign exchange earning, human resource development, local resource utilization, and technology transfer. FIMC can contribute to Savannakhet SEZ development and management based on its past experience in policy formulation and regulatory functions for FDI.

3) Ministry of Industry and Handicraft (MIH)

Department of Industry and Handicrafts of the Ministry of Industry and Handicraft (MIH) has functions of policy formulation and provision of assistance to industries. MIH has about 500 staff including those assigned to the provinces. In view of its expertise in industrial development, MIH will cooperate in SEZ development and management in one way or another.

4) Ministry of Commerce and Tourism (MCT)

Department of Foreign Trade of the Ministry of Commerce and Tourism (MCT) is in charge of foreign trade promotion. MCT has about 550 staff. Taking into account its past experience and skills in commerce promotion, MCT will also cooperate in SEZ development and management activities.

5) Ministry of Finance (MOF)

Customs Department of the Ministry of Finance is responsible for study and formulation of the State custom policy and collection of import/ export taxes in accordance with the custom policy in force. Since SEZ may have its own regulations on import and export, participation of the Customs Department in SEZ development and management is important. Customs Department in Vientiane has 86 staff for reference.

#### 6) Ministry of Labor and Social Welfare (MLSW)

As FDI is promoted and employment generation is expected in SEZ, attention will be paid to human resources development and provision of good working conditions. Strengthening of regulatory activities to safeguard workers' safety and labor rights will reduce labor turnover and absenteeism and improve productivity. Therefore the Labor Department of the Ministry of Labor and Social Welfare will greatly contribute to SEZ development and management. The Ministry has 814 staff, while the Labor Department in Vientiane has 16 staff.

#### (2) SEZ Authority as an Independent Entity

SEZ is a new concept in Lao PDR. As seen above, FIMC has the authority to approve FDI application. MIH supports industry and handicrafts sector while MCT assists in commerce development and export promotion.

A new and independent organization should be set up for implementation of the planned SEZ. Under the Article 40 (8) of the Constitution of Lao PDR, the National Assembly is authorized to give resolution on the establishment of ministries, ministerial equivalent agencies, province or prefecture. It has also the power to define the provincial or prefecture area based on the proposal of the Prime Minister. In other words, the establishment of such an independent SEZ Authority requires a new law that is made by the resolution of the National Assembly.

In Thailand, for reference, the Board of Investment (BOI) which is chaired by the Prime Minister approves investment application and provides various incentives, and the Industrial Estate Authority (IEAT) - a state enterprise attached to the Ministry of Industry - develops and manages industrial estates. IEAT has "One-Stop-Service" that assists investors in a wide variety of issues, ranging from the early stage of site selection through operation and maintenance. The One-Stop-Service provides potential investors with information on investment opportunities throughout Thailand. Investors can meet the following requirements at one point (IEAT):

- Permits and licenses
- Information and advice on:
  - investment and setup
  - tax incentives and privileges
  - physical design of factories

- existing industrial estates and factories
- After Sales Service:
  - assistance in submission of application forms
  - monitoring approval process
- Sales, Marketing and Public Relations Services
- Access to:
  - conference and meeting facilities
  - internet services

The One-Stop-Service is aimed at ensuring investors receive efficient assistance. The proposed SEZ Authority will be equipped with similar one-stop-service.

Experiences in other countries also show that provision of full autonomy reduces red tape and contribute to efficient and prompt operation. It is now proposed that a new organization for SEZ development and management be established as the SEZ Authority.

### (3) Functions of SEZ Authority

As discussed in Section 5.3, major functions of SEZ are (i) Manufacturing, (ii) Logistics, (iii) Commerce, (iv) Amenity (tourism), and (v) Supporting (Administration and FDI promotion, and export and local industry assistance).

The government's primal role through the SEZ Authority will be provision of legal framework, FDI promotion, and export and local industry assistance. Some public agencies will be responsible for development of infrastructure necessary for the SEZ, i.e., access road, supply of electricity and water, and telecommunications. The institutional arrangement for SEZ development and management can be summarized as follows:

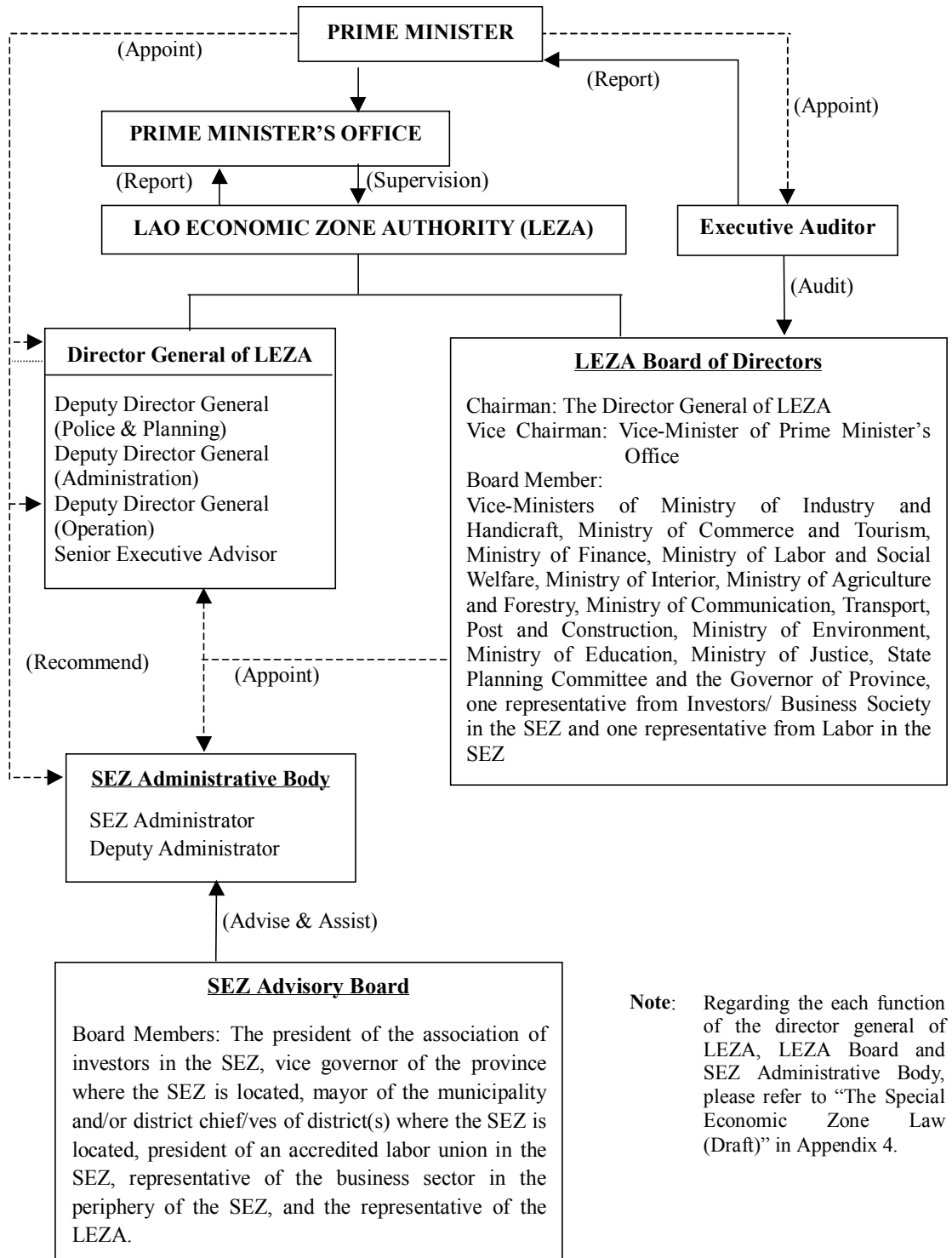
**Table 7.7 Implementation Arrangement for Savannakhet SEZ**

	<b>Legal Framework</b>	<b>Adm. and Management</b>	<b>Construction</b>	<b>Operation Maintenance</b>
Industrial Processing	Government	LEZA	Private	Private
Logistics	Government	LEZA	Private	Private
Commerce	Government	LEZA	Private	Private
Amenity	Government	Private	Private	Private
Supporting	Government	LEZA	Private	LEZA

SEZ Authority will consist of Director General, Board of Directors, Auditor, SEZ Administrative Body (Secretariat), and SEZ Advisory Board. Director General is overall coordinator of the policies, plans and programs of the SEZ while Board of Directors is responsible for policy-making of the SEZ. Executive Auditor, who is appointed by the Prime Minister, attends the Board of Directors meeting. Advisory Board consists of the representative of the investors, the representative of the labor union and Vice Governor of the province. Advisory Board will advise Administrative Body (Secretariat) to be established by utilizing the expertise of current related organizations; i.e., FIMC, MIH, MCT, MOF and MLSW. Officials of these ministries will be assigned to Secretariat of SEZ Authority.

The following figure presents tentative organizational setting for SEZ Authority (LEZA).

Once LEZA (SEZ Authority) is established, it may prove effective to envisage a technical cooperation arrangement with neighboring countries' similar organizations, namely IEAT of Thailand, DIPEZA (Da Nang Industrial Estates and Export Processing Zones Authority) of Vietnam, and Philippine Economic Zone Authority (PEZA) of the Philippines.



**Figure 7.1 The Organization of the LEZA**

### **7.3 Human Resources Development Required for Savannakhet SEZ**

In the previous section, administrative framework for development of Savannakhet SEZ was discussed. In this section, human resources required for Savannakhet SEZ is examined.

Savannakhet province has a low population density and supply of readily available workforce is limited. Therefore, labor intensive industry utilizing cheap and abundant workers – common in other countries' EPZ – is not necessarily suitable for Savannakhet SEZ.

It is therefore important to provide workers with training opportunities in Savannakhet province in order to attract FDIs and to kick off industrialization in the border area. There has no doubt been a great deal of knowledge spillover from the creation of SEZ. Previously unskilled labor force has become a semi-skilled and skilled production worker through training and learning by doing on the job. These improved skills and productivity increase the workers' income earning capacity. Domestic firms, which are not located within the SEZ, may also get the benefits from training and skills by hiring workers employed in the SEZ firms. Some employees also receive training at the managerial or supervisory level. This would enrich the entrepreneurial capital of the province. The presence of the FDI firms allows domestic entrepreneurs and workers to benefit from observing and copying the traits.

With these requirements and impacts in mind, the following measures are recommended.

#### **(1) Provision of Skilled Workers Through Upgrading of Savannakhet Technical School**

Savannakhet Technical School (STS) is a major provider of semi-skilled worker in the region. STS has various courses including

- Carpentry
- Electricity
- Welding
- Personal Computer
- Business administration
- Auto Mechanic
- General Mechanic
- Masonry

The STS's problems include 1) overcrowded classroom, 2) obsolete equipment and school facility, and 3) lack of teacher of good quality.

Currently there are 650 students enrolled in STS while the standard number of students is 300. STS is popular among the students. The students are mostly from six provinces of the southern region. They study 2 or 3 years after finishing upper secondary level education. Though STS also provides short-term training courses (certificate is given), the opportunities for young workers to participate in such courses are limited.

In order to upgrade the STS's teaching staff and facilities, first it is necessary to clearly set the STS's mission. The main mission of the STS is proposed as "to produce trained workforce for industry and business". Having established its mission, the STS shall prepare its development plan. The graduates of the STS will be good workforces for the FDI firms in the Savannakhet SEZ.

Introduction of the mechanism of internship at the STS will be worth studying. STS students may be trained at the factories and enterprises established in and around SEZ. An idea is to contract with Thai enterprises in and around Mukdahan to accept such internship and on-the job training for a certain period.

## (2) Introduction of Private Training Courses

In addition to training at the STS, it is desirable that possibilities to invite private training courses in SEZ be examined. Enterprises in SEZ may be encouraged to set up their training courses under the privilege that training expenses are deductible from the profit.

Possibilities to set up private training institutes should also be examined. For instance, training of business administration, computer, hotel and auto mechanics may have chances for training on a private initiative. These training institutes may be regarded as SEZ enterprises.

## (3) Establishment of Industry and Technology Laboratory in Savannakhet

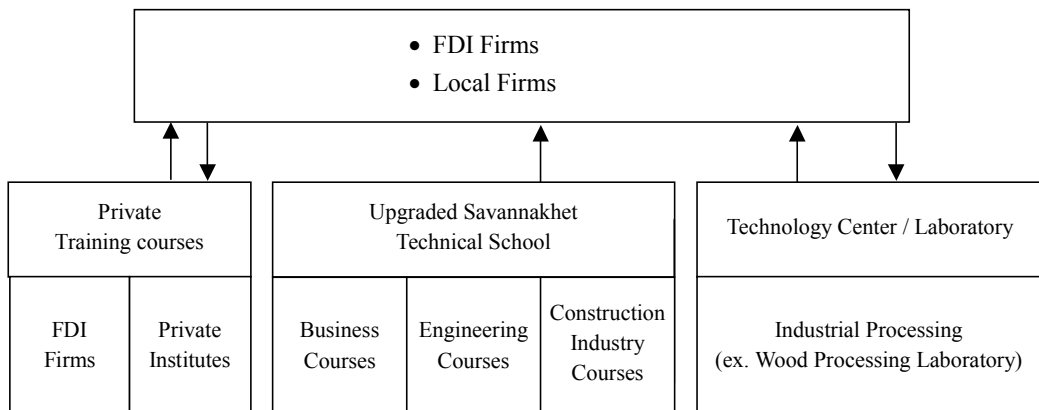
There is no industrial and technology laboratory or research institute, which may serve as the technological base of the region, to enhance its technological capabilities, add greater value to its products, and pioneer new industries and fields of technology.

The research center or laboratory works closely with local industry and conducts research that directly corresponds to the varying technological needs of different enterprises. Findings from this research are then

transferred back to industry through technical consultation and guidance. A key element of this transfer process is the on-site engineering consultation the center provides, a proactive approach. The dissemination of patent information is also a center function.

A possibility is to set up a wood-processing technology laboratory in Savannakhet where new technologies for processing are tested and disseminated.

The following figure illustrates required supply/training of and support facilities for Savannakhet SEZ.



**Figure 7.2 Training and Research for Savannakhet SEZ**



#### **7.4 Action Plan for Savannakhet SEZ Development**

Implementation Schedule for Savannakhet SEZ is proposed to in Chapter 6.5 “Development Scenario”. Actions required for development of Savannakhet SEZ is presented below.

(1) Establishment for Savannakhet SEZ Development Committee (Secretariat)

There are many issues to be tackled with for establishing Savannakhet SEZ – the first SEZ in Lao PDR. First it is necessary to have an organization in charge of SEZ development. The Steering Committee for this study consists of representatives including Savannakhet Province, Ministry of Industry and Handicrafts, FIMC, Ministry of Justice, MCTPC, and Tax office. As described in Chapter 7.2, a new organization for SEZ development and management is required. The new organization named Lao Economic Zone Authority (LEZA) is proposed as an implementing body under the control of the Prime Minister’s Office.

Therefore, the first thing the Lao side should do is to set up a secretariat consists of government organizations of the current Steering Committee. The Savannakhet SEZ Development Committee shall be responsible for overall planning of SEZ preparation.

(2) Preparation of Legal Base for Savannakhet SEZ

As described in Chapter 7.1 “Legal and Regulatory Framework”, in order to establish a SEZ in Lao PDR, enactment of the SEZ Law is required. It requires careful examination of the laws and decrees. The review should be made under the leadership of the Ministry of Justice taking into consideration the concordance with the prevailing laws and decrees. In addition to the drafting of SEZ Law, rules and regulations for the SEZ should be prepared. The SEZ Law and its rules and regulations should be periodically reviewed to incorporate the SEZ into the national economy.

(3) Promotion of Investment

In Chapter IV “Investment Demand”, it is pointed out that potential investors’ knowledge on Lao PDR is limited. It is, therefore, indispensable to inform the potential investors of Savannakhet SEZ. SEZ Development Committee should prepare well-planned investment activities. Incentives offered and potential resources at the SEZ shall be made open. Leaflet on

SEZ and the website of the Savannakhet SEZ shall be prepared. The websites of Subic Bay Management Authority:

<http://www.sbma.com/home.html>, Industrial Estate Authority of Thailand: <http://www.ieat.go.th/t-main2.html> and Okinawa Special Free Trade Zone: <http://www.pref.okinawa.jp/okinawa/intoro.html> will be of good reference.

(4) Coordination of SEZ Development Efforts

Appropriate set-up of SEZ Authority and legal framework, and good management of SEZ are indispensable for its success.

Organization of Savannakhet SEZ Development Committee (Secretariat), preparation of legal framework, promotion of Savannakhet for potential investors require huge efforts and coordination. Coordination is required because many government agencies are involved as stakeholders.

Once SEZ is established and in operation, Savannakhet SEZ shall constitute an integral part of an economic reform and liberalization program. Domestic reforms should be made so that eventually similar incentives and benefits apply to all firms in Lao PDR (perhaps except for tax holidays).

It is therefore recommended that an external advisor to advise on improvement of the environment for FDIs, and promotion of FDIs, as well as on establishment of legal framework and promotion of Savannakhet SEZ.