Laos Legislative Drafting Programme

Seidman, Robert B.

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Boston University
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[The purpose of this outline is a) to indicate the kinds of information required in each section, structured according to problem-solving methodology; and b) suggest additional detailed data that would be useful to obtain. In its present form, this is not even close to a completed research report!]

Draft Outline of Research Report for
A LAW ON MANUFACTURING INDUSTRY IN LAO PDR

I. Introduction:

A. [A brief statement of the importance of the manufacturing industry to provide increasingly productive employment opportunities and raise Laotian living standards]

B. [Outline of main sections of the report, structured according to 4-step logic of problem-solving agenda]

1. [To help readers understand why use this agenda, introduce the outline with a brief explanation of the logic of problem-solving and how its use in organizing available information helps to translate government's industry policy into law.]

II. Statement of the problem:

A. Existing inherited institutions perpetuate distorted pattern of resource use that leaves majority of Lao citizens very poor (per capita income among world's lowest):

1. Limited 'modern' sector, built around export of raw materials (mainly logs, some minerals) and hydro-electric power; import of manufactured consumer items, even foodstuffs, and machinery, equipment and semi-processed materials for manufacturing sector that exports labor-intensive manufactured goods;

2. Most of rest of economy remains underdeveloped, largely subsistence agriculture, large areas without roads or electricity, far less manufacturing industries to process Lao natural resources (timber, minerals, agricultural products) for use in increasing Lao productivity and living standards.

B. Main social actors whose behaviors contribute to perpetuating this problem:
1. Primary social actors: Factory owners/managers

a. 3 different sizes, with different shares of foreign ownership/management:

(1) Large (10% of total): over 500 workers, mainly foreign-owned/managed; a few joint ventures; some process some Lao resources; use relatively modern technologies; mainly produce for narrow high income Lao market or export; eg sugar, sapphires, animal feed, medical drugs, fertilizer.

(2) Medium sized (30% of total): 100-499 workers; partly Lao, partly foreign, some joint ventures; some process local raw materials; many use imported raw materials; fairly modern technologies; produce mostly for high income Lao market or export (need more data; preferably a table).

(3) Small sized (60% of total): 10-99 workers; almost all Lao owned, managed; low technology; relatively low quality of output, mostly for broader, low income Lao market.

b. Problematic behaviors:

(1) Few factories process Lao natural resources or establish backwards and forwards linkages;

(2) small and some medium firms use relatively backward machinery and equipment;

(3) quality of output of all but large and some medium-sized firms is relatively low;

(4) old factories (and sometimes new ones) exist in residential or farming areas, without regard to plan, thus aggravating problems of shortage of land for agriculture and other needs, including recreation, schools, traffic;

(5) some pollute neighboring water supplies, air.
2. Implementing agency: Ministry of Industry and Handicrafts Department of Manufacturing Industries (MIH) (currently combined with handicrafts department, but about to be redivided into 2 separate departments),

a. MIH Department of Manufacturing Industries has 78 officials in 11 divisions (though currently is restructuring these); [need facts to identify officials get selected and appointed, their qualifications, terms of service]:

(1) Division that reviews domestic and foreign applications for establishing factories; 5 officials;

(2) Factory management division gives permits to managers of factories;

(3) Division of registration and production standards: Makes lab tests and analyses of products, especially foodstuffs, for export; 5 officials.

(4) Enforcement/implementation department: to ensure completion and operation of priority projects (eg large cement, sugar, weaving plants); 3 officials recently appointed.

(5) Propaganda division: (to educate public about Lao products); works on national, provincial, district level; 5 officials.

(6) Vocation Center to promote Lao industry through displays of wares; (how many officials?)

(7) Environmental protection department to protect against factory pollution; 4 officials for supervision, rely on assistance of residents, factory workers.

(8) Policy division: How to promote manufacturing industries; 7 officials;

(9) Micro-enterprise finance division: provides credit for Lao industries through banks with funds provided by government;

(10) Training and employment division: programs in all provinces to train in eg clothing, furniture production; 7-8 officials.
Administration Department: to service the other divisions; have a box to receive criticisms and suggestions about improving work.

b. Problematic behaviors:

(1) Not as effective as desired in promoting processing of Lao resources or in establishing backwards and forward linkages as necessary to create a more balanced, integrated economy.

(a) For example, __% of timber exported as logs, __% of minerals in crude form, only __% of agricultural, timber, or mineral resources processed in Laotian factories;

(2) training program reaches only __% of factory managers, and __% of factory workers;

(3) unable to resolve all Lao factories' credit needs;

(4) cannot ensure all factories produce goods of high enough quality for export. (Would be useful to get data, perhaps a table, for this section).

(5) Cannot sufficiently assist Lao entrepreneurs improve their technology.

III. Explanations of causes of problematic behaviors that comprise the difficulty

A. Mini-introduction (include a brief note that laws can only try to change problematic behaviors by changing or eliminating the factors that cause them; and maybe a footnote to explain that ROCCIPI categories, broadly construed, by subsuming all possible factors likely to cause problematic behaviors, aims to inspire the drafter to develop useful hypotheses to explain behaviors).

B. Explanations for behaviors of factory managers/owners: Failure to use Lao natural resources as inputs to manufacturing; in some cases, low quality of output; backward technologies.
1. Rules: All laws or regulations concerning their behaviors

a. Foreign investment law provides requirements which foreign investors in manufacturing must meet; offer some tax breaks for specific kinds of manufacturing; can you obtain any others?

b. 1990 (?) regulation supposedly provides for measures to promote Lao manufacturing investors, including capital, training, marketing assistance, etc; (are there any others?) but does not provide any details re criteria or procedures for implementing the policy; leaves everything to MIH discretion.

2. Small and some medium-sized enterprises:

a. Opportunity and Capacity

(1) do not have technologies, skilled labor, or skilled managements;

(2) do not have capital (their own or borrowed) to acquire new technologies or process either Lao or imported resources to high levels of quality;

(3) may have little information about potential markets in Lao or abroad (need data if possible).

b. Communication of the law: Only a few small and some medium sized firms know details of laws designed to promote their processing of Lao raw materials or other activities, or whether they would qualify for tax breaks, etc. (any facts on this?)

c. Interest: Some would like to process Lao raw materials and expand production to increase their own incomes, but cannot because of capacity constraints.

d. Process: Almost no small firms and some medium sized firms have any access to government information or tax concessions; they may not have personal contacts, and they remain relatively unimportant in the Lao political-economy.
e. Ideology: Small firm owners might believe they should buy made-in-Lao raw or semi-process materials to work on; but they may not have the opportunity or capacity to make that choice.

3. Large and some medium sized firms:

a. Capacity: Have capacity to process Lao natural resources; foreign investors particularly may be ignorant of Lao's natural resources and the possibilities they suggest.

b. Communication: know of law and possible tax breaks; and usually take advantage of them (get data on this).

c. Interest: Some large foreign and many medium sized foreign firms seek to employ low cost Lao labor to work on imported parts and materials for export in order to make high profits (any data on this?);

d. Process: Some large and medium firms have access to Ministry decision-making processes, either because of personal contacts or sheer size and importance in Lao's political-economy, provide inputs to pressure decisions to meet their needs, obtain government information and tax concessions (any facts on this?);

e. Ideology:

(2) Foreign firms seek to maximize their own profits, regardless of the social impact on the people in the country where they invest.

(3) Medium-sized Lao firms might believe their factories should process Lao raw materials, increase technologies, train for Lao skills, etc; but objective constraints tend to make it difficult; fear to risk what little capital they have by taking chances in a new field.

C. Explanations for Ministry of Industry and Handicrafts' Manufacturing Department's problematic behaviors

1. Using the ROCCICIPI research agenda:

a. [Note that, like all implementing agencies, the MIH Manufacturing Department constitutes a complex
decision-making organization, which requires consideration of all the input, conversion, output and feedback processes (see Diagram 1); so far, the drafting team has not received enough information relating to the causes of the problematic behaviors of all the social actors involved in any of the Department's divisions; until that is available, the team can only make some general statements about some causes; and identify areas of further questions they must ask to get more information by further discussions with MIH representatives and by obtaining some of their reports relating to the 11 divisions listed.

Diagram 1: MIH Manufacturing Department as a Complex Decision-Making Organization

<table>
<thead>
<tr>
<th>Input processes</th>
<th>Conversion processes</th>
<th>Output Processes</th>
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<tr>
<td>Feedback processes</td>
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2. Some general explanations suggested by the ROCCIPI agenda:

a. Rule: The available regulations:

(1) Foreign investment law: provides general objectives (not including any relating to the need, wherever possible, to encourage processing of Lao raw materials), but no details about the input, conversion or feedback procedures by which the MIH
Manufacturing Department should make its decisions as to how to ensure factories conform to these rules.

The Enforcement Division appears responsible, but need more facts about how the officials undertake their tasks.

The existing regulations likewise provides for promoting Lao industry but includes none relating to processing Lao raw materials. Nor does it detail any details relating to inputs, conversion, or feedback processes.

3. Some factors likely to cause officials to behave problematically at each process-making stage:

a. **Input processes:**

(1) Insufficient rules governing kinds of inputs required for decisions re individual factories or regulations

(2) Other than general objectives stated in bill, nothing specifies the kinds of information officials should obtain to make decisions relating to granting of licenses; who should obtain it, or how they should obtain it; all this seems left to discretion of Minister and Manufacturing Department officials, of whom only a very few participate in the decisions (see limited numbers of officials in responsible positions; if possible, you should get more detailed information about their capacity, interest and values and attitudes).

(3) No officials have responsibility for systematically conducting research as to opportunities for individuals or groups of Lao entrepreneurs (eg in a village) to process Lao natural resources as a basis for assisting them to develop appropriate technologies and obtain credit to establish processing industries, or to help them find markets in Lao or overseas.

(4) The officials tend to wait for entrepreneurs to come to them with projects; and large
foreign investors and some larger medium sized firms more likely have greater access to their attention than smaller ones, which the officials must then try to assess.

b. Conversion processes:

(1) Insufficiently defined criteria: No set of specific criteria or system for ranking them existed to assist officials in deciding whether or not to grant licenses and whether to assist specific entrepreneurs obtain training, credit, tax subsidies, or help in approaching markets. The possibility of requiring, wherever possible, the use of Lao materials, rather than importing them from abroad, is not explicitly included among the factors they consider.

(2) Insufficiently open, accountable procedures: No rules require MIH officials rules to meet with local people affected by proposed factories or regulations relating to them, although such meetings sometimes take place; nor do rules seem to require that officials hold hearings or publish their decisions and the reasons for them to members of the public, particularly in the affected areas.

(3) No rules provide for MIH officials to meet with representatives of other ministries whose responsibilities particular MIH decisions re manufacturing may affect (eg Department of Ministry of Construction and Communication's Urban Planning division re factory locations; Steno re environmental impacts; Health Ministry re possible effects on health).

c. Output processes:

(1) No specified procedure for publishing decisions relating to factory permits, or providing for notes and comments by those likely to be affected.

(2) No rule prescribes how MIH decisions relating to licensing factories or regulations relating to them will be published;

d. Feedback processes:
IV. Solutions

A. Alternative possible solutions:

1. To help small and medium sized Lao firms overcome constraints on establishing factories that meet MIH criteria:

a. Some possible suggestions based on foreign law and experience:

(1) Pioneer Industry statutes give any industry that begins using Lao materials a monopoly for a stated period of time.

(2) The Central Bank can influence lending policies to favor industries using local products (The Korean solution)

(3) Small Business Extension Service to provide information, management training, etc (modelled on agricultural extension)

(4) Business Development Corporation to provide the above, plus soft loans for development of Lao-owned businesses.

(5) Development Bank, to supply soft capital for Lao business.

(6) Possible tax subsidies (concessions, rebates, holidays, etc) for Lao entrepreneurs whose
factories conform with criteria specified by the Law and MIH regulations.

[The drafting team may want to request that the UNDP bring a foreign consultant to provide further information relating to other countries' efforts to use law to assist national businesses, and particularly to the social consequences of those laws.]

b. Suggestions obtained from journals, books, internet, etc.

c. Other possible alternatives?

2. To attract large firms (including joint ventures) to establish factories that meet MIH criteria, including establishment of forward and backward linkages, and especially to process Lao raw materials:

a. Suggestions from foreign law and experience

(1) Ensure procedure for obtaining permits and license to begin manufacturing is simplified as much as possible.

(2) Foreign Investor Information Service, to provide information abroad of Lao natural resources and opportunities.

(3) Condition tax concessions, etc. for foreign business on their relative contribution to Lao economy (for example, firms using Lao resources get added tax concessions).

(4) See also under small industry: Pioneer Industry statutes and laws to change bank lending policies.

(5) Provide criteria and procedures for ensuring adequate training of Lao counterparts and workforce.

(6) Ensure foreign firms transfer to Lao the necessary skills and information to adapt the technologies to Lao circumstances.

b. Journals and books?
c. Other?

3. To strengthen capacity of MIH Manufacturing Department:

a. Foreign law and experience?

b. Journals and books?

c. Other?

B. A proposed legislative programme for addressing the identified difficulties. [Note: (i) These measures address mainly the problem of using Lao natural resources. The final report must be expanded to include measures to address all of the specified difficulties and their causes. (ii) That will likely prove far easier to draft as a series of separate bills, rather than as a single omnibus bill. (iii) As the team describes these measures, show how they address the specific causes of the problematic behaviors adopted)

1. The Enterprise Development Law: Establish a Lao Enterprise Development Corporation within MIH portfolio to assist Lao entrepreneurs establish factories that meet MIH criteria. It would:

a. Conduct research relating to possibilities for processing Lao raw materials for use in Lao or export; the linkages required to facilitate development of those facilities; the technologies which might be produced in Lao or if necessary imported until Lao factories can produce them;

b. assist Lao entrepreneurs to obtain funds necessary to take advantage of identified business opportunities;

c. work with the Central Bank to establish a soft-loan (low interest, long term loan) window in the Lao Commercial Bank, backed by Development Corporation guarantees;

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1 The World Bank has provided financial assistance to Development Corporations elsewhere, sometimes through its Soft Window division, the International Development Bank. In Lao's case, another World Bank division, the International Finance Corporation, has plans to open an office in Vientiane, and might be willing to work with the International Development Bank to establish such a facility to assist private Lao entrepreneurs establish factories to process Lao raw materials.
d. Work with the Ministry of Finance to establish a set of criteria and enforcement mechanisms to provide tax subsidies where necessary.

e. Provide systematic training programs for Lao entrepreneurs and their work forces to enhance management capacities, and generally to ensure they can handle appropriate technology and produce high-quality products, not only for Lao market, but also for export.

2. The Industrial Development Study Commission Decree: Establish a high-level commission under leadership of the Minister to review work of divisions dealing with licensing, permits, registration, and enforcement in relation to foreign firms to ensure that procedures are open, accountable, systematic, according to pre-specified criteria, to advise the Minister about necessary changes, and, for submission to the Minister, to draft regulations for accomplishing necessary changes.

3. A new Factories Law (this may also require an amendment to the Foreign Investment Act and its Implementation Decree): This will embody three principal programs:

a. It will specify criteria and a system for ranking those criteria to guide MIH officials in deciding whether to license and provide incentives to particular kinds of factories, foreign or domestically owned. These would encourage investors:

(1) to process Lao materials wherever possible, rather than imports, and make every effort to strengthen backwards and forward linkages within Lao's economy;

(2) to employ Lao workers wherever possible in conditions stipulated by the Ministry of Labor; and provide them with training and upgrading according to a stipulated schedule;

3. to protect Lao's environment against pollution in accordance with regulations provided in cooperation with Steno;
4. To use up-to-date, appropriate technology and ensure Lao employees know how to use and repair it;

5. To maximize foreign exchange earnings by processing products as much as possible before exporting them;

b. It will also specify provisions for ensuring that factories live up to their licensing agreements. (for example, by irregular, surprise inspections; by requiring yearly renewal licenses accompanied by complete reports on activities, under pain of perjury penalties; etc).

c. It will also specify open and accountable procedures which MIH officials must use at every stage when:

(1) Making decisions relating to whether to license factories;

The drafting team probably could get some good ideas from relevant foreign law and experience for this.

(2) Drafting regulations to govern the detailed operation of factories once established.

The drafting team probably could get some good ideas from relevant foreign law and experience for this.

d. It will also specify criteria and procedures to ensure MIH personnel work with other ministries on specific issues:

(1) The Ministry of Planning officials to develop a research program directed to helping Lao entrepreneurs identify and develop industries to process Lao raw materials for both domestic and export markets.

This requires the drafting team to discuss with Ministry of Planning officials to find out what research capacity they have in this area; and whether it would be...
feasible to develop such a research program.]

(b) Relevant foreign law and experience might provide some useful ideas for this.]

(2) the Ministry of Construction and Communication's urban planning division to establish guidelines for factory locations, and procedures for joint decisions on specific cases.

(3) STENO, to develop appropriate environmental controls and procedures for specific industries.

(4) Ministry of Health concerning possible health hazards introduced by specific industries.

(5) Ministry of Finance for specific criteria and procedures for providing tax subsidies as incentives for factory owners/managers to comply with specified criteria.

C. Demonstrate that these proposals will likely work, by use of a reverse ROCCIPI analysis.

1. [For example: To show that the new licensing procedure will work, must ask: Will MIH have the capacity to implement the new licensing procedures?]

D. Make a social cost/benefit analysis of the proposed solution.

1. Include such matters as:

a. Out-of-pocket government costs (e.g. for additional personnel)

b. Beneficial and adverse consequences on various social groups. Especially, discuss probable impact on groups and interests often overlooked: Women, the poor, minorities, children, the environment, the possibilities for corruption.

E. How will the new law be monitored? What feedbacks on its relative successes or failures?
A POSSIBLE OUTLINE FOR THE FACTORIES ACT

CHAPTER ONE
GENERAL PRINCIPLES

V. Description of the Act.
This Act implements part of an industrial policy consistent with the New Economic Mechanism.

VI. Objectives.
This Act has the following objectives:

A. To encourage investment in Lao industry that will lead to the development of the Lao economy in ways beneficial to the Lao people;

B. to provide consultative advice for Lao-owned or operated manufacturing enterprises;

C. to provide a source of capital for small and medium sized Lao-owned or operated enterprises;

D. to ensure the development of appropriate rules for implementing the Act;

E. to ensure that in developing those rules, responsible officials use transparent and accountable procedures; and

F. to ensure that in developing those rules, adequate consultation takes place between relevant ministries and agencies.

VII. Definitions.

PART ONE

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2 The function of the General Principles provision is to aid officials and judges to interpret the Act; it should be assessed accordingly.

3 Consideration should be given to placing definitions at the end of the bill, under 'miscellaneous provisions', where it fits more appropriately.
INCENTIVES FOR FACTORIES THAT HELP LAO'S DEVELOPMENT

CHAPTER TWO
OPENING AND OPERATING FACTORIES

VIII. Opening and operating a large factory.

A. In this Act:

1. 'Manufacturing enterprise' means an enterprise that derives more than one-third of its gross receipts from manufacturing activities.

2. 'Enterprise' means an organization on a single site.

3. 'Manufacturing activities' means processing or servicing goods. It includes agricultural activities only when the conditions for agricultural activities approximate processing materials more closely than they do growing plants or nurturing animals. After consultation with the Minister of Agriculture, the Minister shall by regulation specify activities involving growing plants and raising animals that constitute manufacturing activities.

4. A large factory means a manufacturing enterprise that uses more than five horsepower of energy and employs ten persons or more in its operations, excluding:

a. if owned by fewer than five people, the owners and their wives, children, parents, brothers and sisters and spouses of their brothers and sisters; and

b. the chief executive officer;

5. 'The Minister' means the Minister of Industry and Handicrafts.

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4 The analogous laws in Italy use a fifteen-person cutoff. Having no other basis on which to draw a line, we drew it there. This number should be revised after research into Lao conditions.

5 This number, too, has been arbitrarily selected, and should be revised.
6. 'Licensing Authority' means the department of the Ministry of Industry and Handicrafts that the Minister by regulation designates as the Licensing Authority.

B. A person may not commence manufacturing operations in a new large factory without having first obtained a license to do so pursuant to this Act.

C. Within a time that the Minister shall by regulation prescribe, a large factory in existence at the time of the coming into force of this Act may not operate unless it has received a license pursuant to this Act.

D. Within a time that the Minister shall by regulation prescribe, a factory that increases its staff to fifteen or more employees shall apply for a license pursuant to this Act.

IX. Approval or Denial of a License.

A. When granting a license, the Licensing Authority shall determine the kind of license it grants for purposes of determining the appropriate level of benefits the licensee shall receive.

B. The Licensing Authority may not grant a license for a new large factory if the Authority finds that:

1. except as set forth in subsection (3), the applicant proposes to maintain the factory in an area in which a law or regulation or approved land use plan prohibits the maintenance of a large factory; or

2. the applicant proposes to maintain a factory that violates or will violate a law protecting the environment.

C. [Make provisions for variances from the zoning requirement]

X. Level of benefits.

A. The Minister shall by regulation provide that the amount of tax and other benefits that a licensed large factory receives depends upon factors including but not limited to:

1. the use of Lao inputs;

2. the manufacturing of inputs to other Lao industries;

3. the generation of foreign exchange;

4. the generation of employment;
5. the transfer of useful advanced technology, and training Lao people to use, install, repair, manufacture, design in and conduct research concerning that technology;

6. the training of Lao workers and managerial personnel;

7. training Lao personnel in obtaining financing for industrial projects; and

8. teaching Lao personnel about overseas markets and how to enter them.

B. The Minister shall by regulation determine the number of points an applicant will receive in consideration of the scoring on the factors mentioned in subsection (1).

XI. Benefits

The Minister by regulation may provide benefits as follows:

1. With the consent of the Minister of Finance, appropriate relief from taxes of any sort.

2. With the consent of the Minister of Finance, appropriate relief from import and export duties.

3. With the consent of STEENO, appropriate relief from environmental regulations.

4. With the consent to the Planning Commission, the provision of infrastructure for a manufacturing enterprise.

5. The building and lease to a licensee of manufacturing premises.

6. With the consent of the Minister of the Interior [?], relief from provision relating to entrance, residence and work in the Lao PDR for expatriate managerial employees of a licensee.

7. With the consent of the Minister of Finance, appropriate relief from exchange control measures.

8. With the consent of Cabinet, other benefits that the Minister determines serve the public interest.

CHAPTER THREE
LICENSES: APPLICATION PROCEDURES; IMPLEMENTING LICENSES

XII. The Licensing Authority

[How appointed; qualifications; terms]

XIII. Kinds of Licenses and accompanying level of benefits.

[The Authority shall grant licenses according to a scheme which determines the kind of license granted (and therefore the amount of tax and other benefits to which the licensee becomes entitled; or refuse licensing for lawful cause].

XIV. Application for a License: Content

XV. Consideration of an Application: Review by the Ministry

XVI. Application for a License: Procedures before the Authority

XVII. Implementation of a License

[Provisions about how the Ministry will determine that a licensee is conforming to the representations made on the license application.]

CHAPTER FOUR
RULE-MAKING BY THE MINISTER

XVIII. Powers of the Minister to make rules.

XIX. Procedures for making rules.

XX. Criteria for rules

PART TWO
THE INDUSTRIAL DEVELOPMENT CORPORATION

CHAPTER FIVE
THE INDUSTRIAL DEVELOPMENT COMMITTEE

XXI. Creation.

This bill establishes the Industrial Development Corporation.

XXII. Objectives

The Corporation shall have the following objectives:
[here list]
XXIII. The Board of Directors

[Here state the size of the Board of Directors, the mode of appointment of its members, etc.]

XXIV. Powers and duties of the Board of Directors

XXV. Ministerial powers to give directions of a general nature.

XXVI. Funding; accounting for funds.

PART THREE
INTER-MINISTERIAL COOPERATION

XXVII. The Inter-Ministerial Committee on Industrial Policy.

A. The Ministers of Industry and Handicrafts, Finance, Commerce, Agriculture and Forestry, Health, and Education shall constitute the Inter-Ministerial Committee on Industrial Policy.

B. A Minister may nominate an official of their Ministry to serve in their place.

XXVIII. Powers and duties

[The Committee to study issues of industrial policy, make recommendations to Cabinet, etc.]

PART FOUR
MISCELLANEOUS AND CONSEQUENTIAL PROVISIONS

XXIX. Rule-making.

[Minister may make rules; procedures; criteria].

XXX. Consequential provisions

A. The Foreign Investment Act is amended as follows: ... 

B. [any other amendments to other acts or decrees? Repeals?]

XXXI. Coming into force.