

2017

STRENGTH OF MYANMAR



Myanmar's Legal Framework and Implication on Business Environment – Focus on Investment

Key Pieces of Law and Regulations

- The **Myanmar Investment Law 2016**
- The **Myanmar Investment Rules 2017**
 - Also titled: Ministry of Planning and Finance Notification No. 35/2017
- **Restricted Investment Activities**
 - Notification No. 15/2017
- These can be found on the **Directorate of Investment and Company Administration (DICA)** website at <http://www.dica.gov.mm/en/Investment>

Recent Developments in Investment Law

- A new **Myanmar Investment Law 2016** was signed into law on 18 October 2016.
 - After some delays proposals under new law were accepted only from 1 April 2017.
- The former Foreign Investment Law 2012 and Citizens Investment Law 2013 no longer in effect after 31 December 2016 (Notification No. 123/2016)
- Notification No. 35/2017 **The Myanmar Investment Rules 2017** were published on 30 March 2017.

Recent Developments in Investment Law

- Notification No. 13/2017 regarding **promoted sectors** and Notification No. 10 / 2017 prescribing **development zones** were issued by the Myanmar Investment Commission
- The list of **Restricted Investment Activities** was issued by the Myanmar Investment Commission on 10 April 2017 (Notification No. 15/2017). --Basically 'hazardous' investments are prohibited and certain industries limited to the Myanmar Union Government are restricted.
 - The most notable change is the inclusion of **a restriction to wholesale- and retail trading**. Only Myanmar citizens are allowed to own mini-markets and convenience stores with a floor space of less than 10,000 sqf.

Investment Law – At a Glance

- **Myanmar Investment Law 2016** is applicable to all direct investments into Myanmar before and after the date of its coming into force
- Any foreign investment (even those without MIC Permit) are now subject to the Myanmar Investment Law 2016 and eligible for the rights, but also subject to the obligations
- Excluded are only:
 - Investments established in a Special Economic Zone under the Special Economic Zone Law 2014
 - Investments which received an MIC Permit under the Foreign Investment Law 2012 or the Citizens Investment Law 2013, but have subsequently suspended operations
 - Investment disputes which have arisen before the new Myanmar Investment Law 2016 came into effect

The New Myanmar Investment Law 2016

Setting up a new company:

- 1) Set up your company by simple Company Registration at the Directorate of Investment and Company Administration (DICA)**
- 2) MIC Permit**
- 3) MIC Endorsement**

Types of Investments Needing MIC Permit

MIC permit required for investments that:

- Are important to the Union's strategy;
- Have a large environment and social impact;
- Use state-owned land or buildings;
- Are capital-intensive;
- Are classified by the Government as requiring an MIC Permit

MIC Permit

Important to the Union's strategy:

- Basically any investment of more than USD 20m apart from manufacturing, agriculture and hotels and tourism
- Investments of more than USD 1m in border or conflict areas or across the national border
- Investments across Regions and States
- Investments using more than 1,000 acres (agriculture) or 100 acres (non-agriculture) of land

MIC Permit

Large environmental and social impact investments:

- Investment requiring an environmental impact assessment according to the Environmental Impact Assessment Procedure (MoECF Notification 616/2015);
- Investments located in designated protected areas;
- Investments requiring resettlement of, or otherwise adversely affects, at least 100 individuals;
- Investments requiring more than 100 acres and impacts land rights holders

MIC Permit

Large environmental and social impact investments: (*cont.*)

- Investment uses state-owned land, unless the land is
 - Grant land or similar land;
 - Leased for not more than 5 years;
 - subleased from an authorized person
- Investment is capital-intensive: Investment amount > USD 100m
- Other investments specified by the government from time to time

MIC Permit Application

- **Submitted by the investor or its authorized representative**
 - (New Investment Law : authorized representative can sign application docs)
- Previously, submitted through the relevant ministry in case of mining, upstream oil & gas, establishment of airlines, provisions of airport services, establishment of ports, provision of port services, or investments using government land
- Now, submitted through relevant ministry if government (partly) owns the investor, intends to grant a concession or otherwise required or authorized to submit the proposal
- **Application fee: Ks. 100,000 - 500,000 (depending on the investment amount)**

MIC Permit Procedure

Procedure:

- Prepare one set of application Required Documents while communicating with MIC officer;
- If the MIC officer is happy, prepare 20 sets and submit to the MIC;
- At the same time, submit application for company registration with DICA;
- Within 15 days, screening by MIC's "Proposal Assessment Team"; investor to attend the PAT meeting;
- If the PAT decides to go ahead, the MIC obtains the opinion of the ministries and other authorities involved;
- In the process, the investor will be asked to amend the proposal;

MIC Permit Procedure

(Cont.)

- Once all amendments are done, the investor has to prepare 10-12 more sets and submit them to the MIC;
- Investor holds a power point presentation at the MIC meeting;
- If everything went well, the MIC will issue the permit
- Shortly thereafter, DICA issues the company certificates
- **Required time from the filing of the application until the issuance of the MIC permit: Theoretically, 85 working days**

MIC Endorsement

A MIC Endorsement is required if:

1. Local or foreign investor wants tax incentives, or
 2. Foreign investor wants to lease land for more than one year and the investment does not require an MIC permit
- Submitted by the investor or its authorized representative
 - (New Investment Law: authorized representative can sign application docs)
 - **Application fee: Ks. 50,000**

MIC Endorsement Procedure

- **The Required Documents can be submitted in English** (although I would advise Myanmar translations also)
- **Procedure:**
 - Prepare one set of application documents while communicating with MIC officer
 - If the MIC officer is happy, prepare 10 sets and submit to the MIC
 - At the same time, submit application for company registration with DICA

MIC Endorsement Procedure

- **(Cont.)**
 - If, after initial screening, the MIC decides to move ahead, the MIC further screens the application and obtains approval from the relevant authorities
 - Investor may be asked to amend the application, but no attendance at MIC meetings required
 - If everything goes well, the MIC will issue the Endorsement
 - Shortly thereafter, DICA issues the company cards
- **Required time: Theoretically, 55 working days in total**

Tax Incentives

- **Application fee: Ks. 100,000-200,000**

Tax incentives are given to investments where:

- Minimum investment amount to be eligible: USD 300,000
- No more automatic 5 year exemption from corporate income tax
- Investments in promoted sectors (MIC Notification 13/2017) in (i) less developed, (ii) moderately developed, (iii) developed townships (MIC Notification 10/2017):
- Exemption from corporate income tax (up to 25%) for (i) seven, (ii) five or (iii) three years

Tax Incentives

- Exemption from customs duty and commercial tax at the import stage for machines, construction materials, etc., during construction or expansion period (including the import through agents, Rule 112)
- Exemption from customs duty and commercial tax at the import stage for raw-materials and semi-finished goods if 80% of the income is in foreign currency from export
- Exemptions from corporate income tax on profits that are reinvested within one year
- 1.5 x accelerated depreciation
- Deduction of R&D expenses (max. 10% of the income)
- Better incentives may be granted to citizen-owned businesses

Land Rights Authorisation

- Required by foreign investors wishing to lease immovable property for more than one year
- Requires MIC Permit or Endorsement
- Application filed together with the Permit or Endorsement application, or later (but in this case tax compliance is checked)
- **Application fee: Ks. 100,000**

Questions

Are there any questions?

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