



Myanmar's New Companies Law and Investment Framework: Companies and the Investment Law

Training Series with Australian and British Chamber of Commerce

Workshop 4: 21 March 2018

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Myanmar's New Companies Law and Investment Framework Workshop Series

1. Preparing for the new Myanmar Companies Law and company administration requirements
2. Corporate governance and stakeholder protections
3. Corporate structures and corporate finance
4. Companies and the Investment Law

Workshop 4 Outline

- Investment Law objectives
- Investment Law incentives and protections
- Investment Law applications and procedures
- Bringing the Investment Law and Companies Law together

Myanmar Investment Law: Objectives

Background to the MIL

- A new framework to promote, incentivise, regulate and protect investments in Myanmar
- Guiding principles: simplification; streamlined procedures; predictability; compliance; clarity
- Key objectives: liberalisation, inclusive development, responsible investment
- Drafting commenced 2014; MIL passed October 2016; MIR effective 1 April 2017
- Helped Myanmar win an Investment Competitiveness – Star Reformer award October 2017
- Potential is still to be realized
 - Leverage with Companies Law reforms

Scope of the Investment Law and Rules

- Universal application
 - Foreign & Myanmar investors; wide concept of “investment”; protections apply to all
- Regulation
 - Permitted (strategic / sensitive; capital intensive; environmentally significant)
 - Restricted (State only; Myanmar only; Foreign-Myanmar JV (20%); other approval)
 - Streamlined approval processes and delegations
- Promotion and Incentives
 - Promoted sectors; income tax relief; duty and other tax relief; R&D, depreciation and re-investment incentives
 - Land rights
- Protections / rights
 - Grievances and disputes; currency remittance; employment; transactions and finance
- Obligations (Reporting; compliance with law; insurance; changes of control)

Myanmar Investment Law: Incentives and protections

Tax Incentives

- Income tax exemption 3, 5 or 7 years for businesses on the promoted sectors list
- Import taxes and customs duties for all Investments
 - Materials and equipment during project implementation and construction
 - Materials and equipment for project expansion
 - Raw materials for export orientated business, more than 80% of revenue from export
 - Raw materials and partially manufactured goods used for manufacturing products for export (import duty credit at the end of the assessment year)

Tax Incentives

- Income tax relief after reinvestment of profits
 - Limited to capital expenditure
- Accelerated depreciation at 1.5 times the regular depreciation rate
- Deduct research and development expenditure
 - Maximum deduction limited at 10% of revenue

Land Rights Authorisation

- Available to any Investor
- 50 years plus up to two 10 year extensions
- MIC may still approve a Land Rights Authorisation where land required to undergo a change of use if land is designated or approved as appropriate by State or Region
 - the relevant authority is required to give effect to the change of use
- If the lessor does not have ownership documents MIC may still approve if sufficient supporting documents are provided
- Where a land authorisation is obtained and the land is subleased additional Land Right Authorisations are not required

Investment Guarantee and Grievances

- Investor guarantee relating to nationalisation and expropriation, including indirect expropriation
- Investor grievances may be brought by Investors in good faith if they believe:
 - a Government decision in respect of Investment was incorrect
 - an application for a permit was incorrectly refused
 - any right, protection or approval given under the MIL has been frustrated
- Investor grievances and disputes to be handled by the Investor Assistance Department
 - once the more detailed grievance and dispute mechanism is put in place the Investor Assistance Department may be replaced.
 - WIP

Myanmar Investment Law: Applications and procedures

Applications / Notifications under the Rules

- Permit (strategic / sensitive; capital intensive; environmentally significant impact; Government land)
- Endorsement – Land Rights Authorisation
- Endorsement – Tax Incentive (promoted sectors; zone in which investment made)
- Investment Screening
- Restricted Investment Notification
- Appeals and Grievances

MIC Permit – assessment criteria

- Commitment to carry out investment in a responsible and sustainable manner
- Relevant business experience
- Financial resources
- Investor is of good character and business reputation
- Investment is compatible with government policy (economic, development, social)

Tax incentive - assessment criteria

- Mandatory criteria
 - holds Permit or Endorsement
 - promoted sector and in investment zone for income tax incentive
 - New investment of \$300,000
- Non-mandatory criteria
 - create employment
 - technology transfer or knowledge transfer
 - increase competition, greater efficiency or productivity, or provision of enhanced infrastructure or services
 - increase exports

Screening Applications and Notification

- Screening

- Investors can apply to MIC to obtain non-binding clarification on whether their proposed investment: requires a Permit; is prohibited; is reserved for government; is reserved for Myanmar citizens; requires a joint venture, needs approval from the relevant Ministry or Pyidaungsu Hluttaw

- Notification

- Operating in a restricted sector, (e.g. an investment reserved for citizens or where a joint venture is required), does not need prior approval. MIC needs to be notified within 3 months
- Does not apply to small companies.
- Does apply to Myanmar companies (alongside other MIL provisions)!

Summary of main Applications under the Investment Law

Permit

- Applicable to small sub-set of sensitive/strategic investments
- Similar to current procedure
- Fitness/good standing of the investor is relevant

Endorsement

- No restriction on eligibility
- Approval can be streamlined with approvals delegated

Tax incentive

- Available if investments are on the promoted list
- Clear criteria, requirement to also show the benefit of the investment.

Land rights authorisation

- Limited objective assessment criteria
- Not mandatory to identify land prior to application
- Approval can be streamlined through delegation
- The Authorities must give effect to it.

Transition and miscellaneous provisions

- Permits issued under previous FIL or MCIL effective to expiry and taken to be a Permit under MIL
 - Must comply with the MIL where not inconsistent with Permit terms
- Additional or new incentives granted under MIL
- Permits granted under MIL prior to commencement of MIR valid
- Changes of control to entities with an MIC Permit require MIC approval
- MIC decisions on Applications may be appealed to Chairman if decision making criteria incorrectly applied
- Investments in SEZ excluded from application of MIL
- The MIL applies to Myanmar companies (Permit applications, restricted investment notifications)

Myanmar Investment Law and Companies Law: Bringing them together

A platform for development

- Liberalisation
 - Restricted List and 'Myanmar Company' amendments
 - Abolition of Permits to Trade
 - Investments in Myanmar land owning, trading and banking companies
 - If it's not on the restricted list – do it! (or lodge a screening application)
- Flexibility
 - Group structures
 - Fundraising and capital management
 - Joint ventures
- Certainty
 - Clear rules and procedures
 - Investor rights and protections
 - Corporate Governance and shareholder rights
 - If you can't do what the MIL or MCL says you can – lodge a grievance!

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This document provides a general summary only and is not intended to be comprehensive. Specific legal advice should always be sought in relation to the particular facts of a given situation.

