



Dear Readers,

Welcome to a new edition of our newsletter.

1. Notifications implementing the new Myanmar Investment Law now complete

The Myanmar Investment Commission (“MIC”) still has a backlog of 40 proposals of foreign direct investment which it will review according to the old Foreign Investment Law (<http://tinyurl.com/lfyx9an>), but new proposals will from now on (definitely) be dealt with according to the new Myanmar Investment Law as the notifications implementing the new law are now complete.

The main differences between the old and the new regime are as follows:

- (a) **MIC permits only for significant investments:** An MIC permit will now only be required - and only be available - if the investment (i) is strategic to the Union, (ii) requires a large amount of capital, (iii) has a substantial impact on the environment or the local community, (iv) uses state-owned land or buildings or (v) is classified by the government as requiring an MIC permit. The Myanmar Investment Rules (Ministry of Planning and Finance Notification No. 35/2017, <http://tinyurl.com/me2aesl>) define these categories in detail (Rules 3-11).
- (b) **New endorsement procedure:** In addition to the MIC permit, the new law has created a new type of approval, the “endorsement,” for investors whose business does not fit into any of the new MIC permit categories, but who would previously have been able to apply for an MIC permit in order to (i) lease land long-term (50+50+10 years) and/or (ii) obtain tax incentives. The endorsement procedure is supposed to be faster and less cumbersome than the MIC permit procedure.
- (c) **Promoted sectors and regions:** Under the old regime, MIC permits automatically came with a five year exemption from corporate income tax, irrespective of the sector and the region in which the investment was made. Under the new regime, an exemption from corporate income tax is only available if the investment is made in a promoted sector specified in MIC Notification No. 13/2017 (<http://tinyurl.com/ln8u8d8>). Furthermore, the exemption period is three, five or seven years, depending on whether the investment is made in a developed, moderately developed or less developed region as specified in MIC Notification No. 10/2017 (<http://tinyurl.com/kjsmk5t>).



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- (d) **Other tax benefits:** Other tax benefits remain largely the same. The minimum capital expenditure for obtaining tax benefits is now officially specified (Rule 91 (d) - USD 300,000). An investor can obtain an exemption from customs duty and commercial tax at the import stage even if the import is made through a third party (Rule 112).
- (e) **Prohibited, restricted and otherwise qualified investments:** The MIC has replaced its Notification No. 26/2016 in this regard with new Notification No. 15/2017 (<http://tinyurl.com/m2uqkrg>).
- (f) **One-stop service centre:** The Myanmar Investment Rules provide for a comprehensive one-stop service centre within the MIC, but we expect it to still take some time until this is implemented.
- (g) **Devolution to Regions and States:** Endorsements for investments up to USD 5 million or Ks. 6 billion are supposed to be issued by the Regions and States (<http://tinyurl.com/mwfgtul>) and not by the MIC, but it is not clear if the respective commissions have been established yet.
- (h) **Services companies and the import of goods:** Up to now, the Ministry of Commerce has not registered foreign-invested companies without MIC permit as importers. In the past, some foreign-invested services companies managed to obtain MIC permits which allowed them to import goods. It remains to be seen whether MIC endorsements will be available for such cases under the new regime.
- (i) **Change of control:** A change of control in an "Investor" (which in this case we understand to mean the parent company of an investment vehicle incorporated in Myanmar) with an MIC permit now requires MIC approval (Rule 191).
- (j) **Scope of the Myanmar Investment Rules:** Unlike the old regime, the new Myanmar Investment Law covers all investments, not only those explicitly approved by the MIC. The Myanmar Investment Rules were, however, clearly drafted with a view of regulating MIC permits and MIC endorsements. We therefore very much suppose that rights (such as the right to obtain an import license) and obligations (such as the obligation to obtain MIC approval for the employment of a foreigner) of an investor that are specified in the Rules will in practice only be applied to investors with an MIC permit or endorsement, even if there is no such explicit restriction in the respective Rule.



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2. Central Bank publishes framework for credit rating agencies

The Central Bank recently published Notification 5/2017 (<http://tinyurl.com/kpq6wq8>), setting the framework for credit rating agencies. The text is in Myanmar, but we were told that the Central Bank would publish an English translation after the Water Festival. The contents in a nutshell: Minimum capital Ks. 3 billion; initial license fee = 0.1% of the investment; annual license fee = 0.1% of the paid-up capital; foreign ownership possible.

3. Draft laws on foreigners rejected by parliament

We forgot to mention it in the last newsletter, but it is with a little bit of pride that we announce that the controversial drafts of a Foreigners Law and a Foreign Worker Law created by two departments in the Ministry of Labour, Immigration and Population were rejected by parliament; the departments were asked to create new drafts. Pride, because our submission to the parliamentary law drafting committee (text in English: <http://tinyurl.com/kpxe7cy>) at the request of a senior politician seems to have contributed a little to the outcome.

4. Electricity and energy news

- (a) **Myanma Oil and Gas Enterprise (MOGE)** has extended the submission deadline for three tenders to 17th May 2017 (<http://tinyurl.com/ksa3sbb>); the tenders are, as stated in our previous newsletter, for (i) seismic acquisition services (<http://tinyurl.com/lbjl7t3>), (ii) onshore drilling services (<http://tinyurl.com/khb6ogh>), and (iii) onshore pipeline construction and maintenance services (<http://tinyurl.com/mwlzuvl>).
- (b) **UK supports offshore oil and gas projects:** <http://tinyurl.com/nyyv33h>
- (c) **Myanmar-China oil pipeline finally operational:** <http://tinyurl.com/mh nubzm>
- (d) **The Ministry of Electric Power plans to develop 50 large-scale hydropower projects, five wind and five solar-power projects:** <http://tinyurl.com/lq7f8x2>. It seems, however, that most projects have not gone past the MoU stage yet. A big issue is/will be the funding as the power producers have to sell the electricity to a state-owned off-taker which is supposed to buy it at market rates, but resell it at heavily subsidized rates. This year's Union budget does not seem to provide for more losses from subsidizing electricity in comparison to last year's, and it is a bit difficult to see where the government would get the money from to pay for all the additional electricity from new power plants unless it raises prices for end-customers which would be deeply unpopular.



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5. Market access

- (a) **Five TV channels awarded:** Myanma Radio and Television awarded licenses to five local companies for the operation of free-to-air digital TV channels (<http://tinyurl.com/lfyx9an>). The five companies are Mizzima Media Co., Ltd.; Young Investment Group Co., Ltd.; Kaung Myanmar Aung Co., Ltd.; Fortune International Ltd.; DVB Multi Media Group Co., Ltd.
- (b) **Myanmar patients spend USD 600 million annually in medical expenses abroad:** <http://tinyurl.com/lc6zptw> - This surely shows that there is a market for upscale medical services in Myanmar. If you are interested in setting up a hospital or a clinic or in other medical-related investments, please do not hesitate to contact us; we have worked on a large hospital project.

6. Tenders

- (a) **Department of Rural Development:** Construction of two bridges of up to 200 metres in length each and three low-level causeways of up to 350 metres in length each, rehabilitation works for 50 km of roads in Kalay District, Sagaing Region (KfW funded): <http://tinyurl.com/lw45jl9>
- (b) **Department of Rural Development:** Construction of bituminous roads of up to 60 km in total in Shan State (KfW funded): <http://tinyurl.com/ljndq45>
- (c) **Department of Rural Development:** Purchase of 96,000 grievance pamphlets, 52,000 manual booklets for focal points, 182,000 grievance letters/envelopes (IDA funded): <http://tinyurl.com/kmrarhk>
- (d) **News and Periodicals Enterprise:** Purchase of 4 high-performance, long-life 4 Hi Tower colour printing presses: <http://tinyurl.com/ksj3rom>
- (e) **Myanma Railways:** Electric power supply works for 37 stations between Mahlwagon and Taungoo, Mahlwagon and Ywathagyi Substations and HT Lines: <http://tinyurl.com/m42tzt7> (The project is JICA funded, but there do not seem to be nationality restrictions.)
- (f) **Myanma Railways:** Tender for civil, track, signaling and telecommunication works: <http://tinyurl.com/mvdg3l5> (The project is JICA funded; the prime contractor must be Japanese or a Japanese/Myanmar joint venture with Japanese majority ownership.)



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- (g) **Global New Light of Myanmar:** Purchase of paper and plates:
<http://tinyurl.com/kq8ongg>
- (h) **Myanma Oil and Gas Enterprise (MOGE):** Purchase of various items:
<http://tinyurl.com/mzxkd5y>
- (i) **Department of Rural Development:** National project Advisor for the Emergency Support for Chin State Livelihoods Restoration Project: <http://tinyurl.com/n69auzf>
- (j) **No. (1) Heavy Industries Enterprise:** Privatization of No. 14 Heavy Industry (Thagaya):
<http://tinyurl.com/kygkllc>

Happy Thingyan Holidays!

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