



Dear Readers,

Welcome to a new edition of our newsletter.

1. Investment brochure

We have expanded a brochure of legal and tax FAQs on investing in Myanmar that we originally prepared for the Myanmar Investment Forum 2017. It is available for download here: <http://tinyurl.com/y8oyoppk>

2. Mini power projects

Over the last months, we received several requests concerning mini power projects, more precisely projects in which the investor would

- install solar panels on the roofs of factory buildings and sell the produced electricity to the factory owner;
- install a waste-to-energy plant near a factory and sell the produced electricity to the factory owner;
- in an initial phase, install solar panels in rural areas in one Region and sell the produced energy to telecom tower companies or private households.

We have always maintained that no specific permits and approvals are required to engage in such projects, in particular no permit from the Ministry of Electricity and Energy as the electricity is not fed into the national grid.

This view now seems to be confirmed by the MIC who said, with regard to the third project, that the investor could just go ahead with the initial phase.

Nevertheless, we recommend trying to obtain an MIC endorsement for the following reasons:

- Without MIC endorsement, the investor cannot lease the land for installing the solar panels or other facilities for a period in excess of one year;
- if the plots on which the facilities are to be installed are of the land type “farmland”, permission from the Regional or Central Farmland Management Committee to use the land for other purposes has to be sought (section 30 (a) or (b) Farmland Law). This should be easier if there is an MIC endorsement;



- we expect that with an MIC endorsement, the investor can register its business with the Ministry of Commerce as an importer and import equipment (without having to wait for the Ministry of Commerce to issue internal guidelines that might permit registration without MIC endorsement);
- with MIC endorsement, the investor can apply for tax incentives.

3. Long-term lease, import, trade and the employment of foreigners under the new Investment Law

The new Myanmar Investment Law applies to any “investor”, with or without MIC permit or endorsement, and this has opened some interesting aspects.

(a) Long-term lease without MIC permit or endorsement

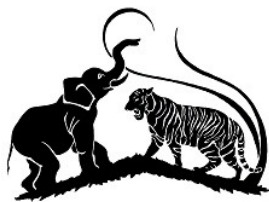
Rule 135 appears to allow a foreign investor (without MIC permit or endorsement) to sublease immovable property from another investor long-term if the other investor has an MIC permit. This means that property developers with an MIC permit should be able to conclude lease agreements for their office space with foreign companies for longer terms than one year. This also seems to be the view of the MIC (although we got conflicting replies when asking, and the form that has to be submitted by the prospective tenant to the MIC also appears to be still in the making).

(b) Import without MIC permit or endorsement

The import of goods requires registration with the Ministry of Commerce as an importer, but the Ministry of Commerce has so far registered foreign-invested companies only in exceptional circumstances (notably, if they had an MIC permit and needed to import goods for their business, such as raw materials for a manufacturing business).

Rules 230, 231 appear to allow foreign investors to import goods “for their business” without any MIC approval and oblige the Ministry of Commerce to register their companies as importer.

This means that, e.g., a foreign-invested services company (without MIC permit or endorsement) that needs goods from abroad to perform its services should be able to register with the Ministry of Commerce and import the goods. This also seems to be the view of the Ministry of Commerce. However, presently such registrations are still not possible as the Ministry of Commerce does not seem to have drafted the respective internal guidelines yet.



(c) Foreign-invested trading companies

The setting-up of a “wholesale” or “retail” company requires the approval of the Ministry of Commerce (theoretically, irrespective of whether the company is foreign- or Myanmar-invested; in practice only if the company is foreign-invested). We will probably have to wait until the Ministry of Commerce has issued notifications clarifying under what conditions (joint venture with a local?) approval will be granted before it makes sense to apply for it - but maybe some might consider applying already now?

In this context: There are by now quite a number of foreign/local joint ventures that import and sell construction materials and other goods under MoC Notification 96/2015, so this does seem to work.

(d) Employment of foreigners

According to Rule 206, any investor (with or without MIC permit or approval) wishing to employ a foreigner has to obtain prior approval from the MIC. From a practical perspective, however, the MIC seems to be taking the view that it is only responsible for investments with a permit or endorsement and does not seem request other investors to submit applications for such approval.

4. New Myanmar Investment Commission

We have a new MIC: <http://tinyurl.com/yajnvab>

5. Our seminar: The new Myanmar Investment Law - first experiences

You are cordially invited to attend our seminar on Friday, 23 June 2017, from 2:30-4:00 p.m. at Sule ShangriLa. Topics include:

- How to obtain an MIC permit
- How to obtain an MIC endorsement
- The new “investment screening procedure”
- Importing goods
- Removal of restrictions on foreign companies leasing property?
- Market access liberalization

The entrance fee is Ks. 10,000 per person. Please reserve by sending an e-mail to either sebastian@lincolnmyanmar.com or nyeinchanzaw@lincolnmyanmar.com, stating the name of your company and the names of the participants.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 26 - 19 June 2017

You can download the seminar invitation here: <http://tinyurl.com/ycdpl8hv>

6. Electricity and energy news

Investment in the power sector: The very informative presentation from Electric Power Generation Enterprise at the Myanmar Investment Forum has been uploaded here: <http://tinyurl.com/y734sv5h>

7. Market access and other news

- (a) **Invitation to submit proposals for the construction of dry ports and bonded warehouses in Yangon:** <http://tinyurl.com/y9256a7o>
- (b) State-owned papers have started publishing the draft of a new Forest Law.
- (c) **Withholding tax:** PWC reports that the Ministry of Planning and Finance has replaced Notifications no. 2 and 37/2017 with Notification 51/2017. The only (but important and welcome) material change seems to be that **no tax has to be withheld if the payment does not exceed Ks. 500,000** (Ks. 1,500,000 if the maker of the payment is a large taxpayer) **per transaction** (instead of “per year” as was provided for in the old notifications).
- (d) **Hotel business not as prosperous as expected:** <http://tinyurl.com/y9o3tny6>
- (e) **World Bank urges liberalization of accounting and auditing sector:** <http://tinyurl.com/y8eqz28j>
- (f) **Central Bank urges banks to scrutinize “unpermitted dollar deposits”:** <http://tinyurl.com/y7actd3l> and, related, <http://tinyurl.com/y9jmvfn8> (Most unwelcome news, as it indicates that the Central Bank has not improved the clarity of its communication. Section 15 Foreign Exchange Management Regulation allows a resident to own USD 10,000 in cash and deposit it in a bank account; there is no upper limit on the number of times this can be repeated. The two notifications that the article is referring to are cryptic. In such circumstances, we generally advise our clients to continue with their business as before until they receive personalized notice from the authorities to change things.)
- (g) **EuroCham cites protectionist bent and tax inefficiencies as top investor concerns:** <http://tinyurl.com/yclb5wjr>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 26 - 19 June 2017

8. Tenders

- (a) **Myanma Railways:** Spare parts for automatic levelling, lining and tamping machine and profile ballast regulating machine: <http://tinyurl.com/y8n85k6p>
- (b) **Myanma Oil and Gas Enterprise:** Purchase of various equipment: <http://tinyurl.com/ybcny7lk>
- (c) **Myanma Railways:** Axle shaft and ball bearings: <http://tinyurl.com/y7y9n5uk>
- (d) **Department of Highways:** Upgrade of the Daik U - Sittaung road (JICA funded): <http://tinyurl.com/y799692l>

We hope that you have enjoyed reading our newsletter and found it useful.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director