



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 10 - 20 October 2016

Dear Readers,

Welcome to a new edition of our newsletter.

## 1. New Myanmar Investment Law enacted

The **new Myanmar Investment Law was enacted on 18 October 2016**. DICA has an unofficial English translation on its homepage: <http://tinyurl.com/zgbz3xp>.

The new Investment Law merges the previous Foreign and the Citizens Investment Law, reduces the necessity to obtain an MIC permit to large projects and projects on state-owned land, introduces an “endorsement procedure” for foreign investors to obtain the right to use land long-term and/or tax benefits, clarifies that also non-MIC companies have the right to repatriate profits, and extends investment protection to non-MIC companies.

Please find a **summary of the new Investment Law in this newsletter**. The summary is basically a rerun of what we published previously as the new Investment Law is largely identical to the drafts published prior to submission to parliament.

## 2. Stamp duty reduced

As Myanmar Legal Services points out, there has been a significant reduction of the stamp duty rates. Ministry of Planning and Finance Notification No. 146/2016 reduces, with effect from 1 October 2016, in particular the following rates:

Sr. no. in Schedule 1	Description	Old rate	New rate
15	Bond	1.5%	0.5%
23	Conveyance	3%	2%
35(c)	Fine or premium or money advanced in addition to rent (if the stamped lease agreement is executed)	Ks. 600	Ks. 300
62	Transfer of shares or debentures	0.3%	0.1%

Nos. 15 and 23 are often referenced to in other numbers of Schedule 1. The reduction of the stamp duty rates for bonds and conveyances means that rates for other instruments have gone down as well, e.g. for lease agreements with a term of not more than 3 years from previously 1.5% of the annual rent to now 0.5%, and for lease agreements with a term in excess of 3 years from previously 3% of the annual rent to now 2%.



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### 3. Market access

- (a) **MOGE approaches Roland Berger to help draw up a tender for an offshore supply base:** MOGE has been planning to engage private firms to build and operate offshore supply bases for over a year, but a previous tender fell flat. A new tender appears to be in the making. (<http://tinyurl.com/jarfbgp>)
- (b) **US-Myanmar consortium wins 300-megawatt power plant bid:** A consortium consisting of local companies National Infrastructure Holdings and MCM Pacific, and US companies APR Energy and Ace Resources Group has won a tender to build a 300-megawatt power plant in Yangon. (<http://tinyurl.com/zpja3b5>)

### 4. Seminar: Investment in the power sector in Myanmar

There are still **places available at our seminar on investment in the power sector on 27 October**; you are cordially invited. Please find the seminar announcement inside the newsletter.

We trust that you will find this newsletter useful and hope that you will enjoy reading it.

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director



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## Press review (9 - 20 October 2016)

- Yangon Heritage Trust calls for more space at Yangon railway site: <http://tinyurl.com/hy8gluu>
- Jade producers hope to get a boost from access to US market: <http://tinyurl.com/zy4o7do>
- Myanmar and South Korea eye free trade agreement?: <http://tinyurl.com/hbw29f5>
- MOGE approaches Roland Berger to help draw up a tender for an offshore supply base: <http://tinyurl.com/jarfbgp>
- Condominium by-laws delayed: <http://tinyurl.com/z42j4rh>
- US-Myanmar consortium wins 300-megawatt power plant bid: <http://tinyurl.com/zpja3b5>
- More clarity on economic policy due at workshop in Nay Pyi Taw: <http://tinyurl.com/j9hnp9l>
- Thai firm Group Lease plans to expand financial services in the countryside: <http://tinyurl.com/hl7yxmn>
- Yangon Region Transport Authority Group devised scheme allowing bus owners to trade in old buses for car import slips: <http://tinyurl.com/h9xgln5>
- Developer plans to sue YCDC for Ks. 50 billion after YCDC ordered reduction of floors: <http://tinyurl.com/zs3fm6v>
- Start-up takes on moneylenders with short-term microfinance options: <http://tinyurl.com/zowfdnu>
- Ministry to free another 150 import items from license requirements: <http://tinyurl.com/jtaxvq8>
- Tanintharyi Region starts palm oil sector land review: <http://tinyurl.com/h7vxt52>
- Illegal foreign-run businesses in Yangon MP's crosshairs: <http://tinyurl.com/j6g9p79>



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## SEMINAR INVITATION:

### INVESTING IN MYANMAR'S POWER SECTOR

<b>Date and time</b>	Thursday, 27 October 2016, 2:30pm - 4:00pm
<b>Place</b>	Sule Shangri-La, 223 Sule Pagoda Road, Yangon
<b>Topics</b>	<ul style="list-style-type: none"><li>▪ Institutional and legal framework of the power sector</li><li>▪ Opportunities for foreign investors in power generation: selling turnkey facilities; construction and operation of coal-fired, gas-fired and hydro power plants; power generation with renewable energy</li><li>▪ Opportunities for foreign investors in supply, engineering and distribution</li><li>▪ Project documentation: MoA, BOT contract, power purchase agreement, fuel supply agreement</li><li>▪ Land issues</li><li>▪ Project finance</li><li>▪ Government guarantees</li></ul>
<b>Speakers</b>	<ul style="list-style-type: none"><li>▪ Sebastian Pawlita</li><li>▪ U Nyein Chan Zaw</li></ul>
<b>Language</b>	English
<b>Fee</b>	The event is free of charge.
<b>Registration</b>	Please register by sending an e-mail to <a href="mailto:sebastian@lincolnmyanmar.com">sebastian@lincolnmyanmar.com</a> or <a href="mailto:nyeinchanzaw@lincolnmyanmar.com">nyeinchanzaw@lincolnmyanmar.com</a> , stating the name of your company and the names of the participants.



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## The new Myanmar Investment Law

The new Myanmar Investment Law was enacted on 18 October 2016; an unofficial English translation can be found on DICA's homepage (<http://tinyurl.com/zgbz3xp>). The new law combines the previous Foreign Investment Law and the Citizens Investment Law. However, with regard to market access and incentives, the new law contains advantages of domestic investors over foreign investors.

### 1. Myanmar citizen investor and foreign investor

A Myanmar citizen investor is defined as a citizen investing in the country. The term "citizen" includes enterprises established only by citizens. This is at odds with the draft of the new Companies Law (the latest version can be found here: <http://tinyurl.com/jm4vu9x>) according to which companies with a foreign shareholding not exceeding a "prescribed ownership amount" are treated as a local company.

A foreign investor is an investor who is not a citizen.

### 2. Two routes to invest

As has also been the case so far, the new law provides for two routes to invest in the country: (i) with a permit from the Myanmar Investment Commission ("**MIC permit**") and (ii) without it.

An MIC permit is required for businesses that (i) are important for the Union's strategy, (ii) require a large amount of capital, (iii) have a high impact on the environment and the local community, (iv) use state-owned land or buildings, or (iv) are classified by the Government as requiring an MIC permit. It should be noted that the requirement to obtain an MIC permit applies to both foreign and Myanmar citizen investors.

Other businesses do not require an MIC permit. Differently from previously, however, the new law provides that foreign investors in non-MIC businesses may be eligible to lease land long-term and obtain tax exemptions. Furthermore, they benefit from other advantages under the draft law (e.g. guarantee against confiscation, explicit right to repatriate profits) that so far have been only available to MIC companies.

### 3. Endorsement application

Foreigners wishing to invest in businesses for which an MIC permit is not required may file an application to obtain MIC endorsement for the long-term lease of land (50+10+10 years) and/or obtaining tax exemptions.



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### 4. Market access restrictions

The new law provides for the following market access restrictions:

- (a) Certain investments which are deemed to be harmful are prohibited to Myanmar citizen and foreign investors alike.
- (b) Concerning state monopolies, the draft only states that access is “restricted” without differentiating between Myanmar citizen and foreign investors. One would expect, however, that - as has already been the case so far - access may be possible on a case-by-case basis.
- (c) Investments which a foreign investor is not allowed to engage in, or only allowed to engage in if he forms a joint venture with a citizen.
- (d) Investments which require approval of the relevant ministries. The new law does not distinguish between Myanmar citizen and foreign investors in this regard.

The MIC shall, with the approval of the Government, issue a notification which shows the restricted businesses (b)-(d).

### 5. Tax incentives

The draft provides for the following tax incentives:

- (a) For investments in sectors listed in a notification issued by the MIC in order to promote investment: Exemption from corporate income tax for seven, five or three years depending on whether the investment takes place in an underdeveloped, moderately developed or adequately developed region or state.
- (b) Exemption from customs duties and other domestic taxes on the import of machines, equipment and other specified items required during the construction period of a new business, or during the expansion period of an existing business that obtained permission from the MIC to increase the investment amount.
- (c) Exemption from customs duties and other domestic taxes on the import of raw materials and partially manufactured goods by an export-oriented business if these items are used in the production of goods for export.
- (d) Exemption from corporate income tax on profits reinvested within one year.
- (e) Accelerated depreciation (although this would often not work as an incentive).



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- (f) Right to deduct R&D expenses from the corporate income tax base if R&D is done in, and for the development of, the Union (although these expenses would be deductible under the ordinary tax laws anyway).
- (g) Better incentives may be granted to citizen-owned businesses.

### 6. Labour matters

Unlike the previous Foreign Investment Law, the draft contains no requirement as to the hiring of a specified percentage of skilled local employees. However, investors (both domestic and foreign) are obliged to implement skill development programmes.

### 7. Dispute resolution

The draft obliges the MIC to implement a mechanism by which disputes can be resolved before reaching the official dispute resolution stage.

Investors are free to agree on a dispute resolution method of their choice.

### 8. Transitional period

The old Foreign and the old Citizens Investment Law are repealed with effect 18 October 2016. However, by-laws implementing the new Myanmar Investment Law have not been issued yet. The new law states that for the time being, the “rules issued under the [old] Foreign Investment Law ... continue to be in effect, if they are not contrary to the [new law],” and investment permits issued under the old laws continue to be valid. Furthermore, the old MIC continues to be in office until a new commission is appointed. The new law contains no further transitional regulations. If the past is any guidance, the MIC will, for a transitional period until the new by-laws are out, process MIC applications as if the new law did not exist.



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