



THE NEW MYANMAR INVESTMENT LAW - FIRST EXPERIENCES 23rd June, 2017



THE NEW INVESTMENT LAW

- Enacted on 18th October 2016
- Combines the Foreign Investment Law 2012 and the Citizens Investment Law 2013
- Proposals under the new law submitted since April 2017
- Distinguishes between "citizen investor" and "foreign investor"
- "Citizen investor" includes enterprises established "only" by citizens (which is at odds with the draft of the new Companies Law) - but see Rule 134 (b)





THE NEW INVESTMENT LAW

- MIC permit
- MIC endorsement
- Just set up your company and start your business





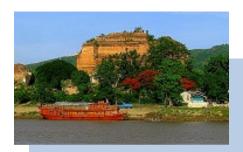
- MIC permit required for investments that:
 - are important to the Union's strategy;
 - have a large environment and social impact;
 - use state-owned land or buildings;
 - are capital-intensive;
 - are classified by the Government as requiring an MIC permit





- 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





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





- 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





- Submitted by the investor or its authorized representative (new: 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)





- Required documents: Depends on the project, but in particular
 - Proposal form
 - Details and financial standing of the investor
 - Explanation ("summary") of the investment Bilingual
 - Land documents, draft lease agreement
 - P/L and cash flow for 10 years, IRR, recoupment period
 gone?





- List of machines, equipment, raw materials purchased
 (i) locally and (ii) abroad
- Annual production plan/service plan for 10 years
- Local/foreign sales ratio for 10 years
- Income tax/commercial tax forecast for 10 years Gone?
- Employment opportunities (number of local and foreign employees, their positions and salaries)
- Fire prevention plan Gone?





- Social security and welfare plan
- CSR commitment; commitment to withhold income tax Gone?
- Location map
- Conceptual design of the building Gone?
- Evaluation of environmental impact
- Electricity and water usage forecast (10 years)
- Contracts related to the investment
- Documents can be submitted in English





Procedure:

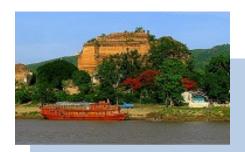
- Prepare one set of application documents while communicating with MIC officer
- If the MIC officer is happy, prepare 20 sets and submit to the MIC
- At the same time, submit application for company registration with DICA
- Within 15 days, screening by MIC's "Proposal Assessment Team"; investor to attend 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
- 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





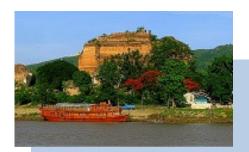
- Shortly thereafter, DICA issues the company cards
- Required time from the filing of the application until the issuance of the MIC permit: Theoretically, 85 working days





- Required if
 - Local or foreign investor wants tax incentives, or
 - 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: authorized representative can sign application docs)
- Application fee: Ks. 50,000





- Required documents:
 - Application form
 - Details and financial standing of the investor
 - Annual production plan/service plan for 10 years
 - Local/foreign sales ratio for 10 years
 - Copies of related contracts (e.g. JVA, CMP contract)
 - Copies of related licenses (if any)





- Tax incentive application form, list of locally purchased and imported machinery and equipment, list of raw materials, standards to be complied with
- Land rights authorization form, draft lease agreement, land documents, location map





- Documents can be submitted in English
- 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





- 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 went well, the MIC will issue the endorsement
- Shortly thereafter, DICA issues the company cards
- Required time: Theoretically, 55 working days in total





MARKET ACCESS RESTRICTIONS

- Section 41 MIL, Rules 12-16:
 - "Harmful investments": prohibited to foreigners + citizens (Rule 13?)
- Section 42 MIL, MIC Notification 15/2017:
 - Union only
 - Investments prohibited to foreigners
 - Investments requiring foreigners to have JV w/citizen
 - Investments requiring approval of the relevant ministries





MARKET ACCESS RESTRICTIONS

- Restriction on trade
 - MIC Notification 15/2017 requires MoC approval if a (foreign) investor wants to open a retail or wholesale business
 - MoC Notification 36/2017 dated 12 June 2017:
 Foreigners can trade in construction materials, seeds, fertilizers, pesticides and hospital equipment (no JV requirement anymore)





IMPORT RESTRICTIONS

- Rules 230, 231 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
- Ministry of Commerce has, however, not issued internal guidelines yet





INVESTMENT SCREENING PROCEDURE

- Non-binding information whether:
 - MIC permit required?
 - Parliamentary approval required?
 - Restricted investment?
 - Promoted investment?
 - Prohibited investment?
 - Others





TAX INCENTIVES

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





TAX INCENTIVES

- 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 AUTHORIZATION

- 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





LAND RIGHTS AUTHORIZATION

Exceptions:

- Once the new Companies Law is out: Companies with foreign ownership below a harmful threshold (Rule 134 (b))
- Already now? Foreign investor leases land or building from another investor with MIC permit or endorsement allowing the sub-lease of such land or building (Rule 135)





LAND RIGHTS AUTHORIZATION

- Procedural acceleration:
 - MIC does not have to obtain any approval if the land is located in a designated zone (e.g. industrial or hotel zone), Rule 130
 - For farmland: Permit according to section 30 (a) or (b)
 Farmland Law not required to apply for land rights authorization (Rule 132)
 - Contractual title chain enough to apply for land rights authorization (Rule 133)





DEVOLUTION

- MIC Notification 11/2017: Endorsement applications to be dealt with by State and Regional Investment Committees if the investment amount does not exceed USD 5 million or Ks. 6 billion
- State and Regional Investment Committees not in place everywhere yet
- In this case, endorsement applications can be filed with the MIC in Yangon





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