



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



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)



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THE NEW INVESTMENT LAW

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



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MIC PERMIT

- **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**



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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**



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MIC PERMIT

- **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**



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MIC PERMIT

- 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



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MIC PERMIT APPLICATION

- 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



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MIC PERMIT APPLICATION

- 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)



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MIC PERMIT APPLICATION

- **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?



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MIC PERMIT APPLICATION

- 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?**



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MIC PERMIT APPLICATION

- 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



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MIC PERMIT APPLICATION

- **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**



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MIC PERMIT APPLICATION

- 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



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MIC PERMIT APPLICATION

- 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



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MIC ENDORSEMENT PROCEDURE

- **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**



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MIC ENDORSEMENT PROCEDURE

- **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)**



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MIC ENDORSEMENT PROCEDURE

- **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**



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MIC ENDORSEMENT PROCEDURE

- 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



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MIC ENDORSEMENT PROCEDURE

- 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



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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**



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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)



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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



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INVESTMENT SCREENING PROCEDURE



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



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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**



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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



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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



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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



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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)**



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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)**



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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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