



Dear Readers,

Welcome to a new edition of our newsletter!

### 1. **New Industrial Zone Law**

The Pyidaungsu Hluttaw passed a new Industrial Zone Law on 26<sup>th</sup> May 2020. An English translation of the law [can be found on our homepage](#).

#### (a) **Summary**

In a nutshell,

- the law establishes a new system for industrial zones (in addition to SEZs);
- established industrial zones are to be moved to the new system;
- developing, and setting up a business in, an industrial zone will (apparently) be outside the purview of the Myanmar Investment Commission (“**MIC**”);
- the newly established Industrial Business and Industrial Zone Development Central Committee (“**Central Committee**”) may create a system of “special benefits” for developers and investors (presumably replacing, for industrial zones, the exemptions and reliefs according to the Myanmar Investment Law);
- the “**Management Committee**” of industrial zones will at least be partly composed of investors;
- the law operates on the premises that a private developer leases land from the government to sublease plots to investors, not accounting for established industrial zones that are operated by a government department or whose land is privately owned; and
- developers and/or investors will have to pay penalties if land is left idle.

#### (b) **New system for industrial zones**

Myanmar has an [SEZ Law](#) and [SEZ Rules](#) according to which so far three special economic zones have been set up (only the Thilawa SEZ is operational). Apart from its comparatively good infrastructure, the regulatory features that set the Thilawa SEZ apart from other investment destinations in the country are (i) a separate system of



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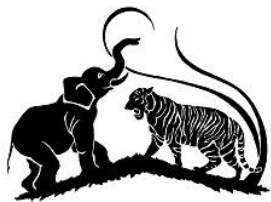
incentives that is different from the incentives offered under the Myanmar Investment Law and clearly distinguishes between export-oriented businesses and other businesses; (ii) a fast-track investment approval system that is operated by the Thilawa SEZ Management Committee and does not involve the MIC; and (iii) a one-stop service centre composed of representatives from all relevant government departments to bundle procedures.

Obtaining approval to set up a new SEZ would require a large land area and involve a massive effort (if you are interested, [we once summarised the procedure](#)) as, among others, Union parliament approval is required.

The new Industrial Zone Law basically creates “SEZs light” with a three-tier management, policy development and oversight mechanism.

- The **Central Committee**, composed of 15 officers from relevant (Union) ministries and government departments, in particular sets policies and reviews proposals to develop industrial zones;
- a **Regional Committee** in each Region and State and the Union Territory, composed of up to 15 members, made up mostly from officers of the respective Regional or State government or the Nay Pyi Taw Council and other government departments, but also from representatives of private investors (more on it below), in particular reviews proposals to develop industrial zones and set up businesses in industrial zones; and
- a **Management Committee** for each industrial zone, composed of 15-21 members, appointed by private investors, the respective Regional or State government or the Nay Pyi Taw Council, is in charge of the day-to-day operation of the industrial zone, somewhat akin to a condominium executive committee.

The initiative to set up a new industrial zone may be taken by a developer or a Regional or State government or the Nay Pyi Taw Council (section 7(a)). The proposal is passed on to the Union government through the respective Regional Committee and the Central Committee. If approved, the Union government shall announce the location, size and demarcation of the proposed industrial zone in a notification. The Regional Committee then (apparently) has to select a developer through a tender (section 14(a)) - possibly even if the industrial zone was proposed by a developer in the first place.



### (c) **Move of established industrial zones to the new system**

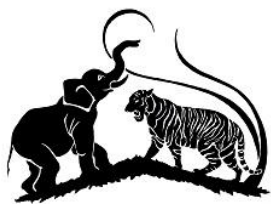
An “established industrial zones” is defined as an industrial zone, industrial sub-zone, industrial area, industrial ward or industrial park established before the enactment of the Industrial Zone Law.

Currently, established industrial zones are either operated by a government department (e.g., the Yangon City Development Committee) or a private developer (e.g., i-Land in Bago Region). A private developer would usually have leased land from the government and obtained MIC approval for the development. He would then sub-lease plots to investors wishing to establish factories or other businesses who, in their turn, would require MIC approval for their investments.

According to section 75, established industrial zones shall comply with the provisions of the new law in order “to be specified and announced” (by the Union government in a notification) as “industrial zone”. The law is fairly silent on the conversion process, other than that the Central Committee may instruct the respective Regional Committee to initiate it. Details will have to be fleshed out in implementing regulations which are not yet out.

Details to watch out for may include:

- What happens to those plots in an established industrial zone that are privately owned? Who pays the penalty if land is left idle, the developer or the owner (who may refuse to find a tenant or offer sensible conditions)?
- What will the process be like for established industrial zones operated by government departments? Will they have to transfer their land to the Regional Committee from which they would have to lease it back?
- Developers may not be pleased that factory owners suddenly get a say in the day-to-day operation of the industrial zone through their seats in the Management Committee.
- What happens to benefits granted under existing MIC permits and endorsements?



### **(d) Removal (possibly) of the MIC from the process and a new (possibly) system of benefits**

According to the new law, the development of a new industrial zone is approved by the Union government (after scrutiny of the proposal by the respective Regional and the Central Committee). Investments in an industrial zone (in particular, investments to build and operate a factory) are approved by the respective Regional Committee.

We suppose that this means that the MIC (or the Regional or State investment committees) are not involved in the approval process anymore as it would mean doing the same things twice if an MIC permit or endorsement were needed in addition.

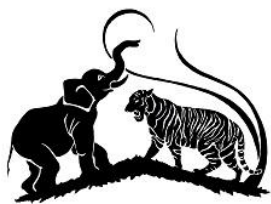
Furthermore, we read the law as laying the foundations of a new system of reliefs and benefits that is to replace the existing exemptions under the Myanmar Investment Law. Chapter 14 states:

45. *Developers and Investors are allowed to temporarily import machinery and equipment for use in initial construction according to the procedures prescribed in the Sea Customs Act. The Ministry of Commerce shall coordinate with regard to imports made with the recommendation of the Regional Committee.*
46. *The Central Committee may, by notification, grant special benefits to the following businesses for a period of time -*
  - (a) *Industrial Zone development businesses and investment businesses in underdeveloped areas;*
  - (b) *investment businesses which provide vast employment opportunities in areas with high unemployment;*
  - (c) *export-oriented investment businesses which produce value-added agricultural goods;*
  - (d) *investment businesses which produce high-quality agricultural machinery;*
  - (e) *value-adding export-oriented investment businesses and innovative investment businesses.*

### **(e) Involvement of investors in the management of industrial zones**

The Regional Committee shall form a Management Committee for the respective industrial zone with 15-21 members, composed of representatives nominated by the investors (no minimum or maximum number given), relevant government departments and organisations and the persons appointed by the Nay Pyi Taw Council or Regional or State government. The chairman shall be appointed with the consent of the members from among the representatives appointed by the investors.

The chairmen of up to five industrial zones may sit in the Regional Committee.



(“Investors” are those that set up a business in an industrial zone; the developer himself is not an “investor”.)

These provisions may not be entirely without problems as they may put an investor in a position to decide over the investment proposal or the business operation of a competitor. Furthermore, industrial zones that do not get to send their chairman to the Regional Committee may be at a disadvantage.

The law is silent on whether foreign investors may nominate representatives (and if yes, if they would be eligible for the position of chairman).

### **(f) Land matters**

The new law operates on the premises that a developer leases land from the government (from the Regional Committee, to be precise - much like in case of an SEZ, the developer leases land from the SEZ Management Committee) for 50+10+10 years and sub-leases plots to investors for 50+10+10 years. It does not provide for the establishment of an industrial zone on privately owned land (although implementing regulations may change this).

Importantly, the new law for the first time stipulates penalties if land is left unused. More precisely, a project plan with estimated completion date shall be submitted to the Regional Committee within 6 months from the date of the specification and announcement as industrial zone. If the project timeline approved by the Committee cannot be met, 10% of the land value specified by the Central Committee shall be paid every year to the relevant Regional Committee. The land use permit or grant shall be revoked if the fines are not paid.

## **2. Electricity and energy news**

- (a) [Chambers, embassies urge delay of solar tender, removal of controversial clauses](#)
- (b) [Developer issues tender for Ayeyarwady LNG power plant](#)

## **3. Market access and other news**

- (a) [COVID-19 travel and other restrictions extended until 15<sup>th</sup> June 2020](#)
- (b) [Allowing gatherings of five and more persons on more occasions \(among them: schools; seminars; restaurants\)](#)



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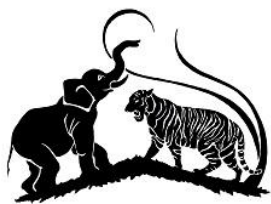
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- (c) [4 townships removed from semi-lockdown list](#)
- (d) [Singapore agency to help Myanmar find partners for key infrastructure projects](#) - This is interesting: Infrastructure Asia, established by Enterprise Singapore and the Monetary Authority of Singapore, will assist with inviting international standard tenders, improving the bankability and identifying investors for large-scale infrastructure projects in Myanmar's [project bank](#).
- (e) [Microfinance institutions face COVID-19 cash flow crisis](#)
- (f) [Myanmar government borrows USD 925 million from Central Bank to cover deficit](#)
- (g) [Government seeks parliamentary approval for additional Dala Bridge loan](#)

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

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director



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### About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

- Sebastian Pawlita, Managing Director  
Phone: +95-9-262546284 (English)  
E-Mail: [sebastian@lincolnmyanmar.com](mailto:sebastian@lincolnmyanmar.com)
- Nyein Chan Zaw, Director  
Phone: +95-9-790488268 (Myanmar)  
E-Mail: [nyeinchanzaw@lincolnmyanmar.com](mailto:nyeinchanzaw@lincolnmyanmar.com)

Office address: La Pyi Wun Plaza, Room 409 (4<sup>th</sup> Floor), 37 Alan Pya Pagoda Road, Dagon Township, Yangon

Web: [www.lincolnmyanmar.com](http://www.lincolnmyanmar.com)