1st June 2020

SETTING UP A MANUFACTURING PLANT IN MYANMAR, IN PARTICULAR IN THE CHEMICAL INDUSTRY

A. OPPORTUNITIES FOR FOREIGN INVESTORS

1. Sectors to invest in

The Directorate of Investment and Company Administration ("**DICA**") published a list of investments for which Myanmar is a suitable destination in the areas of agriculture, aquaculture and fisheries, urbanization, tourism and hospitality, power generation, manufacturing, extractive industries and forestry-based industries. While we do not necessarily agree with every item on this list - DICA sometimes seems to underestimate bureaucratic and logistic difficulties -, the list on the whole appears to us to be accurate. For "manufacturing", DICA lists:

- Labour-intensive industries in second-tier cities (e.g. Pathein, Bago, Hpa An) in areas such as production of garments and shoes, or assembling of toys and stationery articles
- Agro-processing industries
- Production of building materials strongly demanded by the national construction industry (e.g. cement, bricks, steel, glass, paints, doors, windows)
- Gemstone processing industries (e.g. jade, sapphires, rubies) to establish value-adding production such as design, cutting and polishing
- Capital-intensive industries (e.g. automotive, land machinery) particularly at locations with good access to international and national markets (e.g. SEZs)
- Wood-processing industry particularly based on hardwood and bamboo (e.g. furniture production)
- Developing the paper and cardboard industry
- High-tech industries (e.g. in Yangon, Nay Pyi Taw, Bago and Mandalay) based on local, regional and global demand and the opportunities through the proximity of international airports

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- Chemical industries (e.g. pharmaceutical and plastic articles) based on local and regional demand
- Industrial services (e.g. waste water management, recycling, training)

With regard to the above list, it should be noted that manufacturing projects for which a local network of suppliers is required are usually not feasible as such a local network of suppliers usually does not exist. E.g., there are automotive production plants in the country, but they operate on a semi-knock down (SDK) basis, i.e. sets of parts are imported and then assembled.

Big infrastructure projects are listed in the project bank.

2. Privatisation of state-owned plants

State-owned newspapers sometimes carry tenders, usually called by departments or state-owned enterprises under the Ministry of Planning, Finance and Industry, calling for investors to lease state-owned plants or operate state-owned plants as a joint venture. While this may be an opportunity to get hold of land for industrial development at a good location, we are somewhat wary of these tenders as we have the impression that it would often be cheaper to build a new plant than to rehabilitate the old.

B. LABOUR AND ENVIRONMENTAL PROTECTION

1. Labour

In comparison to many countries in the region, the protection of workers in Myanmar is, generally, weak. They can in practice be dismissed at will if the employer pays the statutory severance allowance based on the length of service.

The current minimum wage (Ks. 144,000 - approx. USD 103 - per month in all sectors and in all regions) is the lowest in the region. It was only in 2015 that a minimum wage was set for the first time (at the time, at Ks. 108,000 per month); it was increased to Ks. 144,000 per month in 2018.

Myanmar has a large pool of unskilled workers. Finding skilled personnel is sometimes difficult, and they can obviously demand a much higher salary than the minimum wage.

A Japanese manufacturer of equipment for eye surgery (which is rather fiddly to assemble) says of his workers: “I started manufacturing in Myanmar precisely because the workers generally

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have good eyesight - not ruined by watching too much TV - and tend to be mechanically skilled because they are used to repairing things from early childhood on instead of buying new stuff."

It is not legal to hire foreign workers for work that requires no skills. With the exception of businesses set up in the Thilawa SEZ, there is no local/foreign minimum ratio with regard to the hiring of experts and management personnel.

2. Environmental protection

There is a legislative framework for environmental protection, comprising, among others, the

- Environmental Conservation Law;
- Environmental Conservation Rules;
- Myanmar Environmental Impact Assessment Procedures;
- National Environmental Quality (Emission) Guidelines;
- Prevention of Hazard from Chemical and Related Substances Law;
- Prevention of Hazard from Chemical and Related Substances Rules;
- List of Prohibited Chemicals;
- List of Restricted Chemicals;
- UN Recommendations on the Transport of Dangerous Goods;
- Rules relating to the Supervision of Controlled Precursor Chemicals.

Myanmar does not have national standards for all aspects of industrial production, transport and storage of goods. In such a case, the investment approval would often oblige an investor to adhere to international standards, such as the UN Recommendations on the Transport of Dangerous Goods quoted above.

The import of used machinery is as such allowed, but with restrictions. The Ministry of Commerce publishes its import criteria each year (generally speaking, the machine must not be older than 10 years and still run at 80% of its capacity).

Many industrial projects (even rather small-scale ones) require the production of an environmental impact assessment ("**EIA**") report by a company accredited with the Ministry of Natural Resources and Environmental Conservation. The Myanmar Environmental Impact

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Assessment Procedures quoted above contain a list with thresholds for various industry types above which an EIA is required, but it is better to double and triple confirm with the Department of Environmental Conservation before assuming that a project is too small for needing an EIA; we experienced surprises in this regard.

The EIA is a lengthy and not entirely cheap exercise. Although the Myanmar Investment Law states that the investor shall obtain the investment permit or endorsement "in advance" before undertaking the EIA, it is in practice necessary to start the EIA process prior to the issuance of investment approval.

C. JOINT VENTURE REQUIREMENTS

Some investments are only allowed if they are undertaken in a joint venture with a Myanmar party (minimum local shareholding ratio: 20%). Investments with joint venture requirements are primarily listed in Myanmar Investment Commission Notification 15/2017 (the list starts on page 2 and ends on page 5). According to this notification, the production of various goods may only be undertaken in a joint venture if the goods are sold domestically. It was originally possible to have 100% foreign ownership of most export-oriented businesses, in line with government policy to promote export. Sadly, Ministry of Commerce Notification 8/2018 changed this by allowing foreigners to export "22 groups of high quality finished products" (only) if they produced them in a joint venture.

It should be noted that there are no joint venture requirements in the Thilawa SEZ.

D. LAND

A central issue that foreign investors wishing to set up a manufacturing business in the country are facing is the acquisition of land for the project.

1. Prohibition of foreign land ownership; long-term lease

(a) Prohibition of foreign land ownership

Foreign ownership of immovable property is prohibited with very limited exceptions (ownership of units in condominiums set up according to the Condominium Law is to a certain extent possible, as is - theoretically, as it does not happen in practice - foreign ownership of immovable property with the permission of the "relevant ministry").

Foreign investors can only lease immovable property for a period of in total 70 years (outside the Thilawa SEZ, initially 50 years, renewable twice for 10 years each time; the

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maximum lease periods are slightly different in the Thilawa SEZ). This puts foreign investors at a triple disadvantage in comparison to their local counterparts that can purchase land:

- A local investor purchasing land obtains an asset (the land) in return for the purchase price. The rent paid by a foreign investor on the other hand is expenses that are gone.
- Many land owners do not want to lease their land out; they want to sell it.
- The rent over the entire lease period is usually a much higher sum than what a purchase price would amount to.

Against this background, some investors use nominee structures. They are, however, illegal.

There have been reports that a company with a foreign shareholding ratio of not more than 35% would be treated as a local company and could therefore acquire land. This is not correct. While the new Myanmar Companies Law indeed sets the threshold for a "foreign company" at 35% foreign ownership ratio, this is not applied in the context of land acquisition yet; the authorities continue to treat - in the context of land acquisition - any company with even the smallest foreign ownership ratio as a foreign company.

Due to the prohibition of foreign land ownership, land in a joint venture is contributed by the local joint venture partner in a rather peculiar way. JVCo would sign a lease agreement with the local joint venture partner according to which the local joint venture partner leases the land to JVCo for a rent of USD (or Ks.) XXX, payable in shares of JVCo. Such a lease is - unfortunately - subject to income tax and commercial tax (VAT) as if JVCo paid rent in cash.

(b) Long-term lease of land

A lease of immovable property with a term in excess of one year requires approval by a government entity, usually the Myanmar Investment Commission ("**MIC**"). In practice, this means that the parties will negotiate the lease agreement, but sign it only after the (foreign) investor has obtained an MIC permit or endorsement. In order to secure the land until then, the investor usually has to make a deposit with the land owner which the land owner will often not refund if the MIC application fails.

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2. Various land types and land due diligence

(a) Various land types

There are many (sometimes contradictory) land laws in Myanmar and many land classifications (which sometimes overlap). Foreign investors wishing to lease land for a manufacturing business should know at least the following:

When leasing from a private party, the land should either be so-called freehold land or grant land. Furthermore, the land may be so-called permit land (but in this case, the lessor should have it converted to grant land quickly). Or, the land may be farmland converted for a specific industrial use according to section 30(a) or 30(b) Farmland Law (previously often referred to as “LaNa-39 land”) - again, the lessor should have it converted to grant land quickly as in this case it can be used for any industry and not just for the specific business permitted.

It is generally not advisable to lease ordinary farmland for industrial use, although it would be much cheaper than the land types described in the paragraphs above, as ordinary farmland would first have to be converted according to section 30(a) or 30(b) Farmland Law which involves a lengthy and costly procedure with rather unpredictable outcome.

It should be noted that, if the manufacturing business should be set up at a specific location, there is sometimes no choice but to lease farmland (and hope that the lessor will be good at converting it) as farmland is often the only land type that is realistically available in rural areas.

When leasing from a government entity, the land should be “government land”. It should be noted that at least theoretically, the government entity has to call a tender before leasing government land to a private party. Alternatively, there is “vacant, fallow or virgin (VFV) land” for which local/foreign joint ventures may apply to the “Central Committee of the Administration of Vacant, Fallow and Virgin Land” for permission to use.

(b) Land due diligence

Myanmar has a cadastral system and it is possible (and quite vital, as there are so many fake land documents around) to check land ownership. This usually involves a lawyer or similar expert visiting the land record department and speaking with neighbours, the ward or village tract administration officer and possibly the township or district court.

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At the very least, the investor should ensure that the purported owner is (i) in possession of the original land ownership documents and (ii) recorded with the land record department as the owner, and that the land is not subject to a dispute (e.g., from a failed dissolution of an estate, or with previous owners claiming to have lost the land through improper means).

It should be noted in this context that it is often not possible to find out with certainty whether land serves as security for a loan as the most common type of mortgage does not require registration.

For bigger plots, the investor may wish to send in a surveyor to check the plot's measurements.

A special due diligence process exists for government land.

(c) Finding suitable land

An investor would, in a first step, identify suitable locations based on the proximity of ports, existence of roads or other means of transport and the availability of raw materials and workers, etc.

Usually, he would then turn to a real estate agent to help find suitable plots. We think, however, that it is better to turn to the Regional or State Investment Committee as many land owners looking to lease out to investors would use the officers there as a kind of broker. Alternatively or in addition, investors might introduce the benefits of their investment to the respective Regional or State government and ask whether they can provide state-owned land (or help with obtaining state-owned land from other government departments).

It should be noted that land at sought-after locations is not cheap.

E. SPECIAL ECONOMIC ZONES AND INDUSTRIAL ZONES

1. Special economic zones

Myanmar currently has three SEZs: (i) Thilawa, near Yangon, partly Japanese-owned (operational), (ii) Dawei, down south in Tanintharyi Region, partly Thai-owned (preparatory stage), and (iii) Kyaukpyu, in Rakhine State at the Bay of Bengal, partly Chinese-owned (preparatory stage).

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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 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.

The good infrastructure and regulatory environment come, however, at a price. Land in the Thilawa SEZ is comparatively expensive and mostly sold-out.

2. Industrial zones

There are a number of industrial zones in Myanmar (most of them in Yangon and Mandalay). The quality of the infrastructure and land prices are very mixed, depending on the location and the operator.

Currently, 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.

F. ELECTRICITY AND TRANSPORT

1. Electricity

The current commercial electricity tariffs are as follows:

	Price per kWh
1-500 kWh	Ks. 125 (approx. USC 8.93)
501-5,000 kWh	Ks. 135 (approx. USC 9.64)
5,001-10,000 kWh	Ks. 145 (approx. USC 10.36)
10,001-20,000 kWh	Ks. 155 (approx. USC 11.07)
20,001-50,000 kWh	Ks. 165 (approx. USC 11.79)
50,001-100,000 kWh	Ks. 175 (approx. USC 12.50)
From 100,001 kWh	Ks. 180 (approx. USC 12.86)

However, the national grid only covers about half of the country and lacks capacity and reliability. Outside of the Thilawa SEZ and some industrial zones, factory operators therefore

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often have to generate their own electricity (at least as a backup option). It should be noted in this context that projects involving coal as fuel are unlikely to be approved.

2. Transport

Myanmar's logistics infrastructure is described in detail here.

There are nine main ports in Myanmar. The ports in or near Yangon, which the Ministry of Transport and Communications says handle 90% of the country's official imports and exports, are river ports and can handle ships with a draft of up to 9 metres and a length of up to 167 metres. Ships have to wait until high tide as the water at the estuary of Yangon River is too shallow during ebb tide.

Myanmar currently does not have a deep sea port. CITIC is building (or will build) a deep sea port in Kyaukpyu (Rakhine State) as a Belt and Road Initiative project. Further deep sea ports are planned on Kalagauk Island (Mon State), in Dawei and Bokpyin (both Tanintharyi Region).

Inland transport is mainly done by road (or, cheaper but more slowly) on rivers. The road network and most river ports are described as being underdeveloped.

G. TAXATION AND INCENTIVES

1. Tax and similar rates

Sr. no.	Tax	Rate
1	Corporate income tax	25% of the income as shown in the annual audited financial statements
2	Commercial tax = VAT (on import and/or domestic sale)	5% of the landed costs (import) or sales price (domestic sale)
3	Special goods tax (on certain "luxury goods" such as liquor and cars)	Depending on the type and price of the goods
4	Personal income tax	0%-25% of the salary after allowances
5	Stamp duty on lease agreement (term = max. 3 years)	0.5% of the average annual rent
6	Stamp duty on lease agreement (term = more than 3 years)	2% of the average annual rent
7	Stamp duty on a loan agreement	0.5% of the loan amount
8	Social security contributions	- Employer's part: Max. MMK 9,000 (approx.

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Sr. no.	Tax	Rate
		USD 6.43) per employee and month - Employee's part: Max. MMK 6,000 (approx. USD 4.29) per month
9	Registration fee for a lease agreement	0.2% of the average annual rent
10	Customs duty	Depending on the type of goods and the country of origin

2. Tax incentives

Myanmar offers the following main tax incentives (outside the Thilawa SEZ):

- If the investment is made in a promoted sector (manufacturing, except the manufacturing of cigarettes, liquor, beer and other goods harmful to health): Exemption from corporate income tax for the first 3, 5 or 7 years of operation, depending on whether the investment is made in a developed, less developed or least developed area
- Exemption from customs duty and commercial tax on the import of machinery, equipment and construction materials (that are not available in the country) during the construction period.

Different tax incentives apply in the Thilawa SEZ.

H. INSURANCES

State-owned Myanma Insurance and private insurance companies in Myanmar offer among others the following policies:

- Fire and allied perils
- Industrial all risk
- Construction all risk/erection all risk

I. INVESTMENT APPROVAL AND LICENSES

Foreign investors wishing to lease land for a period in excess of one year and/or enjoy tax incentives require approval of their investment (outside of the Thilawa SEZ) by the Myanmar Investment Commission or, if the investment is not higher than USD 5 million and does not require an

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environmental impact assessment, by the Investment Committee of the respective Region, State or Union Territory.

This is a fairly lengthy process which, in a good-case scenario, takes 3-6 months.

Until the start of commercial operation, the following steps are usually required (outside of the Thilawa SEZ):

First step: Finding suitable land and negotiating a lease agreement

Second step: Starting the environmental impact assessment (or, for smaller projects, initial environmental examination)

Third step: Obtaining a permit or endorsement from the Myanmar Investment Commission (or endorsement from the Investment Committee of the respective Region, State or Union Territory)

Fourth step: Signing, revenue-stamping and registration of the lease agreement

Fifth step: Obtaining an exporter/importer registration certificate from the Ministry of Commerce

Sixth step: Applying for a building permit, constructing the factory building, applying for a building completion certificate

Seventh step: Obtaining various licenses and registrations required for the operation of the factory, in particular registration with the Directorate of Industrial Supervision and Inspection, municipal business license, boiler registration certificate, permission to use a transformer, generator registration, licenses and registrations for the import of chemicals, etc.

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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:

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