

Update on Foreign Investment

In the last week, two important matters have occurred which are relevant to foreign investment in Myanmar:

1. The Directorate of Investment and Company Administration (DICA) has issued a consultation draft of the Rules under the Myanmar Investment Law 2016 (MIL); and
2. A revised draft of the Myanmar Companies Law was approved by cabinet last week and has been forwarded to Parliament.

Draft Rules under the Myanmar Investment Law

Strategic Investments

The MIL has two processes available to obtain the approval of the Myanmar Investment Commission (MIC). The first is the permit process which is expected to be similar to the process under the old law. The second is the new stream-lined endorsement process.

All "strategic" and "capital intensive" investments will go through the permit process.

The Draft Rules define a "strategic" investment as:

- it is in the communications, technology, transport or energy infrastructure, urban development infrastructure, extractive/natural resources, agricultural, urban land or media sectors;
- it is under a grant of authority from the government and the expected investment value is more than \$20 million;
- in a border conflict region and an expected investment value of \$10 million;
- it will be conducted across the national border and an expected investment value of \$20 million;
- it is for agricultural purposes and relates to more than 1,000 acres; or
- includes the right to occupy or use more than 100 acres of land.

A "capital intensive" investment is defined as having an expected investment value of \$100 million.

Prohibited, Restricted and Promoted Investments

The Draft Rules mention that a separate notification will be issued in respect of prohibited investments, restricted investments (which include investments which need to be undertaken in joint venture with the government or a local entity) and promoted investments.

Investment Screening Process

The Draft Rules introduces a new investment screening process where an applicant may make an application for non-binding guidance on whether the investment proposal:

- is required to be submitted to the MIC;
- is required to be submitted to the Parliament for approval; or
- is a prohibited, restricted or promoted investment.

The guidance will be provided within 10 business days (unless the application relates to whether the investment process is required to be submitted to the Parliament in which case it is 20 business days).

New Timeline for MIC Decisions

The Draft Rules states that the MIC will make a decision on whether the application is complete or ineligible within 15 business days and if the application is accepted the MIC will have a further 60 business days. There are "stop the clock" provisions whereby the timeline can be suspended including for the reason that the MIC requires further information and an ability for the MIC to extend in certain circumstances.

If the proposed investor is required to give further information, they must do so within 20 business days, although this timeframe can be extended.

Proposal Assessment Criteria

In granting a MIC permit, the MIC will consider whether the investor:

- is acting in accordance with the law;
- requires a permit;
- has demonstrated a commitment to invest in a responsible and sustainable manner;
- has relevant business experience and acumen;
- is of good character and business reputation (the MIC may take into account if the investor has breached the laws of another jurisdiction); and
- has a proposal which is compatible with the national development, security, economic, social and cultural policies of the government or any regional government affected by the investment.

Endorsement process

Any investor who is not required to submit a proposal (for example because it is a strategic or capital intensive project) but who wishes to obtain permission to enter into long term leases or tax incentives may submit an application for an endorsement.

The MIC will have 15 business days to consider whether the application is complete or ineligible and if the application is accepted the MIC will have a further 60 business days to make a determination. There are similar stop the clock and extension provisions for the endorsement process.

Other than the fact that an application for an MIC permit is more likely to have stop the clock periods and extensions, there is no difference in the timeframe for MIC permit or endorsements.

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Lease and tax incentives

The MIC may delegate the assessment of tax incentives to a State or Regional Committee or the Secretary of the MIC if the value of the investment is less than \$5 million.

The Secretary of the MIC has commented that an investment may be more likely to get lease and tax incentives if the investment is in a promoted sector. It also set out that tax incentives will be different depending upon the location of the investment in Zone 1 (least developed regions), which may obtain up to 7 years of tax incentives, Zone 2 (medium developed regions), which may obtain up to 5 years tax incentives or Zone 3 (the most developed regions), which may get up to 3 years of tax incentives. The Draft Rules do not set out either the promoted sectors or the definition of the Zones.

However, the Draft Rules do provide that the MIC will take into account the level of creation of employment opportunities, the development of skilled workers, technology or business skills transfers, promote efficiency or productivity or increase exports from Myanmar.

We will provide an update on the draft Companies Law once it has been passed by the Parliament.

Kind regards,



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