

Myanmar Investment Rules

The Myanmar Investment Law 2016 (“**MIL**”) was enacted to replace the Foreign Investment Law 2012 and the Myanmar Citizens Investment Law 2013 on 18th October 2016. On 30th March 2017, the Ministry of Planning and Finance, therefore, published the Myanmar Investment Rules (“**MIR**”) under the Myanmar Investment Law 2016 (MIL) as Notification No.35/2017 for implementation of the MIL. The MIR contains the provisions on types of investment, obtaining of MIC Permits and MIC Endorsements, filing requirements, tax and non-tax incentive, the Myanmar Investment Commission (“**MIC**”) and their powers and authorities, formation of committees to support the MIC, dispute mechanism, requirement of insurance for approving investment proposal, investor assistances, etc.

MIC Permit

The investments that are required to obtain an MIC Permit are:-

(1) Strategic Investments:-

Investments in the communications, technology, transport or energy infrastructure, urban development infrastructure, extractive / natural resources, agricultural, urban land or media sectors;

Investments made pursuant to the grant of authority from the government and expected investment value exceeding US\$ 20 million;

Investments in a border or conflict affected area with an expected investment value exceeding US\$ 10 million;

Investments which will be conducted across the national border with an expected investment value exceeding US\$ 20 million;

Investments made for agriculture purposes with more than 1000 acres of land; or

Investments made for non-agricultural related purposes with the right to occupy or use more than 100 acres of land

Capital intensive investments that have expected investment value from US\$100 million;

(3) Investments that have a large potential impact on the environment and the local community, i.e. an investment that is required to conduct an Environment Impact Assessment or located in the areas specified under the Environmental Conservation Law;

(4) Investment activities that use state-owned land and buildings; and

(5) Investment activities designated by the government.

In order to grant an MIC permit, the MIC will consider the criteria specified under the MIR

such as commitment to invest in a responsible and sustainable manners, business experiences, business reputation, compliance of the investment proposal with the national development, security, economic, social and cultural policies of the government.

MIC Endorsement

Any investor who is not required to submit a Proposal for Permit but wishes to obtain permission to enter into long term leases or tax incentives may submit an application for an MIC Endorsement.

In order to grant an MIC Endorsement, the MIC will consider the criteria specified under the MIR such as compliance of the endorsement application, qualifications of the investor as defined under the MIL and eligibilities of the investor to receive the right to use the land and/or the tax incentives, etc.

Long Term Lease and Tax Incentives

The MIL allows foreign investors with an MIC Endorsement to lease land up to 50 years with the option to renew for a period of ten years each for two times. In order to promote the development of difficult to access regions with lower economic development, MIC may allow longer periods of land utilization or land leases.

The MIL allows the MIC to approve various tax incentives in support of an investment such as (i) corporate income tax exemptions; (ii) relief of customs duties and other taxes; and (iii) exemption or relief of corporate income tax if profits are re-invested, etc.

After the investor has received the Tax Incentive, it is required to retain all accounts, receipts, records, books, other documents, computer records and other trading electronic records for 7 years or other periods required by other applicable laws, after the tax assessment year.

Dispute Settlement

The MIR establishes a grievance mechanism for the investment disputes to be settled by the Investor Assistance Department before entering into arbitration or litigation procedures.

A notice of grievance or dispute can be submitted by an investor to the Investor Assistance Department in writing if such investor believes in good faith that:-

- (1) a decision of government authorities was made incorrectly in respect of the investment;
- (2) an application for a permit, license, registration or approval was incorrectly refused by government authorities; or
- (3) any right, protection or MIC approval granted under the MIL has been frustrated.

Insurance

Every investor must hold relevant insurance policies issued by licensed insurance companies

based on the nature of its businesses, i.e. the Property and Business Interruption Insurance, Engineering Insurance, Professional Liability Insurance, Professional Accident Insurance, Marine Insurance and Workmen Compensation Insurance.

Prohibited, Restricted and Promoted Businesses

MIC may from time to time announce the prohibited, restricted and promoted investments by issuance of a separate notification.

As of today's date, there are two notifications issued by the MIC under the MIL in relation to the promoted businesses and the restricted businesses:-

(1) the Notification No. 13/2017 re: Classification of Promoted Sectors issued on 1st April 2017 that include manufacturing, construction of road, bridge and railway, power generation, transmission and distribution, production of renewable energy, health services, information technology services, telecommunication businesses, etc.; and

(2) the Notification No. 15/2017 re: List of Restricted Investment Activities issued on 10th April 2017 that categorized the investments in 4 types:-

(a) investment activities that are allowed to be carried out only by the Union, e.g. manufacturing of products for security, administration of electric power system, air traffic services, etc.;

(b) investment activities that are not allowed to be carried out by foreign investors, e.g. fresh water fisheries, survey and performing feasibility study of mineral for small and medium scale, performing of shallow oil well, exploration and production of gem stones, etc.;

(c) investment activities allowed only in the form of a joint venture with any Myanmar citizen owned entity or any Myanmar citizen, e.g. manufacturing and domestic distribution of chemical based on available natural resources, flammable solid, liquid, gaseous fuels, sales and lease of residential apartments and condominiums, local tour services, etc.; and

(d) investment activities to be carried out with the approvals from the relevant ministries, e.g. manufacturing and distribution of medicines, refuelling services, construction and implementation of building for importing, transporting, storage, distribution and selling of oil, gas and petroleum products, importing of equipment for exploiting, producing and researching of oil and gas, etc.

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