

Kelvin Chia Yangon Ltd Named 1st Runner Up for ASEAN Business Awards

Kelvin Chia Yangon Ltd ("KCY") was selected as 1st Runner Up in the category of Micro, Small and Medium-sized Enterprises ("MSMEs") at the regional ASEAN level by the ASEAN Business Advisory Council.

In addition to being named National Winner for Myanmar in the MSME category, KCY was also awarded 1st runner-up in the ASEAN level for the said category during the ASEAN Business Awards night in Nay Pyi Taw on 11 November 2014. KCY was considered from among a field of 120 other nominees across the Southeast Asian region.

KCY considers this award as a recognition of its continued commitment to excellence, as the Firm grows with Myanmar.

Ministry of Communications and Information Technology Releases Licensing Rules

The Licensing Rules lays out the procedures in applying for telecommunications licenses and outlines the rights and obligations of license holders.

On 14 October 2014, the Ministry of Communications and Information Technology ("MCIT") issued Licensing Rules for Telecommunication Licenses ("**Rules**") pursuant to its mandate under the Telecommunications Law (2013).

The Rules discuss the procedures required for applying for the four types of telecommunications licenses under the Telecommunications Law (2013), namely: (i) Network Facilities Service (Individual) License (NFS-I); (ii) Network Facilities Service (Class) License (NFS-C); (iii) Network Service License; and, (iv) Application Services License. It also describes in detail the scope of the activities permitted under each type of license and provides the general and specific rights and duties of the license holders. In addition to the telecommunications licenses, the Rules also discuss other types of permissions from the MCIT such as the Telecommunication Equipment License.

Regulations Relating to the Application for the Investment in the Thilawa Special Economic Zone Promulgated

The Ministry of National Planning and Economic Development prescribed the Regulations for the issuance of an investment permit in the Thilawa Special Economic Zone on 1 October 2014.

The Regulations relating to the application for investment in the Thilawa Special Economic Zone ("**TSEZ Regulations**") were uploaded on the website of the Directorate of Investment and Company Administration in early October. The TSEZ Regulations enumerate the prohibited or permitted investment activities, the minimum paid-in capital for specific types of businesses in a free zone or promotion zone, and the forms to be submitted in the investor's application.

Prohibited activities in the TSEZ include the following: (i) production, processing of munitions including arms, weapons, explosives for military use, etc. and services rendering for military-related services; (ii) production, processing or services hazardous to the environment and ecology; (iii) recycling industries that will render

waste management services to the industries outside Myanmar; (iv) production, processing of psychoactive substances and narcotic substances; (v) importation or production, processing of poisonous chemicals, agriculture pesticide, insecticide and other goods, using chemical substances prohibited by international regulations or by the World Health Organization, that affect the public health and environment; (vi) business utilizing the industrial waste imported from abroad; (vii) production, processing or prohibited substances which may destroy the ozone layer; (viii) production, processing and sale of the goods made of asbestos; and, (ix) production, processing of polluted substances hazardous to the human health and environment.

Investment activities which may be allowed to locate inside the TSEZ are those which are not prohibited by the Regulations. These include trading, real estate development, engineering and design, warehousing and logistics services, research and development services, computer software services, information enabled services, distribution services, financial services, professional services, leasing services, construction related services, educational services, environmental protection services, hospital and health services, tourism related enterprises, recreational and entertainment businesses, cultural and sporting services, and transport services or services auxiliary to all modes of transport.

The TSEZ Regulations also provides for the minimum capital requirements and additional requirements for certain businesses, namely:

Type/Location of Businesses	Minimum Paid-in Capital Requirement (in US Dollars)
Export-oriented manufacturing businesses in a Free Zone or Free Zone business exporting at least 75% of the gross sale of its products to overseas	750,000
Supporting industry business in a Free Zone or Free Zone business engaging in supporting industries which supply at least 80% of the gross sale of its products to the export-manufacturing businesses	300,000
Trading and Export-related Services in the Free Zone	500,000
Logistics Services in the Free Zone	80,000 special drawing right*
International Trade Exhibition Center in the Free Zone	10,000,000
Manufacturing Industries in the Promotion Zone	300,000
Service Industries in the Promotion Zone	300,000
Real Estate Development in the Promotion Zone	5,000,000
Training, Vocational and Educational Institutes in the Promotion Zone	2,000,000
Hotels in the Promotion Zone	minimum 3-star class
Hospitals in the Promotion Zone	minimum 100 beds

According to the TSEZ Regulations, the investment application in the TSEZ shall be directly submitted to the TSEZ Management Committee ("**Committee**"), which shall approve or reject the application within (30) days from its submission. The application must include a written approval issued by the Zone developer for the area to be leased, proof of residence of its directors or partners, and the income tax return of the partners or audited balance sheet of the corporate investor for the last three years. The applicant shall enter into a land lease agreement once the Committee issues the Letter of Approval and must submit a copy thereof to the Committee within 6 months from the issuance of the Letter of Approval. The applicant's failure to submit a copy of the land lease agreement within the specified time frame may lead to a withdrawal of the approval.

Nine Foreign Banks Granted with Preliminary Approval

The Foreign Bank Licensing Committee announced granting preliminary approval to nine foreign banks in a statement posted on the website of the Central Bank of Myanmar on 1 October 2014.

The following nine foreign banks have been granted with preliminary approval "to prepare for commencement of banking operations in Myanmar."

1. Australia and New Zealand Banking Group Limited (ANZ)
2. Bangkok Bank
3. Bank of Tokyo-Mitsubishi UFJ (BTMU)
4. Industrial and Commercial Bank of China (ICBC)
5. Malayan Banking Berhad (Maybank)
6. Mizuho Bank
7. Oversea-Chinese Banking Corporation (OCBC)
8. Sumitomo Mitsui Banking Corporation (SMBC)
9. United Overseas Bank (UOB)

Out of twenty-five applicants, only nine foreign banks were selected. The preliminary approval is valid for twelve months and meant to provide the selected banks with time to prepare for the operation and fulfill the commitments made in their respective answers to the Request for Proposal. Thereafter, these banks will be granted with the final License to Operate. With this License to Operate, foreign banks are expected to be allowed to engage in financing activities with Myanmar banks and foreign-owned corporate entities in Myanmar.

Central Bank Issues Foreign Exchange Management Regulations

The Foreign Exchange Management Regulations, issued on 30 September 2014, provides instructions to Foreign Exchange Dealers in conducting foreign exchange transactions.

The Foreign Exchange Management Regulations ("**Regulations**") (i) outlines the duties and responsibilities of Myanmar banks; (ii) provides guidelines for the opening of foreign currency bank accounts by residents and non-residents; and, (iii) prescribes the procedures for foreign currency transactions such as the outward remittance of repatriation of profits, interests and dividends, payments in relation to intellectual property, loan repayments, and remittance of salaries by foreigners. Notably addressed by the Regulations is the issue of foreign loans, which now clearly require the approval of the CBM. The Regulations also now reiterate the duty of Myanmar residents (both foreign and local alike) to report without delay to the CBM the existence of any investment abroad which they have undertaken before the promulgation of the Regulations.

New MIC Notifications Issued in August

*A series of new notifications by the Myanmar Investment Commission ("**MIC Notifications**") were issued in August 2014.*

The Myanmar Investment Commission ("**MIC**") has issued MIC Notification Nos. 49/2014, 50/2014 and 51/2014 in August 2014. MIC Notification Nos. 49/2014 and 50/2014 re-organizes the approvals and requirements for various economic activities covered by the Myanmar Foreign Investment Law (2012) ("**MFIL**").

MIC Notification No. 51/2014 prescribes the list of economic activities which are not eligible for relief from commercial taxes and customs duties.

MIC Notification No. 49/2014 expressly repeals MIC Notification No. 01/2013 and streamlines the categories of economic activities which are prohibited and permitted to be undertaken by foreigners. MIC Notification No. 49/2014 covers three types of economic activities: (1) those that are prohibited from foreign investment; (2) those allowed only in the form of joint venture with Myanmar citizens; and (3) those permitted subject to specific conditions. Economic activities permitted under specific conditions are categorized into two groups: (a) activities which must be under a joint venture with Myanmar citizens and with recommendation from the relevant ministries and (b) activities which must only be in the form of a joint venture with other conditions. Economic activities specifically requiring environmental impact assessments are separately listed in MIC Notification No. 50/2014.

Notification No. 49/2014 modifies the list of prohibited activities which were previously more extensive under Notification No. 1/2013, such as, for example, removing the trading of electric power from the list of prohibited activities. At the same time, the following activities are no longer required to be undertaken by joint venture with a Myanmar citizen, having been removed from such category under Notification No. 49/2014: (1) prospecting, exploration and production of industrial minerals and metallic mineral; and (2) large scale production of minerals. Hence, such mining-related activities will now be allowed to operate with full percentage of foreign ownership. MIC Notification No. 49/2014 expressly provides that economic activities which are not included in the notification shall be allowed to operate with full percentage of foreign ownership/investment.

Meanwhile, MIC Notification No. 51/2014 is an exercise of the MIC's power under Section 12(J) of the MFIL to prescribe which investment businesses are ineligible for tax exemptions and relief from customs duties and commercial tax. Under the notification, the following activities are not eligible for tax exemptions and relief from customs duties and commercial tax:

1. Business which manufactures alcohol, beer, cigarettes and similar products and related services;
2. Business that distributes gasoline, diesel, machine oil and natural gas;
3. Business that provides vehicle repair services and similar services;
4. Low technology and low investment industries which can be carried out by Myanmar nationals (except industries that require a large labour force);
5. Business which rents forest areas (forest reserves and protected forests outside forest reserves) for agriculture and logging;
6. Business which extracts natural resources (except exploration of oil and natural gas);
7. Business which constructs buildings and sells them;
8. Business which provides vehicle and machinery rental service; and
9. Restaurants and business which sells foods.

In addition, food industries which are related to milk and dairy products will not be granted commercial tax exemption and relief but may be entitled to relief from customs duties.

MIC Notification No. 51/2014 states, however, that its provisions are to be applied prospectively. Consequently, the notification will not affect investment permits already granted by the MIC before the enactment of this notification.

These new notifications can be accessed at the following link <http://dica.x-aas.net/dica/>.