

KELVIN CHIA YANGON

LOCAL KNOW-HOW WITH INTERNATIONAL EXPERTISE

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THE MYANMAR INVESTMENT LAW (DRAFT) IF ENACTED, WILL BE MERGING AND REPLACING THE FOREIGN INVESTMENT LAW AND THE MYANMAR CITIZENS INVESTMENT LAW

A newly revised draft investment law announced on 30 May 2016 allows long term land lease and tax exemptions and reliefs for non-MIC projects.

Overview

Amalgamating the Foreign Investment Law and the Myanmar Citizens Investment Law, the Myanmar Investment Law (Draft) (“**MIL Draft**”) detaches the grant of incentives from the regulation of investments in restricted and prohibited sectors. Further, tax holidays will not be automatically granted for MIC approved projects. A new application process called “Approval Application” has been introduced, and may be sought by an investor intending to secure long term land leases and tax incentives for either MIC or non-MIC projects.

Regulatory Framework for Foreign Investments

The Myanmar Investment Commission (“**MIC**”), which is the regulatory authority for screening both local and foreign direct investments under the MIL Draft, will be composed of a chairman nominated by the President and members from ministries, governmental organizations, the private sector, and experts. MIC meetings will be held at least twice a month or more.

Under the MIL Draft, an MIC Permit is mainly for the purpose of regulating investments in restricted and prohibited activities, and an investor seeking to secure a long term land lease and tax incentives is required to submit a separate Approval Application – the Approval Application process is available for both MIC and non-MIC projects.

Businesses that are detrimental to Myanmar are prohibited under the MIL Draft. Restricted sectors are categorized as follows:

1. Sectors where both domestic and foreign investments are prohibited
2. Sectors where only foreign investment is prohibited
3. Sectors where foreign investment is allowed only in partnership (Joint Venture) with an entity or citizen of Myanmar
4. Sectors where both domestic and foreign investment requires approval from relevant ministries

The specific business activities in the prohibited and restricted sectors will be determined by the MIC with the approval of the Union Government. It is mandatory for investors to submit an investment proposal to MIC and to obtain an MIC Permit in order to invest in the restricted sectors, as well as in other business activities to be determined by the Cabinet. MIC is now required to respond within 15 days whether an investment proposal is accepted, and once the proposal is accepted, the MIC permit will be issued within 90 days from the date of the proposal's acceptance.

Land Use Rights

While it is not necessary for investors who are investing in non-restricted business activities to submit an investment proposal for an MIC Permit, investors wishing to secure long term land leases should submit a separate Approval Application to the MIC. If such an application is approved, the lease term is up to 50 years with 10 years extensions for two times. While the lease period is similar to the current regime, an MIC Permit is no longer required for a long term land lease, which is now separately regulated by the Approval Application process under MIL Draft.

Tax Exemptions

Tax exemptions may be applied for by submitting the Approval Application to MIC even without an MIC Permit. Income tax holidays are determined based on the location of the investment projects within the country, as well as sectors which are to be determined by the MIC with subsequent notifications.

2. Exemption/relief of customs duty and/or other taxes on raw materials and partially manufactured goods imported for the purpose of manufacturing for exports,
3. Exemption/relief of income tax on the profit reinvested within one year,
4. Reduction of R&D expenditure from taxable income,
5. Rights for foreigners to pay income tax at the same rate as citizens.

The exemption/relief of customs duty and/or other taxes on raw materials for the purpose of manufacture for three years from the completion of construction, as permitted under the current Foreign Investment Law, is no longer referred to in the MIL Draft. The incentives described in items 1 and 2 above are pegged to exports.

Dispute Resolution

Investors may agree to resolve the dispute by the method as mentioned in the contract (or) at a local court (or) arbitration (or) other dispute resolution methods. Decisions made by a foreign arbitration tribunal shall be effective to the extent that the government recognizes such decisions under a local law according to international conventions to which Myanmar is a party to, including the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Copy of the MIL Draft (in Myanmar) may be downloaded from the website of the DICA at http://dica.gov.mm/sites/dica.gov.mm/files/document-files/draft_mil_as_of_30-5-2016_website.pdf

Regions and States	Years of Income Tax Holiday
Least Developed (Zone 1)	Up to 7 years
Moderately Developed (Zone 2)	Up to 5 years
Adequately Developed (Zone 3)	Up to 3 years

In addition to the income tax holiday, MIC may also allow the following incentives:

1. Exemption/relief of customs duty and/or other taxes for machineries and equipment which will be used during the construction or renovation period,



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