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THE MYANMAR INVESTMENT LAW MERGING AND REPLACING THE FOREIGN INVESTMENT LAW AND THE MYANMAR CITIZENS INVESTMENT LAW APPROVED BY LOWER HOUSE OF PARLIAMENT

The proposed Myanmar Investment Law was approved by the Lower House of Parliament on 28 September 2016, with revisions to the version proposed by the Directorate of Investment and Company Administration

The draft Myanmar Investment Law (“**MIL Draft**”), which combines the investment frameworks under the existing Foreign Investment Law and the Myanmar Citizens Investment Law, was approved by the Lower House of Parliament (Pyithu Hluttaw) on 28 September 2016, thus paving the way for its submission to the Upper House of Parliament (Amyothar Hluttaw) for further consideration. The MIL Draft is expected to come into force by the end of 2016 following its approval by both houses of the Myanmar Parliament, and by the President.

Changes to the Current MIL Draft from the Lower House of Parliament

Most of the changes to the MIL Draft approved by the Lower House of Parliament involved only modifications in syntax and language, although the Lower House of Parliament did approve the following more substantial revisions to the MIL Draft:

1. Myanmar Investment Commission (“**MIC**”) is now required to seek the approval of the Union Cabinet for the determination of promoted sectors for investment (which will determine corresponding tax concessions)
2. MIC is now required to seek the approval of the Union Parliament through the Cabinet before granting leases of land and buildings longer than the MIL Draft’s prescribed term of 50 years with two 10 years extensions to investments in remote and least developed regions (the original MIL Draft did not require Union Parliament approval)
3. In the case of appealing against the administrative penalties determined by the MIC, the investor may now appeal to the Union Cabinet instead of the Union Supreme Court.

Other elements of the MIL Draft as originally proposed by the Directorate of Investment and Company Administration remain intact. It is possible, of course, that additional revisions will be made as the Upper House of Parliament considers the proposed law.

For reference, we discuss below the most salient provisions of the MIL Draft, which continue to be featured in the version recently approved by the Lower House of Parliament.

Regulatory Framework for Investments

The MIC will continue to be the regulatory authority for screening both local and foreign direct investments. It will be composed of a chairman who is a member of the Cabinet, nominated by the President, a vice-chairman appointed by the Cabinet, other members from ministries, governmental organizations, the private sector, and experts, and the secretary of the MIC, who is also the head of the MIC's Secretariat Office.

The tenure of the MIC members, except for the secretary of the MIC, is stipulated to be the same as the tenure of the elected government, with a newly elected government being required to reconstitute the MIC within two months from taking office. The MIL Draft also prescribes that MIC meetings are to be held at least once a month or more as required.

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 or building lease and tax incentives is required to submit a separate Endorsement Application – the Endorsement Application process is available for both MIC and non-MIC projects.

The MIL Draft classifies businesses that are detrimental to Myanmar as prohibited investments, and the restricted sectors 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 sectors to be determined by the Cabinet.

Tax Incentives

The tax incentive structure and the Income Tax holidays are determined based on the location of the investment projects as follows:

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

Land & Building Leases

Another significant change in the MIL Draft to the existing investment regulations relates to the Long-term leases of Land and Building. While the lease term defined in the current MIL Draft is similar to the existing investment regulations, up to 50 years with 10 years extensions for two times, the MIL Draft also allowed the investors to seek MIC's endorsement for long-term leases of buildings.



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