KELVIN C·H·I·A YANGON LTD

LEGAL LINE

Local Know-how with International Expertise

e-Newsletter | January 2014
Issue 8

The New Special Economic Zone Law Passed on 23 January

The update to the 2011 Special Economic Zone Law is expected to attract investment to Myanmar with improved tax incentives and simplified administrative procedures meant to help catalyze the country's economic growth.

Passed to promote national economic development and create employment, the new Special Economic Zone ("***SEZ***") Law details the processes and conditions for the establishment and management of investments in SEZs. This new law replaces 2011's SEZ Law and repeals the Dawei SEZ Law; however, notifications, orders directives and procedures published pursuant to the 2011 laws remain in place insofar as they are not in conflict with the 2014 SEZ Law. The new law establishes a regulatory hierarchy for SEZs, with the Union Government's Central Committee on top, supported by the Central Working Committee, and with SEZ Management Committees for each created SEZ providing oversight, direct management of infrastructure and administration of business entities within the zones.

Featuring numerous pro-investment features, the law streamlines administrative procedures and provides a number of incentives to help remove obstacles to participation in Myanmar's SEZs. Section 11(c) of the law requires Management Committees of each SEZ to assess and come to a determination on investment applications within 30 days of submission, while "one-stop centers" are to be instituted to provide for single points of contact for permit issuance, registration, and other regulatory matters. Additionally, the law delivers a host of incentives for investors based on a two-tiered categorization system, splitting investment areas into export-focused "Exemption Zones" and domestically-focused "Promotion Zones." Investments in either zone may be made by companies that are 100% foreign-owned and certain export-oriented investments in Promotion Zones may qualify as "Exemption Zone Enterprises," and will be eligible for the same benefits as investments in Exemption Zones.

The new law provides for income tax holidays for the first 7 years of investment in an Exemption Zone or through an Exemption Zone Enterprise, and the first 5 years of investment in a Promotion Zone. An additional 50% income tax relief for the 5 years following the initial holiday may be sought, with another 50% of relief on operating profits for a second 5 year period, if those profits are maintained in a reserve fund and reinvested by the investment enterprise within 1 year from the date earned. Land leased pursuant to an SEZ investment may be leased for a period of 50 years, with an optional renewal period of an additional 25 years. Other incentives include a guarantee against nationalization of any projects during the permitted term of investment, exemption from customs duties and tariffs on the importation of equipment necessary for the investment, and exemption from duties and tariffs on raw materials and other products essential for production for certain set times, depending on the category of investment involved.

Presently, the Thilawa SEZ (Yangon region) and Dawei SEZ (Thanintharyi region) have been launched, while the Kyaukphyu SEZ (Rakhine State) is expected to commence in April 2014 after the selection of a master developer by tender. Work is also underway to establish more SEZs in Karen and Shan states, along with Mandalay and Nay Pyi Taw regions. As set out in the new law, development of these new SEZ's may be managed by private parties and private-government collaborative projects, and foreign investors can act as developers with either 100% foreign investment or through joint-venture with citizens or the government. Further clarification of incentives and requirements for investment are expected in Rules to be subsequently issued.

15-09 SAKURA TOWER, 339 BOGYOKE AUNG SAN ROAD, KYAUKTADA TOWNSHIP, YANGON, MYANMAR

MCIT Grants Telecom Licenses to Ooredoo and Telenor

Announcement made on 30 Jan with licenses to come into effect on 5 Feb; Telecom Rules to follow

The Ministry of Communications and Information Technology ("**MCIT**") made a joint press release on 30 January along with foreign telecommunications providers Telenor and Ooredoo announcing the long awaited issuance of the providers' respective telecommunications licenses. After several months of delays and speculation, the issuance of these licenses marks a major step forward in the on-going overhaul of Myanmar's telecommunications sector.

The next major milestone, the issuance of the Telecommunications Rules (the "**Rules**") that set forth detailed guidelines on licensing, spectrum assignment, interconnection procedures and competition], is expected to occur sometime in February. It was initially expected that the Rules would be promulgated prior to the actual issuance of the telecommunications licenses; however, it now appears that various delays have pushed official publication back several weeks. Reports indicate that the Rules are being translated from English into Myanmar, and will be delivered to the Attorney General's office for final approval thereafter.

MIC Issues a Statement on the MIC Application Process

The MIC Notification No. 2/2014 outlines seven steps for the MIC Application process and warns investors against paying additional fees

The Myanmar Investment Commission ("***MIC***") published a statement on the general steps and procedures relating to the submission and evaluation of investment permit applications under the Myanmar Foreign Investment Law (2012) on 24 January 2014. This was done with the view to ensuring that applicants only pay the required fees upon application, and not for additional fees apart from the ones already prescribed. The steps for the MIC application process as stated in the notification are as follow:

1. Investor or founder fills in the designated proposal form
2. The proposal form is submitted to the MIC office in Nay Pyi Taw or the Yangon branch
3. The Proposal Assessment Team ("***PAT***") discusses the investment proposal during their monthly meetings in Nay Pyi Taw
4. MIC issues a decision to reject or accept the investment proposal
5. MIC then seeks opinions of the respective state/region governments and relevant ministries
6. MIC further discusses the proposals with investors at the MIC meetings in Nay Pyi Taw
7. The Investment is approved after reaching an agreement on the investment project terms

Inquiries on this notice can be made to the following officials: Director General (067-406121); Deputy Director General (067-406342); Director of Foreign Investment Department (067-406334); Director of Myanmar Citizens Investment Department (067-406139).

Asia M&A Forum in Hong Kong - Feb 25, 26

KCY presents at the ninth Asia M&A Forum organized by the International Financial Law Review Group

This year's Asia M&A forum organized by the International Financial Law Review ("***IFLR***") and will bring together a group of experts form legal, banking and corporate fields with a focus on the following topics: (i) compliance risk and anti-corruption developments in Asia, due diligence pre-acquisition and post-deal.

This forum will be held at the Island Shangri La Hotel in Hong Kong, from Tuesday, 25th to Wednesday, 26th February 2014. KCY's session on Myanmar titled "**Myanmar M&A in the pipeline**," will be held in the afternoon of the second day.

For more information or registration, please visit: http://www.iflr.com/pdfs/events/AsiaMA/AMA14.pdf. The event is free for in-house counsel.

15-09 SAKURA TOWER, 339 BOGYOKE AUNG SAN ROAD, KYAUKTADA TOWNSHIP, YANGON, MYANMAR