

KELVIN CHIA YANGON

LOCAL KNOW-HOW WITH INTERNATIONAL EXPERTISE

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Kelvin Chia Yangon Ltd. (KCY) has been in active operation in Myanmar since 1995, currently with offices in Yangon and Mandalay. KCY is the firm of choice for those seeking to navigate the fast-changing legal and regulatory landscape in Myanmar, where we have gained extensive experiences and expertise across all the fast-changing legal and regulatory landscape in Myanmar areas of commercial practice.

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PARLIAMENT APPROVES THE FORMATION OF A NEW MINISTRY FOR INVESTMENT AND FOREIGN ECONOMIC RELATIONS

On 19 November 2018, the President's Office had issued the Order No. 40/2018 and Notification No. 87/2018, creating a new ministry named Ministry of Investment and Foreign Economic Relations, and appointed the current chairman of the Myanmar Investment Commission, U Thaug Tun, as the minister of the newly created ministry. It is hoped that the creation of the new ministry composed of the Directorate of Investment and Company Administration and the Foreign Economic Relations Department, which were previously under the Ministry of Planning and Finance, would help streamline the functions of the two departments and enable the new ministry to effectively carry out the functions of investment promotion, and managing economic cooperation and relations with other countries and regional associations to which Myanmar is a member of.

FORMATION OF THE MYANMAR COMPETITION COMMISSION

Myanmar's Competition Law has been enacted since 2015 but investors have not seen its full effects because the Commission overseeing the competition matters had been waiting to be formed. Recently on October 31st, the Union Government has issued the notification 106/2018 which officially announces the formation of the Myanmar Competition Commission (the "Commission"). The Commission comprises of the Union Minister of the Ministry of Commerce as a chairman and various professionals and representatives from different union ministries, government departments, government organizations as well as non-government associations.

Healthy competition is extremely important for adolescent markets like Myanmar. The Commission plays a vital role in regulating industries under the Competition Law. The main function of the Commission, according to 2015 Competition Law, is to specify market share, supply, amount of capital, number of share and magnitude of ownership so as to make sure, among others, that there is a healthy competition and cooperation among businesses.

2015 Competition Law delineates various actions that threatens healthy competition and the Commission is conferred with the responsibility of investigating any suspicious activity and thus effectively acting as a body that materializes the law into practice.

There are four types of violations under the law, namely (a) acts of restraint of competition; (b) market monopolies; (c) anti-competitive acts, and (d) anti-competitive business combinations (merger and acquisitions). Acts in restraint of competition are defined as acts which reduce or hinder the competition in the market. The Law provides a list of acts deemed as restraining competition in a market, including price fixing, abuse of market dominance, restraining or controlling production, market acquisition, technology and development of technology and investment, and collusion in tenders and bids. Furthermore, the Competition Law also expressly prohibits the following acts as unfair trade practices:

- Misleading the consumers,
- Disclosing trade secrets,
- Coercing businessmen against each other,
- Defaming the reputation of another business,
- Disturbing the operation of the business,
- Conducting advertising and sales promotions for the purpose of unfair competition,
- Discriminating among businessmen,
- Selling goods at a price less than the production cost or cost, insurance and freight in the market,
- Abusing influence of business, inducing or instigating of a party under contract with other businesses to breach the contract,
- Exercising unfair competitive act in violation of any stipulation by the commission for the interests of consumers when necessary.

The violation of the Law may result in the imposition of a fine that goes up to Myanmar Kyat 15 million and/or imprisonment for up to three years.

In Myanmar, there are also other sector-specific laws and regulations for example Financial Institutions Law of 2016 and the Competition Rules for the telecommunication sector regulate mergers and acquisitions with respect to financial institutions and telecommunication companies. The formation of the Commission marks a step forward for Myanmar in adopting standards and procedures in competition policy, making sure that Myanmar is fair, safe and healthy for investments.

CENTRAL BANK OF MYANMAR ALLOWS FOREIGN BANKS TO PROVIDE SERVICES TO LOCAL BUSINESSES

As a continuation of the liberalization of the Myanmar's Banking sector, the Central Bank has been slowly liberalizing Myanmar's banking sector to increase foreign bank participation. Recently, the Central Bank of Myanmar has issued Instruction No. 6/2018 allowing foreign bank branches to provide financing and other banking services to local businesses. While "other banking services" is not clearly defined in the notification, it is still a welcome step forward which will give local business access to a larger pool of resources at the same time stimulating Myanmar's financial market.

Formerly, even though foreign bank branches were allowed to provide full banking services to foreign investors and joint-ventures, they are only allowed to undertake export financing and its related banking services in favor of local companies. With the Instruction no. 6/2018, the only activity that is still being restricted for foreign bank branches in Myanmar is provision of retail banking services to individual Myanmar citizens. As of today, there are 13 foreign bank branches operating in Myanmar since the government started to issue foreign bank licenses in 2015.



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