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## Tax Exemptions on Raw Materials Importation, Formation of Investor Grievance Resolution Committee and Requirements for Importation of Reconditioned Machines for Businesses

### 1. Tax exemptions and reliefs on importation of raw materials and partly manufactured goods

In an announcement issued on 20 January 2021 (the “**Announcement**”) and citing Section 77(b) of the Myanmar Investment Law (the “**MIL**”) that provides for the following:

77. The Commission may scrutinize and grant the following exemptions or reliefs from customs duty and other internal taxes to the investor if applied.

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- (b) exemptions or reliefs from the customs duty or other internal taxes or both on the importation of the raw materials and partially manufactured goods conducted by an export-oriented investment business for the purposes of the manufacture of products for export;”

the Myanmar Investment Commission (the “**MIC**”) laid down the following conditions required of so-called “export-oriented investment businesses” for them to enjoy exemptions and reliefs from customs duties and other internal taxes:

- (a) *first*, any raw materials or partly manufactured goods imported into Myanmar under any import duty exemption or relief must be utilized for the production of finished goods for export; and,
- (b) *second*, only when a business is able to generate at least 80% of its total earnings from exports produced from such raw materials and partially manufactured goods can such business be granted such import duty exemptions and reliefs.

Businesses that have been granted the foregoing exemptions and reliefs are required to submit to the MIC in the last quarter of each year of commercial operations the relevant Import Declarations for goods thus imported, and corresponding Export Declarations of the resulting finished goods, as well as evidence of earnings on such exports. Penalties under the MIL or the Customs Act may be imposed by

the MIC or relevant Myanmar authorities for failure to satisfy these requirement (such as if finished goods are instead sold for domestic sale).

In evaluating applications for exemptions or reliefs for imported raw materials and partially manufactured goods, the MIC (assuming the foregoing requirements have been satisfied) will consider the following process:

- (a) import duty exemptions and reliefs on raw materials and partially manufactured goods for *test runs* will be allowed on a one-time only basis *prior to* the commencement of commercial operations;
- (b) import duty exemptions and reliefs on raw materials and partially manufactured goods imported *after* commencement of commercial operations must be sought annually and at least 3 months prior to the start of the anniversary date of commencement of commercial operations. Submission of the following will be necessary:
  - (i) Completed **Form-6** with information on (A) the amount and quantity of raw materials required, (B) the expected quantity of finished goods, per unit material utilization rate, (C) the rejection rate, and (D) the expected income depending on the nature of the business and the type of production; and,
  - (ii) Export declatration of finished goods.

Based on the submission of the requirements above, the MIC will seek the recommendations and inputs from other relevant ministries and thereafter approve the application based on such recommendation.

## 2. Formation of Investor Grievance Resolution Committee

In a separate notification similarly dated 21 December 2020 (the “**Notification No. 21/2020**”), the MIC also announced the formation of the Investor Grievance Resolution Committee (“**Committee**”), to be headed by the MIC Chairman, and with the following specific responsibilities and functions:

- (a) To transparently resolve grievances between investors and relevant governmental agencies through provision of relevant investment related advice,
- (b) To determine and highlight barriers towards investors and investments being conducted in accordance with the law, with the view towards developing Myanmar’s investment related laws and frameworks,
- (c) To seek inputs and expertise of relevant experts to effectively tackle the investors’ grievances presented to the Committee and to provide advice in relation to the grievances,
- (d) To convey the investors’ grievances to relevant ministries and departments,
- (e) To coordinate with relevant governmental departments, organizations and authorities to implement measures to address the grievances formulated based on recommendations issued by the Committee to resolve the grievances,
- (f) Where recommendations of the Committee are not able to be implemented, to advise the relevant head of the governmental departments and organizations to resolve the grievance,
- (g) To report to the Union Government and seek guidance after coordinating with the MIC where the recommendations of the Committee are not able to be implemented,

- (h) To formulate and implement mechanisms and procedures for investigating the source of the grievances, and effects of the recommendations of the Committee on the grievances,
- (i) To report to the Union Government of recommendations for improving the investment policy, investment environment and the regulatory framework,
- (j) To monitor the implementation of the recommendations for the resolving of investors' grievances, and to submit yearly reports to the Union Government, and
- (k) To implement the procedures stipulated in the Notification No. 9/2020 by the MIC in relation to resolving investors' grievances.

### 3. Notification on importation of reconditioned machinery

On 20 January 2021, the Ministry of Commerce issued the Notification 8/2021 (“**Notification No. 8/2021**”), specifying the following criteria and requirements for the importation of reconditioned machinery for use in businesses:

- (a) The machinery must be for use in manufacturing by small and medium enterprises,
- (b) The machinery must be ready for use, with required parts repaired or replaced,
- (c) The machinery must be able to be utilized in the next ten years after importation and required spare parts must be available in the domestic market,
- (d) The machinery must have a warranty from the offshore seller stating that the machinery is able to be used for the next ten years and that the spare parts are available in the domestic market,
- (e) The machinery must have a Pre-shipment Inspection Certificate on the machinery's condition, which was issued within six months prior to the date of its arrival in Myanmar.

Notably, Notification No. 8/2021 also specifies that the following cannot be imported as reconditioned machinery:

- (a) Home appliances and office equipment such as fridge, air-conditioner, washing machines, copiers, printer, television and computers that are not directly related to manufacturing activities, and
- (b) Machinery that is intended for resale, and not for use in own manufacturing activities.

Notification No. 8/2021 comes into effect on 21 March 2021 (or sixty days from the date of its issuance).

### About Kelvin Chia Yangon (KCY)

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 Myanmar's fast-changing and complex regulatory landscape, a jurisdiction in which KCY has gained in-depth legal expertise from the numerous transactions it has handled.

### Our main practice areas

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