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Kelvin Chia Yangon Ltd (KCY)

Unit 08-03, Union Financial Center, Corner
of Mahabandoola Road and Thein Phyu
Road, Botahtaung Township, Yangon.

(951)8610348/8610349

csg@kcyangon.com

www.kcpartnership.com

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Myanmar Issues Industrial Zone Rules (2024)

On 2 April 2024, the Ministry of Industry issued Notification No. 5/2024 (Industrial Zone Rules (2024)) (“**IZR**”) as implementing rules for the Industrial Zone Law (2020) (“**IZL**”). The IZL is a relatively recent legislation that governs the establishment and operation of industrial zones in Myanmar. It was enacted with the intention of developing industrial zones sustainably, attracting both local and foreign investment into Myanmar, enhancing market competitiveness through improved connectivity, ensuring systematic management to minimize environmental impacts, and utilizing permitted lands to boost Myanmar’s economy and generate employment opportunities.

Relevant Authorities – The national body responsible for overseeing the approval, management and operation of industrial zones in Myanmar is the Industrial Enterprises and Industrial Zone Development Central Committee (the “**Central Committee**”). The Central Committee, which is chaired by the Deputy Prime Minister (Vice Chairperson of the State Administration Council), is also responsible for forming Regional Industrial Zones Establishment and Supervision Committees in the various regions and states of Myanmar (the “**Regional Committee**”). These Regional Committees are responsible for evaluating proposals for new industrial zones and submitting recommendations to the Central Committee, approving applications for investments in industrial zones, and designating a Management Committee for each approved industrial zone. Unlike the Central Committee and the Regional Committees, each Management Committee consists of two-thirds private investor representatives and one-third government officers.

Establishment of Industrial Zones – According to Section 13 of the IZL, the Central Committee is tasked with reviewing a Regional Committee’s proposal for the establishment of an industrial zone within its territory based on specified criteria, such as, *inter alia*, regional development potential, land availability, infrastructure, proximity to international gateways, and workforce availability. After the Central Committee approves and designates an area to be an industrial zone, a developer selection process will be conducted by the Regional Committee, and this selection process is required to focus on state benefits, project execution capability, and transparency. The developer approved by the Central Committee will have the right to develop infrastructure at the approved area, manage the corresponding industrial zone and sublease land to investors, both local and foreign.

Section 15 of the IZL requires each approved industrial zone to be comprised of the following areas and area percentages:

- Industrial area (60-70%); this area is for manufacturing activities
- Commercial area (1-5%); this area is for vehicle depots, warehouses, machinery spare parts outlets, trading centers, offices, and customs bonded storage

- Public utilities and assistance area (20-25%); this area is for restaurants, gardens, banks, technical and training centers, machinery repair workshops, services, information distribution services, research laboratories, and fuel stations
- Green belt (9-10%): this area must encircle the industrial zone and run along both sides of the roads

Investment in Industrial Zones – In order to carry out an investment activity in an industrial zone, the investor under Section 25 of the IZL must apply for an investment enterprise license with the Regional Committee through the corresponding Management Committee of the relevant industrial zone. The investor is also required under Sections 27(a) and 27(b) of the IZL to “register in accordance with the existing laws in the relevant departments” and to “operate the enterprise in accordance with the stipulations of the relevant departments and organizations” – these requirements seem to imply that apart from applying for and securing an investment enterprise license from the relevant Regional Committee, the investor must similarly secure separate permits and licenses, including an investment permit from the Myanmar Investment Commission (“MIC”) for investment activities that meet the criteria under Section 36 of the Myanmar Investment Law (2016) (“MIC-level Investments”). Verification from the relevant authorities is advised.

According to the IZL and the IZR, the following investment activities are specifically permitted or prohibited in an industrial zone:

Permitted Investment Activities	Prohibited Investment Activities
(a) Value-added manufacturing of agricultural and livestock produce; (b) Manufacturing of finished goods from raw materials, high-tech manufacturing, manufacturing based on natural resources, and labor-intensive manufacturing activities; (c) Investment activities that can be carried out in an industrial zone, which have been granted the permit or endorsement under the Myanmar Investment Law;* (d) development of commercial infrastructure including trade centers; (e) warehouse system and logistics; (f) research and development; (g) health care services; (h) training-related services; (i) Other services including consultancies; (j) Services for environmental conservation and waste management; (k) micro-, small- and medium- enterprises; (l) other activities as permitted by notification of the Regional Committee.	(a) activities that are detrimental to the defense and security of the state; (b) manufacturing, possession, storage and distribution of narcotics; (c) manufacturing, packaging, storage, distribution and sale of toxic chemicals, agricultural pesticides and other materials containing prohibited chemicals (d) storage, re-cycling, distribution and sale of wastes in violation of international standards and prevailing laws; (e) activities that are not related to manufacturing, such as residential houses, hotels, guest houses, karaoke shops, restaurants, theaters, cinemas and nightclubs; (f) other activities prohibited by notification of the Regional Committee.

***Note:** This seems to indicate that the investment enterprise license is additionally required for an investment activity that has been granted the investment permit under the MIL, provided that such activity is undertaken in an industrial zone covered under the IZL and the IZR.

According to Rule 64 of the IZR, investors who are desirous of relocating their enterprises to an industrial zone may submit their application to the Regional Committee through the corresponding Management Committee of the relevant industrial zone. These investors may be able to enjoy benefits and reliefs upon the approval of the Regional Committee, and these include reduced fees for the land use, additional construction periods, assistance with securing loans, and exemption from contribution to the Management Committee during the construction period.

Investment Incentives – Section 46 of the IZL outlines potential special incentives for the developers and investors who carry out the following activities, subject to notification by the Central Committee:

- development and investment in underdeveloped regions
- investment activities that generate substantial employment in areas with limited job opportunities
- investment activities that add value to basic agricultural products for export
- investments activities that manufacture high-quality agricultural machinery
- value-added exports and innovative investment activities

Note, however, that to date, specific incentives have not been further clarified by the Central Committee.

Land Use – According to Section 32 of the IZL, the Regional Committee may grant the land use rights of an industrial land to a developer or an investor up to 50 years, with two extensions of 10 years each – these terms coincide with land rights available to foreigners under the Myanmar Investment Law (2016). The developer or the investor may lease, sell, exchange or otherwise transfer the land permitted to be used, to a third party in accordance with the land lease agreement, subject to the approval of the Regional Committee.

Appointment of Foreign Experts – An investor seeking to employ foreign experts and technicians must obtain approval from the Management Committee. The Management Committee evaluates the necessity of these foreign professionals for the investor’s operations and refrains from recommending their appointment if suitable local alternatives exist. According to Rule 76 of the IZR, the Management Committee can only recommend hiring foreign professionals who possess recognized certificates from professional councils established under the prevailing laws.

Instructions on Actions for Non-Compliance with Tax Law Provisions

The Ministry of Planning and Finance (“**MoPF**”), through Notification No. 44/2024 issued on June 13, 2024 (the “**Notification**”), under Section 86(b) of the Tax Administration Law (the “**TAL**”), has set forth new guidelines to ensure uniformity in addressing non-compliance with tax laws. This Notification outlines the distinction between cases requiring police action and those that do not, as well as the procedures for handling each type of cases.

For cases involving deliberate tax evasion under Section 77 of the TAL, such as knowingly avoiding tax payments or fraudulently seeking refunds, police action is allowed. Upon identifying such offenses, the head of the relevant township Internal Revenue Department (the “**IRD**”) must issue a notice to the taxpayer within 15 days, mandating full disclosure of the evasion. An extension of 15 days may be granted if the taxpayer provides valid reasons, such as revising financial statements or proving tax payments. Failure to comply within the specified or extended deadline will result in the initiation of prosecution with the Director General’s approval.

In contrast, cases of non-compliance that do not require police action include violations of confidentiality requirement and obstruction of tax administration under Sections 78 and 80 of the TAL. Violations of confidential matters described under Section 8(b) or (c) of the TAL will be prosecuted under Section 80 of the TAL. Anyone who hinders tax officials from performing their duties, such as refusing to provide necessary documents or obstructing access to premises, will face prosecution under Section 78(a) of the TAL. The head of the IRD is responsible for issuing a notice within 15 days of detecting such violations, with the possibility of a 15-day extension under valid circumstances. Similar to police action cases, non-compliance will lead to a request for prosecution upon the Director General’s approval.

The Notification also addresses the handling of tax arrears and the legal procedures for their recovery. Taxpayers who fail to pay due taxes within the specified time are classified as defaulters and will receive a notice to this effect. The township IRD must compile a comprehensive case file, including personal information and evidence of non-compliance, which is then submitted for approval to proceed with prosecution. Legal action will be conducted in the appropriate jurisdiction, and provisions for settlement or withdrawal of cases are outlined, requiring the Director General’s approval. All related documents and evidence must be kept confidential and securely stored by the IRD. When the IRD takes action under the TAL, the following parties may be sued:

1. **Currently Operating Companies:** The company itself.
2. **Non-Operating but Undissolved Companies:** Chairperson, Managing Director, Board Members, General Manager, or any person managing the company.
3. **Partnership:** The members of the partnership.
4. **Trust:** The trustees.
5. **Other Persons other than Companies and Trusts:** Individuals responsible for compiling the book of the payables and receivables on behalf of such person.
6. **Residents Abroad:** The manager or the responsible person of a business organization owned by the resident in Myanmar.
7. **Multiple Representatives:** All representatives of the taxpayer.
8. **Dissolved Companies:** Shareholders within one year prior to dissolution; or If the cause of action against the company arises during a period of time under the ownership of shareholders who are different from those present at the time of the dissolution of the company, such shareholders.
9. **Deceased Taxpayers / Taxpayer's Assets Seized Due to Debt:** Executors, administrators, agents, or trustees managing the taxpayer's assets, or persons continuing or terminating taxable business.
10. **Mortgaged Properties:** The mortgagee if the property is used for taxable activities.

This Notification aims to provide clear and structured procedures for addressing non-compliance of tax laws, ensuring that legal actions are conducted uniformly and fairly across Myanmar.

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 Supervisory landscape, a jurisdiction in which KCY has gained in-depth legal expertise from the numerous transactions it has handled.

Our main practice areas

Foreign Investments | Incorporation and Company Maintenance | General Corporate and Commercial | Due Diligence | Mergers and Acquisitions | Joint Ventures and Production Sharing Agreements | Investment Funds | Energy/Oil and Gas | Natural Resources/Mining | Banking | Project and Project Financing | Manufacturing | Education | Agriculture | Real Estate | Infrastructure | Construction | Telecommunications | Compliance / Supervisory | Licensing and Permits | Labour and Employment | Immigration | Taxation | Insurance | International Arbitration | Intellectual Property | Special Economic Zones

Our Partners



Cheah Swee Gim

Director, Kelvin Chia Yangon
Senior Partner, Kelvin Chia Partnership
cheah.sweegim@kcpartnership.com



Pedro Jose F. Bernardo

Foreign Attorney, Kelvin Chia Yangon
Partner of Kelvin Chia Partnership
pedro.bernardo@kcpartnership.com



Khin Leinmar Ban Aye

Principal Legal Manager, Kelvin Chia Yangon
Partner, Kelvin Chia Partnership
klm@kcyangon.com



Lyra Miragrace Flores Bisnar

Foreign Attorney, Kelvin Chia Yangon
Partner, Kelvin Chia Partnership
lyra.floresbisnar@kcpartnership.com



Chin Wai Yip

Foreign Attorney, Kelvin Chia Yangon
Partner, Kelvin Chia Partnership
chin.waiyip@kcpartnership.com

Yangon Office: Unit 08-03, Union Financial Center (UFC), Corner of Mahabandoola Road and Thein Phyu Road, Botahtaung Township, Yangon.

Mandalay Office: Asean Street | Shwe Ge Ward | Nge Toe Group | Amarapura Township | Mandalay.