

Myanmar Investment Law is applicable to both Myanmar citizen, & foreigner's investment.

The new Myanmar Investment Law 2016 ("MIL") has been enacted on 18 October 2016.

The MIL came into effect on 18 October 2016, and consolidated and replaced the previous Foreign Investment Law 2012 and the Citizens Investment Law 2013.

The MIL, which provides the overall legal framework for both citizen and foreigners, two notifications: Notification 13/2017 dated 1 April 2017 (Classification of Promoted Sector) and Notification 15/2017 dated 10 April 2017 (List of Restricted Investment Activities). Together, these represent the body of the current Myanmar foreign investment laws.

Under the previous investment laws, investors were required to submit an application and obtain approval for an MIC Permit. The new MIL has introduced a new route for investment, i.e. endorsement application.

There are 15 committees under MIC in the 14 divisions and states. Endorsement application can be approved by 15 committees and for MIC permit application must be approved by MIC.

A MIC Permit is required for businesses that are (a) strategic for the Union; (b) large capital intensive projects; eg. over USD 100 million investment (c) projects which have a large potential impact on the environment and the local community; eg. need to seize over 100 Acres land to implement project (d) use state-owned land or buildings; and (e) designated by the government to require the submission of a proposal to the Commission. The requirement to obtain a MIC permit applies to both foreign and citizen investors.

Businesses/investments that do not fall under the categories above do not require a MIC Permit. Companies with less than USD 5 million share capital investment can apply for MIC endorsement via 15 committees. Otherwise, company would still need to submit an endorsement application to the MIC to be eligible to enjoy the right to use land and obtain tax exemptions. Furthermore, they will benefit from other advantages under the new MIL .

Under the new MIL, the MIC Permit appears to be mainly for the purpose of regulating investments that are restricted. Investors seeking to secure rights to use land and tax incentives would only submit an Endorsement application.

Foreign investors wishing to invest in businesses for which a MIC permit is not required may file an application to obtain a MIC endorsement for the long term land lease and possibly obtain tax exemptions. Different from the previous investment laws, the new MIL provides that foreign investors in non-MIC businesses will still be eligible to lease land long term. This would encourage investors who need land but will not be involved in an MIC related business, e.g. not large capital intensive project. This should help to attract foreign direct investments in Myanmar.

### **Right to use land**

According to the transfer of immoveable property restriction out 1987, foreigners are able to rent land for maximum one years.

An Investor who obtains an MIC Permit or an MIC Endorsement has the right to obtain a long-term lease of land or building from commencing on the date of receipt of the permit or endorsement for an initial period of (50) with an option to extend the lease by two periods of 10 years.

The investor shall register the land lease contract at the Office of Registry of Deeds in accordance with the Myanmar Registration Act. The Myanmar Government may grant leases for Government owned land on more favorable terms and conditions.

### **Investment Guarantee Against Nationalisation**

The government guarantees not to nationalize or indirectly expropriate & termination any investment carrying out in accordance with the law except the following conditions;

- (a) actually necessary for the interest of Myanmar or its citizen;
- (b) non-discriminatory manner same treatment to both local & foreign investors;
- (c) measures in accordance with the applicable law;
- (d) prompt, fair and adequate payment of compensation;

### **Treatment of Investors**

For foreign investors, treat no less favorable than it accords to Myanmar citizen investors in respect of the expansion, management, operation and the sale or other disposition of direct investments.

For foreign investors and their direct investments from one country, treat no less favorable than that it accords to investors of any other country and their direct investment.

Government guarantees to the investors fair and equitable treatment in respect of the followings:

- (a) the right to obtain relevant information (eg. calling Telenor)
- (b) the right to due process of law and the right to appeal on similar measure.

## **Employment of staff and workers**

The MIL contains a number of provisions in respect to employment matters. An investor:

- may appoint any citizen (foreign or local) to qualified positions such as senior management positions, technical and operational positions, and as advisors on the investment project;
- after providing training and capacity building programs Myanmar citizens to qualified positions such as senior management positions, technical and operational positions, and as advisors on the investment project;
- shall appoint only Myanmar citizens to unskilled positions;
- shall ensure employees are appointed with employment contracts in accordance with Myanmar labor laws and rules.
- shall ensure employees receive the entitlements and rights under Myanmar labor law, including in respect to, minimum wages, leave, holiday, overtime fee, damages, compensation, social welfare, and other insurance; and occupational terms and conditions in the employment contract.
- shall settle disputes arising among employers, among workers, between employers and workers, and technicians, or staff in the investment in accordance with applicable laws.

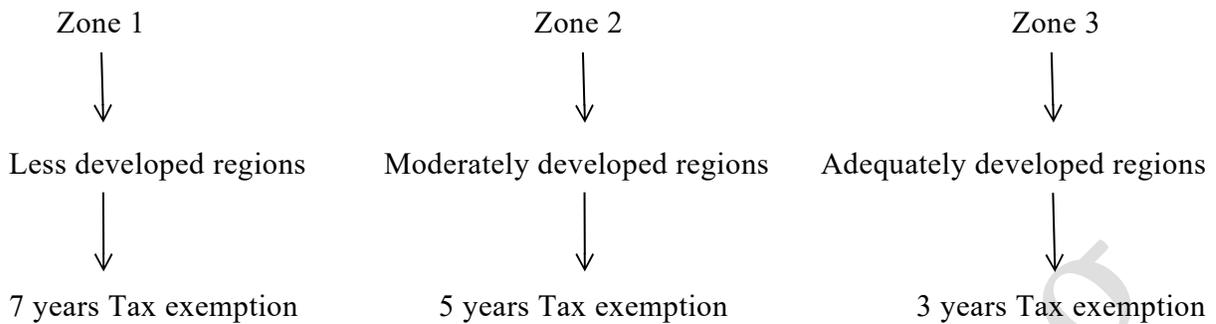
## **PROHIBITED AND RESTRICTED INVESTMENTS (SECTION 41 OF MIL)**

The following activities are Prohibited Activities for investors;

- activities involving the importation of hazardous or poisonous wastes into Myanmar;
- activities involving technologies, medicines, flora and fauna, and/or instruments which are still being tested and/or not internationally approved, except for investment in research and development;
- investment that impact upon the traditional culture and customs of Myanmar's ethnic groups;
- investment in activities which may effect to the public interest;
- investment in activities which pose a significant threat to the environment; and
- investment which manufacture goods or provide services that are prohibited under the applicable laws.

## **Tax Exemptions Zones**

According to notification 10/2017, the following are the descriptions of the development zones and tax exemption.



The new MIL has also stipulated the restricted businesses/ investments as follows:

- (a) sectors which are allowed to be carried out by the government only; (eg. gun manufacturing)
- (b) sectors that are restricted to foreign investors; (eg. convenient stores)
- (c) sectors that are allowed only in joint venture with a citizen owned entity or a citizen of Myanmar; The ratio of foreign to local capital can be mutually agreed by both parties, if JV is formed. and
- (d) sectors that are carried out only with the approval of the relevant ministries.

The specific businesses/investments that are prohibited/ restricted will be determined by the MIC with the approval of the Government. According to notification 26/2016, list of restricted activities was announced by MIC.

### **Responsibilities of Investors**

The investor

- (a) shall respect and comply with the customs, traditions and traditional culture of the ethnic groups in the Union;
- (b) shall register a company or sole proprietorship or legal entities or branches of such entities under the Laws in order to invest;
- (c) shall abide by the terms and conditions, issued by this Law and the applicable laws, terms and conditions of contract and tax obligations;
- (d) shall carry out in accordance with the stipulations of the relevant department if it is, required to obtain any license or permit from the relevant Union Ministries, government departments and government organizations
- (e) shall immediately inform to the Commission if it is found that natural mineral resources or antique objects and treasure trove. If the Commission allows, the investor shall continue to carry out the investment in such land, and if not allowed, the investor shall transfer and

- carry out, by obtaining the permission, at the substituted place which is selected and submitted by him;
- (f) shall not make any significant alteration of topography or elevation of the land on which he is entitled to lease or to use, without the approval of the Commission;
  - (g) shall abide by applicable laws so as not to cause damage, pollution, and loss to the natural and social environment and not to cause damage to cultural heritage;
  - (h) shall list and keep proper records of books of account and annual financial statement, and necessary financial matters relating to the investments performed by permit or endorsement in accordance with internationally and locally recognized accounting standards;
  - (i) shall close and discontinue the investment only after payment of compensation to employees in accordance with applicable laws
  - (j) shall pay wages and salaries to employees in accordance with applicable laws, rules, procedures, directives and so forth during the period of suspension of investment for a credible reason;
  - (k) shall pay compensation and indemnification in accordance with applicable laws to the relevant employee or his successor for injury, disability, disease and death due to the work;
  - (l) shall supervise foreign experts, supervisors and their families, who employ in their investment, to abide by the applicable laws, rules, orders and directives, and the culture and traditions of Myanmar;
  - (m) shall respect and comply with the labor laws;
  - (n) shall have the right to sue and to be sued in accordance with the laws;
  - (o) shall pay effective compensation for loss, if there are damage to the natural environment and socioeconomic losses caused by logging or extraction of natural resources which are not related to the scope of the permissible investment, except from carrying out the activities required to conduct investment in a permit or an endorsement.
  - (p) shall allow the Commission to inspect in any places, when the Commission informs the prior notice to inspect the investment;
  - (q) shall take in advance permit or endorsement of the Commission for the investments which need to obtain prior approval under the Environmental Conservation Law and the procedures of environmental impact assessment, before undertaking the assessment, and shall submit the situation of environmental and social impact assessment to the Commission along the period of activities of the investments which obtained permit or endorsement of the Commission.

After obtaining a permit or an endorsement from the Commission, the investor shall execute and sign necessary contracts with the relevant government department or a government organization or government organizations, and conduct its investments.

The permission of the Commission shall be obtained for any extension and amendment of the contracts mentioned in section 69.

Investment obtained a permit or an endorsement, shall submit and notice to the Commission of any sublease, mortgage transfer of shares or transfer of business to any person during the investment period.

### **Exemptions and Reliefs**

1. The Commission shall, for the purpose of supporting the development of the Union by allowing investment in sectors which need to be developed, and for the proportionate development of Regions and States, scrutinize and may grant one or more tax exemptions or reliefs if the investor applies for such exemptions or reliefs.
2. (a) With respect to the income tax exemption , designated the less developed regions as Zone (1) , the moderate developed regions as Zone(2),and the adequate developed regions as Zone (3), the Commission shall, with the approval of the Government , issue a notification and may grant income tax exemptions to investment businesses in Zone(1) for a period of 7 consecutive years including the year of commencement of commercial operation, investment businesses in Zone (2) for a period of 5 consecutive years including the year of commencement of commercial operation ,and investment businesses in Zone(3) for a period of 3 consecutive years including the year of commencement of commercial operation.
- (b) With the approval of the Government, the Commission may change the designation of the zones from time to time depending on the development of the respective regions.
- (c) Income tax exemptions shall be granted only for the sectors specified by the Commission in the notification as the sectors to promote the investments.
3. In addition to the provisions under Chapter XI of Treatment of Investors, the Government may undertake subsidies, funding, capacity building and training to Myanmar citizen investors and citizen-owned small and mediumsized enterprises. The Government may also allow exemptions and reliefs for the locations where Myanmar citizen-owned businesses are operated or other economic activities.
4. The Commission may scrutinize and grant the following exemptions or reliefs from customs duty and other internal taxes to the investor if applied.
  - (a) exemptions or reliefs from customs duty or other internal taxes or both on machineries, equipments, instruments, machinery components, spare parts, construction materials unavailable locally, and materials used in the business, which are imported as they are actually required, during the construction period or during the preparatory period of the investment business;
  - (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;

(c) reimbursement of customs duty or other internal taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export;

(d) if the volume of investment is increased with the approval of the Commission and the original investment business is expanded during the permitted period of investment, exemption or relief from the customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, materials used in the business, and construction materials unavailable locally, which are imported as they are actually required for use in the business which is being expanded as such.

5. The Commission may scrutinize and grant the following exemptions and relief, as required, to the investor if applied:

(a) exemption or relief from income tax if the profit obtained from the investment business that has obtained a permit or an endorsement is reinvested in such investment business or in any similar type of investment business within one year;

(b) right to depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on a depreciation rate which is less than the stipulated lifetime of the machinery, equipment, building or capital assets used in the investment;

(c) right to deduct expenses which are incurred for the research and development relating to the investment businesses carried out within the Union and actually required for the economic development of the Union from the assessable income.

6. The foreign investors have to pay income tax on their income at the rates applicable to the citizens residing within the Union.

7. Except the exemptions and reliefs under section 75, 77 and 78, other taxes shall be carried out in accordance with relevant tax laws.

8. The exemptions and reliefs under sections 75, 77, 78 and 80 shall not apply to businesses operating in special economic zones.