NEW MYANMAR INVESTMENT LAW – A NEW DAWN FOR FOREIGN INVESTORS

Posted on December 1, 2016

Category: CNPupdates

Date Published: 1 December 2016

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In October 2016, the two houses of parliament in Myanmar passed the new Myanmar Investment Law, which effectively merged the Myanmar Citizens Investment Law (enacted in 2013), which governs investment by locals, and the Foreign Investment Law (enacted in 2012), which governs investment by foreign entities. It now seems likely that the new law would be enacted in the next parliamentary session. The new law was drafted with the assistance of the International Finance Corporation (IFC). This is a clear signal by the Burmese government to the international community that they are serious in re-integrating with the global economy and are doubling down on the necessary reforms to make up for the lost decades of economic and political stagnation. The new law is intended to streamline and improve the efficiency of investment processes for both local and foreign investors. It is widely expected that this law will provide clarity and greater ease of doing business in Myanmar.

The Myanmar Investment Commission (MIC) continues to play a central role

The new law effectively reduces the number of investment fields for which investors have to apply for approvals from the MIC. However, all investors would still have to notify the MIC of the investments that will be undertaken in Myanmar. It remains unclear how the MIC would assess the investment applications in restricted activities. Perhaps in the months to come, MIC would provide details on the assessment criteria. What is certain here is the MIC will continue to play a central role in regulating investments in the country.

New list of prohibited and restricted activities for foreign investment

Besides awaiting the enactment of the new law, investors are eagerly anticipating a new list of prohibited and restricted activities for foreign investment that may be introduced to supersede the existing list which was just issued on 21 March 2016 (“**Notification 26/2016**”).

Tax exemptions

Chapter 18 – Exemptions and Reliefs provides for a tiered tax exemption regime where tax exemption will be given in sectors promoted by the government. In Zone 1 (regions and states that are least-developed), tax exemption will be for a period of 7 consecutive years including the year of commencement of business, in Zone 2 (regions and states that are moderately developed) it will be for 5 years and in Zone 3 (regions and states that are adequately developed) for 3 years. The law provides for a high level of discretion by the government through the MIC to grant further tax exemptions and grants to businesses for example, among other possibilities, to businesses deemed beneficial to the development of the less developed regions in Myanmar, to businesses which can help kick-start new industries and to businesses which will be re-investing the profits back into the country.

Clarity in regulations on land leases

Chapter 12 – Rights to Use Land provides for a foreign investor to lease land up to an initial period of 50 years commencing on the date of receipt of the approval from MIC. Such lease could be extended by a consecutive period of 10 years and entitled to a further 10-year extension, approval of which may be obtained from the MIC. This is good news for foreign investors which prior to this have had to grapple with uncertain legislation on land leases thus significantly slowing down the number of property developments which would otherwise have been carried out. Myanmar is well-endowed with many natural scenic spots, and with this law, we can expect to see a lot of resort developments in less-developed regions of the country in the coming years.

Greater protection of foreign business interests

Chapter 14 – Expropriation of Investment by the Government provides that the government guarantees not to impose any measures which effectively results in any expropriation or nationalization of any investment or property except under the following conditions:

- For a public interest;
- In a non-discriminatory manner;
- Upon receipt of prompt, fair, adequate, and effective compensation; and
- In accordance with due process of law.

While the ambit of the government’s power to expropriate or nationalize investment or property is vague, it is nevertheless reassuring to investors that the government has made attempts to provide for some form of guarantee to not resort to expropriation or nationalization.

Myanmar Companies Act

Now that the new Investment Law has been passed by both houses of the parliament, all eyes are on the highly anticipated Myanmar Companies Act. This piece of legislation is critical in supporting corporate transactions and is necessary to improve the overall investment landscape of the country. One area of particular interest to foreign investors is whether there will be changes to allow foreign investors to acquire shares of companies listed on the Yangon Stock Exchange, which the current Companies Act does not allow. The government has invited Asian Development Bank to assist with the drafting of the bill with the aim of producing a company's law that is business-friendly and forward-looking.

Conclusion

It is too early to assess whether the revamp of the Investment Law will be a success or not. How the executive arm of government implements and applies the law would determine its success. This is an area of law that will continue to be monitored closely as many foreign corporations eager to enter the market are waiting to see how the reforms will facilitate their eventual investments into the country.