



BRIEF ON MYANMAR'S CHANGING LEGAL FRAMEWORK FOR INVESTMENT - 6 JULY 2015

Asia Group Advisors (AGA) would like to provide you with an update on Myanmar's investment climate and important impending changes to the country's legal framework. As Myanmar prepares for General Elections in November this year, the current administration appears determined to ensure that economic growth will be unaffected. While moves to strengthen Myanmar's business environment through legislative reform is an encouraging sign for foreign investors, it is unclear if such reforms can be successfully enacted before a change in government.

The international business community has raised concerns about how the elections will impact foreign direct investment (FDI) into Myanmar, with some analysts predicting that electoral uncertainty will lead to a drop in FDI flows. During a recent meeting in Yangon with Aung Naing Oo, Director-General of the Directorate of Investment and Company Administration (DICA), the government also acknowledged a slowdown in FDI, with DICA now predicting FDI inflows to drop to USD 6 billion in 2015 from USD 8 billion in 2014. It should be noted, however, that a direct comparison with 2014 is somewhat misleading since a large proportion of last year's FDI total was attributable to the awarding of 20 offshore oil and gas exploration blocks. In fact, DICA projects that the number of foreign investment projects will be higher this year than the year before.

Moreover, Director-General Aung Naing Oo expressed optimism that the ease of doing business will not be adversely affected as Ministers and Deputy Ministers spend more time campaigning in coming months. He noted that there are established ministerial coordinating mechanisms that will help ensure that executive branch processes do not slow down. It is also believed that the Myanmar Investment Commission (MIC) should continue to function effectively as seven out of thirteen MIC members are from the private sector (the MIC is legally obligated to meet twice a month and only requires 50% attendance to reach a quorum).

The current government is also working hard to finalize a number of pending reforms to facilitate Myanmar's integration into the global economy after years of economic sanctions. These reforms have predominantly focused on modernizing and improving the country's commercial laws, many of which date back to British colonial rule, to better facilitate foreign trade and investment flows.

An update and assessment of imminent key reforms is detailed below.

The Investment Law & The Myanmar Companies Act

DICA has completed the drafting of a new Investment Law that, if passed, will combine the current Foreign Investment Law, which was enacted in 2012, and the current Myanmar Citizens Investment Law, which governs domestic investment, into a single law. While the distinction between "foreign investment" and "domestic investment" will remain, the draft Investment Law seeks to create "a level playing field", with the commitment to treat foreign investors not less

favorably than domestic investors, while also aiming to strengthen local industries to be more competitive in preparation for the ASEAN Economic Community.

The draft Investment Law will be submitted to the Attorney General's Office (AGO) in the next few days, after which it will be submitted to the parliament for consideration. DICA originally planned for the Investment Law to be finalized by May 2015, but decided to allow more time for consultations with stakeholders after a draft of the investment law released earlier this year raised concerns among civil society groups. One concern was that the draft law establishes significant rights for investors without properly protecting local companies affected by business activity; another was that the law would not provide sufficient public health and environment safeguards. Director-General Aung Naing Oo has stated that the revised draft is acceptable to all stakeholders.

DICA has also finalized the drafting of the new Myanmar Companies Act that will serve as the principal legislation for all companies incorporated in Myanmar, governing among others the registration of companies, management and conduct of companies' affairs, financial reporting and audit requirements, share capital and capital-raising matters, and duties of directors. In another encouraging sign for foreign investors, the updated Act would allow foreigners to directly own shares in Myanmar companies, which is prohibited under the current law that was enacted in 1914. The proposed law is already with the AGO for legal review.

The timing for both the draft Investment Law and the draft Companies Act is crucial. With only a few months to go before the Myanmar General Elections in November, it will be important to expedite the submission of the drafts to parliament to ensure passage before the elections, particularly since there is a large backlog of pending bills with parliament. Hence, it will require a strong push from the administration to ensure that the Investment and Companies Acts get prioritized attention in parliament. That being said, the possibility of a protracted bureaucratic process cannot be dismissed. We were informed that if the laws are not passed before the elections, DICA hopes that they will be promulgated in the first half of 2016.

Amendments to Current Legislation

Pending parliament's passage of the new Investment Act, the government is also seeking to amend current legislation in a bid to encourage more investment flows. AGA was informed that DICA has proposed amendments to both the Myanmar Citizens Investment Law and the Foreign Investment Law to include new provisions that would allow the MIC to delegate some of its authority to regional governments. Under the proposed amendments, regional governments would have the mandate to approve smaller value investments (up to the value of USD 5 million) in certain sectors. Larger investments would still be approved at the national level by MIC. It is hoped that this would reduce processing time of investment licenses and permits, particularly for local industries and SMEs.

The proposed amendments have already been reviewed by the AGO and it is expected that the amendments will be submitted to parliament this month. AGA will continue to closely monitor these and other legislative changes that will affect Myanmar's business environment in the months leading up to the elections and will update accordingly.