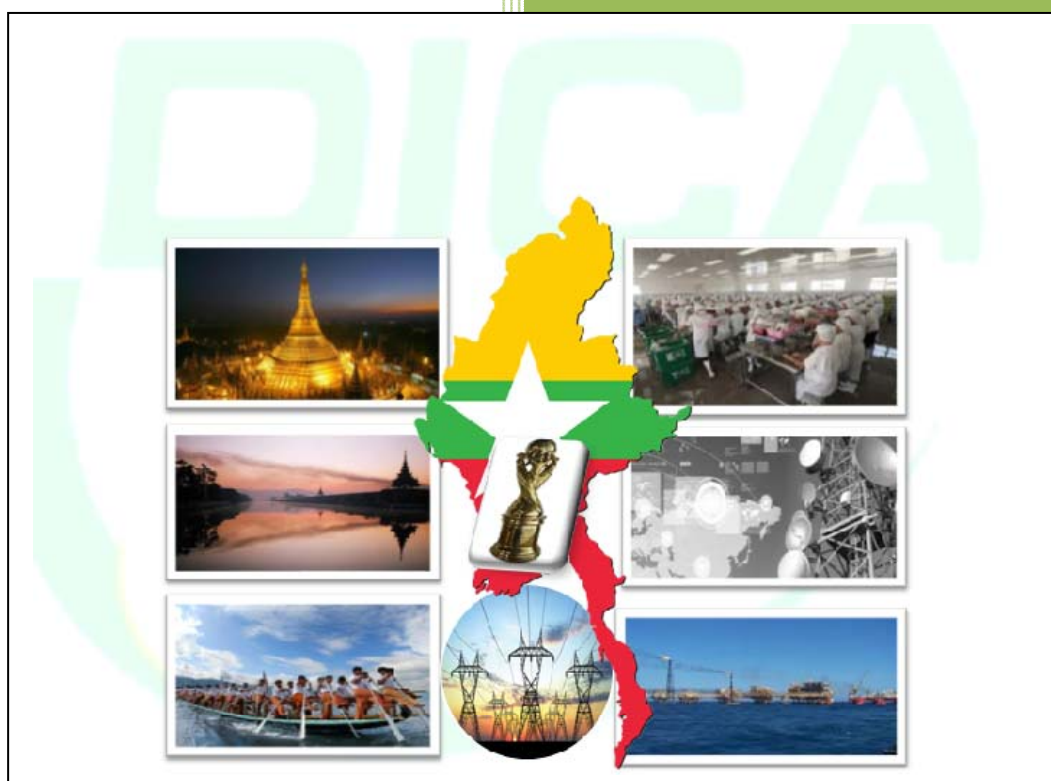


Evolving Legal Framework in Myanmar and Implications for FDI



Directorate of Investment and Company
Administration (DICA)
Ministry of Planning and Finance, and
Myanmar Investment Commission (MIC)

Evolving Legal Framework in Myanmar and Implications for FDI

General Information

1. Myanmar has a favorable geo-strategic location and abundant natural resources, being situated at the tri-junction of South Asia, South-east Asia and East Asia and bordering some of the fastest growing economies in the world such as China, India, and Thailand. After decades of economic isolation, Myanmar has made a new start in a series of political and economic reforms to strengthen the country's economy and promote its sustainable development.
2. Myanmar has worked closely with international organizations such as the World Bank, OECD, UN Development Program, UN Economic and Social Commission for Asia and the Pacific (UNESCAP), Japan International Cooperation Agency (JICA) and the Asian Development Bank (ADB). These international organizations joined forces to analyse a number of problem areas in which Myanmar needs to reform. Myanmar has undertaken the necessary structural reforms to boost its development and is now on the right track for future success.

Investment Related Reforms

3. The Directorate of Investment and Company Administration (DICA) has been creating a more attractive investor-friendly-environment, which is one of the main drivers to support the country's development since 2013. DICA, under the Ministry of Planning and Finance (MOPF), is also the secretariat of the Myanmar Investment Commission (MIC) and plays a complementary role of in supporting reform in Myanmar's legal, policy, regulatory and institutional frameworks.

Legal Framework Reforms

4. After the civilian Government took power in 2011, the new Foreign Investment Law and the Special Economic Zone Law were enacted and implementing rules were issued. With the goal of implementing the recommendations of the OECD Investment Policy Review of Myanmar (2014), to be in line with the ASEAN Comprehensive Investment Agreement, and to correct some past mistakes, DICA, with the technical assistance of the International Finance Corporation (IFC), developed the new Myanmar Investment Law (MIL) merging the Foreign Investment Law and the Myanmar Citizens Investment Law to create a fairer and more level playing field between foreign and domestic investors.

5. Myanmar Investment Law

- (i) The MIL was promulgated by Union Parliament on 18th October, 2016. The Myanmar Investment Rules implementing the MIL were issued on 30th March 2017. According to the MIL, the Notification for Classification of Zones was prescribed on 22nd February 2017 as well as the Notification for allocating authority for investments (investment amount) that the Region and State Governments may approve on 3rd March 2017, the Notification for the Investment Promoted Sectors on 1st April 2017 and the Notification for the List of Restricted Investment Activities on 10th April 2017, respectively.
- (ii) The unique characteristics of MIL are:
 - encouraging responsible business and transparent, simplified and expeditious procedures,
 - focusing on supervision of the Commission, not requiring the MIC permit for every investment project,
 - allowing long term land and building leases,
 - providing a guarantee that investments not be expropriated directly or indirectly,
 - setting up more comprehensive provisions for transfer of funds,
 - income tax exemptions according to the zones and promoted areas,

- reducing the development gap between the States and Regions by power delegation,
 - protecting investments in line with the regional and international agreements and
 - establishing a grievance resolution system.
- (iii) Moreover, the Notification for the Proposal Assessment Team was also prescribed on 17th July 2017 and both the Notification for the One-stop Service Team and the Notification for the Investor Assistance Committee which is assisting the investment related disputes on 21st July 2017.

6. Myanmar Companies Law

With the objectives of being modernized, supporting the development of the capital market, reducing procedures of registration, implementing e-registration system, reducing the regulations for small companies, and improving the compliance of rules and regulations, DICA is trying to amend the 103-year old Myanmar Companies Act with the assistance of the Asian Development Bank (ADB). The new draft law has been submitted to the Parliament for approval and will be enacted soon.

Policy Reform

7. DICA emphasized four key objectives for the Myanmar economy, to be more open, more liberalized, more transparent and more diversified. It opened previously closed investment sectors. The Investment Policy was published on 16th November 2016 in line with the Economic Policy that focuses on the development of the country's multi-dimensional needs. Myanmar's investment policy welcomes responsible and mutually beneficial foreign investments.

Regulatory Reform

8. DICA reduced the steps for doing business, simplified the procedures and established one stop services for investment. For example, the steps for company registration have been reduced from 13 to four steps in order to simplify, facilitate and expedite the process of starting a business.

Institutional Reform

9. The new MIC was formed and DICA branch offices were opened in the cities of the Regions and States. Similarly, the State and Regional Investment Committees were organized by prescribing relevant notifications and MIC delegates its power to the State and Regional Investment Committees. The Standard Operating Procedures adopted to be practiced by the committees for investment facilitation, investment promotion and sustainable balance development throughout the country.

Capacity Building Programs

10. In order to practically apply MIL and its subsequent rules and notifications, capacity building programs are being conducted at DICA head office and branch offices. Significantly, two programs were conducted with the assistance of UNESCAP and Dana Facility in Kayin State and Sagaing Region.

Reform Outcome

11. According to the mid-term (2016-2020) of our Foreign Direct Investment Promotion Plan (FDIPP), it is targeted to the FDI amount of US\$ 6 billion per year. In the last period of 2016-2017, permitted FDI total inflow reached US\$ 6.649 billion and in this current period of 2017-2018, as of 30 September 2017, it reaches US\$ 4.137 billion. This year current FDI inflow achieves 62.21% from 1st April to 30th September 2017 comparing with that of last year period.

Achievement

12. As a result of the above reform process, DICA received the Myanmar President's *Excellent Performance Award (2016)* in striving for the promotion of investments on 9 February 2016. Myanmar also received the World Bank's *Global Star Reformer Award* on 25 October 2017 for its effective foreign direct investment (FDI) related reforms and resulting success.

13. Myanmar has jumped in the World Bank's ranking for ease of doing business from 178th place in the *2014 Doing Business* report to 170th place in *2017 Doing Business*. Myanmar's ranking for starting a business has taken a significant leap to 146th place in *2017 Doing Business* from 189th place in *2014 Doing Business*.

Ongoing Activities

14. As one of DICA's strenuous efforts, it is trying to enact the new Myanmar Companies Law soon. Moreover, DICA, with the assistance of international organizations such as ADB and Japan International Cooperation Agency, has implemented two main programs for a private-sector led infrastructure economy, including digital related infrastructure with Public-Private Partnerships (PPP) and amendments of the Partnership Act, Insolvency Law, Secured Transactions Law and the PPP Law.

Conclusion

15. Myanmar will be able to provide better protection to investors, create more confidence which will, in turn, lead to more Foreign Direct Investment in the country.