

Myanmar Updater

This briefing provides an overview of recent news and developments in relation to Myanmar. In this edition we look at the new foreign investment law and other recent steps taken to develop the economy.

Myanmar passes new foreign investment law...

Myanmar's long awaited foreign investment law passed on 7 September 2012, after recent reports that opposing Parliamentary factions had led to a significant dilution of the law's attractiveness to foreign investors. A compromise may have finally been reached between the reformists led by President Thein Sein and more conservative lawmakers, representing constituencies cautious of foreign competition and protective of existing interests.

The President's final endorsement is required before the law can take effect – and it is possible he will push back and seek further changes – but it is understood that the previously reported US\$5 million minimum investment threshold, and 49% cap on foreign ownership in certain key restricted sectors (including manufacturing and agriculture), were deleted from the final draft.

Full details are not yet available and the full text (once endorsed) will require close analysis, but early reports of the law's features include:

- foreign ownership of joint ventures in certain restricted sectors set at 50%

- interests of greater than 50% (possibly as high as 100%) in other sectors
- the ability for foreigners to obtain 50 year land leases, with renewal rights

The law's passing (and without the protectionist measures referred to above) is a much anticipated and important step towards greater liberalisation of Myanmar's economy and good news for foreign investors – though it appears it will likely fall short of expectations that existed before the law became somewhat bogged down in the lawmaking process. Clifford Chance will produce a more detailed briefing when the law has been endorsed by the President and full details are available.

...amid other positive steps towards reform

The foreign investment law passed after another period of signs that Myanmar is, slowly, making positive steps towards unlocking its potential. The Asian Development Bank, which along with the World Bank has recently opened offices in Myanmar, issued a report stating that the country could soon experience 7 to 8% annual growth and could be a middle income nation by 2030.

Recent developments have included:

Cabinet reshuffle

President Thein Sein's first cabinet reshuffle since taking office in early 2011 promoted several ministers seen as key drivers of the reform agenda, and the demotion of some of its detractors. Industry minister U Soe Thane, a proponent of foreign investment law reform and understood to have been a strong critic of protectionist measures in the later drafts, was among the winners in the reshuffle, which is understood to be the first round of broader changes at several levels within the administration.

Banking and finance

Central Bank reform is also underway, with moves to separate the Bank from the finance ministry and give it greater autonomy in setting interest rates and performing other functions. Among other things, it will shortly issue licences to the local private banks to provide yen, yuan and baht letters of credit to facilitate border trade. Meanwhile, the easing of sanctions have led to agreement between Mastercard and Myanmar's Co-operative Bank Ltd on the licensing of credit and debit cards to be issued by the local bank, which has the country's largest ATM network. This follows an announcement by VISA that it is also taking steps to enter

into licensing arrangements with Myanmar's banks.

Dawei

The Myanmar government granted Italian-Thai Development Plc a 75-year concession to develop the special economic zone in Dawei covering over 200 square kilometres. The 10-year project will consist of an industrial zone including heavy industries, power stations, a deep-sea port and office buildings and commercial areas.

Obstacles to be overcome

The Burmese partner to the project withdrew its support raising concerns about its viability. Other issues which need to be overcome include securing power supplies to Dawei. A 4,000 megawatt coal-fired power plant had originally been planned but was halted on environmental concerns. Following environmental concerns at Map Ta Phut, Thai environmentalists have also voiced concern over the impact Dawei would have on the environment and local people. There is, however, political support for the project, as it would be a major step in developing Myanmar's economy as

well as boosting the Thai economy.

Securing funding

The first Phase of the Dawei project is estimated to require funding of US\$8 billion while the whole project would require investment of US\$50 billion. The Thai government has indicated that it would encourage foreign investors to support the project and has entered into an MOU with Myanmar in relation to the project. The Thai government has also announced investment of over US\$1 billion to develop infrastructure links to Dawei including a motorway from Nonthaburi's Bang Bua Thong district to Kanchanaburi. Japanese investors have shown a great deal of interest in Myanmar and are expected to support this project.

Constitutional crisis averted

The nine judges comprising Myanmar's constitutional tribunal resigned on Thursday 6 September 2012, following a vote by the lower house of Parliament to impeach them after the tribunal had earlier ruled to limit the law-making power of Parliamentary committees on the

basis that those committees did not have the requisite level of national-level authority. While tensions over the extent of Parliament's authority remain, the judges' resignation is thought to have averted a possible constitutional crisis in the short term. It will be left to the replacement judges, to be chosen by the President and the house speakers for Parliament's approval, to decide the fate of their predecessors' controversial ruling.

Contacts

Fergus Evans Partner

T: +66 2 401 8810
E: fergus.evans
@cliffordchance.com

Chad Morgan Senior Associate

T: +66 2 401 8818
E: chad.morgan
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.

Clifford Chance, Sindhorn Building Tower 3, 21st Floor, 130-132 Wireless Road, Pathumwan, Bangkok 10330, Thailand

© Clifford Chance (Thailand) Ltd 2012

Clifford Chance (Thailand) Ltd