

Myanmar New Foreign Investment Law & Double Tax Treaty

Opportunities for Foreign and Thai Investors

Update (New) Myanmar Foreign Investment Law, Bilateral Investment Treaty and Double Tax Agreement (DTA) between Thailand - Myanmar

Wednesday 28th November 2012, Holiday Inn Silom, Bangkok

Dr. Vilawan Mangkratanakul

- * Director of International Development, Department of Treaties and Legal Affairs, the Ministry of Foreign Affairs
- * Guest speaker in international conferences (Investment Law)
- * Ph.D. (Investment Law), University of London, United Kingdom
- * Negotiator of Bilateral Investment Treaty (BIT) of Thai Ministry of Foreign Affairs
- * Ph.D. Thesis: The Legal Environment for the Promotion and Protection of Foreign Direct Investment in Malaysia and Thailand: A Comparative Evaluation

Dr. Nimmual Piewthonggam

- * Executive Director at the AEC Strategy Center, UTCC
- * Law Lecturer at the Faculty of Law, University of Thai Chamber of Commerce (ASEAN & AEC)
- * Several years experience in Myanmar Investment Law & Tax law
- * Public speaker focus on ASEAN Economic Community and Investment in Myanmar.
- * S.J.D. International trade law, Golden Gate University, the US
- * Investment market in Myanmar and other ASEAN countries specialist

Dr. Arthit Sathavorasit

- * Senior Legal Officer at the Thai Revenue Department
- * Ph.D. in law (Cardiff University, UK)
- * MSc in Fiscal Studies (University of Bath, UK)
- * LL.M (Tax) (UCL, UK)
- * Guest speakers in Double Tax Agreement (DTA) in many recognized institutions
- * Negotiator of Double Tax Treaty, Thai Revenue Department

Crucial Issues & Strategies to be Updated and Explored :

- ◆ Update new Myanmar Foreign Investment Law and implications for Thai investors
- ◆ Joint venture agreements and partnership structures between domestic and Thai investors in Myanmar
- ◆ How does Bilateral Investment Treaty between Thailand – Myanmar and ASEAN Comprehensive Investment Agreement (ACIA) protect Foreign investment in Myanmar?
- ◆ Multilateral Investments Guarantee Agency (MIGA) : Non-commercial insurance & investment risk management in ASEAN and Myanmar
- ◆ Stabilization clauses – Legal tools to mitigate risks associated with Myanmar investment
- ◆ Update Double Tax Agreement between Thailand - Myanmar : Points to pay attention to by foreign investors when claiming treaty benefits
- ◆ Legal impact of the new Myanmar Foreign Investment law on the key sectors
- ◆ Tax incentives, tax relief condition, tax holiday in accordance with Myanmar Investment Law
- ◆ How to protect foreign investments in Myanmar against expropriation measures or indirect expropriation under Bilateral Investment Treaty between Thailand - Myanmar
- ◆ Practical case studies and recommendations

Myanmar New Foreign Investment Law & Double Tax Treaty

Overview of Seminar :

Myanmar, rich in natural resources, human resources and national heritage, offers a range of opportunities to potential investors. Recently, Myanmar provides a spectrum of incentives in the forms of **taxes and duties**, new '**Foreign Investment Law**', and other special benefits afforded to foreign investors. *Unique Seminar & Training* would like to invite you to a seminar which examines recent legal and tax aspects of foreign investment in Myanmar. The crucial issues and strategies to be updated are as follows:

- ◆ What foreign investment is occurring in Myanmar today?
- ◆ What are the important aspects to evaluate when investing in Myanmar?
- ◆ What is the nature of the legal regime in Myanmar today?
- ◆ May a foreign enterprise own 100% of a legal entity in Myanmar or is a joint venture mandatory?
- ◆ What is the process for making a foreign investment in Myanmar?
- ◆ Is the currency stable? If not, may a foreign investor rely on the use of a convertible foreign currency?

The latest version of the Myanmar foreign investment law reduces the number of "**restricted**" or "**forbidden**" areas for foreign investors, but also gives the Myanmar Investment Commission the power to restrict any manufacturing or services business it decides Myanmar nationals can do.

In restricted sectors, foreign investors "can propose" a **50-50 joint venture**. In unrestricted sectors, the law permits wholly-owned foreign businesses or **joint ventures** with a minimum 35 percent foreign stake. Foreign investors can invest in restricted areas through a **joint venture** either with the government or Burmese citizens.

- ◆ Why in Myanmar a joint-venture is so important?
- ◆ When to do a joint-venture in Myanmar?
- ◆ How to choose the right partner and make sure it is the right partner.
- ◆ How to **structure Joint Venture** with **local companies in Myanmar**.

Which projects are now promoted under the Myanmar's new Foreign Investment Law? How can **profits be repatriated** under the Double Tax Agreement between Thailand – Myanmar, Myanmar **foreign exchange control**, and new Foreign Investment Law?

The law would sweeten **tax incentives** for foreign investors, increasing the **minimum tax holiday** from three years to five years. New proposed Myanmar tax incentives are included customs duty free import of machinery and equipment, customs duty free import of raw material, tax incentive concerning research & development (R&D), right to carry forward losses for 3 years etc.

- ◆ **Tax holidays** granted to which sectors?
- ◆ What are the other tax benefits within the discretion of the Myanmar Investment Commission?
- ◆ What tax incentives are available for foreign investment today? How can Thai investor take advantages from such tax incentives?

Double Tax Agreement (DTA) between Thailand and Myanmar officially entered into force on 1 January 2012. Thailand's DTA with Myanmar is expected to provide tax stability to Thai resident in Myanmar and stimulate the flow of investment, technology and services between Thailand and Myanmar.

- ◆ **Tax planning opportunities in Myanmar:** What are the key features of the new DTA?
- ◆ How to optimize foreign tax relief from the income derived in Myanmar?
- ◆ How can a **consulting enterprise** have a PE in Myanmar without having any fixed place of business of their own?
- ◆ Which taxes apply to finance, cross-border service fees, royalties and other international payments?

Myanmar New Foreign Investment Law & Double Tax Treaty

Update (New) Bilateral Investment Treaty between Thailand and Myanmar

Other than the new Myanmar Foreign Investment law itself, the **Bilateral Investment Treaty between Thailand and Myanmar** may be the most important for **Thai investors looking to invest in Myanmar**. The Investment Treaty provides that the Myanmar Government must accord to Thai investment from the other state “**fair and equitable treatment**”.

- ◇ What is the standard by which arbitrators are to judge a violation of ‘fair and equitable treatment’?
- ◇ What **damages are recoverable by an investor** for a government’s violation of the fair and equitable treatment provision?

With full coverage by the Investment Treaty, Thai investors have an additional layer of **protection from expropriation** and other Myanmar government actions that can adversely impact Thai investments in Myanmar. *How to protect Thai investments in Myanmar against expropriation measures or indirect expropriation.*

To protect against the **non-commercial risks** of investing in Myanmar, many investors obtain **political risk insurance**. Political risk insurance is available from the **Multinational Investment Guarantee Agency (MIGA)**.

- ◇ What coverage is provided by MIGA?
- ◇ Does MIGA have a broader role to play in promoting foreign investment in ASEAN? What is the role?
- ◇ Does MIGA employ different eligibility requirements for insuring risks directly than for reinsurance?
- ◇ What is MIGA’s role with respect to private political risk insurers?

One important feature of a favorable investments climate is the **transparency of local laws** and administrative practices.

- ◇ What damages may flow from the Myanmar government’s **violation of the transparency provision** of an investment treaty?

Is it possible for Thai investors to obtain investment protection from both the ‘**Bilateral Investment Treaty between Thailand - Myanmar**’ and the **ASEAN Comprehensive Investment Agreement (ACIA)**?

Comparison analysis between BIT and ACIA: What Thai investors need to know in practice!

“**Myanmar** has been closed for many years and still has virgin land, so lots of foreign companies are preparing to come, they just need **transparency and stability**. Investors are more concerned about **stability** than the laws they must work under,”

Source: The Myanmar Times, Myanmar Fisheries Federation Vice Chairman

Some host states, especially **Myanmar**, agree to protect foreign investors against future changes in the host State’s domestic laws. Such provisions are commonly referred to as ‘**stabilization**’ or ‘**change-in-law clauses**’.

- ◇ What is the purpose and function of a stabilization clause?
- ◇ What **types of stabilization clauses** or their complement exist?
- ◇ Have stabilization clause evolved over time? How? What is the **legal effect** of a stabilization clause?
- ◇ In the **absence of a stabilization clause**, may a Myanmar government always modify its laws, applying the changes to the foreign investor with impunity?
- ◇ Can a breach of ‘Stabilization Clause’ constitute an **expropriation of Bilateral Investment Treaty between Thailand and Myanmar**?

“Investors may negotiate with the **Ministry of Mines** for **stability of law** regime by inclusion of **stability provisions** in the mineral investment agreements which will be subject to the approval of the **Myanmar Investment Commission (MIC)**. Renegotiation clauses may also be included for stabilization of mineral investment agreements. No separate stability agreements will be signed by the Ministry of Finance and Revenue.”

“Mexico failed to ensure a **transparent and predictable framework** for Metalclad’s business, planning and investment. The totality of these circumstances demonstrates a lack of orderly process and timely disposition in relation to an investor of a party acting in the expectation that it would be treated fairly and justly in accordance with the FTA.”

Source: Metalclad Corp. v. Mexican, ICSID, 2001 (International Arbitration Decision)

Myanmar New Foreign Investment Law & Double Tax Treaty

Dated on 28th November 2012 @ Holiday Inn Silom

08.30 Registration & Morning Coffee

09.00 – 12.00

What Management Needs to Know About New Myanmar Foreign Investment Law and Key Myanmar Business Law

Dr. Ninnual Piewthonggam, Myanmar Investment Law Specialist, AEC Strategy Center, UTCC

- Update new Myanmar Foreign Investment Law and implications for Thai investors
- Foreign investment environment and important Myanmar issues
- Myanmar Investment Commission (MIC) and foreign direct investment policy
- Promoted business sectors and restriction on foreign investment
- Legal aspects for restructuring investment into Myanmar
- Industry specific overview : Impact of the new foreign investment law
- Joint venture agreements and partnership structures between domestic and Thai investors in Myanmar
- Legal impact of the new foreign investment law on the key sectors
- Minimum amount requirement of foreign investment
- Remitting profits out of Myanmar for foreign investors
- Foreign investment under Burma Companies Act
- Land rights for foreign investment in Myanmar
- Critical aspects of land lease requirements
- Key issues on employment and labor law
- Banking system and foreign exchange control
- Interaction between Myanmar Foreign Investment Law and Burma Companies Act
- Myanmar tax system
- Tax incentives, tax relief conditions, tax holiday and management
- New employment law reforms and updates
- Foreign exchange control issues
- How to finance a project in Myanmar
- Intellectual property protection in Myanmar
- Investing in infrastructure projects in Myanmar: Legal implications

“As **Myanmar** returns to the world stage, Thailand can play a key supporting role in the early stages. Thai investors should seize the opportunity to invest in Myanmar within the next three years before the Asean Economic Community is formed in 2015.”

H.E. Mr. Pisanu Suvanajata, Thai Ambassador to Myanmar

Source: Bangkok Post, 10/9/2012

“Thai investors, particularly in the manufacturing and tourism industries, have been urged to explore opportunities in **Myanmar** and take action within three years or face greater competition from global heavyweights after the 2015 general election.”

Source: *The Nation*, 16th October 2012

Myanmar New Foreign Investment Law & Double Tax Treaty

13.30 – 15.30

How does the Bilateral Investment Treaty between Thailand – Myanmar and ASEAN Comprehensive Investment Agreement (ACIA) Protect Foreign Investors in Myanmar?

Dr. Wilawan Chaimankankul, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Thailand

- How does BIT Thailand – Myanmar protect Foreign investment in Myanmar?
- Comparison between ASEAN Comprehensive Investment Agreement (ACIA) and BIT Thailand v. Myanmar
- Interaction & conflict between BIT TH - Myanmar and ACIA
- Substantive protection provided by BIT Thailand v. Myanmar or ACIA
 - ⇒ Fair & Equitable Treatment

“The fair and equitable treatment standard obliges the State to respect procedural propriety and due process. The host state’s decision lacked transparency and due process and was unfair, in contradiction with the requirements of the fair & equitable treatment principle.”

Source: Rumeli Telecom v. Kazakhstan, ISCID, 2010.

- ⇒ National Treatment and MFN
- ⇒ Free transfer
- ⇒ Subrogation
- ⇒ Market access
- ⇒ Certificate of Approval for Protection : C.A.P.
- ⇒ Expropriation & indirect expropriation and Compensation

“A ‘creeping expropriation’ is comprised of a number of elements, none of which can constitute the international wrong. These constituent elements include non-payment, non-reimbursement, cancellation, denial of judicial access, actual practice to exclude, non-conforming treatment, inconsistent legal blocks, and so forth.”

Source: Waste Mgmt. Inc. v. Mexico, ICSID case, June 2000.

- **Stabilization clauses – Legal tools to mitigate risks associated with Myanmar investment**
 - ⇒ Types of stabilization clauses
 - ⇒ What is the purpose and function of a stabilization clause?
 - ⇒ (Tax) Stabilization Clause : Resolving tax dispute with the Myanmar tax authorities
 - ⇒ Can a breach of ‘Stabilization Clause’ constitute an expropriation of ACIA or BIT Thailand v. Myanmar?

“Although fair & equitable treatment is not defined in the treaty, the Preamble clearly records the agreement of the parties that such treatment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources. The stability of the legal and business framework is thus an essential element of fair and equitable treatment.”

Source: Occidental Exploration v. Ecuador, ISCID, 2004.

- **Multilateral Investments Guarantee Agency (MIGA) : Non-commercial insurance & investment risk management in ASEAN and Myanmar**
- **What Foreign investors need to know the real case studies from international arbitration under ISCID? : Resolving investment disputes with the Myanmar Government Authorities**
 - ⇒ Change in law or tax law
 - ⇒ Creeping expropriation
 - ⇒ National treatment
 - ⇒ Fair & equitable treatment

“...the ways in which governmental authorities may force a company out of business, or significantly reduce the economic benefits of its business, are many. Denial of access to infrastructure or necessary raw materials, imposition of unreasonable regulatory regimes, have been considered to be expropriatory actions”. Reasonable governmental regulation of this type cannot be achieved if any business that is adversely affected may seek compensation, and it is safe to say that customary law recognizes this.”

Source: Marvin Feldman VS. United Mexican States, ICSID case, 2002.

Myanmar New Foreign Investment Law & Double Tax Treaty

15.45 - 17.00

Taking Advantages of Double Tax Agreement between Thailand - Myanmar

Dr. Arthit Sattthavorasit, Thai Revenue Department

- Points to pay attention to by the Thai companies when claiming treaty benefits
- When Permanent Establishment (PE) will be created in Myanmar according to the TH – Myanmar tax treaty and possible ways to mitigate the PE risk?
 - ⇒ PE for furnishing of services
 - ⇒ Supervisory activities in connection with a construction project in Myanmar
 - ⇒ Oil & gas service providers and PE risk
 - ⇒ Combination of auxiliary and preparatory activities
 - ⇒ Stock delivering agent
 - ⇒ Arm's length exception for independent agents with one principal

“An enterprise of a Contracting State shall not be deemed to have a permanent establishment (PE) in the other Contracting State merely because it carries on business in the other State through.....agent of independent status,..... However,..he shall not be considered an agent of independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.”

Source: Article 5 (6) of TH - Myanmar DTA

- Tax treaty on dividend distributions
- Myanmar Tax Treaty and Beneficial owner : Dividend, interest and royalty
- Cross border computer software payments
- Capital gains from sale of shares
- Tax Sparing Credit : Opportunities for Thai investors in Myanmar

‘Tax Sparing Credit’ is a credit granted by the Myanmar tax authority, to foreign taxes which for some reason were not actually paid to the source country but were payable under the country's normal tax rules. Non-payment of tax or a tax holiday occurs due to tax incentive provided by Myanmar to foreign or Thai investors to encourage investment and business in Myanmar. In the absence of tax sparing, the actual beneficiary of a tax incentive provided by Myanmar to attract foreign investment may be the residence country (Thailand).

- Transfer Pricing for cross border transactions between Thailand and Myanmar
- Treatment of royalties and consultancy or technical services in Myanmar
- Is Joint Venture entitled to a tax treaty protection?
- Tax implications of cross-border leasing of equipment
- Avoiding tax traps with short-term assignments
- Non-discrimination under the tax treaty: Thai investor's protection
- Other interesting aspects of the tax treaty

Overview :

- ◇ Why a Double Taxation Agreement (DTA) would be beneficial for Thai resident in Myanmar?
- ◇ How best to maximize the use of DTA provisions in particular with regard to technical or managerial support services rendered from Thailand?
- ◇ Do you need an intermediate holding company to hold the investment in Myanmar in view of potential risks?
- ◇ Do **technical or consulting services** performed by a Thai enterprise in Myanmar constitute a PE?
- ◇ Would there be any withholding tax on **interest** paid by a local company to a non-resident?
- ◇ Does a combination of auxiliary or preparatory activities lead to having a PE for a non-resident enterprise?
- ◇ Is any withholding tax imposed on **dividends** paid by a locally resident company to a non-resident?
- ◇ Agency PE does not exist as long as it is not shown that the transactions between the agent and the taxpayer **are not made under arm's length conditions**. What will this mean to you?

Myanmar New Foreign Investment Law & Double Tax Treaty

ADMINISTRATIVE DETAIL

Our Tax ID No: 0105550042885

METHOD OF PAYMENT:

() Crossed cheque made payable to
Unique Seminar and Training Co., Ltd.

() Bank Transfer to
Unique Seminar and Training Co., Ltd.

() SIAM COMMERCIAL BANK
/ Thanon Phetchaburi
Saving Account No.0082710867

() BANGKOK BANK / Urupong
Saving Account No.149-0-96241-0

*(Please kindly fax pay-in slip including
a copy of withholding tax document to
02-2156822)*

INCORRECT MAIL INFORMATION

It is possible that you will receive multiple mailings of this event or incorrect company details on the labels, for which we apologize. If this happens, please let us know so that we can update our database immediately. If you do not wish to have your name on our mailing list, please let us know and we will remove it. *Remark: Speakers and programs are subject to be changed without notice.*

FOR NORMAL REGISTRATION

In order to avoid any inconvenient circumstances to delegates at the conference, payment should reach us 7 days after the registration form is submitted

ENQUIRIES

Please call our conference administrator
Tel: (662) 6120101 if you need more
Information about the seminar conference

CONFERENCE DATE

Wednesday 28th November 2012

09.00-17.00

Venue : Holiday Inn Silom, Bangkok

4 EASY WAY TO REGISTER OR ENQUIRE



TELEPHONE :
(66)02-612-0101 , (66)02-2156822
(66)02-215-1156 , 081-937-1766



FAX : (66)02-6120869



Email :
contact@uniqueseinar.com
Website:
Http : // www.uniqueseinar.com



Unique Seminar and Training Co., Ltd.
62/1 Phetchaburi Road ,
Phetchaburi Road Sub-District ,
Rajthwee District ,
Bangkok 10400

Please register the following delegate (s) for the conference: Myanmar New Foreign Investment Law & Double Tax Treaty

- 1) Name: _____ CPD No. _____ Position: _____ Email: _____
- 2) Name: _____ CPD No. _____ Position: _____ Email: _____
- 3) Name: _____ CPD No. _____ Position: _____ Email: _____

Company: _____

Address: _____

City: _____ Zip Code: _____ Country: _____

Tel: _____ Fax: _____ Company Email: _____

Name & Title of Approving Manager: _____

Nature of Business: _____

Registration Date : ____/____/____

This course will be held in English.

Fee for one delegate <i>(Fee include lunch, refreshments and Materials)</i>	Early Bird (Thai Baht) Payment Before 22nd November 2012 <u>(one person)</u>	Normal (Thai Baht) Payment within 23rd - 28th Nov 2012 <u>(one person)</u>	Extra Price Payment Before 23rd November 2012 <u>(two person)</u>
Registration Fee	12,000.00	14,000.00	21,000.00
VAT 7% (+)	840.00	980.00	1,470.00
Withholding Tax 3% (-)	(360.00)	(420.00)	(630.00)
TOTAL PAID	12,480.00	14,560.00	21,840.00

Early Bird !! Save Money ...Register Early ...Seating is limited Call 02-612-0101 , 02-612-0869 , 02-215-1156