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MYANMAR INSIDER

THIS MONTH'S INSIDER NEWS ON BUSINESS, LUXURY, REAL ESTATE, LIFESTYLE & LEISURE

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INSIDE INSIDER

Investing in Rubies p.5

Rubies are unquestionably the most sought after of all the precious gemstones in the world, and amongst the most expensive. There are only a few countries in the world that produce rubies, with Myanmar being the industry leader, generating over 80 percent of the world's supply of precious rubies.

Progress for Ooredoo p.27

Digicel Asian Holdings, comprised of the Digicel Group, the First Myanmar Investment Co. Ltd and Yoma Strategic Holdings Ltd, has signed an agreement with Ooredoo Myanmar to develop, construct and lease telecommunications towers in Myanmar. We understand from management sources that detailed terms regarding ownership and capital outlay for the consortium are still being negotiated and will be announced in due time.

Five of the Finest - Luxury Bags p.26

Like most things in life, exclusivity leads to desirability. If what you want is not immediately available, then the desire for the object intensifies until you just need to have it. Such is the case with beautiful and elegant luxury bags.

PROFESSIONAL INSIDER

MOE KYAW

Cover story, P.8

The tale of how winning a competition in 1997 led to a trip to Manila and a career in accountancy. The Managing Partner of Win Thin & Associates tells the Myanmar Insider of his journey to the top of his profession and his view on the tremendous opportunities ahead.

Doing Business in Myanmar

By Jack Sheehan and William Greenlee, Partners at DFDL

Myanmar is a highly promising land for businesses and investors, which continues to experience rapid economic growth. In 2013, the gross domestic product (GDP) was estimated to be US$884 per capita, which is 6 percent more than the estimates provided for 2012 and 2011. As of June 30, 2013, foreign investments in Myanmar totalled more than US$42B, with the largest investments coming in the power, oil and gas, mining and manufacturing sectors. Nestled between markets of over two and a half billion persons and boasting a population of over 60 million (of which 46 million are of working age), Myanmar, flush with natural resources and a large work force, is in a prime position to experience dynamic economic growth in the years to come.

The Myanmar Parliament is actively working to develop a modern legal and regulatory environment that will further encourage foreign direct investment (FDI). The recent flurry of new laws that are being drafted and enacted have given investors a clearer picture of their rights and obligations when investing, as well as the direction in which the country is heading.

As a prime example, we can highlight the following three important changes: Myanmar's accession to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ("New York Convention"); the recent enactment of the Central Bank of Myanmar Law, 2013 ("Central Bank Law"), which provides independence to the Central Bank of Myanmar from the Ministry of Finance and Revenue; and the Securities Exchange Law, 2013 ("Securities Exchange Law"), which provides the framework for the establishment of a stock exchange. [1]

On July 15, 2013, Myanmar became the 149th contracting state to the New York Convention. This is a significant economic and legal step forward. Once the government adopts domestic legislation implementing the convention, Myanmar courts will be obliged to give effect to foreign arbitration clauses and to enforce arbitral awards made in other member states. Foreign investors, as between themselves, will be able to choose a neutral offshore in advance for the resolution of any disputes that may arise.

With the passage of the new Central Bank Law, the Central Bank of Myanmar will become an autonomous body, acting more independently from the Ministry of Finance. This relaxation in regulation and control seems to indicate the opening up of the banking industry to more international participation and the rules and regulations issued under the repealed Central Bank of Myanmar Law still remain in force for the time being. The Myanmar government has indicated that new rules and regulations are forthcoming and may provide foreign banks the opportunity to participate in Myanmar's banking industry. The opening up of Myanmar's banking sector towards foreign banks would be a significant evolution, as foreign banks are currently restricted to setting up representative offices only. [2]

In addition to establishing the framework for a proper stock exchange, the Securities Exchange Law established the Securities and Exchange Commission, which is the main regulatory body and will supervise the securities market, set out the licenses available for securities businesses (dealing, brokerage, underwriting, investment advisory and company's representative), provide for the establishment of an over the counter market, set out the prohibited acts in relation to securities trading (e.g. insider trading) and the relevant penalties, and provide for the establishment of a securities depository and clearing business. The next step is for the government to publish the associated rules, which will provide further details on the Security Exchange Law. With this first step toward developing a capital market in Myanmar, further progress must be made, including updating the Myanmar company law legislation (which we understand is underway) and establishing a robust regulatory and reporting framework, which will be able to withstand the scrutiny of domestic and international investors. Nevertheless, the Securities Exchange Law is another step forward towards the modernisation of Myanmar.

Of course, Myanmar still has some way to go, but no one can doubt that progress is being made and that there appears to be is a strong political will to continue with the reforms in both the economic and political arenas.

Foreign Investment Law, 2012

On November 2nd, 2012, the new Foreign Investment Law ("FIL") was enacted; designed to jumpstart the development of wealth, infrastructure and productivity in Myanmar.

The new FIL and the implementing rules and regulations issued thereunder provide increased areas where foreign investment is allowed, greater flexibility as to the form of the investment, including less rigid rules regarding joint ventures, enhanced tax and investment incentives, logical solutions for the settlement of disputes, as well as a strengthening of the legal framework for the use of land, employment related matters and the remittance of foreign currency.

The Myanmar Investment Commission ("MIC") is the regulatory authority empowered under the FIL, with broad discretionary powers to implement the objectives of the FIL, including approving foreign investment projects and dictating the terms and conditions under which such projects can be carried out.

(1 While Myanmar already has a small stock exchange in operation with two listed securities, the lack of a comprehensive regulatory framework has prevented its development. The Myanmar government appears to be determined to rectify the previous shortcomings with the enactment of this new law.)

(2 Deputy Finance Minister Maung Maung Thien mentioned that these rules and regulations may allow foreign banks to operate in Myanmar through joint ventures. In February of 2013, President Thein also announced that foreign banks may be permitted to enter Myanmar with majority owned joint ventures with local banks. These joint ventures would then eventually be followed by wholly owned subsidiaries and then full branches. However, the regulatory and licensing structure for foreign banks remains unclear.)

It is expected that the MIC will soon publish new procedural regulations that will be helpful to further understanding the methodology used by the MIC when scrutinising investment proposals. Whilst some uncertainties surrounding the practical implementation of these changes still remain, it cannot be denied that the FIL has been favourably received by foreign observers and a large part of the international investment community.

Foreign Investment and Restrictions

According to the FIL, when an investment proposal is made with regards to a business, project, sector, or an asset has been specially designated by notification, the investment may be carried out under any of the following corporate forms:

a) A 100 percent foreign owned company
b) A joint venture company formed by a foreigner and a Myanmar citizen, or government department or organisation, or
c) A public/private partnership, including a BOT contract or other analog system

Alternatively, a foreign entity may establish a branch office in Myanmar, which will be capable of engaging in revenue generating activities, as long as those are permitted under the memorandum and articles of association of the parent company. Generally, as a branch is not specifically designated as a permissible corporate form for investment under the FIL, branch offices are registered by foreign firms that are engaged in investment activities that do not require a permit from the MIC.

Certain activities have by notification been expressly prohibited to foreign investment, including those that are potentially detrimental to public health or the environment, could be prejudicial to the culture of the country, as well as certain services and/or manufacturing activities that are related to agriculture, livestock and fisheries activities. Yet, even in these sectors foreign investment will be allowed with prior permission of the State.

Tax Incentive under Foreign Investment Law

Projects that gain approval by the MIC under the FIL can apply for tax incentives. A key tax incentive available to foreign investors is a five year holiday from corporate income tax. The five year period commences at the beginning of commercial operations. In addition, investors may apply for designated discretionary benefits, including the following:

a) The right to pay income tax on the income of foreigners at the rates applicable to the citizens residing in Myanmar.
b) Exemption/relief from customs duty or other internal taxes (or both) on machinery, equipment, instruments, machinery components, spare parts and materials used in the business that are imported, as they are actually required for use during the period of construction of the business.
c) Exemption/relief from customs duty or other internal taxes (or both) on raw materials imported for production for the first three years after completing construction of the business.

For projects qualifying for an investment permit from the MIC, the above mentioned benefits can be substantial. The current corporate income tax rate in Myanmar is 25 percent, and thus the five year corporate income tax exemption alone can be justified in a cost benefit analysis to apply for an investment permit with the MIC. Additionally, imports into Myanmar are generally subject to both customs duties and commercial tax. Customs duty rates vary from item to item. However, commercial tax is fixed at five percent, except for a few specially designated items that carry a higher rate. Therefore, exemption from taxes on imports into Myanmar can be very beneficial to investors.

The above points are the main tax incentives under the FIL that investors are regularly concerned about. There is a list of further discretionary incentives that investors can apply for with the MIC.

Challenges of Doing Business in Myanmar

While the foregoing has sought to highlight some of the important changes happening to Myanmar's investment climate, a cautionary approach to investment in Myanmar is still recommended.

Both the European Union and Australia have lifted their economic sanctions imposed on Myanmar and the United States have eased theirs. It is still advisable for investors to identify any potential issues that could arise by referring first to the Specially Designated Nationals List (published by the US Department of the Treasury) before doing business with any Myanmar national or Myanmar company.

Another challenge facing investors is that Myanmar's institutions are neither savvy nor well experienced in the content or implementation of Myanmar's laws and regulations. Investors will often face civil servants who are either inexperienced or unclear on what needs to be done. Myanmar's institutions, and the persons staffing them, are learning as they go, so an investor must be determined in order to successfully navigate this sometimes frustrating regulatory environment.

Myanmar also faces challenges with regard to the next general election in 2015. The newly elected government must continue on the current path of reform despite the hurdles it will face. Among the greatest challenges will be a young banking system, a developing network of infrastructures and a generally weak educational system.

Despite the challenges, there are many opportunities for foreign investors in Myanmar in fast moving consumable goods, real estate, transportation and chemical related activities, to name just a few, and all of them are significantly encouraged and rewarded. Of course, with the further economic opening of the country, there will be other opportunities across the board in many other sectors. For instance, the current restrictive regulatory framework related to insurance, banking, vocational training and retailing activities is expected to change soon, either by or before 2015.