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Myanmar revises scope of prohibited and restricted activities for foreign investment

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Speed read

On 14 August 2014, the Myanmar Investment Commission (**MIC**) issued a new notification clarifying the activities in which foreign investment is prohibited or restricted.

In this client bulletin, we highlight the main provisions of the MIC notification and provide an overview of the activities that are now prohibited or restricted for foreign investment in Myanmar.

Overview

The legal and regulatory framework governing foreign investment in Myanmar is set out in a number of instruments, including:

- the Foreign Investment Law (2012)¹ (**Foreign Investment Law**);
- the Foreign Investment Rules (2013)² (**Foreign Investment Rules**) issued by the Ministry of National Planning and Economic Development (**MNPED**) on 31 January 2013; and
- orders, notifications and directives issued by MIC from time to time.

On 31 January 2013, MIC issued a notification outlining prohibited and restricted activities for foreign investment³ (**2013 Notification**). For further information on the Foreign Investment Law, the Foreign Investment Rules and the 2013 Notification, please see our client bulletins *Myanmar enacts new foreign investment law* dated 14 November 2012 and *Myanmar issues foreign investment rules* dated February 2013.

MIC issued Notification No. 49/2014⁴ (**New Notification**) on 14 August 2014 following months of speculation of a move by MIC to issue a revised list of prohibited and restricted activities. The New Notification repeals the 2013 Notification and clarifies the nature and scope of activities in which foreign investment is either prohibited or restricted. In particular, the New Notification expands the list of activities required to

¹ Union Parliament Law No. 21, 2012

² Foreign Investment Rules, Government of the Republic of the Union of Myanmar, Ministry of National Planning and Economic Development, Notification No. 11/2013 (31 January 2013)

³ The Republic of the Union of Myanmar, Myanmar Investment Commission, Notification No. 1/2013 (31 January 2013)

⁴ The Republic of the Union of Myanmar, Myanmar Investment Commission, Notification No. 49/2014 (14 August 2014)

be undertaken by way of a joint venture with Myanmar citizens or, in certain cases, a ministry or government department.

The 2013 Notification also prescribed the activities that required an environmental impact assessment (**EIA**) to be undertaken. These activities are now listed in Notification No. 50/2014⁵ (**EIA Notification**) which was also issued on 14 August 2014. MIC subsequently issued Notification No. 51/2014⁶ (**Tax Notification**) on 19 August 2014. The Tax Notification lists the activities that do not qualify for the customs duty and commercial tax exemptions set out in the Foreign Investment Law or the Myanmar Citizens

Investment Law (2013)⁷ (**Myanmar Citizens Investment Law**). See “*Other recent and pending amendments to the foreign investment framework*” below for further details. Official English translations of the **New Notification**, the **EIA Notification** and the **Tax Notification** are available on the website of the Directorate of Investment and Company Administration (**DICA**).

The New Notification goes some way towards clarifying the nature and scope of prohibited or restricted activities for foreign investment and, in some respects, aligns the regulatory framework with current practice. It remains to be seen, however, how the New Notification will be interpreted and applied by MIC and the relevant ministries and government departments.

⁵ The Republic of the Union of Myanmar, Myanmar Investment Commission, Notification No. 50/2014 (14 August 2014)

⁶ The Republic of the Union of Myanmar, Myanmar Investment Commission, Notification No. 51/2014 (19 August 2014)

⁷ The Pyidaungsu Hluttaw Law No. 18 (29 July 2013)

The new notification

What forms of investment are permitted?

The Foreign Investment Rules provide that 100% foreign ownership is permitted except in relation to activities that MIC prescribes from time to time. The 2013 Notification classified prohibited and restricted activities into three separate categories, being activities in which foreign investment is: (a) prohibited or restricted; (b) permitted only by way of a joint venture with Myanmar citizens; or (c) permitted on the recommendation of, and in accordance with, specific conditions imposed by the relevant ministry. The 2013 Notification also prescribed in some detail the activities that fell within the scope of each of these categories. For further information on the 2013 Notification, please see our client bulletin *Myanmar issues foreign investment rules* dated February 2013.

The 2013 Notification received some criticism for being drafted hastily (and in some respects, with minimal input from the relevant ministries) in order to coincide with the issue of the Foreign Investment Rules, which were required by law to be issued within 90 days of the enactment of the Foreign Investment Law. As a result, the 2013 Notification was drafted in broad and often contradictory and uncertain terms.

MIC has sought to address some of the discrepancies and uncertainties in the 2013 Notification with the issue of the New Notification. The New Notification provides that 100% foreign ownership is permitted except in relation to the following three categories:

Category 1	Activities in which foreign investment is prohibited
Category 2	Activities in which foreign investment is permitted only by way of a joint venture with Myanmar citizens
Category 3	Activities in which foreign investment is permitted in accordance with “specific conditions”, including: Category 3(a): Activities in which foreign investment is permitted: – on the recommendation of the relevant ministry; and – only by way of a joint venture with Myanmar citizens Category 3(b): Activities in which foreign investment is permitted: – in accordance with “other conditions”; and – only by way of a joint venture with Myanmar citizens, the relevant ministry or government department (as prescribed)

As with its predecessor, the New Notification prescribes in some detail the activities that fall within the scope of each of these categories and certain exceptions apply to the prohibition on 100% ownership within Categories 1 and 3 (see “*What activities are prohibited or restricted under the New Notification?*” below).

How does the New Notification affect the foreign ownership restriction for joint ventures?

Under the Foreign Investment Law and Foreign Investment Rules:

- The foreign to domestic ownership ratio for joint ventures in activities that **are not prohibited or restricted** is subject to the agreement of the parties, although MIC has power under the Foreign Investment Law to prescribe a minimum foreign ownership requirement on a case-by-case basis depending on the nature of the proposed investment.
- Foreign ownership in a joint venture with a Myanmar citizen (as opposed to the state) **in a prohibited or restricted activity** is limited to 80% of the total

investment amount, although MIC may amend this restriction by notification with the approval of the government. This restriction does not expressly apply to joint ventures between a foreign investor and the state.

Although the New Notification does not affect the broader restrictions set out above, it does impose a maximum foreign ownership threshold of less than 80% for certain activities, including the domestic distribution and export of certain crops (see “*What activities are prohibited or restricted under the New Notification?*” below).

What activities are prohibited or restricted under the New Notification?

The tables below summarise the key activities that fall within the scope of Categories 1, 2 and 3 of the New Notification and highlight the key differences between the New Notification and the 2013 Notification. MIC may, however, amend these activities from time to time with the prior approval of the government where the amendment is in the interests of the state and Myanmar citizens.

Category 1 – Prohibited Activities		
Examples of Category 1 Activities	Key differences between the 2013 Notification and the New Notification	Is foreign investment permitted in a Category 1 Activity?
<p>Mining</p> <ul style="list-style-type: none"> – Small and medium scale mineral production – Prospecting, exploration and production of jade and gemstones 	<p>Activities that are no longer prohibited under the New Notification</p> <p>Twenty one activities were listed as Category 1 Activities in the 2013 Notification. Eleven activities are now listed as Category 1 Activities in the New Notification. The 2013 Notification prohibited foreign investment in the following activities, among others:</p> <ul style="list-style-type: none"> – Power: electricity trading; 	<p>Prima facie no, but MIC may permit foreign investment in a Category 1 Activity if it is in the interests of the state to do so</p> <p>Category 1 Activities are permitted to be undertaken by Myanmar citizens only. However, MIC may, in its discretion, permit foreign investment in a Category 1 Activity where the investment is in the interests of the state and Myanmar’s citizens, particularly Myanmar’s ethnic groups.</p>
<p>Power</p> <ul style="list-style-type: none"> – Supervisory control of Myanmar’s electric power system 	<ul style="list-style-type: none"> – Manufacturing: production of substances prohibited under certain international conventions, including the Vienna Convention for the Protection of the Ozone Layer and the Stockholm Convention on Persistent Organic Pollutants; – Agriculture: activities in contravention of Myanmar’s legal and regulatory framework for agricultural activities; and 	
<p>Defence</p> <ul style="list-style-type: none"> – Manufacturing of arms and ammunition and related services 	<ul style="list-style-type: none"> – Environment: activities prohibited under Myanmar’s legal and regulatory framework for environmental conservation, including activities that may cause environmental damage. <p>These activities are not expressly referred to in the New Notification, whether as Category 1 Activities or otherwise. Although foreign investment in these activities is no longer prohibited or restricted, it will likely be subject to requirements or restrictions imposed under the applicable legislative and regulatory frameworks and/or by the relevant ministries or government departments.</p>	
<p>Media</p> <ul style="list-style-type: none"> – Certain broadcasting and publishing activities without government approval 	<p>Remaining uncertainties</p> <p>As with its predecessor, the New Notification does not contain any guidance as to what “supervisory control of Myanmar’s electric power system” may entail and it remains unclear whether this is intended to cover transmission. Similarly, the New Notification does not contain any guidance as to what constitutes “small” or “medium scale” mineral production. MIC will determine whether a proposed investment falls within these thresholds on a case-by-case basis.</p> <p>Foreign Investment Rules</p> <p>The Foreign Investment Rules also prohibit foreign investment in such activities as the drilling of shallow oil wells up to 1,000 feet and traditional and small scale agriculture and livestock breeding. The New Notification does not affect the prohibition on foreign investment in such activities.</p>	

Category 2 – Activities permitted only by way of a joint venture with Myanmar citizens

Examples of Category 2 Activities	Key differences between the 2013 Notification and the New Notification	Is foreign investment permitted in a Category 2 Activity?
<p>Power</p> <ul style="list-style-type: none"> – Small and medium scale production of electricity <p>Manufacturing and consumer goods</p> <ul style="list-style-type: none"> – Manufacturing and domestic marketing of cereal products and confectionery – Manufacturing and the preserving, canning and domestic marketing of other food products except milk and dairy products – Manufacturing and marketing of malt, malt liquors and non-aerated products and purified ice – Manufacturing of purified drinking water, plastic and rubber – Packaging – Manufacturing and marketing of all kinds of paper, raw materials for paper and paper-related products – Distilling, blending, rectifying, bottling and marketing of all kinds of spirits, alcohol, alcoholic and non-alcoholic beverages – Manufacturing of pharmaceutical raw materials – Manufacturing and marketing of chemicals available domestically, solid, liquid and gaseous fuel and aerosols, oxidants, corrosive chemicals and industrial chemical gases (excluding petroleum and gas products) <p>Real estate</p> <ul style="list-style-type: none"> – Development, sale and lease of residential buildings – Development and sale of commercial/office buildings <p>Services</p> <ul style="list-style-type: none"> – Domestic and international air transport services 	<p>Activities in which 100% foreign investment is now permitted</p> <p>The following activities, among others, were prescribed as Category 2 Activities under the 2013 Notification and were therefore required to be carried out by way of a joint venture with Myanmar citizens:</p> <ul style="list-style-type: none"> – Mining: large scale mining (although the 2013 Notification did not contain any guidance as to what constitutes “large scale”) and the exploration and production of industrial minerals; and – Infrastructure: the construction of transport infrastructure. <p>These activities are not expressly referred to in the New Notification, whether as Category 2 Activities or otherwise. Although 100% foreign investment is now permitted in these activities, certain activities relating to the construction of railways and related infrastructure and services are now listed as Category 3 Activities under the New Notification and must therefore be undertaken by way of a joint venture with Myanmar citizens with the approval of the government and the Ministry of Railways.</p> <p>Activities in which 100% foreign investment is no longer permitted</p> <p>The Foreign Investment Rules prohibit foreign investment in the generation of electric power below 10 megawatts. The 2013 Notification, however, did not refer to small or medium scale power production. The New Notification now categorises small and medium scale power production as a Category 2 Activity, although it does not provide any guidance as to what may constitute “small” or “medium scale”. Electricity generation is a Reserved Activity (see “<i>What is the interplay between the State-owned Economic Enterprises Law and the New Notification?</i>” below) and it remains open for the Ministry of Electric Power to impose additional restrictions or requirements on investors engaging in small and medium scale power production.</p> <p>Other clarifications</p> <p>The New Notification confirms that the restriction on the manufacturing and marketing of chemicals derived from natural resources available domestically, solid, liquid and gaseous fuels and aerosols, oxidants, corrosive chemicals and industrial chemical gases does not apply to petroleum and gas products. See Category 3 below for information on restrictions on the distribution and sale of oil, gas and petroleum products under the New Notification.</p>	<p>Yes, but only by way of a joint venture with Myanmar citizens</p> <p>Foreign investment in a Category 2 Activity is permitted only by way of a joint venture with Myanmar citizens.</p> <p>The foreign capital invested in a joint venture between a foreign investor and a Myanmar citizen (as opposed to the state) in respect of a Category 2 Activity must not exceed 80% of the total investment amount.</p>

Category 3 – Activities permitted subject to “specific conditions”

Examples of Category 3 Activities	Key differences between the 2013 Notification and the New Notification	Is foreign investment permitted in a Category 3 Activity?
3(a) – Activities permitted on the recommendation of the relevant ministry and which must be by way of a joint venture with Myanmar citizens		
Ministry of Livestock, Fisheries and Rural Development – Export and import of animals and fishery products (including live fish species)	Joint venture requirement Whereas most of the Category 3 Activities prescribed in the 2013 Notification were not subject to a joint venture requirement, the Category 3 Activities specified in the New Notification must now be undertaken: – in respect of Category 3(a) Activities, by way of a joint venture with Myanmar citizens; and	Yes, but only by way of a joint venture with Myanmar citizens and on the recommendation of the relevant ministry
Ministry of Environmental Conservation and Forestry – Eco-tourism – Activities relating to the reduction of carbon emissions – Importing, exporting, breeding and the production of wild flora and fauna species for commercial purposes	– in respect of Category 3(b) Activities, by way of a joint venture with Myanmar citizens, the relevant ministry or government department, as prescribed. As with its predecessor, the New Notification requires a Category 3(a) Activity to be undertaken on the recommendation of the relevant ministry.	The foreign capital invested in a joint venture between a foreign investor and a Myanmar citizen (as opposed to the state) in respect of a Category 3 Activity must not exceed 80% of the total investment amount.
Ministry of Industry – Manufacturing and marketing of soft beverages, aerated and non-aerated products – Manufacturing of medicinal drugs using controlled chemicals	Ministry of Industry Beverages: The 2013 Notification provided that the manufacturing and marketing of soft beverages, aerated and non-aerated products was subject to a 20% local material requirement, which increased to 60% after three years. Although the New Notification does not specify any local material requirement, it remains open for the Ministry of Industry to impose such a requirement (and others) in providing its recommendation for an investment proposal. It remains to be seen whether the Ministry of Industry will continue to impose the minimum local material requirements set out in the 2013 Notification.	
Ministry of Communications and Information Technology – Domestic and international postal services	Ministry of Electric Power Electricity trading: The 2013 Notification provided that the sale of electricity generated by hydropower or coal-fired power plants required a joint venture with the government on a BOT basis. This activity is no longer referred to in the New Notification, whether as a Category 3 Activity or otherwise.	
Ministry of Health – Private hospitals, clinics, diagnostic services – Private production of pharmaceuticals and medical devices – Private medical/health-related education institutions	Although 100% foreign investment is now permissible, it remains open for MIC and/or the Ministry of Electric Power to impose additional requirements on a case-by-case basis. See also “ <i>What is the interplay between the State-owned Economic Enterprises Law and the New Notification?</i> ” below.	
Ministry of Information – Publication of foreign language periodical newspapers – Film production and screening – FM radio broadcasting and television broadcasting using Direct-To-Home, DVB-T2 or cable systems		

3(b) – Activities permitted subject to “other conditions” and which must be by way of a joint venture with Myanmar citizens, the relevant ministry or government department

Ministry of Energy	Joint venture requirement	Yes, but only by way of a joint venture with Myanmar citizens, the relevant ministry or government department and subject to other conditions that may be imposed by MIC and/or the relevant ministry
<p>The following activities must be carried out by way of a joint venture with the Ministry of Energy:</p> <ul style="list-style-type: none">– Oil and gas: construction and implementation of storage tanks, loading ports, pipelines, related machinery and equipment, and structures for the purposes of importing, transporting, storing, distributing and selling oil, gas and petroleum products– Oil and gas: importing, producing, constructing and installing equipment and accessories for the following purposes: (a) the exploration and refining of oil and gas by geological, geophysical and geochemical means; (b) the exploration and production of oil and gas and related laboratory services; (c) transportation and the construction of oil and gas pipelines; and (d) the construction and installation of offshore platforms– Refineries: construction and refurbishment of refineries	<p>See commentary in relation to Category 3(a) Activities above.</p> <p>Ministry of Energy</p> <p>The 2013 Notification provided that the following activities were subject to the recommendation of the Ministry of Energy:</p> <ul style="list-style-type: none">– the importation and distribution of petroleum and petroleum products as raw materials;– the exploration and production of oil and gas;– oil and gas laboratory services;– the establishment of petrochemical industries; and– the transportation, storage and distribution of oil and gas and petroleum products. <p>The New Notification broadens the scope of these activities and now requires foreign investors to establish a joint venture with the Ministry of Energy for the purposes of carrying out these activities. Further, the exploration, extraction and sale of petroleum and natural gas and the production of related products are Reserved Activities (see “<i>What is the interplay between the State-owned Economic Enterprises Law and the New Notification?</i>” below) and it remains open for the Ministry of Energy to impose additional restrictions or requirements on investors engaging in such activities.</p> <p>Ministry of Mines</p> <ul style="list-style-type: none">– Coal: The 2013 Notification provided that coal prospecting, exploration and production must be conducted by way of a joint venture with the state. Although the New Notification does not prescribe coal prospecting, exploration or production as a prohibited or restricted activity, it remains open for MIC and/or the Ministry of Mines to impose additional requirements on a case-by-case basis.	<p>The foreign capital invested in a joint venture between a foreign investor and a Myanmar citizen (as opposed to the state) in respect of a Category 3 Activity must not exceed 80% of the total investment amount. This restriction does not expressly apply to joint ventures between a foreign investor and the state.</p>
<p>Ministry of Industry</p> <ul style="list-style-type: none">– Cigarettes: the manufacture of cigarettes is subject to a 50% domestic raw material requirement for the first three years (or alternatively, at least 50% of raw materials must be purchased from export earnings of local Virginia) and a 90% export requirement. The manufacture of cigarettes is also subject to the approval of the Ministry of Industry. The New Notification does not expressly provide whether a foreign investor is required to enter into a joint venture with a Myanmar citizen, the Ministry of Industry or government department.– Production of chemicals: the production and marketing of explosive chemicals and flammable liquids and solids is permitted only by way of a joint venture with the government.	<p>Ministry of Hotels and Tourism</p> <ul style="list-style-type: none">– Hotels: The 2013 Notification provided that 100% foreign investment was permitted in relation to hotels with a rating of three stars or more, while investment in hotels rated below three stars was required to be by way of a joint venture with a Myanmar citizen. Although the New Notification does not prohibit or restrict 100% foreign investment in hotels (regardless of rating), it remains open for MIC and/or the Ministry of Hotels and Tourism to impose additional requirements on a case-by-case basis. <p>Ministry of Commerce</p> <ul style="list-style-type: none">– Retail and trading: The 2013 Notification prohibited foreign investment in small retail businesses and permitted foreign investment in supermarkets, department stores and shopping centres provided that a minimum 40% local ownership applied in the event that the investment was carried out by way of a joint venture. The 2013 Notification also required wholesaling activities to be carried out in accordance with the terms and conditions imposed by the Ministry of Commerce. Although the New Notification does not prohibit or restrict retail and wholesale trading activities, in practice, DICA still prohibits foreign investors from engaging in trading activities (although MIC may permit some trading as a secondary activity). DICA has recently announced that it proposes to permit certain trading activities by the end of 2014, although the nature and scope of this proposed amendment to the current regime remains unclear at the time of writing.	

3(b) – Activities permitted subject to “other conditions” and which must be by way of a joint venture with Myanmar citizens, the relevant ministry or government department

Ministry of Agriculture and Irrigation

The local distribution and export of crops cultivated using imported materials is permitted only for “value-added production”. Foreign investment in such activities is limited to 49%. Retail and trading could be permitted depending on the joint venture entity in question and water or border trade is prohibited. The New Notification does not expressly provide whether a foreign investor is required to enter into a joint venture with Myanmar citizens, the Ministry of Agriculture and Irrigation or a government department.

Ministry of Construction

The 2013 Notification categorised the construction and leasing of offices and commercial buildings as a Category 3 Activity and provided that foreign investment in these activities must be carried out: (i) on a BOT basis in the case of 100% foreign ownership; or (ii) by way of a joint venture with a Myanmar citizen who had the right to use the relevant land. The New Notification categorises the development and sale (as opposed to leasing) of commercial / office buildings as a Category 2 Activity (see above) and introduces “urban redevelopment” as a Category 3(b) Activity. Although the New Notification does not provide any guidance as to what may constitute urban redevelopment, it is likely that there will be some degree of overlap between the real estate development activities listed in Categories 2 and 3.

Ministry of Construction

Urban redevelopment activities to be undertaken on the recommendation of the Ministry of Construction and by way of a joint venture with the government.

How does the New Notification affect current investment projects and proposals?

Although the New Notification expressly repeals the 2013 Notification, it does not provide any guidance as to how the New Notification applies to investment proposals that MIC has already approved or that are awaiting MIC approval. However, we understand from MIC that:

- the New Notification will not apply to investment proposals approved by MIC prior to 14 August 2014 (i.e. investment proposals in respect of which MIC issued an investment permit prior to the date of issue of the New Notification); and
- MIC will consider, on a case-by-case basis, the extent to which the New Notification will apply to investment proposals submitted to MIC prior to 14 August 2014 and in respect of which MIC approval was pending as at that date.

What is the interplay between the State-owned Economic Enterprises Law and the New Notification?

The New Notification does not affect the restrictions or requirements imposed on foreign investment in activities which are reserved to the state under the State-owned Economic Enterprises Law (1989)⁸ (**SOEE Law**). Under

the SOEE Law, the government has the sole right to carry out the following activities, among others:

- banking, insurance and telecommunications services;
 - electricity generation (other than generation permitted by law to be undertaken by private individuals and co-operatives); and
 - exploration, extraction and sale of petroleum and natural gas and the production of petroleum and natural gas products,
- (each a **Reserved Activity**).

Where it is in the interests of the state to do so, the government may permit an investor to undertake a Reserved Activity either by way of a joint venture with the government and/or subject to any conditions the government may impose.

Foreign investment in a Reserved Activity falls within the operation of both the SOEE Law and the foreign investment framework, and the relevant ministry may prescribe additional requirements or exempt an investor from the operation of certain laws or regulations. It is therefore open for the relevant ministries (for example, the Ministry of Electric Power or the Ministry of Energy) to impose additional requirements or restrictions on the relevant activities outlined in the tables above.

⁸ The State Law and Order Restoration Council Law No. 9/89 (31 March 1989)

Other recent and pending amendments to the foreign investment framework

The EIA Notification

The 2013 Notification listed 34 activities which required environmental impact assessments to be undertaken.

These activities included, among others:

- exploration and production of minerals, oil and natural gas;
- construction of large dams;
- hydropower and other large scale electricity production;
- construction of oil and gas pipelines and electricity transmission lines;
- large scale agricultural activities; and
- large scale manufacturing and construction activities.

The activities requiring an EIA to be undertaken are now listed in the EIA Notification, which provides that an EIA is now required for the following additional activities:

- all mining and mineral processing activities;
- establishment of oil refineries and petrochemical plants; and

The Tax Notification

The Foreign Investment Law provides that foreign investors are entitled to enjoy the following tax exemptions:

- exemption or relief from customs duty or other internal taxes, or both, on:
 - machinery, equipment, instruments, machinery components, spare parts and materials used for an investment project, which are imported as they are required for use during the construction period; and
 - raw materials imported for production during the first three years after completion of the construction period,

(the **Customs Duty Exemption**); and

- exemption or relief from commercial tax on goods produced for export (the **Commercial Tax Exemption**).

Myanmar citizens are entitled to similar exemptions under the Myanmar Citizens Investment Law.

The Tax Notification provides that the Customs Duty Exemption and the Commercial Tax Exemption do not apply to the following activities, among others:

- manufacture of alcohol, beer, cigarettes and similar goods and related services;

- establishment of industrial zones.

Although the Environmental Conservation Law⁹ was enacted in 2012, the implementing regulations and rules which will regulate the EIA and related assessment processes (**EIA Procedure**) are still in the process of being finalised and have not yet been issued by the Ministry of Environmental Conservation and Forestry. The draft EIA Procedure that we have reviewed prescribes in a significant level of detail the activities that will require an EIA or an initial environmental examination to be undertaken and/or an environmental management plan to be prepared and implemented. The activities listed in the EIA Notification are consistent with those listed in the draft EIA Procedure. We will monitor the progress of the environmental regulations and the EIA Procedure and will update clients as further details are released.

⁹ The Pyidaungsu Hluttaw Law No. 9/2012 (30 March 2012)

- sale and distribution of gasoline, diesel, engine oil and natural gas;
- extraction of natural resources (excluding the exploration and production of oil and gas);
- construction and sale of buildings;
- leasing of vehicles, equipment and machinery; and
- restaurants and food and beverage businesses.

Investors undertaking activities relating to milk and dairy products do not qualify for the Commercial Tax Exemption but are entitled to benefit from the Customs Duty Exemption. The Tax Notification applies to investment activities permitted by MIC after the issue of the Tax Notification. We understand that MIC will consider, on a case-by-case basis, the extent to which the Tax Notification will apply to investment proposals submitted to MIC prior to 19 August 2014 and in respect of which MIC approval was pending as at that date.

The Tax Notification should be considered in conjunction with the broader amendments to the commercial tax regime that were introduced in late March 2014. We strongly encourage clients to seek tax advice in respect of the potential implications of the Tax Notification (and the broader commercial tax amendments) on their current or proposed investment activities in Myanmar.

Merger of the foreign and domestic investment regimes and MIC reform

MNPED is in the process of updating and merging Myanmar's foreign and domestic investment regimes. The International Finance Corporation is assisting MNPED with this process. The timing and content of the revised regime (including the nature and scope of any prohibitions or restrictions on foreign investment) remain unclear at the time of writing.

As part of the broader reforms to the investment regime, the government is also proposing to move MIC out from under the operation of MNPED and to bring it directly under the supervision of the President's Office. The implications of the proposed restructure, including any change to the role of DICA (which is currently the secretariat of MIC) are unclear.

Conclusion

The issue of the New Notification is a key development in Myanmar's foreign investment framework. The New Notification goes some way towards clarifying the nature and scope of activities in which foreign investment is prohibited or restricted and aligning the regulatory regime

with current practice. That said, it remains to be seen how the New Notification will be interpreted and applied by MIC and the relevant ministries and government departments.

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