

**ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Economic Cooperation Support
Programme (AECSP) - Investment Facilitation and Technical Assistance for Newer ASEAN
Members**

**DEVELOPING EFFECTIVE AND EFFICIENT BUSINESS REGULATIONS FOR THE ENTRY OF
FOREIGN DIRECT INVESTMENTS
(MYANMAR COUNTRY REPORT)**

September 2016

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LIST OF ACRONYMS

AANZFTA	ASEAN – Australia – New Zealand Free Trade Area
AEC	ASEAN Economic Community
AS License	Application Services license issued by the PTD under the Telecommunications Law
ASEAN	Association of Southeast Asian Nations
ASEAN – BAC	ASEAN Business Advisory Council
CBM Notification No. 7/2015	Central Bank of Myanmar Foreign Exchange Management Policy Notification dated 30 September 2014
CBM Directive No. 15/2012	Central Bank of Myanmar Procedures Relating to Foreign Exchange dated 8 November 2012
Certificate of Registration (Final)	Certificate of Registration (Final) issued by the DICA
Certificate of Registration (Temporary)	Certificate of Registration (Temporary) issued by the DICA
CLMV	Cambodia, Lao PDR, Myanmar and Vietnam
DCA	Department of Civil Aviation
DHSHD	Department of Human Settlement and Housing Development of the Ministry of Construction
DICA	Directorate of Investment and Company Administration
Doing Business Report 2016	Doing Business competitiveness report of the World Bank (WB) – International Finance Corporation
ECWP	Economic Cooperation Work Programme
EIA	Environmental Impact Assessment
FDA	Food and Drug Administration of the Ministry of Health
FEML (2012)	Foreign Exchange Management Law (2012)
FESR	Framework for Economic and Social Reforms
IEC	Information, Education and Communication
IEE	Initial Environmental Examination
IFC	International Finance Corporation
KCY	Kelvin Chia Yangon Ltd.
MCDC	Mandalay City Development Council
MCIL (2013)	Myanmar Citizen Investment Law of 2013
MFIL (2012)	Myanmar Foreign Investment Law of 2012
MFIL Rules	Ministry of National Planning and Economic Development Notification No. 11/2013 dated 31 January 2013, also known as the Foreign Investment Rules
MIC	Myanmar Investment Commission
MIC Notification No. 26/2016	MIC Notification No. 26/2016 dated 21 March 2016 amending the classification of the types of economic activities under the Myanmar Foreign Investment Law
MIC Permit	Permit issued by the MIC authorizing a company to conduct its economic activities under the MFIL (2012) or MCIL (2013)
MHT	Ministry of Hotels and Tourism
MOI	Ministry of Industry

MPA	Myanma Port Authority
MTC	Ministry of Transport and Communications
NCDC	Naypyitaw City Development Council
NFS-C	Network Facilities Services – Class license issued by the PTD under the Telecommunications Law
NFS-I	Network Facilities Services – Individual license issued by the PTD under the Telecommunications Law
NS	Network Services license issued by the PTD under the Telecommunications Law
OSS	One-Stop-Service established by the DICA and located at the DICA office in Yankin Township, Yangon, Myanmar
OSSC-DICA	One Stop Service Center representative of the DICA located inside the TSEZ
PAT	Proposal Assessment Team
PROJECT TEAM	Consultant hired by the AANZFTA for the preparation of the Draft Report in 2013
PSD	Private Sector Development
PTD	Posts and Telecommunications Department
SEZ Law (2014)	Myanmar Special Economic Zone Law of 2014
SEZ Permit	Permit issued by the relevant Special Economic Zone Management Committee authorizing a company to conduct its economic activities under the SEZ Law (2014)
SEZ Rules	Special Economic Zone Rules
TIPRA	Transfer of Immovable Property Restriction Act (1987)
TSEZ	Thilawa Special Economic Zone
TSMC	Thilawa Special Economic Zone Management Committee
UMFCCI	Union of Myanmar Federation of Chamber of Commerce and Industries
YCDC	Yangon City Development Council

EXECUTIVE SUMMARY

1. The ASEAN – Australia – New Zealand Free Trade Area under its Economic Cooperation Work Programme approved the ‘**Investment Facilitation and Technical Assistance for Newer ASEAN Members Project**’ (AANZ-0018-INV-02) in 2011 and was subsequently undertaken in Cambodia, Lao PDR and Myanmar from 2012 – 2014 (“**Project**”). The Project seeks to deepen and broaden the linkages among Parties by addressing impediments to investment and developing strategies for further improving the investment climate. The overarching goal is to facilitate investments within the AANZFTA area through increased transparency and more predictable investment procedures among the Parties.
2. This Report is based on the experiences, data gathered, outputs, and insights in the Republic of the Union of Myanmar. It takes into consideration Myanmar’s current investment facilitation process that includes: (a) registration of foreign and local investment; (b) issuance of the MIC Permit and SEZ Permit; (c) granting of construction permits; and (d) conducting business inspections.
3. The work assignment¹ had been designed to involve the full participation of stakeholders and to adopt a consultative process to ensure that ownership of the Project and its results rests with the stakeholders in Myanmar. Consultations were held with various government ministries and representatives from the business / private sector. The focal government ministry is the Ministry of Planning and Finance specifically its attached agency, the Directorate of Investment and Company Administration (DICA), which is the statutory body tasked with the registration and administration of associations and business entities (*e.g.*, private limited companies) under the provisions of the Companies Act (1914).
4. Data gathering and formulating recommendations were made possible through: (a) the conduct of surveys adopting a standard questionnaire to be answered by the line ministries and agencies; (b) actual on-site observation of the OSS; (c) consultations / discussion meetings with stakeholders; (d) research and desk review of reports, studies, survey results, and other publications on global competitiveness and business facilitation.
5. A foreign investor intending to conduct business activities in Myanmar must first establish a business entity with the DICA and obtain a Form of Permit under Section 27A of the Companies Act (1914). Upon preliminary acceptance of the application, the DICA will issue a Certificate of Registration (Temporary) and a Form of Permit (Temporary), which are valid for a period of six months. If the foreign investor desires to avail of investment incentives under the MFIL (2012), the foreign investor may apply for an MIC Permit (although if the business activities intended to be undertaken are covered by the MIC Notification No. 26/2016, then the foreign investor is required to secure such MIC Permit). Foreign investors may also choose to operate in a special economic zone, and apart from seeking registration under the provisions of the Companies Act (1914), may apply for an SEZ Permit to avail of

¹ The work assignment was originally undertaken and the corresponding draft final report prepared by a third-party consultant appointed by the ASEAN Secretariat, but which draft final report was subsequently supplemented by KCY following a separate engagement, but subject to the limitations outlined in Paragraph 1.3, below.

the incentives under the SEZ Law (2014). It is only after the corresponding MIC Permit or SEZ Permit is secured under the MFIL (2012) or the SEZ Law (2014) that the Certificate of Registration (Final) and the Form of Permit (Final) is issued by the DICA.

6. Applications for an MIC Permit under the MFIL (2012) require compliance with the application process of the MFIL (2012). While the MFIL Rules prescribes a 90-day period for the MIC to evaluate an application, the formal acceptance of an application is an often tedious procedure in practice as the evaluation of the sufficiency of the application is dependent on the discretion and appreciation of the relevant Investment Department of the MIC reviewing the application. Therefore, because the formal acceptance of an MIC Permit application may already result in unpredictable delays, the process of obtaining an MIC Permit may take 4 to 6 months depending on the nature of the proposed investment. In this respect, improvements may be made in enhancing the transparency of the initial evaluation process.
7. Once formally accepted by the MIC, the application goes through the standard process of evaluation under the MFIL Rules by the PAT, which includes securing recommendation letters from the relevant line ministries and agencies, and the evaluation by the MIC itself. Delays usually occur in obtaining the recommendations from the line ministries and agencies (which are coordinated internally among the MIC and the line ministries and agencies) and without which, the application will not proceed to the final stage of evaluation by the MIC. This is particularly true for business activities that are covered by otherwise state-reserved enterprises under the State-owned Economic Enterprises Law (1989) which usually require special post-registration licenses (*e.g.*, telecommunications licenses, mining permits and broadcasting licenses) under applicable Myanmar laws, but which, in practice, are issued before the MIC Permit approval process with the MIC.
8. The same difficulty exists for foreign investors intending to establish a business entity with the DICA even without an MIC Permit (that is, so-called “services companies”) considering that the evaluation of the proposed “scope of business” of such proposed business entity may also require in-principle approvals from relevant line ministries and agencies having jurisdiction over the business entity’s proposed “scope of business.” These line ministries and agencies do not have any formal guidance on allowable “scope of business” and are usually evaluated on a case-by-case and *ad hoc* basis.
9. With respect to the application for post registration permits with the OSS, we note that while the OSS provides geographic convenience and dispenses with the need for the investor to go to various agencies to process the permits, the number of processing days, costs of transaction or procedures remains the same. However, the permits that may be obtained from the OSS are limited to import/export registrations and MIC recommendations for stay permit applications.

Thus, post-registration licenses and permits needed for the conduct of certain business activities, particularly those covered under the State-owned Economic Enterprises Law (1989), must still need to be applied for and obtained from the relevant line ministry or agency after an MIC Permit (or Certificate of Registration (Final), if appropriate) has been

issued; examples of these post-registration licenses include manufacturing licenses from the MOI, among others. Hence, while these relevant line ministries and agencies are required by the MIC to issue the recommendation letters even during the MIC Permit application process, applications for the formal issuance of these licenses and permits remains a separate (and duplicated) post-registration requirement. Moreover, there is no assurance that the issuance of a recommendation letter during the MIC Permit application process translates to the ease of obtaining approval for the corresponding license or permit.

9. In view of the foregoing, we propose the following actions / recommendations:

- (a) ***Institutional / Organizational.*** Engage all involved line ministries and agencies in dialogue or discussions on how to further streamline or simplify the investment facilitation system. We suggest that for line ministries or agencies that require a post-registration license or permit under applicable Myanmar law for the conduct of business operations in Myanmar, a single application process (that is, for both the MIC Permit and the post-registration operational permit or license) be adopted; and this will require coordination between the MIC and the relevant line ministry or agency, particularly with respect to the application documents and requirements in order to avoid repeated submissions or duplicate documentation across the process of MIC Permit and post-registration license approval.

The objective therefore is to have one streamlined procedure that will enable the applicant to obtain an MIC Permit and then subsequently, the post-registration operational permit or license from the relevant line ministry or agency under a unified application process. Considering that the MIC procedure is already generally streamlined, we suggest integrating the approval process for what otherwise would be considered post-registration licenses and permits at the stage after the PAT is concluded (and the applicant is cleared to proceed for final evaluation by the MIC). Ideally, this process should dispense with the need for the applicant to undergo a separate procedure for the application of such said post-registration license or permit after the MIC Permit is issued. Thus, once the MIC Permit is granted, the relevant line ministry or agency would issue the corresponding post-registration license or permit without another set of submissions and as a matter of course.

To implement this, it will be necessary to identify and fix the application requirements for securing these post-registration licenses and permits, and integrate such requirements in the over-arching MIC Permit application process with the MIC. As a preliminary step, the MIC can begin streamlining its processes with the manufacturing sector (that is, its coordination with the Ministry of Industry for the issuance of corresponding post-registration licenses and permits from such ministry), which accounts for the most number of approved applications, totaling 642 as of July 2016.² This shall be considered as the pilot sector and will be used as a benchmark for the rest of the sectors moving forward.

² See www.dica.gov.mm [last accessed 26 August 2016].

- (b) **Capacity Building.** Once an integrated and streamlined application process has been approved, training seminars should be conducted with the participation of the relevant MIC Investment Department and the relevant line ministry or agency, in order to inform them of the common basic requirements for a particular industry and engage them into dialogue of identifying the basic issues that are needed to be addressed in the application.

- (c) **Automation of Investment Facilitation Process.** The investment facilitation process should be automated to ensure that the data of the MIC application is shared with the relevant line ministry or agency (thereby dispensing with the need of preparing multiple or additional copies of application documents). Therefore, during the application process, there should be no need to submit separate hardcopies of the MIC Permit application bundles to the relevant line ministries or agencies; the hardcopies of the MIC application bundle submitted to the MIC would be sufficient.

The objective for the automation is to create an “application database” for the MIC and the line ministries and agencies. This is intended to assist future applications by relieving the foreign investors of the burden of providing hardcopies to the line ministries and agencies separately, but most importantly providing a database of precedents that will assist the MIC and the line ministries and agencies in resolving issues in a uniform manner.

- (d) **Information, Education and Communication (IEC) Campaign.** There should be an effective and efficient IEC plan. Private/business sector could be tapped as an effective partner and the IEC must show that the enhanced investment facilitation also addresses other governance concerns in Myanmar.

1. INTRODUCTION

The AANZFTA became effective on 1 January 2010. This region-to-region agreement aims to “create a business environment that promotes certainty, predictability and transparency, so that economic operators are assured that commercial activities will not be unnecessarily interrupted or disrupted.”³ Under its ECWP specifically the investment component, the ‘**Investment Facilitation and Technical Assistance for Newer ASEAN Members Project**’ (AANZ-0018-INV-02) was approved in 2011 and was subsequently undertaken in Cambodia, Lao PDR and Myanmar (CLM) from 2012 – 2014.

Consistent with the objectives of the ECWP Component on Investment, the Project looks forward to deepening and broadening the linkages among Parties by addressing impediments to investment and developing strategies for improving the investment climate. This can be achieved by improving the investment facilitation processes and streamlining of licensing/business approval procedures.⁴

This Report is on the experiences, data gathered, outputs from the inquiries made from the government ministries and agencies, and insights in the establishment of a business entity by foreigners in the Republic of the Union of Myanmar.

1.1. Goal and Objectives

The overarching goal is to facilitate investments within the AANZFTA area through increased transparency in the investment procedures among the parties. Specifically for this assignment, the intention is to conduct preliminary research that will lead to assisting the government of Myanmar in enhancing its system for approving the establishing business entities, granting MIC Permits, construction permits and conducting business inspections.

The scope of work covers the following objectives:⁵

1. Hold consultations with representatives from line ministries and agencies and business/private sector in Myanmar on the present systems and procedures of investment facilitation as well as on the strategic direction and reforms the country wants to pursue in this area.
2. Provide inputs during the discussions on the reforms and adjustments that other countries are undertaking in enhancing their investment environment with emphasis on good practices and results from the ***Doing Business Report 2016***.⁶

³ ASEAN Economic Community Handbook for Business 2012, ASEAN Secretariat, Jakarta (November 2012), p. 88

⁴ Project Terms of Reference.

⁵ Following the preparation of the initial version of this draft Final Report, the ASEAN Secretariat appointed KCY on 28 June 2016 to further update and revise the said draft, under the following specific scope of work: (a) consider the conceptual framework to be provided by the ASEAN secretariat; and (b) review and update the draft country report of Myanmar in consultation with focal points from the DICA under the Ministry of Planning and Finance to incorporate the relevant sections from the amendments to the investment law and companies act, and include the flow diagram or matrix for mapping current investment application process.

3. Identify with main stakeholders in Myanmar the possible actions that can be pursued in order to enhance their investment environment and the roles that each of them can significantly perform in the enhanced system.
4. Identify needs and assistances that external organizations such as the AANZFTA can provide to Myanmar in undertaking investment enhancement reforms.

For this particular assignment, preliminary works were conducted to determine the future course of action for Myanmar if and when actual assistances and interventions are undertaken especially with support from AANZFTA and other international agencies.

1.2. Methodology

This work takes into consideration Myanmar's current investment facilitation process that includes: (a) registration of foreign and local investment; (b) issuance of MIC Permit; (c) granting of construction permit; and (d) conducting business inspections. These processes were used as indicators in determining the country's current investment processing system and in providing recommendations that will result to a more simplified or streamlined process.

From the inception stage, this work assignment had been designed to involve the full participation of stakeholders and to adopt a consultative process in order to ensure their ownership of the Project and its results. Activities were designed in a way that it considered and integrated the perspective of and experiences in Myanmar. Consultations were held with various government ministries including representatives from the business/private sector. This approach is valuable especially later on when the recommendations contained here are adopted and implemented. It is important that project ownership primarily rests with stakeholders in Myanmar.

The focal point government ministry in Myanmar is the Ministry of National Planning and Economic Development (now under the present government, the Ministry of Planning and Finance) specifically its agency, the DICA. Activities were consulted, facilitated, and agreed upon with the DICA, which largely assisted in project dissemination and activity coordination. Through the DICA, the active participation of other government ministries and private/business sector groups was engaged.

Data gathering and formulating recommendations were made possible with the following activities:

⁶ Annual report on the results of assessment and comparison of competitiveness among economies over time using a set of indicators and sub-indicators.

- **Survey**

A survey questionnaire was developed by the Project Team and distributed to the government ministries. The questionnaire gathered information on the role of the government in approving and registering investment applications, granting of investment and construction permits, capacity building requirements to enhance investment facilitation, and possible support assistance from external organizations like AANZFTA in enhancing the investment environment of Myanmar. The DICA facilitated the dissemination of the questionnaires and retrieval of the accomplished forms from the various offices.

A sample copy of the questionnaire is attached as **Annex A** of this Report.

- **Actual On-site Observation**

The Project Team was able to visit the OSS established by the DICA at the ground floor of its Yangon office building to provide assistance to foreign and local investors. Aside from the DICA's processing units, office space is provided, free-of-charge, to different government ministries, which has a role in investment application and registration.

- **Consultations/Discussion Meetings with Stakeholders**

There were several consultations/discussions with various government ministries and representatives from a private sector organization. The meetings served as an orientation to the Project of the stakeholders and at the same time, as an opportunity between AANZFTA and the ministries to level off on project goals and results. During the discussions, the Project Team was able to gather initial information on the current roles of the ministries in investment facilitation, the reforms initiated by each ministry within their offices to enhance investment process, and the capacity building requirements to strengthen investment approval and permitting. The meetings provided the Project Team with insights on how to proceed with follow-up activities if and when the Project goes to the reform implementation stage. An incidental outcome of the consultations was that the DICA staff which assisted the Project Team during meetings also learned of what each ministry is doing at their level to enhance investment facilitation.

- **Research and Desk Review**

To prepare for field activities and to gather sufficient background information on the Project, the Project Team conducted research and desk review of existing reports, studies, survey results, and other publications on global competitiveness and business facilitation as conducted by different international organizations, academe and private sector groups.

The AANZFTA Project Team conducted the data gathering. Inputs from KCY based on their professional knowledge as legal advisors in Myanmar and from their experience in assisting local and foreign investors in the establishment and conduct of business operations in Myanmar supplemented the information contained in this Report.

1.3. Limitation of the Work Assignment

This assignment could have been further enriched and made more in-depth if other activities were undertaken such as the conduct of a workshop-forum on investment streamlining processes with the stakeholders as participants especially government ministries, longer observation period/deeper immersion to the OSS, more consultations with representatives from private/business sector of various investments, and discussions with regional government units that issue the construction permit such as the YCDC, the MCDC and the NCDC. However, these activities require a common time schedule among the project stakeholders that proved to be a challenge in doing this assignment.

The engagement of KCY to supplement the substance and finding of this Report is constrained by the methodology and approach already adopted by the Project Team. KCY's contribution to this Report is therefore limited to providing supplemental analysis on the Project Team's findings based on its knowledge as professional legal advisors in Myanmar, as well as its experience in dealing with local and foreign investments and particularly with its dealings with the DICA, MIC and other line ministries and agencies in securing MIC Permits, SEZ Permit and other post-registration permits and licenses for the conduct of business and investment activities in Myanmar. KCY is not responsible for the methodology and findings presented by the Project Team in the Report, where KCY did not participate or contribute.

2. PROJECT BACKGROUND

This work assignment made use of studies, surveys, and experiences of Myanmar and of other countries in investment facilitation especially in streamlining or simplifying business processes. As already mentioned, it aims to make available data and information that will guide the Project if and when the identified recommendations in this Report are adopted and implemented.

2.1. Investment Facilitation and Competitiveness

As the global economy shows stronger connectivity, productivity and prosperity have become driving forces in enabling competitiveness among countries especially in the area of investment facilitation. In recent years, several groups – government, donor, academic, private - advocating for “ease of doing business,” have initiated competitiveness measures among countries. With a set of common indicators, the competitiveness measures gauge how economies have enhanced investment facilitation services as a way of responding to public demands especially from the private/business sector and in fixing inadequacies in the facility.

In the *Doing Business Report 2016*, the performance of 189 economies were measured based on their adopted and implemented regulatory policies and actions that facilitate investments from start-up to registration to operation including financing and even resolving conflicts among parties. The study is able to show that competitive economies have sound business regulation which: (a) prioritizes protection of the public; (b) adopts

efficient procedures; (c) operates with strong institutions although it may be either big or small government; (d) operates with low transaction costs; and (e) gives the private sector the opportunity to grow and prosper. Such economies are considered to have “better regulation” which does not always equate to less regulation. Governments of these economies are able to do reforms and improve things no matter how complex or daunting the prospect looks.

The indicators used in measuring country competitiveness in *Doing Business Report 2016* include starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency. Among the sub-indicators are time, costs, and procedures. The indicators used in doing this assignment are basically from the *Doing Business Report 2016*.

In addition, reforms to increase competitiveness in business facilitation results to reforms in other areas of governance such as in transparency and accountability, even to some extent on gender concerns.

2.2. Investment Facilitation in ASEAN with Special Reference to Myanmar

The much-anticipated ASEAN Integration at the end of AEC also resulted in Myanmar taking initiatives and actions in preparation for the momentous development. The AEC seeks to “establish ASEAN as a single market and production base to make it more dynamic and competitive with new mechanisms and measures to strengthen the implementation of its existing economic initiatives; accelerating regional integration in the priority sectors; facilitating movement of business persons, skilled labor and talents; and strengthening the institutional mechanisms of ASEAN.”⁷

The “Findings from 2013 ASEAN–Business Advisory Council (BAC) Survey on ASEAN Competitiveness” reported that its survey revealed that ‘investors’ interest in ASEAN remain strong’ and are, in fact, inclined to adopt more an ASEAN strategy as the region moves towards AEC since they see the ASEAN integration more as an opportunity rather than a threat or a weakness. With this positive feedback, the ASEAN – BAC, as part of its policy recommendation, suggests “ASEAN should give priority attention to harmonizing, simplifying and enhancing the transparency of rules and regulations in the areas of business registration, investment and custom procedures.”⁸ Even as the realization of the AEC in 2015 is viewed positively and is much awaited, it is also foreseen that member countries would have to raise their competitiveness to be able to compete with other each in enticing investors who have decided to invest in the region especially to set up in their country.

The survey revealed in particular that Myanmar is among the countries with best prospects for international investors. A total of 38% of the respondents chose Myanmar as a potential

⁷ ASEAN Economic Community Blueprint, ASEAN Secretariat, Jakarta (January 2008), p. 5

⁸ *Ibid.*, p. 27

investment area. Since the country has just recently opened up to the global economy, it will need strong support from external organizations such as the AANZFTA as it builds its capacity to engage in political, social and economic reforms. Since 2011, Myanmar has formulated the FESR to serve as a guiding framework for economic policy. The newly elected government has also outlined 12 economic policy objectives on 29 July 2016 that aim to develop a responsible and sustainable economic growth and create an environment facilitative for investment and business activity.

As an indication of its desire to open up and compete in the area of investment, Myanmar enacted the following laws providing the legal framework for foreign investment in the country:

- The MFIL (2012) and the MCIL (2013)

The MFIL (2012) defines and allows certain privileges such as longer land lease rights to foreigners that are currently prohibited by the TIPRA to enter into long-term leases over immovable property. The MFIL (2012) and MCIL (2013) provides incentives to both foreign and local investors such as 5-year income tax holiday, exemption from customs duties and applicable taxes on the materials imported during the construction period, among other things. The MFIL (2012) and MCIL (2013) also provides for the framework in streamlining the investment proposal appraisal and permit system through the creation of the OSS in DICA as well as the formation of the PAT to help investors in facilitating their investment applications.

The DICA is also leading various other line ministries and agencies in discussing with representatives from the IFC on the drafting of the Myanmar Investment Law which would unify the MFIL (2012) and the MCIL (2013) and which intends to provide for a more simplified investment procedure process. Furthermore, Myanmar has subsequently released and revised its classification of business activities in order to invite foreign investments into more business sectors, with the latest notification, MIC Notification No. 26/2016, allowing 100% foreign investments into 4 more business sectors.

- Securities Exchange Law (2013), which provides for the framework for capital market development and the securities regulation industry.
- SEZ Law (2014), which provides for the framework for the establishment of special economic zones and the grant of incentives to locators engaged in export related industries and support services.
- Myanmar Competition Law (2015), which provides a framework for regulating anti-competitive conduct in Myanmar. The competition law as per Presidential Notification No. 69/2015 will only take effect on 24 February 2017.

- Myanmar Financial Institutions Law (2016), which provides for the legal framework in regulating Myanmar’s banking sector and financial system.
- Drafting of the Myanmar Companies Law, which will update the Myanmar Companies Act (1914).

The streamlining and consolidation of the MFIL (2012) and MCIL (2013) will create a consistent and supportive framework for both domestic and foreign investments. However, clarity on the designation of states and regions in Myanmar based on their respective development levels, as well as priority investment sectors, would require coordination with relevant ministerial counterparts as well as ensuring that various policies and development plans are aligned with one another, both at the union and the regional levels. Such efforts would also give greater clarity to potential investors and create a more facilitative environment for investment.

While the legal framework already exists, substantial work needs to be done with respect to the enforcement of these laws and ensuring that the internal policies of the line ministries and agencies are aligned with these laws.

3. DISCUSSION AND FINDINGS IN MYANMAR

The activities conducted in Myanmar as part of this work assignment provided an opportunity to look at the current investment registration and permitting system and identify what could be further done to enhance the system to contribute in increasing the competitiveness of the country. An analysis of the status, needs, and potential of Myanmar in simplifying/streamlining its business, registration, approval, and permitting process was conducted.

3.1. Results of the Survey⁹

A total of 14 accomplished survey questionnaires were obtained by the Project Team from the various line ministries and agencies that were furnished with copies of the questionnaire, with most coming from the then Ministry of Transport and two from the Ministry of Communications. Both these line ministries now form the MTC under the present government.

The survey questionnaire focuses on two main factors namely: (a) the requirements imposed by the respondent line ministry or agency (each a “**Respondent**” and collectively “**Respondents**”) with respect to the business registrations; and (b) the capacity development needs of the Respondent line ministry or agency.

⁹ Any amendments made herein are based on the summary of the survey results prepared by the previous consultant who drafted this report. Please note that we have adjusted the number of accomplished survey results from 15 to 14 based on the terms in the matrix. Any changes to this section are made solely for accuracy and consistency; as KCY did not participate in the conduct of the survey, KCY is not responsible for the conduct and results thereof.

3.1.1. Business registration and licenses

The MHT, the DMA, the Public Works Department of the Ministry of Construction, the Directorate of Water Resources and Improvement of River System of the then Ministry of Transport, the DHSHD, the DCA and the MPA, have all confirmed that they have a role in the issuance of business licenses.

Among these confirmations, the DHSHD has specified that its role is to scrutinize land ownership issues in relation to business permit licensing. The DCA responded that it has the authority to issue “Air Operator Certificates” and the MPA responded that it has the authority to issue stevedoring and inland depot container licenses to terminal operators.

The Department of Mines from then Ministry of Mining (now under the Ministry of Natural Resources and Environmental Conservation) and Myanma Airways, responded by indicating that they have no role in any of the above processes. Five other Respondents did not provide an answer to the survey questions under this category.

3.1.2. Requirements for business registration

Majority of the line ministries and agencies identified common documentary requirements which they require for the issuance of their recommendation or business permits namely: application form, bank statement, company registration certificate, and certification from the investor’s embassy.

Other Respondents identified additional documents that they require for the issuance of the recommendation. The Department of Mines, the PTD of the MTC and Myanma Airways, additionally require the submission of the environmental impact assessment and/or land lease agreement. The MTC charges application fees.

Eight Respondents did not provide an answer to this particular survey question.

3.1.3. Fees collected and its purpose

Eight Respondents said that they impose fees to applicants either during business registration or during the course of the permits. The fees are classified as application fee, signature bonus, service fee, processing fee, and annual license fee. The MOI responded that it does not collect any fee.

Five Respondents did not provide an answer to this particular survey question.

3.1.4. Common concerns or issues from investors during business registration or permitting

The Department of Mines, DMA, and Myanma Airways responded to obtaining feedback from investors on the processing time of the application, number of requirements, bureaucracy, 'difficulty in getting information on land availability,' and 'confusion among agencies on responsibilities.'

Nine Respondents did not provide an answer to this particular survey question.

3.1.5. Capacity Building Requirement

The questions propounded to the Respondents focused on three main areas namely: (a) feedback obtained by the line ministry or agency from the investors on their application process; (b) skills needed by the line ministry or agency to enhance business registration and licensing; and (c) the type of assistance needed from other agencies. We provide the answers of the Respondents as follows:

(a) Feedback obtained from the investors on their application process

The Respondents mentioned that there is a need to: (i) develop or improve their English language ability to improve their services in facilitating business registration and permitting; (ii) improve their coordination or collaboration with other agencies; (iii) improve on the management of information or data; and (iv) enhance technical skill on areas such as convergent regulation and effective use of legal instruments.

Three Respondents did not provide an answer to this particular survey question.

(b) Skills needed by the line ministry or agency to enhance business registration and licensing

There are mixed responses for this question as the line ministries and agencies are divided on whether the current state of information technology is adequate to address the need for an efficient business processing. There are some who view that the state of information technology is adequate while others view that it needs improvement.

(c) Assistance needed from other line ministries or agencies

Nine Respondents noted that training, as a form of assistance is needed from external agencies, while six Respondents listed the preparation of master or development plans. Other answers include action planning and strategizing as well as technical assistance on information technology,

human resource development, and other specialized training in engineering, transport and airline management.

A summary of the responses to the survey questionnaire is attached as **Annex B** of this Report.

3.2. The OSS

In 2013, the DICA established the OSS office building in Yangon to provide service assistance to foreign and local investors who are applying for an MIC Permit or registering their business office in Myanmar with the DICA. Several government agencies were assigned office spaces in the OSS, free-of-charge, where they hold office on workdays and provide assistance or information to potential investors. The OSS has therefore provided geographic convenience and dispenses with the necessity for the registrant to move from one line ministry or agency to another to complete its post-registration requirements. Apart from the DICA unit offices that perform functions in investment application and registration, other government agencies in the OSS include the Ministry of Natural Resources and Environmental Conservation, the Ministry of Labor, the Ministry of Commerce (with respect to the Import/Export Registration) and the Central Bank of Myanmar.

The OSS aims to address the needs of the investors in providing a convenient place to apply for many of the required documents such as the Import/Export Registration and license application and work permits and stay permits for the foreign employees of companies issued an MIC Permit. However, the services provided by the offices in the OSS are very limited at the moment.

Most importantly, the OSS only provides for services that are ancillary to the operations of the proposed business and still fails to cover the issuance of the post-registration licenses or permits in favor of the applicant (particularly for those businesses covered by particular Myanmar laws or the State-owned Economic Enterprises Law (1989)). For instance, in the field of manufacturing, the investor must obtain a manufacturing license from the MOI prior to commencing business activities. There is no facility in the OSS that addresses this requirement and therefore, once the MIC Permit is issued, a separate application will need to be made with the MOI, and which in turn requires the submission of a whole separate set of requirements (and this is notwithstanding the issuance of a recommendation from the MOI during the MIC Permit application process). In the field of Oil and Gas production, a separate post-registration license must also be obtained from the MOEE before the conduct of its activities. Similarly, telecommunications licenses (*i.e.* NFS-I, NFS-C, NS and AS licenses) must be applied for separately with the PTD. Although the MIC has now required that telecommunications licenses should be obtained first from the PTD before an application should be made with the MIC, this nonetheless requires the submission of two applications, one with the MIC and another with the PTD, before the company is permitted to conduct business in Myanmar.

Moreover, with respect to the application for ancillary permits, the OSS's limited capacity fails to serve all of the needs of the applicants. For instance, with respect to the issuance of

import/export licenses, while the application may be submitted with the OSS, it is possible that the Ministry of Commerce in the OSS will require a recommendation from the relevant line ministry or agency that is not present in the OSS (*e.g.*, an application for the FDA on the importation of a raw material for the purpose of beverage manufacturing must separately be obtained from the FDA office). Hence, while the OSS provides for the office that will be responsible for issuing the corresponding import license, the recommendation (in this case) must nonetheless be applied for separately from a different government ministry or agency that is not participating in the OSS. Another example of the limited capacity of the OSS is that its issuance of stay permits for foreign employees is currently confined to providing recommendations. The stay permits will nonetheless be applied for and obtained from the Ministry of Labor Immigration and Population's office in a separate office, and often with an additional list of requirements.

From the foregoing, although the intention is to provide an OSS, which will cover most if not all of the post registration requirements of an investor, the current operational set-up of the OSS still requires the investor to coordinate with various line ministries or agencies in separate locations, and with a different set of application requirements.

3.3. Investment Facilitation System

The Myanmar Government has taken great strides in enhancing the investment facilitation process in Myanmar and streamlining the activities to assist foreigners in establishing their Myanmar business entities. Nevertheless, from an investor's perspective, there is a need for improvement in terms of further simplifying and ensuring transparency in the evaluation of the applications and lowering the costs of investing in Myanmar.

This section provides for an overview of the current procedures with the DICA and the TSEZ in order to determine possible areas of improvement with respect to ensuring transparency, predictability and achieving a smoother investment facilitation process.

3.3.1. Current Application and Registration of Foreign and Local Investment

The application process for the establishment of the investor's business entity in Myanmar will depend on whether the investor intends to establish a branch office, a private limited company (either 100% foreign or under a joint venture) without an MIC Permit (if not required under MIC Notification No. 26/2016), a private limited company with an MIC Permit, or a private limited company with an SEZ Permit.

The investor who intends to establish a business entity in Myanmar must first determine whether its proposed business is covered by the limitations in MIC Notification No. 26/2016. If the business is not covered by the notification and the restrictions under the State-owned Economic Enterprises Law (1989), then it may be permitted to establish its business in Myanmar.

The documents required for the application for a branch office/private limited company have been streamlined by the DICA. The present DICA website provides

the requirements for an application for the establishment of a business entity and provides for a user-friendly flowchart on the procedures for the application. A list of the required forms and documentary requirements for an MIC application is available with DICA office and is also in the Myanmar Investment Guide Book, which is available, online (<http://www.dica.gov.mm>). The DICA has also exerted efforts to entice business permit registrations by reducing the fees for the application for foreign companies from US\$1,000 to US\$500.

Upon submission of the complete application bundle, the DICA depending on its workload and whether it will need to request for the recommendation from a relevant ministry, will issue the Certificate of Registration (Temporary) (valid for 6 months) and Form of Permit (Temporary) in 3 days. The Certificate of Registration (Temporary) is required to enable the investor to open a bank account with either a Myanmar bank or a foreign bank duly licensed by the CBM for the purpose of the inward remittance of initial capital. For private limited companies without an MIC Permit and branch offices, the DICA requires the inward remittance of at least 50% of the minimum capital of US\$50,000. For private limited companies that intend to apply for an MIC Permit, the inward remittance is at least 50% of the minimum capital of US\$150,000. The minimum amount of capital to be remitted will nonetheless be subject to any minimum capital requirements by other relevant ministries (*i.e.*, the PTD prescribes the minimum capital commitment depending on the telecommunications activities to be conducted by the foreign investor and the licenses that it intends to apply for). Once the inward remittance of capital is accomplished, the relevant bank issues a credit note that will be submitted to the DICA as proof of the investor's compliance with its requirement.

In late 2015, the DICA adopted a policy requiring the submission of the ward recommendation letter prior to the issuance of the Certificate of Registration (Final). The ward recommendation letter is intended as supporting document for the designated principal address of the investor. In view of this, the DICA requires the submission of three documents prior to the issuance of the Certificate of Registration (Final) namely: (a) the bank credit note reflecting the initial inward remittance of capital; (b) the signed Conditions Letter, which is provided by the DICA upon the issuance of the Certificate of Registration (Temporary); and (c) the ward recommendation.

While the issuance of a ward recommendation is a straightforward process, that is, it only requires the submission of proof that the owner of the property gives its consent to the company for the use of the premises (*i.e.* lease agreement), it has become an added burden on the investors who need to go to the ward authorities either early in the morning, before office hours, or late in the evening after office hours. We have noted that most ward authorities are not open during regular office hours as these are manned by government employees who serve their respective line ministries or agencies during regular office hours.

3.3.2. Issuance of the Investment Permit

Investment Permits are issued either by the MIC or the relevant special economic zone management committee. Presently, the TSEZ is the only operating special economic zone in Myanmar and its permits are issued by the TSMC.

The MIC

The MIC is reformed according to the MFIL (2012) and has 13 members. Under the current government regime it is an 11-person commission chaired by the Union Minister for the Ministry of Planning and Finance, has a secretary, a joint secretary, and eight members. Its responsibilities include approval or disapproval of investment application, taking action on investors' complaints, issuance of MIC Permit, ensuring that proposed business or operation of businesses are in accordance with law and regulations of Myanmar, suspending an investor if non-compliant to what is in the approved proposal, and allowing or refusing a bank that is proposed by an investor. The DICA serves as the MIC Secretariat.

The Thilawa Special Economic Zone Management Committee (TSMC)

The TSMC is formed under Article 5 of the SEZ Law (2014). Unlike the MIC (which is composed of 11 members), the TSMC is composed of 4 members, a secretary and a joint secretary. The TSMC reports to the Myanmar Special Economic Zone Central Body through the Central Working Body. It is the regulatory body over the TSEZ and has the authority to issue TSEZ permits in favor of both local and foreign companies.

Special Economic Zone Central Body

Under the SEZ Law (2014) the Central Body is tasked to (a) prescribe the rules and regulations for the special economic zones; (b) coordinate with the relevant governments for the demarcation of proposed special economic zone and issuing recommendation thereon for the approval of the Union Government; (c) evaluate and approve the development plan submitted by the management committee of the special economic zone; (d) supervise the functions of the management committees; (e) determining the taxes and revenues, rental fees and land use premiums to be levied under the SEZ Law with the approval of the Union Government, among other things.

The new members of the Central SEZ Management Committee have been appointed under the present administration.

MIC Permit

The procedure for the establishment of a private limited company with an MIC Permit is the same as the procedure for the establishment of a private limited company without an MIC Permit. However, for a private limited company applying

for an MIC Permit, the issuance of the Certificate of Registration (Final) requires not only the submission of the bank credit note, signed conditions letter and the ward recommendation letter, but also the issuance of the MIC Permit.

(a) Investment Department Evaluation

While the MFIL Rules prescribes a 90-day period for the MIC to evaluate an application, the formal acceptance of an application is a tedious procedure as the evaluation of the sufficiency of the application is dependent on the relevant Investment Department reviewing the application. In this regard, we note that the MIC has 4 Investment Departments that have delineated authorities depending on the type of business applied for.¹⁰ Investment Departments, however, act independently and may have varying internal policies and styles of processing investment application. Hence, prior to the official acceptance of the application bundle, the respective Investment Department exercises ample authority to require various revisions to be incorporated in the MIC application as a condition for acceptance, most of which affecting the declarations in the Form 1 and the details on the schedules submitted in support of the application (*i.e.* raw materials to be imported, machinery and equipment to be imported, manpower, among others). The revisions required by one Investment Department may not necessarily be adopted by another Investment Department.

Under the MFIL (2012) the MIC is mandated to evaluate the application based on the following criteria: the proposed investment (i) supports the main objectives of the country's national economic development plan; (ii) encourages the development of employment opportunities; and (iii) involves the use of advanced technology and heavy equipment, among others. In addition, the MIC also takes into consideration the amount of the capital investment involved in the proposed investment, the necessity of an MIC Permit to undertake the proposed investment activity, and the proposed investment's brand-name and popularity and recognition in the region. As these criteria provide for the necessary guidelines for an MIC Investment Department to evaluate the application at the onset, the relevant Investment Department may, in theory, refuse outright to accept an application for failure to satisfy any of the key criteria.

(b) PAT Evaluation Process

Once the MIC Permit application is officially accepted, the Investment Department further evaluates the application and elevates the application for the consideration of the PAT. The PAT is composed of representatives from various ministries and headed by the DICA Director General. The investor will be given an opportunity to

¹⁰ The types of business are categorized under the following sectors: (1) Agriculture and Forestry Sector; (2) Livestock and Fisheries Sector; (3) Food based industry sector; (4) Manufacturing Sector; (5) Hotel and Tourism Sector; (6) Construction, Transportation, Telecommunications, Electricity, Real Estate Development Sector; (7) Airline and Airport Services and Ports Sector; (8) Establishment of Industrial Zones Sector; (9) Oil and Gas Sector; (10) Mining Sector; and (11) Other Services Sector.

present its proposed business to the PAT who may approve or deny the application. If approved, the PAT will proceed to request for the recommendation letters from the relevant line ministries or agencies.

It is at the point between that PAT and the completion of the recommendation letters that delays usually occur, as the relevant line ministries and agencies would have their own requirements for the issuance of the recommendation letter. While the MFIL (2012) provides for a timeline within which the line ministries or agencies must respond to the PAT's request, the timeline is not observed due to delays in the review process. There have also been instances that a recommendation was revised in order to cover additional portions of the business that was not covered in the initial recommendation. For instance, the Yangon Regional government requires a separate meeting for the presentation of the proposed investor's business and the conduct of an inspection. The recommendation of the Ministry of Natural Resources and Environmental Conservation is also required, which will in turn, request for compliance with the EIA Procedures of 2015. Under the EIA procedures, the investor will need to secure the services of a third party reviewer, to assess the investment proposal based on its environmental and social effects. Depending on the proposed investment, the third party service provider may either conduct an IEE or an EIA. The third party also monitors the implementation progress of an approved proposal and is a government-accredited organization or individual that could either be local or international.

The issuance of a recommendation letter however does not guarantee the issuance of any post-registration license or permit required of the investor under applicable Myanmar law. Based on present procedures, a grantee of an MIC Permit may need to undergo a separate application process with the relevant line ministry or in order to obtain this post-registration license or permit. This translates to delays before an investor is actually able to enter into actual business operations in Myanmar.

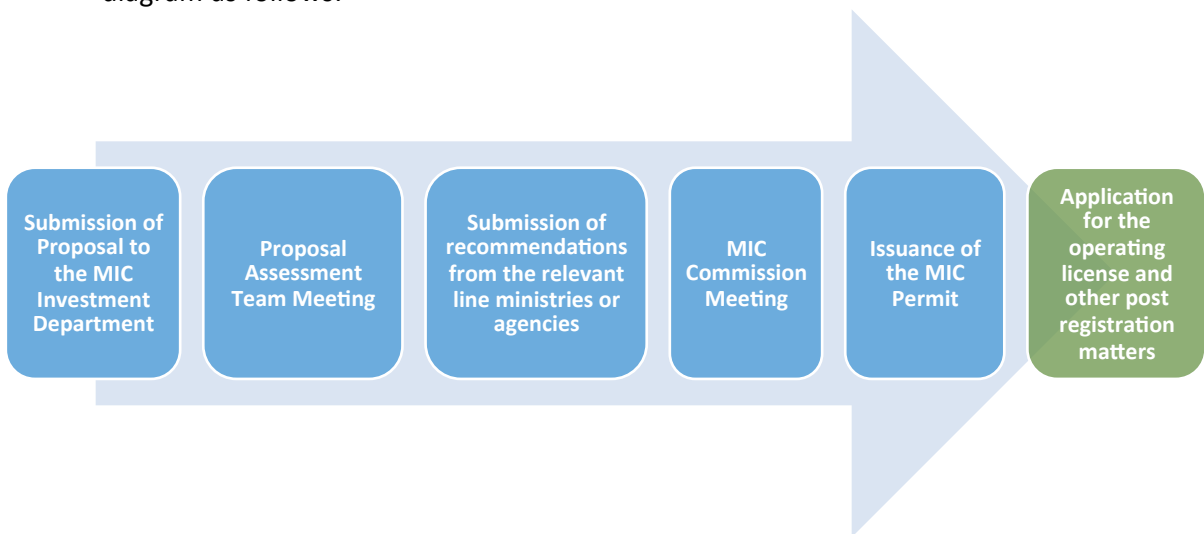
(c) MIC Final Evaluation

Once the line ministries and agencies notified by the PAT have issued their respective recommendations, the application is submitted to the MIC for its own review and assessment. The investor will then present its application to the MIC in another meeting and at the end of which, the MIC will decide whether to approve or deny the MIC Permit application. Once an application is approved, the MIC issues the MIC Permit and the DICA subsequently issues the Certificate of Registration (Final) in due course.

During the consultation meetings of the Project Team with the different ministries, it was stated that there are cases when an investor submits first the application, investment proposal and other required documents to the relevant line ministry or agency that has jurisdiction over the proposed investment. For example, a potential investor in mining goes to the Ministry of Natural Resources and Environmental Conservation, an investor in hotel or other tourism-related business goes to the

Ministry of Hotels and Tourism, and an investor in telecommunications goes to the PTD (of the MTC). More often, each line ministry or agency will have its own application form for the relevant post-registration licenses or permits. The line ministry or agency makes an initial review and approval of the application before endorsing it to the MIC. There are instances though where an investor is asked to redo and resubmit the proposal until the relevant line ministry or agency finds the application acceptable. In any event, however, the recommendations provided by the line ministry or agency are not considered as approvals for the necessary post-registration license or permit, which, as stated above, usually involves the submission of a new set of documents after the corresponding MIC Permit is issued.

The present flow of the MIC application procedure is summarized in the following diagram as follows:



SEZ Permit

The procedure for applying for an SEZ permit for investors intending to locate in the TSEZ is relatively shorter. Chapter 9 of the SEZ Rules prescribed a 30-day period for the TSMC to evaluate an application, and if an application is rejected, the TSMC will provide their reasons to the applicant.

Similar to the MIC Permit application, there will be various discussions on the application bundle before it is formally submitted for the TSMC's evaluation. The expediency in resolving the applications may be due to the load of the TSMC, as it is only limited to locators inside the TSEZ. Unlike the MIC Permit application however, investors in the TSMC do not need to apply for the establishment of the business entity with the Yangon office of the DICA; rather, there is an OSSC-DICA located inside the TSEZ. There is also no Certificate of Registration (Temporary) for a TSEZ investor; hence, there are no initial remittance requirements before the issuance of the Certificate of Registration (Final). Therefore, the procedure with an SEZ permit is that the SEZ Permit application is first submitted to the TSMC and once approved,

the OSSC-DICA proceeds to issue the Certificate of Registration (Final) within 1 week. The remittance requirements are complied with subsequently.

The TSEZ similarly has an OSSC for the investor's post registration requirements, which is staffed by representatives from the Ministry of Commerce, Customs Department, Internal Revenue Department, Labor Department, DHSHD, General Administration Department, MPA and as mentioned above, the DICA. Based on reports, the TSEZ OSSC intends to launch an online application system soon in order to ease the application process for the investor's post registration permits.¹¹

Nevertheless, the roadblocks experienced with the MIC with respect to obtaining recommendations from the relevant line ministries or agencies are the same; that is, the issuance of a recommendation by the relevant line ministry or agency will not assure the investor of the issuance of its post-registration license or permit. Hence, the investor must still obtain such post-registration license or permit from the relevant line ministry or agency, which involves the submission of a new set of documents and new set of approvals.

3.3.3. Issuance of Construction Permit

Once the MIC issues an MIC Permit, the investor has the responsibility to comply with any post-registration licenses or permits including any construction permit for the conduct of construction activities within the MIC-approved construction period.¹²

The construction permit is obtained from the city development committees, namely the YCDC, the MCDC, and the NCDC, or from the regional governments. The relevant authority checks on the building location, the installation of proper electricity/wiring system, compliance with the building code as implemented by Ministry of Construction and compliance with the building regulations of the local council. The responsibility for monitoring construction rests with the regional government that also collects a construction fee based on the physical area of the building or the business.

Similar to obtaining recommendations from the other relevant line ministries or agencies, the application for a construction permit involves a tedious process. For the application for a construction permit in the YCDC area, the procedure is as follows:

¹¹ See www.myanmarthilawa.gov.mm/one-stop/services [last accessed 19 August 2016].

¹² If construction cannot be completed within the approved period, the MFIL Rules provides that the investor may request with the MIC for an extension of the construction period, 60 days before the end of the approved construction. The MIC will then conduct an investigation and if it finds the request justifiable, issue certificate approving the extension of the construction period which should not be more than 50% of the original construction period. The extension can only be issued twice except for a justifiable cause such as force majeure. The MIC may revoke an MIC Permit if construction is not completed despite two extensions. Once completed, an investor must inform MIC within 30 days from the end of construction.

- (a) Obtaining a land title certificate and a cadastral map at the Yangon City Development Committee Land Department;
- (b) obtaining the written consent of neighbors;
- (c) obtaining the ward recommendation;
- (d) obtaining debt clearance from the YCDC township executive office applying for a construction permit with the YCDC Engineering Department Building;
- (e) Inspection by the YCDC of the foundation;
- (f) Inspection by the YCDC of the flooring;
- (g) Inspection by the YCDC of the roofing;
- (h) Request for a building completion certificate;
- (i) Final Inspection for the building completion certificate;
- (j) Obtain building completion certificate from the YCDC;
- (k) Request and obtain an excavation permit from the YCDC for the well (simultaneous with the construction permit procedures);
- (l) Drill well for water supply (simultaneous with the construction permit procedures).¹³

There are also fees charged by the YCDC for the issuance of the land title certificate, the construction permit and the permission to drill a well.¹⁴

In May 2016, the Yangon Regional Government, called for the suspension of more than 200 high-rise projects approved under the previous administration for review and pending its preparation of the building permit regulations. Based on reports, a substantial number of the projects have already commenced construction and therefore, the suspension of the construction activities will lead to serious business losses on the part of the investors. There are also reports that developers have been required to amend their designs midway during the construction in order to comply with YCDC's internal policies.

¹³ See www.doingbusiness.org/data/exploreeconomies/myanmar/dealing-with-construction-permits [last accessed 19 August 2016].

¹⁴ *Ibid.*

In August 2016, the YCDC has finished amending its building permit regulations and has called for the assistance of the Association of Myanmar Architects and the Myanmar Engineering Society to comment on regulations.¹⁵

3.3.4. Conduct of a Business Inspection

An investor must submit a Quarterly Report to the MIC every three months within its allowed period of business operation. For the fiscal year 2016-2017, the MIC has increased its monitoring efforts to ensure the investors' compliance with the submission of the quarterly reports, setting a deadline for the submission of the First Quarter Report (April 1 to June 30), last 28 July 2016. The MIC has declared that it may take legal action if necessary for the companies that fail to comply.

With respect to the conduct of business inspections, the investor is responsible to provide cooperation during inspections by the MIC, which often undertakes inspections of the permitted investments. The MIC may conduct the inspections on its own initiative or upon the complaint of a third party. For instance, a local government official may file a complaint with DICA if there is an issue with a business or an investor. The DICA then submits a report to the MIC, which makes the decision whether to investigate the compliant or to order the business to cease operation. MIC may conduct business inspection especially if there are complaints on the business. An inspection team is formed to investigate complaints.

Other ministries may also conduct inspections on the investor's business from time to time. There are inspection teams from the MHT, the MOI, and the Ministry of Construction as well as the YCDC.

3.4. Foreign Currency Regulations

In addition to streamlining the requirements for the establishment of businesses in Myanmar, the Myanmar government, through the Ministry of Planning and Finance, has done its share in enhancing the investment facilitation process by providing the legal framework for the use of foreign currency. In this regard, the use of foreign currency in Myanmar is covered by two separate but interrelated regimes namely the MFIL (2012) and the FEML (2012) and its implementing rules.

3.4.1. Foreign Currency Provisions of the MFIL (2012)

Under the MFIL (2012), companies with an MIC Permit may, as a general rule, and following approval from the MIC for each and every remittance out of Myanmar (which approvals are entirely separate from the approval of the MIC Permit), transfer or remit abroad foreign currency either brought into Myanmar for purposes

¹⁵ See www.mmtimes.com/index.php/business/property-news/21843-ycdc-drafts-new-rules-for-building-permits.html [last accessed 19 August 2016].

of the foreign investment or generated in Myanmar by way of conducting business in Myanmar. These include the company's net profits (following deduction of various taxes which may include, without limitation, corporate income tax (if the applicable tax holiday has expired), service tax, capital gains tax, commercial tax, and income tax withholdings for employees), dividends to be distributed to the foreign shareholder who had remitted foreign capital into Myanmar, and the amount receivable by the foreign shareholder upon liquidation of the company.

Applications for each and every remittance must be submitted to the MIC together with the corresponding bank statement relating to the account in which the foreign currency is deposited and an audit report (conducted by an external auditor or accountant certifying to the reports of accounts of the company) relating to the relevant investment activity. The MIC has the discretion to approve the remittance application in full, or in an amount less than that applied for. All remittances must be transacted through a licensed domestic bank in Myanmar that has been authorized to deal in foreign currency.

3.4.2. Foreign Currency Transactions under the FEML (2012)

At the same time, however, companies with an MIC Permit must also comply with the requirements under the FEML (2012), which includes the need to obtain the separate approval of the CBM with respect to the outward remittance of certain classes of funds. The FEML (2012) classifies foreign currency transactions as either "ordinary transferred payments" or "transferred payments for capital". These "ordinary transferred payments" include the following specific transactions:

- (a) Payments for the importation of goods and payment for services, including payments for short-term bank loans;
- (b) Interest paid on loans, and net profit accrued from investments (unfortunately, an interpretation as to the scope of this item is not provided under the law);
- (c) Repayments of loans in installments, or depreciation for direct investments; and
- (d) Remittance of money into or out of Myanmar for family living expenses.

A "transferred payment for capital," meanwhile, is simply defined as a foreign currency transaction that is not an "ordinary transferred payment." The distinction is important, because under the FEML (2012), "ordinary transferred payments" do not, at least in strict point of law, need prior approval of the CBM in order to be transacted by licensed Myanmar banks. However, "transferred payments for capital" under the FEML (2012) does require the prior scrutiny and approval of the CBM.

In implementing the provisions of the FEML (2012), the CBM issued CBM Directive No. 15/2012, which is addressed to licensed Myanmar banks and which outlines the requirements before certain types of foreign currency transactions may be completed for outward payment. Notably, while the FEML (2012) states that remittances of “ordinary transferred payments” are to be unrestricted, CBM Directive No. 15/2012 also lists certain “ordinary transferred payments” that do require additional or special documentation to be submitted to the licensed domestic bank before outward remittance of foreign currency take place. For example, under Items 30 and 31 of Annexure A of CBM Directive No. 15/2012, companies with an MIC Permit that wish to transfer foreign currency acquired in the course of business, or for the purpose of repaying loans, interest and business expenses must submit the following documents:

30	Transfer of foreign currency acquired by businesses such as hotels, companies etc., operating under the permit of the Foreign Investment Commission	a	Application for transfer
		b	Form-A: foreign exchange transfer for matters other than import
		c	Income Expenditure Statement
		d	Supporting evidence for the transfer
		e	Permit of the Union of Myanmar Foreign Investment Commission
31	Re-payment of loans, interests, and expenses by business, such as hotels, companies etc., operating in Myanmar under the permit of the Foreign Investment Commission	a	Application for transfer
		b	Form-A: foreign exchange transfer for matters other than import
		c	Income Expenditure Statement
		d	Supporting evidence for the transfer
		e	Permit of the Union of Myanmar Foreign Investment Commission

The foregoing requirements under CBM Directive No. 15/2012 are consistent with the provisions of the MFIL (2012), in that the outward remittance of funds “acquired by businesses” and “repayment of loans, interests, and expenses by business” of entities with an MIC Permit will also be required to obtain a “permit of the Union of Myanmar Foreign Investment Commission.” However, at least under the FEML (2012) and its definition of an “ordinary transferred payment,” remittance of these amounts should, in theory, be unrestricted. Still, licensed Myanmar banks have tended to apply the provisions of CBM Directive No. 15/2012 with respect to these payment notwithstanding the provisions of the FEML (2012).

In addition, to these documentary requirements, the CBM has also recently issued CBM Notification No. 7/2015 which requires all licensed Myanmar banks to review all outward remittances of funds made by foreign investors and declared as profits, dividends or interest to ensure that such foreign investors have first registered their inward remittance of capital with the CBM. In other words, apart from securing the approval of the MIC for the issuance of its MIC Permit, all inward remittances of capital (whether in the form of debt or equity) must also be registered with the CBM. It is only upon proof that capital has been actually brought into Myanmar (as

evidenced by registration of the inward remittance with the CBM) that any outward remittance of profits, dividends or interest will be allowed. This adds an additional level of regulatory approval on the part of the foreign investor – but this takes place not at the point of outward remittance of the profits, dividends or interest, but at the point when the capital (whether equity or debt) is first brought into Myanmar (under an MIC Permit).

At the same time, CBM Notification No. 7/2015 has also prescribed additional procedures for the official registration of foreign loans (that is, loans from lenders who are sited off-shore), including loans extended by shareholders to their on-shore Myanmar companies. For foreign investors, this registration requirement is an elaboration of the need to register all inward remittances of capital discussed in the preceding paragraph, and will apply at any point in the investment that an offshore loan is extended to the on-shore Myanmar entity. Under CBM Notification No. 7/2015, approval for such loans will involve the submission of the draft loan documents, as well as a schedule of repayments of both principal and interest. In repaying either principal and interest, therefore, the borrower will need to satisfy the requirements of CBM Directive No. 15/2012 (including the approval of the MIC for the corresponding payment), present evidence that the loan itself was earlier approved by the CBM under CBM Notification No. 7/2015, and that the repayment of the corresponding principal or interest is in accordance with the loan repayment schedule earlier presented and approved by the CBM.

In July 2016, the CBM published in its website the following criteria in evaluating offshore loans:¹⁶

- (a) whether the company concerned has invested equity or capital brought-in in the amount of at least US\$500,000;
- (b) whether the entity obtaining the offshore loan is a business entity which has regular foreign income;
- (c) if the entity does not have foreign income, whether it has the ability to repay the loan from local income and whether it has plans to protect against the exchange rate fluctuation;
- (d) whether the entity has brought in at least 80% of the equity amount mentioned in the MIC Permit;
- (e) whether the debt to equity ratio is within the stipulated range between 3:1 and 4:1;

¹⁶ See www.cbm.gov.mm/content/1950 [last accessed in 29 July 2016].

- (f) whether the loan related terms and conditions concerning the company are sufficient and valid; and
- (g) whether the repayment tenure contained in the loan agreement is medium-term or long-term and whether the repayment schedule is appropriate to the loan agreement.

3.5. Institutional Reforms under the present government

There have been substantial reforms under the present administration beginning with the reformation of the line ministries. On 25 May 2016, the Union Government issued President's Office Notification No. 9/2016 providing the following ministries under the new administration:

- (a) Ministry of Foreign Affairs;
- (b) Ministry of Home Affairs;
- (c) Ministry of Defense;
- (d) Ministry of Border Affairs;
- (e) Office of the State Counselor;
- (f) Ministry of Information;
- (g) Ministry of Religious Affairs and Culture;¹⁷
- (h) Ministry for Agriculture, Livestock and Irrigation;¹⁸
- (i) Ministry for Transport and Communication;¹⁹
- (j) Ministry of Natural Resources and Environmental Conservation²⁰
- (k) Ministry of Electricity and Energy;²¹
- (l) Ministry of Labor, Immigration and Population;²²
- (m) Ministry of Industry;
- (n) Ministry of Education;
- (o) Ministry of Health and Sports;
- (p) Ministry of Planning and Finance;²³
- (q) Ministry of Construction;
- (r) Ministry for Social Welfare, Relief and Resettlement;
- (s) Ministry for Hotels and Tourism;
- (t) Ministry of Ethnic Affairs; and
- (u) Union Attorney General's Office.

¹⁷ Resulting from a merger between the Ministry of Culture and the Ministry of Religious Affairs.

¹⁸ Resulting from a merger between the Ministry of Agriculture and Irrigation and the Ministry of Livestock, Fisheries and Rural Development.

¹⁹ Resulting from a merger among the Ministry of Communications and Information Technology, the Ministry of Transport and the Ministry of Rail Transportation.

²⁰ Resulting from a merger between the Ministry of Environmental Conservation and Forestry and the Ministry of Mines

²¹ Resulting from a merger between the Ministry of Energy and the Ministry of Electrical Power.

²² Resulting from a merger between the Ministry of Labor, Employment and Social Security and the Ministry of Immigration and Population.

²³ Resulting from a merger between the Ministry of National Planning and Economic Development and the Ministry of Finance.

The institutional reforms by the government are intended to centralize the functions of related ministries in order to ensure harmony in its objectives. It is uncertain at this point, considering that the institutions have only been streamlined recently, up to what extent the reorganization will contribute to the ease of doing business in Myanmar. Suffice it to state however, that reforms have been made on the institutional level and this should be treated as a positive development towards streamlining of the government's functions.

3.6. Continuing efforts by the present government to liberalize economic activities in Myanmar

The Myanmar government has entered public private partnerships in order to liberalize certain sectors of the Myanmar economy namely the telecommunications sector, the transportation sector (*i.e.*, the upgrading of the Mandalay International Airport and the 30-year concession agreement covering the Thilawa port), and the various electricity tenders and oil and gas tenders. These activities, which have been previously conducted by the government are now open to private participation and reflects the government's stance of assisting in the liberalization of Myanmar's economy.

In August 2016, the DICA has published a written report dated March 2016 entitled Private Sector Development Framework and Action Plan, which is intended to develop a roadmap for Myanmar's transition to a private sector led economy. The main purpose of establishing a PSD framework is to stimulate economic growth and social development in Myanmar.²⁴ The DICA, in its study, identified the five key pillars which should be improved in order to stimulate economic growth in Myanmar namely: (a) legal and regulatory reforms, (b) ensuring access to finance; (c) promoting trade and investment; (d) restructuring the state's rule in business enterprise and service delivery; and (e) building Myanmar's human capital base. Based on the survey, the DICA's priority issues are as follows:

- (a) the current approach to the preparation of laws must be considered. It is recommended that a whole government review and reform of the law drafting process is required. There should also be mandatory coordination across all relevant government agencies and compulsory consultations with the public.
- (b) Alignment of regulatory and administrative practices with laws and regulations; and
- (c) Proper implementation and uniform enforcement of laws and capacity building within the public service and the judiciary so that new laws can be effectively implemented and enforced.

²⁴ Myanmar Indicative Private Sector Development Framework and Action Plan, p. 7.

4. RECOMMENDATIONS²⁵

The *Doing Business Report 2016* marks the third year that Myanmar joins global economies being measured for its ease of investment facilitation. It currently ranks 167 out of 189 economies, and attained considerable improvements in the ranking for the Starting a Business category by achieving a ranking of 160 in *Doing Business Report 2016* from 189 in *Doing Business Report 2015*.

The DICA has been proactive in enhancing its investment facilitation process, beginning with improving the management of the business entities registered under its authority. Last August 2015, the DICA has requested all business entities to submit a manifestation confirming that it is still conducting business operations. The purpose of the notice is to determine which corporations are no longer operational and which should be wound up. In line with these efforts, the DICA in March 2016 launched a new website which allows users to conduct company searches. The website was also enhanced containing detailed information of the procedure for the establishment of business entities and the relevant rules and regulations for foreign investment in Myanmar. The DICA has made notable reforms in investment facilitation specifically by enhancing its information dissemination procedures and obtaining the assistance of international government organizations to conduct capacity building. Therefore, on an institutional / organizational perspective, the DICA has commenced with the necessary reforms that will result to a more streamlined investment facilitation process. Nonetheless, we outline below suggested areas for improvement on four main areas: (1) Institutional/Organizational; (2) Capacity Building; (3) Automation of the Investment Facilitation Process; and (4) Information Education and Communication campaign.

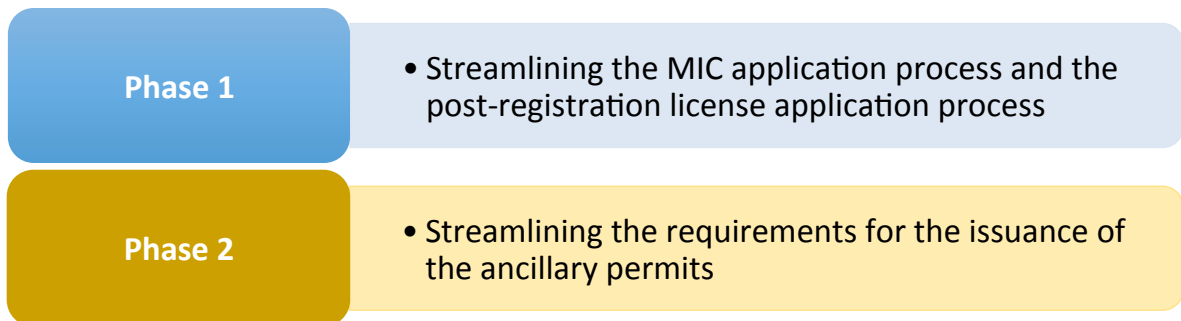
²⁵ KCY has been informed during a meeting with DICA representatives (consistent with our Scope of Work) that the initial recommendations of the consultant were not implemented as the DICA has decided to move towards an alternative route in streamlining their procedures. KCY has therefore amended the recommendations bearing this fact in mind.

4.1. Institutional/Organizational

Creation of unified application process for the MIC Permit and the post-registration license of an investor for its proposed business activities in Myanmar

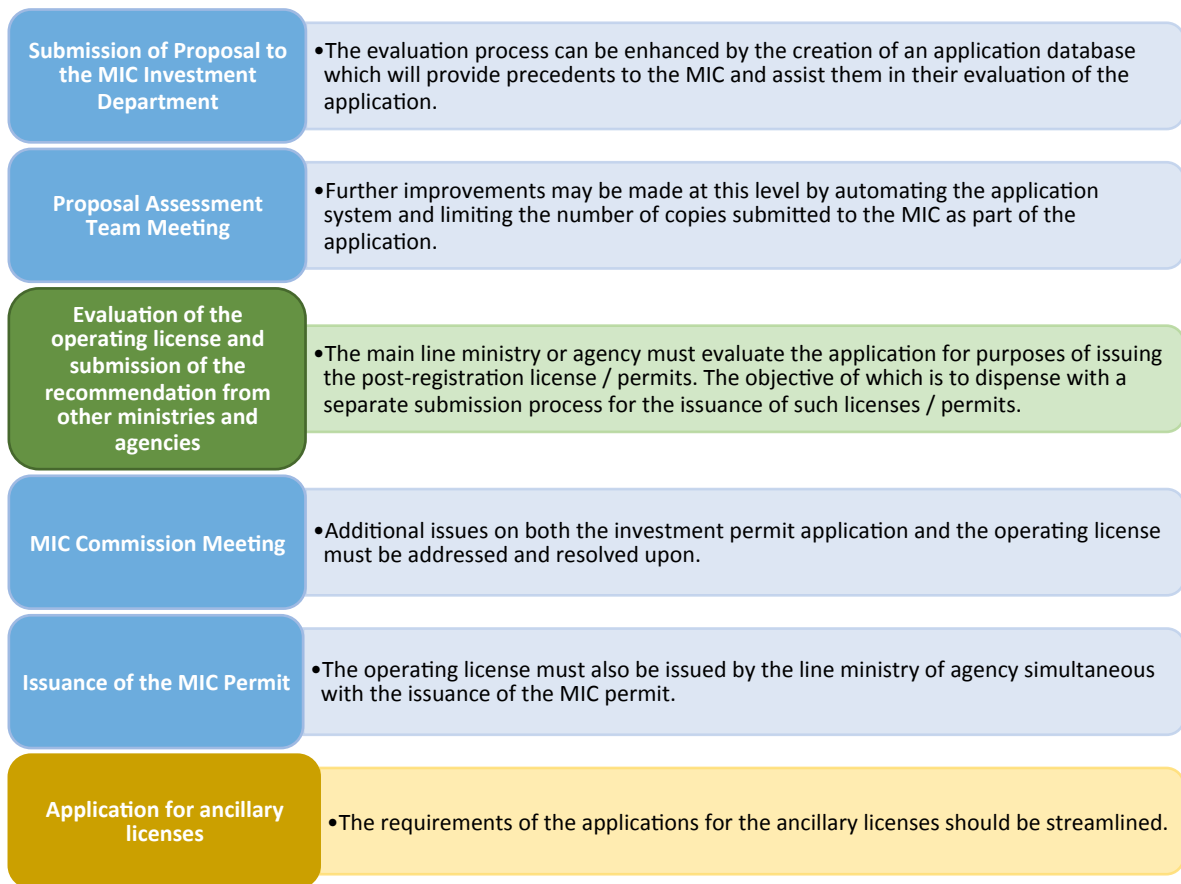
Based on our review of the MIC Permit/SEZ Permit application procedures in Myanmar, we have noted that the main cause of delays in the conduct of business activities in Myanmar relate to the duplication of efforts by the foreign investor. Specifically, we find that the MIC Permit/SEZ Permit application process can be further streamlined if the approval of the relevant line ministry or agency for the post-registration licenses or permits (particularly those involving permits and licenses specifically required by applicable Myanmar law) can be secured together with, or in the same procedure as, the MIC application. Hence, instead of obtaining no objection letters after the conduct of the PAT, the relevant line ministry or agency responsible for the granting of the post-registration licenses or permits must, at the point of the PAT, evaluate the application for the purpose of issuing the post-registration license. Hence, if it finds the application acceptable, the operating license will be issued simultaneous to the grant of the MIC Permit.

The issuance of both the MIC Permit and the post-registration licenses and permits will assist the investor in applying for all the ancillary permits necessary in conducting its proposed business activities in Myanmar. A second phase may be considered, that is, streamlining the requirements for the ancillary permits by dispensing with the requirements already submitted to the MIC and the main line ministry or agency responsible for the issuance of the operating licenses.



To implement these objectives, we recommend beginning with the manufacturing sector that accounts for the most applications. The MIC and the relevant line ministry or agency should enter into dialogue identifying the requirements of the MIC Permit application and the post-registration license and permit application and harmonizing the requirements in order to streamline the application process with the view to integrating all documentation and application requirements so as to avoid repetition in submissions and delays in the commencement of business operations.

The intention is to streamline the current application process as provided in the diagram below:



Additional recommendations that may be considered by the DICA

Although applications with the DICA pertaining to regular service companies are relatively straightforward, we have provided below our recommendations in order to enhance the ease of doing business at the DICA level.

- Establishment of a formal pre-clearance procedure for proposed business activities that do not squarely fall under MIC Notification No. 26/2016.
- Establishment of an information help desk with assigned persons from each Investment Department.

Monitoring of the action implementation of the suggested improvements

- Form a steering committee composed of different ministries, regional governments, and representatives from the UMFCCI who will work on the streamlining/simplification of the investment facilitation system. This action should involve the collaboration of the various stakeholders in Myanmar possibly with Ministry of Planning and Finance, particularly DICA, at the helm. The steering committee could be formalized and made more binding with a Memorandum of Understanding among

the stakeholders. The steering committee will also function as an oversight committee that will ensure that the reform activities are promoted, undertaken, and monitored.

- Identify a focal point person in each ministry as well as in other stakeholders' groups to ensure that reforms are cascaded or implemented at the level of the line ministry or agency. The focal person will be responsible for regular reporting to the steering committee on the status of streamlining activities in their respective line ministry or agency.
- Ensure that every line ministry or agency involved in streamlining or simplification of the application process makes the necessary adjustments in their organizational structure in response to the changes in the system and to ensure the active performance of the said line ministry or agency when the simplified system is adopted. If needed, provide technical expertise or assistance to the ministries especially if they do not have the internal capacity to undertake this activity.

4.2. Capacity Building

- Once the application process has been streamlined on a per sector basis, the relevant Investment Department together with the relevant line ministry or agency should undergo training in order to ensure that investment facilitation is aligned among the parties.
- Considering the financial cost in providing capacity building programs, delivery of the training courses could be done on a per sector basis, consistent with the recommendation above that the streamlining of the applications shall be done on a per sector level.
- Continue exposing the stakeholders to good practices on investment enhancement as possible models or guides for replication or adoption as Myanmar pursues its own investment enhancement targets. It should be kept in mind though that there is no "one size, fits all" solution in enhancing investment facilitation.

4.3. Automation of Investment Facilitation Process

- An automation solution must consider a data management system that will not only facilitate the capture of data or information but will allow data sharing as well among the stakeholders especially data on investment profile in Myanmar. It should result to data being 'pushed' to the different ministries as needed instead of the investors or the ministry staff going from one office to another which is time consuming and costly. The sharing of data between the line ministries and agencies is intended to decrease the paperwork required under the current investment permit applications.

In addition, the creation of an application database is intended to provide for references on possible precedents that will assist the MIC and the line ministries and agencies in resolving issues in a uniform manner.

- The automation framework and solution must consider the political dynamics and the work 'culture' among the various ministries involved. It should be clear and agreed upon by the stakeholders 'who will own the data and where it will rest.' Thus, full consultation and acceptance by stakeholders are essential. Even at each line ministry or agency, there should be a clear identification of where or with whom the responsibility of running automated system is reposed.
- Just like other capacity building programs, automation is costly but could be done by phasing depending on the identified priority needs and available resources of each ministry or stakeholder.

4.4. Information Education and Communication Campaign

- Once the application procedure has been streamlined, there should be an effective and efficient IEC plan to disseminate information to the public.
- The IEC materials must be translated into English aside from Myanmar in order to entice foreign participation.

REFERENCES

Publications

A Guide for ASEAN Business- ASEAN-Australia-New Zealand Free Trade Area, ASEAN Secretariat, Jakarta (October 2009).

ASEAN Economic Community Blueprint, ASEAN Secretariat, Jakarta (January 2008).

ASEAN Economic Community Handbook for Business 2012, ASEAN Secretariat, Jakarta (November 2012)

World Bank. 2016. *Doing Business 2016: Measuring Regulatory Quality and Efficiency*. Washington DC: World Bank Group. DOI: 10.1596/978-1-4648-0667-4. License: Creative Commons Attribution CC BY 3.0 IGO

Myanmar Investment Guidebook (December 2015)

Myanmar Indicative Private Sector Development Framework and Action Plan, a joint project of the MIC, MOC, UMFCCI with support from ADB, Mekong Business Initiative and the Australian Government (March 2016)

Articles

Wong, M.H. and Wirjo, A., Findings from the 2013 ASEAN – BAC Survey on Competitiveness, ASEAN Business Advisory Council, Jakarta, 2013

Wong, M.H., Shankar, R. and Toh, R. ASEAN Competitiveness Report 2010, Asia Competitiveness Institute, 2011

Websites

<http://www.dica.gov.mm>, last accessed 26 August 2016.

www.myanmarthilawa.gov.mm/one-stop/services, last accessed 19 August 2016.

www.doingbusiness.org/data/exploreeconomies/myanmar/dealing-with-construction-permits, last accessed 19 August 2016.

www.mmtimes.com/index.php/business/property-news/21253-new-policy-elusive-as-ycdc-restarts-building-permit-applications , last accessed 19 August 2016.

www.mmtimes.com/index.php/business/property-news/21843-ycdc-drafts-new-rules-for-building-permits.html, last accessed 19 August 2016.

www.cbm.gov.mm/content/1950, last accessed 29 July 2016.

Annex A

Investment Facilitation and Technical Assistance for Newer ASEAN Members (Phase 2) Project

Survey Questionnaire for Myanmar

Good day! May we request you to take time and answer this survey?

This survey is conducted under the **Investment Facilitation and Technical Assistance for Newer ASEAN Members (Phase 2) Project** of the ASEAN – Australia – New Zealand Free Trade Area (AANZFTA) with the intent of finding out how Myanmar is doing in facilitating investments so that actions or reforms could be done to improve investment facilitation in the country.

Part I. Profile of the Respondent

Name: _____

Position: _____

Organization: _____

Sectors monitored / regulated: _____

Email Address: _____ Contact Number: _____

Part II. Some information on the respondent's organization

1. In which part of the business registration and licensing process below does your ministry or agency have a role? Kindly mark your answer with an X. **Please provide a process flowchart, if available.**

- | | | | | | |
|--------------------------|--|--------------------------|----------------|--------------------------|------------------|
| <input type="checkbox"/> | a) Application for business registration | <input type="checkbox"/> | Local business | <input type="checkbox"/> | Foreign business |
| <input type="checkbox"/> | b) Processing of business registration | <input type="checkbox"/> | Local business | <input type="checkbox"/> | Foreign business |
| <input type="checkbox"/> | c) Approval of business registration | <input type="checkbox"/> | Local business | <input type="checkbox"/> | Foreign business |
| <input type="checkbox"/> | d) Issuing of business licenses | <input type="checkbox"/> | Local business | <input type="checkbox"/> | Foreign business |
| <input type="checkbox"/> | e) Processing of construction permit | <input type="checkbox"/> | Local business | <input type="checkbox"/> | Foreign business |
| <input type="checkbox"/> | f) Issuing of construction permit | <input type="checkbox"/> | Local business | <input type="checkbox"/> | Foreign business |
| <input type="checkbox"/> | g) No role in any of the above | | | | |
| <input type="checkbox"/> | h) Another answer: _____ | | | | |

Annex A

2. What are the requirements of your ministry or agency from an investor or business registrant during the business registration and business licensing process? Kindly mark your answer with an **X**.

A. Business Registration

- | | |
|---|---|
| <input type="checkbox"/> a) Application Form | <input type="checkbox"/> d) Environment Impact Assessment |
| <input type="checkbox"/> b) Certification from investor's embassy | <input type="checkbox"/> e) Land Lease Contract / Agreement |
| <input type="checkbox"/> c) Bank Statement / Certification | <input type="checkbox"/> f) Others: _____ |

B. Business Licensing

- | | |
|---|---|
| <input type="checkbox"/> a) Application Form | <input type="checkbox"/> d) Environment Impact Assessment |
| <input type="checkbox"/> b) Certification from investor's embassy | <input type="checkbox"/> e) Land Lease Contract / Agreement |
| <input type="checkbox"/> c) Bank Statement / Certification | <input type="checkbox"/> f) Others: _____ |

3. Does the investor or business registrant pay any fee with your ministry or agency in registering a business or in getting a business license? Kindly mark your answer with an **X**.

- | | |
|---------------------------------|--------------------------------|
| <input type="checkbox"/> a) Yes | <input type="checkbox"/> b) No |
|---------------------------------|--------------------------------|

If your answer is YES, what is the payment for? Kindly mark your answer with an **X**.

- | | |
|---|--|
| <input type="checkbox"/> a) Application Fee | <input type="checkbox"/> b) Processing Fee |
| <input type="checkbox"/> c) Others: _____ | |

If your answer is YES, what is the amount of the fee or payment? Kindly indicate if US\$ or MMK.

4. What are some common concerns or issues you get from potential investors or business registrants while dealing with your office, if any? Kindly mark your answer with an **X**.

- a) Fee is too high / expensive
- b) Application processing takes a long period or too many days
- c) Too many required documents
- d) Have to deal with many officials or personnel / staff
- e) Others: _____

Annex A

III. Capacity development needs of the respondent's organization to improve its present role in the investment facilitation process

5. What skills or abilities does your ministry or agency need to develop or improve in order to enhance the business registration and licensing? Kindly mark your answer with an **X**.

- a) English language ability
- b) Customer service
- c) Management of information or data
- d) Coordination or collaboration with other agencies or offices
- e) Technical skills such as _____

6. Is the current status of your Information Technology adequate to address the needs for an effective and efficient business registration and licensing? Kindly mark your answer with an **X**.

- a) Yes
- b) No

If your answer is NO, what improvements are needed? Kindly mark your answer with an **X**.

- a) Improve inter-connection and data sharing between offices or agencies
- b) Update website content
- c) Have relevant information in English
- d) Others: _____

7. If needed, what support / assistance do you need from external organizations such as donor agencies (i.e. ASEAN Programmes, World Bank, JICA, ADB, KOICA, Australia, New Zealand, etc.) and other government-assisted programs to improve the investment environment in Myanmar? Kindly mark your answer with an **X**.

- a) Training
- b) Preparing a master plan or development plan
- c) Action planning and strategizing
- d) Information Technology
- e) Technical assistance in _____
- f) Others: _____

Thank you very much for spending time to answer this survey. Kindly return completed survey by **10 January 2014**. We may get in touch with you later on to clarify some of your answers or for further questions.

Have a good day!

Annex B

ORGANIZATION	PART 1. PROFILE OF RESPONDENT					PART 2. BUSINESS REGISTRATION AND LICENSING PROCESS				PART 3. CAPACITY DEVELOPMENT		
	Sector monitored/regulated	Name of Respondent	Position	Email	Contact number	Role of agency in business registration & licensing process	Requirements of agency for business registration or licensing	Fees paid by investor & purpose	Concerns or issues of investor when applying	Skills Needed by Agency to Enhance Business Registration & Licensing	Adequate IT facility & needed improvements	Types of assistance needed from External Agency
MINISTRY OF HOTEL AND TOURISM	Hotels and Tourism Sector	U Chit Khin	Head of Union of Minister's Office	mohmailto@gmail.com	9567406454	Issuing of business licenses (for both local and foreign businesses). (See attached: flow chart)	A. No Answer. B. application form; bank statement/certification/ environment impact assessment and land lease/ agreement	Yes. In payment for application fee and license fee. (See attached: The amount of fee/payment)	No Answer. No Answer.	English language ability; and coordination of collaboration with other agencies or offices	Yes.	Training, Preparing a master plan or development plan, action planning and strategizing. Specific technical assistance in Human Resource Development. Financial assistance is also needed.
MINISTRY OF INDUSTRY	No answer.	Daw Htay Htay Than	Deputy Director	hlay2than59@gmail.com	067-408129	No answer.	A. No Answer. B. No Answer.	No	No Answer.	Management of information of data	No.	Preparing master plan or development plan
MINISTRY OF MINING: Department of Mines	U Kyaw Thet (Director of Mineral Development Section)	U Kyi Win Zaw	Deputy Director	deotmine@gmail.com	067 - 409378	No role in any of the above.	A. Application form, certification from investor's embassy, bank statement/certification, environment impact assessment and land lease/ agreement B. Application form, certification from investor's embassy, bank statement/ certification, environment impact assessment and land lease contract/agreement	Yes. Payment for Signature Bonus. Amounting to USD 100,000	Application process takes a long period of too many days; too many required documents	English language ability, coordination or collaboration with other agencies of offices	Yes.	Training and Information technology
MINISTRY OF TELECOMMUNICATIONS: Posts and Telecommunications	International Relations Division, License Division and Law Division	Than Htun Aung	Director	htunaung.than@gmail.com	967407435	No Answer.	Others: Application fees, company registration certificate, relevant document to application form Others: Application fees, company registration certificate, relevant document to application form	Yes. Initial fees. Fees for Telecom service is allowed to Local and foreign entities under the license rule reflected in the Telecom law(8 oct 2013). Payment shall be complied as mentioned in Licensing rule which will be coming out.	No Answer.	Technical skills such as 'next generation convergent regulation', OTT etc.	No Answer.	Now is proceeding to appear the licensing rule and relevant rules with World Bank's Technical assistance.
	Works and Inspections Department	U Soe Thein	Deputy General Manager	soeyon@gmail.com	95-67-407030	No Answer.	A. Application form, certification from investor's embassy, bank statement/ certification, environment impact assessment B. Application form, certification from investor's embassy, bank statement/ certification, environment impact assessment	No Answer.	No Answer.	Customer service, management of information data	No. Improve inter-connection and data sharing between offices or agencies, update website content and have relevant information in English	Training, preparing a master plan or development plan, action planning and strategizing, information technology and technical assistance
MINISTRY OF CONSTRUCTION: Public Works	Roads and Bridges	U Kyaw Linn	Managing Director	ekyawlinn@gmail.com	9567407073	Approval of business registration for (foreign business)	A. Application form B. No Answer.	Yes. They pay processing fee amounting to Myanmar 300,000 Kyats	No Answer.	Management information or data and coordination or collaboration with other agencies of office	No. Improve inter-connection and data sharing between offices or agencies.	Training, preparing a master plan or development plan, action planning and strategizing, information technology and technical assistance in all sector in Engineering
MINISTRY OF CONSTRUCTION: Department of Human Settlement and Housing Development	Urban and Housing Development	U Min Hthein	Director General	uminhthein@gmail.com	95-67-407311	Scrutinizing the Land ownership issue in processing of business permit	A. No Answer. B. No Answer.	No Answer.	Difficult to get information for land availability.	No Answer.	No Answer.	Action planning and strategizing
MINISTRY OF COMMERCE	Trade Policy Division	Directorate of Trade	Director	moc001@moc.gov.mm	95-67-408232	No Answer.	A. No Answer. B. No Answer.	No Answer.	No Answer.	English language ability and coordination of collaboration with other agencies or offices	No. Improve inter-connection and data sharing between offices or agencies, update website content and have relevant information in English.	Training and technical assistance.

Annex B

ORGANIZATION	PART 1. PROFILE OF RESPONDENT					PART 2. BUSINESS REGISTRATION AND LICENSING PROCESS				PART 3. CAPACITY DEVELOPMENT		
	Sector monitored/regulated	Name of Respondent	Position	Email	Contact number	Role of agency in business registration & licensing process	Requirements of agency for business registration or licensing	Fees paid by investor & purpose	Concerns or issues of Investor when applying	Skills Needed by Agency to Enhance Business Registration & Licensing	Adequate If facility & needed improvements	Types of assistance needed from External Agency
MINISTRY OF TRANSPORT												
Department of Civil Aviation	Economic Regulation of Air Transport	Ne Win (Mr)	Deputy Director (Air Transport)	newin2316@gmail.com	951533010	Another answer: Currently, the Department of Civil Aviation only issues "Air Operator Certificate" to all air operators, with commercial purposes, which have been permitted by Myanmar Investment Commission (MIC) to run a business in Myanmar. However, air operators which intend to deliver scheduled air services within and/or to and from Myanmar need to secure a "Permit to Operate", mainly concerned with air operation rights, from DCA.	A. No Answer. B. No Answer.	No Answer.	No Answer.	No Answer.	No Answer.	No Answer.
Department of Marine Administration	Regulator	Capt. Htay Win	Deputy Director General (Technical)	myanmarine@mptmail.net.m	951556041	Application for business registration (local and foreign business) Processing of business registration (local and foreign business) Approval of business registration (local and foreign business) Issuing of business licenses (local and foreign business)	A. Application form and Environment Impact Assessment B. Application form and Bank statement/ certification	Yes. Application Fee	Application processing takes a long period of too many days	Coordination of collaboration with other agencies or offices.	Yes.	No Answer.
Directorate of Water Resources and Improvement of River System	Transport/ Inland River Transport Infrastructure	Mr. Sein Tun	Director	theinaung07@gmail.com	951292961	Issuing of construction permit (local business) Pre activities of application and issue recommendation for wreck removal, dredging, sand and gravel production in river-creek boundary, bank boundary and water front boundary	A. Application Form B. Issues recommendation	Yes. Processing Fee in MMK	Some confusion between and among the relevant agencies' responsibilities	English language ability, customer service, management of information or data, coordination or collaboration with other agencies or offices, and technical skills such as "effective use of legal instruments"	No. Improve inter-connection and data sharing between offices or agencies; update website content, have relevant information in English and other capacity enhancing	Training; information technology and technical assistance.
Inland Water Transport	No answer provided.	Mr. Winn Pe	Managing Director	No answer.	No answer.	No Answer.	A. No Answer. B. Issues recommendation	No Answer.	No Answer.	No Answer.	No Answer.	Training; Preparing as master plan or development plan; Action planning and strategizing; information technology; technical assistance in engineering, marine and transport sector; Others: infrastructure and facilities.
Myanma Airways	Air transport	Mr. Than Tun	Managing Director	management off@myanmaairways.aero	95-1-246452	No role in any of the above.	A. Application form; certification from investor's embassy; bank statement/certification; environment impact assessment and land lease contract/agreement B. No Answer.	Yes. Concerning tax	Application processing takes a long period or too many days; Too many required documents; Have to deal with many officials or personnel/staff	English language ability; Customer service; Management of information or data. Coordination or collaboration with other agencies or offices; Technical skills such as pilot/engineer/well trained skill star	Yes.	Training; Preparing a master plan or development plan; Action planning and strategizing; Information Technology; Technical assistance in Airline business.
Myanma Maritime University	No answer provided.	Mr. Myat Lwin	Rector	No answer provided.	No answer provided.	No Answer.	A. No Answer. B. Issues recommendation	Yes. Concerning tax.	No Answer.	English language ability; Technical skills such as pilot/engineer/well training skill star	No Answer.	Training.
Myanma Port Authority	Stevedoring and ICD Licensing	Mr. Myo Nyein Aye	Assistant General Manager	mpa@mptmail.net.mm	95-1-391272	Issuing stevedoring license and inland container depot license for terminal operators	A. No Answer. B. Application Form; Labour list and particulars	Yes. Annual License Fee amounting to \$1500 or MMK equivalent	No answer.	No Answer.	Yes. (capacity enhancing)	No Answer.