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## Myanmar's Special Economic Zones (SEZs)

Myanmar's three Special Economic Zones (SEZs) may present foreign investors with an attractive alternative to investment under the Foreign Investment Law (FIL) alone, particularly those interested in investing in export oriented businesses.

The Myanmar Special Economic Zone Law (2014) (SEZL) applies to each of Myanmar's three SEZs (Thilawa, Dawei and Kyaukphyu) and supplants previous SEZ laws. The Thilawa SEZ project in the south is a joint venture between Myanmar and the government of Japan; the Dawei SEZ project in the southeast was undertaken in cooperation between the Thai and Myanmar governments; and, the Kyaukphyu SEZ in the west began as a cooperative project between Myanmar and China but has since transitioned to a private development scheme. In each case the respective zones are located near international transit points (ports and borders) making international transport more convenient.

### Administrative Structure

The SEZL establishes a Central Body, a Central Working Body and three Management Committees for each of the SEZs. The Working Body interacts with the respective Management Committees and reports back to the Central Body. Management Committees work with investors and developers to submit operations and maintenance plans to the Central Working Body which, with the approval of the Central Body, the Working Body guides to completion. Management Committees generally approve applications for investment within 30 days.

The SEZL allows for the demarcation of a variety of zones, most importantly of which are "free" or "exempted" zones" and "promotion zones". Management Committees have the authority to demarcate free zones and promotion zones within their respective SEZs as appropriate. Free zones are treated as if they were located outside of Myanmar for customs purposes; and thus, machines, materials and goods used in production (or used to construct the facilities for production) within a free zone are exempt from import duties. In return, however, businesses operating within free zones must manufacture their goods primarily for export. In contrast, goods produced by businesses

in promotion zones must be intended to be sold primarily in the local market and must also be manufactured with local materials. Promotion zone goods sold abroad are considered export products of Myanmar.

### Investors and Developers

The SEZL defines "investors" as foreigners or citizens with established joint venture or wholly owned foreign and/or Myanmar businesses that have been granted permission to operate within an SEZ by one of the respective Management Committees. The SEZL defines "developers" as companies, persons, corporations or organizations with permission to engage in the construction, operation and maintenance of the infrastructure of the SEZ. There are significant tax incentives for SEZ investors and developers.

### Tax Incentives

Investors and developers can enjoy tax breaks and exemptions on income tax and customs duties for the first five years with a 50% tax break on re-invested profits for the next five years; and, for a third period of five years, they may claim an additional 50% tax relief on reinvestments of export sales profits. Certain goods produced with the zone (e.g. vehicles, machinery) are entitled to exemptions on all customs duties for the first five year and 50% exemptions for the second five year period. Import duty exemptions are also available on the importation of raw materials, equipment and some types of goods used for approved investor activities within the SEZs. Finally, tax exemptions are available for proceeds earned on overseas sales for the first five years from the day of commencement of a production or a service within additional exemptions at a graduated rate for the next ten years.

### Non-tax Incentives

Non-tax incentives include long term leases of up to 75 years (five more years than available under the FIL), protections against nationalization, guarantees to repatriate profits, the right to open a corporate bank account and relaxed controls on foreign exchange.

### Foreign Insurance Companies

The ability of wholly owned foreign insurance companies and joint ventures to operate within

## ABOUT US

BNG Legal is a leading regional law firm providing comprehensive legal services to foreign and local clients in Cambodia and Myanmar.

Registered with the Bar Association of the Kingdom of Cambodia, our legal professionals combine international standards with local expertise.

We differentiate ourselves by coupling a deep understanding of the local business environment with international professionalism and integrity.

We facilitate business, investment and trade between Cambodia, Myanmar, and the rest of the world through innovative and cost-effective legal services.

Superior knowledge of local protocol, local procedure, and local people is necessary for any business to succeed.

Conducting daily business in Cambodia and Myanmar, BNG Legal is up to date with the newest procedures and requirements, helping clients efficiently and successfully complete any project.

## CAMBODIAN LAW BLOG

[cambodianlaw.wordpress.com](http://cambodianlaw.wordpress.com)

BNG Legal believes expanding access to legal information is crucial to rule of law. To that end, several of our legal professionals write a blog discussing recent developments in the legal landscape.

## LEGAL DATABASE

The laws and regulations in our database are based upon the Official Gazettes, law compendiums and other collections from the ministries and institutions of the Royal Government of Cambodia. These are available to the public through our partner site, [www.bnglaw.net](http://www.bnglaw.net).

the SEZ is an added benefit of the SEZL. Prior to the SEZL foreign insurance companies were restricted to operating representative offices only (although many foreign insurers operate by proxy in Myanmar).

While the SEZL allows foreign insurers to operate within SEZs they are still subject to several restrictions, including exclusion from the domestic market and the imposition of trust accounts. Nevertheless, the allowance of foreign insurers within the SEZL represents a significant step forward in a developing market and a unique opportunity for foreign insurance companies to gain a foothold in Myanmar.

## Special Economic Zone Locations

### *Thilawa SEZ*

The Thilawa SEZ is a joint venture project between the governments of Japan (49%) and Myanmar (51%). The Thilawa SEZ covers about 2,400 hectares and is located just 20 kilometers south of Yangon, the country's former capital and largest city in Myanmar. The SEZ has direct access to Thilawa deep sea port and the Yangon International Airport is just an hour's drive away. Of all Myanmar's SEZs, the Thilawa SEZ has attracted the most attention and appears most likely to significantly contribute to the country's economic development. Thilawa is conveniently located with plenty of space for growth. The project also has the backing of the Japanese government and several major Japanese companies such as Mitsubishi have already committed to operating within the Thilawa SEZ.

### *Dawei SEZ*

The Dawei SEZ is a joint-venture project between the governments of Thailand (50%) and Myanmar (50%). The Dawei SEZ is located in the south of the country near Thailand; it is four times larger than the Thilawa SEZ and covers about 205 square kilometers.

Progress has been slow on the development of the Dawei SEZ. In contrast to the Thilawa SEZ, the surrounding area has a much less developed infrastructure and an inadequate supply of labor. When complete, the project promises to include a deep sea port, a natural gas power plant, a water supply system, steel manufacturing and facilities for fertilizer production.

### *Kyaukphyu SEZ*

The Kyaukphyu SEZ began as a joint venture project between the governments of China and Myanmar but is now being developed by private companies. The Kyaukphyu SEZ covers about 1,600 hectares and is located in the far west of the country on an island in the Rakhine State which provides access to the Shwe natural gas field in the Bay of Bengal.

The intention with the Kyaukphyu SEZ has always been to create a "trade corridor" between China and Myanmar. A natural gas pipeline running some 2,500 kilometers between southern China and Kyaukphyu is already in operation and there are plans to build a railway line following the same route that would connect Kyaukphyu to Kuming, the capital city of China's Yunnan province.

The Kyaukphyu SEZ is an ambitious project with tremendous potential that has experienced some difficulties in Myanmar primarily due to anti-Chinese sentiment. Nevertheless, the announcement of a US \$7.8 billion trade deal between China and Myanmar in November 2014 has brought renewed enthusiasm to the project.

## Recommendations

Myanmar SEZs present foreign investors with unique and attractive opportunities for investment. However, as every investment opportunity presents its own challenges, clients are strongly advised to seek individualized legal advice before investing. For more information about Myanmar's Special Economic Zones, please contact BNG Legal's Myanmar office through Joseph Lovell ([joseph@bnlegal.com](mailto:joseph@bnlegal.com)) or Benjamin Wagner ([benjamin@bnlegal.com](mailto:benjamin@bnlegal.com)).

## Legal Update

### **Sub-Decree No. 258 dated 19 September 2014 on the Organization and Functioning of National Trade Repository**

The aim of this Sub-Decree is to fulfill obligations as stated in the Master Plan of the ASEAN economic community (point A1) on the free flow of goods and Article 13 of the Trade Agreement ASEAN goods (ASEAN Trade in Goods Agreement-ATIGA) to create sensing information concerning trade ASEAN in 2015.

The National Trade Repository is responsible to link and compile information related to trade which is accessible by public. This information will help to facilitate trade and investment in ASEAN as well as trade and investment with partner or any member of the World Trade Organization. The National Trade Repository's information includes; list of Nation Preferential tax, Decrease/erase tariff programs under free trade area, non-tariff measures, Rules of origins and other relevant legal rules and regulations.

This sub-decree is divided into 6 chapters and 12 articles. The National Trade Repository is governed and under the supervision of the Ministry of Economy and Finance.