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MYANMAR DRAMATICALLY CUTS LIST OF 92 ACTIVITIES REQUIRING A LOCAL PARTNER DOWN TO 22

Big Winners are Retail, Petroleum Products, Real Estate, Media and Healthcare

In a move to expand the potential opportunities for foreign investors, the list of activities a foreign investor is allowed to carry out in Myanmar only under a joint venture ("JV") with a Myanmar citizen or company, has been cut significantly. From 92 activities listed in Notification 26/2016 ("Notification 26") requiring a JV, the new Notification 15/2017 ("Notification 15"), which replaces Notification 26, only lists 22 such activities.

The big beneficiaries are, in no particular order, foreign retailers who now get to open large outlets (exceeding 10,000 square feet), petroleum product suppliers and private clinics (both no longer need a JV). Also benefitting from increased access is real estate development of commercial space and offices, print and broadcasting media, and various manufacturing activities and agriculture.

The Myanmar Investment Commission ("MIC") has done this significant reduction of JV requirements essentially by convincing the line ministries and the Cabinet to go back to [the way things were in 2013](#), and once again remove the JV requirement for all activities which merely require approval from the line Ministry. That

Highlights of this note

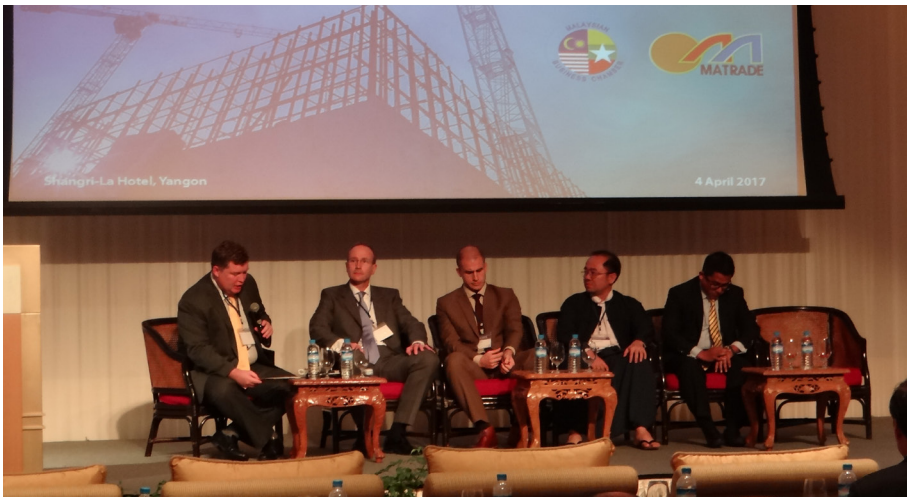
- ▶ Big Winners are Retail, Petroleum Products, Real Estate, Media and Healthcare
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was indeed the situation under Notification 1/2013, the very first version of the list of foreign ownership restricted activities. In 2014, a general JV requirement was added for each and every activity that required approval by a line ministry through Notification 49/2014, adding dramatically to the number of activities requiring a JV for foreigners.

PROGRESS REPORT 2016 MYANMAR



<https://goo.gl/jfdQ4U>



Building Yangon: Property and Urban Infrastructure Market & Legal Update
04 April 2017, Yangon.

Notification 15 implements Section 42 of the Myanmar Investment Law of 2016 by setting out which activities may be carried out by foreign investors, possibly with a local JV partner.

A new feature is the inclusion of “industry codes” such as “CPC” (“Central Product Classification”), or to “ISIC” (“International Standard Industrial Classification of All Economic Activities”). We have analyzed the effect of these code references at the end of this note.

Myanmar Opens Up for Big Retail. Again.

Notification 15, sadly, does not say in a straightforward manner that foreign investment in large retail is now permitted. But it does say that “mini-markets and convenience stores” are not allowed for foreign investment (not even with a JV) if these are smaller than 10,000 square feet or the corresponding 929 square meters. The implication is that sizes in excess of this surface are allowed for foreign investment. There is no mention of a requirement for a JV, but it is stated in Notification 15 that the Ministry of Commerce (“MoCm”) will need to approve retail and wholesale investment.

The first thing to notice is the modest size requirement, which seems to have been designed solely to protect small convenience stores. The 929m2 requirement of Notification 15 is a little bigger than two basketball courts. That is a big retail outlet, certainly, if you need to fill it with, for example, toys, but it is nothing close to megamall sizes.

Some of us, of course, have already seen this once before. In [Notification 1/2013](#),

the very first list of restricted activity, promised foreign retailers they could enter as well. Section 19 of that list, entitled “Retail business” stated at that time that “Foreign investment in small-sized retail businesses is not permitted under this category. However, supermarkets, department stores, and shopping centers are permitted. In this category, the enterprise may not be situated nearby areas with local businesses. The enterprise is required to retail mostly local products. In the case of a JV, the local partner needs to have a minimum shareholding of 40%”. However, in reality the MOCm never issued any permissions and the whole notion was swept away when roughly a year later [Notification 49/2014](#) came along, wiping out reference to retail of any kind.

The original reference to large retail in 2013 was a lot more explicit than the current version in Notification 15. It still leaves quite a number of unanswered questions. None of those questions is more fundamental than the object and purpose of the retail exception created by Notification 15. Does it refer only to convenience stores, as the released translation suggests, or to retail of anything at all? Is this good news for Carrefour only or also for Adidas, ToysRus, Marks & Spencer and Kinokuniya?

Based on how Notification 15 reads now, we think it is good news for all retailers, regardless of what they sell. The reference to “CPC 62”, which is glued to the retail exception in Notification 15 is highly suggestive of that interpretation. Assuming MIC had the CPC 1.1. or 2.1. version in mind and not the Provisional Version, CPC 62 stands for general retail trading, of all and any goods,

whether foods or anything else. By that reasoning any foreign retailer, whether a supermarket, of a retailer of toys, books, fashion, sporting goods, home appliances, audio-visual, ICT or anything else, would be able to invest in Myanmar to carry on a retail business, by, presumably, importing their goods and reselling them in retail outlets he owns. Provided the outlet is a little larger than two basketball courts.

There is however nothing to go on in Notification 15 in terms of regulation, and it is stated quite clearly that the MOCm will need to regulate this activity. We will have to see if, when and how the MOCm will actually implement the licensing of foreign owned retail outlets. Will there be limitations in terms of number of outlets? Or in the nature of the goods sold? Notification 15 does not mention any JV requirements, but it these are not unusual in retail.

Real Estate: No More JV for Commercial or Office Developments

There used to be four categories of real estate development activity which require a joint venture with a Myanmar citizen. With their reference numbers of Notification 26’s List B, these are: 21-Development, sales and lease of residential apartments/ condominiums; 22- Development and sales of office/ commercial buildings; 23-Development, sales and lease of residential apartments in areas related to industrial zones; and 24- Development of affordable housing.



Only one of those four categories remains in Notification 15 as requiring a JV, the one referring to “development, sale and lease of residential apartments/condominiums”. The other three activities are no longer mentioned on in Notification 15’s list of activities requiring a JV. Thus, the “development of affordable housing”, “development, sales, and leasing of residential apartments in industrial zones” and “development of commercial buildings” will now only require approval from the Ministry of Construction (“MOC”). These activities are no longer included in the list of activities requiring a joint venture. However, the development, sale and lease of residential buildings and condominiums will still require a joint venture.

So there is now a local ownership requirement depending on the purpose of the development. This will be difficult to administer in projects which are, as is very often the case, a mix of residential, commercial and office portions.

In addition, development of new towns will require a joint venture with a government organization along with the approval from the Ministry of Construction (“MOC), while urban and regional development that is 100 acres and above will only require approval from the MOC. Specifically, urban redevelopment projects (over 4 acres) in Nay Pyi Taw, Yangon and Mandalay also require MOC approval.

Also noteworthy, as is discussed in more detail below, large scale retail,



Government Guarantees for PPP Projects in Myanmar
31 March 2017, Nay Pyi Taw.

with a selling area of more than 10,000 square feet or 929 square meters is allowed as a joint venture for foreign investors, although mini-markets and convenience stores remain prohibited to foreign investors.

The construction of roads, expressways, tunnels, underpasses, overpasses, flyovers, and bridges (over 180 feet), as well as the manufacturing and distribution of their related materials now only requires approval from the MOC.

No More JV with MOEE for Petroleum Product Businesses

In the energy sector, the JV requirements introduced by Notification 49/2014 to support the Government’s privatization program of a number of state-owned assets, are reversed by Notification 15. As per the new regulation under the Myanmar Investment Law, these activities no longer require a joint venture with the MOEE, or with any other a local partner, but instead only require MOEE approval.

In 2014, the storage, transport, pipeline, jetty or terminal and distribution of all petroleum products was, since Notification 49/2014, was suddenly decreed to be only permitted to foreign investors under a JV with the MOEE. As we pointed out at the time (see [here](#)), this move was made to support the previous Government’s initiative to find foreign JV partners for a number of state owned assets. The JV between the Government and Puma Aviation for the nationwide distribution of aviation fuel

was concluded under this program.

The tide has been in favor of abolishing these foreign ownership requirements for a while. Indeed, most foreign investors will not tie up with MOEE just because a regulation says so. No one starts a business with a local partner one does not wish to have. Instead, investors just wait until the market is opened up. And, by the same token, those foreign investors who are happy to tie up with MOEE would do so anyway, whether the regulation says so or not.

These foreign ownership restrictions have been abolished, and are replaced with a general requirement of obtaining MOEE approval for the investment project. Reasonably speaking, cancelling an existing restriction means that the activity is now open without such restriction. A foreign oil products company would now, in principle, allowed to carry out the business activity of importing, storing, transporting and in general distributing petroleum products.

However, it remains to be seen if the MOEE will, in fact, grant such approval to foreign investors, and if so, subject to which conditions. Notification 15 does not even require any local partner for this activity. It does not seem logical for the previously heavily regulated petroleum sector to be thrown open entirely overnight, and to go from years of a JV requirement with the Government itself, straight to allowing 100% foreign ownership. Current MOEE regulations on a number of petroleum product business activities, such as

importing fuel, distributing LPG, or transporting petroleum products are not comprehensive. The MOEE might come up with additional restrictions or conditions as it produces appropriate regulation for the sector, or even on a case-by-case basis. We believe the MOEE is currently working on their own requirements for approval of foreign invested petroleum product projects. But, Notification 15 is at the very least a major stepping stone in opening the petroleum sector up to foreign investment.

In addition to cancelling the midstream restrictions, Notification 15 has cancelled the upstream oil and gas related restrictions which were also introduced by Notification 49/2014. This was for “import, production, construction and installing” of pipelines and facilities for offshore drilling. Both were, as for was the case for the midstream activities, introduced as a support for a Government JV program. In fact, the MOGE only very recently invited EOI’s for the pipeline project.

Finally, construction and operation of offshore supply bases and petrochemical plants also no longer need the MOEE as a local joint venture partner.

Pharma and Healthcare: No More JV Needed for Clinics

There are three principle expansions under the now permissible activities in the pharma and healthcare sector. Firstly, the manufacturing of pharmaceutical

raw materials no longer requires a joint venture. Secondly, manufacturing of vaccines and distribution of narcotic drugs, no longer requires a joint venture partner, however the activity is subject to the approval from the Ministry of Industry. Thirdly, activities related to private health care services, private nursing homes, and private hospitals no longer required a joint venture, subject to the approval of the Ministry of Health and Sport. However, a “Transportation Agency for patients to overseas hospitals”, an entirely new business line in the health sector, may be carried out as a JV only.

Opining up clinics to 100% foreign ownership is the eye-catcher in the health sector. Several hospitals and clinics have been approved in recent years under the JV requirement as per Notification 26 and its predecessors. This was always a difficult requirement. There is a lack of substantial private health care businesses in Myanmar, which made finding a partner who can economically contribute at least 20% of the investment quite a challenge. The previous JV requirement was meant to foster business combinations between foreign and local providers, but it ended up being one more obstacle to investing in Myanmar’s healthcare sector. This change marks a sizable expansion in the number of health services a foreign investor may engage in.

However, the same does not apply to veterinary clinics, which are from now

on only permitted under a JV with a Myanmar citizen. Previously these could be 100% foreign owned.

The “transportation agency” activity JV requirement raises a number of new concerns. These activities are now often performed by branches in Myanmar of foreign hospitals. Presumably, such activity can continue. But new investments by foreign hospitals in Myanmar, almost certainly subsidiaries of hospitals overseas, will of course also refer patients to them. Would they then need to have a local JV partner? That seems illogical and easily avoidable in the structure. The interpretation of the “transportation agency” is also unclear. It refers to CPC 93121, but this class of activity is not about transportation at all. It is the general category under Class: 9312 - Medical and dental services, “Subclass: 93121 - General medical services”. This covers services “consisting of the prevention, diagnosis and treatment by doctors of medicine of physical and/or mental diseases of a general nature, such as consultations, physical check-ups, etc.” according to the UN’s commentary.

Foreign Investment in Print and Broadcasting Media without JV

Under Notification 26, most media activities within the purview of the Ministry of Information (“MOI”) required a JV with a Myanmar citizen:

- Publishing of periodical newspapers in foreign languages (or) publishing



Government Guarantees for PPP Projects in Myanmar
March 31, 2017, Nay Pyi Taw.



- newspapers in foreign languages
- FM radio programmes
- Business of broadcasting industry Direct to Home (DTH) system
- Business of broadcasting industry using DVB-T2 system
- Business of broadcasting industry using Cable TV system
- Business of movies production
- Cinema business

In Notification 15, none of these activities requires a JV. For all of these activities, approval from the MOI is required, except for cinema business which has been taken out of the regulated activities altogether. This is a significant opening of the broadcasting sector covering (foreign language) print, radio and television.

Nothing new here, but Notification 15 now confirms that, manufacturing and domestic distribution of mobile handsets and equipment's related to satellite communications, radar, radio communications, is also permitted without a JV. Distribution of handsets which are manufactured in Myanmar was already open for 100% foreign investment under the existing practice. Notification 15 likely, as is the case already, only allows distribution of handsets which are manufactured by the seller in Myanmar.

Manufacturing: Packaging and Pharma No More JV, But Cosmetics and Soaps Now Needs JV

Four types of manufacturing activity have been removed from the JV list:

- Manufacturing and marketing of ropes;
- Packaging;
- Manufacturing of pharmaceutical raw materials; and
- Manufacturing of seasoning powder.

In addition, the restrictions on cigarette manufacturers which existed under Notification 26 (mostly in connection with use of local tobacco and requirement of export) seem to have been removed, at least for future projects.

However, a few activities which previously did not require a JV, have been added on to the list in Notification 15:

- Manufacturing of cosmetics
- Manufacturing of soaps
- Rearing, breeding and selling of pets (insofar that is not out of place here)

Agriculture: Cap of 49% on Foreigners for Certain Activity Removed

Notification 26 did not contain a straightforward JV rule for agriculture activities. It did state that "distribution in local market and exporting crops after cultivating and producing using imported necessary input materials", was "permitted only for production of value added products with foreigner shareholding up to 49 percent". That notion of "49 percent" has been removed in Notification 15, but the activity continues to feature on the JV list. In actual practice, there appear to have been only very limited circumstances where the 49% was thought to apply anyway.

Notable for prospective investors is that 100% foreign ownership is now permissible for production and distribution of seeds and hybrid seeds, crops, new plant varieties, pesticides, fertilizers, hormone, weed killer and other agriculture related services and research. Approval from the Ministry of Agriculture, Livestock and Irrigation is still required, however previously these activities strictly required a joint venture with a local partner.

New Use of Industrial Sector Classifications: How to Interpret?

New to Myanmar (Vietnam has done this for many years) is the use of some type of industrial or services activity classification codes in an apparent attempt to make is clearer which activities are meant. Notification 15 refers sometimes to "CPC", which stands for "Central Product Classification", covering all goods and services, also used as a tool for the WTO's General Agreement on Trade in Services ("GATS"). There are several versions of the CPC, the most common ones being the CPC 1.1. and the CPC Prov, used in many GATS Schedules. There is also a more recent CPC 2.1. version, which we think is the one used by Notification 15. In other instances, Notification 15 refers to "ISIC", which stands for "International Standard Industrial Classification of All Economic Activities", produced by the United Nations Statistics Division since 1958.

So, now there are essentially two columns of activity, one in language (both in Myanmar language and published by the MIC in English) and one new column with an industry code. They are almost never identical. Sometimes, the code is much, much wider than the textual description of the activity. So,



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22 March 2017, Yangon.

which one prevails? The one in language or the one in code?

We think the codes are added to, in some cases, provide extra clarity or context for one or more aspects of the activity. The codes do not replace, or are not equivalent to the text activity itself. They are to be taken into account for a better understanding, but within reason and within the textual description of the activity.

To illustrate our reasoning on this issue, let's take a look at the reference to "Construction and implementation of storage tank, loading port, pipe line, related machineries and equipment and construction of building for importing, transporting, storage, distribution and selling of oil, gas and petroleum products". All this comes with a simple reference to "ISIC 2512" in the code column. Now, ISIC 2512 is merely "manufacturing of steel tanks" only, and not the business activity of owning or operating petroleum storage or pipelines, or any of the other activities mentioned in the text column of this activity. So, what Notification 15 is saying here, is merely that someone might be constructing such steel tanks

to carry out the wider activity of storing petroleum products. Similarly, the reference in Notification 15 to "Deep sea ports", where we find a code reference of ISIC 4290. This however refers to construction activity alone and not to the activity of owning or operating such port. As such it does little to help our understanding of "foreign investment in deep sea ports".

Another example is the reference to "transportation agency to overseas hospitals clinics", which connects with CPC 93121. However, CPC 93121 is not about transportation at all, but about general medical services. The code is meant to convey that the purpose of that transportation must be those general medical services. The code does not mean to replace the text.

The use of industry codes is a helpful idea, but it can lead to mixed or even wrong results. One needs to keep in mind the limited functional role they appear to play in the interpretation of Notification 15, as additional context for one or more aspects of the activity referred to in the text.

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