Consult-Myanmar
for fruitful investment in Myanmar

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

Transcript for video: “Myanmar Company Incorporation – What you need to know”

View video at http://youtu.be/a1alkUaTQ64.. To download a MP4 video version hosted on Google Docs go to http://goo.gl/rt68O (file size 24 MB)

Slide 1

Hello this is Andrew here. I am the Director at Consult-Myanmar Company Limited. This is the 2nd video in a 2 part series on investing in Myanmar. Today we are going to talk about “Myanmar Company Incorporation – What you need to know”

Slide 2

In the previous video we discussed about the key legal framework in Myanmar and the industry or sector opportunities that are revealed by the new legal framework. This new framework gives foreigner investors the opportunity to hold controlling interest in their investment in Myanmar via 100% ownership or via a joint-venture.

If you have not watch the previous video – please go to Part 1 video now at http://youtu.be/87j04PQBbQw as the investment strategy you adopt will decide on the type of investment vehicle you use. The company incorporation is that vehicle that you decide to use once you have decided on your investment strategy.

Slide 3

Let’s start with Part 2 video: Myanmar Company Incorporation – what you should know as an investor.

Slide 4

In this video we will focus on:

- The Foreign Investment Law
- Myanmar Companies Act

Slide 5

As a foreign investor it is important that you understand the objectives of the Foreign Investment Law – as we want to invest responsibly, by focusing our investment into areas that are profitable for us and at the same time is beneficial to the Myanmar people. The foreign investment law outlines what are the long term objectives that the Myanmar people want to achieve in order to take the country forward both economically and intellectually.

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

Slide 6

One of the key objectives of the Foreign Investment Law is that of economic development of key industries that the Myanmar government considers to be crucial. Especially important are those sectors that create employment, export promotion and import substitution.

Slide 7

Myanmar people want to catch up with its neighbours like Thailand, Malaysia and Singapore. They do not want to be left behind in terms of economic development.

The Myanmar people realize that years of sanctions have left the country both isolated and stagnant.

The government realizes that in many sectors of the economy Myanmar people do not have the technology, management knowhow or capital necessary to fully exploit those segment or industry and to bring it to an international level quickly. Example would be operating deep sea oil and gas exploration platform or running a 4th Generation mobile network.

That is where the Myanmar government feels that foreign capital, technology or management knowhow will do the most good.

The Myanmar government is keen to develop the remote region of its country – for example if you can invest in a factory that will create employment in the remote and poor region of the country – the MIC can even look at extending the Exemptions and Reliefs that you received for a longer period.

Slide 8

The Foreign Investment Law provides the legal framework for foreign investors to invest in Myanmar. In it the roles and responsibilities of the Myanmar Investment Commission or MIC is defined.

The MIC acts like a one stop shop. It is vested with the power to review all investment proposals that foreign investors submit. The MIC will co-ordinate with all government ministries to ensure that all investment proposals are treated in an expeditious manner.

The MIC can approve the investor’s proposal and issue MIC Permit. It can also extend the benefits if the investor invest in remote region thereby creating employment and the MIC can also impose punitive measures if investors do not abide by the terms of the investment agreement.

Slide 9

Let’s go through the 3 key benefits that foreign investors will enjoy when they invest under the FIL scheme. I call these 3 benefits the 3 pillars to fruitful investment in Myanmar.

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

Slide 10

The first pillar and one of the most important that foreign investors enjoy under the FIL scheme is tax exemption or relief. For capital intensive &/or export-oriented industry – this first pillar is extremely attractive as it reduces the manufacturer's tax liability significantly.

As the investor get income tax exemption for 5 year, exemption from income tax for profit reinvested into the business, accelerated depreciation for capital equipment, 50% relief on export income, exemption from custom duty for import of capital equipment, exemption from duty for import of raw material.

For foreign investors that invest in remote region and create employment there - investors can request for extension of the benefits beyond its stipulated period from the MIC.

Slide 11

The 2nd pillar is the Right to use Land. Under the 1987 Restriction Act – Foreigners are not allowed to buy or own land in Myanmar.

However for foreign investors that are in export-oriented manufacturing under the FIL scheme they can easily lease industrial land from the government for up 50 years ; and if need be they can apply for 2 10-year extension on the lease.

Foreign investor can also lease land from private land owner with the approval of the government. This is important for example if you are investing in say building 10 supermarkets in Myanmar over the next 3 years and you need land of at least 5,000 sq ft for each site in order to run a successful supermarket and your Myanmar JV partner already own prime land in key cities in Myanmar that can be use for that purpose. The local partner can lease the JV Company the prime land as their contribution to the joint-venture.

If you are willing to invest in remote region and create employment there – the MIC is willing to look at extending your lease to a longer period.

Slide 12

The 3rd and final pillar is the Guarantees that the government gives to foreign investors under the FIL scheme.

The government guarantees that your company will not be nationalized during the term of the FIL agreement. They will not suddenly terminate your company's permit to trade unless you are breaking the law or violating the terms of the investment agreement.

On expiry of the term of the contract, you are able to remit your profit out of the country after paying necessary taxes and liabilities.

Consult-Myanmar
for fruitful investment in Myanmar

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

Slide 13

There are currently 3 business classifications used by the Myanmar Companies Act:

They are Industrial – which is for business involves in manufacturing;

Service – for business such as consulting, design & advertising &

Trading - which is import and export business. Take note that trading is reserved only for Myanmar citizen only. Foreigners cannot be involved in trading.

Remember that one of the purpose of the FIL is to develop industries that Myanmar people do not have the technology, management knowhow or capital to develop. As trading is a low-tech business this is an area that foreign investors cannot participate in in Myanmar.

Slide 14

Incorporation route. For foreign investors who are incorporating a company in Myanmar they have an option of incorporating with FIL benefits or without FIL benefits.

For capital intensive industry such as export-oriented manufacturing where it is normal to invest US$2 million and above on a factory – it makes sense to incorporate under the FIL scheme and enjoy the 3 pillars of benefits that we discussed earlier.

In the case of JV such as building a chain of supermarkets – it is also very capital intensive so it make sense to invest under the FIL scheme. So the FIL scheme is ideal for capital-intensive industry.

For non- capital intensive industries such as Service industry like consulting , design, advertising whereby the capital invested may not exceed US$50,000 if you are able to break-even within the first year of operation – it makes sense to incorporate without the FIL benefits as most of the sales are generated locally.

Investors that want to station staff in Yangon in anticipation of the Myanmar government opening up their sector for foreign investment like what we have seen recently in the oil & gas industry. Under such circumstances – the foreign investor should just open a branch of a foreign company i.e. the shareholder is a foreign company that is incorporated overseas in its home country.

Take note also that to incorporate a company with limited liability you need a minimum of 2 shareholders. Therefore to incorporate a company under the Myanmar Companies Act without the FIL benefits – is suitable for companies in the non-capital industry.

Slide 15

This table here shows a quick summary of the difference in the benefits that a foreign investor enjoy when they invest under the FIL scheme and when they invest without FIL scheme.

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

As you can see for capital intensive industry that qualifies to invest under the FIL scheme – the benefits are substantial.

Slide 16

How do you start planning on what type of entity or legislation that you want to register your business under? What are the considerations?

Slide 17

There are 5 questions you need to ask yourself.

First question :

1)Is it reserved for the State Owned Economic Enterprises?

If it is in a reserved sector you must either propose a JV with the State or wait for an open tender to be called by the relevant ministry.

2) Is it in a restricted industry?

If it is in the restricted industry you need to ask yourself the following questions:

3) Do I need to JV with a local?

What is the role of the local citizen? Normally the local provides land, manufacturing or service facilities, distribution or sales.

4) Which government ministry must I get approval from?

For eg if you want to invest in a hotel – you need to seek approval from the Ministry of Tourism.

In the restricted industry - always find out what is the minimum criteria set by the relevant ministry if you want to get your investment proposal approved quickly.

5) How do I get access to land?

Do I lease industrial land for 50 years direct from the government? Or is the local partner going to provide the land?

Slide 18

JV Consideration. Sourcing for a suitable local partner is a major problem for many companies going into the reserved sector or the restricted industry. In these segments it may be mandatory to partner a local citizen or enterprise before you can participate in that industry or sector. For example in the banking industry if the government were to issue say 4 international banking licence via a “beauty contest” at the end of the year and the international banks need to partner a local bank in order to be able to be bid for one of the licence – the number of strong private Myanmar banks that have good network of branches

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

in Myanmar can be counted with the fingers of one hand. You have the usual suspects KBZ Bank, AGD Bank, CB Bank, Ayeyarwady Bank, etc.. The number of potential international banks that will participate in the open tender will probably be more than 20. About 75% of the applicants will be left without a partner – and thus fall out of the race.

Finding suitable land. For export-oriented manufacturing that are under the FIL scheme – they can lease industrial land directly from the government in one of the many industrial parks around Yangon. For industries where location is important such as retail or hotel – getting access to prime land that are strategically located is a challenge. Ideally in these industries – the foreign investor should partner a local citizen or enterprise that already own prime land in key locations that they want and can lease those land to the JV company as part of their contribution to the JV.

The decision to incorporate the JV Company either in a tax friendly country like Singapore which has Double Taxation Agreement with Myanmar or to incorporate locally within Myanmar has implications on your how much tax you will pay. This is something that you need to consider carefully when the JV Company is being set up.

Due diligence. Bigger companies in Myanmar such as banks or telecom companies will have annual audit that are more in line with Generally Accepted Accounting Principle - otherwise known as GAAP. However, for smaller Myanmar companies – it is common for them to have 2 sets of book – one to show the income tax department – the other for their own shareholders. Standard like the GAAP may be loosely interpreted in Myanmar. So performing due diligence is a challenge in Myanmar.

On top of that US companies must also vet the background of their potential JV partner to ensure that are not directly or indirectly controlled by people that are on the US sanction list. The challenge is that most of the business tycoons in Myanmar are on the US sanction list which would imply that US companies can only partner the small businessmen in Myanmar. This severely limit chance of success in bidding for a licence when it comes to capital intensive industries such as oil & gas, banking or telecom where you have a higher chance of getting a licence if you partner with a local tycoon.

Under the FIL - dispute resolution mechanisms can be contractually agreed upon between the parties. If no such mechanism is provided for in the contract, Myanmar law will apply by default. Further, if the FIL conflicts with an international treaty or similar agreement approved by the Myanmar government, the terms of the treaty or agreement will prevail.

Take note that Myanmar government just became a signatory to the New York Convention. This allows parties to a contract to stipulate that future disputes will be arbitrated in neutral arbitration centres such as HK or Singapore. As to how the law will be enforced in Myanmar is still not clear. For example if there is a dispute between a foreign investor and his Myanmar JV partner and is arbitrated in Singapore. If the arbitration court grant an arbitral award in favour of the foreign investor and the Myanmar partner is not happy and dispute the arbitral award in the High Court in Myanmar – we are not sure how the Myanmar High Court will handle the case. Will they accept the arbitral award passed by the arbitration court in

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

Singapore? Or will they side with the Myanmar company? It is not clear at this point in time how the mechanism for enforcing arbitral award passed by foreign arbitration court will be implemented by the court in Myanmar.

Slide 19

So what are the risk in investing in Myanmar. There are four risks you need to be aware of. They are political, social, economic and reputational.

Slide 20

If the political reform in Myanmar fails – we could see a roll back of the sanctions that was just recently lifted by the West.

On 20th May 2013, when President Thein Sein visited the White House – he pledged to institutionalize the reform and to hardwire it into the legislation so that it is irreversible.

But if political reform fails, what we will see is this.

Companies are asked not to do business with the Myanmar govt. This was a campaign that ran in Australia in 2009. “Don’t Deal with Burma” campaign.

Companies that have invested in Myanmar are asked to pull out of Myanmar. This is a scene outside the French Embassy in London in 2009 – the protesters are asking French oil company Total SA which operate the lucrative Yadana Gas Project to pull out of Myanmar.

Slide 21

Social risk. Myanmar now is very democratic. 16 newspaper licence have been granted to private companies. In fact too many licence have been granted. The challenge now for the private newspaper is how to build scale, readership and hopefully survive as a private company.

Myanmar people now are also very vocal as a result of the political reform and their new found press freedom.

People protest whenever they feel injustice have been done to them.

For example if they feel that there is a Land Grab by government officials or big companies and they had not been fairly compensated for vacating their land. They will protest.

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

If a factory is built near their village and they think pollutes the neighbouring farmland. They protest.

If they work in a factory and they think that their pay is too low – they will protest.

So foreign investors that invest in oil & gas and mining run a higher risk with issue like environmental pollution.

Foreign investors that invest in large garment factory that hire tens of thousands of low wage workers – run the risk of industrial actions due to demand by worker for higher pay.

Slide 22

Economic risk.

You are faced with perennial power shortages in Myanmar. The picture shows the number of diesel generators that you can find outside retail shops and factories due to the constant power stoppages.

Factory cannot run large scale 24 hours manufacturing without constant power supply.

Slide 23

Then there is reputational risk.

If a company invest in (onshore oil exploration) in the Rakhine State where there are communal violence between the Buddhist and Muslim. As a result you have to strengthen security and run the work site like a military camp in order to secure your worksite. If for whatever reasons some NGOs start to publish papers saying that your company is in cahoots with the military to oppress the local people it may tarnish the reputation of your company.

Similarly if you are involve in jade mining in the Kachin State – this is the battle ground between the Myanmar Army and the Kachin rebel.

If you are Sumitomo and you invested in building the Thilawa Special Economic Zone. Due to the accusation of land grab by government officials and inadequate compensation to the farmers and villagers that had to give up their land – your reputation as a responsible corporate citizen could be tarnished.

Partnering Cronies. Similarly , for capital intensive investment in the reserved sector or the restricted industry it is sometime necessary to partner one of the business tycoons in Myanmar in order to get access to prime land or have a partner who can carry his own weight. However should the political reform stall and there is a roll back of sanctions on Myanmar – your company may be accused of partnering a crony.

Corruption. Like all emerging markets the Myanmar civil servants are poorly paid. A department head in a government department makes less than US$300 a month but they

Consult-Myanmar Company Limited
47 Kaingdann St, 1st Floor
Lanmadaw Township, Yangon
Republic of Union of Myanmar
Tel: +95-9-42000-1988
Email: info@consult-myanmar.com
http://consult-myanmar.com
Myanmar Registration No: 25 FC/2013-2014

are responsible for giving approval to foreign investors for projects that may go into millions of dollar US. There is always this temptation to take gifts or incentives from foreign investors in order to give insider information, speed things up or to turn a blind eye. This problem is not unique to Myanmar but is prevalent in all emerging markets. Foreign companies that bid for big infrastructure projects are especially susceptible to this problem as it is a zero sum game and there is only 1 winner and the payoff is huge.

Slide 24

My last slide. I would like to let you know that Consult-Myanmar Company Limited is a 100% foreign owned company that is incorporated in Myanmar. We are a member of the Union of Myanmar Federation of Chamber of Commerce and Industry.

If you have any questions about the market opportunities that I have just covered in my presentation – please do send me an email at investopp2@consult-myanmar.com

Or visit our website at http://consult-myanmar.com

You can subscribe to our newsletter mailing list at http://goo.gl/7KJDn

Before we part, I would like to wish you a fruitful and profitable investment experience in Myanmar.

Good Bye.