The new foreign investment law (the “MFI Law”) was signed into law by President Thein Sein and published in local newspapers on November 3, 2012.

Parliament’s review of the MFI Bill had focused on the issue of setting down maximum levels of shareholdings that can be held by foreigners in a joint venture company. Resolution of this issue has not been settled in the MFI Law, and the issue will be decided in Foreign Investment Rules (“FI Rules”) that will be issued by the Ministry of National Planning and Economic Development within 90 days of the bill being signed into law.

In certain sectors foreigners will be prevented from holding 100% of a venture. These sectors will include, amongst others, activities:

- that can affect public health, natural resources and the environment;
- related to manufacturing and services that can be carried out by Myanmar citizens;
- that involve agriculture, livestock farming or fisheries

**Cap on foreign ownership**

The existing provisions requiring that the foreign party contribute at least 35% to the venture have been removed from the law.

Minimum capital requirements will be set in the new FI Rules, provided that the current rules,
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regulations and procedures will continue to be effective until then (minimum investments of USD 500,000 for industrial projects and USD 300,000 for services related projects).

Other key provisions are:

Labor
For skilled positions, the MFI Law provides an obligation to increase the use of local Myanmar staff over time. The investor is to achieve:

- at least 25% of its workforce to be Myanmar nationals during the first two years,
- at least 50% during the second two years; and
- at least 75% during the third two years.

The initial draft provided for increments of five years. Knowledge-based industries will be subject to review (to give more favorable treatment). For unskilled positions the investor is to employ only Myanmar citizens from the start of the venture.

Land Use Rights
Land use rights are being changed under the MFI Law with investors having the ability to lease land for 50 years initially (vs. 30 years under notification 39/2011 adopted pursuant to the 1988 Foreign Investment Law (“1988 FIL”) that is being replaced) which can be extended for two 10-year terms (vs. two 15 years extensions).

Tax
The corporate income tax exemption period will be extended to five years (vs. three years under the 1988 FIL). Other tax benefits that could be granted under the 1988 FIL have been retained. Incentives relating to exemptions from customs duty and commercial tax for export products have been added.

Approvals
The law formalizes the requirement to obtain certain State and Regional approvals, additionally to the permit issued by the Myanmar Investment Commission (“MIC”) which administers the foreign investment regime.

Key activities eligible for MIC Permit
As with the 1988 FIL, the MFI Law identifies key activities which may secure from the MIC an investment permit. These embrace new activities, including “import substitution” and “development of a modern industry”. To determine whether a given activity requires a permit, legal advice should be sought.
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MIC Powers
The MIC’s powers are reaffirmed and certain changes have been formalized, as the MIC will review and approve the conditions pursuant to which the ratio of shareholdings in a JV company between foreign and local investor may fluctuate (including resale to Myanmar citizens).

Timing
The MFI Law introduces rules relating to timing as the MIC is required to evaluate proposals for completeness and accept/reject these within 15 days of submission, and will issue (or deny) an investment permit within 90 days.

Investor’s rights and duties
The MFI Law sets out for the first time investors’ duties and rights. These provisions have been derived from the Myanmar Citizens Investment law.

After securing the investment permit

As was the case under the 1988 FIL, after having obtained an MIC permit, an investor will prepare an application for a “permit to trade” (e.g. a business license), whilst proceeding with an application for incorporation of a local company (or registration of a local branch), with the Directorate for Investments and Companies Administration and the Companies Registrar’s Office under the Ministry for National Planning & Economic Development.