MYANMAR'S THIRD SPECIAL ECONOMIC ZONE

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This paper is a high level overview of recent Special Economic Zone (SEZ) developments in Myanmar and is not intended to be fully comprehensive or legal advice. For more information, please contact:

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INTRODUCTION

Myanmar has joined a host of nations in the Asia-Pacific region that have been turning to SEZs to stimulate foreign investment in certain sectors, create jobs and free investors from more burdensome local regulatory requirements. In the last two years, the Philippines and Myanmar in particular have become increasingly attractive for foreign capital/investment. Nearby, the Maldives has entered the SEZ market as part of a drive to diversify its economy and Australia has started to consider something similar for its far north.

As part of its continued push to attract foreign developers and investors, on 23 January 2014, Myanmar's Parliament passed a new SEZ Act.[1] The Government is hoping the incentives and protections in the SEZ Act will induce investors to deliver the ambitious goals Myanmar has for its three SEZs.

SUMMARY OF RECENT SEZ DEVELOPMENTS IN MYANMAR

A consortium led by Singapore-based CPG Consultants is now considering EOIs that were received for the first phase of Myanmar's new Kyauk Phyu SEZ (**KPSEZ**). Phase one comprises a deep sea port, an industrial park and an integrated residential area. Developers and investors are eligible for the incentives under the country's new SEZ Act. A website has been established to facilitate the bid process for the future phases of development.[2]

KYAUK PHYU SEZ

KPSEZ is Myanmar's third SEZ. The zone is located in Rakhine State in the west of Myanmar. Some key announcements to date include:

- unlike the two existing SEZs (Dawei and Thilawa), which were developed by foreign governments in cooperation with the Myanmar Government, KPSEZ will be developed by private industry at a business-to-business level;
- CPG Consortium was appointed to develop the master plan for KPSEZ. The consortium is comprised of:
  - CPG Consultants (the corporatised entity of the former Singapore Public Works Department);
  - DTZ Debenham Tie Leung (SEA);

[1] http://www.burmalibrary.org/docs17/2014-Myanmar-SEZ_Law-en.pdf

[2] http://kpsez.org/registration/

  - Ernst & Young;
  - Global Maritime & Port Services (Singapore-based port, marine operations and engineering design consultancy); and
  - PM Link (Singapore-based project manager).
- the EOI for phase one of the zone's development comprises three separate components, including a deep sea port, an industrial park and an integrated residential area. Contracts will be awarded in December 2014 with construction expected to commence in early 2015 and be operational by 2020;
- CPG Consultants have been "road showing" KPSEZ and, in line with Myanmar's SEZ Act, represented that the concession is for 50 years with an option to extend for another 25 years; and
- the new zone will initially cater to light industries (e.g. textile and manufacturing companies) but will later include heavier industries (e.g. marine and petrochemical sectors). There has also been some discussion about where or not the KPSEZ will be the port terminus for the Yunnan-Arakan railway.

FEATURES AND PROPOSED BENEFITS OF KPSEZ

KPSEZ is designed to function as a "trade corridor" connecting "three economically vibrant and dynamic markets – China, India and ASEAN". The Government expects the zone will create 50,000 local jobs. Construction spending during phase one is expected to amount to USD 270 million.

The zone is located four miles from the Kyaukpyu Township in Rakhine State and covers over 1,600 hectares. Rakhine is a coastal province on the far west of Myanmar's coast and borders the Bay of Bengal.

The Bay of Bengal has been the location for significant oil and gas exploration but also a long-running dispute between Myanmar, Bangladesh and India over the location of maritime boundaries. An international tribunal operating under the UN Convention on the Law of the Sea released its maritime boundary determination for India and Bangladesh in July 2014. Following this decision, and the tribunal's 2012 decision involving Myanmar and Bangladesh, there is now growing expectation that there will be oil and gas-related development in the Bay of Bengal.

SEZ ACT IN MYANMAR

As part of Myanmar's reform agenda and gradual acceptance into the international political sphere and world economy, in January 2014 the Government introduced a new SEZ Act.

SEZ Act objectives include:

- to support the main objectives of the national economic development plan;
- to create jobs for citizens, to promote their living standards, to promote the export of goods and to increase foreign exchange earnings;
- to encourage and promote the balanced development of industrial, economic and social sectors;
- to promote cooperation in industrial, economic and commercial services and financial businesses between countries, and to provide opportunities for vocational training;
- to encourage and promote domestic and foreign investments, by building appropriate infrastructure for developers and investors; and
- to promote the flow of domestic and foreign investments in the SEZ and to establish backward and forward linkages among the industries in and surrounding the SEZ with the creation of new jobs.

Developer incentives under SEZ Act include:

- income tax exemption for the first eight years from the commencement of business operations;
- 50% relief of the income tax rate stipulated by the existing law for the following five years; and
- 50% relief of the income tax rate stipulated by the existing law for the subsequent five years on the profit which is obtained from the business and reinvested within one year.

Investor incentives under SEZ Act include:

- income tax exemption for the first five to seven years from the commencement of the commercial operations;
- 50% relief on the income tax rate stipulated under the existing law for the following five years; and

- 50% relief of the income tax rate stipulated under the existing law for the subsequent five years on the profit which is obtained from the business and reinvested within one year.

Comparison with Foreign Investment Act incentives

The Foreign Investment Act of 2012 also provides an array of tax exemptions and other incentives, including protection from nationalisation. A comprehensive summary of Myanmar's Foreign Investment Act can be found in the Myanmar profile of DLA Piper's *Renewable Energy in the Asia Pacific* publication. Click here for a copy.

Generally though, the incentives offered under the SEZ Act are even more generous than the Foreign Investment Act. For instance:

- there is a possible eight year income tax exemption under the SEZ Act, compared with a five year income tax exemption under the Foreign Investment Act;
- investors are eligible for a 75 year lease over land (50 years with an extension of 25 years), compared with a 70 year lease under the Foreign Investment Act (50 years with two extensions of 10 years);
- the SEZ Act guarantees protections against nationalisation and the ability to repatriate profits (as with the Foreign Investment Act); and
- foreign or joint venture insurance companies can operate in an SEZ under the SEZ Act, which was not allowed for in the Foreign Investment Act.

THE EXISTING SEZS

Thilawa SEZ

- Thilawa is located 20km south of Myanmar's capital Yangon and covers an area of 2,342 hectares.
- The SEZ has an industrial focus, with manufacturing plants for high-tech, textile, and labour intensive industries. It is envisaged that the SEZ will also include a port, with construction completed by 2015.
- The development is financed by the Myanmar-Japan Thilawa Development Company. Equity is split 51% for Myanmar and 49% for Japan.
- In July 2014, the second phase of the Thilawa SEZ was initiated with environmental and social assessments taking place.
- While there has been accusations of land-grabbing and inadequate compensation by Japanese companies involved in Thilawa, overall the project has been seen as a success, given the ten-fold increase in Japanese investments in Myanmar since 2012-13 and the increasing ties between the Myanmar and Japanese Governments.

Dawei SEZ

- Dawei is located in the south of Myanmar and is much larger in area than Thilawa.
- The project is envisaged to include a deep sea port, industrial zone, steel plant, fertiliser plant, coal and natural gas-fired power plant and water supply system as well as a highway linking Thailand's Kanchaburi province with Myanmar.
- The initial phase of the project includes a highway, a small wharf, an industrial zone involving labour intensive industries, power plant, residential area, water supply system and communication lines.
- In June 2013, Thailand and Myanmar agreed to a 50:50 joint venture development of the SEZ, replacing the prior developer (Italian-Thai Development PCL), which had experienced difficulties in attracting investors since it began operations in 2010.
- Thailand and Myanmar have signed three different MOUs to transfer the existing interests of Italian-Thai Development and to create the new special purpose vehicle – Dawei SEZ Development Co.
- Construction of the entire SEZ has been estimated to cost USD 8.6 billion, however progress on development has been slow and only USD 400,000 has been put forward by the new investment vehicle.

ANALYSIS OF SEZS IN MYANMAR TO DATE

The following summarises some of the views of domestic and international experts/commentators as well as some of our own observations:

- Myanmar's push for SEZs is seen as an attempt to utilise its location amongst growing economies and to focus on export-oriented industries;

- in recent years, Myanmar has been relatively successful in courting investments from the US, the EU, China and Japan. The SEZ Act is seen as a further step at enhancing foreign investment levels from those and other countries;
- more detail on SEZ governance is expected to be released through regulations;
- the Government appears committed to a decentralised approvals process, which is normally a key aspect contributing to the success of SEZs; and
- given that Myanmar is still a relatively new investment destination for most foreign investors, it is likely many will choose to operate in the SEZs rather than under the general Foreign Investment Act. However, it is also clear that further work remains to be done to allay initial investor fears (often investors look to see how these zones are operating in practice before making a decision to invest). Importantly for this development, the Government needs to show how the new SEZ Act is a 'better deal' for investors compared with the 2011 SEZ Act, which has had mixed results to date for investments in Dawei and Thilawa.

FURTHER READING (CLICK THROUGH)

- DLA Piper's *Renewable Energy in the Asia Pacific* (includes Myanmar Foreign Investment Act analysis)
- KPSEZ website (includes EOI registration details)
- Myanmar Insider article: Special Economic Zones
- Series of articles on SEZs from Online Burma/Myanmar Library
- Myanmar Times article: Myanmar gets new SEZ law
- KPMG article: SEZ Law in Myanmar
- Consult Myanmar articles on SEZs

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