

Insights

MYANMAR POSTCARD - 9 APRIL 2020

Apr 09, 2020

Proposals to restrain the military's political power rejected

The National League for Democracy's ("NLD") attempts to rebalance parliamentary control by revoking privileges granted to the military in the Constitution have been rejected. The current Constitution, enacted under the military government, requires the approval of more than 75 percent of lawmakers to pass any amendment and guarantees the military 25 percent of parliamentary seats, giving military lawmakers the power to veto any proposal.

The NLD's key proposals included:

- (a) a gradual reduction of the number of seats reserved for the military over a period of 15 years, ultimately enabling amendments to pass without their full approval;
- (b) amending the threshold to pass amendments to the Constitution from "more than seventy-five percent" to "two-thirds of elected representatives";
- (c) revoking Article 338 which states that "all the armed forces in the Union shall be under the command of the Defense Services";
- (d) revoking Article 339, which states, "the Defense Services shall lead in safeguarding the Union against all internal and external dangers"; and
- (e) removing the word "disciplined" from the Constitution's objective of a "genuine, disciplined multiparty democratic system".

Unsurprisingly the proposals were denounced by the military lawmakers who argued that the amendments risk damaging the "national reconciliation and democratic transition the country is undergoing". Despite the NLD's majority, without the military's support the proposals failed as expected. The proposals revoking Article 338 and 339 only received approximately 63 percent of the votes. The loss means the status quo continues to apply in Myanmar.

The Project Bank's first 58 projects announced

The Myanmar Sustainable Development Plan ("MSDP") presents a framework to align the country's policies and institutions and achieve a "peaceful, prosperous and democratic country". To facilitate the MSDP's agenda, the Government launched the Myanmar Project Bank.

The Project Bank is a centralised online platform presenting key details of major investment projects that align with the strategic action plans in the MSDP. The platform is publically available, providing transparency to the general public and to development partners and private investors, opening up the projects to competitive and appropriate financing.

Typically development projects are nominated by the implementing Government agency for entry into the Project Bank, although the private sector may also make unsolicited proposals. However, only those that pass a screening process will gain access. The screening process will consider the viability of the project and its social, environmental and economic impact. Previously ministries prepared sectoral development plans independently and it is hoped that this new collaborative process will facilitate strategic planning in line with the objectives of the MSDP.

Projects that are successful will be financed by one or more of:

- (a) the state budget;
- (b) development assistance;
- (c) a partnership with the private sector; and
- (d) the transfer of state-owned enterprises, in whole or in part, to the private sector.

The first 58 projects have recently been listed in the Project Bank and many more are in the screening process. Most projects are in the energy and transportation sectors, the largest project cost being USD4billion for the Muse-Htigyaing-Mandalay Expressway Project which involves the construction of 446km of expressway.

Central Bank of Myanmar updates criteria for approval of offshore loans

In accordance with the Foreign Exchange Management Regulations, resident companies cannot obtain a foreign loan or conduct other types of borrowing from outside Myanmar without first obtaining approval of the Central Bank of Myanmar (“**CBM**”). The CBM has updated the [criteria](#) that it will use to consider applications made by companies for its approval to obtain an offshore loan (the “**Updated Criteria**”).

The Updated Criteria now distinguishes between the maximum debt to equity ratios for: (i) companies holding permits issued by the Myanmar Investment Commission (“**MIC**”) (“**MIC Companies**”); and (ii) companies not holding MIC permits (please refer to our guide on the [Myanmar Investment Law](#) for further information on MIC Permits). Previously, the CBM required applicants to have a ratio of 3:1 to 4:1. The Updated Criteria now sets the debt to equity ratio for an MIC Company at 4:1 and 3:1 for others.

Under the Updated Criteria, in addition to checking against the newly revised debt to equity ratios, the CBM will review the following:

- (a) MIC Companies seeking an offshore loan must have at least USD500,000 in equity capital;
- (b) companies that are not MIC Companies seeking an offshore loan must have at least USD50,000 in equity capital;
- (c) for an MIC Company, whether it has brought in to Myanmar at least 80 percent of its equity capital as approved by the MIC; and
- (d) the applicant company will also be asked to show whether: (i) it has access to a matching foreign exchange income or not; and (ii) it is able to repay the loan from the income generated from domestic business, and has plans to mitigate the exchange risk even if it does not have a foreign exchange income.

Yangon Stock Exchange open for trading to foreigners

On 6 March 2020, the Securities and Exchange Commission of Myanmar (“**SECM**”) issued [Instruction No. 1/2000](#) setting out guidelines on the opening of securities account and trading for foreigners. SECM had already issued a notice on 12 July 2019 regarding permission to allow foreign investors to trade in listed shares in companies listed on the [Yangon Stock Exchange \(“YSX”\)](#) (see our [July 2019 Postcard](#)). The 12 July 2019 notice stated that foreign investors would be permitted to invest in up to 35 percent of the listed shares of the companies listed on the YSX but without specifying a date. The 6 March 2020 notice specifies that the actual start of trading by resident and non-resident foreigners is 20 March 2020.

There are six companies currently listed on the local bourse:

- (1) First Myanmar Investment;
- (2) Myanmar Thilawa SEZ Holdings;
- (3) Myanmar Citizens Bank;
- (4) First Private Bank;
- (5) TMH Telecom (“**TMH**”); and
- (6) Ever Flow River Group.

Currently, [TMH shares](#) are not available for foreign participation due to the time it takes to get approval from the relevant organisation, the Post and Telecommunication Department from the Ministry of Transport and Communication of Myanmar.

The SECM is working on increasing the number of listed companies on the bourse by a corporate governance framework for public companies to follow, sharing knowledge and awareness regarding the stock market as well as including foreign investors in the stock market.

The YSX has announced that from 26 March 2020 it will increase the stock trade matching time from [four to seven per day](#).

MEET THE TEAM



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