DOING BUSINESS IN MYANMAR

By

MYANMAR LEGAL SERVICES LTD

A foreign investor looking at a project or transaction in Myanmar for the first time will find an outdated but developing legal framework and administrative practices governing most business transactions. The role of the law, lawyers, and the judiciary in Myanmar was established during the British colonial period, and continued after Myanmar gained independence in 1948 until 1962. In 1962 the government changed the country’s economic policy to socialism. When the State Law and Order Restoration Council took power in September 1988, this marked a shift from a socialist policy to a more liberal and market oriented economic policy. The first Constitution of Myanmar was enacted in 1947; the second in 1974 and the current one in 2008 effective from 31 January 2011 (first convening of the Parliament). The next general election is scheduled for 2015.

Since the second session of Parliament in fall 2011, over 68 laws have been enacted. A number of the recent laws are intended to promote investment into Myanmar, including the Foreign Investment Law (“FIL”) enacted on 2 November 2012 and the Myanmar Special Economic Zone Law (MSEZL) enacted on 23 January 2014. The new FIL and MSEZL improve certain incentives offered to foreign investors.

The laws and practices governing investing in Myanmar are undergoing rapid changes. The Myanmar government is obtaining technical assistance and training in a number of key areas, including foreign exchange controls, finance and investment law reform and trade facilitation.

Foreigners Investing in Myanmar

A foreign investor investing in Myanmar has the option of incorporating a subsidiary or registering a branch of a company incorporated outside Myanmar. A subsidiary incorporated in Myanmar may be wholly foreign owned or may be a joint venture including Myanmar shareholders.

The incorporation of a foreign Myanmar company and registration of a Myanmar branch of a foreign company are subject to the procedures and requirements set out in the Myanmar Companies Act and by the Directorate of Investment and Company Administration (“DICA”).

In addition to setting up a company with DICA a foreign investor may be eligible for applying for incentives under the FIL unless it is in a SEZ. The FIL defines three types of foreign investment which are eligible to obtain investment privileges: 1) a 100% foreign owned company; 2) a joint venture with a Myanmar investor; and (3) a foreign investor operating in a contractual relationship with a local investor. The minimum required foreign investment capital will depend on the business sector and as decided by the Myanmar Investment Commission (“MIC”).

The Foreign Investment Rules (Notification No. 11/2013 of the Ministry of National Planning and Economic Development) and a notification of the MIC providing details on the terms and restrictions on making certain kinds of foreign investment (Notification No. 1/2013 of the MIC) were issued on 31 January 2013. Of particular interest is the MIC notification as it advises foreign investors of what industries they can expect to be allowed to invest in and what conditions they can expect to be subject to. The following are examples of industry sectors:

- Mining: Foreign investors may only participate in large scale mining operations with a local joint venture partner.
- Real estate: Development of commercial and residential real-estate requires a local joint venture partner.
- Oil and Gas: Drilling for oil and gas from shallow wells of less than 1000 feet is generally not permitted for foreign investors.
• Telecommunications: There are no restrictions on foreign investment in the Foreign Investment Law for the telecommunications sector. However, the telecommunications sector is a restricted sector under the State Owned Economic Enterprises Law, allowing the Government to impose additional restrictions and requirements. A new Telecommunications Law was enacted on 8 October 2013 to regulate the sector. On 31 January 2014, the Myanmar government issued two 15-year telecommunication licenses for the development of nationwide cellular service to Telenor and Oredoo.

• Power: Hydro and coal power plants will only be permitted through a joint venture with the Government or on a build, operate, and transfer basis.

Foreigners who invest in “local” companies through nominees have no legal standing to enforce their rights. Foreigners considering investment in Myanmar should only invest through a Myanmar incorporated company in which they are shareholders and have their directors duly registered at DICA in accordance with the Myanmar Companies Act (1914).

On 27 February 2012, the MIC passed an Order relating to nominee investments carried out by Myanmar Citizens. The order requires foreign investors to invest in accordance with the Foreign Investment Law, not through the use of a local nominee.

Foreigners may not currently purchase land or condominiums in Myanmar. However, pursuant to MIC Notification No. 1/2013, lease of an office or commercial building can be implemented with 100% Foreign Investment if it is established by Build, Operate & Transfer (BOT) system under a MIC permit or through a joint venture with a local partner.

International Sanctions

Since 1997, investment in Myanmar was restricted by sanctions imposed by the US, EU, UK, Australia, and Canada. The following is an overview of relaxations of sanctions in 2012 and 2013:

United States:

• Latest relaxations:
  o General License No. 18 – issued 16 November 2012, authorizing the importation of products of Burma, except rubies and jadeites. This General License does not authorize transactions with SDN’s.
  o On 11 July 2012, the US relaxed sanctions as follows:
    * OFAC General License No. 16 Authorizes the Exploration of Financial Services to Burma, subject to certain limitations.
    * OFAC General License No. 17 Authorizes New Investment in Burma, subject to certain limitations and reporting requirements.
    * New Executive Order Targeting Persons Threatening the Peace, Security or Stability of Burma (Myanmar).
  o On 23 May 2013, the US issued rules that require investors investing more than $500,000 or contracting with Myanma Oil and Gas Enterprise to submit reports to the State Department within 60 days of their new investment. Investors are required to submit annual reports to the State Department.
  o Executive Order dated 7 August 2013 – Allows the importation of products from Myanmar, except rubies and jadeite.

European Union:


• Council of the European Union Decision 2013/184/CFSP issued on 22 April 2013: All sanctions have been lifted with the exception of the arms embargo and equipment embargo that might be used for internal repression, which will continue until 30 April 2014, at which point it will be renewed, amended or otherwise as appropriate.

2 The EU External Action website on Myanmar: http://eeas.europa.eu/Myanmar/
United Kingdom:
- Latest relaxation: Suspends assets freeze on nearly 500 people and restrictions on key industries.

Australia:
- Latest relaxation: Australia has lifted all travel bans on Myanmar citizens as reported on 7 June 2012. There are no general trade sanctions. However, the Australian government retains the capacity to impose sanctions if required by the circumstances, and still has prohibitions on weapons trading.

Canada:
- Latest relaxation: Prohibitions on import, export, investment, financial transactions, and technical data have been removed. Asset freeze and prohibition on transactions also remain in effect for designated individuals, but the list of individuals is being reduced.

**Myanmar Legislation**

Myanmar legislation includes 13 volumes of codified laws from the period 1841–1954 (known as the “Burma Code”), and numerous special laws, notifications, rules, regulations and orders enacted from time to time. The Government publishes a bi-monthly Gazette that provides notifications, changes to existing laws, and new laws. Myanmar Laws enacted after 1988 are usually published both in Myanmar and English.

**The Court System**

According to the Constitution, Courts of the Union include: (i) Supreme Court of the Union, High Courts of the Region, High Courts of the State, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts, Township Courts and the other Courts constituted by law, (ii) Courts-Martial, and (iii) Constitutional Tribunal of the Union.

The Supreme Court is the highest Court in the country without jurisdiction over the powers of the Constitutional Tribunal and the Courts-Martial. There is no jury system in Myanmar. Cases are normally tried by a single judge; however, in special cases the Chief Justice of the Supreme Court can instruct to form a panel of judges. The language of the Court is the Myanmar, and procedures of all courts are governed by the Civil Procedure Code, Criminal Procedure Code and the Courts manual, all of which are available in Myanmar and English.

**Sources of Local Advice**

**Myanmar Investment Commission:** The MIC is the agency responsible for reviewing most types of foreign investment and coordinating with other government agencies. MIC is a good source of information for foreign investors.

MIC’s objectives include developing the State’s economy by promoting investment projects; promoting more opportunities for investment, technical knowhow and job opportunities for Myanmar citizens, and becoming more efficient on investment under the market oriented system.

**Legal Advice:** Legal advice on business law in Myanmar can be obtained from local Myanmar lawyers. There are several local law firms that are affiliated with international law firms.

**International Accounting Firms:** Deloitte, KPMG, PWC, and E&Y have opened offices in Yangon recently. Certain other international accounting firms have associations with local Myanmar accounting firms.

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3 The United Kingdom Treasury Department website; www.hm-treasury.gov.uk/fin_sanctions_burma.htm; Note that the UK shares many policies on sanctions with the EU.
6 See website of DICA (Directorate of Investment and Company Administration, Ministry of National Planning and Economic Development) www.dica.gov.mm. This website includes a “Myanmar Investment Guide.”
Currencies and Exchange Rates

There are two main currencies in use in Myanmar:

1. **Kyat (MMK)**: is the national currency for daily transactions among citizens and visitors in Myanmar.

2. **Foreign Currency**: the US Dollar is the preferred foreign exchange currency. Banks will also buy Euros and Singapore dollars. The government allowed banks to exchange Thai Baht and Chinese Yuan on 1 April 2013.

The Foreign Exchange Management Law was enacted on 10 August 2012, which repealed the Foreign Exchange Regulation Act (1947). The law relaxed exchange restrictions and eliminated the previous practice of having multiple domestic currencies. The Central Bank of Myanmar changed the country’s exchange rate system from a fixed exchange rate system to a managed market exchange rate with the IMF’s technical assistance. Before 1 April 2012, the “official exchange rate” was approximately 6.00 kyat per one US dollar compared to a black market exchange rate of 800 Kyat per one US dollar.

The government has licensed 14 of the country’s 20 private banks to offer foreign currency accounts, which can be used to remit foreign exchange abroad. Some restrictions remain on opening such accounts, including documentation requirements showing that the account holder earns a salary in foreign exchange or a receipt from an official exchange currency centre.

**GENERAL LAWS GOVERNING DOING BUSINESS**

Foreign investors, like domestic investors, must comply with the general business laws of Myanmar. The principal laws include:

**Myanmar Companies Act (1914)**

A Myanmar investor wishing to carry on business in Myanmar through a limited company may register a company under the Myanmar Companies Act. However, a local Myanmar citizen company may have no foreign shareholders and no foreign director.

A foreign investor wishing to carry on business in Myanmar through a locally incorporated limited company may register the company under the Myanmar Companies Act, unless the company is a State-owned enterprise or involves the Government, in which case it must also be incorporated under the Special Companies Act (1950).

Under the Myanmar Companies Act, a foreign company, whether a 100% foreign owned, joint-venture or a branch, is required to obtain a DICA permit. A DICA permit is generally renewable every five years and requires approval by MIC. A joint venture company with a State entity, formed under the Special Company Act 1950, is also required to obtain a DICA permit.

A DICA permit is also issued to MIC promoted companies, which have to be renewed every five years together with the Company Registration Certificate. In contrast, MIC Permits are approved for a long term and do not have to be periodically renewed.

At present, no registration certificates or DICA permit for a foreign trading company (distributing and selling products) are issued or renewed. The government did not announce any notification of such prohibition.

A limited company has both memorandum and articles of association. The articles of association may include special voting rights and other minority shareholder protections. Care must be taken by foreign investors in prescribing the powers of the managing director, etc. There are no nationality or residence qualifications applicable to directors unless otherwise prescribed in the articles of association.

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7 On 1 April 2013, Foreign Exchange Certificates (FEC) were phased out (demonetized but exchangeable with USD equivalent).
Imported Capital

There are two classes of imported capital that concern foreign investors. First, is the minimum capital required to register a company under the Myanmar Companies Act. Second, is the foreign capital required to qualify for a MIC permit. Companies qualifying for a MIC permit are entitled to the incentives outlined in the FIL.

- **Minimum Imported Capital for Company Registration under Myanmar Companies Act, 1914**

  A foreign Myanmar company must remit into Myanmar the minimum capital for each category as follows:

  - USD150,000 for an industrial, hotel or construction company; and
  - USD 50,000 for a service company.

  Minimum 50% of capital must be deposited into a Licensed Bank when the company’s registration application is approved. The remaining 50% must be imported within one year. The capital may be held in foreign currency accounts and exchanged at market rates. The registration fee is Kyat 1,000,000 and the renewal fee is Kyat 500,000 for a foreign company/branch office.

- **MIC Permit**

  The MIC prescribes no minimum amount of foreign capital required under the Foreign Investment Law for the business activity. Under the old FIL, minimum foreign capital required was USD 500,000 for an Industry Company and USD 300,000 for a Services Company. However, under the new FIL, the MIC consider whether the proposed capital investment is sufficient to justify the incentives under the FIL.

  Foreign capital may be imported in the following forms:

  - foreign currency;
  - property actually required for the business and which is not available within the State, such as machinery, equipment, machinery components, spare parts and instruments;
  - intellectual property rights such as, patents, licenses, industrial designs, trademarks and copyrights;
  - technical know-how;
  - reinvestment of benefits accrued to the enterprise from the above, or out of share of profits;
  - Foreign loans if approved by MIC.

**Special Company Act (1950)**

This Act governs all companies in which the State has equity share capital. When a company’s memorandum and articles of association have been approved by the government, a notification is issued by the Ministry of National Planning and Economic Development, approving the company as a Special Company. The provisions of Myanmar Companies Act apply in so far as they are not excluded by the Act.

**Labour Laws**


These laws govern problems with labour relations and deal with such subjects as work hours, holidays, leaves of absence, woman and child labour, wages and overtime, severance pay, workmen’s compensation, social welfare.

8 [http://www.dica.gov.mm/](http://www.dica.gov.mm/)
work rules and other matters. The Social Security Act established a fund with contributions by employers, employees and the government.

These labour laws were formerly announced as rules under the 1964 Fundamental Rights and Responsibilities of the People’s Workers Law (“1964 Law”). On 21 December 2011, a Law revoking the 1964 Law was passed. On 11th October 2011, the Trade Unions Act 1926 was repealed by the Labour Organization Law. The Labour Organization Law took effect on 9 March 2012.

The MLESS has issued an outline of Myanmar Labour Law booklet, which summarizes above labour laws. The booklet also contains a model employment contract which may be used by companies when appointing Myanmar citizen employees.

The Myanmar Special Economic Zone Law (2014), and the FIL prescribe special rules applicable to foreign employees and minimum percentages of employees who must be citizens.

Myanmar has been a member of the ILO since 1948. The Government has ratified 19 ILO Conventions. A Myanmar tripartite delegation comprising with the representatives of Government, Employers, and workers attend the ILO conference held in Geneva annually.

**Immigration Law**

Most foreigners cannot enter Myanmar without a visa, except under a visa on arrival regime (which requires an invitation letter and other documents). A normal tourist visa is valid for 28 days. Foreigners doing business in Myanmar can apply for a business visa permitting trips lasting up to 70 days. Multiple entry business visas are also available. A foreigner wishing to remain in Myanmar more than 90 continuous days must apply to the Immigration Department for a Foreigner’s Registration Certificate, which can be extended for a stay of one year with a recommendation letter from the employing company, subject to obtaining a recommendation from the relevant Ministry.

**Intellectual Property (IP) Laws**

Framework for the protection of intellectual property rights in Myanmar is relatively undeveloped and extremely weak. At present, among the existing relevant laws that can be enforced regarding intellectual property rights are laws dealing with both criminal and civil action, which are as follows: The Code of Civil Procedure (1808), The Myanmar Penal Code of 1860 (Indian Act XLV. 1860), The Myanmar Merchandise Marks Act (1889), The Code of Criminal Procedure (1898), The Registration Act No. 16 of 1908 on basic registration system for trade marks (1908), The Copyright Act of 1911 (1914), The Land Customs Act (1924), The Specific Relief Act 1877, as last amended up to Act No. 3 of 1954 (1958), The Sea Customs Act No. 8 of 1878, as amended up to Act 1962 (1962), The National Drug Law No. 7 of October 30, 1992 (1992), Science and Technology Development Law No. 5 of June 7, 1994 (1994), The Computer Science Development Law No. 10 of September 20, 1996 (1996), The Traditional Drug Law No. 7 of July 7, 1996 (1996), The Television and Video Law No. 8 of 1996 (1996), The National Food Law, No. 5 of March 3, 1997 (1997), The Protection and Preservation of Cultural Heritage Regions Law No. 9 of September 10, 1998 (1998), Electronic Transactions Laws (2004). IP laws are in the process of being drafted in accordance with the TRIPS agreement by the Office of the Attorney General with the co-operation of the ministries concerned and experts from various sectors. In light of IP Laws, with the World Intellectual Property Organization (WIPO), it has been reported by local press that the following acts are expected to be and enforced in 2014, but there is uncertainty regarding timing. In brief:

- **Utility and Designed Patents:** The Myanmar Patent and Design Act 1939 was first introduced to Myanmar after the separation of Burma from India in 1937. Afterward, the Myanmar legislature enacted the Myanmar Patent and Design Act 1945 as a substitute for the 1939 Act. In fact, the Myanmar Patent and Design (Emergency Provisions) Act 1946 repealed all of the previous Acts mentioned above. Presently, it can be said that there is currently no law in connection with patent and design patents.

- **Technology and Licensing:** The State Law and Order Restoration Council enacted the “Science and Technology Development Law” in 1994 to carry our development of science and technology forward.
for the promotion of industry and industrial protection. The law also prescribed some salient terms and conditions to be contained in contracts for technology transfers. The law provides that the provision relating to technology transfers shall not apply to transfer of right in patents and designs.

- **Trademarks:** There is no specific law on trademarks in Myanmar. There is not any statutory provision regarding the registration of trademarks. In the absence of a specific law, provisions contained in the Penal Code are used for determining the solution of such cases. A trademark owner can file a declaration of ownership of his trademark at the office of the Registration of Deeds under the Registration Act. If applicable, assignments can be filed at the same time.

- **Copyright and Trade Secrets:** The existing Myanmar Copyright Act came into force in 1914. In practice, although there is existing law in Myanmar, there have been no legal proceedings in the Civil Courts. The Civil Courts have no experience in handling copyrights cases. The same is true of Trade Secrets – there are no specific laws or practices in place.

**Land Laws**

- **Restrictions on land ownership**

Before 30 September 2011, foreigners and foreign companies were not allowed to buy land in Myanmar or lease land for a term exceeding one year unless specifically permitted by the Government according to the Transfer of Immovable Property Restriction Law of 1987. There are exceptions for diplomatic missions and transfers for the benefit of the State. A company approved under the Foreign Investment Law could request a long-term right of lease from the government.

On 30 September 2011, the Government issued Notification No. 39/2011 (Notification on Right to Use of Land relating to the Republic of the Union of Myanmar Foreign Investment Law). This Notification allows a foreign company with MIC approval to lease land up to an initial 30 years based upon the permitted investment term, which is extendible twice for another 15 years. Under the new FIL enacted on 2 November 2012, a 50 year initial lease period may be permitted which may be extended for another 10 years twice depending on the type of business, industry and the amount of investment.

- **Land for property development**

Generally, land in Myanmar is owned by the State. Land administration is assigned to various government departments. While a foreign investor may not own land, land use rights can be obtained in either one of the following two ways:

- obtaining land use rights under a lease, from either the government or private citizens, approved by the government; or
- land use rights are contributed to a joint venture by a government agency

Foreign investors may, however, invest in property development on a build, operate and transfer (“BOT”) basis. Subject to restrictions prescribed in MIC notifications, the project can be a 100% wholly foreign owned project or a joint venture with a local Myanmar or with a government partner. Many of the projects approved by the MIC are BOT projects.

**Mining Laws**

Prior to 1990, the mining sector was open only for State investment. With the introduction of the FIL, foreign investment was introduced into the mining sector. As the old mining laws were out of date, the Government promulgated the Myanmar Mines Law (1994), Myanmar Gemstone Law (1995), and the Myanmar Mines Rules (1996).

Since the nature of the mineral industry is capital intensive and also requires technical know-how, foreign participation is invited in large scale mining projects. Mining rights are granted in the form of production sharing contracts or profit sharing concessions.
A foreign investor can apply to the Ministry of Mines in order to obtain a permit under the following categories:

- prospecting, exploration, large scale production or small scale production of metallic minerals;
- large-scale production of industrial minerals; or
- large-scale production of stone (decorative stones).

**Oil and Gas Laws**


The State-owned Economic Enterprises Law (“SEE Law”) states that the Government has the sole right to carry out the exploration, extraction and sale of petroleum and natural gas and production of products of the same. However, the Government may, in the interest of the State, permit such activities to be carried out jointly between the government and any other organizations.

Although the above-mentioned laws relating to petroleum are still applicable, in practice, investors generally enter into production sharing contracts, performance compensation contracts, or improved petroleum recovery contracts with MOGE, the terms and conditions of which govern the process so long as they are not contrary to the laws in force. A foreign investor is required to partner with a local Myanmar company for onshore and shallow water blocks. On 9 July 2011 bidding for onshore blocks was opened, resulting in the award of 10 blocks to 8 companies in January 2012. Another round of bidding for 18 additional onshore blocks was announced on 17 January 2013 resulting in the award of 16 blocks to 11 companies in October 2013. On 11 April 2013, MOGE announced a new round of offshore bidding, consisting of 11 shallow water blocks and 19 deep water blocks. 30 shortlisted bidders submitted bids on 15 November 2013.

**Tax Laws**

Myanmar tax structure comprises fifteen different taxes and duties under the four major heads, namely:

1. Taxes levied on domestic production and public consumption - excise duty; licence fees on imported goods; state lottery; taxes on transport, commercial tax and sale proceeds of stamps;
2. Taxes levied on income and ownership-income tax;
3. Customs duties; and
4. Taxes levied on utility of State-owned properties-taxes on land; water tax, embankment tax; taxes on extraction of forest products, minerals, rubber and fisheries.

**Income Tax Law (1974)**

In the past, a flat rate of 30% of net profits was applicable to enterprises operating under the Foreign Investment Law and those formed under the Myanmar Companies Act. On 15 March 2012, Notification No. 111/2012 was issued, prescribing an income tax rate of 25%.

- **Resident and non-resident foreigners**

  For income tax purposes, foreigners and foreign organizations are classified into “resident” and “non-resident” foreigners. A resident foreigner is:

  (i) in the case of an individual, a foreigner who lives in Myanmar for not less than 183 days during the income year;

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(ii) in the case of a company, a company formed under the Myanmar Companies Act or any other existing Myanmar law;

(iii) in the case of an association of persons, other than a company, an association where the control, management and decision-making of its affairs are situated and exercised wholly within Myanmar; and

(iv) any enterprise or individual permitted under the Foreign Investment Law.

A foreigner or a foreign organization which does not satisfy the relevant criteria listed above is classified as a “non-resident”. A branch of a foreign incorporated company registered in Myanmar under the Companies Act is considered a “non-resident” for the purposes of taxation. Non-residents are subject to a flat taxation rate of 35%. All Citizens and Resident Foreigners are obliged to pay income tax in accordance to the schedule announced by the Ministry of Finance, Notification No. 107/2012 on 15 March 2012. The tax is ranges from 1% to 20% depending on the individual salary. Short term employees working for companies with MIC Permits can pay the tax rate applicable to tax residents, even if they remain for less than 183 days. The corporate income tax rate applicable to companies incorporated in Myanmar is 25%.

• **Withholding Tax**

The Ministry of Finance issued Notification No. 41/2010 on 10 March 2010, which prescribes a withholding tax regime. Effective 1 April 2010, persons responsible for disbursement of the following types of payments, other than under the head “salaries” must at the time of payment deduct and remit tax in the currency the disbursement is made. Notification No. 167/2011 issued on 26 August 2011 sets the following withholding tax rates:

1. **Interest:** No withholding tax for interest paid to residents and resident foreigners but 15% for non-resident foreigners;
2. **Royalties for the use of licenses, trademarks and patent rights:** 15% on payments to residents, 20% to non-resident foreigners;
3. **Payments for work done by foreign contractors:** 2% on payments to residents and 3.5% to non-resident foreigners; and
4. **Payments made to contractors for goods and services performed in the Union or purchase of goods from the Union:** 2% on payments to residents and 3.5% to non-resident foreigners.

**Commercial Tax (1990)**

Notification No. 117/2012 prescribes commercial taxes from 5% to 100% depending upon different good and services businesses. The application for registration must be in the prescribed form and filed one month before the commencement of business. Irrespective of the level of its sales at any time, a registered enterprise is required to comply with all the provisions of the law including submitting returns, paying tax monthly and keeping records, until its name is removed from the register. Only registered enterprises are allowed to deduct input taxes incurred on their purchases.

Schedule 7 of Notification No. 117/2012 prescribed commercial tax at 5% on 14 types of business activities.

**Avoidance of Double Taxation Agreements (DTA)**

Myanmar currently has double taxation treaties with India, Laos, Malaysia, Singapore, South Korea, Thailand, United Kingdom, and Vietnam.
INVESTMENT PROMOTION LAWS

Foreign Investment Law (2012)

The new FIL was enacted on 2 November 2012, replacing the previous FIL (1988), to encourage foreign investment in Myanmar with the objectives of exploitation of the abundant resources of the country with a view to catering to the needs of the nation in the first instance and exporting the available surplus; job creation for the people in line with the progress and expansion of work; developing human resources; developing infrastructure such as banking and financial institutions, highways and roads, national electricity and energy works; developing high-tech industries, including modern data collection technology and further develop communication networks; develop an international standard railway, maritime and airway transport throughout the entire country; to encourage the citizens to be able to compete with foreigners and to develop investment work in line with international standards. Unlike the preceding FIL (enacted in 1988), the new FIL defines ‘investment’ as, “various kinds of property supervised by the investor within the State’s territory in accord with the new FIL, and is to include:

1. the right to be mortgaged and right to mortgage in accordance with the FIL in relation to moveable and immovable property;
2. shares, stock and debentures of the Company;
3. financial rights or activities under a contract determined as a value related to finance;
4. intellectual property rights in accord with existing laws; and
5. functional rights granted by the relevant law or contract, including the right of exploration and extraction of mineral resources.

The FIL offers a large range of incentives and guarantees to foreign investors. An enterprise permitted by the FIL enjoys a tax holiday period of five years; inclusive of the year the enterprise commences commercial operation. In addition, MIC may grant one or all of the following exemptions and reliefs:

1. exemption or relief from income tax on the profits of the business kept in a reserve fund and reinvested in the business within one (1) year after the reserve is made;
2. accelerated depreciation in respect to machinery, equipment, building or other capital assets used in the business, at a MIC approved rate;
3. relief from tax on up to 50% of the profits accrued from the export of goods produced in Myanmar;
4. right to pay income tax on the income of foreigners at the rates applicable to the citizens residing within the country;
5. right to deduct from assessable income, expenses incurred in respect to necessary research and development carried out within Myanmar;
6. carry forward and set off losses up to three (3) consecutive years after the year in which the loss was sustained;
7. exemption or relief from customs duty licensing requirements and internal taxes on the import of approved machinery and materials during the initial period/period of construction;
8. exemption or relief from customs duty, licensing requirements and internal taxes on the import of raw materials imported within the first three years of commercial production following start up/completion of construction;

Summary based on translation of the FIL (2012).

This tax holiday may be extended on application, provided that the MIC considers it appropriate.
9. exemption or relief from customs duty or other internal taxes on machinery, machinery components, instruments, equipment, spare parts and materials required for approved expansions during the permitted period; and

10. exemption or relief from commercial tax on goods produced for export.

**Prohibitions and Restrictions under the FIL**

The MIC was formed in order to oversee and administer the FIL. In order to provide more specific guidance to foreign investors, the new FIL explicitly lists 11 prohibited activities. These activities are:

1. Business which can affect the traditional culture and customs of the national races within the State;
2. Business which can affect public health;
3. Business which can affect the environment and eco-system;
4. Importation of hazardous or poisonous wastes into the State;
5. Business which produce or use hazardous chemicals under international agreements;
6. Production or manufacturing work or services which are activities reserved for citizens;
7. The importation of technologies, medicines or utensils/paraphernalia without relevant permits, or not designated for use;
8. Agricultural investment and plantation and cultivation for long and short terms which can be performed by citizens;
9. Livestock breeding which can be performed by citizens;
10. Marine fishing which can be performed by citizens; and
11. Foreign investment activities within 10 miles from boundary/borders between neighboring nations of Myanmar, except in State economic zones approved by the Myanmar Government.

The MIC has the power to grant permission to foreign investors to engage in activities under the prohibited/restricted list, if doing so would be in the best interest of the Nation. The MIC must request approval from the Union Parliament through the Union Government for any project which poses a significant impact on the security of the State and people, the economy, the environment or socio-economic wellbeing.

Restrictions specific to certain industry sectors were published in MIC Notification No. 1/2013 on 31 January 2013 (a translation is available at www.myanmarlegalservices.com).

**Right to Transfer Foreign Currency**

A person who has brought in foreign capital can transfer the following:

- foreign currency entitlement of the person
- net profit after deducting all taxes and provisions
- foreign currency permitted for withdrawal by the MIC which may include the value of assets on the winding up of business.
- a foreign employee can transfer its salary and lawful income after deducting taxes and other living expenses incurred domestically
Guarantee

Enterprises operating under the FIL have the State guarantee against nationalization and expropriation. In the new FIL, the guarantee is subject to an exception if the nationalization or expropriation is in the natural interest, in which case the investor is to be compensated for the market value of the investment. The Government also guarantees that investment will not be terminated during the permitted term, and foreign capital will be transferred to investors upon the expiration of the term of the investment contract.

Application Procedures for Foreign Investment

A promoter for foreign investment must submit a proposal in prescribed form to the MIC, with the following attachments:

- Documents supporting financial credibility (audited final accounts of most recent year of the person or the firm that intends to make investment).
- Bank recommendation regarding the business standing.
- Detailed calculation relating to the economic justification of the proposed project indicating inter alia:
  - estimated annual net profit.
  - estimated annual foreign exchange earnings or savings and foreign exchange requirement for the operation.
  - recoupment period.
  - prospects of creating employment.
  - prospects of increase in national income.
  - Local and foreign market conditions and the requirement, if any, for local consumption.
- If it is a hundred percent foreign investment, a draft contract to be executed with an organization determined by the Ministry concerned.
- If it is a joint venture, a draft contract to be entered into between the foreign investor and local counterpart.
- If it is a joint venture in the form of a limited company, draft Memorandum and Articles of Association and also a draft contract between the foreign and local investors.
- The promoter may apply for the exemptions and reliefs from taxes stated in chapter 12, Article 27 of the FIL.
- The promoter may also apply for an exemption from commercial tax under chapter 12, Article 27(k).

Myanmar Special Economic Zone Law

On 23 January 2014 the Government enacted a new Myanmar Special Economic Zone Law (MSEZL), Law No. 1/2014 which applies to all Special Economic Zones, and which repeals to 2011 MSEZL and the Dawei SEZL.

The MSEZL provides for a Central Body, Central Working Body, and a Managerial Committee for each SEZ.

A SEZ may have several zones: Exempted Zone, Business Development Zone, and other Zones.

The new MSEZL offers the following incentives to investors within a SEZ:

- 100% Foreign Ownership;
- The right to lease land for 50 years, with a 25 year renewable period;
- 7 year income tax exemption for businesses in “Exemptions Zones” and for “Exempted Businesses”;
- 5 year income tax exemption for “Investment Businesses” in “Promotion Zones” or other businesses in a SEZ;
- 5 year income tax reduction of 50% following any exemption period, reduction can be extended for another 5 years for profits which are reinvested;
- No customs duties:
  - in “Exempted Zones”;
  - for materials and equipment used during construction and exemptions or relief for other imported materials or equipment;
- “Investors” will pay customs on raw materials and goods used for production but can apply for reimbursement if the finished goods are used in the SEZ;
The right to carry forward losses for five years after they were sustained;  
Certain reliefs and exemptions from VAT and Commercial tax;  
Right to open foreign currency accounts with approved banks.

As of March 2014 there are three SEZ’s: Thilawa, Kyank Phyu and Dawei SEZ.

Each Special Economic Zone is administered by a Management Committee under the MSEZL 2014.

- The Thilawa project is being developed by Myanmar and Japanese investors with Myanmar owning 51 percent and Japan 49 percent. The Thilawa project involves construction and development of textile, manufacturing and high-tech industries, as well as a deep-sea port. It was started in November 2013 and Myanmar-Japan Thilawa Development Limited (MJTD) was established to develop the project.

- The Kyank Phyu Special Economic Zone serves a port and an oil and gas terminal and is western end of pipelines linking Myanmar and China. There are further plans for the SEZ. A Singapore firm has been appointed consultant.

- On 17 June 2013, Myanmar and Thailand signed an agreement to create the Dawei SEZ Development Co (DSEZ). Three memoranda of understanding were signed between Thailand and Myanmar in November 2013 creating 50/50 investment in the project and transferring the Dawei concession from Italian-Thai Development Plc (ITD) to DSEZ. The project is presently seeking further investment.

**State-Owned Economics Enterprises Law (1989)**

The SEE Law provides that the following 12 activities may only be undertaken by a State-owned economic enterprise, namely:

- (a) extraction and sale of teak in Myanmar and abroad;  
- (b) cultivation and conservation of forest plantation with some exceptions;  
- (c) exploration, extraction and sale of petroleum and natural gas and production of products of the same;  
- (d) exploration, extraction or export of gems;  
- (e) breeding and production of fish and prawns in fisheries which have been reserved for research by the government;  
- (f) post and telecommunications services;  
- (g) air transport and railway transport services;  
- (h) banking and insurance services;  
- (i) broadcasting and television services;  
- (j) exploration, extraction or export of metals;  
- (k) electricity generating services other than those permitted by law and cooperative electricity generating services; and  
- (l) manufacturing of products relating to security and defense.

While the SEE Law restricts the aforementioned activities, the law allows the government to grant the activities reserved to State-owned economic enterprises to joint ventures between the government and any other person or economic organization.

**Regulation of Manufacturing**

A manufacturing business in Myanmar is regulated by the Ministry of Industry No. 1, which is responsible for directing and promoting industrial investment and production of consumer goods and other light industrial products.
A variety of consumer goods such as textiles and garments, foodstuffs and beverages, pharmaceuticals, soap and toiletries, enamel wares, aluminum wares, steel products, cement, marble and porcelain wares, rubber goods, leather, packing materials, pulp, paper and paints, jute carpet, etc. are being produced by State-owned factories.

Foreign investors may submit proposals to engage in these manufacturing activities under the FIL, either as joint ventures or wholly owned foreign enterprises. They can also enter manufacturing contracts with existing factories to provide raw materials and spare parts in exchange for the finished products after payment of processing charges in foreign currency. Foreign investors can also participate in a buy-back system, under which they will supply machinery and equipment on a deferred payment basis. The cost of the machinery and equipment is then paid back in agreed quantities of finished goods annually at mutually agreed upon prices.

**The Private Industrial Enterprise Law (1990)**

The Private Industrial Enterprise Law and Procedures of 1990 enables the establishment of small, medium and large scale enterprises, and promotes private industrial enterprises excluding those industrial enterprises conducted as a joint venture with the State.

The Private Industrial Enterprise Law provides:

1. joint ventures with the Government/State-owned economic enterprises are specifically exempted from the Private Industrial Enterprise Law;
2. all private individuals and entities (whether 100 percent foreign-owned, locally owned or a joint venture) operating an enterprise which produces finished goods from raw materials using any form of power in any building must apply for registration with the Ministry of Industry No. 1 in the manner prescribed by the Private Industrial Enterprise Law;
3. the Ministry may impose conditions on the registration (particularly with regard to technology transfer and pollution controls) and the registered private industrial enterprise is required, among other things, to comply with the orders and directives issued by the Ministry from time to time; and
4. the Minister of the Ministry of Industry No. 1 has wide discretion to suspend or cancel the registration “if it is necessary in the interests of the State.” Also, the registration will become invalid upon the enterprise being terminated under any other law.

**Myanmar Citizens Investment Law (2013)**

The new Myanmar Citizens Investment Law was enacted on 31 July 2013 and allows Myanmar investors to receive similar investment incentives as foreign investors may receive under the Foreign Investment Law. The law allows local companies to appoint foreign experts for a limited duration with the approval of MIC. Myanmar Investors may also form and operate in accordance with the Foreign Investment Law if forming a joint venture with a foreigner or foreign company.

**Arbitration**

Until July 2013, Myanmar was a party to the Geneva Protocol on Arbitration Clauses of 1923, but is not a party to the ICSID Convention or other international conventions relating to arbitration. Myanmar deposited its instrument of accession without reservations to become a contracting state of the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, which become effective on 15 July 2013. Myanmar must pass a new arbitration act, which is expected during 2014.

The new arbitration law being drafted is based on the UNCITRAL model law. The current Arbitration Act 1944 does not provide for enforcement of foreign arbitration awards and does not recognize arbitration abroad.

There is no public record of any international commercial arbitration cases conducted under the English based, Myanmar Arbitration Act 1944. Very few international commercial arbitration cases have been conducted in Myanmar. This probably reflects the economic policy of Myanmar prior to 1988 of minimizing economic
relations with foreign countries. Since 1988, there have been a number of contracts between Myanmar parties and foreign companies, in which a foreign governing law and foreign arbitration rules are prescribed.

Myanmar became a member of ASEAN in 1997, and is obliged to ratify 14 key agreements prescribed by ASEAN. The ASEAN Comprehensive Investment Agreement become effective on 29 March 2012.

The Myanmar Companies Act contains provisions on arbitration. The arbitration provisions in the Myanmar Companies Act state:

1. A company may by written agreement refer to arbitration, in accordance with the Arbitration Act on existing or future differences between itself and any other company or person.

2. Companies, parties to the arbitration, may delegate power to the arbitrator to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing bodies.

3. The provisions of the Arbitration Act shall apply to all arbitrations between companies and persons in pursuance of this Act.

As a matter of government policy, most contracts between State-owned enterprises and foreign companies specify Myanmar law as the governing law, and prescribe that disputes be settled by arbitration under the Arbitration Act. In general, the Attorney General’s Office (“AGO”) and MIC do not allow foreign arbitration provisions.

In practice at present time, some disputes between the contracting parties in Myanmar are settled by the Union of Myanmar Federation of Chambers of Commerce and Industry (“UMFCCI”) in Yangon, when both parties of the dispute are members of the UMFCCI.

**Investment Promotion Treaties**

Myanmar has investment promotion treaties with China, India, Laos, the Philippines, Thailand, and Vietnam. The treaties with China, India, the Philippines and Thailand have come into force.
ADDRESS OF MAIN OFFICES FOR INVESTMENT IN MYANMAR

MYANMAR INVESTMENT COMMISSION OFFICE
DIRECTORATE OF INVESTMENT AND COMPANY ADMINISTRATION
MINISTRY OF NATIONAL PLANNING AND ECONOMIC DEVELOPMENT

www.dica.gov.mm/index.htm

FOR COMPANY REGISTRATION
COMPANY REGISTRATION OFFICE
DIRECTORATE OF INVESTMENT AND COMPANY ADMINISTRATION
MINISTRY OF NATIONAL PLANNING AND ECONOMIC DEVELOPMENT

Building No. 32, Nay Pyi Taw
Myanmar
Tel: 95-67-406342; 406124; 406124
Fax: 95-67-406074
Website: www.mnped.gov.mm/index.php

FOR EXPORT & IMPORT
EXPORT IMPORT REGISTRATION OFFICE
DIRECTORATE OF TRADE
MINISTRY OF COMMERCE

Building No. 3, Nay Pyi Taw
Myanmar
Tel: 95-67-408009; 406124; 408003
Fax: 95-67-408234
Website: www.commerce.gov.mm

DIRECTORATE OF TRADE
YANGON BRANCH

No. 226/240, Strand Road
Pabedan Township, Yangon
MYANMAR
Tel: 951-251197
Fax: 951-253028