

MYANMAR

A BUSINESS GUIDE FOR NORWEGIAN INVESTORS



MYANMAR: A BUSINESS GUIDE FOR NORWEGIAN INVESTORS

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Fig. 1: Map of Myanmar © Myanmar Information Management Unit (MIMU)

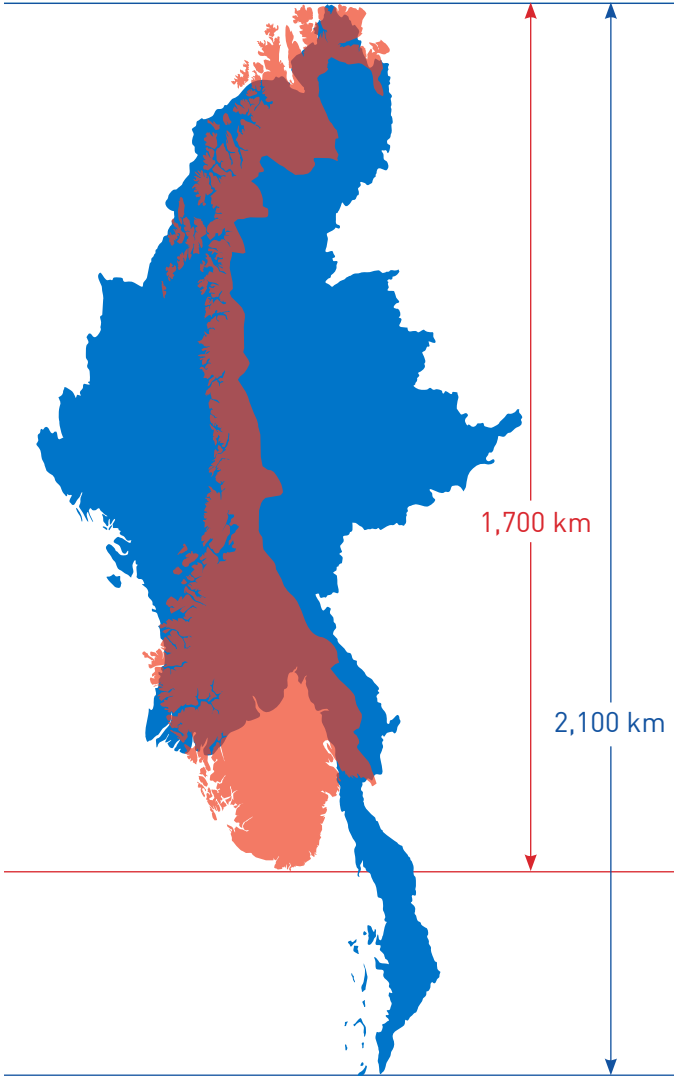


Fig. 2: Comparative sizes of Norway and Myanmar

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	NORWAY	MYANMAR
Official name	Kingdom of Norway	Republic of the Union of Myanmar
Capital	Oslo	Nay Pyi Taw
Language	Norwegian	Myanmar Ethnic Minorities have their own languages
Area	385,1991 km ² Mainland: 324,220 km ² Svalbard & Jan Mayen: 61,39 km ²	676,578 km ² Mainland: 653,508 km ² Islands: 23,070 km ²
International Borders	Sweden Finland Russia	Bangladesh China India Laos Thailand
Coast Line	2,650 km (excluding fjords and bays)	1,930 km
Highest Mountain	Galdhopiggen 2,469 m	Gamlang Razi 5,870 m
Big Cities	Oslo, Bergen, Trondheim, Stavanger	Yangon, Mandalay, Nay Pyi Taw
Climate	Four seasons: Winter (December – February) Spring (March – May) Summer (June – August) Autumn (September – November).	Three seasons: Winter (November – February) Summer (March – June) Tropical Monsoon (June – early October)
Temperature	High: 30 Low: -30	High: 40 Low:
Population	5,2 million (2015 est.)	51,4 million (2014 est.)
Life expectancy at birth Total population	81,7 years	66,29 years

Table 1: Comparative table of Norway and Myanmar

	NORWAY	MYANMAR
Male Female	79,7 years 83,81 years (2015 est.)	63,89 years 68,82 years (2015 est.)
Administrative and Political System	Constitutional Monarchy: Multi- party system	Unitary Presidential Republic Multi-party system
National Day	Constitution Day 17 May (1814)	Independence Day 4 January (1948)
Main Religions	Church of Norway (Evangelical Lutheran), Christian, Muslim, Ro- man Catholic, Other	Theravada Buddhism, Muslim, Christian, animist.
Natural Resources	Petroleum, natural gas, iron ore, copper, lead, zinc, titanium, pyrites, nickel, fish, timber, hydropower	Petroleum, timber, tin, antimony, zinc, copper, tungsten, lead, coal, marble, limestone, precious stones, natural gas, hydropower, arable land
Main agricultural products	Barley, wheat, potatoes, pork beef, veal, fish, milk	Rice, pulses, beans, sesame, groundnuts, sugarcane, lumber, fish
Main industries	Petroleum and gas, food proces- sing, shipbuilding, pulp and paper products, metals, chemicals, timber, mining, textiles, fishing	Agricultural Processing, wood and wood products, copper, tin, tungsten, iron, cement, construc- tion materials, oil and natural gas, garments, jade
Main export commodities	Petroleum and petroleum products, machinery and equipment, ships, chemicals, fish	Petroleum gas, rough wood, pre- cious stones, dried legumes.
Main import commodities	Machinery and equipment, chemi- cals, metals, food products.	Fabric, petroleum products, fertili- zer, plastics, machinery, transport equipment, cement, food products
Currency	Norwegian Kroner (NOK)	Myanmar Kyat (MMK)





Introduction

It is a great pleasure for me to see that a comprehensive Business Guide for Myanmar is now available. I am sure it will prove to be a useful tool for both established and prospective Norwegian businesses in the country.

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Norway places great emphasis on the promotion of responsible business conduct in Myanmar, and we believe Norwegian companies have an important role to play in this. The work Norway supports through organisations such as the Myanmar Centre for Responsible Business is very important in terms of setting international norms and putting 'best practice' in the area of responsible business conduct on the agenda. Business ethics, corporate conduct and environmental sustainability are key principals in this regard. We believe that Norwegian companies entering Myanmar can act as role models by setting high standards, thereby building capacity and improving the livelihood for the people.

There is a great need for private sector development in Myanmar. The country needs the

economic growth and job creation that private sector investment can offer. A dynamic private sector is critical for long-term, sustainable poverty eradication through creating value and broadly based wealth, tax revenues and productive jobs. Better standards of living will also help to propel further democratization. In this context, Norwegian companies have a unique opportunity to compliment the local business environment towards realizing long-term goals, and to help the country leapfrog into a modern and vibrant society.

The increasing cooperation between Norway and Myanmar is the result of a lasting commitment, where Norwegian support to responsible business lies at the very core. Through a close and integrated approach with Innovation Norway and the Norway-Myanmar Business Council, the Norwegian Embassy will continue to provide a comprehensive chain of services to Norwegian companies in Myanmar.

Ann Ollestad
Ambassador of Norway to Myanmar



1. Norwegian Engagement in Myanmar during Recent Years

Norway is an important international partner to Myanmar's transition, based on a longstanding commitment. Prior to 2008, and at the height of internal conflict and violence, Norway engaged with local partners promoting political reform - an engagement that continues today. At the same time, it worked with exile organizations promoting change from outside of Myanmar. As a result, Norway established unique and trusted relationships with organisations in civil society and other leaders, many of whom are key actors in the transition process.

INTRODUCTION

In 2012, the Government of Norway developed a strategy for development cooperation with Myanmar. The strategy sets the stage for long-term development cooperation between Myanmar and Norway, particularly in the areas of (1) peace, democracy and reform and (2) natural resource management, particularly energy and environment/climate change.

The overarching goal of Norwegian development cooperation with Myanmar is to contribute to peace and reconciliation and an enabling environment for social and economic development. In 2013 and 2014, Norway provided a combined amount of 319 million Norwegian kroner (approximately 37 million USD) in development assistance to Myanmar.

PEACE, DEMOCRACY AND REFORM

In 2012, Norway was requested by the Government to establish the Myanmar Peace Support Initiative (MPSI) and the Peace Support Group (PSG). The projects initiated through MPSI were completed in 2015. Through the Peace Support Group, Norway continues to work closely with the Government and ethnic groups to support their ongoing efforts of securing national peace and supports a number of civil

society organizations working to promote peace and reconciliation on the grass roots level. Norway led the PSG from its inception in 2012, before handing over the chairmanship to Switzerland in 2015. The Norwegian Embassy is currently working with the PSG on establishing a Joint Peace Fund. Gender equality continues to be a top priority for Norway in Myanmar, and the embassy is currently working actively to increase the participation of women in the peace process.

Support to the democratization process has been and still is an important part of Norwegian development cooperation with Myanmar. While in earlier times the support was principally channeled through organizations and media operating outside of Myanmar, the bulk of the support is now being channeled through organizations based in Myanmar. Prior to the national elections in November 2015 the Embassy was actively involved in dialogue with the Government of Myanmar, opposition, Union Election Committee, media and civil society regarding various election issues. Norway issued support to several projects related to the elections, including the Asian Network for Free Elections (ANFREL), Carter Center, UNDP, IDEA and Norwegian Peoples Aid.

The Government of Myanmar is in the process of implementing an ambitious reform agenda. Norway has supported the Government in these reform efforts with capacity building and expert advice on economic reform, and capacity building related to the implementation of the Freedom of Association Law, through the International Labour Organization (ILO). Additionally, Norway provided assistance to the Government to prepare for the chairmanship of the Association of the South-East Asian Nations (ASEAN) in 2014.

Norway was also a significant contributor to the sensitive and important 2014 Population and Housing Census, through United Nations' Populations Fund (UNFPA). The relationship between Buddhists and Muslims in Rakhine remains tense, and the fragile situation still requires close monitoring. In this context, Norway will continue its support to all parties in Rakhine.

ENERGY

Realizing the country's energy potential and increasing access to electricity is a top priority of the Government of Myanmar. Norway is assisting the Ministry of Electric Power with capacity building through assistance from the

Norwegian Directorate for Energy and Water Resources (NVE). The cooperation focuses on sustainable hydropower development, the legal framework, hydropower standards and hydrology, and provides on-the-job training in addition to training courses provided by the International Centre for Hydropower (ICH).

Norway works closely with the Asian Development Bank (ADB) on capacity building within the Ministry of Electric Power and with assistance to revise the electricity regulatory framework. Contributions are also provided to the World Bank «Myanmar Electric Power Project»..

Norway is a long-standing partner of Proximity Designs and support their work to design and deliver affordable, income-boosting products and services to rural families. Products include sustainable lighting options, based on solar energy. Norway also works closely with Green Economy Green Growth Association (GEEG) and support their efforts to establish a Center of Excellence for Greening.

The governments of Norway and Myanmar have embarked on a dialogue to establish an Oil for Development Program. Many activities

are underway. The program will involve capacity building within the Ministries of Energy, Finance and Revenue and Environmental Conservation and Forestry on issues related to resource management, revenue management and environmental management related to the petroleum sector. Government accountability and civil society engagement is an important aspect of the program. Norway supports the EITI process through the Natural Resource Governance Institute (NRGI).

ENVIRONMENT AND CLIMATE CHANGE

Environmental conservation has been a priority for Norwegian development cooperation with Myanmar since early days.

The visit to Norway by the Union Minister of Environmental Conservation and Forestry marked the beginning of an institutional cooperation program between the Norwegian Ministry of Environment and the Union Ministry of Environmental Conservation and Forestry (MOECAF) on environmental management. The program focus on building capacity within the Government on biodiversity and protected area management, integrated water resource management (IWRM) and hazardous waste. Another important component of the Norway-

Myanmar cooperation on environmental issues is the ongoing efforts to conserve and rehabilitate the beautiful Inle Lake in Shan State. The lake is severely threatened by environmental degradation and rehabilitation requires concerted efforts by the Government, Non-Governmental Organizations (NGOs) and development agencies. Norway has provided technical assistance to the Government to develop a long-term plan restoration and conservation of Inle Lake through the UN Human Settlements Program (UN HABITAT), and supports a number of community activities in the Inle Lake watershed area through the UN Development Program (UNDP).

Norway provides support to the Government in its efforts to safeguard natural heritage in Myanmar within the World Heritage framework, through cooperation with UNESCO.

Myanmar is in the early stage of establishing a national program for Reducing Emissions from Deforestation and Forest Degradation (REDD). Norway is one of the main donors of this initiative. Support is also provided to the Center for People and Forests (RECOFTC) and the Norwegian Rainforest Foundation, in their efforts to involve local communities in forest management in Myanmar.

Norway has for many years been a main contributor to the UN HABITAT's work on disaster risk reduction in Myanmar, through the Cities and Urban Risk Program (CURB).

TRADE AND COMMERCE

In January 2012, the Norwegian Government decided that it would no longer urge Norwegian companies to refrain from trade and investment in Myanmar. A dynamic, vibrant private sector is critical for long-term, sustainable poverty eradication through creating value and broadly based wealth, tax revenues and productive jobs. Trade and foreign investments will have both immediate and long-term benefits in strengthening local capacity and fostering local competition.

Norway attaches great importance to the principles of decent work, corporate social responsibility and environmental sustainability. Norwegian companies operating abroad can have a positive impact, for example by setting high standards for corporate conduct, which can subsequently be followed by local companies. The long-standing support to the Myanmar Centre for Responsible Business has been one of Norway's key initiatives in this regard.



Through an integrated approach with Innovation Norway and the Norway-Myanmar Business Council, the Norwegian Embassy will continue to provide a comprehensive chain of services to Norwegian companies in Myanmar. The Embassy's primary role in this respect is to function as a platform for dialogue between Myanmar authorities and Norwegian companies.

NORWAY'S COMMERCIAL FOOTPRINT IN MYANMAR

The first Norwegian business delegation visited Myanmar in 2012 and since then, there have been annual trade delegations and business engagement with Norwegian companies in connection with official visits, culminating with the State Visit of President U Thein Sein to Norway in February 2013 and Their Majesties the King and Queen of Norway to Myanmar in December 2014.

A dynamic private sector is critical for long-term, sustainable poverty eradication that creates value and broadly based wealth, tax revenues and productive jobs. Better standards of living will also help to propel further democratisation. Trade and foreign investments will have both immediate and long-term

benefits in strengthening local capacity and fostering local competition.

Norway attaches great importance to business ethics, corporate conduct and environmental sustainability. We believe that Norwegian companies entering Myanmar can act as role models by setting high standards, thereby building capacity and improving the livelihood of the people of Myanmar.

First and foremost, Myanmar needs basic power infrastructure. Only 30% of the population has access to power. In the countryside, this might mean a few hours per day and even the big cities are subject to frequent power cuts. Norway has a long experience in the power sector and several Norwegian companies are involved in upgrading the electricity provision systems, both by adding capacity but also by refining the existing installations. Myanmar needs additional energy provision solutions both on-grid and off-grid.

The oil and gas exploration sector in Myanmar is still in its infancy. Most of the country's gas is exported to neighbouring countries. At the same time, the country needs oil and gas for domestic consumption.

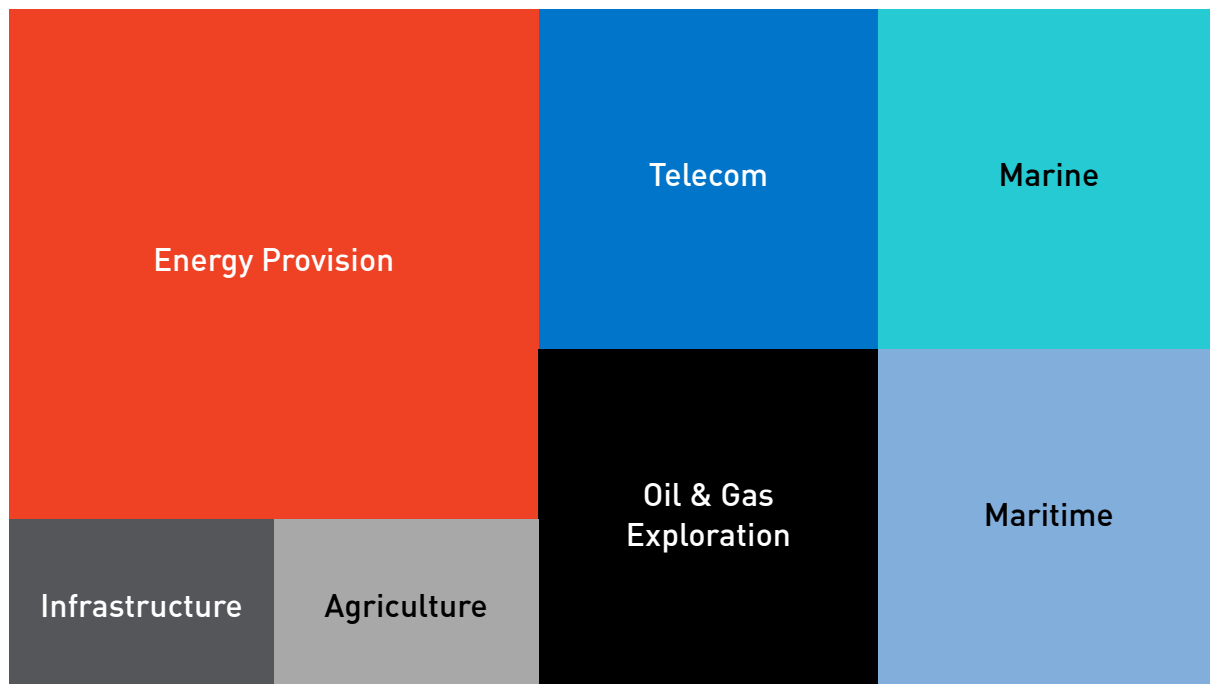


Fig. 3: Norway's commercial footprint in Myanmar

Telenor, which won one of two mobile telephone tenders, was the first Norwegian multinational to enter Myanmar. Since then the telecom supplier industry such as towers and power for the telecom industry has entered the country. The maritime sector is mainly involved in supplying Myanmar officers for the world's commercial maritime fleet. Myanmar officers are known for their excellent seamanship, hard work and loyalty.

The marine sector is centred on Myanmar's abundant marine resources. It is expected that low-technology aquaculture and fishmeal processing together with agricultural products will form a key part of Myanmar's export industry in the future.

Finally, as Myanmar's international footprint increases, there will be a growing need to develop infrastructure solutions for roads, har-



bours, rail, river transport and air. Norway has expertise in several of these fields and there are opportunities for Norwegian companies with relevant experience in these industries to enter the country.

MYANMAR-NORWAY BUSINESS COUNCIL

Based on the increasing number of Norwegian businesses coming to Myanmar, the initiative was made to set up the Myanmar-Norway Business Council. The Council is set up as a sub-chapter of the Thai-Norwegian Chamber of Commerce, with the support of Ambassador Ann Ollestad. The Council was also endorsed by Telenor, Statoil and Jotun, three of the leading Norwegian companies in Myanmar. The Council was formally convened in 2015.

The aim of the Council is to facilitate further growth in trade and investments between Norway and Myanmar, through providing a forum for businesses to exchange ideas and experiences, and to provide networking opportunities. The Council believes that Norwegian companies has an unique opportunity to contribute positively to the development and modernisation of Myanmar, while at the same time creating sustainable and profitable business opportunities for Norwegian companies.

Norwegian companies entering Myanmar will face high expectations from both the local business community and the local government. We are expected to bring state of the art technology and business methodology, while being role models in responsible businesses. To some these expectations can be seen as challenges, but to most of us these represents opportunities and gives Norwegian companies a strong competitive advantage in the market. Norwegian companies will be able to showcase the principles of decent work, corporate responsibility and environmental sustainability. On behalf of the Myanmar-Norway Business Council, I would like to welcome Norwegian companies to visit Myanmar, and to learn more on the opportunities Myanmar can offer.

Ola Nicolai Borge
President

Myanmar-Norway Business Council /
Partner - Baker & McKenzie Myanmar
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2. Introduction to Myanmar

Myanmar, officially named The Republic of the Union of Myanmar, is a sovereign state located in South-East Asia. The country is bordered by Bangladesh, India, China, Laos and Thailand, with a long coastal line towards the Andaman Sea and the Bay of Bengal. The strategic location is one of the many aspects that are currently attracting international investors to the country.

Myanmar, formally known as Burma, used to be one of the most developed and rich countries in the region. Under British rule, the country was the world's largest exporter of rice, and in 1853 Myanmar became one of the earliest petroleum producers in the world. However, since the move towards nationalisation in the 1960s - Myanmar's development was falling way behind other countries in the region. With the recent opening up of the economy, and ease of international sanctions, Myanmar's economy has started on a high-growth trajectory. During the last years, Myanmar has had one of the strongest GDP growths in the world, and this growth is expected to continue over the coming years.

The country has many advantages which appeals to foreign investors. In addition to the strategic location and regional benefits of an ASEAN membership, Myanmar is blessed with an abundance of natural resources. Hydropower, oil and gas, minerals, forests, marine resources and agricultural land are in abundance. In addition, the country has a great tourism potential, being one of the last "unspoiled" countries in the world. The key to the future success of the country will be sustainable management of the natural resources.

«Myanmar's recent reforms open up a wide range of economic opportunities (including foreign investment in key sectors that are outdated due to decades of isolation), with its strategic location playing a key role.» (from ADB's report «Myanmar in Transition», published in August 2012)

CHALLENGES IN DOING BUSINESS IN MYANMAR

Myanmar is generally considered to be a challenging country to do business. The primary challenges for the private sector relates to lack of capacity within the government combined with at times excessive bureaucracy, underdeveloped infrastructure, lack of skilled labour and limited financing. In addition, we see that Norwegian companies entering Myanmar are struggling with finding a suitable local partner, to the extent needed.

Corruption in Myanmar is also an area that attracts international attention. Myanmar has consistently during recent years been ranked as one of the most corrupt countries in the world in the annual Transparency International corruptions perceptions index. In the 2014 ranking, Myanmar placed number 156 of 175 countries, improving one position from 2013.

It is however worth noticing that many companies engaged in doing business in Myanmar are finding corruption to represent less of a challenge than expected. This is underscored by the fact that corruption is only ranked as the 14th out of 15 key constraints in the World Bank Enterprise Survey from 2014.

Based on the challenges of doing business in Myanmar, the country might not suit all Norwegian investors. Smaller companies without experience in Asia and/or developing countries might find the challenges of this emerging country to be disproportionate to the potential upside. In many cases, smaller companies might not have financial and organisational resources to take on a long-term project in the country.

Companies starting up in Myanmar should expect to invest in capacity building at all levels in their own organisations. This is necessary to get staff to understand how things actually should work. On the other hand, employers in Myanmar have a unique opportunity to set standards and build a desired work environment.

It is important to point out that any business activity in Myanmar must be considered long-term and companies entering Myanmar must be given a realistic picture of the basic conditions. Things we take for granted in the developed world do not necessarily work in Myanmar and many specialised commodities are not readily available.

These facts are often misunderstood and can lead to disengagement, or in the worst-case scenario, a loss of projects and investments.



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3. Setting up Business in Myanmar

Setting up a business in Myanmar is a relatively straightforward process, with significant opportunities for foreign investors. There are however still activities that foreigners are not allowed to do, or that needs to be done in joint venture with a Myanmar citizens.

REQUIREMENT TO REGISTER

All foreign investors conducting business in Myanmar are required to obtain a Permit to Trade. In order to obtain a Permit to Trade, the foreign investor is required to establish a locally registered entity. The application for the Permit to Trade and the locally established entity are filed for and issued in tandem.

LEGAL FORMS OF REGISTRATION AVAILABLE

Under the Myanmar Companies Act, multiple forms of entities are available to investors. However, in practice, the Directorate of Investment and Company Administration (DICA) will only allow foreign investors to register

a private limited company, a public limited company, or a branch of a foreign company. Private limited companies are the most common vehicle used by foreign investors to invest in Myanmar.

Registration Requirements

Each type of entity available to foreign investors (private limited company, a public limited company, or a branch of a foreign company) has similar requirements and process for registration. However, there is some variation for the requirements of each type of entity.

Registration Process

The process to register any of the forms of

ISSUE	PRIVATE LIMITED COMPANY	PRIVATE LIMITED COMPANY	BRANCH
Shareholders	2 - 50	7 +	N/A
Paid-up Capital	USD 50,000 (for service companies) USD 150,000 (for construction & manufacturing companies)	USD 50,000 (for service companies) USD 150,000 (for construction & manufacturing companies)	USD 50,000 (for service companies) USD 150,000 (for construction & manufacturing companies)
Directors	Minimum of 2	Minimum of 3	N/A
Managers	N/A	N/A	1
Address	Yes	Yes	Yes
Business Objectives	Yes	Yes	Yes

Table 2: Legal forms of registration available in Myanmar

entities listed above is similar, and can be broken down into three basic steps. The first step is to collect all of the relevant information required to register the entity and to apply for a certificate of incorporation and permit to trade. This includes items such as selecting the relevant shareholders, choosing directors, etc. One of the more difficult parts of this step is to craft the description of business objectives. It is important that the business objectives be broad enough to allow the company to conduct its business, but not over broad such that it requires superfluous ministry approval or is rejected for including prohibited business activities. Often, creating appropriate business activities requires multiple discussions with the DICA. In theory, this first step could happen very quickly, but in practice, it usually takes about a month.

The second step is to submit the application and receive a temporary certificate and permit to trade. The temporary documents (issued to both companies and branches) are not addressed by the law. They were created by the DICA in order to allow companies to begin conducting limited setup operations immediately while the registration application is pending. The third step is to track the application's pro-

gress through the DICA and perform certain required administrative actions. At that point, the company being incorporated will need to open a bank account and inject a minimum of half of the paid up capital, as well as a few minor administrative actions. This step usually takes between two and three months. Once the third step is complete, the DICA will finish its review and issue a registration certificate and Permit to Trade. This usually takes from one to three weeks.

Myanmar Investment Commission Permit

Foreign investors seeking to make a large investment in Myanmar, or foreign investors seeking to invest in a restricted area, may find that they should, obtain a Myanmar Investment Commission (MIC) permit, although an MIC permit is not mandatory for operating in Myanmar. A MIC permit will allow foreign investors to receive certain investment incentives provided for in the Foreign Investment Law. For more information on the investment incentives provided for in the Foreign Investment Law, please see the section below discussing the same.

A MIC permit is usually applied for in conjunction with the registration process outlined



above, and usually takes between three and six months to obtain, depending on the size, type and complexity of the investment. If an investor applies for an MIC permit, the registration process will usually proceed in relation to the MIC permit application. Meaning that the registration and Permit to Trade will be issued at the same time as the MIC permit is issued. When applying for an MIC permit, an investor will be required to create an investment proposal and application, and submit them to the MIC. The MIC will review the proposal and application to ensure they are satisfactory, before formally accepting it. Once the application and proposal are formally accepted, the Preliminary Assessment Team will interview the investor and request information about the proposed project. Once the Preliminary Assessment Team is satisfied with the application and proposal, the investor will be required to give a presentation about the investment to the MIC. Thereafter, if the MIC accepts the investment proposal and application, the MIC permit will be issued.

RESTRICTIONS FOR FOREIGN INVESTMENT

Foreign investment in Myanmar is restricted through a couple of methods. First, the certain

laws (notably the Foreign Investment Law and Foreign Investment Rules) place some restrictions on foreign investment. Second, different ministries and governmental organisations promulgate notifications restricting foreign investment (notably Notification 19/2014 issued by the Myanmar Investment Commission). Finally, foreign investment is also restricted through unwritten policies of the various governmental ministries and organisations.

Restrictions under the Foreign Investment Law

The Foreign Investment Law sets out a list of restricted and prohibited activities, which can be carried out only with the approval of the Myanmar government. Activities reserved for Myanmar citizens come under the category of restricted and prohibited activities. The Foreign Investment Rules contain four schedules that provide further details on what constitutes activities reserved for Myanmar citizens. The four schedules cover a diverse range of activities ranging from small scale agriculture and livestock breeding to ambulance services. The Foreign Investment Rules provide that if a joint venture is used for investment in such activities, foreign ownership must not exceed 80 percent.

Restrictions under Notification 49/2014

The MIC Notification 49/2014 sets out lists of: (i) activities which are not permitted; (ii) activities which can only be carried out using joint ventures with Myanmar citizens (ownership ratios vary); and (iii) activities which are permitted with specific conditions.

Non-permitted activities

Examples of non-permitted businesses are manufacturing of arms and ammunition, exploration of jade and gems, trading of electric power and air navigation services.

Activities which can only be carried out using joint ventures with Myanmar citizens

This category covers a number of manufacturing activities including manufacturing and marketing of grain products and confectionery, all kinds of ice, plastic wares, rubber and plastic. Other examples in this category are tourism, private healthcare and domestic and international air transport.

Activities permitted with specific conditions

This category is further sub-divided into: (i) activities permitted with the recommendations of the relevant ministries (e.g. importation and distribution of petroleum products and

petroleum requires recommendation from the Ministry of Energy); (ii) activities which can only be carried out by adhering to specific conditions (e.g. 100 percent foreign investment is allowed for three stars and above hotels); and (iii) activities which require environmental impact assessment (e.g. hydropower and other heavy electricity generation).

Restrictions by Policy

Perhaps the two most well-known restrictions on foreign investment imposed by policy, rather than law, are the restrictions on trading and insurance¹.

Currently, there is no law or regulation which restrict foreigners from trading in Myanmar, however, in accordance with the current unwritten policy of the Ministry of Commerce, foreigners are in general not allowed to engage in trading business in Myanmar. Trading is generally considered to cover import, distribution and sale of products. Therefore, it is recommended that the exact activities of any company seeking to invest in Myanmar be discussed with the relevant government department or with the DICA to ensure that the planned investment activities are permitted. Under notification 96/2015 the Ministry of

Commerce is now opening up for foreigners to participate in trading of certain agricultural commodities and medical equipment in joint venture with locals. Further ease of the trading restrictions are expected in the coming years.

INTERNATIONAL SANCTIONS AND THEIR IMPACT

While many countries have lifted or eased sanctions against Myanmar in recent years, sanctions are still imposed against specific individuals and businesses in Myanmar. Additionally, certain trade restrictions remain in force against Myanmar generally.

US Sanctions and SDN List

The US Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers the Specially Designated Nationals and Blocked Persons List (SDN List). US Persons (e.g., US entities, US citizens, Green Card holders, etc.) are prohibited from engaging in virtually any dealings involving SDNs. In addition, US export controls (which apply extra-territorially) prohibit the export, re-export,

or transfer of most US origin/content items (i.e., goods, software, technology) to Myanmar SDNs. This is particularly important in Myanmar, as the SDN List includes many prominent banks, conglomerates, and business leaders in Myanmar. Further, any businesses owned 50 percent or more by one or more SDNs is similarly restricted.

In practice, it can at times be difficult to determine if a company or individual is on the SDN List. Additionally, violations of US sanctions can lead to significant civil or criminal penalties. Therefore, US Persons or companies with a significant US stakeholders (e.g., shareholders, suppliers, banks) should conduct appropriate due diligence before engaging in business activities in Myanmar. Use of experienced advisors in Myanmar is highly recommended. In addition to the SDN List maintained by the OFAC, there remain specific US sanctions against the Myanmar Ministry of Defence, state or non-state armed groups (which includes the military), or entities owned 50 percent or more by the foregoing. As a result, US Persons are prohibited from engaging in various business dealings involving the Myanmar Ministry of Defence, state or non-state armed groups (which includes the military), or entities owned

¹ In recent years, there has been an easing of the policy prohibiting foreign investment into insurance in Myanmar. Currently, foreign insurance companies are permitted to set up representative offices in Myanmar, and it appears that the government is preparing to allow foreign investment into insurance in Myanmar. However, it is not known when this would happen.

50 percent or more by the foregoing. The import of jade or rubies or articles containing the same into the US remains prohibited.

Furthermore, in general, any US Person must complete the State Department's «Reporting requirements on responsible investment in Burma» if they engage in (i) “new investment” that exceeds \$500,000 or (ii) any “new investment” pursuant to an agreement, or the exercise of rights under such agreement, with Myanmar Oil and Gas Enterprise.

Norwegian companies might not initially be directly subject to these US laws and regulations. To the extent Norwegian companies has offices, subsidiaries or affiliates in the US, employ US citizens, have US citizens in director position, or have non-US personnel spending time in the US, a high level of caution should be given to the US Sanctions. The experience is that the US Department of Justice will enforce a rather dynamic and aggressive interpretation of what persons or entities that are subject to these US sanctions.

It should also be noticed that engaging with entities on the SDN list could have serious reputational issues.

Sanctions from other countries

Canada retains sanctions against military activities or arms sales and related financial transactions. The EU retains an arms embargo and an embargo on equipment that could be used for internal repression. Australia retains a prohibition on the sale of arms or related material or services relating to the same.

Precautionary Measures

As a precautionary measure, many foreign companies conduct appropriate due diligence before engaging in business activities in Myanmar and include clauses in commercial contracts with Myanmar companies in which the Myanmar company undertakes not to be involved with entities or individuals on the SDN list.

SPECIAL ECONOMIC ZONES

To further encourage investment into Myanmar, and to provide investors an alternative to investing under the Foreign Investment Law, the Myanmar government adopted the Myanmar Special Economic Zone Law of 2014 (SEZ Law). Currently, three special economic zones have been established under the SEZ Law: Dawei Special Economic Zone, Kyauk Phyu Special Economic Zone, and Thilawa Special Economic Zone.

Investment in a special economic zone is primarily governed by the SEZ Law, to the exclusion of other laws. Importantly, the SEZ Law requires that each special economic zone maintain a one-stop service for obtaining the necessary permits to operate in the zone. Specifically, each one-stop service is required to issue investment permits, entry visas, certificates of origin, work permits, construction permits, and others. Additionally, the one-stop service is required to collect taxes and register companies as well.

Investment incentives granted under the SEZ Law will be discussed below in the «Investment Incentives» section.

INVESTMENT INCENTIVES

Investment incentives are found under two primary laws, the Foreign Investment Law, and the Special Economic Zone Law.

In order for the company in Myanmar to benefit from incentives under the Foreign Investment Law it must apply for a MIC Permit, this can be done in parallel when incorporating the company. Some of these investment incentives are automatic, others are at the MIC's discretion, including:

- a) five year income tax exemption (automatic);
- b) further income tax relief if profits are re-invested within 1 year (discretionary);
- c) the right to deduct depreciation from profits for the purposes of the income tax assessment (discretionary);
- d) the right to carry forward and set off losses for up to three years for losses incurred within the first two years following the end of the five year income tax exemption (discretionary);
- e) exemptions from customs duty and other taxes on machinery and materials imported for the purposes of expanding the initial investment (discretionary);
- f) being able to enter into long term leases (discretionary); and
- g) making it easier to repatriate funds overseas (automatic).

Other significant investment incentives available in Myanmar can be found in the SEZ Law. The SEZ Law has a specific set of investment incentives for the developers of special economic zones, as well as for those investing in the special economic zones once they are constructed.



Currently, there are three Special Economic Zones ("SEZs"); Dawei, Kyuakpyu and Thilawa. In order for a company to receive the investment incentives found in the SEZ Law, the company must be a developer of a new SEZ, or invest in an SEZ. Investment incentives for investing in an SEZ are further divided into different subjects, depending on which part of the SEZ the investment is in.

Some of the investment incentives available for companies investing in an SEZ are as follows:

- a) Long term lease of 30 years, with various extensions available;
- b) Seven year exemption from corporate income tax, commencing on the date of commencement of commercial operations;
- c) A 50% reduction in corporate income tax for the eighth to twelfth years after the commencement of commercial operations;
- d) Customs duty exemptions for certain machinery imported to facilitate manufacturing;
- e) Customs duty exemptions for certain raw materials used in manufacturing; and
- f) Corporate income tax deduction for reinvested income.

Unlike the Foreign Investment Law, which divides investment incentives between automatic and discretionary investment incentives, the investment for investing in an SEZ are highly dependent on the type and location of the investment being made within the SEZ. Consultation should be held with the SEZ administration in order to determine the exact investment incentives available for a particular investment.

INVESTMENT GUARANTEES

Both the Foreign Investment Law and the SEZ Law both provide guarantees against nationalisation of investment projects during the permitted investment period. The permitted investment period depends on the type of investment, and is usually stated in the investment permit granted by the MIC or the SEZ administration.

IMPORT AND EXPORT

Importing and exporting goods into and out of Myanmar is a restricted activity, and foreign investors are generally prohibited from engaging in such activities. However, certain options exist for foreign investors seeking to import or export products into or out of Myanmar. Perhaps the most simple option for importing

and exporting goods as a foreign investor is to engage the services of a local importer or exporter. These individuals or companies act as agents, and charge a fee for their services. Alternatively, a foreign investor may import or exports goods to and from Myanmar if they obtain a MIC Permit or invest in a special economic zone.

Importing

The Myanmar import process can be divided into three categories: overseas trade, border trade and transit trade. Overseas trade is carried out by sea or air freight, and is generally much more aligned with international practices. Border trade is trade carried out by land with neighbouring countries and accounts for the majority of the black market trading in Myanmar. Transit trade is carried out through companies responsible for transferring goods over land from one country to another, often over long distances.

The primary law governing the import of products is the Export and Import Law of 2012 and various customs laws. Additionally, the Foreign Investment Law, Foreign Investment Rules and SEZ Law have an impact on the process as well.

In order to import goods into Myanmar, companies that are permitted to conduct import activities must hold three levels of authorisation/licenses. First, a company wishing to engage in the importation of goods must be registered as an importer/exporter with the Directorate of Commerce and Consumer Affairs under the MOC. Second, the company is required to obtain an import license for each import it brings into Myanmar. Finally, the company wishing to import goods into Myanmar must receive a customs approval letter and work with an import agent to clear customs.

Exporting

In order for a company to be able to legally export goods from Myanmar, it must be duly incorporated, permitted to export under the law (have a MIC permit or special economic zone permit allowing such activities), and registered at the UMFCCI. After registering at the UMFCCI, the company will be required to register as an exporter at the Directorate of Commerce and Consumer Affairs (DCCA) under the MOC.

Generalised System of Preferences and Certificates of Origin

The Generalised System of Preferences (GSP) refers to the preferential tariffs granted to less

developed countries of the World Trade Organisation (WTO) by the more developed country members. Because Myanmar is considered a less developed country, the GSP means that exports from Myanmar to more developed countries may receive more favourable tax treatment than exports from other countries. However, in order to receive the benefits of the GSP, the exports must be genuine products from Myanmar. In order to prove that the products are from Myanmar, the exporter must receive a Certificate of Origin (CO). COs are granted by the UMFCCI and the one-stop service of a special economic zone.

COMPLIANCE ASPECTS AND REQUIREMENTS (ACCOUNTING, AUDIT, FILINGS)

Regarding accounting, auditing, and related filing compliance, every company is required to maintain proper book of account in the English and Myanmar languages. The books of a company must be prepared by an accountant licensed by the Myanmar Accountancy Council. When choosing an accountant, it is important to check that the license held by the accountant has been properly renewed, as a license is only valid for a matter of years.

The books of account should be kept at a company's registered office and must be accessible to directors and other entitled persons during business hours. These books will be used for both corporate and tax filings, as well as internal corporate governance purposes.



4. Financial Systems and Foreign Exchange

Myanmar has in recent years made significant changes in the banking sector, including opening up for nine foreign banks to open branches in Myanmar and with a wide number of micro-finance entities in the market. Still, the financial services sector is lagging behind other countries in the region.

INTRODUCTION TO MYANMAR BANKING SYSTEM, WITH RECENT CHANGES

Myanmar's banking history began under British colonial rule, and since then, the banking system in Myanmar has undergone some significant changes. After the independence of Myanmar from British colonial rule in 1948, the banking system in Myanmar flourished until all banks were nationalised in 1963.

After several demonetisation waves hit the Myanmar economy, the government instituted reforms which included the Financial Institutions of Myanmar Law in 1990. Subsequently, private banks were allowed to open in 1992. Myanmar experienced some turbulence in its financial sector in 2003, and as a result, the three private banks then operating in Myanmar collapsed. Since then, the Myanmar financial sector has struggled to recover. As a result, the Myanmar economy is still primarily a cash economy and very few individuals hold bank accounts.

Over the previous few years, as Myanmar has been undergoing political and legal reform. Part of this reform has been a liberalisation of the banking system, which has seen the Central Bank of Myanmar (CBM) become a more

independent body, with both institutional and political autonomy. Along with this institutional and political autonomy, came the ability for the CBM to regulate certain aspects of the financial sector. This includes the ability to license other financial institutions to operate in Myanmar, as well as formulating and implementing monetary policy, maintaining and managing the international reserves of Myanmar, and many others.

The CBM has since issued licenses to nine foreign banks to operate in Myanmar, though the activities permitted under those licenses are restricted. For example, none of the foreign banks are permitted to engage in retail banking, or issue loans in the local currency.

BANKING IN MYANMAR

Banking services in Myanmar have been quite limited, but there is a growing number of options available for foreign businesses. The majority of state owned banks are specialised banks, and will likely not suit the business needs of foreign investors. Similarly, local private banks often do not provide adequate services for foreign businesses, but a few local private banks have become favourites amongst the foreign business community. Foreign

banks, however, are new and figuring out their processes, but can open accounts denominated in USD for locally incorporated foreign companies.

Government Banks

- Myanma Foreign Trade Bank
- Myanma Investment and Commercial Bank
- Myanma Economic Bank
- Myanma Agriculture and Development Bank

Local Private Banks

Currently, there are 23 local private banks operating in Myanmar. However, the vast majority of these banks do not offer services suitable for foreign companies. As a result, most foreign companies choose to open accounts with one of the following banks.

- Co-operative Bank Ltd
No-334/336 Corner of Strand Road and 23rd street, Latha Township, Yangon
- Yoma Bank Ltd
No-1, Kungyan street Mingalar Taung Nyunt Township, Yangon
- Kanbawza Bank Ltd
No-165/167 Bo Aung Kyaw Road(Middle), Kyauktada Township Yangon

Foreign Banks

The first three foreign banks that opened their doors for business did so on 22 April 2015, with the rest of the nine licensed foreign banks following shortly thereafter. These banks are restricted in what services they can offer, but they are able to open accounts denominated in USD for locally incorporated foreign companies:

- The Bank of Tokyo-Mitsubishi UFJ, Ltd
- Oversea-Chinese Banking Corporation Ltd
- Sumitomo Mitsui Banking Corporation
- United Overseas Bank Limited
- Bangkok Bank Public Company Limited
- Industrial and Commercial Bank of China
- Malayan Banking Berhad (Maybank)
- Mizuho Bank Limited
- Australia and New Zealand Banking Group Limited

OVERVIEW OF FOREIGN EXCHANGE ISSUES

As Myanmar's banking system lagged behind most of the world, so too did its foreign exchange system. However, the banking system has been undergoing a modernisation process, and the foreign exchange system has not been overlooked. Under the Foreign Exchange Management Law of 2012, the

Myanmar Kyat was released from the 35-year old peg to the Special Drawing Rights and was floated in a managed float, which defines the market-determined reference rates through daily auctions conducted by the CBM.

Private institutions are permitted to conduct foreign currency exchange, if they are properly licensed under the Foreign Exchange Management Law. However, the CBM controls the exchange rate, and private institutions engaging in foreign currency exchange must trade within a certain band of the official exchange rate. Nevertheless, unlicensed money changers are prevalent in Myanmar, often disregarding the official exchange rate set by the CBM when the market rate varies significantly from the official rate.

REMITTANCE OF FUNDS ABROAD

When remitting funds out of Myanmar, it is important to be aware of the potential restrictions that could be placed on the remittance under the Foreign Exchange Management Law 2012. Generally speaking, funds being transferred out of Myanmar are divided into two types: current account and capital account. Current account funds generally do not require CBM approval for transfer. Capital account funds, on the other hand, require CBM approval, which can take some time.

Examples of current account funds include items such as royalties or service contract payments. These types of payments generally do not require CBM approval. Most foreign companies dividend their profits out of Myanmar. Dividends are also treated as current account funds and therefore do not require Central Bank approval.

Examples of capital account funds include investment funds, liquidation funds or purchases of large assets abroad that are capital in kind. In granting approvals to remit such funds offshore, the Central Bank will have regard to the legitimacy of the transaction.

In all cases, a careful analysis of proposed payments is recommended as the detailed rules on foreign exchange are quite complicated and the bank through whom the remittances are made will have their own requirements.

LOAN ARRANGEMENTS - LOCAL AND INTERNATIONAL

Local loan arrangements

Local banks do not face the same challenges foreign banks face when making offshore loans to companies in Myanmar. However, the local banking system has certain difficulties and restrictions of its own. To begin with, the

local banks are woefully undercapitalised, making large loans impossible. Further, due to the unpredictability of the legal system, local banks require that loans be fully collateralised, often with cash, immovable property or gold as collateral.

Offshore loan arrangements

Under the previous banking regulatory regime, offshore loans were heavily restricted, and only a handful of government owned banks were permitted to deal in foreign currencies. Currently, all local residents are permitted to enter into offshore loan agreements, but the CBM issued a new directive that certifies that the CBM maintains control over the approval of offshore loans. In addition to maintaining control over offshore loans, the CBM maintains control over the approval of a host of international financial dealings.

In addition to receiving CBM approval, borrowers who have applied for and received an MIC Permit will be required to receive MIC approval for their loans as well, including approval for certain collateral used to secure the loan.

Collateral

A common issue lenders and borrowers face in Myanmar is securing loans. Generally speak-

ing, it is possible to use all types of property (movable and immovable) as collateral. However, procuring sufficient priority to that collateral can be difficult to do, and more difficult to verify.

Due to the relatively undeveloped nature of the banking system in Myanmar, the laws and systems are not particularly well adapted to complex security agreements. However, with proper advice and careful planning, lenders can adequately securitise their loans.

Perhaps the most obvious source of collateral to secure a loan is immovable property, in the form of land, buildings, or leases of the same. Currently, this is the preferred source of collateral; however, using immovable property as collateral is not without its challenges, the biggest challenge being that foreign individuals and entities are prohibited from taking title in immovable property in Myanmar.

Finally, registration of collateral is required, but there is no publicly searchable database that lenders can review to gain a better understanding of the collateral's history and who might have a right to it. Therefore, thorough due diligence is recommended for all loans.



5. Legal System

Myanmar's legal and judiciary systems are to great extent based on the systems adopted by the British Rulers up until 1948. At the time the legal systems were considered to be fairly modern. However, during the last decades several area of the legal systems have become quite outdated. This is being addressed, and we have seen significant changes and updates during the last couple of years.

OVERVIEW OF LEGAL FRAMEWORK

Having been colonised by the British from 1826 until 1948, Myanmar's legal and judiciary systems were adopted by the British Rulers as an innovative legal system, not identical to their own, but a unique and derived model of English Common Law.

The systems with application of codified laws were noticeably inspired by English Common Law legal principles. Typical examples could be found, among others, in Contract Act, Transfer of Property Act, Specific Relief Act, and so on. Further, in the absence of any specific statutory law to a particular legal issue, judicial courts have to decide according to the

principles of justice, equity and good conscience, so far as appropriate to the local society and circumstances. The principle of stare decisis (the legal principle of determining points in litigation according to precedent) is applied for all judicial courts through different eras of Myanmar till date.

The Myanmar legal system is overviewed and widely concluded as belonging to the family of English Common Law legal system.

Over the last couple of years, since the reforms started in 2011, Myanmar has also gone through significant legal changes, with more than 180 new laws being passed, in addition

COURT	JURISDICTION	ADMINISTRATION
Supreme Court of the Union	Has jurisdiction over all appeals for both civil and criminal cases (but not constitutional issues).	Chief Justice of the Union and 6 to 10 Supreme Court Judges
High Court of the Region/ State	Has jurisdiction over all appeals, criminal and civil. May be the court of first instance for civil cases with an estimated monetary value of more than one hundred million Kyat.	Chief Justice of the High Court of the Region/State and 2 to 6 Judges of the High Court of the Region/State
District Courts /Courts of the Self-Administered Division and Zone	Has jurisdiction over disputes valued at up to one hundred million Kyat.	Administered by Judicial Officers

Table 3: Overview of courts and procedures in Myanmar

to a number of new notifications and regulations. Some of the changes are significant and relevant to foreign investors, like the Foreign Investment Law.

OVERVIEW OF COURTS AND PROCEDURES

Under the new Constitution of 2008 and the “Union Judiciary Law” of 2010, the judiciary and court systems were dramatically changed. The current top-down structure is as per table 3 (page 46):

Under the Criminal and Civil Procedure Codes, the suits or cases are to be started with the lowest pecuniary jurisdiction or at the relevant location of the subject matter. Normally, the High Courts of the Region/State are the highest court for appeal or revision except certain cases allowable up to the Supreme Court of the Union.

Apart from above courts, under the Constitution, there are other courts for specific purposes in parallel status with the Supreme Court of the Union. Those are:

- Courts-Martial for military personnel
- Constitutional Tribunal of the Union for constitutional interpretation and constitutional issues





The Constitutional Tribunal (Court) is a new judicial system in the history of Myanmar. It is mainly conferred to interpret the provisions of the Constitution, scrutinizing laws enacted by the Union Parliament and Region or State Parliaments whether they are in conformity with the Constitution or not, scrutinising commitments of the Union and all different executive authorities whether those are in conformity with the Constitution or not, etc.

Notably, Myanmar does not have a jury system for any level of court. Rather, the judges determine the outcome of all cases. The Myanmar Court system is an open court system and the public is in general permitted to attend court proceedings. However, there are some cases that are mandated for in camera hearing only, e.g. cases of child abuse, rape, state secret, etc.

ARBITRATION

Myanmar has been a part of the Geneva Convention of Arbitration, and recently joined The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (better known as the New York Convention) in order to modernise its arbitration regime and keep abreast with other ASEAN countries. Accordingly,

the Supreme Court of the Union is drafting a new arbitration law to substitute the existing «Arbitration Act» of 1944, which addresses enforcement of local arbitral awards, and the «Arbitration (Protocol and Convention) Act» of 1937 relating to foreign arbitration awards and their enforcement. Each of these laws will be either amended or substituted.

Meanwhile, new investment and business related laws are allowing arbitration arrangements by mutual consent in commercial deals and transactions, providing more flexibility than under domestic laws and local venue. Still, enforcing these arrangements can be challenging until the new Arbitration law is in effect.



6. Land in Myanmar

Land in Myanmar is a complex and challenging area, with frequent ownership issues. There are significant restrictions for foreigners related to ownership and lease of land.

TYPE OF LAND	DESCRIPTION
Freehold land	<p>This type of land was originally owned by Myanmar citizens during the British colonial period and has since been passed down from one generation to the next. It exists primarily in Yangon and Mandalay and there are a limited number of freeholders. Freehold land is transferable. The Government can nationalise freehold land in accordance with the Land Acquisition Act, 1894 (Land Acquisition Act) if it finds it necessary to acquire the freehold land to engage in an activity that is in the interests of the state, on the payment of compensation to the freeholder. The General Administration Department of Ministry of Home Affairs would organise such nationalisation, but the process is difficult and lengthy.</p>
Grant land	<p>Grant land is a common type of land that is often leased to foreign investors by a Myanmar citizen/entity. Grant land is owned by the Government, but Myanmar Citizens are granted leases of the land for terms of 10, 30 or 90 years. During the lease period, it would also be theoretically possible for the government to reacquire the land under the Land Acquisition Act in the same manner as that described for freehold land above.</p> <p>If the holder of Grant land grants a lease to a foreign investor, the lease term will be subject to the term of the Grant land. It is risky to have a lease term extending beyond this as it is uncertain whether the Grant land tenure will be extended.</p>
Farm Land	<p>The Farm Land Law was promulgated in 2012 (Farm Land Law). The idea of farmland replaced that of agricultural land. In accordance with the Farm Land law, farmland has a land use certificate from the State. The land use certificate is issued from the Township Farmland Management Body. Farmland is transferable and such transfer is registered at the Township Land Records Department's office. Even though farmland could be leased, it would require several further steps to convert farmland for use for commercial purposes.</p>

Table 4: Overview of types of land in Myanmar

TYPE OF LAND	DESCRIPTION
Grazing Land	<p>Grazing land was introduced in accordance with the Upper Burma Land Revenue Regulations 1889. It is also included in the definition of «Virgin Land» under the Vacant, Fallow and Virgin Land Management Law 2012 (Vacant Land Law). In accordance with the Vacant Land Law, land use rights can be applied for if the purpose of the land use is:</p> <ul style="list-style-type: none"> • Agriculture; • Livestock Poultry Farming and Aquaculture; • Mining; or • Any other purpose allowed by the government that is consistent with the law.
Town Land	<p>Town Land is often called La Na 39 land. It is not grant land or freehold land. However, it has the same status as freehold land or grant land. This type of land was created under the Farm Land Nationalisation law 1952, which was repealed in accordance with Farm Land Law 2012. Originally, La Na 39 land was farmland with a La Na 39 license that allowed the use of the farmland for other purposes. In future, there will be no new La Na 39 or Town Land.</p>
Village Land	<p>Village land is the same as town land that is situated outside of the area of town land. It is transferrable if it was La Na 39 land or a grant land. However, some areas that are still registered as Agricultural land cannot be transferred.</p>
Cantonment Land	<p>This type of land is exclusively for the purpose of military. It is not possible to lease this land for commercial purposes.</p>
Monastery/Religious Land	<p>This type of land is reserved for religious purpose only, apart from the one exception of building telecom towers. It is not possible to lease the land for commercial purposes.</p>



Land is a very complex issue in Myanmar, and obtaining proper and unassailable land use rights is difficult. Table 4 (pages 52-53) gives an overview of the various types of land.

REGISTRY SYSTEM AND OWNERSHIP VERIFICATION

The land registration system varies depending on the location of the land. If the land is located within an urban centre, then the relevant city development committee will have organised the land registration system. If the land is outside of an urban centre, the Settlement of Land Records Department will organise the land registration system. The registry for farmland or grazing land is different still.

In the limited circumstances where a foreign investor is permitted to take a long-term lease, it is essential that the right of the lessor to lease the land in question is established. This can be a very difficult process, as transfer of land in the local context is often carried out unofficially. This results in gaps in the title registration chain.

In Myanmar, the transfer of land, whether by sale, lease, gift, or another mode of transfer, is not valid if the person making the transfer

cannot sufficiently prove, with documentary evidence, that he has lawfully acquired title to the land and that he has the rights to transfer the land. Myanmar case law indicates that merely showing that the purported landowner's name is listed in the town land registry may not be sufficient to prove that he is the actual owner of the land. Furthermore, land maps and land records may be regarded as valuable documents providing prima facie evidence of title, but they cannot be regarded as documents creating title.

RESTRICTIONS FOR FOREIGN INVESTORS

Under the Transfer of Immoveable Property Restriction Act, 1987, foreigners and foreign entities are restricted from owning immoveable property and are only allowed to lease land for up to 1 year. Under the FIL, however, investors with an MIC Permit may lease for up to 50 years with two possible 10-year extensions. Please see the Investment Incentives Section for more details.



7. Intellectual Property

The legal framework related to Intellectual Property in Myanmar is going through significant changes, with several new laws being drafted.

INTELLECTUAL PROPERTY

The Myanmar intellectual property regime emanates from the British colonial rule at the end of the 19th century. At that time, the intellectual property regime was considered modern and in line with the intellectual property laws in Europe and elsewhere. Unfortunately, as time passed, the intellectual property regime was not modified or updated in accordance with global economic trends, nor legal principles. As a result, knowledge of intellectual property rights waned even among legitimate intellectual property holders. Currently, only copyright is governed by a specific law. There is no specific law governing trademarks, patents or designs in Myanmar. However, there are draft copyright, trademark, patent and design laws that are currently being considered by the government (to be discussed below). Due to this lack of specific legislation governing intellectual property in Myanmar, intellectual property owners in Myanmar have relied on other laws to assert what rights they do have.

Myanmar has acceded to some international agreements directly applying to the country's commitment to protecting intellectual property. Specifically, Myanmar was an original member of the General Agreement on Tariffs

and Trade (GATT), and was a founding member of the successor organisation, the World Trade Organisation (WTO), and Myanmar became a member of the World Intellectual Property Organisation (WIPO) in 2001. In spite of Myanmar's entry into WIPO, Myanmar is a non-signatory state to intellectual property conventions other than the «Agreement on Trade-Related Aspects of Intellectual Property Rights» (TRIPS Agreement) which is automatically binding on all member states of the WTO.

TRADEMARK

Trademark law in Myanmar was originally created in the British colonial courts through the common law system. Trademarks have never been protected by specific legislation in Myanmar. Nevertheless, a piecemeal system for trademark ownership, registration and protection has developed over the years.

Trademark Ownership

Under the case law from the British colonial period, trademark ownership is established through use. In an attempt to remedy this issue, the government passed Directive No. 13 from the Inspector General, which allows trademarks to be registered under the Registration Act, but ownership is still established through use.

TYPE OF IP	SUBSTANTIVE LAW	RELATED LAWS
Trademark	N/A	<ul style="list-style-type: none"> • Penal Code (1860) • Merchandise Marks Act (1889) • Specific Relief Act (1877) • Sea Customs Act (1878) • Registration Act (1908) • Private Industrial Enterprise Law (1990) • Anti-money laundering Law (2014) • Competition Law (2015) • Consumer Protection Law (2014)
Copyright	Myanmar Copyright Act, 1914 (Annexed with British Imperial Copyright Act, 1911)	<ul style="list-style-type: none"> • Specific Relief Act (1877) • Merchandise Marks Act (1889) • Television and Video Law (1996) • Motion Picture Law (1996) • Anti-money Laundry Law (2014)
Patent	N/A	<ul style="list-style-type: none"> • Patent and Design (Emergency Provisions) Act (1946) • Specific Relief Act (1877) • Merchandise Marks Act (1889) • Science and Technology Development Law (1994)
Industrial Design	N/A	<ul style="list-style-type: none"> • Patent and Design (Emergency Provisions) Act (1946) • Specific Relief Act (1877) • Science and Technology Development Law (1994)

Table 5: Overview of laws used for intellectual property protection in Myanmar

Trademark Registration & Renewal

Currently, trademark owners may register their trademarks by filing a “Declaration of Ownership” with the Registration Office. The registration is not compulsory and not conclusive proof per se of ownership of a trademark. As stated above, ownership is established through use of the trademark. However,

registration constitutes prima facie evidence of ownership in criminal or civil proceedings against an infringer.

Trademark registration can be broken into three parts. First, a trademark search must be carried out in order to ascertain whether or not the trademark is available or will be con-

sidered as «infringing» on another trademark. Second, the trademark must be registered at the Registration Office. Finally, a cautionary notice of the trademark should be published in the local media.

Since the trademark registration is filed under the general registration law (the Registration Act) in which no renewal provision exists, it is generally concluded that a registration exists in perpetuity, unless cancelled by the applicant himself or by a court decree. However, industry practice dictates that a renewal be undertaken every three to five years.

Trademark Enforcement

As discussed above, various laws contain isolated provisions that afford trademark owners some level of protection. Through careful consideration and coordination with different government ministries, it is possible for trademark owners to achieve some level of protection of their trademarks against infringement in Myanmar through civil, criminal, and administrative actions.

Draft Trademark Law

While the ad hoc trademark practice that has developed over time in Myanmar is proba-

bly the most robust of all of the intellectual property systems, it is woefully behind international standards. Therefore, the Myanmar government is drafting an updated Trademark Law in order to bring the trademark regime of Myanmar up to an international level. Some of the key features of the Draft Trademark Law include an application and review process, which contains a notice and challenge period. The Draft Trademark Law also grants the holder of a registered trademark specific rights, such that trademark owners in Myanmar will no longer have to rely solely on common law rights developed by the courts of Myanmar during the British colonial period. Finally, the Draft Trademark Law provides for robust enforcement mechanisms that will allow trademark owners to more easily protect against infringement.

PATENT

In 1945, the Myanmar Patents and Designs Act was enacted but never brought into force. Eventually, during the years of the State Law and Order Restoration Council, the Act was repealed by the Law for the (Second Time) Repeal of Laws of 1993. Strictly speaking, one law, namely the Myanmar Patents and Designs (Emergencies Provisions) Act, 1946 remains in

the list of applicable Myanmar Laws. However, that law has long been defunct as its main purpose was to apply the India Patents and Designs Act of 1911 just for the pre-enforcement period of the Myanmar Patents and Designs Act of 1945. Therefore, it must be concluded that no *modus operandi* law exists in respect of patent protection in Myanmar.

Draft Patent Law

With the aim of creating a robust patent system in Myanmar, the government has recently published a Draft Patent Law (Draft Patent Law). When passed, this will be the first meaningful substantive law to govern patents in Myanmar.

Under the Draft Patent Law, inventors are permitted to receive the protection in relation to specific inventions, if an invention is:

- new;
- involve an inventive step; and
- have usefulness in industrial application.

The Draft Patent Law also provides for the establishment of a registration process, which includes a notice and challenge period, as well as in depth review of submitted inventions. In the event that a patent application is rejected,

the Draft Patent Law provides an appeals process as well.

The Draft Patent Law also enumerates the exclusive rights of a patent holder. Specifically, patentee has the right to prevent any third party from making, using, offering for sale, selling or importing the products or using the process in order to conduct business without its consent. Additionally, the patentee has the right to transfer its interest in the patent. Finally, the Draft Patent Law provides robust enforcement mechanisms, as well as the express right for patent holders to bring both civil and criminal actions against infringers.

COPYRIGHT

The Myanmar Copyright Act, 1914 (Copyright Act) is the one and only substantive intellectual property law in Myanmar as of 2015. The Act makes the Copyright Act, 1911 of the United Kingdom applicable to Myanmar as its *modus operandi* by putting it in the First Schedule with exception of certain penalty sections and other modified clauses. The Copyright Act applies to original literary, dramatic, photographic, musical and artistic works first published in Myanmar or, if unpublished, works that were created at a time when the author was a citizen or resident of Myanmar.

The Copyright Act has become outdated when compared with modern copyright laws in other jurisdictions and is not supported by effective regulatory infrastructure such as by-laws or a regulatory body.

Ownership

Under Schedule 1, Section 5 of the Copyright Act, the author of a work is the first owner thereof, subject to limited exceptions and that copyright persists for a period of ten years from the date the work was first published. However, if a translation of the work is published within that time, the translation enjoys protection for the term of the life of the author, plus fifty years.

Enforcement

The Copyright Act provides protective measures for the creators and owners of copyrighted material. However, disputes in respect of copyright are usually settled between concerned parties amicably out of court, sometimes through relevant NGOs such as the Writers Federation, Motion Picture Federation, Music Federation, etc. which take a role as collective management organisations or mediators. However, the parties to a dispute may always seek redress in the courts.

Draft Copyright Law

The Myanmar government is also drafting an updated Copyright Law (Draft Copyright Law), with the intention of modernising the copyright regime in Myanmar. The Draft Copyright Law will modernise Myanmar's copyright system by providing a registration process (though not compulsory), setting forth the specific economic and moral rights of a copyright holder, as well as providing for copyright protection.

INDUSTRIAL DESIGN

Myanmar has never before had a substantive law applicable to industrial designs. Historically, the most applicable law to industrial designs was the Myanmar Patents and Designs Act, which was enacted in 1945 but never brought into force and subsequently repealed. However, Myanmar has recently published a draft industrial designs law (Designs Law).

KEY FEATURES UNDER THE DESIGNS LAW

Under Designs Law, industrial design is defined as the appearance of the whole or a part of any industrial or handicraft product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the said product itself and/or its ornamentation. However, in order to receive protection

under the Designs Law, an industrial design must be:

- new or original; and
- independently created without imitating any existing designs.

An industrial design is considered new if it has not been disclosed to the public inside or outside of Myanmar.

The Designs Law also sets out a comprehensive registration process, which includes a challenge period and review process.

Once an industrial design is registered, the owner of a registered design has the right to prevent any third party from making, selling or importing any product, which reproduce the main facts of the registered design. Additionally, the owner has the right to prevent the unlicensed reproduction of the registered design for commercial propose. In the event that the owner's rights are infringed upon, the owner can bring a civil action against an individual or entity.

Additionally, the owner has a right to transfer or license the registered industrial design and must record such transactions with the Intellectual Property Office.





8. Human Resources and Labour

Myanmar has a growing regime of labour regulations. Recent changes includes a minimum wage, and a social security system. It is in general rather straight forward for foreigners to work in Myanmar.

OVERVIEW OF LEGAL FRAMEWORK

- a) Employment and Skill Development Law 2013 (the «ESD Law»),
- b) Labour Organisation Law 2011 (the «LO Law»),
- c) Shops and Establishments Act 1951 (the «Shops and Establishments Law»)

EMPLOYMENT AND INDUCTION

Myanmar has a growing regime of labour regulations. Under various laws and government notifications, employers are required to take several steps upon employment of any new workers. First, employers are required to enter into an employment agreement with all employees within 30 days of employment. This agreement must be registered with the township labour office. Additionally, the employer is required to register each employee with the township social security office and contribute to the pension scheme under the Social Security Law.

MINIMUM WAGE

The Minimum Wages Law 2013 was passed by parliament, and after lengthy discussion the minimum wage was set at 3,600 MMK per day (Roughly USD 2.81, but fluctuates widely due to the instability of the Kyat). The per day rate

is based on an eight hour workday, and is applicable in all sectors and industries. However, there is an exemption for small allowing them to pay a lower wage per day.

SOCIAL SECURITY

The Myanmar government enacted the Social Security Law in 2012, with the aim of establishing broader social and medical security for workers. Under the Regime set forth under the Social Security Law, companies operating in Myanmar are required to register their employees and contribute to a social security scheme.

Benefits

Under the Social Security Law, the Social Security Board is tasked with managing a series of social security systems related to workers wellbeing.

Pensions (Superannuation Pension Benefit)

Under the Social Security Law, both employers and employees are responsible for contributing to the superannuation fund, which will later pay out the superannuation benefits. However, the right of an employee to receive a superannuation pension benefit in retirement is determined based on the length of employ-

ment and associated contributions. The pensionable age for the Superannuation Pension Benefit is currently 60 years old, but may be extended to 62 or 65 upon specific application.

Compliance

Compliance with the Social Security Law can be broken down into three parts: registration, contribution and record keeping. All employers with five or more employees are required to register each of their employees with the social security office. In order to do this, the company itself must register, and have each employee evaluated by the township clinic

before registering the employee at the township social security office. Once registration has been completed, the employer will be required to deduct a capped percentage of the employees' wages to the social security fund. Finally, each employer is responsible for maintaining records of all registered employees and all contributions made to the social security fund.

PROTECTION AND TERMINATION

Termination of employment is largely governed by contract. However, the Ministry of Labour has issued a standard employment contract, which contains minimum standards that must be in every employment contract. Generally

SOCIAL SECURITY PROGRAM	ASSOCIATED BENEFITS
Health and Social Care Insurance	<ul style="list-style-type: none"> • Medical and sickness benefits • Maternity benefits • Medical insurance for retired persons • Funeral benefits
Family Assistance Insurance	<ul style="list-style-type: none"> • Education allowance benefit • Health care and aid benefit during natural disasters • Ad Hoc benefits for dependent family members
Disability Benefit, Superannuation Pension and Survivors Benefit Insurance	<ul style="list-style-type: none"> • Disability benefits • Superannuation pension benefits • Survivors' benefit from death not related to employment
Unemployment Benefit Insurance	<ul style="list-style-type: none"> • Medical care • Cash benefit

Table 6: Summary of Myanmar social security system and relevant features



speaking, termination of employment can be divided into two categories, termination for egregious actions, and termination for non-egregious actions. Termination for egregious actions can be instant, and no severance pay is required. However, for terminations based on non-egregious actions, the employer is required to complete a multi-step notice process prior to termination. In the event that the notice period is completed and termination finalised, the employer will be required to pay severance pay.

Employers may also terminate employees for reasons of downsizing or redundancy. In such an event, the employer will be required to give the employee advance notice and pay severance pay.

REQUIREMENT FOR LOCAL HIRES

Where the company is an ordinary (non-MIC promoted) company, there are no requirements as to the nationality of staff. It would be theoretically possible for there to be a 100% foreign national workforce.

Where the company has an MIC permit under the Foreign Investment law, however, only Myanmar nationals may be employed for non-

skilled work (neither skilled or non-skilled work are defined in the Foreign Investment Law). For skilled work, at least 25% of skilled employees must be Myanmar citizens within the first two years from the commencement date; at least 50% within the second two years; and at least 75% within the third two-year period. It can be noted that where this is not possible, these time periods may be extended by the MIC.

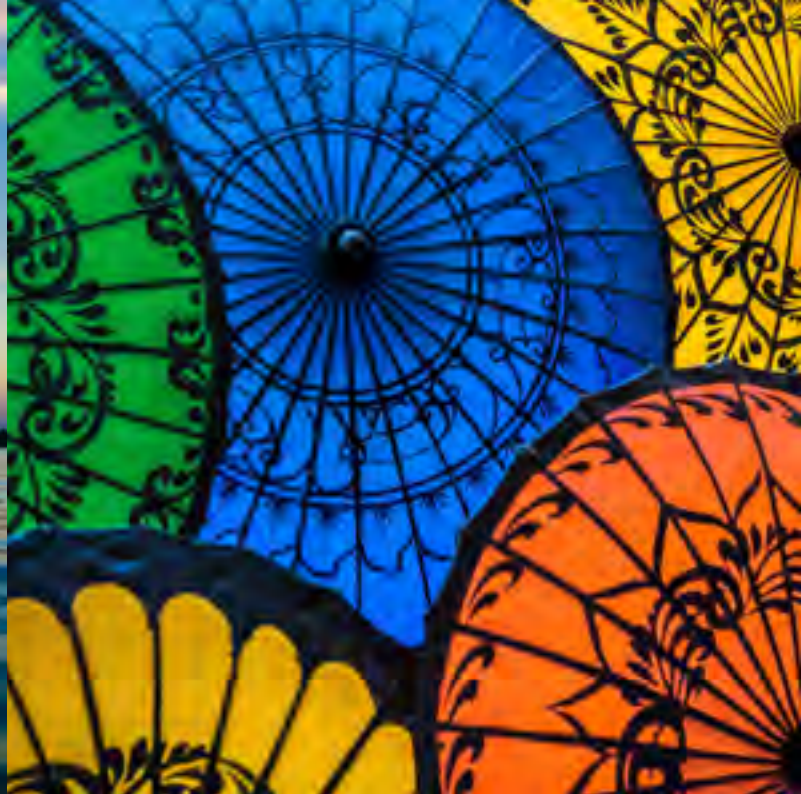
ISSUES FOR FOREIGN EMPLOYEES

Foreign employees are still relatively unregulated in Myanmar and there are very few restrictions on foreign employees. However, all foreign employees in Myanmar will be required to obtain a business visa, and exit the country every 70 days, regardless of the length and validity of their visa. Alternatively, foreign employees may obtain a stay permit and foreign registration card that will allow them to remain in the country for an extended period of time.



9. Environmental Issues

Myanmar has a rich endowment of natural resources and open spaces. In order to safeguard those resources, the government passed a series of laws and regulations imposing regulations to protect the environment.



OVERVIEW ON LEGAL FRAMEWORK RELATED TO ENVIRONMENTAL ISSUES

Myanmar has a rich endowment of natural resources and open spaces. In order to safeguard those resources, the government passed a series of laws and regulations imposing regulations to protect the environment. Overseeing the implementation of those laws is the Ministry Of Environmental Conservation And Forestry (MoE).

The primary environmental protection law in Myanmar is the Environmental Conservation Law of 2012 (Environmental Law). In an effort to implement that law, the government has promulgated the Environmental Impact Assessment Rules (Environmental Rules). Additionally, the Protection of Wildlife and Conservation of Natural Areas Law and the Forest Law seek to protect certain aspects of the Myanmar environment.

Of primary concern to foreign investors is who is responsible for environmental degradation under the Environmental Law. There are three primary parties responsible for environmental degradation. Those are, persons causing a point source of pollution; owners, occupiers, of businesses or materials or places which cause

a point source of pollution; and persons or organisations operating businesses in industrial estates or special economic zones.

In necessary circumstances, the MoE and other relevant agencies may carry out ongoing monitoring of the project in accordance with the EMMP. Additionally, the project proponent is required to comply with the conditions of the approval certificate at all stages of the project. Failure to comply with the terms and conditions of the approval certificate will be considered an offense under the Environmental Law, subject to the penalties as described below.



10. Taxation

Myanmar is currently giving high priority to increasing tax revenues, clearly needed to finance the further development of the country. The level of changes over the last few years have been significant, both related to laws and regulations, and also how these laws and regulations are imposed in real life.

TAX IN MYANMAR

The key laws comprising the bulk of the Myanmar tax regime are as follows:

- a) Union Tax Law 2015
- b) Income Tax Law 1974
- c) Commercial Tax Law 1990
- d) Stamp Duty Act 1899
- e) Sea Custom Act 1878
- f) Land Custom Act 1924
- g) Tariff Law 1992

TAXATION OF COMPANIES

Corporate Tax

Corporate Income Tax (CIT) is imposed under the Union Tax Law 2015 and the Income Tax Law of 1974. Under the Union Tax Law 2015, the same CIT is imposed on a resident entity and non-resident entity, at the flat rate of 25 percent on the gross profit of the company. This rate could be changed accordingly based

on the changes of the Union Tax Laws.

Each company operating in Myanmar is required to submit and file a tax return at the Small and Medium Tax Payer Office or the Large Tax Payer Office, regardless of whether or not they earn a profit. Normally, the deadline to file the tax return is on 30th of June.

Withholding Tax

Notification 41/2010 and Notification 167/2011 impose a withholding tax on interest, royalties, and payment of purchase of goods within Myanmar, and payments for services performed both inside and outside Myanmar.

The rate of withholding tax could be reduced under one of Myanmar's Double Taxation Agreements (DTAs). Myanmar has entered 10 DTAs, but only 8 of these have entered into effect. The DTAs in effect are with following

TYPES OF INCOME	RATES APPLICABLE TO RESIDENT ENTITIES	RATES APPLICABLE TO NON-RESIDENT ENTITIES
Dividends	0%	0%
Interest	0%	15%
Royalties	15%	20%
Payments of purchase of goods within Myanmar and services inside and outside Myanmar	2%	3.5%

Table 7: Summary of withholding taxes in Myanmar

countries; India, Korea, Laos, Malaysia, Singapore, Thailand, United Kingdom and Vietnam.

Capital Gain Tax

Capital Gains Tax (CGT) is imposed on the sale of capital assets that include shares, bonds and other similar financial instruments and fixed assets. If the value of the asset is less than 10 million Kyat (approximately USD 9,500), the CGT will be exempted. Otherwise, CGT will be imposed at the rate of 10%, in accordance with the new Union Tax Law 2015. For tax payers involved in oil & gas industry, the CGT is higher, with rates between 40 percent to 50 percent. CGT must be filed within 30 days from the date of such sale, exchange or transfer of the capital assets.

Commercial Tax

Commercial Tax (CT) is a turnover tax that is somewhat similar to a Value Added Tax or Goods and Services Tax in other countries. CT is imposed on the production of goods within the country, on the importation of goods from abroad, and on trading and services in accordance with the Commercial Tax Law 1990 and the Union Tax Law 2015.

The rate of Commercial tax will vary depending on the types of goods and service being sold.

Most goods and services incur 5% CT. For certain goods, special CT rates apply, which can reach as high at 120%.

CT will not be imposed if the value of sales is no more than Kyat 20,000,000 (approximately USD 18,600) in one year.

TAX INCENTIVES

There are two laws that generally provides tax incentives - the Foreign Investment Law and the SEZ Law.

Tax Incentive under Myanmar Foreign Investment Law

Numerous tax incentive can be enjoyed under the Myanmar Foreign Investment Law, which fall into three categories, income tax exemptions and deductions, import/export duty exemption or deduction, and foreign employee income tax benefits.

Perhaps, the most enticing tax incentive offered under the Foreign Investment Law is a five-year tax holiday on income tax. This tax incentive applies to all companies with an MIC Permit granted under the Foreign Investment Law, and includes the financial year the enterprise begins operations. The Foreign

Investment Law provides for several additional tax benefits. First, the Foreign investment Law provides an exemption from income tax on profits of the business kept in a reserve fund and reinvested in the business within one year after the reserve is made. Second, the Foreign Investment Law allows investors to deduct depreciation from their profit with regards to machinery, equipment, buildings or other capital assets used in the business. Third, the Foreign Investment Law allows for a deduction of expenses incurred for research and development carried out within Myanmar. Fourth, losses incurred in the two years after the expiration of the five-year tax holiday can be carried forward for three years. This serves

as a set-off against taxable income the company earns after the tax exemption expires.

In addition to the tax benefits related to income tax, several tax incentives are offered regarding the importation of equipment, machinery and materials, and exportation of goods. First, the Foreign Investment Law provides relief on up to 50% of the profits accrued from the export of goods produced in Myanmar. Second, the Foreign Investment Law provides an exemption relief from customs duty and other domestic taxes on imported machinery and equipment used during the construction phase of a business. This incentive can be extended in the event that the investor wishes

INCENTIVE TYPE	SUMMARY OF TAX INCENTIVE
Income Tax	Five year income tax holiday and an exemption on income kept in the company's reserve account and reinvested into the company within one year
Depreciation	Depreciation of assets against profit
Research and Development	Ability to deduct research and development expenses
Set-offs	Right to carry forward set-offs for three years
Imports	Exemption or relief for goods and raw material imported for purposes of carrying out the project
Exports	Relief from 50% of the income tax for profit earned from exporting products manufactured in Myanmar

Table 8: Summary of tax incentives offered under the Foreign Investment Law

to expand the scope of the project and receives MIC approval. Finally, the Foreign Investment Law provides for the exemption of customs duty for raw materials imported within the first three years of commercial production. These items may be exported or sold to the domestic market.

The final tax incentive offered under the Foreign Investment Law is the right for foreign employees to enjoy the tax rate applicable to the citizens residing within the Union.

Tax Incentive under Special Economic Zone Law

Investing within one of the special economic zones is incentivised through various tax benefits, similar to those under the Foreign Investment Law. However, the tax incentives related to the special economic zones are differentiated based on which part of the economic zone the investments are made in. The different parts of an economic zone are classified as follows: 1) the economic zone generally, 2) the free zone, and 3) the promotion zone.

To begin, all companies investing in a special economic zone receive a five-year tax holiday from the commencement of their commercial operations, except for investments in the free

zones, which will receive a seven-year income tax exemption.

Investments in the free zones and promotion zones will receive a 50% exemption on the income tax for five years after the expiration of their general income tax holiday. Additionally, investments within the free zones and the promotion zones will receive a 50% discount on their applicable income tax for the third five-year period on profits obtained from the business, which have been reinvested in the business within one year.

TAXATION OF INDIVIDUALS

The most significant tax levied against individuals is the Personal Income Tax, which is imposed on all individuals working in Myanmar, regardless of their status as a resident or nonresident. Essentially, all person receiving a salary in Myanmar will be taxed at progressive rates that begin at 0% and rapidly reach 25%. If the non-resident foreigner receives other income, it will be taxed at a flat rate of 25%. Personal income tax must be filed monthly if the employee receives the salary monthly. The employer has the responsibility of deducting the personal income tax from the salary of the employees.

TYPE OF TAX	RESIDENT ENTITY (STANDARD COMPANY)	NON-RESIDENT ENTITY (BRANCH/ REPRESENTATIVE OFFICE)	WITH MIC PERMIT	IN SEZ
Income Tax	25%	25%	25%	25%
Commercial Tax	5 - 120%	5 - 120%	5 - 120%	5 - 120%
Dividends	0%	0%	0%	0%
Interest	0%	15%	0%	0%
Royalties	15%	20%	15%	15%
Payment of purchase of goods within Myanmar and services inside and outside Myanmar	2%	3%	2%	2%
Capital gain tax (non-Oil & Gas)	10%	10%	10%	10%
Capital gain tax (Oil & Gas)	40-50%	40-50%	40-50%	40-50%

Table 9: Summary of tax rates in Myanmar

Social Security Contributions are 5% of the salary, capped at a maximum of 300,000 Kyat per month (approximately 300 USD). The contribution ratio between the employer and employee is 3% for the employer and 2% for the employee.

OTHER TAXES AND DUTIES

Stamp Duties

There are two types of stamp duties: judicial

stamp and non-judicial stamp. Judicial stamp is used only for judicial proceedings and non-judicial stamp is applied for general purposes. The rate of the stamp duty varies depending on the type of the document. Paying the proper stamp duty is particularly important, as documents that do not contain the proper stamp duty are non-admissible before the Court as documentary evidence.

CUSTOM DUTIES

Customs Duties are imposed on the import and export of goods in accordance with the below two systems;

- MFN Tariff (2012) or
- ATIGA Schedule.

Trade within the ASEAN countries will be subject to the ATIGA rate, while trade with other countries will be subject to the MFN Tariff rate.

The rate of the custom duties generally varies from 0 percent to 40 percent, however, some goods are subject to higher custom duty. In Import, CIF is mostly used and Custom Duties are calculated as follows;

- Assessable Value = CIF value + landing charges (which is 0.5 percent of CIF value)
- Assessable value in Kyat = Assessable value * Central Bank of Myanmar exchange rate
- Custom duty = Assessable Value in Kyat * Tariff (in percentage)

Customs duties could be exempted or reduced for entities set up under the Foreign Investment Law or entities set up within a special economic zone.

Property Tax

Property Tax is mostly imposed on the owner

of the land, and foreign nationals and foreign companies are not allowed to own land in Myanmar. Therefore, generally speaking, Property Tax is not relevant for foreign nationals or foreign companies.

Relevant City Development Committee imposes the Property Tax and therefore, based on the region, its applicability could vary.

Thin Capitalisation Rules

There are no specific thin capitalisation rules in Myanmar. However, in accordance with the Foreign Exchange Management Rules, the offshore loan shall be approved by Central Bank of Myanmar and the interest rate shall be market based interest rate.

CFC Rule

There are no CFC rules in Myanmar.

Transfer Pricing Rules

There are no Transfer Pricing rules in Myanmar. Transfer Pricing is a relatively new concept in Myanmar, but we do notice significant interest and focus on this area as Myanmar is getting more used to dealing with multinationals. It is recommendable to implement transfer pricing structures in Myanmar that would

comply with international standards, in order to be well prepared for the development.

General Anti-Avoidance Rules

There are no general anti-avoidance rules in Myanmar.

Anti-Treaty Shopping Rules

There are no specific anti-treaty shopping rules.

Baker & McKenzie in Myanmar

About us

Baker & McKenzie is a multinational law firm. We bring to matters the instinctively global perspective and deep market knowledge and insights of more than 12,000 people in 77 offices worldwide.

Our Yangon office provides full legal advisory and transactional services with respect to Myanmar. Drawing on Baker & McKenzie's unparalleled emerging markets expertise, the Yangon team is capable of advising on all manner of Myanmar investment, helping clients navigate and comply with the developing regulatory environment. We have advised foreign investors in all major industry sectors in Myanmar. On cross-border matters and where additional specialist skill sets are needed our office works with teams from Bangkok, Jakarta, Kuala Lumpur, Melbourne, Singapore, Sydney, Tokyo and other Baker & McKenzie offices around the region and the world.

Categories of work include

- Foreign Direct Investment
- Power and Infrastructure
- Mining, Oil and Gas
- Telecommunications and Media
- Financial Services
- Manufacturing
- Real Estate
- Corporate Commercial
- Intellectual Property
- Mergers and Acquisitions
- Labour and Employment
- Sanctions and Compliance
- Tax and Customs
- Major Projects
- Pharmaceuticals and Healthcare
- Trade and Commerce

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11. Corruption

Foreign investors entering Myanmar needs to give high attention to corruption issues. The country has over recent years introduced new laws and regulations to combat such unwanted and damaging activities. This is expected to be an area of high priority going forward.

CORRUPTION AND BRIBERY

Corruption and bribery are primarily regulated by the Myanmar Penal Code and the Anti-Corruption Law 2013 (Anti-Corruption Law), although other corruption-related offenses and penalty clauses are contained in numerous laws. Under the anti-corruption regime in Myanmar, corruption and the associated liability are categorised based on the identities of the giving and receiving entities. The most common categories of corruption and bribery are 1) private to public, 2) private to private. Variations of these two categories exist, in re-

BRIBERY as per The Myanmar Penal Code
Whoever, being or expecting to be a public servant, accepts or obtains or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished...

lation to private companies being involved and foreign public officials.

There are two primary definitions of bribery found in the Myanmar legal system. Those being Myanmar Penal Code and the Anti-Corruption Law. See definitions below.

Under a strict interpretation of this definition, only public servants can be found guilty of bribery under the Myanmar Penal Code. However, two important points should be noted in relation to this definition. First, the Myanmar Penal Code defines public servants very broadly, encompassing nearly all conceivable public officials, of both high and low rank. Second, a person offering a bribe could be found guilty of aiding and abetting the public servant in committing the offense.

CORRUPTION as per the Anti-Corruption Law doing directly or indirectly of an authoritative person by abusing his authoritative position, such as giving, accepting, receiving, attempting to receive, offering, pledging, or discussing in any way of a consideration from a person concerned for himself or any other or any organisation in order to do anything, refrain from doing any lawful act, give a person his legitimate right, or prohibit a person wrongfully from his legitimate right.

Under the Anti-Corruption Law, an “authoritative person” means a public servant who holds authoritative power either by his tenure or by jurisdictional or administrative authority, public servant abroad, existing holder of political post, high official, or administrator or representative of any public organisation.

The definition of “authoritative person” found in the Anti-Corruption Law similarly excludes private individuals, but the government has made it known that it intends to amend the law in order to explicitly include private individuals.

PENALTIES

If an offense is committed under the Penal Code, an abettor could be punished with the same punishment as the public official. For the offense relating to public servants under the Penal Code, this could be a fine, or imprisonment of up to three years, or both.

Under the Anti-Corruption Law, any “political post holder” convicted of corruption is liable to a fine and up to 15 years’ imprisonment; any other authorised person is liable to a fine and up to 10 years’ imprisonment; anyone else is liable to a fine and up to seven years’ imprisonment.

It should be noted that the Myanmar Penal Code or the Anti-Corruption Law do not address the liability of companies for such actions. Rather, the penalties currently focus on the individual committing the offense.

HOSPITALITY EXPENSES (GIFTS, TRAVEL, MEALS, ENTERTAINMENT, AMONG OTHERS)

Neither the Myanmar Penal Code, nor the Anti-Corruption Law places specific limitations on hospitality expenses and gifts. However, Hospitality Expenses could be interpreted as a

“gratification” under the Penal Code, or more likely, as corruption within the wide definition of corruption under the Anti-Corruption Law. Various figures and amounts have been given by public officials and lawmakers in unofficial circumstances as guidance on what would be an acceptable level of Hospitality Expenses. President Thein Sein has indicated amount up to USD 300 would be appropriate, but this has been heavily criticised. There is currently no legal warrant supporting the appropriateness of any thresholds for acceptable Hospitality Expenses.

FACILITATION PAYMENTS

The Myanmar Penal Code and the Anti-Corruption Law are silent on specific issue of facilitation payments. However, Facilitation payments could be interpreted as a “gratification” under the Penal Code, or more likely, as corruption within the wide definition of corruption under the Anti-Corruption Law.

COMPLIANCE PROGRAMS

As discussed above, the Myanmar Penal Code and the Anti-Corruption Law do not apply to entities and therefore, there is no liability for corporate bodies under those laws. Therefore, a compliance program would not reduce liabi-

lity of a corporate body because the associated offenses create personal liability. Accordingly, the absence of a compliance program is not seen as an offense.

However, many foreign companies operating in Myanmar do have compliance programs for a number of reasons, primarily for governance reasons, or because they are potentially liable under anti-corruption legislation within their national jurisdictions (e.g., FCPA; UK Bribery Act).

If a company desires to implement a compliance program, the below lists should be considered:

Suggested elements of compliance program

- ❑ Clear policies and procedures should be established to ensure compliance.
- ❑ Employees should undergo training explaining on the relevant legislation, company policies and procedures, and situations in which difficulties could occur.
- ❑ The effectiveness of the program should be monitored and adjustments be made where necessary.

- Employee training should be repeated at least annually.
- Individuals and companies that you intend to conduct business with should be checked against the Specially Designated Nationals (SDN) list.
- Consideration should be given to having compliance provisions in all material contracts affecting the business, such as compliance with the AntiCorruption Law; the FCPA; and the UK Bribery Act.

REGULATORS

The police investigate any alleged offense under the Penal Code, which would then be prosecuted by the Prosecution Department of the Attorney General's Office.

Offenses under the Anti-Corruption Law are investigated by an investigating team under a special "Bribery Eradication Commission" established by the Anti-Corruption Law.



12. Norwegian Government Support

In addition to the Royal Norwegian Embassy in Yangon, several organisations support Norwegian businesses with entry into Myanmar. First point of contact is often Innovation Norway, which can assist companies with market entry activities. GIEK and Export Credit Norway can assist Myanmar customers with their financing needs, enabling the customers to purchase capital goods or services from Norway on long-term credit, without the exporter assuming the risk of non-payment.

ASSISTANCE FROM INNOVATION NORWAY

Myanmar is covered by Innovation Norway's Bangkok office, which works in close cooperation with the Royal Norwegian Embassy in Myanmar. As such, we have good access to key decision makers within the government and to leaders in the industrial sectors.

We assist Norwegian companies by giving a realistic picture of doing business in Myanmar. In addition, we give advice related to practical issues and identify challenges and possible solutions to rectify the challenges. Further, we meet and identify potential partners and networks that can be of assistance to particular companies. If you are thinking about doing business in Myanmar, we will be your gateway!

OUR SERVICES

Innovation Norway's services in Myanmar are centred on the International Growth Programme established to assist Norwegian SMEs to find new markets abroad.

Under the International Growth Programme, the following services are offered:

- Market Insight
- Market Entry & Growth

- Market Search
- Market Potential Evaluation
- Partner Search
- Practical Assistance in connection with establishment
- Strategic business modelling and adjustments of business model for local market entry

FINANCING

For companies looking to Myanmar, Innovation Norway can offer financial support such as innovation loans to ease the challenges of market entry. Specific criteria applies and further discussions should be made with our regional offices in Norway. They will be able to assist you with project applications.

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EXPORT FINANCING FROM NORWAY

Export financing helps Norwegian exporters win Myanmar contracts

Norwegian exporters seeking business opportunities are using the financial strength of the Norwegian government to secure new contracts in Myanmar.

GIEK and Export Credit Norway can assist Myanmar customers with their financing needs, enabling the customers to purchase capital goods or services from Norway on long-term credit, without the exporter assuming the risk of non-payment.

“During the past two years Myanmar gone from zero demand to one of our most active countries in terms of exporters requesting export financing for their customers,” says Ivar Slengesol, Director of Lending of Industry and Clean Technologies at Export Credit Norway. A limited liability company wholly owned and funded by the Norwegian government, Export Credit Norway offers export loans to buyers of Norwegian capital goods and services. GIEK, a government agency, issues guarantees on behalf of the Norwegian government. Together, the two government-backed export credit agencies offer a powerful sales tool for Nor-

wegian exporters: a loan back by a guarantee for Myanmar buyers.

“The power and telecom sectors account for most of the demand in Myanmar so far,” says Øyvind Ajer, director of the industry and energy department at GIEK.

He says the export contract values range from a few million NOK to more than one billion NOK.

Export Credit Norway and GIEK have recently taken steps to make export financing of small and medium-sized export contracts – below NOK 100 million – as convenient, simple and inexpensive as possible.

The organisations now offer a one-stop shop for small and medium-sized loans and guarantees to support Norwegian export contracts:

- One joint and simplified application
- One common financing offer
- One common term sheet

“The loan documentation requirements are reduced to a minimum. We can assist the exporter from the initial contact with the customer until full payment is received for your delivery,” says Slengesol.

GIEK and Export Credit Norway have developed a simplified loan agreement to reduce the documentation burden for the customer.

The main requirements are that:

- The transaction is fundamentally sound
- The buyer is creditworthy
- The export contract contributes to Norwegian value creation

“The repayment period is typically between two and five years for loans below NOK 100 million, but longer repayment periods may be granted on a case-by-case basis,” says GIEK’s Ajer.

For export contracts valued at NOK 30 million or less, the exporter may choose to cover the residual credit risk not covered by GIEK instead of a commercial bank.

Regardless of the size of the transaction, GIEK conducts the credit assessment of the buyer. Both organisations assess risks related to money laundering, corruption and social and environmental impact. Export Credit Norway, as lender, heads up the loans agreement negotiations with the buyer.

The loans and guarantees follow the terms of the international OECD agreement on export financing. The loan amount is limited to 85 % of the export contract value. GIEK requires sharing at least 10 % of the credit risk with a commercial party, either a bank or the exporter. A cash deposit in a pledged bank account is a third alternative.

Deliveries from Norwegian daughter companies outside Norway—for example, an export contract for a delivery between Singapore and Myanmar—may qualify for Norwegian export financing under a concept known as “Norwegian interest.”

To conduct a due diligence of the buyer, GIEK and Export Credit Norway will request standard corporate information about the buyer. This includes:

- Annual financial statements from the last three years
- Budget for the buyer for the following one to three years
- Certified Company Certificate
- Copy of resolutions of the board of directors authorising the loan and the signatory(ies)
- Certified copies of passport of the authorised signatory(ies)

“Please get in touch, and we’ll do our utmost to support your business in Myanmar,” says Slengesol of Export Credit Norway and Ajer of GIEK.

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ABBREVIATIONS AND ACRONYMS

ADB – Asian Development Bank

ANFREL – Asian Network for free Elections

ASEAN – Association of South East Asian Nations

CBM - Central Bank of Myanmar

CGT - Capital Gains Tax

CIT - Corporate Income Tax

CO - Certificate of Origin

CT - Commercial Tax

CURB - Cities and Urban Risk Program

DCCA - Directorate of Commerce and Consumer Affairs

DICA - Directorate of Investment and Company Administration

DTAs - Double Taxation Agreements

EMMP - Environmental Management and Monitoring Plan

ESD Law - Skill Development Law 2013

FCPA – Foreign Corrupt Practices Act

FIL – Foreign Investment Law

GATT - General Agreement on Tariffs and Trade

GDP – Gross Domestic Product

GEGG - Green Economy Green Growth

GSP - Generalized System of Preferences

ICH – International Centre for Hydropower

I-IDEA – International Institute for Democracy and Electoral Assistance

ILO – International Labor Association

LO Law - Labour Organization Law 2011

MIC - Myanmar Investment Commission

MOECAAF - Ministry Of Environmental Conservation And Forestry

MOECAF - Union Ministry of Environmental Conservation and Forestry

MPSI – Myanmar Peace Support Initiative

NGO – Non-Governmental Organisation
NMBC – Norway-Myanmar Business Council
NVE – Norwegian Directorate for Energy and Water Resources
OFAC - The US Office of Foreign Assets Control
PSG – Peace Support Group
RECOFTC - Center for People and Forests
REDD - Reducing Emissions from Deforestation and Forest Degradation
SDN - Specially Designated Nationals
SDN List - Specially Designated Nationals and Blocked Persons List
SEZ - Special Economic Zones
SEZ Law - Myanmar Special Economic Zone Law of 2014
TRIPS Agreement - Agreement on Trade-Related Aspects of Intellectual Property Rights
UMFCCI Union of Myanmar Federation of Chambers of Commerce and Industry
UN HABITAT - UN Human Settlements Program
UNDP – United Nations Development Programme
UNESCO - The United Nations Educational, Scientific and Cultural Organisation
UNFPA – United Nation’s Population Fund
WIPO - World Intellectual Property Organisation
WTO - World Trade Organisation

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