



## Investing in Myanmar - Legal and Tax FAQs

This little brochure covers law and tax-related questions that often arise in the context of foreign direct investments in Myanmar. Its aim is to provide investors with a first overview; it is far from being complete.

Many investors will be aware that a new Companies Law was enacted on 6 December 2017. The new Companies Law is not in force yet (it is expected to enter into force on 1 August 2018). We have included reference to the new Companies Law where it will change the current legal framework.

### 1. Investment vehicles

#### 1.1. What investment vehicles are available?

Foreign investors may set up a representative office, branch or company.

A representative office is a branch whose name ends with “(Myanmar Representative Office)” and whose business scope is “liaising with the headquarters and doing market research for the headquarters”. It is suitable for investors wishing to explore the market, and for companies conducting their Myanmar-related business from the foreign headquarters with the need for ground support in Myanmar.

Only a company can set up a representative office or branch. Individual investors have to set up a company.

Representative offices and branches are not separate legal entities. Liabilities incurred by a representative office or a branch are liabilities of the headquarters. In contrast, a company shields its shareholders from liabilities incurred by the company.

Investors in the upstream oil and gas sector and in the banking sector traditionally invest through a branch. In other sectors, investors wishing to do business in Myanmar on a stable, regular basis usually set up a company.

The law provides for several types of companies, but the only type available to foreign investors is a “private company limited by shares” which roughly corresponds to a Pte. Ltd. in Singapore.

The minimum capital requirements are set out below. The capital can be used to cover operating expenses; it is not necessary to keep it in the bank account. 50% of the minimum capital have to be paid in at the time of the establishment of the representative office, branch or company; the remaining 50% have to be paid in within five years after the establishment.



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- Minimum capital of a representative office, a branch or a company engaging in services: USD 50,000
- Minimum capital of a company engaging in manufacturing: USD 150,000

A company presently must have at least two shareholders. It is sufficient if the second shareholder subscribes to one share. Often, one of the designated directors of the company acts as the second shareholder.

**Under the new Companies Law, it will be possible to set up a company with only one shareholder.**

A company must have at least two directors. Both directors may be foreigners residing outside of Myanmar.

**Under the new Companies Law, it will be sufficient for a company to have only one director. This director must be resident in Myanmar. If a company has more than one director, at least one of the directors must be resident in Myanmar.**

The share capital of a company can be denominated in USD; it is not necessary to convert it to Myanmar kyats.

### 1.2. What is the process for setting up an entity in Myanmar?

*The following explains the process of setting up a representative office, branch or company with the help of outside local counsel. Foreign investors do not necessarily have to retain outside local counsel in order to establish an entity. As, however, the process is paper-based and online filing is not yet available, a foreign investor wishing to set up an entity in Myanmar requires assistance on the ground, which, if no outside counsel should be hired, could be rendered by an employee, a local partner or an otherwise trusted person.*

***According to the Directorate of Investment and Company Administration (“DICA”), online registration will be available from 1 August 2018.***

*When comparing prices of outside local counsel, foreign investors should insist on a fixed fee in which all ancillary services (e.g., assistance with the opening of a bank account) are included.*

There are specific investment approval procedures, but only for certain big projects, projects that require the use of land and cases in which the investor seeks tax incentives. In all other cases, the investor simply has to register a representative office, branch or company and can start its business. The registration procedure is easy and fast.



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The following information and documents are currently required. **Once the new Companies Law enters into effect, the following table will change.**

Representative office	Branch	Company
<ul style="list-style-type: none"> <li>▪ Copies of the business registration certificate and the list of directors of the foreign headquarters and an English translation thereof</li> <li>▪ Copies of the articles of association and the audited financial statements of the foreign headquarters for the last two years and an English translation thereof (everything must be notarized and legalized)</li> <li>▪ Power of attorney for the chief rep (draft provided by local counsel) - must be notarized and legalized</li> <li>▪ Resolution of the board of directors of the foreign headquarters (draft prepared by local counsel)</li> <li>▪ Copies of the passports of the directors of the foreign headquarters who signed the board of directors' resolution</li> </ul>	<ul style="list-style-type: none"> <li>▪ Copies of the business registration certificate and the list of directors of the foreign headquarters and an English translation thereof</li> <li>▪ Copies of the articles of association and the audited financial statements of the foreign headquarters for the last two years and an English translation thereof (everything must be notarized and legalized)</li> <li>▪ Power of attorney for the branch representative (draft prepared by local counsel) - must be notarized and legalized</li> <li>▪ Resolution of the board of directors of the foreign headquarters (draft prepared by local counsel)</li> <li>▪ Copies of the passports of the directors of the foreign headquarters who signed the board of directors' resolution</li> </ul>	<p><u><i>If the company is being set up by an individual:</i></u></p> <ul style="list-style-type: none"> <li>▪ Copy of this person's passport</li> <li>▪ This person's address</li> </ul> <p><u><i>If the company is being set up by a foreign parent company:</i></u></p> <ul style="list-style-type: none"> <li>▪ Copy of the business registration certificate and the list of directors of the foreign parent company and an English translation thereof</li> <li>▪ Resolution of the board of directors of the foreign parent company (draft provided by local counsel)</li> <li>▪ Copies of the passports of the directors of the foreign parent company who signed the board of directors' resolution</li> </ul> <p><u><i>Furthermore, the following is required:</i></u></p> <ul style="list-style-type: none"> <li>▪ Copies of the passports (if foreigners) or national registration cards (if Myanmar nationals) of the designated directors of the</li> </ul>



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Representative office	Branch	Company
<ul style="list-style-type: none"> <li>▪ Copy of the passport (if foreigner) or national registration card (if Myanmar national) of the designated chief rep</li> <li>▪ Address of the chief rep</li> <li>▪ Address of the representative office in Myanmar</li> <li>▪ Two sets of the application file (prepared by local counsel)</li> <li>▪ Stamp duty and registration fees: Approx. USD 314</li> </ul>	<ul style="list-style-type: none"> <li>▪ Copy of the passport (if foreigner) or national registration card (if Myanmar national) of the designated branch representative</li> <li>▪ Address of the branch representative</li> <li>▪ Address of the representative office in Myanmar</li> <li>▪ Business scope of the branch</li> <li>▪ Two sets of the application file (prepared by local counsel)</li> <li>▪ Stamp duty and registration fees: Approx. USD 314</li> </ul>	<ul style="list-style-type: none"> <li>company</li> <li>▪ Addresses of the designated directors</li> <li>▪ Who of them is going to be the managing director?</li> <li>▪ Who is the second shareholder?</li> <li>▪ Proposed name of the company</li> <li>▪ Address of the company</li> <li>▪ Business scope of the company</li> <li>▪ Information on the capital. Our suggestion for a services company:               <ul style="list-style-type: none"> <li>▪ Initial paid-up capital: USD 25,000</li> <li>▪ Authorized capital: USD 100,000</li> <li>▪ Nominal value per share: USD 10</li> </ul> </li> <li>▪ Two sets of the application file (prepared by local counsel)</li> <li>▪ Stamp duty and registration fees: Approx. USD 352</li> </ul>

In a first step, local counsel checks with the Directorate of Investment and Company Administration (“**DICA**”) whether the name and the business scope of the representative office,



branch or company are permissible. Local counsel then prepares the application file and sends it to the client for signing by the appropriate persons.

Once local counsel has the package back, it is filed with DICA. DICA then issues temporary registration cards within a few days. With these temporary registration cards, the representative office, branch or company has to open a bank account with a bank operating in Myanmar. This requires the presence of the chief rep, the branch representative or at least one of the directors of the company in Myanmar as bank accounts cannot be opened by proxy.

The investor then has to transfer at least USD 25,000 to this bank account from abroad upon which the bank issues a “certificate of brought-in capital”. With this certificate, the temporary registration cards can be traded in for final ones at DICA. This takes about two weeks.

The final registration cards have to be renewed after five years.

The representative office, branch or company can start its business once the temporary registration cards are issued, i.e. within a few days after the application for registration was filed with DICA.

## 2. Investment law and licensing

### 2.1. Are there any licenses required in addition to the registration of the representative office, branch or company with DICA?

In most cases, no additional licenses are required.

A permit from the Myanmar Investment Commission (“MIC”) is required if the project is strategic for the Union, is capital intensive, has a big environmental or social impact, uses state-owned land or buildings or is specified by the government as requiring a permit. Details are laid down in sections 3-11 of the Investment Rules (Ministry of Planning and Finance Notification No. 35/2017 dated 30 March 2017).

An MIC endorsement is required if the investment requires the use of land (e.g., if the investor wishes to lease land in order to build a factory on it). Furthermore, an MIC endorsement is required if the investor wishes to apply for tax incentives.

Investors investing in a special economic zone require approval from the SEZ management committee.

Investors wishing to offer telecommunication services require a license from the Ministry of Transport and Communications.



The ownership of a hotel or guesthouse requires a license from the Ministry of Hotels and Tourism. No such license is required for companies managing hotels for others.

Important license requirements furthermore exist for the production of electricity, anything that is related to oil and gas, and the operation of ports and airports.

When establishing a branch or a company in Myanmar, local counsel will check for the investor whether the entity's proposed business scope requires a license in addition to the registration of the entity.

### **2.2. I want to set up a company in Myanmar in order to sell goods. Can I do this?**

Foreigners are restricted from engaging in "trade" in practice.

When setting up a representative office, branch or company, foreign investors currently have to sign an undertaking not to engage in trade. Trade, in this context, is interpreted as comprising wholesale and retail. Furthermore, the business scope of a branch or company must not contain any reference to trading activities as DICA will otherwise not register the entity.

That said, DICA does not actively monitor whether foreign investors engage in trading activities.

The import of goods requires the registration of the importer with the Ministry of Commerce. Foreign-invested companies can often not obtain this registration, but restrictions have recently been loosened in this regard:

- A foreign investor operating, e.g., a factory can register in order to import machines, equipment, building material and raw materials.
- A foreign investor operating a service can import goods required to perform this service.
- Foreigners can import construction materials, fertilizers, seeds, pesticides and hospital equipment for resale.
- Foreigners can set up joint ventures with locals in order to import brand-new cars or construction machines for resale.
- Foreign investors in the Thilawa SEZ can set up import and trading companies under certain conditions, but the capital requirements are comparatively high.
- With the approval of the Ministry of Electricity and Energy and the Myanmar Investment Commission, foreigners can import and sell petrol and other petroleum products.



Officials from the Ministry of Commerce have announced at various events hosted by foreign chambers of industry and commerce that there would soon be further liberalization. In most cases, however, foreigners still cannot set up trading companies. What they can do instead is the following:

- Finding a local agent for the import of the goods.
- Setting up a company with the business scope “management services” (the business scope may require fine-tuning with DICA).
- The management company then assists the local agent with the resale of the goods for a fee. Through this fee, the management company siphons off some of the profit that the local agent is making from the resale of the goods. The management company can repatriate the profit thus obtained from the local agent to the foreign investor as a dividend.

### **2.3. I am offering services and have to import goods in order to provide my services. Can I do this?**

As stated above, branches of foreign companies and foreign-invested companies are often unable to register as an importer with the Ministry of Commerce and thus unable to import. In the past, some foreign-invested service providers managed to obtain a permit from the Myanmar Investment Commission (so-called “MIC permit”) with which they could register as importer and import the goods required for providing their services.

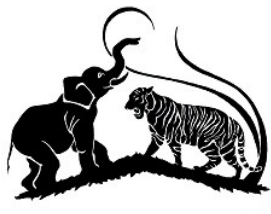
According to the new Investment Rules, foreign investors with a branch or company in Myanmar should be able to register their branch or company with the Ministry of Commerce as importer (irrespective of whether they have an MIC permit or endorsement) and import the goods required for their business. It appears that also in practice, the Ministry of Commerce now registers these branches and companies as importer.

### **2.4. Are there other market access restrictions?**

Yes; they are laid down in Myanmar Investment Commission Notification No. 15/2017 dated 10 April 2017. Certain businesses are prohibited to local and foreign investors alike, others are prohibited to foreign investors only, again others require a local joint venture partner, and again others require approval from the relevant ministry.

In addition, some ministries may have unofficial restrictions.

When establishing a branch or a company in Myanmar, local counsel will check for the investor whether the entity’s proposed business scope is permissible.



### 3. Repatriation of profits and foreign exchange control

#### 3.1. Is it possible to repatriate profits?

Yes, this is possible, if the profit is from a lawful investment. Lawful investment means that the investor has set up a company or branch and conducted his business through it. Investors in nominee structures may have difficulties repatriating profits.

It is possible to exchange kyats to foreign currency in order to remit profits abroad. Sometimes, concerns are voiced that it may not be possible to convert large amounts, but these concerns do not seem to have materialized so far.

#### 3.2. Are there foreign exchange control mechanisms in Myanmar?

Yes, there are. They are laid down in the Foreign Exchange Management Law of 2012, the Foreign Exchange Management Regulation (Central Bank Notification No. 7/2014 dated 30 September 2014) and several Central Bank directives, in particular Directive No. 16/2015 dated 27 May 2015. In a nutshell, the following restrictions apply:

- Bank transfers in foreign currency within the country and into the country from abroad are not restricted.
- Bank transfers in foreign currency to a destination abroad are restricted; details have to be enquired with the bank before trying to make a transfer.
- There are upper limits on cash withdrawals of foreign currency from a bank account: Max. USD 5,000 per withdrawal and max. USD 10,000 per week.
- There are no limits on cash withdrawals from a foreign currency account if the customer agrees to the bank converting the amount to Myanmar kyats.
- A resident can accept up to USD 10,000 in cash. If the amount is not used within six months, it has to be deposited in a bank account.
- Whether shops can advertise their prices in foreign currency is a gray area.





### 3.3. We have foreign exchange control mechanisms in my home country. How can I get money out of my country to invest it in Myanmar?

We encourage our foreign clients to comply with the forex regulations of their home country.

That said, we can state the following from a Myanmar perspective:

- When setting up a representative office, branch or company, the foreign investor has to transfer at least USD 25,000 to the entity's Myanmar bank account. It is not necessary that the money is from the investor's home jurisdiction or the investor's bank account. It is sufficient if the transfer form clearly states that the money is intended to be a capital contribution to the representative office, branch or company.
- If a foreign investor has cash in Myanmar and wishes to use this cash to set up a representative office, branch or company, things are a bit more complicated.

First of all, the investor has to find a bank which accepts the cash. This can be difficult, as (i) banks only accept USD bills that are immaculate, and (ii) Myanmar is on several international money laundering watch lists and wants to get off them.

Furthermore, the bank will not issue a "certificate of brought-in capital", just a bank statement showing the deposited amount. With this bank statement, the foreign investor can obtain the final registration cards from DICA. However, DICA will not issue a "certificate of registration of documents" with regard to the paid-up capital. This is usually no problem, but may become one in certain cases, e.g. if profits are to be repatriated.

## 4. Financing

### 4.1. Can foreign-invested companies obtain bank loans?

Local banks are required by Central Bank policy to extend loans only against security, which in most cases comes in the shape of a mortgage of land. As branches of foreign companies and foreign-invested companies cannot own land, loans from local banks are therefore often not an option. If the investment is in the form of a joint venture, it may, however, be possible to obtain a loan from a local bank if the local joint venture partner offers his or her land as security.

Theoretically, things may change a little once the new Companies Law becomes effective as it provides for a 35% threshold up to which foreign ownership of the company's capital does not make the company a "foreign company". It is therefore theoretically possible that a company with up to 35% foreign ownership may in the future own land and mortgage such land to a bank in order to obtain a bank loan.



There are now 13 branches of foreign banks in Myanmar with restricted onshore licenses. Foreign-invested companies can obtain loans from these branches; security requirements would have to be individually discussed.

Cross-border loans are allowed if they are approved by the Central Bank of Myanmar in advance. It is still a bit of a challenge to put together a security package that is acceptable to foreign lenders (for this reason, cross-border loans are often also secured offshore in addition to the onshore security), but there are by now numerous examples of foreign lenders having funded projects in Myanmar.

Shareholder loans provided by a foreign parent or group company have to be approved by the Central Bank in advance. Otherwise, it is not possible for the subsidiary to pay interest or repay the loan as banks in Myanmar would refuse to carry out the money transfer.

#### **4.2. What types of onshore security are available to foreign lenders?**

It is still a bit of a challenge to put together a security package that satisfies foreign lenders, but there is by now ample precedence where this was achieved. However, there is still no practical experience with the enforcement of security taken by foreign lenders.

The following are the most common types of security in Myanmar:

- Mortgage of immovable property (requires a local security agent)
- Pledge of movable property (usually not suitable as the lender would have to take possession of the pawn)
- Guarantee
- Irrevocable power of attorney to sell the borrower's assets in case of default (powerful security, but unknown whether it has been used so far in a cross-border loan; borrowers are usually reluctant to give an irrevocable power of attorney)
- Project bank account (local bank acts as security agent and channels revenue from the project to the foreign lender through this bank account)
- Share pledge
- Floating charge on receivables and/or inventory (problem: the law requires registration, but the Directorate of Investment and Company Administration - DICA - does not seem to issue registration certificates);
- Fixed charge on machines (same problem as with floating charges)



- Assignment of rights
- Assignment of licenses (only possible in exceptional cases - e.g. telecom-related licenses, section 23 (c) Licensing Rules - as licenses are usually not transferrable)

In order to be able to continue the project if the borrower mismanages it, foreign lenders are often keen on step-in rights, i.e. a provision in, e.g., a lease agreement allowing a lender to step into the position of the lessee. It is, however, unknown if such clauses could presently be successfully negotiated in Myanmar.

#### **4.3. Is it possible to obtain government guarantees?**

Government guarantees are available for construction costs (the Ministry of Electricity and Energy would, e.g., issue a guarantee to the construction company with regard to the construction costs of a power line), but (probably) not for loans. A valid government guarantee requires that the project was approved by the cabinet and is being paid for from the Union budget approved by parliament.

#### **4.4. Are convertible loans allowed?**

Foreigners wishing to invest in a restricted sector sometimes explore schemes by which the foreign investor (lender) grants a convertible loan to a 100% Myanmar-owned company (borrower). The idea is that, once the restriction is lifted, the borrower repays the loan not in cash, but in shares of the borrower. Through this method, the foreign investor hopes to be able to invest in a restricted sector already now although the restriction may, or may not, only be lifted in the future.

Convertible loans as such are not prohibited. However, cross-border loans require Central Bank approval, and we are not aware of any instance in which the Central Bank would have approved a convertible loan.

## **5. Intellectual property**

#### **Is intellectual property protected in Myanmar?**

Myanmar does not have modern intellectual property legislation yet, but it is possible to protect certain types of intellectual property.

Trademarks, patents and designs can be registered with the Registration of Deeds Office through a “declaration of ownership” which is customarily followed by the publication of a cautionary notice in a newspaper. Registration serves as prima facie evidence of who owns the intellectual property, but an opponent could still establish earlier use and win the case.



The Myanmar Competition Law makes it a crime to steal business secrets.

Copyright protection of foreign works is as such presently not available. Bootlegged videos may, however, be seized under section 32 (b) Television and Video Law 1996 (“distributing videos without censorship sticker”).

Victims of an infringement would, in a first step, usually contact the infringer through a lawyer and request cessation of the infringement. If there is no voluntary compliance, the owner of a protected intellectual property right can file for a temporary or perpetual injunction, sue for damages, and/or press criminal charges.

Four IP bills (trademarks, industrial designs, patents, copyright) are currently pending in parliament. They will, once enacted, modernize IP protection. However, it will take a significant amount of time for them to go live after enactment as a modern IP administration infrastructure still has to be created in its entirety.

## 6. Land law

### 6.1. Is there a land register?

Yes, there is. Most land is registered at the respective Township Land Record Department under the Ministry of Agriculture, Livestock and Irrigation. The register may not always be correct as transactions may not have been registered for a variety of reasons, in particular tax reasons. It is, however, important for land that is used for a foreign investment to be properly registered as it is otherwise not possible to obtain a permit or endorsement from the Myanmar Investment Commission. The authenticity of land documents can be checked with the Land Record Department.

### 6.2. Can foreigners own immovable property?

No; this is prohibited by the Transfer of Immovable Property Restriction Law of 1987. This law allows foreigners (including any company in Myanmar with one foreign shareholder or more than one foreign shareholder) to lease immovable property for a period of up to one year and prohibits any further interest in immovable property unless an exemption is granted by the relevant ministry.

Theoretically, it will become possible for foreigners to acquire a share in real estate under the new Companies Law as it provides for a 35% threshold up to which foreign ownership of the capital of a company does not change this company’s categorization as “local”; theoretically, such a company will be able to own real estate in the future.



Foreigners investing with a permit or endorsement from the Myanmar Investment Commission may lease land for up to 50 years and renew the lease twice for up to ten years each time.

Foreign developers of, and foreign investors in, a Special Economic Zone may lease land for up to 50 years and renew the lease once for up to 25 years.

A local joint venture partner can contribute his or her land to the joint venture company only in the form of a lease. The joint venture company in this case does not pay the rent in cash, but in kind by issuing shares to the local joint venture partner. The land itself remains the property of the joint venture partner.

The Condominium Law of 2016 and the Condominium Rules of 2017 allows foreigners to acquire (own) 40% of the total floor area in a condominium. To this date, however, no building has been converted to a condominium under this law.

### **6.3. Can Myanmar nationals own immovable property?**

There are rare cases of freehold land in Yangon.

Myanmar nationals may obtain a land grant in towns and villages. This is technically a lease for 30, 60 or 90 years with quarterly rental payments (of nominal amounts) to the government. Renewal of the term requires an application, but is then done almost automatically. The grant holder may sell or otherwise dispose of the land, mortgage it and pass it on to their heirs. A land grant is similar to land ownership.

Farmers obtain their land from the government through what is technically a lease for an unlimited term. They may sell or otherwise dispose of the land, mortgage it and pass it on to their heirs. Farmland may only be used for the type of farming activities permitted in the “certificate of the right to use farmland” (form 7). If the land is to be used for non-farming purposes, prior permission from the State or Regional Farmland Management Committee or the Central Farmland Management Committee has to be obtained.

There are other types of land, but it would be beyond the scope of this brochure to go into further details.

Myanmar nationals may own apartments. The Condominium Law of 2016 provides for a proper strata title registration system for condominiums that are established under this law (none have been yet); for other buildings, there is no strata title registration system.

### **6.4. What should one look at in a land due diligence?**

A land due diligence should clarify the following issues:



- Verify ownership
- Was the land acquired in a land grab?
- Is it legally possible to use the land for the project?
- In case of government land: Does the respective department have the right to lease the land for the project?

### 6.5. Do lease agreements have to be registered?

Lease agreements with a term in excess of one year have to be registered with the Registration of Deeds Office unless the lessor is the government; otherwise, they are void. Registration has to be done within four months (extension to eight months possible by paying a penalty) after the signing of the lease agreement; the registration fee is 0.2% of the annual rent. Unfortunately, registration officers sometimes deny, for various reasons, the registration of a lease agreement if the lessee is a foreign-invested company, even if it has a permit from the Myanmar Investment Commission.

## 7. Labour law and immigration

### 7.1. Are there restrictions on the employment of foreigners?

Foreigners may not be employed for jobs that do not require skills. The previous Foreign Investment Law required that certain percentages of the jobs requiring skills were filled with Myanmar nationals, but this restriction has since been abolished outside special economic zones. Investors are, however, encouraged to recruit Myanmar nationals.

An exception applies in special economic zones: According to section 75 SEZ Law, 25%, 50% and 75% of the jobs requiring skills must be filled with Myanmar nationals in the first, second and third two years of operation.

### 7.2. Do foreign employees need a work permit?

Presently, no. The draft of a law that would have introduced a comprehensive work permit system was rejected by parliament in March 2017.

### 7.3. What formalities do foreign companies have to observe if they employ foreigners?

Most foreigners working in Myanmar are doing so on the basis of a business visa sponsored by a representative office, branch or company registered in Myanmar. A single-entry business visa allows its holder to stay in Myanmar for 70 days. Repeated visitors may also apply for multiple-entry business visas that allow stays of three, six or twelve months.



(It should be noted in this context that some foreign-invested real estate developers employ foreign workers on their construction sites who stated in their visa application that they were “English teachers”, “engineers” or otherwise highly qualified. It should be clear that this is not a good idea and that the authorities are cracking down on this.)

Since the introduction of an “employment visa” in December 2016, a business visa is, strictly speaking, not the correct visa category for foreign employees anymore, but we understand that most foreign employees still apply for business visas.

Foreigners staying in their own accommodation or accommodation provided by the company have to report their arrival (or ensure that their landlord reports their arrival) to the Ward Administration Office and the Township Immigration and National Registration Department.

Foreigners wishing to stay in Myanmar for more than 90 consecutive days have to apply for a stay permit, foreigner registration card and multiple special re-entry visa.

According to the new Myanmar Investment Rules, investors outside special economic zones have to obtain approval from the Myanmar Investment Commission before employing a foreigner. This rule only applies to companies with an MIC permit or endorsement; the application has to be filed with the MIC before or within 7 days after the foreign employee has entered the country.

Investors within the Thilawa SEZ have to submit a list of their employees and their standard employment contracts to the SEZ Management Committee on a monthly basis. They furthermore have to register their foreign (and local) employees at the One-Stop Service Centre.

#### **7.4. Are there formalities with regard to labour contracts?**

Yes, there are, but it is in many cases not possible to comply with all of them.

According to the Employment and Skills Development Law of 2013, employer and employee have to sign a labour contract within one month after the commencement of the employment. The employer then has to submit three copies of the contract to the Township Labour Office for approval. The labour administration officer is supposed to stamp them and return two copies to the employer and the employee.

The problem is that Notification 140/2017 of what was then the Ministry of Labour, Employment and Social Security requires all employers with more than five employees - irrespective of the sector, the job type and the employee’s salary - to use the Ministry’s labour contract template, and the Township Labour Offices do not approve any contract that is not an exact copy of the template.



The template is made for factory workers and not suitable for many types of jobs. Often, employees (especially foreign employees) refuse to sign the template as it does not adequately reflect what they have negotiated in terms of benefits.

This situation is presently being dealt with as follows:

- Factory owners are advised to use the template.
- Township Labour Offices allow the parties to attach an annex to the template in which they can spell out what they have negotiated.
- Some companies do not use the template and state in their employment contracts that it was “the employee’s wish” to have an individual contract.
- Foreigners may be employed by the foreign headquarters and seconded to the Myanmar subsidiary. The employment contract is in this case governed by foreign law and not subject to Myanmar requirements.

### **7.5. Can the parties agree on a probationary period?**

Yes. In practice, employees are appointed for a three-month probationary period at first during which they receive 70% of the basic salary.

### **7.6. Is there a minimum wage?**

Yes, the minimum wage is Ks. 3,600 per day in establishments with more than 15 workers, irrespective of the sector, region and job. During a pre-employment training period, only 50%, and during the probationary period, only 75% of the minimum wage have to be paid.

It is not official yet, but the minimum wage will probably rise to Ks. 4,800 per day from 1 April 2018 and become applicable to establishments with more than 10 workers.

### **7.7. Are there rules on dismissals?**

Yes, although they are not contained in a law, but have developed in practice and are partly summarized in the labour contract template issued by what was then the Ministry of Labour, Employment and Social Security.

Labour contracts in Myanmar are often for a fixed term (which in many jurisdictions would make it difficult for a party to leave before the end of the term), but it is in practice usually possible for a party to walk away from the contract without any particular reason. The employee has to give one month’s notice. The employer has to (i) give one month’s notice or pay one month’s salary





instead, and (ii) make a severance payment, the amount of which depends on the length of the service.

The employer does not have to give notice and pay a severance allowance if the employee is terminated for misconduct (on the spot in grave cases, otherwise after three warnings).

## **7.8. Is there a social security system?**

Yes, employers with five or more than five employees are obliged to register them with the Social Security Board. The employer's contribution is 3% and the employee's contribution is 2% of the monthly salary. The employer's contribution is presently capped at Ks. 9,000 per employee and month and the employee's contribution at Ks. 6,000 per month.

## **7.9. What are the rules on working hours, overtime and holidays?**

These rules are spread over several laws and differ in details depending on the sector.

The regular working hours in a factory are 8 hours/day and 44 hours/week (48 hours if, for technical reasons, "continuous work" is required). If the worker agrees, overtime is possible if the weekly working hours do not exceed 60 hours; the overtime salary is twice the basic salary. An overtime policy requires approval from the Factories and General Labour Law Inspection Department.

The regular working hours in a "shop or establishment" (e.g. office, hotel) are 8 hours/day and 48 hours/week unless the parties agree otherwise. If the worker agrees, overtime is possible if the weekly working hours do not exceed 60 hours (64 hours in "special cases"); the overtime salary is not specified in the law (but the township labour offices assume that it is twice the basic salary).

Apart from one off-day per week (usually, Sunday), employees are usually entitled (with pay) to 10 days of earned leave, 6 days of casual leave, 14 weeks of maternity leave (for mothers; for fathers covered by the 2012 Social Security Law: 15 days of paternity leave), 30 days of medical leave and (in 2017) 24 public holidays.

## **8. Taxation**

### **8.1. What taxes are imposed on an investment, and what are the tax rates?**

- (a) Corporate income tax:** Imposed on the income as shown in the audited financial statements of a company or branch; tax rate: 25%



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- (b) **Commercial tax:** A tax similar to VAT, imposed on: (i) the turnover in case of a sale of goods or the provision of services, and (ii) the landed costs in case of the import of goods. The tax rate is (in most cases) 5%.
- (c) **Special goods tax:** Imposed on the manufacture, manufacture and subsequent sale, import, and export of certain “special goods”. The tax base is (generally speaking) the market price; the tax rates vary depending on the goods.
- (d) **Personal income tax:** Imposed on the salary of employees. As do other jurisdictions, Myanmar requires employers to withhold personal income tax from the salaries paid to their employees and pay the withheld amount over to the tax office. The tax rates are progressive and range from 0% to 25%.
- (e) **Stamp duty:** Imposed on any instrument listed in Schedule 1 to the Stamp Act of 1898. The duty amount is either fixed or described as a percentage of the value of the contract. Stamp duty poses many vexing issues as the classification of an instrument by the tax office can be creative.

### 8.2. Are there tax incentives?

Yes. They depend on whether an investment is made outside or inside a special economic zone.

#### (a) Tax incentives for investments outside a special economic zone

Tax Incentives outside of a special economic zone are governed by the Myanmar Investment Law (Law No. 40/2016 dated 18 October 2016).

Investors in a “promoted sector” specified in Myanmar Investment Commission Notification No. 13/2017 dated 1 April 2017 may enjoy an exemption from corporate income tax. The exemption period may be three, five or seven years, depending on the township (developed, moderately developed, less developed) in which the investment is proposed to be made (the townships are specified in Myanmar Investment Commission Notification No. 10/2017 dated 22 February 2017).

Other important tax incentives include:

- Exemption from customs duty and commercial tax at the import stage for machines, construction materials, etc., during the construction or expansion period; and for export-orientated businesses
- Exemptions from corporate income tax on profits that are reinvested within one year



- Accelerated depreciation
- Deduction of R&D expenses

**(b) Tax incentives for investments inside a special economic zone**

Within a special economic zone (SEZ), the management committee can demarcate “exempted zones” and “promotion zones”. Businesses in an exempted zone have to manufacture primarily for export, while goods manufactured in a promotion zone must primarily be produced with local content and directly transported and sold to businesses in an exempted zone.

Exempted zones are regarded as if they were located outside the country. An investor in an exempted zone therefore does not have to pay import duty on construction materials, raw materials, machines and other goods used in the construction of the factory or the production process. Usually, an importer has to pay 5 percent commercial tax in addition to import duties, though the SEZ Law does not state clearly whether this tax is waived in an exempted zone.

However, an investor in an exempted zone does not have to pay income tax in the first seven years of operation and pays only 50% income tax during the following five years. If, during a subsequent five-year period, profits are reinvested within a short period of time, the income tax rate for profits derived from such reinvestment is also reduced by 50pc.

The developer of an SEZ and investors in a promotion zone are entitled to the same income tax benefits with the exception that the tax holiday period (complete exemption from income tax) is not seven but eight years in case of the developer and five years in case of an investor in a promotion zone.

A developer and every investor in an SEZ may carry forward losses for up to five years. Outside an SEZ, the carry-forward period is three years maximum.

*Information in this brochure is up-to-date as of 1 April 2018.*



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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