

## DOING BUSINESS IN MYANMAR

By

### MYANMAR LEGAL SERVICES LTD.

A foreign investor looking at a project or transaction in Myanmar for the first time will find an outdated but developing legal framework and administrative practices governing most business transactions. The role of the law, lawyers, and the judiciary in Myanmar was established during the British colonial period, and continued after Myanmar gained independence in 1948 until 1962. In 1962 the government changed the country's economic policy to Burmese way to socialism. When the State Law and Order Restoration Council took power in September 1988, this marked a shift from a socialist policy to a more liberal and market oriented economic policy. The first Constitution of Myanmar was enacted in 1947; the second in 1974 and the current one in 2008, which has been in effect since 1 January 2011 (the first convening of the Parliament). In the general election held on 8 November 2015, the National League for Democracy won a large majority of seats in the Parliament, and took office on 1 April 2016.

Since the second session of Parliament in fall 2011 to the end of July 2019, more than 300 laws were enacted, with many more expected over the coming months. A number of the recent laws are intended to promote investment into Myanmar, including the new Myanmar Investment Law 2016 (**New Investment Law** or **MIL**), which came into force in October 2016, and the Myanmar Special Economic Zone Law (**MSEZL**) enacted on 23 January 2014 and their rules on 27 August 2015. The New Investment Law, and MSEZL and its rules and notifications, improve certain incentives offered to foreign investors. The new Special Economic Zone (**SEZ**) Central Management Committee and Central Working Committee were formed by the President Office's Notification No. 59/2016 on 12 August 2016. The Central SEZ Management Committee consists of 15 members including Union ministers, with the responsibility to demarcate SEZs, to classify the type of investment, and to prescribe logistical requirements which will be required to submit to the Union Government.

The laws and practices governing investing in Myanmar continue to undergo rapid changes. The new companies law (**New Companies Law**) came into force on 1 August 2018, replacing the Myanmar Companies Act (1914). An English translation is in the DICA website. In addition, the new Myanmar government is obtaining technical assistance and training from foreign experts in a number of key areas, including foreign exchange controls, finance and investment law reform and trade facilitation.

On 1 April 2016, the number of ministries was reduced from 36 to 20 by the new government. On 17 May 2016 the new Ministry of State Counsellor was established. Three additional ministries were established. On 20 November 2018, the Myanmar Government established the new Ministry of Investment and Foreign Economic Relations, combining the functions of the DICA and the Foreign Economic Relations Department of the Ministry of Planning and Finance.

### Foreigners Investing in Myanmar

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

The incorporation of a foreign Myanmar company and registration of a Myanmar branch of a foreign company were subject to the procedures and requirements set out in the Myanmar Companies Act (1914) and by instructions of the Directorate of Investment and Company Administration (**DICA**).

These procedures were superseded on 1 August 2018 by new procedures under the new Companies Act (2017). It was formerly announced that existing companies and branch offices (Overseas Corporations) must re-register within six months after 1 August 2018, but extensions were granted for another one month and another month with a penalty of Myanmar Kyats (MMK) 250000.

In addition to setting up a company with DICA, a foreign investor may be eligible for applying for incentives under the MIL unless it is in an SEZ. The MIL defines three types of foreign investment which may be eligible to obtain investment privileges: 1) a 100% foreign owned company; 2) a joint venture with a State-owned Economic Enterprise or a government organization; and 3) a foreign investor operating in a contractual relationship with a local investor. The minimum required foreign investment capital will depend on the business sector and as decided by the Myanmar Investment Commission (MIC) [on a case by case basis]. Depending upon the type of business activity and the investment amount, MIC will issue a Permit or an Endorsement.

**Foreign ownership conditions and restrictions:**

The Myanmar Investment Rules (Notification No. 35/2017 of the Ministry of Planning and Finance) and, most recently, MIC Notification No. 15//2017 contain details of business activities and industries which are either prohibited to foreign investors, restricted, or otherwise subject to certain conditions imposed by the government.

**Prohibited activities:**

The MIL provides that the following business and investment activities are prohibited:<sup>1</sup>

- which may bring or cause hazardous or poisonous waste into Myanmar;
- which may bring technologies, medicines, flora and fauna and instruments which are still being tested abroad or which have not obtained approvals for use, planting and cultivation - except investments made for the purpose of research and development;
- which may affect the traditional culture and customs of racial groups within Myanmar;
- which may affect public health;
- which may cause significant damage to the natural environment and ecosystem; and
- which manufacture goods or provide services that are prohibited in accordance with applicable laws.

**Restricted activities:**

In addition, the following business and investment activities are restricted:<sup>2</sup>

- which may only be carried out by the Myanmar government, or pursuant to a contract executed between the Myanmar government and an investor;<sup>3</sup>
- which may only be carried out by Myanmar citizens;
- which are only permitted by way of joint venture with a Myanmar citizen, in which case the minimum direct shareholding or interest of the Myanmar citizen investor in the joint venture is 20%;<sup>4</sup> and
- which are permitted only with a recommendation from the relevant government ministry.

Further details of the prohibited and restricted activities referred to above, in the form of a detailed list, are currently contained in Notification 15/2017 dated 10 April 2017.

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<sup>1</sup> Section 41 MIL  
<sup>2</sup> Section 42 MIL  
<sup>3</sup> Rule 20  
<sup>4</sup> Rule 22

Under a recent Notification by the Ministry of Commerce, Directive 25/2018, dated 9 May 2018, foreign owned companies are allowed to carry on retail and wholesale businesses. The Ministry of Commerce released its detailed operating procedures on 26 July 2018, in its News Bulletin No. 2/2018, providing further clarity to prospective trading businesses of the registration requirements. Eighteen companies have been permitted to undertake a trading business to date, of which fourteen are foreign companies or foreign-local joint ventures.

### **International Sanctions**

Since 1997, investment in Myanmar was restricted by sanctions imposed by the US, EU, UK, Australia, and Canada. On 7 October 2016, the US implemented termination of the Burma Sanction Program. Individuals and certain Myanmar companies remain on the US Department of Treasury's Specially Designated Nationals List. In August of 2018, Canada and the EU imposed economic sanctions on seven senior military officials in response to ongoing violence between the Myanmar military and Rohingya. In July 2018, the United States similarly imposed economic sanctions on five additional senior military officials (one individual had been sanctioned in December 2018), and two military divisions. These sanctions impose a freeze on any assets of those individuals in the US, Canada, and the EU, and prohibit conducting business with such individuals. On 16 July 2019, the US extended its sanctions to cover Commander-in-Chief Min Aung Hlaing, Deputy Commander-in-Chief Soe Win, Brigadier General Than Oo and Brigadier General Aung Aung. This was said to be in response to the military's lack of accountability for alleged human rights violations.

#### **Termination of the Burma Sanctions Program<sup>5</sup>**

Executive Order (E.O.) 13742 of October 7, 2016, "Termination of Emergency with Respect to the Actions and Policies of the Government of Burma," terminated the national emergency, revoked E.O.s 13047, 13310, 13448, 13464, 13619, and 13651, and waived financial and blocking sanctions in the Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act of 2008. As a result, the economic and financial sanctions on Burma administered by OFAC are no longer in effect. This includes the following impacts, among others:

- All individuals and entities blocked pursuant to the Burmese Sanctions Regulations (BSR) have been removed from OFAC's Specially Designated Nationals and Blocked Persons (SDN) List.
- All property and interests in property blocked pursuant to the BSR are unblocked.
- The ban on the importation into the United States of Burmese-origin jadeite and rubies, and any jewelry containing them, has been revoked.
- All OFAC-administered restrictions under the Burma sanctions program regarding banking or financial transactions with Burma are no longer in effect.
- OFAC will remove the BSR from the Code of Federal Regulations.

Compliance with the State Department's Responsible Investment Reporting Requirements is no longer required by OFAC's regulations and is now voluntary.

The termination of the Burma sanctions program does not impact Burmese individuals or entities blocked pursuant to other OFAC sanctions authorities, such as counter-narcotics sanctions. They remain on the SDN List, and their property and interests in property remain blocked. Further, pending or future OFAC enforcement investigations or actions related to apparent violations of the BSR when in effect may still be carried out. See [www.state.gov](http://www.state.gov) / and General Licence Nos. 17 and 19 for more information on US sanctions.

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<sup>5</sup> The U.S. Treasury Department Office of Public Affairs website : <https://www.treasury.gov/press-center/press-releases/Pages/j10569.aspx>

**European Union:<sup>6</sup>**

Council of the European Union Decision (CFSP) 2016/627 of 21 April 2016: All sanctions have been lifted with the exception of the arms embargo and equipment embargo that might be used for internal repression, which was extended for an additional year in April 2018, at which point it will be renewed, amended or otherwise as appropriate. Prior to April 2013, the EU also had trade, financial, and targeted sanctions in place, but those have now been lifted. The EU imposed economic sanctions on seven military officials in August 2018.

**United Kingdom:<sup>7</sup>**

Latest relaxation: Suspends assets freeze on nearly 500 people and restrictions on key industries, and includes relaxations of sanctions as described above under the EU.

**Australia:<sup>8</sup>**

Latest relaxation: Australia has lifted all travel bans on Myanmar citizens and targeted financial restrictions as reported on 7 June 2012. However, the Australian government retains the capacity to impose sanctions if required by the circumstances, and still has prohibitions on weapons trading. Australia’s arms embargo remains in place.

**Canada:<sup>9</sup>**

Latest relaxation: Prohibitions on import, export, investment, financial transactions, and technical data have been removed. Asset freeze and prohibition on transactions also remain in effect for designated individuals. Canada, like the EU imposed new economic sanctions on select military officials in June 2018.<sup>10</sup>

**Myanmar Legislation**

Myanmar legislation includes 13 volumes of codified laws from the period 1841–1954 (known as the “Burma Code”), the Burma (Myanmar) Court’s Manual, and numerous special laws, notifications, rules, regulations and orders enacted from time to time. The Government publishes weekly a Gazette that provides notifications, changes to existing laws, and new laws. Myanmar laws enacted after 1988 and until 2011 were published both in Myanmar and English language versions. Since 2011, most Myanmar laws have only been published officially in Myanmar language.

In 2018, the government prescribed a change in the government’s fiscal year from 31 March to 30 September. In early 2019, the Internal Revenue Department issued a circular bringing the fiscal year of all private companies into line with the government’s budget year. It confirmed that there would be a shortened fiscal year for 2019 (from 1 April 2019 to 30 September 2019), and thereafter, the fiscal years of all companies would commence on 1 October of each year.

**The Court System**

According to the Constitution, Courts of the Union include: (i) Supreme Court of the Union, High Courts of the Region, High Courts of the State, Courts of the Self-Administered Division, Courts of

<sup>6</sup> See: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.106.01.0023.01.ENG&toc=OJ:L:2016:106:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.106.01.0023.01.ENG&toc=OJ:L:2016:106:TOC)

<sup>7</sup> The United Kingdom Treasury Department website; [www.hm-treasury.gov.uk/fin\\_sanctions\\_burma.htm](http://www.hm-treasury.gov.uk/fin_sanctions_burma.htm); Note that the UK shares many policies on sanctions with the EU.

<sup>8</sup> The Australia Department of Foreign Affairs and Trade website; <https://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar.aspx>

<sup>9</sup> See: <http://www.gazette.gc.ca/rp-pr/p2/2012/2012-05-09/html/sor-dors85-eng.html>

<sup>10</sup> See: <https://www.canada.ca/en/global-affairs/news/2018/06/myanmar-sanctions.html>

the Self-Administered Zone, District Courts, Township Courts and the other Courts constituted by law, (ii) Courts-Martial, and (iii) Constitutional Tribunal of the Union.

The Supreme Court is the highest Court in the country without jurisdiction over the powers of the Constitutional Tribunal and the Courts-Martial. There is no jury system in Myanmar. Cases are normally tried by a single judge; however, in special cases the Chief Justice of the Supreme Court can instruct to form a panel of judges. The official language of the Court is Myanmar, and procedures of all courts are governed by the Civil Procedure Code, Criminal Procedure Code and the Courts manual, all of which are available in Myanmar and English. Documents to be submitted to the courts in English language must be translated into Myanmar language by a Notary Public to be admissible in the courts. Law reports are passed by the Supreme Court from time to time known as Burma/Myanmar Law Reports, which become case law which may be cited by the courts.

### **Sources of Local Advice**<sup>11</sup>

**Myanmar Investment Commission (MIC):** The MIC is the agency responsible for reviewing most types of foreign investment and coordinating with concerned government agencies. MIC is a good source of information for foreign investors. MIC moved from Nay Pyi Taw to Yangon on 9 July 2014 to improve access for foreign investors.

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

**Directorate of Investment and Company Administration (DICA):** In 1993 DICA was formed as the administration arm of MIC and Ministry of Planning and Finance (MOPF) (formerly Ministry of National Planning and Economic Development (MNPED)). It has now been transferred to the Minister of Investment and Foreign Economic Relations. Its main functions are to scrutinize and appraise proposed investment projects, monitor and report the implementation of approved projects, and registration and administration of corporate entities. Its main objectives are to (i) increase investments, (ii) encourage private entrepreneurship, and (iii) take part in regional and international cooperation. Effective 1 August 2018, DICA introduced on-line processes for registration of companies and other business.

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

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

### **Foreign Exchange, Remittance and Banking**

There are two main currencies in use in Myanmar:<sup>12</sup>

- **Kyat (MMK):** is the national currency for daily transactions among citizens and visitors in Myanmar.
- **Foreign Currency:** the US Dollar is the preferred foreign exchange currency. Banks will also buy Euros and Singapore dollars. The government allowed banks to exchange Thai Baht and Chinese Yuan on 1 April 2013 and also allowed to exchange Malaysia ringgit by CBM Directive No. 17/2015.

<sup>11</sup> See website of DICA [www.dica.gov.mm](http://www.dica.gov.mm). This website includes a "Myanmar Investment Guide."

<sup>12</sup> On 1 April 2013, Foreign Exchange Certificates (FEC) were phased out (demonetized but exchangeable with USD equivalent).

The Foreign Exchange Management Law was enacted on 10 August 2012, which repealed the Foreign Exchange Regulation Act (1947). The law relaxed exchange restrictions and eliminated the previous practice of having multiple domestic currencies. The Central Bank of Myanmar (CBM) changed the country's exchange rate system from a fixed exchange rate system to a managed market exchange rate with the IMF's technical assistance. Before 1 April 2012, the "official exchange rate" was approximately 6.00 kyat per one US dollar compared to a black market exchange rate of 800 Kyat per one US dollar. On 30 July 2019, exchange rate was Kyat 1,512 per one US dollar.

The government has licensed 3 of the 4 state-owned banks, and 14 of the 24 private banks to offer foreign currency accounts, which can be used to remit foreign exchange abroad. Some restrictions remain on opening such accounts, including documentation requirements showing that the account holder earns a salary in foreign exchange or a receipt from an official exchange currency centre.

Generally speaking, companies in Myanmar who want to remit foreign exchange abroad must (i) seek CBM approval through a local bank to do so, (ii) prove the remittance falls under the permitted circumstances within the law, and (iii) prove that all Myanmar taxes have been paid in respect of the remittance.

As of 27 June 2016,<sup>13</sup> 13 foreign banks had opened branches and commenced business, after having been awarded licenses to operate by the CBM.

### **GENERAL LAWS GOVERNING DOING BUSINESS**

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

#### **Myanmar Companies Act (1914)<sup>14</sup> [Repealed]**

Prior to 1 August 2018, a foreign investor wishing to carry on business in Myanmar through a locally incorporated limited company could register the company under the Myanmar Companies Act, unless the company was a State-owned enterprise or involved the Government as a shareholder, in which case it could also opt to be incorporated under the Special Companies Act (1950).

Under the Myanmar Companies Act (1914), a foreign company, whether a 100% foreign owned, joint-venture or a branch, was required to obtain a Registration Certificate and a DICA permit namely Form of Permit (Form 1). A DICA permit was generally renewable every five years. A joint venture company with a State entity, formed under the Special Company Act 1950, was not required to obtain a DICA permit.

A DICA permit was also issued to MIC promoted companies, which had to be renewed every five years together with the Company Registration Certificate. In contrast, MIC Permits were approved for a long term (fixed number of years with extensions on a case by case basis).

No registration certificate or DICA permit for a foreign trading company (distributing and selling products) were issued or renewed in Myanmar since 2002. The government did not announce any notification of such prohibition until 2017. On 12th June 2017, the Ministry of Commerce published Notification 36/2017 which allows foreign owned companies to import 1) fertilizer; 2) seed; 3) pesticide; 4) medical equipment; and 5) construction materials under certain prescribed conditions. Nowadays, 100% foreign owned companies will be allowed to import and trade these products. On 9 May 2018, the Ministry of Commerce issued Directive 25/2018 which allows foreign ownership of retail and wholesale businesses.

<sup>13</sup> See website of CBM: <http://www.cbm.gov.mm/my/content/1228>

<sup>14</sup> Superseded on 1 August 2018 by the New Companies Act.

A limited company had both memorandum and articles of association. The articles of association could include special voting rights and other minority shareholder protections, which must be approved in writing by DICA as amendments to DICA's format of MoA and AoA. Care had to be taken by foreign investors in prescribing the powers of the managing director, etc. There were no nationality or residence qualifications applicable to directors unless otherwise prescribed in the articles of association.

### New Myanmar Companies Law

The new Myanmar Companies Law (2017) was enacted on 6 December 2017 and came into force on 1 August 2018. It has 476 sections.

DICA issued a draft of Companies Regulations 2018 called Myanmar Companies Rules (Electronic Registry System and Miscellaneous Matters) to be effective 1 August 2018.

The new law changes the way companies are regulated. It will modernize company formation and management, and significantly revise corporate governance in Myanmar, bringing the country's company legislation on par with international common law standards (with an Australian touch).

Following 1 August 2018, all existing companies were required to re-register according to new procedures of DICA.

#### **Change in the definition of foreign companies**

One of the most significant changes is the new definition of "foreign company". In the old Companies Act of 1914, to retain the "local company" status, companies had to maintain a 100 percent local ownership. The new Myanmar Companies Law allows foreign investors to hold up to 35 percent of shares in a domestic company without the company losing its classification as a "local company." It is still uncertain whether a local company with 35% foreign ownership could own or allowed to transfer immovable property in Myanmar, as it conflicts with 1987 Transfer of Immoveable Property Restriction Law.

#### **Amendment to rules related to company administration**

In the past, every company required a minimum of two shareholders and two directors for the incorporation of the company. The new Law reduces this requirement to a minimum of one shareholder and one director, allowing investors to make their Myanmar company a 100 percent owned subsidiary.

A director of the company need not be a Myanmar citizen, but at least one director must be present in Myanmar for a minimum of 183 days in a year to qualify as the resident director of a company.

#### **Other important changes**

**Constitution:** The memorandum of association and articles of association are replaced by a single document, the "constitution." Filings with DICA will be done online.

**Capital management:** The Law allows more flexible capital structures and changes to share capital that will permit companies to raise or reduce capital with fewer procedural requirements.

**Company registration process:** The Law exempts investors from the need to obtain a trade permit (Permit to Trade) from DICA. The change will significantly enhance the ease of doing business in Myanmar.

**Protection to minority shareholders:** The new law introduces more protection to minority shareholders. Companies may also provide other instruments in their constitution that minority shareholders may use to further their interests. Further, the law legally authorizes companies to carry on any business and activities, after obtaining a relevant license, and no longer need to define the objectives of the company in its Memorandum of Association.

**Renewal of Registration Certificate:** The new Law does not require renewal of the registration certificate every five years.

### Corporate Capital Requirements

There are two classes of imported capital that concern foreign investors. First, is the minimum capital required to register a company under the Myanmar Companies Act. Second, is the foreign capital required to qualify for an MIC permit which is based upon the type and size of the project. Companies qualifying for an MIC permit are entitled to the incentives outlined in the MIL. Under the new Companies Act, there are no corporate capital requirements.

A foreign invested Myanmar incorporated company must, at a minimum, have the following capital amount transferred into Myanmar:

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

At least 50% of this capital amount must be deposited into a licensed bank in Myanmar when the company's registration application is approved. The remaining 50% must be imported into Myanmar within five years, prior to the company registration being renewed. The capital may be held in foreign currency accounts and exchanged at market rates. The registration fee for all types of private companies is reduced from Kyat 500,000 to 250,000 with effect from 1 April 2018, and the renewal fee is Kyat 300,000 for a foreign company/branch office.<sup>15</sup>

### Special Company Act (1950)

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

### Labour Laws

A Workplace Safety and Health Law was enacted on 15 March 2019, but will not come into force until issue of a notification. It will apply to all sectors.<sup>16</sup>

Existing labour laws in Myanmar include:

- Employment Restriction Act (1959)
- Employment Statistics Act (1948)
- Factories Act (1951)
- The Law amending the Factories Act (2015)
- Labour Organization Law (2011)
- Leave and Holidays Act (1951), the law amending the Leave and Holidays Act (2014), Leave and Holidays Rules (Notification No 69/2018)

<sup>15</sup> <http://www.dica.gov.mm/>

<sup>16</sup> Lincoln Myanmar Newsletter 59 – 30 April 2019.

- Oilfields Labour and Welfare Act (1951)
- Payment of Wages Law (2016)
- Shops and Establishments Law (2016)
- Workmen's Compensation Act (1923) and its Amendments 1955, 1957, and 2005 and its Rules 1924
- Settlement of Labour Disputes Law (2012)
- Social Security Law (2012), and its Rules
- Payment of Wages Law (2016) and its amendment 2018 Notification No 2018 and its Rules 2018
- Employment and Skill Development Law (2013)
- Law Amending the Settlement of Labour Disputes Law (2014) and its Rules 2014
- Shops and Establishment Law (2016) and its Rules 2018.

These laws govern problems with labour relations and deal with such subjects as work hours, holidays, leaves of absence, woman and child labour, wages and overtime, severance pay, workmen's compensation, social welfare, work rules and other employment related matters. The Social Security Law established a fund with contributions required to be made by employers, employees and the government.

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

The Ministry of Labour, Employment and Social Security (MLESS – current name is the Ministry of Labour, Immigration and Population) has issued an outline of Myanmar Labour Law booklet, which summarizes the above labour laws. The MLESS issued Announcement No. 1/2015 on 31 August 2015 relating to entering into employment contracts between an employer and employee in accordance with the model employment contract which must be used by companies when appointing Myanmar citizen employees. On 1 September 2017, the Ministry issued a new template for model employment contract. See <http://tinyurl.com/ycqjuuqw>. The MLESS issued the Service Pay Order 84/2015, on 3 July 2015 relating to payment of service pay when an employee's employment is terminated by an employer. Regarding minimum wages, the National Minimum Wage Committee announced by Notification on 2 January 2018 that the minimum wage for all employees in Myanmar (for the whole region and all business activities) is 600 kyat (six hundred kyat) per hour and 4,800 kyat for an 8 hour work day. These minimum wage requirements do not however apply to small business and family-run business with less than 15 employees.

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

FIL incorporated companies are required to employ local skilled employees at ratios of:

- 25% within the first two years
- 50% within the second two years
- 75% within the third two years

However, such local hiring ratios are not contained in the New Myanmar Investment Law. The New Myanmar Investment Law does retain provisions on recruitment and capacity building of local employees.

Myanmar has been a member of the International Labor Organization (ILO) since 1948. The Government has ratified 22 ILO Conventions. A Myanmar tripartite delegation comprising with the

representatives of the Government, Employers, and workers attend the ILO conference held in Geneva annually.

### **Immigration Law**

Most foreigners cannot enter Myanmar without a visa, except under a visa on arrival regime (which requires an invitation letter and other documents). A normal tourist visa is valid for 28 days. Foreigners doing business in Myanmar can apply for a business visa permitting trips lasting up to 70 days. Multiple entry business visas are also available. A foreigner wishing to remain in Myanmar more than 90 continuous days must apply to the Immigration Department for a Foreigner's Registration Certificate, which can be extended for a stay of one year with a recommendation letter from the employing company, subject to obtaining a recommendation from the relevant Ministry. The Permanent Residence of a Foreigner Rules was issued on 18 November 2014, which is generally applicable to ex-Myanmar citizens.

### **Intellectual Property (IP) Laws**

The framework for the protection of intellectual property rights in Myanmar is relatively undeveloped and extremely weak. At present, among the existing relevant laws that can be enforced regarding intellectual property rights are laws dealing with both criminal and civil action, which are as follows:

- The Code of Civil Procedure (1808)
- The Myanmar Penal Code of 1860 (Indian Act XLV. 1860)
- The Myanmar Merchandise Marks Act (1889), The Code of Criminal Procedure (1898), The Registration Act No. 16 of 1908 on basic registration system for trade marks (1908)
- The Copyright Act of 1911 (1914)
- The Land Customs Act (1924)
- The Specific Relief Act 1877, as last amended up to Act No. 3 of 1954 (1958)
- The Sea Customs Act No. 8 of 1878, as amended up to Act 1962 (1962)
- The National Drug Law No. 7 of October 30, 1992 (1992)
- Science and Technology Development Law No. 5 of June 7, 1994 (1994)
- The Computer Science Development Law No. 10 of September 20, 1996 (1996), The Traditional Drug Law No. 7 of July 7, 1996 (1996)
- The Television and Video Law No. 8 of 1996 (1996)
- The National Food Law, No. 5 of March 3, 1997 (1997)
- The Protection and Preservation of Cultural Heritage Regions Law No. 9 of September 10, 1998 (1998), and
- Electronic Transactions Laws (2004).

IP laws are in the process of being drafted in accordance with the TRIPS agreement by the Office of the Attorney General with the co-operation of the ministries concerned and experts from various sectors. In light of IP Laws, with the World Intellectual Property Organization (WIPO), it was reported by local press that the following acts were expected to be enacted and enforced in 2014. They are still pending, except as noted below.

In June 2015, draft IP laws comprising of Copyright Law, Patent Law, Trademark Law and Industrial Design Law were published in a daily newspaper and public comments were invited. The draft IP laws empower the Union Supreme Court to establish an IP office and courts, and will provide significantly more protection to investors in terms of their IP, including protections on IP registered in other nations which are members of IP protection treaties.

- **Utility and Designed Patents:** The Myanmar Patent and Design Act 1939 and Myanmar Patent and Design Act 1945 were repealed by the Myanmar Patent and Design (Emergency Provisions) Act 1946. A new Patent Law was enacted on 11 March 2019, but will not enter

into force until issue of a notification.

- **Technology and Licensing:** The 1994 “Science and Technology Development Law” prescribes some salient terms and conditions to be contained in contracts for technology transfers and provides that the provision relating to technology transfers shall not apply to the transfer of rights in patents and designs.
- **Trademarks:** Prior to 30 January 2019, there was no specific law on trademarks in Myanmar. There was no statutory provision regarding the registration of trademarks. In the case of trade, property and other marks, criminal legal provisions contained in the Penal Code were used for determining the solution of such cases. A trademark owner could file a declaration of ownership of his trademark at the office of the Registration of Deeds under the Registration Act. If applicable, assignments could be filed at the same time. A Trademark Law and an Industrial Design Law were enacted on 30 January 2019, but will not enter into force until issue of a notification.<sup>17</sup>
- **Copyright and Trade Secrets:** The existing Myanmar Copyright Act came into force in 1914. In practice, although there is existing law in Myanmar, we are not aware of any legal proceedings in the Civil Courts. The Civil Courts have no experience in handling copyrights cases. A new Copyright Law was enacted on 24 May 2019, but will not enter into force until the issue of a notification. The same is true of Trade Secrets – there are no specific laws or practices in place.

### Land Laws

#### Restrictions on land ownership

Foreigners may not currently purchase land in Myanmar. However, foreigners in joint ventures with Myanmar citizens may lease an office or commercial building pursuant to MIC Notification No. 26/2016.

Before 30 September 2011, foreigners and foreign companies were not allowed to buy land in Myanmar or lease land for a term exceeding one year unless specifically permitted by the Government according to the Transfer of Immovable Property Restriction Law of 1987. There are exceptions for diplomatic missions and transfers if required for the benefit of the State. A company approved under the FIL or MIL was allowed to sign a long-term lease of land, and such long-term lease could be stamped and registered at the Deed Registration Office to secure the foreign investors’ rights.

On 30 September 2011, the Government issued Notification No. 39/2011 (Notification on Right to Use of Land relating to the Republic of the Union of Myanmar Foreign Investment Law). This Notification allowed a foreign company with MIC approval to lease land up to an initial 30 years based upon the permitted investment term, which is extendible twice for another 15 years. Under the FIL enacted on 2 November 2012, and the new MIL, a 50 year initial lease period may be permitted which may be extended for another 10 years twice depending on the type of business, industry and the amount of investment. Under the Myanmar Special Economic Zone Law, investors may secure land leases or permissions for use. The initial period granted is 50 years. If the investor is desirous of continuing to operate after the expiry of the permitted term, it may renew for another 25 years under certain approvals.

<sup>17</sup> Lincoln Myanmar Newsletter 59 - 30 April 2019.

### **Land for property development**

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

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

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

A Condominium Law was enacted on 29 January 2016. According to the Condominium Law (2016), a foreigner can buy a housing unit of condominium on a certain limit prescribed by the Condominium Law.

### **Mining Laws**

Prior to 1990, the mining sector was open only for State investment. With the introduction of the FIL, foreign investment was introduced into the mining sector. As the old mining laws were out of date, the Government promulgated the Myanmar Mines Law (1994), Myanmar Gemstone Law (1995), the second amending law of the Myanmar Gemstone Law and the Myanmar Mines Rules (1996). The law amending the Myanmar Mines Law was issued in December 2015. The Mine Rules were published in Notification No. 13 (2018) dated 13 February 2018.

Since the nature of the mineral industry is capital intensive and also requires technical know-how, foreign participation is invited in large scale mining projects. Mining rights are granted in the form of production sharing contracts or profit sharing concessions.

A foreign investor can apply to the Ministry of Natural Resources, Environmental Conservation and Development Affairs (former Ministry of Mines and Ministry of Environmental Conservation and Forestry were merged into one Ministry) in order to obtain a permit under the following categories in accordance with the law amending the Myanmar Mine Law (2015):

- Prospecting, exploration, feasibility study, large scale production, processing or selling and purchasing of mineral, industrial mineral and stone.

On July 26, 2018, the Department of Mines at MONREC began accepting applications from local and international companies.

### **Oil and Gas Laws**

Current legislation governing oil and gas includes:

- The Oilfields Act (1918)
- The Oilfields Rules (1936)
- The Petroleum Act (1934)
- The Petroleum Rules (1937)
- The Essential Supplies and Services Law (Law No. 13/2012)
- The Water Power Act (1927)

- The Petroleum Resources (Development Regulation) Act (1957). Law Amending the Petroleum Resources (Development Regulation) Act (1969)
- Oilfield (Workers and Welfare) Act (1951), and
- The Myanmar Petroleum Concession Rules (1962), mostly based upon British Law Codes of the pre-independence and Indian statutes.

Notifications are also issued from time to time as a guideline from the Ministry of Electricity and Energy (formerly Ministry of Energy). A new petroleum law, the Petroleum and Petroleum Products Law was published on 1 August 2017.

A draft new petroleum law was issued in October 2018. This draft law would govern the up-stream oil and gas sector, and repeal the 1957 Petroleum Resources (Development and Regulation Act).

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

Although the above-mentioned laws relating to petroleum are still applicable, in practice, investors generally enter into production sharing contracts, performance compensation contracts, or improved petroleum recovery contracts with MOGE, the terms and conditions of which govern the process so long as they are not contrary to the laws in force. A foreign investor is required to partner with a local Myanmar company for onshore and shallow water blocks. On 9 July 2011 bidding for onshore blocks was opened, resulting in the award of 10 blocks to 8 companies in January 2012. Another round of bidding for 18 additional onshore blocks was announced on 17 January 2013 resulting in the award of 16 blocks to 11 companies in October 2013. On 11 April 2013, MOGE announced a new round of offshore bidding, consisting of 11 shallow water blocks and 19 deep water blocks, resulting in the award of 20 blocks to 13 companies in March 2014.

According to the Oil and Gas Planning Department announcement on 31 August 2018, a new round of bidding for one onshore block was to be called before the end of 2018 but was not. Additional rounds of bidding for offshore and other onshore fields was to be called in the first and second quarters of 2019, but have not been called.

### **Tax Laws**

Per Myanmar’s plan to update tax rates annually, the Union Tax Law is published annually. 2018 Union Tax Law was published on 30 March 2018, to become effective from 1 April 2018. The new law includes certain adjustments to existing personal, commercial and capital gains tax rates.

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

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

## Income Tax Law (1974)<sup>18</sup>

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

The income tax rates that were enacted in March 2014 remained unchanged under the 2018 Law, which reduced tax brackets from 12 to 5 (the top rate is still 25% for Myanmar companies and 25% for branches of foreign companies under the new law), the threshold for capital gains is now denominated by Myanmar currency rate, except those in the oil and gas sector. Thresholds have been raised to MMK 10 million, and capital gains taxes for non-residents are reduced to 10% under the new 2018 Law. Other rates under the 2018 Union Law, including harmonized stamp duty for documents in foreign and domestic currency, and payment of income tax before the end of each quarter instead of monthly remain the same.

- **Resident and non-resident foreigners**

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

- in the case of an individual, a foreigner who lives in Myanmar for not less than 183 days during the income year;
- in the case of a company, a company formed under the Myanmar Companies Act or any other existing Myanmar law;
- in the case of an association of persons, other than a company, an association where the control, management and decision-making of its affairs are situated and exercised wholly within Myanmar; and
- any enterprise or individual permitted under the MIL.

A foreigner or a foreign organization which does not satisfy the relevant criteria listed above is classified as a “non-resident”. A branch of a foreign incorporated company registered in Myanmar under the Companies Law is considered a “non-resident” for the purposes of taxation. Non-residents are subject to a flat taxation rate of 25%. All Citizens and Resident Foreigners are obliged to pay income tax in accordance to the schedule announced by the Ministry of Finance, Notification No. 107/2012 on 15 March 2012. Under section 19 of the 2018 Union Tax Law, the tax ranges from 0 % to 25% depending on the individual salary. Short term employees working for companies with MIC Permits can pay the tax rate applicable to tax residents, even if they remain for less than 183 days. The corporate income tax rate applicable to companies incorporated in Myanmar is 25%.

- **Withholding Tax**

The Ministry of Finance and Planning issued Notification No. 47/2018 on 18 June, 2018 which prescribes a withholding tax rates as follows:

- **Interest:** No withholding tax for interest paid to residents and resident foreigners but 15% for non-resident foreigners;
- **Royalties for the use of licenses, trademarks and patent rights:** 10% on payments to residents, 15 % to non-resident foreigners;
- **Payments for work done by foreign contractors:** 2.0% on payments to residents and 2.5 % to non-resident foreigners; and

<sup>18</sup> As amended by the Law Amending the Income Tax Law (1989); the Law Amending the Income Tax Law (1991); the Law Amending the Income Tax Law (2006); and The Union Tax Law 2018.

- **Payments made to contractors for goods and services performed in the Union or purchase of goods from the Union:** 0% on payments to residents and 2.5% to non-resident foreigners.

### **Commercial Tax (1990)**

The Union Tax Law 2018 prescribes commercial taxes from 5% to 120% depending upon different goods and services businesses. The application for registration must be in the prescribed form and filed one month before the commencement of business. Irrespective of the level of its sales at any time, a registered enterprise is required to comply with all the provisions of the law including submitting returns, paying tax monthly and keeping records, until its name is removed from the register. Only registered enterprises are allowed to deduct input taxes incurred on their purchases.

Schedule 7 of Notification No. 117/2012 prescribed commercial tax at 5% on 14 types of business activities. Amendments to the Commercial Tax Law became effective on 1 April 2015, which included 23 services businesses that are exempt from commercial tax (a reduction from 26 in 2014). Under the Union Tax Law 2018, 30 services businesses are exempt from commercial tax. The range of rates under these amendments remains the same, but the list of taxable goods changed. The threshold for tax exemption increased from MMK 15Million to MMK 20Million under the 2015 Law.

### **Special Commodity Tax Law (2016)**

According to the Special Commodity Tax Law, various kinds of cigarettes, tobacco, Virginia tobacco, cheroots, cigars, pipe tobacco, betel chewing preparations, various kinds of liquor, beer, wine, teak, hard wood jewellerys, jades, rubies, sapphires, emeralds, diamonds and other gems and petrol, diesel, aviation jet fuel, natural gas and van above 1,800 cc except Double cab, Pick up, saloons, sedans and estate wagons and coupes are included in the special commodities.

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

Myanmar currently has double taxation treaties with India, Laos, Malaysia, Singapore, South Korea, Thailand, United Kingdom, and Vietnam. Treaties with Bangladesh and Philippines are pending ratification.

## **INVESTMENT PROMOTION LAWS**

### **New Myanmar Investment Law**

Drafted in consultation with the International Finance Corporation (IFC), the new Myanmar Investment Law (2016, No. 4) was enacted on 18 October 2016.

The new Investment Law combined and replaced the Myanmar Citizens Investment Law 2013 and Foreign Investment Law 2012.

A brief summary of certain of the key changes under the New Investment Law follow below.

### **MIC Application Process**

The MIC prescribes no minimum amount of foreign capital required under the Myanmar Investment Law for the business activity. Under the old FIL, minimum foreign capital required was USD 500,000 for an Industry Company and USD 300,000 for a Services Company. However, under the new MIL, the MIC considers whether the proposed capital investment is sufficient to justify the incentives under the MIL. US\$ 150,000 is the minimum for an MIC permitted company. At present, MIC does not generally approve service companies.

- **MIC Permit/Endorsement**

The MIL introduces a new investment licensing regime, under which investments can now receive ‘approval’ from the MIC in one of two ways: either (i) by obtaining an MIC permit, similar to the process under the previous investment regime, for more significant investments meeting certain criteria stipulated by the MIC, or (ii) by obtaining an ‘Endorsement’, for less significant investments which do not fall within the criteria for requiring an MIC Permit but desire a land lease over 1 year and tax relief or incentives.

The application procedure for obtaining an endorsement (**Endorsement**) is designed to be faster and less cumbersome than the procedure for obtaining an MIC Permit. However, in practice this has not always proved to be the case. On 23 July 2019, the Ministry of Investment and Foreign Economic Relations issued Notification No. 37/2019, setting out additional matters required to be submitted as part of an MIC Permit or Endorsement application.

- **MIC Permit:**

An MIC permit (**MIC Permit**) must now only be applied for if the proposed investment falls within one of the following categories:

- activities that are ‘strategic’ for the Union;
- large capital intensive investment projects, being projects with an expected Investment value exceeding USD 100 million;
- projects with large potential impact on the environment and the local community;
- activities using state-owned land and buildings, subject to certain exceptions; and
- activities which are designated by the government to require the submission of a proposal to the Commission, including (i) investments in more than one state or region of Myanmar, and (ii) investments in activities specified in Notification 15/2017 (prohibited and restricted list of activities) as requiring approval of a specific Ministry.

### **MIC Endorsement**

If investors want to lease land or buildings up to an initial period of 50 years plus two 10 year extensions, or desire tax exemptions and incentives, but the investments do not fall within the MIC’s criteria for requiring an MIC Permit (described above), an Endorsement can be applied for.

An Endorsement is obtained pursuant to the procedures and process prescribed in Chapter VII of the Rules.

The application process is less rigorous than that needed for an MIC Permit, thereby in theory making the investment approval process easier for an MIC Endorsement – however time will tell how this new process will play out in practice, and whether or not it will be easier than obtaining an MIC permit under the old regime.

Foreign capital may be imported in the following forms:

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

- Foreign loans if approved by MIC and the Central Bank of Myanmar (“CBM”).

### **Tax Incentives**

Tax holidays and incentives are no longer automatic, and instead depend on the geographic location of the investment, the sector, and it appears to some extent, MIC’s discretion.

- Investors must apply to MIC separately for any tax exemption. A new zoning system is introduced, pursuant to which investments in certain regions or zones (the locations and details of which have not yet been issued) may be granted different corporate income tax exemptions. Under the new zoning system:
  - Zone 1 (representing the least developed areas of Myanmar), will attract the greatest potential income tax holiday of up to 7 years;
  - Zone 2 will attract an income tax holiday of up to 5 years; and
  - Zone 3 (representing the most developed areas of Myanmar) attracts the shortest potential income tax holiday of up to 3 years.
- Tax exemptions granted will also depend on whether the relevant project falls within a ‘promoted sector’. In exercise of the power conferred under section 43 and sub section (b) of Section 100 of the Myanmar Investment Law, the Myanmar Investment Commission has prescribed the investment sectors with the approval of the Union Government on by Notification No. 13/2017 on 1<sup>st</sup> April, 2017.

### **Land use rights**

This basic prohibition that foreign invested companies cannot lease premises for more than one year still applies, with the following exceptions:

- A lease of up to 50 years, with option for two 10 year extensions, may be granted to MIC Permit holders and MIC Endorsement holders.
- Longer lease terms may also be granted in ‘less developed and remote regions’, although the details of this are not yet clear.

### **Remittance of Funds**

The New Investment Law clarifies the categories of funds which may be remitted offshore, provided that the company remitting the funds has complied with all tax obligations in respect of the funds transfer.

### **Expropriation Guarantee**

The new law expressly contains a guarantee against expropriation, as well as nationalization, although exceptions have also now been set out in the law, including for public interest.

### **Employment**

Foreign investors now appear to have more flexibility in their approach to employees, since the required local employee hiring ratios of FIL have been deleted.

The new law however retains provisions on recruitment and capacity building of local employees.

**Myanmar Special Economic Zone Law**

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

MSEZL Rules were issued on 27 August, 2015.

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

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

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

- 100% Foreign Ownership;
- The right to lease land for [up to] 50 years, with a 25 year renewable period;
- Income tax exemption for the first seven years from the commencement of the commercial operation in “Free Zones” and for “Free Zone Businesses”;
- The first 5 years income tax exemption for [investment businesses] in “the Promotion Zones” or other businesses in the boundary of the SEZ, from the commencement of the commercial operation;
- For the investment business within the Free Zone and the Promotion Zone, there shall be 50% relief on the income tax rate stipulated under the existing law for the second five years; for the investment business within the Free Zone and the Promotion Zone there shall be 50% relief of the income tax rate stipulated by the existing law for the third five years on the profit which is obtained from the business if it is reinvested within one year in the business as a reserve fund;
- No customs duties:
  - in “Free Zones”;
  - for materials and equipment used during construction, and exemptions or relief for other imported materials or equipment;
- “Investors” will pay customs on raw materials and goods used for production but can apply for reimbursement if the finished goods are used in the SEZ;
- The right to carry forward losses for five years after they were sustained;
- Certain reliefs and exemptions from value added tax (VAT) and Commercial tax; for example an investor situated in a Free Zone may be given exemption of the commercial tax or VAT; the investor may apply for the exemption of commercial tax or VAT for manufactured goods which will be exported;
- Investors operating within a Free Zone may apply for an exemption for import tax or VAT for the goods imported from the local or Promotion Zone to the Free Zone;
- Except for goods which are prohibited and restricted by the Union Government, the goods exported directly or indirectly or re-exported from the SEZ are entitled to exemption of taxes and other assessments;
- Developers and investors may apply the exemption of income tax for the dividends distributed to shareholders based on the profits accrued locally for which tax has been paid;
- Right to open foreign currency accounts with approved banks;
- A guarantee that the investment business in the SEZ shall not be nationalized during the permitted period.

As of October 2016 there are five SEZ's announced: Thilawa, KyankPhyu, Dawei, Kokang and Myawaddy SEZ. Of the five SEZ's, Dawei and KyankPhyu are in various phases of development, while Thilawa has commenced operations.

- On 3<sup>rd</sup> October 2014, MIC issued Notification No.59/2014 and demarcated the boundary of Kokang Economic Zone in Shan State.
- On 17<sup>th</sup> July 2015, MIC issued Notification 62/2015 and demarcated the boundary of Myawaddy Economic Zone in Karen State.

On 1<sup>st</sup> October 2014, the Ministry of Planning and Economic Development issued the Notification 81/2014 as Thilawa Special Economic Zone Regulations.

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

- The Thilawa project is a joint venture between Myanmar and Japanese investors with Myanmar owning 51 percent and Japan 49 percent. The Thilawa project involves construction and development of textile, manufacturing and high-tech industries, as well as a deep-sea port. The project was started in November 2013 and Myanmar-Japan Thilawa Development Limited (MJTD) was established to develop the project. Phase 1 of the project opened for operations in October of 2015. Phase 2 is expected to be operational by July of 2016.
- The Kyaukphyu Special Economic Zone serves a port and an oil and gas terminal and is [located at the] western end of pipelines linking Myanmar and China. There are further plans for this SEZ. A Singapore firm has been appointed consultant. Construction is expected to begin in 2016. This project is attracting several Chinese investors due to its favorable trade location between China and India.
- On 17 June 2013, Myanmar and Thailand signed an agreement to create the Dawei SEZ Development Co (DSEZ). Three memoranda of understanding were signed between Thailand and Myanmar in November 2013 creating 50/50 investment in the project and transferring the Dawei concession from Italian-Thai Development Plc (ITD) to DSEZ. The project is presently seeking further investment. Construction was delayed for several years. On 4 July 2015, the Japanese government signed an MOU with Myanmar and Thailand to invest and provide knowhow for the project.
- Seven local industrial zones in Nay Pyi Taw, Mandalay, Kayin, Rakhine, and Shan states are to be created under the MSEZL.

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

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

- extraction and sale of teak in Myanmar and abroad;
- cultivation and conservation of forest plantation (with some exceptions);
- exploration, extraction and sale of petroleum and natural gas and production of products of the same;
- exploration, extraction or export of gems;
- breeding and production of fish and prawns in fisheries which have been reserved for research by the government;
- post and telecommunications services;
- air transport and railway transport services;

- banking and insurance services;
- broadcasting and television services;
- exploration, extraction or export of metals;
- electricity generating services other than those permitted by law and cooperative electricity generating services; and
- manufacturing of products relating to security and defense.

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

### **Regulation of Manufacturing**

Manufacturing businesses in Myanmar are regulated by the Ministry of Industry<sup>19</sup>, which is responsible for directing and promoting industrial investment and production of consumer goods and other light industrial products.

A variety of consumer goods are produced by State-owned factories, including: textiles and garments, foodstuffs and beverages, pharmaceuticals, soap and toiletries, enamel wares, aluminum wares, steel products, cement, marble and porcelain wares, rubber goods, leather, packing materials, pulp, paper and paints, jute and carpets..

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

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

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

The Private Industrial Enterprise Law provides:

- joint ventures with the Government/State-owned economic enterprises are specifically exempted from the Private Industrial Enterprise Law;
- all private individuals and entities (whether 100 percent foreign-owned, locally owned or a joint venture) operating an enterprise in a building or buildings which produces finished goods from raw materials using any form of power must apply for registration with the Ministry of Industry in the manner prescribed by the Private Industrial Enterprise Law;
- the Ministry may impose conditions on the registration (particularly with regard to technology transfer and pollution controls) and the registered private industrial enterprise is required, among other things, to comply with the orders and directives issued by the Ministry from time to time; and
- the Minister of the Ministry of Industry has wide discretion to suspend or cancel the registration “if it is necessary in the interests of the State.” Also, the registration will become invalid upon the enterprise being terminated under any other law.

### **Myanmar Citizens Investment Law (2013) [Repealed]**

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

<sup>19</sup> Ministry of Industry No.(1) and Ministry of No.(2) was newly combined as Ministry of Industry, in 2012, 4<sup>th</sup> April, by Meeting No. 13/2012 of the Union Government.

The New Investment Law supersedes the Myanmar Citizens Investment Law and the Foreign Investment Law. See the section above for further brief details of the New Investment Law.

### **Arbitration**

Myanmar deposited its instrument of accession without reservations to become a contracting state of the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, which became effective on 15 July 2013.

The new Arbitration Law, No. 5/2016 was enacted on 5 January 2016, and revoked the old Arbitration Act 1944, which did not recognize arbitration abroad. The new law is based on the UNCITRAL model law, and allows enforcement of foreign arbitral awards in Myanmar on certain conditions.

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

Myanmar became a member of ASEAN in 1997, and is obliged to ratify 14 key agreements prescribed by ASEAN. The ASEAN Comprehensive Investment Agreement became effective on 29 March 2012, which provides for fair and equitable treatment and lays the foundation for possible cross-border dispute resolution mechanisms between member states, as well as directives for dispute resolution, including arbitration, among member states.

As a matter of government policy, most contracts between State-owned enterprises and foreign companies specify Myanmar law as the governing law, and prescribed that disputes be settled by arbitration under the Arbitration Act 1944.

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

### **Investment Promotion Treaties**

Myanmar has bilateral investment treaties with China, India, Japan, Laos, the Philippines, Thailand, Vietnam, Republic of Korea, Kuwait, Indonesia, Israel and United States of America. Among others, benefits under these investment treaties include dispute resolution mechanisms, limitation on expropriation of assets, most favored nation status and the ability to transfer investment and returns more freely.

The ASEAN Comprehensive Investment Agreement governs intra-ASEAN investment (effective April 2012). This agreement is forward thinking, and aims to liberalize investment regimes in and among ASEAN members.

**ADDRESS OF MAIN OFFICES FOR INVESTMENT IN MYANMAR****GENERAL:**

MYANMAR INVESTMENT COMMISSION OFFICE (MIC)  
DIRECTORATE OF INVESTMENT AND COMPANY ADMINISTRATION (DICA)  
MINISTRY OF PLANNING AND FINANCE

Website: [www.dica.gov.mm/](http://www.dica.gov.mm/)

**FOR COMPANY REGISTRATION:**

COMPANY REGISTRATION OFFICE  
DIRECTORATE OF INVESTMENT AND COMPANY ADMINISTRATION (DICA)  
MINISTRY OF PLANNING AND FINANCE  
Building No.1, ThitSar Road, Yankin Township,  
Yangon, Myanmar  
Tel: 95-1-657891. Fax: 95-1-657825. Office:  
Website: [www.mnped.gov.mm/index.php](http://www.mnped.gov.mm/index.php)

**FOR EXPORT & IMPORT:**

EXPORT IMPORT REGISTRATION OFFICE  
DIRECTORATE OF TRADE  
MINISTRY OF COMMERCE  
Building No. 3, Nay Pyi Taw  
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**About Myanmar Legal Services Limited**

**Myanmar Legal Services Limited (MLSL)** has been in practice since 1998. The firm offers a broad range of legal advice and assistance on local and international commercial transactions, and on doing business in Myanmar.

The firm is committed to providing high quality, cost-effective legal services that achieve client business objectives – in every transaction.

**MLSL** was recognized as a Top Ranked/Leading Firm by international commentators: by The Legal 500 Asia Pacific 2018 as a Top Tier Firm, by IFLR1000 (Financial & Corporate) 2018 as a Top Tier Firm, by Asialaw Profiles 2018 as an Outstanding Firm, and by Chambers and Partners Asia-Pacific 2018 as a Top Ranked/Leading Firm.

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**Daw Khin Cho Kyi**, the firm’s Managing Director, is ranked by Asialaw Profiles 2019 as a Market Leading Lawyer (Energy & Natural Resource), by Chambers & Partners Asia-Pacific 2019 as a Leading Individual (General Business Law), by IFLR 1000 2019 as a Highly Regarded Lawyer (Financial & Corporate/M&A/Project Development), by IFLR 1000 2018 as a Highly Regarded Lawyer (Energy & Infrastructure), and by The Legal 500 Asia Pacific 2018 as a Leading Individual.

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