

I. RELEVANT LEGISLATION

1. INVESTMENT ACT

- *The Union of Myanmar Foreign Investment Law (November 1988)*

Contributes towards attracting foreign capital inflows, with the following main objectives:

- Promotion and expansion of exports;
- Exploitation of natural resources requiring substantial amounts of capital;
- Technology transfer activities;
- Development of energy conservation activities;
- Regional development;
- Creation of more employment opportunities

According to the Foreign Investment Law, foreign investment in Myanmar can take one of the following three forms:

1. Sole proprietorships, partnerships, limited companies, or wholly foreign-owned subsidiaries. A partnership firm or a limited company incorporated outside Myanmar can conduct business as a foreign branch by bringing in the total capital required by such a branch.
2. Production sharing contracts with one of the state-owned economic enterprises (SEEs) for exploration, extraction and sale of petroleum and natural gas and mining operations.
3. Joint ventures, either as partnerships or limited companies with any individual, firm, cooperative, or state-owned enterprise of Myanmar.

- *Procedures relating to the Union of Myanmar Foreign Investment Law (December 1988)*

A foreign investor who intends to invest in Myanmar is required to apply a permit from the MIC (Myanmar Investment Commission) if he

wishes to be considered for incentives and exemptions under the Foreign Investment Law. The application procedure is as follows:

A potential investor, or promoter, must submit the investment proposal to the MIC in a prescribed form, which can be obtained from the MIC at the following address:

**653, 651 Marchant Street, Pabardon Township,
Yangon, Myanmar.**

The investment proposal has to be supported by the following documents:

- business profiles and documents supporting financial credibility such as the latest audited accounts of the person or the firm intending to make the investment,
- bank reference and recommendation regarding the potential foreign investor's business standing; and
- detailed calculation relating to the economic justification of the proposed project indicating :
 - the estimated annual net profit, annual income and expenditure statement;
 - annual production services, annual cash flow statement;
 - the estimated annual foreign exchange earnings and requirements;
 - recoupment period;
 - prospects of creating employment;
 - prospects of increasing national income;
 - local and foreign market conditions;
 - requirement for local consumption;
 - prospects of foreign exchange savings.

Notes:

- i. If the proposed project is a 100% direct foreign investment, a draft contract executed with a State organisation that is

responsible for the smooth operation of enterprise in the respective field must also be attached;

- ii. If the proposed project is a joint-venture, a draft contract between the foreign investor and the local counterpart must also be attached;
- iii. If the proposed project involves leasing of land, a draft lease agreement must also be attached; and
- iv. If the proposed joint-venture in Myanmar is in the form of a limited liability company, a draft Memorandum and Articles of Association must also be attached.

If the proposal meets all the requirement set out in the Foreign Investment Law, the MIC will issue a permit ("MIC permit") with stated terms and conditions.

2. COMPANIES ACT

- *The Myanmar Companies Act (1914)*

Administers private and public companies.

- *The Myanmar Companies Rules (1940)*

Provides the rules and regulations for the liquidation of private and public companies.

- *Special Company Act (1950)*

Specially promulgated for the incorporation of private and public companies in which the State has an equity.

3. INCENTIVES / EQUITY

If a joint venture is formed under the Foreign Investment Law, at least 35% of total equity could be owned by foreign investor.

4. MINIMUM INVESTMENT LEVEL

- US\$ 500,000 for manufacturing;
- US\$ 300,000 for services.

5. OTHER LEGISLATION

- ***The Myanmar Partnership Act (1932)***

Administers the partnership enterprises and registration of partnership.

- ***Immovable Property Restriction Law (1987)***

This Law prohibits the transfer of immovable property from foreigners to citizens, and vice versa.

- ***The Co-operative Society Law (1992)***

Reforms co-operative societies to be in line with the market economy.

- ***The State-Owned Economic Enterprises Law (1989)***

Identifies areas of economic activities that shall be solely undertaken by the State sector.

(See Section III.2 on Restriction)

- ***Law Relating to Fishing Rights of Foreign Vessels (1989)***

Focuses on the conservation of marine and freshwater fisheries to enable systematic operation in fishery activities.

- ***Law Relating to Aquaculture (1989)***

This Law encourages wider participation of foreign investors and it promotes exports in the aquaculture activity.

- ***The Myanmar Tourism Law (1990)***

Promotes the development of hotels and the tourism industry.

- ***Commercial Tax Law (1990)***

Replaces the commodity and services tax for better coverage of taxes.

- ***The Central Bank of Myanmar Law (1990)***

Streamlines the monetary policy and extend banking services.

- ***Myanmar Marine Fisheries Law (1990)***

This is to encourage wider participation of foreign investors and to promote exports.

- ***Fresh Water Fisheries Law (1991)***

This is to encourage wider participation of foreign investors and to promote exports.

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

Consolidates and promotes large, medium and small scale private industries.

- ***Procedures relating to the Private Industrial Enterprise Law (1991)***

- ***The Tariff Law (1992)***

Streamlines the custom tariff rates.

- ***Myanmar Hotels and Tourism Law (1993)***

Promotes the development of hotels and tourism industry.

- ***The Myanmar Insurance Law (1993)***

Replaces the Insurance Business Law of 1975 and for wider coverage of insurance activities.

- ***The Science and Technology Development Law (1994)***

Promotes science and technology and co-operation with research institutes and high-tech oriented organisations.

- ***The Protection of Wild Life and Wild Plants and Conservation of Natural Areas Law (1994)***

Deals with the enforcement and implementation of policy regarding the protection of wildlife and natural plants and conservation of natural areas.

- ***The Myanmar Mines Law (1994)***

This Law relates to the development of mineral prospecting and exploration works to enhance production of minerals and promotion of exports. It also aims to enforce and implement mineral resources policy effectively and also for environmental conservation.

- ***Myanmar Citizens Investment Law (1994)***

Promotes the inducement of domestic investment so as to lead to promotion of production and exports by the private sector.

- Myanmar Pearl Law (1995)

Implements the policy of the Government relating to pearl production and marketing. It also encourages and supervises the development of pearl production, and protects and conserves water area of oyster fishing grounds from destruction and oysters from extinction.

- Myanmar Gems Law (1995)

The Law promotes the development of gems and jewelry market in Myanmar, while at the same time enforces and implements the policy to regulate the trading of precious stones.

- The Insurance Business Law (1996)

Facilitates wider coverage of insurance business in Myanmar to meet the growing demand for more sophisticated insurance needs in the country.

II. APPLICATION

1. AGENCY/IES INVOLVED IN ADMINISTERING INVESTMENT APPLICATION AND GRANTING OF INCENTIVES

The Myanmar Investment Commission (MIC)

MIC was established to be the initial approving authority for foreign investment activity in the country. Its major responsibility is to evaluate foreign investment proposals. It also has the authority to stipulate terms and conditions of investment permits and evaluate foreign investment situations.

2. CONDITIONS INCLUDING TIMETABLE FOR PROCESSING OF APPLICATION

The following are the application procedures:

- A promoter for foreign investment shall submit a proposal in the prescribed form to MIC. The MIC will issue a Permit if the proposal is approved.
- If the approved economic activity is to be formed as a limited company, it must apply for Permit to Trade from the Ministry of National Planning and Economic Development through the Company Registration Office.

- After being granted a Permit to Trade, the company must be registered with the Company Registration Office under the Ministry of National Planning and Economic Development.
- A company involved in foreign trade has to apply for registration as an exporter/importer with the Ministry of Commerce.

The duration for processing an application will take 4-6 weeks if the documents are in order and complete Proposal Form attached. (Refer to Section 1 “Procedures relating to ***the Union of Myanmar Foreign Investment Law***”).

III. PROMOTED AREAS/SECTORS

PROMOTED FIELD/SECTORS

- A. The types of economic activities allowed for foreign investment, as appeared in ***MIC Notification No. 1/89***, are classified into 9 sectors:
- Agriculture
 - Livestock and Fishery
 - Forestry
 - Mining
 - Industry
 - Foodstuff
 - Textile
 - Personal Goods
 - Household Goods
 - Leather Products and the Likes
 - Transport Equipment
 - Building Materials
 - Pulp and Paper
 - Chemicals, Chemical Products and Pharmaceuticals
 - Iron and Steel
 - Machinery and Plant
 - Construction
 - Transport and Communication
 - Trade
 - Economic activities mentioned in section 3 of the ***State-owned Economic Enterprises Law***, provided permission has been obtained under section 4 of the said Law.

- B. If **investment** proposals not specified in the above mentioned list are submitted, they will be considered on a case-by-case basis by MIC.

IV. **FOREIGN EQUITY POLICIES**

EQUITY REGULATIONS

- 100% foreign equity ownership is allowed **according to the Foreign Investment Law (without any condition)**
- Foreign investor may enter into a joint venture, either as a partnership or a limited company with any individual, firm, co-operative, or State-owned enterprise of Myanmar
- **In the case of** a joint venture, the foreign capital must be at least 35% of the total equity capital.

V. **INCENTIVES**

1. CORPORATE INCOME TAX / INCOME TAX ALLOWANCE

Foreign investors are granted a minimum of 3 year corporate income tax exemption, extendible on a case-by-case basis.

2. EXEMPTION FROM OR REDUCTION OF TAXES ON IMPORTED CAPITAL GOODS

The Union of Myanmar Foreign Investment Law 1998 grants exemption from customs duty and other internal taxes on imported capital equipment and materials during the construction, exploration and development period **of the investment project**.

During the construction period as mentioned in the proposal form or extended construction period approved by MIC, the investor can enjoy this exemption.

3. EXEMPTION FROM OR REDUCTION OF TAXES ON IMPORTED RAW MATERIALS

During the first 3 years of commercial production and operational period, exemption from customs duty and other internal taxes on imported raw materials is granted.

The investor has to inform MIC the commenced date of commercial operation for approval. After getting MIC approval, the investor can enjoy the exemption on imported raw materials.

It is necessary to mention the performance of the project in applying the above incentives.

4. OTHER INCENTIVES (I.E. GRANTS, DOMESTIC LOANS, SUBSIDIES, ETC.)

Other incentives are also provided such as:

- Exemption or relief from income tax on profits which are maintained in a reserved fund and re-invested within one year.
- Right to accelerate depreciation.
- Relief from income tax up to 50% on the profits accrued from exports.
- Right to pay income tax on behalf of the foreigners employed and to deduct the same from the assessable income of the enterprise.
- Right to pay income tax of the foreign employees at the rates applicable to the citizens of Myanmar.
- Right to deduct the expenditures for research and development carried out within the State.
- Right to carry forward and set off losses up to 3 consecutive years, from the year the loss is made.

VI. TAXATION

1. CORPORATE TAX

Corporations incorporated in Myanmar are treated as resident and taxed at the rate of 30% on income accruing or arising in Myanmar and outside of Myanmar.

2. VALUE ADDED TAX/SALES TAX

Commercial Tax is payable on goods, imported or produced in Myanmar, trading sales, and services ranging from 0%-200%.

3. WITHHOLDING TAX

Withholding tax rates are dependent on the types of payments (interest, royalties, and payment for the work done under different kinds of organisations), and could range from 3.5 % to 15 %.

There is no withholding tax on dividends.

Payments on income such as interests, royalties, and on contracts are subject to the different following rates of withholding tax:

- Interests:
 - For resident citizens and resident foreigners= 15%
 - For non-resident foreigners= 20%
- Royalties for the use of license, trade marks, patent rights, etc.:
 - For resident citizens and resident foreigners= 15%
 - For non-resident foreigners= 20%
- Payment on contracts undertaken by State organisations, development committees and cooperative societies:
 - For resident citizens and resident foreigners= 3%
 - For non-resident foreigners= 3.5%
- Payment for work done to foreign contractor:
 - For resident citizens and resident foreigners= 2.5%
 - For non-resident foreigners= 3%

4. **PERSONAL INCOME TAX**

A non-resident's salary is taxed at the rate of 35%. Other income is taxed at the minimum rate of 35% or at the resident rates, graduating from 3% to 50%.

A foreigner staying in Myanmar for 183 days or more is considered a resident foreigner. Both resident foreigners and resident citizens are taxed on salaries **based on** progressive scale, starting at 3% and rising to a maximum rate of 30%. A non-resident foreigner is subject to tax on income derived from every source within Myanmar, at the flat rate of 35%, or at progressive rates ranging from 3% to 50%, whichever is greater.

5. **IMPORT DUTY**

Import duties range from 0%-50%.

(For information on import duties, please refer to customs tariff of Myanmar, harmonised commodity description and coding system).

For various import duties, please contact the following address:

Customs Department

132, Strand Road
Yangon, Myanmar
Fax: 095-01-281 847

VII. **FINANCIAL REGULATIONS**

1. **BORROWING**

Domestic borrowing in foreign currency is not available.

Domestic borrowing in local currency can be provided by the commercial banks operating in the country.

2. **FOREIGN EXCHANGE**

There is a 15% withholding tax for interest paid to non-resident lender.

3. SOURCE OF FINANCING

Foreign borrowings and foreign equity investments would require prior approval from MIC. All foreign investments should be registered with MIC to enable applications for capital repatriation and profit remittance.

4. REPATRIATION OF CAPITAL/PROFITS

Remittance of profit and capital repatriation are subject to prior approval of MIC and are also subject to Exchange Control regulations

VIII. EMPLOYMENT FOR APPROVAL OF FOREIGN WORKERS

1. CONDITIONS OF APPROVAL OF FOREIGN EMPLOYEES (MANAGERIAL, SUPERVISOR, UNSKILLED LABOUR)

In appointing personnel in an organisation formed under the Permit issued by MIC, preference shall be given to citizens. However, MIC can consider the request for appointment of experts and technicians from abroad on a case-by-case basis.

An economic organisation formed under a Permit shall make arrangements for local and foreign training so as to ensure its local personnel proficiency in their work and promotion to higher ranks of services.

2. WORK PERMIT PROCESSING AND REQUIREMENTS (MANAGERIAL, SUPERVISOR, UNSKILLED LABOUR)

Employment of foreign experts and technicians by the enterprises formed under the Permit issued by MIC is allowed. The following procedures would have to be completed to employ foreign experts and technicians.

- The Investor has to mention the number of foreign experts/technicians to be employed in the investment application form submitted to the MIC.
- After obtaining MIC permit, a company has to apply for appointment and stay-permit.

- With the endorsement of MIC, a company has to apply for work permit to the Directorate of Labour under the Ministry of Labour, and for stay permit and visa to the Immigration and National Registration Department under the Ministry of Immigration and Population.

IX. LAND AND BUILDING OWNERSHIP

1. REGULATION ON ACQUISITION OF LAND AND BUILDING

Foreigners cannot own land but can lease it for periods up to 30 years, or more if approved by MIC, from the government.

The lease can be extended if the project is mutually beneficial between the Investor and the State.

2. RESTRICTIONS

According to ***Immovable Property Restriction Law (1987)***, a foreigner or a foreign company cannot lease any immovable property such as land from the private sector more than one year at a time.