

Doing Business in Myanmar

缅甸经商须知



MYANMAR IN BRIEF



Economy

GDP: 19,000 in billion Kyat (2009-10)
 GDP per capita: 571 thousand Kyats (2009-10)
 (USD702)

General facts

Name	Republic of the Union of Myanmar (Myanmar)
Capital	Nay Pyi Taw
Other Major Cities	Yangon (Former Capital and Business Capital at present), Mandalay, Patheingyi, Mawlamyath, Taunggyi, Bago, Monywa and Sittwe
Area	676,577 sq km
Currency	Kyat (ks.) Exchange rate for US Dollar and Kyat is the market rate which is available at the Government recognised exchange counter opened by Private Banks.

Geography

Major Export items	Natural gas, jade rough, timber, pulses & beans, marine products, raw rubber, precious and semi-precious stones
Major Import items	Capital goods, machinery, chemicals, transportation equipment, industrial raw materials, machineries, machine spare parts, edible oil, fertilizer, pharmaceuticals
Major Trading Partners	China, Thailand, Singapore, India, Malaysia, Hong Kong, Japan, Korea, Indonesia, Bangladesh
Main crop	Rice, pulses and beans, sesame, maize, rubber, fruits & vegetables.
Natural resources	Natural gas, petroleum, gold, jade, ruby and other gemstones, copper, tin, antimony, lead, zinc, silver, teak and other timber

INVESTMENT LAWS OF MYANMAR

- ❑ **The Union of Myanmar Foreign Investment Law (FIL)** was enacted on 30 November 1988.
- ❑ **The Union of Myanmar Special Economic Zone Law** was enacted in January 2011
- ❑ **The Dawei Special Economic Zone Law** was also enacted in January 2011 subsequently.
- ❑ Myanmar Company Act

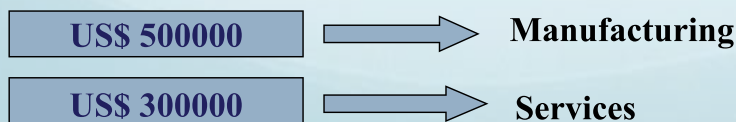
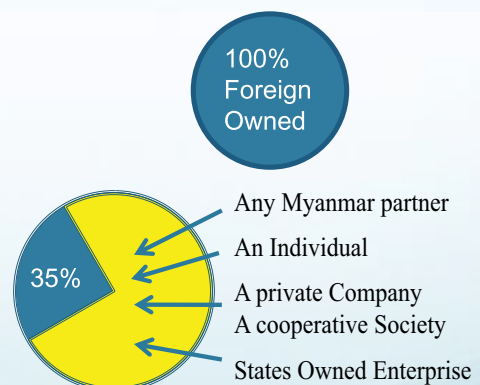


- The union of Myanmar Foreign Investment Law (FIL) applicable to foreign companies and FDI
- Union of Myanmar Citizenship Investment Law (CIL) applicable to Myanmar citizens only (Same relief and incentive given as FIL)
- Myanmar Companies Act (MCA) and Regulations
- Special Company Act (SCA) applicable where Government equity share are involved in JV with foreign companies
- The Myanmar Income Tax Law and Regulations and Notification issued by the Ministry of Finance and Revenue (MFR) applicable to taxation
- Myanmar laws are based on British Common Law such as India, Australia, Singapore, Malaysia and Hong Kong

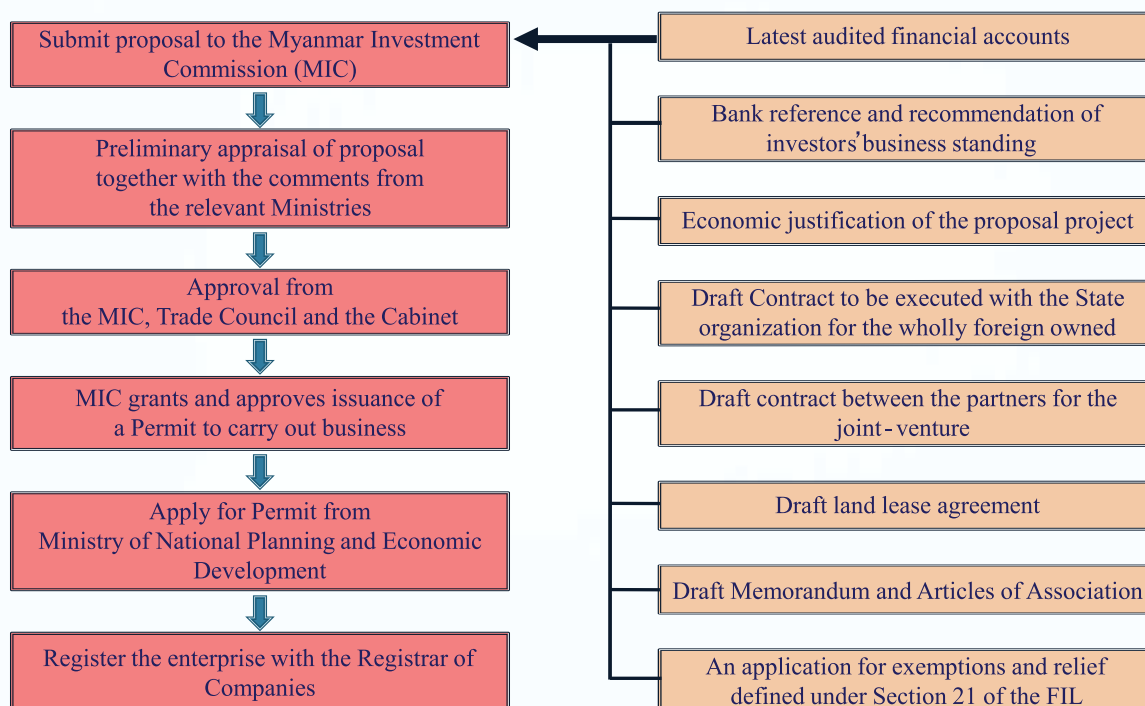
Form of Investment

Foreign investor can set up their business either in the form of:

- **wholly foreign-owned (100% foreign)**
- **Joint Venture**
In all joint ventures, the minimum share of the foreign party is 35% of the total equity capital.



APPLICATION PROCEDURES FOR FOREIGN INVESTMENT



REGISTRATION OF PRIVATE COMPANY

- Operation in Myanmar can be carried out through one of the following business organisation:
 1. Partnership
 2. Companies limited by share i.e. joint venture companies; local companies; foreign companies
 3. Branch or Representative offices of a foreign company
 4. Associations not for profit

Corporate structure

- At least two (2) directors required;
- At least two (2) shareholders required, one shall be nominee of corporate;
- Shareholders and the Directors may be the same persons;
- Appointment of local shareholders or Directors is not necessary;
- Appointment of local secretary is not necessary;

TAXATION

There are 15 different types of taxes and duties under four main heading:

- 1) Taxes levied on domestic production and public consumption – excise duty; license fees on imported goods; state lottery; taxes on transport, commercial tax and sale proceeds of stamps
- 2) Taxes levied on income and ownership – income tax and profit tax
- 3) Customs duties
- 4) Taxes levied on utility of state-owned properties – taxes on land; water tax; embankment tax; taxes on extraction of forest products, minerals, rubber, and fisheries. Income of tax payer is computed on the basis of one fiscal year (April 1 to March 31 of the following year)

TAX RATE

Income tax on companies

Type of Taxpayer on income	Tax rate
Company incorporated in Myanmar under Myanmar Companies Act	30%
Myanmar Companies Act	30%
Enterprise operating under MFIL	30%
Foreign organisations engaged under special permission in state – sponsored projects, enterprise or any undertaking	30%
Non-resident foreign organisation such as a branch of a foreign company	>35% or 5% to 40%
Tax rates for capital gains: resident companies	10%
Non-resident companies	40%

Income tax on individuals

Type of Taxpayer on income	Tax rate
Foreigners working for MFIL companies	10%
Foreigners engaged under special permission in state-sponsored projects, enterprise or any undertaking	20%
Foreigners working for non-MFIL companies	15%
National earning foreign exchange	10%
Other income Tax rates for capital gains:	
Foreigners	>35% or 5% to 40%
Resident	10%
Non-resident	40%

INVESTMENT INCENTIVES

1.	Relief from Income tax (re-invested profits)	6.	Right to pay income tax (foreign employees)
2.	Exemption or relief from income tax (re-invested)	7.	Right to deduct R&D expenditure
3.	Accelerated depreciation rates	8.	Right to carry forward and set off losses
4.	50% relief from income tax	9.	Exemption or relief from customs duty or other internal tax (machinery)
5.	Right to pay income tax - Right to deduct	10.	Exemption or relief from customs duty or other internal tax (raw materials)

TAX INCENTIVES UNDER FIL

1.	3 years' tax holiday from the date of commercial operation. (Now 5 years tax holiday under revised FIL)	5.	Right to pay income tax of the foreign employee at rate applicable to citizens
2.	Exemption and relief from income tax up to 50% on the profit from export	6.	Right to deduct Research and Development expenses
3.	Exemption and relief from income tax in profit which is reinvested within one year	7.	Exemption and relief from customs duties and other internal taxes on imported machinery, equipments, instruments, machinery components, spare parts and materials during the construction period
4.	Right to pay income tax on behalf of the foreign employees and to deduct some from the assessable income of the enterprise	8.	Exemption and relief from customs duties and other internal taxes on imported raw materials for use of the factories for the first 3 years' of commercial operation

Revising of Foreign Investment Law

- In order to be adaptable to the advancing era and develop the whole economic infrastructure, FIL is being revised .
- No description on rights & obligation - Description on rights & obligation

Existing Law	Revised Law
No specific definition on investment	Specific definition on investment
No specific definition on grantee of land lease or grantee of land used	Specific definition on grantee of land lease or grantee of land used
Not mentioned on restricted activities	Mentioned on restricted activities
Export Promotion	Export promotion and import substitution
No description on rights and obligation of investor	Description on rights & obligation of investor
3 years tax holidays	5 years tax holidays
No description on land use	Description on land use
Official exchange rate	Market exchange rate
No description on administrative penalty	Description on administrative penalty
No description on dispute settlement	Description on dispute settlement

Notifications

With the aim of facilitating investment procedures and getting better opportunities in doing business, Government issues two notifications relating to Land used and Foreign Currency.

The Transfer of Immoveable Property Restriction Law (Pyithu Hluttaw Law No. 1, 1987)	Republic of the Union of the Myanmar Notification of Concession Rights for Land Used relating to FIL (Notification No. 39/2011)
<ul style="list-style-type: none"> - No person shall lease to a foreigner or a company owned by a foreigner immoveable property for more than a year at a time 	<ul style="list-style-type: none"> - Investor has a right of the grantee of land lease or land used from government owned land, governmental department, organization owned lands and citizen owned private lands
Existing FIL	Republic of the Union of the Myanmar Notification of Relating to Foreign Currency relevant with FIL (Notification No. 40/2011)
<ul style="list-style-type: none"> - Foreign capital brought in has to be evaluated at official exchange rate - No rights to make account transfer for payment transition 	<ul style="list-style-type: none"> - Foreign capital brought in can be exchanged with prevailing market price - Investor has the rights to make account transfer for payment transition

Incorporation of Company in Myanmar

- Under section 27 A of the Myanmar Companies Act, a foreign company, whether a hundred percent owned or a joint-venture and branch/representative office, is required to obtain a Permit and Registration.
- However, a joint-venture with the state equity formed under Special Company Act 1950 is exempted from obtaining a Registration.

Incorporation of Company in Myanmar (Requirements)

- 1) Company Name and Address in your country
- 2) Intended activities to be performed
- 3) At least two people of their passport endorsed by Myanmar Embassy
- 4) Each People's Bank confirmation letter mentioned the balance of amount showing at least USD 50,000 (for services Company) and at least USD 170,000 (for Industrial Company) from their bank endorsed by Myanmar Embassy

Branch / representative office (Requirements)

- 1) Instead of the companies Memorandum and Articles of Association, a **copy of the Head Office's Memorandum and Articles of Association** or of the Charter, Statute or other instruments constituting or defining the constitution of the company, **duly notarized and consularized** by the Myanmar Embassy concerned in the country where the company is incorporated.
- 2) **The Annual Report for the last two financial years** (or) if it is the copies of the Head Office Balance Sheet and Profit and Loss accounts for the last two financial years, it is to be notarized and consularized by the Myanmar Embassy concerned in the country where the company is incorporated.
- 3) Where the original Memorandum and Article of Association and other relevant documents are not in English language, authentication of the translation into English.



Investments in Myanmar (US\$ in Million)

Sr. No.	Particulars	Permitted Enterprises		
		No.	Approved Amount	%
1	China	33	13947.146	34.50
2	Thailand	61	9568.093	23.67
3	Hong Kong	38	6308.495	15.60
4	Republic of Korea	49	2941.289	7.27
5	U.K*	51	2660.588	6.58
6	Singapore	72	1804.013	4.46
7	Malaysia	39	977.461	2.42
8	France	2	469.000	1.16
9	U.S.A	15	243.565	0.60
10	Indonesia	12	241.497	0.60
11	The Netherlands	5	238.835	0.59
12	Japan	23	214.902	0.53
13	India	5	189.000	0.47
14	Philippines	2	146.667	0.36
15	Russia Federation	2	94.000	0.23
16	Australia	14	82.080	0.20
17	Austria	2	72.500	0.18
18	United Arab Emirates	1	41.000	0.10
19	Canada	14	39.781	0.10
20	Mauritius	2	30.575	0.08
21	Panama	1	29.101	0.07
22	Vietnam	2	23.649	0.06
23	Germany	2	17.500	0.04
24	Denmark	1	13.370	0.03
25	Cyprus	1	5.250	0.01
26	Macau	2	4.400	0.01
27	Switzerland	1	3.382	0.01
28	Bangladesh	2	2.957	0.01
29	Israel	1	2.400	0.01
30	Brunei Darussalam	1	2.040	0.01
31	Sri Lanka	1	1.000	0.00
32	Republic of Liberia	2	14.600	0.04
Total		460	40431.454	100.00

*Inclusive of enterprises incorporated in British Virgin Islands, Bermuda Islands and Cayman Islands.



Foreign Investment of Permitted Enterprises as of (29-2-2012) (US\$ in Million)

Sr. No.	Particulars	Permitted Enterprises		
		No.	Approved Amount	%
1	Power	5	18873.720	46.68
2	Oil and Gas	104	13815.375	34.17
3	Mining	64	2794.463	6.91
4	Manufacturing	164	1760.701	4.35
5	Hotel and Tourism	45	1064.811	2.63
6	Real Estate	19	1056.453	2.61
7	Livestock & Fisheries	25	324.358	0.80
8	Transport & Communication	16	313.272	0.78
9	Industrial Estate	3	193.113	0.48
10	Agriculture	7	173.101	0.43
11	Construction	2	37.767	0.09
12	Other Services	6	23.686	0.06
Total		460	40431.454	100.00

Promoted Fields/ 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.

Conclusion Suggested Deal Structure

- **JV with a local with access to Grant Land**
 - Extendable (negotiated) /
 - Transferable at market price
 - Benefit from land appreciation

Grant Land Lease from Citizen vs Lease Land from Government

Type	Citizen	Foreigner	Extendable	Transferable	Land Appreciation
Lease	✓	✓	✓	✗	✗
Grant	✓	✗	✓	✓	✓

- Extendable = extend the lease/grant period beyond the initial contract without adjusting initial rate
- Transferable = transferable to another party at the prevailing market rate
- Land Appreciation = fair value gain on invested land

USEFUL CONTACT

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Source: Republic of the Union of Myanmar Federation of Chambers of Commerce and Industries (RUMFCCI)

2012年霹雳苏丹华诞

至诚恭贺 Congratulations



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