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A JOINT LAW VENTURE

Your Guide to Investment in
MYANMAR



The Basics for Doing Business in Myanmar

Duane Morris & Selvam (Myanmar) Limited

The information contained herein is up to date as of June 2020.

YOUR GUIDE TO INVESTMENT IN MYANMAR

Introduction

Duane Morris & Selvam has a long history with Myanmar dating back more than a decade due to the connection with our then-Consultant, Judge G.P. Selvam, who assisted the Myanmar government with several landmark legal matters. Another very important connection is that Firm Partner Mr. Eduardo Ramos-Gómez formerly served as Mexico's Ambassador to Singapore, Negara Brunei Darussalam and the Union of Myanmar.

In view of these long-established relationships with the Union of Myanmar and then having been honored by the Attorney General's appreciation for Distinguished Services in 2012, Duane Morris & Selvam became the first U.S.-based firm invited to open an office in Yangon in 2013 (led by Managing Partner Krishna Ramachandra) to promote foreign direct investments into Myanmar.

In Myanmar, we stand as a leading law firm with clients from all over the world. Consistently ranked by *Chambers Asia-Pacific*, *The Legal 500 Asia-Pacific* and the *IFLR1000* for Corporate and M&A, Projects (including Energy) and General Business Law, we are a full service law firm offering Corporate law including Mergers & Acquisitions, General Commercial law, Banking & Finance, Energy & Projects, Dispute Resolution, International Arbitration, Capital Markets, Corporate Real Estate, Regulatory and Technology, Media & Telecommunications.

We have a track record of providing high-quality counsel to international and domestic businesses seeking to seize opportunities while minimizing the inherent risks in Myanmar. Our lawyers are qualified in Myanmar, Singapore, the People's Republic of China, England and Wales, the United States and Australia, and fluent in English, Chinese and Burmese. Our firm has also been involved in several groundbreaking transactions such as the first listing on the Yangon Stock Exchange by First Myanmar Investment Company Limited and the establishment of the Myingyan power plant, which is one of the largest gas-fired power plants in Myanmar providing reliable electricity to around 5.3 million people in the Mandalay area.

We have successfully completed seven years of our strong, on-the-ground presence in Myanmar and are committed to the continued growth and economic development of Myanmar. In 2018, Duane Morris & Selvam appointed *Wunna Kyaw Htin* Dr. Tun Shin, retired Attorney General of the Republic of the Union of Myanmar, as Senior Mentor Emeritus to the Firm to advise and guide our Yangon office. Our lawyers and clients benefit from Dr. Tun Shin's unprecedented level of expertise and experience relating to Myanmar and its legal system.

We see Myanmar as an exciting and promising destination for foreign investments and we hope this overview of Myanmar's legal framework provides an insightful guidance for investors looking to enter a fast-emerging market.

Leon Yee

Chairman

Duane Morris & Selvam LLP



Foreword

In my 37 years of public service in Myanmar, one of my duties was to give talks in different parts of the world on the business laws of Myanmar. In many countries where I had given these talks, there was and still is the common denominator that Myanmar is seen as a populous county in the ASEAN, significantly rich in natural resources and one of the “Emerging Dragons” in East Asia and the Pacific region. It is also known to investors as the last frontier of investment since the adoption of the market economy system.

Myanmar is abundant in natural resources such as oil and gas, various minerals, precious stones and gems, timber, forest, products, rice and fisheries. Thus, the official economic indicators dated 30 September 2019 show that foreign investments in the sectors of oil and gas, power, manufacturing, transport and communications, real estate, hotels and tourism, mining, livestock and fisheries, agriculture, industrial estates, construction and other services had reached 1,837 in number and USD81,874.265 million in capital .

There are three special economic zones established in Myanmar, namely Kyauk Phyu in Rakine State, Dawei in Thanintharyi Region and Thilawa in Yangon Region, with 113 foreign investments in number and USD1,862.671 million in capital. This excludes other regional industry zones in many parts of the country. Myanmar also has the largest land mass of 677,000 square kilometers (equivalent to 167.3 million acres) amongst other countries in the mainland of South East Asia. There are six types of land, namely freehold land, grant land, farm land, cultural land, town land and village land. Myanmar is also rich in saltwater and freshwater fish resources, which is attributable to 2,832 kilometers of coastline. Thus, foreign investors often quip that “Myanmar is the only place in the world where fish die of old age.”

Besides natural resources, Myanmar has abundance of manpower with a growing population, especially a prominent, large youth population. Based on the research of Boston Consulting Group, an international

management consultancy specializing in strategy and market research, Myanmar's middle and affluent class is expected to double in size and grow to 15 percent of its population by 2020.

Every success in investing in the above requires a good legal framework. In terms of that framework, some legislations in force are a century old. In comparative legal systems, it belongs to the common law legal family. However, its legal system is not a replica of the common law of England. The principles of common law are adopted throughout Myanmar's legislations with Myanmar customary law in place. This system was inherited from the Indian legal system when Myanmar regained its independence in 1948. Thus firstly, there are old colonial laws, of which some are still in use today. Generally, they cover immovable property, moveable property, transport in land, sea and air sectors, etc. Secondly, some of these old laws are repealed or amended to be compatible with the times. Thirdly, there came a necessity to promulgate new laws to create an investor-friendly climate. A good illustration of this is the three generations of investment laws in legal history, *i.e.*, 1988-2012, 2012-2016 and after 2016. The latest Investment Law was promulgated in 2016.

This guide provides a good overview of Myanmar's legal framework for investors. Again, Company Law 2017 was promulgated to give an investor-friendly climate to foreign investors. Besides the Company Law, the adherence of the United Nation Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, known as the New York Convention, was ratified by Myanmar in 2013 and the Arbitration Law was promulgated in 2016. The UNCITRAL Arbitration Rules are widely used for contacts with foreign investors. This gives the right to enforce foreign arbitration awards in Myanmar by foreign investors. Some nuts and bolts are still being tightened, but a giant leap has been made from a small step after years of tedious efforts. Reform efforts have also been put in sectors including taxation, banking, export and import, intellectual property and real estate. A bird's-eye view is presented in this guide.

Duane Morris & Selvam landed in Myanmar in 2013 and steadily climbed the ladder in business legal consultancy. Its expertise in many areas of legal corporate and advisory services earned the recognition and acclaim of foreign and business communities. This is mentioned in Duane Morris & Selvam's brochures on its activities. Achievements of awareness are also visible. Duane Morris & Selvam LLP on 3 April 2019 held an International Business Law Workshop with the Union Attorney General's Office (UAGO) of Myanmar in Nay Pyi Taw and thus became one of the first international law firms to have an international business law workshop with UAGO after 2016. Over 100 participants including foreign investors and senior officials from ministries attended the workshop. Following this workshop, in July 2019, Duane Morris & Selvam held a joint seminar with the Singapore Business Federation in Singapore focusing on "Myanmar's Progress towards Implementing Investor Friendly Regime," attended by 150 businesses.

This guide offers a good insight of investment in Myanmar with a practical touch of the legal framework for the benefit of investors.

Wanna Kyaw Htin Dr. Tun Shin

Senior Mentor Emeritus at Duane Morris & Selvam (Myanmar) Ltd

Retired Attorney General of Myanmar



What is the legal system in Myanmar?

The legal system in Myanmar is based on English common law, Myanmar customary law and recent legislations (laws promulgated before and after 1954). Myanmar's primary legislation as of 1954 includes 13 volumes of codified laws enacted from 1818 to 1954, known as the Burma Code, in addition to special laws, notifications, rules and regulations enacted from time to time.

Can a business in Myanmar be 100 percent foreign-owned?

Yes, under the Myanmar Companies Law 2017 (MCL), a foreign investor may incorporate a 100 percent owned private company limited by shares (the most common business practice) or register as an overseas corporation (erstwhile referred to as branch office or representative office under the old Myanmar Companies Act 1914), subject to Notification No. 15/2017 (List of Restricted Investment Activities), issued by the Myanmar Investment Commission in accordance with the Myanmar Investment Law 2016 (MIL). This Notification No. 15/2017 set forth prohibited and restricted activities for foreign investments, as categorized below:

- i. Activities that are allowed to be carried out only by the Union Government;
- ii. Activities that are not allowed to be carried out by foreign investors;
- iii. Activities that are allowed only to be carried out by forming a joint venture with a local entity or person; and
- iv. Activities that are allowed to be carried out with the approval of the relevant ministries.

What are the most common business vehicle used by domestic and foreign investors?

Business vehicles

Under the Myanmar law, business vehicles are classified as follows:

- a. company limited by shares (private/public);
- b. overseas corporation;
- a. company limited by guarantee (with or without share capital);
- b. unlimited company (with or without share capital);
- c. business association regulated by the Registration of Organization Law 2014; and
- d. private/public companies limited by shares regulated by the Special Companies Act 1950 and the MCL (depending on whether or not Myanmar government is involved).

The most common business vehicle used in Myanmar is private company limited by shares and overseas corporation.

Companies limited by shares

It includes:

- (a) 100 percent foreign owned company – Companies incorporated in Myanmar but with 100 percent foreign ownership.

This form of company requires a minimum of one shareholder who can be either a corporate entity (such as a company representative, for example a company director) or an individual. It also requires that one of the company directors – for a private entity – be ordinarily resident, meaning a person who resides in Myanmar for at least 183 days in each 12 month period from the date of registration or working for a company under the MCL. The maximum number of members in a private company is 50, while the number of members in a public company is unlimited.

- (b) Joint venture companies – Companies incorporated in Myanmar between a foreign investor and a Myanmar entity/individual (including state-owned entities).

Foreign shareholding threshold

“Foreign company” is defined under the MCL as “a company incorporated in the Union in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five percent.” In other words, a company registered in Myanmar with less than 35 percent of foreign shareholding will be deemed as a “Local Myanmar Company”. Prior to that, any number of shares held by a foreign company in a local entity changed the status of the local entity to a foreign entity. This becomes particularly relevant when a foreign investor decides to enter into a joint venture with a local company. As long as the local company holds 65 percent or more of the shares, the restructured company is able to hold its status as a Myanmar company. Having said so, the application of this 35 percent rule is still developing, in particular with respect to land. The Transfer of Immoveable Property Law Restriction Law 1987 prohibits foreigners from holding any land ownership, regardless of percentage of foreign shareholding.

Overseas corporation

Foreign companies intending to set up an office in Myanmar can do so in the form of an overseas corporation in accordance with the MCL, previously known as a branch office/representative office (typically oil and gas companies, airlines, foreign banks and insurance companies).

Business structure for foreign investors

In light of the above, subject to Notification No. 15/2017, foreign investors can either:

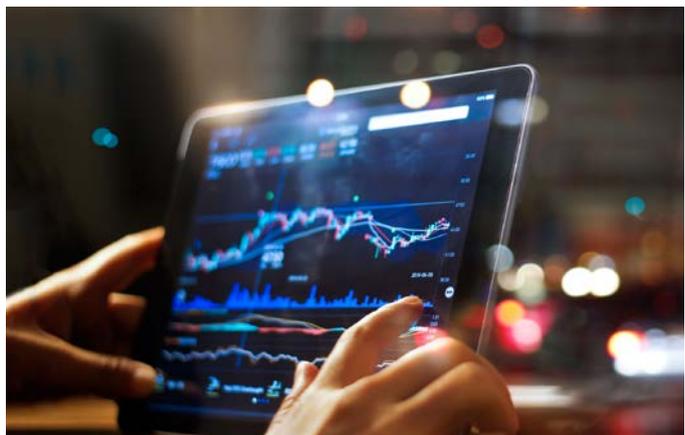
- a. establish a 100 percent foreign-owned company;
- b. establish a joint venture company with a local entity or individual; or
- c. register as an overseas corporation.

Where in Myanmar can a company be registered? How long does it take to register a private limited company?

Company registration can be made electronically via the Myanmar Companies Online (MyCO) platform, which was established under the MCL and is administered by the Directorate of Investment and Company Administration (DICA).

The processing time for registration of a private

company can be completed within a few hours if the required information and documents are provided (for public companies, the process might take longer due to additional document requirements).



Is there any minimum capital requirement? What are the rights of shareholders?

There are no minimum capital/share capital nor authorized capital requirements under the MCL. Capital can be issued either in local kyat currency or USD.

The MCL introduced various changes to shareholders rights. Among those is a greater amount of protection for minority shareholders. Under the MCL, any existing or former member of the company may request the court to issue an order if the company's conduct was oppressive, prejudicial or discriminatory against its member(s) to whom a share in the company has been transmitted by will or by operation of law. The MCL also allows shareholders to hold shares jointly as one member, and allows companies to issue shares in different classes including ordinary shares, preference shares, redeemable shares, redeemable-preference shares, employee's shares and management shares.

What is a MIC permit and what are the incentives for an investor to obtain it?

A foreign investor may want to consider obtaining a permit from the Myanmar Investment Commission (MIC) for two reasons. Firstly, it would allow him or her to benefit from certain investment incentives available under the MIL (as discussed below). Secondly, while generally a permit is not mandatory for operating a business in Myanmar for most of business sectors, a permit is required to be obtained for these sectors which involve environmental and social assessment requirements.

If an investor wishes to benefit from investment incentives and/or operate in restricted business sectors, then he or she would submit a proposal to apply for an MIC permit. Any of the following criteria must be met:

- (a) investment business that are essential to the Union strategy;
- (b) large capital intensive investment projects;
- (c) projects which are likely to cause a large impact on the environment and local community;
- (d) investment business which use state-owned land and buildings; or
- (e) investment businesses that are designated by the government to require the submission of a proposal to the commission.

Separate ministry approvals and licenses may also be required subject to Notification No. 15/2017. For instance, any foreign entity intending to carry out downstream oil and gas business will require requisite permit from the Ministry of Electricity and Energy.

Another way to enjoy certain investment incentives is to establish a company in a special economic zone (SEZ). Currently, three zones exist of which one is active Thilawa (Yangon), while the other two are in the development stage (Kyauk Phyu in Rakhine State and Dawei in Thanintharyi Region).



Investment incentives available for MIC permit holders

Investment Protection. The MIL and the Myanmar Special Economic Zone Law 2014 (SEZ Law) guarantee that a company operating with an MIC or SEZ permit will not be nationalized during the permitted period. There is also a further guarantee that investments will not be terminated before the expiration of the term of the permit without sufficient cause.

Enter into Long-term Lease. The MIC or SEZ committee may grant a permit on a case-by-case basis to foreign investors to carry out their business activity long-term. In the absence of such a permit, foreigners may only lease land for a period of up to one year. A permit allows the holder to lease land for an initial period of up to 50 years with two consecutive extensions of 10 years each (total 70 years).

Tax Incentives. Income tax holidays under the MIC are available for a period of three, five or seven years depending on the MIC's discretion and what zone the project is located in: Zone 1 (less developed areas, excludes Yangon and Nay Pyi Taw); Zone 2 (moderately developed areas, excludes Yangon but includes Nay Pyi Taw); or Zone 3 (developed areas, includes Yangon and Mandalay). Income tax holidays under the SEZ Law are five or seven years based on the SEZ committee's discretion.

The MIC committee may also grant one or more of the following exemptions and reliefs:

- Exemption from customs duties and/or local taxes on imported raw materials not available locally.
- Exemption from customs duties and/or local taxes on imported raw materials (available locally) during the construction period of the business.
- Exemption from customs duties and/or local taxes on imported raw materials and partially manufactured goods for an export-oriented investment business.
- Right to take into account depreciation for the purpose of corporate income tax assessment.
- Right to take into account expenses on research and development relating to the investment business for the purpose of income tax assessment.
- Exemption or relief from income tax on profits of the business kept in a reserve fund and reinvested in the business within one year after the reserve is made.

Right to Transfer Foreign Currencies. A foreign investor has the right to transfer abroad these types of foreign currencies:

- Foreign currency entitlement of the person who brought in the foreign capital.
 - Net profit (dividend) after deducting all taxes and reserve funds from the person who brought in the foreign capital, in accordance with the MCL.
 - Foreign currency in the form of service fee permitted for repatriation.
 - Capital repatriation: Approval from the Central Bank of Myanmar (and MIC or SEZ winding committee if an entity that requires MIC approval or operates within a SEZ) on the winding-up of business.
- Furthermore, a foreign employee can transfer his salary and lawful income after deducting taxes and other living expenses incurred domestically.



What is an endorsement?

Investors intending to carry out business activities that do not meet the MIC permit criteria while require land use authorization (*i.e.* long term use exceeding one year) and tax exemption may apply for an endorsement from the MIC. The region/state investment committee has authority to approve application for an endorsement with proposed investment less than USD5 million. If the investor's investment capital exceeds USD5 million, it entails requirement of an endorsement at the MIC head office.

If an MIC permit has been obtained by a company registered in Myanmar (such as operations related to oil and gas), the investor will not be required to apply for an endorsement separately for the same company.

How long does it take to obtain an MIC permit and endorsement?

The MIC permit is granted on a case-by-case basis depending on the nature and size of the investment. At a minimum, an applicant should expect to a period of four to six months to obtain an MIC permit. Coincidentally, the period to obtain an endorsement is also the same, although this was not the intent of the legislature under the MIL.

Can a foreign investor purchase insurance in Myanmar?

The MIL requires investors to purchase insurance at any insurance company allowed to carry out business in Myanmar. Generally, the insurance market is not as sophisticated as in other developed jurisdictions. For a potential investor, this results in insurance coverage that is substantially less than in developed markets. Having said that, the Ministry of Planning, Finance and Industry (MOPFI) has taken steps to improve its insurance market by allowing five foreign companies to operate life insurance services as well as six joint ventures between foreign investors and local firms in 2019. Prior to this move, foreign investors were not allowed to enter into this sector in Myanmar except in Thilawa SEZ in Yangon, where three Japanese providers were granted permission in 2015.

Is the banking sector in Myanmar investor-friendly?

Myanmar's banking industry has undergone significant changes recently. The Central Bank of Myanmar (CBM) has granted foreign bank branch licenses to 13 foreign banks (nine foreign banks in the year 2015 and four

foreign banks in 2016) to offer banking services in the country. In April 2020, CBM granted preliminary approval to seven foreign banks to prepare for commencement of operations in Myanmar within nine months; among them, three foreign banks obtained pre-approval for subsidiary license. The licensed foreign banks are allowed to engage in wholesale banking business.

In addition to allowing more foreign banks to provide banking services, several liberalization measures have been taken:

- a. In December 2017, CBM issued Directive No. 7/2017 permitting the licensed foreign banks to provide export financing to domestic businesses;
- b. In November 2018, CBM issued Directive No. 6/2018 permitting the licensed foreign banks to provide banking services to domestic businesses;
- c. In January 2019, CBM issued Directive No. 1/2019 allowing up to 35 percent of foreign investment (foreign banks and financial institutions) to Myanmar domestic banks; and
- d. In May 2019, CBM announced during a press conference that it will allow the 13 foreign banks to open up additional branches across the country as well as allowing them to establish permanent subsidiaries. It was also announced that foreign banks would be allowed to provide retail banking services, pending regulations to implement.

The further liberalization of the banking sector is envisioned to bring in foreign expertise and inflow of capital that could prove vital for the business community at large due to greater access to credit.

Financing: Foreign companies and joint venture companies (in which a foreign company is a shareholder) may obtain loans denominated in both USD and kyats from licensed foreign banks. Any offshore debt component is subject to prior CBM approval.

Can a foreign investor enforce an arbitral award in Myanmar?



Yes, foreign arbitral awards from New York Convention member states can be enforced in Myanmar in accordance with the Code of Civil Procedure under the Myanmar Arbitration Law 2016 (MAL), but this is yet to be well tested in Myanmar courts. The Myanmar Arbitration Law 2016 (MAL), which replaced the old Arbitration Act 1944, provides a domestic legal framework to fully implement and comply with the New York Convention on the Recognition and

Enforcement of Foreign Arbitral Awards of 1958, which Myanmar signed and ratified in 2013. Under the New York Convention, arbitral awards issued in a country party to the New York Convention should be recognized and enforceable in other countries that have ratified the convention, subject to limited defenses. Under the MAL, enforcement of arbitral award is subject to several exceptions for instance, the court may refuse to

enforce the award if it considers it to be against public purpose or there are certain procedural irregularities during the arbitration proceedings. Despite the passage of the MAL, additional steps still need to occur for a smooth enforcement of international arbitration awards, such as Myanmar courts updating and/or introducing new rules and procedures and training judges about the process of enforcing such awards. As part of the development, the Myanmar Arbitration Center was launched on 3 August 2019.

What are the tax considerations for companies?

Generally, Myanmar resident companies are taxed on their worldwide income. Resident companies are defined as those that are covered by any of the Myanmar laws currently in force, including the MCL, MIL and SEZ Law. While this includes almost any type of legal entity, it excludes overseas corporations. Those types of entities, also known as nonresident companies, are not covered by any of the laws previously mentioned.

Despite a formal distinction in tax treatment on worldwide income between a resident and nonresident company, in practice only income earned within Myanmar is subject to tax, whether being a resident or nonresident company. We are not aware of any case where tax authorities have assessed additional income taxable as a result of a permanent establishment (*i.e.*, residence) within Myanmar.

In Myanmar, the businesses are subject to taxes, as applicable, including income tax (corporate and personal), capital gain tax, withholding tax, commercial tax, customs duty, stamp duty and special goods tax.

Income Tax

Corporate Income Tax

Companies operating under the MIL and those incorporated under the MCL are subject to corporate income tax rate of 25 percent of the net profits (except companies listed on the Yangon Stock Exchange, which are subject to 20 percent tax). The same tax rate applies to nonresident companies including overseas corporations.

Double Taxation Agreements

Certain tax reliefs may be available under applicable tax treaties. Myanmar has ratified double taxation treaties (DTAs) with the following countries: India, South Korea, Malaysia, Singapore, Thailand, the United Kingdom (UK), Laos and Vietnam, while DTAs with Indonesia and Bangladesh are in the draft phase. Under the Myanmar Income Tax Law 1974, as amended in 2014, a DTA must be “notified” before it overrides the provisions of the tax law. Currently, only the



UK tax treaty has been notified. Thus, under domestic law, application of the relevant DTA, with the exception of the UK DTA, is at the discretion of the tax authorities. Therefore, the investor may wish to confer with the Myanmar tax authorities before any transactions or arrangements are implemented.



Capital Gains Tax

Capital gains tax will be levied on gains from the sale, exchange or transfer (including shares) of capital assets if the total value of such assets exceeds 10 million kyat within a year no capital gains tax applies. Ten percent of capital gains tax shall be levied on gain from an individual person or group of persons, except for companies operating in the oil and gas industry on which a range of the following percent of capital gains tax rate shall be levied:

| No. | Profit up to | Tax rate |
|------------|---|-----------------|
| 1 | Up to equivalent kyats 100 billion (Kyats 100 billion is about USD68,258,700 as of 1 January, 2020) | 40% |
| 2 | From equivalent kyats 100 billion to kyats 150 billion (Kyats 150 billion is about USD102,388,050 as of 1 January, 2020) | 45% |
| 3 | Above of equivalent kyats 150 billion (Kyats 150 billion is about USD102,388,050 as of 1 January, 2020) | 50% |

Withholding Tax

Payments to individuals regarding income, such as interest, royalties and contracts, are subject to withholding tax. There is no withholding tax on dividends, repatriation of overseas corporation (branch) profits and proceeds from the sale of shares and stocks. The tax rates vary depending on whether the individual is considered a resident or nonresident. For tax purposes, a resident is someone who resides no less than 183 days per year in Myanmar or is employed by a company that is covered by the MIL. A nonresident is anyone not fulfilling any of those two requirements.

| Type of income | Rate applicable to resident recipients | Rate applicable to nonresident recipients |
|---|--|---|
| Interest | N/A | 15% |
| Royalties from use of licenses, trademarks, patent rights, etc. | 10% | 15% |
| Payments by state enterprises and organizations for the purchase of goods, work performance or supply of service, and hiring arrangements within the country under a tender, contract, quotation or other modes. | 2% | 2.5% |
| Payments by private entities, organizations and joint ventures (including private local companies and the government) for the purchase of goods, work performance or supply of service and hiring arrangements within the country under a tender, contract, quotation or other modes. | None | 2.5% |

Commercial Tax

Instead of imposing value added tax, commercial tax is levied under the Commercial Tax Law 1990 (CTL) and yearly Union Tax Law (UTL). Generally, commercial tax is 5 percent for both domestic products and services and imported products, including for the sales of price on trading, on domestic sales of imported goods and on revenue from domestic services, and for the special goods on the sales prices of produced and sold in the country or on the landed costs of imported goods. Services exempted from commercial tax are listed out in Union Tax Law as amended on an annual basis. However, commercial tax is only 1 percent on sales of gold jewelries and 3 percent on sales of building. Certain products such as alcoholic beverages and tobacco are taxed separately under the Specific Goods Tax Law 2016 (SGL) under which taxes are significantly higher than 5 percent.

For products and services supplied domestically, commercial tax is levied at the time of supply. For the import of goods, commercial tax is collected by the Customs Department at the point of entry in the same manner in which customs duties are collected. Exemption from commercial tax is available if this is considered appropriate by the relevant authorities, particularly as an incentive for a newly established business and for exports. Any exemption will be granted only on a case-by-case basis.

Stamp Duty

Stamp duty is a form of tax charged on certain legal instruments including but not limited to conveyance of property and transfer of bonds and shares under the Myanmar Stamp Act 1899, as amended as of 2019

(MSA). The tax rate may vary according to the legal instrument. In respect of the timing of payment of stamp duty, the fixed stamp duty must be paid to the relevant township tax office on or prior to the date of execution of the document, for an instrument executed in Myanmar. As to documents executed outside Myanmar, it shall be stamped within three months from the date of its entry into Myanmar. Failure to pay the fixed stamp duty within the prescribed timeline entails a penalty of three times of the applicable stamp duty.



Customs Duty

With a few exceptions and tax holiday granted under the MIC permit/endorsement or SEZ permit as mentioned above or any specific exemption by the government from time to time, all of the imported goods are subject to customs duties as levied by the Customs Department.

What are the requirements for the registration of deeds?

Registration of certain instruments is required under the Deeds of Registration Law 2018. Instruments related to immovable property, *inter alia*, including any of the lease deeds that value more than 100,000 kyats and deeds of mortgage in relation to immovable property, are compulsorily required to be registered with the Deed Registration Office within 120 days from the date of execution. An extension of an additional 120 days may be granted in exceptional circumstances, however late registration will result in a fine and/or penalty that will be set by the relevant ministry.

What are some employment law considerations for investors?

Myanmar has no single piece of uniform employment legislation. The relevant laws and regulations are spread across a variety of pieces of legislation and notifications that are sector-specific. Myanmar employment laws are concerned with labor relations, working hours including overtime working hours, minimum wage (currently 4,800 kyat per day, making it 600 kyat an hour for an eight-hour day), child and female labor, overtime, severance pay, workers' compensation, social welfare, holidays and leave, and health and safety.

A template employment contract (as amended in 2017) made between an employer and employee, prescribed by the Ministry of Labor, Immigration and Population, is required to be executed and it is mandatory to be registered with the relevant local township labor office.

Social security registration is mandatorily required for employers with five or more employees. Under the social security regulation, both employees and employers are required to contribute a percentage of their monthly wage to the social security fund established under the law. The rate of contribution is currently fixed at 3 percent for employers and 2 percent for employees on an employee's monthly salary capped at 300,000 kyats as the highest salary.



Employment income is taxed at a progressive rate of zero percent to 25 percent, the range of which can be amended by the government from time to time. It is still common practice if individuals enter and exit on business trips and are paid offshore that they are unlikely to be subject to income tax in Myanmar, unless their stay in a particular financial year exceeds 183 days. If they work in Myanmar for a Myanmar entity, they would be subject to income tax.

In our view, Myanmar's employment laws are more employee-friendly than employer-friendly. Ensuring compliance with Myanmar's myriad, complex employment laws requires significant assistance to navigate the investor in the right direction. Therefore, any investor wishing to employ staff in Myanmar should consider seeking the engagement of skilled on-the-ground legal counsel.

What common problems may be encountered by foreign investors considering business in Myanmar?

Although Myanmar's political and economic reforms have been rapid and significant, doing business in Myanmar still has its challenges. Investors should be prepared to deal with poor infrastructure in terms of transport, telecommunications and utilities supply. Improvements to the country's infrastructure have been undertaken by the government, although at slow pace.

Change of Laws

As Myanmar gains speed in its reform process, many draft laws and amendments are pending consideration by Myanmar's Parliament. At the same time, few of the introduced legislations are in effect. The country is still in the process of developing its legal system and one would need to prepare for changes as legislation is being adopted.

Property Ownership Verification Issues

There is no official land title register or electronic database, making it challenging for investors to accurately determine the ownership of privately held land plots. When local owners sell land, they often do not change the name of the title deed holder in order to avoid payment of the stamp duty. Therefore, local owners rely primarily on legal contracts that state the transfer of land ownership after a sale. This could be confusing for investors.

Transparency

There are transparency concerns when dealing with the government in terms of public tendering. But transparency still remains a large issue in the procurement as well as administration of conducting business in Myanmar.

Meetings

Meetings with any ministry, department, division or subdepartment of the government will generally take place in Nay Pyi Taw because the government's principal offices are located there (aside from the MIC and DICA, which have offices in Yangon).

Meeting requests typically are requested in letter form – hard-copy originals must be sent to the relevant authority to arrange a meeting. Email communication remains uncommon in practice.

Patience Is Required

Myanmar's political and economic reforms have been rapid and significant, paving the way for foreign investments into the country. However, this does not mean that doing business in Myanmar is not without its challenges. Investors must be prepared to deal with the current challenges of poor infrastructure in terms of transport, telecommunications and utilities supply. Improvements to the country's infrastructure will take time.

It is possible when visiting the government offices in Nay Pyi Taw for meetings to be postponed, delayed or cancelled entirely. In addition, investors may experience long wait times from the original scheduled meeting time. We suggest patience to all investors when visiting the government, as things rarely go as planned. These are the understandable results of the limitations and challenges the government constantly faces as it gradually moves forward with Myanmar's transformation from the dark to the light.



For More Information, Please Contact:



Leon Yee

Chairman

+65 6311 0057

lyee@duanemorrisselvam.com



Wunna Kyaw Htin Dr. Tun Shin

Senior Mentor Emeritus

Retired Attorney General

+959 4 4154 6892



Priyank Srivastava

Special Counsel

+959 4 5070 4379

psrivastava@duanemorrisselvam.com



Kim Sung-Hee

Director of Korea Desk

+65 6311 3653

shkim@duanemorrisselvam.com



U Kyaw Zay Ya

Senior Consultant

+959 4 4154 6892



Lan Yu

Director

+959 2 6663 7032

lyu@duanemorrisselvam.com



CN Bei Lo

Senior Associate

+959 4 4154 6892

cblo@duanemorrisselvam.com



Bei Wang

Senior Associate

+95 1937 7209

bwang@duanemorrisselvam.com



Khin Kuu Kuu Khaing

Associate

+95 1937 7209

kkkhaing@duanemorrisselvam.com



Nhkum Bawk Seng

Associate

+95 1937 7209

nbseng@duanemorrisselvam.com



Win Phyu Phyu

Legal Business Development Executive

+959 4 4154 6892

ppwin@duanemorrisselvam.com

Duane Morris & Selvam (Myanmar) Limited

Address: Duane Morris & Selvam (Myanmar) Limited

Kantharyar Centre Office Tower; Unit no. #18-01;

No.11, Corner of Kan Yeik Thar Road & U Aung Myat Street, Mingalar Taung Nyunt Township, Yangon, Myanmar.

Phone: +951 9377209 | + 959 441546892

www.duanemorrisselvam.com

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