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& Partners



DOING BUSINESS IN MYANMAR

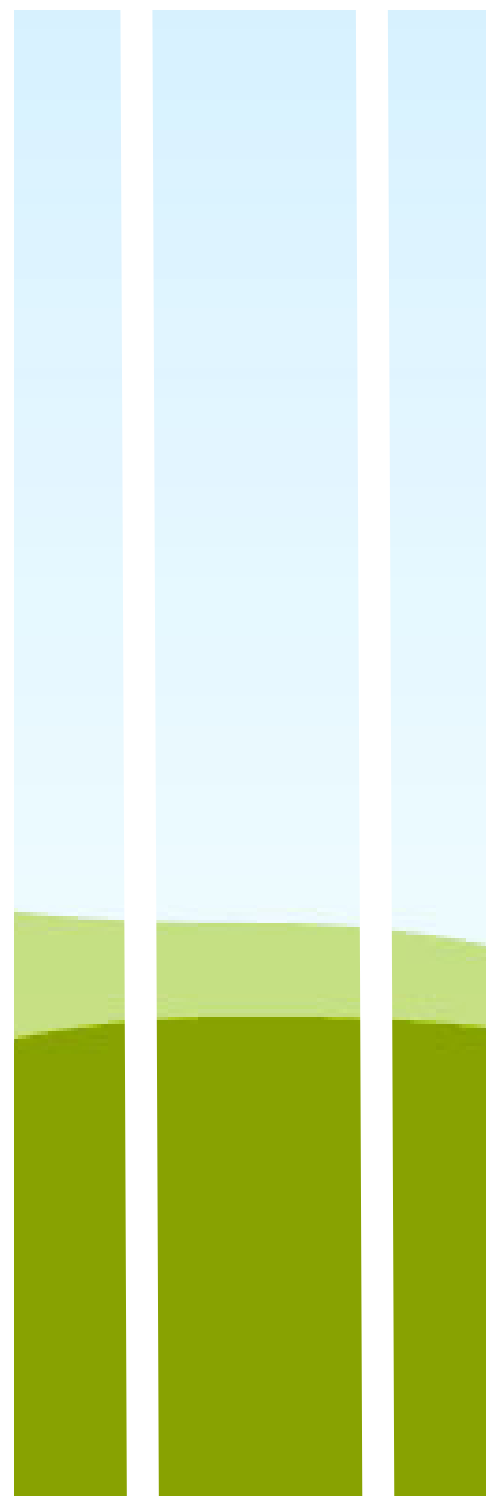
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INTRODUCTION



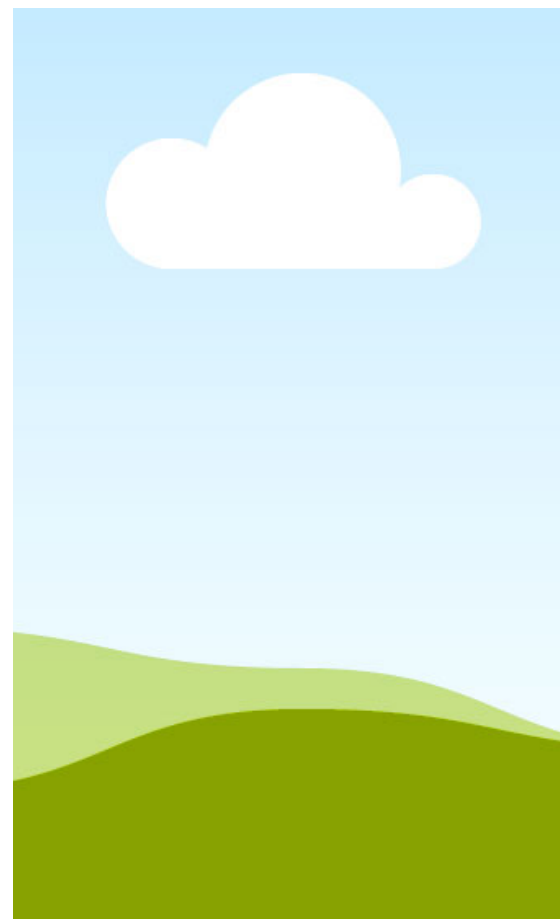
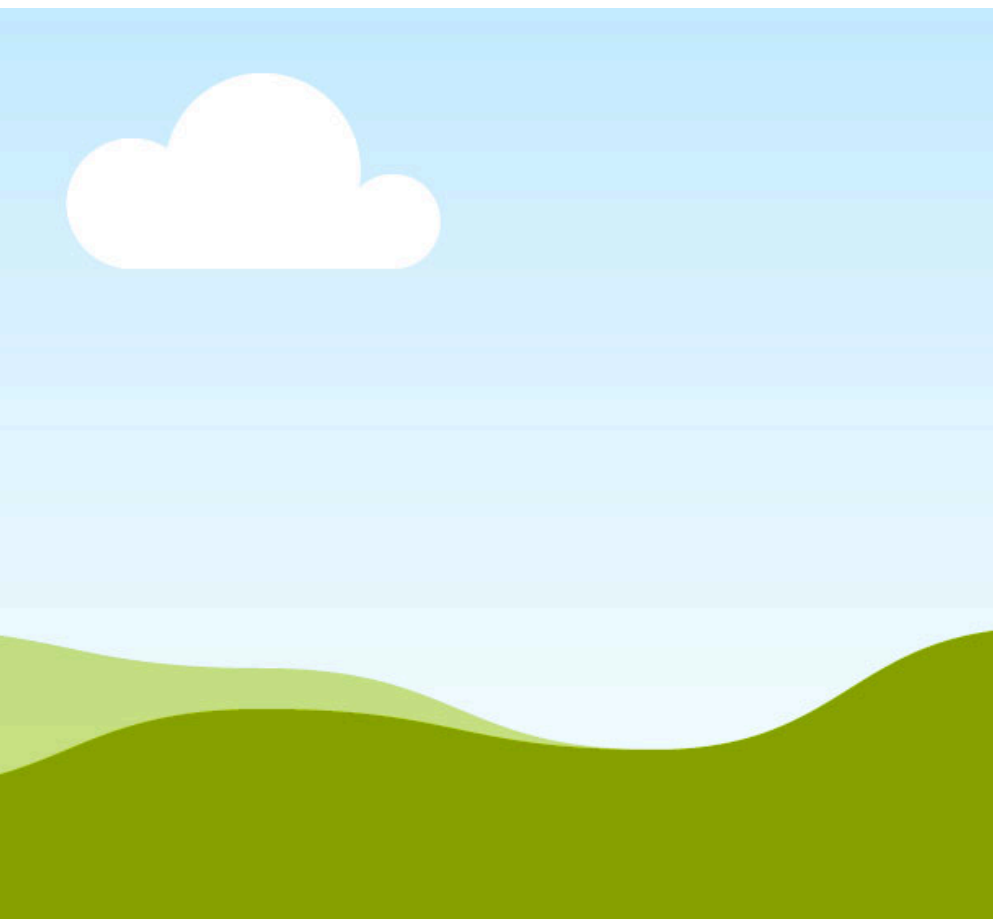
Myanmar, a captivating country in Southeast Asia, presents a compelling business destination for entrepreneurs and investors alike. With its strategic location between India, China, and the Association of Southeast Asian Nations ("ASEAN") markets, Myanmar offers access to a vast consumer base and abundant natural resources.

The economic landscape of Myanmar has undergone significant transformations in recent years, with the government implementing market-oriented reforms to attract foreign direct investment. This has resulted in a surge of opportunities across various sectors, including manufacturing, infrastructure development, tourism, energy, and telecommunications.

Myanmar's young and dynamic workforce, coupled with a large domestic market, creates a favorable environment for business growth. As the country embraces digitalization, it offers immense potential for technological innovation and e-commerce ventures.

However, understanding the cultural and regulatory landscape is crucial to establishing successful operations. Engaging with reliable local partners and building strong relationships with government authorities can help mitigate risks and ensure effortless business operations.

While challenges such as Myanmar's untapped potential, coupled with ongoing economic reforms, make it an exciting and promising market for those seeking new business opportunities in Southeast Asia. By leveraging the right strategies and adapting to the local context, entrepreneurs can harness Myanmar's emerging market to achieve sustainable growth and contribute to the country's development.



ECONOMIC OVERVIEW

Understanding a country's economic overview before starting a business is important for market analysis, regulatory compliance, risk assessment, resource allocation, and long-term planning for success.

A new era for Myanmar began in 2015 with the country's first democratic elections. Rapid economic growth (over 7 % per year) and discernible gains in social welfare were achieved as a result of the unification of currency rates, liberalisation of the product and factor markets, integration into regional markets, and modernization of economic and financial institutions and systems.

According to the World Bank's January 2023 Myanmar Economic Monitor, the projected growth rate for Myanmar in the year ending September 2023 is 3%. The inflation rate is expected to be higher than any other member. The Asian Development Bank has forecast inflation at 8.5 percent in 2023, building on the 16% rate in 2022. This means that per capita Gross Domestic Product "GDP" will be around 13 percent lower than what was in 2019, indicative of the persistent impacts of recent shocks on both supply and demand. In the absence of further shocks, the economy is likely to continue to expand slowly beyond 2023.

FOREIGN DIRECT INVESTMENT POLICY

The foreign investment regime in Myanmar follows a primarily open approach, allowing foreign investment in most sectors unless there are specific prohibitions, restrictions, or conditions. Under this framework, proposals for foreign investment falling within restricted sectors or meeting certain criteria undergo a screening and approval process by the relevant authorities. Additionally, currency exchange control rules are in place, requiring approval from the Central Bank of Myanmar for the transfer of funds to and from the country.

- The primary law regulating foreign investment is the Myanmar Investment Law “MIL” (2016) and the notices, regulations and rules issued pursuant to it, including the Myanmar Investment Rules (2017) (collectively, the MIL). The Myanmar Investment Commission “MIC” is the authority in charge of screening and reviewing any investment proposals relating to Restricted FDI.
- Under Myanmar laws, a foreigner or foreign-owned company is not permitted to take any interest in immovable property or enter into lease arrangements for a term longer than 12 months. However, the MIL created an exception, where foreign companies with an MIC Permit or an endorsement from the MIC “MIC Endorsement” are permitted to obtain a lease or a right to use immovable property for up to 50 years, with the possibility of two ten-year extensions.
- The MIL also contains various tax incentives that the MIC may, in its discretion, grant to an investor with an MIC Permit or MIC Endorsement if the activities fall within one of the promoted sectors or are located in one of the promoted regions.
- With respect to companies that have been issued with an MIC Permit or MIC Endorsement (such a company is an ‘MIC Approved Company’), in addition to any other regulatory approval that may be required under other sector-specific legislation or regulations in Myanmar, prior approval from the MIC is required for any transfer of shares in, or transfer of business by, such an MIC Approved Company if the transfer would result in a person who is not a related body corporate (as defined in the MIL) acquiring majority ownership or control of the MIC Approved Company and/or more than 50 per cent of the assets of the MIC Approved Company. For any other transfer of shares that does not require prior approval from the MIC, the MIC Approved Company is required to notify the MIC of such transfers.
- Pursuant to section 88 of the MIL, if the investor violates any provisions of the MIL, including the performance of the prohibited investment business under the MIL, the investor can be prosecuted under the law.

KEY SECTORS



Agriculture, industries, energy and tourism are the main sectors of the Myanmar economy. Agriculture, however, is the dominant sector and accounts for almost 60 percent of the GDP. The heavy industries are owned and operated by the state. Agriculture in Myanmar is primarily a private sector activity, except for rice exports which are a state monopoly. Government efforts to boost agricultural production have been hampered by drought and flooding, impacting rice output. On the other hand, there has been a notable increase in the cultivation of pulses and beans.



The **industrial manufacturing** sector in Myanmar is currently in an early stage of development. While government efforts to privatize certain industries have faced obstacles, there is room for growth and improvement. Foreign investments, although encouraged, have been limited due to sanctions and boycotts against the military regime. However, the potential for increased international interest remains. Industry contributed 11 percent of GDP in 1997, indicating opportunities for expansion and economic development in the future.



The **energy** sector grew considerably during the late 1990s. The exploration and discovery of petroleum and natural gas deposits continued during this period. The construction of the Yadna gas pipeline to Thailand was a major development and is expected to be a major source of revenue. The lack of sufficient electrical power contributes to the country's poor economic growth.



The **tourism** sector in Myanmar has experienced significant growth in recent years, attracting both domestic and international visitors. The country's rich cultural heritage, historical sites, natural landscapes, and diverse ethnic traditions make it an appealing destination.

ADVANTAGES OF DOING BUSINESS IN MYANMAR

In the past, Myanmar generated significant enthusiasm among the international investment community due to its promising prospects. Investing in Myanmar at this stage can provide early adopters with a valuable advantage, leveraging the potential for future growth and opportunities in the country.

- **Strategic location:** One of the greatest assets of Myanmar is its strategic location in the centre of Asia, between China and India. Myanmar's position gives the country direct access to two of the largest markets in the world, with a total of more than 2.5 billion consumers.
- **Myanmar's growing population is becoming more affluent:** In addition to a growing population, various parameters show that poverty levels are falling and the economic condition of the nation's residents is improving. According to the World Bank, in 2005, nearly half of Myanmar's population lived below the national poverty line.
- **Competitive labour costs:** Myanmar's wages are another great attraction for foreign companies that want to invest in Myanmar. Compared to other countries in the region, the minimum wage in Myanmar is significantly lower.
- **Increasing exports:** Myanmar is gradually becoming a more open economy. Rich in resources, the country's chief exports include natural gas, agricultural products, precious and semi-precious stones, garments, and rice. The European Union is a significant export destination. Buyers include H&M, a Swedish multinational clothing-retail company, Primark, an Irish fashion retailer, Inditex, a Spanish clothing firm, and also Adidas, the German shoe giant.
- **Incentives to increase foreign investment in Myanmar:** Myanmar has placed great emphasis on the need to increase the level of foreign direct investment. Foreign investors in Myanmar can enjoy the incentives and benefits.
- **New companies law to facilitate investment:** In August 2018, Myanmar also introduced the new Myanmar Companies Law "MCL", making it easier for foreign firms to invest in Myanmar, now companies can register by using an online registry system.
- **Many foreign companies are investing in Myanmar successfully:** China has been the largest investor in Myanmar. However, in recent years, other countries have stepped up their level of investment in the country.

BUSINESS TYPES

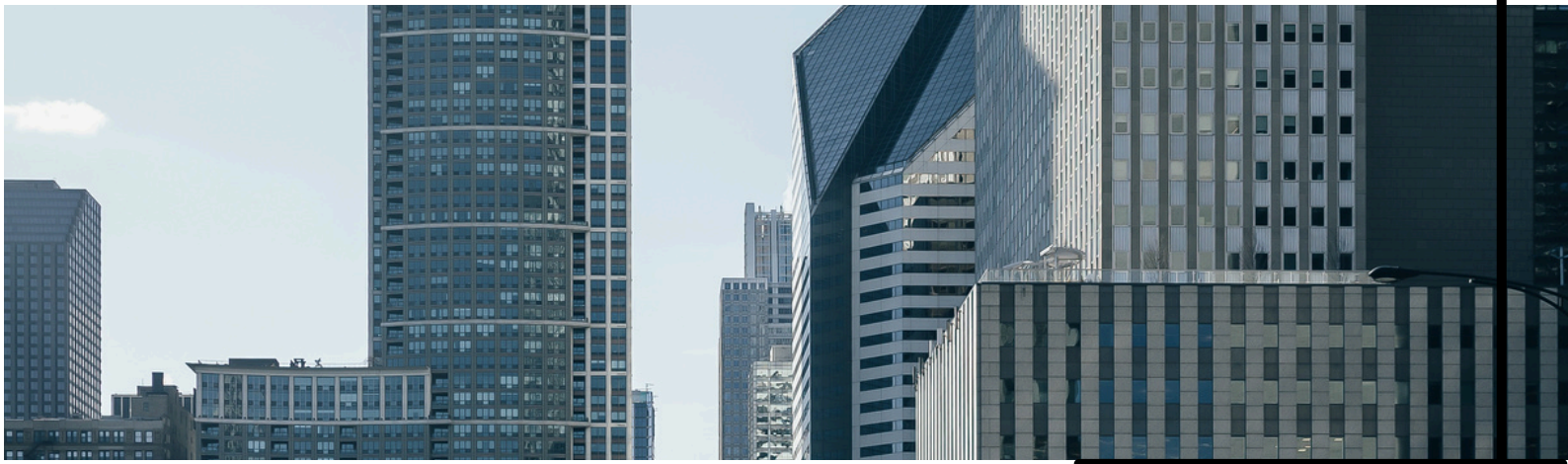


Private company limited by shares

For private companies being set-up, only one director and one shareholder is required. The sole director can also be the sole shareholder of a private company. The number of shareholders is restricted up to 50 members. Additionally, the liability of shareholders is limited to the amount unpaid on their shares. The private company limited by shares is the most common type of company used in Myanmar as well as in international business.

Public company limited by shares

In a public company limited by shares, it needs at least three directors and one of them must be Myanmar citizen. The liability of members is limited to the shares that the member contributes if the company is liquidated and there are insufficient assets to pay any outstanding debts. Most importantly, the shares of company can be freely traded on a stock exchange in line with the standards and criteria set out by the stock exchange.



Overseas corporation

Foreign companies that carry on business in Myanmar may have to be registered as an overseas corporation with the Directorate of Investment and Company Administration “DICA”. Otherwise, an overseas corporation is basically a Myanmar branch of a company that has been incorporated outside Myanmar.

- **Directors:** An overseas corporation operating in Myanmar is typically required to have at least one director.
- **Shareholders:** The minimum number of shareholders in an overseas corporation may vary depending on the type of company. For a private limited company, the minimum number of shareholders is typically two, but a single shareholder may be allowed in certain cases.

In addition the said types of companies, the other two common types of business are partnership and joint ventures.

Partnership

A partnership is formed by a group of individuals. The partnership’s rights and obligations are based on the agreement entered into between the partners. All partnerships formed in Myanmar are of unlimited type. Registration of a partnership is not compulsory and the business ends when all partners agree to dissolve the partnership.

- Directors – None, specifically.
- Shareholders/Partners – 2 minimum.

Joint venture

Joint Venture is a business entity formed by two or more organisations from different countries from the same or diverse industry to undertake a specific goal or task. The companies or businesses or individuals can form a joint venture by pooling their resources, expertise, and domain knowledge to develop a JV and work together as a single organisation towards achieving the objectives. Directors/shareholders limit is according to the Joint venture agreement.

MINIMUM ELIGIBILITY CRITERIA FOR COMPANY REGISTRATION

The Myanmar Companies Law (2017) under section 4 talks about the essentials for a company to be considered for registration. A company registered under this Law must have:

- a name;
- a constitution;
- at least one share in issue (provided that a company limited by guarantee need not have a share capital);
- at least one member; subject to the above sub-section, at least one director must be ordinarily resident in the Union;
- if the company is a public company, at least three directors, and at least one of whom must be a Myanmar citizen who is ordinarily resident in the Union; and a registered office address in the Union.
- A company may appoint a company secretary and have a common seal.

Under the Companies Act a person will be considered to be ordinarily resident if they hold permanent residency or is a resident in Myanmar for at least 183 days in each 12-month period. The period of residency will be calculated from the date of incorporation of a company (or the date of commencement of the new law for existing companies). Public companies must appoint at least 3 directors, and at least one of the directors must be a Myanmar citizen who is ordinarily resident in Myanmar. There are no minimum capital requirements for the incorporation of the company.

HOW TO SET UP A COMPANY?

In the country, company incorporation is under the jurisdiction of the Directorate of Investment and Company Administration “DICA”, a secretariat of the Myanmar Investment Commission “MIC”. Usually, the incorporation process involves 5 steps:

(1) Name request: The first and foremost thing that a foreign company must do is to check whether the desired name for the company is available and appropriate for registration. The entrepreneur must, therefore, submit a name check form to the Directorate of Investment and Company Administration “DICA”. Once the DICA gives the go-ahead, the entrepreneur can secure the desired name for the business by registering it under the company’s name.

(2) Appointment of directors and shareholders: A Private Limited Foreign company should have at least a minimum of 2 directors and 2 shareholders. Unless otherwise specified, all the directors and shareholders can be foreigners. These Private Limited foreign companies are allowed a maximum of 50 shareholders

(3) Registration with the Myanmar Investment Commission “MIC”: Foreign investors shall submit a project proposal to the MIC to receive a Foreign Investment Permit. The MIC communicates the acceptance or rejection of the proposal within a period of 15 days from the date of making the project proposal. If the proposal gets accepted, it will be reviewed by the commission. The approval or denial of the project proposal by the commission is made within a period of 90 days.

(4) Registration with DICA: Foreign entrepreneurs must register with the DICA to legally operate a company in Myanmar. Once the registration has been completed, the DICA approval is virtually an automatic process. The documents are submitted simultaneously for both MIC and DICA registration. However, the forms are different. Upon DICA’s approval, it will issue a temporary license. It is incumbent on the applicant to confirm his registered office address within one of receiving approval from the DICA in order to obtain a permanent Registration Certificate and Permit to trade. The applicant must also submit proof of transfer of minimum capital into a Myanmar bank account along with a signed letter of conditions to obtain a Permanent Registration Certificate and Permit to Trade.

(5) Obtaining licenses and fulfilling compliances: The foreign company can commence business operations upon receiving the MIC permit and DICA permanent license if no further licensing is required for the intended commercial activities. The inquiries related to further licensing can be further directed to the licensing division of the DICA.

TAXATION

Tax Authority in Myanmar is the Internal Revenue Department. A company which is not formed under any of the above laws is recognized as a non-resident company. Resident companies are taxed on their worldwide income where non-resident companies are taxed only on income accrued within Myanmar. Both resident and non-resident companies are liable to pay corporate income tax at a rate of 25% on total net profit before deduction on relief. However, resident companies registered under MIL and SEZL are taxed in accordance with the applicable income tax exemptions and reliefs on their investments.



Myanmar operates a one-tier corporate tax system. The taxable period of a company is the same as its financial year (income year), which is from 1 April to 31 March. Tax returns for capital gains must be filed within one month from the date of disposal of the capital assets. The date of disposal refers to the date of execution of the deed of disposal or the date of delivery of the capital assets, whichever is earlier.

Corporate Income Tax: All enterprises that do not enjoy tax incentives are subject to income tax at 22% (as of March 2023). The residence status of a company is determined by the place of its incorporation. Companies incorporated in Myanmar are treated as residents of Myanmar for tax purposes. Companies incorporated outside Myanmar are treated as non-residents of Myanmar for tax purposes.

Capital Gains Tax: Capital gains tax is levied on gains from the sale, exchange or transfer of capital assets. However, no capital gains tax will be levied if the total value of such capital assets within a year does not exceed Myanmar Kyat “MMK” 10 Million. Capital gains are taxable at 10% for resident and non-resident taxpayers. Capital gains for taxpayers in the oil and gas industry are subject to capital gains tax at between 40% and 50%.

Stamp Duty: Stamp duty applies to a number of transactions. Some of the most relevant stamp duties are as follows: Sale or transfer of immovable property (outside Yangon) – 4% of the value, Sale or transfer of immovable property (inside Yangon) – 6% of the value, Rental of immovable property (contract for between one year and three years) – 0.5% of the annual average rent, Rental of immovable property (contract for more than three years) – 2% of the annual average rent, Sale or transfer of shares – 0.1% of the value.

Property Tax: Immovable property situated in Yangon is subject to property taxes, covering general tax, lighting tax, water tax, and conservancy tax. Due to the restrictions on foreign ownership of land, these taxes are usually not a direct issue for foreign investors.

Customs Duty: Most imported goods, with a few exceptions, are subject to customs duties on importation and are required to be declared to the Myanmar Customs Department accordingly.

Currently, the customs duties levied on the import of machinery, spare parts, and inputs generally range from nil to 40% of the value of the goods imported. For exports of goods, export duty is levied on certain commodities.

Foreign-exchange Controls: Generally, there shall be no impediment, neither directly nor indirectly, on payments and other transfers for transactions between Myanmar and other countries according to the Foreign Exchange Management Law “FEML”. However, the Central Bank of Myanmar “CBM” shall check all incoming foreign investment in order to have a reference for the subsequent repatriation of the principal, interests, profits and dividends under FEML. Further, CBM’s upfront approval on offshore loans are required even if they are shareholder loans.

International Withholding Tax Rates: Dividends are not subject to withholding tax, regardless of the residence status of the recipient. Royalties paid to a non-resident of Myanmar are subject to withholding tax of 15%. Interest paid to a non-resident of Myanmar is subject to withholding tax of 15%. The withholding tax rates on interest and royalty payments made to non-residents of Myanmar may be reduced by an applicable income tax treaty

ACCOUNTING STANDARDS

Details of local accountant requirements:

The enterprises in Myanmar are required to maintain proper books of accounts in accordance with the Myanmar Accounting Standards which were drafted based on the 2010 version of the International Financial Reporting standards. In addition, audited financial statements must be filed with the corporate income tax return within 3 months from the fiscal year ended. It is important to note that in case of any conflicts between the Myanmar Companies Law 2017 and those made under the Myanmar Accountancy Council Law, the requirements under the Myanmar Accountancy Council Law will prevail.

Periodicity of local books to be closed: At least once a year (there is no specific requirement in the law, it depends on tax return requirement/management decision – monthly/quarterly).

Documentation to be presented with the financial statements: None unless the entity is a Myanmar Investment Commission-approved company.

The retention period for statutory financial statements/working papers: At least 3 years for tax purposes.

Requirements to Retain Physical Copies Locally/Electronically Stored Data to Reside on In-country Server: All filings in physical format.

Generally Accepted Accounting Principles “GAAP” Myanmar Financial Reporting Standards “MFRS”. However, all Public Interest Entities “PIEs” must prepare their financial statements under IFRS (International Financial Reporting Standard) effective from Financial Year 2022-2023. PIEs include banks, microfinance institutions, and insurance companies.

EMPLOYMENT & LABOUR LAWS



LAWS APPLICABLE TO FOREIGN NATIONALS

Foreign nationals working in Myanmar are currently covered under the same labour laws as Myanmar citizens; there are no other specific provisions for foreign nationals.

Similarly, employment laws in Myanmar apply equally to all employees working within the country, including those working for foreign-owned companies, and employees who are transferred or seconded to Myanmar for a short duration under a subsisting foreign employment contract must ensure that they comply with Myanmar labour laws throughout their time working in the country.

Foreign national workers who work for a company holding a permit/endorsement from the Myanmar Investment Commission "MIC", or a company operating in a Special Economic Zone "SEZ, must register their employment contract with either the Labour Section of the Departmental Co-operation Team in the MIC, or the Labour Section of the One Stop Service Centre ("OSSC") of the Special Economic Zone Management Committee.

LAWS APPLICABLE TO NATIONALS WORKING ABROAD

The Law Relating to Overseas Employment (1999) requires all Myanmar citizens, except seamen and government servants, to register with the Directorate of Labour. If employees are sent to work outside of Myanmar by their employer (for example, for an intra-office scheme), their welfare and employment conditions will continue to be governed by existing Myanmar labour laws, unless the employment contract states otherwise.

The employment law framework in Myanmar is primarily set out in around 10 key pieces of legislation in that respect. The employment law framework is primarily administered by the Ministry of Labour. In practice, most labour law matters are handled by the relevant township-level labour office with territorial jurisdiction over the matter.



EMPLOYMENT POLICIES

Employment relationship: Employers in Myanmar must enter into employment contracts within 30 days of employment and send a copy to the relevant township labor office for approval. Registration is required after employing five or more local employees. Failure to comply may result in up to six months of imprisonment, a fine, or both for the employer.

Establishing a presence: All overseas corporations 'carrying on business' in Myanmar are required to be registered under the Myanmar Companies Law 2017 ("MCL"). An overseas corporation can engage the services of persons in Myanmar through an agency or another third party in Myanmar, or as independent contractors, without registration as an overseas corporation under the MCL.

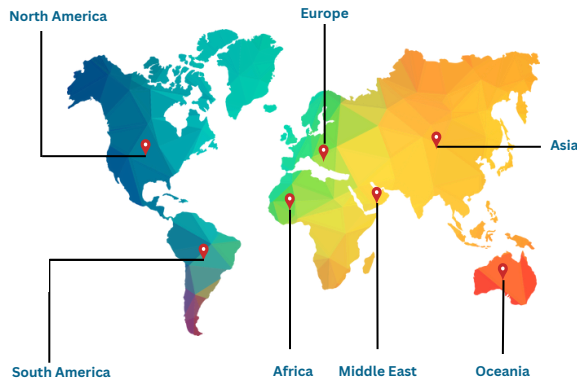
Statutory benefits: Myanmar has implemented a social security framework, as set out in the Social Security Law and the Social Security Rules, which provides certain baseline benefits for all Myanmar employees. Businesses employing five or more employees (inclusive of temporary workers and foreign employees) are required to register with the relevant township office of the SSB within 10 days of the appointment of the fifth employee. Under the current regulations, employees in Myanmar are obligated to contribute 2% of their monthly salary to the social security fund, while employers must contribute 3%. The total monthly contribution for each employee is capped at 15,000 kyats, with the employer and employee contributing 9,000 kyats and 6,000 kyats, respectively. These contributions are withheld and paid towards the social security fund.

Restrictive covenants: Every agreement that purports to restrain a person from exercising a lawful profession, trade, or business of any kind is void, unless the restrictions are reasonable, about the nature of the business. In practice, certain township labor offices have imposed a blanket prohibition on post-termination non-compete clauses.

HOW WE CAN HELP?

- Our team of professionals can conduct comprehensive market research to help businesses understand their target audience, industry trends and potential competitors.
- Our experts can help set clear objectives, outline actionable steps and identify opportunities for growth and expansion.
- Our team can conduct risk assessments to identify potential threats and vulnerabilities within a business. They can then recommend risk mitigation strategies to safeguard against adverse events.
- Our team offers advice on the optimal legal form for an enterprise, such as a corporation, partnership, limited liability company ("LLC") or sole proprietorship. Our team describes the legal and tax implications of each option and assists in picking the best option based on objectives and circumstances.
- Our team can investigate and identify any licenses, permissions or registrations required for the client's specific area or industry. The business assists with the application process and ensures that the organization complies with all legal criteria.

SERVING CLIENTS WORLDWIDE



The information contained herein is of a general nature. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. The information is not offered as an advice on any matter, and no one should act or fail to act based on such information without appropriate legal advice after a thorough examination of the particular situation. The information does not make us responsible or liable for any errors and/or omissions, whether it is now or in the future. We do not assume any responsibility and/or liability for any consequences.

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