

Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia



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Tilleke & Gibbins has opened new offices in Indonesia, Laos, and Myanmar, while our Thailand and Vietnam practices have received recognition from The Legal 500 Asia Pacific.

Establishing a Company in Myanmar

Left | **Michael Ramirez**
Consultant | michael.r@tilleke.com

Right | **Yuwadee Thean-ngarm**
Consultant | yuwadee.t@tilleke.com



Myanmar is at an important political and economic crossroads. Spearheaded by the reform-minded government of President Thein Sein, Myanmar has set a path toward a more liberalized democracy, greater political reconciliation, and the promotion of a mixed, internationally linked economy.

A critical component of these economic reforms is the promotion of foreign direct investment, primarily through the enactment of new or otherwise updated laws focused on the easing or removal of traditional restrictions on foreign investment. In addition to a number of other business-related laws, the government has substantially revised the Foreign Investment Law in late 2012 and has been active in its efforts to update the archaic Myanmar Companies Act. These ongoing efforts are creating a better business environment—one that is arguably more open to foreign investment than China and Thailand, two neighbors with an established reputation of attracting foreign investors.

The reaction of the international community has been positive, prompting the lifting of economic sanctions by Western nations and resulting in substantial interest and action by foreign investors. According to the Directorate of Investment and Company Administration (DICA), since passage of the Foreign Investment Law in November 2012, the rate of foreign investment has increased fivefold, with foreign direct investment expected to exceed USD 3 billion in 2013. There has been a similar spike in company formations in Myanmar, with an estimated 20,000 jobs created in the current fiscal year.

In the current environment of reform and economic opportunity, many foreign investors have naturally turned to Myanmar as a green field upon which to develop future business. This article introduces potential investors to relevant legal provisions regulating company formation and seeks to address some of the most frequently asked investor questions.

Business Operations

Business operations in Myanmar can be established in the following forms:

(1) Partnership: A partnership is an entity set up by individuals entering into partnership agreements to run a business entity. The partners have rights and obligations based on their agreement under the Partnership Act 1932. In accordance with this Act, the number of partners is limited to 20. A partnership may be registered, but registration is not compulsory. All partnerships formed in Myanmar have unlimited terms of operation. Since no provision is made for the term of operation, the partnership can be dissolved upon the partners' mutual agreement.

(2) Limited Company: A limited company is established by shareholders under the Myanmar Companies Act 1914. It can be in the form of a joint venture company, a local company, or a foreign company. A limited company can be established either as a public company or as a private company under the Myanmar Companies Act, or as a special company under the Special Company Act 1950. In a private limited company, the transfer of shares is restricted and the number of shareholders is limited from a minimum of two up to a maximum of fifty shareholders. For a public limited company, the number of shareholders must be at least seven.

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Myanmar Company Establishment (from page 1)

(3) Branch or Representative Office: A representative office (RO) is set up by a representative of a foreign company under the Myanmar Companies Act, while a branch office is established by registering with the DICA. Under Section 27 of the Myanmar Companies Act, both a branch and an RO must obtain a permit and registration. The documents to be presented with the permit application include: (i) a company's board resolution to establish the office in Myanmar and (ii) copies of the passports for each of the company's directors and shareholders. In an application to establish an RO in Myanmar, the directors need to sign an undertaking stating that they will not trade in the country.

(4) Association: A nonprofit organization can be established as an association under Myanmar law.

Although there are certain types of businesses that can be used to facilitate specific goals, as a matter of practice, the most commonly used form in Myanmar is the limited company. This form covers a foreign company that is registered in Myanmar and also a branch or representative office for a company organized outside Myanmar.

The Foreign Investment Law 2012 does not specify the branch office as being one of the forms that foreign investors can use to apply for investment in Myanmar. Branches are typically used for temporary projects and services, and for special industry purposes. Only a 100% foreign-owned company, a joint venture, and a business contract are listed in the Foreign Investment Law as forms that can be used to apply for investment. Therefore, foreign investors setting up companies for investment projects in industries such as manufacturing, construction, mining, hotels and resorts, agriculture, and transportation have to apply for and obtain an investment permit with the Myanmar Investment Commission (MIC) under the Foreign Investment Law.

Applicable Procedures

In order to set up a DICA company, the applicant only needs to obtain a permit to trade and to register with the DICA. The DICA will issue a temporary company registration, followed by a permanent company registration, and then it will finally issue a tax registration to the company.

To set up an MIC company, the starting point is to obtain permission from the MIC. In practice, the first step the applicant must take before obtaining permission is to secure two recommendations, as required by Section 14 of the Foreign Investment Rules. One is a recommendation from the relevant Ministry that oversees the applicant's industry. For example, if an investor is setting up a hospital or a company engaged in pharmaceutical production, a recommendation from the Ministry of Health is required. The other recommendation comes from the governmental entity administering the city in which the MIC company will be located. Once the applicant has obtained permission and has been granted a permit from the MIC, the subsequent steps are similar to the steps required to set up a DICA company under Section 18 of the Foreign Investment Rules.

Minimum Capital

As a general rule, there is no minimum share capital requirement for companies that are established in compliance with the Myanmar Companies Act. For companies seeking to operate in certain industries, however, there are minimum share capital requirements. For instance, such requirements apply to banking and insurance companies. The following types of foreign and branch companies are also subject to minimum share capital requirements:

1. Industrial, hotel, and construction companies are required to have a minimum share capital of USD 150,000.
2. Service, travel and tour companies, bank representative offices, and insurance representative offices are required to have minimum share capital of USD 50,000.

Time Frame

In general, the entire registration process takes approximately two months to one year, varying according to the type of business. However, the DICA registration is an option available to an applicant to obtain a temporary incorporation certificate. The applicant can receive this temporary registration within one month after submitting the application to incorporate under the Myanmar Companies Act.

Foreign Investment in Myanmar 2013

The Union of Myanmar Chambers of Commerce and Industry has listed the top-ten foreign countries currently investing in Myanmar.

This was calculated based on the number of foreign-investment applications approved and companies registered in Myanmar as of August 30, 2013.

In the next few years, Myanmar is expected to experience continued economic growth, driven primarily by large investment projects. However, with

the passage of the Foreign Investment Law 2012 and the expected revisions to the Myanmar Companies Act in 2014, entrance and participation of individual investors, SMEs, and regional companies are expected to increase, providing investment opportunities to a wide range of business sectors.

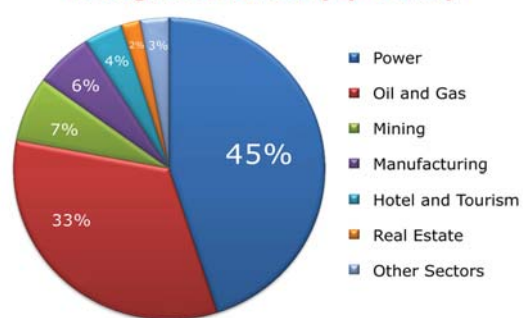
The Union of Myanmar Chambers of Commerce and Industry has also provided statistics on industry sectors targeted by foreign investors in Myanmar through August 30, 2013. The sector that has seen the most robust investment is the power sector, followed by oil and gas.

Foreign Investment (By Country)

No.	Country	Percentage of Investment
1.	China	33.04
2.	Thailand	23.23
3.	Hong Kong	14.91
4.	Republic of Korea	7.03
5.	United Kingdom	7.09
6.	Singapore	5.49
7.	Malaysia	2.41
8.	France	1.09
9.	Vietnam	1.19
10.	India	0.66

Source: The Union of Myanmar Chambers of Commerce and Industry (August 30, 2013), published by the Myanmar Times on September 9, 2013.

Foreign Investment (By Sector)



Source: The Union of Myanmar Chambers of Commerce and Industry (August 30, 2013), published by the Myanmar Times on September 9, 2013.

With the promise of continued reform, Myanmar should continue to attract a steady stream of foreign investors in the months and years to come. While the pace of entry may ease due to uncertainties about long-term sustainability of reform and the inadequacy of technology and infrastructure, an outright reversal is improbable. This portends a future for Myanmar in which foreign investors and local businesses alike can prosper, helping Myanmar to achieve its vast potential as one of the last economic green fields in Southeast Asia. 🌱