

# Myanmar

<b>Capital City</b>	Nay Pyi Taw
<b>Major Financial Center</b>	Yangon
<b>Population (2020)</b>	54.4 million
<b>Location</b>	Southeast Asia bordered with Thailand, India, Bangladesh, China and Laos
<b>Major Languages</b>	Burmese, Shan, Karen, Kachin
<b>Legal System</b>	Common Law
<b>Square Miles</b>	127,355 sq mi
<b>Gross Domestic Product (2020)</b>	USD 366 billion
<b>Major Exports</b>	Natural gas, agricultural products, forest products
<b>Currency</b>	Kyat (MMK)
<b>U.S. Dollar Exchange Rate (as of January 2020)</b>	USD 1 = MMK 1,322.24
<b>Euro Exchange Rate (as of January 2020)</b>	EUR 1 = MMK 1,614.91

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## Chapter 31

# What Type of Entity Should We Use to Set Up Our Business?

Foreign investors in Myanmar may establish a business presence through the following:

- a. incorporate a private limited company; and
- b. register an overseas corporation.

Note that representative office and regional office structures are not currently allowed under Myanmar law.

### 1. Private Limited Company

The private limited company structure (“company”) in Myanmar is similar to a Limited Liability Company (LLC) structure in the US and is the most utilized type of legal entity in Myanmar.

A company is owned by shareholders/members (minimum one) and managed by directors (minimum one). However, shareholders in Myanmar, in practice, frequently exercise direct control over the operation of the company, primarily by serving as directors themselves or through a designated or nominated director. Company directors are subject to fiduciary duties and obligations imposed by law for the company’s benefit. The liability of each of the shareholders is generally limited to the total par value of their shares.

A company must have at least one resident director, and to be considered a resident, the director must either have permanent resident status or (if not a permanent resident) be present in Myanmar for at least 183 days in a year counting from the date of incorporation.

**EXAMPLE:** A Finnish investor establishes a wholly foreign owned company in Myanmar and appoints himself the company's resident director. To satisfy the requirement of having a resident director, the investor must either have permanent resident status under Myanmar law, or be present in Myanmar for at least 183 days in a 365-day period starting from the company's date of registration.

Unlike a registered overseas corporation (see below), a company is treated under Myanmar law as a stand-alone legal entity.

If a multinational wishes to establish a business presence in Myanmar, it will likely do so as a privately held company. If individual investors wish to establish a stand-alone business to generate income in Myanmar, they will most likely also do so as a privately held company.

**EXAMPLE:** A multinational establishes a business presence in Myanmar as a wholly owned company. That new company then executes a contract to supply auto parts, but then fails to supply those parts. In this situation, the Myanmar purchaser would generally be limited to suing the multinational's Myanmar-registered company for the breach of contract, not its headquarters overseas.

Unless otherwise prescribed by law or regulation for the conduct of identified business activities, there is generally no minimum capital requirement in order for a foreign investor to incorporate a private limited company in Myanmar.

An explanation of the process to register a company as well as other relevant rules are presented in Chapter 32.

## 2. Registered Overseas Corporation

Myanmar law no longer includes the term "branch office". Instead, the designation used is a registered overseas corporation, which refers to a business entity incorporated outside Myanmar but operates in Myanmar after registration. Myanmar law sets out a range of detailed requirements with regard to registration, the use of the overseas company's name in Myanmar, the preparation and the submission of annual filings, and the process by which an overseas corporation may stop operations.

Note that, unlike a company, Myanmar law treats a registered overseas corporation as merely an extension of its head office overseas.

**EXAMPLE:** Suppose a multinational registers as an overseas corporation in Myanmar (instead of a company) and the registered overseas corporation enters into the same contract to supply auto parts as in the previous example and fails to perform. The Myanmar purchaser could then sue the head office of the multinational directly.

Overseas companies operating in Myanmar are required to appoint an authorized officer who must have permanent resident status or if not a permanent resident, should be present in Myanmar for at least 183 days in a 365-day period starting from the registration of the registered overseas corporation.

**EXAMPLE:** A company listed in China registers as an overseas corporation in Myanmar and appoints a Chinese national as its authorized officer. In this situation, the Chinese authorized officer would be required to either have permanent resident status in Myanmar or be present in Myanmar for at least 183 days in a 365 day period starting from the company's date of incorporation.

Below is a comparison of different aspects of a registered overseas corporation and a company. Note that CBM refers to Central Bank of Myanmar, DICA refers to the Directorate of Investment and Company Administration and MyCo refers to Myanmar Companies Online.

	<b>Registered Overseas Corporation</b>	<b>Company</b>
<b>Legal Personality</b>	Not a separate legal entity.	Separate legal entity.
<b>Limitation of Liability</b>	All legal obligations, debts and liabilities shall be binding and enforceable against the overseas company.	Liability of the parent is limited to the amount of share capital which it takes up or agrees to take up.
<b>Taxation</b>	Treated as a non-resident entity. All income derived from Myanmar is taxed at a rate of 25%.	Treated as a resident entity. All income derived from within or outside Myanmar is taxed at a rate of 25%.
<b>Capitalization</b>	Unless otherwise specifically prescribed by law, no minimum capital requirement.	Unless otherwise specifically prescribed by law, no minimum capital requirement.
<b>Loans from Offshore</b>	Offshore loans (which include loans from the overseas company) must be approved by the CBM but there is no need to first capitalize up to US\$ 500,000 in terms of equity in Myanmar before seeking the approval of CBM for overseas loan. It is also likely to be case that offshore borrowings remitted into Myanmar are not subject to any debt equity ratio criteria.	Offshore loans (which include shareholders' loans) must be approved by the CBM and the CBM will only approve offshore loans in respect of a company incorporated in Myanmar only if the company has at least been capitalized to the extent of US\$500,000. CBM also imposes a debt equity ratio on offshore borrowings.

	<b>Registered Overseas Corporation</b>	<b>Company</b>
<b>Shareholders</b>	Same as overseas company.	Minimum of one shareholder, whether natural person or corporate entity.
<b>Directors</b>	Same as the overseas company.	Minimum of one director who is ordinarily resident in Myanmar, i.e. he/she must stay in Myanmar for at least 183 days in each 12 months period commencing from the date of incorporation.
<b>Procedure for establishment</b>	An application for registration of an overseas corporation shall be submitted to the DICA via MyCO.	An application for incorporation of a company limited by shares shall be submitted to the DICA via MyCO.

## Chapter 32

# What are the Legal Issues Associated with the Start-up of a Company?

There are several legal and practical issues associated with the legal start-up of a private limited company (“company”). The start-up process involves registration with the Directorate of Investment and Company Administration (DICA) through its online portal, Myanmar Companies Online (MyCO) (<https://www.myco.dica.gov.mm/>).

### 1. Incorporation and Registration

Foreign investors seeking to establish a private limited company must submit an application online via the MyCO. This process takes approximately one to two working days and successful applicants will receive a corresponding Certificate of Incorporation.

Note that the name reservation request in Myanmar is a part of the overall company registration application to be approved when the company registration is final.

**EXAMPLE:** A Finnish multinational wishes to establish a subsidiary company named “Lucky Toys”. This name reservation request would be included in the company registration application and the Finnish investor will not know if the company name reservation is approved until the company registration application is evaluated and the registration process is allowed to proceed to completion.

### 2. Activities of the Company

Companies are now allowed to engage in any lawful business activity, subject to

securing required post-registration licenses and permits (e.g., companies engaged in telecommunications, insurance or financial services). Similarly, a company is not required to specify its intended business activities in its articles of incorporation (and thereby limit its authorized scope of business) unless specifically required by separate law or government policy to do so (for example companies engaged in financial services).

**EXAMPLE:** A French company seeks to establish a subsidiary in Myanmar to manufacture mosquito nets for export. As the manufacture of mosquito nets for export is not a restricted activity, the French company will not be required to state the scope of its subsidiary's intended business activities in its application for company registration, but it will need to secure other post-registration licenses and permits in order to legally engage in its intended manufacturing activities.

### 3. Registered Address

The company registration application must specify the address to which all official notices and communications to the company are to be sent and which may or may not be the same address as the company's principal place of business. The only requirement for a registered address is that it is an address in Myanmar.

### 4. Directors and Director Duties

The minimum number of directors is one and the minimum number of shareholders is one unless it is a public company, in which case it must have at least three directors. It is also a requirement that any company have at least one director who is resident in Myanmar, which means residing in Myanmar for a minimum of 183 days in any 12-month period.

**EXAMPLE:** A German company registers a subsidiary in Myanmar and has two directors: one is a German national and one is a Myanmar national. In this situation, it would be required that at least one of the two directors physically reside in Myanmar for a minimum of 183 days in any 12-month period.

Only natural persons 18 years and over are eligible for appointment as a director. Directors owe fiduciary duties to the company including the duty to act with care and diligence, the duty to act in good faith in the company's best interest, and the duty to avoid reckless trading, which requires not carrying on the business of the company in a manner that is likely to create a substantial risk of serious loss to the company's creditors.



## 5. Shares and Shareholders

As discussed in Chapter 31, there is no minimum capitalization requirement to establish a private limited company or register an overseas corporation in Myanmar.

**EXAMPLE:** Chinese investors seek to register a company in Myanmar with a subscribed capital of \$1 US. This is permissible under Myanmar law, but the company may be subject to minimum capitalization requirements depending on the nature of its intended business activities (for example, wholesale and retail trading).

Contributions in kind for share capital are now also expressly permitted. There are detailed requirements that must be met by a company that accepts non-cash consideration for the issue of shares. This includes determining the present cash value of the consideration and recording the basis for assessing that cash value. The present cash value must not be less than the amount to be credited for the issue of shares, as resolved by the board of directors.

**EXAMPLE:** Three Japanese investors register a company in Myanmar and one of the three seeks to contribute a truck with a specified appraised cash value. This non-cash consideration is permissible provided that it is specifically approved by a directors' resolution where the directors confirm that the appraised value of the truck is fair and reasonable to the company and its shareholders and that the present cash value of the truck is not less than the amount to be credited for the issue of the shares.

## 6. Auditor

Companies are generally required to appoint a licensed auditor except for companies classified as small. However, even small companies will be required to appoint an auditor in the following circumstances:

- i. a separate law requires it (e.g., depending upon the company's intended business activities or if operating under a post-registration license such as banks, etc.)
- ii. the constitution of the company requires it;
- iii. the members require it by ordinary resolution; or
- iv. the Registrar determines that an auditor must be appointed.

A small company is defined as a private company that has 30 or fewer employees and an annual revenue in the previous financial year of less the MMK 50,000,000 (approx. USD\$36,500), in the aggregate.

In addition, small companies are also exempted from requirements relating to preparing an annual balance-sheet and directors' report and forwarding financial

statements to the DICA, unless specifically required by separate law, its constitution (see below), its shareholders/members or the Registrar.

## 7. Company Constitution

Myanmar law requires all companies to have a constitution that provides for such matters such as the composition of the board, the manner by which shareholder and board meetings are conducted, and limitations on the power of the board or the company.

A company may adopt a model constitution (as provided by the DICA), a constitution that amends the model DICA constitution, or a constitution that is entirely distinct from the model constitution.

## 8. Government Fees

The relevant government fees for incorporation of a private limited company and/or registration of an overseas corporation are as follows:

Description	Applicable Fee (MMK/US\$)
Incorporation of private company limited by shares (Form A-1)	150,000 MMK/ US\$ 115.38
Incorporation of private company limited by guarantee (Form A-3)	150,000 MMK/ US\$ 115.38
Registration of overseas corporation (Form A-8)	150,000 MMK/ US\$ 115.38

## 9. Online Filings and Records of Companies

The MyCO does away with the previous manual filing done with the DICA and now allows for the online submission of applications for the incorporation of companies as well as the online filing of required company information, MyCO also currently provides information on the status of a company as registered, its registration number, its date of registration, its company type, its registered address, and its officers.

Other current and historical company information concerning the company's shareholders, its corporate filings and the existence of registered mortgages or charges over assets of the company are also available for purchase.

## Chapter 33

# What are the Legal Issues Associated with Operating as a Foreign-Held Company?

Myanmar law specifically provides that foreign investors are not to be treated less favorably than Myanmar nationals in respect of the expansion, management, operation, and the sale or other disposition of direct investments.

However, Myanmar law does impose nationality restrictions with respect to the conduct of certain business activities in Myanmar, as well as with respect to the ownership and use of immovable property, including land.

Below is a summary of the rules and regulations relating to foreign investment in Myanmar.

### 1. Definition of Foreign Investor

Myanmar law defines a foreign investor as a person investing in Myanmar who is not a Myanmar national, including foreign companies, foreign branch offices, and other foreign enterprises held by non-Myanmar parties.

Under Myanmar law, a “foreign company” refers to a company incorporated in Myanmar in which an overseas corporation or other foreign person (or combination) owns or controls, directly or indirectly, an ownership interest of more than 35%.

**EXAMPLE:** French investors enter into a joint venture with Myanmar investors in which the French Investors collectively own 36% of the shares of a new Myanmar registered company and the Myanmar investors own the rest. In this situation, the company would be legally classified as a foreign company.

## 2. Prohibited and Restricted Sectors

Myanmar law prohibits foreign investments in the following industries:

- a. Publishing and distribution of periodicals in ethnic languages, including Myanmar,
- b. Fresh water fisheries and relevant services,
- c. Establishment of quarantine stations for exportation and importation of animals,
- d. Pet care services,
- e. Manufacturing of forestry products from forest areas and government-administered natural forests,
- f. Prospecting, exploration, feasibility study and production of minerals on small and medium scale,
- g. Refinement of minerals on small and medium scale,
- h. Prospecting shallow oil wells,
- i. Printing and issuing stickers for visas and stay permits for foreigners,
- j. Prospecting, exploration and production of jade/gemstones,
- k. Tour-guide services, and
- l. Mini-markets, and convenience stores where floor area is less than 929 square meters.

An additional 22 sectors require the foreign investor to co-invest with a Myanmar-citizen and a further 126 sectors which require some prior approval from the applicable government ministry (but may allow 100% foreign ownership, subject to government approval).

In addition, the Myanmar Investment Commission (MIC) is authorized to bar all investment (whether foreign or local) with respect to certain activities that are deemed by the MIC as:

- a. Investment activities allowed to carry out by the government only (these are generally described in the State-owned Economic Enterprises Law (1987), but whose terms have been further liberalized by the passage of subsequent legislation, including, for example, the Telecommunications Law (2013) and the Financial Institutions Law of Myanmar (2016))
- b. Investment activities which may bring or cause hazardous or poisonous wastes into Myanmar
- c. Investment activities which may bring technologies, medicines, flora and fauna and instruments which are still being tested abroad or which have not obtained approvals for use, planting and cultivation except the investments which are made for the purpose of research and development

- d. Investment activities which may affect the traditional culture and customs of the racial groups within Myanmar
- e. Investment activities which may affect the public health
- f. Investment activities which may cause significant damage to the natural environment and ecosystem
- g. Investment activities that manufacture goods or provide services that are prohibited in accordance with applicable laws.

### 3. MIC Permits

As a general rule, foreigners may engage in investment activities in Myanmar by the registration of an on-shore entity (see Chapter 31), without having to secure any further approval from the MIC. However, Myanmar law does require that investors (whether foreign or local) secure an investment permit from the MIC (an “MIC Permit”) for the following specific investment activities:

Type of Investment	Coverage
1. Strategic for Myanmar	<ul style="list-style-type: none"> <li>1. Includes those made:               <ul style="list-style-type: none"> <li>a. in the technology, transport infrastructure, energy infrastructure, building urban development infrastructure and new cities, extractive/natural resources or media sectors and has an expected investment value exceeding US\$20 million;</li> <li>b. pursuant to the grant of a concession, agreement or similar authorization by an authority and has an expected value exceeding US\$20 million;</li> <li>c. in a border region or conflict affected area by foreign investors or in case of Myanmar citizen investors, has an expected investment value exceeding US\$1 million;</li> <li>d. and conducted across the national border by foreign investors or in case of Myanmar citizen investors and has an expected investment value exceeding US\$1 million;</li> <li>e. and conducted across the States or Regions;</li> <li>f. primarily for agriculture related purposes and includes rights to occupy or use more than 1,000 acres of land; or</li> <li>g. primarily for non-agricultural related purposes and includes rights to occupy or use more than 100 acres of land.</li> </ul> </li> </ul>

Type of Investment	Coverage
2. Capital intensive ventures	2. An investment is taken to be a large capital- intensive venture or investment if the expected investment value exceeds US\$100 million.
3. Projects which have the potential to negatively impact the environment or local communities	<ul style="list-style-type: none"> <li>a. a. It has been or is likely to be classified as an Environmental Impact Assessment-type project;</li> <li>b. b. The investment is located under a designated protected or reserved area or major biodiversity area under the laws in force including the Environmental Conservation Law (2012) (“ECL”) or areas selected and specified to support the ecosystem and cultural and natural heritage, cultural commemoration and unspoilt areas; or</li> <li>c. c. It includes rights to occupy or use land which: <ul style="list-style-type: none"> <li>(1) has been or is likely to be acquired through expropriation, compulsory acquisition procedure or by agreement in advance of such expropriation or compulsory acquisition procedure in accordance with the laws of Myanmar and will either cause the relocation of at least 100 individuals permanently residing on such land or comprise an area of more than 100 acres;</li> <li>(2) comprises an area of more than 100 acres and would be likely to cause involuntary restrictions on land use and access to natural resources to any person having a legal right to such land use or access;</li> <li>(3) comprises an area of more than 100 acres and which is the subject of a pre-existing bona fide claim or dispute by a person regarding rights to occupy or use such land in a way which would conflict with the proposed investment; or</li> <li>(4) would otherwise adversely impact the legal right of at least 100 individuals occupying such land to continue to occupy such land.</li> </ul> </li> </ul>

Type of Investment	Coverage
4. Business activities that will use state-owned land and buildings.	3. An investment is taken to use state-owned land and buildings if a government authority has the land, building or relevant land rights and is authorized to transfer or deal in such land, building or rights in the capacity of an owner or occupier. It does not include land use rights arising from the grant, alteration or other administration of land rights pursuant to a statutory land administration process within the responsibility of the government authority.
5. Business activities that are designated by the government to require the submission of a proposal to the commission.	

## 4. Application for MIC Permit

Myanmar law requires that foreign companies seeking to engage in activities requiring a MIC Permit to apply for and receive such permit in the proper form prior to engaging in such activity.

Upon its receipt of the required completed application form, the MIC decides whether or not the proposal meets the stipulated criteria for the MIC Permit and decides whether or not the application should be rejected. If the application for the MIC Permit is not rejected in first instance, the MIC will process the application, and if required, may also request for additional information from the investor and/or input from other governmental organizations in relation to the MIC Permit application.

Once the MIC has completed the processing of the MIC Permit application, and reaches the decision to issue the MIC Permit, such MIC Permit will be issued within ten working days from the date of the decision.

## 5. Application Fees

The usual application fee for a MIC Permit is based upon the amount of investment, as follows:

<b>Application Type</b>	<b>Fee (MMK)</b>
Permit Application (Investment less than US\$ 1 million)	MMK 100,000
Permit Application (Investment amount between US\$ 1 million to US\$ 20 million)	MMK 200,000
Permit Application (Investment amount between US \$ 20,000,001 to US\$ 100,000,000)	MMK 300,000
Permit Application (Investment Amount US\$ 100,000,001 and above)	MMK 500,000
Endorsement Application	MMK 50,000
Application for Tax Incentive (Investment amount of less than US\$ 10 million)	MMK 100,000
Application for Tax Incentive (Investment amount of US\$ 10 million and above)	MMK 200,000
Application for Land Rights Authorization	MMK 100,000

However, in response to the COVID-19 pandemic, in order to reduce the burden on prospective investors, from 20 April 2020, MIC has reduced the applicable filing fees for the various applications to the MIC as follows:

<b>Application Type</b>	<b>Fee (MMK)</b>
Permit Application (Investment less than US\$ 1 million)	MMK 50,000
Permit Application (Investment amount between US\$ 1 million to US\$ 20 million)	MMK 100,000
Permit Application (Investment amount between US \$ 20,000,001 to US\$ 100,000,000)	MMK 150,000
Permit Application (Investment Amount US\$ 100,000,001 and above)	MMK 250,000
Endorsement Application	MMK 25,000
Application for Tax Incentive (Investment amount of less than US\$ 10 million)	MMK 50,000
Application for Tax Incentive (Investment amount of US\$ 10 million and above)	MMK 100,000
Application for Land Rights Authorization	MMK 50,000



## 6. Land Rights

Foreigners are also generally prohibited from owning land in Myanmar. They are also only allowed to lease land for a term not exceeding 1 year. However, foreigners can also seek an MIC Endorsement with an accompanying land rights authorization to lease land for a term not exceeding 50 years (with 2 renewal terms of 10 years each).

For an explanation concerning this land rights authorization please see Chapter 36.

## 7. Wholesale and Retail Restrictions

Foreigners who are seeking to engage in wholesale or retail activities in Myanmar for the sale of the following commodities are required to secure a wholesale or retail permit from the Ministry of Commerce:

1. Consumer goods (including clothes, watches, and cosmetics)
2. Foodstuff (including agricultural products except restricted products, marine products, animal products, ready-made foods, various types of beverage, and domestically manufactured liquors)
3. Household goods (including ceramics, earthenware, and glassware)
4. Kitchen products
5. Medicine, medical devices and hospital equipment
6. Animal feed and veterinary medicines
7. Stationery
8. Furniture
9. Sport accessories
10. Communication products (including cameras and phones)
11. Electronics
12. Construction materials and equipment
13. Electrical goods
14. Chemicals for industrial manufacturing
15. Seeds, inputs for agriculture, and materials for agricultural use
16. Machinery for agriculture
17. Various types of machinery and accessories
18. Bicycles
19. Motorcycles and accessories
20. Spare parts for motor vehicles and heavy machinery
21. Children's toys
22. Decorative materials for households (including flowers and plants)

23. Souvenirs and handmade products
24. Fine art, musical instruments, and accessories (excluding antiques).

Minimum capital commitments are also required, based upon the composition of the on-shore trading company.

	<b>Joint Venture</b>	<b>Foreign Companies</b>
Wholesale	<p>US\$2 million and above (excluding rental fees for land lease) with equity ratio of local investor not less than 20%.</p> <p>A JV company with less than 20% of local shareholding shall be deemed as a foreign company.</p>	US\$5 million and above (excluding rental fees for land lease).
Retail	<p>US\$700,000 and above (excluding rental fees for land lease) with equity ratio of local investor not less than 20%.</p> <p>A JV company with less than 20% of local shareholding shall be deemed as a foreign company.</p>	US\$3 million and above (excluding rental fees for land lease).

Moreover, an entity which is either a foreign company or a company in a joint venture with a Myanmar citizen that seeks to engage in retail trading must dedicate a minimum floor area per location of at least 929 square meters. This effectively reserves retail activities for locations smaller than 929 square meters to persons who are Myanmar citizens.

## Chapter 34

# What is the Process to Obtain a Work Permit?

Foreigners employed to work in Myanmar are required to obtain various documents and approvals such as a business visa, a foreign registration certificate, a stay permit, a work permit, Form C and a labor card depending upon their particular employment circumstances.

These requirements are summarized in the following table:

Foreign nationals employed by employers operating without an MIC permit and/or endorsement (a “Non-MIC Company”)	Foreign nationals employed by employers operating with a permit and/or endorsement from the Myanmar Investment Commission (an “MIC Company”) or operating within a Special Economic Zone (an “SEZ Company”)
<ul style="list-style-type: none"><li>- Business visa</li><li>- Foreigner Registration Certificate (an “FRC”)</li><li>- Stay Permit</li><li>- Form C</li></ul>	<ul style="list-style-type: none"><li>- Business visa</li><li>- FRC</li><li>- Stay Permit</li><li>- Form C</li><li>- Work permit from the MIC</li><li>- Foreigner labour registration card (“Labor Card”)</li></ul>

Further details for each of the above requirements as set forth below.

### 1. Obtaining a Business Visa

A foreign national engaged to work in Myanmar is required to apply for a business visa, which is initially for a single-entry and valid for 70 days and is the authorization to reside in Myanmar.

Applications for business visas are usually made at the Myanmar embassy or consulate in the foreign employee's home country or the nearest available Myanmar embassy or consulate before the foreign employee travels to Myanmar. Also, note that certain nationalities may also apply for a business-visa-on-arrival at the Yangon International Airport, or online <https://evisa.moip.gov.mm/>.

Exact requirements and application fees may vary for each Myanmar embassy or consulate in different countries, applications for a business visa may generally be supported by an invitation letter or appointment letter from the employer in Myanmar and shall be submitted together with a passport with at least six months' remaining validity and documentation evidencing the registration of the inviting Myanmar business and a completed application form.

For foreigners qualifying to apply for the business-visa-on-arrival at the Yangon International Airport the requirements for such visa-on-arrival include (i) an invitation letter from the employer, (ii) the certificate of incorporation or registration of the inviting entity, (iii) two passport-sized photos and (iv) a completed business-visa-on-arrival application form.

Continued employment after 70 days will require the foreign national to depart Myanmar and re-apply for another business visa, with usually a 70-day period. However, if the subsequent business visa is sought from the Myanmar embassy, the embassy may, in its discretion and upon the employee's request, issued a multiple-entry visa with a term of 3 months, 6 months or 1 year.

At the same time, the employee, while in Myanmar under a valid business visa, may also seek the issuance of a stay permit (allowing the foreigner to reside in Myanmar for a period longer than the one stated in the foreigner's business visa), in the manner discussed below.

#### **a. Dependent Visa**

Dependents of foreign nationals employed by Myanmar employers must also enter the country with a business visa, and are subject to the same requirements and conditions discussed above. They may similarly apply for a stay permit with their principal, in the manner discussed below.

In all cases, dependents are required to submit the proof of their family relationship with the foreign employee. Note that children above 18 years of age are usually not eligible to apply for a stay permit (see below) and visa extension as a dependent; however, that is subject to the discretion of the issuing authorities.

## 2. Foreign Registration Certificate (FRC)

Foreign nationals who enter Myanmar with a business visa that will allow them to remain for more than 90 consecutive days are required to secure an FRC within one month from their arrival. The validity of all FRCs expires on the 30th day of November of every year, and the FRC has to be renewed annually in December. Applications are made with the Immigration Department of the Ministry of Labor and Immigration and Population (“MLIP”).

## 3. Stay Permit

A stay permit is an authorization for the foreign employer to reside in Myanmar for a period exceeding the term in the employee’s business visa. If a foreigner’s employment will continue beyond the term of business visa, and the foreigner has not, in the meantime, been able to secure a stay permit, then the foreigner must exit Myanmar and re-apply for a new business visa.

**EXAMPLE:** A Dutch national is to be employed by a Myanmar registered company on a short -term basis, obtains a business visa that is valid for 70 days, enters Myanmar and begins working. The term of the employment is completed before 70 days, and the Dutch employee then returns home before the expiration of his business visa. In this situation, it is not necessary for the Dutch national to apply for and be issued a stay permit.

The first step in applying for a stay permit is obtaining a letter of recommendation from the Ministry of Planning, Finance and Industry (MPFI). After this recommendation is obtained, the foreigner must then proceed to the MLIP to apply for the stay permit, which is valid for up to one year. Stay permits may be extended subject to application by the necessary parties and payment of the relevant application fees.

If the employer (whether foreign or Myanmar-owned) is not registered with the MIC, the position to which the foreigner must be appointed must be one requiring skill. As such, non-MIC companies usually only hire foreign nationals for high-level positions.

For employees of MIC Companies and SEZ Companies, applications for stay permits must also additionally satisfy the requirements set forth in the next succeeding section.

## 4. Requirements for MIC and SEZ Companies

For foreign nationals employed by MIC and SEZ companies, their employment is required by law to be approved by and registered with the MIC, whether or not they intend to apply for a stay permit (which, as stated above, is only necessary if the national wishes to remain in Myanmar for a period beyond the term of his or her business visa). Such approval and registration are generally referred to as a “work permit” by the MIC and operate as part of the supporting documents for the application for stay permits.

Further, the employees will also be required to obtain a Labor Card after registration with MIC. More details about the Labor Cards are discussed below.

### a. Work Permit

There is no limitation on the number of foreign employees who may work as skilled labor for either a foreign company registered with the MIC or companies located in a SEZ. These two types of companies are permitted to appoint any qualified person as senior manager, technical and operational expert, or adviser. However, note that these employers are allowed to appoint only Myanmar citizens for work that does not require high skill.

**EXAMPLE:** An Italian-held company is registered in Myanmar and is located within a SEZ and wishes to hire two foreigners: one as a quality control expert and the other to operate machinery in its factory.

In this situation, the foreigner to fill the position of quality control expert should qualify to receive the stay permit but for the foreigner to operate the machinery whether or not he would be approved for a stay permit may depend on whether or not the presiding official considers the position as skilled labor or not.

In addition, Myanmar law requires companies registered with the MIC to register and apply for MIC approval when hiring foreigners for senior management, technical experts and consultants, whether it is short-term or long-term employment. According to the announcement issued by the Investment Monitoring Division of the MIC (“IMD”), an application for the approval of the MIC for foreign employees working for MIC companies is required within seven working days after the date of arrival of the foreign employee.

The application for the approval of the MIC is to be submitted to the IMD and the validity of the approval of IMD varies from six months to one year, and upon expiration, the extension can be applied for at the MIC One Stop Service (“MIC OSS”). To apply for the approval of IMD, the following documents must be submitted:

- a. application letter (including name, passport number, position, duration, qualification);
- b. form (12-A) (application form for the permission of work);
- c. invoice for the service fee of MMK5,000 for the appointment of each foreigner;
- d. a copy of the passport;
- e. number of proposed employees (local, foreign);
- f. number of existing employees (local, foreign), including each employee name, expertise level and position;
- g. a copy of the latest quarterly performance report of the company;
- h. the foreigner's name, passport number, evidence of expertise or degree and profile; and
- i. power of attorney (if investors cannot come to the office, including the name, national registration certificate number and phone number).

Upon issuance of the approval of the IMD, the same documents listed above must be submitted along with the approval of the IMD to the MIC OSS to secure the approval of the MIC OSS. The approvals of the IMD and the MIC OSS both serve as the recommendation for the issuance of a stay permit in favor of the foreigner.

After registration of the foreign employees with the MIC, the company shall apply for work permits with a recommendation of the MIC (i.e., the approvals of IMD and MIC OSS) to the MLIP. The stay permit shall be valid for up to one year and may be extended subject to application by the necessary parties and payment of the relevant application fees.

#### **b. Labor Card**

In addition to the stay permit, foreign nationals employed by MIC or SEZ Companies are also required to apply for the Labor Card from the MLIP, which is issued with the same period of validity as the stay permit and may be applied for extension subject to the approval of the IMD and the MIC OSS. Having this Labor Card enables registrations of employment contracts of the relevant foreign employees with the township labor office under the MLIP.

## 5. Obtaining Form C

In order for a foreigner to legally reside outside of a hotel in Myanmar, the foreigner must apply for Form C with the relevant Township Immigration Office of the MLIP within 24 hours after his/her arrival in Myanmar. Application for Form C is the responsibility of the landlord of the foreign national and requires recommendation of the relevant Ward Administration Office of the General Administration Department, Ministry of Home Affairs certifying that the foreigner resides at a particular residence within the ward and sets forth the following details.

- Nationality;
- Date of birth;
- Address in Myanmar;
- Date of arrival;
- Stay Permit validity date;
- Business in Myanmar;
- Date of proposed departure;
- Passport number, date of issue and authority of issue.



## Chapter 35

# What Incentives are Available to Foreign Investors by the Government?

The Myanmar Investment Commission (“MIC”) under the Myanmar Investment Law (“MIL”) is the government body responsible for the review and approval of MIC Permits and MIC Endorsements for projects undertaken in Myanmar. Unless specifically required by law (for certain large-scale and environmentally-sensitive business activities), it is not necessary for investors to secure these MIC Permits or MIC Endorsements and it is possible for investors to do business in Myanmar without them. However, investors without these MIC Permits or MIC Endorsements will not enjoy the rights and concessions available to investors under the MIL. The application processes to obtain a MIC Permit and MIC Endorsement are set forth in Chapter 33.

**EXAMPLE:** A Danish clothing company has a plan to construct a manufacturing plant in Myanmar to produce, sell and export clothes. This company may register a 100% foreign-owned subsidiary in Myanmar, but in order to construct and operate a manufacturing plant, it will need to secure an MIC Endorsement for a land rights authorization to enter into a long-term lease of land for its manufacturing plant.

### 1. Benefits Available

The MIC is authorized to grant the following benefits and incentives to qualifying projects:

- i. **Limited-period income tax exemption** – This refers to exemption from income tax for a designated number of years (3, 5, or 7 years) from the commencement of commercial operations depending on the zone (based

on level of development of zone) under which the business will be conducted. The period of tax exemption per type of region is as follows:

- a. Seven years for Zone 1 or Least Developed Regions;
  - b. Five years for Zone 2 or Moderately Developed Regions; and
  - c. Three years for Zone 3 for Developed Regions.
- ii. **Exemptions and reliefs from customs duties and other internal taxes** - The MIC is authorized to grant exemptions and reliefs to qualified investors on customs duties and other internal taxes on, among others, machinery, equipment, materials not available locally during the construction/preparatory period of the investment.
  - iii. **Other exemptions and reliefs** - The MIC is authorized to grant other exemptions and reliefs to qualified investors such as exemption or relief from income tax if the profit obtained from the investment business that has secured an MIC Permit or MIC Endorsement is reinvested in such investment business or in any similar type of investment business within one year, right to deduct depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on a depreciation rate which is less than the stipulated lifetime of the machinery, equipment, building or capital assets used in the investment, and right to deduct expenses from assessable income, incurred for research and development relating to the investment activities/business which is actually required for the economic development of Myanmar and carried out within Myanmar.

Apart from satisfying the requirements above, the MIC also requires that there will be expenditure of additional funds or application of further capital of an amount exceeding US\$300,000.

**EXAMPLE:** A German company applies for an MIC Endorsement to receive a customs duty exemption on equipment to be imported and used for its manufacturing project. In order to qualify to receive this incentive one of the requirements will be that there will be an expenditure related to the project exceeding \$300,000 US.

#### **a. Land Rights Authorization**

Under Myanmar law, foreigners are prohibited from owning or acquiring rights over immovable properties, or leasing them for a period of more than one year. The MIL however provides an exemption to this lease restriction by allowing foreign investors who have applied for an MIC Permit or MIC Endorsement to also apply for a Land Rights Authorization, which would allow the investor to lease the land for a term not exceeding 50 years (with two 10-year renewals).

**EXAMPLE:** A Japanese company established a subsidiary in Myanmar and seeks to lease a factory for the manufacture of furniture for export. In this situation, the general rule would be that the company could only lease the factory for no longer than 1 year. However, if such project is granted an MIC Permit or MIC Endorsement with accompanying Land Rights Authorization, the company will be allowed to lease the factory space for up to 50 years (renewable for two 10-year terms).

When reviewing applications for Land Rights Authorization, the MIC will consider various criteria including whether the land may be used for purposes contemplated in the investment under applicable laws, and if the proposed use of the land will or may be likely to require a significant alteration of topography or elevation of the land, and whether such alteration is likely to have a material adverse effect on the environment which cannot be mitigated.



## Chapter 36

# What are the Legal Issues Associated with Foreign Ownership of Land?

Foreign individuals and foreign companies are not allowed to own any direct interest in land in Myanmar unless covered under a statutory exception. Foreign individuals and foreign companies are also subject to leasehold limitations. Below is an explanation of the rules relating foreign ownership of land and leasing of land.

### 1. Restrictions on Foreign Ownership

Myanmar law prohibits any sale, transfer and exchange of land to any foreigner or foreign company.

A foreign company is defined as a company incorporated in Myanmar in which an overseas corporation or other foreign person (or combination) owns and/or controls, directly or indirectly, an ownership interest of more than thirty-five percent, however, note that uniformity in the application of this rule varies, in that some land officials continue to apply the previous more narrow rule that classified companies with any foreign shareholding as a foreign company while others apply the new rule.

**EXAMPLE:** Korean and Myanmar nationals register a company in Myanmar in which Korean national holds 1% of the company shares. The company then seeks to purchase land to build a hotel in Yangon. In this situation, there are two possible scenarios:

- 1) Although not specifically supported by current law, the land regulator in Myanmar may continue to disallow the land purchase on the basis that only companies 100%-owned by Myanmar citizens may be allowed to own land; or

2) The land regulator adopts current law and allows the land purchase because the company's foreign shareholding is not more than 35%.

## 2. Condominium Ownership

Myanmar law allows foreigners to own up to 40% of the total sellable floor area in a qualifying condominium development. Accordingly, any transfer of title to a foreigner causing this ownership ratio to exceed 40% will not be allowed.

**EXAMPLE:** A German national working in Mandalay seeks to purchase a condominium to live in. The current owner of the condo is a Myanmar national. In this situation, the German would only be allowed to purchase the condominium if the purchase would not cause over 40% of the total space in the condominium development to be owned by foreigners.

## 3. Restrictions on Leases

In Myanmar restrictions on the lease of land and other real estate also apply. Foreigners and foreign held companies are generally limited to leasing land and other real estate for one year at a time.

**EXAMPLE:** A Myanmar registered company which is 100%-owned by a UK shareholder (thus classified as a foreign company) seeks to lease a warehouse outside of Naypyidaw. In this situation, the company would generally be limited to leasing the warehouse for one year at a time.

**EXAMPLE:** A Myanmar registered company, which is 75%-owned by a Thai shareholder (thus classified as a foreign company) seeks to lease an office in Yangon for 3 years. In this situation, they would generally be limited to leasing the space for 1 year at a time.

However, an exemption to the one-year limitation exists for foreign investors who apply with the Myanmar Investment Commission ("MIC") for Land Rights Authorization. If granted this allows foreigners and/or foreign-owned companies to lease and develop land and immovable properties for a period not exceeding 50 years, which can be renewed for up to two terms of 10 years, or for a total of 70 years.

**EXAMPLE:** A company registered in Myanmar, which is 100%-owned by an Italian shareholder is granted Land Use Authorization through an Endorsement issued by the MIC to construct and operate an ice cream factory outside Yangon. In this situation, the company may be allowed to lease the land where the factory is to be constructed for up to 50 years, which is renewable for up to 70 years.

Also, note any lease exceeding 1 year is required to be registered with the Office of Register of Deeds within 120 days from the date of execution of the lease contract in order to take effect.

**EXAMPLE:** Canadian investors register a Myanmar company and operate in a SEZ. In this situation, the company may be granted the right to lease land for up to 50 years.

### a. Land Classification

In addition to the above, additional restrictions on foreign individuals' and foreign companies' ability to lease land and other real estate may apply depending upon the legal classification of the land to be leased.

Below is a summary of different legal classifications for land presented together with the applicable restriction concerning foreign leasehold.

Land Type	Description	Lease Limitation
Freehold	Granted during the colonial era, this is the only type of land in Myanmar where full ownership rights are vested on a Myanmar citizen. As such, freehold land may be used for any lawful purpose and leased, sold or otherwise transferred to a Myanmar citizen without restriction, and may only be expropriated by the government if public interest requires it, subject to the payment of compensation and in accordance with the Land Acquisition Act.	Owner may lease land to a foreign investor, only with approval from the cabinet and from the Directorate of Investment and Company Administration (MIC).
Grant Land	Owned by the state but leasehold rights to possess and use the land for a lawful purpose are granted to a Myanmar citizen on a long-term basis. Such rights may be enjoyed by the grantee or his successor in interest for a period ranging from ten to 90 years, extendible subject to the approval of the relevant authority. Rights over grant land may be leased or otherwise transferred, subject to the conditions specified in the land grant.	Landholder may lease all or part of the land to a foreign investor, only with permission from the cabinet and the MIC.

Land Type	Description	Lease Limitation
Leased Land	Owned by the state but which a lease allowing the right to possess and use the land for a specified purpose has been granted by the government to an individual or company. Land use authorizations conferred on a foreign invested company under the MIL fall under this category. Typically, the conditions for the use and, if permitted, sublease, assignment, transfer or disposition of the land/land rights are stated in the lease.	Typically, long term leases of 10/60/90 years. Lessee can lease land directly from the Government or sub-lease land if the Government lease allows it (with amendment of the lease, if necessary).
Permit/ Licensed Land	Owned by the state but where certain limited rights and obligations as specified in a written license have been granted by local land authorities to a Myanmar citizen. These limited rights granted under this type of land may only be assigned or transferred with the approval of the aforesaid local land authorities.	Land may be leased, sub-leased or transferred with Government permission. Permit Land must be converted to Grant Land before it can be used for a purpose other than habitation or personal cultivation.
Vacant/ Fallow/ Virgin Land	Vacant and fallow lands are lands previously cultivated by tenants but that have since been abandoned by such tenants. Virgin lands are those that have not been previously cultivated or tenanted. Such lands form a part of the government land bank and may be allocated to Myanmar citizens, state-owned economic organizations, and foreign joint venture investors (subject to compliance with the MIL) for agriculture, livestock, poultry farming, aquaculture or any other use permitted and approved by the Central Committee for the Management of Vacant, Fallow and Virgin Lands.	May be leased, sub-leased or transferred to a foreign investor only with Government permission. If the use of the land will be something other than agriculture, livestock breeding or aquaculture, mining, or another use specifically permitted by the Government, then the lessor will have to apply for a change of the purpose of the land.



## 4. Requirement of Registration with the Officer of the Register of Deeds

Until recently, registering the transfer of title of land, mortgages, encumbrances and third party interests has not been widely adopted in part due to the absence of appropriate registers across Myanmar. However, the government has recently enacted laws creating and revitalizing national land registers and requiring that instruments that which purport to convey ownership over immoveable property, create, declare, assign, limit or extinguish any right, title or interest in immoveable property in excess of Ks 100,000, including mortgage deeds and involve leases from year to year, or for any term exceeding one year or reserving a yearly rent be registered or, otherwise, shall be deemed ineffective.

**EXAMPLE:** Danish national owns a condominium in Naypyidaw and wishes to sell the condominium to a German national with a sales price of 20 million KS. In order for the sale to be effective the instrument of conveyance or sale must be properly registered with the Office of Register of Deeds within 120 days from the date of execution of the instrument.