

BAKER & MCKENZIE

Doing Business in

Myanmar

for US Companies





Myanmar has undergone a political and economic transformation with incredible speed and success. This transformation has allowed it to leave behind its isolation and move towards full integration into the global economy.

In 2015, Myanmar held its first national election in 25 years, which ushered in a new era of democracy and economic prosperity. Investor expectations were so high that Myanmar experienced GDP growth of 7.8 percent, in a historic election year. In contrast, the U.S. experienced GDP growth of 2.4.

THE POLITICAL AND ECONOMIC SITUATIONS IN **MYANMAR** ARE ONLY BECOMING MORE STABLE.

With this increasingly stable political situation, the Asian Development Bank has estimated that Myanmar will experience GDP growth of:

MYANMAR	GDP Growth	USA
8.4% (2016)		1.9% (2016)
8.3% (2017)		2.2% (2017)

In the last four years, significant reforms have been undertaken to build investor confidence in Myanmar, including the passing of the Arbitration Law. Important new laws in their late drafts are the Companies Law, Investment Law and several Intellectual Property laws.

Given its rapid accession to the world stage, US investors can no longer afford to wait to invest in Myanmar.

MAJOR **US** INVESTMENT IN MYANMAR

Major investment from the **US** is in
the following sectors



FAST FOOD



CLOTHING



BEVERAGES



**HOUSEHOLD
PRODUCTS**

SANCTIONS

On 7 October 2016 President Barack Obama issued an executive order terminating the national emergency relating to Myanmar (the Burma related executive orders). This has the effect that:

- All individuals and entities listed on the Specially Designated National and Blocked Persons List (SDN List) for Myanmar related reasons will be removed from the List;
- All Office of Foreign Asset Control (OFAC) administered restrictions relating to banking and financial transactions with Myanmar are removed; and
- The Responsible Investment Reporting Requirements will be removed (that is, US person will no longer need to report any agreement with the Myanmar Oil and Gas Enterprise or any investment which exceeds \$5,000,000).

Concurrent Anti-Money Laundering Exception

On the same day, the Financial Crimes Enforcement Network (FinCEN) issued an administrative exception which suspends the prohibition on US financial institutions providing correspondent services to Myanmar banks. This will make it easier for US financial institutions, including banks, to wire transfers to and from Myanmar banks, conduct business transactions and make and accept deposits from Myanmar banks.

The issuing of the administrative exception was in recognition of advances made by Myanmar in the regulation of AML, taking actions to address public corruption, taking action against international drug trafficking and cooperating with international law enforcement agencies in criminal matters.

Jade and Rubies

Finally, the ban on the importation into the United States of Myanmar originated jadeite and rubies has been revoked.

Implications

Together the measures will enable United States companies to more easily invest in Myanmar. However, of similar significance, the removal of the individuals and entities from the SDN List and the AML exception will mean that investment into Myanmar (particularly where the relevant currency is US\$) will be easier for all companies (whether they are US persons or not).



MARKET ENTRY

Business in Myanmar must be conducted through an entity registered in Myanmar.

	SUBSIDIARY	BRANCH
LIABILITY	Limited liability	Full liability
REPORTING REQUIREMENTS	Heightened reporting requirements	Minimal reporting requirements

Foreign investors may establish either a wholly owned subsidiary or a branch office in Myanmar.

The application processes to establish a subsidiary or register a branch in Myanmar are largely identical. In either case, a complete application is lodged with the Directorate of Investment and Company Administration (**DICA**). Within a few days, the DICA will issue a temporary Certificate of Incorporation or Registration, and a Form 1 (commonly referred to as a Permit to Trade). At this point, the company or branch is legally set up in Myanmar, but must inject its capital and perform various administrative actions before receiving the final Certificate of Incorporation or Registration. The whole process takes approximately three months.

FINANCING AND THE FINANCIAL SECTOR

The Myanmar financial sector has taken great strides in the past year. As of 2015, the Central Bank of Myanmar had granted nine banking licenses to foreign banks, followed by four additional licenses in 2016. Additionally, FMO, the Dutch development bank, as well as the OPIC, have both given substantial loans to onshore projects in the past year.

Still, financing in Myanmar is not without its challenges. The primary difficulty in obtaining financing in Myanmar is adequately securing the financing. Under Myanmar law, the usual forms of security are available, such as mortgages over immovable property, security over receivables, pledges over bank accounts and shares, guarantees, and others. For such security interests to be enforceable, strict stamp duty and registration requirements must be followed. Ultimately, any enforcement of an onshore security would be done through the courts of Myanmar, which can be slow and unpredictable.

LAND OWNERSHIP

Foreigners or the subsidiaries or branches of foreign companies may not own land in Myanmar, although as we indicate, under certain conditions long term leases are available for investors.

THE YANGON STOCK EXCHANGE

After several years of planning, the YSX opened on the 9th December 2015. There are currently 3 companies listed on the YSX, with Myanmar Citizens' Bank being the most recent listing in August 2016. However, it is not known when foreign investors will be permitted to trade on the exchange.

INVESTMENT PROTECTION

There are multiple investment protection regimes in Myanmar. Specifically, those are the investment protections under the Foreign Investment Law (FIL), Special Economic Zone Law (SEZ Law), various bilateral investment treaties (BITs) and the ASEAN Investment Protection Agreement (1987) and its successor, the ASEAN Comprehensive Investment Agreement of 2009 (ACIA). With some planning, investors can avail themselves of one or more of these investment protection regimes.

INVESTMENT PROMOTION

There are two investment promotion regimes in Myanmar aimed at attracting large scale foreign investment. Myanmar Investment Commission (MIC) Promotion under the FIL, and Special Economic Zones under the SEZ Law. While there is some variation between the investment incentives offered under these two regimes, they are primarily identical.

	MIC	SEZ
LONG TERM LEASE	yes	yes
CORPORATE INCOME TAX RELIEF	yes	yes
IMPORT DUTY RELIEF	yes	yes
PROTECTION AGAINST EXPROPRIATION	yes	yes

It should be noted that a new Investment Law is being drafted, which is expected to broaden the application of investment incentives.

Kyaukphyu SEZ

Thilawa SEZ

Dawei SEZ

Mandalay

Naypyitaw

Yangon

Currently, there are three SEZs in Myanmar; Thilawa, Kyaukphyu and Dawei. Thilawa is the most developed of the three SEZs, and is located near Yangon, the largest city in Myanmar and commercial capital.



LIBERALIZATION OF TRADING ACTIVITIES IN MYANMAR

Trading is another area that has seen a significant liberalization in the past year. Previously, foreign companies were strictly prohibited from engaging in retail or wholesale activities, under the Ministry of Commerce policy prohibiting foreign companies from engaging in “trading” activities. However, in the past year the Ministry of Commerce has announced that foreign companies may enter into a joint venture with local companies to retail or wholesale five types of products in Myanmar. Overall, the Ministry of Commerce appears to be moving towards liberalization of this restriction, which is a welcome sign for investors.

ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING

Myanmar has implemented the Anti-Corruption Law 2013, which clearly sets out what activities are punishable. Furthermore, the local government authorities have made a concerted effort to educate government employees regarding what is acceptable gift giving, and what is prohibited under the law.

Similarly, Myanmar implemented the Anti-Money Laundering Law 2014, and made a push to prevent money laundering. In 2016, less than two years after the Anti-Money Laundering Law was implemented, the Financial Action Task Force removed Myanmar from its list of states deemed weak in combating money laundering and terrorist financing.

DISPUTE RESOLUTION

Myanmar ratified the New York Convention in 2013, and passed the Arbitration Law in 2016, fully implementing the New York Convention. Under the Arbitration Law, foreign arbitral awards are enforceable under the Code of Civil Procedure as though they were a decree of the court. This has been a boon for investor confidence, as previously the enforcement of foreign arbitral awards was uncertain. Similarly, foreign court judgments are enforceable under the Code of Civil Procedure, but the courts of Myanmar have broad discretion to retry the case.

Products permitted for trading by foreign companies in JV



Construction Materials



Fertilizer



Medical Equipment



Pesticides



Seeds

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Being global is part of our DNA.**

Our difference is the way we think, work and behave – we combine an instinctively global perspective with a genuinely multicultural approach, enabled by collaborative relationships and yielding practical, innovative advice. Serving our clients with more than 4,200 lawyers in more than 45 countries, we have a deep understanding of the culture of business the world over and are able to bring the talent and experience needed to navigate complexity across practices and borders with ease.

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