

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 September 14th, 2016, President Obama announced his intention to terminate U.S. sanctions on Myanmar. This was excellent news for the future of U.S. companies interested in investing in Myanmar. Daw Aung San Suu Kyi and President Obama also announced the U.S.- Myanmar Partnership, which is intended to allow for deepened economic ties across a range of sectors between the two countries.

It is expected that the sanctions regime will be lifted soon, although the precise date is not yet known.

One note of caution: due diligence should still be exercised because Myanmar individuals or entities may remain Specially Designated Nationals (SDNs) under different sanctions programs.

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.

Kyuakpyu SEZ

Thilawa SEZ

Dawei SEZ

● Mandalay

● Naypyitaw

● Yangon

Currently, there are three SEZs in Myanmar; Thilawa, Kyuakpyu 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



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Being global is part of our DNA.**

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