



2018 Year Review

Myanmar

In 2018, Myanmar continues to generate intense investor interest in what remains one of the world's largest underdeveloped markets. Myanmar is making valiant strides in leveraging its geopolitically strategic position, rich natural resources, young labor force, over 50 million strong population, and proximity to some of the most dynamic economies in the world, to propel its nation and people to greater prosperity and step out of the shadow of its authoritarian past. We have summarized the key developments undertaken during 2018.



New Competition Rules in Myanmar

Myanmar's Ministry of Commerce ("MOC") issued the Competition Rules (Notification No. 50/ 2017) dated 9 October 2017 ("Rules") pursuant to Article 56(a) of the Competition Law. After the National Assembly's 90-day review period, the Rules took effect earlier this year. While the Rules provide no material guidance on the interpretation and application of the substantive provisions of the Competition Law; they clarify aspects of the Competition Commission ("Commission") and Commission Secretariat ("Secretariat") as well as expanding on several procedural elements of the Competition Law.

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Minimum Wage Increase

The National Committee for setting the Minimum Wage issued Notification 2/2018 establishing an increased daily minimum wage of MMK 4,800 (approximately USD 3.60), for an eight-hour workday. The increased minimum wage does not apply to small businesses with less than 10 workers and family businesses. Notification 2/2018 replaces Notification 2/2015 which establish the last daily minimum wage of MMK 3,600 (approximately USD 2.70). Setting the minimum wage in 2015 followed a process established by the 2013 Minimum Wage Law and Rules. The process involves numerous meetings and discussions among the relevant national, regional and state committees, along with employer and employee organizations, workshops, and other consultations. The previous minimum wage of MMK 3,600 per day did not apply to small businesses with less than 15 employees and family businesses.

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The Myanmar Companies Law, Changes Related Party Transaction Landscape

The Myanmar Companies Law ("MCL"), with a view to promote corporate governance and transparency has defined related parties and come up with compliance requirements for related party transactions which is one of the distinct features of the new law. The changes which have been introduced to the MCL affects the general financing between related parties and requires additional compliances to be looked into before entering into financing transactions.

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Myanmar Permits Wholesale and Retail Business for Foreigners

With the issuing of Notification 15 of 2017 ("Restriction List") under the Myanmar Investment Law 2016 ("MIL"), retail and wholesale activities by foreign investors are now permissible with approval from the Ministry of Commerce ("MOC"). The MOC has also announced the imminent circulation of Notification 25/2018 on trading and wholesaling activities for foreign investors. This will lay down the framework, guidelines, and required qualifications for these activities in detail. The notification will soon be published on the MOC's website. This is a welcome strengthening of the MOC's positive trend in opening up the economy to greater levels of foreign participation and investment. This builds upon previous developments such as when they permitted foreign participation in the trading of six limited commodities (seeds, pesticide, fertilizers, medical equipment, agricultural equipment and construction material). The MOC has now issued a notification allowing for unrestricted wholesale and retail activities by foreign companies, joint ventures, and local companies (with initial capital exceeding USD 7 million).

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Companies' Re – registration, Formation, and Corporate Compliance filing under the Myanmar Companies (Electronic Registry System and Miscellaneous Matters) Regulations 2018

A new electronic registry system called Myanmar Companies Online ("MyCo") is to be launched with the coming into force of the new Myanmar Companies Law 2017 ("MCL") on the 1st of August. The Directorate of Investment and Company Administration ("DICA") is introducing MyCo with the purpose of streamlining company filings and making the process more transparent. The DICA requires all existing companies and entities to re-register via MyCo. This mandatory company re-registration must be performed from 1 August 2018 to 31st January 2019, as the implementation period of the Myanmar Companies (Electronic Registry System and Miscellaneous Matters) Regulations 2018.

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Own a Condo in Myanmar

On 14 September 2018, the Ministry of Construction (“MOC”) issued Notification 227/2018 (the “Notification”) “Appointing Registrar and Opening Registration Office relating to Condominiums” as part of the implementation of the Condominium Law 2016 (“Condo Law”) and Condominium Rules Notification 267/2017 (“Condo Rules”).

This welcome development establishes the long awaited condominium registration offices allowing developers to register condominiums under the Condo Law and Rules. It is thus now possible for foreign nationals to own up to 40% of the total saleable floor area of the respective condominium building.

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Investment Commission Invites Increased Foreign Investment into Logistics and Manufacturing Sectors

The Myanmar Investment Commission (MIC) is seeking heightened local and foreign participation in logistical services and the manufacturing sectors in order to foster increased investment into Myanmar. In summary, these invitations to invest are offered in order to foster greater investment into Myanmar. According to the MIC’s press statement on 28 December 2017, as of the third week of December, the MIC permitted and endorsed 174 foreign direct investment enterprises, this includes the notable investment into the Thilawa Special Economic Zone. These investments in total amounted to over USD 5 billion.

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Foreign Banking Branches in Myanmar Now Permitted to Provide Financing to Local Companies

The Central Bank of Myanmar issued a directive which goes considerable distance in further liberalizing and encouraging market access to local companies. The directive will foster increased competition in the market and addresses the persistent grievances of local companies in terms of their access (or the lack thereof) to channels and sources of foreign finance. By virtue of this directive, the branches of foreign banks are now permitted to provide banking services, including financing and all other related banking services to local companies. This directive seeks to address the issues that local companies traditionally faced in trying to secure financial assistance from branches of foreign banks operating in Myanmar. The directive is also a welcome step for foreign banks in tackling thorny issues that foreign banks had to endure when interacting with local players in the market.

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Myanmar Branches of Foreign Banks Now Permitted to Set their Own Interest Rates for Foreign Currency Loans

In another recent development, the Central Bank of Myanmar (“CBM”) has taken a further step in liberalizing the business operations of branches of foreign banks operating in Myanmar.

In line with the latest CBM announcement, branches of foreign banks operating in Myanmar are now permitted to provide financing in both local and foreign currency. Foreign bank branches are also permitted to set their own interest rates for foreign currency loans. While there has been no explicit cap on interest rates imposed by the CBM in relation to borrowing from overseas financial institutions, it is assumed that the CBM is now creating a level playing field between foreign banks with branches in Myanmar and those without.

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Updates on Online Payment System and Advance Income Tax on Exports

The Myanmar IRD implemented an online payment system this month through which taxpayers can easily submit their due taxes. This online system aims to reduce delays resulting from manual filing and the clearing of checks with local banks and to streamline the tax payment procedures with the Myanmar Economic Bank. The online payment system applies to taxpayers registered under the Large Taxpayers Office (“LTO”), the Medium Taxpayers Office (“MTO”), and those registered under township tax offices.

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Myanmar IRD Clarifies Financial Year For Banks and Financial Institutions

The Internal Revenue Department (“IRD”) recently issued an announcement (under LTO letter No. 5274 dated 9 May 2018) stating that banks and financial institutions must adopt the new financial year for reporting purposes (i.e., starting 1 October 2018), in order to come into alignment with the Central Bank of Myanmar’s (“CBM”) new reporting requirements.

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Myanmar Passes The 2018-2019 Union Tax Law

On 25 September 2018, the Union Parliament (“Pyidaungsu Hluttaw”) enacted the 2018-2019 Union Tax Law (“2018-2019 UTL”) which provides clarity on the transition period regarding the change in the tax year of reporting along with tax rates and exemptions applicable to certain goods and services in Myanmar. For State-owned enterprises (“SOEs”), the 2018-2019 UTL is effective from 1 October 2018. For other taxpayers (i.e., private companies and businesses), the provisions of this new law will only be effective between 1 April 2019 to September 2019. At present, private companies and businesses will still be covered by the 2018 UTL (effective since 1 April 2018) until 31 March 2019.

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Myanmar Passes the 2018 Union Tax Law

The 2018 Union Tax Law (“2018 UTL”) was signed into law by U Win Myint, the new President of the Republic of the Union of Myanmar, on 30 March 2018. The new law (effective from 1 April 2018) provides welcome clarity on the financial year for 2018-2019, and the tax rates and exemptions applicable to certain goods and services in Myanmar. Major changes in the 2018 UTL are:

1. Clarification of the financial year 2018-2019 (“FY 2018-2019”)
2. Changes to Special Goods Tax (“SGT”)
3. Changes to Commercial Tax (“CT”)
4. Changes to Income Tax

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Ministry of Planning and Finance Amends the Withholding Tax Rules in Myanmar

The Ministry of Planning and Finance issued Notification 47/2018 on 18 June 2018 outlining the new withholding tax (“WHT”) rules that now apply on payments to resident and non-resident taxpayers in Myanmar. This Notification is effective from 1 July 2018 and will supersede the current WHT Notification 51/2017 that was issued last 22 May 2017.

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Clarification on the tax treatment during the transition period 1 April to 30 September 2018

Based on the confirmation letter that we recently received from the IRD concerning the tax treatment during the transition period 1 April 2018 to 30 September 2018, the IRD clarified that:

- Only state-owned enterprises are required to adopt the new tax year effective 1 October 2018.
- The transition period of 1 April to 30 September 2018 is considered as one full financial year from a tax assessment perspective and in determining the carry-over loss period.
- Employees’ personal income tax is not covered by the transition period.

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Bribes or similar payments to government officials as non-deductible expenses for income tax

The IRD, in its Notice No. 1/2018 dated 29 October 2018, clarified that bribes paid to public officials are not considered valid business expenses for income tax purposes. This Notice defines “public officials” as:

- 1) government officials (including officials from outside Myanmar);
- 2) those with positions in the Legislative, Judicial, and Executive Branches of the Myanmar Government;
- 3) those who have been appointed to a Board or related Commission as organized by the Myanmar Government; and
- 4) those who work for public international organizations.

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Clarification on the offsetting mechanism for commercial tax (“CT”) purposes

The Internal Revenue Department (“IRD”) recently issued two Notices clarifying the treatment of recording CT upon the sale and purchase of goods and services. Notice No. 2/2018 dated 11 October 2018 provides the CT treatment from the seller’s perspective (for output CT) while Notice No. 3/2018 dated 29 October 2018 provides the CT treatment from the point of view of the buyer (input CT).

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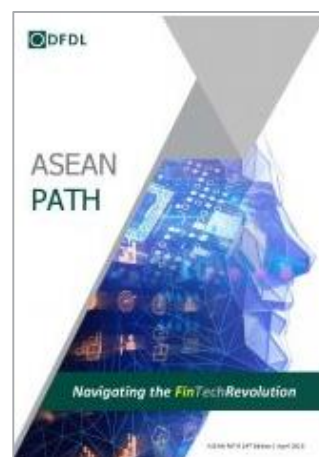
2018 PUBLICATIONS



Myanmar Investment Guide



ASEAN Path #15 GDPR



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