



MYANMAR 2025

M&A OVERVIEW – A LEGAL AND TAX GUIDE



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THE REGULATORY FRAMEWORK

1.1 Business Vehicles

- [01] The most common form of business vehicle used by local and foreign investors in Myanmar is private companies limited by shares. The main law that regulates companies in Myanmar is the Myanmar Companies Law of 2017 (the 'Companies Law'), which repeals the Myanmar Companies Act of 1914 (the 'Old Companies Act'). Local or foreign companies are required to be incorporated under the Companies Law. An offshore company may be registered as an overseas corporation under the Companies Law.
- [02] A foreign company is defined by the Companies Law as a company incorporated in Myanmar in which an overseas corporation or any other foreigner or combination of them, directly or indirectly, has an ownership interest of more than 35%.
- [03] The Companies Law eliminates the requirement for foreign companies to hold a permit to trade, which was required under the Old Myanmar Companies Act.
- [04] A Board of Directors is required to be set up to manage the company according to the laws. A public company or a private company that is a subsidiary company of a public

company shall have at least three directors, and at least one of the directors must be a Myanmar citizen who is ordinarily resident. A private company must have at least one director, who is ordinarily resident. A person will be an ordinarily resident if he or she holds permanent residency or is a resident in Myanmar for at least 183 days in each twelve-month period. Directors are not necessarily required to hold shares in the company. The directors have the powers to manage the business of the company and may exercise all powers of the company as are not, by the Companies Law, or by the Constitution, required to be exercised by the company in general meetings. Directors have the power of approving share transfers, issuing and allotting shares and making capital calls. The board of directors may appoint a managing director.

[05] Obligations after Incorporation/Registration are as follows.

[06] Registered office: Every company/ overseas corporation must open a registered office from the date of its incorporation/registration.

[07] Issue of shares: After shares have been issued, a prescribed Form C-3 (Change to Share Capital or Register of Members) must be filed with the Directorate of Investment and Companies Administration (DICA)¹ through its Myanmar Companies Online Registry (MyCo) within twenty-one days. Unless the conditions of transfer or allotment provide otherwise, every company must issue share certificates within twenty-eight days after the issuance of any of its share debentures or debenture stock and within twenty-eight days after the registration of the transfer of any such shares.

[08] General Meeting: Shareholders conduct their business at a general meeting by passing resolutions. Resolutions are categorized as ordinary resolutions and special resolutions. A copy of resolutions approving the following matters must be filed with MyCo by using an e-prescribed form: (i) remuneration of directors and other benefits to directors and related parties; (ii) reduction of share capital; (iii) an agreement for an equal share buy-back; and (iv) provision of financial assistance.

[09] An annual general meeting must be held within eighteen months from the date of incorporation and thereafter at least once in every calendar year and not more than fifteen months after the holding of the last annual general meeting. In case of default, the court may call an annual general meeting on the application of any shareholder. The quorum for a private company consists of two shareholders personally present at the meeting (unless otherwise provided by its Constitution). The directors may call an extraordinary general meeting. Unless otherwise provided by the Constitution, the directors must call an extraordinary general meeting at the requisition of the shareholders, which have a share capital of not less than one-tenth of the share capital of the company or the requisition of at least a hundred shareholders. Minutes of all proceedings of general meetings are to be entered in a minute book, which must be kept at the registered office and open to inspection by any member without charge.

[10] Board of directors' meeting: The board of directors conducts their business at a meeting by passing resolutions. A written resolution signed by all directors also constitutes a resolution passed at a meeting. Minutes of all proceedings of directors are to be entered in a minute book.

[11] A company formed under the Companies Act was required to file specific documents with the DICA on a yearly basis. These documents included: Form E, minutes of the annual general meeting and auditor reports. As for a branch, Head Office's Annual Report, Head Office's Shareholder Certificate, Head Office's List of Officers and Branch Office's Audited Balance Sheet are required to be filed on a yearly basis. The Companies Law requires every company to file a return of its particulars with the registrar within two months of its incorporation and once at least every year (but no later than one month after the anniversary of its incorporation). The Companies Law also requires an overseas corporation to file an annual return with the Registrar within twenty-eight days of the end of its financial year. In addition to the above requirement, financial statements of an overseas corporation are required to be

¹ DICA acts as company registration office.

filed with MyCo at least once each calendar year and at intervals of no more than fifteen months.

- [12] Change of Directors and Officer/Secretary: Every company/overseas corporation must file a form containing the particulars of directors, secretary and any changes therein with MyCo within twenty-eight days of such appointments or changes. Every overseas corporation must file a form E-6/Notice of change of particulars of an authorized officer of the overseas corporation with MyCo within seven days of the change in the authorized officer or authorized officer's details.

1.2 Laws Affecting M&A

- [13] The term 'merger' is not expressly used in the Companies Law. The term 'reconstruction' or 'amalgamation' is used instead in the Companies Law. There is no provision in the Companies Law that enables a company to merge with another under normal circumstances. An amalgamation of companies may, however, take place when a compromise or arrangement is made between a company and its creditors or shareholders with the sanction of a court. If the compromise or arrangement involves reconstruction of any company or companies or an amalgamation of two or more companies requiring any part of the undertaking or property of one company to be transferred to another, the court may, either at the time of giving sanction or after, provide an order: (a) for the transfer to the transferee company of the whole or part of the undertaking or property or liabilities of the transferor company; (b) for allotting or appropriating by transferee company of shares, debentures, policies or other interests in that company to persons to whom, under the scheme, they are to be allotted or appropriated; (c) for the continuation of proceedings pending against transferor company; (d) for dissolution or winding-up of the same; (e) for providing for dissentient members; and (f) for such other consequential or incidental matters as are necessary. An order for transfer must have the effect as the vesting of the property or liability in the transferee company, and if so directed, freed from any charge, if the compromise or scheme so provides. A certified copy of such order must be lodged with the DICA within

fourteen days of the completion of the order.

- [14] For public companies, section 291 of the Companies Law lays down a special procedure which is to be followed for the purpose of buying up the shares of dissenting shareholders whereby a transfer of shares from one company to another must be made by a share transfer instrument and an agreement, if any, with the approval of not less than three-fourths of the value of the holders of the shares affected, within four months of the offer to buy up those shares, then, within further two months of the said four months. The transferee company may give notice to any dissenting shareholder of the transferor company that it desires to acquire his shares. The dissenting shareholder may, within twenty-eight days of such notice, apply to the court with respect to such acquisition, and the court may disallow it. If, however, the dissenting shareholder does not apply or if the court does order otherwise, the transferee company is entitled and bound to acquire such shares, on the same terms as the others which have been transferred under the share transfer instrument and the agreement. On the expiration of twenty-eight days from the date of notice or if the application has been made to the court, from the disposal of the application, the transferee company must transmit a copy of the notice to the transferor company and pay the amount of the price of the shares to the same. The transferor company must then register the transferee company as the holder of those shares and pay the sums received into a separate bank account.

- [15] An amalgamation of companies may also take place when a company is proposed to be, or in the course of winding up, and the whole or part of its business or property is sold to another company. The former may, subject to a special resolution, in lieu of receiving cash, participate in the profits of or receive benefits from the latter.

- [16] Generally, the acquisition of shares of private companies is the main way in which companies and their business can combine. This can be done by filing instruments of transfer of shares with DICA subject to the foreign investment policy in place, which is dealt with in more detail below.

- [17] The Competition Law of 2015 (the 'Competition Law') was enacted on 24 February 2015, which came into force on 24 February 2017. The Competition Rules were issued on 9 October

2017. The principal regulator responsible for enforcement of the Competition Law is the Myanmar Competition Commission (the 'Competition Commission'), which was formed by the Union Government on 31 October 2018 and reformed on 30 September 2021. The Competition Law provides for a merger control regime, which will cover amalgamations, consolidations, acquisitions, joint ventures, and mergers by other means prescribed by the Competition Commission. The Competition Law, while technically in force, still requires significant guidance and interpretation, including but not limited to merger thresholds, which have not yet been provided by the Competition Commission.

1.3 Merger Control

[18] As mentioned above, the Competition Law provides for a merger regime. The Competition Commission has the power to both: (a) determine the necessary forms, procedures and regulations for the application of approval of a merger; and (b) determine the market share, sale volume, capital, number of shares and the amount of assets that may affect fair competition due to a partial or full acquisition or merger. The Competition Law prohibits mergers where: (a) the merger is intended to lead to excessive domination of the market; (b) the merger will reduce competition in a market with few competitors; or (c) the resulting market share exceeds the thresholds prescribed by the Competition Commission.

[19] An exemption may be, however, granted to an otherwise prohibited merger where: (a) the resulting enterprise remains a small and medium enterprise; (b) one of the merging parties was, or was likely to become, bankrupt; or (c) the merger promotes exports or development of technology, systems or innovation.

[20] Collaborations of businesses will be prohibited if they: (i) are intended to lead to excessive domination of the market; (ii) will reduce competition in a market with few competitors; or (iii) will cause a market share to exceed a level prescribed by the Competition Commission. To date, no thresholds have been set forth. It is not clear whether the merger control regime will be mandatory or voluntary. The Competition Law also includes a prohibition against anti-competitive agreements. There is, however, no distinction between horizontal

and vertical activities. Based solely on the statutory language, it appears that exclusive distribution agreements and geographic sales restrictions might all be prohibited. The implementing rules or regulations need to provide further clarification as the Competition Law does not include express guidance on this.

[21] There are a number of areas which are needed to be clarified in the rules of the Competition Law in order to most effectively implement Myanmar's completion policy. As of 2024 merger thresholds (except the telecommunication sector) have not been set by the Competition Commission. However, recent experiences have suggested that the Competition Commission scrutinizes transactions on an ad-hoc basis requiring detailed reports from the transacting parties. However, recent experience indicates that the Commission has begun to scrutinize certain transactions on an ad hoc basis, requiring transacting parties to submit detailed competition impact assessments.

1.4 Foreign Investment Restrictions and Controls

[22] The Myanmar Investment Law of 2016 (the 'Investment Law') is the law which provides a legal framework for foreign investment and has the following basic objectives: (a) to develop investments that do not cause environmental and social harm; (b) to protect the investors and their investment businesses in accordance with the law; (c) to create job opportunities; (d) to develop human resources; (e) to develop high functioning production, service, and trading sectors; (f) to develop technology, agriculture, livestock and industrial sectors; (g) to develop various professional fields including infrastructure; (h) to enable the citizens to be able to work alongside the international community; (i) to develop businesses and investment businesses that meet international standards. The Myanmar Investment Rules of 2017 (the 'Investment Rules') were published on 30 March 2017.

[23] Myanmar Investment Commission (MIC) is formed under the Investment Law as a minimum nine-member body, including State and private sector members. The MIC is responsible for, inter alia, carrying out investment promotion activities;

coordinating with potential investors and investors; providing investment facilitation to investors and their investments; allocating powers, in coordination with the Nay Pyi Taw Council, Region and State Governments, for investments business that the government may approve according to the type of investment businesses or the condition of natural resources or development of job opportunities for the economic development of Regions, States and the Union Territory (Nay Pyi Taw); and scrutinizing whether or not the investor and its investment comply with the Investment Law and its rules, regulations, notifications, orders, directives and procedures and provisions contained in contracts, and if not, ensuring the investor to abide and taking action against the investor and its investment businesses that do not abide by such matters in accordance with laws.

[24] Companies operating under the Myanmar Investment Law are required to notify the MIC of such transfer of shares. If more than 50% of shares are to be transferred to a project company or a change in control will occur, prior approval from MIC is required. In particular, MIC's prior approval is required if shares or business are transferred, directly or indirectly, to a person who is not a Related Body Corporate of the Investor acquiring: (a) majority ownership or control of the investor; and (b) more than 50% of the assets of the investor.

[25] The Investment Law and Notification No. 15/2017 on 10 April 2017, issued by the MIC classifies investment activities into the following six separate categories:

- (1) activities in which foreign or local investment is prohibited outright ('Prohibited Investment Activities');
- (2) activities in which foreign or local investment is restricted as reserved for the state ('Restricted Investment Activities');
- (3) activities in which foreign investment is not permitted ('Investment Activities not Permitted to Foreign Investors');
- (4) activities in which foreign investment is permitted only by way of a joint venture with Myanmar citizens ('Activities Permitted only by way of a Joint Venture with Myanmar Citizens');

(5) activities in which foreign investment is permitted with the approval of the relevant ministries ('Activities Permitted with the Approval of the Relevant Ministries');

(6) activities in which foreign investment is permitted with the approval of the Parliament ('Activities permitted with the Approval of the Parliament').

[26] Prohibited Investment Activities, Restricted Investment Activities, the Investment Activities not Permitted to Foreign Investors, the Activities permitted only by way of a Joint Venture with Myanmar Citizens and Activities permitted with the approval of the Relevant Ministries are set out in Appendices A, B, C and D.

[27] Activities permitted with the approval of the Parliament are investment activities that may significantly impact the security, economic condition and environment and national interest of the country. Those activities can be carried out with the approval of the Pyidaungsu Hluttaw (Parliament).

[28] Under the Investment Law, some activities are permitted only by way of a joint venture with Myanmar citizens and the minimum share ownership for the Myanmar citizens in the joint venture is 20%.

1.5 Foreign exchange control

[29] Foreign exchange in Myanmar is regulated by the Central Bank of Myanmar (CBM) and governed by the Foreign Exchange Management Law of 2012 (FEML), the Foreign Exchange Management Regulation of 2014 and its accompanying regulations and other notifications and directives issued by the CBM. Only banks with authorised dealer licences issued by the CBM may open and manage foreign currency accounts, and trade in foreign currency. The right to obtain and hold an authorised dealer licence was extended to foreign-owned banks with licences to operate in Myanmar within the last two years. There are now more than 25 foreign banks with licences in Myanmar, although some foreign banks are closing (or planning to close) their branches because of the difficult political and economic situation in the country. At the same time, foreign

banks are allowed to offer loans and provide banking services to Myanmar citizens and companies as well as foreign persons and companies. Loans can now be offered by foreign licensed banks in the local currency (Kyat or MMK) or in nominated foreign currencies.

[30] Following the decision of the military-appointed government in early 2022 to take steps to 'de-dollarise' the Myanmar economy, the CBM released a Notification under the FEML on 3 April 2022 (the Notification) mandating the conversion of all foreign currency amounts on deposit in, or remitted to, accounts held at local banks to be converted to the local currency (Myanmar Kyats or MMK) within one working day of receipt of the funds. There are some exemptions from this requirement to convert foreign currency into MMK, such as companies importing or exporting goods which have payment obligations in foreign currency, companies with more than 35 per cent foreign shareholdings or those holding investment permits issued by the Myanmar Investment Commission (MIC). As part of the foreign exchange controls imposed by the government, it is now the case that almost all foreign outward remittances of foreign exchange, including dividends and repayment of offshore loans, can only be done with the prior approval of the Foreign Exchange Supervisory Committee (FESC) which was established in 2022 by the CBM.

[31] Under the FEML, all foreign currency loans to a Myanmar person or entity from abroad require the prior permission of the CBM, which is applied for by the borrower by sending a specified list of documents to the CBM, including a draft of the loan agreement. Until now, loan approvals have rarely been refused and have taken about four to six weeks to be issued. There are maximum limits on both the amount of interest that can be charged on foreign currency loans (currently around eight per cent) and on the amount of debt that the borrower can assume – the debt:equity ratio of a borrower cannot exceed 4:1 after taking account of the amount of the loan being submitted for approval. However, in July 2022 the CBM issued a notification to all banks licensed to conduct foreign

exchange requiring them to instruct their customers (local residents and companies) with outstanding loans from foreign lenders to negotiate an adjustment to their repayment schedules, as may be necessary, in order to suspend the repayment of interest and principal on the offshore loans. As this was not a direct order to suspend all foreign loans, merely an instruction to banks to notify their customers with such loans, it is not known what the current status is of the loans and whether the payments due to be made under the loans must be suspended. In any event, all such payments to offshore lenders must now be approved by the FESC and the cumulative effect of these CBM notifications is that the offshore loan market has dried up and lenders with outstanding loans are mostly entering into recurring reschedulings, waivers and deferrals to avoid the alternative of declaring default and taking enforcement action in an increasingly difficult regulatory environment.

[32] As regards the structure and rules of the foreign remittance market, the FEML distinguishes between two types of foreign currency transaction – current account transactions and capital account transactions. Current account transactions are defined as payments for purposes other than the transfer of capital, and the FEML lists the following examples:

- payments to be made in connection with foreign trade, other ongoing business including services, short-term banking and credit facilities;
- payments of interest on loans and as net income from other investments (including dividends);
- payments in a reasonable amount to amortise loans and depreciate direct investment; and
- reasonable remittances for family expenses.

All other types of transactions are termed as capital account transactions.

[33] Section 26 of the FEML states that the CBM must scrutinise all incoming foreign investment in order to have a frame of reference for outward payments aimed

at repatriating the principal, interests, profits and dividends (i.e. capital account transactions). Section 27 requires foreign investors to declare funds brought into the country and provide documentary evidence to the CBM when required. Failure to do so may result in an inability to repatriate funds at the end of the investment term.

1.6 Financing an acquisition

[34] Acquisitions are generally financed through retained earnings or loans. In case of loan financing, the gradual opening of the retail and commercial banking sector to foreign banks has provided the opportunity to obtain acquisition financing from those banks. However, in practice, such financing has up to now been mostly obtained from offshore sources and it is still the case that all loans from outside Myanmar require prior CBM approval. It is not clear whether the CBM will continue to approve new loans from abroad, should any external financing sources remain willing to lend into Myanmar under current circumstances,

[35] In order to obtain approval for offshore borrowing, a copy of the agreed loan agreement must be submitted to the CBM, together with such other documentation as may be specified from time to time. While the Notification implements a compulsory conversion of foreign currency balances, including loan balances, as noted above certain exemptions have been carved out which include majority-owned foreign businesses and those companies holding MIC Permits. For equity fund transfers there is no requirement to seek the prior approval of the CBM, but such transfer needs to be declared to the CBM.

1.7 Taking security

[36] Subject to the foreign ownership restrictions described below, a Myanmar company may grant security to lenders on both movable and immovable property under the laws of Myanmar. Mortgages and charges over immovable property and the assets of a Myanmar company must be registered against the target company under section 229 of the MCL at the Directorate of Investment and Companies Administration (DICA) through

MyCO, the online company registration and filing system in Myanmar. The typical forms of security taken by foreign-owned Myanmar companies and lenders are:

- fixed and floating charge or a deed of hypothecation, which is effectively a floating charge over certain assets;
- fixed mortgage over a lease (usually a simple mortgage);
- assignment of contracts;
- fixed charge over bank accounts; or
- equitable mortgage of shares in the borrower.

[37] It is important to note that under the MCL, it is now possible for an acquisition target that is not a private company, and which is not a subsidiary of a public company, to give financial assistance in the acquisition of its shares in the form of security granted to the lender to the acquirer, provided that the board of directors of the target resolves in favour of granting such security, and confirms that certain tests are met (including a solvency test which under the MCL means that the company (i) is able to pay its debts as they become due in the normal course of business, and (ii) its assets exceed its liabilities). Shareholder approval is also required under the MCL either in the form of a resolution agreed to by all ordinary shareholders or by a special resolution (75% or more votes in favour) passed at a general meeting of the company, with no votes being cast in favour of the resolution by the person acquiring the shares or by their associates.



2

POSSIBLE ACQUISITION STRUCTURES UNDER THE COMPANY LAW REGIME

2.1 Myanmar Companies Law and other laws

[38] The MCL is derived from the old Companies Act of 1914 which came from the Companies Law of England and Wales at that time. The MCL updated the law and brought it much more in line with modern developments, while retaining the basic framework. Similarly, the Myanmar Contract Act of 1872 is based on the then contract law of England and Wales and incorporates the underlying principles of freedom of contract. With the MCL in place, there are now very few restrictions on M&A in Myanmar, whether the acquisition is of a minority or majority stake. Although the MCL expressly allows for foreigners to acquire up to 35 per cent of a company under all-Myanmar ownership without any change of classification of the company from Myanmar to foreign, the fact is that even with that mandatory change of classification, there are no additional restrictions in place where more than 35 per cent is acquired and the obligations on the company (and its foreign owners) are no different to those imposed on Myanmar companies. Only a change of classification is required, notification of which can be made by filing a prescribed form. This is a welcome

change from the position under the old Companies Act.

[39] Acquisitions can be made by foreign buyers through the typical mechanisms you would see in the UK, such as:

- direct share purchase of shares in MyaCo;
- upstream share purchase (of offshore holding company);
- asset/business purchase;
- joint ventures; or
- schemes of arrangement.

[40] Buyers can also establish an entity in Myanmar through one of the following forms:

- a company limited by shares;
- a company limited by guarantee; or
- an overseas corporation (which is basically a branch office of a company incorporated outside Myanmar).

[41] The parties will follow the acquisition process and use the documentation that would typically be used in the UK and elsewhere. This would necessitate a share/asset sale and purchase agreement as the key document, alongside a shareholders agreement where there are multiple buyers, a joint venture or where the seller retains an equity stake. The parties are free to choose Myanmar law for their agreements or any other governing law, subject in the latter case to any mandatory provisions of Myanmar law that may apply. Foreign judgments are recognised and in principle, can be enforced through the Myanmar courts, but the scarcity of cases over the last 50 years creates uncertainty in this area. The introduction of the New York Convention into domestic Myanmar law through the Arbitration Law of 2016 makes foreign arbitration a much better alternative. However, there have been no public or reported cases of a dispute that has been resolved through foreign arbitration since the passing of that law.

[42] Other than the obligation to obtain regulatory approval for acquisitions in certain sectors (e.g. microfinance, banks, telecoms), or where a company is operating under a MIC permit (further details below), M&A transactions can generally be completed without regulatory approval or permission. Additionally, all

filings and registrations that are required for changes of directors, issues of shares and annual returns etc. under the MCL can now be completed online via the relevant company account with MyCO.

2.2 M&A requirements under the MIL, rules and notifications

[43] The MIL simplified and further deregulated the investment regime in Myanmar. It combined the previous local and foreign investment laws and provided for a streamlined investment approval process. The Myanmar Investment Rules 2017 sets out the process of obtaining approval for investment in Myanmar. For some key sectors such as oil & gas and electricity, it is mandatory to obtain an MIC permit to carry out those activities. In other non-key sectors, it is advisable to obtain MIC permits because without those permits, investors cannot take a lease of land of more than one year and this is clearly insufficient for long-term capital investment. MIC permits also establish eligibility for key tax exemptions and reliefs. In particular, it is possible to obtain an exemption from Corporate Income Tax (CIT) for three to seven years depending on the location of investment, and an exemption or relief on the payment of customs duty and taxes upon importation of imported capital assets and materials (as applicable) during the construction period. Other tax incentives include accelerated depreciation, tax on reinvested profits, and additional deduction on research and development costs. These tax exemptions are discretionary (with preference being given to manufacturing and infrastructure businesses), and the level of exemptions will depend on the proposed location of the business or project.

[44] Foreign investors wishing to acquire shares in a company operating under a MIC permit, either by subscription for new shares or by a sale and purchase from an existing shareholder, will need the approval of the MIC only if the subscription or acquisition entails a change of control of the target company, defined as “the transfer (or series of transfers) of shares or business.....[which] would result in a person who is not a Related Body Corporate of the Investor acquiring: (a) majority ownership or control of the Investor;

and (b) more than 50 per cent of the assets of the Investor". Investor is defined as the owner of the company which operates under the MIC permit. This definition is wide enough to be construed as including an upstream change of control of a company that is the indirect intermediate or ultimate holder of the target company's shares. The draftsmen of the law have informally confirmed that this was the intention.

[45] Once MIC approval is obtained, the transaction would proceed on the basis described above. It should also be noted that MIC approval is in addition to any other sector approvals that may be necessary.

[46] As noted above, the table at the end of this section sets out examples of foreign ownership restrictions in certain key industry sectors.

2.3 Acquisition structures

[47] It is possible to structure an acquisition by way of a share or a business/asset acquisition, subject to the prohibition of foreign ownership of land as described above. The acquisition of shares can be made by a foreign company; there is no requirement for the acquisition vehicle to be a Myanmar entity. However, the acquisition of business/assets must be by a company established in Myanmar by the buyer.

2.4 Minimum share capital requirements

[48] There are no longer any minimum capital requirements in Myanmar; these were abolished when the MCL came into force.

2.5 Change in share capital

[49] There are no restrictions on a shareholder's right to transfer shares to any person, local or foreign, other than (i) the change of control provisions of the MIL discussed above; and (ii) where there is a prescribed minimum shareholding by a Myanmar person in a company that is subject to minimum Myanmar shareholding requirements. These companies and sectors are now rare and some examples of sectors where mandatory joint ventures are required can be seen in the table at the end of this section.

[50] Shareholders have a pre-emptive right to subscribe for all issues or dispositions of shares of any class, in proportion to their respective shareholdings, if the constitution of the company includes this right. Shareholders can agree to impose restrictions on share transfers, which must be reflected in the company's constitution in order to bind third parties.

2.6 Put and Call options

[51] Put and call option arrangements on the shares of a Myanmar company are recognised in Myanmar, subject to the change of control and minimum Myanmar shareholding requirements described above.

2.7 Preference shares and different classes of shares

[52] Shares of stock corporations may be divided into classes or series of shares, or both, any of which may have such rights, privileges or restrictions as may be stated in the articles of incorporation. Only shares classified as preferred or redeemable may be deprived of voting rights.

2.8 Nominee structures

[53] The MCL specifically excludes the right of a third party such as a trustee, who is not recorded as the shareholder in the mandatory share register of a company, to have any recognised ownership interest in those shares.

2.9 Corporate governance

[54] The constitutional document of a company is its registered charter and is the official document recording the relations between the shareholders and the company. Shareholders can put in place a private shareholders' agreement, but this is not registered and will not bind the company in which the shares are held unless the provisions of that agreement are reflected or incorporated in the constitution.

[55] All public companies and companies in certain specific sectors (such as banking, securities, and insurance) must incorporate certain mandatory provisions provided in the applicable regulations into their constitutions.

[56] Companies have shareholders meetings and boards of management and the principles of corporate governance closely follow the UK legal model. The MCL prescribes that any two directors can bind the company with their signatures on an agreement or a deed, although this can be varied by a board resolution authorising one director (or even a non-director) to sign on behalf of the company.

2.10 Nationality/residency requirements for directors and other officers

[57] Under Myanmar law, at least one director of every Myanmar company must be resident in Myanmar under long-term visa or stay permit requirements.

2.11 Achieving effective control of a company

[58] Voting in a limited liability company is proportional to capital contributions as a matter of law. Votes cast totalling at least 50 per cent plus one share is sufficient to pass an ordinary resolution. Special resolutions require approval by at least 75 per cent by value of the members attending the meeting. Matters requiring special resolution include amendments to the charter, the winding up of the company, and a change of company name. The constitution of the company can provide for higher voting thresholds, but not lower than the statutory minimum.

2.12 Public M&A issues

[59] Public companies (PLC) in Myanmar are regulated under the MCL and, if listed on the Yangon Stock Exchange (YSX), also by the Securities Exchange Commission of Myanmar (SEC) established under the Securities Exchange Law of 2013. There have been only six companies listed on the YSX since its launch in December 2015 and until very recently, trading in shares of listed companies was limited to Myanmar citizens. However, this restriction was lifted when the SEC issued Notification No. 1/2019 in July 2019, which allowed foreign nationals as well as foreign entities to purchase up to 35 per cent of the total share capital of a Myanmar company listed on the YSX. Under the MCL, private companies cannot have more than

50 shareholders, and any company that intends to have more than 50 shareholders must be incorporated as (or converted to) a PLC. Other key differences between private companies and PLC are: (i) only a PLC can offer its shares to the public; (ii) a PLC must have at least three directors; (iii) no PLC can restrict the transfer of its shares; and (iv) a PLC cannot provide financial assistance in the acquisition of its own shares.

[60] There are also restrictions on the powers of directors of a PLC, in particular the board of directors cannot sell or dispose of the main undertaking of the company without obtaining the consent of shareholders by ordinary resolution passed at a general meeting.

[61] The MCL requires a PLC to issue a prospectus if it intends to offer its shares to the public. The prospectus must be signed by all directors and filed with the registrar of companies. If the PLC is listed (or intends to list) on the YSX, it must also have the prospectus approved by and filed with the SEC.

[62] As regards the acquisition of shares in a PLC which is not listed on the YSX, the same considerations apply as to the acquisition of shares in a private company. The MCL does not regulate takeovers or share sales as such and it is largely a matter of contract.

[63] For PLC with shares listed on the YSX, there are no takeover rules currently applicable in Myanmar as might be seen in more developed countries. There are some post-event disclosure requirements (to the SEC and by announcement to investors) for listed PLC in relation to "occurrences" in areas such as a change of major shareholder, transfer of business, delisting, liquidation and corporate reorganisation, but there are no rules regulating how these occurrences are to be dealt with by the PLC and for issues such as voluntary/mandatory offers and compulsory share purchases, no rules currently apply.



3

COMPETITION LAW REGIME

3.1 Anti-trust and merger control regulations

[64] The Myanmar Competition Law of 2015 (the Competition Law) came into force on 24 February 2017. The objectives of the Competition Law are:

- to prevent acts that injure public interests through monopolisation or manipulation of prices by any individual or group with intent to endanger fair competition in economic activities, for the purpose of development of the national economy;
- to control unfair market competition on the internal or external trade and economic development;
- to prevent the abuse of dominant market power; and
- to control the restrictive agreements and arrangements among businesses.

[65] The Competition Law also prohibits conduct amounting to “unfair competition”, which includes practices such as misleading consumers, disclosing trade secrets, intimidating other business persons and defaming the reputation of another business. The Competition Law also applies to firms located outside Myanmar whose behaviour directly affects competition and consumers in domestic markets. The Competition Law’s merger control provisions are also applicable to foreign mergers.

3.2 Mandatory pre-merger review requirements

[66] Section 30 of the Competition Law defines mergers to include affiliations, amalgamations, acquisitions, joint ventures, and mergers by other means prescribed by the Competition Commission (the Commission). No such mergers by other

means have so far been prescribed by the Commission.

[67] The Competition Law prohibits mergers where:

- the merger is intended to lead to excessive domination of the market;
- merger will reduce competition in a market with few competitors; or
- the resulting market share exceeds the thresholds prescribed by the Commission.

[68] However, Section 33 of the Competition Law permits an otherwise prohibited merger where:

- the resulting enterprise remains a small or medium-sized enterprise;
- one of the merging parties was, or was likely to become, bankrupt; or
- the merger promotes exports or development of technology, systems or innovation.

3.3 Timetable and substantive assessment

[69] While the Commission has now been established and all 11 members appointed, we have not witnessed any substantive assessment of mergers taking place in Myanmar. No thresholds have been determined as to what amounts to dominance in the market have been formulated by the Commission.

3.4 Sanctions

[70] Non-compliance with the merger control rules as mentioned above may lead to imprisonment for a period of up to two years and also lead to imposition of fine up to MMK 10 million as per Section 41 of the Competition Act.

3.5 Anti-corruption

[71] The key law relating to anti-bribery in Myanmar is the Anti-Corruption Law of 2013 (the Anti-Corruption Law). The implementing regulations for the Anti-Corruption Law were issued in 2015, under which the Anti-Corruption Commission was established.

[72] The Anti-Corruption Law relates solely to bribery in the public sector. 'Bribery' is defined as "the promising, offering or discussing

or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or another person or entity, in order that the official acts or refrains from acting in the exercise of his official duties, in order to obtain or retain business or other undue advantage". Public officials include:

- any person who holds a temporary or permanent office of a legislative, administrative or judicial nature, by election or appointment, with or without salary, allowance or remuneration;
- any person who is in the service of a public enterprise including public departments; and
- any person who is recognised as a public official under an existing law.

[73] The Anti-Corruption Law penalises public officials for accepting bribes and also creates offences of active and passive bribery by private individuals. Section 57 creates private offences of active bribery. Section 56 creates private offences of passive bribery.

[74] The Anti-Corruption Law also applies to all offences committed by any person within Myanmar and to citizens and permanent residents of Myanmar outside Myanmar. There is no express defence of adequate anti-bribery compliance procedures under the Anti-Corruption Law.

[75] The Anti-Corruption Law does not expressly prohibit facilitation or "grease" payments, but we consider that these payments would be considered acts of bribery and are therefore punishable under the Anti-Corruption Law.

[76] The Anti-Corruption Law makes no mention of a minimum level below which gifts are acceptable. Any gift or economic benefit could potentially constitute a bribe depending upon the context in which it is given. The Union Government has its own codes of conduct which impose limits on the cost of gifts or entertainment that can be given. The cost of gifts or entertainment is specifically limited to US\$300.

[77] We recommend that appropriate representations and warranties are included by purchaser in any relevant M&A agreement because carrying out due diligence in this area is not an easy process.



4

TAXATION ASPECTS

[78] The major tax laws in Myanmar include:

- The Union Tax Law;
- The amended Income Tax Law of 1974 (the 'Income Tax Law');
- The amended Commercial Tax Law of 1990 (the 'Commercial Tax Law');
- The amended Specific Goods Tax Law of 2016 ('Specific Goods Tax Law');
- The amended Myanmar Stamp Act ('Stamp Act'); and
- The Tax Administration Law of 2019 ('Tax Administration Law').

The Union Tax Law is a yearly tax law that supplements the exemptions, relief, and other benefits granted under the Income Tax Law, Commercial Tax Law, and Specific Goods Tax Law. The Income Tax Law is supplemented by the Income Tax Rules, the Income Tax Regulations, and Notifications periodically issued by the Internal Revenue Department (IRD). The Commercial Tax Law and Specific Goods Tax Law are also supplemented by implementing regulations and notifications. The Myanmar Stamp Act is supplemented by a schedule detailing the documents subject to stamp duty and the applicable rates. The

Tax Administration Law provides uniform tax administration procedures for income tax, commercial tax, and specific goods tax, effective 1 October 2019.

The IRD, under the Ministry of Planning and Finance ("MoPF"), administers the taxation in Myanmar while the Myanmar Customs Department, also under the MoPF, administers the collection of duties and taxes upon importation or export of goods.

4.1 Corporate Income Tax

[79] The taxation of a corporate entity is determined by its tax residence. Under the Income Tax Law, as amended, a resident company is a company formed under the Myanmar Companies Law or any other existing Myanmar law. Furthermore, resident entities also include associations formed wholly or partly with foreigners and where the control, management and decision-making of its affairs are situated and exercised wholly in Myanmar (section 3(k) Income Tax Law). A corporate entity who is not a resident company is defined as a 'non-resident foreigner' (section 3(l) Income Tax Law). A Myanmar branch of a foreign company is treated as a non-resident for income tax purposes.

[80] A resident company is subject to income tax on all income received within and outside Myanmar while a non-resident is taxed only on income received within Myanmar (section 3(n)(i) and (iii) Income Tax Law).

[81] The Union Tax Law provides the types of assessable income, tax rates for each class of income, and available income tax exemptions. The Union Tax Law is enacted yearly before the start of the financial year. Effective 1 April 2022, the financial year in Myanmar starts on 1 April and ends on 31 March of the following year (previously from 1 October to 30 September of the following year).

[82] The State Administration Council enacted the Union Tax Law of 2024, under which an enterprise is subject to corporate income tax at the rate of 22% on its total income (17% for companies listed on the Yangon Stock Exchange). In computing such total income, expenditures incurred for the purpose of earning that income and depreciation

allowance as prescribed by the Income Tax Regulations can be deducted. However, no deduction is allowed for the following: (1) capital expenditure; (2) personal expenditure; (3) expenditure not commensurate with the volume of business, unreasonable expenditure; expenditure not incurred for the purpose of earning that income; (4) payment made, other than for professional service, to a member of an association of persons, not a company or a co-operative society of the Income Tax Law is deducted (section 11 Income Tax Law).

[83] **[78]** The depreciation on fixed assets such as buildings, plants and machinery, furniture, vehicles are deductible subject to compliance under MOPF Notification No. 19/2016. Under this notification, the depreciation rates range from 2.5% to 20%. Tax depreciation may be claimed for the whole year irrespective of the date of purchase of the asset; however, no tax depreciation is allowed in the year of sales or disposal. Any difference between the accounting depreciation and tax depreciation is adjusted for income tax calculation purposes. Meanwhile, there is no clear guidance for amortization of intangibles.

[84] **[79]** Under the Income Tax Law, if there is any loss from a source of income in the fiscal year, theoretically, such loss can be set off against the income from the remaining sources of income of that year. If the loss cannot be wholly so set off, the amount for future set off may be carried forward in the next three consecutive years. However, loss from capital assets cannot be set off.

4.2 Dividend

[85] Dividends received from association of persons are exempted from income tax (section 5 Income Tax Law). The term 'association of persons' includes partnerships, joint-ventures, companies, associations formed by individuals, an association or institution formed and registered under existing law, co-operative societies and Government economic enterprises (section 3(j) of the Income Tax Law).

[86] Dividend payments, including branch profit remittance, to resident or non-resident companies are exempted from withholding tax.

4.3 Capital Gain

- [87] Capital gains are taxed separately from corporate income tax. Capital gains tax is levied on gains from the sale, exchange, or transfer of capital assets if the total value of the assets sold, exchanged, or transferred during the year is more than MMK10 m (approx. USD4,760). Capital gain from the sale, exchange or transfer of capital assets is subject to income tax payable in kyat or the foreign currency in which the transaction was made. The income tax on capital gain is generally levied at the rate of 10% (section 27(b) Union Tax Law) but can be increased to 40%-50% if relating to an oil and gas exploration transaction.
- [88] In this context, the term 'capital asset' is defined as any land, building, rooms therein, vehicle and any capital assets of an enterprise. This expression also includes shares, bonds and similar instruments (section 3(q) of Income Tax Law).
- [89] Generally, capital gains are calculated based on the total consideration less the adjusted cost of the capital asset for tax purposes and related expenditure in procuring and selling the capital asset. The tax is generally 10% of the capital gains but can be increased to 40%-50% if relating to an oil and gas exploration transaction (section 27 of the 2024 Union Tax Law). Exemptions may apply subject to the conditions on capital gains under a relevant tax treaty with Myanmar. It is assessed in Myanmar Kyat or the foreign currency in which the transaction was made.

4.4 Stamp Duty

- [90] Stamp duty is collected from the affixing of judicial and non-judicial stamps. Judicial stamps are for use in judicial proceedings while non-judicial stamps are for general purposes. The various categories of instruments chargeable with stamp duty are listed in Schedule 1 to the Stamp Act. Instruments attract a charge to either ad valorem (in proportion to the value) stamp duty or fixed stamp duty.
- [91] The stamp duties are imposed on instruments that generally fall into five main categories: (i) Instruments relating to conveyance and property transfer; (ii) instruments relating to loans and advances; (iii) instruments relating to capital market transactions; (iv) instruments used in daily business and commercial transactions; and (v) instruments executed under other statutes for record-keeping purposes.
- [92] Transfer of tangibles is deemed to a conveyance subject to Stamp Duty of 2% of the amount or value of the transaction. An additional 2% surcharge (and municipal charges, as applicable) is added to the stamp duty payable if it relates to a transfer of immovable properties located in Myanmar. Meanwhile, the transfer of share is subject to 0.1% on the value of shares.

DFDL Myanmar Limited

DFDL Myanmar Limited provides a full range of legal and tax services to foreign and local investors operating in Myanmar. Our team of more than thirty experienced local lawyers and foreign legal advisers provide efficient, effective, and practical legal services at an international standard, coupled with a high-level personal in-depth knowledge of the local environment.

DFDL Myanmar Limited
No 134/A, Than Lwin Road, Golden Valley Ward (1)
Bahan Township (Box 729 GPO)
Yangon, Myanmar
Tel.: +95 1 7526 180
Fax: +95 1 548 835

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Band 1 – General Business Law – Cambodia, Lao PDR, Myanmar
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Band 3 – Projects & Energy, Real Estate, Tax – Thailand
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Band 4 – Corporate/M&A – Thailand

2025 The Legal 500 Asia Pacific

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Tier 1 – Corporate and M&A/Projects and energy– Myanmar
Tier 1 – Tax – Vietnam
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Tier 2 – Projects & Energy – Thailand & Vietnam
Tier 2 – Tax – Thailand
Tier 3 – Corporate and M&A – Bangladesh & Vietnam
Tier 3 – Restructuring and Insolvency – Thailand
Tier 3 – Real Estate and Construction – Thailand
Tier 3 – TMT – Thailand
Tier 4 – Corporate and M&A – Thailand

2024-25 IFLR1000

Active – Financial and Corporate – Bangladesh
Tier 1 – Financial and Corporate – Cambodia, Lao PDR, Myanmar
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2024 Asia Business Law Journal

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Insolvency & Restructuring
Taxation

2024 Asia Legal Business (ALB) Asia M&A

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Industry Sectors

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Goods and Services/Industrials and Manufacturing

Lao PDR Firm of the Year

Industry Sector

Highly Recommended – Banking and Financial Services/Infrastructure

Practice Area

Outstanding – General Business Law

Thailand

Industry Sector

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Recommended – Aviation and Shipping/Industrials and Manufacturing/Real Estate

Practice Area

Highly Recommended – Banking and Finance/Construction/Tax/Corporate and M&A
Recommended – Labour and Employment/Restructuring and Insolvency
Notable – Capital markets

Vietnam

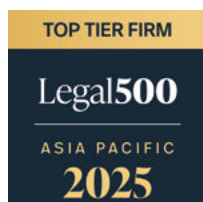
Industry Sector

Highly Recommended – Energy
Recommended – Banking and Finance Services/Real estate
Notable – Consumer Goods and Services/Industrials and Manufacturing
Practice Area
Highly Recommended – Corporate and M&A/Energy/Tax
Recommended – Banking and Finance/Capital Markets

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