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Myanmar Laws, Regulations and Policies that every investor should know

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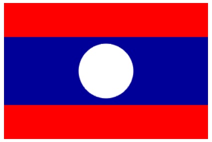
What makes us unique?

"We are pioneers in emerging markets"

1994



Lao PDR

1995

Cambodia

Myanmar

2005

Thailand

2006

Vietnam

2010

Singapore

2011

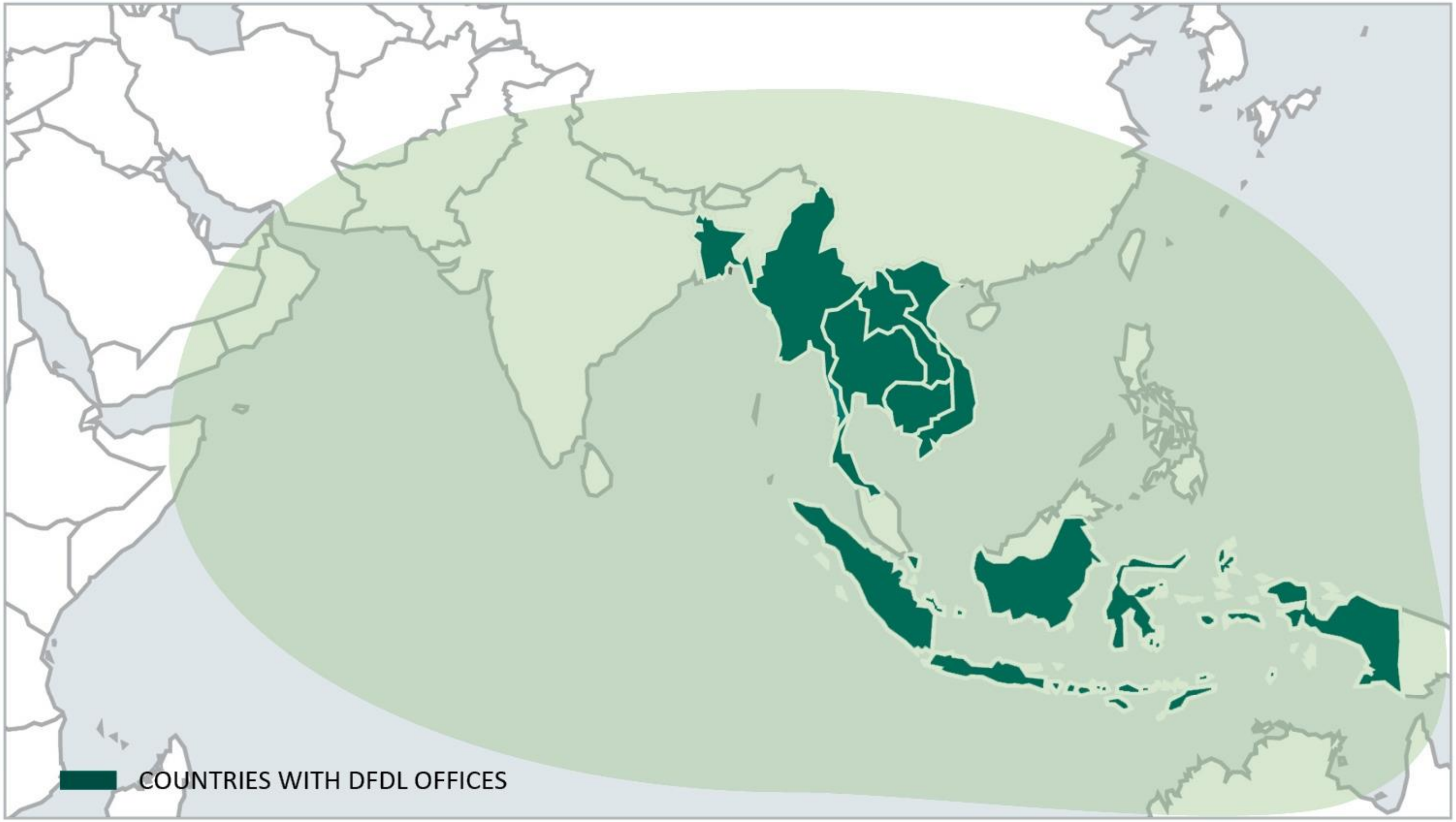
Bangladesh

Indonesia

Our Strategy

Not "Go Where our Clients Go", BUT "Go BEFORE you Go".

DFDL Reach



BANGLADESH | CAMBODIA | INDONESIA* | LAO PDR | MYANMAR | SINGAPORE | THAILAND | VIETNAM

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DFDL's India Desk

- Established in 2011
- Our team is comprised of Indian and international advisers who are highly experienced in working with Indian business interests
- Providing a full range of services to Indian companies who are looking to develop their operations internationally

DFDL’s India Desk *cont’d*

- Focusing on all aspects of business and investment opportunities in connection with outbound investments into Southeast Asia, South Asia and beyond.

- Drawing on DFDL’s international and local expertise in legal and tax services, combined with our understanding of Indian business culture, India’s legal regime and the interests of our Indian clients, DFDL is the go-to firm for Indian corporations looking to expand their businesses further into Asia.

DFDL's India Desk *cont'd*

INDIA DESK

- Tata Group – Tata Steel, Tata Motors, Tata International, Tata Power
- Aditya Birla Group
- Apollo Tyres Limited
- Spice Mobile
- Exim bank of India
- Bank of India
- Nava Bharat Ventures Limited, India
- Khamin Development Co. Limited,
- Kirloskar Brothers
- DLF Limited
- Wolkem India
- DSM Group
- Boving Fouress Limited
- Mahindra Holidays

Diplomatic relations between India and Myanmar have their foundations in 1951 when the two countries signed a Treaty of Friendship.

By declaring itself "open for business" recently, Myanmar has seen rapid growth in foreign direct investment resulting in stronger commercial ties between India and Myanmar. India is currently Myanmar's fourth-largest trading partner after Thailand, Singapore, and China.

India's investment in Myanmar currently stands at USD 273.5 million; the two countries have tentatively set a target for bilateral trade of USD 3 billion by 2015.

India-Myanmar Relationship

India’s economic involvement in Myanmar has been predominantly in the oil, gas, and manufacturing sectors, and has been spearheaded by entities such as: **ONGC Videsh Limited, GAIL (India), Telecommunications Consultants India, Essar Energy**, and the **Escorts Group**.

In the past, private sector companies showed a reluctance to enter Myanmar; however that has now changed, and among the entrants are: **Tata Motors, Aditya Birla Group, Jubliant Oil and Gas, Sonalika Tractors, Sun Pharmaceuticals Limited, Cadila Healthcare Limited, Shree Balaji Enterprises, TCI Seaways, Dr. Reddy’s Laboratories, Shree Cement, Cipla, Gati Ship, Apollo Tyres, RITES**, and **AMRI Hospital**.

Bilateral Relationship

With the aid of the India-Myanmar Joint Trade Committee Meeting the Myanmar-India Business Club and MIGA, trade and commerce between the two countries is being encouraged with the assistance of the following bilateral and multilateral agreements:

- the India-Myanmar Bilateral Investment Promotion Agreement ("**BIPA**");
- the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation ("**BIMSTEC**") Free Trade Area ("**BIMSTECFTA**"); and,
- the India-Myanmar Double Taxation Avoidance Agreement ("**IMDTAA**")

Investment Benefits in Myanmar

Its raw and untapped allure combined with an abundance of natural resources, lower costs, and large internal markets have attracted Indian and international investors.

As a result, Myanmar's global trade numbers have risen significantly from USD 5.6 billion in 2003 to USD 25 billion in 2012.

Experts predict that by 2030, specific sectors in Myanmar could generate jointly more than USD 200 billion of economic output.

Investment Benefits in Myanmar *cont'd*

Under the Foreign Investment Law (2012), the government of Myanmar is intent on creating a favorable investment climate by offering several incentives and benefits to investors including:

- guaranteed remittance of investment gains in the same foreign currency that investors brought in at the outset;
- permission to stipulate a variety of dispute resolution mechanisms;
- the ability to lease land from the government or authorized private owners for a period of 50 years (with two consecutive terms of ten-year extensions possible);
- a guarantee against nationalization; and,
- guarantees against termination without sufficient cause.

Investment Benefits in Myanmar *cont'd*

The Myanmar Investment Commission also offers various incentives to Indian investors in order to promote foreign investment in the state including but not limited to:

- CIT exemption from the year in which production or service activities commence, including the years prior to commencement, for five continuous years; and, if beneficial for the state and depending upon the progress of investment activities, further tax exemption or relief may be available for a suitable period;
- tax exemption on profits that are reinvested into the company within one year;
- entitlement to accelerate depreciation in respect of machinery, equipment, buildings, or other capital assets used in the business;
- a tax exemption of up to 50 percent of the profit earned on the export of any goods produced from an investment;

Investment Benefits in Myanmar *cont'd*

- foreigners have the right to pay income tax at the same rate as ordinary citizens. Expenses incurred in necessary research and development may be be deducted from income;
- the right to carry-forward and set-off losses up to three consecutive years from the year in which the losses are sustained;
- to enjoy exemption from duty and other internal taxes as well as relief on machinery, equipment, tools, machinery, or parts imported for use during the establishment period;
- exemption/relief of duty and other internal taxes on imported raw materials for three years after the initial investment;
- exemption or relief on duty and other internal taxes on imported machinery, equipment, tools, machinery parts, and accessories necessary for the expansion of business (with the approval of the relevant authority); and
- exemption and relief of commercial taxes that are generally imposed on products manufactured for export purposes.

Investment Benefits in Myanmar *cont'd*

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Other significant benefits of investing in Myanmar include:

- a labor force estimated at 33.41 million; and,
- a low daily minimum wage for laborers of 500 Kyat (equivalent to USD 0.62).

Bilateral Investment Promotion Agreement (2008) (BIPA)

The BIPA was signed in 2008 to facilitate greater Indian investment into Myanmar and vice versa. In addition, BIPA provides a framework for:

- the resolution of disputes;
- the promotion and protection of investments;
- the extension of "most-favored-nation" treatment;
- the repatriation of investment and return on that investment; and,
- the sojourn of technical and managerial personnel.

India Myanmar Tax Treaty

Any enterprise operating under the Myanmar Foreign Investment Law or the Myanmar Companies Act must pay income tax at a flat rate of 25 percent after the last of its income tax holidays has ended. As a result of Myanmar entering into a tax treaty with India on April 2, 2008, entities in both countries can avoid double taxation and their governments can counter fiscal evasion with respect to taxes on income.

- **Double Taxation Avoidance Agreement (2008) ("IMDTAA")**

The agreement aims to provide tax stability to the residents of both countries and to facilitate mutual cooperation as well as stimulate the flow of investments, technology, and services between India and Myanmar. Business profits are taxable in the source state if the activities of an enterprise constitute a permanent establishment in the source state.

India Myanmar Tax Treaty *cont'd*

- **What Taxes are covered by the IMDTAA?**

The IMDTAA covers income tax and surcharges in the case of India, and income tax imposed under the Income Tax Law 1974 (Law No. 7 of 1974) in the case of Myanmar. Generally, the tax rates prescribed within the IMDTAA are lower when compared to the various domestic taxes.

A provision under the IMDTAA provides that those profits accruing from a construction, assembly, or installation project will be taxed in the source state if the project operated in that state for 270 days or more.

Under the IMDTAA, business profits will be taxable in the source state if the activities of an enterprise constitute a permanent establishment in the source state. Examples of permanent establishments include a branch, factory, place of management, and sales outlet.

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- **Tax Rates**

Withholding tax is generally applied at a rate of 10 percent for interest and royalties under the IMDTAA. The local withholding tax rates on interest and royalties are 15 percent and 20 percent respectively. A resident of India may also avail themselves of an exemption from the local withholding tax rate of 3.5 percent for income from trade in goods, services, and other business profits provided that the Indian recipient does not have a permanent establishment in Myanmar.

Dividends are not subject to tax in Myanmar. Capital gains tax exemption is also available particularly in the case where an Indian resident disposes of shares whose underlying value does not principally consist, directly or indirectly, of immovable property situated in Myanmar.

India-resident individuals working in Myanmar may also avail themselves of an exemption from Myanmar tax on salary if their stay in Myanmar is less than 183 days and their salary is not borne by or recharged to a permanent establishment in Myanmar or to a resident of Myanmar.

Agenda

1 Myanmar Law, Regulations and Policies

2 Recent Myanmar Legislation

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2 Recent Myanmar Legislation

Myanmar Laws, Regulations and Policies that every investor should know

1. Preliminary
2. The Foreign Investment Law (FIL)
3. The Rules and Notification
4. Foreign Equity Ratio – Bring in Capital

1. Preliminary

- Myanmar's New Foreign Investment Law ("**FIL**") was passed on November 2, 2012
- The FIL is optional, except in certain sectors (as described below)

FI under FIL	FI under the Myanmar Companies Act
Special benefits (long term lease, tax holiday, etc.)	No special benefits
Bring in capital higher; burdensome application	Bring in capital lower; Less formation documentation

- This presentation will focus on the Foreign Investment under the new FIL regime

2. Foreign Investment Law (FIL)

- Myanmar's New Foreign Investment Law ("**FIL**") was passed on November 2, 2012. It replaces the MFIL of 1988.

- Generally the FIL is **optional except** in the case of a) major infrastructure deals 2) manufacturing and 3) State Owned Enterprise Law of 1989 ("**SOE Law**"). With FIL approval comes notification issued under the SOE Law to grant an exemption.

- Where the FIL is optional, the reason investors use the FIL is to get the **benefits**, like land rights and the tax holiday, discussed later.

- Administration by the **Myanmar Investment Commission** (**MIC**).

FIL— General Attributes of FIL

- Government **guarantee against expropriation**. Same in old and new law.
- **Foreign exchange benefits** (guaranteed remittance of profits; remittance upon exiting the investment). Same in old and new law.
- **Equity** in an FIL company **can be transferred** with approval of MIC.
- FIL companies may enter into **long-term leases** up to 50 years + 10 + 10
- **Tax holiday.** Accelerated depreciation and customs exemptions are the same as the old law with added incentives.

3. The Rules and Notifications

- On 31 January 2013, as per the FIL, the Ministry of National Planning and Economic Development issued the FIL Rules (the “**Rules**").
- On 14 August 2014, the Myanmar Investment Commission (“**MIC**”) issues Notification No. 49/2014 concerning types of activities that are prohibited, must be done in joint venture with a Myanmar citizen, or require additional approvals from relevant ministries.
- MIC also issued Notification No. 50/2014 listing activities that require Environmental Impact Assessment and Notification No. 51/2014 listing activities that are not eligible for the tax exemptions and relief usually offered under the FIL.
- The Rules and Notification provide additional details and guidance on the FIL.

The Rules - Provisions

- **Transferable Equity**: One of the most important features of the Rules is that shares held by Myanmar citizens of entities formed under the FIL, *with MIC approval*, may now be transferred to foreigners and vice versa. [Rule 65]

- If an **extension** is needed for the **construction period**, the investor must apply to the MIC at least 60 days before expiration of the construction period. [Rule 57]

- Investor can **sub-lease or mortgage the long lease** on application to the MIC. This is a significant step in further developing off-shore financing.

The Rules - Provisions

- Investors must submit a **progress report** to the MIC every 90 days. [Rule 52]
- The investor must submit a **schedule of investment** if the proposal provides that the investment will be brought in over a period of time. [Rule 135]
- The Rules are **not applicable to trading**. [Rule180]

The Rules—Prohibitions

There are a few prohibitions in the rules, notably:

Schedule 1

- Drilling oil and gas hand-dug wells up to 1,000 feet in depth
- Small and medium mineral production
- Electricity generation under 10 megawatts

Schedule 2

- Small farming

Schedule 3

- Small livestock breeding

Schedule 4

Fishing in Myanmar’s Territorial waters

4. Foreign Equity Ratio – Bring in Capital

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Permitted Foreign Equity in FIL company:

- 100% foreign ownership allowed unless provided otherwise.
- If JV is needed:
  - Equity ratio between foreign investor and local partner 'upon mutual agreement between the parties' except in restricted sectors
  - No general limitation on foreign investors lower limit
- Some special limitations, e.g. Saw mills (max. 25% FI) , Production of semi-finished wood products (max. 35% FI)

Bring in Capital

- No MIC notification – but generally in practice it is USD50,000 for services and USD 150,000 for manufacturing. *still under the complete discretion of the MIC*

Agenda

1 Myanmar Law, Regulations and Policies

2 Recent Myanmar Legislation

I. <u>Category 1</u>. **Economic Activities Prohibited to Foreign Investors**

Important examples:

Production of arms and explosives for defense; Prospecting, exploration and production of jade and gemstones; Small and medium scale production of minerals;

II. <u>Category 2</u>. **Economic Activities Only under Joint Ventures for Foreign Investors**

Not necessarily 80-20 as set forth in Rule 20. Can be any amount unless limited elsewhere, for example in Category 3, below.

Important examples:

Large scale production of minerals, construction of buildings, infrastructure projects, tourism, food industry, brewery, bottled water business, packaging, large scale mineral production, air transport services;

III. Category 3. Economic Activities Permitted with Specific Condition

Important examples:

- Saw mills—maximum 25% for foreign investor; Mining—limits on exploration feasibility study, can be extended and production 15 year production period, 5-year extensions ; Casinos—Myanmar people can't play;
- **Approval or recommendation** from the Union Government and relevant ministry are often required;

Notification 49/2014 – classification of activities

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- **Some activities are only allowed in JV with the State such as:**
  - Production and marketing of rare earths, strategic mineral, radioactive mineral, manufacturing and marketing of gems, jewelry and finish products (statue, curving), Production and marketing of explosive chemicals, Production of vaccine and distribution of it, Shipping agency services for foreign owned ships, Dockyard services, Government-Foreign investment hospital/clinics, exploration and production of coal.
  - Business concerning with **sales of electricity** by establishing hydropower and coal-fired thermal power plants – JV with State required on BOT basis

Notification 50/2014 – activities requiring an EIA

Activities that require an Environmental Impact Assessment in line with the Environmental Conservation Law:

Some important examples:

- Project based: Construction of large scale irrigation dams, hydropower, certain manufacturing activities, large scale wood-based industry, large scale hotel, resorts or housing projects;
- Location based: operations in areas prone to natural disasters, fragile ecosystems, areas that contain endangered flora or fauna, projects on cultivable land

Notification 51/2014 – ineligibility for tax breaks

FIL provides tax exemptions and relief for foreign investors with an MIC permit.

Investment activities that are ineligible for these tax breaks include:

- Manufacturing of alcohol, beer, cigarettes and similar goods and related services;
- Industries which do not require high technology or where the investment amount is small;
- Logging;
- Restaurants and sale of food.

Social Securities Law, enacted on 4 June 2013

- Relevant as it brings compliance obligations regarding health and insurance onto the table
- Notifications expected to be enacted soon

Foreign Exchange Management Law of 10 August 2012

(repealing the Foreign Exchange Regulations Act, 1947)

- Issuing rules and regulations expected to provide more clarity

Key Recent Legislation *cont'd*

- **Telecommunications Law** – Two Telecom licenses have been granted
- **Printing and Publishing Law**– The Bill was approved by the Lower House of Parliament. However it is controversial. The Myanmar Journalists Network is opposed to the Bill, saying that it restricts media freedom.
- **Employment Skills and Development Law** employers are now required to pay into a training fund, hire from local labour offices and establish their own training practices.

Legislation expected to pass soon

- **Myanmar Arbitration Law** – Implementing the New York Convention (expected by the end of 2014)
- **Myanmar Companies Act** - On 23 July, the Director General of the Ministry for National Planning and Economic Development announced that the Myanmar Companies Act of 1914 is set for revision. He referred to rewriting the law, rather than amending it. ADB is helping the Ministry to rewrite the Act. Online company registration planned.
- **Condominium Law** - being finalized. This law will reportedly allow foreigners limited ability to buy apartments.

Legislation expected to pass soon

- **Mining Law** or Amendment to existing 1994 Mining Law - Australia assists Myanmar in the regulatory reform of the sector. The new regime is set to ease restrictions and attract foreign investment into its mining sector.
- Amendments to **Transfer of Property Act**
- Further regulation implementing various provisions of **Foreign Exchange Management Law**
- Regulation implementing various provision of the **Central Bank Law** related to Foreign Banks

Conclusion for Business

- Many old laws on the books:
  - not always relevant to current age and int'l practices;
  - implementation, application and enforcement inconsistent;
  - not always well known.
- Too many new laws, requiring deep and broad expertise from too few people.
  - Too many priorities: Many changes to system required to upgrade system;
  - Law making institutions and person overwhelmed;
  - Source of drafts the government (greatest resources): circulated?
- Potential Result:
  - Framework laws, with substantive details in the decrees;
  - Slowing rate of progress?
  - Lack of implementation: Laws effective but not applied (CBM law example) (still apply old regulations)

Tax Planning is Important

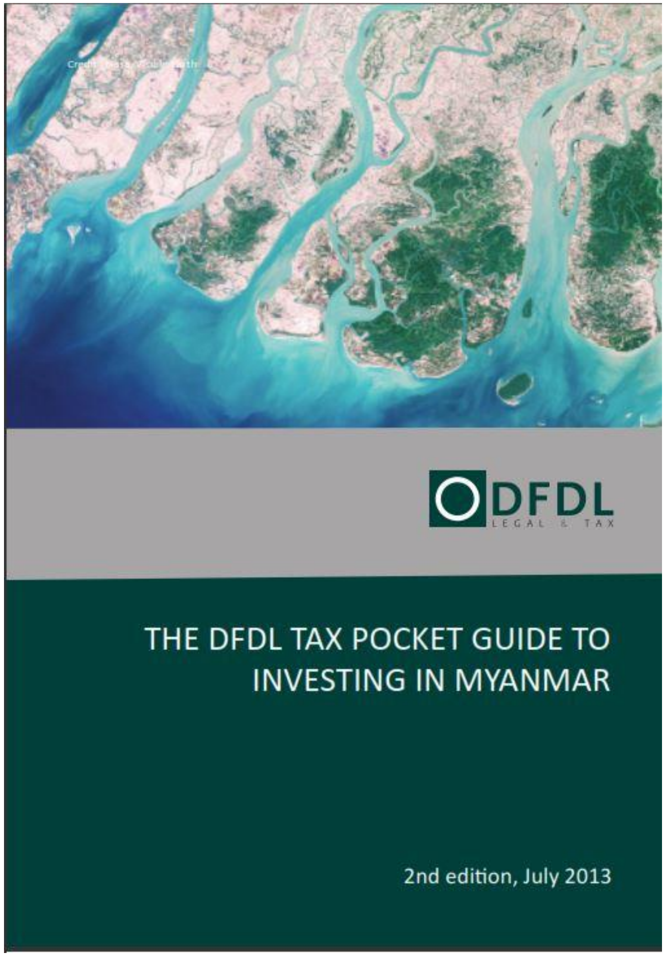
Tax Pocket Guide to Investing in Myanmar – 2nd Edn

An updated and new edition of

The Tax Pocket Guide to Investing in Myanmar

is now available online.

Download at www.dfdl.com



Thank you

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