



# Italian Chamber of Commerce, Singapore

James Finch, Partner, DFDL Myanmar

....., Singapore

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## Myanmar's Investment & Regulatory Environment

## FIL

- Myanmar's Foreign Investment Law (FIL) was passed on November 2, 2012. It replaces the MFIL of 1988.
- Background:  
Generally the FIL is optional except in for scheduled investment activities, which include:
  1. 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.

## 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 both laws.
- Administration—by the Myanmar Investment Commission (MIC)

Depending on the type of enterprise and investment amount the MIC would allow investors to enter into a lease up to 50 years + 10 + 10 Tax.

Tax holiday—five years. Accelerated depreciation and customs exemptions are the same as the old law with added incentives.

- Investors must submit a progress report to the MIC every 90 days. [Rule 51]
- 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, with approval of land owner
- Shares in an FIL-approved company, whether owned by a foreigner or a Myanmar citizen, may be transferred to a foreigner or a Myanmar citizen with MIC approval. [Rule 65]
- Specific rules for clearing land of population [Rule 126]. Requires approval of proper authorities and paying compensation.

- 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]
- Disputes must be settled using the laws of Myanmar, namely the Arbitration Act 1944 and the Protocol and Conventions Act 1939. [Rule 170]



## **New Notification on permissible foreign investment activities**

Categories of activities that are:

- Prohibited activities – administration of electric power systems, inspection work related to electric power
- Must be done in joint venture with Myanmar citizen – small scale, medium scale electric power generation works
- In joint venture with Ministry of Energy – petroleum and natural gas businesses
- With the approval of the Ministry of Rail Transportation – generation of electric power to be used in railway businesses

## New Notification

- I. **Category 1.** Prohibited by Foreign Investors— administration of electric power systems, inspection work related to electric power
  - Previously list of prohibited activities was 21 activities, now only 11
- II. **Category 2.** Only Joint ventures— small scale, medium scale electric power generation works
  - “Small scale” and “medium scale” not defined in the new notification, but in the past “small” has been defined as less than 10 megawatts and “medium” has been defined as between 10 and 50 megawatts.
  - Previously there was no mention of power plants, indicating gas fired plants could be 100% foreign owned. The new notification likewise contains no specific mention of power plants.

### **III. Category 3.** Businesses permitted to be carried out under conditions specifically provided:

- Joint venture with Ministry of Electric Power: import, manufacture and erection of machinery and storage related to petroleum and natural gas businesses, petrochemical complexes and offshore platforms
- No mention of power plants
- Formerly, hydro and coal power plants were listed as having to be in a JV BOT with a government entity

Outline of types of projects that require Environmental Impact Assessment under the *Environmental Conservation Law 2012*:

- Project based categories: Hydropower and other heavy electricity production and construction of national grid for electric power;
- Location based categories: Operations in fragile ecological site, area of endangered flora or fauna, in the vicinity of main resource or public drinking water, lake and reservoir, in areas prone to natural disasters.

Investment activities that will not benefit from tax exemption and relief under the FIL framework, includes:

- Distribution of petrol, diesel, fuel and natural gas;
- Exploitation of natural resources (excluding the exploration and drilling of petroleum and natural gas).

# Opportunities for Foreign Participation



List of economic activities to be allowed only in the form of Joint Venture with Myanmar citizens:

- Development of international standard golf courses and resorts
- Development, sales and lease of residential apartments/condominiums
- Development and sales of office/commercial buildings
- Development, sales and lease of residential apartments in areas related to industrial zones
- Development of affordable housing

Recommendation of the relevant Ministry

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Joint Venture with Myanmar citizens:

- Construction of fishing jetty and fish auction market  
(Ministry of Livestock, Fisheries and Rural Development)
- Dockyard services (Ministry of Transport)
- Water transport related services on land plots owned by Water Transport  
(Ministry of Transport)



List of economic activities to be allowed only in the form of Joint Venture with Myanmar citizens:

Manufacturing of pharmaceutical raw materials



### Recommendation of the relevant Ministry

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### Joint Venture with Myanmar citizens:

- Production of medicinal drugs by using the controlled chemicals (Ministry of Industry)
- Private pharmaceuticals and medical devices production (Ministry of Health)
- Research on vaccine and diagnostic test kit production (Ministry of Health)
- Trading of traditional pharmaceutical raw materials production (Ministry of Health)
- Traditional herbal cultivation and production (Ministry of Health)
- Traditional medicine research and laboratory (Ministry of Health)
- Manufacturing of traditional drugs (Ministry of Health)

- Estimated size of Myanmar's Pharmaceutical Industry is about USD 100-120 million CIF Value.
- Indian Pharma Companies are about 35-40% of the market
- Followed by Bangladesh, China, Thailand, Indonesia, Pakistan and Vietnam.
- First pioneer, Haryana-based Ranbaxy Laboratories set up business in Myanmar in 1993.
- Two major cities Yangon and Mandalay contribute to 60% of total pharma sales in Myanmar.
- Leading Indian players there are Ranbaxy, Cipla, Dr Reddy's etc.
- According to Ministry of Commerce, Myanmar imports more than 5,000 categories of medicine annually.



When the reforms started in 2011, there were barely 270,000 vehicles, mostly old, cars.

In a country of nearly 60 million - an average of just five vehicles per 1,000 people.

Approx. 300,000 cars have been imported to Myanmar over the past two-and-a-half years.

Direct import by private citizens under a decision of the Government in 2011



**Suzuki** Japan's №4 automaker by sales, built vehicles in Myanmar for 11 years, until 2010.



Resumed manufacturing 100 small trucks a month in Myanmar since 2013.

**Toyota** dominating the Myanmar market for used cars for many years and continuing to hold the trust of the Myanmar people in terms of attractiveness, cost and reliability. Toyota has dealers and car servicing.



**Nissan** and **Suzuki** new car sales with after-sales service support





**Ford** has had a new showroom in Yangon for nearly a year, under a joint venture between a regional Ford distributor and a well-known local automotive company Capital Diamond Group

**Land Rover** and **Jaguar** on the same basis as above.



**Mercedes** has recently come to Myanmar via a joint venture for car maintenance and service with their Singapore-based regional distributor (part of the Jardine Matheson Group) in joint venture with a local car distributor.

**Honda, Mitsubishi, GM (Chevrolet), Chery** and **Tata** are also in the sales/dealership/showroom market or in terms of after-sales services or spare parts, with some looking at production/assembly



**BMW** appointed Prestige Automobiles Co. Ltd. as its authorized importer of BMW automobiles in Myanmar.

Prestige Automobiles Co. Ltd. is a subsidiary of the Octagon International Services which is also responsible for providing aftersales service to customers in Myanmar.





Activity in automotive sector	Restricted to Myanmar citizen/company	Foreign involvement permitted
Import of new cars	Yes (with 1 exception)	If MIC permit is granted and if this activity is permitted to be carried out by JVCo
Import of pre-owned cars	Yes	No
Sale of new cars	Yes (with 1 exception)	If MIC permit is granted and if this activity is permitted to be carried out by JVCo
Sale of pre-owned cars	Yes	No
After-sales services for cars and showrooms (all services except actual sale)	No	Yes, but only in joint venture (with or without MIC permit)
Sale of spare parts/accessories	Yes	No
Ownership of showroom	Yes (with one exception)	If MIC permit is granted and if it allows long lease to JVCo
Transportation, depot and distribution	Yes (with one exception)	If MIC permit is granted and if these activities are permitted to be carried out by JVCo

Myanmar Security Expo the first of its kind in Myanmar will be held from 2 to 4 September 2015.

Opportunities:

- ✓ New banks
- ✓ Special Economic Zones, in Thilawa, Kyauk Pyu and Dawei, worth a total of USD 60 billion,
- ✓ New Hantharwady airport worth USD 1.1 billion
- ✓ The Myanmar construction industry is projected to grow 46% in the next 3 years

# Financial services, i.e. banks



## Banking & Foreign Exchange

- **Banking sector opening up to foreigners** – local banks (27: 4 state-owned, 23 private) and nine new foreign banks licensed.
- **Small capitalization of local banks** (total USD 400M) & little liquidity
- **No local lending in USD**
- **Offshore loans into Myanmar** - possible, but only unsecured – foreign banks subject to TIPRA restrictions on mortgages—but FIL allows assignment of leases [like mortgages]
- **Most investors channel funds via shareholder loans** (own funds or external + parent guarantee)

## Banking & Foreign Exchange

- **Foreign Exchange Management Law 2012** – liberalized the FOREX regime on paper
- Local and foreign companies in Myanmar can open forex bank accounts in Myanmar and outside & can ‘freely’ service loans
- Central Bank has **issued some implementing regulations and directives**, but application of these regulations and directives is not always consistent
- **New regulations and directives expected soon.**
- Recently, Foreign Exchange Management Regulations was published on September 30, 2014
- Myriad reporting requirements to MIC and CBM, with approvals still required for all ‘capital account’ transactions

## ★ Sources of Debt Financing

### Debt Financing Shareholder Loan

- a) **Lack of debt financing** – all shareholder loans (own funds or borrowed from home country banks).
- b) **Loan or Term sheet required** in MIC application form.
- c) **MIC approval of loan required**, recommended to get approval for repayment schedule.
- d) **Legally, no need for Central Bank approval** for repayment of authorized loans.
- e) **MIC approval of repayment of loan?** Historically, yes. Currently not clear. Perhaps not (since CBM approval not required under 2012 FEMA).
- f) **Security** over Borrower's assets problematic.

## Myanmar's New Foreign Investment Law/The Rules of 31 Jan 2013

- An investor may now sub-lease or **mortgage land and buildings** “*without altering the type of the project*” with approval from the MIC. [Rule 62].

### Registration of Mortgages and Charges:

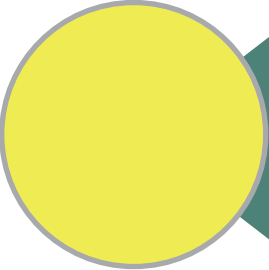
- Registration must be made in the Office of the Registration of Deeds (Registration Act) and with the Directorate of Investments and Companies Registration under the Companies Act. In practice these registers have fallen into disuse and are not maintained.

### Conclusion:

- Although in theory charges (Transfer of Property Act) and mortgages of leases (under the FIL) are possible we are not aware of any (foreign) lender ever having done this.



Presidential Directive 1/2013



Tender invitations committee, floor price calculating working committee, tender scrutinizing and election committee, qualification inspection committee, etc.



Timing requirements for government advertisement of tenders



- Now government offers bids through embassies or places tender offers in newspapers
- In order to submit the tender for supply materials, Local and Foreign Companies need to request the registration in Mailing List of MOEP.
- Registered companies are invited tender and MOEP evaluate by open tender system.
- As with the oil and gas and telecommunication sector, it is expected that MOEP will offer bids to conduct power projects through MEPE.

- Under the present practice, a certain percent of shares of the joint venture company needs to be allotted. Subscription for shares must be paid by foreign company.
- Currently the Project Company must supply free of charge 10% or 15% of the net electricity generated under the Project during the Concession Period to MOEP as a royalty.
- In future MOEP would require supply of 25% of electricity generated by the projects for free, with the right to buy another 25% from the Project Company.

# Legal changes to come in the future



## Changes to dispute resolution likely in the near future

- Disputes must be settled using the laws of Myanmar, namely the Arbitration Act 1944 and the Protocol and Conventions Act 1939. [Rule 170]
- However, Myanmar has ratified the New York Convention on arbitral action and is currently drafting legislation to give the Convention force of law in the country

- Prescribes that a committee will set minimum wage levels based on the business sector and the skill demanded of the employee, which only apply to the private sector. The committee has not yet finished this work.
- The Law distinguishes between “laborers” and “employees”.
- To date, no minimum wages have been set.
- Wages in Myanmar vary greatly depending on the nature of the work and the employer, for example skilled vs unskilled workers – “unskilled” work is generally understood to mean work that requires no education or special training.
- Failure to abide by the minimum wages can result in a fine of about USD330 and imprisonment for between 1 and 6 months for the employer.
- The rules allocate committees to different categories of work to devise minimum wages. Work specifically relating to offshore activities is not mentioned in the rules.

- Passed, but no rules or regulations have been issued. As such, many provisions of the law are not in practice in effect.
- A Technical Skill Development Committee will be formed which will establish a technical skill development fund.
- Employers to pay a levy of 0.5% per month on total wages and salaries of every worker at a company. This fee goes into the fund and is used for a central “Skill Development Team” to:
  - Provide training for skill development or skill enhancement of employees;
  - Provide further training to terminated employees, or employees wanting to change work.
- Levy cannot be deducted from the workers’ wages.

- Employers to inform the relevant township job center of any vacancies.
- Import mandatory contractual provisions that are similar to existing practice (terms, having to complete contract within 30 days, having to file contract with the relevant township office).
- Employment and Skill Development Law appears to make violating the labor contract a criminal offence.

- Myanmar has acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“**Convention**”)
  - Foreign arbitration clauses should be permitted in agreements and Myanmar courts will be obligated to enforce foreign arbitration awards.
  - Still waiting for local implementing legislation.





More details of EIA and EMP requirements



New companies Act



New FIL blended with Myanmar Citizens Investment Law



Legislation enforcing New York Convention on the Recognition and enforcement of Foreign Arbitral Awards, 1958 Convention



**James Finch**  
*Partner, Myanmar*

[james.finch@dfd.com](mailto:james.finch@dfd.com)

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