



How to Start a Business in Myanmar?

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The following article provides an overview of the process to start a business in Myanmar.

An economic revolution is happening in Myanmar and foreign investors have their eyes riveted on this untapped market. The Pyidaungsu Hluttaw (Myanmar parliament) has been proactive for the past 2 years in passing new laws, notably the Foreign Investment Law (FIL) that grants numerous incentives to foreign investors when certain conditions are met.

However, the Myanmar legal system is still at an early stage (or at an old stage, depending on your point of view). New laws still coexist with outdated ones such as the Myanmar Companies Act, 1914, which still governs the incorporation of a company. Moreover, the gap between the law and the practice is significant. Officials lack legal knowledge and have their own customs that can't be found in any law.

The following article provides an overview of the process to start a business in Myanmar. It is divided as follows:

1. Entry options in Myanmar
2. Activities opened to foreigners
3. Incorporation of a company

1. Entry Options in Myanmar: FIL or not FIL?

Foreigners wishing to invest in Myanmar generally have the choice to invest either under the Foreign Investment Law (FIL) or by directly setting up a company. The FIL is, however, mandatory for major infrastructure deals, manufacturing and activities controlled by the State-owned Economic Enterprise Law.

The reason foreigners choose to invest under the FIL is to gain certain benefits. The FIL grants foreign investors with tax incentives, including corporate tax holidays for the first five years^[1]. Foreign investments are also better protected under the FIL. Foreign companies investing under the FIL can lease land for a term up to 50 years plus two extensions of ten years each^[2]. Other foreign companies, on the other hand, can only enter in a one year term lease agreement^[3]. Furthermore, the FIL provides guarantees against nationalization^[4] and offers unrestricted repatriation of the invested capital^[5].

There is a downside, however, to these benefits. The process to obtain a permit from the Myanmar Investment Commission is costly and time consuming. Foreign companies are subject to a considerable amount of reporting obligations once investment permits have been issued.

2. Activities Opened to Foreigners

The first thing that investors must check is whether or not the intended activities can be carried on by foreigners. The definition of a foreigner under the Myanmar Companies Act (MCA) makes

things difficult because when one share is held by a foreigner, the company is deemed a foreign company[6]. Pursuant to this definition, a joint venture with a local partner is a foreign company whatever the ratio of foreign ownership.

The Myanmar Investment Commission (MIC) issued the Notification No. 1/2013 on January 31, 2013, which details which areas of economic activity are prohibited to foreign investors or where foreign investment is restricted.

Under this Notification, business activities are divided into three categories:

- Activities under Category 1 are prohibited to foreign investors;
- Activities under Category 2 are permitted to foreign investors only in the form of a joint venture with a Myanmar citizen
- Activities under Category 3 are permitted under specific conditions (i.e. such as Minister approval or an environment impact study requirement).

In a nutshell, investment in the form of 100 % ownership is permitted to a large range of business activities. Remarkably, foreign investors are now allowed to set up department stores and hypermarkets. When an activity must be carried out in the form of a joint venture with a local partner, foreign investors still can hold up to 80% of the shares[7].

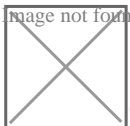
It should be noted that twelve other business activities are prohibited to private investment (both local and foreign) under the State-Owned Economic Enterprise Law, 1989, (SOE). Under the SOE, some key economic sectors such as telecommunication, banking and insurance services can only be carried by a state-owned company unless an authorization has been granted by the Government[8]. Some of these activities should be progressively liberalized. Joint ventures with local banks are expected to be authorized soon. In addition, the government recently passed a new telecommunications law that allows foreign companies to operate telecommunications services after being granted a license[9].

3. Incorporation of a Company

The registration of a company occurs at the Directorate of Investment and Company Administration (DICA). The main DICA office is in Naypyidaw, but there is a branch at Yangon where the process can be started. The process to register a company will depend on whether or not the company intends to invest under the Foreign Investment Law (FIL).

First, if the company wants to invest under the FIL, it must obtain a permit from the Myanmar Investment Commission before to start the registration process[10]. Secondly, all foreign companies must obtain a permit to trade to be registered.

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The FIL is silent on the minimum capital requirement. This is decided on by the MIC on a case per case basis. Concerning the application for the permit to trade[11], the minimum capital requirement is US\$ 50,000 for a service company and US\$ 150,000 for an industrial company.

Conclusion

Starting a business in Myanmar is not an easy process and the setting up of a company can take up to six months. The negotiations to obtain a permit from the Myanmar Investment Commission can be long and the terms of the investments are decided on a case per case basis. Even if the system may seem arbitrary at first glance, foreign investors must keep in mind that they are more

than welcome in Myanmar. The efforts of the government and the local people to attract foreigners are real. So, why not start the adventure here in Myanmar, and be among the pioneers of the next Asian tiger?

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[1] Section 27 of the Foreign Investment Law, 2012

[2] Section 31 and 32 of the Foreign Investment Law, 2012

[3] Section 5 of the Transfer of Immoveable Property Restriction Act, 1987

[4] Section 28 and 29 of the Foreign Investment Law 2012

[5] Section 30 of the Foreign Investment Law 2012

[6] Section 2 of the Myanmar Companies Act, 1914

[7] Section 20 of the Ministry of National Planning and Economic Development Notification No.11/2013

[8] Section 4 of the State-owned Economic Enterprise Law, 1989

[9] The Telecommunication Law No. 31, 2013

[10] It is also possible to register the company first and to apply for a MIC permit later.

[11] The term “permit to trade” is misleading because the permit is not related to trading activities. It is nothing more than a foreign business license.