

Doing business in Myanmar: overview

Yuwadee Thean-ngarm, Nwe Oo and Sher Hann Chua
Tilleke & Gibbins

global.practicallaw.com/9-591-0368

OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

In 2017, the following significant legislative developments occurred in Myanmar:

- The Myanmar Investment Rules 2017 were issued on 30 March 2017, which supplement the Myanmar Investment Law 2016.
- The Myanmar Investment Commission (MIC) issued Notification No. 10/2017 on 22 February 2017, which designates development zones. The notification categorises:
 - less developed regions as Zone 1 (investors are able to enjoy tax exemptions for seven years);
 - moderately developed regions as Zone 2 (investors are able to enjoy tax exemptions for five years);
 - developed regions as Zone 3 (investors are able to enjoy tax exemptions for three years).
- The MIC issued Notification 13/2017 on 1 April 2017, which classifies the promoted sectors that are entitled to tax exemptions and relief.
- The MIC issued Notification No. 15/2017 on 10 April 2017, which lists restricted investment activities. This notification stipulates the types of business activities in which foreign investment is only allowed through joint ventures with local citizens and companies and/or with special approval from government line ministries.
- The Ministry of Commerce (MOC) issued Notification No. 16/2017 which regulates the registration of businesses engaged in the operation of car showrooms, enabling such businesses to be owned by local citizens, or through joint ventures between Myanmar citizens and foreign nationals.
- The MOC issued Notification No. 17/2017 which regulates the registration of businesses engaged in the operation of heavy machinery showrooms, enabling such businesses to be owned by local citizens, or through joint ventures between Myanmar citizens and foreign nationals.
- The MOC issued Notification No. 36/2017 on 12 June 2017, to permit foreign-owned companies to trade and import fertilisers, seeds, pesticides, hospital equipment, and construction materials that are prescribed under the Myanmar Harmonised System (HS) Commodity Code. Previously, only local companies and local-foreign joint ventures were allowed to engage in such trade. The relaxation of restrictions is intended to obtain quality goods for the nation's agricultural, healthcare, and infrastructure sectors.
- The Ministry of Labour, Immigration and Population issued a new mandatory employment contract template on 1 September 2017 to replace the previous template under the Employment and Skill Development Law 2013. Employers from all industries must use the mandatory employment contract template and register all such executed contracts with the relevant township labour offices in Myanmar.
- The Competition Law 2015, which was passed in February 2015 and sets out regulations on minimising dominance in the market and curbing anti-competitive activity, came into force on 24 February 2017.
- Following Union Government Meeting 17/2017 on 7 September 2017, the Myanmar Government has decided to change the country's fiscal year calendar from the previous system, which ran from 1 April to 31 March, to a new system, which runs from 1 October to 30 September. The aim of this change is to optimise national budgetary management and revenue collection.
- The Ministry of Commerce issued Notification No. 55/2017 on 17 November 2017, which permits joint ventures between foreign and domestic companies to carry out the retail or wholesale trade of agricultural machinery, subject to certain requirements.
- The Myanmar Company Law was signed into law on 6 December 2017, allowing foreign nationals to hold up to 35% of shares in local companies. The law stipulates that any such companies will be recognised as local companies under Myanmar law, while those with foreign ownership of more 35% will be classified as a foreign company. Furthermore, foreign nationals will now be able to hold up to 35% of shares in companies listed on the Yangon Stock Exchange (YSX). However, although this act has been signed into law, it is not expected to be implemented until August 2018 to allow the relevant authorities time to prepare rules for implementation.
- Consistent with the government's aspirations in enacting the Myanmar Investment Law 2016, opportunities for foreign investment continue to expand following the issuance of the Myanmar Investment Rules 2017 and the Ministry of Commerce Notification Nos. 16/2017, 17/2017 and 36/2017. These notifications allow foreign joint venture company to be involved in car and heavy machinery show rooms, and importantly for foreign-owned companies to be involved in the trading and importation of fertilisers, seeds, pesticides, hospital equipment and construction materials.

Notwithstanding the developments in the legal and regulatory framework, some sensitive foreign investors are troubled by Myanmar's regional ethnic conflicts and remain cautious about the prospects of a sustainable long-term resolution.



LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Myanmar is a former British colony and there is still evidence of this colonial legacy in its legal system. It has retained much of the English common law system, despite its independence in 1948. Many of the country's applicable laws date back to the colonial period (although Myanmar is keen to modernise its laws and legal practice).

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

The Myanmar Investment Law 2016 was enacted on 18 October 2016 and the Myanmar Investment Rules 2017 were issued on 30 March 2017. The current restrictions on foreign investment are provided for in the Myanmar Investment Commission's (MIC) Notification Nos. 13/2017 and 15/2017, which contain the following exhaustive lists:

- List of promoted investment activities eligible for tax exemption or relief.
- Investment activities allowed to be carried out only by the union.
- Investment activities that are not allowed to be carried out by foreign nationals.
- Investment activities allowed only in the form of joint ventures with any citizen owned entity or any Myanmar citizen.
- Investment activities to be carried out with the approval of the relevant ministries.

Foreign investors are now being encouraged to invest in most business activities but are still prohibited from engaging in most trading and importation businesses.

The MIC is the main body in charge of approving MIC permits and MIC endorsements for foreign investors. Applications for company formation must be made with the Directorate of Investment and Company Administration (DICA).

4. Are there any restrictions on doing business with certain countries or jurisdictions?

Myanmar does not have any restrictions on doing business with other countries.

However, communal tensions in Rakhine State have resulted in some limited sanctions.

As of 7 October 2016, the US has lifted its sanctions against Myanmar.

5. Are there any exchange control or currency regulations?

Exchange control and currency control are regulated by the Central Bank of Myanmar Law and the Foreign Exchange Management Law 2012. Currently, the foreign currencies that can be sold and bought by authorised dealers in Myanmar are the United States Dollar, the Euro, the Singapore Dollar, the Thai Baht, and the Malaysian Ringgit. Under the Central Bank of Myanmar's Letter No. MaBaBha – 1/111 (FEMD)/(904/2015) of 28 May 2015 (which

draws reference from Letter No. 7 (Ba-1)/7/ Union President's Office, the Republic of the Union of Myanmar dated 11 June 2014), all domestic transactions with government entities are restricted to Myanmar Kyats.

6. What grants or incentives are available to investors?

The Myanmar Investment Law 2016 (MIL) and the Myanmar Special Economic Zone Law (SEZ) are two significant laws offering incentives to foreign investors. Under the MIL and the SEZ, the Government of Myanmar guarantees protection against nationalisation/expropriation.

The SEZ law provides:

- An income tax exemption on profits for the first seven years within stipulated free zones (that is, designated areas that are entitled to the exemption of customs duty and other taxes).
- A 50% income tax reduction for the second five-year period.
- Import duty relief on raw materials, machinery, equipment and other goods as specified.
- That losses may be carried forward for five years.

Under the MIL, investors can also apply to the Myanmar Investment Commission (MIC) for tax exemptions and relief for investments in promoted sectors, for some other internal taxes and customs duties, and for long term leases of 50 years with options of two ten-year extensions. The MIL also empowers the MIC to issue notifications to designate three investment zones according to each region's level of development, with income tax exemptions of three, five or seven years, respectively.

However, the extent and applicability of these incentives will vary from case to case and are subject to governmental approvals.

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

The main business vehicles available in Myanmar are partnerships, private limited companies (including joint ventures), branch offices, associations and representative offices. The most commonly used form is a company established under the Myanmar Companies Act 1914 (MCA). The simple procedure and minimum capital requirements provided under the MCA are advantageous to many foreign investors, particularly those in the service sector.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration

Registration of a company under the Myanmar Companies Act 1914 (MCA) consists of two main steps:

- Application for a trade permit.
- Registration with the Companies Registration Office (CRO).

There is an additional step for investments with a high capital outlay or those intending to operate under the Myanmar Investment Law 2016 (MIL). They must also apply for an investment permit from the Myanmar Investment Commission (MIC) (please see www.dica.gov.mm for more information). Other investors who want to enjoy benefits under the MIL, such as long term leases and

tax incentives, can also apply for an investment endorsement from the MIC.

Reporting requirements

Every company registered under the MCA must comply with its provisions and file the following with the CRO:

- Renewal of permit to trade.
- Change of registered address of business.
- Particulars of directors, managers and managing agents and of any applicable changes (Form XXVI).
- Return of allotment of shares (Form VI).
- Annual list of shareholders (Form E).
- Special and extraordinary resolutions.
- Return of persons authorised to accept services of process and notices (foreign branches and representative offices).
- Change of scope of activities (business objectives).
- Increase in authorised capital of company.
- Change of company name.
- Share transfer in certain cases.
- Head office's audited financial statements/annual report in case of foreign branches and representative offices.
- Statement of holding of shares (foreign branches and foreign representative offices).
- Change of directors of head office (foreign branches and representative offices).
- Change in Memorandum of Association and Articles of Association of incorporated companies and of head office (foreign branches and representative offices).
- Display name of company.
- Banking companies and insurance companies regarding publication and authentication of financial statements.
- Annual audited financial statements.

It is mandatory for every company to maintain the following records:

- Members' register.
- Index to members in certain cases.
- Directors' register.
- Register of mortgages and charges.
- Share certificates.
- Minutes of the board of directors' meetings.
- Minutes of the annual general meetings.

Share capital

Most companies formed under the Myanmar Companies Act that do not require additional permits or approval can be registered with share capital of US\$50,000. However, for business activities that require an MIC permit or endorsement or other ministerial approval, capital requirements, maximum foreign shareholding, and other restrictions may be set on a case-by-case basis by the relevant authority.

Under the new MIL, 50% of the minimum capital must be brought into the country to qualify for a permanent company registration certificate, and the remaining capital must be brought into the country within the period stated in the MIC proposal.

Non-cash consideration

This can be issued at the discretion of the directors in accordance with the memorandum of association and articles of association.

Rights attaching to shares

Restrictions on rights attaching to shares. This depends on the nature of the shares, for example, ordinary, preference or management shares.

Automatic rights attaching to shares. Ordinary shareholders and management shareholders have automatic rights.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

Foreign companies established in Myanmar require a minimum of two shareholders and two directors (one being the managing director).

Management restrictions

There are no restrictions on foreign managers.

Directors' and officers' liability

A director may be liable if he exceeds the scope of the company's objectives or exceeds his authorised power or breaches fiduciary duties. The directors' may also be held personally liable in the event of the company failing to comply with the various requirements imposed by law.

Parent company liability

For limited liability companies, parent companies will be liable to the extent of the value of their shares. However, for corruption and other offences, liability can extend to the parent company, depending on the nature of the offence and knowledge of the management/controlling company.

EMPLOYMENT

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

There is no single universal legislation that applies to all sectors, and the labour laws of Myanmar unite many different legal focus points. The most significant laws are the:

- Employment & Skill Development Law 2013.
- Leave & Holidays Act 1951 and its amendments.
- Minimum Wages Law 2013.
- Payment of Wages Law 2016.
- Shops and Establishment Law 2016.
- Social Security Law 2012.
- Labour Organization Law 2011.
- Workmen's Compensation Act 1923 and its amendments.
- The Factories Act (1951) and its amendments.
- Settlement of Labour Disputes Law 2012.

Most of the provisions in these laws apply equally to local and foreign employees based in Myanmar. For local employees sent to work outside of Myanmar by their employer (for instance, on an intra-office scheme), their welfare and employment conditions

would be determined according to Myanmar labour law, unless the employment contract states otherwise.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

Employment contracts must be written in Burmese, and supplemented by an English version where required, in compliance with the Employment & Skills Development Law 2013. The law lists the mandatory provisions that must be included in the employment contract. For example, standard clauses on remuneration, termination, duration, and social security benefits must be explicitly stated in the employment contract. There is no concept of implied terms or collective agreements.

The Directorate of Labour recently issued an updated mandatory employment contract template, which must be used by employers. The contents of the template can be altered with the mutual agreement of the employer and employees but the approval of the Directorate of Labour is still required. The employment agreement must be approved by and registered with the relevant labour office within one month from the date of the employee's appointment or after the successful completion of the employee's probation period. An employer who fails to sign an employment agreement with its employee may be punished with imprisonment for up to six months, a fine, or both.

12. Do foreign employees require work permits and/or residency permits?

Currently, foreign employees can work in Myanmar on a single-entry business visa, which grants a stay of up to 70 days. Multiple entry business visas, valid for six months to one year, may be granted on a case by case basis, usually after the issuance of two single entry business visas. Foreign nationals who want to remain in Myanmar for more than 90 days must also apply for a foreign registration certificate. Stay permits of up to one year can also be issued to foreign nationals, which supplement the business visa by removing the 70-day exit requirement.

Foreign nationals employed by companies with an investment permit granted by the Myanmar Investment Commission must also hold valid work permits and stay permits.

The Ministry of Immigration and Population of Myanmar Regulations (made under Section 16 of the Burma Immigration (Emergency Provisions) Act, 1947), enacted by Ministry of Commerce Notification 1/2014, allow foreign nationals and ex-Myanmar citizens to apply for permanent residency if they are experts, skilled persons, or investors. The criteria for eligibility have been sub-divided into a number of categories. There are separate requirements for those interested in investing long term in Myanmar. There are also provisions for individuals married to Myanmar citizens who can now apply for permanent residency. Individuals can apply for a five-year stay which is renewable for a five-year term at a time.

TERMINATION AND REDUNDANCY

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

There is no provision for management representation for employees in the Labor Organization Law 2011 or the Settlement of Labor Disputes Law 2012 (SLDL). However, employees can

negotiate their conditions of employment and general welfare through their Workplace Coordinating Committee, the establishment of which is compulsory under the SLDL for workplaces with more than 30 employees.

14. How is the termination of individual employment contracts regulated?

Termination of employment contracts in Myanmar is generally not at will and must be accompanied by clear notice (depending on how long the employee has worked with the company). The distinction of unfair and fair dismissal depends on the facts of each case and consideration by the conciliatory body. For wrongful conduct, dismissal may be without statutory severance pay.

The Ministry of Labour, Immigration and Population (then known as the Ministry of Labour, Employment and Social Security) published Notification No. 84/2015 on 3 July 2015, which includes the minimum severance rates based on the number of years of service, as follows:

- Six months' to one year of service: half of the monthly salary.
- One year to two years' of service: one months' salary.
- Two to three years' of service: one and a half months' salary.
- Three to four years' of service: three months' salary.
- Four to six years' of service: four months' salary.
- Six to eight years' of service: five months' salary.
- Eight to ten years' of service: six months' salary.
- Ten years to 20 years' of service: eight month's salary.
- 20 years to 25 years' of service: ten months' salary.
- More than 25 years' of service: 13 months' salary.

15. Are redundancies and mass layoffs regulated?

Mass layoffs and associated labour disputes are regulated by the Labour Organisation Law 2011 and Settlement of Labour Disputes Law 2012. There is no obligation for the employer to consult with union representatives prior to management decisions, including layoffs.

TAX
Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

Employees are taxed based on their residency. A foreign employee who has resided in Myanmar for at least 183 days of any financial year will be considered a tax resident.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Both local Myanmar employees and foreign employees who have resided in Myanmar for at least 183 days are considered as resident tax payers and are subject to income tax and social security tax.

Income tax. Anyone will be subject to income tax on the total of their income, after the deduction of the allowances according to section 6 of the Income Tax Law, at the following progressive rates:

- MMK1 to MMK2 million: 0%, tax exempt.
- MMK2,000,001 to MMK5 million: 5%.
- MMK5,000,001 to MMK10 million: 10%.
- MMK10,000,001 to MMK20 million: 15%.
- MMK20,000,001 to MMK30 million: 20%.
- MMK30,000,001 and above: 25%.

However, under the Union Taxation Law 2017, income tax must not be assessed on salaries of up to MMK4.8 million in the budget year ending on 31 March 2018. For salaries over that amount, income tax is charged at the progressive rates above. This exemption is applicable to salaries only, and not to other forms of income.

Social security. This is charged at a rate of 2%, currently capped at MMK 6,000.

Non-tax resident employees

An individual who earns income while working in Myanmar for any duration between one and 183 days in a year will be considered a non-resident tax payer. Non-resident and resident tax payers are subject to the same rates of tax under the Union Taxation Law 2017. Non-resident tax payers can now enjoy the same progressive rates of taxation as resident tax payers, but they cannot enjoy tax relief and exemptions available to resident tax payers (*see above, Tax resident employees*).

Employers

Employers must contribute 3% of the employee's salary to the social security fund. This is currently capped at MMK9,000 per employee.

BUSINESS VEHICLES

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

Resident companies are generally taxed on their worldwide income, including income accrued outside of Myanmar. A resident company is a company as defined and formed under the Myanmar Companies Act 1914 (MCA). Foreign-owned Myanmar companies with an investment permit granted under the Myanmar Investment Law 2016 (MIL) are also treated as resident companies for the purposes of taxation. However, foreign-owned companies are not taxed on their foreign income and can apply for tax exemptions under the MIL.

Non-tax resident business

A non-resident company is one that is not formed under the MCA or any other existing law of Myanmar. Non-resident companies are only taxed on income derived from sources in Myanmar. Income received from any capital assets within Myanmar and from any source of income within Myanmar is deemed to be income received within Myanmar for tax purposes.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Corporate tax is levied at a rate of 25% on net profit for all businesses in Myanmar.

Commercial tax is levied on transactions specified in the Commercial Tax Law 1990 and applies to Myanmar-resident entities that produce, manufacture or import items in Myanmar. However, it is not applicable to non-resident entities.

In addition, withholding tax can be deducted on the sale of certain goods and services at a rate of between 2% and 2.5%.

Companies must register when commencing business, and file quarterly and annual tax returns for commercial tax. There is a 10% penalty applicable for each default, including failure to retain invoices and/or receipts. This penalty is calculated, based on the deficit amount that the tax falls short of what is required by law.

DIVIDENDS, INTEREST AND IP ROYALTIES

20. How are the following taxed:

- **Dividends paid to foreign corporate shareholders?**
 - **Dividends received from foreign companies?**
 - **Interest paid to foreign corporate shareholders?**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders?**
-

Dividends paid

There is no tax on dividends paid.

Dividends received

There is no tax on dividends received.

Interest paid

There is a 15% withholding tax on interest paid to non-resident foreigners.

IP royalties paid

There is a 15% withholding tax on royalties paid to non-resident foreigners and 10% withholding tax on royalties paid to resident citizens and foreigners.

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

There are no specific regulations on thin capitalisation.

Myanmar Investment Law 2016 companies can obtain loans from foreign banks or business entities. However, receiving approval from the Myanmar Investment Commission and Central Bank of Myanmar for such debt financing takes considerable time.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign company rules in Myanmar.

23. Are there any transfer pricing rules?

There are no specific transfer pricing rules. However, section 19(c) and (d) of the Income Tax Law 1974 provides for an arms-length assessment.

CUSTOMS DUTIES

24. How are imports and exports taxed?

Customs tariffs vary between 0% and 10% depending on the item and whether in part or whole. However, some export and import items are exempt from duty.

Double tax treaties

25. Is there a wide network of double tax treaties?

Myanmar has double taxation treaties with the UK, Malaysia, Singapore, India, South Korea, Thailand, Laos and Vietnam.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

Myanmar passed a new Competition Law in February 2015. The bye-laws are yet to be formulated. In accordance with Notification No. 69/2015 issued by the President's Office, the Competition Law 2015 entered into force on 24 February 2017.

Restrictive agreements and practices

Section 27 of the Myanmar Contract Act 1872 provides that an agreement in restraint of trade may be considered void. However, in practice, these agreements are acceptable, provided they are reasonable in duration, scope and territory.

Unilateral conduct

Article 36(b) of the Constitution of the Republic of the Union of Myanmar 2008 provides that the public must be protected from monopolistic practices and unfair competition.

27. Are mergers and acquisitions subject to merger control?

There are no specific regulations on mergers and acquisitions. However, the Competition Law 2015 provides that the Competition Commission will regulate any anti-competitive activity in the market. In order to understand the relevant regulations and thresholds, the bye-laws to the Competition Law 2015 must be issued. Companies registered with the Myanmar Investment Commission (MIC) under the Myanmar Investment Law 2016 must request approval from both the MIC and the Directorate of Investment and Company Administration when selling or transferring shares.

For the telecommunications industry, mergers and acquisitions are subject to the provisions of the Competition Rules for the Telecommunications Sector of the Republic of the Union of Myanmar 2013 (Telco CR 2013), which was issued by the then Ministry of Communications and Information Technology (now the Ministry of Transport and Communications) via powers granted under the Telecommunications Law 2012. The Myanmar-language rules predominantly mirror the English language.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. Despite the existence of an archaic Patents and Designs (Emergency Provisions) Act 1946, there is currently no specific patent law in Myanmar, which lays out a patent protection framework. The country's patent laws are currently being drafted, with the latest bill submitted to the legislative committee in July 2017.

Registration. In the past, patent owners could record the ownership of patents by lodging a declaration of ownership with the Office of Registration of Deeds and by publishing a cautionary notice in a local newspaper. However, in July 2017, the Office of Registration of Deeds announced that it has stopped accepting any and all declarations of ownership relating to patents.

Trade marks

Definition and legal requirements. Under the Myanmar Penal Code of 1860, a mark used for denoting that goods are the manufacture or merchandise of a particular person is known as a trade mark. The latest trade mark bill was published in July 2017 and is currently being considered by the legislative committee.

Protection. There is currently no trade mark registry in Myanmar. However, the traditional practice is to record trade marks through a declaration of ownership with the Office of Registration of Deeds.

Enforcement and remedies. A declaration of ownership constitutes prima facie evidence of ownership of a trade mark, which facilitates enforcement actions. The relevant dates would be the registration date of the declaration and the first date of use in Myanmar.

A trade mark owner can launch a civil action against an infringer for infringement under section 54 of the Specific Relief Act to obtain a permanent injunction. In addition, under sections 482, 483, 485 and 486 of the Penal Code, trade mark infringement is considered a criminal offence for which both a fine and imprisonment can be imposed. The court can also confiscate all counterfeit goods and items used to infringe. The archaic Merchandise Marks Act 1889, which is based on the now repealed Indian Merchandise Marks Act 1889, also contains provisions concerning remedies against trade mark infringement and the use of false trade descriptions. In addition, the Sea Customs Act No. 8 of 1878 prohibits the importation of counterfeit goods.

Length of protection and renewability. Based on the current practice of the Office of Registration of Deeds, the length of protection for a trade mark is three years from the date of recording a declaration of ownership (*see above*). This can be renewed either by re-recording the trade mark or by republishing the cautionary notice (*see above*) in a local newspaper.

Registered designs

Definition and legal requirements. There is currently no legal definition of designs in Myanmar. Similar to patents, in the past, design owners could record the ownership of designs by lodging a declaration of ownership with the Office of Registration of Deeds and by publishing a cautionary notice in a local newspaper. However, in July 2017, the Office of Registration of Deeds announced that it has stopped accepting any and all declarations of ownership relating to designs. The latest industrial designs bill was published in July 2017 and is currently being considered by the legislative committee.

Unregistered designs

Definition and legal requirements. There are no definitions available under Myanmar law.

Enforcement and remedies. There are no enforcement mechanisms or remedies for infringement of unregistered designs in Myanmar. Theoretically, rights owners can rely on their common law rights, but this is difficult to enforce in practice.

Length of protection. There is no statutory protection available.

Copyright

Definition and legal requirements. The Copyright Act 1914, in place since the colonial period, is substantially out of date. The law only applies to publications in Myanmar, and foreign copyrighted works are not recognised. The latest copyright bill was issued in July 2017 and is currently being considered by the legislative committee.

Protection. There is no protection available for foreign copyright owners.

Enforcement and remedies. There are no enforcement mechanisms or remedies for infringement of foreign-owned copyright in Myanmar.

Length of protection and renewability. Copyright protection lasts for 50 years but only for local works published in Myanmar.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

There are no specific laws regulating distribution or franchising agreements. These types of agreements must be read alongside the general principles of the Myanmar's Contracts Act 1872 (Contracts Act). Many business partners contract using local or foreign choice of law provisions. However, relevant parties should be aware of applicable local laws, such as the Import and Export Rules framed by the Ministry of Commerce, which require qualified contracts to be governed by and conducted in accordance with the laws of Myanmar.

In addition, it is common practice for foreign companies to insert an exclusivity clause in agreements, to limit the distributor from selling competitor products within the same market. Section 27 of the Contracts Act provides that any contract in restraint of trade will be void. In practice, this is not an absolute rule, but any post contractual clauses must be reasonable in duration, limit and territory.

Myanmar is not typically considered a freedom to contract jurisdiction, and every agreement must adhere to certain standards provided in the law of contract. Any reasonably presumed unfair clauses are usually scrutinised by the court if disputed. Open-ended distributor agreements can be terminated without any obligation to pay compensation, whereas one that is limited in time may involve an obligation to pay compensation if sufficient cause for termination cannot otherwise be shown.

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

There are no specific laws for e-commerce in Myanmar. However, the Electronic Transaction Law of 2004 and amendment of Evidence Act specifically focuses on electronic contracting and signatures.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

The Consumer Protection Law 2014 and the Competition Law 2015 have specific provisions restricting the content of advertisements to prevent any harmful, detrimental, or anti-competitive advertising. There are some restrictions on advertising for drugs, food supplements and infant food products set by the Myanmar Food and Drug Administration (FDA). Advertising on alcohol and tobacco products are also prohibited by authorities. Advertising of the following nature is not permitted under Myanmar law:

- If it offends public morality and decency.
- If it offends or insults the local customs and religion;
- Comparative advertising of businesses with similar goods and services.
- Deceptive advertising caused by goods that are similar with those of another business;
- Circulating incorrect information regarding price, quality, design, durability, origin, place, packaging, warranty period, usage of goods, and other information.
- Using exaggerated descriptions, covering defects, and using derogatory remarks about competitor's goods.
- Promoting or offering for sale goods and services with no intent to actually sell during that prescribed time.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

While section 357 of the Constitution of the Republic of the Union of Myanmar 2008 provides that the Union must protect the privacy and security of home, property, correspondence and other communications of citizens under the law subject to the provisions of the Constitution, Myanmar does not currently have specific data protection laws. The Telecommunications Law 2012 contains provisions which refer to the protection of personal data, but applies only to persons, departments, and organisations within Myanmar, and Myanmar citizens living locally and abroad. The Law Protecting the Privacy and Security of Citizens 2017, which was enacted and promulgated into law on 8 March 2017, is focused on the protection of citizens' freedom of movement, residence and speech, as well as private affairs.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

Myanmar has not passed any specific legislation dealing with product liability. However, some laws regulate certain aspects of product liability, including the:

- Contracts Act 1872.
- Sale of Goods Act 1930.
- Penal Code of 1860.
- National Drug Law 1992.
- National Food Law 1997.
- Consumer Protection Law 2014.
- Competition Law 2015.

Regulatory bodies such as the Food and Drug Administration of Myanmar do exercise their powers conferred under these legislations in policing issues of product liability in Myanmar.

MAIN BUSINESS ORGANISATIONS

Directorate of Investment and Company Administration (DICA)

W www.dica.gov.mm

Main activities. Government department in charge of company formations and administering the Ministry of Commerce's policies, guidelines and regulations.

Internal Revenue Department (IRD)

W www.irdmyanmar.gov.mm

Main activities. Responsible for tax collections, e-filings, tax rulings, formulation and publications of laws and notifications.

Myanmar Customs Department

W www.myanmarcustoms.gov.mm

Main activities. Main government authority for setting tariff rates, rules, customs inspections, approvals, exemptions for regulating import and export.

Ministry of Commerce

W www.commerce.gov.mm

Main activities. Government Ministry in charge of formulating policies, guidelines, notifications and approvals for companies operating under the Myanmar Investment Law 2016 (MIL).

Ministry of Labour, Immigration and Population

W www.mol.gov.mm

Main activities: Ministry responsible for regulating labour affairs, including formulation of policies, laws, notifications and guidelines.

ONLINE RESOURCES

Ministry of Information

W www.moi.gov.mm/laws

Description. Maintained by the Ministry of Information. Provides newly enacted laws available in Burmese.

Directorate of Investment and Company Administration

W www.dica.gov.mm

Description. Maintained by DICA. English language versions of some laws are available, such as the MIL.

Practical Law Contributor profiles



Yuwadee Thean-ngarm, Director, Myanmar

Tilleke & Gibbins
T +95 1 255 208
F +95 1 255 207
E yuwadee.t@tilleke.com
W www.tilleke.com

Professional qualifications. Patent agent; notarial services attorney; Attorney-at-law, Bar Council of Thailand, Lawyers Council of Thailand; MA, Chulalongkorn University; LLB, Thammasat University

Areas of practice. IP; regulatory affairs; commercial transactions and M&A; corporate services; dispute resolution and litigation.



Nwe Oo, Attorney-at-law

Tilleke & Gibbins
T +95 1 255 208
F +95 1 255 207
E nweoo@tilleke.com
W www.tilleke.com

Professional qualifications. Bar Council of Myanmar, 1997

Areas of practice. Corporate services; commercial transactions and M&A; dispute resolution and litigation.

Sher Hann Chua, Consultant

Tilleke & Gibbins

T +95 1 255 208
F +95 1 255 207
E SherHann.C@tilleke.com
W www.tilleke.com

Professional qualifications. Attorney-at-law, Bar Council of Malaysia, 2014; LLM, University College London, 2012; LLB, University of Reading, 2011

Areas of practice. IP; regulatory affairs; commercial transactions and M&A; technology, media and telecommunications; corporate services.