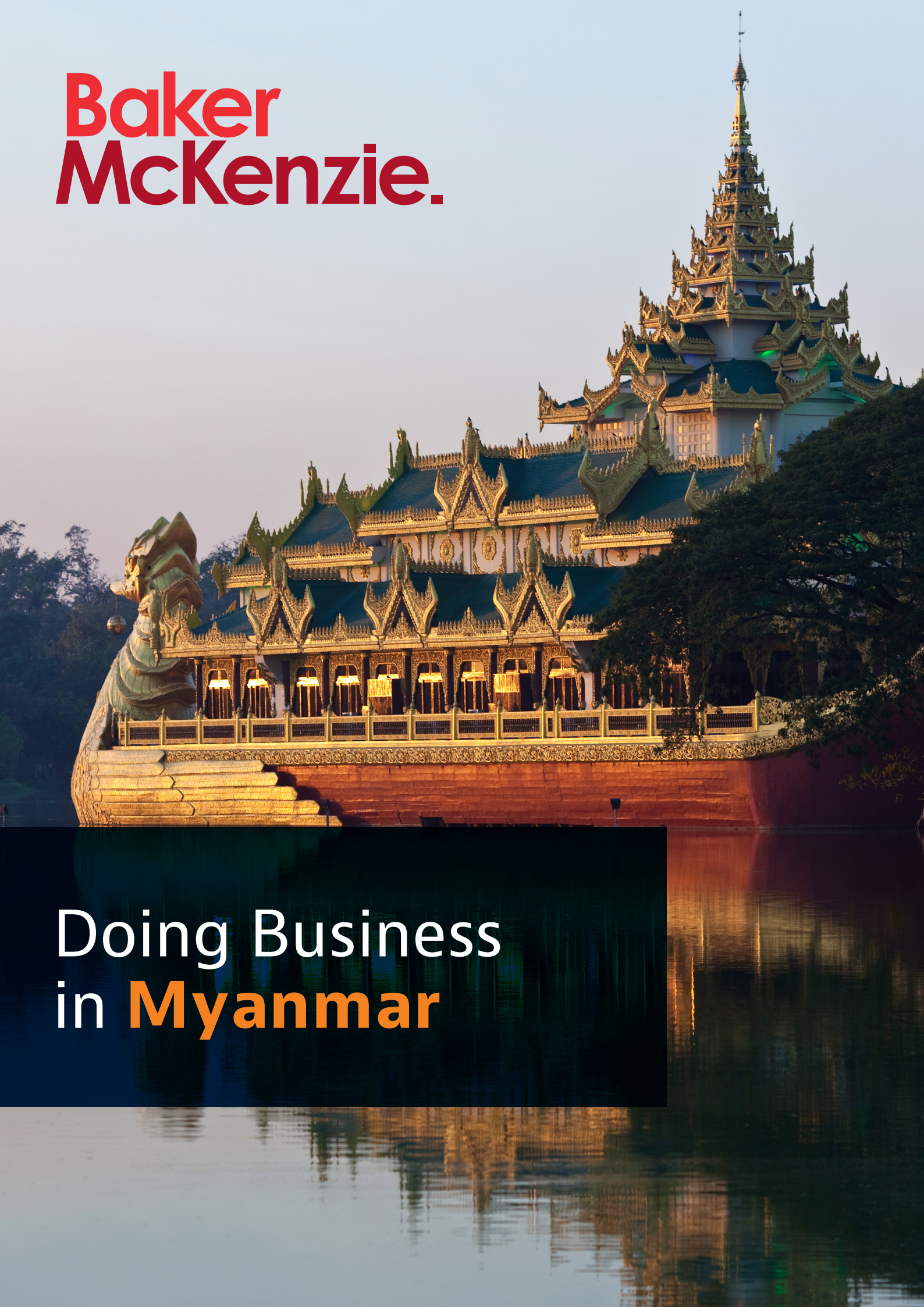


**Baker  
McKenzie.**

Doing Business  
in **Myanmar**



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## KEY BUSINESS DEVELOPMENT OR INVESTMENT IN MYANMAR

**Myanmar** has undergone a political and economic transformation with incredible speed and success and remains one of the fastest growing economies in East Asia. Myanmar's economic isolation has reduced considerably, as it seeks to fully integrate into the global economy.

In 2015, Myanmar held its first national election in 25 years, which ushered in a new era of quasi-democracy and economic prosperity. Investor expectations were so high that Myanmar experienced GDP growth of 7.2 percent, in a historic election year. The GDP growth is currently projected to continue averaging 7.1% per year, mainly driven by economic reforms, public consumption and private investment.

# THE POLITICAL AND ECONOMIC SITUATIONS IN **MYANMAR** ARE ONLY BECOMING MORE STABLE.

In the last four years, significant reforms have built investor confidence in Myanmar, including the passing of the Arbitration Law and the Myanmar Investment Law. Important new laws in their late drafts are the Companies Law and several intellectual property laws.

There are many opportunities for foreign investors in sectors such as power and renewable energy, agriculture, IT, engineering, automotive, construction, textiles, healthcare and banking and finance.

## MARKET ENTRY

Business in Myanmar must be conducted through an entity registered in Myanmar. That is to say, a company cannot “carry on a business” in Myanmar without having a locally registered entity. The concept of “carrying on a business” is widely interpreted and will apply to companies if employees fly into Myanmar and make sales calls and hand out business cards and brochures.

	Subsidiary	Branch
<b>Liability</b>	Limited Liability	Full Liability
<b>Reporting Requirement</b>	Heightened Reporting Requirement	Lower Reporting Requirement
<b>Withholding Tax</b>	2 percent	2.5 percent

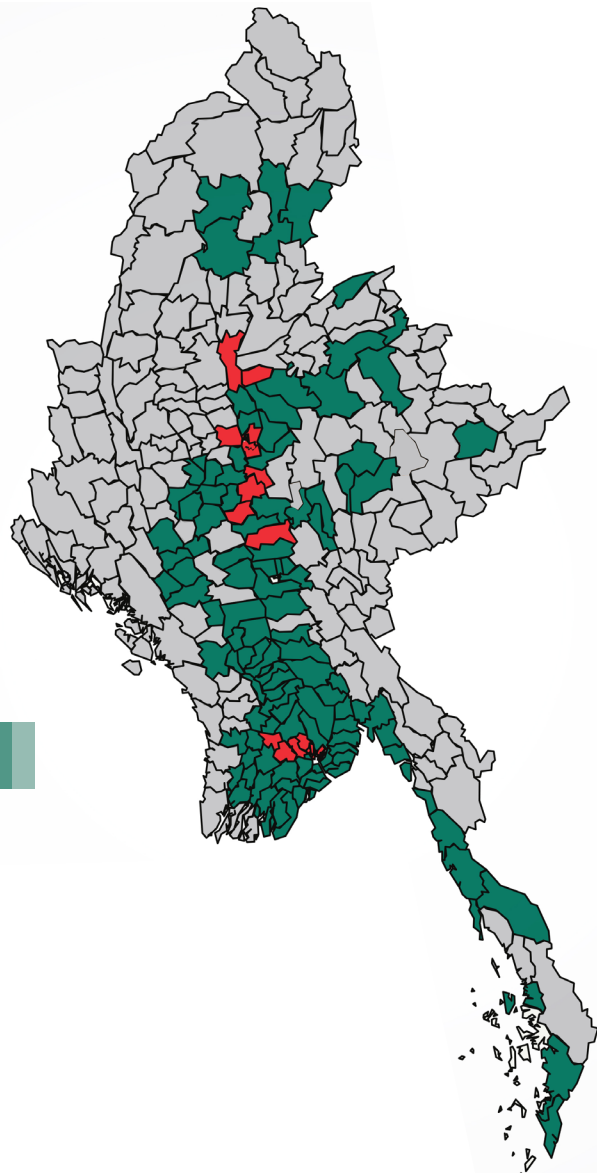
Foreign investors may establish either a wholly owned subsidiary or a branch office in Myanmar. The application processes to establish a subsidiary or register a branch in Myanmar are largely identical. In either case, a complete application is lodged with the Directorate of Investment and Company Administration (DICA). Within a few days, the DICA will issue a temporary Certificate of Incorporation or Registration, and a temporary Form 1 (commonly referred to as a Permit to Trade). At this point, the company or branch is legally set up in Myanmar, but must inject its capital and perform various administrative actions before receiving the final Certificate of Incorporation or Registration and Form 1. The whole process takes approximately three months.

## INVESTMENT PROMOTION

There are two investment promotion regimes in Myanmar aimed at attracting large scale foreign investment: Myanmar Investment Commission (MIC) promotion under the Myanmar Investment Law 2016 (MIL), and Special Economic Zones under the Special Economic Zone Law 2014 (SEZL).

### LEGEND:

- ZONE 1
- ZONE 2
- ZONE 3



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## MIL

Under MIL, depending on the respective zone, corporate income tax can be exempted. However, it will only be granted with the approval of MIC based on their discretionary power.

Zone	Period of Corporate Income Tax Exemption
Zone 1 (most developed areas)	3 years
Zone 2 (moderately developed areas)	5 years
Zone 3 (least developed areas)	7 years

Income tax exemptions are only available, however, in the following promoted sectors:

- Agriculture and related services;
- Plantation and conservation of forests, and other forestry business;
- Livestock production, breeding and production of fishery products and related services;
- Manufacturing (except alcohol, cigarettes and similar products);
- Establishment of industrial zones;
- Establishment of new urban areas;
- City development activities;
- Construction of roads, bridges and railway lines;
- Construction of seaports, river ports and dry ports;
- Management, operation and maintenance of airports;
- Maintenance of aircraft;
- Supply and transport services
- Power generation, transmission and distribution;
- Production of renewable energy;
- Telecommunication business;
- Education services;
- Health services;
- Information technology services;
- Hotels and tourism; and
- Science research and development business.

## SEZL

Under the SEZL, a company can receive a corporate income tax exemption for 5 years.

## Other Benefits under MIL and SEZL

There are other benefits available under these two regimes:

	MIL	SEZL
<b>Long Term Lease</b> (a foreign company without MIC or SEZ approval can only lease land for 12 months)	Yes	Yes
<b>Commercial Tax and Import Duty Relief</b>	Yes	Yes
<b>Protection Against Expropriation</b>	Yes	Yes

## INVESTMENT TREATIES WITH MYANMAR

Myanmar has entered several investment treaties and some free trade agreement.

The key treaty is the Asean Comprehensive Investment Agreement which is the Agreement between Asean countries covering Myanmar, Singapore, Thailand, Vietnam, Indonesia, Malaysia, Philippines, Singapore, Cambodia, Laos, and Brunei. In addition, Myanmar has also entered the treaty with China, Korea, Australia/New Zealand, and India through the ASEAN.

Additionally, Myanmar entered the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC). The members of BIMSTEC are Myanmar, India, Nepal, Bangladesh, Bhutan, Sri Lanka and Thailand.

There are also bilateral investment treaties as follow:

Country	Description
<b>United States of America</b>	Investment Incentive Agreement between the Government of the Republic of the Union of Myanmar and the Government of the United States of America
<b>Japan</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of Japan for Liberalization, Promotion and Protection of Investment
<b>China</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the People's Republic of China on the Promotion and Protection of Investments
<b>Thailand</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the Kingdom of Thailand for the Promotion and Protection of Investments
<b>Vietnam</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the Socialist Republic of Vietnam for the Promotion and Reciprocal Protection of Investments
<b>Philippines</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the Republic of Philippines for the Promotion and Reciprocal Protection of Investments

<b>Laos</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the Lao People's Democratic Republic for the Promotion and Reciprocal Protection of Investments
<b>Republic of Korea</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the Republic of the Korea for the Promotion and Protection of Investments
<b>Kuwait</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the State of Kuwait for the Encouragement and Reciprocal Protection of Investments
<b>Indonesia</b>	Framework Agreement on Trade and Investment between the Government of the Republic of the Union of Myanmar and the Government of the Republic of Indonesia
<b>Israel</b>	Agreement between the Government of the Republic of the Union of Myanmar and the Government of the State of Israel for the Reciprocal Promotion and Protection of Investments

In general, these treaties cover the promotion and protection of investment, repatriation, and provide a dispute settlement mechanism. Basically, investment shall be treated fairly and equitably and shall not be expropriated except under specific conditions. In case of expropriation, compensation payments would be required. Foreign Investors have the right to be treated just as if they were Myanmar investors.

## FINANCING AND THE FINANCIAL SECTOR

The Myanmar financial sector has taken great strides in the past year. As of 2015, the Central Bank of Myanmar had granted thirteen banking licenses to foreign banks which are:

- (a) The Bank of Tokyo-Mitsubishi UFJ, Ltd;
- (b) Oversea-Chinese Banking Corporation Ltd;
- (c) Sumitomo Mitsui Banking Corporation;
- (d) United Overseas Bank Limited;
- (e) Bangkok Bank Public Company Limited;
- (f) Industrial and Commercial Bank of China;
- (g) Malayan Banking Berhad (MayBank);
- (h) Mizuho Bank Limited;
- (i) Australia and New Zealand Banking Group Limited;
- (j) The Joint Stock Commercial Bank for Investment and Development of Vietnam (BIDV);
- (k) Shinhan Bank;
- (l) E.Sun Commercial Bank Limited; and
- (m) State Bank of India.

In the past year, these licenced foreign banks are very active in Myanmar. Furthermore, FMO, the Dutch development bank, as well as the OPIC, (which are from offshore) have both given substantial loans to onshore projects in the past year.

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Still, financing in Myanmar is not without its challenges. The primary difficulty in obtaining financing in Myanmar is adequately securing it. Under Myanmar law, the usual forms of security are available, such as mortgages over immovable property, security over receivables, pledges over bank accounts and shares, guarantees, and others. For such security interests to be enforceable, strict stamp duty and registration requirements must be followed. Ultimately, any enforcement of an onshore security would be done through the courts of Myanmar, which can be slow and unpredictable.

On-shore financing is also made more difficult by the fact that Myanmar has no sovereign credit rating.

## THE YANGON STOCK EXCHANGE

After several years of planning, the YSX opened on the 9th December 2015. There are currently 4 companies listed on the YSX, with First Private Bank. being the most recent listing on 20 January, 2017. Also, two further companies (Yangon Buss Public Company Ltd and Myanmar Agro Exchange Public Limited) are proceeding the approval for public offering from the Securities and Exchange Commission of Myanmar.

## TRADING

Trading is another area that has seen a significant liberalization in recent years. Previously, foreign companies were strictly prohibited from engaging in retail or wholesale activities, under the Ministry of Commerce policy prohibiting foreign companies from engaging in "trading" activities. However, the Ministry of Commerce has announced that foreign companies may retail or wholesale five types of products in Myanmar. In addition, wholesale activities are allowed through Thilawa SEZ, and wholesale and retail activities are now to be allowed in the rest of Myanmar with approval of the Ministry of Commerce. Overall, the Ministry of Commerce is clearly moving towards liberalization of this restriction, which is a welcome sign for investors.

## EMPLOYMENT

Myanmar has reasonably strict labour laws governed by a complex patchwork of old and new legislation, many of which are in the process of being reviewed and updated by the Ministry of Labour, Immigration and Population. The current minimum wage is set at 3,600 Myanmar Kyat (approximately US\$3) per day. The Ministry has been quite strict about implementing their template employment contract for all foreign and local employees. Any deviation from the template must grant the employee more generous terms than those provided for in the template.

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## LAND OWNERSHIP

Foreigners, or the subsidiaries or branches of foreign companies, may not own land in Myanmar, although as already mentioned, under certain conditions long term leases are available for investors. Under the new Condominium Law, foreigners and foreign entities are allowed to purchase a condominium, provided it meets certain requirements.

## ANTI-CORRUPTION AND ANTI-MONEY LAUNDERING

Myanmar has implemented the Anti-Corruption Law 2013, which clearly sets out what activities are punishable. Furthermore, the local government authorities have made a concerted effort to educate government employees regarding what is acceptable gift giving, and what is prohibited under the law.

Similarly, Myanmar implemented the Anti-Money Laundering Law 2014, and made a push to prevent money laundering. In 2016, less than two years after the Anti-Money Laundering Law was implemented, the Financial Action Task Force removed Myanmar from its list of states deemed weak in combating money laundering and terrorist financing.

## INFRASTRUCTURE

The most recent development in this space is Law No. 20/2017, known as the Petroleum and Petroleum Products Law (Petroleum Law). The Petroleum Law has a very broad scope ("Petroleum Product" is defined to mean "any materials derived from processing petroleum") and, once subordinate legislation is confirmed, will likely mean that any entity involved in any stage of the petroleum product supply chain will require some form of licence or permit issued under the Petroleum Law.

The licensing regime under the Petroleum Law is intended to be extensive. In particular, enterprises will require licences for:

- (a) Importing or exporting petroleum products (Ministry of Commerce)
- (b) Processing, transporting, distributing, storing, selling, inspecting and testing petroleum products (when through a pipeline the Ministry of Electricity and Energy, and when not through a pipeline the Ministry of Natural Resource and Environmental Conservation)
- (c) Operating vehicles or transport vessels (anything other than pipelines), as well as ports and waterways for the transport of petroleum products (Ministry of Transport and Communications) and
- (d) Installing or utilising underground tanks and warehouses (Ministry of Natural Resources and Environmental Conservation).



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Under the Petroleum Law it will be an offence to operate without a relevant licence. It will also be an offence not to assist the relevant Ministry or its inspectors when conducting a valid inspection under the Petroleum Law. Penalties may include warnings, fines or suspension of licences. Furthermore, the Ministry of Planning and Finance can confiscate, execute or otherwise administer unlicensed or improperly licensed petroleum products. As with the majority of Myanmar laws, there is also individual liability.

This is the first amendment to broader power and energy regulation in Myanmar under the current Government, and it is possible that developments like this will continue into other market segments or sectors.

## DISPUTE RESOLUTION

Myanmar ratified the New York Convention in 2013, and passed the Arbitration Law in 2016, fully implementing the New York Convention. Under the Arbitration Law, foreign arbitral awards are enforceable under the Code of Civil Procedure as though they were a decree of the court. This has been a boon for investor confidence, as previously the enforcement of foreign arbitral awards was uncertain. Similarly, foreign court judgments are enforceable under the Code of Civil Procedure, but the courts of Myanmar have broad discretion to retry the case.





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