

**FDI Guide
Myanmar**

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Foreword: This chapter seeks to provide an overview of the primary legislation and rules regulating foreign investment into Myanmar, namely the Myanmar Investment Law (2016) and the application process for investment permits and endorsements issued by the Myanmar Investment Commission pursuant to the law.

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1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <p>The foreign investment regime applicable in Myanmar is modelled on a negative list approach, that is, foreign investment is generally allowed, unless it is specifically prohibited, restricted or conditions are imposed.</p> <p>Based on this exception principle, Myanmar implements a process by which proposals for foreign investment that falls within the ambit of the restricted sectors and/or fulfils certain stipulated criteria (‘Restricted FDI’) would need to be screened, reviewed and approved by the relevant authorities.</p> <p>Separately, there are currency exchange control rules that apply to the transfer of funds to and from Myanmar and require the approval of the Central Bank of Myanmar.</p>
2.	<p>Legal regime</p> <p>Authority(ies) in charge</p>	<p>Describe source(s).</p> <p>Name of authority in charge of applying the FDI rules (Minister/Agency/...).</p>	<p>The primary law regulating foreign investment is the Myanmar Investment Law (2016) and the notices, regulations and rules issued pursuant to it, including the Myanmar Investment Rules (2017) (collectively, the MIL).</p> <p>The Myanmar Investment Commission (MIC), which is a minister-level committee appointed by the government and established under the Ministry of Investment and Foreign Economic Relations, is the authority in charge of screening and reviewing any investment proposals relating to Restricted FDI. Where Restricted FDI involves business activities that are regulated by other ministries, the MIC also involves such relevant ministries in the review of the investment proposals.</p>
3.	<p>Transactions that may be subject to FDI</p> <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>Under the MIL, investment involving the following requires a permit issued by the MIC (an ‘MIC Permit’):</p> <ol style="list-style-type: none"> 1. activities essential to the ‘national strategy’;¹ 2. large capital-intensive investment projects (ie, investment value in excess of USD 100m); 3. projects that are likely to cause a large impact on the environment and the local community;

¹ Examples of such investment include: (1) investment in the technology sector, transport infrastructure, energy infrastructure, etc, or pursuant to the grant of a concession, agreement or similar authorisation by a regulatory authority, and in each case where it has an expected investment value exceeding USD 20m; (2) investment in a border region, conflict affected area, across national border or across the states or regions ; (3) in respect of investment made primarily for agriculture related purposes, where it includes rights to occupy or use more than 1,000 acres of land; and (4) in respect of investment primarily for non-agricultural related purposes, where it includes rights to occupy or use more than 100 acres of land.

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			<p>4. activities that make use of state-owned land and/or buildings; and/or</p> <p>5. activities designated by the government to require the submission of a proposal to the MIC.</p> <p>Under Myanmar laws, a foreigner or foreign-owned company is not permitted to take any interest in immovable property or enter into lease arrangements for a term longer than 12 months. However, the MIL created an exception, where foreign companies with an MIC Permit or an endorsement from the MIC ('MIC Endorsement') are permitted to obtain a lease or a right to use immovable property for up to 50 years, with the possibility of two ten-year extensions. The MIL also contains various tax incentives that the MIC may, in its discretion, grant to an investor with an MIC Permit or MIC Endorsement if the activities fall within one of the promoted sectors or are located in one of the promoted regions. As such, for foreign investment that does not fall within the categories of activities that require an MIC Permit, the investor may instead apply for an MIC Endorsement if it requires a long-term lease over immovable property or if it wishes to apply for the tax incentives available to it under the MIL. The application for an MIC Endorsement requires less documentation and time.</p> <p>With respect to companies that have been issued with an MIC Permit or MIC Endorsement (such a company is an 'MIC Approved Company'), in addition to any other regulatory approval that may be required under other sector-specific legislation or regulations in Myanmar, prior approval from the MIC is required for any transfer of shares in, or transfer of business by, such an MIC Approved Company if the transfer would result in a person who is not a related body corporate (as defined in the MIL) acquiring majority ownership or control of the MIC Approved Company and/or more than 50 per cent of the assets of the MIC Approved Company. For any other transfer of shares that does not require prior approval from the MIC, the MIC Approved Company is required to notify the MIC of such transfers.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>The MIL is not clear on whether an acquisition in a parent company outside the jurisdiction would trigger a requirement for prior approval from the MIC. However, in practice, we understand that the MIC has not generally required its approval to be sought prior to the acquisition of shares in a parent company outside the jurisdiction, notwithstanding that such acquisitions may constitute an indirect acquisition of assets or shares in Myanmar.</p> <p>Greenfield investments that carry out activities that fall within Restricted FDI or fulfil the criteria and conditions for an MIC Permit or MIC Endorsement are covered under this FDI regime.</p>
		<p>Does the FDI authority (or another type of governmental authority) have a power of</p>	<p>It is not clear to what extent the MIC has such powers. Under the MIL, the MIC is the authority in charge of screening and reviewing any investment proposals relating to Restricted FDI and</p>

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		evocation/ex officio/call-in powers? If so, please describe.	where Restricted FDI is also regulated by other ministries, the MIC will also involve relevant ministries in the review of the investment proposals.
4.	Sectors falling under the FDI scope	Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply. Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	Under the MIL, there are four categories of sectors in which investment is restricted. Specific approval from the MIC is required for a foreign investor to invest in any of the following four categories: <ol style="list-style-type: none"> 1. specific investment activities that are allowed to be carried out only by the government;² 2. specific investment activities that are not allowed to be carried out by foreign investors;³ 3. specific investment activities that are allowed to be carried out only through a joint venture with a Myanmar entity or a citizen of Myanmar;⁴ and 4. specific investment activities that require approval from relevant ministries.⁵ A list of activities falling within each category is set out in Notification No 15/2017 issued by the MIC.
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	Any foreigner or foreign company ⁶ that meets any of the conditions related to the MIC Permit or MIC Endorsement is required to obtain these approvals from the MIC before bringing in the FDI. Under the Myanmar FDI regime, there is no specific category of qualified investors and no different treatment of foreign investors based on their origin.
6.	Procedure 6.1 Before or post-closing filing		Prior approval of the MIC is required prior to completion of an investment relating to Restricted FDI and the flow of funds into Myanmar in connection with such an investment.

2 These include activities that relate to national security or defence, administration of electric power systems, inspection of electrical works and air traffic services.

3 These include jade or gemstone exploration, publishing and distribution of periodicals, fresh water fisheries and relevant services, tour guide services and a mini-market or convenience store having floor area below 10,000 square feet.

4 These include veterinary clinics; cultivation of crops in agricultural land for distribution locally and for export; manufacturing and domestic distribution of plastic products; processing, canning and manufacturing of food products, except milk and dairy products; and manufacturing, distilling and bottling of alcoholic beverages.

5 These include manufacturing and distribution of medicines that are produced using narcotic and psychotropic drugs, broadcasting FM radio, investment related to fisheries resources and fish species, and commercial livestock farming.

6 A 'foreign company' is defined as any company that is either: (1) registered and incorporated outside Myanmar; or (2) if registered and incorporated in Myanmar, has more than 35 per cent of its shares held by another foreigner or foreign company.

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7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	The submission of a pre-closing application to the MIC is mandatory if the investment activities constitute Restricted FDI. If the investment activities do not relate to Restricted FDI but the foreign investor wishes to apply for an MIC Endorsement to enjoy land use rights and/or tax benefits under the MIL, an application can be made prior to or after closing the investment, in accordance with the terms of the MIL.
8.	6.3 In the case of post-closing, what are the powers of the authority?		
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>It is possible to submit an investment screening application to the MIC for non-binding guidance on whether the proposed investment is eligible for an MIC Permit or MIC Endorsement.</p> <p>The MIC will issue non-binding guidance within ten working days from the date of submission of the investment screening application (or such a period may be extended if the MIC requires additional information). The investor is given ten working days to provide any additional information requested by the MIC, failing which, the investment screening application lapses.</p>
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	In general, the timeline for preparing an investment proposal for filing with the MIC may take up to two to three months, depending on the complexity or novelty of the proposal and the ability of the applicant to provide the relevant information on the proposed investment.
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist <i>de facto</i> or <i>de jure</i> .	<p>Upon the submission of an application to the MIC in the prescribed form along with the necessary details pertaining to the proposed investment, which includes business plans and budgets (the 'Proposal'), the MIC will screen the Proposal for eligibility and completeness. If it is determined that the Proposal is eligible and complete, it will be accepted, and the Proposal shall undergo substantive assessment by the Proposal Assessment Team (PAT) and then be submitted to the MIC's meeting.</p> <p>Under the MIL, the MIC has 15 working days to accept or reject the Proposal.</p> <ol style="list-style-type: none"> 1. If the Proposal is rejected, the MIC will give the investor a notice of rejection, along with an explanation within the next five working days. 2. If the Proposal is accepted, the MIC will screen the Proposal within the next 60 days (in the case of an MIC Permit) or 30 days (in the case of an MIC Endorsement) from

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			<p>the date of acceptance and, if approved, issue the MIC Permit or MIC Endorsement (as the case may be) within ten working days thereafter.</p> <p>3. If the MIC requires further information to support the application, the investor is required to provide the information required by the MIC within 20 working days. The timeline for the application may be suspended during the time the investor is collating information and will resume after additional information has been submitted to the MIC.</p> <p>As part of the application process, the MIC may require that an investor or its authorised representative attend meetings of the PAT or MIC at which the Proposal is being considered. If required, experts from government departments and entities relevant to the nature of the investment will be invited to attend.</p>
			<p>The time required for an application to the MIC to be reviewed and approved differs depending on the completeness of information submitted and complexity or novelty of the investment proposal. As the MIC approval process involves a substantive assessment by the PAT, in recent times, we understand that applications to the MIC may have required a longer time. In practice, the review and approval process for an MIC Permit may take around three to four months.</p>
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>The investor gets an opportunity to make presentations and provide clarifications to, and engage in discussions with, the representatives of the relevant ministries at meetings with the PAT, MIC and/or regional government in connection with the application.</p>
		Are there any guidelines issued by the authority?	<p>The MIC assesses every Proposal and determines if it is beneficial to the interests of the country. In making its assessment, the MIC has regard to the objectives, principles, rights and responsibilities in the law. It also considers whether the investor and/or Proposal satisfy the following criteria:</p> <ol style="list-style-type: none"> 1. the investor is acting, and the investment will be made, in accordance with the laws of the country; 2. the investment requires a permit; 3. the Proposal is in accordance with the law; 4. the investor has demonstrated a commitment to carry out the investment in a responsible and sustainable manner, including by limiting any potentially adverse environmental and social impacts;

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			<ol style="list-style-type: none"> 5. the investor, holding company or an associate involved in the management of the investment have business experience and acumen relevant to the investment; 6. the investor, associate and holding company have demonstrated their financial commitment to the investment; and 7. the investor, associate and holding company are of good character and business reputation, and the investment is compatible with national development, security, economic, social and cultural policies, taking into consideration the development, security, economic, social and cultural policy objectives announced by the government or the government of any state or region affected by the investment.
13.	(iv) Filing fees	Is there a filing fee?	Yes. A filing fee of approximately MMK 50,000–250,000 (approximately USD 27–135) is payable.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>The information required by the MIC includes, among others, the following:</p> <ol style="list-style-type: none"> 1. details of the promoter (name, address, contact details, identity card number, etc); the MIC generally expects that the promoter is a director of the applicant company; 2. details of the investor (name, business type, certificate of incorporation, statement of bank balance and audited financial statements); 3. list of the investor’s shareholders; 4. detailed list of foreign capital to be brought in; 5. detailed list of local capital to be brought in; 6. particulars of any loan, if proposed to be taken; 7. list of services and products to be provided; 8. annual electricity and water requirement; 9. details of employment that will be generated in Myanmar in connection with the investment; and 10. feasibility study and environmental protection plan.
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	The MIL allows the MIC to suspend the timelines during the period when the applicant is collating information requested by the MIC. In addition, the MIL allows the authorities to extend the timeline for review of the application depending on the complexity and novelty of

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			the Proposal. There are no consequences for the MIC if it does not issue a decision within the set timeframe.
16.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	Typically, the MIC does not issue conditional approvals to applications for an MIC Permit or MIC Endorsement. However, it may impose terms to which the holders of MIC Permits and MIC Endorsements are required to adhere during the course of the project.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	The MIC and relevant ministries have sole discretion to accept or reject a Proposal. The investor may submit a notice of grievance or dispute to the Investor Assistance Committee in the case in which the investor is of the opinion that the decision to reject the Proposal was made incorrectly or an application for a permit, licence or approval was incorrectly refused, or the investor's rights under the law have been frustrated.
18.	(iii) Risk of veto	Describe a topical case. Statistics	The MIC does not publish the number of applications submitted and/or rejected.
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	Depending on the nature of the proposed investment activities, the relevant focal ministries to which the investment activities relate may participate in the assessment of the investment proposal, including the meetings of the PAT and MIC.
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of: <ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	In the event that the conditions attached to the approvals or the commitments made by the investor in its Proposal are breached or the investor breaches any provisions of the MIL and/or terms and conditions contained in the MIC Permit or MIC Endorsement issued to it, the MIC may impose one or more of the following administrative penalties on the investor: <ol style="list-style-type: none"> censure; temporary suspension of business; temporary suspension of tax exemption and reliefs; revocation of the permit or endorsement; and/or

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		<ul style="list-style-type: none"> investment carried out without prior approval. 	<p>5. add the business to a blacklist for which no permit or endorsement can be issued in the future.</p> <p>Pursuant to section 88 of the MIL, if the investor violates any provisions of the MIL, including the performance of the prohibited investment business under the MIL, the investor can be prosecuted under the law.</p>
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic	We are not aware of any specific rules that affect the MIC approval process as a result of the Covid-19 pandemic.

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