Myanmar

As Myanmar emerges from political and economic isolation, it is making the world sit up and take notice. Nomita Nair and Aaron Jones explain why

In November 2010, Myanmar (formerly known as Burma) held its first general election for 20 years. It ushered in a civilian government with President Thein Sein at the helm. Myanmar had spent years in relative isolation as a result of sanctions imposed by the US and EU over human rights concerns. But after EU sanctions were suspended in April 2012 and US sanctions were eased in July 2012, Myanmar has made the world sit up and take notice.

The country is a strategically attractive investment proposition, which is rich in natural resources, blessed with an uninterrupted coastline of nearly 2,000km and flanked by the world's powerhouses of China and India. It also has a population of around 60 million and a young and hard-working labour force.

Myanmar is largely a cash-backed economy, where it is not uncommon for businesses and householders to withdraw sacks full of kyats (the local currency) from the bank. Meanwhile, credit cards only work in a limited number of high-end hotels.

Foreign investment

To facilitate much-needed foreign investment into the country, a new Foreign Investment Law (FIL) was signed into law on 2 November 2012 after taking a protracted passage through parliament. The FIL replaces the 1988 Foreign Investment Law, and the main investor-friendly improvements are as follows:

- There is no cap on foreign investment for non-restricted sectors (but there is a cap on restricted sectors such as mining);
- Foreign investors can hold 50-year land leases, which are extendable by two periods of 10 years;
- Tax benefits for foreign investors, including a five-year tax holiday, a right to carry forward losses after expiry of the tax-exempt period for up to three years and exemption from customs duties for machinery, equipment and raw materials; and
- A guarantee from the Myanmar government that companies operating under the FIL will not be nationalised.

The FIL contains an extensive set of rules and restrictions relating to investment in restricted sectors, which are split as follows:

- Prohibited activities, which can only be carried out by Myanmar citizens;
- Economic activities that are only allowed through a joint venture with Myanmar citizens. These are subject to approval by the Myanmar Investment Commission (MIC) and the maximum foreign shareholding allowed is 80%;
- Economic activities that are permitted subject to the recommendation or other conditions of relevant ministries (for example, approval of the relevant ministry); and
- Economic activities that require an environmental and social impact assessment. This is a new requirement, and it remains to be seen how it will be implemented in practice.

Section 3 of the State-owned Economic Enterprises Law of 1989, which continues to apply, also lists 12 economic activities reserved for the state. These include banking and insurance services, extraction and sale of teak, and export of pearls, jade and precious stones.

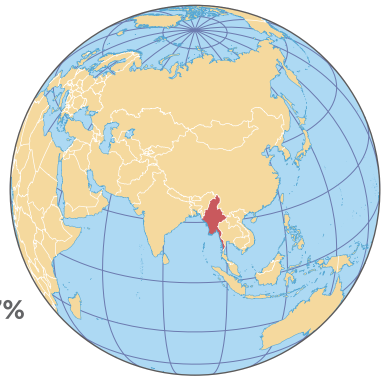
Incorporation process

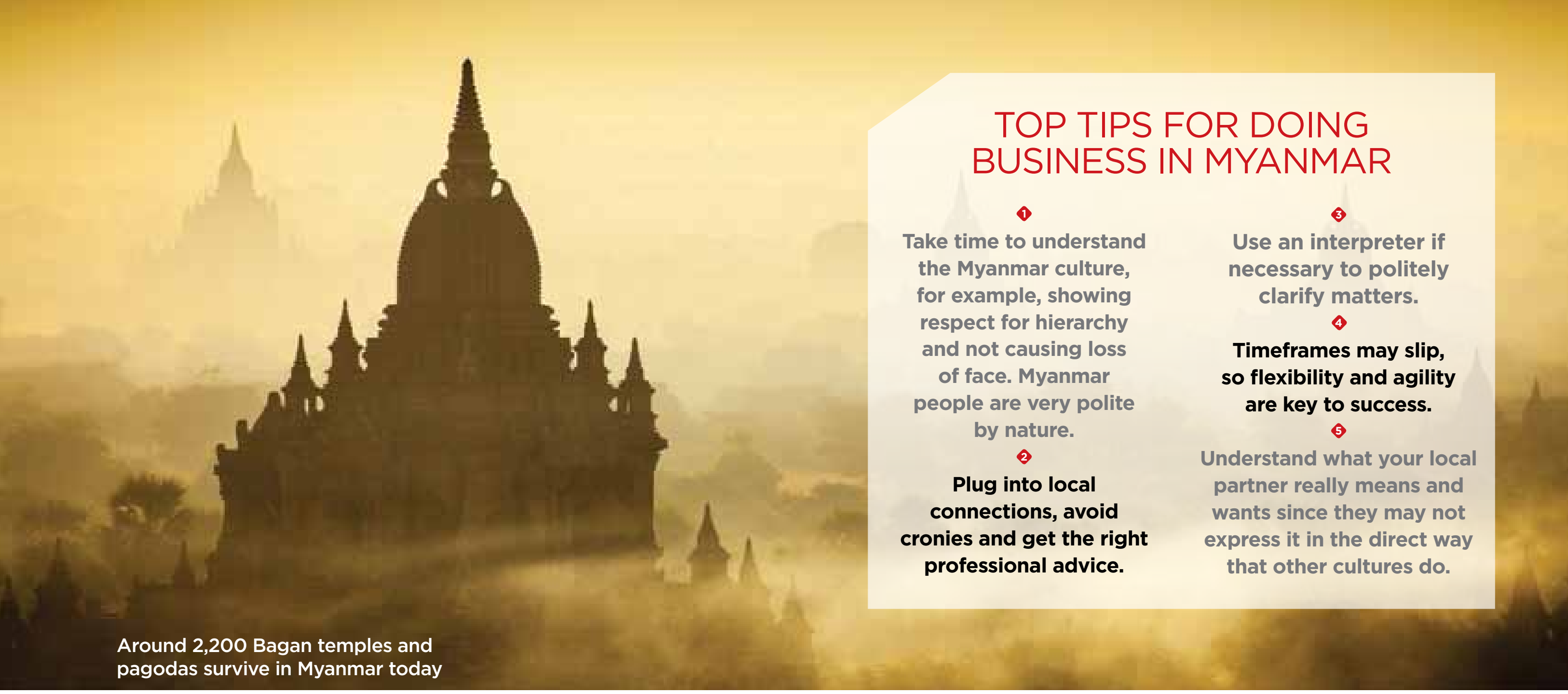
Most corporate and business structures are available in Myanmar, including partnerships, companies limited by shares (both joint venture companies and 100% foreign companies), branch offices, companies limited by guarantee, not-for-profit organisations and unlimited companies. A Myanmar company can have one or more class of shares, which can be paid for in part or in full and issued at a premium or discount. Companies may also attach special voting rights in their articles or a shareholders' agreement.

There are three stages involved in the incorporation of a foreign company under the FIL, which can take up to one year:

COUNTRY FILE

Population size: 60.62 million
Area: 676,578 km^2
% growth in 2012: 5.5
Type of govt: Nominally civilian parliamentary
Official language: Burmese
Capital city: Nay Pyi Taw
Largest state: Shan state
GDP (PPP): $51.44bn
Central govt debt as a proportion of GDP: 45.7%
Currency: Kyat (MMK)
Currency rate against the euro: 1,197





Around 2,200 Bagan temples and pagodas survive in Myanmar today

TOP TIPS FOR DOING BUSINESS IN MYANMAR

1. Take time to understand the Myanmar culture, for example, showing respect for hierarchy and not causing loss of face. Myanmar people are very polite by nature.
2. **Plug into local connections, avoid cronies and get the right professional advice.**
3. Use an interpreter if necessary to politely clarify matters.
4. **Timeframes may slip, so flexibility and agility are key to success.**
5. Understand what your local partner really means and wants since they may not express it in the direct way that other cultures do.

1. Obtaining a permit under the FIL through application to the MIC (MIC permit);
2. Obtaining a permit to trade through application to the Directorate of Investment and Company Administration (DICA); and
3. Registering the company with the Companies Registration Office (CRO).

It is also possible to incorporate a company for non-restricted activities without an MIC permit under the Companies Act 1914 (in which case, only steps 1 and 2 are required), although the benefits of the FIL are not then available.

The key governmental organisation for the implementation of the FIL is the MIC, which has a broad discretion and is responsible for approving foreign investment proposals, determining which tax benefits are available and also specifying any other terms of an MIC permit.

DICA oversees the activities of the MIC and the director general of DICA also serves as the registrar of companies and receives applications for the incorporation of foreign companies. The MIC and DICA form part of the Ministry of National Planning and Economic Development.

Companies incorporated without an MIC permit are not subject to limits on foreign workers, but foreign nationals must obtain a work permit from the MIC. For companies operating under the FIL, all unskilled workers must be local, skilled local workers must be trained by the company and an increasing percentage of the company's workforce must be local depending on the age of the business.

Lending and security

The use of FX and all loan agreements are subject to the prior approval of the controller of FX, who is the governor of the Central Bank of Myanmar. Companies operating under the FIL must also get clearance from the MIC.

Most forms of collateral are available for secured transactions, including real estate, leasehold interests and movable property, including shares, securities and bank accounts. Under the Transfer of Immovable Property Restriction Act of 1987, however, mortgages of immovable property are not available in connection with secured transactions if the lender is a foreigner, foreign company or foreign bank. Security must be registered with the CRO and gives rise to *ad valorem* stamp duty and registration fees.

Enforcement of foreign awards

The question of enforcement of foreign arbitral awards has been an issue since Myanmar only acceded to the New York Convention of the Enforcement of Arbitral Awards 1959 in April 2013. The Convention comes into force in Myanmar on 15 July 2013 and the country must enact domestic legislation to implement it. At present, all proceedings in local courts are in Burmese and, while there is an option to settle disputes through the alternative dispute resolution process hosted by the Myanmar Chamber of Commerce, there is always a question of independence as this body is set up to promote local businesses.

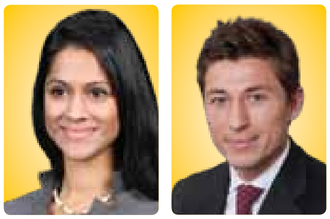
Anti-bribery and corruption

Myanmar ranks 172 out of 176 according to Transparency International's 2011 Corruption Perception Index. One of the biggest concerns for most Western investors is therefore compliance with the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977. Companies can mitigate this is by working with professional advisers who can raise any concerns at an early stage.

Current sociopolitical environment

Given that the lifting of some sanctions is only temporary and linked to continuing government reforms, the effect of the FIL should be considered in light of the current sociopolitical environment. The Japan Bank for International Cooperation recently announced that it would provide a bridge loan to Myanmar to cover debt owed to the World Bank and the Asian Development Bank, thus making Myanmar eligible again for crucial new development funding. However, the escalation of conflict in the Kachin region and controversial projects such as the Letpadaung Copper Mine have shed some doubt on the sustainability of recent reforms.

Myanmar is undoubtedly at a crossroads in its economic development, and there are a number of opportunities open to foreign investors. Legal and governmental reforms will take time to implement, however, so investors should proceed with caution and get professional advice to help them to navigate potential risks.



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