

Doing Business in Myanmar

This document describes some of the key commercial and taxation factors that are relevant on setting up a business in Myanmar.



Background



Country overview

The Republic of the Union of Myanmar. Some nationals still refer to their country as Burma. The name change occurred in 1989. Myanmar has an area of 676,578 square kilometres. Myanmar is the second largest country in South East Asia after Indonesia.

Myanmar is a country rich in natural resources; Agricultural land, Renewable energy, Minerals, Forests, and Gas. A new administration, new laws, removal of sanctions and rapidly growing foreign investments are all transforming Myanmar.

Myanmar shares borders with India, Bangladesh, Laos, Thailand and China. Myanmar has 5,876kms of borders of which 1,930kms is coastline providing access to the Bay of Bengal and the Andaman Sea.

The census of 2017 reported a population of approximately 54 million, in fifteen regions or states, within which there are 67 districts, these being subdivided into townships, then towns, wards and villages. The main areas of urban population by percentage are approximately, Yangon 70%, Kachin State 36% and Mandalay 34%.

Muslims, Hindus, Christians and Buddhists all live in Burma. It is a rural country but urbanisation is growing rapidly, 34% in 2015, and forecast 40% in 2025.

Many languages are heard in Myanmar. 136 are officially recognised and includes all the languages spoken within ethnic groups. However, approximately 67 percent of the population speak Burmese, which is the official language. This originates from the language spoken by the Bamar people, who have been and are the largest ethnic group within the country.

The languages used can be traced back to Sino-Tibetan, Austro-Asiatic, Tai-Kadai, Indo-European, Austronesian, and Hmong-Mien. There is also a sign language for Burmese.

Yangon, formerly known as Rangoon is the country's largest city, the heart of the growing economy with numerous parks and lakes, and the sacred Shwedagon Pagoda. A gold plated stupa, which is said to house Buddhist relics and which dates back to the 6th century.

However, Myanmar's capital was moved North to Nay Pyi Taw, 320kms from Yangon. Construction took place over ten years, starting in 2002 and completed in 2012. Having the ability to start from scratch the City has plenty of wide open areas. Relative to its area it has a low number of inhabitants. Two ASEAN (Association of Southeast Asian Nations) Summits have been staged here, and also the South East Asian Games. Myanmar joined ASEAN in 1997. Its location is being harnessed more every year for trade and also to provide trading routes to neighbouring countries.

Myanmar Regions and States: Ayeyarwady Region, Bago Region, Chin State, Kachin State, Kayah State, Kayah State, Magway Region, Mandalay Region, Mon State, Rakhine State, Shan State, Sagaing Region, Tanintharyi Region, Yangon Region, and Nay Pyi Taw, Union Territory under direct administration of the President.

Knowing some of the history of Myanmar allows a better perspective on the enormous changes that have taken place and which continue at a rapid pace, spurring the economy. Myanmar is

recognised as one of the last areas ripe for development with huge economic potential for growth.

Burma was a monarchy prior to the 19th century. The country then became part of British India and this would remain the status until 1938. In 1927 British Burma with some self rule saw escalation of tensions due to opposing powerful groups in Burma. This would become even more of an issue when groups joined opposing sides in World War II. The dominant group was the Bamar.

In 1946 a Myanmar had a transitional government. The Deputy Chairman was Aung San (from the Bamar Group). This gave him authority over all areas of Burma, including regions not previously under Bamar control. In 1947, he was assassinated together with some members of the cabinet.

Burma gained its independence from Great Britain in 1948, allowing the formation of a parliamentary system. The first President appointed was Sao Shwe Thaik.

However, despite independence Burma did not become a member of The Commonwealth. A bicameral parliament was created, (a legislative body having two chambers). The Assembly of the Union Pyidaungsu Hluttaw is the national level bicameral legislature of Myanmar, officially known as the Republic of the Union of Myanmar. The Pyidaungsu Hluttaw has two assemblies. The Amyotha Hluttaw (House of Nationalities). This is the Upper House with 224 members. There is the Pyithu Hluttaw, the Lower House with 440 members (House of Representatives).

The area of Myanmar brought together regions that were known as Lower Burma, Upper Burma and Frontier Areas. These regions had previously been registered separately when under jurisdiction from Great Britain.

Myanmar gained further recognition when in 1961 the Permanent Representative to the United Nations, Mr U Thant became Secretary-General. He had been The Secretary to the Prime Minister. He was the first appointee not from a Western country to be selected as head of any international organisation. He retained this appointment for ten years.

In 2008 changes appeared with Myanmar's military drafted constitution being overwhelmingly approved by 92.4% of the 22 million voters with reported voter turnout of 99%, this being phase one of a two-stage referendum leading to elections in 2010 and 2012.

In November 2015 further general elections were held, which led to the National League for Democracy winning an absolute majority of seats in both chambers of the national parliament, to make its candidate president. As you may have seen in other reports, there are laws that prevent Aung San Suu Kyi from taking the title President

President: Win Myint, National League for Democracy

State Counsellor: Aung San Suu Kyi, National League for Democracy

Vice-President: Myint Swe, Union Solidarity and Development Party

Vice-President: Henry Van Thio, National League for Democracy

Aung San Suu Kyi is The State Counsellor of Myanmar, the de facto head of government. The President is the de jure (in accordance with law) Head of State and Head of The Government. Note: The charter does allocate 25% of seats in parliament to the military.

Within Myanmar there are regions each with their own assembly, or Hluttaw.

However, the elections meant that 50 years of military rule were ended and this placed Myanmar on the international stage. Trade sanctions were removed, leading to change of forecasts for the economy, which point to a future of prosperity for Myanmar.

Economic overview

The currency in Myanmar is The Burmese Kyat, currency code MMK, currency symbol K.

The removal of trade sanctions by The Obama Administration was a huge positive step, opening up investment flows and boosting economic growth that had effectively been blocked.

There have been many news laws and legal reviews continue to arrive rapidly. These are opening up the country to overseas investments and adding greater flexibility for business and financial institutions. Legal reforms such as The Foreign Investment Law and The Financial Services Law have opened doors for foreign investors. Also there have been identified areas requiring priority

investment, encompassed within The Special Economic Zone Law. Furthermore, overseas banks have been provided more flexibility to operate in Myanmar. These reforms and other changes have grown and continue to boost investor confidence. The Myanmar Investment Law 2016, inter alia, introduces a faster Government Endorsement process for companies seeking approval for new projects for non-restricted business activities. More flexible rules for land leases are also included in the updated guidelines.

The new Myanmar Companies Act will come into force on 1st August 2018 and is eagerly awaited, providing much greater investment flexibility for foreign ownership. The changes are very extensive. The existing restrictions for foreign investment have been reformed.

A holding of up to 35 percent of shares in a local company is now authorised. Furthermore, a 100 percent foreign ownership is now permitted for operations in the education sector and as of May 9, 2018, wholesale and retail services. Note: If a Myanmar domestic business acquires investments with over 35 percent of its shares being from a foreign entity the company is considered to be a foreign company.

Myanmar headline figures for 2017/2018

GDP US\$66.2billion

GDP per capita US\$1,425.50 (2016)

Export revenues increased by to US\$11.9 billion. (+6.9% annual growth)



Imports revenues increased grew by 3.7% to US\$17.2 billion. (3.7% annual growth)

Sector results: 2017/2018

Agriculture 25%

Industry 35%

Service Industries 40%

Inflation 5.8%

Unemployment rate 0.9

(Source: World Bank)

Foreign direct investment was over US\$4.5 billion as at the end of November 2017.

Economic growth

In 2012 this was 5.9%, with ongoing yearly positive change, rising to 8.7% in 2013/14, largely due to telecommunication, mining, oil and gas, construction and manufacturing sector investments. Last year, 2017/2018, growth was 6.7%. The forecast for 2018/2019 is 7.48%, driven mainly by services, industry and agriculture. The forecast for 2022 is 7.55%. (Source: World Bank).

All sectors are growing, notably service industries due also to the growing prosperity of the population. There has been strong demand for Internet and mobile telephone services, as well as private education, institutions and entertainment. Tourist numbers also show continual growth; 1 million visitors in 2012. 2 million in 2013. Over 3.4 million in 2014. 4.7 million in 2015.

The banking structures have been revitalised and radically changed with key names now being; Myanma Investment

and Commercial Bank, Myanma Economic Bank (MEB), Myanma Foreign Trade Bank (MFTB) and Myanma Agriculture Bank. Now with the new Financial Institutions Law 2016, 13 foreign banks have opened and 48 representative offices of foreign banks. Developments also continue apace with new IT networks and reporting systems. There are operations from Union Pay, Western Union, MasterCard, Visa Card and ATM systems.

Myanmar will also soon be introducing new laws that cover trademarks and Intellectual Property (IP). You should soon, within legally binding timescales, act to protect your trademark and IP in Myanmar.

Myanmar is already signed up to the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights, the TRIPS Agreement.

Special Economic Zones SEZs

There are currently three coastal SEZs: Thilawa, Kyaukphyu and Dawei. Sizeable benefits are offered for investors and incentives, such as special custom duty rates, tax exemptions and other incentives.

Myanmar's membership to ASEAN states will be increasingly important as these SEZs grow adding more port facilities.

ASEAN. This is a group of ten Southeast Asian countries. The aims of this group are to encourage Pan-Asia interests, generate cooperative initiatives between member countries, seeking broad improvements to grow their economies. Other objectives are to facilitate better security and

interaction between countries, ranging from social, to educational, to new business initiatives. Member countries are Myanmar, Indonesia, Malaysia, The Philippines, Singapore, Brunei, Cambodia, Laos, Vietnam and Thailand. The total land area for all ASEAN countries is 4.4 million square kilometres. This is 3% of the total land area of Earth, and a total population of approximately 640 million people.

Due to its geographic location, Myanmar is becoming an important logistics hub. It is recognised that there are faster transit times to Thailand by road in Myanmar, as opposed to existing maritime routes. (See OBOR, below).

One company that have seized this opportunity is Yamato, the N°1 Japanese logistics company. They recently announced major new plans for operations in Myanmar. Another new

logistics centre has also opened bringing together Damco, a global provider of freight forwarding, chain management services and Myanmar based construction company Star Light Group. Damco is part of A.P. Moller – Maersk.

For Myanmar by volume of exports, key destinations are China 39% and Thailand 20%. Myanmar is a key destination for imports from China, 33%, Singapore 15%. These countries top the list for sources of investment, which also include Japan and a long list of international parties, all now focussing on Myanmar.

There is unmistakable change of Government approach, focus and solid intent to stimulate more manufacturing, increased power generation, improved transport links, all with the aim of growing exports worldwide and notably to ASEAN states.



Promoted Sectors have been announced by the Government together with multiple investment incentives and tax breaks. Key areas being; telecommunications, information technology, electricity generation, renewable energy, city development, hotels and tourism, construction of roads, bridges, railways, sea and river ports and dry ports, health services, scientific research, airport operations, education services, agriculture, forest conservation and plantation, livestock production, transport services, and manufacturing excluding cigarettes and alcohol.

Natural resources have been a continual source of revenue for many years. A new Joint Venture has added to this prosperity. These private/Government joint ventures offer win win opportunities. The state owned company Myanmar Petroleum Enterprise (MPE) is working with Myanmar Company Yandanar Su for the production of Liquid Petroleum Gas LPG. MPE figures indicate that state owned LPG plants produce about 800 metric tons of LPG per day. This covers only about 19 per cent of the country's demands. The actual LPG demand in a year in Myanmar is between 50,000 to 60,000 metric tons.

With the roll out of mobile telecommunication services three network providers emerged. MPT with 42 per cent market share, Telenor (Norway) at 35 per cent and Ooredoo (Qatar) at 23 per cent. Recently MyTel became the 4th Telco in Myanmar and is launching a 4G network. There has been a huge rise in the purchase of SIM cards due to a big drop in price to just over US\$1, and because these are available in many more sales outlets.

Burma's judicial system is limited. Laws and processes introduced by the British remain largely unchanged.

Transport infrastructure

It is widely recognised that substantial investment is required. An infrastructure improvement plan for the transport sector has been published by The Government. Also, publications have appeared showing Myanmar's links to OBOR the One Belt One Road Project from China. At a recent conference, in China, an extra \$113 billion in funding was announced for the entire project. The plans show that Myanmar will benefit from new transport corridors through Myanmar to India, and also to Thailand and Malaysia.

The Myanmar government has officially stated that improving the transport infrastructure is a recognised premier priority. The poor road and rail services are not sufficient for the growing markets and public requirements. There are 150 designated planned transport projects for road, rail, sea and air transport facilities.

There are a growing number of public-private partnerships (PPP) also in this sector. The Asian Development Bank (ADB) was awarded contracts by the Myanmar Government with the focus on initiatives to improve transport facilities. A Government authored National Transport Master Plan has been created. Investment of \$60 billion is required over the next 15 years.

Transport by road is still the dominant solution, taking over 90 per cent of all freight in the country. Even for passenger journeys the figure is 86 percent. Thilawa

(SEZ) on the coast is important, with new terminal buildings and warehousing. Currently, Yangon Port handles most of the import and export traffic.

Myanmar Railway (MR) is state owned and has the longest network of all the ASEAN states but it requires extensive overhaul. A \$2.5 billion Yangon railway station project was recently announced, with the winning consortium of companies being Oxley Holdings from Singapore, Sino Great Wall Co. from China and Min and Dharma Co. from Myanmar.

Myanmar has 25 airports; three airports offer international flight services - Mandalay, Yangon, and Naypyidaw (Nay Pyi Taw) plus Hanthawaddy International Airport which is due to open in 2020 in the Bago Region. This is 77 km from Yangon. Plans show an initial capacity of 12 million passengers a year, rising to 30 million.

Yangon International Airport handles the largest number of flights and is currently 15kms from Yangon. There are reports of a new airport site being planned. Flight services are provided by Myanmar carriers and approximately 30 international carriers.

Investments from Japan have been numerous and well publicised in Myanmar especially within the transport area. The World Bank announced facilities of US\$40m to help develop the key ports. This is just phase one, with the overall project valued at \$200m. China is also linked to the Kyaukphyu Special Economic Zone project, with reports valuing this at US\$14 billion to create a commercial port with associated services in Rakhine state.

Summary of foreign investment by sector since 2005.

US\$M	Foreign Investment	Foreign Capital to be brought in	2017 - 2018 end of 31/03/2018
Oil & Gas		22,410	
Power		21,000	405
Manufacturing		9,533	1,769
Transport & Communication		9,055	902
Real Estate		4,976	1,262
Hotel & Tourism		3,027	177
Mining		2,898	1
Other Services		1,886	1,005
Livestock & Fisheries	585,424	585	27
Agriculture		384	134
Industrial Estate		237	34
Construction		38	

The figures reflect strong recent resurgence in confidence for all sectors, notably in Oil and Gas, Power, Manufacturing, Real Estate, Transport and Communication and Mining.

Source: Myanmar Government Statistics.

Doing business in Myanmar

As at November 2017 the number of entities registered since 1988 is as follows:-

Myanmar Companies:	52554
Foreign Company/Branches:	5843
Partnerships:	1072
Associations:	138
Joint Ventures:	69

Total 59676



Choice of Legal Form



Limited liability company

This is the most common form of company incorporation.

FIL Incorporation - Registration through the Myanmar Investment Commission (MIC).

This is for large operations that require substantial investment, for example as with mining, manufacturing, transportation etc. This route requires extensive documentation and may lead to longer lead times to complete the registration process but it does attract tax incentives and other advantages.

The new Foreign Investment Law (FIL) provides new definitions as to which route to take for incorporation, depending on the size of the proposed investment and company. Applications are submitted to and supplied by the Myanmar Investment

Commission (MIC). The Chairman of the MIC is a member of The Government.

All foreign investment through FIL requires approval from the MIC.

Myanmar Company Incorporation: The Myanmar Companies Act (MCA).

The second route is for incorporation according to the MCA and this may take one of the following forms:

- Limited Company. This format can also be used for a joint venture company, a local company (public or private) or a foreign company.
- Partnership – Maximum 20 partners.
- Association. (Non profit).

An important detail to note is that foreign nationals are allowed to operate with 100% ownership of an MCA company. US\$50,000 is the benchmark for the minimum investment. These funds are retained by the company.

All applicants must also apply for a Permit to Trade (PTT) whether 100% owned or a joint venture and also a company's registry office certificate. This is provided by the Companies Registration Office (CRO).

The Directorate of Investment and Company Administration (DICA) acts as the Secretariat of the MIC. DICA is mandated to encourage local and foreign investment in Myanmar.

Foreign company

This is defined as a company incorporated in the Union of Myanmar in which an overseas corporation or other foreign person (or combination of them) owns or controls, directly or indirectly, an ownership interest of more than thirty-five per cent.

An overseas corporation should register in Myanmar if it intends to carry on business in the country, unless the business is an isolated transaction that is completed within a period of 30 days.

The Myanmar laws state that a private company may start trading as soon as they have received their Company Incorporation registration. The only exception being if other permits or licences are required due to the type of operation or sector or region.

Updates to the Myanmar Companies Law grants authority for foreign investment of up to 35 percent in a local company.

The changes have also reached the Yangon Stock Exchange (YSX). Now investors from overseas may purchase shares in a company with a ceiling of 35 percent maximum. Overseas investors are also now allowed to invest in the Special Economic Zones in Myanmar.

Some activities listed under the Myanmar Investment Law also attract stipulations as to maximum percentage of shares available (e.g. for the sale and lease of apartments - these also require a joint venture with a Myanmar partner). The Myanmar Investment Commission (MIC) has stated that where necessary they may make unique dispensation on a case by case basis as regards to the level of investment from overseas.

Registered branch office

Representative office - overseas company.

Many businesses use this classification when initiating market research in Myanmar. The classification does not authorise any activity that may create revenue.

Joint venture company

Laws allow joint venture agreements, for partnerships with Myanmar Limited Companies, or a Myanmar national or a Private Company, and also Government owned companies.

Small company

This classification applies when a company and its subsidiaries have no more than 30 employees and the annual revenue in the prior financial year was less than MMK 50,000,000 in aggregate. This does not apply to a public company or subsidiary of a public company.

Sole proprietorship of an enterprise

Requirements: A private person being a Myanmar citizen.

Audit Requirements

As with many countries, and Myanmar is no exception, there has to be at least one official auditor. At the start of operations, the Company is allowed to select the Auditor. Thereafter the appointment may

be led by votes from shareholders as recorded in the initial AGM with an audit being submitted thereafter and on an annual basis.

Taxation



Corporate tax (profit tax)

For a company incorporated in Myanmar, shareholders (and this includes new members authorised by the new Foreign Investment Law) a tax rate of 25 per cent applies. The same rate as for a member resident in Myanmar.

This rate also applies for any branch of a foreign company.

Commercial tax

A levy is applicable of 5% for products and services whether imported or produced in Myanmar. There are some locally produced items which attract a zero rate.

Commercial tax on exports

There are exemptions for all exports regarding Commercial Tax yet some exceptions covering petroleum products, timbers, jade/gemstones.

Personal income tax for foreigners

Any non-resident has to pay income tax on salary at the rate of 25 percent. Other bands exist for other types of income. This may be 35 percent in some cases.

Any foreign national remaining in Myanmar for a period of 183 days or more is regarded as being resident. Income tax applies.

A foreign national who is not registered as a resident is subject to income tax on income generated in Myanmar. This may be at the rate of 35 percent or on a scale from zero to 25 percent.

VAT

VAT has not been introduced but there is Commercial tax as mentioned above with the rate being 5 percent. Some local produce is exempt.

Foreign tax relief

Unless an international reciprocal agreement is in place there is no relief applicable

Tax treaties

A number of countries have signed tax treaties. These include; Singapore, Republic of Korea, Indonesia, Bangladesh, India, Laos, Malaysia, Vietnam, Thailand, and Great Britain.



Allowances



Personal tax allowances apply and are defined in guidelines for personal income tax.

There are a wide range of tax benefits and exemptions for companies, notably for business activities in Special Economic Zones. Special rates apply, allowing up to 50 percent reduction on tax for products manufactured in Myanmar and exported.

Business costs can be deducted for tax purposes, defined as expenses incurred in the operation of the business.

Depreciation

Depreciation rates for fixed assets should be reviewed together with rates outlined in Income Tax rates. A full year of depreciation in year one of a purchase may be recorded:

Buildings: 1.25% to 10%.

Interior fittings: 5% to 10%.

Machinery: 2.5% to 20%.

Vehicles: 12.5% to 20%.

Other fixed: 5%.

Social security

The rate of 5% applies on net monthly salary. Of this the employers pay 3%. These have a ceiling of MMK 15,000. Companies automatically deduct these contributions from salary payments. All transactions being in MMK.

Employment of foreign staff

Employment laws provide foreign nationals the same protection as for Myanmar nationals when employed in Myanmar. A Visa is required.

A Foreigner Registration Certificate is required if staying for over 90 consecutive days.

There is a draft Foreign Worker Law, which would require prospective employees from outside Myanmar to provide copies of qualifications and or work experience, with further requirements pertaining to duration of stay. But clarity is still absent on numerous aspects and definitions, for example relating to or clarifying the duration of an appointment, the definition of a foreign employee or an expert, exemption for members on the board of a Myanmar company.

Medical

Healthcare is provided under the Social Security Act, and this includes compensation for injuries or sickness due to employment, there are also maternity benefits.

Payroll taxes

See Personal Income Tax for Foreigners

Withholding Taxes



These are levied in many cases. Payments made by foreign companies, foreign enterprises and organisations, local companies, purchase of goods, work performed, supply of services, hiring within the country under a tender, contracts, and quotations. The withholding tax rate is 2% if the payment is made to a resident and 2.5% if made to a non-resident.

Interest

Non-residents pay a 2.5% withholding tax on goods, services and leases procured and a 15% withholding tax on both interest and royalties paid. Any non-resident in receipt of interest will come under a withholding tax stipulation, at the rate of 15%. There is no withholding tax for a resident on interest received.

Royalties

Royalties attract different tax bands. A non-resident is liable to tax of up to 20%. For a resident the rate is 15%. There are Government royalties applicable in certain sectors, these include; Petroleum, Forestry, Fishing and Mining.

Dividends

Dividends are not subject to tax.

This summary can only be a brief snapshot of the current fiscal landscape. Laws are changing very fast in Myanmar with new guidelines appearing rapidly, some with little pre-announcement, e.g. 100 percent ownership being authorised since May 9, 2018, for foreign companies in wholesale and retail services. All the changes are highly favourable. The objectives of the Myanmar Government are to drive up investment and further prosperity.

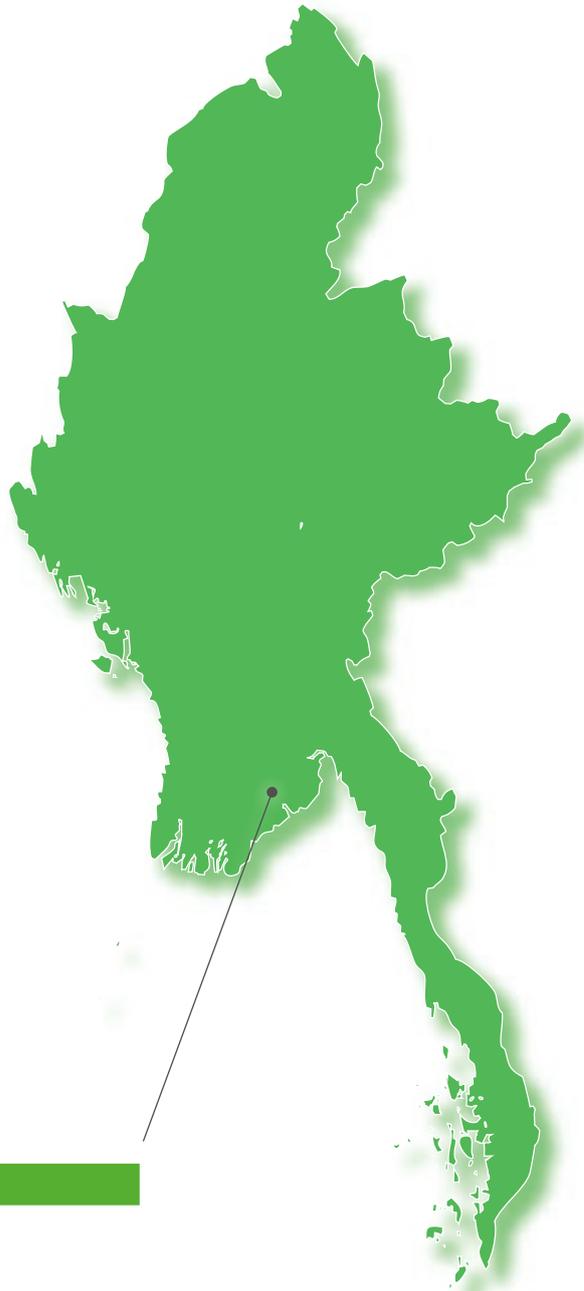
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For further information on the services available from the DFK member firms in Myanmar please see overleaf.



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