



Freshfields Bruckhaus Deringer

Spotlight on Myanmar

A regular look at the market in Myanmar

June 2018

Freshfields Spotlight on Myanmar gives you the latest updates on Southeast Asia's most recently emerging economy. Prepared by a former Freshfields lawyer who is now our consultant on-the-ground in Yangon, *Freshfields Spotlight on Myanmar* keeps you up-to-date with the key business, legal and political developments in the country.

The Business Section

Alibaba market entry:

Chinese internet giant **Alibaba** has acquired its first operations in Myanmar. Alibaba purchased **Daraz**, the Pakistan based startup, which owns Myanmar e-commerce player www.shop.com.mm, for an undisclosed sum. Daraz was founded by German startup incubator **Rocket Internet** and also has operations in Pakistan, Nepal, Bangladesh and Sri Lanka. Rocket had previously sold **Lazada**, the South East Asian e-commerce company, to Alibaba. The Myanmar e-commerce market is in its infancy and operators struggle with logistics and payment solutions which remain undeveloped in the country. The market is attracting increasing attention, however, as retailers see opportunities to take advantage of the huge growth in connectivity among the Myanmar population. In 2013, fewer than 15% of Myanmar people had a mobile phone of any description. Now over 90% have a smartphone.

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The Legal Section

Draft Companies Regulations:

Myanmar's companies regulator, the Directorate of Investment and Company Administration (DICA), is preparing for the coming into force of the new Myanmar Companies Law on 1 August 2018. DICA will suspend its services for the week before 1 August to allow all its record-keeping to switch to a new electronic registry. Under the draft regulations, set to come into force on the same day, companies will have six months to re-register under the electronic system or risk being struck off the register.

Foreign ownership:

1 August will also see the most hotly anticipated section of the Myanmar Companies Law 2017 coming into force: the liberalisation to allow foreigners to purchase up to 35% of the shares in Myanmar companies. Questions remain as to whether authorities will seek to impose restrictions against allowing foreign investors to take these stakes in certain sectors. A vice governor of the Central Bank has announced that the Central Bank is open to allowing foreign investment in the banking sector but that each proposal will be reviewed on a case-by-case basis. The Yangon Stock Exchange is working on rules to allow foreign investors to purchase shares in listed companies while ensuring that the 35% limit is not breached.

Wholesale and retail liberalisation:

One sector with more clarity on foreign ownership is wholesale and retail trading. The Ministry of Commerce has finally published its notification on foreign investment in this sector. Overseas companies will be allowed to wholly own retail and wholesale operations in Myanmar provided they satisfy minimum capital requirements of US\$3 million for retail and US\$5 million for wholesale. If the foreign investor has a local partner with at least a 20% stake, these capital requirements are reduced to US\$700,000 and US\$2 million respectively. Store size limits are also in place: no foreign investment will be allowed in stores of less than 10,000 square feet to protect local small businesses.

Japanese retailer **Aeon** already operates a handful of stores in the country pursuant to a special arrangement with the previous government. Dutch cash-and-carry operator **Metro** is in the process of establishing facilities in Thilawa Special Economic Zone on the outskirts of Yangon.

Education services liberalisation:

Education services have also been opened up, with the Myanmar Investment

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Commission clarifying that foreign investors may wholly own private schools in Myanmar. In practice, many of Myanmar's 585 private schools already had foreign backing but the legal situation was unclear which was hampering investment. The National League for Democracy has highlighted education reform as a key aim and has doubled spending on government run schools to 700 billion Myanmar kyats (US\$518 million). They are now keen to encourage overseas investors to enter the sector and support their reforms.

The Political Section

“Turning point” in Rakhine crisis?

Aung San Suu Kyi, Myanmar's de facto leader, announced a “turning point” in the Rakhine crisis nine months after the escalation of hostilities in northern Rakhine State led 700,000 people, mostly Rohingya Muslims, to flee the country. Last month the government invited UN Security Council representatives to visit the region and meet with Aung San Suu Kyi and the head of Myanmar's military, Senior General Min Aung Hlaing. The Security Council subsequently stated, “The members of the Security Council urged the Government of Myanmar to step up its efforts to create conditions conducive to the safe, voluntary and dignified return of Rohingya refugees and internally displaced persons to their homes in Rakhine State and to address the root causes of the crisis through implementation of the Rakhine Advisory Commission recommendations, including those related to human rights, citizenship, poverty alleviation and development”.

Following the visit, the Myanmar government signed a memorandum of understanding with the United Nations Development Programme and the United Nations High Commissioner for Refugees confirming all parties' support for the voluntary repatriation and reintegration of returning refugees. While these are positive developments, most observers are waiting for concrete progress on repatriation before they declare a turning point in the crisis.

Freshfields in Myanmar

Freshfields has been advising foreign investors looking at opportunities in Myanmar since the mid-1990s and we are one of very few international firms with meaningful experience since the transition to a civilian government in 2011. We have advised many multinational clients on their investments in Myanmar addressing all the key issues including sanctions, regulatory uncertainty, IP protection, exit and dispute planning and investment structuring.

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