

THE  
CORPORATE  
IMMIGRATION  
REVIEW

EIGHTH EDITION

Editor  
Chris Magrath

THE LAWREVIEWS

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CORPORATE  
IMMIGRATION  
REVIEW

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# PREFACE

The politics of immigration continue to dominate headlines worldwide.

The tensions between national protectionism, free trade arrangements and the need to attract skilled workers and foreign investors create conflict and inconsistency in many jurisdictions. This can be seen most acutely in the United Kingdom, where the net migration target (the aim to reduce the annual population increase caused by migration to the tens of thousands from a high of nearly 350,000) continues to be the central plank of government immigration policy. The result of the Brexit referendum in June 2016 is beginning to impact on the figures. In the 12 months from June 2016 to June 2017, migration from the EU decreased by over 100,000, causing a significant drop in net migration. Undoubtedly this is the consequence of uncertainty surrounding the United Kingdom as a long-term destination of choice – EU workers find the country less attractive. The referendum result has therefore assisted in the delivery of the overarching policy.

However, this reduction in the supply of workers from the EU has resulted in a spike in demand for workers from the rest of the world. The consequence of this has been friction in the Tier 2 (General) scheme, where demand has exceeded supply of Certificates of Sponsorship for the final four months of the allocation year (April to March). The government imposes a strict limit of 20,700 Certificates of Sponsorship for skilled new hires from abroad across all employers annually, regardless of business needs. This overall annual allocation is broadly equally divided across 12 monthly allocations. The final four months of the year were oversubscribed, causing significant frustrations for the many businesses that cannot sponsor the workers they need. This is unhelpful when added to the general business uncertainty surrounding the United Kingdom's post-Brexit trading arrangements.

The reduction in worker supply dictated by government policy does not appear to have resulted in an 'upskilling' of the local labour market or a reduction in UK unemployment (which in any event remains fairly low). There is a risk that the strict migration policy and uncertainty caused by Brexit will result in a slowdown in the economy, as businesses struggle to fill skilled jobs. Is this really a sensible immigration policy for Britain in the 21st century?

Furthermore, setting aside the overall policy wisdom, a major question mark hangs over whether the Home Office has the operational capacity to handle a registration and settlement scheme on the scale required to manage Brexit. There are approximately three million EU nationals in the United Kingdom and each one of them will have to engage with a new 'light-touch' process between now and the end of the transition period in 2021. We are promised a streamlined digital scheme that will minimise inconvenience and delay, but how can this promise be squared with the need for data integrity and avoidance of

fraud? Apparently 1,200 new caseworkers are being recruited to carry the burden. However, whether they can be recruited and trained in time to ensure a seamless transition to a new set of immigration arrangements remains to be seen.

The future of post-Brexit immigration policy remains opaque. The Migration Advisory Committee (MAC) will not issue its substantive report on EEA nationals and the UK labour market until September, although earlier indications of its thinking are expected. A White Paper and Immigration Bill will then follow. It will be some time before clarity is reached on the new immigration arrangements for 'taking back control'.

The Home Affairs Committee of the House of Commons has been highly critical of the government's Brexit preparedness in the context of immigration. The Committee's report (February 2018) expresses frustration at the lack of administrative preparedness and policy definition, and there is a sense that the government is feeling its way on the issues rather than providing firm leadership. By the time the next edition of *The Corporate Immigration Review* is published, the immigration road map to Brexit should be much clearer.

Donald Trump's 'America First' immigration and trade policies provide an echo of the situation in the United Kingdom. As with Brexit, we see in the United States the long-term effects of populism at the ballot box. The realisation of the President's promise to start building a border wall on 'day one' has proven more elusive in practice than his campaign-trail proclamations suggested. He is learning that the implementation of ideas is more complex in Washington than it is when undertaking more traditional real-estate deals in the private sector (and particularly when Congress controls the budget). However, Trump's hard-line approach to immigration policy is beginning to bite in less symbolic ways. On the ground, applications to the authorities are receiving considerably more scrutiny than was the case under the Obama administration, attracting harsher refusals or calls for additional evidence. US immigration practitioners report significant uncertainty in respect of the outcome of their cases. Paradoxically, this uncertainty results in a spike in business for lawyers, as applicants seek guidance and assistance in navigating a fast-changing legal landscape.

It is perhaps the fate of the 'Dreamers' that speaks most eloquently to the shift in approach to immigration policy in the United States. Named after the failed Development, Relief and Education for Alien Minors Act, the Dreamers are migrants who were brought to the United States illegally as children and who applied for renewable two-year work permits under the Deferred Action for Childhood Arrivals (DACA) programme, introduced under Barack Obama in 2012. In 2017, the Trump administration rescinded DACA and announced that, from 5 March 2018, the protection it offered to almost 800,000 people would begin to expire. Since then these individuals have found themselves at the centre of a political impasse that shut down the US federal government for three days. The Democrats had refused to agree to a budget deal that did not offer permanent protection to the Dreamers, but on 22 January they relented, agreeing to a short-term spending package to fund the government until 8 February, in exchange for a pledge by Republicans to address the fate of DACA recipients. At the time of writing, the Dreamers' future remains uncertain. Whether they are provided with a route to citizenship or face deportation will depend on the Democrats' ability to negotiate with a Republican Party dominated by hardliners and an unpredictable president.

Travelling east, we can see the tentacles of protectionism spreading to Singapore, where the Fair Consideration Framework (the Framework) approaches its fourth anniversary. Businesses are witnessing increased scrutiny of foreign manpower profiles, Employment Pass applications and hiring practices.

The Framework was introduced in 2014 as part of the Singapore government's overall strategy to promote fair employment practices and to strengthen the Singaporean core in the local workforce. Since then, the practical measures designed to facilitate this have been increasingly felt by companies and individual foreigners. The Ministry of Manpower (MOM) continues to emphasise that a quota for Employment Passes is not on the agenda, and instead that foreign workforce growth must be moderated to ensure it functions as an enhancement to the local workforce in a sustainable manner. In essence, the measures aim to maintain the delicate equilibrium between protecting and nurturing the local workforce, while also capitalising on available foreign talent to enable the longer-term growth and expansion of the Singapore economy. Development of the local workforce is key, as unemployment rises and net growth in the local economy begins to slow down.

The MOM wishes to see employers actively interpreting the spirit of the Framework in demonstration of their commitment to the overarching policy. The authorities will not shy away from scrutinising a company's hiring practices and curtailing work pass privileges in circumstances where firms are found to have nationality-based or other discriminatory HR practices. Around 300 countries are currently estimated to be on the MOM watch list and are required to work with Singapore's Tripartite Alliance for Fair and Progressive Employment Practices to demonstrate their commitment to improving internal hiring and employment practices. The term 'triple weak' has been used to describe companies found not to be actively nurturing a strong Singaporean core or demonstrating a strong relevance to Singapore's economy and society.

Immigration practitioners, wherever they live, face a constant stream of political scrutiny, policy development and legislative change. Now in its eighth edition, *The Corporate Immigration Review* contains the thinking of the world's leading business immigration lawyers. We are immensely grateful to them all for their contributions.

**Chris Magrath and Ben Sheldrick**

Magrath Sheldrick LLP

London

May 2018

# MYANMAR

*Jean-François Harvey and Bastien Trelcat*<sup>1</sup>

## I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

In the past decades, the Republic of the Union of Myanmar (formerly known as the Union of Burma) has been marked by political turmoil. As a result, the Myanmar economy remained closed until 1988, and has only slowly started to open up to foreign direct investment (FDI) in the past 20 years.

Countries such as China, Korea and Thailand have played a significant role in this process, developing several sectors such as oil and gas, power, mining and manufacturing.

At present, Myanmar is a relatively untapped market of 52.8 million people (with over 30 million people constituting the workforce) and the generally positive outlook on the economy is attracting more and more foreign investors. Economic isolation and political instability have been receding over the past 20 years and the country is now embracing a path towards more transparency and more stability. The National Election held on 8 November 2015, along with the announcement of the easing of American economic sanctions on 7 October 2016 are seen as key milestones towards security and stability.

The introduction of the Yangon Stock Exchange, which formally opened in mid December 2015, with actual market trading starting in May 2016, is also a significant step, showing that the country is opening up. As such, Myanmar is well positioned to become an attractive investment destination in the coming years. However, while Myanmar has seen an inflow of US\$11.2 billion in foreign investments in the past two years, the country still faces challenges in terms of development.

### i Legislation and policy

The government of Myanmar adopted its first law on immigration, the Foreigners Act, on 12 February 1864. Since then, some 15 acts, excluding amendments, have entered into force over the years, which shows the government's intent to adapt its legal framework to attract foreign investment. In addition to the Constitution of the Republic of the Union of Myanmar, ratified on 29 May 2008, which prescribes the legal and regulatory scheme for entering Myanmar's territory and the right to reside, the principal laws on immigration that should be considered are the Myanmar Immigration Act of 13 June 1947 (Emergency Provisions) and the Myanmar Immigration (Emergency Provisions) (Amendment) Act.

This legislation is supported by additional statutes, enacted by the government of Myanmar, which includes the Burma Citizenship Law published on 15 October 1982 and the Permanent Residence of a Foreigner Rules, which came into force on 18 November 2014.

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<sup>1</sup> Jean-François Harvey and Bastien Trelcat are partners at Harvey Law Group (HLG).

Moreover, the Foreign Investment Law (FIL) and the Citizens Investment Law, enacted on 2 November 2012 and 29 July 2013 respectively, played a key role in dictating the processes to be used for corporate immigration. These two laws were combined and then were replaced by the Myanmar Investment Law (MIL), which was released on 18 October 2016 and took effect on 1 April 2017.

## **ii The immigration authorities**

The current legal framework is implemented by several authorities working together to make determinations on entry applications and visas, extensions of stay and leave to remain. The Ministry of Labour, Immigration and Population, established on 15 June 1995, through its Immigration and National Registration Department, administers the immigration system, along with the support of the Ministry of Foreign Affairs.

Depending on the nature of the business-related endeavour, additional permits may be required from other entities to facilitate entry, including the Myanmar Investment Commission (MIC), the Directorate of Investment and Company Administration and the Ministry of Labour, Employment and Social Security.

## **iii Exemptions and favoured industries**

No specific industries have been earmarked by the government to promote the use of foreign nationals working in Myanmar. On the contrary, foreign ownership is actually restricted in several industries: the State-Owned Economic Enterprises Law restricts ownership of industries to Myanmar nationals in the following sectors:

- a* exploration, extraction, production and sale of petroleum and natural gas;
- b* postal and telecommunications services;
- c* banking and insurance services; and
- d* electricity generation services.

While these sectors are restricted to ownership by Myanmar nationals, the country suffers from a lack of skilled local personnel. Consequently, many of the senior level management and key positions in local companies are filled with foreign workers.

## **II INTERNATIONAL TREATY OBLIGATIONS**

International treaties play a significant role in the country's development. Myanmar owes its recent growth mostly to the access to the Association of South-East Asian Nations (ASEAN) and to the conclusion of multiple bilateral investment treaties in Asia. Furthermore, Myanmar has been actively negotiating further treaties and trade agreements, and now has agreements with the European Union, the United States and the adjacent areas of the Bay of Bengal.

Those treaties and trade agreements provide the basis of a legal framework intended to stimulate the economy and encourage a boost in growth in the short term, and to allow fully fledged economic cooperation thereafter.

### **i ASEAN**

ASEAN was formed by the signing of the ASEAN Declaration on 8 August 1967 in Bangkok by five countries: Indonesia, Malaysia, the Philippines, Singapore and Thailand. The Association will celebrate its 50th birthday at the end of this year and, with aims including

creating a single market, it is now, more than ever, seen by stakeholders as the European Union of South East Asia. Various other countries have also joined this single market, namely Brunei, Laos, Cambodia and Vietnam.

Myanmar became a member on 23 July 1997, allowing the country eventually to take advantage of the benefits offered by the ASEAN Economic Community (AEC). Established on 31 December 2015, AEC represents an architecture for integration and economic development. As the seventh-largest economy in the world, the AEC market constitutes the essential vehicle for the growth of its developing states. The Community is based on the elimination and reduction of tariff barriers and the implementation of a free trade area (FTA) in which products and services can circulate, while also facilitating movement of the workforce, thanks to specific recognition and rights to practise in the area for skilled workers.

As a consequence, companies incorporated within ASEAN are able to import or export goods from and among ASEAN states while reducing their costs and increasing their competitiveness.

## **ii Bilateral investment treaties**

Myanmar has entered into several bilateral investment treaties (BITs), stimulating FDI, since 1998. Currently, six BITs are in force and have been concluded with China, India, Japan, Laos, Thailand and the Philippines respectively. Four other BITs have also been agreed, with Israel, Kuwait, South Korea and Vietnam.

## **iii US–Myanmar Trade and Investment Framework Agreement**

A Trade and Investment Framework Agreement was signed on 21 May 2013 between Myanmar and the United States. The aim of this agreement is to promote an attractive investment climate and to diversify and expand the trade of products and services between the two nations.

At this stage, both countries are still identifying opportunities and issues in trades to reduce impediments to business activities between the countries.

## **iv EU's Generalised System of Preferences**

The European Union established the EU's Generalised System of Preferences (EUGSP) to allow developing countries to access the EU market. In essence, the EUGSP entitles companies from selected nations exporting qualifying products to one of the EU Member States to pay reduced customs duties, and in some cases no customs duties at all.

The European Parliament and EU Council repealed the restrictions affecting Myanmar imposed in Council Regulation (EC) No. 552/97<sup>2</sup> (which had been in force for almost 20 years), thus enabling Myanmar to become part of this preferential system. The Regulation effecting this change was signed on 12 June 2013.<sup>3</sup> As a result, Myanmar is now entitled to take advantage of the incentives offered through this system to access the European market.

Further to the above treaties and cooperation agreements, Myanmar, as a member of ASEAN, is participating in all intra-ASEAN agreements, as well as taking active measures in implementing and participating in multilateral FTA agreements with Australia, New Zealand, China, India, Japan and South Korea.

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2 Council Regulation (EC) No. 552/97 of 24 March 1997.

3 Regulation (EU) No. 607/2013 of the European Parliament and of the Council of 12 June 2013.

**v Bay of Bengal Initiative for Multi-Sector Technical and Economic Cooperation**

The Bay of Bengal Initiative for Multi-Sector Technical and Economic Cooperation (BIMSTEC) was established on 6 June 1997 between Bangladesh, Bhutan, India, Nepal, Sri Lanka and Thailand. Myanmar subsequently joined BIMSTEC on 22 December 1997. The whole area represents around 1.5 billion people – around 22 per cent of the world's population – and has a GDP of US\$2.7 trillion.

BIMSTEC is aiming for cooperation in 14 sectors, notably trade and investment, transport and communication, energy and agriculture. Focusing on trade and investment, in February 2004 all members committed to establishing an FTA facilitating the circulation of goods and products within the area at lower and reduced tariffs. This area has a huge potential in terms of growth and developments in the coming years. BIMSTEC members agreed in 2017 to opt for an early conclusion of the FTA agreement and quick implementation.

**vi Migrants' mobility**

More than having an impact on the countries' economies, international treaties are also seen as the necessary steps and tools towards the improvement of individuals' mobility. The basis of a freedom of movement community can already be witnessed among South East Asian (SEA) countries. Thanks to ASEAN, various mutual recognition agreements (MRAs) have been concluded that allow some workers to consider working and living among the region's territories.

The path towards a single market where people could freely settle, as in the EU single market, remains the sought-after goal. However, a lot of challenges are still pending. In fact, only a few sectors are covered by MRAs and those agreements have done little to overcome other barriers, such as nationality requirements.

Qualifications predominate when it comes to cross-border employment matters. This demonstrates that South East Asia is not yet ready for the implementation of an open-borders system. While establishing a basis for the movement of workers, SEA countries currently act more as gatekeepers than facilitators, which impedes the integration of the different states' workforces, and currently only specific types of jobs are given more flexibility in terms of mobility.

MRAs apply under particular conditions, requiring applicants to have a minimum number of years of experience and practice. Medical practitioners, engineers and architects are some of the highly skilled jobs illustrating this situation. Dental and medical practitioners are required to have been in active practice for no less than five continuous years in the country of origin before being eligible to apply. Engineers have to demonstrate seven years' experience after graduation, two years of which must have involved significant engineering work. Architects must have been in practice for at least 10 years. While it is crucial to enhance workers' mobility, these criteria show that the ASEAN states are considering a slow and step-by-step process when it comes to the free flow of workers.

Indeed, new opportunities are only available to skilled workers, yet 87 per cent of ASEAN manpower is made up of unskilled or low-skilled labourers. This trend might change in the coming 10 years, particularly since more and more students from the ASEAN region are pursuing their education, especially university degrees, in developed countries such as the United States and Canada or in European countries.

Bilateral labour agreements and memoranda of understanding (MOUs) will also play a role in labour-market access in the coming years. At present, labour mobility remains

congested and ASEAN countries still need to find an actual operating model to allow an effective workforce flow. Priority is still given to local resident workers in the first instance, and therefore working throughout the region remains a challenge.

SEA country regulations show significant differences in their policies towards foreign employment. Some states accentuate their mutual cooperation. For instance, the diplomatic relations between Myanmar and Thailand have led to new agreements strengthening the ties between these countries. No fewer than 16 MOUs have been agreed, on or before 2 February 2017, including notably a money transfer services agreement for Myanmar migrants working in Thailand.

### **III THE YEAR IN REVIEW**

The year 2017 witnessed the Rohingya situation escalating and gaining international attention from both media worldwide and the United Nations. The crisis, mostly fuelled by ethnic tensions in Rakhine State, has resulted in thousands of deaths and more than 700,000 refugees fleeing Myanmar to its northern neighbour, Bangladesh. After a year of conflict, the situation is yet to be contained by Myanmar military, and an agreement between Bangladesh and Myanmar, signed in November, now seeks the return of thousands of refugees back to Myanmar soil.

From an economic standpoint, the forecast from the International Monetary Fund is that Myanmar's economy will grow by 6.7 per cent in the current year, well above of the initial 5.1 per cent prediction. The country's agriculture, recovering from adverse weather in 2016, is playing a significant role in the growth of the overall economy. Accounting for 38 per cent of GDP and employing 60 per cent of the national workforce, agriculture is of vital importance for Myanmar's economic development.

While growth remains positive, the business community has raised concerns over the slow implementation of economic reforms. Recent surveys found a significant fall in confidence among the business community, with respondents citing a lack of clear economic policy from the government as a significant reason behind the drop. These concerns were also reflected in the World Bank's 2018 ease-of-doing-business index, which placed Myanmar 171st out of 190 economies surveyed. Despite maintaining the same ranking from 2017, the country recorded incremental improvements in six out of the 10 categories covered in the survey, indicating that the pace of reform is beginning to improve. The report cited the reduction of stamp duty when registering property and the adoption of regulations allowing for the establishment of credit bureaus as measures that had facilitated greater business activity in recent times.

Despite some concerns over the pace of economic reforms, recent developments have improved Myanmar's investment outlook. The new Companies Law, approved in December 2017 and set to be implemented by August 2018, will allow foreign investors to hold up to 35 per cent of shares in a domestic firm, while the company will still be designated as a local operator. Currently, even a 1 per cent overseas stake in a local company means the firm is designated as a foreign company, resulting in restrictions on property and asset ownership.

Authorities hope the improved investment climate will encourage stronger FDI inflows in 2018 and help broaden the base of investment into more sectors of the economy.

With regard to foreign workforce and mobility, 2017 saw changes to employment law to gradually liberalise access to foreign workers. Indeed, the Companies Law is to be

implemented in 2018, the new MIL is also being implemented, and two new laws were enacted during the fourth quarter of 2016, the Foreign Workers Law (FWL) and the Law Concerning Foreigners.

According to the current provisions of the FWL, foreigners will be entitled to apply for work permits for up to four years. It shall also ease the issuance of the foreigner registration certificate (FRC). There are 12 categories of multiple-entry visas – including workshop, seminar, meeting and research visas, and business and employment visas – now available, following the notification of the Ministry of Labour, Immigration and Population published on 2 December 2016 giving foreigners the option to apply for longer temporary stays in Myanmar for business purposes.

## **IV EMPLOYER SPONSORSHIP**

### **i Work permits**

The current law in force does not provide a formal work permit system in Myanmar. There are no restrictions with regard to the number of foreign staff that may be employed by a legal entity set up under the Companies Act, and the procedure to be granted the right to work in Myanmar under the MIL is now getting simpler than the system was under the FIL. While companies registered under the FIL wishing to employ foreign staff had to apply for a work permit on behalf of the employee and comply with specific ratios applicable to their staff and hence to their business development on a larger scale, these ratios have been dispensed with in the MIL requirements.

Indeed, the FIL objectives outlined that Myanmar citizens had to make up 25 per cent of the workforce within the first two years of operation of a foreign company, at least 50 per cent within the third and fourth years, and at least 75 per cent during the fifth and sixth years of operation, none of which is required in the MIL.

From a practical standpoint, the complexity of the previous system under the FIL led several foreign workers to operate only under a business visa. The new FWL and the MIL are therefore expected to help establish more straightforward procedures and criteria to facilitate access to foreign workers.

Hence, under the MIL, foreign skilled workers and experts are simply required to be hired according to the requirements of the labour laws and rules in force, namely by signing a valid employment contract with the employer, obtaining a work permit and paying individual income tax.

The MIL remains mute, however, about whether, once granted a work permit, a foreign worker must still obtain a multiple-entry business visa and a stay permit, or whether any foreign individual wishing to stay more than 90 days in Myanmar is still required to hold a FRC.

Finally, as regards intra-company transfers, given that Myanmar does not have an established work permit system, there is no specific immigration category that exists for intra-company transfers within international groups of companies.

## **ii Labour market regulation**

### ***Main employment regulations***

With regard to employment, a company employing new staff, whether foreign or local individuals, will have to enter into an employment agreement within 30 days of the date of employment.

A minimum wage has been established with the implementation of the Minimum Wages Law (MWL) in 2013. Since 28 August 2015, the minimum wage for local workers is set at 3,600 kyats per day calculated at an hourly rate of 450 kyats.

Staff turnover remains high in Myanmar, particularly for unskilled positions and office employees, and it is difficult to recruit staff with good English language skills.

Employers are able to terminate an employee who does not comply with their obligations after having formally provided three warnings to the employee.

Severance payments upon termination shall not be due where an employee failed to comply with his or her duties. In other cases, up to five months' salary shall be due depending on the contract's duration.

### ***Myanmar special economic zones***

Following the Myanmar Special Economic Zone Law enforced on 23 January 2014, special economic zones (SEZs) for trading activities by foreign investors have been established in Myanmar. These areas are designed to create a favourable investment environment through the significant benefits granted to investors.

The Thilawa SEZ, located 16 miles from South Yangon, allows foreign investors to be granted several incentives. Investing in Thilawa will allow foreign investors to import to Myanmar without customs duties, and to sell products to its domestic markets. Tax reduction and exemptions also apply. No tax shall be due by qualifying investors for five to seven years, and a 50 per cent tax exemption may also apply for another five years after this initial period.

Several companies from China, Europe, Japan and Singapore have already invested in this SEZ.

## **iii Rights and duties of sponsored employees**

Sponsored employees have the same rights and obligations as any other foreign worker in Myanmar.

## **V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS**

Myanmar has not established any classic immigration-by-investment routes for investors and entrepreneurs yet, and the government is not ready to consider implementing such schemes in the coming years.

Investors and entrepreneurs have to deal with the general foreign-worker framework offered to foreigners wishing to enter Myanmar's market. Skilled workers are particularly needed in Myanmar. Based on the data of the Ministry of Labour, Employment and Social Security, although Myanmar's workforce is over 30 million strong, there are barely more than 500 skilled workers who meet international standards.

Thanks to ASEAN, skilled migrants can freely operate among the member states. Hence, medical practitioners, engineers, architects from countries that enjoy a higher level of development can operate and set up their activities in Myanmar.

When it comes to investing in the territory, entrepreneurs and investors are required to incorporate a legal entity.

Practically, an investor has two choices: incorporating a company under the Company Act (CA) of 1914 or a legal entity that has received approval from the MIC.

Registering an MIC company will allow the investor to be eligible for investment incentives under the FIL while CA companies are not. Income tax exemptions may be provided for up to five consecutive years, and the right to pay income tax on the income of foreign employees at the rates applicable to Myanmar citizens, as well as exemption from or reduction of income tax on the profits of the business, may be granted to investors.

In terms of entitlement of stay, while a multiple-entry business visa with validity from three months to one year from the date of issue may be considered, such visas are generally only awarded after the applicant has received two single-entry business visas. An applicant may only receive a business visa valid for 70 days, single entry, through the e-visa programme.

### **i Permanent residency**

Following Notification No. 1/2014, obtaining permanent residence is currently allowed for two categories of individuals, namely foreigners and ex-Myanmar citizens. A foreigner can apply as an expert, as an individual who desires to invest and operate a business, or as someone who is under the responsibility of a Myanmar citizen.

An applicant granted permanent residency shall have an initial length of stay of five years, which can be renewed at five-year intervals thereafter. Permanent residents will then be entitled to specific rights, including the right to stay and work in other areas, except the restricted or prohibited area officially declared by the state, to apply for Myanmar citizenship and to purchase an apartment.

Individuals desiring to invest and operate a business must comply with the following conditions. First, they must hold a valid visa (e.g., a business visa) and apply for permanent residence after having resided in Myanmar for at least three years. They must not have left Myanmar during that time for over 90 consecutive days within a year. Second, they have to be financially able to invest, pay tax and submit official documentation proving this financial status according to the laws and regulations in force. Thirdly, applicants cannot be international refugees nor someone who has obtained political asylum in another country, nor can they have a criminal record. Finally, applicants must be in good health and free of contagious diseases.

For those applying for permanent residence as 'experts', proof of experience and qualifications are required in addition to the conditions specified above.

## **VI OUTLOOK AND CONCLUSIONS**

Despite six years of unabated liberalisation, Myanmar is still in the early stages of opening itself up to the world.

There have already been massive strides, such as the liberalisation of the telecommunications industry in 2014, which resulted in an explosion in the mobile phone penetration rate in the country: from less than 10 per cent in 2012 to 54.6 per cent by June 2015. Many foreign investors took this as an example of the untapped potential of the Myanmar market, and the termination of the Office of Foreign Assets Control of the US

Department of the Treasury's Specially Designated Nationals and Blocked Persons List has allowed many previously reticent foreign investors to consider prospects in the country. As such, we can expect to see continued foreign interest in Myanmar.

However, until the national education system can be effectively overhauled, and because such a process can essentially take a generation to come to fruition, Myanmar will suffer from a dearth of indigenous talent when it comes to fulfilling the skilled roles created by such investment. In the short and medium term, Myanmar will no doubt have to rely on foreign talent while building up its own pool of skilled workers. The Myanmar government is well aware of this and has embarked on the long and arduous process of rationalising its approach to corporate immigration.

This process is marred by the same challenges that are present in other areas of government reform. Despite winning a landslide victory at the end of 2015, the National League for Democracy government finds its democratic mandate hampered by the 25 per cent of the Pyidaungsu Hluttaw (Myanmar's legislature, the Assembly of the Union) that is reserved for serving members of the Tatmadaw (the Myanmar Armed Forces); this is in addition to the residual presence of Union Solidarity and Development Party ministers in the current cabinet.

Attracting FDI is high on the government's list of priorities. The issue of corporate immigration, while no doubt related, might not fare so well in comparison with more pressing matters of educational reform, investment in infrastructure, and the resolution of the various ethnic insurgencies currently affecting the country.

Myanmar has huge potential in terms of development, provided that the focus is set on the market's key sectors; strategic investments remain the communications, transportation, urban development and technology sectors.

Myanmar is slowly laying the groundwork to become one of South East Asia's leading economies, as it was in the early 1960s.

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Jean-François Harvey founded Harvey Law Group (HLG) in Montreal, Quebec in 1992. He completed his Bachelor of Laws degree at the University of Ottawa and was appointed to the Quebec Bar in 1992, and is a member in good standing of both the Quebec and Canadian Bar Associations.

Jean-François is recognised internationally as an expert in immigration law, and he brings a wealth of experience in providing comprehensive immigration law services to corporations and high-net-worth individuals.

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Bastien Trelcat obtained his Master of Laws in business law and corporate taxation from the law school of the University of Provence Aix-Marseille I, France in 2002. During his studies, he was ranked among the 10 best business law students by Freshfields Bruckhaus Deringer in 2001 and won the first edition of the Landwell Award (PwC) in 2002. The following year, in 2003, he received his LLM in international business law from City University of Hong Kong. In 2004, Mr Trelcat became a member of the Paris Bar.

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