

# MYANMAR

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## **LAW AND PRACTICE:**

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.



# Law and Practice

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**Myanmar Legal Services Limited (MLSL)** has been in practice since 1998, offering a broad range of legal advice and assistance on local and international commercial transactions, and on related aspects of doing business in Myanmar. The firm is committed to providing high-quality, cost-effective legal services, and has substantial experience with

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## 1. Project Finance Panorama

### 1.1 Recent History and Expected Developments

Project finance in Myanmar has developed recently, particularly after the registration of branch offices by foreign banks. Prior to 2012, Myanmar banks did not have the capacity to provide the services required to support major project financings, and very few individuals had bank accounts. The Central Bank of Myanmar (CBM) had not developed the regulatory framework for foreign banks to provide foreign financing.

The role of law, lawyers and the judiciary in Myanmar was established during the British colonial period, and continued after Myanmar gained independence in 1948 until 1962. In 1962 the government changed the country's economic policy to the Burmese Way to Socialism. In 1988 there was a shift from socialist policy to a more liberal and market-oriented economic policy. The current constitution was adopted in 2008 and has been in effect since January 2011. In the general election held in November 2015, the National League for Democracy won a majority of seats in Parliament and took office in 2016.

Myanmar legislation includes 13 volumes of codified laws from the period 1841 to 1954 (known as the "Burma Code"), the Burma (Myanmar) Courts Manual, and numerous special laws, notifications, rules, regulations and orders enacted from time to time.

Since the autumn of 2011 to the present, more than 288 laws have been enacted, a number intended to promote investment into Myanmar. Such laws include the Myanmar Investment Law 2016 (MIL) (under which both foreign and do-

mestic investors may apply for incentives) and the Myanmar Special Economic Zone Law 2014 (MSEZL).

The laws and practices governing investment in Myanmar continue to undergo rapid changes. The new Myanmar Companies Law (2017) (MCL) came into force on 1 August 2018, replacing the Myanmar Companies Act (1914). The Directorate of Investment and Company Administration (DICA) introduced on-line processes for registration of companies and other business. The new MCL provides that a 'foreign company' is a company with more than 35% foreign share ownership. A company with less than 35% foreign share ownership can obtain permits and licences which can only be granted to a Myanmar citizen; it is uncertain whether it can obtain ownership of immovable properties (subject to clarification of Sections 228(b) and 464 of the MCL and the Transfer of Immovable Property Restriction Act of 1987).

Prior to 2015, there was no branch or subsidiary of a foreign commercial bank in Myanmar. Preliminary approval was given in 2014 to nine foreign banks to open branch offices. In 2015, CBM invited additional foreign banks to open branch offices. As of November 2016, 13 foreign bank branches were operating. There are four state-owned banks, 24 privately owned banks and 49 representative offices of foreign banks.

The Foreign Exchange Management Law 2012 regulates current account payments (which do not require CBM approval) and capital account payments (which require prior approval from CBM).

The Financial Institutions Law No. 20/2016 was enacted in January 2016. The law provided specific rules on risk management requirements, Basel III compliance, anti-money

laundering issues and prudential requirements. The rules lay out a wide range of guidelines for commercial, state-owned, private and foreign banks. There are also rules for non-bank financial institutions, and rules governing development banks, although such entities do not yet exist in Myanmar.

A foreign investor has the option of incorporating a Myanmar subsidiary, or registering a branch of a company incorporated outside Myanmar. A subsidiary may be wholly foreign owned or may be a joint venture including Myanmar shareholders. They were subject to procedures set out in the 1914 Myanmar Companies Act and instructions of DICA. These procedures were superseded on 1 August 2018. Existing companies and branch offices must re-register within six months after 1 August 2018, with a one month extension.

The MIL defines three types of foreign investment which may be eligible to obtain investment privileges: (1) a 100% foreign owned company; (2) a joint venture with a State-owned Economic Enterprise or a government organisation; and (3) a foreign investor in a joint venture with local investor. The minimum required foreign investment capital will depend on the business sector and as decided by the Myanmar Investment Commission (MIC) on a case-by-case basis.

Precedent 'project financings' include, among others:

- Yadana gas pipeline
- Yetagun gas pipeline
- MICCL S&K copper mine (1997)
- Shwe gas and oil pipelines (2010)
- MPRL E&P office building (March 2014)
- Kempinski Hotel, Yangon (November 2014) (now the Rosewood Yangon Hotel)
- Myanmar Fiber Optic Communication Network (2015)
- Short-term and long-term loan project financings by Bangkok Bank (Yangon Branch)
- Myingyan gas-fired power plant (IFCm ADB and other foreign lenders).

## 1.2 Institutions Typically Acting as Sponsors and Lenders

Sponsors are generally Myanmar companies, which may be 100% foreign owned in certain sectors.

Lenders are usually foreign banks, e.g. international financial institutions (ADB, IFC, etc.) and commercial banks within ASEAN or the eight countries with which Myanmar has double taxation avoidance agreements. Local banks are growing in capabilities, and are often co-lending with foreign banks.

## 1.3 Public-private Partnership Transactions

'Public-private partnerships' (PPPs) are not recognised in Myanmar law. There is no specific legislation re PPPs. Certain project financings bear some similarities to PPPs.

## 1.4 Main Issues Considered When Structuring the Deal

**Project documents:** These need to be adapted to specific Myanmar laws and practices, including permits, licences and government approvals. See 'Due diligence issues' below. With few exceptions, project documents may be in the English language, be governed by foreign law, and adopt international arbitration for dispute resolution.

**Loan agreements:** There is no word in the Myanmar language for 'loan agreement'. Besides the absence of specific provisions on loan agreements in the Burma Code, there were issues to do with applicable stamp duty. The current Stamp Duty Act provides for 0.5% stamp duty, and a 10x penalty for late affixing of duty stamps, under the category 'bond'. Regulatory approvals are required for foreign loans from MIC (for MIC companies) and CBM. There is a 15% withholding tax rate on interest on offshore loans.

**Security documents:** Specific security documents are required, some of which may be governed by foreign law assuming one or more foreign shareholders, etc. Requirements for stamp duty and registration of each security document need to be determined.

**Company documents:** Following the effective date of the MCL on 1 August 2018, all Myanmar companies must re-register, using an on-line process with DICA.

The foreign exchange regime needs to be understood. Until April 2012, the official rate was USD1 to MMK6, but the unofficial rate USD1 to approximately MMK800. Dual exchange rates posed problems for accounting, determination of taxable income, etc. A new floating foreign exchange regime was adopted in April 2012. As of 23 October 2018, the floating exchange rate was USD1 to MMK1,569. The Foreign Exchange Management law requires prior approval by CBM for remittances. Approval by MIC is also necessary for companies operating under the MIL.

## Due Diligence Issues

### *Government Organisation*

Under the 2008 Constitution, which became effective on 31 January 2011 (first convening of the new Union Assembly), the Myanmar Union government includes seven Regions, seven States and five autonomous areas.

Foreign investors often deal with MIC and DICA in Yangon and government regulators in Nay Pyi Taw, but need to understand the local laws and regulations in one or more of the 19 States, Regions or autonomous areas of the Republic of the Union of Myanmar.

### *Different Types of Land and Need to Upgrade Titles*

- State-owned land
- Freehold land
- Grant land

- Farm land
- Religious land
- Vacant land, fallow land and virgin land
- Town land
- Village land

## Different Laws Applicable to Land

- Transfer of Property Act 1882
- Land Acquisition (Mines) Act 1885 (Repealed) by Law No. 19/12 the Law revoking the Land Acquisition (Mines) Act, on 1/11/12
- Upper Burma Land and Revenue Regulations 1889
- Land Acquisition Act 1894, latest amendment issued on 13 July 2015
- Code of Civil Procedure 1908
- Water Power Act 1927
- Disposal of Tenancies Law 1948
- Transfer of Immovable Property Restriction Act 1987
- Procedures Conferring the Right to Cultivate Land/Right to Utilize Land for Agriculture, Livestock Poultry Farming and Agriculture Purposes 1991
- Forest Law 1992
- Constitution 2008
- Right to Use Land Notification 39/2011
- Farm Land Law 2012 and its rules
- Vacant, Fallow and Virgin Lands Management Law 2012
- Ward and Village Tract Administration Law 2012
- Myanmar Investment Law 2016, Section 50 and its rules

## Different Rules Applicable to Each Sector

- In each project sector, and in each State, Region and autonomous areas, there may be numerous laws, rules, regulations, orders and directives to be identified and complied with.

## Absence of Environmental, Health and Safety Laws

- The Environmental Conservation Law was enacted in March 2012. Environmental Conservation Rules were issued in June 2014.
- No Myanmar bank has adopted the Equator Principles.

## Current Contracting Issues in Myanmar

- Who is the government counterparty?
- What is the model form of concession/MoU/JVA with each government counterparty?
- How will the new Arbitration Law, No. 5/2016 (based on UNCITRAL Model Law) be used in practice? What will be the choices of venue for dispute settlement by arbitration?
- What are choices of governing law?
- Will Myanmar government guarantees of performance of Myanmar counterparties be available?
- How will acquisition of land for roads and transmission lines be facilitated?
- What is the scope of business of the new branches of foreign banks which opened in 2015 and 2016?

- In the case of foreign lenders, there is a requirement for mortgages of immovable properties owned by the borrower to be held by a Myanmar bank as security agent for foreign lenders. Land must be transferable in order for it to be mortgaged.
- Requirement for existing companies and branches to re-register after 1 August 2018.
- New forms of company documents under new Companies Law (2017) effective 1 August 2018.

## Due Diligence Challenges

- Access to DICA records of Myanmar companies
- Litigation searches
- Title deed searches and determination of whether the land is transferable
- Limited electronic capacity of regulators
- Translations (English/Myanmar)
- Failure to affix stamp duty (prior to or on date of document)
- Failure to register documents
- New regulatory practices after change of government 2016

## 2. Guarantees and Security

### 2.1 Assets Typically Available as Collateral to Lenders

Forms of security available under British colonial law are provided for in the Burma Code. However, practice has taken over in many respects.

Most forms of security must be registered and have stamp duty affixed (prior to or on date of signing).

MIC and CBM approvals must be obtained for offshore security.

As a general rule, foreigners are prohibited from owning or taking any interest in immovable property. Foreigners may not own land in Myanmar. Foreigners may lease land for one year, renewable. Under the MIL, investors may apply for lease land or buildings up to an initial period of 50 years, plus two ten-year extensions.

A typical security package may include the following:

Forms of security over immovable property:

- Registered or equitable mortgage or a charge, if the land is transferable. Six types of mortgages are provided for, with varying enforcement processes. In practice, the “Mortgage by deposit of title deed” and “Simple mortgage” are used.
- Assignment of land lease agreements.
- Onshore Security Agent Agreement (if the mortgagee is a foreigner).

Forms of security over movable property: There is no law prescribing what securities are enforceable under loan agreements. There is no consensus among law firms in Yangon. The following list of securities must be enforceable under the Contract Act, Myanmar Registration Act, Myanmar Stamp Act, Transfer of Property Act, etc.

- Security Assignment Agreement (combination of mortgage, charge and floating/fixed charge)
- Mortgages
- Charges (e.g. charge over accounts)
- Transfer of actionable claims (e.g. assignment of insurance, assignment of PPA, etc.)
- Floating charges
- Pledges with possession with pledgee

Other forms of security:

- Negative pledge (within the loan agreement)
- Guarantees
- Charge on shares (share pledge agreement)
- Offshore security, including guarantees, equity support agreements, assignments of foreign bank accounts, etc.

## 2.2 Charge or Interest over All Present and Future Assets of a Company

There is no single universal or similar security interest over all present and future assets of a company.

The Burma Code includes the general language of guarantee, mortgage, charge, etc.

The MCL does not expressly provide for pledge of shares. Most Myanmar companies have no share register book.

## 2.3 Costs Associated with Registering Collateral Security Interests

Collateral security interests will be subject to stamp duty and registration fees, with exception in some cases for security documents retained offshore.

The Stamp Duty Act provides for 65 categories of documents. A loan agreement has been interpreted to fall under “bond”, 0.5% with no ceiling, and a 10x penalty for late stamping. Stamp duty rates on most other documents are nominal. In the case of a document in Myanmar, stamp duty must be affixed prior to or on date of signing. In the case of a document signed abroad, stamp duty must be paid within three months of being brought into Myanmar; notarisation, consularisation and proof of date of import of document are recommended.

The MCL provides which documents are required to be registered at DICA, to be done within 28 days of being signed (if signed in Myanmar) or within 28 days of import of document (if all parties sign offshore).

The Registration Act 1909 provides that certain financing documents be registered at the Office of Registration of Deeds (ORD). Such documents include mortgages over immovable property. A new Registration Act was enacted on 20 March 2018, but has not come into effect. It will make registration mandatory for security documents such as mortgages and assignments relating to immovable property.

## 2.4 Granting a Valid Security Interest

Each item of collateral needs to be individually identified in each security document. There is no recent Myanmar court precedent on enforcement of security documents.

## 2.5 Restrictions on the Grant of Security or Guarantees

If a lease of land is to be mortgaged to a foreigner, it must be held by a Myanmar bank as a Security Agent on behalf of the foreign bank or investor, and be approved by MIC.

In order to enforce security or guarantees in a Myanmar court, if the security or guarantee is in English or other foreign language, a Myanmar translation certified by a notary public will be required at the time of initiating a court process.

## 2.6 Absence of Other Liens

Liens are not centrally recorded. Searches are difficult, and require a board resolution of the Myanmar company in order to search for records at DICA, ORD, Land Records Offices, etc.

Most Myanmar companies have no share register books, making it difficult to track pledges of shares.

Searches of records at DICA have become faster and more efficient since the introduction of an online filing system on 1 August 2018. We are not informed which items (other than name directors, shareholders and regulation certificates) will be available to search online; currently, other information is not open for searches.

## 2.7 Releasing Typical Forms of Security

A release of a security interest requires consent of the secured party, and in most cases registration with the same regulators with which the security was registered, e.g. DICA, ORD, Land Records Office, etc. The MCL provides forms to file security deeds for registration, and to release such deeds.

# 3. Enforcement

## 3.1 Secured Lender Enforcing its Collateral

Myanmar is not a litigious jurisdiction. The Myanmar court system is not well understood or transparent. There are few precedents re enforcement of collateral. The steps to initiate a case to enforce collateral include the following:

- Filing a civil suit at the court of competent jurisdiction for recovery of debts under the Civil Procedure Code.
- After obtaining a decree, file application to the court that passed the decree for enforcement of the decree or order. Execution may be effected either against the person or property or both, of the judgment debtor.

### 3.2 Upholding Foreign Law

A Myanmar court will not accept jurisdiction over a contract governed by foreign law, but will accept jurisdiction to enforce a foreign judgment (subject to conditions).

### 3.3 Judgment Without Retrial

A foreign court judgment or foreign arbitration award is enforceable by a Myanmar court without a retrial of the merits of the case (subject to conditions).

Myanmar acceded without reservations to become a contracting state of the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, effective on 15 July 2013.

The Arbitration Law (2016) revoked the old Arbitration Act 1944, which did not recognise arbitration abroad. The new law is based on the UNCITRAL Model Law, and allows enforcement of foreign arbitration awards in Myanmar on certain conditions. Regulations under the Arbitration Law (2016) have not been issued.

### 3.4 Other Matters Impacting a Foreign Lender's Ability

All approvals and registrations required under Myanmar law and practice must be in place.

Co-operation of the onshore security agent (Myanmar bank) must be assumed in order to enforce a mortgage of land or leasehold rights to land.

Certain title deeds must be upgraded to allow project development or mortgage.

## 4. Foreign Investment

### 4.1 Restrictions on Foreign Lenders Granting Loans

Regulatory approvals are required by foreign lenders wishing to make loans, including the approval of CBM and MIC.

### 4.2 Restrictions on Foreign Lenders on Granting of Security or Guarantees

Each form of security or guarantee must be properly stamped and registered. There is no blanket approval available.

### 4.3 Foreign Investment Regime

There are two key investment laws in Myanmar:

### Myanmar Investment Law (2016)

The new MIL combined and replaced the Myanmar Citizens Investment Law 2013 and Foreign Investment Law 2012.

Assuming the project is under the MIL, there will be a number of obligations to be satisfied in order to secure the tax and non-tax incentives available to a particular project. There is no standard package of incentives; they depend upon the nature of the business, investment, location, etc.

Drafted in consultation with the International Finance Corporation, the new Myanmar Investment Law (2016, Notification No 4) was enacted on 18 October 2016. Implementing rules were passed on 30 March 2017 by Notification No 35/2017 by the Ministry of Planning and Finance.

A brief summary of certain of the key changes under the MIL are :

### MIC Application Process

There is a new type of MIC approval, which is an MIC Endorsement. There are two types of MIC approval, depending on the nature of the investment; either (i) approval by way of MIC Permit, or (ii) approval by way of MIC Endorsement (which is expected over time to be a simpler process than under the former investment regime).

### Tax Incentives

Tax holidays and incentives are no longer automatic, and instead depend on the geographic location of the investment, the sector, and MIC's discretion.

- Investors must apply to MIC separately for any tax exemption. Tax exemption under the MIL will still be available, but instead granted to investors at the discretion of MIC and under the provisions of MIC Notification.
- A new zoning system is introduced, pursuant to which investments in certain regions or zones (the locations and details are prescribed in MIC Notification No. 10/2017 dated 22 February 2017) granted different corporate income tax exemptions. Under the new zoning system:
  - (a) Zone 1 (representing the least developed areas of Myanmar), will attract the greatest potential income tax holiday of up to seven years;
  - (b) Zone 2 will attract an income tax holiday of up to five years; and
  - (c) Zone 3 (representing the most developed areas of Myanmar) attracts a tax holiday of up to three years.
- Tax exemptions granted will also depend on whether the project falls within a 'promoted sector', which is prescribed in MIC Notification No 13/2017 dated 1 April 2017.

### Land Use Rights

The basic prohibition that foreign invested companies cannot lease immovables for more than one year still applies, with the following exceptions:

- A lease of up to 50 years, with option for two ten-year extensions, may be granted to MIC Permit holders and MIC Endorsement holders.
- Longer lease terms may be granted in “*less developed and remote regions*,” as per details in MIC Notification No 10/2010.

### Remittance of Funds

The MIL clarifies the categories of funds which may be remitted offshore, provided that the company remitting the funds has complied with all tax obligations in respect of the funds transferred.

### *Expropriation Guarantee*

The MIL contains an express guarantee against expropriation, as well as nationalisation, with exceptions set out in the law, including for public interest.

### *Employment*

Foreign investors have more flexibility in the approach to employees, since the required local employee hiring ratios of the former Foreign Investment Law have been deleted. The MIL retains provisions on recruitment and capacity building of local employees.

### **Myanmar Special Economic Zone Law (2014)**

On 23 January 2014 a new Myanmar Special Economic Zone Law (MSEZL), Law No 1/2014, was enacted, and applies to all SEZs. It provides for a Central Body, Central Working Body and a Managerial Committee for each SEZ.

A SEZ may have several zones: Free Zone, Business Development Zone, Promotion Zone and other Zones.

Investors within an SEZ are offered the following incentives:

- 100% foreign ownership.
- Right to lease land for 50 years, with a 25-year renewable period.
- Seven-year income tax exemption for businesses in ‘Exemption Zones’ and for ‘Exempted Businesses’; five-year income tax exemption for ‘Investment Businesses’ in ‘Promotion Zones’ or other businesses in an SEZ; five-year income tax reduction of 50% following any exemption period; reduction can be extended for another five years for profits which are reinvested.
- No customs duties in ‘Free Zones’ and for materials and equipment used during construction and exemptions or relief for other imported materials or equipment.
- ‘Investors’ will pay customs on raw materials and goods used for production, but can apply for reimbursement if the finished goods are used in the SEZ.
- Right to carry forward losses for five years after incurred.
- Certain reliefs and exemptions from VAT and commercial tax.
- Right to open foreign currency accounts with approved banks.

### **4.4 Restrictions on Payments Abroad or Repatriation of Capital by Foreign Investors**

Restrictions on payments abroad or repatriation of capital by foreign investors include registration of loan or equity investment by foreign investors with CBM and MIC (if applicable), payment of all Myanmar tax due, and withholding tax according to the applicable double tax treaty.

### **4.5 Maintenance of Offshore Foreign Currency Accounts**

It is permissible for a project company to maintain offshore foreign currency accounts with consent of CBM.

## **5. Structuring and Documentation Considerations**

### **5.1 Registering or Filing Financing or Project Agreements**

Financing and project agreements need to be registered with government authorities (DICA, ORD and land records offices) to be enforceable.

### **5.2 Licence Required for Owning Land or Natural Resources**

Foreigners cannot own land in Myanmar. Foreigners may lease land for one year, renewable. Under the MIL, foreigners may lease land for up to 50 years, renewable twice for ten years each.

Ownership of natural resources is subject to restrictions on foreign ownership in the MIL and other legislation, and obtaining a concession from the government regulator concerned.

### **5.3 Recognition of Agent and Trust Concepts**

There are concepts of agent and trust in the Burma Code, but they are little used in practice.

### **5.4 Rules Governing the Priority of Competing Security Interests**

Myanmar law is silent on priority of competing security interests, and validity of contractual subordination provisions in insolvency.

### **5.5 Requirements of Local Law**

Generally, the project company must be registered under the Companies Law (2017), or re-registered if registered prior to 1 August 2018.

In the upstream oil and gas sector, foreign companies may be parties to production sharing contracts (or other forms of contracts) with MOGE.

## 6. Bankruptcy and Insolvency

### 6.1 Availability and Practice of Company Reorganisation Procedures

See the new Myanmar Companies Law (2017) Part 5 – Winding Up, Sections 292 to 412. Three modes of winding up are prescribed: by the court, voluntarily or subject to supervision of the court. A new bill on insolvency law is pending; when enacted in 2019, it will repeal the Rangoon Insolvency Act (1909), the Burma Insolvency Act (1920) and Part 5 of the MCL.

The new bill has been drafted with input from ADB. It is based on common law precedents, but reflects international best practice. It will address both corporate and personal insolvency, including specific provisions for micro and small to medium enterprises, which will have the option of following a liquidation route or alternatively opting for rehabilitation proceedings. The draft law includes adoption of the model law on cross-border insolvency.

### 6.2 Commencement of Insolvency Processes Impacting Lender's Rights

In the winding up of an insolvent company the same rules shall apply and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to valuation of annuities and future contingent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent (MCL Section 390).

### 6.3 Payment Order to Creditors on a Company's Insolvency

In a winding up the following shall be paid in priority to all other debts (MCL Section 391):

- All revenue, taxes, cesses and rates, whether payable to the Government or to a local authority;
- All wages or salaries of any clerk or servant in respect of service rendered to the company within the previous two months;
- All wages of any labourer or worker whether payable for the time or piecework, in respect of services rendered to the company within the previous two months;
- Compensation payable under the Workmen's Compensation Act or other applicable law in respect of the death or disablement of any officer or employee of the company;
- All sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of employees maintained by the company; and
- The expenses of any investigation held.

The foregoing debts shall:

- rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and

- so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

### 6.4 Risk Areas for Lenders

There will be the risk areas if the debts of the borrower, security provider or guarantor to the lenders exceed the recoverable assets of the company. Lenders can reduce risks by securing 'security interests', meaning "a charge, lien, mortgage or pledge or any other form of security interest prescribed or recognised under the MCL or other applicable law" (MCL Section 1, xxxv). For information on mortgages, charges, etc, see MCL Sections 229-253.

### 6.5 Entities Excluded from Bankruptcy Proceedings

According to the MCL, no entities are excluded from bankruptcy proceedings.

## 7. Insurances

### 7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies

In the past, insurance had to be procured from the sole state-owned insurance organisation, Myanmar Insurance Corporation.

Under the MIL and Myanmar Investment Rules 2017, an investor may procure insurance from any insurance company in Myanmar.

Recently Myanmar Insurance issued a number of licences to Myanmar companies. It is not clear whether standard cover for CAR, delay in start-up and business interruption is available, nor what rules apply to reinsurance by foreign insurance companies.

The Myanmar Insurance Law, Section 12(c) permits reinsurance in and outside of Myanmar. Myanmar Insurance provides reinsurance cover, according to the Ministry of Planning and Finance.

### 7.2 Payable Insurance Policies over Project Assets to Foreign Creditors

Insurance policies over project assets are payable to foreign creditors, subject to the investments by foreign creditors having been properly approved and registered.

## 8. Tax

### 8.1 Payments to Lenders Subject to Withholding Tax

The Ministry of Finance and Planning issued Notification No. 47/2018 on 18 June 2018 which prescribes withholding tax rates. There is no withholding tax for interest paid to residents and resident foreigners, but 15% for non-resident foreigners. Withholding tax on interest under most double tax treaties is generally 10% (or 8% on some loans from Singapore).

### 8.2 Taxes, Duties, Charges or Tax Considerations Relevant to Lenders

Myanmar is a party to eight double tax treaties with India, Laos, Malaysia, South Korea, Singapore, Thailand, the UK and Vietnam.

Myanmar is a party to 12 bilateral investment treaties with China, India, Japan, Laos, the Philippines, Thailand, Vietnam, South Korea, Kuwait, Indonesia, Israel and the United States of America, and the ASEAN Comprehensive Investment Agreement.

### 8.3 Usury Laws or Other Rules Limiting the Amount of Interest Charged

The Usurious Loan Act was enacted in 1918 and if the court has reasons to believe that the interest is excessive, the court may exercise the power to reopen the transaction and to create a new obligation. However, it is very rarely applied in practice.

There is no restriction on the rate of interest charged by foreign banks. Interest charged by Myanmar banks is subject to a ceiling of 10%, with some exceptions between 8% and 13% (the ceiling on the CBM website). One must consult with the Myanmar bank one wishes to deal with.

## 9. Applicable Law

### 9.1 Law Typically Governing Project Agreements

Assuming one or more foreign shareholders, and no mandatory Myanmar law provision, project agreements are often subject to foreign law, eg, English, Singapore, Thai, etc.

Project contracts with Myanmar regulators are governed by Myanmar law. Myanmar law includes “laws of the Republic of the Union of Myanmar”.

### 9.2 Law Typically Governing Financing Agreements

Financing agreements with foreign lenders and Myanmar branches of foreign banks are typically governed by foreign law.

### 9.3 Matters Typically Governed by Domestic Law

Permits, licences and regulatory approvals, agreements re lease of land, procurement from Myanmar government entities, and pledges of shares of Myanmar companies, are usually governed by Myanmar law.

Provisions on settlement of disputes by arbitration often provide for foreign arbitration, SIAC arbitration in Singapore being a common resolution. Note that regulations under the new Arbitration Law (2016) have not been issued, and there is no recorded case of enforcement of a foreign arbitration award.

## 10. Islamic Finance

### 10.1 Development of Islamic Finance

There is no legislation re Islamic finance in Myanmar.

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