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## Insider's Guide to Doing Business in Myanmar- *A Legal Perspective*

Thai Business Association of Myanmar

June 2015



# Outline

- ❑ Land Usage and Land Due Diligence
- ❑ Important Considerations in Company Formation
- ❑ Intellectual Property Protection
- ❑ Brief Update on New Laws



# Evaluating Land Use Options and Importance of Land Due Diligence

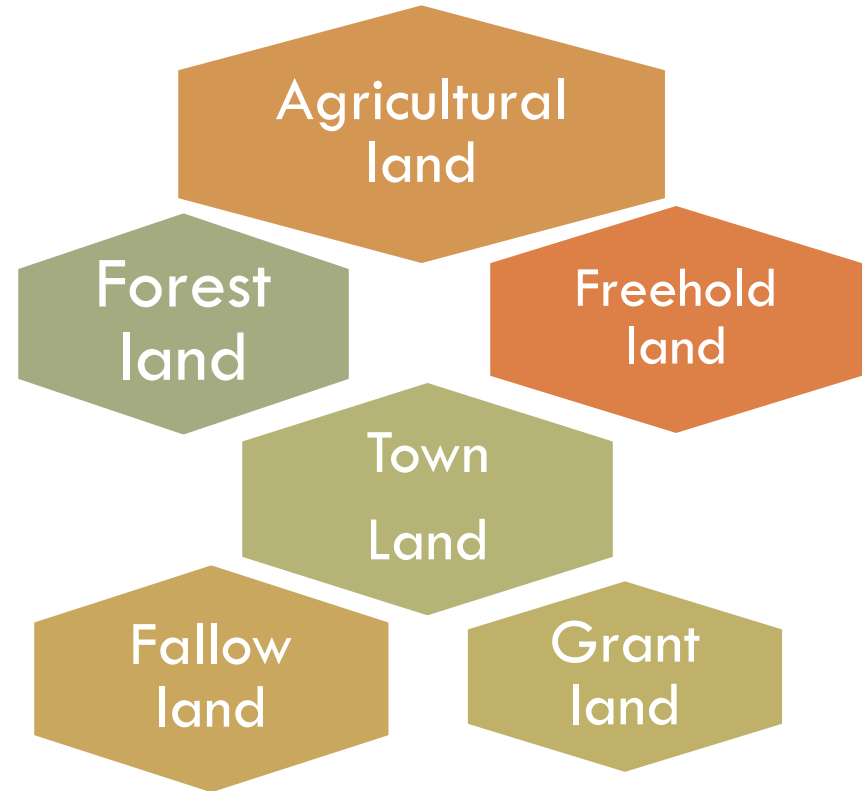
# Who owns land in Myanmar?

Article 37 (a) of the Constitution of Myanmar states that the **Union** :

*“is the **ultimate owner** of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union.”*



# Types of land



# What is Permit status of land

- ❑ Majority landlord in greater Yangon may be in possession of land by Permit only for limited time.
- ❑ Permit may be transferable or non-transferable
- ❑ During the Permit period, the holder must comply with conditions stated such as completing construction by expiry date.
- ❑ On expiry of Permit, the Holder must apply for Grant status



# Grant status

Obtaining a Grant on land by the government allows the holder to use:

- ❑ the land for the stated purpose for a period of 30, 50 or even up to 90 years.
- ❑ Grant land may be leased to foreign investors for long term use permissible under FIL law
- ❑ May be transferable or non-transferable
- ❑ YCDC maintains records for land within greater Yangon area.
- ❑ Grant term will supersede any other term permitted under the FIL even if the latter is greater.

# Lease of Immovable Property by Foreigner

- ❑ The Transfer of Immoveable Property Law 1987 forbids the transfer of property to foreigners except by way of lease one year at a time.
- ❑ The Foreign Investment Law 2012 (FIL) allows foreigners to enter into long term leases subject to conditions.
- ❑ The new draft FIL suggests removing approval for long term lease.



# Issues in Right to Use Land

- ❑ Confusing Permit right with ownership
- ❑ Local tend to use Power of Attorney in transferring Permit
- ❑ More than one person can hold the rights on the same plot
- ❑ Lack of documentary records
- ❑ Lack of good recording system

# Protect your Investment

- ✓ Only enter into leases permissible under law
- ✓ Avoid engaging in a disguised sale
- ✓ Ask for title deeds to ascertain status- Grant status has a better title over the land than simply a Permit.
- ✓ Verify term permitted under Grant and FIL
- ✓ Cross check title documents with Land Records Dept.
- ✓ Verify actual owner of the Plot. Name on the Permit/Grant should match the person you are dealing with.
- ✓ Request for status of construction permit and building permits



# Important Considerations in Company Formation Procedure

# Company objectives

Important to have them vetted before submitting the application and drafted as:

- ❑ Short sentences
- ❑ Broad meaning
- ❑ Simple language

# Vetting of objectives

Feedback from officers:

- ❑ Unpublished internal guidelines may restrict certain activities
- ❑ Ad-hoc recommendations to change objectives
- ❑ Line Ministry approval may be required
- ❑ Different officers dealing with the case file providing contradicting advice

# Recording your Capital Contribution via Bank Transfer

Instruct remitting bank to transfer USD 25,000 + bank charges

Ensure bank charges are settled by remitting bank. Amount should be near exact amount.

Bank remittance slip should state “ **For Paid Up Capital of ABC Co. Ltd**”

# Recording Cash Deposit as Capital Contribution

Declare cash at Yangon International Airport by submitting Customs Form.

Request for and fill in Foreign Exchange Declaration (FED) form at the airport before leaving the customs checkpoint. Mention for **“Paid up capital of ABC Co. Ltd.”**

Get the FED form **stamped** and carry with you to your local Myanmar bank and deposit the form along with cash.

# Foreign Exchange Declaration Form

Central Bank of Myanmar Original / Duplicate  
 Foreign Exchange Management Department  
**Foreign Exchange Declaration Form (FED Form)**

NAME ..... Passport No .....  
 COUNTRY ..... Date of arrival .....  
 Name of carrier ..... Port of embarkation .....

Currency Notes -  
 \_\_\_\_\_  
 \_\_\_\_\_

Cheques -  
 \_\_\_\_\_

Drafts -  
 \_\_\_\_\_

Others -  
 \_\_\_\_\_

Signature : .....  
 Address : .....  
 Telephone : .....

**မှတ်ချက် / Note**  
 မြန်မာနိုင်ငံသားများ / နိုင်ငံခြားသားများ မြန်မာနိုင်ငံသို့ ရောက်ရှိလာပြီး ၁၄၄ (၇)လအတွင်းသာ ဆက်သွယ်  
 စိစစ်ခံစားရန်နှင့် မြန်မာနိုင်ငံသို့ ချွတ်ချွတ်  
 - Nationals / Foreigner are allowed for retention and taking out within THREE  
 months from the date of arrived in Myanmar.

Endorsements by Customs and Foreign Exchange Management Department

For use by authorised banks and authorised money changers

Dt.	Authorised bank/money changer	Particulars	Amount encashed	Balance	Official Stamp & Signature



# Intellectual Property Protection in Myanmar

rights  
are in the  
copy-right,  
rights, pp.  
copyrighted book

# Trademark

- There is no Trademark Law
- There is no official trademark search facility or database
- Record the trademarks under Registration Act

# Features of draft Trademark Law

- ❑ Currently in its 10<sup>th</sup> Draft
- ❑ Multi-class applications will be allowed
- ❑ First to file system to be introduced
- ❑ Within 3 years from the date on which the law will be enacted; those registered under Registration Act should apply under the new law

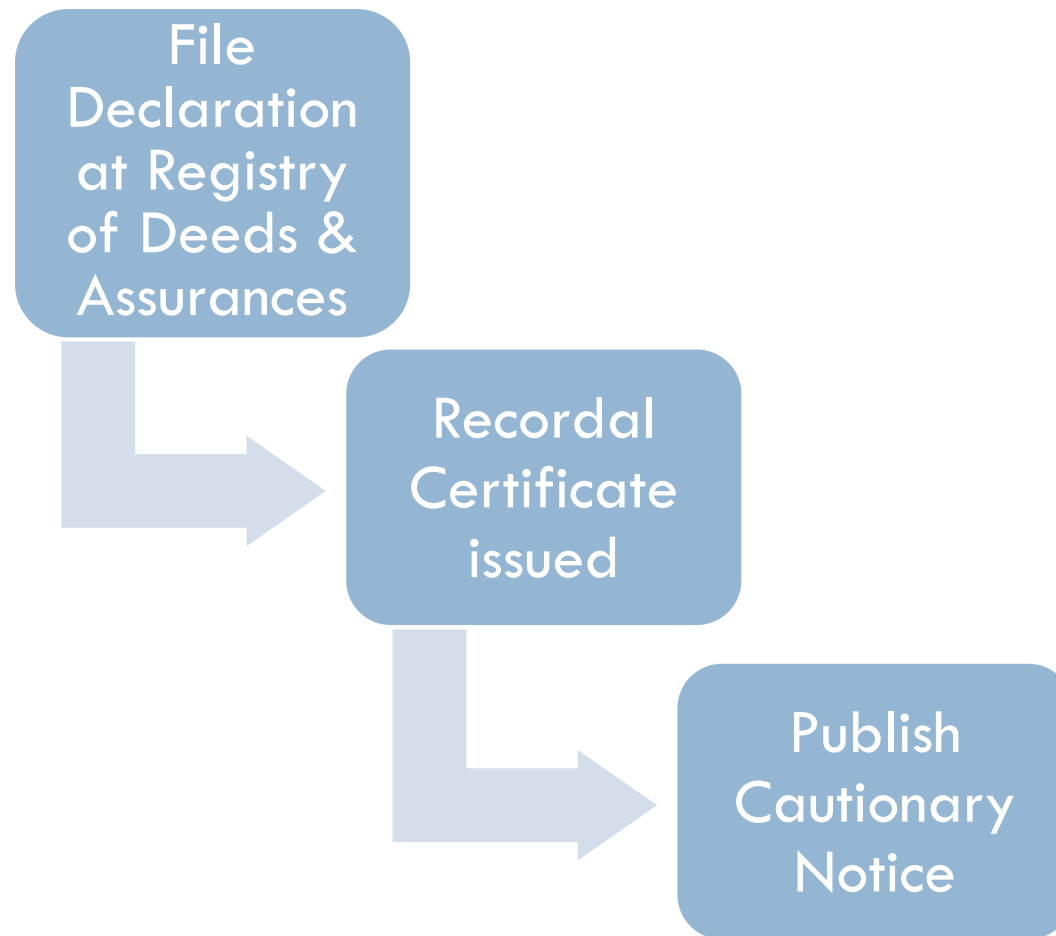
# Copyright

- ❑ Currently, the protection of the original **literary, artistic, musical and dramatic works** by the 1914 Copyright Act.
- ❑ Foreign works are not recognized by Myanmar's Copyright Act. This is because current copyright protection is given to works created by Myanmar nationals and/or works first published in Myanmar.

# Patent

- ❑ There has Patents and Designs (Emergency Provisions) Act of 1946, but it is not applicable in Myanmar. The rights of parties that set up rival claims to the ownership of a patent are determined in accordance with the principles of common law.

# Protect your IP- Recordal system



# Current Draft of IP Laws

- ❑ Trademark Law
- ❑ Industrial Design Law
- ❑ Patent Law
- ❑ Copyright Law



# Brief Update of New Laws

## *Investor Perspective*



# Media Law 2014

# Media Law

## ❑ Chapter 5, Article 10(b):

A person who wants to participate in the News Media industry is allowed to set up an industry as per the following option:

- (b) establishment of industries in conformity with Myanmar Citizens' Investment Law or Foreign Investment Law



# Electricity Law 2014

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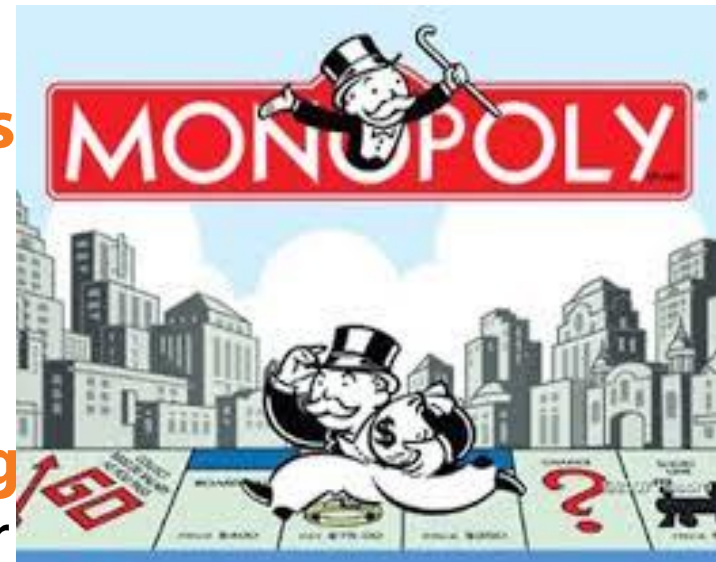


- ❑ Governs the right to carry out electricity works
- ❑ Foreigners can apply for licenses.
- ❑ Hydro and coal based projects have been removed from the list of restricted activities under Notification No. 49/2014 and may therefore be available for 100% foreign investment.

# Competition Law 2015

# Myanmar Competition Law

- ❑ **Fixing** buying or selling price, or controlling or **prohibiting access to a market** is prohibited.
- ❑ Prohibited from creating **monopolies** through **controlling the price of goods** or services, or reducing the availability of a good or service without appropriate reason.



# Myanmar Competition Law

- ❑ Prohibition of practices of unfair competition such as **misleading customers** or damaging other businesses' reputations.
- ❑ Businesses are not allowed to engage in listed acts of collaboration if the **merger leads to excessive domination** of the market or if it will reduce competition

# Exceptions

In Section 14, the Competition Commission shall grant an exemption for a defined period for agreements which would otherwise be prohibited, if consumers are benefited by:

- ❑ Reshaping businesses to increase efficiency;
- ❑ Enhanced technology;
- ❑ Increase quality of products;
- ❑ Standardize distribution of goods and payments
- ❑ Promote competitiveness of SMEs; and
- ❑ Promotion of Myanmar businesses in the international market.



# Consumer Protection Law 2014

# Consumer Protection Law 2014

- ❑ This law was enacted to recognize and protect consumer rights by providing correct information; high quality goods and services and holding businesses responsible for their actions.
- ❑ Central Committee will oversee implementation of the law, receive and address consumer complaints
- ❑ The law provides for the formation of a Consumer Disputes Tribunal

# New Issues from Central Bank Of Myanmar

On 27 May 2015, the **Central Bank issued three documents** that

- ❑ **limit the withdrawal of foreign currency to USD 5,000 twice per week** (*Reference: The Republic of the Union of Myanmar Central Bank of Myanmar Directive No. 16/2015*);
- ❑ **add Malaysian ringgit and Thai baht** to the list of currencies that “authorized dealers” (e.g. banks) can buy and sell (*Reference: The Republic of the Union of Myanmar Central Bank of Myanmar Directive No. 17/2015*);
- ❑ **restrict domestic payments in transactions with government entities to kyats** (*Reference: Letter No. 7 (Ba-1)/7/ Union President’s Office, the Republic of the Union of Myanmar dated 11.6.2014*).

# Thilawa Special Economic Zone

# Instruction No. 02/2015: Instruction on the Scope of “Trading” Activities Permitted for Investors in the Thilawa Special Economic Zone

## Activities Permitted for Investors in the SEZ

### Business in the Free Zone (Free Zone Business)

	Own Products	Other Products
Export or Sale (manufactured in/by Free Zone/Businesses)	Permitted: (i) For export to overseas market (ii) Sale to Promotion Zone, Other Businesses, Outside SEZ <u>but</u> : a. Shall be limited to wholesale b. Shall not include specified products c. Shall be subject to a limit of maximum 25% of total value of Investor’s annual sales.	
Import, Storage and Re-export (not manufactured in SEZ)	Permitted if investor establishes his own warehouse at its own lot in the SEZ.	
Import, Storage and Sale (not manufactured in the SEZ to Promotion Zone, Other Business or outside the SEZ)	Permitted if investor establishes his own warehouse at its own lot in the SEZ <u>but</u> : a. Shall be limited to wholesale b. Shall not include specified products c. Shall be subject to a limit of maximum 25% of total value of Investor’s annual sales.	

**Business in Promotion Zone/Other Business**

	Own Products (excluding specified products)	Other Products (excluding specified products)	Locally Procured Products
<p><b>Import, wholesale* and/or retail within SEZ</b></p>	<p>Permitted <u>if</u>:</p> <ul style="list-style-type: none"> <li>(i) Any of the value adding activities or services shall be provided at its own lot in the SEZ;</li> <li>(ii) Amount to be invested, including the costs of the factory building but excluding costs for the land at its own lot in the SEZ, for providing the value adding activities or services shall not be less than USD 2 million; and</li> <li>(iii) An Investor establishes its own warehouse at its own lot in the SEZ.</li> </ul>	<p>Permitted <u>if</u>:</p> <ul style="list-style-type: none"> <li>(i) An investor shall have an official agency or distributorship relationship with the manufacturers of the Other Products and is certified as such;</li> <li>(ii) An investor, its Parent Company, or any group Company, has a minimum of 10 years of experience in international trading business with a minimum 3 years average annual consolidated sales amount of at least USD 500 million and an established business in at least 5 countries;</li> <li>(iii) An Investor, its Parent Company, or any Group Company has a minimum paid-up capital of at least USD 25 million;</li> <li>(iv) Any of the value adding activities or services shall be provided in the SEZ;</li> <li>(v) Amount to be invested for providing the value adding activities or services shall not be less than USD 3 million</li> <li>(vi) An investor must establish its own warehouse at its own lot in the SEZ.</li> </ul>	

<b>Import and Retail to outside SEZ</b>	<b>Not Permitted</b>		
<b>Wholesale*</b>		<b>Within SEZ</b>	<b>Outside SEZ</b>
		Permitted	Permitted for products that exclude agricultural, fishery, precious gems and mineral products.
<b>Retail</b>		Permitted	Not Permitted
<b>Export of products manufactured in the Promotion Zone</b>	<b>Permitted</b>		

**Miscellaneous**

**\* For wholesale activities above, the investor in the SEZ may set up its facilities, including sale offices outside the SEZ, if it leases the land for a lease term of one year or less.**

**Note:**

- (1) If the products to be sold or distributed inside SEZ and/or in the Domestic Tariff Area outside the SEZ require license or registration for sale or distribution as per the relevant laws, rules, regulations, directives, instructions of relevant ministries, they shall not be sold or distributed outside the SEZ until such necessary license is acquired or registration is done.**
- (2) Permitted trading activities in relation to specified products shall be separately stipulated by the Management Committee.**



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