



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

## NEWSLETTER 15 - 21 December 2016

**Dear Readers,**

Welcome to a new edition of our newsletter.

### **1. Real estate developer looking for investors**

We have been asked by a local real estate developer to help search for investors:

- (a) Downtown, prime location, between 36<sup>th</sup> Street and Pansodan Road:** Grant land bought from an auction, piling for 32 floors is done. Building permit exists; 1 ½ month ago the developer obtained permission to resume construction. 115 x 100 feet floor plan. Developer wants to sell the plot (long-term lease with lump-sum payment of the rent would also work) as the original Chinese investors pulled out of the project. Foreign investment is possible. Asking price: USD 30 million.
  
- (b) South Dagon Township, large-scale housing project:** Big residential area (with shopping mall, cinema, function halls, sports stadium, swimming pool, hospital, office buildings, park, playground and other facilities) on 350 acres grant land, 500 buildings with 8 ½ floors planned. The apartments are to be sold. Building permit exists; a 20 MVA transformer is installed. Foreign investment in the project is possible. Developer looks for either a joint venture partner or a project loan from a bank. The investment or loan amount would be USD 150 million.

Interested parties should contact Sebastian Pawlita ([sebastian@lincolnmyanmar.com](mailto:sebastian@lincolnmyanmar.com), ph: +95-9-262546284 - English) or Nyein Chan Zaw ([nyeinchanzaw@lincolnmyanmar.com](mailto:nyeinchanzaw@lincolnmyanmar.com), ph: +95-9-790488268 - Myanmar).

### **2. Foreigners Bill**

The state-owned papers published a “Foreigners Bill” in early December. The bill pertains to the registration of foreigners and contains some rather unwelcome clauses. According to the bill, foreigners who are not permanently resident, but intend to stay in the country for more than 90 days have to obtain a foreigner registration card which they have to carry with them wherever they go. They have to obtain permission if they intend to be absent from the address recorded on the card for more than 24 hours. Non-compliance carries a penalty of imprisonment from 6 months to 1 year and/or a fine from Ks. 50,000 to Ks. 100,000 and may result in deportation.

In contrast, the present Registration of Foreigners Rules (<http://tinyurl.com/jl8wq3q>) require foreigners to notify (not: seek permission from) the authorities if they are temporarily absent from their registered address for one month or more (not: 24 hours). They furthermore do not



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require foreigners to carry the registration card with them, but to produce it upon request within 24 hours.

The requirement for multiple-entry visa holders to leave the country every 70/90 days was recently abolished, but if the Foreigners Bill is voted into law, foreigners whose business requires a prolonged presence in the country may consider leaving Myanmar every 90 days (which will hopefully be considered as interrupting the stay period). Or, they may consider applying for a permanent residence permit (the Rules are here: <http://tinyurl.com/l2qgdox>).

### 3. Draft work permit law

There have been several press reports over the last few months that a work permit law is in the making (the latest news item in English is here: <http://tinyurl.com/zjbtvm5>). The background seems to be the influx of workers from China and Vietnam. The draft seems to provide for once renewable, four year work permits. Workers failing to obtain a work permit will, according to the draft, apparently face imprisonment and/or a fine, and deportation.

We are sure that the draft was published somewhere, but we missed it. If anybody is in possession of the draft, we would be grateful for a copy to translate it.

### 4. The Central Bank and the exchange rate regime

People on the ground have noticed that the US dollar exchange rate against the kyat increased massively over the last weeks with the unofficial rate exceeding at times Ks. 1,400.

The background seems to be a new vehicle import policy that will, with few exceptions, restrict the import of passenger cars to left-hand drive models manufactured in or after 2015 from 2017 (see our previous newsletter on this topic here: <http://tinyurl.com/z6op9nu>). This will surely drive up prices next year and has prompted importers to import, in a last-minute rush, as many cars under the old rules as possible. As these cars have to be paid for in USD, there was a surge in demand for the currency in Myanmar which was probably responsible for driving up the exchange rate.

The Ministry of Commerce has in the meantime pulled the emergency break and suspended, on 19 December 2016, (almost) all car imports on 19 December 2016 (<http://tinyurl.com/zvxejf6>). As a consequence, the USD exchange rate seems to have stabilized; the unofficial rate is now around Ks. 1,380.

Although opinions are divided as to whether swings in the exchange rate are actually something to worry about, the Central Bank - although clearly not as influential on the exchange rate as



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other factors - has moved to increase the supply of dollars in the country. By notifications dated 5 December 2016, it obliges commercial banks to:

- (a) report export companies which do not repatriate export profits to Myanmar within six months (we have included a translation of this notification in this newsletter);
- (b) notify customers that they have to report their foreign bank accounts (<http://tinyurl.com/h427tln>); and
- (c) submit information on foreign accounts held by bank executives.

(The Central Bank has not elaborated on how commercial banks would know that their customers have export earnings stashed abroad or opened a foreign bank account.)

Furthermore, the Central Bank announced that, from next year on, its reference rate will better reflect market reality as it will base the reference rate on transactions in the interbank market, rather than the Central Bank's own - unpopular - daily auctions (<http://tinyurl.com/j7ws9au>).

The background for the notification requirements is paragraphs 11 and 12 of the Foreign Exchange Management Regulation of 2014:

11. *A domestic resident shall obtain permission from the Central Bank when this person opens a foreign currency bank account abroad in accordance with the provisions of section 14 of the Foreign Exchange Management Law.*
12. *A person who has a bank account abroad under paragraph 11 shall monthly submit a financial statement to the Central Bank.*

According to the clear wording of paragraph 11, foreigners residing in Myanmar are not obliged to disclose their foreign bank account if they opened it before coming to Myanmar.

#### **5. Conflict in Rakhine State**

On 9<sup>th</sup> October, about 400 jihadists attacked three border posts in Maungdaw Township, Rakhine State, killing nine policemen. The Myanmar military and the police retaliated, committing, as Western press reports, human rights groups and the UN allege, various atrocities against the local population (<http://tinyurl.com/he7luf>). The NLD-led government, being in a peculiar position between international expectations on the one side and, on the other side, a military it does not control and popular feelings against the Muslim population in Rakhine State, supports the response of the police and the military, specifically denying some of the alleged human rights abuses (<http://tinyurl.com/h2glkn4>, <http://tinyurl.com/zaq99jc>).



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At least in Western news outlets, reports on the conflict have eclipsed all other reporting on Myanmar for the last weeks, and for some, the conflict has started to tarnish Myanmar's reputation as a destination for foreign investment:

Activist shareholders of Chevron have filed a resolution that, if adopted by the annual meeting in May 2017, would urge Chevron to halt its relationship with the government of Myanmar until "that country ends the state-sanctioned violence against its Rohingya minority" (<http://tinyurl.com/zhamu6w>). It is to be hoped that nothing comes out of this proposed resolution, and that this initiative will not be imitated elsewhere - it would be a shame if shortly after the lifting of American sanctions, there were to be another impediment to the business climate originating with activist groups; in particular as the government has pretty little maneuvering room to solve the situation.

At the initiative of Myanmar, ASEAN's foreign ministers have in the meantime met to discuss the conflict (<http://tinyurl.com/jnjfwfc>). Nevertheless, there is still a moratorium in place issued by Myanmar's Ministry of Labour, Immigration and Population on the sending of workers to Malaysia, following harsh criticism by the Malaysian prime minister of Myanmar's handling of the conflict (<http://tinyurl.com/jdra65n>).

#### 6. Market access and tenders

- (a) **Opportunity for foreign Investors? Yangon City Development Committee plans 150MW waste-to-energy plant:** <http://tinyurl.com/jeuo6ax>. On a related note: **Ministry of Electricity and Energy to spend millions to increase safety and ensure steady and reliable voltage:** <http://tinyurl.com/z8rg2ze>
- (b) **JICA loans worth Ks. 358 billion approved**, in particular for the Thanlyin bridge project over the Bago river, so there should be something to do for construction companies: <http://tinyurl.com/jeuuuuu>.
- (c) **First step for Thai banks to enter the market?** The Myanmar Central Bank and the Bank of Thailand have signed a letter of intent to start negotiations on the establishment of "Qualified ASEAN Banks" (<http://tinyurl.com/gslvh6g>). A Thai bank with this status could operate on-shore in Myanmar (and, vice-versa, a Myanmar bank with this status could operate onshore in Thailand).
- (d) **Lenders hope to start US transactions next year:** Following the lifting of US sanctions, several Myanmar banks have started negotiating with US banks in the hope to have direct USD transfers between the two countries next year: <http://tinyurl.com/h45s2ye>



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(e) Tenders:

- (aa) **Myanma Oil and Gas Enterprise:** Purchase of various spare parts for drilling equipment (<http://tinyurl.com/z83nu5g>)
- (bb) **Department of Highways:** Purchase of (i) laboratory and field testing equipment for soil, concrete and asphalt: <http://tinyurl.com/zldwwro>; rotary drilling machine for geotechnical survey with accessories: <http://tinyurl.com/gombbul>; pavement-condition survey equipment (FWD, car-mounted roughness metre, Benkelman beam) <http://tinyurl.com/hwnnxua> - all purchases are ADB-funded.
- (cc) **Department of Rural Development:** Purchase of various items and software; supply and installation of diesel generators and electric current stabilizers for 15 regional offices and 20 new townships (funded by the International Development Association IDA): <http://tinyurl.com/hy67psj>
- (dd) **Myanma Railways:** Purchase of rolling stock (diesel electric multiple units and four train sets of six cars each) for the “Yangon-Mandalay Railway Improvement Project Phase 1”: <http://tinyurl.com/hmq1ue5>. The project is JICA-funded; eligible bidders must be Japanese companies or a local/Japanese joint venture with the nationality of the lead partner being Japanese.
- (ee) **Electricity Supply Enterprise:** Purchase of 94,786 concrete poles for the National Electrification Project (World Bank funded): <http://tinyurl.com/j3bwr38>

We trust that you will find this newsletter useful and hope that you will enjoy reading it. Merry Christmas!

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director



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#### Press review (7 - 21 December 2016)

- Ministry of Commerce not to extend licenses of car sales centres on an IRD blacklist for failing to make quarterly advance income tax payments: <http://tinyurl.com/j8cl5jj>
- Property developers ask for massive tax cuts for buyers of condominiums under the Condominium Law: <http://tinyurl.com/humc38b>
- Ministry of Commerce suspends car imports in response to year-end rush: <http://tinyurl.com/zvxelf6>
- Earthquake Monitoring Committee to be formed in Yangon: <http://tinyurl.com/jbeexrz>
- Myanmar set to graduate from least developed country status by 2025: <http://tinyurl.com/jny95om>
- BASF to build its first manufacturing plant in Myanmar: <http://tinyurl.com/j5eqn79>
- Yoma launches agribusiness finance programme with LIFT: <http://tinyurl.com/j5crgpv>
- Central Bank exchange rate reform starts from January next year: <http://tinyurl.com/j7ws9au>
- Lenders hope to start US transactions next year: <http://tinyurl.com/h45s2ye>
- Central Bank to crack down on “illegal foreign accounts”: <http://tinyurl.com/he7mwrq>
- JICA to update the project plans of the proposed USD 7.4 billion “2040 Yangon City Project,” in particular in order to harmonize it with KOICA’s plans: <http://tinyurl.com/h8l7nyq>
- Thanlyin low cost housing planned: <http://tinyurl.com/jn43kw2>
- Tourism investment up despite drops in visitors: <http://tinyurl.com/zlpu58s>
- New import rules sent car prices rocketing: <http://tinyurl.com/grmmh2t>
- First anniversary of the Yangon Stock Exchange!: <http://tinyurl.com/js5epnl>



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## Central Bank Notification on the Repatriation of Export Proceeds

- CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED -

**The Republic of the Union of Myanmar  
Central Bank of the Union of Myanmar**

Notification number FE: 1/1075

Date: 5 December 2016

Re: An exporter shall submit the status of incoming export proceeds within six months of shipping exports overseas.

Legal basis: Foreign Exchange Management Law and Foreign Exchange Management Regulation.

1. The Foreign Exchange Management Law and the Foreign Exchange Management Regulation prescribe that exporters shall transfer export proceeds as foreign currency into their domestic bank account within six months after shipping exports overseas.
2. Therefore, we inform you that the relevant banks which hold an A.D. [= "Authorized Dealer"] license shall not fail to submit, within 5 working days, the lists of the companies which do not transfer export proceeds after the specified 6 months.

On behalf of the Chairman  
(Sat Aung, Vice Chairman)

Distribution list: *[omitted]*



**Foreigners Bill**

- CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED -

**Foreigners Law  
2016, Pyidaungsu Hluttaw Law**

The Pyidaungsu Hluttaw has approved this law.

**Chapter (1)**

**Title and definitions**

- (1) This law shall be called the “Foreigners Law.”
- (2) The expressions included in this law are defined as follows:
  - (a) “**State**” means the Republic of the Union of Myanmar.
  - (b) “**Government**” means the Union Government.
  - (c) “**Ministry**” means the Ministry of Labour, Immigration and Population of the Union Government.
  - (d) “**Union Minister**” means the Union Minister of Labour, Immigration and Population.
  - (e) “**Administration Department**” means the Department of Immigration.
  - (f) “**Director General**” means the director general of the Department of Immigration.
  - (g) “**Registration Officer**” means an officer whose position is not lower than the township administrator in a Township Administration Department of Immigration and Population *[under the]* Ministry of Labour, Immigration and Population.
  - (h) “**Immigration Administrator**” means an officer whose position is not lower than the deputy administrator of immigration in a Township, District, State or Regional Administration Department of Immigration and Population *[under the]* Union Ministry of Labour, Immigration and Population.
  - (i) “**Foreigner**” means a person who is neither a citizen nor an associate citizen nor a naturalized citizen.





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- (j) **“Qualified domestic foreigner”** means a foreigner who continually stayed in Myanmar for at least 8 years and applied, under any law repealed by this law, for a foreigner identity card within the period from 1.4.1938 to 1.4.1948 or 1.4.1948 to 1.4.1958; the members of his/her family are also included.
- (k) **“Permanently resident foreigner”** means a foreigner who is allowed to stay until the time limit according to the Permanent Residence of Foreigners Rules.
- (l) **“Travel document”** means a passport, any types of identity cards, any types of identity cards that are provided by the UN, organizations under the UN, or any organizations which are internationally recognized, to their employees and their family permitting them to travel; or any documents that are issued by a country to its non-citizens in order to travel.
- (m) **“Foreigner Registration Card”** means a foreigner identity card or registration card that is issued under this law to a foreigner whose age is from 10 to 18 or above 18.
- (n) **“Fee”** means a cost that needs to be paid by a foreigner for obtaining a registration card, for changing it, for updating it, for renewing it annually, or for requesting a duplicate when it is worn-out.
- (o) **“Registered address”** means the address in Myanmar that is stated by a foreigner when he/she applies for a foreigner registration card under section 3.
- (p) **“Resident home”** means a home or any sports and games association that allows a foreigner to stay for a charge or for no charge. Hotel, motel, inn, lodging house, boarding place or building are included in this definition.
- (q) **“Owner of a resident home”** means an owner of a resident home or a person who is appointed by an owner, or a person in charge.

### Chapter (2)

#### Foreigner Registration Card

- (3) Except for a permanently resident foreigner, the following foreigner must, in accordance with the provisions of this law, apply for a foreigner registration card to the relevant Registration Officer based on his/her age and carry the card with him/her:
  - (a) Qualified domestic foreigner



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- (b) A person whose parents are foreigners
  - (c) A person who was born under the provisions of section 43, Burma Citizenship Law and who does not desire to apply for citizenship after having turned 18.
  - (d) A foreigner having arrived in the State with an entry visa who desires to continually stay for over 90 days.
- (4) The following persons must apply for a Foreigner Registration Card from the date on which their relevant qualification becomes invalid:
- (a) A citizen, associate citizen or a naturalized citizen if their right to be a citizen has been revoked.
  - (b) A person who was born under the provision of section 43, Burma Citizenship Law who has not applied to become a citizen within the specified period after having turned 18.
  - (c) A head ambassador, ambassador or consul whose position is terminated as well as their foreign husband, wife or children.
  - (d) The foreign husband, wife or children of a public servant who is a Myanmar citizen and who was dismissed, whose position was terminated, or who resigned or retired.
  - (e) A foreigner who has returned to the State after the expiry of his/her entry visa, resulting in him/her losing his/her domestic qualification.
  - (f) A foreigner whose permanent residence is revoked.
- (5) A foreigner referred to in section 4 must apply, as prescribed, for a Foreigner Registration Card to the relevant Registration Officer within 90 days after his/her qualification has become invalid, and carry the card on him/her.
- (6) As an exception, a foreigner who is being punished with imprisonment or who is in in a detention centre pending trial according to any laws in force is not required to extend the Foreigner Registration Card annually.
- (7) A foreigner referred to in section 6 must extend the Foreigner Registration Card as prescribed *[by applying]* to the relevant Registration Officer within 30 days from the date that he/she was released from the detention centre or prison.



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- (8) A Registration Officer must issue a Foreigner Registration Card as prescribed and ask for the specified fees when receiving an application from a foreigner under sections 3, 5 or 7.
- (9) As the expiration date of a Foreigner Registration Card is the 30<sup>th</sup> of November every year, a foreigner must extend it as prescribed [*by applying*] to the relevant Registration Officer within 30 days from the expiration date.
- (10) A person holding a Foreigner Registration Card must:
  - (a) Return the Foreigner Registration Card to the relevant Registration Officer when he/she leaves the State.
  - (b) Apply for confirmation of the Foreigner Registration Card referred to in sub-section (a) within 30 days from the date of arrival [*i.e. re-entry*].
- (11) A person holding a Foreigner Registration Card must apply, as prescribed, for a duplicate to the relevant Registration Officer if the card has been lost, damaged or is worn-out.

### Chapter (3)

#### Temporary visit and immigration

- (12) A person holding a Foreigner Registration Card must:
  - (a) Apply, as prescribed, for permission to the Registration Officer in charge of his/her residence if he/she desires to temporarily visit, from the address that is stated in the Foreigner Registration Card, another place within the State for over 24 hours.
  - (b) Apply for permission to the Administration Department if he/she desires to move residence from the address that is stated in the Foreigner Registration Card to another place within the State.
  - (c) Personally inform the Registration Officer in charge of the specified residence and fill in a specified form within 24 hours if he/she needs to move accidentally from the address that is stated in the Foreigner Registration Card to another place within the State because of any unforeseen circumstances.
- (13) A foreigner must:
  - (a) Personally inform the relevant Registration Officer and fill in a specified form within 24 hours after arriving at a place that he/she is permitted to visit or to move to.



- (b) Apply for permission from the Administration Department through the Registration Officer in charge of the specified residence for visiting another country if he/she is a qualified domestic foreigner.
  - (c) Comply with the provisions of the Permanent Residence of Foreigner Rules if he/she is a permanently resident foreigner.
- (14) A foreigner must hold a travel document and other specified permits and submit them when a responsible person is investigating during the period of visit, employment or residence within the State.
- (15) If a foreigner does not receive permission from the Administration Department and moves to an address that is not stated in the Foreigner Registration Card, he/she will be sued and punished under section 25; thereafter, he/she has to inform the Registration Officer where he/she moved to in order to obtain a legal address.

### Chapter (4)

#### Obligations of a foreigner

- (16) A foreigner must:
- (a) Answer accurately all questions about personal facts that are asked by a Registration Officer or Immigration Administrator.
  - (b) Carry a travel document, other specified permits and the Foreigner Registration Card wherever he/she goes.
  - (c) Not fail to reveal the travel document, other specified permits and Foreigner Registration Card when a Registration Officer or Immigration Administrator so requests.
  - (d) Personally apply, within the specified period, to the Registration Officer when changing a personal fact or circumstance.
  - (e) Not fail to apply for, and hold, a Foreigner Registration Card within the period specified in section 5 if he/she is a person referred to in section 4.
  - (f) Submit the personal data, data in the passport, reason for visiting to the owner of the resident home when he/she has arrived at the resident home.



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- (g) Inform the relevant Registration Officer as prescribed within 72 hours if a travel document or Foreigner Registration Card has been lost.
  - (h) Comply with the provisions for extending the Foreign Registration Card, confirming it, and obtaining a duplicate.
  - (i) Not fail to return the Foreigner Registration Card *[issued]* under this law to the relevant Township Administration Department if he/she receives a permanent residence permit.
  - (j) Comply with the rules and regulations, orders, declarations and directives that are issued under this law.
  - (k) Comply with the laws in force, respect the sovereignty of the State and fulfill the obligations referred to in this law.
- (17) A foreigner holding a Foreigner Registration Card must not fail to pay the prescribed fees to the Administration Department or the relevant Township Administration Department.

#### Chapter (5)

##### Obligations of the owner of a resident home

- (18) The owner of resident home must:
- (a) Ask for, sign, and record personal data, data in the passport and the reason for visiting of/from a foreigner staying *[in the resident home]*.
  - (b) Send the recorded data and reason referred to in sub-section (a) to the relevant Registration Officer as prescribed.
- (19) If a Registration Officer or Immigration Administrator investigates a resident home, the owner of the resident home must reveal the data and reason recorded in accordance with section 18, sub- section (a).

#### Chapter (6)

##### Obligations and powers of the Registration Officer and Immigration Administrator

- (20) The obligations of the Registration Officer and Immigration Administrator are as follows:
- (a) Register Foreigner Registration Cards for foreigners referred to in sections 3, 5 and 7 as well as for their children.



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- (b) Register foreigners who have an entry visa and desire to stay for over 90 days as well as their foreign husband, wife, children or dependents.
  - (c) Register, and arrange, for foreigners who desire to change personal data or the address, to extend the Foreigner Registration Card, to obtain a duplicate, or to confirm the card, in accordance with the procedures and directives.
  - (d) Submit a report to the Administration Department on the permission of a foreigner's visit in accordance with the procedures and directives.
  - (e) Collect the stipulated fees accurately and submit them to the Administration Department in accordance with procedures and directives.
  - (f) Take action against foreigners who violate or fail to comply with any of the provisions or rules issued under this law and the laws in force.
- (21) The Registration Officer and Immigration Administrator has the following powers:
- (a) Investigate, and take action against, foreigners who enter restricted areas which are specified in a notification by the State.
  - (b) Without warrant and at any places, inspect foreigners who arouse suspicion.
  - (c) Without warrant and at/in any places, buildings or vehicles, arrest foreigners who violate, have violated, are suspected to violate, or fail to comply with, any of the provisions, rules, regulations, orders, notifications or directives issued under this law.
- (22) The Registration Officer shall issue a Foreigner Registration Card to, and collect twice the stipulated fees from, a foreigner who fulfills the following conditions and applies for a Foreigner Registration Card after the expiration date if he/she is a foreigner under section 3, a foreigner who has to apply for a Foreigner Registration Card under section 4, or a foreigner exempt from extending the Foreigner Registration Card under section 6.
- (a) The application for the Foreigner Registration Card is not filed more than one month after the expiration date.
  - (b) It is the first time that the foreigner applies, under sub-section (a), for a Foreigner Registration Card after the expiration date.



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- (23) The relevant Township Administration Officer shall obtain permission from the Administration Department to allow a foreigner who was punished under section 25 to change the old address to a legal address.

#### Chapter (7)

##### Offences and penalties

- (24) Any foreigners referred to in section 3, 5 or 7 convicted of having failed to apply for a Foreigner Registration Card from the relevant Registration Officer shall be punished with imprisonment of at least six months and at most five years or with a fine of at least Ks. 50,000 and at most Ks. 500,000 or with both.
- (25) Any foreigner convicted of moving to and staying in an address within the State that is not stated in the Foreigner Registration Card, or of having moved or visited another country without obtaining a signature of approval from the Registration Officer or the Administration Department shall be punished with imprisonment of at least six months and at most one year or with a fine of at least Ks. 50,000 and at most Ks. 100,000 or with both.
- (26) Any foreigner convicted of having failed to comply with any obligations under the provisions of Chapter (4) shall be punished with imprisonment of at least six months and at most two years or with a fine of at least Ks. 50, 000 and at most Ks. 100, 000 or with both.
- (27) Any owner of a resident home convicted of having failed to comply with any provisions of Chapter (5) shall be punished with imprisonment of at least six months and at most one year or with a fine of at least Ks. 50,000 and at most Ks. 100,000 or with both.
- (28) Anyone assisting or attempting to assist a foreigner to register as a foreigner in an illegal way shall be punished with imprisonment of at least three months and at most two years or with a fine of at least Ks. 30,000 and at most Ks. 100,000 or with both.
- (29) Anyone convicted of having failed to comply with any of the rules, regulations, orders, notifications or directives issued under this law shall be punished with imprisonment of at least six months and at most five years or with a fine of at least Ks. 50,000 and at most Ks. 500,000 or with both.
- (30) A foreigner who was convicted and has served the specified punishment under this law must leave the State as early as possible if he/she has also been given a deportation order referred to in section 32, sub-section (b).



- (31) A person convicted of having failed to comply with a deportation order or a person returning to the State prior to the expiry of the deportation period shall be punished with imprisonment of at least one year and at most five years or with a fine of at least Ks. 100,000 and at most Ks. 500,000 or with both, and be ordered to be deported again.

### Chapter (8)

#### Giving a deportation order and arrest

- (32) The Union Minister can:
- (a) Give a deportation order to a foreigner to leave the State immediately or within the specified period if the foreigner opposed or attempted to oppose the sovereignty of the State.
  - (b) Give a deportation order to leave the State to a convicted foreigner under any laws in force from the date that he/she has served the punishment.
  - (c) Give a deportation order to leave the State to a foreigner who violated any of the provisions, rules, regulations, orders, notifications or directives made under this law.
- (33) The Union Minister can authorize the Director General to give a deportation order under this law.
- (34) A deportation order shall be in force as long as the Union Minister has not withdrawn it.
- (35) An Immigration Officer whose position is not lower than an Immigration Administrator and who is authorized by the Director General shall inform, and submit *[the case]* to, the District Judge in order to have the foreigner arrested before giving the deportation order, after giving the deportation order, or during the duration of the transfer to his/her country under this law.
- (36) An Immigration Officer can arrest *[the foreigner]* for not more than 15 days at a time during the process of transferring *[the foreigner to his/her home country]* under section 35 in any police department, detention centre, police station or prison.

### Chapter (9)

#### Suspension, withdrawal or revocation of the deportation order; bail

- (37) If the Union Minister has irrefutable evidence and reason, the deportation order can be suspended, withdrawn or revoked under this law.





- (38) The Union Minister or an appointee can, on bail, release an arrested foreigner from the detention centre in accordance with the provisions of this law while the deportation order is performed or after giving the deportation order.

**Chapter (10)**

**Exemption for ambassadors and members of the UN**

- (39) The provisions of this law shall not apply to foreign diplomats, employees of an embassy, governmental staff, consuls, and their family members, if they were appointed according to the prescribed procedures.
- (40) The provisions of this law shall not apply to members of the UN, persons from organizations under the UN, and their family members, if they have obtained diplomatic rights.

**Chapter (11)**

**General**

- (41) The Administration Department can:
- (a) Promulgate in a notification that any provisions under this law, rules made under this law or the laws in force shall not apply to any foreigners, specific class or types of foreigners, or apply to them only on specified conditions.
  - (b) Promulgate in a notification that foreigners who desire to stay in unsuitable places are prohibited to do so.
  - (c) Authorize the Immigration Officer to investigate any foreigners as to whether or not they comply with any provisions under this law or rules made under this law.
  - (d) Promulgate in a notification to specify the registration fee, the amount of fines and the procedures by which a foreigner has to pay them.
- (42) The Director General can authorize any Immigration Officer whose position is not lower than the Deputy Immigration Administrator to investigate a dispute as to whether a person is a foreigner or not.
- (43) Shall obtain permission from the Ministry if it is necessary to bring charges against a person who is appointed to perform the obligations under this law.



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

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- (44) If a person is being assessed as to whether or not he/she is a foreigner, he/she has the duty to prove that he/she is not a foreigner by revealing strong and true evidence irrespective of the Evidence Act.
- (45) When the Registration Officer or the Immigration Administrator is investigating a foreigner who desires to enter the State, stays in the State or desires to leave the State, he/she is obliged to state who he/she is by revealing strong and true evidence.
- (46) The rules, notifications, orders, directives and procedures issued under the Foreigners Act and the Registration of Foreigners Act shall continue to be used if they are not in contravention to this law.
- (47) When implementing the provisions of this law:
- (a) The Ministry can issue rules and regulations with the approval of the Government.
  - (b) The Administration Department can issue notifications, orders, directives and procedures with the approval of the Ministry.
- (48) Only the Ministry can make decisions on the relevant cases under this law except judicial matters.
- (49) A statement made in front of, and an investigative report made by, the Registration Officer or the Immigration Administrator shall be used as evidence under this law irrespective of the Evidence Act.
- (50) The following Acts are repealed by this law:
- (a) The Foreigners Act
  - (b) The Registration of Foreigners Act
  - (c) The Foreigners (Extension) Act - 1949
  - (d) The Registration of Foreigners (Extension) Act - 1949

*Source: Myanma Alinn 3-5 December 2016*