



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



UPDATE ON LEGAL DEVELOPMENTS IN MYANMAR

26 September 2018

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DIGITAL BUSINESS



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DIGITAL BUSINESS

- **“Digital business” - where found?**
 - **Advertising and marketing in online publications**
 - **Digital shopping platforms**
 - **Online newspapers and other media**
 - **Online computer games**
 - **Service providers (e-mail, internet access)**
 - **Social media**
 - **Telecom companies**
 - **Any business collecting, storing, transferring and/or processing data**
 - **Transfer of money by smartphone**



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DIGITAL BUSINESS

- Legal framework:
 - No single “Digital Business Law”
 - Many issues also occur in “classic” business transaction (e.g., supply of defective goods)
 - Specific issues are either (i) explicitly regulated; (ii) not regulated; or (iii) regulated, but in an outdated fashion
 - Examples of current legislation:
 - Contract Act 1872
 - Sales of Goods Act 1930
 - Electronic Transactions Law 2004 as amended 201
 - Evidence Act 1872 as amended in 2015



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- **Examples of current legislation (continued):**
 - **Consumer Protection Law 2014**
 - **Competition Law 2015**



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- License requirements:
 - Usually, no specific licenses are required
 - A license from the Ministry of Transport and Communications are required for telecommunication services (i.e., offering of the telecom infrastructure itself and the offering of access to telecom infrastructure)
 - A license from the Central Bank is required for mobile financial services
 - A license from the Ministry of Information is required for publishing news (section 4(a) Printing and Publishing Law)



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- Operators of an online business often require the following types of contract:
 - Website development agreement
 - Website hosting agreement
 - Contents license from third parties if contents is not freely available
 - Agreements with users and customers (e.g., terms of use, terms of sale)
 - Marketing agreements



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- **Electronic conclusion of a contract (e.g., by the customer clicking on “order” and the seller sending a confirmation by e-mail)**
 - **Should be possible as the Contract Act 1872 does not prescribe a specific form**
 - **The Electronic Transactions Law specifically provides that “matters prescribed to be reduced to writing or to be signed under any existing law may be made by electronic record, electronic data message or electronic signature”**



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- “Electronic documents” may be submitted as evidence in court since an amendment to the Evidence Act in 2015
- Problem: Stamp duty



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- **Collection of personal data**
 - **We are not aware of legal restrictions on the collection, storage, transfer (within the country or to a destination abroad) and processing of personal data**



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DIGITAL BUSINESS

- **Data retention period**
 - **Written financial records (e.g., vouchers, bank statements, account book, cash book, contracts, asset list, correspondence about financial matters)**
 - **The financial statements (balance sheet, profit and loss statement, cash flow statement)**
- To be kept for at least 3 years for tax purposes (forever according to new Companies Law?)**



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- **Security of internet transactions**
 - **We are not aware of any specific legislation that would oblige businesses to secure data received from customers against theft or loss.**
 - **Exception: Mobile financial services providers must “ensure privacy and confidentiality of customer information and data” according to Central Bank regulations**
 - **However, any business may become liable for damages for breach of contract or tort (negligence) if it allows customer data to be lost or stolen.**



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- Encryption
 - We are not aware of any laws that would require (or, conversely, prohibit) businesses from encrypting data and correspondence.



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- Access to data by law enforcement agencies
 - Section 94(1) Code of Criminal Procedure: Any court and any officer in charge of a police-station has the power to order the production of any document or thing required in an investigation



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- **Electronic payments**
 - **Businesses are free to accept payments by electronic means. They would need a contract with one of the providers of mobile financial services providers (which must be licensed by the Central Bank).**



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- **Linking to a third party website; framing; caching; spidering; using metatags**
 - **This is all currently not regulated.**
 - **However, metatags consisting in a competitor's business name or competing products may be considered misleading advertising (as visitors may be fooled into thinking that Google directed them to the competitor's website)**



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- Advertising
 - A good overview of what is acceptable in advertising and what is not is provided by an “advertising policy” drafted (but never enacted) by the Ministry of Information in 2014
 - Misleading advertising is prohibited by the Consumer Protection Law and the Competition Law



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- Unsolicited e-mails or text messages
 - E-mail providers and telecom operators may contractually restrict users to send out unsolicited e-mails or text messages
 - The law as such contains no restrictions



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DIGITAL BUSINESS

- **Reform**
 - **The Ministry of Transport and Communications is currently working on a “cyber security framework”**
 - **We are part of the consortium that won the contract to assist the Ministry**



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REAL ESTATE BUSINESS - THE CONDOMINIUM LAW AND RULES



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MAIN REASONS FOR THE NEW FRAMEWORK

- Presently, an apartment building with an elevator is marketed as a “condominium”, but:
 - Contrary to land, there is no registration system for the apartments (units): Title check difficult
 - Banks usually do not accept apartments as security
 - Long-term bank loans for the purchase of apartments not available
 - Foreigners cannot own apartments



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MAIN REASONS FOR THE NEW FRAMEWORK

- **Market currently down: Developers say that they could sell more (high-end) apartments if the market is expanded by making long-term bank loans available and allowing foreigners to buy**
- **Currently, developers can theoretically start selling apartments without having started construction and without funds in their bank account (although we suppose that contractor licenses would contain restrictions)**
- **Building management presently not regulated**



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NEW RULES

- **Condominium Law (Pyidaungsu Hluttaw Law No. 24/2016 dated 29 January 2016)**
- **Condominium Rules (Ministry of Construction Notification No. 267/2017 dated 7 December 2017)**
- **Ministry of Construction set up Condominium Registration Offices on 14 September 2018**
- **Ministry of Construction still has to set up Regional and State Management Committees**



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NEW RULES ONLY TO APPLY TO SOME SITES

- “Condominium” under the new rules:
 - Building with at least 6 floors standing on land with an area of at least 20,000 square feet
 - Land must be registered as “collectively owned land”
 - Units must be separately registered
- No such registrations yet, as Management Committees still to be established → **No “official” condominiums yet**



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TYPES OF LAND

- **Contradiction:**
 - **Condominiums must be built on “collectively owned land” (section 9 CL)**
 - **Most land on which “condominiums” are presently being built is not freehold land, but either grant land or land leased from a government entity under a BOT contract**



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TYPES OF LAND

- **Freehold land:** Right to use for an unlimited term; no rent to the government; confiscation only for a public purpose against adequate compensation; may be sold, otherwise transferred, mortgaged, bequeathed → Full land ownership
- **Grant land:** Long-term lease from the government (usually, 30, 60 or 90 years); nominal rent to be paid; confiscation prior to expiry only for a public purpose against adequate compensation; renewal in practice almost automatic; grant may be sold, otherwise transferred, mortgaged, bequeathed → Close to full land ownership



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TYPES OF LAND

- **BOT land:**
 - Lease for (usually) 50+10+10 years from a ministry, government department or the military
 - Rent: Up front land use premium and annual rent (easily billions of kyats)
 - After the expiry of the lease, land and building are to be handed over to the government
 - Not comparable to land ownership
 - **Risks for purchasers of apartments (units): Inherent expiry date and corresponding loss of value; developer may stop paying the annual rent**



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TYPES OF LAND - EFFECTS OF CONVERSION

- Conversion to “collectively owned land” does not seem to change the original nature of the land (Rule 27; in spite of section 17 CL):
 - Freehold land: Unit owners collectively own the land
 - Grant land: Unit owners collectively hold the grant; they are collectively responsible to pay the nominal rent (Rule 54 (f)) and renew the grant (Rule 57 (z7) (1))



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TYPES OF LAND - EFFECTS OF CONVERSION

- **BOT land: Law and Rules are rather tight-lipped, but we think (in spite of section 17 CL): Unit “owners” collectively become lessees of the land (instead of?/in addition to? the developer) and are collectively responsible to pay the annual rent (Rule 54 (f)) and renew the lease (Rule 57 (z7) (1))**

We think that this is an unacceptable risk for the unit “owners” as the purchase price for the units would have been calculated to include the land rent. If the developer pays off the entire future land rent prior to the conversion, this risk is avoided.



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CONVERSION PROCEDURE

- **Freehold land/grant land:**
 - **Forms available**
 - **Current owner or developer to register an affidavit or oath with the Registration of Deeds Office to convert the land to “collectively owned land” (Rules 18, 19). Management Committee then to instruct the Condominium Registration Office to register the land as “collectively owned” (Rule 22).**
 - **Stamp duty: 6% (Yangon)/4% (outside Yangon) of the land value; 0.2% fee at Registration of Deeds Office; fee at Condominium Registration Office still unknown**



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CONVERSION PROCEDURE

- **BOT land:**
 - **Union Government approval required (section 15 (c) CL)**
 - **No forms available**
 - **Developer to obtain permit to construct the condominium and to register the land as collectively owned at the Condominium Registration Office with the approval of the Management Committee (Rule 21).**
 - **Stamp duty: 6% (Yangon)/4% (outside Yangon) of the “value of the transfer”; fee at Condominium Registration Office still unknown**



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OBTAINING A DEVELOPER LICENSE

- Application to be filed with the respective Management Committee
- Among others, evidence of past work experience and tax payment required if the applicant is “an individual or organisation” (Rule5 (a) (7), (8)) - if the applicant is a company, partnership or group of individuals?
- License term: 5 years
- Fees: Still unknown



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OBTAINING A DEVELOPER LICENSE

- **Foreigners and foreign companies can only be “co-developers” (Rule 2 (d)). How does this square with the fact that foreign participation in the “development, sale and lease of residential apartments and condominiums” occurs through the establishment of a joint venture company (MIC Notification 15/2017) which would act as the developer?**



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OBTAINING A PERMIT TO ESTABLISH A CONDO

- Permit to establish a condominium can be applied for at the same time as the developer license if the applicant is an “individual or organisation” (Rule 5 (a) (9)) - if a company, partnership or group of individuals?
- Application to be filed with the respective Management Committee
- Rule 14 contains a long list of requirements
- Fee: Still unknown



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FOREIGN OWNERSHIP OF UNITS

- Up to 40% of the total floor area of a condominium may be sold to foreigners (prior enquiry with the Condominium Registration Office as to whether the ratio is exceeded is required)
- “Foreigners” = probably, only individuals, not companies
- Unit ownership limited to the “term of the condominium” (Rule 36)
- Foreign ownership in the land?



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OTHER RESTRICTIONS ON THE SALE OF UNITS

- Developer must sell at least 75% “of the units” (Rule 35)
- No buyer may acquire more than 25% “of the units” (Rule 37)



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THE NEW COMPANIES LAW



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THE NEW COMPANIES LAW

- **Pyidaungsu Hluttaw Law No. 29/2017**
- **Passed by parliament on 23 November 2017**
- **Signed into law by the president on 6 December 2017**
- **Entered into force on 1 August 2018**



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THE NEW COMPANIES LAW

- Contains provisions from the Companies Act 1914 and the Company Regulations 1957 (partly reworded/rewritten)
- Borrows liberally from the Australian Corporations Act 2001
- Contains distinctly own concepts
- In general: Existing companies/rep offices/branches are grandfathered in (S. 469(a) CL)



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ELECTRONIC FILING SYSTEM “MyCO”

- **Electronic filing currently only possible in order to register a new entity or re-register an existing entity (some additional forms made available on 26 September 2018)**
- **Works fine and fast**
- **Offline filing is still possible; in this case a DICA officer inserts the data into the system**
- **No more 5 year term: A company registration is valid indefinitely**



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ELECTRONIC FILING SYSTEM “MyCO”

- **No more minimum capital requirements: Foreign companies do not require a USD 50,000 contribution anymore**
- **Existing companies will, upon re-registration, receive new registration numbers and electronic incorporation certificates**



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ELECTRONIC FILING SYSTEM “MyCO”

- **Incorporation certificate of new companies does not show if a company is a foreign company (no “FC” in the registration number) - but sighting the “company extract” would reveal that a company has foreign shareholders**
- **Company search is free; additional information has to be purchased**



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FEATURES OF THE NEW COMPANIES LAW

- Single director/single shareholder company possible
- A company with up to 35% foreign ownership is considered to be a local company (however, still unclear how government offices apart from DICA would deal with this)
- Company's constitution may be tailor-made
- Abolishment of the “company's objects” and the “form of permit”



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FEATURES OF THE NEW COMPANIES LAW

- Abolishment of the authorised capital and the nominal value of a share
- Companies must have at least one resident director
- Branches and rep offices of overseas corporations must have at least one resident authorised officer (existing entities have one year (until 31 July 2019) to comply)
- Compliance now matters due to significant fines (→ get a company secretary)



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TAKING SECURITY

- **Transfer of Immovable Property Restriction Law 1987 (English translation): Prohibits any person to “pawn” immovable property to a “foreigner or a foreigner-owned company”**
- **New CL: A mortgage or charge on immovable property registered with DICA does not breach the Transfer of Immovable Property Restriction Law (S. 228(b)(i), 229(a)(iii) CL)**
- **Foreign lenders may take security over immovable property without a local security agent**



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TAKING SECURITY

- Old CA (S. 109(1)) and new CL (S. 229(a)) require mortgages and charges on immovable and (most) movable property to be registered with DICA
- So far, DICA had difficulties registering mortgages and charges, but this may now change
- On the whole, new CL makes taking security easier and consequently broadens access to financing from (in particular) foreign banks



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LAND LAW



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TYPES OF LAND

- Farmland (paddy land and several types of non-paddy land)
- Non-farmland:
 - Town land
 - Village land
 - Grant land
 - Permit land
 - Freehold (“ancestral”) land
 - Licensed land
 - Religious land
 - Vacant land
 - Fallow land



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TYPES OF LAND

- Fallow land
- Virgin land
- Forest land
- Farmland that is allowed to be used in other ways (according to section 30 (a) or 30 (b) Farmland Law; previously “LaNa 39” land)



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LAND DOCUMENTS

- Land grant certificate (lease agreement)
- Land permit
- Land license
- Land use certificate (form 7)
- Receipt for land tax
- Land forms 105, 106
- Certificate according to section 30 (a) or 30 (b) Farmland Law (formerly: “LaNa 39”)



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LAND GRANT

- Technically, a transferable lease
- Previously: Only for residential purposes
- Now: Residential and business purposes
- Land grants are available for 90, 60 or 30 years
- In Yangon: Issued by the Department of Human Settlement and Housing Development (DHSHD) or YCDC



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LAND PERMIT

- Document allowing temporary residence
- Period: One year
- Allows the building of a house
- Prohibition to sell or transfer
- Permit shows the name of the land holder and the location of the land
- Categorized as “town land”
- Verification possible at land record department



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LAND LICENSE

- Previously, issued under section 7 Lower Myanmar Town and Village Lands Act for specific types of businesses:
 - Industry: e.g. rice mill, oil mill, timber factory
 - Agriculture: e.g. teak, *dhani*
- Extendable after paying the annual tax
- Not issued any more



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LAND USE CERTIFICATE (FORM 7)

- Issued according to section 7 Farmland Law 2012
- Can be sold, transferred and inherited
- Changing the use requires permission from the Central Farmland Management Committee (paddy land) or Regional/State Farmland Management Committee (other types of farmland)



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LAND USE CERTIFICATE (FORM 7)

Farmland Form 7	<u>Details of the farmland for which there is a right to use</u>
Farmland Rule 14 (a)	
Nay Pyi Taw/ <i>Ayeyarwady</i> Region/State	1. Name of Township <i>Patheingyi</i>
<i>Patheingyi</i> District, <i>Patheingyi</i> Township	2. Name of Ward/Village Tract <i>Ma-gi-zin</i>
	3. Field/Plot No.
	4. Name of Field/Plot <i>Pauk-hla-gving (Pyin)</i>
	5. Holding No. of Plot <i>45</i>
	6. Type of Land <i>Garden</i>
	7. Area (acre) <i>22.54</i>
	8. Permission Letter No. <i>1217/LaYa(2013)</i>
	9. Date of Permit <i>24.10.2013</i>
	10. Remark

Certificate of the Right to Use Farmland

Permit so long as there is no breach of terms and conditions under section 6, 7 and 8 of the Farmland Law.

(Map is attached as evidence)



Official Seal



Official Seal

(-----)

Secretary

Township Administrative Body of the Farmland

Patheingyi



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LAND USE CERTIFICATE (FORM 7)

Details of the person who has the right to use the farmland

1. Name of person/organization [REDACTED]
2. Name of father U [REDACTED]
3. N.R.C No. 14 [REDACTED]
(for company/organization, registration no. of company/organization)
4. Address: (42/988), ~~Shwe Oa Daung~~ St. 1, North Dagon, Yangon

(Sticker)

Conditions

1. The farmland must be worked on as prescribed in the Farmland Law.
2. Land revenue and other taxes levied by the Ministry relating to the farmland must be paid.
3. Sales, mortgages, leases, transfers and gifts of the right to use farmland must be registered with the relevant Township Department by paying the stamp duty and registration fees stipulated by the Department for the contract.
4. If the right to use the farmland has been acquired by inheritance in accordance to existing laws, this must be registered with the relevant Township Department in accordance with the stipulations.
5. The right to use the farmland may only be mortgaged for the purpose of obtaining funds for investments in cultivation, and it must be mortgaged to a Government bank or a bank recognized by the Government.
6. Without authorization by the relevant administrative body for the farmland, the farmland shall not be trespassed on and worked on.
7. Without permission, the farmland must not be used for other purposes.
8. Without permission, the crops originally cultivated must not be changed for other kinds of crop.
9. The farmland must not fall in disuse without sufficient reason.
10. The farmland must not be sold, mortgaged, leased, transferred or given as a gift before the right to use the



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LAND TAX RECEIPT (FORM 8)

- Issued for paddy land, garden land, *ya* (dry field) land, *khai* (dry field) land
- Shows the name of the land user, use period, holding no., *kwin* name and number, land type, land location; shows the paid amount
- Form states that “this form does not prove ownership”



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LAND TAX RECEIPT (FORM 8)

(၁၁၈)

မြေစာရင်း၊ ဝ
မြေခွန်မြေစာ

၂၀၁၃ - ၂၀၁၄ ခုနှစ်

၀၁ တော့ရွာစာစဉ်	မြေခွန်	ဆင့်ငွေ
၂၁ တွင်းစာစဉ်		
၃၁ တွင်းစာစဉ်		
၄၁ ပြင်ပိုင်စာစဉ် (၃၄/၇)		
၅၁ မြေလှုပ်တိုင်ဆွဲစာစဉ်		
၆၁ (၁) ဝယ်ကြပ်သည်သိမ်းခံစာစဉ် (သိမ်းခံစာစဉ်)		
(၂) ဝယ်ကြပ်သည်သိမ်းခံစာစဉ် (မြေစာစဉ်)		
(၃) မြေလှုပ်ခွန်		
၇၁ နိုင်ကြေး		
၈၁ စတင်ကြပ်သည်ခံစာစဉ်		
၉၁ ထပ်ငွေခေါင်းစွပ်		၆၅
၀၀၁ ကော်လံထွက်စာစဉ်		
၀၀၂ ထပ်ငွေခေါင်းစွပ် ၆၃ အောက်ကျပ်တို		
၀၀၃ ကော်လံထွက်စာစဉ်		
၀၀၄ ငွေပေးဆောင်သည့်နေ့ ၂.၉.၂၀၁၄		
၀၀၅ ငွေရရှိကြောင်း ရပ်တွက်/တော့ရွာအုပ်စု အုပ်ချုပ်ရေးမှူးလက်မှတ်		

ဤဖြတ်ပိုင်းသည် အခွန်မြေစာသာဖြစ်သည်။ မြေပိုင်ရှင်
ဖြစ်ကြောင်း သက်သေခံလက်မှတ်မဟုတ်။ အခွန်ဆောင်သင့်သည့်
သူများ၏ ပြင်ပိုင်စာရင်းကို သိလိုပါက သက်ဆိုင်သူများသည် မြေတိုင်း
စာစာထုတ်လျှောက်ထား၍ ကြည့်ရှုနိုင် သည်။ မြေစာဖြတ်ပိုင်းပေါ်၌
(၁)ကော်လံထွက်စာစာရင်းနှင့် အခွန်ကောက်ခံသူ လက်မှတ်မပါသည့်
အခွန်မပေးရ၊ (၂)ရပ်တွက်/တော့ရွာအုပ်စု အုပ်ချုပ်ရေးမှူး (သို့မဟုတ်)
၎င်း၏ကိုယ်စားလှယ်မှ တစ်ပါး အခြားသူကို အခွန်မပေးရ။

အခွန်နှင့်နိုင်ကြေးများကို တောင်းဆိုရာတွင် မတမ်းဆောင် ငြင်းပယ်လျှင်
မှတ်သားရန် မှတ်တမ်း

အခွန်မဆောင်မီကွက် သူထံ အခွန်တောင်းဆိုကြောင်း နို့တစ်စာပေးအပ်သည့် (သို့မဟုတ် ၎င်းသူကို ရွာတွင်မတွေ့ရ၍ နို့တစ်စာကို ကြော်ငြာဖျဉ်ဖြားတွင် တပ်ထား သည့်) ခုက်နေ့ -----
နို့တစ်စာထုတ်ပြီးနောက် ထမ်းဆောင်သည့်နေ့
ငွေထမ်းဆောင်သည့်ရက်နေ့ -----
အခွန်ကောက်ခံသူလက်မှတ်



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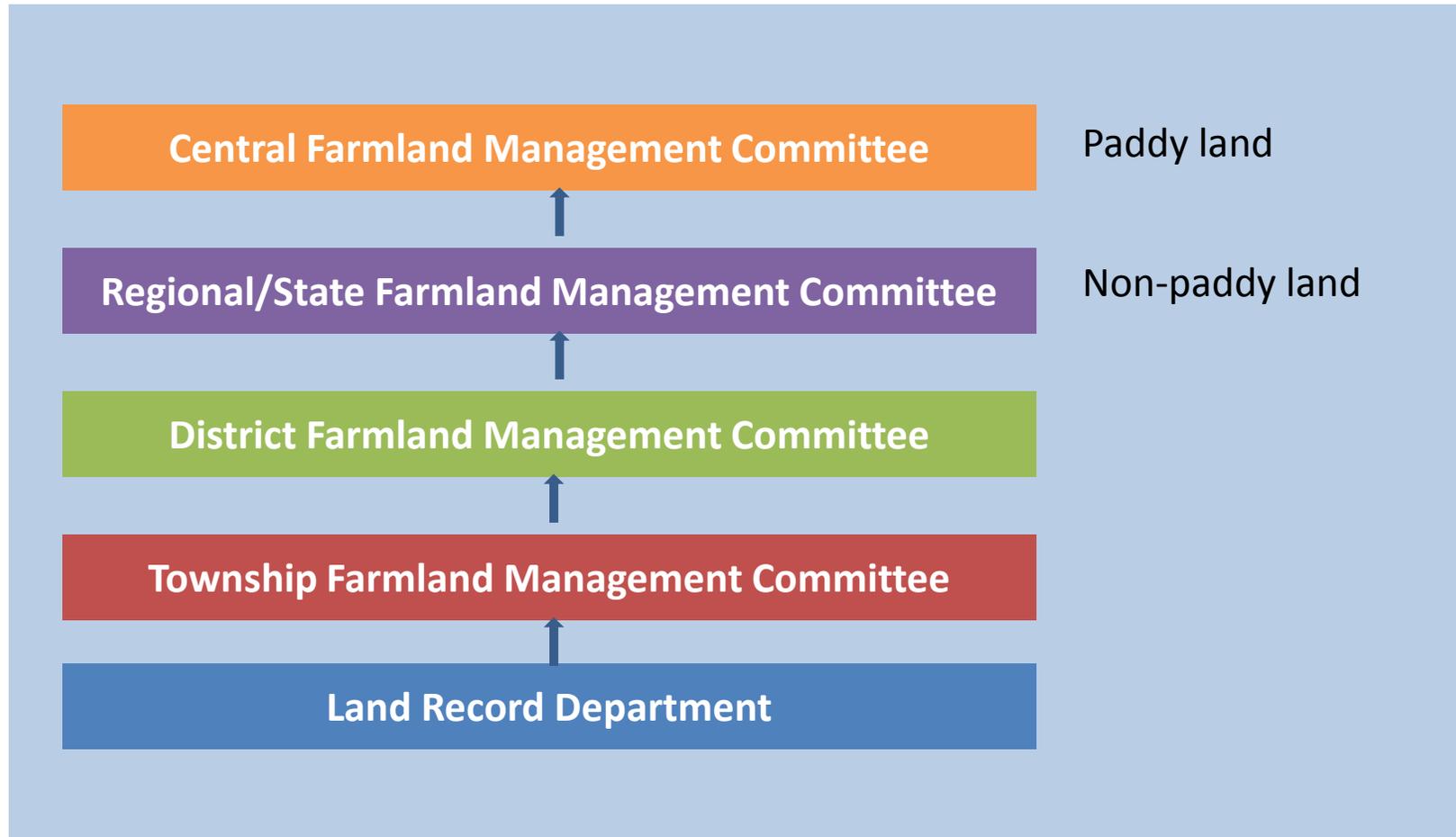
FORMS 105 AND 106

- Form 105: Map of a plot of land
- Form 106: Land history
- Available from the Township Land Record Department
- Issued for both farmland and non-farmland
- Form 105: Shows the name of the “owner, grant holder, lessee”, land identification (plot no., etc.), status of the land (e.g. “government land”), land type (e.g. “garden land”), land map



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USING FARMLAND IN OTHER WAYS



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REGISTERING LEASE AGREEMENTS

- **New Registration of Deeds Law (Pyidaungsu Hluttaw Law 9/2018) to enter into effect from 1 October 2018**
- Every Land Record Department is different
- At the very least, landlord, tenant and two witnesses have to appear in person
- Landlord and tenant can be represented with a power of attorney; power of attorney has to be notarized
- Other documents that a land record department may request to see: form 105 (purpose: “lease of land”), form 7, permission according to section 30 (a)/30 (b) Farmland Law



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REGISTERING LEASE AGREEMENTS

- Documents have to be presented for registration within 120 days from the date of signing (section 21 Registration of Deeds Law 2018)
- Documents have to be revenue-stamped first (“before or at the time of signing”; section 17 Stamp Act)
- Stamp duty for lease agreements: 1.5% of annual rent if term \leq 3 years; 3% of annual rent if term is longer
- Penalty: duty amount x 10 for late stamping (section 35(a) Stamp Act)



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INVESTMENT RULES 2017



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INVESTMENT RULES 2017

- **Ministry of Planning and Finance Notification 35/2017 dated 30 March 2017**
- **Contains in particular**
 - **Criteria to distinguish between an investment permit and an investment endorsement**
 - **Information on prohibited and restricted investments (in combination with MIC Notifications)**
 - **Procedure for an investment screening application**
 - **Procedures and criteria for accepting an investment permit application and an investment endorsement application**
 - **Procedure and criteria for a tax exemption application**



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INVESTMENT RULES 2017

- Procedure and criteria for a land use application
- Various other matters



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INVESTMENT RULES 2017

- Investment permit vs. endorsement
 - **MIC endorsement:** Application reviewed by DICA and the MIC; no proposal assessment team (PAT) meeting with the investor; no MIC meeting with the investor
 - **Regional investment committee endorsement:** Application reviewed by regional DICA and regional investment committee; no PAT meeting with the investor, but regional investment committee meeting with the investor
 - **MIC permit:** Application reviewed by DICA and the MIC; PAT meeting with the investor; MIC meeting with the investor



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INVESTMENT RULES 2017

- Investment permit vs. endorsement
 - **MIC permit required if the investment:**
 - is important to the Union's strategy; or
 - has a large environment and social impact; or
 - uses state-owned land or buildings; or
 - is capital-intensive



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

INVESTMENT RULES 2017

- Investment permit vs. endorsement
 - **MIC endorsement required if the investment:**
 - does not require an MIC permit; and
 - has an amount of more than USD 5 million/MMK 6 billion or requires ministerial approval according to MIC Notification 15/2017; and
 - should obtain tax incentives or involves the long-term lease of land



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

INVESTMENT RULES 2017

- Investment permit vs. endorsement
 - **Regional investment committee endorsement required if the investment:**
 - does not require an MIC permit; and
 - has an amount of up to USD 5 million/MMK 6 billion and does not require ministerial approval according to MIC Notification 15/2017; and
 - should obtain tax incentives or involves the long-term lease of land



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

INVESTMENT RULES 2017

- Prohibited and restricted investments
 - **Investments that are prohibited to both locals and foreigners:** Listed in section 41 Myanmar Investment Law and MIC Notification 15/2017
 - **Investments that are prohibited to foreigners:** Listed in MIC Notification 15/2017
 - **Investments that foreigners may only perform in a joint venture:** Listed in MIC Notification 15/2018



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

INVESTMENT RULES 2017

- Prohibited and restricted investments
 - **Investments for which both locals and foreigners require approval from the relevant ministry:** Listed in MIC Notification 15/2017
 - **Investments for which both locals and foreigners must form a joint venture with the government:** Listed in MIC Notification 15/2017 and relevant laws. This area was greatly liberalised after the enactment of the Myanmar Investment Law in 2016; joint venture requirements with the government have largely disappeared.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

TAX INCENTIVES ACCORDING TO THE FOREIGN INVESTMENT LAW



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TAX INCENTIVES

- **Exemption from corporate income tax (I)**
 - Only available if the investment is made in a promoted sector according to MIC Notification 13/2017
 - Available for 3, 5 or 7 years, depending on whether the investment is made in a developed, moderately developed or less developed township according to MIC Notification 10/2017
 - Only available if the investment amount is at least USD 300,000



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TAX INCENTIVES

- **Exemption from corporate income tax (II)**
 - Available if profits are re-invested within one year
 - Only available if the investment amount is at least USD 300,000



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TAX INCENTIVES

- **Exemption from import duty and commercial tax at the import stage**
 - Available only for:
 - Machinery, equipment and construction materials imported during the construction period, preparatory period or expansion period
 - Raw materials and semi-finished goods imported by an export-oriented business (at least 80% of the total income is generated from export) in order to manufacture goods for export
 - Investment amount must be at least USD 300,000



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MINING SINCE 2018



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MINING

- **Recent key legislative changes**
 - **Law Amending the Mines Law (Pyidaungsu Hluttaw Law No. 72/2015 dated 24 December 2015)**
 - **Mines Rules (Ministry of Natural Resources and Environmental Conservation Notification 13/2018 dated 13 February 2018)**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MINING

- **Main changes:**
 - **Foreigners may theoretically purchase, sell, transport and store processed minerals (requires Union government approval)**
 - **Foreign participation in small and mid-scale production not possible, but citizens may form joint ventures with foreigners to upgrade small and mid-scale production to large-scale production**
 - **Large-scale (2,100 sq. km.) production permits for a period from 15 to 50 years (previously, only up to 25 years)**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MINING

- Main changes:
 - Right to production permit guaranteed to those who have undertaken prospecting, exploration and feasibility study
 - Production permit holders must establish a two reserve funds for (i) environmental conservation and (ii) mine rehabilitation following mine closure
 - Tender process for places with multiple applicants and sufficient geological data
 - Mining licenses are transferrable (“Transfer” includes a change of shareholders or directors)



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MINING

- **Main changes:**
 - **New royalty rates (payable after the mineral is sold; calculated according to the contents of pure metallic mineral and its international market price at the time of the sale):**
 - **Gold, platinum, uranium: 5% (new)/4-5% (old)**
 - **Silver: 4% (new)/4-5% (old)**
 - **Copper, tungsten, nickel: 4% (new)/3-4% (old)**
 - **Iron, zinc, lead, tin, tungsten, aluminium: 3% (new)/3-4% (old)**
 - **Industrial minerals or stones: 2% (new)/1-3% (old)**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MINING

- **Main changes:**
 - **Government participation:**
 - **Old: Mining company pays 100% of the production costs and gives 20-30% of the output to the state (“production sharing”)**
 - **New: At the option of the Department of Mines, (i) production sharing; (ii) free equity; (iii) profit sharing**
 - **Dead rent (surface fees) considerably reduced**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

RETAIL AND WHOLESALE BUSINESS



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

RETAIL AND WHOLESALE BUSINESS

- Recent legislative changes
 - **Ministry of Commerce Notification 25/2018 dated 9 May 2018:** Allows foreign participation in retail and wholesale subject to minimum investment amounts and floor space; obliges local retailers and wholesalers with an investment of at least USD 700,000 to obtain a permit from the Ministry
 - **Ministry of Commerce Newsletter 2/2018 dated 26 July 2018:** Creates a “standard operating procedure” (SOP) for the issuance of a retail or wholesale permit



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RETAIL AND WHOLESALE BUSINESS

- Recent legislative changes:
 - **Ministry of Commerce Newsletter 3/2018 dated 26 July 2018:** “List of prioritised goods which are allowed to be sold through wholesale and retail by foreign companies and companies established as a joint venture between Myanmar citizens and foreigners”



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

RETAIL AND WHOLESALE BUSINESS

- Recent legislative changes:
 - **Ministry of Commerce Newsletter 6/2018 dated 9 August 2018:** Allows “foreign-owned companies and branches of foreign companies” to apply for an exporter and importer registration certificate. The holders of an exporter and importer registration certificate may “distribute the imported goods in the country through their preferred system except goods for which a procedure has been specified according to the law or procedure of the relevant ministry.”



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MINIMUM INITIAL INVESTMENT AMOUNT

	80.1-100% foreign ownership	0.1-80% foreign ownership	100% Myanmar ownership
Wholesale	USD 5 million	USD 2 million	0
Retail	USD 3 million	USD 0.7 million	0

- **Minimum initial investment amount exclusive of the rent; to be used for “goods to be sold”**
- **Initial investment amount \neq paid-up capital; may be contributed over time; must be contributed in cash**
- **100% Myanmar-owned companies exempt from registration requirement if initial investment amount < USD 0.7 million**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

MINIMUM INITIAL INVESTMENT AMOUNT

- Minimum initial investment amounts have to be combined if both a wholesale and a retail permit are sought (e.g., USD 5 million + 3 million = 8 million)
- Minimum initial investment amount per project, not per outlet
- Schedule for contribution:
 - New project: 50% at time of application; 30% within the second year; 20% within the third year
 - Special rules for the (i) upgrading of a manufacturing company and (ii) **an existing retail or wholesale business**



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MINIMUM FLOOR SPACE FOR RETAIL PERMIT

- Paragraph 9: “100% foreign-owned companies and joint venture companies shall not operate a minimarket or convenience store with a floor area of less than 929 m2.”
- Applies also to other shop types (not only minimarkets and convenience stores)
- **Individual shops in shopping malls do not require a retail permit, provided that a retail permit has been issued to the shopping mall**



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

PROCEDURE FOR OBTAINING A WS OR RT PERMIT

- **First step:** Secure land or premises
- **Second step:** If you are a foreign investor and want (i) to lease the premises long-term or (ii) erect a building on the land: Obtain an MIC endorsement or permit
- **Third step:** Incorporate company
- **Fourth step:** Any business permits of other relevant ministries required?



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PROCEDURE FOR OBTAINING A WS OR RT PERMIT

- **Fifth step:** Obtain business permit and recommendation letter from the city or township development committee
- **Sixth step:** File application with Ministry of Commerce in Nay Pyi Taw
- **Seventh step:** Collect permit in Nay Pyi Taw (hopefully)
- **Eighth step:** Register as exporter/importer with the Ministry of Commerce (Department of Trade) in Yangon
- **Ninth step:** Get other approvals (e.g., FDA approval)



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MUNICIPAL BUSINESS PERMIT

- **Example: Yangon**
- **In order to obtain a recommendation letter from YCDC, the investor has to obtain a YCDC business permit first**
- **The procedure for obtaining a YCDC business permit is well-established and has been in place since long before Ministry of Commerce Notification 25/2018**



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MUNICIPAL BUSINESS PERMIT

- It involves in particular the submission of (i) land documents (grant, contract, lease); photos of the premises; 10 signatures from neighbours; no-objection letters from the fire department, electricity department and health care officer; business permit from “the relevant ministry”; other documents as requested
- A township development officer will come for a site visit
- Approval of the business permit should be given within one week after the site visit → payment of fees → issuance of business permit



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LABOUR LAW



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LABOUR LAW - RECENT DEVELOPMENTS

- **Arbitration system replaced:**
 - The Settlement of Labour Disputes Law and the Settlement of Labour Disputes Rules (2012) provide for an alternative (outside of the courts) resolution system for collective labour disputes: (i) mediation at the township conciliation body; (ii) arbitration at the regional or state arbitration body; (iii) appeal to the arbitration council in Nay Pyi Taw
 - In practice, this alternative system was also used for individual disputes (in particular, unfair dismissals)



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LABOUR LAW - RECENT DEVELOPMENTS

- Since Ministry of Labour internal directive dated 27 June 2018 (3/6-4 (9) Taiyintha), the conciliation body does not accept individual cases anymore (the background is apparently a Supreme Court decision)
- Apparently, the conciliation body also stopped accepting collective cases
- As an alternative, labour cases are now heard by the Yangon Regional Government (we do not know the legal basis); the Minister of Rakhine Ethnic Affairs is currently also in charge of labour matters



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UNION TAX LAW 2018; TAX LAW



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RECENT DEVELOPMENTS

- Revenue Appellate Tribunal Law (Pyidaungsu Hluttaw Law 23/2018) enacted on 2 August 2018
- Draft of the Union Tax Law 2018/2019 published on 24 August 2018. If enacted, it will
 - enter into force on 1 October 2018 for state-owned enterprises and on 1 April 2019 for private enterprises;
 - significantly increase special goods tax on cigarettes, cheroots and liquor (except wine and beer);
 - exempt raw and processed diamonds and emeralds and jewellery made thereof from special goods tax;



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RECENT DEVELOPMENTS

- exempt raw materials for making detergent, raw materials for making soap, raw soap from commercial tax;
- Impose 1% commercial tax on the landed costs of imported jewellery; and
- remove the cap of Ks. 10,000,000 on tax-deductible rewards for causing a drug-related arrest.



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YVQC - YANGON VEHICLE QUOTA CERTIFICATE AND VEHICLE IMPORT QUOTA



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RECENT DEVELOPMENTS

- The following information has been obtained from the press (Myanmar Times, 27 August 2018):
 - Currently, the import of cars requires a parking recommendation letter
 - New system to start in October 2018
 - According to the new system, buyers will be allowed to bid for a Yangon vehicle quota certificate, which gives them the right to apply for a license to import and own a vehicle in Yangon for a fixed period. Bidders can bid between Ks. 3 million and Ks. 9 million for the certificate.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

CONTACT

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