Property Tenure/Ownership

Main Features of Land Holding

Constitution 2008 guarantees that the Union of Myanmar ('Union') shall permit citizens the right of private property and inheritance, in accordance with the law. The Land and Revenue Act 1879 provides the landholder permanent, heritable and transferable rights of use and occupancy. These rights are subject to:

• payment of taxes;
• government power to acquire the land for public purposes; and
• government control over mines and minerals.

Under the Constitution, the Union is the ultimate owner of all lands and natural resources and will supervise the use or extraction of them.

Under the Land Acquisition Act 1894 ('LAA'), the government may acquire or temporarily occupy land for public purposes. The President of the Union may also grant a company the same power for public purposes. In such cases, the LAA governs compensation given to the original landholder.

State land, belonging to or at the disposal of the government, is defined in the Upper Burma Land and Revenue Regulations 1889. The occupier’s right is non-inheritable and non-transferable.

Freehold land is transferable, inheritable and exempt from land revenue, and it can only be expropriated if it is in the public interest, subject to the payment of compensation. Freehold land is primarily located in larger cities or towns.

Grant land is granted or leased by the government from 10 to 90 years. The right is transferable, and the grant holder is subject to land revenue. The state does not have access to the land during the grant period, but can reclaim it under the LAA. Grant land is primarily located in cities and towns.

In general, land is classified by its use. Different regulations may apply to different land uses.

‘Culturable’ land, ‘fallow’ land and ‘waste’ land may be granted to local or foreign investors for agricultural purposes involving technology, expertise and capital, under the Procedures Conferring the Right to Cultivate Land/Right to Utilize Land for Agriculture, Livestock Poultry Farming and Aquaculture Purposes 1991. The grant may be up to 5,000 acres for 30 years. The maximum 30-year period can be extended with the approval of the government.

Foreigner applications and requests for larger grants of 50,000 acres or more must be approved by the Myanmar Investment Commission ('MIC'). Exemptions from land revenue, income tax and other duties are available.

The Forest Law 1992 empowers the Minister of Forestry to demarcate land as ‘reserved forests’ or ‘conservation areas’ for certain other purposes. The Forest Law governs licensing and practice for economic use of forest land.

Land administration is assigned to various government departments.

Other Land Legislation

Transfer of Property Act 1882 ('TPA') applies to contracts, sales, mortgages, charges, gifts, exchanges, leases and other transfers. To an extent, the TPA is superseded by more recent laws.

Previously, the Towns Act 1907 covered denomination, administration and tax collection from those holding land within towns. The Village Act 1907 served similar purposes for village tracts (lands outside towns). The Ward or Village Tract Administration Law 2012 repealed and replaced these two Acts, intending to modernize colonial systems, introduce secret ballot voting of local officials and create greater safeguards against forced labor.

The Water Power Act 1927 and accompanying rules govern the use of public water for energy or mining purposes.

The Code of Civil Procedure 1908 addresses attachments. Lands, houses or other buildings, and all other saleable property, movable or immovable, belonging to or under the control of a judgment debtor, whether held in name or in trust, are liable to attachment and sale in execution of the decree.

Restrictions on Foreign Property Ownership

Foreigners or foreign-owned companies may not purchase land or condominiums. The Transfer of Immovable Property Restriction Law 1987 ('TIPRL') prohibits the transfer of immovable property between citizens and foreigners. Therefore, TIPRL prevents foreigners from accepting mortgages as security. TIPRL does not apply to companies or organizations in contract with the state, and exemptions can be granted to embassies.

Foreigners can obtain land use rights by leasing from the government or by contributing to a joint venture with a government agency. It is common for foreigners investing in property development to lease the land from the government and enter into a build, operate and transfer ('BOT') agreement with the government for the development project (known as the BOT system). The project can be wholly owned by the investor, or can be a joint venture with a government partner.

Land Lease

On 3 November 2012, a new Foreign Investment Law 2012 ('FIL') came into force, replacing the Myanmar Foreign Investment Law 10/1988. Investors registered under the new FIL are eligible for a lease term of up to 50 years, with the option of two consecutive ten-year renewals. The MIC may even grant lease terms greater than 50 years where an investor invests in remote or economically underdeveloped areas. In both cases, the MIC has discretion over
lease terms; investors should make clear requests for long-term leases and provide business justifications for the request in their MIC proposal.

Leases are not granted for:

- religious land;
- land restricted for state security;
- land under litigation; and
- land restricted by the state.

The state may prohibit leases for land where the investor’s business would cause public impact to the environment, noise, pollution or culture within urban residential areas.

**Operational Requirements for Foreign Corporations**

**Registration**

The Registration Act 1909 requires registration of mortgages and all non-testamentary instruments that create or extinguish a present or future interest in immovable property. Leases of immovable property require registration if they last over one year or have yearly rent. An instrument gifting immovable property must be registered. The Registration Act exempts instruments relating to shares in a joint-stock company, even if the assets of the company include immovable property.

Under the Companies Act 1914, a company must register any charge or mortgage with the Registrar’s Office, including copies of the implementing instrument. The company must also keep records of each charge or mortgage.

**Permit to Trade**

All foreign companies (100% owned, joint venture or branch/representative office, but not in a government joint venture), wishing to do business in Myanmar must obtain a ‘permit to trade’ (now known as ‘business permit’ or ‘DICA permit’) from the Ministry of National Planning and Economic Development. The investor must meet the minimum imported capital requirements. The permit to trade is applied for at the Companies Registration Office.

**MIC Permit**

Foreign companies wishing to operate and receive incentives under the FIL may apply for an MIC permit.

The foreign investment rules, enacted on 31 January 2012, prohibit foreigners from operating certain enterprises and require them to have a joint venture with the locals in certain industry sectors.

**MIC Notification 1/2012** lists a number of industry sectors and the applicable restrictions and/or specific approvals required.

If the company is a government-owned enterprise or a joint venture with a state entity, it must be incorporated under the Special Companies Act 1950. The company may apply under the FIL. If approved, the MIC permit will be issued.

**Foreign Exchange Controls**

**Foreign Currency**

Myanmar has recently gone through a currency reform and has implemented a managed floating exchange rate.

The Foreign Exchange Management Law 2012 governs outward remittances, making a distinction from ‘current transactions’ that include:

- payments due in connection with foreign trade and other current business, including services, normal short-term banking and credit facilities;
- payments due as interest on loans and as net income from other investments;
- payments of moderate amounts for amortization of loans for the depreciation of direct investments; and
- moderate remittances for family living expenses and capital transactions.

No restrictions are imposed on transactions concerning current transactions. However, capital transactions will require approval by the Central Bank of Myanmar. Investing under the FIL and its subsequent notifications guarantees repatriation of funds, subject to satisfying certain requirements. Organizations and individuals acting under an MIC permit shall carry out financial transactions through foreign currency and Myanmar kyat accounts with a bank licensed to carry out foreign currency transactions.

**Taxation**

**Taxes**

Property and income taxes are collected by the Internal Revenue Department of the Ministry of Finance.

Myanmar tax structure comprises 15 different taxes and duties under four major heads:

- taxes levied on domestic production and public consumption: excise duty; license fees on imported goods; state lottery; and taxes on transport, commercial tax and sale proceeds of stamps;
- taxes levied on income and ownership-income tax;
- customs duties; and,
- taxes levied on utility of state-owned properties: taxes on land; water tax; embankment tax; and taxes on extraction of forest products, minerals, rubber and fisheries.
Income tax is assessed from property, salary, business and other sources. For income tax, foreigners and foreign organizations are separated into resident and non-resident foreigners. A foreign employee working for a company under the FIL may be considered a resident foreigner. A resident foreigner is either an individual present in Myanmar for 183 days during the income year, an association with control in Myanmar, or a company or enterprise formed under the Myanmar law. A branch of a foreign-incorporated company registered under the Companies Act is categorized as a non-resident.

Withholding taxes are prescribed by Notification No. 41/2010, issued by the Ministry of Finance and Revenue, enforced under section 15, subsection (e) of the Income Tax Law 1974. Withholding taxes apply at different rates to income from interest, royalties and purchases of goods and services in Myanmar, or by an entity created by the Myanmar law. The amount must be deducted and remitted in the same currency as the payment.

Land Revenue
The Upper Burma Land and Revenue Regulations and the Land and Revenue Act (applying to Lower Burma and the Thayetmyo District of Upper Burma) enforce land revenue for all property, unless otherwise exempted. For example, land revenue and income tax exemptions apply for different periods of time, depending on the use of agricultural land.

Stamp Duty
The Myanmar Stamp Act 1899, as amended, prescribes stamp duties for instruments that transfer or create property interests. Rates for instruments attracting stamp duty and instruments exempted are enumerated in the schedules subsequently enacted by notifications.

Double Taxation Treaties
Myanmar has double taxation treaties with the United Kingdom, Singapore, Malaysia, Vietnam, Indonesia, South Korea and Thailand.

Investment Incentives
Special Economic Zones
A specific regime applies to special economic zones under the Special Economic Zone Law 2011. Currently, the Dawei Special Economic Zone is governed by a similar law, the Dawei Special Economic Zone Law 2011. Investors may secure land leases or permissions for use. The initial period granted is 30 years. An investor may apply at prescribed intervals for extensions totaling ten to 45 additional years, depending on the size of investment.

Within the permitted period of land use, an investor may rent, mortgage or sell the land and building to another person for investment business.

An investor receives the right to operate in foreign currency, to open a foreign account with any bank, to receive and pay money in foreign currency, and to exchange and transmit their own foreign currency within the zone or abroad. Incentives include tax breaks. Duties of the investor include bearing the expenses of any required transfer of human settlement and obtaining permission before altering the topography.

The special economic zones laws may be repealed or amended in the near future.

Foreign Investment Law
The FIL provides many incentives in addition to the enhanced lease terms. All investors registering under the FIL are entitled to an income tax exemption for a period up to five consecutive years. Investors may further apply for additional incentives, including:

- exemption from income tax on profits maintained in a reserve fund and reinvested in Myanmar within one year;
- enhanced depreciation of capital assets used in the business, deductible from taxable profits;
- income tax relief to a maximum of 50% on export profits;
- right to deduct research and development expenses from assessable income, where such activities are necessary for the business and carried out within Myanmar;
- right to carry forward and offset a loss for up to three consecutive years from the year the loss is sustained, where such loss is sustained within two years immediately following the expiration of the initial tax holiday;
- relief from customs duty and internal taxes on the imports of industrial materials required to establish the enterprise, or where such imports support an expansion of the initial investment;
- relief from customs duty and internal taxes on raw materials imported for the first three years of commercial production; and
- relief from trading tax on goods produced for export.

Beyond tax incentives, registering under the FIL:

- guarantees against nationalization during the term of investment;
- permits the investor to remit net profits derived from annual business earnings;
- guarantees that the investor may remit foreign currency upon termination of investment; and
- gives precedence to contractual dispute resolution mechanisms, stipulated in contracts relating to the business activities, over local state laws.