Property Tenure/Ownership
Main Features of Land Holding

Constitution of the Republic of the Union of Myanmar (2008) (the Constitution) guarantees that the Union of Myanmar (Union) shall permit citizens the right of private property and inheritance, in accordance with the existing laws. 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
- 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 occupancy 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, and Lower Burma Town and Village Lands Act (1899). The occupier’s right is non-inheritable and non-transferable.

On June 25, 2015 the Law Amending the Lower Burma Town and Village Lands Act was passed and amended the penalty clause.

Freehold land is transferable, inheritable and exempt from land revenue, and it can only be expropriated if it is in the public interest under the LLA. In invoking the LLA, the government will compensate the owner of the land in cash or with alternative land plots. Such authority vests with the General Administration Department which is under the Ministry of Home Affairs.

Freehold land is primarily located in larger cities or towns.

Grant land is granted or leased by the government from 10 to 90 years to any person or entity for a stipulated period which is extendible upon application. It is explicitly spelled out in the document well known in the Myanmar language as “Ga-yan” and apparent direct adoption of the word “Grant”. The landright 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.

For Yangon, Grants are put into effect by the “Yangon City Development Committee (the YCDC) and for Mandalay by the Mandalay City Development Committee (the MCDC). Both cities have their own Development Committee Law. For other cities and towns, “Grants” are put into effect by the concerned “District General Administration Department” as they fall within the broader application of the Development Committee Law which applies to all parts of the country except Yangon and Mandalay.

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

“Vacant” land, “Fallow” land and “Virgin” land may be granted to local or foreign investors for agricultural purposes involving technology, expertise and capital, under the Procedures Conferring the law on Right to Cultivate Land/Right to Utilize Land for Agriculture, Livestock Poultry Farming and Aquaculture Purposes 1991. The acreage of 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. Foreign investors’ 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.

This is also separate class of land in which regard the government may grant the right to cultivate, utilize to stated-owned economic organization, joint-ventures, other organizations and private individuals on a commercial basis such as utilizing for agriculture, livestock breeding or aquaculture enterprises.

The government in this regards passed the law “Vacant, Fallow and Virgin Lands Management Law” and its Rules in 2012.

In accordance to this Law the Central Committee (the CCM) for the Management of Vacant, Fallow and Virgin Lands, the CCM shall permit the right to utilize the land of vacant, fallow and virgin in the country for the purposes of agriculture, livestock poultry farming and aquaculture, mining and other purposes allowed by government in line with the law.

The CCM shall specify the premium and land revenue tax depending upon the type of business activities which shall be paid by the person, who get the permission right to use on vacant, fallow and virgin lands. After completion within the prescribed time, the CCM shall refund the premium to the persons who obtained the right to use on vacant, fallow and virgin lands.

Farm Land––In accordance with 2012 Farmland Law, farm land means designated land as; paddy land, ya land, kaing land, perennial plant land, dhani land, garden land, land for growing of vegetables and flowers and alluvial island. In this expression, it does not include land situated within any town or village boundary used for dwelling, religious building and premises and public–owned land which is not used for agriculture purposes.
Township Administrative Body of the Farmland (the TABF) has the power to give permission to a person the right to use of farmland with the approval of District Administrative Body of Farmland (the DABF). After paying registration fees, the certificate to use the farmland will be issued to the concerned person. A person who has the permission of right for farming must utilise the land for farming purpose only. Such land should not be sold, pawned, leased, exchanged or donated to any foreigner or organisation containing foreigner without the permission of State Government.

Farmland is transferable in accordance with the terms and conditions prescribed in section 12 of the Farmland Law and rule 47 and 48 of the Rules relating to Farmland.

Farmland may be used for other purposes in accordance with section 30 of the law and clause 78 of the Rules. But for the long-term national interest of the State, the respective implemented Ministry shall utilize the farmland for the use of the Project, by the permission of the Cabinet of the Union Government after getting the remarks of the Central Farmland Management Body.

In respect of the application to utilize the farmland for other purposes in the interest of the public:

(a) The Central Farmland Management Body shall give permission to utilize the paddy land for other purposes, with the recommendation of the Region or State Farmland Management Body;

(b) The respective Region or State Government shall give permission to utilize the farmland for other purposes except paddy land, with the recommendation of the Region or State Farmland Management Body;

Forest land – Forest land is declared by the Ministry of Environmental Conservation and Forestry (the MOECF) in accordance with the Forest Law and its rules and regulations. 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. It is not transferable. Permission is required from the MOECF in extracting timber, cutting fire-wood, producing charcoal or catching fish from a Reserved Forest Area.

Approval is also required of government enterprises involved with gem-mining or oil exploration in the exploration/activities in reserved forest areas.

Individual shall pay licence fees to the Forest Department for wood cutting, for charcoal production or for extraction of forest products in forest land. Trespassers may be prosecuted under Forest Law.

Forest land may not be re-designated into another category of land unless the Ministry of Environmental and Forest de-registers it from their registry.

Religious land
The Ministry of Home Affairs may declare an area of land as “religious land”. Once it has been declared as such type of land, the status of the land remains unchangeable for perpetually. In accordance with Rules 128 (c) of the Foreign Investment Rules and Notification 39/2011, the investor, for operating any business, does not have the right to lease and carry out on the religious land.

In addition some lands are restricted for operating business by the existing laws such as 2012 Foreign Investment Law, 2015 The Law Protecting the Antique Objects, 2015 the Law Protecting the Antique Building, The Protection and Preservation of Cultural Heritage Law 1998, the Protection of Wildlife and Conservation of Natural Areas Law 1994, etc.

According to these Laws the cultural heritage regions, natural heritage region, a place or land where exists building which may cause situation such as impact on public environment, noise, pollution, impact on culture within urban residential area due to the business of the investor are restricted, does not have the right to lease and carry out the business.

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. TPA is not superseded by more recent laws. It is still enforceable. Please see Transferable of Immovable Property Restriction Law (1987) as follows.

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 villagetracts (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 directly accepting land in mortgages as security. TIPRL does not apply to companies or organizations in contract with the State and exemptions can be granted to Embassies.

Land Lease

In the past, foreigners can obtain land use rights by leasing long term from the government, government department, government organization and private land owned by the citizen or by contributing to a joint venture with a government agency with the prior approval of the Union Government in accordance with Notification 39/2011. 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.

On November 3, 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, MIC has discretion over lease terms; investors should make clear requests for long-term leases and provide business justifications and project plans requesting in their MIC proposal.

Leases are not granted for:

- Religious lands
- Cultural heritage regions, natural heritage region which are designated by the relevant Union Ministries
- Land restricted for state defense and security
- Lands under litigation
- Lands restricted by the state from time to time
- Place or land where exists building which may cause situation such as impact on public environment, noise, pollution, impact on culture within urban residential area due to the business of the investor.

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.

No documents other than a will shall be accepted for registration unless presented for that purpose to propose officer within four months from the date of its execution. If owing to urgent necessity or unavoidable accident, any document executed in the Union of Myanmar is not presented for registration till after the expiration of the time hereinbefore prescribed on that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration. When a document purporting to have been executed by all or any of the parties out of the Union of Myanmar is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied:

a) that the instrument was so executed; and

b) that it has been presented for registration within four months after its arrival in the Union of Myanmar may, on payment of the proper registration-fee, accept such document for registration.

Under the Myanmar 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 January 31, 2012, prohibit foreigners from operating certain enterprises and require them to have a joint venture with Myanmar citizens in certain industry sectors.

MIC Notification 1/2013 lists a number of industry sectors
and the applicable restrictions and/or specific approvals required. The Notification No.1/2013 issued by the Myanmar Investment Commission on January 31, 2013 is repealed by Notification 49/2014 of MIC on August 14, 2014. MIC notified three notifications such as Notification 49/2014, 50/2014 and 51/2014. In Notification 49/2014 it is mentioned the Classification of Types of Economic Activities, List of Economic Activities under Prohibition, List of Economic Activities to be allowed only in the form of Joint Venture with Myanmar Citizens, List of Economic Activities Permitted with the Specific Condition and List of Economic Activities Permitted with Other Conditions and required Joint Venture.

The economic activities excluded from this notification can be carried out 100% foreign investment.

The Economic activities which require Environmental Impact Assessment are prescribed in Notification 50/2014 and Investment Business Activities that are not required to grant exemption and relief from tax are prescribed in Notification 51/2014.

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 manageable floating exchange rate. In accordance with Notification 40/2011, the investor shall open an account and deposit the foreign currency contained in the proposal in conformity with the permit of the commission for any business in a bank within the State which has the right to operate work in foreign currency. The investor has the right to make account transfer and expend the foreign currency from his bank account for making account transfer for the matters to be paid in foreign currency in the country; making bank account transfer to be affiliated company business in the country or the citizen or the citizen-owned company business for the matters related to business which he has invested.

The Foreign Exchange Management Law was enacted on August 10, 2012, which repealed the Foreign Exchange Regulation Act(1947). Its released the exchange restrictions of 1947 Act. 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 a mortisation of loans for the depreciation of direct investments
- 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.

According to the Foreign Exchange Management Law the Central Bank shall monitor and record the funds brought in as a foreign investment, as a reference for the repatriation of principal, interests, profits, dividends and other payments related to the investment. Subject to the Foreign Exchange Management Law foreign investors shall declare their funds and prove the evidence of their funds brought into the Central Bank for each transaction. Foreign investors who fail to present the documentary evidence may not be permitted to repatriate the funds abroad. In the case where the investment period has ended or the investment activities are partially or completely ceased, the foreign investor may repatriate his/her investment funds to his/her own country or to a third country in accordance with the existing laws.

Foreign Exchange Management Regulations was enacted on September 30, 2014. Its implement details of the provisions of the Foreign Exchange Management Law.

On December 15, 2015 The Law Amending the Foreign Exchange Management Law was passed as Law No. 64 of 2015. According to the Amending Law, all the transactions are done in accordance with the stipulations of Central Bank of Myanmar.

**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
- 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 categorised 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. The Notification No. 41/2010 is replaced by the Notification No. 167/2011 issued on August 26, 2011. Deducted rates are different between residents, resident foreigners and non-resident foreigners. Pursuant to Notification 167/2011, no withholding tax is required for interest paid to residents and resident foreigner but 15% for non-resident foreigners; regarding to the royalties for the license, trademarks and patent right, withholding tax to be deducted shall be 15% on payment to residents and 20% to non-resident foreigners; payments for work done by foreign contractors, withholding tax deducted shall be 2% on payments to residents and 3.5% to non-resident foreigners; and payment made to contractors for goods and services performed in the Union or purchase of goods from the Union shall deduct 2% on payments to residents and 3.5% to non-resident foreigners.

For each Financial year, the Pyudauungsu Hluttaw update tax rates annually. The Union Tax Law 2015 was published on 6th April 2015, to become effective from 1st April 2015. The Union Tax Law 2015 shall take effect for the financial year 2015-2016. This Law includes certain adjustments to existing personal, commercial and capital gain tax rates.

On January 26th 2016, The Union Tax Law 2016 enacted and it will be effected on 1st April 2016 for 2016-2017 financial year. According to this law, tax rates for special commodity, such as various kind of cigarette, virginia, tobacco, cheroots, cigar, betel, various kind of alcoholic liquor/ beer and wine, tea, hard wood logs, jade, ruby, emerald, sapphire, diamond and other precious gemstone, jewellery, vehicle, petrol, diesel, aviation jet fuel and natural gas are prescribed in sub-section (a) of section 11. The tax rates shall be levied in accordance with relevant schedule.

On January 21, 2015 the Ministry of Finance issued the Notification 180/2015 in respect of manner to assess tax by way of issuing the receipt for producer of goods or service provider who will obtain the proceed of sale or service charges.

**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.

On 28 March 2014, the Law Amending the Myanmar Stamp Act was passed and reduced the stamp duty rate in certain deeds and instruments.

Pursuant to section 17 of the Myanmar Stamp Act all instruments chargeable with duty and executed by any person in the Republic of the Union of Myanmar shall be stamped before or at the time of execution. Under section 18 of the above Act instruments other than bills and notes executed out of the Republic of the Union of Myanmar may be stamped within three months after it has been first received in the Republic of the Union of Myanmar.

If the instruments expressed in foreign currency such duty shall be calculated on the value of such money in the currency of the Republic of the Union of Myanmar according to the current rate of exchange on the day of the date of the instrument.

**Double Taxation Treaties**

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

**Investment incentives**

**Special Economic Zones**

A specific regime applies to special economic zones under the Myanmar Special Economic Zone Law (2014) PyithuHluttaw Law No (1) of 2014. This law repealed the Special Economic Zone Law 2011 and the Dawei Special Economic Zone law. Investors may secure land leases or permissions for use. The initial period granted is 50 years. If the investor is desirous of continuing to operate after the expiry of the permitted term, it may renew for another 25 years.

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.

On October 3, 2014, MIC issued Notification 59/2014 and specifies an area of 4,075,153.029 square meters (1007 acres) within the boundaries of specified area located in the Kokang Self Administered Zone as the “Kokang Economic Zone” with effect as from the date of issuance of this notification.

On October 1, 2014, the Ministry of Planning and Economic Development issued the Notification 81/2014 as Thilawa Special Economic Zone Regulations.

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
• Relief from trading tax on goods produced for export

Beyond tax incentives, registering under the FIL:

• Guarantees that the investor may remit foreign currency upon termination of investment
• Gives precedence to contractual dispute resolution mechanisms, stipulated in contracts relating to the business activities, over local state laws

On December 22, 2015, the Law Amending the Foreign Investment Law was passed and foreign investments in the respective areas are empowered to relevant Region and State governments with the approval of the State.
Myanmar Legal Services Limited
Lynn M. Smith – Office Manager
lynn@mlslyangon.com
Room 117, Irya Lake Hotel
37 Kaba Aye Pagoda Road
Mayongone Township, Yangon
Myanmar
tel: (95) 1 657 792 / 650 740
myanmarlegalservices.com

JLL
9 Raffles Place
Republic Plaza Level 39
Singapore 048619
tel: +65 6220 3888
www.jll.com.sg