

# LEGAL FRAMEWORK ON DOING BUSINESS IN MYANMAR

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# The Myanmar Legal System

- The Law, Judicial system and the role of lawyers in Myanmar was established in colonial period and continued after Myanmar gained independence in 1948 until 1974 constitution.
- The Judicial system and legal system had changed according to 1974 constitution, which was based on socialist economic system.
- The current Judicial and legal system resumed to Common law based system with some modifications,

# Myanmar Legislation

- Myanmar Codes vol.1 to 13\_ Codified Laws enacted during 1841 to 1954
- Books on yearly legislation\_ 1954 to 1962
- Three volumes of Legislations\_ 1962 to 1974
- Books on yearly legislation\_1974 to 1988
- Books on yearly legislation\_1988 to 2011
- Union Laws\_2011 to 2012

# Changing Trend of Myanmar Economy

- After gaining Independence from British colony in 1948, Myanmar economy continued the same as before.
- After taking over of state power by the Revolutionary Council Government in 1962, the trend of economy was changed into Socialist Economic System.
- For that purpose all the private owned banks and private owned business organizations were nationalized, and laid down the planned economy in long term and short terms as well.

# In support of the Socialist Economy, the government promulgated

- The Protection of Public Property Law 1963
- The Protection of Opposition against the Construction of Socialist Economic System Law 1964.
- The Law Conferring Powers for Establishing the Socialist Economic System was promulgated in 1965.( This law repealed the 1964 Law and this law was repealed by State-owned Economic Enterprises Law 1989 )

- In the late 1988, soon after the State Law and Order Restoration Council assumed responsibility of governing the country, socialist economic system was abandoned and adopted a market oriented economic system.
- \_ First of all the Foreign Investment Law 1988 was promulgated in November, 1988,
  - The initial step taken towards a more liberalized economy is to allow to foreign direct investment and to encourage the private sector development.
  - These economic objectives are aimed to create a market oriented system with the private sector taking the leading role in economy.

# Encouragement of the promotion of private sector in economy

- Since late 1988 the Government has been actively encouraging foreign investment in Myanmar.
- The fundamental or basic concepts of the following laws fall under this category:
  - \* The Union of Myanmar Foreign Investment Law (1988)
  - \* The State-owned Economic Enterprises Law (1989)
  - \* The Myanmar Citizens Investment Law (1994), and
  - \* The Financial Institution of Myanmar Law (1990).

# Union of Myanmar Foreign Investment Law (1988)

**A new FIL has been drafted and it is expected to be passed during the current Parliament session which commence on 4<sup>th</sup> July 2012.**

- **The Foreign Investment Law (1988) defines two types of investment : (1) a sole proprietorship, a partnership and a limited company (wholly owned (100%) by foreign investor), (2) a joint venture in the form of limited company in which the foreign capital invested must be at least 35% of the total equity capital. (Companies Act 1914 and Special Company Act 1950 applied)**

# Investment Commission

- Foreign Investment Commission was formed under section 7 and Procedure in order to administer the foreign investment under this law.
- After Myanmar Investment Law 1992 has promulgated, it is renamed as Myanmar Investment Commission

# Exemptions, Reliefs and Guarantees

- Exemptions and reliefs are given to the investors under to S. 21, such as tax holidays for three consecutive years and exemption or relief from custom duty and other taxes. and guarantees under SS. 22 and 23 for not to be nationalised to take back of foreign currency invested

# The State-owned Economic Enterprises Law (1989)

- defines 12 economic activities in which private investment is restricted and are reserved to be carried out solely by the State. However it has been relaxed according to section 4 of the said law that the Government may, in the interest of the State, permit to carry out such activities.

This could be done by notification in any of the following form:

- \* Joint-Venture between the organization and a citizen or a foreigner,
- \* Joint-Venture between the organization, a citizen and a foreigner,
- \* Joint-Venture between a citizen and a foreigner,
- \* Enterprise by a citizen and a foreigner.

# The Sectoral laws concern with respective sector :

- (1) Private Industrial Enterprises Law (1990)
- (2) Promotion of Cottage Industries Law (1991)
- (3) Myanmar Hotels and Tourism Law (1993)
- (4) The Forest Law (1992)
- (5) The Central Bank of Myanmar Law (1990 )
- (6) The Myanmar Agriculture and Rural Development Bank Law (1990)
- (7) Saving Bank Law (1992)
- (8)The Myanmar Insurance Law(1993)
- ( 9) The Insurance Business Law (1996)

- (10) The Myanmar Mines Law (1994)
- (11) The Myanmar Gemstones Law (1995)
- (12) The Myanmar Pearl Law (1995)
- (13) The Co-operative Society Law (1992)
- (14) The Myanmar Accountancy Council Law (1995); etc,
- (15) The Commercial Tax Law (1990)
- (16) The Tariff Law (1992)
- (17) The Law relating to Private health Care Services (2007)
- (18) The Myanmar Special Economic Zone Law 2011. etc.

# The State-owned Economic Enterprises Law, 1989

- The State Law and Order Restoration Council has promulgated the State-owned Economic Enterprises Law on 31st, March 1989( 9/89). The Union of Myanmar Foreign Investment law will not be completed without the knowledge of State-owned Economic Enterprises Law (SEE Law). The SEE Law defines 12 economic activities in which private investment is restricted and reserved to be carried out solely by the State.

12 activities given under Section 3 of the said Law are as follows: -

(a) extraction of teak and sale of the same in the country and abroad

(b) cultivated and conservation of forest plantation with the exception of village-owned fire-wood plantations cultivated by the villagers for their personal use

(c) exploration, extraction and sale of petroleum and natural gas and production of the product of the same

- (d) exploration and extraction of pearls, jade and precious stones and export of the same
- (e) breeding and production of fish and prawns in fisheries which have been reserved for research by the Government
- (f) Postal and Telecommunications Service
- (g) Air Transport Service and Railway Transport Service
- (h) Banking Service and Insurance Service
- (i) Broadcasting Services and Television Service
- (j) exploration and extraction of metals and export of the same
- (k) Electricity Generating Services other than those permitted by law to private and co-operative electricity generating services
- (l) manufacture of products relating to security and defense which the Government has from time to time prescribed by notification.

# Exception

- Section 4 of the SEE Law, services as a vehicle for privatization, it gives the right to Government to allow these activities to operate under privatization scheme.
- Myanmar Special Company Act 1950 applied

# The Myanmar Citizens Investment Law 1994

- Citizens are entitled to the same exemptions and privileges of foreigners who are enjoying under Foreign Investment Law, such as 3 years tax holidays and other exemptions and guarantee against nationalization.

# The Private Industrial Enterprises Law, 1990

- The State Law and Order Restoration Council promulgated the Private Industrial Enterprises Law on 26th November 1990 as an aid to the private industrial enterprise
- It is enacted to enhance the establishment of small, medium and large scale enterprises and promote private industrial enterprises individually or in partnership or by forming a company.
- This expression does not include industrial enterprises conducted in joint-venture with the Government

# The Financial Institutions of Myanmar Law 1990

- At the time Financial Institutions of Myanmar Law was introduced, it was understood that the banking sector would be liberalized. This law allows the formation of domestic private banks.
- The Financial Institution of Myanmar Law, the Rules Relating to the Financial Institutions of Myanmar Law 1991 and the Central Bank of Myanmar Regulations for Financial Institution 1992 are the laws which regulate the establishment and ongoing operation of financial institutions in Myanmar.

# Fisheries and Marine Products

- The State Law and Order Restoration Council has promulgated the following Laws to conserve marine and freshwater fisheries, to enable systematic operation in fisheries, wider participation of foreign investor and to promote exports.
- Law relating to Fishing Rights of Foreign Fishing Vessels (1989)
- The Law relating to Aquaculture (1989)
- Myanmar Marine Fisheries Law (1990)
- Fresh Water Fisheries Law (1991).

# The Forest Law (1992)

- The Forest Law (1992) has been promulgated as the State Law and Order Restoration Council Law No. 8/92 dated 3rd Nov, 1992. It is enacted to enforce and implement forest policy effectively and also for environmental conservation and systematic development of forestry sector.
- Myanmar teak is most popular in the world teak trade. Teak export can be done in conversion forms, plywood, furniture, carving, joinery, flooring products, mouldings, etc. There are also different species of hardwood to be produced .This law administers all these matters.

# The Myanmar Mines Law 1994

- The Myanmar Mines Law was promulgated on 6th September, 1994. It is enacted for the development of mineral prospecting and exploration works to enhance production of minerals and promotion of exports.

# The Myanmar Gemstones Law, 1995

- The Myanmar Gemstones Law, 1995 has been promulgated to establish and develop a hundred percent gemstones and it can be deemed as the Government's prudent and generous step to see the flourishing of gem trading of the private sector within the country, and to enable local entrepreneurs to beneficially utilize rich natural resources for their own benefit as well as for national interest on equal terms.

# The Myanmar Pearl Law, 1995

- Myanmar Pearl Law is promulgated as State Law and Order Restoration Council Law No. 7/95, 10th July 1995. There are 13 Chapters and 38 Sections in this Law. This law is aimed to conserve pearl, to enable systematic operation in pearl industries and to promote export.
- Section 19 of this Law provides the duties and powers of the Chief Inspector. Duties and Powers of an Inspector is provided in Section 22. (M/M)
- Taking of action by administrative means is provided in Section 23, and Section 25 to Section 33 provide the offences and penalties under this Law.

# The Financial Institutions of Myanmar Law 1990

- At the time Financial Institutions of Myanmar Law was introduced, it was understood that the banking sector would be liberalized. This law allows the formation of domestic private banks.
- This law empowers the Central Bank of Myanmar to grant licenses to financial institutions, whether State, joint-venture, local private or foreign owned to conduct banking activities in Myanmar.
- The Financial Institution of Myanmar Law and the Rules 1991 and the Central Bank of Myanmar Regulations for Financial Institution 1992 are the laws which regulate the establishment and ongoing operation of financial institutions in Myanmar.

# Laws of Banking

- **The Central Bank of Myanmar Law 1990**, which established the Central Bank of Myanmar (the successor to the Union Bank of Burma) ;
- **The Myanmar Agricultural and Rural Development Bank Law 1990**, which established the Myanmar Agricultural Rural Development Bank to support the development of agricultural and rural socio-economic enterprises;
- **The Saving Bank Law, 1992** , which encourages domestic savings and the promotion and mobilization of the country's financial resources.

# Currency

National currency- KYATS

Foreign Exchange Certificate – FEC  
is issued by Central Bank of Myanmar and  
accepted by government agencies

One FEC is equal to one USD

# The Myanmar Insurance Law 1993

According to Section 11 of this Law, Myanmar Insurance undertakes the following insurance business:-

1. Life Assurance;
2. Third Party Liability Insurance;
3. General Liability Insurance;
4. Fire Insurance;
5. Marine Cargo Insurance;
6. Marine Hull
7. Aviation Insurance;
8. Engineering Insurance;
9. Comprehensive Motor Insurance;
10. Oil and Gas Insurance;

11. Cash- in- transit Insurance;
12. Cash-in- save Insurance;
13. Fidelity Insurance;
14. Travelling Insurance;
15. Personal Accident Insurance;
16. Other classes of Insurance;
17. Insurance determined by the Ministry. //

# Tax Laws

Taxes levied on Income / Profit

Income – tax --- The Income Tax Law (1974)

( Profit – tax---The Profit Tax Law (1976) repealed by Law No. 1/2011 effected from 2012-2013 Budget year applied by 1974 law)

-Flat rate of 30% Foreign Companies formed under MCA.

-35% or graduated rate of 35%-50% for non-resident foreigners

Custom duty --- Myanmar Sea Customs Act 1878  
and Land Customs Act 1924

Commercial – tax ---The Commercial Tax Law (1990)

**The Tariff Law , 1992** as amended in 2011 by amending law 3/2011

- Stamp – duty --
- The Myanmar Stamp Act (1935), as amended by Law Amending Stamp Act , Union Law No. 2/2012
- Court Fees Act (1937) as amended by SLORC LAW No. 6/1990 and the Law Amending the Court Fees Act, Union Law No. 5/2011

# Income Tax Law, 1974

The Income Tax Law applies to the following types of tax payers and the classes of income.

- (a) State economic enterprises
- (b) Co-operative societies
- (c) Foreigners and foreign organizations engaged under special permission in State sponsored enterprise
- (d) Income from salaries
- (e) Non-resident foreigners
- (f) Income earned abroad by non-resident citizens
- (g) Companies
- (h) Resident foreigners
- (i) Partnerships or joint-ventures formed between or with (a),(b),(c),(e),(g) and (h) of above.

# The Commercial Tax Law (1990)

- All enterprises with sales of taxable goods and services are required to pay Commercial tax in addition to customs duties.
- commercial tax, which is a form of sales tax is chargeable at the rate prescribed in the schedule 1-5 of the Commercial Tax Law effected in 1990.

# The Tariff Law , 1992

amended by amending law 3/2011

- The minister may, by notification in respect of goods exported from Myanmar or goods imported into Myanmar by land, sea or air \_determine the nature and type of goods, classify the quality of each goods, determine the tariff value on goods on which customs-duties are assessable and determine the tariff based upon the tariff value and reduce or enhance the tariff so determined.
- Under section 4 of this law, the Minister may determine, by notification, the tariff at a special reduced rate in respect of goods exported or imported by the border areas and may reduce or enhance the tariff so determined.

- Double Taxation Agreements
- There are DTA with few countries – UK, India, Singapore etc.

# **The Patents and Designs (Emergency Provisions ) Act 1946**

Myanmar Patents and Designs Act, 1945 was enacted as a substitute for the 1939 Act. However, the 1945 Act was never brought into force even though it has been repealed by the LawNo.4/1993. In 1946, the Patents and Designs (Emergency Provisions ) Act, Myanmar was passed which is still in force with only two sections in it. Section 2 of this Emergency Provisions Act provides that until the Myanmar Patents and Designs Act, 1945 comes into operation, the India Patents and Designs Act, 1911 shall continue to have effect in Myanmar as if notwithstanding the separation of India and Myanmar, Myanmar had continued to be a part of India. In fact, Myanmar Patents and Designs (Emergency Provisions) Act, 1946 should have been repealed together with Myanmar Patents and Designs Act, 1945.

# The Myanmar Copyright Act

If copyright in any work has been infringed, the owner of the copyright is entitled to all remedies by way of injunction or interdict, damages or accounts. In those cases, the Specific Relief Act or the Law of Tort may be applied depending on the nature of the case. However, an action for infringement of copyright is barred to commence after the expiration of three years next after the infringement.

# Science and Technology Development Law, 1994

In 1994, a new law entitled "The Science and Technology Development Law" has been enacted to cope with the changing situation and developments in the market-oriented economy and to enhance its further development. The law provides that every contract for transfer of technology must be registered and failing of it will not have a right to institute a suit based on it.

# The Television and Video Law, 1996

For infringement of copyright in television and video, there is a specific law entitled " The Television and Video Law of 1996 " which prescribes penalties for certain offences. Under section 33 of that Law, the offender of such offences as copying, distributing, hiring or exhibiting for commercial purpose a censor-certificated video tape, without the permission of the license holder , may be punished with imprisonment extending up to three years or with fine extending up to kyats 100,000 or with both. In these cases, as the penalty given is effective and deterrent and the trial of offenders is usually expeditions, the owner of the copyright may not wish to have recourse to civil action. However, the fact that the infringer has been punished under the relevant penal law is no bar to civil litigation.

# The Computer Science Development Law, 1996

As regards the protection of software piracy, no protection can be sought due to the lack of advanced technology. However, section 36 of the Computer Science Development Law, enacted in 1996 penalizes for imports or exports of any type of computer software or any information prescribed by the Myanmar Computer Science Development Council under section 6(g) of the said Law.

# The existing labor laws in Myanmar

1. Employment and Training Act, 1950
2. Employment Restriction Act, 1959
3. Employment Statistics Act, 1948
4. Factories Act, 1951
5. The Leave and Holidays Act, 1951
6. Minimum Wages Act, 1949 (Bill for new law has been issued)
7. Payment of Wages Act, 1936
8. Social Security Act, 1954 (Bill for new law is ready)
9. Shops and Establishments Act, 1951
10. Trade Disputes Act, 1929
11. Workmen's Compensation Act, 1923
12. The Law Relating to Overseas Employment 1998
13. The Labour Organisation Law, The Union Law No. 7/2011

# Transport by Sea

- Firstly, the Shipping Law of Myanmar is no stranger to the Shipping Law of other countries.
  - The Myanmar Carriage of Goods by Sea Act 1925 was enacted to give the force of law to the Hague Rules or the Convention for Unification of Certain Rules of Bill of Lading made in Brussels in 1923.
  - Bill of Lading Act 1856 is the same as English Law.
  - The Myanmar Merchant Shipping Act was promulgated in 1923 based on the British Shipping Law.
    - The registration of ships in Myanmar is governed by the Myanmar Registration of Ships Act (1841) and the Law Amending the Myanmar Registration of Ships Act in 1987 .

# Transport by Air

- Secondly, in the Air Transport Sector, Myanmar rectified the Warsaw Convention 1929 and Chicago Convention (1944).
- -The Aircraft Act of 1934 and Aircraft Rules of 1937 give effect to the navigation of aircraft. The Aircraft Rules were amended by State Law and Order Restoration Council Rules No. 1/94 to issue Air Operators' Certificates to joint ventures airlines that are incorporated in Myanmar.
- The Carriage by Air Act, 1935 governs the loss of life or damages or loss of cargo, baggage and luggage carried by air. This Act gives domestic legal effect to the Convention for the Unification of Rules Relating to International Convention for Carriage by Air ( the Warsaw Convention of 1929).

# Carriage by Land and Multimodal Transport

- Thirdly, The law of carriage by land comprises the Railway Act of 1890 and Motor Vehicle Law, 1964 etc.
- Multimodal Transport refer to a transport system operated by one carrier with more modes of transport under the control of one operator..
- Not yet Multimodal Transport Law but as a member of ASEAN, ASEAN Agreement on Multimodal Transport is bound.

# Company

- **The Myanmar Companies Act 1914**, covers the procedure aspect of company formation for all types of companies. There are some amendments but the basic principles are the same as the other Common Law Countries.
- - Company registration and permit to trade is required
- - Company management is based on Memorandum, Articles, AGM and Returns and under Common Law principles. There is no special penal provisions for corporate crime except Penal Code 1860.
- **Special Company Act 1950** is to govern together with Myanmar Companies Act , JVs are to apply. <sup>46</sup>

# Partnership

- The **Partnership Act 1932** is also Common Law rooted legislation.
- Partners are jointly and severally liable for the act of the firm S 25

# The Arbitration Act 1944

- The Arbitration Act is based upon the English Arbitration laws enacted in 1944.
- The Myanmar Arbitration Act provides for the appointment, powers and duties of arbitrators, Court supervision and enforcement of an appeal from the arbitration award.
- The following is a model of arbitration clause commonly used in commercial contracts in Myanmar.
- "In the event of any disputes arising between the parties to this agreement, which cannot be settled amicably, such dispute shall be settled in the Union of Myanmar by arbitration, through two Arbitrators, one of whom shall be appointed by the purchaser and the other by the supplier. Should the arbitrators fail to reach an agreement, then the dispute shall be referred to an umpire nominated by the arbitrators. The arbitration proceedings shall in all respects conform to the Myanmar Arbitration Act 1944 (Myanmar Act No. IV of 1944) or any subsisting statutory modification thereof.

# The Arbitration Act 1944- (2)

- Relating to the enforcement of foreign arbitral awards, Myanmar has adopted the Geneva Protocol 1923 on Arbitration clauses and the Geneva Convention 1927 on the execution of foreign arbitral awards. Protocol provides for the recognition and enforcement in Myanmar of foreign arbitral awards made in signatory countries and grants reciprocal rights for enforcement of Myanmar arbitral awards in those signatory countries.

# Land Laws

- Generally , Land in Myanmar is owned by the State
- A foreign investor can obtain right to use the land in either of the following two ways.
  - Obtaining land use right under a lease from either the government or private citizen approved by the government
  - Land use right are contributed to a joint venture by a government agency

# Conclusion

- To date, private sector in Myanmar economy is eventually developed under the guidance of new economic policy .
- The above mentioned laws are promulgated after 1988 to promote the private sector in Myanmar economy. The new laws which are designed to fruitfully create a market oriented system, and to promote, encourage, and to aid the private sector of Myanmar economy.

The old laws relating to Business are mentioned in Annexure 1 of this paper.

- Moreover, pre-independence statutory laws relating to commercial matters are applied to commercial transactions, and some of them are modified in line with present day economy. Among the pre-independence laws, the Contract Act of 1872 has the same principles that of other Common Law Countries apply relating to the Law of Contract. It's principles relating to offer the acceptance, consideration, formation, terms and breach of contract are almost the same with other countries
- Until now, there is **lacking** some important laws, such as –Competition Law, Intellectual Property law except Copyright Act though there is Common Law system of protection for IP. Arbitration Act 1944 is still dominant. Needs to sign New York Convention 1958 .

- and procedures concerning the business transaction are preferable and enabling legal manner to encourage doing of business in Myanmar economy.
- In addition, we can expect that our economic relations with other nations will develop near future, and more and more laws, such as Product Liability law, Competition law, IP protection laws and procedures are necessary for supporting this economic opportunities

Thank you  
and  
Good Luck