



INVESTING IN THE MYANMAR REAL ESTATE SECTOR

MYANMAR PRACTICE OVERVIEW

We are known for providing the ultimate in ground connectivity to our clients. We believe that specialization, along with tenacity, is necessary to achieve this. Therefore, in 2016, we ramped up our headcount and the number of our senior advisors, and we converted to a system of exclusively dedicated practice teams in Myanmar.

We have created 4 general practice teams (Corporate M&A, Banking and Finance, Licensing and Disputes) and 4 specialized teams (Energy, Telecommunications, Infrastructure, Real Estate & Construction and Taxation).

Each practice team comprises a team leader, who assists a partner to manage the team, and minimum 4 to maximum 10 advisers who are exclusively dedicated to only one team. All team members are, just like partners Edwin Vanderbruggen and Jean Loi, residents of Myanmar.

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INTRODUCTION

As Myanmar continues its rapid modernization and development, opportunities for investment in the real estate sector have grown exponentially. With a population of over 50 million, 70% of which have little to no access to modern infrastructure, Myanmar will demand large increases in investment in both the short and long term to approach the standards of its neighbors in ASEAN. Real Estate development is one of the most promising sectors for growth and this report aims to provide extensive background and information for interested foreign investors. To accomplish this, the real estate sector will be examined primarily from a legal and regulatory framework perspective.

Real estate development, will provide opportunity for investment across Myanmar in 4 primary areas: hotels, offices, residential properties and retail properties. Each has the potential for significant growth in the coming years, both in major metropolitan areas like Yangon, Mandalay and Nay Pyi Taw, as well as more rural parts of the country.

From a legal standpoint, recent growth in Myanmar has been aided by economic reforms, such as the Foreign Investment Law and Special Economic Zone Law, which have served to aid development in the real estate sector. In general, these laws, coupled with the government's plans to encourage development, have proven successful. For instance, to date, approximately US\$713.3 million has been invested in Thilawa and this figure is expected to increase significantly.

With optimism and opportunities for investing in Myanmar at their highest level in decades, foreign investors must also keep in mind the unique set of challenges posed by investment in the country. The Myanmar Government has liberalized many aspects of the economy and decentralized development. Yet, there is still significant regulatory uncertainty which has resulted, at times, in a relatively moderate pace of development.

In particular, some of the Myanmar government's policies which can be challenging for foreign investors include: government oversight that often involves numerous ministries, land lease issues and constantly evolving laws, rules and regulations. Many of these laws are still in the draft phase; some rules and regulations are also unwritten, which requires close coordination with government entities to fully understand. Going forward, clear implementation of these laws will be essential, as will the effectiveness of the government in regulating them.


The country is also facing significant hurdles due to inadequate infrastructure necessary to facilitate

continued growth in the real estate sector. This is particularly apparent outside of the major cities of Yangon, Mandalay and Nay Pyi Taw. As a result real estate development in much of the country will face challenges, which developers may be unaccustomed to.

However, the overall outlook for development in these sectors is bright and with appropriate planning, many foreign investors have already proven that Myanmar has enormous potential now and in the future.

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A construction site featuring a large tower crane in the foreground, with several tall residential buildings under construction in the background. The scene is overlaid with a blue and green gradient. In the foreground, there is a grid of rebar on a construction floor, and a concrete pump truck is visible on the right side.

"Edwin is very responsive to our requirements and has deep knowledge of the subject matter. We are very confident in his advice."

- IFLR1000

CHAPTER 1: LAND LAW IN MYANMAR

General principles of land law in Myanmar

Types of land in Myanmar

There are almost a dozen different types of land rights for citizens, each of which has its own rights and obligations. The extent of the rights of the land use right holder in relation to each type of land use right differs as per law, regulations and local practice and may even be stipulated on a case-by-case basis in a lease, a land use license or other land use right document. Below we discuss in more detail the following types of land: Freehold land, Grant land, Farm / Agricultural land, Permit / Licensed land, Leased land, Vacant / Virgin / Fallow land, and Monastery / Religious land. Depending on the type of land, a lessor will need to obtain certain approvals or follow certain procedures before a lease can be legally concluded and registered on the land in question, or before a company can apply for a construction permit (if necessary).

The main types of land classification relevant to foreign investors for the transfer of immovable property in Myanmar are:

Freehold land:

Freehold land is also known as ancestor land. Ownership by a Myanmar national is outright and there are no restrictions on the owner to lease, transfer or sell interest in land to other Myanmar nationals and Myanmar companies. Freehold land can only be taken back by the Government, for State interest. Such land may be used for any lawful purpose. Freehold land is evidenced by a title deed and may be leased, sub-leased or transferred in accordance with Myanmar law.

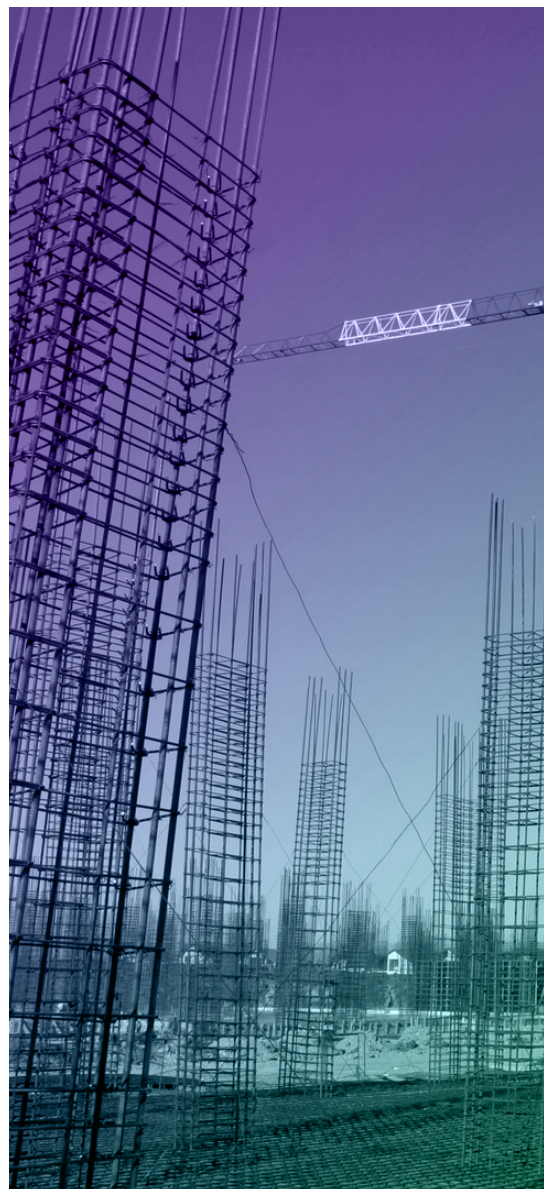
Grant land:

Grant land is the most extensive form of land use right for state land. Grant land may be used for any lawful purpose. In issuing Grant land, the government grants a party the right to occupy the land for a certain period which is explicitly spelt out in the 'Ga-yan' or grant. The lease period could range from 10 years, to 60 years to 90 years etc. which is extendible upon application. Normally, extensions are always granted. Grant land is transferable and can be inherited within certain legal restrictions. A land fee is due on grant land as a premium as an upfront payment upon signing the lease.

The holder of Grant land is free to lease, transfer, mortgage or sell his/her interest in the land to other Myanmar nationals and Myanmar companies.

Farm / Agricultural land:

Farm land and Agricultural land are very similar types of land. Both are land owned by the Government and given to a Myanmar citizen for a particular purpose. With Farm land, a citizen is only permitted to cultivate paddies. With Agricultural land, a citizen is permitted to cultivate any kind of crop. To legally obtain the right to use Farm or Agricultural land, farmers must apply for and obtain a Farm Land Work Permit (Form 7) from the Central Farmland Management Bureau



(CMFB) granting the farmers the right to use the land. Farmers must also pay land tax on Farm/Agricultural land.

If a farmer is in possession of a Farm Land Work Permit, he may lease or sub-lease the whole or a part of the land. Farm/Agricultural land may only be leased, sub-leased or transferred to a foreign company with the permission of the Government.

Permit / Licensed land:

Permit/Licensed land is land that is given by the Government to civil servants to live on and cultivate for personal use. Permit/Licensed land is neither grant land nor leased land; it also belongs to the State. Such land can be licensed to Myanmar citizens by an authorized Revenue Officer (section 3(7) Lower Burma Town and Village Lands Act, 1899).

Permit / Licensed land may only be leased, sub-leased or transferred with the permission of the local land authorities.

Government leased land:

Although technically not an actual type of land as set out by law, leases of Government land are regularly the basis of a foreign-invested project. Government leases are for land that is owned by the state and administered by a municipal or government authority. Any Government entity, such as a Union Ministry or a state or region body may have land that it is able to lease. For example, in Yangon among the authorities permitted to lease out government land are the YCDC and the Housing Board. These two bodies are part of the Yangon city municipal authority. YCDC historically was in charge of the city's upkeep while the Housing Board managed the city's housing. Now both bodies have authorization on behalf of the government, to grant leases within the confines of Yangon city. These two bodies are responsible for renewing leases already granted and also will issue new leases on a regular basis.

Leased land is to be used for the purpose stated in the lease, such as, "residential construction". Such land can only be transferred by the lessee with approval of the Government lessor, which is often granted. Further, Leased land can only be mortgaged by the lessee with approval of the Government lessor, which is often only allowed in relation to the buildings on the land in question. Government leases usually provide that a sublease is not allowed.

Vacant / Fallow / Virgin land:

Vacant/fallow/virgin land is land that has never been cultivated or has been abandoned by its owner. Such land may be used for agriculture, livestock, mining, or any other use permitted by the Central Committee for

the Management of Vacant, Fallow and Virgin Lands. This land can be leased, sub-leased, or transferred with the Cabinet's permission. MIC approval must be obtained to permit a foreign company to use vacant/fallow/virgin land for a purpose other than agriculture, livestock, mining, or the purpose originally permitted by the Government.

Monastery / Religious land:

Monastery/religious land is land that has been given by the Government to a religious entity (monastery, pagoda, church, etc.) for religious purposes. Once monastery/religious land is classified as such, its status cannot be changed, unless the Cabinet so permits.

Monastery/ religious land cannot be leased to foreign investors. A foreign company may nevertheless apply to the Ministry of Home Affairs (MoHA) to change the



purpose of monastery land in an effort to obtain permission to lease such land. With the application, the company would have to include a religious ownership document and a land tax receipt from the lessor. The MoHA would send the application to the Cabinet for review and the Cabinet would have to approve the change of purpose. According to the YCDC, the Cabinet will rarely, if ever, approve a change of purpose for monastery land.

| Category of land | Which land can be leased to foreign investors? |
|---------------------------|--|
| Freehold Land | Owner may freely lease land to a foreign investor, with approval from the cabinet and from the MIC. |
| Grant Land | Landholder may lease all or part of the land to a foreign investor, with permission from the cabinet and the MIC. |
| Farm/Agricultural Land | Landholder in possession of Form 7 (Farm Land Work Permit) may lease, sub-lease or transfer the land to a foreign company, with Government permission. To use the land for something other than paddy or crop cultivation, the landholder must obtain a change of purpose permission from the Government (Form 15). |
| Leased Land | Typically long term leases of 10/60/90 years. Lessee can lease land directly from the Government or sub-lease land if the Government lease allows it (with amendment of the lease, if necessary). |
| Permit/Licensed Land | Land may be leased, sub-leased or transferred with Government permission. Permit Land must be converted to Grant Land before it can be used for a purpose other than habitation or personal cultivation. |
| Vacant/Fallow/Virgin Land | Can be leased, sub-leased or transferred to a foreign investor only with Government permission. If the use of the land will be something other than agriculture, livestock breeding or aquaculture, mining, or another use specifically permitted by the Government, then the lessor will have to apply for a change of the purpose of the land. |
| Monastery/Religious Land | Cannot be leased, sub-leased or transferred to a foreign investor. The status of Monastery land cannot be changed. In rare cases, the Cabinet will approve a change of purpose for the land. Rule 125(a) of Notification 11/2013 prohibits foreign investors from conducting business on religious lands. |

Rights to immovable property for Myanmar nationals

Myanmar nationals (individuals and companies) are able to sell, lease, mortgage and transfer their rights to immovable property, whether it is a freehold, leasehold or Government lease, to other Myanmar nationals. These transfers include rights to apartments, condos and land.

When freehold land is transferred, the rights of the previous owner transfer to the new owner who enjoys the same rights as the previous owner.

For grant land or leased land, the new lessee will enjoy the rights as accorded to the previous owner/tenant for the duration of the period of the leasehold.

In a Government lease, the same principle applies as with grant land: ownership and the right to occupy

the property or the land will last for the duration of the period as stated in the transfer document.

Restrictions on foreign ownership of immovable property

TIPRA sets out the key restrictions for foreign ownership of real property in Myanmar. Generally, TIPRA states that foreigners cannot own any property in Myanmar. Chapter 2 of TIPRA lists the restrictions on immovable property to foreigners. The restrictions are as follows:

- A Myanmar national may not transfer immovable property to foreigners by “sale, purchase, give away, pawn, exchange or transfer by any other means”. (Section 3, TIPRA).
- A foreigner or foreign entity may not acquire immovable property by “purchase, gift, pawn,

exchange or transfer". (Section 4, TIPRA).

- A foreigner may not be granted a lease of more than one year. (Section 5, TIPRA).
- The immovable property of a foreigner who dies or departs Myanmar is scrutinized by the relevant ministry to allow for inheritance in accordance with the law or for confiscation of the property by the state. (Section 6, TIPRA).
- In the case that the immovable property is allowed to be inherited, the inheritor is to be granted an order of the Court as per the Inheritance Act. (Section 7, TIPRA).

In essence, foreigners cannot be transferred ownership or a grant of immovable property from a Myanmar national. The exception to this restriction is Section 15 of TIPRA, which states: "The provisions of this Act do not apply to companies or organizations that have relevant beneficial contracts with the state".

In 1988, the Myanmar Government published the first FIL (FIL 1988) to encourage foreign investment in Myanmar. As TIPRA and the FIL were released within the same time period, the definition of the "relevant beneficial contracts with the state" under Section 15 of TIPRA has to be viewed within the context of the FIL 1988. This section has been interpreted to mean that foreign companies can be transferred immovable property if they, as investors, have received permission to do so from the Government. The relevant authority in Myanmar for foreign investment is the MIC.

Therefore, foreign companies established in Myanmar and issued a permit by the MIC can acquire certain rights to immovable property (see below), but may not own immovable property.

The current laws and regulations, including the recently enacted MIL, allow foreign nationals and companies to obtain rights to immovable property, directly or indirectly in the following ways;

- Government leases and sub-leases;
- Build-Operate-Transfer agreement (BOT); or
- Leasing or sub-leasing from a private party

Obtaining land rights further to leases or subleases of Government land involves, first, negotiating with individual land rights holders on a case-by-case basis. Then, approval for the arrangement must be sought from either the local, state or regional authorities. Finally, the MIC must approve the land right acquisition arrangement. As stated above, there are almost a dozen different land classifications in Myanmar and each different land type comes with a


different 'land use'. A lot of land, such as Agricultural land, will not be suitable for commercial use unless an application is made to the relevant authorities to change the land use (see below).

Foreigners can lease immovable property from a private party, a Myanmar national, for a maximum of one year, renewable with agreement from the lessor. The law is silent on whether there is a limit on the number of years the lease may be renewed. Based on our experience, the one year leases have been renewed on a regular basis with agreement from the lessor.

Some foreign companies and individuals choose to opt for a nominee structure when purchasing property in Myanmar, however this form is not recommended as there is a high risk of conflict that may lead to litigation concerning the ownership of the property between the parties in the future.



| Name of Law | Applicable laws for investment in real estate |
|---|--|
| Foreign Investment Law 2012 Myanmar Investment Law 2016 | Provides that a company registered under MIL FIL needs to submit the investment proposal to MIC for MIC Permit/MIC Approval Order, which provides a number of advantages, including the ability to import into Myanmar and tax incentives; |
| Notification 26/2016 of 21 March 2016 Notification 15/2017 | Provides lists of prohibited activities, activities which require local joint venture partner, activities which require local joint venture partner and remarks of specific Ministries, activities which require joint venture with specified Ministries and/or subject to other conditions; |
| Myanmar Companies Act 1914 | the Act that governs the formation of companies; |
| Foreign Exchange Management Law 2012,0 | The Law governs the financing of projects owned by foreign lenders and provides additional guidance on foreign exchange transaction within Myanmar; |
| Income Tax Law 1974 | The Law provides that, depending on the basis of residence, non-residence and the nature of the business, the income tax rates vary; |
| Commercial Tax Law 1990 | CT is levied on goods produced within Myanmar, services rendered within Myanmar and imported goods; |
| The Tariff Law of 1992 | Administers the custom tariff rates; |
| Myanmar Stamp Act of 1899 | Stamp duty is payable on execution of instruments, including lease agreements and transfer of property; |
| Transfer of Property Act 1882 | The Act relates to the sale and lease of property; |
| Transfer of Immovable Property Restriction Act 19847 | The Act lists the restrictions on immovable property to foreigners; |
| Farmland Law of 20121 | sets forth the law on the use and transfer of farm land in Myanmar; |
| Farmland Rules of 2012 | sets forth the rules for obtaining a permit to use farm land in Myanmar; |
| Vacant, Fallow and Virgin Lands Management Law of 2012 | sets forth the law on the use and transfer of vacant, fallow and virgin lands in Myanmar; |
| Vacant, Fallow and Virgin Lands Management Rules of 2012 | sets forth the rules for obtaining permission to use vacant, fallow and virgin lands in Myanmar; |
| Upper Burma Land and Revenue Regulation of 1889 | sets forth the land laws pertaining to Upper Burma; |
| Lower Burma Town and Village Lands Act of 1899 | sets forth the land laws pertaining to Lower Burma; |
| Registration Act of 1908 | The Act states the type of documents compulsory and optional for registration; |
| Myanmar Contract Act of 1872 | The Act regulates and governs the general rules of a contract. Business transactions in Myanmar are done by way of execution of a contract and thus creating contractual obligations and liabilities between the contracting parties; |
| Environmental Conservation Law of 30 March 2012 | The Law lists broad principles and empowers the Ministry of Environmental Conservation and Forestry to enforce environmental standards, environmental conservation, management in urban areas, conservation of natural and cultural resources, and the process for businesses to apply for permission to engage in an enterprise that has the potential to damage the environment, prohibitions, offences and punishments; |
| Notification 616/2015 | This Notification lists the procedures for applying for an EIA, including the categories of projects which require an IEE or EIA/EMP; |
| Notification 615/2015 | This Notification provides the standards and emission guidelines for IEE/EIA projects. |
| Sea Custom Act 1978 | |
| Land Custom Act 1924 | The Act regulates and governs customs values |
| The Arbitration Act of 1944 2016 | Relates to local arbitration within Myanmar |



".. very good in terms of response times, industry knowledge, business understanding and the level of advice provided."

- Legal 500

CHAPTER 2: LICENSING OF FOREIGN INVESTMENT IN REAL ESTATE

The parties must identify and secure the land for the project to lease from the Government or private party. A copy of any land lease agreement (either with the Government or private party) must be submitted for approval to the MIC as part of the application process.

The MIC will verify already at an early stage whether the investor has the right to use the land he plans to use. Whether it's a plot of land you plan to build something on, a warehouse you sublease, or a terrain you will use as a plantation, the MIC will verify the legal merits of your use, which includes the lease agreement, the master lease (if any) and the land right holder's title (for lack of a better word) documentation.

For the investor to check everything in advance sounds straightforward enough, but it isn't. Land due diligence is one of the toughest things to do in Myanmar, for various reasons. First of all, the land law is (mostly) quite dated, it is scattered into many different laws and regulations, and there are massive gaps between theory and practice. Secondly, land owners are often, for one reason or another, reluctant to produce copies of their documents for inspection, which does not make things easier. Finally, there may in some cases be misunderstandings of laws and regulations by local land owners, which come to the surface when the MIC gets involved. For example, when a building had no construction permit, or no stamp duty has been paid on a lease this might come up in the course of the MIC's assessment.

In a number of cases, land right holders may be honestly convinced that it is possible to build a factory on their land, or to sublease the land in question to a third party. If the investor went ahead based on that representation, and it turns out to be erroneous, the MIC application may get stuck for quite a while.

Forms of investment allowed for foreign investors

Foreign investors (which includes Myanmar registered companies which have one or more foreign shareholders, may not own immovable property. They are however allowed to hold land through a long term lease (for more than one year)

provided it is "engaged in a contract benefiting the state as per section 15 [TIPRA]". This condition is deemed fulfilled, in practice with respect to privately held land, when the foreign invested company has received approval from the MIC for the project in question. Foreign investors wishing to undertake a real estate development project will need approval from the investment regulator (MIC) and will need to obtain an MIC Permit, or a lighter form of an MIC Permit called an MIC Approval Order. Alternatively, the investor will need specific permission from the Government in another form.

Even with approval from the MIC, foreigners and their Myanmar-registered companies cannot own freehold or granted land or buildings. There is an exception for registered condominium projects, in which foreigners may own units not exceeding 40 percent of the private space.

Under the MIL, foreign companies can operate as an investor in a variety of sectors, either as a 100 percent foreign owned entity, as a joint venture with a Myanmar national or a company, or under a contract (for example a BOT contract with the Government).

Notification 15/2017 features several activities which are related to real estate development. For these activities, a JV would be required. Finally, there are some real estate development activities for which no JV is required, according to current interpretation by the MIC of Notification 15/2017. Accordingly, development, sales and lease of residential apartments and condominiums must be done in a JV with a local investor. Notification 15/2017 requires Ministry of Construction approval for investments in the following areas:

- 100 Acres and above urban development projects;
- Urban Redevelopment which is above 4 acres of land in the capital of the Region or State excluding Nay Pyi Taw, Yangon and Mandalay; and
- Development of new city/town.

Investment licensing

| 2016 MIL Incentives | | |
|---------------------|---|--|
| 1. | Corporate income tax holiday | MIC may or may not grant an income tax holiday of 3, 5 or 7 years depending on project site. |
| 2. | Reinvestment | Profit reinvested within 1 year is exempt from income. |
| 3. | Depreciation | Accelerated depreciation allowed from the date of commercial operation. |
| 4. | R&D deduction | Right to deduct from assessable income. |
| 5. | Imported machinery, equipment and materials | Exemption from CD and CT during construction period. |
| 6. | Raw materials | Exempt from customs and tax, but only if enterprises re-exports its whole production. |
| 7. | Refund of tax and duty in case of export | When goods are imported, duty and tax paid on the import of the raw materials and semi-finished goods can be refunded. |
| 8. | Expansion of the project | Exempt from customs and tax. |

MIC Permit submission procedures for a real estate JV

An application for an MIC Permit or an MIC Approval Order can only be approved once the land rights (lease, sub-lease or BOT) have been arranged, as evidenced by a draft lease or a letter of confirmation from the land right owner. The MIL provides for the criteria under which a project requires an MIC Permit rather than an Approval Order. An MIC Permit will be required for investments which are large and considered to be strategic, whereas an expedited Permit can be used for smaller projects which seek to avail themselves to the incentives of the MIL.

Where a new JV Co is formed under the MIL by a Myanmar-owned company with a foreign partner, the submission is accompanied by the final JV Agreement between the Myanmar partner and the foreign investor.

Where the Myanmar partner was already granted this investment license, it is possible to acquire shares in the licensee, subject to obtaining MIC approval, which may be obtained more expeditiously than making a fresh MIC proposal, but which in practice will require a 'conversion' of the company with DICA, from a wholly Myanmar-owned company to a foreign company.

The approval process will in theory be completed in approximately 90 days from submission of the MIC proposal until the issue of the MIC Permit. However, for real estate projects 4 to 5 months is more realistic. An Approval Order may be secured in a much shorter period.

The table below summarizes the step-by-step process of the procurement of an MIC Permit:

| Steps | Actions | Timing |
|-------|--|---------|
| 1 | MIC permit application is filed | Day 1 |
| 2 | Attend Proposal Assessment Team (PAT) meeting | Day 30 |
| 3 | MIC seeks feedback from MOF, States/Regions, AGO and IRD | Day 60 |
| 4 | Proposal goes to MIC member meeting | Day 90 |
| 5 | Receive MIC permit | Day 110 |

A photograph of a construction site, likely for a high-rise building. The image is dominated by a large, complex metal crane structure in the upper half, with a concrete bucket suspended from it. Below the crane, several vertical columns of rebar (steel reinforcement) are visible, some with concrete forms around them. The scene is filled with scaffolding and structural elements. The entire image has a color gradient, transitioning from a purple hue at the top to a greenish-blue at the bottom. The text is overlaid on the upper left portion of the image.

*"...highly praised by peers and clients alike as
a seasoned and informed professional."*

- Asialaw

CHAPTER 3: CONDOMINIUM LAW

The Condominium Law (2016) was enacted on 29 January 2016. The provisions of the law are general, lack certain specifics regarding the process of registering a condominium project, and as of the date of this Report, the law is not supported by any regulation or notification.

VDB Loi has recently been working with the relevant government authorities in order to develop the regulations under the Condominium Law. We anticipate the Rules to be enacted in the near future, as the final draft is currently being considered by the Attorney General's Office.

Two striking features of the Condominium Law are as follows: first, the project land must be transferred absolutely to the co-owners, and therefore the use of BOT or government lease land for a condominium project is likely not possible; and secondly, 40 percent of the private space may be sold to and purchased by foreigners.

The legal process for having a non-built project registered as a condominium under the law is as follows:

- **Developer license:** The developer must apply for a developer license to the applicable Region or State "Management Committee", which will be constituted under the law for the purposes of administering the law. According to our discussions with the Ministry of Construction, obtaining this license is one of the first steps in the process and comes before any actions relating to the land (see below).
- **Developer minimum capital:** The law provides that a minimum capital may be prescribed, yet at this time, a quantum has not been provided.
- **Land registration/conversion:** The project site land must be 'converted' to 'co-owned' land, which will require a legal transfer from the owner, to be registered at the ORD.
- **Construction permit.** The developer must apply to the Management Committee for a construction permit. The approval of other authorities would be required, including the relevant CDC, fire department, and possibility the Regional/State government and other subcommittees (e.g., High-Rise Inspection Committee, Committee for Quality Control of High Rise, in the case of a high-rise in Yangon).

- **Final submission to Management Committee.** After the above approvals have been obtained, the developer would submit the entire file back to the Management Committee, for its final approval.
- **Begin construction.**
- **Pre-sales:** With respect to 'off-plan' sales, the law states simply that the developer may, "... pre-sell units before the construction of the condominium is completed." Based on our discussions with Ministry of Construction, units can be presold after construction plans have



been approved by Management Committee, but there is a preference for sales only after groundbreaking. Also, it is expected that future regulations will limit the percentage of pre-sales.

- **Foreign buyers:** Foreigners may hold 40 percent of total private space. In order to purchase a unit, foreign buyers must remit foreign currency from abroad into Myanmar. It is expected that, prior to a transfer of a unit to a foreign buyer being registered, the foreign buyer would need to produce an official bank transfer in the buyer's name, evidencing a transfer of foreign currency into Myanmar, although this is not expressly stated in the law.
- **Registration of building.** Based on our discussions with the Ministry of Construction, we understand that after construction is completed, the building and individual units will be registered with the Ministry of Construction. According to the law, the Ministry of Construction would appoint a "Registrar" to administer the registration of condominiums and the registration and transfers of condominium units.
- **Unit registration certificates.** As part of the registration of the condominium building, the Registrar would issue 'unit registration certificates' for each registered unit. Those unit registration certificates would then be issued or transferred to the end-buyers. The usual requirements in terms of stamp duty and registration would apply to the sale/transfer of condominium units, and in addition, a notice must be given to the condominium association prior to future sale of units. Strict fines apply for late registration.
- **Management of common areas:** The law provides for the establishment of an "Association" and "Executive Committee" for each condominium project, in order to enact condominium regulations and manage and maintain the common areas of that project. ■

OUR PARTNERS



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Jean is one of the region's most experienced tax and regulatory specialists with more than 12 years of experience in Indochina, Myanmar and Singapore.

She has advised on a large number of project transactions and tax disputes in the specialties of structuring, power plant projects and oil & gas.

As the managing partner of VDB Loi, Jean has extensive experience with projects related to the market entries of companies in the infrastructure, telecommunications and financial services industries in the region, as well as with supply chains. She lives in Yangon.



Edwin Vanderbruggen
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Edwin is the senior partner of VDB Loi and a leading foreign legal advisor living in Myanmar since 2012. A frequent advisor to the Government on transactions and privatizations in energy, transportation and telecom, he is widely recognized for his "vast knowledge" (Legal 500) and his ability "to get difficult things through the bureaucracy" (Chambers, 2016). He advised international financial institutions on their largest Myanmar transactions so far, oil and gas supermajors, a greenfield multi-billion US\$ telecom project and the Japanese Government on the Thilawa SEZ. He assisted two newly licensed foreign banks setup in Myanmar, acted for the sponsor of an 800MUS\$ urban infrastructure PPP project and worked on 5 out of 7 power deals inked in 2016.

*"...very good commercial
understanding of Myanmar."
- Chambers and Partners*



CHAPTER 4: BOT PROJECTS

The Government actively promotes the development of real estate projects on Government land through a BOT system. Under such contract, obviously, the foreign investor constructs a building on Government land, and operates that building for a period of years, depending on the case. The investor will realize the revenue derived from the building, possibly with a Government share as a royalty or annual lease fee. In that structure, the foreign investor would setup a 100% foreign owned Myanmar company to hold the project, or a JV Co. After the expiration of the contract, the construction is transferred to the Government.

The BOT structure is common for hotels, office buildings, commercial buildings and conference centers, as well as for mixed use projects on Government land.

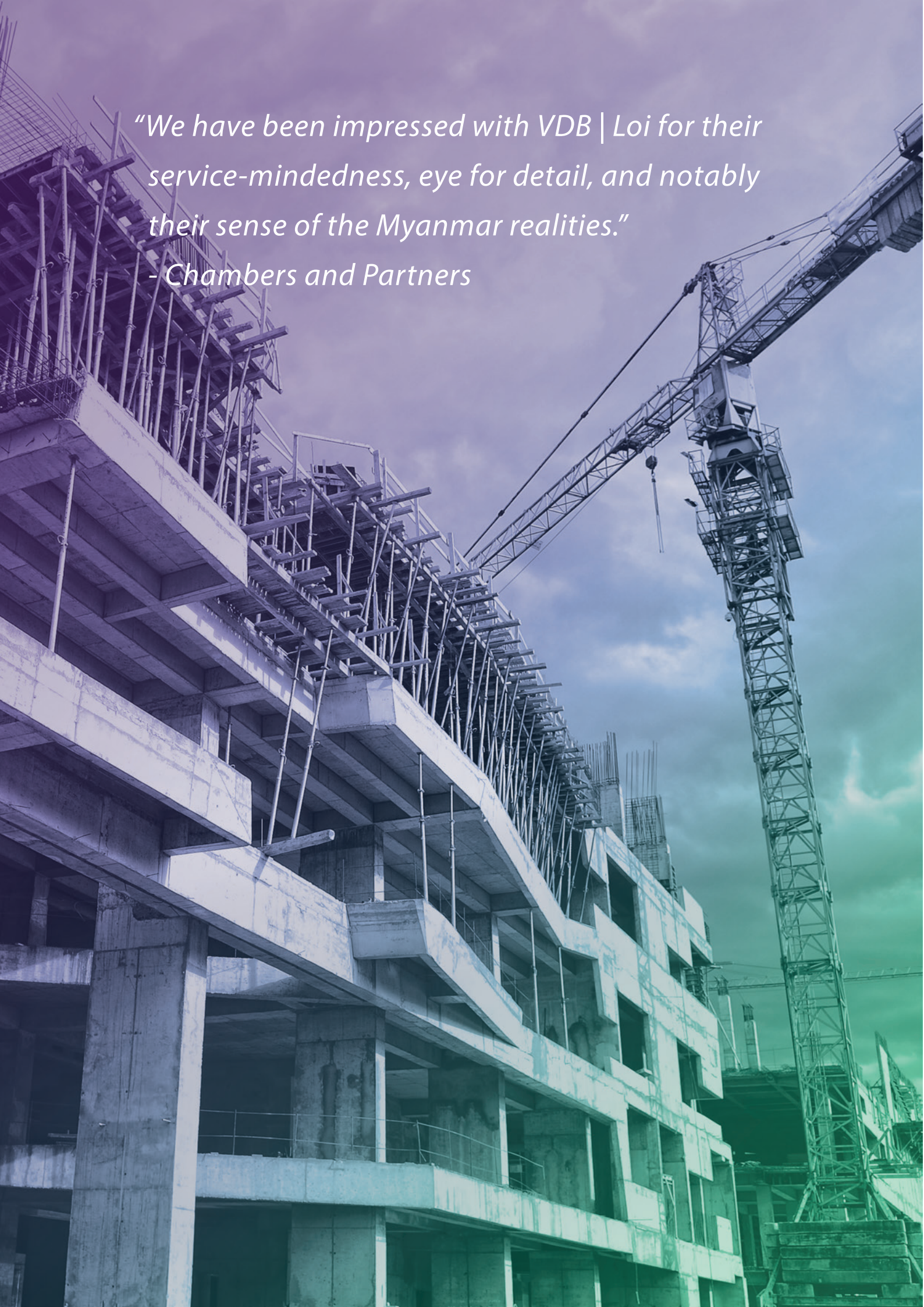
The terms of BOT contracts will of course vary from case to case, and from Ministry to Ministry. Below we point out some of the more common terms.

| BOT Contract Terms | |
|---|---|
| Issue | Term |
| Structure | The contract states that the investor will make all investments and expenses to construct the building. |
| Upfront payment "Premium" (payment terms) | Premium to be paid, schedule of payment. |
| Regular Government fee or royalty | Annual or periodical revenue sharing for the Government, which can also be calculated as a US\$ per built surface, depending on the case. |
| No sub-lease allowed | The contract will usually state that the investor must use the land for the specific purpose of the BOT project. Sub-leases are only allowed with the permission of the land owner. |
| Taxes, fees | The investor is required to pay all applicable taxes and land use fees. |
| Construct only with approval | The investor must submit a construction plan for approval by the land owner. Any amendments to the plan must be approved in advance. The investor must respect city planning and zoning regulations. |
| Who owns the additional construction? | The contract may or may not have clear clauses on legal title to buildings for the duration of the contract. |
| Environmental issues | For projects of a certain size, the contract will normally state that the investor must prepare an Environmental Impact Assessment and must adhere to regulations on environmental protection. |
| Term | The term is agreed in common accord between the land owner and the investor, usually between 15-30 years. Note that under the FILMIL, a 50 year period would normally be required (plus two 10-year extension). |
| Extensions of initial period | Often, BOT contracts provide extensions subject to the discretion of the Government in following of lease agreements. |

The Government can also decide to lease land directly to a foreign owned company, even a 100% foreign owned entity. In practice this is rare, because there is only very little land that is suitable for real estate projects which is not already leased to Myanmar citizens or companies. ■

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CHAPTER 5: CONSTRUCTION PERMITS AND CHANGE OF LAND USE

How to obtain construction permits in Yangon?

The permission to erect a structure based on a submitted plan or design is handled by the Engineering Department of the relevant State, Region or CDC. To apply for a construction permit in Yangon, it is relevant whether the intended project will be a high-rise (nine storeys or more) or non-high-rise structure. Kindly find below a high-level summary of the steps to obtain a construction permit in Yangon based on practice as of the date of this Report, followed by a more detailed description of the process and documents required:

| | Steps | High Rise (9+ Storeys) | Non-high Rise |
|----|---|------------------------|---------------|
| A. | Fire Department <ul style="list-style-type: none"> Submit documents to Fire Department If successful, Fire Department will issue Fire Safety permit | Necessary | Necessary |
| B. | High-Rise Building Inspection Committee (HIC) <ul style="list-style-type: none"> Submit documents to HIC If successful, HIC will request recommendation letter from CQHP and YR | Necessary | Not necessary |
| C. | Committee for Quality Control of High-Rise Building Projects Construction (CQHP) <ul style="list-style-type: none"> Submit new documents to CQHP CQHP will conduct independent tests (pile loading, foundation, structure calculation, etc.) If successful, CQHP will issue "Pile Load Test Permit", "Foundation Permit", and "Superstructure Permit", in that order; and CQHP will issue recommendation letter to HIC and YCDC along the aforesaid permits | Necessary | Not necessary |
| D. | Yangon Region (YR) <ul style="list-style-type: none"> YR will review the documents submitted to HIC If successful, YR will issue recommendation letter to HIC and YCDC | Necessary | Not necessary |
| E. | Yangon City Development Committee (YCDC) <ul style="list-style-type: none"> YCDC will review all documents and conduct site visits and independent testing Documents include neighbor consents and approval of relevant Ward Administration Office (these consents/ approvals can be sought at beginning of process) <i>If successful, YCDC will issue final construction permit</i> | Necessary | Necessary |

Change of land use

Depending on the particular type of land, the lessor will have to apply for a change of purpose of the land before he can lease the land to a foreign-owned company. This is most notably the case for Farm / Agricultural land, which is land specifically designated for paddy or crop cultivation. Farm / Agricultural land cannot be used for any purpose other than paddy or crop cultivation, unless the purpose of the land is changed. Similarly, Permit / Licensed land cannot be sub-leased until the land has been converted into Grant land, unless approvals are obtained from the Permit/License issuer.

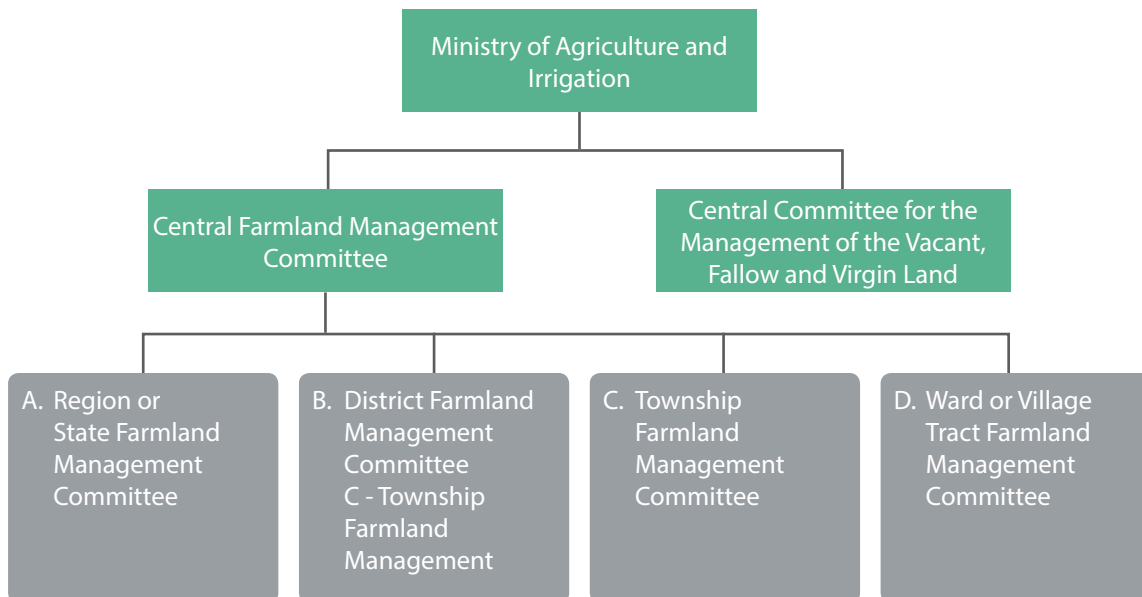
The Farmland Law and Farmland Rules set forth the procedures that are required to obtain permission to use Farm / Agricultural land, as well as permission to change the purpose of such land. To obtain legal permission to use Farm / Agricultural land, a farmer must apply to the relevant village or tract farmland management committee for a Farmer's Certificate (also called Form 7).

If the farmer then wishes to change the purpose of the land, then the farmer must apply to the township department office for permission to change the purpose of the land. The farmer must specify the purpose for which he wishes to use the land.

If the holder of Permit / Licensed land wishes to convert the land to Grant land, the land holder must apply to his regional or local CDC or other land authority such as DUHD. When approved, the applicant will receive a Grant land slip. This slip is proof that the Permit / Licensed land has been converted into Grant land.

A number of ministries, committees and other interested parties can be involved in the process such as:

- Ministry of Agriculture and Irrigation
- Central Farmland Management Committee
- Region or State Farmland Management Committee
- District Farmland Management Committee
- Township Farmland Management Committee
- Ward or Village Tract Farmland Management Committee
- Central Committee for the Management of the Vacant , Fallow and Virgin Land
- Deed Registration Office (DRO)
- Township Internal Revenue Department
- Township Settlement and Land Record Department (TSLRD or TLR)
- City Development Committee (YCDC, MCDC, NCDC)
- Housing Board (HB) ■



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CHAPTER 6: ENVIRONMENTAL LAW AND REGULATION

Initial Environmental Examination (IEE), Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP)

The Ministry of Natural Resources and Environmental Conservation and Forestry, formerly the Ministry of Environmental Conservation and Forestry (MNREC) is primarily responsible for assessing an investor's compliance with Myanmar's environmental law. The (MNREC) was responsible for drafting the current Environmental Conservation Law and it was passed by Parliament in 2012, as well as Notification 616/2015 (Environmental Impact Procedures, based on IFC model). The central goal of the law is to safeguard the nation's natural resources for the benefit of present and future generations. Annex 1 of Notification 616/2015 1 sets out projects which presumptively require IEE or EIA/EMP.

The MNREC is part of the MIC panel and will be present in Proposal Assessment Team (PAT) meetings. For a project to proceed, a letter of non-objection must be obtained from the MNREC. This indicates that the Ministry is comfortable with an organization's planning and level of compliance in relation to environmental concerns. It is important to note that, despite Notification 616/2015, in practice there are cases where an EIA is required, despite not being specified under Annex 1 of Notification 616/2015. The process and guidelines outlined in this briefing are based on our experience with MIC Permit applications. We believe what follows is the best way for investors to avoid problems related to environmental concerns during the application process.

The MIL also identifies environmental protection as a fundamental requirement of foreign investors, where it notes that the objectives of the MIL are to develop responsible business entities that do not harm the environment or society (Art 3(a)). The MIL also notes that investments that have the potential to seriously degrade the environment and ecosystem are prohibited (Art 41(e)).

For investors, the first step of this process is to review the lists at Annex 1 of Notification 616/2015, which dictate when an IEE or EIA/AMP needs to be conducted based on the type of the activity and scale of the activity.

The IEE is a "light" version of the EIA. If only an IEE is initially required, the MIC and MNREC will determine

if an EIA needs to be completed after the IEE is submitted. An EMP must be provided with both the IEE and EIA.

There are a number categories of projects for which an IEE or an EIA is required. When an EIA is required, an IEE does not need to be conducted beforehand. These categories can be found in Annex 1 of Notification 616/2015.

For example, item 121 of Annex 1 applies to "tourism and hospitality development", and requires an IEE for projects with 80 or more, but less than 200 rooms; and an EIA for projects having 200 or more rooms.



Requirements for IEE

The IEE is a relatively straightforward part of the MIC Permit application. An IEE report may be prepared by an outside expert, a third party or prepared internally if an expert is available. While this report can be time consuming, in our experience, it can be used concurrently to gain a better understanding of the challenges investors will face conducting business in Myanmar and a clearer view of the opportunities as well.

There are a number of requirements for the information an IEE must contain. The most important information to provide is a detailed account and summary of the project, analysis and description of possible adverse environment effects (including maps, aerial and satellite photos) and proposed measures to minimize any potential environmental effects of the project.

Upon submission of the IEE, investors should expect to hear back quickly from the MNRE and MIC as to whether an EIA is required for the project.

Requirements for EIA

An EIA is a more in-depth study of the impact of a proposed project or business on the physical, biological and socioeconomic environment. This is the "heavy" version of the IEE. An EIA must be completed for any project, business or activity that is deemed "likely to have a significant impact or change on the environment." This includes Annex 1 of Notification 616/2015 but is not limited to only the type of projects listed there. Ultimately, it is up to the discretion of the MIC and MNRE to decide if an EIA needs to be done for any project.

The MNRE requires that the EIA be conducted by a qualified third party licensed by the Environmental Conservation Department (ECD). The ECD has created a list of companies it suggests using, based on previous MIC applications, known as the EIA referral list. This list does not indicate that a company is licensed to conduct EIAs but it is indicative of companies which have had success in the past drafting EIAs.

In addition to the elements found in an IEE the EIA needs to contain alternatives to the proposed project, policies, applicable laws, organizational framework, methodology for the EIA, a description of public the public negotiations and comment process and a Social Impact Assessment.

It is important to note that it is possible to be granted an MIC Permit even if the EIA is not finished due to time constraints. This is left to the discretion of the MONREC based on their level of comfort with a proposal.

Requirements for EMP

The EMP is comprised of a broad overview of the project and a summary of activities designed to reduce the adverse environmental impact of the project, and will accompany the EIA. A well designed EMP will include allocation of funds and duties, summary measures taken to reduce adverse environmental effects, management and monitoring proposals for each stage of the project including termination and post-termination of work.

The EMP also needs to include comprehensive sub programs for managing and monitoring these sectors: air quality, water quality, waste, sound, smell, chemical substance, soil erosion, biodiversity, health and safety for the workplace and society, cultural heritage, employment and training. Sub programs must also be created for each location or workplace. This is one of the more time consuming aspects of the process as it can become quite complicated depending on the number of locations. ■



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CHAPTER 7: FINANCING AND SECURITY

Legal framework of lending and security

The MIC has the authority to make a case-by-case evaluation on the ability of foreign investors to provide security over land and buildings pursuant to the MIL which creates an onus on investors to notify the MIC. The MIC will facilitate the international financing of investment projects that it wishes to promote. Condition number 3 may require some further interpretation. Commercial lenders are generally not in the position to continue with the investment project, at least not without the intervention of a third party. In practice, we have chosen to submit the entire security package to the MIC for review and approval, and not just the security on land and buildings.

The approval of CBM is also required, and according to current practice, MIC approval cannot be obtained unless CBM approval is first obtained, although CBM approval does not necessarily guarantee MIC approval.

Mortgage on immovable property

Myanmar law recognizes six types of mortgages on immovable property, namely the simple mortgage, mortgage by conditional sale, usufructuary mortgage, English mortgage, mortgage by deposit of title deeds and the anomalous mortgage. Of worth noting are the:

- *English mortgage*: created by a deed that must be signed by the mortgagor and mortgagee, stamped with stamp duty (see comments on stamp duty below) and registered with the ORD, and, if the mortgagor is a company, also registered with the CRO. While the process and costs of perfecting an English mortgage are somewhat onerous at current, the advantage of the English mortgage is that, if drafted correctly, the English mortgage can be enforced without having to obtain a court order, and in addition, a receiver may be appointed if specified in the deed.
- *Mortgage by deposit of title deed* (“equitable mortgage”): created simply by the mortgagor providing to the mortgagee possession of the documents of title to the immovable property, with the intention of creating a mortgage. No mortgage deed is required, although the borrower and lender would generally each execute separate and independent documents acknowledging the deposit/receipt of title

deed (nominal stamp duty would apply). While perfecting an equitable mortgage is less onerous than perfecting an English mortgage, the disadvantage of the equitable mortgage is that it generally necessary to obtain a court order to enforce the same. Also, although it is not necessary to register with the ORD, it is necessary to register with the CRO, if the mortgagor is a company.

With respect to the English mortgage deed, stamp duty applies in case there is possession by the lender. However, the net amount of stamp duty can be mitigated significantly by using careful structuring and drafting methods, as is explained below.



In the case of a foreign investor/borrower, its rights in immovable property will most likely come in the form of a long-term lease or BOT arrangement. Actually, when investors enter into a BOT with the government, the contractual framework generally includes a concession and a long-term land lease. In either case, it should be noted that under Myanmar law, a lease is considered an immovable property and the lease itself may be mortgaged. In practice, almost all lease agreements, whether the lessor is a private party or the government, contain a requirement that any mortgage, sublease or assignment can only occur with the consent of the lessor.

A major issue in actual cases is whether the land right holder has the right to mortgage this particular type of land under the land law that corresponds with the land in question. The right to mortgage a property depends of the provisions of one of a dozen land laws. For example the Vacant, Fallow and Virgin Land Act provides that cabinet permission is required to create a mortgage on land that resorts under this category . Needless to say that the due diligence should focus on this issue as early as possible.

A further complicating factor is that foreigners are not allowed to “acquire immovable property by way of purchase, gift, mortgage, exchange or transfer” without special Government permission, and in practice a foreign lender likely cannot be registered as a mortgagee. A practice has developed in Myanmar of the offshore lender engaging an onshore security agent to hold its interests – a practice which has not been objected to by the MIC and CBM in major finance transactions.

Assignment

An assignment is where one party (the assignor) transfers or agrees to transfer its property or contractual or other rights to another party (the assignee), usually by a deed of assignment which must be stamped but not necessarily registered. The rights of an investor under a lease agreement and/or BOT may assigned to the lender or security agent, as an alternative to, or as an extra layer of protection to a mortgage of the lease.

In addition to the rights under a lease agreement, a developer could also assign other contractual rights, for example, the contractual rights of the developer under SPAs with end-buyers, including the rights to receive progress payments in the case of pre-sales. Assignment is also possible with respect to insurance contracts and EPC contracts.

Fixed and/or floating charge

A charge can be taken over receivables, project equipment, bank accounts, intellectual property rights, or any other movable property, whether

tangible or intangible. There are two forms of charge under Myanmar law:

- *Fixed charge:* Such a charge is against a specific clearly identifiable and defined property. The property under charge is identified at the time the charge is created. The nature and identity of the property does not change during the existence of the charge. The charger can transfer the property charged only after first paying the debt to the chargee.
- *Floating charge:* A floating charge covers property of a circulating or fluctuating nature, such as stock-in-trade, accounts receivable, etc., which would be crystallized on enforcement.



A charge is created by the parties signing a charge deed, which must be stamped with stamp duty and registered with the CRO. Stamp duty is based on 1.5% of the secured amount.

Pledge

A pledge of goods (called a “pawn” under Myanmar law) is where possession of the goods is handed over to the lender or security agent in order to secure payment, and if the borrower defaults, then the lender may take over the goods and sell them in order to satisfy the debt. As possession is provided to the lender/security agent from the onset, enforcement of a pledge ordinarily does not require court intervention.

Pledges are often created over shares in a company. In order to perfect a share pledge, the pledgee must take possession of original share certificates, and it is prudent for the lender/pledgee to take possession of all documents necessary to actually effect the shares transfer, including undated share transfer forms signed and stamped (stamp duty of 0.3% of the value of shares), undated board and shareholder resolutions approving the transfer, undated cover letter to DICA, amongst other documents. The pledge deed itself is subject to stamp duty of 0.065%. No registration with the CRO is required.

Hypothecation

A hypothecation (“hypo”) can be described as a hybrid between a charge and pledge. It applies to movable property and involves a constructive transfer of possession, although the goods remain with the obligator. There are often stamp duty benefits to using a hypo and therefore in certain cases, it is beneficial to take a hypo versus a charge.

Guarantee

Although not actually a form of security, guarantees do provide contractual comforts to the lender. There are few restrictions on providing guarantees in Myanmar, and guarantees can be made by either individuals or corporate entities. In the case of a corporate entity, the ability to provide guarantees should be expressly provided for as an objective of the company (in the memorandum of association of that company), otherwise the guarantee could be void. Also, if the terms of the loan are amended (including written waivers, or written permission to deviate from the terms of the underlying loan,

for instance, to delay payment or release security), then the guarantor needs to consent to the same in writing, otherwise the guarantee will likely be deemed as terminated.

Stamp duty

As noted above, stamp duty applies to the majority of the security documents. The Myanmar Stamp Act was enacted in 1899 and was obviously not crafted for modern financing transactions. As a result, a loan and security package may be interpreted differently depending on the responsible revenue collector, and indeed a loan agreement may be subject to a nominal rate of 300 – 150,000 MMK, or alternatively deemed to be a “bond” and therefore subject to stamp duty of 0.5% of the loan. As noted above, security documents such as a charge or mortgage maybe subject to rates as high as 4pc of the secured amount. Fortunately our firm has extensive experience applying the Stamp Act to modern finance transactions, and have been able to significantly mitigate the stamp duty on finance transactions using sensible drafting and structuring methods.

| | Assets/Right | Types of Security |
|----|--|--------------------------|
| 1. | Land lease/BOT | Mortgage |
| | | Assignment |
| 2. | Buildings | Mortgage |
| | | Charge |
| 3. | Equipment and other goods | Charge |
| 4. | Bank account | Charge or assignment |
| 5. | Contract rights, book debts/ receivables | Assignment |
| | | Charge |
| 6. | EPC contract | Assignment |
| | | Charge |
| 7. | Insurance policy | Charge |
| 8. | Shares | Pledge |
| | | Charge |

Tax implications of financing

With respect to commercial lenders, it is to be noted that there is no withholding tax on interest paid to domestic recipients. However, a 15% withholding

tax applies to payments of interest to non-residents. There is no tax deduction on the remittance of capital reimbursements. The 15% withholding tax rate is reduced to 10% under a number of DTAs, and even to 8% under the DTA with Singapore (if lenders are licensed banks).

The corporate income tax (the common rate is 25% for corporations) contains general rules on the limitation of the deductibility of expenses, including interest expenses, which need to be taken into account for tax planning purposes.

The table below sets out the withholding tax on interest and for those countries with which Myanmar has a DTA.

| Withholding tax on interest paid to non-residents | |
|---|-----------|
| No DTA | 15% |
| UK | No rule |
| India | 10% |
| South Korea | 10% |
| Malaysia | 10% |
| Thailand | 10% |
| Vietnam | 10% |
| Singapore | 10% or 8% |

Stamp duty is payable on execution of instruments, including loan agreements. Refer to our discussion of stamp duty in the previous section.

Criteria for offshore loan

CBM recently published the Criteria for Offshore Loan ("Criteria"). A resident, who wants to seek an offshore loan, to get the approval of the Central Bank of Myanmar may apply directly or through Myanmar Investment Commission to the Central Bank of Myanmar by the following documents:

1. An application which is addressed to "the Central Bank of Myanmar, Office No (55), Nay Pyi Taw".
2. Relevant documents with regard to the company's profile such as Company Registration Certificate, Form VI, Form XXVI, Memorandum of Association, Memorandum of Articles, etc.
3. If the company has been already established, financial statements for the current year and previous year as approved by an external certified auditor, who should be a Certified Public Accountant.
4. Loan Agreement (Draft) including repayment

schedule for the proposed loan and other relevant data.

5. Bank Credit advices evidence of equity transferred to the company (borrower).
6. Other documentary evidence.

Based on the submitted documents, the Central Bank of Myanmar will review and scrutinize the following facts, and approve or reject the proposal:

1. Whether the amount of equity capital of the applicant exceeds USD 500,000.
2. Whether the applicant (borrower) has an access to a matching foreign exchange income or not.
3. Whether the borrower is able to repay the loan from the income generated from domestic business, and has plans to mitigate the exchange risk even if he or she does not have a foreign exchange income.



4. Whether the borrower has already transferred 80% of equity committed in MIC permit or not.
5. Whether Debt to Equity Ratio is within a maximum of 3:1 and 4:1 or not.
6. Whether there are completion and correctness of terms and conditions mentioned in loan agreement and documents or not.
7. Whether the loan tenure is medium-term or long-term, and loan repayment schedule is consistent with loan agreement or not.

In the case of an offshore loan structure (the borrower is the foreign parent company of the Myanmar project company), the foreign borrower would typically re-lend the funds to its Myanmar subsidiary, or use the proceeds of the loan to capitalize the subsidiary. An internal loan also requires CBM approval.

CBM approval is also required for the Myanmar company to open and operate a bank account at an overseas bank. This permission is not always granted.

Additionally, per the Foreign Investment Rules a company in Myanmar must have a foreign currency bank account to hold the foreign exchange remittances.

Further, depending upon whether the borrower has an investment license ("MIC permit"), MIC approval of the facility and the underlying security may be required

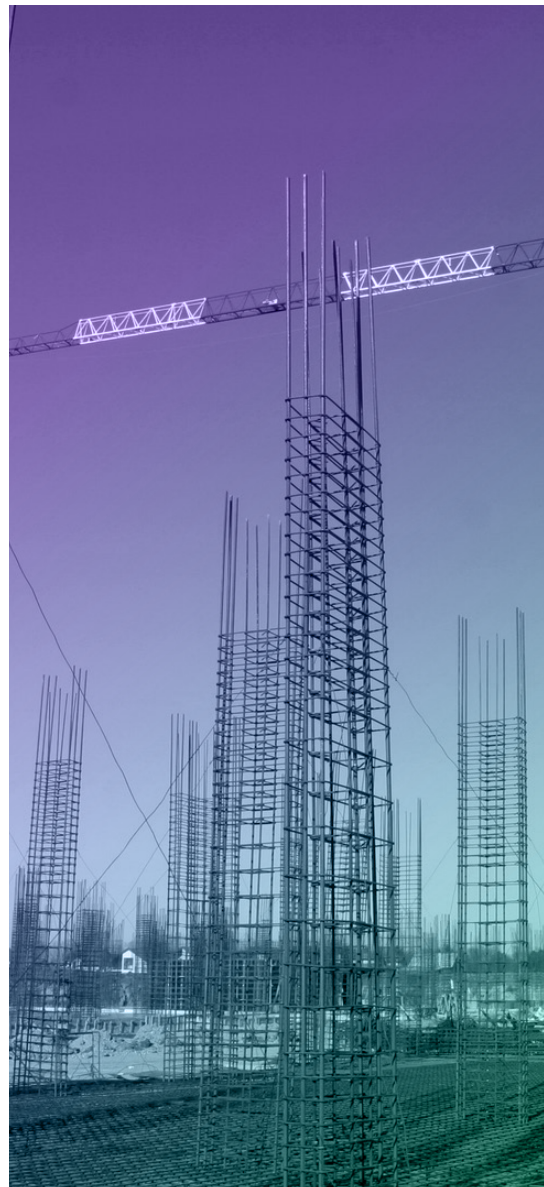
Foreign exchange control

- Persons in Myanmar, including foreign invested companies, have the right to hold foreign currency in accordance with the regulations and hold a foreign currency bank account;
- No limitations will be provided for inward or outward remittances on current account;
- Loans made from offshore into Myanmar are considered to be capital account transactions, the borrower in Myanmar must obtain prior permission from the CBM before borrowing from offshore, which requires submission of the facility agreement or term sheet, the applicable interest rate and the repayment schedule, amongst other requirements;
- Loan and interest repayment may be remitted outside of Myanmar without further CBM approval, provided the loan and repayment schedule was previously approved by the CBM;
- Remittance of equity into Myanmar from offshore does not require CBM approval in practice, although CBM should be notified;
- Remittance of dividends from Myanmar offshore should in theory be processed without CBM approval as it is deemed a current account transaction ; however, the remitting local bank need to be satisfied that the equity remitted into

Myanmar was reported to the CBM, and that the documents are in order for the company to lawfully issued dividends and in practice, the bank will require audited financial statements of the company to show that all taxes have been paid – in the case of a company having a MIC permit, MIC approval will be required before the dividends can be remitted, which should not be withheld if the documents are in order;

- It is also possible for a company based in Myanmar to make service fee payments to an offshore entity, which may or may not be affiliated with the Myanmar company, which should be deemed a current account transaction not requiring CBM approval;

In practice, a foreign invested enterprise is required to open a capital remittance account in Myanmar for the inward remittance of the capital and debt. In addition, in terms of outward remittances, the



company is allowed to open any bank account with a licensed Myanmar bank in a foreign currency, and may also have a Myanmar Kyat account. The bank where the company has its bank account is allowed to process the payment of outward remittances subject to the foregoing comments.

Through the combination of the MIL and the FEML including Notification 7/2014, inward and

outward foreign exchange remittances have now become fairly straightforward in Myanmar for those categories of payments which are by law allowed to be remitted, provided the appropriate procedures are followed. ■

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CHAPTER 8: TAX IMPLICATIONS

Myanmar's real estate investments are subject to the normal tax rules applicable throughout the country. There is no exception regime for income derived from real estate, except in the framework of the MIL. The following table provides an overview of the taxes and tax incentives which apply to power sector investments.

| Taxes Applicable to Real Estate Projects | |
|--|---|
| Corporate income tax | <ul style="list-style-type: none"> Standard tax rate of 25% 3, 5 or 7 year initial exemption under the MIL depending on the location of the project Possible relief for profits that are reinvested within one year |
| Withholding tax on interest | <ul style="list-style-type: none"> Tax of 15% on all interest payments made to a non-resident lender, which may be reduced depending on the applicable DTA if any Tax of 0% on all interest payments made to a resident national or resident foreigner 0% on interest payments made to Myanmar branch of foreign banks |
| Commercial Tax | <p><u>Prior to commercial operation date:</u></p> <ul style="list-style-type: none"> Commercial Tax rate of 5% is applicable on most goods and services provided to the project company except for 29 types of exempt services depending on the supplier, and is not exempt under the MIL Commercial Tax will be exempted on the importation of materials and equipments during the construction period under MIL <p><u>After commercial operation date:</u></p> <ul style="list-style-type: none"> 5% Commercial Tax on rental income, as well as most other goods and services |
| Withholding tax on goods and services | <ul style="list-style-type: none"> 2% on goods and services purchased from local contractors and subcontractors 2.5% on services purchased from foreign contractors and subcontractors 0% on goods purchased from foreign contractors and subcontractors |
| Income tax on salaries | <ul style="list-style-type: none"> Progressive rates of 0 – 25% Non-resident foreigners are not entitled to relief or allowances |
| Customs duty | <ul style="list-style-type: none"> Imported materials and equipment used during the project construction period (or expansion period, if applicable) for the construction of a MIC approved project are exempt from customs duty under the MIL |
| Capital gains tax | <ul style="list-style-type: none"> Resident and non-resident companies and individuals: 10% |
| Property tax | <ul style="list-style-type: none"> General tax not to exceed 20% of annual value Lighting tax not to exceed 12% of annual value Water tax not to exceed 12% of annual value Conservancy tax not to exceed 15% of annual value |
| Undisclosed income tax | <ul style="list-style-type: none"> A progressive rate up to 30% (with variations for lower priced immovable property which is the primary residence of the buyer) imposed on an individual buyer of immovable property who is unable to demonstrate that the purchase funds have been tax cleared the taxed nature of the funds used to purchase such property |

Myanmar does not currently have a full coverage of double taxation agreements (DTAs). However, there are currently DTAs in place with India, Malaysia, Singapore, South Korea, Thailand, the United Kingdom and Vietnam. It also has DTAs with Bangladesh and Indonesia, though these are not yet in force. ■

ABBREVIATIONS

| DEFINITION | TERM |
|------------|--|
| AGO | Attorney General Office |
| BOT | Build-Operate-Transfer |
| CBM | Central Bank of Myanmar |
| CCTO | Companies Circle Tax Office |
| CDC | City Development Committee |
| CIT | Corporate Income Tax |
| CRO | Companies Registration Office |
| CT | Commercial Tax |
| CTL | Commercial Tax Law of 1990 |
| DICA | Directorate of Investment and Company Administration |
| DRO | Deed Registration Office |
| DTA | Double Taxation Agreement |
| EPC | Engineering-Procurement-Construction |
| FEMD | Foreign Exchange Management Department |
| FEML | Foreign Exchange Management Law of 2012 |
| FIL | Foreign Investment Law |
| IFC | International Finance Corporation |
| INRD | Immigration and National Registration Department |
| IRD | Internal Revenue Department |

| DEFINITION | TERM |
|------------|--|
| ITL | Income Tax Law of 1974 |
| JV Co | Joint Venture Company |
| JVA | Joint Venture Agreement |
| MCPA | Myanmar Companies Act of 1914 |
| MIC | Myanmar Investment Commission |
| MIL | Myanmar Investment Law |
| MNREC | Ministry of Natural Resources and Environmental Conservation |
| MOC | Ministry of Commerce |
| MOD | Ministry of Defense |
| MOF | Ministry of Finance |
| MOU | Memorandum of Understanding |
| ORD | Office of Registrar of Deeds |
| PIT | Personal Income Tax |
| SLCA | Sea and Land Customs Act of 1878 |
| TIPRA | Transfer of Immoveable Property Restriction Act of 1987 |
| TOS | Tax on Salary |
| USD | United States Dollar |
| WHT | Withholding Tax |
| YCDC | Yangon City Development Committee |

*“... Edwin is quite a creative thinker.”
- Chambers and Partners*

OUR RECENT EXPERIENCE IN INFRASTRUCTURE, REAL ESTATE AND CONSTRUCTION

Development

- ▶ Project counsel in Myanmar on an extensive US\$2.5 billion proposed development by a consortium of Japanese investors and contractors
- ▶ A US\$440 million project comprising a shopping mall, a hotel, offices and a residential tower at Inya Lake, Myanmar, by a group of Vietnam-Singaporean developers
- ▶ US\$300 million mixed-use development of 7 residential towers in Dagon Township, Myanmar
- ▶ Structuring of a new 1,350-acre satellite city comprising 3,000 residential units near Yangon
- ▶ Largest shopping mall in Cambodia, Japanese project owners
- ▶ Assisting on the development of a series of housing estates by a private equity real estate fund in Myanmar
- ▶ Social and mixed-use US\$200 million PPP project in Myanmar
- ▶ 200,000sqm mixed-use development comprising a mall and 3,000 residential units at Phnom Penh airport, Cambodia

Financing and restructuring

- ▶ Represented an international financial institution on the financing and security involving supermarket assets in Myanmar
- ▶ Purchase and financing of telecom network land sites in Vietnam
- ▶ US\$37 million financing by a state-owned foreign bank of a mixed-use property project in Indonesia
- ▶ Led the financial work-out of a luxury island resort in the Gulf of Thailand, Cambodia

Transactions

- ▶ Disposal of a US\$50 million hospitality asset in Yangon, Myanmar, acting for the seller
- ▶ Acquisition by a real estate PE fund of US\$40 million worth of assets in Vietnam
- ▶ Sale of two resort islands on the coast of Cambodia, acted for the seller, a real estate PE fund
- ▶ Investment by the Government of Japan in a large industrial estate in Thilawa, Myanmar
- ▶ Acquisition and financing of a US\$28 million hospital in Indonesia

Hospitality

- ▶ Hotel projects in Rakhine, Meyik, Mandalay
- ▶ Advised a consortium led by a Korean investor on its US\$220 million hotel development in Yangon
- ▶ Advised a luxury hotel management company and hospitality investor on a US\$175 million new serviced apartment project in Myanmar
- ▶ International corporate structure for a luxury resort in Kep, Cambodia

Construction

- ▶ Acting for a multinational EPC provider on the construction of a power plant in Laos
- ▶ Assisting a French multinational on the building of several residential towers in Myanmar
- ▶ Advising a foreign contractor on the construction of a major hospitality project in Vietnam
- ▶ Construction of a US\$300 million industrial facility on Java, Indonesia
- ▶ Advsing the sponsor of ASEAN's largest solar power plant on the EPC documentation

Disputes

- ▶ Acted for the co-owner of a 30-hectare coastal property in Ream, Cambodia on a property dispute, culminating in several legal proceedings
- ▶ Litigation on behalf of the majority foreign shareholder in a joint venture dispute involving the contribution of land lease rights in Myanmar

Tax advisory

- ▶ Devising tax-efficient EPC documents for the construction of a US\$600 million power plant in Myanmar
- ▶ Tax structuring of a US\$230 million condo development in Yangon, Myanmar
- ▶ Tax structuring for a megamall, the largest in Cambodia
- ▶ Assisting with securing tax exemptions and the corporate tax structuring of a holiday resort in Indonesia

Industrial

- ▶ Investment in the Thilawa SEZ in Myanmar, acting for the Japanese government
- ▶ Investment in a US\$300 million nickel smelter industrial project in Indonesia
- ▶ Development of a new industrial zone in Myanmar, acting for the state-owned foreign investor
- ▶ Planning and project procurement of an offshore supply base in Myanmar

Hospitality

- ▶ Hotel projects in Rakhine, Meyik, Mandalay
- ▶ Advised a consortium led by a Korean investor on its US\$220 million hotel development in Yangon
- ▶ Advised a luxury hotel management company and hospitality investor on a US\$175 million new serviced apartment project in Myanmar
- ▶ International corporate structure for a luxury resort in Kep, Cambodia

Regulatory

- ▶ Assisted on a 28-storey condominium development in Yangon, Myanmar, securing construction and fire safety permits
- ▶ Advised a group of development financial institutions on regulatory compliance for a nationwide network of telecom tower sites in Myanmar
- ▶ Assisted with the import licensing of construction materials and equipment for a nationwide network of telecom infrastructure



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