

Myanmar News:

- Arbitration Law 2016
- Union Tax Law 2016 and Notification 18/2016 amending the Commercial Tax Regulations 2011
- Shops and Establishments Law 2016
- Condominium Law 2016
- Notification 26/2016 concerning Foreign Investments

In its last sessions, the outgoing parliament has passed a total of 25 new laws:

- (1) Law Amending to the Myanmar Lighthouse Act
- (2) Public Debt Management Law
- (3) Road Transportation Business Law
- (4) Railway Transportation Business Law
- (5) Arbitration Law
- (6) Law Amending the Penal Code
- (7) The Third Time Amending Law to Pyithu Hluttaw Election Law
- (8) The Third Time Amending Law to Ahmyothar Hluttaw Election Law
- (9) The Third Time Amending Law to State or Region Hluttaw Election Law
- (10) The Legal Aid Assisting Law
- (11) The Special Commodity (Goods) Tax Law
- (12) The Law Amending the Factories Act, 1951
- (13) The Second Law Amending to the Ward and Village Tract Administration Law
- (14) The Pesticide Law
- (15) The New Generation of Plants (Seedling) Protection Law
- (16) The Law Amending to the Code of Criminal Procedure
- (17) Payment of Wages Law, 2016
- (18) Shops and Establishments Law, 2016
- (19) National Planning Law, 2016-2017
- (20) The Financial Institution Laws
- (21) The Union Budgets Law, 2016
- (22) The Union Revenue (Tax) Law, 2016
- (23) The Second Law Amending to Myanmar Gems Law
- (24) The Condominium Law
- (25) Law Relating to the Person Retired President of Union
- (26) Please find below a summary of the most important new laws, as well as the most recent ministerial notifications.

Arbitration Law 2016

On 5 January 2015, the Myanmar parliament finally passed the Arbitration Law 2016. The new law replaces the Arbitration Act 1944 and provides the domestic legal framework for the implementation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). Based on this law, foreign arbitral awards issued in a country which is party to the New York Convention should now be recognized and enforceable in Myanmar.

Please find below a short summary of the most important changes.

I. Arbitration under the former Arbitration Act 1944

Before passing the new law, the enforcement of Myanmar arbitral awards and particularly foreign arbitral awards in Myanmar was in practice difficult, if not impossible.

Myanmar's former Arbitration Act dating back to 1944 provided for domestic arbitration only. Under the act, the courts were given extensive powers to revoke the authority of an arbitrator (sec. 5 Arbitration Act 1944) or to remove arbitrators or umpires (sec. 11 Arbitration Act 1944).

Myanmar's signing of the New York Convention on 16 April 2013 was the first step towards the recognition and enforcement of foreign arbitral awards in Myanmar. Until now, it was, however, doubtful whether the enforcement of foreign arbitral awards in Myanmar would be possible as agreed in the convention without proper implementation under national law.

II. The Arbitration Law 2016

With the enactment of the Arbitration Law 2016, the Myanmar Parliament finally implemented the agreed terms of the New York Convention. The law supersedes the Arbitration Act 1944 and is based on the United Nations Commission on International Trade Law's (UNCITRAL) Model Law on International Commercial Arbitration 1985. Its eleven chapters contain regulations for domestic and international arbitration, aiming to provide

"[...] fair and effective resolution of domestic and international economic and commercial disputes [as well as] recognition and enforcement of foreign arbitral awards in the resolution

of disputes through arbitration and to encourage use of arbitration in resolving disputes” (sec. 4 Arbitration Law 2016). Consequently, foreign investors shall have the option to resolve disputes with Myanmar parties through arbitration under foreign law (e.g. Singapore Law) and in foreign jurisdictions.

1. International Arbitration

Pursuant to sec. 3 i) Arbitration Law 2016, international arbitration relates to arbitration places outside of Myanmar, in which: -

- (i.) any party to an arbitration agreement has, at the time of the conclusion of the agreement, its place of business in any country other than the Union of Myanmar; or
- (ii.) the place of arbitration if determined in, or pursuant to, the arbitration agreement is situated outside the country in which the parties to the agreement have their places of business; or
- (iii.) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected, is situated outside the country in which the parties to the agreement have their places of business; or
- (iv.) the parties to the arbitration agreement have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

An arbitration award made, in pursuance of an arbitration agreement, in the territory of a member state to the New York Convention other than Myanmar is defined as a foreign award (sec. 3 k) Arbitration Law 2016). In order to recognize and enforce a foreign arbitral award, the party shall pursuant to sec. 45 a) Arbitration Law 2016 submit the following documents and information:

- (i.) Original award or copy thereof duly authenticated;
- (ii.) Original arbitration agreement or an authorized copy thereof;
- (iii.) Evidence to prove that the award is a foreign award; and
- (iv.) Translation into English of the award and the arbitration agreement.

Pursuant to sec. 46 a) Arbitration Law 2016, Myanmar courts shall enforce a foreign award in the same way as a Myanmar court decree. However, the law provides a set of rules in sec. 46 b) Arbitration Law 2016, enabling the courts to refuse to enforce a foreign award (e.g. in case of invalidity of the arbitration agreement or where the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties).

2. Arbitration in Myanmar

In case of domestic arbitration (i.e. arbitration within the Union of Myanmar), the arbitration tribunal shall decide upon the dispute submitted for arbitration in accordance with the relevant Myanmar laws (sec. 46 a) Arbitration Law 2016). The tribunal shall first decide whether the parties have expressly authorized it to do so before deciding in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

3. Conclusion

The enactment of the Arbitration Law 2016 will have a positive impact on foreign investment in Myanmar and in the long run pave the way for more legal certainty in Myanmar. But since Myanmar arbitration tribunals lack experience, Myanmar courts tend(ed) to interfere with domestic arbitration and Myanmar people often mistrust international arbitration, it will take time for concerned authorities and parties alike to adjust to the new arbitration regime.

Union Tax Law 2016

On 25 January 2016, the Myanmar parliament passed the Union Tax Law 2016. Since 2014, the parliament announces changes for special goods tax, commercial tax and income tax on an annual basis. The new law shall be effective from 1 April for the financial year 2016-2017.

Please find below a summary of the most important changes implemented by the Union Tax Law 2016.

I. Income Tax

The rate of corporate income tax remains unchanged at 25% under the new Union Tax Law 2016.

Similarly, no major changes have been announced for individuals, with personal income tax rates remaining unchanged at 0%-25% with a personal basic relief for residents at 20% of the salary income (capped at MMK 10,000,000).

No income tax shall however be levied on an individual earning up to MMK 4,800,000 per year, and allowances for resident individual tax payers living together with a parent, spouse or children have been slightly increased:

- Co-resident parent relief was increased to MMK 1,000,000 per parent;
- Spouse relief was increased to MMK 1,000,000; and
- Child relief was increased to MMK 500,000 per offspring.

II. Commercial Tax

While there is no value added tax in Myanmar, commercial tax is levied as a turnover tax on a wide range of goods and services produced, traded or rendered within Myanmar as well as the import of goods based on the landed cost (i.e. the sum of the cost, insurance and freight value, and customs duties).

Under the law, any manufacturer, trader and service provider is required to register for commercial tax. Exempted from the collection of commercial tax are only enterprises which do not exceed the statutory turnover threshold, which has been increased from MMK 15,000,000 to MMK 20,000,000.

The general commercial tax rate on the import or sale of goods and provision of services remains unchanged at 5%. Commercial tax rates from 0% to 120% may, however, apply depending on the nature of the goods and services described

in the schedules appended to the Commercial Tax Law and the Special Commodity (Goods) Tax Law 2016.

1. Increased Commercial Tax on Special Goods

16 special goods, including tobacco and alcohol, are subject to higher commercial tax rates.

While the total number of special goods has not been changed compared to the Union Tax Law 2015, the way of calculating the tax was amended for some goods. For example, cigarettes will now be taxed per stick, while alcohol will be taxed per liter. A pack of 20 cigarettes with a sales price of up to MMK 400 will be taxed at MMK 3 per stick, cigarettes with a sales price of more than MMK 801 will be taxed at MMK 15 per stick and imported cigarettes will be taxed at 120% of their landed value. A liter of alcoholic liquor (all kinds) with a sales price of more than MMK 20,001 per liter will be taxed at MMK 3,375 per liter and imported alcohol will be taxed at 60% (landed value).

The detailed tables can be found in the new Union Tax Law 2016.

2. Reduced Commercial Tax on certain Services

Passenger transport services by domestic airlines and sales proceeds from the construction and selling of buildings shall be taxed at a rate of 3%.

3. Commercial Tax on Exports

The tax on exports has not been changed under the new Union Tax Law 2016. Zero commercial tax shall be generally levied on the export of goods. Increased taxes apply for the following exports:

No	Type of Goods	Tax Rate
1	Crude oil	5%
2	Natural gas	8%
3	Teak or hardwood logs and conversions	50%
4	Unpolished jade, ruby, sapphire, emerald and other precious stones	15%
5	Polished jade, ruby, sapphire, emerald and other precious stones; and jewelries	5%
6	Electric power	8%

4. Commercial Tax Exempted Goods

Under the new Union Tax Law 2016, the total number of goods exempted from commercial tax was increased from 79 (Union Tax Law 2015) to 86:

Sr	Type of Goods
1	Paddy, rice, broken rice, coarse bran, fine bran, paddy husks
2	Wheat grain, coarse flour, fine flour, coarse bran, fine bran
3	All kinds of maize and other cereals and flour thereof
4	All kinds of pulses, halves, flour, bran and shells
5	Groundnuts, shelled or unshelled
6	Sesamum
7	Mustard seeds, sunflower seeds, tamarind seeds, cotton seeds
8	Palm oil
9	Raw cotton all kinds
10	Jute and other fibres
11	Garlic, onions
12	Potatoes
13	Tapioca bulb, tapioca flour
14	Spices, raw (leaf, fruit, seed, bark); spices, prepared (masala)
15	Fresh fruits all kinds
16	Vegetables
17	Sugarcane, sugar, palm-candy, jaggery
18	Mulberry leaves (silkworm fodder)
19	Medicinal plants or herbs
20	Thatch, reeds, 'dani', 'taung-htan', 'hpala', 'wa-u', 'thanaka' and such agricultural products not elsewhere specified
21	Firewood, bamboo
22	Live animals, fish, prawns
23	Silk cocoons
24	Cane, finished or unfinished
25	Honey, beeswax
26	Lac
27	Cake, meal and residue of groundnuts, sesamum, cotton seeds, rice bran etc.
28	Gross soap powder, gross soap
29	Bleaching substances
30	Coir yarn, palm-shell charcoal
31	Tea leaves, fresh or dry, all kinds
32	Stamps, all kinds (including revenue stamps)
33	Sealing wax and sticks
34	Slates, slate pencils and chalk
35	Shrimp and fish sauces (Ngan-pya-ye)
36	Oil and oilcake of peanut, sesamum, sunflower seed, bran, soybean
37	Fresh fish, fresh prawn, fresh meat
38	Dried fish, dried prawns, all kinds
39	Marinated fish, marinated prawns, all kinds
40	Fish powder, prawn powder
41	Value-added products based on aquatic products such as fish and prawns
42	Milk and milk powder all kinds
43	Chilli, chilli powder
44	Saffron, saffron powder
45	Ginger
46	Fish paste
47	Ripe tamarind
48	National flags
49	Prayer beads, all kinds
50	Various kinds of rulers, eraser, sharpener
51	Wood-replacement fuel blocks
52	Coconut oil (not edible palm oil)
53	Various kinds of fowl eggs
54	Pumpkin seeds, watermelon seeds, cashew nuts
55	Religious clothes (such as monk's robes)
56	Oil dregs
57	Salt all kinds
58	Rubber
59	Betel Nuts
60	Synthetic Fertilizers
61	Insecticides, pesticides, fungicides, herbicides etc.
62	Agricultural machinery, tools and spare-parts
63	Raw materials and finished goods for animal fodder, fish meal, prawn meal
64	Medicines for animals, fish, prawn
65	Artificial insemination fluid and tubes for high-grade breeding
66	Solar panels, solar charger controllers and solar inverters
67	X-ray film, plates and other X-ray, surgical and medicinal pharmaceutical apparatuses and equipment (only for goods imported by self for use in respective hospital, clinics)
68	Bandages, gauze, other surgical dressing materials, hospital and surgical outfit and sundries (only for goods imported by self for use in respective hospital, clinics)
69	Household medicines and other pharmaceuticals, all kinds for human consumption (other than those restricted by Commercial Tax regulations)
70	Pharmaceutical raw materials
71	Textbooks, exercise and drawing books and various kinds of papers for the production of such books, all sorts of pencils

72	Graphite for pencil production
73	Condoms
74	Arms, vehicles, machineries, materials and equipment, accessories and spare-parts thereof, used by defense and security organization
75	Various kinds of gun powder, various kinds of dynamites and accessories thereof used by the civil departments
76	High-grade, pure-strain cereal seeds and sprouts
77	Fire trucks, hearses
78	Goods sold in foreign exchange at specific locations for departing passengers
79	Goods for foreign diplomatic missions and consulates on a “reciprocal basis”, and diplomats and non-diplomatic personnel thereof
80	Goods for use by the Armed Forces and for consumption by members of the Armed Forces, purchased under expenditure budget allocated to the Ministry of Defense
81	Raw materials, components and packaging consigned from abroad for cutting-manufacturing-packaging (CMP) into finished goods
82	Fuel oil sold by the Ministry of Energy to foreign embassies, United Nations agencies and foreign diplomats
83	Goods procured with money donated or granted as aid to the Union by domestic/foreign organizations
84	Jet fuel oil sold for utilization on foreign outbound flights
85	Spares and parts for machinery, equipment and materials used in airplanes or helicopters
86	Goods exempted from taxes by the Union Parliament in the interest of the Union

6	Educational services
7	Goods carriage services (carriage with motor-vehicles, watercraft, aircraft, machineries)
8	Employment agency services
9	Capital market services
10	Banking services
11	Customs/port clearance services
12	Catering equipment rental services
13	Cutting-manufacturing-packaging services
14	Funeral services
15	Kindergarten services
16	Myanmar traditional physiotherapy/physiotherapy by the blind
17	House moving services
18	Road toll collection services
19	Animal husbandry and veterinary services
20	Public toilet services
21	Foreign route passenger transport services
22	Art and culture services
23	Public transport services (bus, train, ferry-ship)
24	License fees paid to state organizations
25	Printing and publishing services from the security printing works under the Ministry of Defense
26	Services procured by foreign diplomatic missions and consulates relevant on a “reciprocal basis”, and diplomats and non-diplomatic personnel thereof
27	Services procured with money donated or granted as aid to the Union by domestic/foreign organizations
28	Goods exempted from taxes by the Union Parliament in the interest of the Union
29	Inter-organization services between organizations such as the Office of the Union, President, Office of the Union Government Cabinet, Office of the Union Parliament, Office of the People’s Parliament, Office of the National Parliament, Office of the Union Supreme Court, Office of the Constitutional Tribunal, Office of the Union Election Commission, Office of the Union Attorney General, Office of the Union Auditor General and Office of the Union Civil Service Board, Office of the Naypyitaw Council, Social Security Board, Offices of the Region/state governing bodies, departments. Goods procured with money donated or granted as aid to the Union by domestic/foreign organizations (excluding services procured or provided by State-Owned-Enterprises)

5. Commercial Tax Exempted Services

Further, the total number of services exempted from commercial tax was increased from 23 (Union Tax Law 2015) to 29:

No commercial tax shall be levied on the following services:

Sr.	Kind of services
1	House rental other than from a house rental business enterprise
2	Parking lot services
3	Life insurance services
4	Micro-finance services
5	Healthcare services other than cosmetic body modification

III. Notification Number 18/2016 of the Ministry of Finance

On 4 February 2016 the Ministry of Finance further issued Notification 18/2016 amending sec. 42 and sec. 52 of the Commercial Tax Regulations concerning the set-off of commercial tax.

1. Amendment of sec. 42 of Commercial Tax Regulations

Following last year's Notification 180/2015 dated 21 January 2015 which implemented the set-off of commercial tax in service enterprises, the Ministry of Finance has in its latest amendment of the Commercial Tax Regulations aligned the respective regulations for production, trade and service enterprises.

Initially, sec. 42 of Commercial Tax Regulations stipulated, that

- a manufacturer of goods may set-off the commercial tax paid on the purchase or import of raw materials or semi-finished goods from the commercial tax due on the sale of goods produced by the manufacturer; and
- a trader of goods may set-off the paid commercial tax on the purchase or import of goods from the commercial tax due on the sale of the goods.

Notification 180/2015 extended the application of sec. 42 Commercial Tax Rules to service providers, allowing for a set-off of commercial tax paid for matters concerning the enterprise, from the commercial tax due for the services provided by the service provider.

While the set-off for manufacturers and traders was limited to certain input taxes, the set-off for service providers was – at least in theory – not restricted.

The new Notification 18/2016 further stipulates which commercial tax may be set-off by manufacturers, traders and services:

A manufacturer may deduct: -

- (i.) Commercial tax already paid on landed-value of goods imported;
- (ii.) Commercial tax already paid on the purchase from another manufacturer, trader or importer; and

- (iii.) Commercial tax already paid on services charges for services procured in connection with the manufacturing enterprise.

A trader may deduct: -

- (i.) Commercial tax already paid on landed-value of goods imported;
- (ii.) Commercial tax already paid on the domestic purchase of goods; and
- (iii.) Commercial tax already paid on service charges for services procured in connection with the trading enterprise.

A service provider may deduct: -

- (i.) Commercial tax already paid on landed-value of goods imported;
- (ii.) Commercial tax already paid on the domestic purchase of goods; and
- (iii.) Commercial tax already paid on service charges for services procured in connection with the service enterprise.

While the legal framework for the set-off of commercial tax is clearer than ever before, difficulties in the implementation remain as a result of insufficient implementation and lack of proper documentation required for the set-off.

2. Restriction of set-off

Pursuant to Notification 18/2016, commercial tax paid on the acquisition of fixed and capital assets of an enterprise are explicitly excluded from set-off.

Shops and Establishments Law 2016

On 25 January 2016, the Myanmar Parliament passed the new Shops and Establishments Law 2016. The new law replaces the 65 year old Shops and Establishments Act 1951 and contains regulations on working hours, payment of wages, workplace safety and health.

Please find below a short summary of the most important changes.

I. Covered Shops and Establishments

The new law applies to -

- (i.) Shops (i.e. premises used wholly or in part for the wholesale or retail sale of commodities or articles or any premises for the purpose of goods forwarding agency enterprise, trading agency enterprise);
- (ii.) Commercial establishments (i.e. establishments carrying out advertising, commission, freight forwarding agency or commercial representative businesses);
- (iii.) Public entertainment establishments (i.e. cinemas, theatres, clubs, reception halls, video establishments, karaoke establishments, arcades using computers or electronic systems, fun-fairs, gardens and playgrounds);
- (iv.) Industrial establishments (any enterprise engaged in industrial activity not covered by the Factories Act 1951); and
- (v.) Other establishments as stipulated by the Ministry of Labour, Employment and Social Security by notification.

The Shops and Establishments Law 2016 does not apply to sidewalk hawker shops, shops at irregular public fairs and public entertainment establishments and shops at temporarily held festival.

II. Covered Employees

While the Shops and Establishments Act of 1951 was not applicable to managers (sec. 5 g) Shops and Establishments Act of 1951), the new law does no longer limit its application to non-managerial staff. As a consequence, the stipulated

working hours – including the regulations concerning overtime and rest periods – shall in future also apply to managers.

III. Operating Hours

The Shops and Establishments Law 2016 extends the curfew for shops and commercial establishments by two hours. While shops and commercial establishments were required to close from 9pm to 5am under the former Shops and Establishments Act 1951, the new closing hours extend from 11pm to 5am (sec. 7 a) Shops and Establishments Law 2016). Public entertainment establishments – other than theatres, performances and open-air venues included in public entertainment establishments – shall be kept closed between 1am and 5am (sec. 8 a) Shops and Establishments Law 2016).

Shops, establishments and public entertainment establishments which, due to the nature of work, need to remain open 24 hours per day (e.g. shops at airports, hotels, guesthouses and clubs) shall apply for a special license with the Factories and General Labour Law Inspection Department (sec. 9 a) Shops and Establishments Law 2016).

IV. Working Hours and Overtime

Pursuant to sec. 11 Shops and Establishments Law 2016, no employee shall work for more than eight hours in any one day and for more than 48 hours in any one week. Working hours in excess of these hours per day/week shall be deemed to be overtime. Total hours of overtime shall not exceed twelve hours in any one week. In case of “special need”, overtime shall not exceed 16 hours in a week. Furthermore, no work shall be done beyond midnight.

Pursuant to sec. 17 Shops and Establishments Law 2016, an employer requiring an employee to work overtime shall provide overtime remuneration in accordance with the law (i.e. two times the regular wage/salary).

V. Rest Periods

Under the old Shops and Establishments Act 1951, an employee was allowed to take a break of at least 30 minutes after five hours of work. This continuous period of work has been reduced to four hours (sec. 12 a) Shops and Establishments Law 2016). Furthermore, the total of working hours, breaks and overtime shall not exceed eleven hours per day.

Please note, that the rest period requirement shall not apply to watchmen or guards (sec. 12 (b) Shops and Establishments Law 2016).

VI. Minors

The new law contains more specific regulations concerning minors working in shops and establishments.

While no person under the age of 13 years was allowed to work under the old Shops and Establishments Act 1951, this minimum age has been lifted to 14 years (sec. 13 a) Shops and Establishments Law 2016). Minors must however be fit for work, confirmed by an authorized physician.

With regard to working hours for minors, the new law stipulates that -

- (i.) no person who has not completed 16 years of age shall be permitted to work beyond prescribed working hours at a shop or establishment (sec. 13 b) Shops and Establishments Law 2016);
- (ii.) no person who has completed 14 years of age but not 16 years of age shall be required or permitted to work during the period between 6pm and 6am (sec. 14 b) Shops and Establishments Law 2016);
- (iii.)no person who has completed 14 years of age but not 16 years of age shall be required or permitted to work in another shop or establishment on the same day of having worked in any shop or establishment (sec. 14 d) Shops and Establishments Law 2016).

No employee under 18 years of age shall be required or permitted to work at a task or workplace determined as hazardous.

VII. Rest days and Remuneration

Pursuant to sec. 15 a) Shops and Establishments Law 2016, an employer shall designate at least one day per week as a paid rest day.

Remuneration of employees shall not be disbursed later than seven contiguous days after expiry of the time interval for which remuneration is to be disbursed (sec. 15 b) Shops and Establishments Law 2016).

VIII. Workplace Safety and Health

In contrast to the old Shops and Establishments Act 1951, the new Shops and Establishments Law 2016 contains some – although rather vague – regulations concerning workplace safety and health. Pursuant to sec. 24 Shops and Establishments Law 2016, the employer shall –

- (i.) implement proper measures for cleanliness, freedom from odors and sanitary condition;
- (ii.) implement measures to ensure good ventilation and lighting;
- (iii.) implement measures to prevent noise in excess of the level prescribed;
- (iv.) implement measures to prevent excessively high temperatures and for fire prevention; and
- (v.) provide sufficient first-aid kits and medicaments for employees.

IX. Non-Compliance

An employer convicted of failing to comply with provisions of the Shops and Establishments Law 2016 shall be punished with imprisonment or with a fine or with both (sec. 25-31 Shops and Establishments Law 2016).

Condominium Law 2016

After three years of going back and forth between the upper and the lower house, the Myanmar Parliament passed the long awaited Condominium Law on 29 January 2016. So far, foreigners were not allowed to buy any kind of immovable property in Myanmar. Under the new law, foreigners may now acquire up to 40% of housing units in a condominium.

Please find below a short summary of the most important changes.

I. Legal Restrictions on Land Ownership applicable to Foreigners

The acquisition of land in the Republic of the Union of Myanmar is governed by numerous laws and regulations. Restrictions may apply both with regard to the land itself, as well as the acquisition of land by foreigners. Foreign ownership of immovable property is restricted under the Transfer of Immovable Property Restriction Law 1987, pursuant to which no foreigner or foreign owned company shall acquire immovable property (e.g. by way of purchase).

II. Condominium Law

Myanmar laws do however allow for certain exemptions from these restrictions. Under the Transfer of Immovable Property Restriction Law 1987, the Myanmar government may allow diplomatic missions, United Nations' organizations and other organizations the ownership and use of immovable property.

The most recent exemption from the general restrictions is the Condominium Law 2016. Under the new law, foreigners (i.e. a person who is not a citizen of Myanmar) may now purchase apartments in a condominium.

Pursuant sec. 2 a) Condominium Law 2016, *condominium* is defined as a high-rise building of six levels or more, built as a collectively owned structure on collectively owned land (land area of minimum 20,000 square feet or more) and registered under the Condominium Law 2016. The expression includes housing-units and collective-properties provided for the use of collective-owners.

The Ministry of Construction may stipulate further specifications, including technology and safety/security of such buildings and properties to be met by condominiums (sec. 11 Condominium Law 2016).

A maximum of 40% of housing-units in any condominium shall be available to foreigners. The rest may only be sold to and purchased by Myanmar citizens.

In a previous draft, foreigners were only allowed to buy apartments on or above the sixth floor of a condominium. This requirement has however been deleted from the final Condominium Law.

Notification 26/2016 of the Myanmar Investment Commission

On 21 March 2016 the Myanmar Investment Commission issued Notification 26/2016 replacing Notification 49/2014 concerning restrictions on foreign investment.

While the general distinction between prohibited activities, foreign investments which require a joint venture with a Myanmar citizen and foreign investments which are only permitted under certain conditions has not changed, certain activities were added or deleted from the respective lists.

The most important change is found in sec. 3 of the new notification, providing that service enterprises established under the Companies Act 1914 will in future generally require permission from the relevant ministry. While this has always been the practice of the Directorate of Investment and Company Administration, it was always unclear on what legal basis the ministry's permission was required.

Please find below an unofficial translation of Notification 26/2016 with track changes highlighting any amendments from the previous Notification 49/2016.

Republic of the Union of Myanmar Myanmar Investment Commission Notification Order Number 26/2016 Nay Pyi Taw, March 21, 2016

1. Exercising the powers conferred under section 56, subsection (b) of the Foreign Investment Law, the Myanmar Investment Commission, with the approval of the Union Government Cabinet, hereby publishes as follows the lists as per Chapter (2) concerning Applicable Economic Activities, namely, types of economic activities which are not permitted; types of economic activities which are

permitted only under a joint venture system with citizens; and types of economic activities which will be permitted only under specifically prescribed conditions:

Economic activities which are not permitted

Sr.	Type of Activity
1	Defense-related munitions production and related services
2	Activities which may damage mangroves, locations of high religious significance and places of worship of indigenous races, pastures, hillside plantations, farmland or water resources
23	Conservation/management of natural forests
34	Exploration, prospecting/survey and production jade/gems
45	Small and Medium Enterprises of mineral production
56	Administration of the electricity grid
67	Electrical inspections
87	Air traffic control services
89	Extraction of mineral resources including gold within regions of river navigation routes
109	Waterways navigation pilot services
4011	Joint operation of print media and broadcasting media without a permit from the Union Government Cabinet
124	Printing and publishing of periodicals [and] all publications in indigenous languages including the Myanmar language

Economic activities which are permitted only under a joint venture system with citizens

Sr.	Type of Activity
4	Production and distribution of hybrid seeds
2	Purification, production and distribution of high-yield and indigenous strains
31	Production, domestic distribution and sale of cereal-based products such as biscuits, wafers, noodles all kinds, vermicelli, rice noodles
42	Production, domestic distribution and sale of confectionary including candy, cocoa and chocolate
53	Preparation/production, canning and domestic distribution and sale of foodstuff other than milk and milk products
64	Germination of barley; activities for production, distribution and sale of alcoholic beverages obtained through germination of barley
75	Production, mixing, purification, bottling etc. for beverage and non-beverage alcohol, spirits etc.; and [their] distribution and sale
96	Production, distribution and sale of various kinds of ice made from purified water
407	Purified drinking water
418	Production, distribution and sale of various kinds of ropes/yarn
429	Production, domestic distribution and sale of various kinds of goods such as ceramic-coated goods, pots, pans, spoons, knives, forks etc.
4310	Production, domestic distribution and sale of various kinds of plastic goods
14	Production of rubber and rubber-products
4511	Packaging

46 12	Production, domestic distribution and sale of various kinds of products including footwear, handbags etc. made from various types of leather, cured or uncured, other than artificial leather
47 13	Production, distribution and sale of various kinds of paper including heat-resistant paper, wax paper/stencil paper, toilet paper; paper raw material; and various paper or cardboard products
48 14	Production, distribution and sale of chemical-products (excluding petroleum, natural-gas, petroleum-products) based on domestic natural resources
49 15	Production, distribution and sale of flammable solids, liquids, gases and aerosols such as acetylene, gasoline, propane, hair-sprays, perfumes, deodorants, insect-sprays (excluding petroleum, natural-gas, petroleum-products)
20 16	Production, distribution and sale of oxidizing-reagents (oxygen, hydrogen-peroxide), and compressed-gas (acetone, argon, hydrogen, nitrogen, acetylene)
21 7	Production, distribution and sale of caustic-reagents (sulphuric acid, nitric acid)
22 18	Production, distribution and sale of various kinds of gases (in gaseous, liquid and solid forms) of industrial use
23 19	Production of pharmaceutical raw-materials
24 20	Small and Medium Enterprises of electric power production
25 21	Development of international-standard golf-courses/resorts
26 22	Establishment, sale and rental of apartments/condominiums
27 23	Establishment and sale of office/commercial buildings
28 24	Establishment, sale and rental of apartments in residential areas connected to industrial-zones
29 25	Establishment of affordable housing for the public
30 26	Domestic air-transport service
31 27	International air-transport service

Economic activities which are permitted under conditions

A. Activities permitted with opinion remarks of the relevant Ministry in the form of joint venture with citizens

Sr. Type of Activity

1 Activities which require the obtaining of opinion remarks from the Ministry of Livestock, Fisheries and Rural Development

1	Apiary and apiary products
2	Establishment of factories for production of fishing-nets
3	Construction of fish unloading port; of fish auction market
4	Research on livestock and fisheries
5	Sea fishing
6	Processing of aquatic products
7	Import/export, breeding/production of animal and aquatic species
8	Fresh-/saltwater fish farms

2 Activities which require the obtaining of opinion remarks from the Ministry of Environmental Conservation and Forestry

1	National [botanical] Gardens
2	Nature-based tourism
3 2	Businesses concerned with reduction of carbon footprint

-
- 43 Plantation and timber extraction through long-term lease of forest area (within/without reserved area, protected area)
-
- 54 Import, further generation and distribution for profit of Genetically Modified Organisms and Living Modified Organisms
-
- 65 High-technology forestry-sector research and development such as tissue culture, conservation and production etc. of quality, pure strains of rare, valuable wood plants;
-
- 76 Development of advanced technology, research and development, and human resources in the forestry sector
-
- 87 Extraction of resources from forest land and forest-covered land under the administration of the Government
-
- 98 Import from abroad, breeding/production of natural plants and wild animals and export for profit
-

3 Activities which require the obtaining of opinion remarks from the Ministry of Industry

- 1 Production and distribution of syrup, soft drinks and other beverages
-
- 2 Production of seasoning powder
-
- 3 Production of pharmaceuticals used in medical treatment and employing any controlled chemicals
-

4 Activities which require the obtaining of opinion remarks from the Ministry of Transport

- 1 Transportation of passengers and cargo with watercraft
-
- 2 Establishment and operation of training centres for waterways transport
-
- 3 Dockyard services
-
- 4 Water transport and related enterprises on land in possession of the Inland Waterways Transport Department
-

5 Activities which require the obtaining of opinion remarks from the Ministry of Communication and Information Technology

- 1 Local and international postal services
-

6 Activities which require the obtaining of opinion remarks from the Ministry of Health

- 1 Private hospitals
-
- 2 Private clinics
-
- 3 Private diagnostic services
-
- 4 Private enterprises for production of medicines and medical equipment
-
- 5 Research and development of vaccines and diagnostic materials/equipment
-
- 6 Private universities of medicine, medicine-related universities and training centres
-
- 7 Commerce in raw materials for traditional medicine
-
- 8 Cultivation and production of traditional medicinal herbs
-
- 9 Research and laboratory analysis of traditional-medicine
-
- 10 Production of traditional-medicines
-
- 11 Traditional medicine hospitals
-

7 Activities which require the obtaining of opinion remarks from the Ministry of Information

- | | |
|---|--|
| 1 | Regular newspapers published in foreign language |
| 2 | FM radio broadcasting |
| 3 | Direct To Home (DTH) |
| 4 | DVB-T2 |
| 5 | Cable TV |
| 6 | Cinema production |
| 7 | Cinema presentation |

Economic activities which are permitted under conditions**B. Activities permitted under other conditions in the form of joint venture only**

Sr.	Type of Activity	Conditions
(1)	(2)	(3)
1	Import/export, transport, storage, distribution and sale of petroleum, natural gas and petroleum products; and construction, installation and operation of related storage tanks, loading/unloading docks, pipelines, auxiliary machinery, equipment and plants	Permitted only under joint venture with the Ministry of Energy.
2	Import, manufacture, construction and installation of machinery, equipment and spare parts/supplies needed for exploration, prospecting, survey of petroleum and natural gas with geological, geo-physical, geo-chemical techniques, and interpretation [of results]	Permitted only under joint venture with the Ministry of Energy.
3	Import, manufacture, construction and installation of machinery, equipment and spare-parts/supplies needed for operations related to extraction and analysis of petroleum and natural gas	Permitted only under joint venture with the Ministry of Energy.
4	Import, manufacture, construction and installation of machinery, equipment and spare-parts/supplies needed for operations related to transport of, and construction of network of pipelines for, petroleum and natural gas	Permitted only under joint venture with the Ministry of Energy.
5	Import, manufacture, construction and installation of machinery, equipment and spare-parts/supplies needed for construction and installation of various kinds of off-shore platforms	Permitted only under joint venture with the Ministry of Energy.
6	New construction and installation of various kinds of petro-chemical plants; investment in and renovation of existing plants; and [their] operation	Permitted only under joint venture with the Ministry of Energy.

7	Production of cigarettes	Shall use 50% of local tobacco leaves in first 3 years; (OR) shall use at least 50% from raw-material purchased with export proceeds of local tobacco. Shall export 90 . Shall include schedule of use of local raw-materials and of export in the proposal. Requires the obtaining of opinion remarks from the Ministry of Industry.
8	Production and distribution of explosives (TNT, nitro-glycerine, ammonium-nitrite)	Permitted only under joint venture with the National Government.
9	Production and distribution of spontaneously combustible liquids or solids (titanium powder), heat-producing chemicals (potassium-sulphide), materials easily decomposed by heat, and materials producing flammable gases on contact with water (calcium-phosphide)	Permitted only under joint venture with the National Government.
10	Cultivation and production of cereal crops using import of necessary inputs; distribution in the local market; exporting	Permitted only for production of value-added goods. Share for foreigners limited to a maximum of 49 per cent. Local/foreign trading and sales will be permitted on the production of the said joint venture. Absolutely not permitted to export paddy by sea or border trade.
11	E-Lottery	Requires the obtaining of opinion remarks of the Ministry of Finance. Must be operated only under joint venture with the government.
12	Establishment of new towns	Requires the obtaining of opinion remarks of the Ministry of Construction. Must be operated only under joint venture with the government.
13	Urban re-development	Requires the obtaining of opinion remarks of the Ministry of Construction. Must be operated only under joint venture with the government.
14	New construction of rail tracks, rail stations and buildings	Requires the obtaining of permission from the Union Government Cabinet. Permitted under joint venture/ BOT with the relevant department/enterprise Myanmar Railways [Enterprise] . Requires the obtaining of opinion remarks from the Ministry of Railways.
15	Maintenance and running of trains	Requires the obtaining of permission from the Union Government Cabinet. Permitted under joint venture/ BOT/lease with Myanmar Railways [Enterprise] the relevant department/enterprise . Requires the obtaining of opinion remarks from the Ministry of Railways.
16	Construction, production and maintenance of train engines, passenger carriages, cargo carriages and spare parts	Requires the obtaining of permission from the Union Government Cabinet. Permitted under joint venture/ BOT/lease with the relevant department/enterprise Myanmar Railways [Enterprise] . Requires the obtaining of opinion remarks from the Ministry of Railways.
17	Establishment of towers, machine rooms and fibre optic cables within land in the possession of the Ministry of Railways	Requires the obtaining of permission from the Union Government Cabinet. Permitted under joint venture/ BOT/lease with the relevant department/enterprise. Requires the obtaining of opinion remarks from the Ministry of Railways.
18	Advanced commercial utilization of land and buildings in the possession of the Ministry of Railways	Requires the obtaining of permission from the Union Government Cabinet. Permitted under joint venture/ BOT/lease with the relevant department/enterprise. Requires the obtaining of opinion remarks from the Ministry of Railways.

19	Transport of passengers and cargo using trains and motor vehicles	Requires the obtaining of permission from the Union Government Cabinet. Permitted under joint venture with the relevant (public or private) department/enterprise/organization. Requires the obtaining of opinion remarks from the Ministry of Railways.
20	Motor vehicle <u>inspection</u> /diagnosis; training courses for driving, repair and maintenance of motor-vehicle	Requires the obtaining of permission from the Union Government Cabinet. Permitted under the relevant (public or private) department/enterprise/organization. Permitted under <u>citizen 50%-foreigner 50%</u> joint venture. Requires the obtaining of opinion remarks from the Ministry of Railways.
21	Electric power generation for use in railways	Requires the obtaining of permission from the Union Government Cabinet. Permitted under joint venture with the relevant department/enterprise/organization. Permitted under joint venture/ <u>BOT/lease</u> with the relevant <u>Myanma Railways [Enterprise]</u> . Requires the obtaining of opinion remarks from the Ministry of <u>Electric Power and the Permission of the Ministry of</u> Railways.
<u>22</u>	<u>Production, distribution and sale of vaccines</u>	<u>Only in joint venture with the National Government. Must conform to WHO GMP standards at minimum.</u>

2. Types of economic activities not included in this notification may be carried out as 100% foreign investment, except in cases of activities deemed by the Commission to require permission from the relevant ministry due to the nature of the business.

4.3. Services which do not have the nature of investments may be carried only after receiving permission from the relevant ministry.

2-4. Notification number 49/2014 dated 14-8-2014 issued by the Myanmar Investment Commission is repealed and superseded by this notification.

<signature> (Zeyar Aung) Chairman

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