

## Myanmar News

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# I. Introduction

On 1 August 2017, the bill amending the Myanmar Stamp Act (1899) was signed into law. Further, the following draft laws were published by the Parliament of the Republic of the Union of Myanmar:

- Law concerning the Registration of Deeds; and
- Tax Appeal Tribunal Law.

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

# II. Law Amending the Myanmar Stamp Act (1899)

On 1 August 2017, the bill amending the Myanmar Stamp Act (1899) was signed into law, providing for various stamp duty changes (e.g. on the transfer of property in Yangon and Mandalay).

The Myanmar Stamp Act (1899) stipulates which instruments are subject to payment of stamp duty, a form of tax charged on certain legal instruments (e.g. lease contracts) in the form of affixation of physical stamps on the instrument in question. The payment and affixation of the stamps is generally due before or at the time of execution of the instrument.

## 1. Stamp Duty on the Transfer of Immoveable Property

The Law Amending the Myanmar Stamp Act (1899) contains provisions relating to the stamp duty payable on the transfer of immovable property (land and real estate). Depending on the location and the local laws and regulations, the payable stamp duty on the value of the transaction shall with effect from 1 August 2017 be as follows:

- Increase to 6% in Yangon (old rate: 4%);
- 4% in Nay Pyi Taw (old rate: 4%);
- Increase to 4% in Mandalay (old rate: 2%); and
- 4% in the rest of Myanmar (old rate: 4%).

## 2.2. Stamp Duty Reductions

Further, the new law confirms the following stamp duty reductions, which were announced by Notification No. 146/2016 of the Ministry of Planning and Finance with effect from 1 October 2016:

No. in Schedule 1	Description	Old rate	New rate
15	Bond	1.5%	0.5%
23	Conveyance	3%	2%
35(c)	Fine or premium or money advanced in addition to rent (if the stamped lease agreement is executed)	MMK 600	MMK 300
62	Transfer of shares or debentures	0.3%	0.1%

As number 15 and number 23 are often referred to in other sections of Schedule 1 of the Myanmar Stamp Act (1899), the reduction of the stamp duty rates for bonds and conveyances affects the rates for other instruments as well (e.g. for lease agreements with a term of not more than three (3) years from previously 1.5% of the annual rent to 0.5%; for lease agreements with a term in excess of (3) years from previously 3% of the annual rent to 2%).

# III. (Draft) Law Concerning the Registration of Deeds

The government recently published the (Draft) Law concerning the Registration of Deeds. Upon enactment, the Deeds Registration Act (The Registration Act, India Act XVI) (1909) will be repealed and replaced by the new law. The rules, regulations, by-laws, notifications, orders, directives and procedures issued under the Deeds Registration Act (1909) will, however, continue to apply unless contrary to the new law.

## 1. Registration of Deeds

As before, the (Draft) Law concerning the Registration of Deeds distinguishes between compulsory and discretionary registration of deeds.

### 1.1. Compulsory Registration

Pursuant to sec. 16 (Draft) Law concerning the Registration of Deeds, the registration of the following documents shall be compulsory:

- Instruments of gift of immovable property;
- Non-testamentary instruments for disposal of immovable property of value not less than Kyats one (1) lakh, for consolidation of the declaration, assignment, limitation or extinguishing of any title or interest in immovable property of value not less than Kyats one (1) lakh; or decrees orders or awards issued by a court in respect of rights related to such instruments;
- Mortgage deeds and deeds cancelling mortgages, certified as true by minimum two (2) witnesses in addition to the mortgagor, in mortgages of value not less than Kyats one (1) lakh, other than with depositing of title deeds;
- Leases of immovable property from year to year, or for any term exceeding one (1) year, or reserving a yearly rent;
- Instruments which operate for collateral security, providing or otherwise assigning by companies/associations to a trustee, all or any part of rights over immovable property or interest thereupon;
- Certificates of adoption; and
- Instruments prescribed from time to time by the Union Government.

**Comment Luther:** Upon enactment of the draft, mortgage deeds and deeds cancelling the same shall be registered. Kindly note, that this registration requirement shall apply to mortgages other than by deposit of title deeds only.

Under the current Registration Act 1909, only the following documents have to be registered:

- Instruments of gift of immoveable property;
- Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of 100 rupees and upwards, to or in immoveable property;
- Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- Leases of immoveable property from year to year, or for any term exceeding one (1) year, or reserving a yearly rent; and
- Non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of 100 rupees and upwards, to or in immoveable property.

## 1.2. Discretionary Registration

Pursuant to sec. 17 (Draft) Law concerning the Registration of Deeds, the registration of the following documents shall be discretionary:

- Instruments of gift for operating of the declaration, assignment, limitation or extinguishing, whether in present or in future, of any title or interest in immovable property of value less than Kyats one (1) lakh, and instruments acknowledging the receipt or payment of any consideration;
- Instruments of mortgage of a value less than Kyats one (1) lakh;
- Leases of immovable property with a term not exceeding one (1) year;
- Instruments which operate to create, declare, assign, limit or extinguish any title to or interest in moveable property;
- Wills;
- Ordinary decrees or orders issued by a law court and arbitral awards;

- Any certificate of sale granted to the purchase of any immovable property sold by auction by a court of law, revenue officer or relevant governmental department, governmental organization;
- Any grant or instrument of partition in respect of immovable property by governmental department, governmental organizations; and
- In addition to the above, documents other than those prescribed as registration compulsory under sec. 16 of the (Draft) Law concerning the Registration of Deeds.

**Comment Luther:** Under the Registration Act (1909), the following documents may be registered:

- Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than 100 rupees, to or in immoveable property;
- Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- Leases of immoveable property for any term not exceeding one (1) year, and any lease for which registration is (as per above) not compulsory;
- Instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property;
- Wills; and
- All other documents not required to be registered (as per above).

## 2. Formal Registration Procedure

For the registration, the documents signed by the executants – bearing the initials or signatures of executants at every place of interlineation, blank, erasure or alteration in the document – shall be submitted in Myanmar language to the Deeds Registration Office (in case of an English document, a Myanmar translation certified by a notary public shall be submitted).

No non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of category, shape, dimensions and situation of such property sufficient identify the same. In case of land, two certifying maps and land records duly issued by the relevant government department shall be included.

## 2.1. Persons Entitled to Apply for Registration

The following persons may carry out the registration of documents at a Deeds Registration Office:

- Persons executing the deed (in case of a decree or order, persons claiming under the decree or order);
- Legal representatives (e.g. for minors or corporations); or
- Attorneys, duly authorized by an executed and authenticated Power of Attorney.

## 2.2. Official Scrutiny

The registering officer shall scrutinize whether or not:

- The executants executed the document in mutual agreement (not applicable to copies of decrees and orders);
- The executants are attending in person for registration (not applicable to copies of decrees and orders); or
- The person presenting for registration is the representative or attorney of the executants.

The registering Officer shall enquire whether the statements in the documents presented for registration were truly made by the executants and the persons presenting the document for registration admit the execution of the document.

The registering Officer shall however not enquire into the title/possession of the property transferred by the document presented for registration.

## 2.3. Registration

If documents submitted for registration comply with the following, the registering Officer may accept them for registration:

- The executants are personally known to him, or he is otherwise satisfied that they are the persons they represent themselves to be;
- If any person is represented by a representative or assignee, such representative or assignee admits the execution;
- If the person executing the document is dead, the document is presented for registration by court order [or] decree;
- The document has been affixed with value of stamps sufficient as prescribed by the Myanmar Stamp Act (1899) and other prevailing laws; and
- It is true that the persons before him are relevant to the document.

The registering Officer shall refuse to register the document, if:

- Any executant denies or does not admit its execution;
- Any executant appears to be a minor, a lunatic or mentally unfit;
- Any document executed in respect of immovable property does not clearly and accurately provide supporting evidence of the property; or
- Any document executed in respect of immovable property is presented without the supporting map.

## 2.4. Immoveable Property Documents

Documents related to immovable property shall be registered at the Deeds Registration Office where the property is situated. (sec. 25 (Draft) Law concerning the Registration of Deeds).

**Comment Luther:** *Kindly note, that all other documents may be registered at any Deeds Registration Office.*

## 3. Time Frame

Depending on the type of document and location of execution, the (Draft) Law concerning the Registration of Deeds provides for the following time frames for registration.

### 3.1. Documents Executed in Myanmar

Pursuant to sec. 21 (Draft) Law concerning the Registration of Deeds, any document other than a will executed in the Republic of the Union of Myanmar shall be submitted for registration within 120 days from the date of execution or the date of issuance of the court decree or order (if an appeal is lodged against the court order or decree, the latest date for registration shall be counted commencing from the date of ruling by the final court of appeal).

**Comment Luther:** *Under the Registration Act 1909, the time frame for the submission of the registration is four months.*

### 3.2. Documents executed outside of Myanmar

Pursuant to sec. 24 (Draft) Law concerning the Registration of Deeds, a person desiring to register a document executed outside of the Republic of the Union of Myanmar:

- Shall present the document to the registering Officer within 120 days of arrival within the Union;
- The registering Officer shall scrutinize and register the document in accordance with prescribed criteria; and
- If a person desires registration, but presents the document after the prescribed period, the provisions of sec. 23 Draft of the Law concerning the Registration of Deeds shall apply.

### 3.3. Late Registration

If a non-testamentary document, court decree or court order is presented for registration only after expiry of the prescribed period above, the person desirous of registration shall apply to the registering Officer for approval to be registered.

The registering Officer shall forward the application to the relevant Region/State or Union-Territory Officer, who shall scrutinize the application and, if the extent of lateness after the prescribed period does not exceed 120 days, may approve the registration after payment of a fine.

### 4. Effect of Registration

Pursuant to sec. 47 (Draft) Law concerning the Registration of Deeds, a registered document:

- Shall operate from the date of its execution; and
- Shall, if relating to any property, whether moveable or immovable, supersede and take effect against any oral agreement or declaration relating to such property, and contrary to the terms contained in the document.

Although effective, the provision shall not be relevant to property, which had been delivered into possession in accompaniment to the oral agreement or declaration, which is contrary to the terms contained in the document.

If a document for which registration is compulsory is not registered:

- It shall not have effect on lease or transfer in any way of immovable property;
- It shall not confer any power to adopt; and
- It shall not be received as evidence of any transaction affecting such property or conferring such power.

### 5. Fees

Pursuant to sec. 68 (Draft) Law concerning the Registration of Deeds, the Ministry of Agriculture, Livestock and Irrigation shall prescribe the fees for the registration of documents, publish the rates of fees in the national gazette and display them at public locations in the Township Deeds Registration Offices.

Pursuant to sec. 69 (Draft) Law concerning the Registration of Deeds, any person presenting a document for registration shall pay the registration fees at the time of registration.

### 6. Prohibitions

Pursuant to sec. 72 (Draft) Law concerning the Registration of Deeds, no person appointed and assigned under the law to carry out the registration of documents shall improperly fill, amend, delete, copy, translate or register a document which has been deposited or presented for registration with the intent to cause injury or knowing it to be likely to cause injury, or in a manner which he knows or has ground to know as incorrect.

Pursuant to sec. 73 (Draft) Law concerning the Registration of Deeds, no one shall commit any of the following:

- Make false statements in front of an officer acting in execution of the law, or any proceeding or enquiry under the law;
- Intentionally deliver to a registering Officer a false copy or translation of a document or map or plan; and/or
- Without being an executant or his representative falsely personate being such, and in such assumed character present any document, make any statement or act improperly in any way.

### 7. Penalties

Pursuant to sec. 74, 75 (Draft) Law concerning the Registration of Deeds, any person convicted of violating any of the above listed prohibitions concerning the registration of deeds shall be punishable with imprisonment for a term which may extend to seven (7) years, or with a fine, or with both.

Furthermore, any person convicted of aiding or abetting the violation of any prohibition under sec. 72 and 73 (Draft) Law concerning the Registration of Deeds shall be punishable with penalty prescribed for the original offense and any person convicted of repeating a similarly prohibited offense shall be punishable for a term which may extend to seven (7) years, plus

a fine, sec. 76 and 77 (Draft) Law concerning the Registration of Deeds.

With the enactment of the (Draft) Law concerning the Registration of Deeds, aiding will be a punishable offence.

## 8. Deeds Registration Office

Pursuant to sec. 4 (Draft) Law concerning the Registration of Deeds, the Director General of the Department of Agricultural Land Management and Statistics of the Ministry of Agriculture, Livestock and Irrigation shall be the chief of the deeds registration activity.

On Regional/State level, the Head of a Region/State or Union-Territory Department of Agricultural Land Management and Statistics shall be the registering Officer of the Region/State or Union-Territory (sec. 5 (Draft) Law concerning the Registration of Deeds); on District-level, the Head of a District Department of Agricultural Land Management and Statistics is the Deeds-Inspector of the relevant District (sec. 6 (Draft) Law concerning the Registration of Deeds); on Township level, the Head, ranking not less than a deputy-officer, of a Township Department of Agricultural Land Management and Statistics is the registering Officer of the relevant Township (sec. 8 (Draft) Law concerning the Registration of Deeds).

Pursuant to sec. 9 (Draft) Law concerning the Registration of Deeds, a Region/State, Union-Territory Deeds Registration Office shall be established jointly within relevant Region/State or Union-Territory offices of the Department of Agricultural Land Management and Statistics. Further, the Director General shall establish a City Deeds Registration Office for the collection of all or some townships within the municipal territory of a city (sec. 10 (Draft) Law concerning the Registration of Deeds).

However, the Deeds Registration Office for townships other than those under sec. 10 (Draft) Law concerning the Registration of Deeds shall be established jointly within the relevant Township Office of the Department of Agricultural Land Management and Statistics (sec. 11 (Draft) Law concerning the Registration of Deeds).

Pursuant to sec. 15 (Draft) Law concerning the Registration of Deeds, a Deeds Registration Office shall:

- Utilize registering Officer's stamping tools and official seals, having dimensions and bearing particulars prescribed by the Department;

- Utilize prescribed register books and forms printed and distributed by the Department;
- Every page of the register books utilized shall be consecutively numbered in print;
- Maintain a safe-box issued by the Department; and
- Establish a filing room to securely store files related to deeds registration.

## 9. Conclusion

The (Draft) Law concerning the Registration of Deeds contains only few changes, but may create more legal certainty.

Unfortunately, the current draft does, however, still not provide for a searchable public register, e.g. for mortgages.

## IV. (Draft) Tax Appeal Tribunal Law

Upon enactment, the Tax Appeal Tribunal Law shall ensure high productivity tax administration, further the trust of tax payers in the assessment and collection of taxes by the Union in accordance with law, afford equality and equity for every citizen and tax payer in payment of statutory taxes, and afford for every citizen and tax payer legal opportunities for defending their case and appeals in the payment of statutory taxes.

### 1. Tax Appeal Tribunal

The Tax Appeal Tribunal, formed by the Union Government Cabinet of the Republic of the Union of Myanmar, will be located in Nay Pyi Taw and shall consist of an uneven number of three (3) to seven (7) members, including the chairman (i.e. the Directory General of the Office of the Tax Appeal Tribunal).

The tenure of members is five (5) years from the date of first assumption of duties; upon expiry of tenure, members shall continue discharging their functions until the cabinet has formed and assigned new members. No member shall occupy office for more than two (2) consecutive tenures.

Persons deemed as having an unsound mind under any prevailing law, convicted of a crime from any court of law and/or declared a bankrupt shall not be appointed. Members shall not engage in any partnership, company or business corporation for a share of the profits or revenues, nor be employed by any person.

### 2. Application

Any person (or their representatives/attorneys) submitting a case to the Tribunal shall use a prescribed form.

### 3. Cases

In accordance with the law, the Tribunal shall hear and conduct proceedings and rule on the following:

- Appeal cases (i.e. an appeal case submitted to the Tribunal due to dissatisfaction against a first appeal order issued by the Internal Revenue Department, or against a tax-related order issued by the Customs Department, or any tariff relat-

ed order issued by any organization assigned by notification from time to time of the Ministry of Planning and Finance);

- Revision cases (i.e. a case submitted for review of facts of the case in accordance with law by a person aggrieved by a ruling of the Tribunal); and
- Review cases (i.e. a case re-submitted to the Tribunal for reviewing its ruling, by a person involved in the ruling).

The Tribunal shall conduct hearings on whether there are points of law to be resolved, and decide on whether or not the case should be forwarded to the Myanmar Supreme Court.

### 4. Procedures

Upon submission, cases shall be heard with the full Tribunal, but at least with a minimum of three (3) members (including the chair).

The Tribunal may:

- Demand documents related to a case, which shall be presented by the possessing person or organization;
- Summon persons relevant to the case to come and testify; and
- Visit and inspect sites.

### 5. Decisions

Based on its findings, the Tribunal may affirm, alter or modify the original decision of relevant departments.

The Ruling of the Tribunal shall be made by majority vote of Members conducting the case, including the Chair.

Any ruling of the Tribunal shall be final and conclusive.

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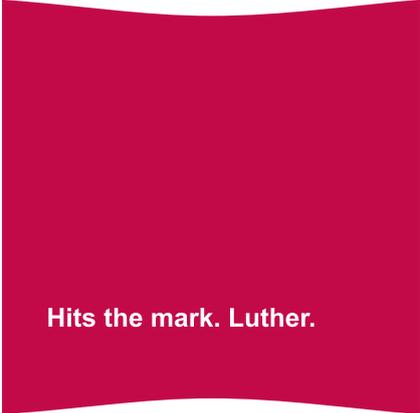
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