

## LEGALINK

### INVESTMENT AND BUSINESS START UP IN MYANMAR

#### (A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

Myanmar legal system is based on the English common law system established since the colonial period in the 19<sup>th</sup> century. Case laws from the colonial period continue to apply unless expressly amended or repealed. Some of these common laws have been codified. Where codified laws are absent on a particular matter, courts apply Myanmar general laws, which are based on the English common law as interpreted by Myanmar courts.

2. What are the major law courts in your country?

According to the Constitution, Courts are divided into three systems: civilian court system, the Constitutional Tribunal, and the Courts-Martial.

The civilian court system in Myanmar is hierarchical. In order of importance are the following courts: the Supreme Court, High Courts of the Region, High Courts of the State, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts, Township Courts, and other courts established by law.

The Constitutional Tribunal acts as the final authority on matters of constitutional interpretation. It is the highest court of the country to adjudicate constitutional issues.

The Courts-Martial are a separate set of courts and adjudicate all crimes committed by the military so that members of the military never have to appear before civilian courts regardless of their crime. Courts-Martial fall outside the jurisdiction of the Supreme Court.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

Myanmar sources of laws include the Constitution, 13 volumes of codified laws from the period 1841-1954 (also known as the Burma Code), numerous special laws, notifications, rules and regulations enacted from time to time. Subject matters absent from the codified laws are decided using Myanmar general law, which is based on English common law (including common law from the colonial period) as adopted and interpreted by Myanmar courts.

4. What is/are the official language(s) in your country?

The official language is Burmese.

#### (B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

100% foreign investment is allowed as a general rule. However, there are restricted business activities. Two main bodies of law govern such restrictions – the State-Owned Economic Enterprises Law (SEE) (1989) and the Foreign Investment Law (FIL) (2012).

SEE applies equally to both foreigners and Myanmar citizens. Under SEE, twelve economic activities are closed to private investment and can only be carried out by the government. However, the government may permit any person or entity to carry out these economic activities on a case by case basis.

Under its power granted by the FIL, the Myanmar Investment Commission (MIC) has declared certain economic activities restricted or prohibited to foreign investment. Such activities are separated into four categories:

- i. Activities that are prohibited to foreigners;
- ii. Activities that require a joint venture with Myanmar citizens;
- iii. Activities that are subject to special conditions (such as approval from certain ministries, foreign ownership limit, minimum foreign capital, scale, quality standard, etc);
- iv. Activities that require Environmental Impact Assessment by the Ministry of Environmental Protection and Forestry.

The lists of these activities can be found under the MIC Notification 1/2013.

Foreign company is also not permitted to do trading activities as a matter of policy.

License and/or approval from the relevant ministries are often required for some industries.

6. Are there any exchange control or currency regulations in your country?

The Foreign Exchange Management Law (FEM) (10 Aug 2012) (Superseding the Foreign Exchange Regulation Act (1 Aug 1947)) is the governing law on foreign exchange controls. As the implementation of the new law is an ongoing work for the Central Bank of Myanmar (CBM), some aspects of the old law may still be observed in practice until details of the new law are announced.

Currently, the Myanmar kyat (MMK) is non-convertible and non-negotiable outside Myanmar. The foreign exchange rate follows a managed floating exchange rate. Remittance of foreign currency into the country should present no problems. Most outward remittances of foreign currency are restricted and require approval from the CBM. Authorization should be forthcoming provided that there is sufficient documentation to support legitimate expenditures.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

Companies registered under the Foreign Investment Law (FIL) which have obtained permits from the Myanmar Investment Commission (MIC) are entitled to 5 year tax holiday and guarantee against nationalization. Other incentives are granted by MIC at its discretion and include:

- Exemption from income tax on profits that are maintained in the reserve fund and reinvested within one year
- Accelerated depreciation rate designated by the Government of machinery, equipment, building, or other working capital
- Tax exemption of up to 50% of the profit from exported goods
- Right of foreign employees to pay income tax at the same rate as Myanmar citizens
- Right to deduct expenses for research and development from assessable income
- Right to carry forward and set off losses from up to previous three years within two years after the 5-year mandatory tax exemption expires
- Exemption from import duty and/or other internal tax on the machinery, equipment, tools, and spare parts imported for use during the initial construction period and/or during the expansion period
- Exemption from import duty and/or other internal tax on the imported raw materials for the first 3 years of commercial production after the completion of construction

Similar incentives are also available under the Special Economic Zone Law (SEZ law) for companies set up in SEZ. The new SEZ bill is being drafted.

**(C) Business vehicles**

8. What is the most common form of business vehicle used by foreign investors in your country?

A private company limited, either in the form of 100% foreign ownership or joint venture with a local entity, is the most common form of business vehicle. A company is governed under the Myanmar Companies Act (1914), Myanmar Companies Rule (1940), and Myanmar Companies Regulations (1957).

Please provide details on (applicable to private limited company only):

- i. Registration formalities;

Registration may be done under the FIL or the Myanmar Companies Act (MCA).

Registration of a company under FIL requires obtaining a permit from the MIC, applying for a permit to trade from the Directorate of Investment and Company Administration (DICA), and applying for registration with the Companies Registration Office (CRO). A permit to trade is a misnomer, because it is essentially a business license. By law, the MIC has 15 days to decide whether to accept the application, and then 90 more days to issue the MIC permit (although it is still unclear whether the timeline will be strictly followed in practice).

Registration of a company under the MCA requires the latter two steps – no MIC permit is required. The registration process could take 3- 6 months. However, temporary certificate of incorporation is normally issued within 2 weeks, after which the company may enter into contracts and open a bank account.

The MIC permit does not need to be renewed. The 'Permit to Trade' is granted for a period of **two years**. Renewal should be submitted within 3 months before the expiration. Certificate of incorporation or certificate of registration of a branch office issued by CRO lasts for 2 years, and must be renewed.

The MIC has not announced the fee for the MIC permit under the new law. The registration fee to obtain the permit to trade and to register under the CRO is USD 2,500.

If the business activity is restricted under the SEE and the foreign investment is in the form of a joint venture with the government, then the application to the MIC will be submitted by the relevant ministry instead. A joint venture with the government under the Special Companies Act (1950) is exempt from obtaining a permit to trade.

ii. Minimum (and maximum) share capital;

Companies registered under the FIL must have a minimum foreign share capital of USD 500,000 for a manufacturing/industrial company and USD 300,000 for a service company under the old FIL law. The MIC has not announced the new minimum foreign capital requirements. Manufacturing/industrial companies must register under the FIL in order to import raw materials and export finished goods.

Companies registered under the MCA must have a minimum foreign share capital of USD 50,000 for a service company.

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);

Yes. Shares may be issued for non-cash consideration.

iv. Any restrictions on foreign shareholders;

No. Companies may have 100% foreign shareholders. Any company with at least one foreign shareholder is considered a foreign company regardless of the percentage of foreign ownership.

Share transfer is restricted for a limited private company such that the company may not publicly solicit buyers. Foreign company registered under the FIL has the right to sell all or part of its shares to foreign or Myanmar companies or individuals.

v. Management structure and any restrictions on foreign managers;

The board of directors has the power to manage the company. Shareholders may not control the exercise of these powers, but they may remove the directors from office or amend the articles of association.

Every private company must have at least two directors (three for a public company). The directors may appoint a manager or a managing agent to oversee the management of the whole affairs of the company.

Foreigners cannot be appointed as directors in companies formed under the Myanmar Companies Act *and* wholly owned by Myanmar citizens.

vi. Directors' liability;

A director is personally liable for any loss or damage if he enters into contracts beyond the scope of the company's objectives, exceeds his authorized power, breaches his fiduciary duties, and is negligent. Any provision in the articles of association or any contract that exempts the director from, or indemnifies him against, liability arising from negligence or breach of duty is void. However, a provision indemnifying the director for costs in defending himself in a civil or criminal proceeding is permitted if the judgment is found in the director's favor.

The directors may also be held personally liable for failure of the company to comply with various requirements under the Myanmar Companies Act (1914).

vii. Parent company liability;

Parent company liability is limited to its contribution to the share capital.

viii. Reporting requirements (including filing of accounts).

There are limited statutory financial filing requirements in Myanmar except for the annual audit. Every company must appoint one or more auditors to report to the members on the accounts of the company. At each general meeting, the directors are required to present an audited balance sheet and profit and loss account to the meeting. Within 21 days of the annual general meeting, all companies are required to file with the Registrar the annual audit.

A private company is also required to send, with the annual audit, a certificate signed by a director or other officer that the company has not issued any invitation to the public to subscribe for any shares or debentures of the company.

Other corporate changes required to be filed with the Registrar include, but are not limited to:

- Change of company's address
- Change of directors

- New allotment of shares
- Any extraordinary and special resolution

The US and the EU also have their own reporting requirements related to responsible business practices that US and EU companies must follow when investing in Myanmar.

**(D) Employment**

9. What are the main laws regulating employment relationships in your country?

The main employment laws are:

- Employment and Training Act (1950)
- Employment Restriction Act (1959)
- Employment Statistics Act (1948)
- Factories Act (1951)
- Labor Organization Law (11 Oct 2011 replacing Trade Unions Act)
- Leave and Holidays Act (1951)
- Minimum Wages Act (1949 – new draft 2012 not yet passed)
- Oilfields Labor and Welfare Act (1951)
- Payment of Wages Act (1936)
- Shops and Establishment Act (1951)
- Workmen’s Compensation Act (1923)
- Labour Dispute Settlement Law (28 Mar 2012 replacing 1929 version)
- Social Security Act (2012 replacing 1954 version)

In addition, there are special rules applicable to foreign employees, work permits, and minimum percentages of employees which must be citizens under the FIL (2012), Myanmar SEZ Law (2011), and Dawei SEZ Law (2011).

Myanmar has been a member of the ILO since 1948.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

Lack of written contract does not mean lack of employment relationship. An employment agreement may be implied from the parties’ performance. The minimum protection provided under various labour statutes and regulations is implied in law.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

Yes. Foreigners are required to obtain work permits to work in Myanmar. There are two types of work permit – the stay permit and the multiple re-entry permit. Stay permit is issued for a 3-12 month stay without any reentry allowed. Multiple re-entry permit is issued for a one-year stay with international travel allowed during its validity. Both types of work permits are renewable. The processing time is currently three months.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

The law does not entitle employees to have management representation, but employees may have some involvement through their labour union and/or Workplace Coordinating Committee.

Workers have the right to organize under the Labor Organization Law (2011). Workers' union may represent a worker or engage in collective negotiation in a labour dispute, but employers are not obligated to consult with union representatives prior to any management decisions including layoff.

Under the Settlement of Dispute Law (2012), companies that employ more than 30 employees must also form the Workplace Coordinating Committee. The Workplace Coordinating Committee consists of employees' and employers' representatives. Under the law, it is tasked with promoting the good relationship between employer and worker or labor organization (if any), and negotiating and coordinating the conditions of employment and general welfare. Thus, the law provides for some employee involvement.

In practice, both laws have proven ineffective.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

Yes. The employment protections laws are fragmented, and they include:

Minimum Wage Law: Under, the Minimum Wage Law, the authority sets the minimum wage at 15,000 Kyat per month (or about USD 17). However, the law is outdated. In reality, the prevailing wage is closer to USD 70 per month. The new minimum wage law is being drafted.

The Shops and Establishments Act and the Factories Act: Depending on the industry, there is a maximum number of working hours above which the employees must be paid overtime (twice the normal wage). The law is not strictly followed by many employers, but foreign investors should be aware of the law:

Industry	Maximum Working Hours
Factory workers, miners, oil and gas workers, other blue collar jobs	8 hours per day / 44 hours per week / 6 days per week
White collar jobs such as office work, shop work, and private businesses	8 hours per day / 48 hours per week / 6 days per week

Leave and Holidays Act: Employees of private enterprises are entitled to the following paid annual leave: 6 days of casual leave, 10 days of earned leave, 30 days of medical leave, and public holidays as announced by the government (21 days per year on average).

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

There is only the mandatory State sponsored pension system for public employees. Private pension may be provided by private employers on a voluntary basis, but there is no tax incentive.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

Severance payment must be paid to all terminated employees with some narrow exceptions. The amount ranges from 1 to 5 month salary depending on the length of service of the employee

No severance pay is required if the employee willfully resigns, or if the employee engaged in an action that damages the company's reputation.

Employees may bring unlawful termination lawsuit under a number of circumstances. Employment in Myanmar is not "at will."

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

There are no laws directly addressing redundancies and mass layoffs. However, laid-off employees must receive severance pay according to the law.

**(E) Tax**

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Employees' taxation is based on tax residency principle. Resident foreigners are taxed on all income derived from sources within and outside Myanmar. Foreigners who reside in Myanmar for at least 183 days during a fiscal year (April – March) (continuously or not) are considered resident foreigners. Foreigners working for an FIL organization (companies or branches) are treated as resident foreigners regardless of their period of stay in Myanmar.

Non-resident foreigners are taxed only on income derived from sources within Myanmar. Non-resident foreigners are foreigners who reside in Myanmar for less than 183 days during a fiscal year and do not work for any FIL companies.

Tax on salary, which includes all the fringe benefits, for resident foreigners follows progressive rates from 1% to 20%. Capital gains tax is 10%.

Tax on salary for non-resident foreigners is fixed at 35%. Capital gains tax is 40%.

18. Under what circumstances are employees subject to taxation in your country?

Employees are subject to taxation in Myanmar if they have total salary income of more than MMK 1,440,000 (about USD 1,674) per year.

19. What income tax or social security contributions must be paid by:

- i. Employees?

Income tax for citizens and resident foreigners is assessed at progressive rates from 1%-20%. Income tax for non-resident foreigners is fixed at 35%.

Employees must contribute 1.5% of their income to the social security fund under the old social security law. New 2012 law has yet to be implemented. Daily wage earners, part-time workers, and contractors are exempt, but they may voluntarily register in the Social Security System and receive the corresponding benefits.

ii. Employers, in relation to their employees?

Employers must withhold proper amount of income tax and social security contribution from employees' monthly salary. In addition, employers are required to contribute 2.5% of employees' earnings to the social security fund under the old law. The new law has yet to be implemented.

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Corporations are taxed based on their residency. Resident foreigners are taxed on their income in Myanmar and abroad. Resident companies include companies incorporated under the Myanmar Companies Act, companies operating under the FIL (including foreign branches), and foreign organizations engaged under special permission in state sponsored projects. Other foreign organizations are classified as non-residents (for example, foreign branch not operating under the FIL). Non-resident foreigners are taxed on Myanmar-sourced income only.

Resident foreign organizations are taxed at 25% for their business income. Capital gains are taxed at 10%.

Non-resident foreign organizations are taxed at 35% for their business income. Capital gains are taxed at 40%.

Dividends are not subject to withholding tax. Other types of income such as interest, royalties, and payments for services require different withholding tax rates with resident foreign organizations being taxed at lower rates. Lower rates may apply for non-resident foreign organizations where Double Tax Agreement (DTA) applies.

21. Under what circumstances are incorporations subject to taxation in your country?

Companies are taxed in Myanmar if (1) they earn Myanmar-sourced income; or (2) they are considered residents for tax purposes.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

Type of Income	Tax Rates for Resident Foreign	Tax Rates for Non-resident Foreign
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	Organizations	Organziations
Business income/ Rental income	25%	35%
Capital gains (except transfer of shares in oil & gas companies where the rates range from 40% to 50%)	10%	40%
Interest	0% WHT	15% WHT
Royalties for the use of licenses, trademarks, patent rights, etc	15% WHT	20% WHT
Payments made under contracts or agreements made by entities formed under existing laws for procurements and for services rendered	2% WHT	3.5% WHT
Payments for services and procurements made within Myanmar	2% WHT	3.5% WHT

Dividend income is not subject to withholding tax. Double Tax Agreements may apply.

There is no VAT in Myanmar. However, commercial tax applies to various transactions. Commercial tax rate for services is 5%. Commercial tax rates for goods range from 5%-100% with many locally produced agricultural goods being exempted.

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

Dividends are exempt from tax.

ii. Dividends received from foreign companies?

Dividends are exempt from tax.

iii. Interest paid to foreign corporate shareholders?

Interest is exempt from tax for resident foreign companies. Withholding tax rate for non-resident foreign companies is 15%. Resident foreign companies are those incorporated in Myanmar, and those operating under the FIL (including foreign branch). Foreign branch not operating under the FIL is treated as non-resident. Double Tax Agreement, if available, may lower the tax rate.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

Withholding tax rate is 15% for royalties paid to resident foreign companies, and 20% for royalties paid to non-resident foreign companies. Double Tax Agreement, if available, may lower the tax rate.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

There are currently no thin capitalization rules.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

There are currently no controlled foreign company rules.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

There are currently no transfer pricing rules.

27. How are imports and exports taxed in your country?

Customs duty together with the commercial tax is collected at the point of entry at the time of clearance. The import tariff ranges from 0% to 40% with raw materials and other essential imports being taxed at very low rates, and cars, luxury items, and jewellery being subject to the highest rates. Lower rates may apply under the Agreement on the Common Effective Preferential Tariff (CEPT) between ASEAN countries. Myanmar uses the Harmonised Commodity Description and Coding System. Commercial tax ranges from 5% to 100% with some exemptions. Assessment of import duty is based on the assessable value, which is the sum of CIF value and the landing charge.

There are also exemptions. Companies operating under the FIL may be exempt from customs duty on machinery, equipment, spare parts, and materials imported for use during the construction phase, and on raw materials imported for use during the first three years of production. Under the Sea Customs Act (1878), 7/8th of the customs paid on imported goods will be refunded when such goods are re-exported from Myanmar under a drawback facility.

Export tariff rates have been reduced to 0% to promote export. Commercial tax is also exempted for export of most products. Where commercial tax applies, it is calculated based on FOB value.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

Myanmar has signed Double Tax Agreement (DTA) with Bangladesh, India, Laos, Malaysia, Republic of Korea, Singapore, Thailand, UK, and Vietnam.

**(F) Competition**

29. Is there any competition law in your country? If so, please give details.

Myanmar does not have a comprehensive competition law. The two main relevant bodies of law that address competition can be found in the new Constitution (2008) and the Contract Act (1872). Under Article 36(b) of the new Constitution, Myanmar shall “protect and prevent acts that injure public interests through monopolization or

manipulation of prices by an individual or group with intent to endanger fair competition in economic activities.” Thus, the Constitution applies to both unilateral conduct and agreements between parties.

In contrast, the restriction under the Contract Act only applies to agreements between parties. Under the Contract Act, any agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to the extent void.” The prohibition does not apply to non-compete agreements in the framework of the sale of goodwill to a competing business, within reasonable limits.

30. Are restrictive agreements and practices regulated by competition law in your country?

Yes. Restrictive agreements and practices are prohibited to the extent that they damage public interests and endanger fair competition. The Contract Act also voids any agreement in restraint of trade.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Yes. The Constitution prohibits unilateral conduct that injures public interests through monopolization or manipulation of prices by individual or group with the intent to endanger fair competition.

32. Are mergers and acquisitions subject to merger control in your country?

No. There is currently no regulatory body in Myanmar with respect to trade competition or merger activities.

**(G) Intellectual property**

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

- i. What is the nature of the right?
- ii. How is it protected?
- iii. How is it enforced?
- iv. How long is it protected?

Intellectual property rights are currently protected in a piecemeal fashion as there is no comprehensive law addressing the issue. Most of these piecemeal laws are very outdated and often inadequate to provide full protection to right holders. Nevertheless, Myanmar has drafted specific laws on trademark, copyright, patent and industrial design in line with TRIPS provisions. Those laws are not yet enacted, but will have to be promulgated in 2013 due to her commitment as a WTO member.

**Patents:**

Myanmar currently has no law in operation on patents and industrial designs. The Patents and Designs (Emergency Provisions) Act (1946) was enacted under the British

Rule, and is now defunct. Therefore, it is currently not possible to apply for patent in Myanmar.

However, in light of the new intellectual property laws in compliance with the TRIPS agreement expected to pass later in 2013, patents may be registered under Section 18(f) of the Registration Act with the Registry of Deeds and Assurances by means of declaration, which is a solemn statement of facts made by the patent owner. Publication of Cautionary Notice in a local newspaper based on the registration warns the potential infringers of potential legal action by patent owners. The Specific Relief Act (Section 54(b) and (c), and Illustration (u)) allows for patent infringement lawsuit, but it is unclear how such lawsuit may be analyzed given the lack of patent law and the legal standard.

Priority claim registration is not yet available under the Registration Act.

**Trademark:**

Myanmar has no trademark registration act, and no trademark registration office exists. Therefore, the rights of the parties setting up rival claims to ownership of a trademark are determined in accordance with the principles of common law as adopted by Myanmar courts. In theory, the priority should be based on actual use in the local market only, but Myanmar court has accepted evidence of actual use of foreign trademark abroad to prove priority. A plaintiff may bring a common law action for passing-off or a civil action for infringement. The courts may grant perpetual injunction and damages under the Specific Relief Act.

Besides the common law principles, trademarks may be enforced under the Penal Code (1860) (criminalizing trademark infringement), the Control of Money Laundering Law (2002) (classifying trademark infringement as money laundering offence), the Merchandise Marks Act (1889) (empowering the court to confiscate all the counterfeit goods), and the Sea Customs Act (1878) (permitting a Customs officer to confiscate counterfeit goods that are being imported or exported).

Despite the lack of trademark registration office, trademark may still be registered by means of declaration of ownership at the Registry of Deeds and Assurances. Such registration provides prima facie evidence of trademark ownership in a criminal or civil proceeding against an infringer. It is an established practice to renew the registration every three years in order to show the continuance of prior ownership rights, and thus strengthens the mark owner's position in case of litigation. Nevertheless, in case of litigation, mere registration does not decide the case, but actual use of the trademark does.

After registration, there usually follows publication of a Trademark Cautionary Notice in local newspapers. Although the Cautionary Notice is not compulsory by law, it constitutes an established practice in Myanmar, serves a very important role in case of trademark conflict, and warns any potential infringer.

**Copyright:**

Copyright is protected under the Myanmar Copyright Act (1914). Copyright is recognized in original literary works, artistic works, musical works, dramatic works, sculpture, architecture, engravings, photographs, cinematography, collective works and performances. Copyright is recognized if (a) the published work was first published in Myanmar, or (b) the unpublished work was created within Myanmar or by a Myanmar citizen. The term of copyright is the life of the author and a period of fifty years thereafter. Myanmar does not recognize copyright from other countries.

Selling, offering for sale, hiring, distributing or exhibiting in public for the purpose of trade, importing for sale or hiring any work without the consent of the copyright owner constitutes an act of infringement. It is also considered infringement if a person for his private profit permits a theater or other place of entertainment to be used for public performance of the work without consent of the copyright owner.

Exceptions to copyright infringement include using any work for private study, research, criticism, review, publishing or an address of a political nature delivered at a public meeting, publication in a newspaper of a lecture delivered in public unless such publication is prohibited. Publishing of works in public places and recitation in public of any reasonable extract from any published work is also permitted.

Copyright infringement is actionable in both criminal and civil courts. Civil remedies include injunctions and damages. In civil infringement cases, if sufficient evidence shows that the defendant is about to abscond, remove or dispose of the whole or part of the property in dispute, the court may issue an arrest warrant for the defendant to show cause why he should not product security for his appearance or direct a conditional seizure of such property.

Criminal punishment includes a fine (although the amount is low and outdated) and possible imprisonment for repeat offenders. Myanmar law provides for no specific mechanism for search, seizure and disposal of infringing goods. However, the general provisions of the Criminal Procedure Code relating to search, seizure and disposal of property empowers the court to order the infringing property confiscated and destroyed pending or after trial.

There are also more specific laws addressing certain types of copyright. For example, for infringement of copyright in television and video productions, the Television and Video law (1996) provides for considerably more severe punishment of three year imprisonment and a heavier fine. No recourse to civil action is available under this law. The Computer Science Development Law (1996) also proscribes penalties for import and export of any type of infringing computer software.

**(H) Marketing agreements**

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:
- i. Agency;
  - ii. Distribution; and
  - iii. Franchising

Marketing agreements are not regulated in Myanmar. There are no specific laws addressing marketing or franchising agreements. Myanmar Contract Act (1872) governs contracts in general.

**(I) E-commerce**

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

The only law directly addressing e-commerce is the Electronic Transactions Act (2004). The law is administered by the Electronic Transactions Control Board, and provides for imprisonment or a fine or both for electronic offences such as hacking, destroying, or stealing electronic records or data; interception of electronic communications; and creating or distributing information by electronic means in a manner detrimental to the interests or dignity of any organization or any person.

**(J) Data protection**

36. Are there any data protection laws in your country? If so, please give brief details.

There is no comprehensive data protection law. The Electronic Transactions Act (2004) simply prohibits hacking, destroying, or stealing electronic records or data. The law is considered outdated.

**(K) Product liability**

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

No specific law in Myanmar is solely dedicated to defective products. However, a number of Myanmar laws contain provisions connected to product liability. These laws include Contract Act (governing contracts that may provide for express and/or implied warranty), Sale of Goods Act (providing for implied condition as to quality or fitness under certain circumstances), Penal Code (providing for criminal liability under certain circumstances), Fatal Accidents Act (permitting civil lawsuits for negligent acts causing death), National Drug Law (regulating drug safety), National Food Law (regulating food safety), and Traditional Drug Law (regulating traditional drug safety).