

Recent and upcoming Myanmar laws related to responsible business

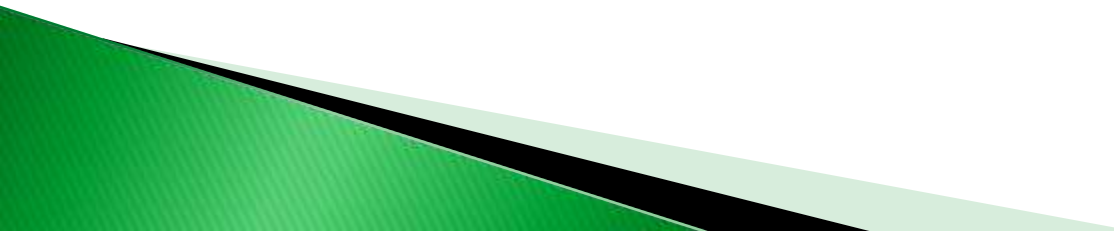
October 2015

NB The information in this presentation should
not be taken as constituting legal advice.

Where to find Laws (mostly in Burmese)

- ▶ President's website – adopted laws
 - <http://www.president-office.gov.mm/zg/?q=hluttaw/laws>
- ▶ Parliament Law Database
 - <http://www.pyithuhluttaw.gov.mm/lawdatabase>
- ▶ List of adopted and draft laws which have reached Parliament
 - <http://www.myanmarparliament.gov.mm>
 - [Draft](#) (although some of these have now been adopted)
 - [Adopted](#)
- ▶ Myanmar Gazette (each Wednesday)
 - <http://www.moi.gov.mm/ppe/?q=pyantan>

Recently adopted laws with relevance to responsible business
(see later slides for labour laws)

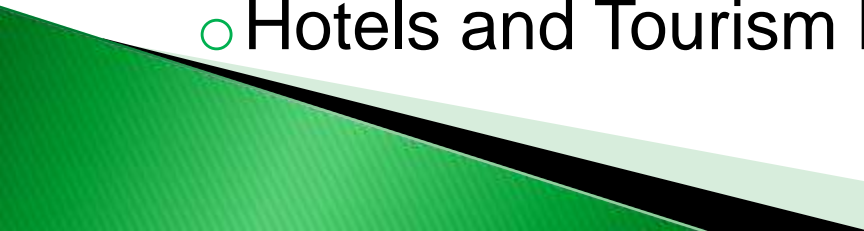
- [Disabilities Law](#) (June)
introduces quota concept
 - [Protection of National Races](#) (ethnic minorities)
(Feb)
 - [Protection of Historic Buildings Law](#) (August)
 - [SEZ regulations](#) (August)
 - [Motor Vehicles Law](#) (8 September 2015)
 - [Competition Law](#) (February)
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Draft Laws in Parliament

- Banks and Financial Institutions
- [Industry Law](#)
- [Amendment to the Land Acquisition Act](#)
 - changes rate of compensation from 'market value' to "the market value of the land or three years average value of a similar land which exists surrounding it; whichever is more"
- ▶ [Private Education Law](#)
- ▶ [Pesticides Law](#)
- ▶ [New Plant Varieties Protection Law](#)
- ▶ [Copyright Law](#) (Gazette 11 September), [Patent Law](#), [Trademarks Law](#) and [Industrial Design Law](#)
- ▶ [Hand Dug Oil Wells Law](#)

Laws in the pipeline

(see later slides for labour laws)

- [Myanmar Companies Act](#)
 - [Myanmar Investment Law](#)
 - [Environmental Impact Assessment Procedures, Guidelines, Standards](#)
 - [National Land Use Policy](#), and subsequent revisions to laws
 - [Violence against Women](#)
 - Draft Intellectual Property Law (published in Gazette 4 & 11 Sept, Order 82/2015)
 - Hotels and Tourism Law
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Disabilities Rights Law (2015)

- ▶ Ministry of Social Welfare is the Myanmar Government entity responsible for people with disabilities (PWD) .
- ▶ A Disability Rights Law 30/2015, drafted with input from disabilities advocacy organisations, was adopted in June 2015.
- ▶ Provides for the creation of a National Committee for Disability Rights with extensive government and NGO participation (but not business).
- ▶ The Committee will address issues such as access to employment, discrimination and vocational training.
- ▶ Tax relief will be available for goods produced by PWDs, and for organizations or private business *‘that employ more than the designated quota of PWDs’*.
- ▶ No further details are given about the quota system, which it appears will be defined by the National Committee.
- ▶ The Law sets out the responsibilities of employers to obey and implement the policy of National Committee for creation of job and training opportunities for PWDs; employ PWDs (including those who are registered at township Labour Offices) in suitable workplace in accordance with the quota system.
- ▶ Where the employer is unable for whatever reason to employ PWDs, they shall contribute to a fund for PWD rights according to a rate to be laid down.
- ▶ The Ministry of Social Welfare is expected to begin work on bye-laws in late 2015.

Protection of the Rights of National Races Law (February 2015)

- ▶ Article 3 includes the purposes of the law: (e) *'to aim for the socio-economic development of less-developed national races including education, health, economics and transportation'*.
- ▶ While Article 3 of the law provides for *'access to equal citizenship rights for all ethnic groups'*, and *'for ethnic groups to have full access to rights enshrined in the Constitution'*, it does not explicitly protect ethnic minorities against discrimination. It does however state that no one can behave with intent to incite hatred, animosity and disunity among *'national races'* and that ethnic rights and entitlements cannot be restricted without a sound reason.
- ▶ Chapter 4 establishes a Minister for National Races to be appointed by the President with the approval of the Union Legislature (not yet in place – for new Government). The Ministry's mandate in Chapter 5 includes (e) *[to] carry out all round development activities including education, health, economics and transportation of less developed national races for their socio-economic development'* and article (j) *[to] 'carry out activities to develop, maintain, protect and improve language, literature, arts, culture and traditions of minority and endangered national races'*.

Protection of the Rights of National Races Law: Free Prior and Informed Consent?

- Article 5 provides that ‘indigenous peoples’ [using the phrase for Indigenous peoples – ta-ni tain-yin-tha, which is not defined in Article 1 of the Law, and was inserted in the Parliamentary process] should receive complete and precise information about extractive industry projects and other business activities in their areas before project implementation so that negotiations between the groups and the Government/companies can take place.

အခန်း(၄)

ဝန်ကြီးဌာနဖွဲ့စည်းခြင်းနှင့် ပြည်ထောင်စုဝန်ကြီးခန့်အပ်ခြင်း

၅။ တိုင်းရင်းသားလူမျိုးများ၏ ဒေသအတွင်း ဖွံ့ဖြိုးတိုးတက်ရေးလုပ်ငန်းများ၊ စီမံကိန်းကြီးများ၊ စီးပွားရေးလုပ်ငန်းများ၊ သဘာဝသယံဇာတ ထုတ်ယူသုံးစွဲခြင်း လုပ်ငန်းများ အကောင်အထည်ဖော် ဆောင်ရွက်မည်ဆိုပါက စီမံကိန်းအကြောင်းအရာများကို သက်ဆိုင်ရာ ဌာနတိုင်းရင်းသားလူမျိုးများအား ပြည့်စုံတိကျစွာ ကြိုတင်ချပြအသိပေး၍ ညှိနှိုင်းဆောင်ရွက်ရမည်။

- Coming soon – an MCRB briefing paper on Indigenous Peoples and Free Prior and Informed Consent in the context of Myanmar

Special Economic Zone regulations

- ▶ MNPED Order 1/2015 available on DICA website in Burmese, 83 pages, 27 August
- ▶ Chapter 3 – which departments are in one-stop shop (NB MOECAAF not specifically identified, but ‘other Ministries’ may be included)
- ▶ Chapter 8 – Developer needs to submit plans including for environmental protection (and ‘other necessary information’)
- ▶ Chapter 9 – prohibited businesses – includes waste processing from overseas
- ▶ Art 53, 58 and elsewhere – mention of environmental protection in line with international standards (page 76 refers to rules including requirement to follow MOECAAF instructions on not harming environment)
- ▶ Art 89 – deduction for tax purposes of costs spent on training unskilled workers
- ▶ Chapter 21 Labour: SEZ Management Committee monitoring compliance with Myanmar labour laws and respect for labour rights; Labour Ministry included OneStop Shop. Investors and Developer can submit internal employment codes to SEZMC; 24 hour advance notice of inspections; SEZ MC can issue orders in relation to recruitment etc, ask for reports on training etc. Art 218: any disputes need to be notified by employer within 24 hours. Art 224: MC can convene groups to support company compliance with Myanmar Law
- ▶ Quarterly report from developer to MC to include environment, workers housing, training includes standard undertaking to combat corruption (page 74); and from investor (template at page 79)

Thilawa SEZ Management Committee

Notice 4/2015

- Notice (7 August 2015) to the Developer, Investors and their Contractors to Ensure the Responsible Investment in the Thilawa Special Economic Zone
 - http://www.myanmarthilawa.com/sites/default/files/responsible_business.pdf

- Sets out the Management Committee's guidance to all companies doing business in the Zone to:
 - Respect human rights
 - Engage with stakeholders
 - Support the rights of workers
 - Build human capital
 - Ensure effective grievance mechanisms
 - Be transparent
 - Created shared value
 - Support the communities in which they operate

Heritage Buildings Protection Law

- ▶ Passed on 26th August, 2015
- ▶ NB also [Heritage Goods Protection Law](#) (passed on 22nd July, 2015).
- ▶ **The Heritage Buildings Protection Law** The law covers to any buildings or sites which are more than 100 years old located onshore and offshore which ancient people have used as the place to live and to worship, and any ruins of ancient cities, pagodas, palaces, cemeteries, etc., and archaeological sites where primates have been found.

Chapter 7 (extract, quick MCRB translation)

- ▶ 6.15 Prior approval required for any project in the area designated as the heritage building from the Department of National Museum under the Ministry of Culture is required. Those projects include;
 - (a) Expansion of villages, ward, and town
 - (b) Building, expansion, renovating, fencing or extension of buildings including hotels, factories and workshops, and houses
 - (c) **Exploration for oil and gas, gem stones and minerals, construction of oil and gas pipelines, factories and workshop, national electric grids, and cell towers, and construction and expansion of infrastructure projects such as roads, bridges and airports, canals, and dams**

Chapter 8 - Restrictions

- ▶ 20. These activities in the heritage building areas are restricted without a prior approval includes the following:
 - (a) Filming and photographing
 - (b) Any actions which use heavy vehicles which could produce vibration to the ground
 - (c) Gardening, farming, fencing and raising livestock
 - (d) Any action which can emit smoke such as gas-fired balloons
 - (e) Flying and landing air carriers and aircraft etc.
 - (f) Disposing waste and chemical waste

Pre-existing Cultural Protection laws seem to have been left in place.....

- ▶ The Myanmar Protection and Preservation of Cultural Heritage Regions Law (1998) Amended by Law. No.1/2009
- ▶ The Ministry of Culture has the duty under this law to scrutinize applications of permission for construction and assess whether:
 - it can cause obstruction of the view of the cultural heritage regio;
 - it is clear of the ancient monument or ancient site;
 - it can obstruct the surrounding natural landscape;
 - it can undermine the grandeur of the ancient monument;
 - it can affect the security of the cultural heritage; or
 - it can cause environmental pollution.
- ▶ The Law also prohibits destruction of ancient monuments, the wilful altering of the original ancient form and structure or original ancient workmanship of an ancient monument; and excavations to search for antiques and exploration for petroleum, natural gas, precious stones or minerals in a cultural heritage site. It is also prohibits to ploughing and cultivating or carrying out any activity that may cause damage to the cultural heritage.

Labour Law Reform

Follow-up process for labour law reform

- ▶ National Tripartite Dialogue Forum formed with representatives from government (9); trade union (3 each from CTUM, MTUF and AFFM-IUF); and employers (UMFCCI); ILO involvement
 - Will be the focal consultative forum for all matters concerning labour law
 - NB important for multinational to engage via UMFCCI
- ▶ Task Force for Labour Law reform – technical input
- ▶ Employment Working Group (donor/government group under Naypyidaw Accord) will also include broader stakeholder forum including business, civil society, to provide advice
- ▶ Medium-term aiming for a Labour Standards Act which incorporates many existing labour laws; would be good for this to recognise atypical work patterns e.g. 1 month on/off for oil rigs

Labour laws: adopted (1)

- ▶ Labour Organisation Law (2011)
 - Right to organise/form trade unions – now over 1700 enterprise level workers unions and around 30 employers unions; 3 actual or emerging (con)federations
 - 0.4% of workforce estimated to be organised; 8-10% of garments or around 25% of garment factories
 - Next step could be collective bargaining at enterprise or sector-level.
- ▶ Labour Disputes Settlement Law (2012)
 - Requires establishment of Workplace Coordination Committees for companies > 30 employees. At least 2 employees; 2 employers, including TU reps if present in the workplace
 - Factories Inspectorate will be inspecting existing of WCC from now on
 - Believe that they can have more than 2 employee/2 employer reps – that is the minimum (1 company present noted they have 4x 4)
 - Also permits strikes/demonstrations to take place without separate permission under Article 18 of Right to Peaceful Assembly and Peaceful Procession Act (2011) – although NB several strikes have been arrested under this Act. [Amended in](#) 2014

Labour laws: adopted (2)

- ▶ [Leave and Holidays Act \(2014\)](#)
 - Amends 1951 Law
 - Maternity and Paternity leave included
 - Makes Sunday a paid day off – NB implications for calculating minimum wage. This may be further revised in labour law reform to make it a 'rest day'
- ▶ Social Security Law (2012)
 - NB both Social Security Law and Leave and Holidays Act (2014) contain inconsistent provisions on maternity leave. Assumption is that where employee is covered by SocSec, those provisions will be followed
 - Individual SS card issuance
 - Law says contribution is % of last month's pay (ie incl O/T, bonuses) but in practice a flat rate based on basic salary is being calculated
 - Scheme is not self-funding: money all accrues to Min of Finance who refunds the SS Fund provider on the basis of an invoice
- ▶ Separately, a [Social Protection Assessment-Based National Dialogue \(ABND\)](#) with ILO input has looked at contributory benefits e.g. unemployment, pension. Actuarial costings are with government for consideration of affordability.
- ▶ President is considering a Provident Fund but would only be for government servants.

Labour laws: adopted (3)

- ▶ Employment Skill and Development Law (2013)
- ▶ Minimum Wages Law (2013)
 - Set at 3600 kyats per day in August 2015
 - Working week is 44 hours(=5.5 days) except for continuous process e.g. furnaces that cant be shut down (48 hours – requires a special permit)
 - Sunday is a paid holiday (see above)
 - so minimum weekly wage is 6 or 6.5*3600 depending on whether ½ Saturday is worked; or (6+1)*3600 for a 6 day week with continuous process
 - Likely to see a change to the law on overtime rate in future so that it is not always 2 x. Will be negotiated in Tripartite Forum
- ▶ Workmen's Compensation Act (2015)
- ▶ Ward and Village Tract Administration Law (2012) relevant to forced labour; Labour-related provisions also in 2008 constitution

Draft Labour Laws currently in Parliament

- ▶ [Shops and Establishments Act](#) (repeals 1951 Act) – relevant for offices
- ▶ [Amendment to the 1951 Factories Act](#)
- ▶ Amendment to the 1999 Overseas Employment Law
- ▶ [Payment of Wages Act](#) (repeals 1936 Act) - includes requirements for when to pay wages, and information to include on payslip. Allows for payment in kyats or foreign currency and by cash or bank transfer (section 3(a))
- ▶ Amendment to the 1940 Foreign Workers Act – in response to ASEAN Economic Community/free movement of workers. Not sure where this has got to (not on Parliament website)
- ▶ (new) Occupational Health and Safety Law (not on parliament website)
- ▶ [Technical and Vocational Training Act](#)

- ▶ Also **draft Standard Contract** proposed by Labour Department
 - Labour department aiming to release before end of year
 - Only provides for fixed term not indefinite contract
 - 8-9 pages of prescriptive detail, will be compulsory
 - Not all of the content is found in existing Myanmar Law

Labour Laws in the pipeline for review

- ▶ 1958 Dock Workers Act
- ▶ 1959 Restriction of Employment Act
- ▶ 1990 Private Industrial Enterprise Law
- ▶ Penal Code
- ▶ Code of Criminal Procedures Act
- ▶ 2011 Right to Peaceful Assembly and Peaceful Procession Act
- ▶ 1993 Child Law
- ▶ 1990 Myanmar Marine Fisheries Law
- ▶ 1918 Oilfield Act
- ▶ 1944 Arbitration Act
 - Would be good to make clear this is for commercial disputes only and not labour
- ▶ 2011 Labour Organisation Law and 2012 Labour Dispute Settlement Law
 - To be reviewed before March 2016