



ICLG

The International Comparative Legal Guide to:

Project Finance 2014

3rd Edition

A practical cross-border insight into project finance

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Myanmar



James S. Finch



Jaime Casanova

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1 Overview

1.1 What are the main trends/significant developments in the project finance market in Myanmar?

The main trend in the project finance market is the willingness of the public authorities to start enforcing the relevant provisions under the laws of Myanmar with regard to registration of securities, provision of evidence thereof, maintaining registers in that respect, etc.

1.2 What are the most significant project financings that have taken place in Myanmar in recent years?

The most significant in recent years are: China Development Bank's US\$900 million project finance facility to Daewoo International Corporation, in relation to the development of an offshore natural gas project in Myanmar – out of Singapore; and the Yangon International Airport PPP project.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

An agreement is required in relation to each type of asset, which must be registered with the registrar of the Companies Registration Office ("CRO") or would be void against the liquidator and other creditors of a company.

Mortgages on immovable property also need to be registered with the Office of the Registration of Deeds. Security interests in moveable property such as bank accounts and shares are made and created by way of a pledge or charge and are perfected by furnishing the secured party with control over such collateral. Creation of a security interest in favour of a foreign lender requires approval from relevant government ministries and the Central Bank of Myanmar ("CBM").

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

The types of collateral available for secured transactions are real estate, buildings, leasehold interests, concessions, etc.

However, under the Transfer of Immoveable Property Restriction Law, 1987 ("TIPRL"), mortgages of immovable property are not available in connection with secured transactions if the lender is a foreigner, foreign company or foreign bank.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

The types of collateral available for secured transactions regarding moveable property include receivables.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

The types of collateral available for secured transactions regarding moveable property include bank accounts and proceeds from investments.

2.5 Can security be taken over shares in companies incorporated in Myanmar? Are the shares in certificated form? Briefly, what is the procedure?

The types of collateral available for secured transactions regarding moveable property include shares and securities.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

Security gives rise to stamp duty and registration.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

There are various fees for stamp duty and registration depending on the type of security interest. Regarding fees for filing any document at the CRO, the fee is 75 kyats.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

According to government directive No. 3/90, land owned by government departments or organisations that is leased to investors may be mortgaged only with the approval of the government.

In addition, Myanmar has enacted new special economic zone laws entitled the Myanmar Special Economic Zone Law of 2011 (“**Myanmar SEZ Law**”) and the Dawei Special Economic Zone Law of 2011 (“**Dawei SEZ Law**”). According to the SEZ laws, investors may, with the approvals of the government and the Central Body relating to the Myanmar Special Economic Zone (“**Central Body**”) and pursuant to existing law, mortgage or sell land or buildings within SEZs in accordance with rules not yet established.

Under the new Foreign Investment Law of 2012 (“**NFIL**”) a foreign investor may sub-lease or mortgage its leasehold interest in immovable property to another person with the prior approval of the Myanmar Investment Commission (“**MIC**”). Such sublease or mortgage must be done within the term of the business and, upon the type of land where it is done, certain other requirements must be met.

3 Security Trustee

3.1 Regardless of whether Myanmar recognises the concept of a “trust”, will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

There are no reported cases or rulings in Myanmar that could be used as guidance dealing with the specific issue as to whether a corporate entity, in the capacity of an agent or trustee, may hold collateral on behalf of the project lenders as the secured party.

3.2 If a security trust is not recognised in Myanmar, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Under the Transfer of Property Act of 1882 (“**TP Act**”), the mortgagee has a right to obtain from the court a decree that the mortgagor shall be absolutely debarred of his or her right to redeem the property, or a decree that the property be sold. However, a mortgagor who holds the mortgagee’s rights as his or her trustee or legal representative, and who may sue for a sale of the property, is not authorised by the TP Act to initiate a suit for foreclosure.

Under the laws of insolvency, the property of the insolvent divisible among his or her creditors will not comprise property held by the insolvent on trust for any other person, and thus, the collateral would be excluded from its estate held by the insolvent on trust.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

Specific requirements under each relevant mortgage vary. In general, a lender would need a court order for enforcement of its security, and cannot enforce its security freely. There is, however, a provision in the TP Act under which a mortgagee may exercise its right of sale without the intervention of the court.

Under the NFIL, foreign companies will be allowed to mortgage real property during the NFIL investment period and with the approval of the MIC. All secured interests in real estate in Myanmar must be registered within 21 days of their effective dates.

The Contract Act also recognises pledges of moveable property in which it is stated that if the pledgor is in default of payment of the debt or performance at the stipulated time of the promise in respect of which the goods were pledged, the pledgee may bring a suit against the pledgor upon the debt or promise, and retain the goods pledged as collateral security, or may sell the thing pledged on giving the pledgor reasonable notice of the sale.

A lender would need a court order and decree to enforce its security in connection with the sale of the mortgaged property. The rules and procedures to be strictly complied with by the parties in connection with institution of a suit are provided in the Code of Civil Procedure of 1908 (“**CPC**”).

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

According to one Myanmar ruling, generally, the TP Act does not authorise the mortgagee exercising power of sale to purchase the property at an auction sale, and therefore, the mortgagees (project lenders) may not participate as buyers in the sale. If the purchaser at the auction is a foreigner, by virtue of the TIPRL, he/she will not be entitled to a legal capacity to bid at the sale of immovable property. With regard to judicial sale, no rules are fixed relating to judgment currency. It is at the sole discretion of a Myanmar court to decide whether the judgment would order the payment in equivalent local currency or in a foreign currency.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

Under the MC Act, any transfer, delivery of goods, payment, execution or other act relating to property that would be deemed a fraudulent preference is invalid. Also, any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

The MC Act provides, *inter alia*, for the winding-up of a company by a court if the company is unable to pay its debts. A company is deemed to be unable to pay its debt if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding

500 kyats then due, has served on the company a demand requiring the company to pay the sum so due, and such company has for three weeks thereafter neglected to pay said sum.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

The MC Act, the Myanmar Insolvency Act of 1920 (the "Myanmar Insolvency Act"), the Yangon Insolvency Act of 1909 (the "Yangon Insolvency Act"), the Central Bank of Myanmar Law of 1990, the Rules Relating to Financial Institutions of Myanmar Law of 1990 and the CPC are the relevant laws which deal with priority of debts and need to be taken into account in connection with protection of secured assets from the general creditors of the borrower.

The Yangon Insolvency Act and the Myanmar Insolvency Act are the relevant laws dealing with insolvency. Whereas the Yangon Insolvency Act is applicable only in Yangon, the Myanmar Insolvency Act applies to the whole country. Both acts apply to individuals, enterprises and partnerships. There is some inconsistency in the various insolvency laws described above with regard to priority of payment of debts in a winding-up, but in general the order of priority, in descending order, is:

- (a) debts due to Government, wages and other accrued benefits owed to employees, taxes, debts due to state banks and the CBM (all ranking equally in priority over other debts);
- (b) debts due under a registered mortgage of immoveable property;
- (c) debts due under a registered fixed and floating charge;
- (d) debts due to unsecured creditors (trade); and
- (e) remainder (if any) to go to contributories (share-holders).

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

According to the law of insolvency, corporations, associations or companies registered under Myanmar law are exempted from insolvency proceedings.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

A mortgagee has power to sell the mortgaged property in default of payment of the mortgage money, without the intervention of the court, subject to the conditions that the mortgage is an English mortgage; the power of sale without court intervention is explicitly conferred on the mortgagee by the deed of mortgage; and a written notice demanding payment has been served on the mortgagor and default has been made by the mortgagor in payment of the principal money for three months after such notice, or interest unpaid for three months after becoming due.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

This is not applicable in Myanmar.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in Myanmar.

This is considered a criminal offence and such director could be punished with imprisonment for a term ranging between two and five years.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

Foreign currency exchange matters are mainly governed by the Foreign Exchange Management Law of 2012 ("FEML").

The FEML is intended, among other things, to liberalise transfer payments relating to "current account transactions" which shall not be restricted directly or indirectly for settlement or remittance out of the country. Payments must be arranged through any bank with a foreign exchange authorised licence, which is issued by the CBM.

The FEML also regulates remittances and payments relating to "capital account transactions", defined as "capital account remittances other than current account remittances".

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

This is not applicable.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

The Myanmar laws relevant to nationalisation include the Farmland Law, 2012, the Land Acquisition Act of 1894 and the Land Acquisition (Mines) Act of 1885.

Most importantly, there is a provision in the NFIL expressly guaranteeing that an economic enterprise operating under the MIC permit shall not be nationalised during the term of the contract or during any extended term.

Under the SEZ Law, the investment businesses in the Special Economic Zone are guaranteed not to be nationalised within the permitted period.

Likewise, businesses under the Dawei SEZ Law are guaranteed not to be nationalised while they are permitted.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

There are various government ministries, departments and state-owned economic organisations under the relevant ministries having jurisdiction with respect to specific project sectors. Depending on project sectors, the requirements to obtain approvals from relevant ministries vary in addition to obtaining prior permits or approvals from the government or the MIC, as may be necessary.

In connection with doing businesses and investment in the Dawei SEZ, approvals are also required as may later be determined from organisations such as the Central Body or the Management Committee.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Any mortgage would require prior approval from the MIC.

If the principal money secured is 100 kyats or more, a mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses. If the principal money secured is less than 100 kyats, a mortgage may be effected either by a registered instrument signed and attested as mentioned above, or (except in the case of a simple mortgage) by delivery of the property.

Also every mortgage or charge created on immoveable or moveable property by a company must be registered with the CRO, and also, mortgages on immoveable property must be registered with the Office of the Registration of Deeds.

Generally, contracts including mortgage deeds may be made in English, although translation of the instruments into the Myanmar language and notarisation or legalisation may be required at the time of filing the documents.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Title to natural resources in the ground is vested in the state.

However, depending on the sector, project activities may be carried out and the rights thereto, including title to underground water as well as things growing on or living on land, may be enjoyed as permitted by law.

Yet, there are particular requirements on leased land on which natural resources or antiques are discovered.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

Royalty rates vary from sector to sector and the Ministry may exempt any royalty payable by the holder of a permit, in whole or in part, for such period as may be determined and also defer payment of royalty due.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

Because implementing regulations to the FEML have not been issued, those of the Foreign Exchange Regulation Act of 1947 (“FERA”) are still observed. As such, shareholder loans which have to be approved by the MIC in the MIC permit application procedure may be treated as capital transactions and subject to CBM approval procedures applicable to every payment to be made under such loans as “*capital account transactions*” and therefore at risk of rejection by the CBM.

Also, the FEML causes further uncertainty with regard to remittance approvals, as it states that restrictions on capital account

transactions will not apply to (*inter alia*) “*repayment of principal for loans permitted by the Union Government*” which implies that loans still require pre-approval.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Myanmar project companies are not required to repatriate foreign earnings. However, foreign companies in Myanmar can repatriate their profits and dividends through any bank with a foreign exchange “authorised dealer licence” issued by the CBM.

Payment of dividend, interest and repayment of capital on loans by a foreign invested enterprise with a permit granted by the MIC must be approved by the MIC before the bank is allowed to execute the outward remittance. Investors have the right to maintain foreign bank accounts without restriction and to freely receive abroad, remit abroad and use without restriction foreign exchange received from export and local sales of its shares.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

Project companies may establish and maintain foreign currency accounts in other jurisdictions and accounts locally, although it may require prior approval from the MIC or the CBM/MFR.

Under the Dawei SEZ Law, businesses that are operated in foreign currency in Dawei SEZ may open foreign accounts and operate accounts in accordance with rules not yet adopted. Also, pursuant to the Dawei SEZ Law, foreign investors may, pursuant to rules not yet adopted, be allowed to make payments and exchange and transmit foreign currency within the Dawei SEZ.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in Myanmar or abroad?

Remittances of investment returns (dividends and capital) or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions may be made with the prior approval of the MIC or the CBM/MFR, or both. If there is state participation in a joint venture or state funds are used to repay principal or interest in connection with loan agreements, the approval of the government/Trade and Investment Supervision Committee (“TISC”) is also required. Under the current Myanmar tax regime, dividends received from a company are exempted from income tax. Also, under the SEZ laws, foreign investors may apply for exemption from income tax on the proceeds of overseas sales during the first five years since the day of the commencement of the production or service. Fifteen per cent withholding tax on interest payments made to overseas lenders must be deducted by the borrower in Myanmar. This withholding tax is a final tax.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

Depending on the project sector, there are various requirements under Myanmar law.

The Environmental Conservation Law (“ECPL”) was enacted on 30 March 2012, under which the Union government is required to form an environmental preservation committee to conserve the environment of Myanmar, and to create and carry out specific policies. The ECPL requires the ministry to accomplish certain objectives, but does not provide detailed, specific requirements. In short, it mainly gives the ministry the power to make policies.

Although the ECPL is binding for the government and the government projects, the ministry may be required to get permission from the Government to enforce the ECPL on other ministries.

Investors at the Dawei SEZ are required not to cause environmental pollution and air pollution.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

This is not applicable in Myanmar.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

All insurance coverage must be done with Myanmar Insurance. If the foreign company wants to maintain insurance with a foreign insurance company abroad, it may do so only with the permission of Myanmar Insurance.

In accordance with the NFIL, all economic organisations formed under an MIC Permit shall procure insurance with any authorised local insurance enterprise in respect of the types of insurance that are provided therein.

Of course, other insurance policies may be required to be subscribed in accordance to the specific project and under the relevant, applicable laws.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Such policies may be payable to foreign secured creditors if the foreign loan transaction is approved by the government, the MIC or CBM/MFR.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

The employment of foreign experts and technicians by a company carrying out business under the NFIL must obtain approval from the MIC. Foreigners are not allowed to be directors of Myanmar companies wholly owned by Myanmar citizens.

Under the NFIL, investors must appoint at least 25 per cent of skilled citizen workers, technicians and staff within the first two years of the investment, at least 50 per cent within the second two years, and at least 75 per cent within the third two years, all counted from the year that the business commenced its operations.

Under the Dawei SEZ Law, there are also certain restrictions related to labour.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

The requirements to be fulfilled prior to importation of project equipment include compulsory registrations, and obtaining export or import licences.

10.2 If so, what import duties are payable and are exceptions available?

The importation of project equipment may be made subject to the customs laws and on payment of customs duty. If incentives as granted under the NFIL are obtained, there may be exemption or relief from customs duties on machinery, equipment, instruments, machinery components, spare parts and materials used in the business required for use during the period of construction.

Likewise, if incentives are granted to foreign investors under the Dawei SEZ Law, these investors may also receive the exemptions that are provided therein.

In respect of production enterprises in other zones, foreign investors are required to pay taxes in advance of importing raw materials to be used, and may apply to receive refunds of the exempted taxes when exporting items abroad.

11 Force Majeure

11.1 Are force majeure exclusions available and enforceable?

Force majeure exclusions are available and enforceable, although they must be included in the relevant agreements.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Corrupt business practices and bribery are considered offences under the Myanmar Penal Code, 1861, and may be punished with imprisonment for a term which may extend to three years, or with a fine, or with both.

13 Applicable Law

13.1 What law typically governs project agreements?

As a general rule, the Myanmar authorities require in virtually all contracts that the law of Myanmar is chosen as governing law, and that the (Myanmar) Arbitration Act, 1944 is chosen as arbitration.

13.2 What law typically governs financing agreements?

There may be exceptions to the general rule, *inter alia*, in loan agreements between the government and foreign entities.

13.3 What matters are typically governed by domestic law?

State-owned economic organisations typically insist that a foreign investor/company use Myanmar law and arbitration.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

The parties to a contract are not prohibited from submitting to the jurisdiction of foreign courts. However, a contract provision expressly excluding the courts from jurisdiction would, therefore, run the risk of rendering the contract void.

There is a lack of precedent in Myanmar concerning how Myanmar courts deal with agreements containing a foreign law forum choice.

Pursuant to section 13 of the CPC, a judgment of a foreign court is recognised in Myanmar except in cases where a foreign judgment is not conclusive, as defined therein.

Sovereign immunity can be expressly waived by state-owned economic enterprises and government authorities and waiver of immunity clauses is effective and enforceable.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Myanmar is a signatory to the Geneva Convention and has enacted the Arbitration (Protocol and Convention) Act of 1937, which deals with foreign arbitral awards and the Arbitration Act of 1944, which deals with domestic arbitration, and arbitral awards made under arbitration agreements governed by Myanmar law.

15.2 Is Myanmar a contracting state to the New York Convention or other prominent dispute resolution conventions?

On 6 March 2013, the Myanmar Parliament approved the signature of the 1958 New York Convention.

15.3 Are any types of disputes not arbitrable under local law?

This is not applicable.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

The Arbitration (Protocol and Convention) Act of 1937 and the Arbitration Act of 1944 do not specifically provide that any particular class or type of dispute will be subject to automatic domestic arbitration, except that to enforce a foreign award it must have been in respect of a matter that may lawfully be referred to arbitration under Myanmar law.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

This is not applicable.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Withholding taxes are required under the Income tax Law, 1974, and their rates vary pursuant to the relevant circumstances.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Foreign investors wishing to carry out business in accordance with the NFIL can obtain the tax incentives that are provided therein.

In addition to the above, foreign investors operating businesses in the Dawei SEZ may apply to obtain the incentives that are provided in the Dawei SEZ Law.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in Myanmar?

Searches may, in theory, be performed by a creditor at the relevant government departments. If a lien is in a particular type of immoveable or moveable property, collateral is perfected only by control and not by way of a public filing, and the only possible way for a creditor to determine the absence of liens is via obtaining representations and warranties by the debtor or other relevant party to the agreement establishing such control.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

In Myanmar, government bonds are issued on a daily basis as there is no specific schedule of issuance by the government. This is less than ideal as investors cannot determine what amount of government bonds will be issued in future and there are months where no new government bonds are issued at all.

The government bond coupon rates are fixed and the interest rates are controlled. Myanmar does not have external sovereign debt and no ratings agency has rated Myanmar.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in Myanmar.

The use of such Islamic financing structures does not appear to be expressly prohibited by Myanmar law.

The authors are, however, not aware of any Islamic financing transaction having been undertaken/completed in the Myanmar market and, as such, such structures remain untested.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

Land related documents, concession agreements, security documents (including pledges of immovable and moveable assets and guarantees) and articles of association are to be governed by Myanmar law. With respect to other types of contracts, the use of

foreign law (including *Shari'ah* law) as the governing law is not prohibited. However, given the developing state of the Myanmar judiciary, a Myanmar court may have no knowledge of foreign laws (including *Shari'ah* law) and, accordingly, may rely solely on its understanding of Myanmar law in dealing with a contractual dispute.

We are unaware of any Myanmar litigation that considered or applied *Shari'ah* law.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in Myanmar? If so, what steps could be taken to mitigate this risk?

Generally not. However, the Contract and Tort Law forbids the compounding of interest (or the addition of interest to principal) in relation to a loan provided by a domestic entity. The calculation of interest on offshore loans is specified to be subject to the agreement between the parties but offshore loans are not explicitly excluded from the application of the prohibition on compounding (adding interest to principal).



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James' experience in the commercial legal field spans three decades and has taken him to the Middle East, Latin America and the Caribbean, where he practiced for extended periods. His work as a partner in the firm of Russin & Vecchi finally took him to Asia, where he began in the Hanoi office of the firm. In 1996 he became the managing partner of the firm's Yangon, Myanmar (Burma) office that has now become DFDL's Yangon office. Since then he has had a varied and active practice in Myanmar, with extensive legal work in the energy, hard minerals, corporate, tax, aircraft leasing, hotel development, banking and finance fields. During this period he also served on Russin & Vecchi's management committee. In 2005, Jim joined DFDL as Senior Of Counsel to establish DFDL's Myanmar practice, as well as to advise clients of the firm in Lao PDR and Cambodia. In 2007 the former Russin & Vecchi office in Yangon changed its name to Myanmar Thanlwin Legal Services Ltd (now DFDL Myanmar).



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