



Investing in Myanmar's Aviation Market--Legal Issues

Airports and Aviation Summit Myanmar Summit 2014

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Government administration agencies

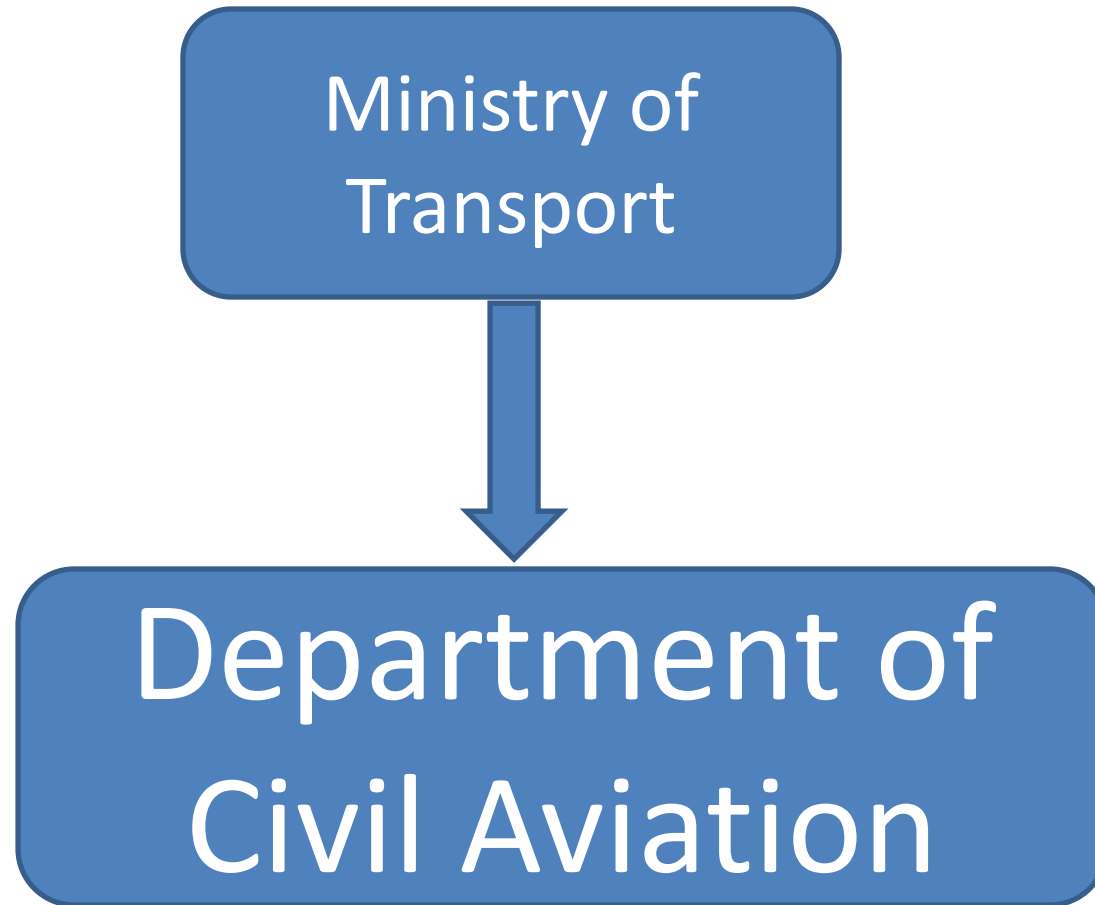
Legal framework and treaties

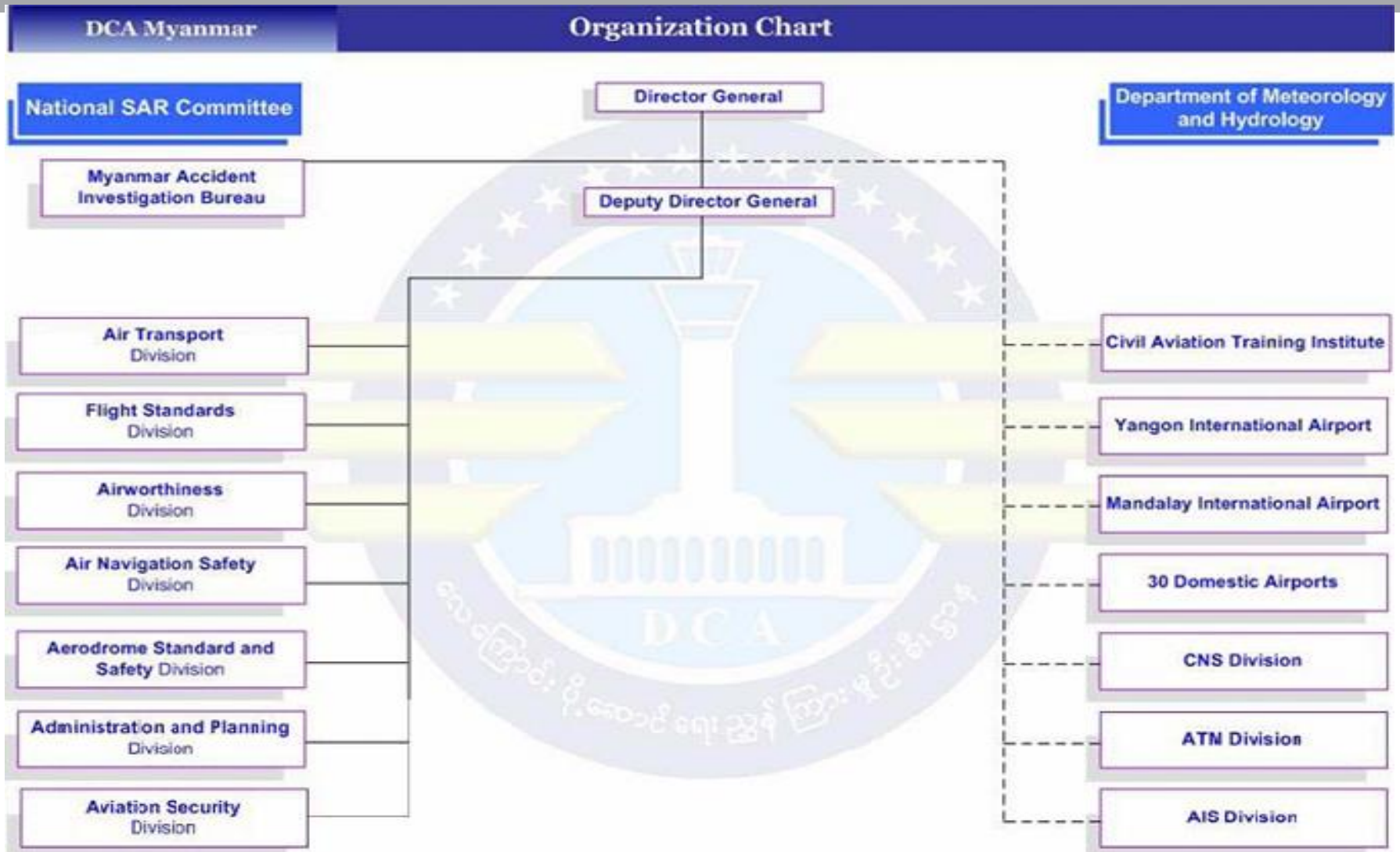
Leasing an aircraft

Developing an airport

Starting up an airline

DCA





Laws relating to aviation in Myanmar:

Colonial era laws have been amended over time, but not yet replaced.

Lots of gaps in the laws remain, and most deals are done with an element of direct negotiation with the Civil Aviation authority.

- Union of Myanmar Aircraft Act 1934
 - *An Act to provide for “control of the manufacture, possession, use, operation, sale, import and export of aircraft”*
 - *Applies to citizens and any persons on an aircraft registered in Myanmar*
 - *Gives power to the President and Ministry of Transport to make rules and regulations*
 - *Sets out some penalties for contravention of rules and regulations*

Laws relating to aviation in Myanmar, *cont*:

- Myanmar Aircraft Rules 1920, 1937, 1946
 - *Covering aerodromes (1920), aircraft (1937), and public health (1946)*
 - *Contain the practical detail related to aviation operations in Myanmar*
 - *Addresses: grant of certificates for air operators, aerodrome operators, personnel as well as rules of the air for lights, navigation, signaling, accidents and emergencies*

- Union of Myanmar Carriage by Air Act 1934
 - *Implements the Convention for the unification of certain rules relating to international carriage by air, signed in 1920 in Warsaw*

- Notification 118/2009
 - Gives the Director General of the Civil Aviation Department broad powers for the regulation and management of aviation
 - DCA has a litany of procedures and directives relating to various aspects of aviation (eg personnel licensing and accident investigation)

- Law Relating to International Interests in Mobile Equipment and Aircraft Equipment 2014
 - Implements the 'Cape Town Convention'
 - No regulations or rules in respect of practicalities have been issued

Myanmar Aircraft Manual, 2010

A compilation of the Legislation and Rules governing Civil Aviation in Myanmar

- The Convention on International Civil Aviation, Chicago, 1944 (Chicago Convention)
- Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 1963 (Tokyo Convention)
- Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970 (The Hague Convention)
- Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 1971 (Montreal Convention 1971)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Montreal Convention 1971, Montreal, 1988 (Montreal Supplementary Protocol 1988)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, 1991
- Convention for the Unification of Certain Rules Relating to International Carriage by Air, Warsaw, 1929 (Warsaw Convention) (Implementing legislation has been passed)
- Article 83 bis Montreal 6/10/08 a
- Cape Town Convention. Adhered to in 2013. Implementing legislation in 2014. No regulations yet.
- Underlined treaties only ones with implementing legislation DCA position is that all others are complied with, however.
- *Not a party to 1948 Geneva Convention on the International Recognition of Rights in Aircraft or 1933 Rome Convention on the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft*



Leasing an aircraft

- No specific laws on aircraft leasing.
- Myanmar Contract Act 1872 recognizes leasing.
- Leases can be governed by foreign law.
- Law does not provide many requirements of a lease.
- Parameters of the lease agreement will largely be drawn from the wording of the contract between the parties.
- DCA allows both wet and dry leases of aircraft.
- Both local owned and in practice foreign ownership can be registered at DCA
- Mortgage will be registrable outside of Myanmar via Cape Town Convention. Could be registered in Myanmar as a deed, but would have to be translated
- Likewise a lease can be registered as a deed, but optional.

1. Reach agreement on lease;
2. Submit an application for reservation of registration number of aircraft to the Department of Civil Aviation ("DCA");
3. Submit an application for registration of aircraft to DCA;

4. Apply for approval letter from the Ministry of Transport ("MOT") for importation;
5. Apply for exemption for import license requirement to MOT if the President delegates this power to MOT;
6. If such exemption mentioned in above 5 is not granted, apply for import license to the Ministry of Commerce;

7. Apply for exemption from the nationality and/or category requirement for the aircraft to DCA; if applicable;

Category requirements:

Category A.—If the aircraft is wholly owned either:

- (i) by organizations controlled by Myanmar Union Government or Region or State Government or by a State or by local authorities, or
- (ii) by citizens of Myanmar, or
- (iii) by companies or other associations organized under the laws in force in Myanmar, not less than sixty per cent of whose capital is owned by Myanmar Union Government or by any Region or State Government or by any local authority or by citizens of Myanmar, and

Category B.—If the aircraft is wholly owned either:

- (i) by persons, resident in or carrying on business in Myanmar, who are not citizens of Myanmar, or
- (ii) by companies or other associations which do not qualify for Category A but are carrying on business in Myanmar.

Where an aircraft does not meet the criteria for (a) or (b), an exemption may be granted under the Myanmar Aircraft Act.

8. Import the aircraft;
9. Pay import duty to the Custom Department;
10. Get a certified copy of the Certificate of Registration from DCA;
11. Get a valid airworthiness certificate for the Aircraft from DCA



Development of an airport in Myanmar

Previously all airports have been state-owned, but there are moves to privatize a number of aerodromes.

The existing legal framework provides little guidance on the procedure for development of an airport.

Ministry of Transport and Attorney General's office are currently drafting the Myanmar Airport Authorities Law.

This law shall be similar to the Myanmar Port Authorities Law and will enable the privatization of airports.

Department of Civil Aviation has issued requirements for the application for and execution of a licence to operate an airport in Myanmar.

Regulations to be abided by when issuing Tenders for Investment and economic activities

Tenders shall be advertise in the State owned newspapers evidently and distinctly for about one week and shall invite the open Tender at least one month ahead.

Tenders shall be advertised on the notice board and Ministry website (2) weeks ahead.

There are specific rules with respect to bidding procedure, for example
The Tender scrutinization and election committee shall scrutinize and announce in the presence of all respective committees, whether or not the bid is in compliance with the rules and regulations

- (aa) Preference shall be given to the bidder who quotes the lowest percentage upon labour charge and service charge of the work. The price for all the costs of the local/ imported materials utilized would be examined and accepted by the office of the Auditor-General (bb)
- (bb) Competency of the company and agreement to carryout the work by themselves(winning bidder) , rather than giving sub-contracts.
- (cc) Companies quoting unrealistically low prices shall be black-listed and notified to other Ministries also.
- (dd) All terms and conditions to be mentioned completely in detail in the contract, and if any dispute arises, to abide by the terms and conditions of the contract.

No Public-Private Partnership Laws

- Although government has shown a willingness for these types of projects
- Also a preference for BOT projects

Foreign Investment Law of 2012 FIL

- Restriction via State Enterprise law 1989 therefore must come under FIL “air navigation services”
- No mention of airports –therefore in theory could be 100% foreign owned
- Tax benefits, including:
 - Tax exemption period of 5 years from commencement of business
 - Reduced income tax rates for foreign employees
- Depreciation, acceleration loses
- Customs duty
- 1987 Transfer of Immovable property Restriction Law. –FIL allows long lease



Starting up an airline

Under the FIL, domestic or international air transport services must be a joint venture operation with a Myanmar citizen/company.

The project will require a permit from the Myanmar Investment Commission (the foreign investment regulator).

There must be a corporate presence in Myanmar.

- Application to DCA not less than three months before the date on which the desired service is to commence
- Applications for a temporary licence (operations not exceeding 60 days) shall be made not less than 15 days before the date of desired service
- Applications made in the form prescribed by DCA
- DCA will issue a certificate that must be kept with the aircraft
- Application are assessed against DCA criteria including category of the aircraft, intended route including landing and takeoff.

Applications must be accompanied by (among other things):

- Details of the airline's head office
- Incorporation, board of directors and equity details
- Details of the fleet of aircraft to be utilized—each aircraft must be registered

For foreign airlines, also:

- Air operator certificate or equivalent by the State of the Operator
- Delegation of authority by the chief executive of the airline to the airline's local representative(s) who will be authorized to act on behalf of the airline in matters concerning DCA
- DCA will give priority to airline operators who have appointed a local legal agent

Thank you



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Since 1994

- Political reform – transition from military rule; next election 2015
- Economic reform:
 - Foreign Investment Law – encourages foreign ownership, tax incentives, permits 100% ownership (except in prohibited and restricted sectors)
 - Foreign Exchange Management Law – provides for easier remittance for certain payments offshore
 - Banking reform – over 30 international banks with rep offices; some international banks now allowed to offer financial services
- Tax reform – lower income tax rates; one rate for commercial tax (with few exceptions)
- Infrastructure: airports, telecom, electricity
- Integration into ASEAN and the world – chairmanship for ASEAN, WTO member, tax treaties, acceded to the New York Convention

- Required documentation for registration of ownership under the Myanmar Aircraft Rules:
 - Particulars relating to the aircraft as may be required ;
 - Prescribed fees;
 - In the case of aircraft imported by air, a certificate signed by a Chief Customs Officer or Customs Collector that the customs duty leviable in respect of it has been paid. Such certificate shall state the type and manufacturer's number of the aircraft and engine, and
 - If the aircraft has been registered elsewhere, its registration marking.

In the event of default, the lessor must first secure a court decree in order to physically repossess the aircraft.

- Once Cape Town is implemented in Myanmar this may be either or a court, or special tribunal

Currently, the lessor may deregister the aircraft, but this would normally involve the consent of the lessee. This is because generally it is the locally lessee that lodges the registration.

This would change once Cape Town is properly implemented. Due to lack of precedent, it is unclear whether the current requirement for consent can be mitigated by a contractual term.

To take the deregistered aircraft out of the country will require export licenses and approvals.

- If the deregistered aircraft is still airworthy, can apply for a temporary air operator's licence to export by air;
- If the deregistered aircraft is not airworthy, and must be exported by land or sea,

Department of Civil Aviation has issued requirements for the application for and execution of a licence to operate an airport in Myanmar.

Steps to apply for an aerodrome operating certificate:

1. Submit ASSD Form 001 to the DCA Director General with:
 - a) Aerodrome manual
 - b) Application fee
 - c) Master plan for aerodrome and its facilities
 - d) Aerodrome survey and pavement evaluation

Steps to apply for an aerodrome operating certificate, *cont*:

2. Site inspection by DCA inspectors

3. Certificate granted by DCA
 - a) Can be issued with conditions and/or exemptions
 - b) Valid for 5 years and renewable

4. Certificate Holder must submit proposed changes to the Aerodrome Manual to DCA 30 days prior to the proposed effective date of the changes.

- Telecom tender process
 - Winners were 2 relatively unknown companies in the region
 - Objective application of criteria
 - Good relationship with other governments (i.e., Singapore, Japan) did not interfere with process
 - No local partners
- Oil and gas tender process
 - Government pledged openness to reassure investors over corruption concerns

- Government departments shall form tender invitations committee, floor price calculating working committee, Tender scrutinization committee, qualification inspection committee etc,
- In order to be open and transparent upon the Tender business, the Tender invitation rules and regulations of the respective committees shall be prescribed exactly and carried out.
- If the type of Tender business requires for supervision by Region and State Governments representatives from the respective Region or State shall be included
- The Tender scrutinization and election committee shall scrutinize and announce in the presence of all respective committees, whether or not the bid is in compliance with the rules and regulations.

- A preliminary feasibility study may be made, free of charge by the bidder is accepted however, this will not give the bidder any advantage in the open competitive tender.
- If the materials to be utilized for the project are locally produced , the expenses shall be calculated and submitted in accordance with the local administrative organization and scrutinized by the office of the Auditor –General .
- If the materials are imported , proof of the price proclaimed by the original company and transportation charges and the fixed rates in carrying out the business shall be calculated and submitted.