

# Legal and Regulatory Framework

## A. Legal Tradition

Myanmar inherited the British law tradition mainly through its historical connections with India. A number of the basic elements of legislation remain in force. These elements are gradually being replaced by modern laws in line with the country's development needs. Please see section C for details on these developments.

## B. English Translation

As an official government policy, all laws signed by the Union President are to be translated into an official English version. The translation is undertaken by the Attorney General's Office and may not always be available at the time the law is promulgated.

At present, regulations, rules, notifications, and directives are not required to officially be translated into English. But due to their significance in the context of the legal framework, the market does greatly benefit from unofficial translations into English, as and when they are provided. As such, an unofficial translation of the SER is highly anticipated.

As far as the use of typical English technical terms in the context of the securities market is concerned, the recently issued laws (see section C for details) are using terms comparable to international markets. The same usage is expected to flow through to the unofficial translations of rules and regulations that are issued pursuant to these laws, and these terms are also expected to be introduced in future legislation and regulations.

YSX publishes its regulations, manuals, and guidelines predominantly in English; certain documents are only published in English. It also carries laws, rules, and notifications from SECM on its website in the Myanmar language and in English, if so available.<sup>13</sup>

## C. Legislative Structure

Like most ASEAN+3 economies, Myanmar features a multitiered legislative structure to govern the financial and capital markets, as detailed below. The Constitution of the Republic of the Union of Myanmar, in its current form drafted in 2008, is the supreme law of Myanmar.

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<sup>13</sup> See <http://www.yxs-mm.com>

- [1st tier] Constitution of the Republic of the Union of Myanmar
- [2nd tier] Fundamental legislation and key legislation for the securities market
- [3rd tier] Rules pursuant to relevant laws
- [4th tier] Regulations, notifications, instructions, and similar issuances from ministries or regulatory authorities
- [5th tier] Instructions and announcements

Table 2.1 applies the relevant legislation to the individual tiers of the legislative structure for the securities market.

**Table 2.1: Examples of Securities Market Legislation by Legislative Tier**

Legislative Tier	Content or Significant Examples
Constitution of the Republic of the Union of Myanmar, 2008	Principles, Rights, and Obligations
Fundamental legislation (laws) and key legislation (laws) for the securities market	<ul style="list-style-type: none"> <li>• Myanmar Companies Act, 1914</li> <li>• New Myanmar Company Law, 2017</li> <li>• Financial Institutions Law, 2016 (No. 20/2016)</li> <li>• Government Securities Act, 1920</li> <li>• Union Budget Laws (for each fiscal year)</li> <li>• Securities Exchange Law, 2013</li> </ul>
Rules	<ul style="list-style-type: none"> <li>• Securities and Exchange Rules, 2015</li> </ul>
Regulations, notifications, instructions and similar issuances (directives and orders from ministries or regulatory authorities)	<ul style="list-style-type: none"> <li>• SECM Notification on Prospectus for Public Offers</li> <li>• SECM Notification on Business Time of Securities Companies and the Fee of Securities Brokerage Business (3/2015)</li> <li>• SECM Notification Announcement of Continuous Disclosure (1/2016)</li> <li>• YSX Trading Participant Business Regulations</li> <li>• YSX Securities Listing Business Regulations</li> </ul>
Instructions and announcements	<ul style="list-style-type: none"> <li>• SECM Instruction on Use of Prospectus Format for Public Offering (5/2016)</li> </ul>

SECM = Securities and Exchange Commission of Myanmar, YSX = Yangon Stock Exchange.

<sup>a</sup> See <http://secm.gov.mm/wp-content/uploads/2015/12/150914-IPO-Notification-2.pdf>

<sup>b</sup> See <http://secm.gov.mm/wp-content/uploads/2015/12/Continuous-Disclosure-E.pdf>

Source: Compiled by ADB consultants for SF1 and based on publicly available information.

Fundamental legislation consists of basic laws that may govern the issuance of specific instruments and the basic roles and responsibilities of financial and securities market participants. These laws are reviewed and updated through the full legislative process and must be debated and passed by Parliament before being signed by the Union President.

Key legislation is the summary term for those laws specifically aimed at a particular market, such as the bond market, or the securities market at large. These laws establish and govern bond or securities markets and market segments, their institutions and participants, and the manner in which they are able to interact. Similar to fundamental legislation, these laws are passed by Parliament and signed by the Union President before taking effect.

While rules that support key legislation are issued by the respective ministry, here the MOPF, rules need to be approved by the Cabinet before they are signed by the relevant minister and promulgated in the market. SECM, as the government body charged with the overall day-to-day supervision and governance of the securities market, issues such rules. These rules interpret aspects from key legislation and elaborate on the roles and responsibilities of market institutions and their participants.

Additional regulations and notifications may be issued by MOPF, CBM, SECM, and YSX for the market segments or activities under their respective purviews. These directives and other statements contain descriptions on how regulations and rules should be applied and specific market activities carried out.

## 1. Fundamental Legislation

The fundamental legislation for the Myanmar bond market has traditionally consisted of the Myanmar Companies Act, 1914 and the Financial Institutions of Myanmar Law, 1990. Together, these laws formed the basic legal framework for the securities market and its components until passage of the Securities Exchange Law in July 2013.

At the same time, with the help of the World Bank, CBM began the process of adapting the Financial Institutions of Myanmar Law, 1990 to the requirements of modern banking and the corresponding prescriptions of the new supervision regime, adequate roles and responsibilities of the financial institutions, and comprehensive descriptions of financial products and instruments. The result was the new FIL, which was promulgated in January 2016.<sup>14</sup>

In turn, the then Ministry of National Planning and Economic Development, which was later subsumed into the MOPF, began to review and rewrite, with technical assistance provided by ADB, the relevant corporate legislation in accordance with the needs of a modern economy, leading to a final draft version of a new companies law in 2016 and proposed Companies Rules.<sup>15</sup> The New Myanmar Company Law was eventually enacted by Parliament on 6 December 2017 but will be enforced effective 1 August 2018.

To improve Myanmar's investment regime, the new Myanmar Investment Law, 2016, which merged with and replaced the Myanmar Foreign Investment Law, 2012 and the Myanmar Citizens Investment Law, 2013, was issued on 18 October 2016 and took effect in April 2017.

### *Myanmar Companies Act, 1914 (revised by Act XIII, 1955)*

The Myanmar Companies Act, 1914 was designed for an economy and markets in another era. Its last major revisions occurred through Act XIII in 1955, with smaller updates in 1989 and 1991. However, after the promulgation of the New Myanmar Company Law, effective in August 2018, this act will be repealed. The act contains a number of basic provisions on securities and their issuance, including mentions of debentures and other relevant elements of today's securities markets.

These provisions are detailed below for easy reference.

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<sup>14</sup> See

[http://www.cbm.gov.mm/sites/default/files/regulate\\_launders/financial\\_institutions\\_law\\_updated\\_by\\_cbm\\_20160303website-1\\_0.pdf](http://www.cbm.gov.mm/sites/default/files/regulate_launders/financial_institutions_law_updated_by_cbm_20160303website-1_0.pdf)

<sup>15</sup> An unofficial translation of the New Myanmar Company Law (in its draft form before enactment) can be accessed on the Directorate of Investment and Company Administration website at [http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/mcl\\_english\\_version\\_mpf\\_comments\\_oct\\_2016\\_clean.pdf](http://www.dica.gov.mm/sites/dica.gov.mm/files/document-files/mcl_english_version_mpf_comments_oct_2016_clean.pdf)

**Part I: Preliminary—Definitions**

S2 (4) mentions “debenture,” including debenture stock.

S2 (14) mentions a definition of prospectus.

S2 (16) includes a definition of share(s).

**Part IV: Management and Administration—Prospectus Section (Article 92–100)**

S92 contains provisions and reference to debentures and underwriters.

S92 stipulates only the issuing and filing of a prospectus.

S93 (1A) refers to additional disclosure requirements (no detailed requirements).

S96 (b) suggests securities can be privately placed without a prospectus: “It shall be lawful, in case, if it is shown that the form of application was issued without a prospectus in relation to shares or debentures which were not offered to the public.”

S98A states that every document indicating an offer for sale to the public will be deemed a prospectus.

S108 references the need to issue certificates, including for debentures.

S126 (and subsequent articles) contains specific provisions for the issue of debentures.

The provisions for the subscription of company issues appear to refer to both shares and bonds. Other provisions, in Part V of the Companies Act, are concerned with the winding up of companies and contain comprehensive bankruptcy and insolvency prescriptions.

In addition, Part XA of the Companies Act features specific provisions for “Banking Companies.” From Article 277F onward, Banking Companies are identified as those in the business of, for example, issuing debentures and bonds, and conducting the promotion and underwriting of securities both in public and private forms. These provisions have since been replaced with the relevant prescriptions for banks and NBFIs, as well as other securities market participants, in the FIL (see next section) and the SEL (see section 2), respectively.

*Financial Institutions Law, 2016*

The FIL was enacted as Law No. 20/2016 on 25 January 2016, replacing the previous Financial Institutions of Myanmar Law, 1990.<sup>16</sup> The enactment of the FIL helped clarify the licensing of and activities to be carried out by banks and NBFIs in the Myanmar capital market.

Under Section 52 (Permissible Banking Activities) of the FIL, commercial banks are permitted to engage in trading, for their own account or for the accounts of customers, in money market instruments such as cheques, bills, and certificates of deposit;

<sup>16</sup> The text of the FIL is available at [http://www.cbm.gov.mm/sites/default/files/regulate\\_launders/financial\\_institutions\\_law\\_updated\\_by\\_cbm\\_20160303website-1\\_0.pdf](http://www.cbm.gov.mm/sites/default/files/regulate_launders/financial_institutions_law_updated_by_cbm_20160303website-1_0.pdf)

foreign exchange; currency forward and spot contracts; swaps and exchange and interest-rate instruments; and transferable securities. Commercial banks may also provide corporate advisory services, portfolio management and advice, and trustee services, as well as perform safe custody services.

Through a separately incorporated subsidiary, a bank may also engage in securities brokerage. However, this separate entity would be subject to licensing and supervision by SECM, under the SEL and relevant regulations.

## 2. Key Legislation for the Bond Market

The key legislation for the bond market in Myanmar is represented by the Government Securities Act and the SEL for the issuance of government and corporate debt securities, respectively.

### *Government Securities Act, 1920*

The principal basis for the issuance of government securities is the Government Securities Act, dating to 1920, established under the previous legal tradition. However, this law has not been actively used by the government for many years.<sup>17</sup>

### *Union Budget Laws (for each fiscal year)*

Instead, the actual issuance of government securities is anchored in the Union Budget Law for the respective fiscal year, which regulates government debt, the type of securities to be issued, and their proportion to each other and the overall budget. The most recent provisions are contained in the Union Budget Law, 2017 for fiscal year 2017/18.

### *Securities Exchange Law, 2013*

On 30 July 2013, the Union President signed the new SEL. The SEL was enacted to establish and regulate the securities market in Myanmar at large and its specific market segments.<sup>18</sup>

The SEL contains provisions to establish SECM and describe its roles and responsibilities, licensing for market participants, and sets the basic parameters for a vertically integrated exchange market and an OTC market, both of which were defined in greater detail in subsequent regulations.

The law does not contain specific provisions for bonds or their issuance but does list a number of debt instruments in its articles; the debt instruments mentioned also include government securities.

The law does not contain descriptions of disclosure requirements or rules regarding distinctions between public offers and private placements.

There are no specific rules regarding a private placement other than those in the Companies Act and New Myanmar Company Law. Generally, the issue of securities not offered to the public is regarded as a private placement.

<sup>17</sup> Government of the Union of Myanmar. 1920. *Government Securities Act*. [http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar\\_code/2016/03/10-1920%20The%20Government%20Securities%20Act..pdf](http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar_code/2016/03/10-1920%20The%20Government%20Securities%20Act..pdf)

<sup>18</sup> See <http://secm.gov.mm/wp-content/uploads/2015/12/4.SECM-Law-Latest-version-English.pdf>

### 3. Rules

Key among the rules that were issued pursuant to key legislation are the SER published by the then MOF in July 2015.

### 4. Regulations, Notifications, Instructions, and Other Directives

Regulations, notifications, instructions, and other such directives are issued by SECM and other regulatory authorities or market institutions for the markets and participants under their purview. SECM issues notifications on specific topics to interpret and complement the SEL and the SER. At the same time, SECM uses notifications to fill in details that are only generally referenced in the law and rules. This can range from prescribing the business hours for securities market participants to comprehensive provisions on disclosure requirements or documents.

YSX issues regulations governing listing, trading, and post-trade activities on its securities market and for post-trade activities. YSX regulations, which are available in English and can be downloaded from the YSX website, are further referenced in the appropriate chapters and sections in this Bond Market Guide.<sup>19</sup>

## D. Myanmar Bond Market Regulatory Structure

The key policy body for legislation, regulations, and the development of the financial and capital markets, and the securities and bond market at large, is the MOPF.<sup>20</sup> In addition, the recently established SECM is the key regulatory authority for the securities and bond market, while CBM governs banks and NBFIs as securities and bond market participants. The Directorate of Investment and Company Administration (DICA) is the corporate regulator and plays a significant role in admitting nonresident investors to the capital market in Myanmar and in policing their activities.

### 1. Ministry of Planning and Finance

Renamed on 30 March 2016 as a result of the combination of the then MOFR and the Ministry of National Planning and Economic Development, MOPF has been the main body responsible for the administration of finances of the central government and for all economic and financial matters affecting the country.

MOPF created and now supervises SECM, and remains the key policy body for legislation and the development of the bond market and the securities market at large. MOPF also houses the Treasury Department, which acts as the issuer of government securities, and the Debt Management Office, which is concerned with the administration of the outstanding government securities.

For the roles and responsibilities of MOPF in the context of the issuance of government securities, please see Chapter III.

### 2. Central Bank of Myanmar

With its separation from the then MOF, CBM became an independent central bank with the signing of the Central Bank of Myanmar Law by the Union President on 11 July 2013.<sup>21</sup> CBM conducts monetary policy and pursues economic stabilization under its new mandate. The governor of CBM has the rank of minister in the Cabinet.

<sup>19</sup> See <https://ysx-mm.com/en/regulations/ysxregulations/>

<sup>20</sup> See <http://www.mof.gov.mm/>

<sup>21</sup> An unofficial translation is available at

[http://www.cbm.gov.mm/sites/default/files/cbm\\_law\\_unofficial\\_translation\\_29-7-2013\\_1.pdf](http://www.cbm.gov.mm/sites/default/files/cbm_law_unofficial_translation_29-7-2013_1.pdf)

In the context of the financial markets, CBM supervises banks and NBFIs across their activities. CBM administers the FIL, which was enacted in January 2016, and defines the roles, functions, and permitted activities of banks and NBFIs in Myanmar vis-à-vis the SEL and the governance of the securities market by SECM (see also section C.1 in this chapter).<sup>22</sup>

With regard to the securities market, in addition to the powers provided in the Central Bank of Myanmar Law, CBM has the power under Section 134 of the FIL to regulate and supervise; monitor payment, clearing, and settlement systems; and provide for the settlement of securities in accounts maintained at CBM. Section 135 further stipulates that CBM may establish, operate, organize, promote, participate, and assist in the establishment, operation, organization, and promotion of, as well as regulate and supervise

- i. any system for the clearing and settlement of payments, and other arrangements for the making or exchange of payments in domestic or foreign currencies;
- ii. any system for the clearing and settlement of securities and other arrangements for the exchange of securities; and
- iii. any system to facilitate clearing and settlement, including other arrangements for the making or exchange of payments or the exchange of securities in any currency against other payments or securities in another currency.

For the roles and responsibilities of CBM in the context of the issuance, trading, and settling of government securities, please see the relevant parts of Chapters III and IV.

### 3. Securities and Exchange Commission of Myanmar

The SEL prescribed the establishment of SECM under the governance of the then MOF.

Pursuant to Chapter 3, Article 4 of the SEL, SECM was formed through Notification No. 64/2014 issued by the Government of Myanmar on 19 August 2014.<sup>23</sup> SECM has seven members and is chaired by the deputy minister of the Ministry of Planning and Finance. SECM's vision is stated as being "[t]owards a dynamic and regulated Myanmar securities market, developing together with the world's." It sees its mission as "maintain[ing] a fair, secured, liquid securities market raising and protecting the investors and the national economy." Since being established, SECM has initiated the formation of laws, rules, notifications, and announcements on securities companies, listed public companies, and YSX.

In its work, SECM is assisted by the Office of the Securities and Exchange Commission (SECM Office), which functions as its executive body. The SECM Office officially started operation on 24 February 2015 and comprises the following departments under the leadership of the Director General, who also acts as secretary of SECM, and the Deputy Director General:

- Administration,
- Development and Policy,
- Market Oversight and Supervision, and
- Market Surveillance.

<sup>22</sup> The text of FIL is available at [http://www.cbm.gov.mm/sites/default/files/regulate\\_launders/financial\\_institutions\\_law\\_updated\\_by\\_cbm\\_20160303website-1\\_0.pdf](http://www.cbm.gov.mm/sites/default/files/regulate_launders/financial_institutions_law_updated_by_cbm_20160303website-1_0.pdf)

<sup>23</sup> Information adapted from SECM website is available at <http://secm.gov.mm/en/securities-and-exchange-commission-of-myanmar/>



The SECM Office had a staff of 15 at its inception; this had risen to 59 by the end of August 2017.

SECM maintains relationships with the Japan Financial Services Agency and Japan International Cooperation Agency, as well as with ADB and the Asian Bond Markets Initiative for support and technical assistance on capital and bond market development activities. SECM is also expected to sign memorandums of understanding with the International Finance Corporation and with the Securities and Exchange Commission of Thailand as part of its capacity building efforts.

The duties and responsibilities of SECM Office include the following:

- i. issue securities business license;
- ii. issue permit of stock exchange;
- iii. grant a permit of the OTC market for trading unlisted securities;
- iv. submit necessary advice to the Government of Myanmar on matters relating to the securities business;
- v. supervise the securities business and carry out inquiries and inspections;
- vi. supervise the following organizations and persons in accordance with the relevant Myanmar accounting standards:
  - a) public companies;
  - b) securities companies;
  - c) OTC market;
  - d) stock exchange;
  - e) persons carrying out or who have carried out as responsible persons, members, staff, and agents of any public company, securities company, OTC market, or stock exchange; and
  - f) license-holder or lawyer, auditor, and agent of such license-holder;
- vii. carry out research and development for the securities business and communicate with organizations in other countries that supervise the securities business, and the businesses, departments, and organizations related to such organizations, to make the securities business in Myanmar compatible to international standards; and
- viii. carry out other functions and duties assigned by the Government of Myanmar.

As prescribed in Section 23 of the SEL, SECM can issue specific business licenses for the following types of securities market participants:

- i. securities dealing business license,
- ii. securities brokerage business license,
- iii. securities underwriting business license,
- iv. securities investment advisory business license,
- v. securities company representative business license, and
- vi. securities business license prescribed by notification issued by SECM.

Under further provisions, SECM may also issue other business licenses at its discretion. More detailed definitions of these types of licenses, the institutions that may apply for them, and the application requirements themselves are contained in the SER, issued on 27 July 2015, which at present are only available in the Myanmar language.



At this stage of development of the Myanmar capital market, SECM activities focus on

- i. increasing the number of listed companies and encouraging these public companies to raise more capital;
- ii. encouraging more investors to participate in the capital market;
- iii. issuing securities business licenses to more securities companies;
- iv. establishing the examination for securities business representative licenses for employees of securities companies;
- v. scrutinizing and approving prospectuses for listed companies wanting to issue shares; and
- vi. educating the public, increasing knowledge of the stock exchange and the securities market at large, and creating awareness of capital market development.

The objective of SECM is to establish a fair, efficient, liquid, and transparent trading system in Myanmar.

#### 4. Directorate of Investment and Company Administration

DICA, now under the MOPF, is the corporate regulator. DICA was established on 13 October 1993. It administers and revises the Myanmar Companies Act, and serves as the government agency acting as the single point of contact for foreign direct investment-related matters. Foreign and domestic companies in Myanmar need to obtain approval from the Myanmar Investment Commission of DICA to start a business. DICA also sets and administers the rules for foreign investment in Myanmar.

#### 5. Yangon Stock Exchange

YSX was incorporated and registered by DICA in December 2014 and received its license for stock exchange activities from SECM in April 2015, pursuant to the provisions in Chapter VI (Stock Exchange) of the Law on Securities. YSX held its opening ceremony on 9 December 2015 and commenced listing and trading activities on 25 March 2016. YSX is a joint venture between MEB, the Daiwa Institute of Research, and the Japan Exchange Group.

Under the stock exchange license, YSX issues regulations on the listing, trading, and post-trade activities on its market, and governs its members and participants. YSX is considered a self-regulatory organization (SRO) and is supervised by SECM.

For detailed information on the regulations issued by YSX and its functions as an exchange market, please refer to Chapter IV and other relevant sections in this chapter.

### E. Regulatory Framework for Debt Securities

Article 5 (a) (ii) (A) and (B) of the New Myanmar Company Law stipulates that a company has the power to issue or offer for subscription debentures. This ability is augmented by the provisions for securities issuance in the SEL and the detailed prescriptions on the process and requirements in the SER.

The issuance of debt securities, which is presently only in the form of public offers, is subject to SECM approval, while CBM may stipulate certain requirements specific to banks and NBFIs as issuers of debt securities only. Foreign investors need to obtain approval for market access from DICA and this access is expected to be further specified in upcoming regulations, while nonresident issuers are not yet able to participate in the Myanmar bond market.

In the event that a listing of securities is planned, YSX needs to review and approve the listing application based on its Securities Listing Business Regulations and other applicable prescriptions. The listing of debt securities is expected to be added to these regulations in future.

## F. Debt Securities Issuance Regulatory Processes

All issuances of securities require an approval from SECM. At present, the issuance of securities in Myanmar is only possible via a public offering, pursuant to the general provisions for securities issuance in the SEL and SER. Provisions for private placements are not yet contained in key legislation or applicable rules and regulations.

At the time of completing this Bond Market Guide, the first priority for SECM was to establish a secondary market in government securities, which is to be followed by the establishment of a framework for the issuance and trading of corporate bonds and notes. This chapter will be updated in line with such developments occurring.

At this point in time, securities may only be issued in Myanmar kyat.

While there are no specific distinctions made in legislation or regulations between domestic and nonresident (foreign) issuers, at present only domestic issuers are able to issue securities.

A subsequent listing of bonds and notes on YSX would be subject to a separate listing approval.

### 1. Regulatory Processes by Issuer Type

Table 2.2 provides an overview of these regulatory processes by issuer type and identifies which regulatory authority or market institution will be involved. In order to make the issuance processes by issuer type more comparable across ASEAN+3 markets, the table features common issuer type distinctions that are evident in regional markets. Not all markets will distinguish all such issuer types or prescribe approvals. Sovereign issuers are typically exempt from corporate issuance approvals but, at the same time, may be subject to different regulatory processes.

At present, all regulatory processes are geared toward the issuance of securities via public offers. In the absence of a framework for corporate bond issuance, CBM does not approve the issuance of bonds and notes by banks and NBFIs under its governance.

Nonresident issuers are not (yet) able to issue bonds and notes in Myanmar, regardless of issuance currency. This is expected to change through legislation and regulations in the near future.

Table 2.2: Authorities Involved in Regulatory Processes by Issuer Type

Type of Issuer	SECM	CBM	YSX (listing only)
Resident issuer			
Resident nonfinancial institution	X		X
Resident financial institution	X	1	X
Resident issuing FCY-denominated bonds and notes	X	2	X
Nonresident issuer			
Nonresident nonfinancial institution	n.a.	n.a.	n.a.
Nonresident financial institution	n.a.	n.a.	n.a.
Nonresident issuing FCY-denominated bonds and notes	n.a.	n.a.	n.a.

CBM = Central Bank of Myanmar, FCY = foreign currency, n.a. = not applicable, SECM = Securities and Exchange Commission of Myanmar, YSX = Yangon Stock Exchange.

Notes: X indicates approval is required. 1 indicates that CBM approval may be required for issuers under its supervision once corporate bond framework has been established. 2 indicates that CBM approval may be required once issuance of bonds in foreign currency permitted.

Source: ADB consultants for SF1.

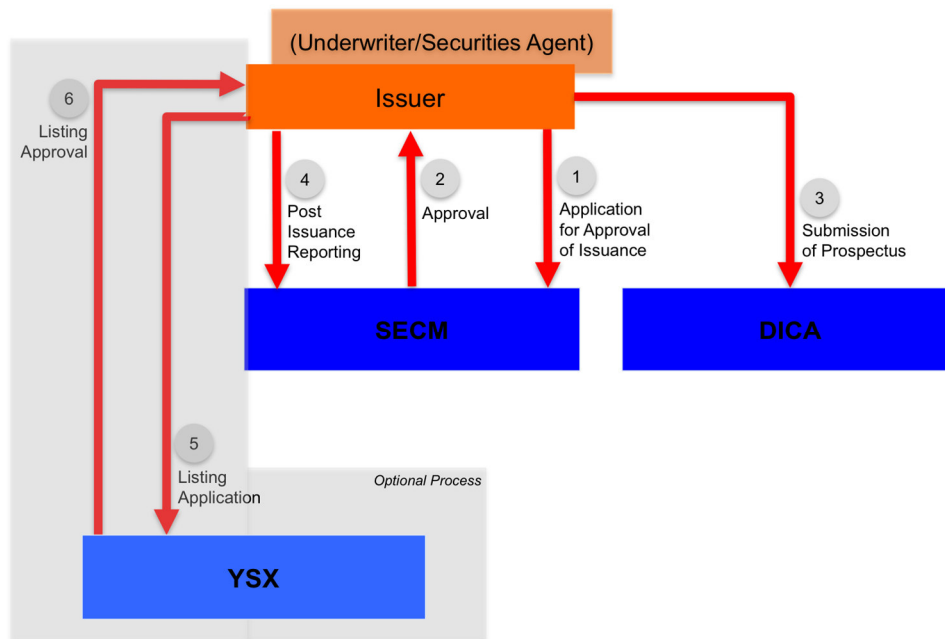
## 2. Regulatory Process Overview

Since SECM is still in the process of establishing a framework for corporate bond issuance, the description of the regulatory process below, provided as a point of reference, is based on the general prescriptions in the SEL and SER for all securities issuance.

At the same time, the legal framework, as well as SECM and YSX regulations, already make reference to debt securities or do not specifically exclude debt securities from the prescribed regulatory processes.

The regulatory process map shown in Figure 2.1 provides an overview of the regulatory process presently applicable in Myanmar; the actual regulatory process is explained in detail in section 4 of this chapter and in Chapter III.I for listing.

**Figure 2.1: Regulatory Process Map—Debt Securities Issuance in Myanmar**



CBM = Central Bank of Myanmar, DICA = Directorate for Investment and Company Administration, SECM = Securities and Exchange Commission of Myanmar, YSX = Yangon Stock Exchange.

Note: While the listing of debt securities is shown as an optional process, listing approval from YSX is not optional in the event a listing is applied for.

Source: ADB consultants for SF1.

Under the SEL, and pursuant to SECM Notification on Public Offering (2/2015), the issuer is responsible for the compilation of the prospectus and related information and the submission of such materials to SECM. The issuer also needs to appoint an underwriter—in Myanmar referred to as a securities agent or representative—for a public offer of securities. The underwriter (securities agent or representative) and any appointed securities sub-distributors (selling agents) need to hold a valid corresponding license issued by SECM. An underwriter (securities agent or representative) may aid in the compilation of the prospectus and related materials for submission to SECM, but the issuer remains responsible for documentation and their submission under the regulations.

Since present regulations prescribe the issuance of securities only in the form of a public offering, there is presently no further distinction necessary between different approval processes in the Myanmar market.

A listing of securities issued via a public offer is optional. In case a listing is intended, an underwriter (securities agent or representative) may be used to help compile and submit the listing application, supporting documentation, and other information required by YSX.

### 3. Regulatory Process in Case of a Nonresident Issuer

At present, nonresident issuers are not yet able to access the Myanmar bond market in the absence of specific provisions regulating their participation.

### 4. Regulatory Process for Public Offers

The issuance of securities, including debt securities, is prescribed in the New Myanmar Company Law and the SEL, and further detailed in Chapter V (Securities Issuing) of the SER. In turn, SECM Notification on Public Offering (2/2015) prescribes the actual regulatory process for public offers, including the submission of required documentation and information and obtaining approval for such issuance.

Offers of securities to the public require the approval of SECM. The key document for submission, together with the application for approval of an issuance, is the prospectus, which follows specific forms and contents set forth by SECM. Initial and continuous disclosure requirements are also defined in the Myanmar Companies Act (in future, the New Myanmar Company Law), the SER, and SECM Notifications.

Each prospectus also needs to be submitted to DICA, as the corporate regulator, under separate provisions of the Myanmar Companies Act. The prospectus and other relevant disclosure information must be in the Myanmar language and may also be provided as an English translation.

The following steps describe the actions to be undertaken by the issuer to obtain approval from SECM for a public offering. If the issuer uses a securities agent—the equivalent of an underwriter or arranger in Myanmar market terminology—such a securities agent may aid in the compilation of the prospectus and additional information. However, the discharge of obligations under securities issuance regulations remains solely with the issuer.

#### Step 1—Approval Application and Submission of Prospectus to the Securities and Exchange Commission of Myanmar

SECM requires the issuer to complete a physical application form requesting approval for the issuance of securities via a public offer.

Together with the application form, the issuer needs to submit the prospectus for the securities to SECM. The prospectus, and any other supporting documents, may only be submitted in printed form.

The prospectus follows the format prescribed by SECM in Instruction 05/2016 (Use of Prospectus Format for Public Offering) and needs to include

- (i) procedures of the public offering;
- (ii) information of the public offering;
- (iii) information of the securities to be offered;
- (iv) information of the issuer;
- (v) a summary of the company's affairs including the information about the history and development of the company, its related companies, and its employees;
- (vi) a business overview including the performance of the company's business, principal activities and principal markets, principal risks and uncertainties facing the company, material contracts, and research and development;
- (vii) a statement of the company's investment plan; and

- (viii) a statement of the company including the information about major shareholders, dividend policy, organizational structure, and management system.

Together with the prospectus, the following documents shall be submitted by the issuer in physical form:

- (i) a copy of its memorandum and articles of association;
- (ii) a copy of its audited balance sheet and profit-and-loss account in each of the past 2 financial years, or a 5-year business plan instead of documents mentioned if it was a start-up company before the issue of the prospectus;
- (iii) a copy of the auditors' report attached to the balance sheet and profit and loss account (if available);
- (iv) a copy of its directors' report under Section 131 (A) of the Myanmar Companies Act (if available);
- (v) a copy of the resolution of the annual general meeting of shareholders, of the extraordinary general meeting of shareholders, or of the board of directors or the decision of the directors in relation to the issue of securities concerned (if available); and
- (vi) a copy of a document that shows the respective authority's approval of a capital increase and/or a change in capital structure.

Article 6 of SECM Notification 02/2015 prescribes that if after a public offering is approved by SECM but before the close of the public offering, the issuer becomes aware of the following points, the issuer shall lodge supplementary documents with SECM:

- (i) a false or misleading statement in the prospectus;
- (ii) an omission from the prospectus of any information that should have been included in it; or
- (iii) a new circumstance that has arisen since the prospectus was submitted to SECM and that is materially adverse to investors.

## Step 2—Approval from the Securities and Exchange Commission of Myanmar

SECM will review the application form, prospectus, and supporting documents and provide approval if it is satisfied with the prospectus and all submitted information. SECM may also, at its discretion, request additional information from the issuer to complete its review of the application. The statutory review period is 60 days from receipt of complete documentation.

SECM will notify the issuer of its decision in writing, stating approval or reasons for a rejection, or any possible qualification attached to an approval. There is no specific validity period for SECM's approval and there is no fee levied by SECM for the review of the application and approval process.

In the event that the issuer sees the need to issue a new prospectus or amend the existing prospectus or any relevant information referred to in the prospectus, a new approval will need to be sought from SECM.

In the event that an issuance goes ahead, the prospectus itself does not need to be updated. Instead, the issuer will have to observe the prescribed continuous disclosure requirements defined in the SER and, if listed, under the YSX Securities Listing Business Regulation.

### Step 3—Submission of Prospectus to the Directorate for Investment and Company Administration

Following the approval of the prospectus by SECM, the issuer is required to comply with the Myanmar Companies Act (in future, the New Myanmar Company Law) by submitting the prospectus for the securities to be offered to DICA as the corporate regulator.

### Step 4—Publication of Prospectus

Once SECM approval is obtained and the prospectus filed with DICA, the issuer is required to publish the prospectus through one or more of the following: (i) procuring newspaper ads, (ii) making available the prospectus to the public—free of charge—in printed form at its official premises, and/or (iii) a posting on its website.

The prospectus shall not be published until the issuer has obtained SECM approval (Article 8 of SECM Notification 02/2015).

### Steps 5, 6—Listing Application and Listing Approval (Optional)

The listing of securities issued via a public offer is optional, but may only be undertaken once steps 1–4 above have been completed. For a more complete explanation of the listing process, kindly see Chapter III.I.

#### 5. Regulatory Process for Bonds and Notes Aimed at Professional Investors or for Private Placements

The present regulatory framework for the Myanmar securities market does not yet provide for the distinction of professional investors from general investors. As such, there are no specific regulatory processes for offers of securities to professional investors or the offer of securities via a private placement.

#### 6. Obligations after Approval and after Issuance

Post-issuance reporting obligations apply to public offers only and are detailed below.

##### a. Public Offers

Article 4 of SECM Notification 02/2015 prescribes that the issuer is required to submit to SECM the result of the public offering immediately upon its conclusion. SECM is preparing to issue a notification on the timeframe, specific reporting requirements, and other details in due course.

##### b. Offers to Professional Investors and Private Placements

Offers to professional investors or via private placement are not yet applicable in the Myanmar bond or securities markets.

#### 7. Issuance Process Specific for a Domestic Financial Institution

In the absence of a regulatory framework for corporate bond issuance, CBM does not (need to) approve the issuance of (debt) securities by a domestic bank or NBFIs under its supervision.



This requirement may be introduced once the corporate bond issuance process has been established by SECM since provisions in the FIL convey the power to CBM to regulate the activities of its constituents.

#### **8. Regulatory Process for Foreign-Currency-Denominated Debt Instruments**

At present, the issuance of debt securities—in fact all securities—in Myanmar is only possible in Myanmar kyat. As such, no approvals are applicable for foreign-currency-denominated securities.

### **G. Continuous Disclosure Requirements in the Myanmar Bond Market**

At present, continuous disclosure requirements have been defined for the issuance of securities via a public offering and those securities that are listed on YSX.

#### **1. Public Offers**

Continuous disclosure requirements for securities issued via a public offering are prescribed in the SER and have been further stipulated by SECM in its Notification 01/2016, dated 19 February 2016. The notification puts disclosure obligations on the issuers of securities or public companies, if

- (i) the issuer is a listed company;
- (ii) the issuer's securities are traded in the OTC market;
- (iii) the issuer obtained SECM approval for the issuance of securities; or
- (iv) the issuer is a public company with more than 100 shareholders.

The issuers (or public companies) will need to submit to SECM annual reports, biannual reports, and so-called extraordinary reports, as may be required. Extraordinary reports refer to a submission to SECM if any of the following events apply to the issuer or public company, or any of their significant subsidiaries:

- i. change of its parent company or its subsidiary company;
- ii. change of its major shareholders (ownership of more than 20% of voting rights of equity interest of the company);
- iii. occurrence of a disaster from which the business of the company is suffering;
- iv. filing or settlement of a material lawsuit claiming damages against the company;
- v. transfer of the company's material undertakings to another person or transfer of material undertakings from another person to the company;
- vi. change of a managing director or manager of the company;
- vii. a resolution of the annual general meeting or extraordinary general meeting of shareholders, other than a resolution approving the company's financial statements at an annual general meeting;
- viii. change of an auditor of the company;
- ix. filing of a petition against the company for any compulsory winding up, company voluntary arrangements, or compromise under the supervision of a court or arrangement with its creditors generally or any class of its creditors;
- x. voluntary winding up or dissolution of the company;
- xi. failure to pay or occurrence of a concern for failure to pay a significant amount of the company's pecuniary claims by a debtor of the company or a debtor whose debt is guaranteed by the company; or

- xii. occurrence of a matter or an event which falls under the subsequent events under the applicable accounting principles.

Article 4 in Notification 01/2016 also stipulates the specific information requirements that apply for each of the potential events mentioned above.

If the issuer of (debt) securities or a public company submits an extraordinary report to SECM, it is required to explain the details of the report to SECM before the report may be published. At the same time, if a listed company intends to make a timely disclosure in accordance with the YSX Securities Listing Business Regulations, the listed company is required to notify SECM of such disclosure before it is disclosed to YSX.

## **2. Offers to Professional Investors or Private Placements**

Offers to professional investors, or the issuance of securities via private placement, are not yet applicable in the Myanmar bond or securities market.

## **3. Securities Listed on the Yangon Stock Exchange**

While the YSX Securities Listing Business Regulations do not presently specifically mention debt securities, it is for the purpose of this Bond Market Guide assumed that the prescriptions for continuous disclosure would apply to the issuers of all listed securities, once debt securities are listed on YSX.

Sections 14 and 15 of the YSX Securities Listing Business Regulations contain the provisions for continuous disclosure for the issuers of listed securities. According to these provisions, issuers must immediately disclose details of such fact

(1) where the body that decides the listed company's business execution has made a decision on important matters regarding the operation, business, assets, or stock of such listed company, which have a considerable impact on investment decisions; or

(2) where any other important fact regarding the operation, business, assets, or stock of the listed company has occurred, and such fact has a considerable impact on investment decisions;

Taking into consideration the criteria for such disclosure, as defined in Section 16 of the regulations, companies that have listed their securities on YSX are also required to submit their earnings information immediately after such information is concluded. The information mentioned above is expected to be explained to YSX prior to a public announcement.

Such disclosure information and details to be submitted to YSX are also required to be submitted to SECM prior to any such announcement, pursuant to SECM Notification 01/2016 (see also section 1 above).

Submission of the information or a formal announcement to YSX may be done in an electronic format prescribed by YSX. In turn, YSX will post such information or announcements on its website. On a case-by-case basis, YSX may also determine other forms of submission, if the website cannot be used or other practical considerations exist.

The disclosure information submitted by listed companies is available, typically in both the Myanmar language and English, for public viewing and downloads of PDF files from the YSX website under each listed company's profile.<sup>24</sup>

## H. Self-Regulatory Organizations in the Myanmar Bond Market

YSX is an SRO. Pursuant to the SEL, and corresponding SECM notification, YSX fulfills the role of an exchange-type SRO and is able to issue regulations on the listing and disclosure, trading, and post-trade activities on its markets. YSX also governs admittance to, and membership or participation in, its markets. At the same time, its regulations are subject to SECM approval prior to publication.

YSX governs its members through the Trading Participant Business Regulations and its corresponding Enforcement Regulations. A Trading Participant is the only membership type (and is defined as an entity) that holds a trading qualification to trade securities on the exchange market. YSX sets the criteria for obtaining such a trading qualification and requires an applicant to hold one of the licenses specified in Article 23 of the SEL to be eligible (see also next section).

The Trading Participant Business Regulations and corresponding Enforcement Regulations are available for download (in English only) from the YSX website.<sup>25</sup>

As of August 2017, YSX had admitted six securities firms as Trading Participants.

For details on the listing, disclosure, and trading rules of YSX and their underlying regulations, please refer to section J in this chapter. For a list of the regulations issued by YSX, please refer to Appendix 2.

## I. Rules Related to Licensing

The licensing of market participants in the securities market in Myanmar, including for the bond market, falls under the principal purview of SECM. In addition, CBM administers the FIL, which permits commercial banks to participate in the bond market without obtaining a separate license from SECM.

### a. Market Participants with Securities Business Licenses

Pursuant to Article 23 of the SEL, SECM approves and licenses securities market participants under one of the following licenses available to conduct securities related businesses:

- (a) securities dealing business license;
- (b) securities brokerage business license;
- (c) securities underwriting business license;
- (d) securities investment advisory business license;
- (e) securities company's representative business license; and
- (f) securities business license prescribed by notification issued by [SECM].

These licenses are in addition to the separate license for a stock exchange or a dedicated over-the-counter market stipulated in the SEL.

<sup>24</sup> For an example of the disclosure documents furnished by a listed company, please see <https://ysx-mm.com/en/listing/company/lc00001/>

<sup>25</sup> See [https://ysx-mm.com/wp-content/uploads/2016/06/ysxr05\\_en\\_032016\\_02.pdf](https://ysx-mm.com/wp-content/uploads/2016/06/ysxr05_en_032016_02.pdf)

A limited exception applies to commercial banks who, as a result of having obtained a banking license from CBM, may already participate in certain specified activities in the bond market—or interbank and money market—under such license (see section b for details.)

Under further provisions in the SEL and SER, SECM may also issue other business licenses for the securities market at its discretion.

#### b. Market Participants with Banking License

Commercial banks are permitted under Section 52 (Permissible Banking Activities) of the FIL to engage in trading, for their own account or for the account of customers, in money market instruments such as cheques, bills, and certificates of deposit; foreign exchange; currency forward and spot contracts, swaps and exchange and interest-rate instruments; and transferable securities. These activities are typically confined to the interbank or money market.

Commercial banks may also offer trustee services, as well as perform safe custody services without obtaining a separate license. However, if commercial banks want to engage in any of the regulated securities businesses (see section a), they will need to apply to SECM for the appropriate licenses.

Likewise, in the event that commercial banks or NBFIs wish to engage in activities in the secondary securities market, including the buying and selling of equity and debt securities approved by SECM, they must obtain a securities business license to do so.

As such, it is envisaged that commercial banks may engage in securities brokerage through a separately incorporated subsidiary. Such a separate entity would be subject to the licensing requirements imposed by SECM, pursuant to the SEL, SER, and Securities Company Regulations (SECM Notification 02/2016). For details, please see section a above.

#### c. Market Conventions and Best Practices

In line with the status of the development of the Myanmar bond market, and the securities market at large, market conventions are still being formed and best practices are in the process of being established, as market participants learn to practically apply rules and regulations in day-to-day business.

## J. Yangon Stock Exchange Business Regulations Related to Listing, Disclosure, and Trading of Securities

Pursuant to the SEL, and as conferred to YSX by SECM, it may govern its markets and its participants through the issuance of its own rules for the listing and disclosure requirements, as well as trading, clearing, and settlement practices, subject to the approval of SECM (see also section H).

In the context of terminology used in the Myanmar market, and to distinguish the nature of the prescriptions from those of SECM, YSX rules are referred to as “business regulations.” The contents of the regulations are available as PDF files in English from the YSX website and are listed for easy reference in Appendix 2.<sup>26</sup>

<sup>26</sup> See <https://ysx-mm.com/en/regulations/ysxregulations/>

#### a. Listed and Traded Securities

Securities listed and traded on YSX are subject to the YSX Securities Listing Business Regulations and Trading Business Regulations and their corresponding Enforcement Regulations, respectively.

The Securities Listing Business Regulations govern the listing process, eligibility criteria, and fees, the initial and continuous disclosure requirements, and interactions between YSX, the listed company, and the general public. The regulations also prescribe that the issuer is to appoint YSX as the provider of “shareholder services,” also referred to as “shareholder agency,” for which YSX has issued business regulations.

The securities listing process is further explained in detail in Chapter III.I.

The Trading Business Regulations defines trading hours, matching methods, and order types, and describe the auction trading concept applied by YSX. At the time of completion of this Bond Market Guide, Section 5 of the regulations still described the securities eligible for trading as equities only.

For further details on the trading of securities, please refer to Chapter IV.

#### b. Trading Participants

In turn, the Trading Participant Business Regulations and the corresponding Enforcement Regulations govern the eligibility criteria (referred to as “trading qualifications”), obligations, participation, and conduct of trading participants on YSX, as well as potential disciplinary measures against them.

### K. Market Entry Requirements (Nonresidents)

At the time of completion of this Bond Market Guide, foreign (nonresident) issuers and investors did not yet participate in the securities market to issue or invest in securities in Myanmar. At the same time, foreign (nonresident) investors can participate in the Myanmar securities market, pursuant to the laws and regulations of the relevant ministries and regulatory authorities, here the MOPF and SECM, respectively.

While applicable market entry requirements for foreign (nonresident) issuers or investors have not been defined, present legislation and regulations do not specifically mention restrictions for foreign (nonresident) issuers or investors with regard to the securities market, while detailed regulations for foreign direct investment in Myanmar have existed for some time. In fact, foreign (nonresident) issuers are even referenced in the SEL (see below).

#### 1. Nonresident Issuers

According to Article 2(a)(ii) of the SEL, the definition of “securities” includes “treasury bills, treasury bonds, bonds and debentures issued by the international organizations, foreign governments and their institutions.” As such, nonresident issuers—possibly of certain eligibility—are principally able to participate in the market.

However, in consideration of the practiced approach to further define specific securities issuance prescriptions in the SER, and to detail such prescriptions in the form of SECM notifications, the absence of the above leads to the general understanding that nonresident parties may not yet be active participants in the Myanmar securities market.

## 2. Foreign Investors

Foreign investors are principally able to participate in the Myanmar bond market and the securities market at large. However, foreign investors are not yet able to engage in domestic securities market activities until such actions are explicitly set in forthcoming regulations. In addition, foreign investors need to obtain approval from the Myanmar Investment Commission of DICA prior to commencing investing in Myanmar.

### L. Market Exit Requirements (Nonresidents)

The existing legislation and rules for the bond and securities markets do not contain specific provisions for, or an exclusion of, foreign issuers and investors.

#### 1. Nonresident Issuers

In the absence of specific rules and regulations for nonresident issuers, market exit requirements have not been defined.

#### 2. Foreign Investors

Prevailing laws and regulations do not contain specific provisions for exit requirements for foreign investors.

### M. Regulations and Limitations Relevant for Nonresidents

The applicable regulations and possible limitations for nonresidents are briefly provided below and grouped according to some of the key topics of interest for nonresidents.

#### 1. Direct Investment

To improve Myanmar's investment regime, the Myanmar Investment Law, 2016 outlines the provisions for direct investment by foreign investors.

According to the law, a foreign investor is a person who invests within the Union and is not a citizen. In this expression, foreign companies, branch offices, and other enterprises established and registered in accordance with the Myanmar Companies Act and enterprises formed in accordance with the laws of any other country are also included.

According to the rules of the Myanmar Companies Act, 1914, a company is currently defined as "foreign" if even one share is held by a foreigner. As the Myanmar Companies Act, 1914 is presently also under review, a company will in future only be considered foreign if a certain percentage of shares is owned by a foreign investor.

#### 2. Cross-Border Portfolio Investment

Investors wishing to access the Myanmar bond or securities market require approval from DICA, as the government portal for all investments in the country. Foreign investors must undertake a company registration (for a domestic subsidiary) and/or obtain a permit to commence activities in the Myanmar domestic market.

### **3. Currency Exchange Controls**

The Myanmar kyat, which is pronounced “chat” and abbreviated in official documents as “K”, is nonconvertible and nonnegotiable outside Myanmar. The import and export of kyat banknotes is prohibited.

Foreign exchange forwards and swaps involving the Myanmar kyat are not permitted at this time.

### **4. Bank Accounts in Domestic or Foreign Currency**

Nonresident domestic currency accounts with licensed banks in Myanmar are permitted upon CBM authorization. Nonresident foreign currency accounts of international organizations and diplomatic missions may be kept with the Myanmar Foreign Trade Bank. Prior approval from CBM is required for other nonresidents.

### **5. Borrowing and Lending**

Domestic borrowing and lending in local currency must be conducted through CBM-authorized intermediaries. Domestic borrowing in foreign currency is not allowed.

## **N. Regulations on Credit Rating Agencies**

There are presently no credit rating agencies operating in Myanmar.

At present, SECM is focused on improving corporate governance standards among listed companies, as well as in view of potential listing candidate companies, before incorporating such standards and requirements into regulations for credit ratings and credit rating agencies.