

# The Political Ecology of Rubber Production in Myanmar: An Overview

Kevin Woods

Over the past decade the Myanmar government has increasingly promoted industrial agricultural production in the country, especially for rubber. With the lead up to the national elections, and now after political-economic reforms begin to set in, foreign investors are eager to make Myanmar into the next rubber production frontier. This report outlines the emerging political ecology of rubber production in Myanmar, with particular attention to the political economy and geography of rubber development taking root during Myanmar's reform period.

Consultant

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## Introduction

Southeast Asia has been experiencing a rubber boom the past decade; Burma/Myanmar (hereafter Myanmar) is no exception. According to one report, more than 500,000 hectares may have already been converted in the uplands of China, Laos, Thailand, Vietnam, Cambodia, and Myanmar.<sup>1</sup> The International Rubber Study Group predicts by 2020 global demand for natural rubber will outpace supply by as much 1.4 million metric tonnes.<sup>2</sup> The biggest regional player in the Mekong region for rubber procurement is China.<sup>3</sup> China's rubber demand has been rising quickly – in part due to huge demand for car tires – while the few southern areas, in particular southern Yunnan, have been aggressively planted with rubber over the past two decades. Chinese government authorities have to some degree attempted to curb further rubber plantation development in China due to environmental concerns.<sup>4</sup> This situation, in addition to cross-border ethnic and commercial familial ties, has led to rubber booms in the Mekong region, in particular northern Laos and Myanmar.

Myanmar central government and military authorities have long supported rubber production as a strategic industrial agricultural crop for export to earn foreign exchange. The history of rubber cultivation is important to consider in order to better understand the newly emerging political economy of rubber in the country during the current transition period. Rubber has been cultivated in Myanmar since the British colonial period in the early 20<sup>th</sup> century, mostly in Mon State.<sup>5</sup> These 'traditional' rubber growing areas in Mon State mostly comprise smallholder rubber plantations that have greatly contributed to the livelihoods of Mon households. Since the past decade, however, a new 'untraditional' frontier area has been targeted for rubber plantation development. In northern Myanmar in Kachin State, northern Shan State, and eastern Shan State, especially including the Wa Self-Administered Region, rubber concessions have swept across the hills in areas that were formerly swidden fields. While rubber in Mon State, Kayin State, and Tanintharyi Region follows more of a smallholder model approach but which is mostly embedded in Chinese rubber markets with Chinese middlemen, rubber development in northern Myanmar follows a private large-scale concessionary model mostly financed by Chinese investment from China's national opium substitution programme. In the past few years new areas yet again in Myanmar are being targeted by large-scale rubber concessions, this time where smallholder rubber farms already exist, such as in Rakhine State, Mon State, Kayin State, and northern Tanintharyi Region.

Local government officials, regional military commanders, and non-state armed groups have allocated rubber concessions through rubber-growing areas in Myanmar over the past decade. These concessions are located in what the government labels 'wastelands', often in the uplands, which in fact are farmed by local households as '*taungya*' (shifting cultivation) plots. Therefore, rubber development in Myanmar that follows the agro-industrial model, are causing serious impacts on local farmers' subsistence livelihoods, as is the case with other industrial agricultural

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<sup>1</sup> Ziegler, A., Jefferson, F., and J. Xu. 2009. "The Rubber Juggernaut." *Science*, Vol. 325, 31 July.

<sup>2</sup> Ziegler, A., Jefferson, F., and J. Xu. 2009. "The Rubber Juggernaut." *Science*, Vol. 325, 31 July.

<sup>3</sup> Ziegler, A., Jefferson, F., and J. Xu. 2009. "The Rubber Juggernaut." *Science*, Vol. 325, 31 July. Mann, C. 2009. "Addicted to Rubber." *Science*, Vol. 325, 31 July.

<sup>4</sup> Mann, C. 2009. "Addicted to Rubber." *Science*, Vol. 325, 31 July.

<sup>5</sup> Hla Myint. 2008. "Development of Rubber Planting Industry in Myanmar: Review and Major Constraints." IRRDB International Natural Rubber Conference, KL, Malaysia. 13-15 October.

concessions. Rubber concessions in former customary swidden fields seriously impact local food security and resource access to forests and agro-fields, while rarely providing adequate alternative livelihoods through wage labour employment for local populations. New agricultural wage labour migration for large-scale rubber concessions, especially in the new production areas in northern Myanmar, is introducing new socio-economic and political tensions to farming communities.

## **Background**

In 1989, the State Law and Order Restoration Council (SLORC) government introduced an open door policy and the production of perennial crops was partially liberalized from state control in theory, although more limited in practice. The government still retained control over the export of rubber, while allowing domestic producers to sell freely to local buyers after they fulfilled their procurement quota to the government agency. As the country opened up its economy for private sector and foreign investment, the price of rubber rose rapidly. By the mid-1990s smallholders had reengaged in the market sector.

Since the new state-owned enterprise dealing with agricultural crops, the Myanmar Perennial Crop Enterprise (MPCE), was established in 1994, the government gave increasing attention to the rubber sector. The MPCE since the reforms this year has been renamed the Myanmar Industry Crop Development Enterprise (MICDE) since the reforms. Agricultural development in Myanmar overall, with rubber no exception, has since received a new boost with the government's partial liberalization of the agricultural sector, especially over the past decade with increasing investment in industrial agriculture in Myanmar. First the 1991 Wasteland Law, and now the Vacant, Fallow, and Virgin Farmland Law passed earlier this year, permits a private company to lease large-scale agricultural concessions. The central Myanmar government has shifted their policy from relying on small-scale farmers to reach national agricultural production quotas to using closely-associated private companies to achieve national targets.<sup>6</sup> The transition to high-input, private capital agricultural production is beginning to produce socio-economic affects that farmers across the country are now rising in opposition to.

## **Overview of the Agribusiness Sector in Myanmar**

The majority of people in Myanmar – nearly three-fourths of the population or about 40 million people – live in rural areas and rely on farmland and forests for their daily needs and livelihoods. Agriculture (including livestock and fisheries) contributes about one-third of the country's gross domestic product (GDP) and 15 per cent of total export earnings, and employs over 60 per cent of the nation's labour force, according to 2008-09 government data.

Due to a host of reasons, primarily from on-going civil war, poor land governance, farmers' debt, and different types of land grabs, it is estimated that at least one-quarter of all farmers in

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<sup>6</sup> While there no longer exists a national overarching policy for farmers to produce agricultural crop quotas for the government like before, there are still legal appendages in the new land laws, and especially in practice, that still undermine farmer's freedom of crop choice.

government-controlled areas in Myanmar are now landless, with some studies showing upwards of 50 per cent in some rural areas. In these areas, about half of household farms are under 5 acres, which is below minimum subsistence levels. Landlessness is therefore a serious and growing problem throughout Myanmar.

As the country opens up more to global markets with neoliberal reform measures new sources of land grabs will emerge that merge land dispossession histories with new more liberal forms.. This is especially true in areas with valuable natural resources, such as minerals, hydropower, oil/gas, and now, land itself. And as the peace process continues and new rounds of ceasefire agreements are signed between the government and rebel groups, resource-rich border areas will be opened up to resource extraction fuelled by foreign investment. One of the sectors being targeted by the new Myanmar government is agribusiness – with Myanmar being advertised as the final land frontier of Asia. The 2<sup>nd</sup> Commercial Farm Asia is a perfect example how the government is putting the country's land up for sale to foreign investors (see appendix).

While there are several drivers of land loss and land grabs, one of the major new drivers of land confiscation in the country is commercial agricultural development. The Ministry of Agriculture and Irrigation's (MOAI) 30-year Master Plan for the Agriculture Sector (2000-01 to 2030-31) aims to convert 10 million acres of 'wasteland' for private industrial agricultural production. The ministry specifically encourages rubber, oil palm, paddy, pulses, and sugarcane for export. The government has transformed its forced crop campaigns that originally targeted farmers to enlisting its preferred domestic businessmen to realize its agricultural commodity export goals. Examples of the government's new privatised 'crop campaigns' include palm oil promotion in Tanintharyi Region, a nationwide *jatropha* campaign (which targeted 0.5 million acres per state and region, for a national total of 8 million acres), rubber for the Chinese export market, and biofuels, including cassava and sugarcane. These national agricultural policies serve to increase the export of crops to increase foreign exchange revenue. The government plans to achieve these industrial agricultural export goals by relying upon Myanmar companies, who maintain good connections to top officials, to develop agricultural concessions granted to them on behalf of the government.

According to the Myanmar government, by 2001 officially more than one million acres of agricultural concessions had been allocated, involving nearly 100 companies. But by 2011, the number of companies more than doubled to 204, which had been allocated nearly 2 million acres of private agricultural concessions, with Tanintharyi Region and Kachin State together receiving over half of those concessions (**See Table 1**). Kachin State officially has 15 Myanmar companies that have been granted a total of nearly 600,000 acres (mostly rubber and sugarcane); Tanintharyi Region has 36 companies with over 670,000 acres (palm oil); Shan State South has 12 companies with over 65,000 acres (corn, rice, rubber); and Shan State North has 17 companies with over 51,000 acres (rubber). Kachin State and northern Shan State have received the highest rate of increase in concessions in the country, which is from the significant increase in Chinese rubber concessions supported by China's opium substitution programme (see separate section for the China rubber connection in northern Myanmar). While all these concessions are to domestic Myanmar companies, there is no indication on whether these concessions are financed by foreign direct investment (FDI) or by other means.

While nearly 2 million acres of recorded concessions have already been allocated in the country (not including those not recorded by the government, or those areas not under government control, such as in Wa areas), only about 20 to 30 per cent of the area of agricultural concessions is actually under cultivation according to Yangon-based Agribusiness Rural Development Consultancy (ARDC).<sup>7</sup> The government is not following their own land laws, where the concessions need to be fully planted within four years of receiving the concession or else the land will be taken back.<sup>8</sup> The government-allocated concessions to companies are not producing good results for farmers or achieving national objectives of increased agricultural production for export.<sup>9</sup>

## **The State of Rubber in Myanmar: Government Statistics and Programmes**

The Burmese government has a 30-year plan, from 2000-2030, to obtain 1.5 million *planted* acres of rubber in the country, and the production capacity to attain nearly 300,000 metric tonnes (MT) per annum. Based on government statistics outlined below, the government has already nearly reached that figure in acres awarded (not planted). It is expected that the goal of acres planted will be attained far before 2030 based on the current trajectory of rubber increases, especially with the expected massive spike in rubber concessions awarded to foreign investors with the passing of the foreign investment law this month. While that may certainly be the case, the current Minister of the Ministry of Agriculture and Irrigation (MOAI), Myint Hlaing, is a former regional military commander (northern Shan State) (as well as top official in other military posts), and has stubbornly pushed investment in hybrid corn production.<sup>10</sup> While he may not be interested in rubber, this is certainly not hampering continual dramatic increases in rubber concessions being awarded every year, especially since he has become the minister of the MOAI since the national elections in 2010.

Total rubber acreage in Myanmar started to dramatically increase in 2006, which was the same time that China began to provide subsidies to Chinese companies to produce mostly rubber in northern Myanmar – precisely where the largest increases in rubber production have been in Myanmar (see **Figure 1 and Table 2**). It took a decade for planted rubber to increase by over 140 per cent, from just under 300,000 acres in 1996-97 to nearly 730,000 acres in 2006-07. But it took only five years for planted rubber to increase by over 120 per cent (nearly twice the rate of increase compared to the decade before), from just nearly 560,000 acres planted in 2005-06 to 1.25 million acres in 2010-11. It is during this period that both Chinese subsidies for rubber production became available in northern Myanmar as well as the central Myanmar government increased the allotment of private rubber concessions to Myanmar companies.<sup>11</sup> These two government-backed programmes for rubber development in Myanmar have targeted different

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<sup>7</sup> Interview with ARDC, November 2011, Yangon, Myanmar.

<sup>8</sup> Vacant, Fallow, and Virgin Lands Management Law, 2012. Article 16b. Union Government of Myanmar.

<sup>9</sup> Based on field observations and interviews with agribusiness firms key informants.

<sup>10</sup> While many agribusiness companies, NGO workers, and retired government officials often joke about the agriculture minister's obsession with promoting hybrid corn in northern Shan State, no one knows why this is the case. However, it could be closely connected to Thailand's CP massive hybrid corn development in Shan State, with overland exports to China.

<sup>11</sup> Department of Agricultural Planning (DAP), Ministry of Agriculture and Irrigation (MOAI). 2010. *Myanmar Agriculture in Brief*. Government of the Union of Myanmar (GoUM).

geographies with an overall significant increase in rubber development overall in Myanmar. Total acreage of planted rubber was 1.14 million acres in 2009-10, 1.25 million in 2010-11,<sup>12</sup> and is predicted to reach over 1.33 million acres by 2011-12 (see **Table 3**).<sup>13</sup> According to Myanmar Rubber Producers and Production Association (MRPPA), two-thirds of the total rubber cultivated is in Mon State.<sup>14</sup>

However, the productive areas of rubber (acres that produce latex) has yet to increase at the same incremental rate as rubber being planted (see **Figures 1 and 2, Table 2**). This should be mostly explained by the time delay between planting rubber and producing latex – six to seven years, which would be about 2013 for the beginning of the production spike following the planting spike in 2006. However, even in a few years we may not see such an increase in production to match rubber planted for two primary reasons. One, the quality of cultivars planted and the survival rate of rubber seedlings is quite low, matched by inadequate rubber tree management, such as planted in improper ecological zones, lack of scientific rigour, and poor technological applications (e.g., low quality and/or quantity of fertilizer). Second, a less technologically-driven reason is that in some cases rubber plantations may not be vigorously planted with rubber as a cover for a logging operation, and/or the company was coerced into receiving the rubber concession as part of the government's goal to increase industrial rubber production. This is certainly the case with palm oil in Tanintharyi Region,<sup>15</sup> and so it is assumed to be a similar case for rubber, although more research is needed. However, while rubber production has only been steadily increasing at the same rate over the past half-decade, rubber export value quadrupled from the mid-2000s (apart from 2007-08) to 2010-11, with a more than doubling in export value in just one year from 2009-10 to 2010-11 at over USD300 million. Without more research, it must be assumed this is due to a sudden increase in global rubber market price rather than domestic affairs. It should be noted that USD300 million per annum for rubber export income is on par with that of teak exports, a famed export for the country.<sup>16</sup> Therefore, rubber is not only a significant agricultural commodity in terms of value of revenue generation, but it is increasing in both production and income earned – whereas the country's wood resources have been overexploited and subsequently face shortfalls.

The areas of the country that have the largest expanses of planted rubber are, in decreasing order, Mon State (nearly 425,000 acres), Tanintharyi Region (almost 220,000 acres), Kayin State (145,000 acres), Shan State East (74,000 acres), Shan State North (56,000 acres) and Kachin (nearly 45,000 acres) (see **Figure 3 and Table 3**). In general, the government planned for each of these states/regions to increase their rubber acreage planted by about 10,000 acres each by the following year (2010-11). Kachin State had a goal of 100,000 acres by 2009-10 (see **Table 4**).<sup>17</sup> All of Shan State (south, north and eastern areas) had a goal of 360,000 acres of planted rubber,

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<sup>12</sup> There is a difference of 18,718 acres in the 2009-2010 figure between table 2 (1,246,531) and table 3 (1,227,813).

<sup>13</sup> Department of Agricultural Planning (DAP), Ministry of Agriculture and Irrigation (MOAI). 2010. *Perennial Plantation Development in Myanmar 2010-2011*. Union of Government of Myanmar. In Burmese.

<sup>14</sup> Aye Kyawt Khaing, 2012. "Myanmar's rubber prices low." *Irrawaddy*. 02 August.

<sup>15</sup> Woods, K. 2012. *Emerging Agribusiness Trends in Myanmar: An Overview*. Kunming: Yunnan University Press.

<sup>16</sup> Woods, K. and K. Canby, 2012. *Baseline Study 3, Myanmar: Overview of Forest Law Enforcement, Governance and Trade. Forest Trends and EFI*.

<sup>17</sup> MOAI 2009. Myanmar Long Term Plantation of Project Office of the State Manager, Kachin State, Myitkyina. First Quarterly Report on Task Implementation of 2009. Union of Government of Myanmar. 3 December.

according to government data.<sup>18</sup> However, there is some discrepancy between data from national and provincial government offices, even within the same government agency. Furthermore, it is sometimes unclear whether the total acreage reported refers to planted area or just the concession area awarded. This must be taken seriously, as oftentimes government statistics record concession awarded as area planted, with plenty of evidence that this is not the same figure. Therefore it is quite probable that the area planted in rubber in actuality is less than recorded in government-controlled areas (whereas non-state rubber areas are not included in national statistics).

The bulk of rubber plantations are still in traditional growing areas in Tanintharyi Region, Mon State, and Kayin State, with all three states/regions each having approximately a 40,000 acre increase in rubber from 2009-10 to 2011-12 (see **Table 3**). The consistency of those numbers among the three traditional growing areas makes one suspect that there is a government push for increasing rubber area planted in those states/Regions, and therefore may not reflect actual rubber planted. This is not to discount the two significant areas of rubber production in the country: the new northern areas of Shan and Kachin States. Kachin State increased by just over 10,000 acres in just two years from 2009-10 to 2011-12, and northern Shan State increased by about 12,000 acres during the same period, roughly a similar increase as in Kachin State. In these areas, the Burmese government categorizes most rubber projects as “perennial crop development substituting for opium poppy in border areas”, and therefore has separate data categorization and collection that does not necessarily match the central government data for rubber production in the different regions/regions of the country. It does not appear, however, that rubber plantations under the Myanmar government category of opium crop substitution receive any extra benefits or subsidies, or fall under a special land allocation process. This is because the rubber spike in northern Myanmar is not from the central government pushing Myanmar companies to plant rubber, but rather from China encouraging Chinese agribusiness companies to cultivate industrial rubber in estates through its opium substitution programme (see separate section).

In 2005-06, rubber production in Myanmar was around 64,000 MT, but by 2010-11, production levels reached nearly 128,000 MT (of which 71 per cent was exported for a total of over 91,000 MT, netting over USD 300 million) (see **Table 2**). These figures suggest that the government’s rubber target for 2011-12 is not being met: while they will reach their target for area planted fifteen years early (1.5 million by 2030), their production target is less than half of what they expected (136,000 MT) given their target area has been met. This means that their rubber productivity estimates are far below the actual field results – which again flags the techno-social and political-economic factors influencing actual rubber production in Myanmar (thus the title: ‘political ecology of rubber production’). This includes poor quality of seedlings and fertilizer, poor edaphic qualities where the rubber is planted, and rubber not actually planted in the recorded planted area (i.e., company resistance to coercive arrangement, cover for logging).

Following the country’s gradual piece-meal privatisation measures in select sectors in the country over the past decade, the percentage share of private capital in rubber production (rubber planted area and latex production) in the country has been gradually increasing while that of the state has been correspondingly decreasing (see **Figure 3 and Table 5**). The private sector now controls 97 per cent of rubber plantations and 98 per cent of total latex production.

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<sup>18</sup> Noam, Z. 2010. “White Gold Rush.” *Irrawaddy*, 10 June.

About 70 per cent of rubber production in the country is targeted for export (see **Table 2**).<sup>19</sup> Ninety per cent of exports head to China and five ASEAN countries—Malaysia, Singapore, Vietnam, Thailand and Indonesia.<sup>20</sup> While China is the main rubber importer from Myanmar,<sup>21</sup> and Chinese middle men seem to operate local rubber economies in northern, eastern and southern Myanmar, the recent investment interest in rubber production and processing by Malaysia and Thailand indicate that there will be increasing demand and therefore competition on Myanmar's rubber exports. Rubber from Myanmar is also exported to Korea and India. In terms of rubber cultivation, Myanmar ranks ninth in the world, according to the MRPPA spokesman.<sup>22</sup>

Government statistics must be viewed with some reservations, however. Official statistics do not include rubber concessions in areas not under government control, such as those administered by ethnic political groups like the Kachin Independence Organization/Army (KIO/A) in Kachin and northern Shan States, and the United Wa State Party/Army (UWSP/A) in northern Shan State. For example, a Shan exile media organization reports that there are about 600,000 acres of rubber plantations in the Wa Self-Administered Region, but these are not found in government records or statistics.<sup>23</sup> In addition, agricultural concessions in government-controlled territories that are administered by military officials may or may not be included in national statistics, depending on whether or not the Ministry of Agriculture and Irrigation (MOAI) acknowledges the contracts. Concessions that go through non-state armed groups without national military or government authorities, even though those areas are under de jure national government administration, may not be included in national statistics. Furthermore, discrepancies in data exist between and within ministries and departments. For example, the Myanmar Perennial Crops Enterprise (MPCE) (now the Myanmar Industry Crop Development Enterprise, or MICDE) and Settlement and Land Records Department (SLRD) report different data on rubber plantations, even though both are under the MOAI. Data gathered through interviews also suggests considerable discrepancy between MOAI records and the reality on the ground.

### **Political-Economic Reform: Legally selling Myanmar's farming future**

To date there are only a few 100 per cent foreign-operated agricultural operations in Myanmar, all of which have only been signed since the national elections in 2010. Before the current land reforms, foreign investors could not wholly rent land concessions. Joint ventures with the government were possible, but very few foreign investors opted for this because of very high taxes for foreign companies and political risks were too high. Therefore, nearly all agricultural concessions in the country to date are *formally* run by Myanmar companies. Of course, with the country opening its doors to foreign business, and the foreign investment law very recently being passed, this is certainly set to change.

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<sup>19</sup> Hla Myint, 2007. *The Role of Myanmar Rubber Planters and Producers Association (MRPPA) in Natural Rubber Development and its Recent Activities*. International Rubber Conference. Siem Reap, Cambodia.

<sup>20</sup> Boot, W. 2009. "Myanmar to boost rubber plantations to meet domestic demand." *Irrawaddy*, 29 August.

<sup>21</sup> Aye Kyawt Khaing. 2012. "Burma's rubber prices low." *Mizzima*. 02 August.

<sup>22</sup> Interviews with Myanmar rubber businessmen, Yangon, 7 November 2012.

<sup>23</sup> Shan Herald Agency for News (S.H.A.N.). 2008. "Rubber fields forever for Wa?". No.19, 24 April.



Although there is very little formal foreign agricultural investment in Myanmar so far, foreign investors sometimes back Myanmar companies who receive large agricultural concessions. For example, China's opium crop substitution programme is largely behind much of the agricultural concessions in northern Myanmar, particularly for rubber. Agricultural land contracts negotiated with regional and local military authorities lead to land confiscation and displacement of local farmers. There is no support for smallholders in the north with Chinese investors, nor are local farmers hired as labourers (except in Wa-controlled areas).

But this situation is set to change with the two new land laws in Myanmar and the current push by the new government for foreign direct investment (FDI) in the agricultural sector. Earlier this year the government rushed through parliaments two land laws that allow for private, domestic and foreign investment in the agricultural sector, which is predicted to have a dramatic impact on the development path for the country. The Vacant, Fallow, and Virgin Land Law (or VFV Law), which passed in March 2012, legally allows the government's Central Land Management Committee (LMC), which holds a monopoly power over farmland management and is chaired by the Minister of MOAI, to reallocate smallholder farms (both upland shifting *taungya* land and lowlands without official land title) to other land cultivators, in this case specifically the private sector. As very few farmers have official 105 land title certificates from the Settlement and Land Records Dept. (SLRD) under the MOAI, most farmers have no formal land use rights with the introduction of the VFV Law. This law is meant to convert what the government labels as 'vacant, fallow and virgin land', which is actually oftentimes cultivated (swidden in the hills) by local households, into industrial agricultural estates. This represents blatant legal backing to the private industrial sector at the expense of smallholder farmers who will be targeted as 'squatters' under this law. The total acreage for industrial crops is up to a maximum of 50,000 acres (see Chapter IV, Article 3), for a thirty-year lease. There is potential contradiction here with the Foreign Investment Law (see below), which allows for a maximum of 70 year lease for land. The LMC must try to resolve any land conflicts with local farmers that are generated as a result of reallocated farmland that includes farmland cultivated by local households (see Chapter VIII, Article 25 (a-c)). And in the cases where the reallocated land possess natural resources or artefacts that relate to cultural heritage, the land must be returned to the state (see VFV By-Laws, Article 47(b)). See the Appendix for the unofficial English translation of the Law (bylaws not included).

The other land law is known as the Farmland Law, which also passed in March, 2012. This law states that land can be legally bought, sold and transferred on a land market with land use titles. This is a very significant law because it means that land has become a commodity to be sold on a land market. While farmers have been doing this informally for a long time, the legalisation of a land market introduces significant socio-economic impacts. Much like the VFV law, anyone without an official land use title no longer possesses land use rights. Land use titles will be issued by the SLRD, but that will take decades to title all the land in the country. Moreover, it will be impossible to title shifting *taungya* land because by definition these swidden plots move, and so therefore evade a permanent agricultural land use title. The result is that the uplands - now labelled 'wastelands' or 'fallow lands' - have no land tenure security under these two new land laws. Therefore ethnic upland areas are under the greatest threat, which are precisely the

area's most heavily targeted by industrial agricultural concessions – the uplands of Kachin, Shan, Rakhine, Kayin States, as well as Tanintharyi Region.

Another concern with this law is the monopolistic power that rests with the Farmland Management Body (FMB), chaired by the Minister of MOAI, on decisions over farmland use, management, and allocation. Not only are all decisions made by the FMB, but they are also beyond the judiciary branch (in particular see Chapter XIII, General Provisions, article 40). This represents a collusion between the ministry of MOAI and the new land laws that the agriculture minister helped to push through parliament, putting him in the top decision making position on national agricultural land allocation. See the Appendix for the unofficial English translation of the Farmland Law (bylaws not included).

These two land laws work in concert to dispossess farmers – especially upland farmers – of their right to farm. Moreover, industrial agricultural development is set to target the very geographical and ethno-ecological zones where farmers have lost their land use rights. This presents a very dangerous convergence between Myanmar's new legal environment and corporate industrial agriculture.

Land grabbing and land speculation by companies, both domestic and international, is further incentivised by the new Foreign Investment Law (FIL), which passed on 1 November 2012. The much anticipated FIL, after months of debate, still left much to be desired by the international investment community, but with still some very significant liberalisation measures that will certainly invite Foreign Direct Investment (FDI) into the country, especially in the natural resource extraction sectors, including for agribusiness.

For the FIL, some sectors, including the agricultural sector, have been deemed 'restricted' sectors for investment, and carry certain extra, although ambiguous, precautions. In addition, investment is restricted across all sectors if it is detrimental to traditional cultures and customs of ethnic nationalities, as well as if damaging to public health, natural resources, environment, or biodiversity (see Chapter 2, Article 4 (a-c)). Also significant is a rather ambiguous statement that foreign investment in agriculture should not be carried out if Myanmar citizens, as deemed by the Myanmar Investment Commission (MIC), are capable of undertaking that agricultural activity (see Chapter 2, Article 4 (h)). The final noteworthy exemption to foreign investment is that any foreign investment project is banned from being conducted within at least ten miles from Myanmar's international borders, except in special economic zones (see Chapter 2, Article 4 (k)). That being the case for these restricted areas of investment, if the projects are deemed beneficial to Myanmar citizens, especially to ethnic nationalities, then it may gain approval from the *Pyidaungsu* (Union) Government, and therefore override these restrictions (see Chapter 2, Article 5).

For the specific case of foreign investment in land, land use rights are up to a total of seventy years (see Chapter 14, Articles 31-32), which if for agricultural purposes contravenes the VFV Law (see above) with thirty year leases. And even still, if the investor wants a lease longer than seventy years, they may get permission from the Union Government if their land concession is located in the less developed and poor communication areas of the country as then it will be especially suitable for the economic development of the whole country (see Chapter 14, Article

36). Provincial governments (state and region-levels) are not required to give consent to investments within their jurisdiction. The Union Government does not need to give approval to large-sized investments, although they have to be informed. The MIC, which is chaired by the reformer union minister U Soe Thein, can allow foreign investments in restricted sectors if it considers it is in the national interest, especially that for ethnic minorities. The MIC thus retains a lot of power over the approval and direction of foreign investment in the country, much like the FMB under the Farmland Law as well as the LMC under the VFV Law (both chaired by the Minister of MOAI).

It appears at this early stage that MIC will have the highest authority over very large land concessions if it is in the so-called national interest, which would enable bypassing any national laws or policies regulating land use. The Land Management Committee is chaired by the minister of MOAI, and is therefore essentially under the control of that ministry which has strong vested interests in industrial agricultural concessions. There very well could be future conflict between MIC and MOAI over the allocation of especially large land concessions, with MIC potentially playing a stronger regulatory role as U Soe Thein is a liberal reformer, unlike U Hla Myint (minister of MOAI) who is backed by the military. More details will come out after the bylaws are passed for the FIL, which will be under the Ministry of National Planning and Economic Development, under which MIC is placed.

The Environmental Conservation Law passed in March 2012 contains only vague sustainable development rhetoric, focuses mostly on environmental management and regulation, especially regarding hazardous waste, and carries little bite. MOECAF will be the ministry overseeing environmental regulation, despite having no political authority in practice to do so yet. The only mention of agriculture is with chemical pollution. Chapter nine on the conservation of natural resources and cultural heritage could provide legal backing against environmentally damaging industries: "for sustainable environmental conservation activities, the ministry must collaborate with the related governmental departments and governmental organizations in regard to cultural heritage areas, natural heritage areas, cultural milestone buildings and natural areas." Chapter 10 is regarding obtaining permission for potentially environmentally damaging projects: "With the agreement of the Union of governmental organization, the ministry may determine the type of project, project area or industry that could harm the quality of the environment, and for which it is therefore necessary to receive prior permission." Moreover, "the ministry may determine the principles of environmental conservation when giving the prior permission, and may monitor whether the principles are being implemented or could also request other related governmental departments to monitor." And if this ministry "finds any principle of prior permission has not been followed, the ministry could determine the following administrative punishments." Chapter 12 states that "no one is allowed to do any project in any project area or industry without prior permission." The maximum fee if found guilty for not following these regulations is just 1 million kyat. MOECAF has little power in the country beyond forest management, and has never before managed non-forestry environmental affairs. MOECAF is in no political position to reign in on polluting industries in the country, including agribusiness.

## **Geography of Rubber Concessions**

Different geographical areas of the country, however, are being targeted, with varying resulting impacts. The ‘traditional’ areas of the country that have long been targeted by state-backed yet smallholder-driven rubber production programmes (Mon State and Tanintharyi Region), are being increasingly threatened by industrial rubber concessions to replace smallholder rubber farms. In addition, new areas are opening up to rubber production, such as Rakhine State and especially northern Myanmar. The different areas being targeted operate under different political-economic drivers.

### ***Traditional Growing Areas: Southern and Eastern Myanmar***

Rubber has long been cultivated in Mon state; it is the second most important crop, followed by rice, in the state. Apart from Mon State, other areas in southern and eastern Myanmar also have considerable rubber acreage, in particular parts of Kayin State and Tanintharyi Region. When global rubber prices jumped in the mid-1990s, many smallholders revived their rubber operations, although with no financial support from the government. Although the government supported many other crop sectors, including sugarcane, palm oil and jute, with some limited low-interest loan programmes, rubber planters were not included in the coverage.<sup>24</sup> Most rubber smallholders financed their investments mainly by pooling family resources or taking out high-interest loans. In fact, the planted area in Mon State nearly tripled within a decade after the government introduced market liberalizations in the early 1990s.<sup>25</sup> In 2008, the sown acreage of rubber in Mon State reached over 40 per cent of the total area of agricultural cultivation in that state. According to a then-MPCE survey conducted in the early 1990s (before the northern Myanmar rubber boom), the rubber sector in terms of holding numbers was dominated by smallholders (less than 20 acres of rubber per household).<sup>26</sup> At that time smallholders constituted over 90 per cent of rubber holdings and 37 per cent of the total area sown in rubber. Medium-sized holdings (20 to 100 acres) constituted only 7 per cent of the growers, but 23 per cent of the sown area. Large holdings (more than 100 acres) constituted less than just 1 per cent of the growers, but, importantly, 40 per cent of the total sown area.<sup>27</sup>

While no dominant agribusiness company monopolizes the sector in southern and eastern Myanmar, local producers and smallholders are increasingly dependent on a handful of ‘dealers’ who specialize in trade with China.<sup>28</sup> Two companies, Fu Xing and Yong Xing, are major dealers in the region, with purchasing centres in Mawlamyine, Mon’s state capital, along with a few other towns. Myanmar Shwe Ying International, another Chinese company, has a processing plant in Thanphyuzayat, which tries to upgrade the quality of rubber before exporting it to China. These dealers gradually increase their market share by specialising in the two-way trade in rubber products. They supply raw materials to smallholders at very competitive prices, but apparently without formal contracts. Some smallholders have informal agreements with input

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<sup>24</sup> Central Statistical Organization. “Annual and long-term loans on agricultural crops,” *Statistical Year Report*, Yangon. Various issues.

<sup>25</sup> Woods, K. unpublished. *Emerging Agribusiness Trends in Myanmar: An Overview*. Oxfam Hong Kong.

<sup>26</sup> Woods, K. unpublished. *Emerging Agribusiness Trends in Myanmar: An Overview*. Oxfam Hong Kong.

<sup>27</sup> Woods, K. unpublished. *Emerging Agribusiness Trends in Myanmar: An Overview*. Oxfam Hong Kong.

<sup>28</sup> Woods, K. unpublished. *Emerging Agribusiness Trends in Myanmar: An Overview*. Oxfam Hong Kong.

suppliers, particularly for fertilizer, which allow them to pay after the harvest. Government agencies have no loan programme, however, for smallholder rubber households.

Growers, traders and dealers are experiencing much higher returns from their operations due to the market focus of the sector and the growing demand for rubber in China. Marketing channels have expanded rapidly across the state, with major purchasers working through an extensive network of buyer agents who reach out to smallholders at the village level. However, since neither the growers nor producers can upgrade their value chain, their returns are not large enough to uplift the entire sector. By the government granting large-scale land concessions to a few well-connected companies appears to be an attempt to streamline the rubber sector from above. This policy is slowly pushing smallholders and producers out of the value chain, whom the government could have instead assisted more effectively through credit programs and extension services.

The share of large holdings among the total area sown in rubber has increased dramatically after 2000 following the government's stronger push for industrial rubber production, along with other agricultural commodities. Although large-scale rubber estates are beginning to challenge the model of rubber production in Mon State, and indeed throughout the traditional growing areas in southern and eastern states/regions in Myanmar, smallholders still represent the majority rubber holders, but a lead that is quickly slipping away.

Apart from the traditional growing areas in southern and eastern Myanmar, Bago and Yangon Regions also have smallholder and concessionaire rubber plantations, although more limited than in the rest of the country. In addition, Rakhine State is emerging as a new destination for large-scale rubber concessions, signified by the 120,000 acre rubber concession awarded to the Vietnamese government in southern Rakhine State in 2010 (more information further below).

### ***New Rubber Production Sites: Northern Myanmar***

Since the mid-2000s, the uplands of northern Myanmar in Kachin and Shan States have been targeted as new rubber production sites in the country. Large-scale industrial agricultural production, such as rubber, tea, sugarcane and cassava, has been promoted by the national government in the country since the 2000s, with northern Myanmar no exception. However, northern Myanmar has received an extra boost for industrial agricultural production, in particular rubber, by an addition driver – China's national policy on opium substitution in northern Myanmar and Laos. Since this programme began in 2006, rubber concessions have begun to sprout up throughout eastern and southern Kachin State as well as northern and eastern Shan State.

One of the most significant differences to rubber production in the traditional growing areas in eastern and southern Myanmar compared to new production areas in the north is the mode of production. While smallholder rubber dominates southern and eastern Myanmar (although increasingly threatened by rubber concessions), there is minimal smallholder rubber in the north. In Kachin and Shan States, swidden fields are being threatened by large-scale, industrial rubber concessions. There is no government support for smallholder rubber in northern Myanmar, and

very few households have the inputs available (land and capital) to invest in smallholder rubber. This significant difference in rubber development models between the north and south/eastern parts of the country holds very different socio-economic implications for rural farmers.

In the north, rubber concessions tend to be concentrated in areas with some infrastructure in place, in particular along both sides of government-controlled roads. This follows the concessionary model whereby concessionaire holders' desire land along easy to access infrastructure routes for economies-of-scale extraction and transportation. Rubber concessions in Kachin State, for example, are on both sides of the all-weather roads radiating out from Myitkyina, the provincial capital, heading to Namti, Denai, and the Kachin Independence Organization's (KIO) headquarters at Laiza. The highest concentration of rubber plantations is along the Myitkyina to Bhamo road. In northern Shan State, non-state military authorities in the Wa Self-Administered Division, and less so in the now government-controlled Kokang area,<sup>29</sup> have aggressively promoted establishing rubber plantations in farmers' swidden fields. Wa Self-Administered Division has the most extensive rubber coverage in northern Myanmar. A Shan exile media group reports that there are rubber plantations in the following areas of Wa Self-Administered Division, all with politico-military connections to UWSA leaders: Namteuk (or Namtit), owned by Ai Roong, nephew to Wa military leader Bao Youxiang; Panghsang, owned by the top Wa military leadership; Mongmai (or Mongmau), owned by China's Hong Pang Co. who has invested heavily in agribusiness in Wa areas under China's opium substitution programme; Wiang Kao, owned by Zhong Xinbao; Mongpawk, operated by Wei Hsaitang; Mongphen, owned by local Wa administrators; and Mongyawn, operated by Hong Pang Co. Rubber factories have been established in Namteuk and Panghsang. Nong Chang Company, based in Simao in China's Yunnan Province, are thought to be behind many of the rubber projects.<sup>30</sup> A report by a Lahu environmental NGO based in Thailand documents the spread of rubber in both Wa areas and Lahu settled areas in Tachilek township along the border with Thailand's Chiang Rai province.<sup>31</sup>

In addition to Wa and Kokang areas, government-controlled areas in northern Shan State have also seen a sharp rise in rubber production since the mid-2000s. In particular, the northern Shan State towns of Lashio, Nam Tu and Thein Ni, along the Lashio to Muse Road (the old 'Myanmar Road') on the route to the Yunnan, China border, have been targeted by numerous big and small rubber concessions, as well as areas along the Lashio to Mone Yaw Road. As the geography illustrated above highlights, most of the rubber concessions are located within areas controlled by the Myanmar government, with permission granted from either regional military commanders in that area (i.e., northeast commander), or in some cases even top central military officials.

In some cases agricultural concessions (although often smaller in acreage) are granted by non-state political groups (state-backed militias, ceasefire groups, and insurgent organizations) – sometimes with permission from the government. Rubber concessions under these non-state

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<sup>29</sup> In 2009 the State Peace and Development Council (SPDC) led an all-out offensive attack against the Kokang, causing 30,000 Chinese refugees to flee across the border into Yunnan. It is unknown how government control over Kokang areas impacts rubber development, or who maintains lease rights and access to the harvested products.

<sup>30</sup> SHAN. 2008. "Rubber Fields Forever for Wa?" No.19, April 24. Issue 4.

<sup>31</sup> LNDO. 2009. "Rubber Mania: Scrambling to supply China, can ordinary farmers benefit?" *Undercurrents*, Issue 3.

parties are either within their semi-autonomous territory ('black'), within jointly-administered areas ('brown'), and even within government-controlled territory ('white'). Ceasefire areas include KIO-controlled territories (e.g. Sambai village), New Democratic Army-Kachin (NDA-K) Special Region 1 territory (e.g., Momauk township, Loiye sub-district), and United Wa State Army (UWSA) territory. In Mongla Township in Myanmar's northern Shan State, for example, the ceasefire group National Democratic Alliance Army (NDAA) have encouraged local people to plant rubber seedlings in degraded teak forest hillsides.<sup>32</sup> One such case of pro-government militia groups operating rubber concessions is the Mang Pan militia operating in northern Shan State near Lashio. According to local researchers, the Mang Pan militia owns three rubber plantations in Kharshi village, just 16 kilometres from Lashio, for a total of 1,500 acres.

In areas that are not controlled by the government, such as Wa Self-Administered Region, national government authorities (in this case MICDE and the SLRD) do not record rubber plantations, so these are not included in national statistics. It is unclear the extent to which rubber concessions in government-controlled areas are recorded in national statistics if the concession is awarded by local and/or regional military authorities.

## **Political Economy of Rubber Investment**

### ***Rubber Geographies of Difference***

Investment in rubber plantations occurs under very different circumstances in Myanmar's various geopolitical and ethno-agricultural zones. In the north, rubber is predominantly financed by Chinese investors backed by the Chinese government through its opium crop substitution programme. There are almost no smallholder rubber plantations in the north; the MRPPA confirms that the Myanmar government supports only big companies with expansive land concessions, not smallholder agricultural development, throughout the country. In general, Chinese agribusiness investors work through local individuals in Myanmar, who set up shell companies to provide the Chinese investor with a local partner. This enables them to receive more favourable conditions for their land investments, including lower taxes and simpler administrative procedures, thus avoiding high-level government agencies and oversight that formal foreign investment invites. Myanmar companies from Yangon or Mandalay are mostly not involved in rubber development in the north, however, due to the dominant more localised patron-client relations that operate there. Only rarely is a large national Myanmar company from Yangon, such as Htoo Trading, Max Myanmar or Yuzana, involved in rubber development in the north. However, these very influential companies are involved in other land development projects in Kachin and Shan States, such as mining, hydropower, infrastructure development and logging. And in limited cases they are investing in rubber development in the north, although it is not known under what political circumstances and the extent to which they are getting involved. For the most part, Myanmar companies from regional centres in the country do not have the political patronage networks to compete with local strongmen in the north, who collaborate with the northern military commander, local militias, insurgent organizations, and/or Chinese investors based on personal relations to obtain large concessions.

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<sup>32</sup> Anonymous. 2011. The Impacts of Rubber Plantations on the Ceasefire Area in Mongla Township in Eastern Shan State, Myanmar. Chiang Mai, Thailand.

In the south (Mon State and Tanintharyi Region) a very different investment scenario operates. Stemming from colonial British encouragement, and then FAO/UNDP programmes, rubber development is mostly led by smallholder farmers. In Mon State, where smallholders played a leading role in the rubber industry well before the government took an interest in the industry, only Max Myanmar Group has been granted a license to establish a large concession. Karen Human Rights Group, a grassroots organization which monitors human-rights abuses in eastern Myanmar, alleges the Myanmar army confiscated large tracts of land in northern Mon State in 2008 which it then sold to Max Myanmar for use in its rubber plantation operations.<sup>33</sup> Max Myanmar Group began planting 5,000 acres of rubber trees in Belin in 2005 and finished ahead of schedule in 2007. Initial output from this plantation is expected in 2012, with full production underway by 2018.<sup>34</sup> Apart from this concession, smallholder farms dominate the rubber industry in Mon State, and therefore are expected to be less targeted by rubber investors due to lack of so-called ‘wastelands’.

The main competition facing rubber households is another ‘group’ of smallholders linked to government infantry units stationed in Mon State. In 1997 the Southeast Command, the regional military command that oversees Mon State and the adjacent Kayin State, adopted a self-reliant policy under which military units began growing rubber trees on plots of land owned by the state. The scheme started with 1,000 acres in Kyeikmaraw Township and achieved large profits thanks to technical assistance and inputs from the MOAI. By 2005 several dozen military units, as well as navy and police, owned rubber farms averaging 100 to 200 acres across the state. The programme received further support from top military leaders who regularly visited Mon State to praise the programme as a successful example of the military’s self-reliance policy.<sup>35</sup>

The rubber economy in the south thus represents a major difference from the way the government is purposely pursuing rubber development in the north – reflecting the stark differences in the political and frontier contexts, as well as the government’s current privatisation plans. Farmers in northern Myanmar could potentially make good profits – as seen in Mon State, and in China’s Xishuangbanna Prefecture in Yunnan Province – if they were able to invest in their own smallholder rubber plantations. But due to strong military and militia control over land and their concession allotments in the north, matched by high initial capital investment required without returns for at least seven years, farmers in the north continue to lose out on this new revenue stream – as well as losing their customary land.

### ***Domestic Rubber Economies***

The government initially imposed strict export regulations on rubber growers, who had to provide 45 per cent of their output to the government procurement agency before they could

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<sup>33</sup> Based on a review of a preliminary report by KHRW.

<sup>34</sup> <http://www.max-myanmar.com/manufacturing-rubber.htm>, last accessed on November 10, 2010.

<sup>35</sup> Lt. Gen. Maung Bo, former chief of Bureau of Special Operations for Southeast and Tanintharyi Region Commander, was in charge of the military’s rubber project. He regularly toured Mon State, inspecting the military-owned plantation sites. Interview by Vahu Institute in Yangon, anonymous businessman, September, 2010. Also see *New Light of Myanmar*, September 22, 2005.



export the remaining 55 per cent under specific guidance from the then-MPCE (now MICDE). Domestically, the growers could sell their produce to any buyers or dealers within the country. But in 2004, the government liberalised the rubber export policy by allowing both growers and dealers to export without first fulfilling the quota to the then-MPCE. However, exporters still have to pay a 10 per cent export tax to the government, in addition to obtaining a license from the Myanmar Trade Council (MTC), a centralized trade licensing committee chaired by top military leaders (at that time) and the Ministry of Commerce, with decision-making input from the MRPPA.

Most rubber products, including those produced in the south, are exported to China.<sup>36</sup> Since the liberalisation of rubber exports in 2004, about 75 per cent of locally produced rubber is exported, while the remaining 25 per cent is sold to local manufacturers, mainly shoe factories. Dealers linked to export destinations in China through border trade have some advantage over those who export to the traditional markets of Malaysia and Singapore. Dealers who export raw rubber to China also control the import of finished rubber products from China through border trade. In Mon State, these dealers offer attractive buying prices to growers, much higher than those offered by local manufacturers and agencies that export rubber to other destinations. While the dealers make less profit in exporting raw rubber products to China, they usually charge a higher premium on the import of finished rubber products.

The private sector controls the vast majority of the rubber sector in Myanmar, with 98 per cent of the planted area and 97 per cent of latex production under private operation (as opposed to state) in 2010-11.<sup>37</sup> Government support for the privatisation of agricultural development was made clear with the suspension of domestic purchases of rubber and the lifting of restrictions on rubber exports in 2004. This has worked in tandem with China's opium crop substitution subsidies for Chinese businessmen, providing financial support for Chinese-backed private rubber plantations in the north.

### ***China's Opium Substitution Programme in Northern Myanmar***

Several Chinese national policies in the last fifteen years have together shaped Chinese overseas agricultural development. As early as 1992 the Chinese government began experiments on replacing opium crops in the so-called Golden Triangle with legal agricultural crop plantations, known as the "Menghai Model".<sup>38</sup> In 1998 Beijing then launched its national "Go Out" campaign to encourage investment beyond its borders. Then in 2004 an opium crop substitution "122 Working Group" was formed – with backing from many different state agencies and integrated into national economic development agendas – to facilitate Chinese businesses investing in opium replacement development in northern Laos and Myanmar. The final push arrived in 2006 with the creation of the Opium Replacement Special Fund by China's State Council to provide further financial incentives to Chinese businesses, along with other more favourable investment conditions. The surge in Chinese agricultural concessions in northern

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<sup>36</sup> Interview with MRPPA, November 2012.

<sup>37</sup> Hla Myint. 2008. "Development of Rubber Planting Industry in Myanmar: Review and Major Constraints." IRRDB International Natural Rubber Conference, KL, Malaysia. 13-15 October.

<sup>38</sup> Shi, W., 2008. *Rubber Boom in Luang Namtha: A transnational perspective*. GTZ.

Myanmar, and specifically rubber, neatly overlaps with these most recent Chinese state incentives in 2006.<sup>39</sup>

The policy is intended to provide alternative livelihoods to (ex-)poppy farmers; in fact it is destroying already established so-called alternative livelihoods in rubber production areas through outright land dispossession.<sup>40</sup> The programme is carried out by Chinese businessmen – in contrast to an earlier rendition of the programme which was implemented only by Chinese state officials, and with little success and therefore impact. Since the programme was liberalised, Chinese investors have been working with local elite families who maintain good connections to regional military government officials and/or armed ethnic group leaders. A Chinese company normally provides technical expertise along with seedlings, fertilizer and capital, while the local company uses its connections to the local authorities (in this case regional military official and/or militia or ceasefire group) provides land, often confiscated from farmers, and labour under sometimes highly coercive arrangements. Chinese businessmen normally pay for labour through local authorities rather than directly to the farmers, who usually receive only part of what was paid by the Chinese investor.<sup>41</sup> Two prominent examples of Chinese companies engaged in agribusiness in northern Myanmar include Hong Yu Group Company and Hong Pang Co. (see more below for specific rubber projects they have invested in).<sup>42</sup>

A partial listing of Chinese companies engaged in opium crop substitution projects in northern Myanmar provide insights into crops grown, areas sown, and import quotas for China.<sup>43</sup> Based on limited data available from Kunming municipal government and Xishuangbanna Prefecture's Bureau of Commerce, **Table 6** lists the major crops planted, area sown, and agreed quota imported into China.<sup>44</sup> Most companies either were established in the mid-2000s (especially 2006-07) during Beijing's major push for opium substitution projects in Myanmar (and Laos), or those companies that established in late 1990s and early 2000s but have since dramatically increased their planted areas. Rubber was by far the most popular crop in terms of area established, presumably due to strong demand and limited growing area in mainland China. Other major crops include corn/maize and rice, followed by a litany of lesser-planted crops, such as castor-oil (*jatropha*), sesame, tea, banana, etc. This is only a very partial listing of companies (only companies based in Kunming municipality and Xishuangbanna Prefecture), and therefore does not take into account all agricultural investments in northern Myanmar by Chinese companies.<sup>45</sup>

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<sup>39</sup> Transnational Institute (TNI). 2010. *Alternative Development or Business as Usual? China's opium substitution policy in Myanmar and Laos*. Drug Policy Briefing No. 33. November.

<sup>40</sup> Kramer, T. and K. Woods. 2012. *Financing Dispossession: China's Opium Substitution Programme in Northern Burma*. Transnational Institute (TNI).

<sup>41</sup> Kramer, T. and K. Woods. 2012. *Financing Dispossession: China's Opium Substitution Programme in Northern Burma*. Transnational Institute (TNI).

<sup>42</sup> For more information on Hong Yu Company and its agricultural plantations in Shan State, see <http://english.ynjd.gov.cn/pubnews/doc/read/tdfz/906991389.117111478/index.asp>, last accessed February 2008.

<sup>43</sup> [http://xw.km169.net/kmpap/2008-09/02/content\\_1563164.htm](http://xw.km169.net/kmpap/2008-09/02/content_1563164.htm) (in Chinese language). Last accessed October, 2009.

<sup>44</sup> <http://xsbn.mofcom.gov.cn/aarticle/gonggao/200809/20080905777443.html> (in Chinese language). Last accessed October, 2009. [http://xw.km169.net/kmpap/2008-09/02/content\\_1563164.htm](http://xw.km169.net/kmpap/2008-09/02/content_1563164.htm) (in Chinese language). Last accessed October, 2009.

<sup>45</sup> No further updated or detailed information is currently available. The Myanmar government does not record - or at least make public - China's opium substitution projects in northern Myanmar.

According to **Table 6**, rubber accounts for nearly half of all crops planted for Myanmar by Chinese investors through China's opium substitution programme. The areas planted as part of opium crop substitution according to the Myanmar government are exceedingly high and difficult to interpret without more information, but one could infer that perhaps Chinese agricultural investment in northern Myanmar only constitutes a limited – yet definitely significant – portion of the recent increase in agricultural development in Kachin and Shan States.

A few representative examples of Kunming-based companies involved in China's opium crop substitution program working in Myanmar follow, according to a 2008 data set.<sup>46</sup>

Yunnan Jin Chen Investment Company Ltd., registered in 2006, has registered capital of 16 million Yuan (US\$ 2.310 million). The company has engaged in rubber plantations in Longkwa Area, Mengmao County in Special Region 2 (Wa Self-Administered Region) in Shan State, Myanmar since 2006 with a concession awarded for 300,000 mu (20,000 hectares). In 2008, 98,000 mu (6,533 hectares) of rubber plantation had been successfully planted, with an additional 50,000 mu (3,333 hectares) of rubber planned for planting in 2009. The Chinese import quota is 2,800 tonnes of rubber.

Yunnan Jiuzhou Jinke Investment Co., Ltd. was established in 2005, with 10 million Yuan (US\$ 1.44 million) in registered capital. The company signed a contract with the Kachin Independence Organization (KIO) in Kachin State worth a total investment of 43.68 million Yuan (US\$2.91 million). In 2006 the company established 22,000 mu (1,467 hectares) of rubber, by 2008 an additional 3,800 mu (253 hectares) of rubber had been planted, and the company plans to plant another 10,000 mu (667 hectares) in 2009. The Chinese import quota for this project is 1,000 tonnes of rubber.

In an online English publication titled “Dedicating to Drug-Crop Substitution Cultivation, Forging a Green Great Wall Project of ‘Drug-Crop Substitution Cultivation’”, Ma Zhengshu, Chairman of Yunnan Hongyu Group Co., Ltd., explains their agricultural projects in Myanmar over the past decade.<sup>47</sup> Yunnan Green Treasure Industrial Development Co., Ltd., a subsidiary of Hongyu Co., was founded in 1999 to work on agricultural development in opium crop growing areas along China's borders. They have made agreements with various relevant central and local government, as well as local Burmese and ethnic military authorities, such as the 171<sup>st</sup> Military Region of Special Region (SR) 2 (Wa Self-Administered Region) in southern Shan State. The contract is to develop about 100,000 hectares of rubber plantations in SR2, Wanhong District, with Wa military authorities, between 2004-2014, as well as 100,000 mu (6,667 hectares) of lemon trees between 2009-2014. According to the company's report, they have already established in Shan State 85,000 mu (5,667 hectares) of longan, 15,000 mu (1,000 hectares) of Wulong tea, 15,000 mu (1,000 hectares) of tangerine, 500 mu (33 hectares) of banana, and 500

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<sup>46</sup> [http://xw.km169.net/kmpap/2008-09/02/content\\_1563164.htm](http://xw.km169.net/kmpap/2008-09/02/content_1563164.htm) (last accessed October 2009).

<sup>47</sup> <http://english.ynjd.gov.cn/pubnews/doc/read/tdfz/906991389.117111478/index.asp> last accessed February 21, 2008 (last accessed October 2009).

mu (33 hectares).<sup>48</sup> These agricultural development plans are confirmed by a recent report by ethnic Burmese environmentalists, which states that Hongyu has established massive rubber plantations in south Shan State.<sup>49</sup>

### ***Rubber Attack: Agribusiness Surge***

Overall the major regime-favoured Myanmar companies, such as Htoo Trading, Yuzana, Dagon, etc. have not expressed interest yet in engaging in industrial rubber production in Myanmar.<sup>50</sup> Only a few so-called well-known ‘crony companies’ have received rubber concessions in southern Myanmar since the mid-2000s, but the conditions under which the concessions have been awarded are unknown. But since the early 2000s, more Myanmar medium to large companies have set up new agribusiness Regions within their business groups. For example, First Myanmar Investment (FMI), a publicly listed company in Myanmar headed by Serge Pun, is one of the leading agribusiness firms in the country that promotes the industrial agricultural model, with direct access to President Thein Sein and his advisors. Serge Pun Association (SPA), a group of companies under FMI that is owned by Serge Pun’s family, operates the subsidiary Plantation Resources Pte Ltd (PRPL). PRPL plans to develop up to 100,000 acres of agricultural land, mostly of *Jatropha*, but they are also interested in planting rubber, such as they planned to do in Maw Tin estate in Ayerwaddy Region by 2012.<sup>51</sup> In addition, PRPL obtained a 6,000 acre rubber concession in Bago Region, with additional rubber concessions in Tanintharyi Region and Rakhine State. The company also set eyes on investing in downstream industries associated with the rubber sector.<sup>52</sup>

A few other well-known Myanmar companies have also been involved in rubber development in southern Myanmar, such as Max Myanmar receiving a large-scale rubber concession in Mon State (see more information below). Both domestic and foreign investment in industrial agricultural commodities, in particular rubber and palm oil, is expected to surge with the passing of two land laws and the Foreign Investment Law (FIL) that together provide a more robust legal framework and further government support for large-scale agro-investment. Since foreign companies need to use a local proxy for their business ventures according to the FIL, I predict that the ‘crony companies’ will increasingly engage in the rubber plantation sector, backed by foreign investors, as is the case for other agricultural commodities and investment sectors. According to this analysis, large Myanmar companies may increasingly co-invest in agricultural

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<sup>48</sup> <http://english.ynjd.gov.cn/pubnews/doc/read/tdfz/906991389.117111478/index.asp> last accessed February 21, 2008 (last accessed October 2009).

<sup>49</sup> Burma Environmental Working Group (BEWG). 2011. *Burma's Environment: People, Problems, Policies*. Chiang Mai, Thailand. The report claims 200,000 acres (80,937 hectares) of rubber have already been established, with more soon developed; however, that figure’s reliability is uncertain as it is unknown how this figure was calculated.

<sup>50</sup> Based on interviews with Dagon, Htoo Trading, and Yuzana, among others, October-December 2010.

<sup>51</sup> Agribusiness Rural Development Consultancy (ARDC), one of the only agribusiness advocacy firms in the country, is under FMI and is headed by U Tin Htut Oo, who is now head of the National Social and Economic Advisory Committee (NESAC). ARDC’s number two in command is a Malaysian Chinese man who aggressively promotes palm oil in Tanintharyi Region, courting Malaysian investors.

<sup>52</sup> May Thandar Win. 2005. “FMI reveals new ventures at annual general meeting,” *Myanmar Times*, December 12-18. See also the company website at [http://www.yomastrategic.com/business\\_agriculture.asp](http://www.yomastrategic.com/business_agriculture.asp)

concessions as a business strategy rather than just to further buttress their political capital with Naypyitaw as before.

The (geo-)political dynamics of the country lay down the contours of rubber investment, as outlined in a previous section. In the north, for example, rubber production is mostly being pushed by regional military commanders and non-state armed groups (government-backed ethnic militias, ceasefire groups and insurgent organisations) in the Shan and Kachin States. Even the Myanmar Rubber Planters and Producers Association (MRPPA) admits this military-backed push: “The exceptionally high increases in the rubber planted area within a very short time are primarily due to the relentless encouragement by the government represented by the military area commanders in the regions...”<sup>53</sup> The different groups identified here involved in the process of allocating agricultural concessions - the LMC, FMB, MOAI, MIC, regional military commanders, and non-state armed groups - work together or against each other in complex ways. In northern Myanmar, regional military commanders and non-state armed groups, which have de facto control over most land development initiatives in that part of Myanmar, are the main authority figures in Myanmar involved in rubber development. The companies that receive rubber concessions are often directly owned by or indirectly linked to these same military commanders and militia leaders. In other parts of Myanmar that do not have armed groups operating, local and national MOAI authorities largely dictate the agricultural land allocation process. It is expected that as the land laws go into effect, the LMC and MIC will play a more significant role in the land allocation process, with correspondingly larger land concession sizes granted to prominent Myanmar agribusiness firms jointly with foreign investors.

The financing for these rubber projects is predominately through China’s national opium substitution programme, as outlined above. Chinese businessmen - which includes Chinese citizens based in mainland China, Chinese born in China but based in Myanmar, and Chinese Burmese born in Myanmar - provide the finance capital to make rubber development possible which thus brings all these different players together. Given this politico-military context of rubber development in the north, the new land- and investment-related legislation passed this year is not expected to greatly alter rubber investment patterns in northern Myanmar. Instead, it is predicted that Kayin State, Rakhine State, and Tanintharyi Region (less so Mon State because of most land already cultivated by rubber smallholders) to be the most heavily-targeted states/regions for industrial rubber production in the country in the coming years. And perhaps Tanintharyi Region will receive the biggest increase in rubber concessions in the near future, as indicated by recent Malaysia and Thai rubber investment interest.<sup>54</sup> Rubber investment in the north will be mostly predicated on any possible changes (or not) to China’s opium substitution programme.

The on-going peace process in ethnic areas with existing armed political conflicts will undoubtedly affect the geography and extent of agribusiness investment in Myanmar. The new round of ceasefire agreements with remaining rebel groups will open up new territories of agricultural expansion along Myanmar's borders, particularly in Karen areas along the Thailand

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<sup>53</sup> Hla Myint. 2007. *The Role of Myanmar Rubber Planters and Producers Association (MRPPA) in Natural Rubber Development and its Recent Activities*, International Rubber Conference, Siem Reap, Cambodia.

<sup>54</sup> Based on interviews with ARDC, MRPPA, and the desktop study for this report (see more information in this report on rubber interest by Thai and Malaysian companies).

border. There is some limited initial data from the border areas that agricultural land concessions are already being granted in anticipation of new ceasefire deals, and in some cases may be linked to those rebel leaders involved in the ceasefire negotiation deals.<sup>55</sup>

In the past few years some foreign governments and corporations have expressed interest in investing in rubber production, and to a lesser extent middle and downstream processing, in Myanmar. This is apart from Chinese investors in northern Myanmar, as already outlined, and only targets the following states/regions, which exclude northern Myanmar: Tanintharyi Region, Kayin State, and Rakhine State. Since the devastation by Cyclone Nargis in the delta region in mid-2008 – and the agribusiness opportunities it presented – the government to some extent has been more encouraging of agribusiness in the country, leading one publication labelling this government move as “privatisation of crop campaigns”.<sup>56</sup> Moreover, leading up to the national elections in November 2010, another surge of agricultural concessions by domestic Myanmar companies occurred, presumably backed by foreign investors.

This most recent land grab phenomenon came about due to unforeseen political change in the country that prompted elite Myanmar companies to get land while their political connections allowed it, much like a safe investment in the bank during a volatile period.<sup>57</sup> Immediately following the national elections, which were largely heralded as a success by the international community, foreign investors lined up to assess the business environment in post-election Myanmar. However, most foreign investors have held off from signing MoU's until favourable land and investment legislation would be signed into effect in the country. In March 2012 two new land laws, with bylaws signed into effect in August 2012, laid the legal framework for large-scale agricultural concessions in the country. But foreign investment still largely held off until a favourable foreign investment law would be passed, which was achieved in early November, 2012.<sup>58</sup> It is expected that now foreign investment will rapidly accelerate in Myanmar, especially in the agricultural sector, as illustrated by a thorough list of new agribusiness investments being signed in the past few months in Myanmar (see below). See the section titled “Political-Economic Reform: Legally selling Myanmar’s future” for a legal land and investment analysis pertaining to agribusiness.

According to interviews with Myanmar rubber companies under the MRPPA,<sup>59</sup> complimented by media reports of scoping trips and MoU's signed by foreign investors for rubber production in Myanmar (see detailed information further below), foreign investors are gearing up to make Myanmar the next rubber frontier in Southeast Asia. Based on this collated information, investors interested in rubber production and processing in Myanmar are from the following countries, in no particular order: Thailand, China, Malaysia, India, and Vietnam. The following is a synthesis of foreign agricultural investment interest in Myanmar, based on the desktop study and complimented by interviews for this consultancy report (more detailed information to follow). Thailand and Malaysia are interested in investing in southern Myanmar, mainly

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<sup>55</sup> Based on reviewing preliminary reports this year from Karen Human Rights Group (KHRG) and Karen Environment and Social Action Network (KESAN) on land rights and concessions during this ceasefire negotiation period.

<sup>56</sup> Woods, K. 2012. *Emerging Agribusiness Trends in Myanmar: An Overview*. Kunming: Yunnan University Press.

<sup>57</sup> Woods, K. 2012. *Emerging Agribusiness Trends in Myanmar: An Overview*. Kunming: Yunnan University Press.

<sup>58</sup> Based on interviews with Myanmar agribusiness companies as well as investment analysts in Yangon.

<sup>59</sup> Interview with two MRPPA members in Yangon, November, 2012.

Tanintharyi Region (along with palm oil). Malaysia is relying on its large state-backed companies to obtain large-scale rubber concessions in Tanintharyi Region, whereas Thai companies interested in investing are medium to large-size agribusiness firms. However, Thai companies are also interested in middle-stream processing to produce higher-quality latex for the Thai domestic and international market. These processing plants would be built in major rubber producing areas in southern Myanmar, particularly in northern Tanintharyi Region, and in some part related to the Dawei SEZ financed in part by Thailand (both for processing and rubber plantations in the vicinity). Moreover, it is expected that a new border gate at Mawdaung on the Tanintharyi Region – Thai border will open in 2013, which will facilitate the export of agricultural commodities across the border to Thailand.

Vietnam, on the other hand, is interested – much like Malaysia – in developing large-scale rubber concessions, and also rely on the Vietnamese government to facilitate the agribusiness deals, in particular Myanmar's MOAI and Vietnam's Vietnam Rubber Association (VPA). All interviewees commented that Indian companies are in dialogue with the MOAI and the MRPPA about developing rubber concessions in Myanmar, but no more details are available, and no media articles have reported on India rubber investment in Myanmar. Finally, China, while Myanmar's largest importer of rubber latex, does not appear to be making national-level agribusiness deals for rubber in the country like the other Asian investors. Instead, they dominate the rubber sector in northern Myanmar, as outlined above, without any other investors from other countries exploring rubber production contracts in the north.

In April 2010, before the national elections when land grabbing started to take off with domestic Myanmar companies, the Vietnamese and Myanmar government signed agreements in twelve key investment areas in Myanmar after a bilateral visit.<sup>60</sup> The Ministry of Agriculture and Rural Development of Vietnam met with Myanmar's MOAI and signed a MoU for a 120,000-acre rubber concession located between Taungup Township and Ma Ei Sub-Township in southern Rakhine State.<sup>61,62</sup> This land concession followed the opening of the Bank for Investment and Development of Vietnam in Myanmar, as well as the launch of direct flights from Hanoi to Yangon.<sup>63,64</sup> As part of the rubber concession agreement, the two sides agreed to help facilitate Vietnam's rubber investment activities in Myanmar, to be implemented by the Vietnam Rubber Group, Ho Chi Minh City Youth Volunteers, and Hoang Anh Gia Lai Group.<sup>65</sup> However, after signing the MoU for the rubber concession located in southern Rakhine, a Vietnamese delegation

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<sup>60</sup> Maung Aye. 2010. "Myanmar News: Myanmar to lease over 100,000 acres of Arakanese land to Vietnam." *Mizzima News*. 17 Aug.

<sup>61</sup> The SLRD has reportedly already surveyed the land in this area in preparation for the concession. Rubber plantation projects began in Rakhine State in 1995; there are now 2,231 privately owned acres of rubber plantations as well as nearly 1,000 acres owned by a ministry called the Industry Ministry 1.

<sup>62</sup> Maung Aye. 2010. "Myanmar News: Myanmar to lease over 100,000 acres of Arakanese land to Vietnam." *Mizzima News*. 17 Aug.

<sup>63</sup> The MoU followed a visit by Vietnam's Deputy Foreign Minister Doan Xuan Huong to Myanmar in January 2010, during which he pledged to increase commercial ties. Cooperation was furthered with Vietnamese Agriculture Minister Cao Duc Phat's visit to Myanmar in early March. Bilateral trade had already reached US\$60 million in the first nine months of 2009. According to the Association of Vietnamese Investors to Myanmar, by 2011 14 projects worth a total of USD580 million have been negotiated (although not necessarily implemented yet).

<sup>64</sup> Deutsche Presse-Agentur. 2010. "Vietnam bank to open branch in Myanmar." 10 March.

<sup>65</sup> *The New Light of Myanmar*. 2010. "Joint Statement on cooperation between Union of Myanmar and Socialist Republic of Vietnam." 4 April.



did not receive permission to visit the concession due to ‘security concerns’, and has since been temporarily suspended by the Vietnamese government, as confirmed by the MRPPA in an interview.<sup>66</sup> With communal violence spreading in Rakhine State, it is not expected that the concession will go ahead anytime soon.<sup>67</sup> If violence ends in Rakhine, it is expected that the Yoma Mountain Range that passes north-south through the middle of the state - some of the area that the Vietnamese rubber concession is located in - will be targeted for agricultural concessions as it predominately listed as ‘wasteland’ on MOAI maps, despite generations of swidden cultivation in these mountains by local communities. In Rakhine State has not been exempt from rubber development; the government began targeting Rakhine State for rubber production in the mid-1990s, currently with 2,231 privately-owned acres of rubber plantation as well as nearly 1,000 acres owned by the Ministry called Industry Ministry 1.<sup>68</sup>

Malaysia is also taking a very active role in leading foreign investment in Myanmar’s rubber plantation sector, led by Felda Global Ventures Holdings Bhd (FGV), Malaysia’s largest agro-business company that is protected by the state with high level connections, such as to the colourful ex-PM Mahathir.<sup>69</sup> FGV, together with their selected local partner, Pho La Min Trading Ltd (PLM),<sup>70</sup> plans to develop a complete supply chain of rubber (along with palm oil and sugar cane). PLM, a Myanmar agro-company, is already invested in rubber production in Tanintharyi Region, with a rubber processing factory in Myeik, which is precisely the chosen location of FGV’s rubber concession. According to an informant, although this contradicts the press, FGV’s Myanmar partner will also be – or in addition to PLM perhaps – Htoo Trading, headed by Htay Za.<sup>71</sup> FGV’s President and Chief Executive Officer Datuk Sabri Ahmad said they will develop their rubber business in three phases, starting with the establishment of a processing plant.<sup>72</sup> By the end of 2012 or beginning of 2013 the company aims to start planting rubber trees on 30,000 hectares in Myeik, Tanintharyi Region.<sup>73</sup> The third phase will be downstream opportunities such as tyre manufacturing and rubber glove production.<sup>74</sup>

Later in October 2012 another Malaysian delegation came to Myanmar, this time headed by the Minister of the Ministry of Plantation Industries and Commodities, H. E. Tan Sri Bernard Giluk Dompok, who met directly with President Thein Sein.<sup>75</sup> The Myanmar Minister of MOAI, U Myint Hlaing (former northeast military commander), was also present for the signing of the MoU in Traders Hotel. They discussed cooperative agricultural development for both the rubber

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<sup>66</sup> Interview, 11 November 2012, Yangon.

<sup>67</sup> Although it is not certain precisely where communal violence clashes are erupting in Rakhine State, it doesn’t appear that it is in the same area as this concession, which is not located in lowland village areas where the fighting is occurring.

<sup>68</sup> Maung Aye 2010. “Myanmar to lease over 100,000 acres of Arakanese Land to Vietnam.” *Mizzima News*. 17 August.

<sup>69</sup> For Felda, see [www.feldaglobal.com](http://www.feldaglobal.com) and [www.felda.com.my](http://www.felda.com.my). See specifically

<http://feldaglobal.com/plantations.php> on their plantations in Malaysia and Indonesia for oil palm and rubber.

<sup>70</sup> On PLM, see [www.gmdu.net/corp-542.html](http://www.gmdu.net/corp-542.html) and [www.alibaba.com/member/pholamincoltd.html](http://www.alibaba.com/member/pholamincoltd.html).

<sup>71</sup> Htay Za is one of the country’s richest, powerful and well-known businessmen who has established close business relations with former no. 1 Than Shwe, along with marrying his daughter. Interview with Myanmar rubber businessman, Yangon, 4 November 2012.

<sup>72</sup> *Burnama*, 2012. “Felda to build Myanmar supply chain.” 02 Oct.

<sup>73</sup> *Burnama*, 2012. “Felda to build Myanmar supply chain.” 02 Oct.

<sup>74</sup> *Burnama*, 2012. “Felda to build Myanmar supply chain.” 02 Oct.

<sup>75</sup> The New Light of Myanmar. 2012 “President U Sein Thein receives Malaysian guest.” 31 October, Naypyitaw.



and palm oil sectors.<sup>76</sup> Minister Dompok gave further comments on 1 November 2012 regarding Malaysia's interests in Myanmar's rubber sector: "We have the idea to establish a rubber plantation in the southern part of Myanmar. We will set up the refinery industry near the port."<sup>77</sup> He is presumably referring to oil palm processing plant located near the Dawei port as part of the new SEZ plan, orchestrated by the Thai conglomerate Ital-Thai, with mega-funding also being discussed by China and Japan. Malaysian companies it appears, much like their Thai counterparts, are also interested in establishing rubber processing facilities and get involved in rubber trade.<sup>78</sup> According to a Myanmar rubber businessman, another Malaysian company – Salin Company – is interested in rubber production around Dawei SEZ.<sup>79</sup> Jaycorp Berhad, a prominent rubberwood company from Malaysia,<sup>80</sup> is also now investigating whether or not to invest in rubberwood production (not just for latex) in Tanintharyi Region.<sup>81</sup>

Thailand is also a major upcoming rubber investor in southern Myanmar, due to close geographical proximity as well as for economic reasons – Thailand is the world's largest producer (predominately smallholder) and exporter of rubber. Thai Hua Rubber Plc,<sup>82</sup> Thailand's third-largest rubber producer under President and CEO Luckchai Kittipol, plans to invest in rubber production in Myanmar for export, following the political and economic reforms, according to Kittipol. According to media, Thai Hua Rubber is ready to start growing rubber immediately as soon as it gets government approval.<sup>83</sup> Thai Hua Rubber also was present at an agribusiness fair in Yangon to discuss the opportunities in rubber investment in Myanmar (see below and appendix). Sri Trang Company,<sup>84</sup> one of Thailand's largest rubber companies, made a recent trip to Myanmar and met with MRPPA to get an overview of the rubber sector. In addition, they met with Myanmar Supreme Co., headed by Dr. Sein Myint, which is a group of companies that specialise in various sectors, including fertilizer and hold some limited agricultural concessions. Presumably Sri Trang is shopping around for a local Myanmar partner to obtain a joint venture in an agricultural production scheme in the country.<sup>85</sup>

Thailand and Vietnam are also cooperating with their Myanmar colleagues on major agricultural production schemes as Myanmar increasingly becomes more conducive to foreign investment and Myanmar conglomerates are opening subsidiary agribusiness firms to engage in global

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<sup>76</sup> The New Light of Myanmar. 2012 "President U Sein Thein receives Malaysian guest." 31 October, Naypyitaw.

<sup>77</sup> Myat May Zin, 2012. "Malaysia Eyes Rubber, oil plantations in Myanmar." *The Myanmar Times*. 5-11 Nov.

<sup>78</sup> Malaysia's interest in rubber processing was also confirmed in an interview with a Myanmar rubber businessman, Yangon, 4 November 2012.

<sup>79</sup> Interview, Yangon, 4 November 2012.

<sup>80</sup> For Jaycorp Berhad, see [www.jaycorp.com.my](http://www.jaycorp.com.my). Their board members are mostly involved in timber trade and wood processing, particularly for furniture, and therefore their corner of the rubberwood furniture market. See [http://www.jaycorp.com.my/corporate\\_boardofdirectors.htm](http://www.jaycorp.com.my/corporate_boardofdirectors.htm) for their board of directors, and [http://www.jaycorp.com.my/business\\_rubberwooddivision.htm](http://www.jaycorp.com.my/business_rubberwooddivision.htm) for more information about their downstream rubberwood processing.

<sup>81</sup> Interview with Myanmar rubber businessman, 4 November 2012.

<sup>82</sup> For Thai Hua, see [www.thaihua.com](http://www.thaihua.com). They have strong connections to China being a Thai-Chinese family business that has since grown into one of Thailand's largest rubber companies with international branches. For their international trade team, the head of whom is Chinese, see <http://www.thaihua.com/v4/en/corporate/trading-team.php>. See <http://www.laothaihua.com/> for more information about their Laos subsidiary company.

<sup>83</sup> See [www.ft.lk](http://www.ft.lk) 21 May 2012, last accessed October 2012.

<sup>84</sup> For Sri Trang Co., see [www.sritranggroup.com](http://www.sritranggroup.com). Little more information is available on their website, however.

<sup>85</sup> Interview with Myanmar rubber businessman, Yangon, 4 November 2012.

production schemes. For example, one major project activity among these three countries, although for ethanol production from cassava, is the technology transfer of Very High Gravity-Simultaneous Saccharification and Fermentation (VHG-SSF) technology developed by NSTD in Thailand.<sup>86</sup> Under the project, two pilot scale ethanol production plants, one each at Thailand (200 l/d) and Vietnam (50 l/d), respectively, will be implemented. The project will also facilitate the establishment of one commercial scale ethanol production plant project of 400,000 l/d in Myanmar under Kaung Kyaw Say Group of Companies (KKS) for USD 25 million (79 per cent of financing). In addition, an ethanol information hub at NSTDA, Thailand and a technical centre at FIRI, Vietnam will be established. This major agribusiness investment plan is facilitated by the World Bank's Global Environment Facility (GEF).<sup>87</sup>

With escalating international interest in Myanmar's agricultural sector after years of disinterest and stagnation, the Myanmar government has taken a series of steps to promote the country's agribusiness industry to potential foreign investors. For example, the government hosted the international agribusiness conference "Into Myanmar: Agri-Trade, Investment and Infrastructure Global Summit 2012" at the Sedona Hotel in Yangon on 26-27 July. Nearly 200 businesspersons attended, from nine countries: Myanmar, Singapore, China, Indonesia, Australia, Vietnam, Italy, Japan and Hong Kong. Nearly one hundred Myanmar businesspersons attended, including representatives from the Myanmar Rice Industry Association (MRIA), Myanmar Rice and Paddy Traders Association, Myanmar Edible Oil Dealers Association, and the Myanmar Fruit and Vegetable and Flower Producer Association. Myo Aung Kyaw of the powerful agricultural crop MRIA, who attended the summit, commented, "The international community wants to know what is happening in Myanmar now that it's opening. I want officials to hold a summit like this twice per year".<sup>88</sup> The summit discussed amendments to the foreign investment law as well as agricultural policies.<sup>89</sup>

Then the government organized another agribusiness fair, the "2<sup>nd</sup> Commercial Farm Asia," in Yangon on 11-12 October 2012 to further showcase the country as the last frontier of agricultural investment in Asia (see appendix). Government officials and the private sector gave presentations to entice potential foreign agro-investors on the new legal land framework and land governance conducive to large-scale investments in the country.<sup>90</sup> This event prompted a protest by local activists who challenge the industrial agricultural concession model of development for their country. They had a one-day alternative symposium where land rights lawyers, social activists, 88G activists, farmers representatives, and ethnic political party leaders discussed the land grab situation in Myanmar, which included drafting a letter of solidarity for those present at the protest gathering, matched by a letter of global solidarity with 100 signatures, which were then both presented to the agribusiness fair organizers.

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<sup>86</sup> *Thailand: TT-Pilot (GEF-4): Overcoming Policy, Market and Technological Barriers to Support Technological Innovation and South-South Technology Transfer: The Pilot Case of Ethanol Production from Cassava under the Global: TT-Pilot (GEF-4).*

<sup>87</sup> *Thailand: TT-Pilot (GEF-4): Overcoming Policy, Market and Technological Barriers to Support Technological Innovation and South-South Technology Transfer: The Pilot Case of Ethanol Production from Cassava under the Global: TT-Pilot (GEF-4).* Pg. 7.

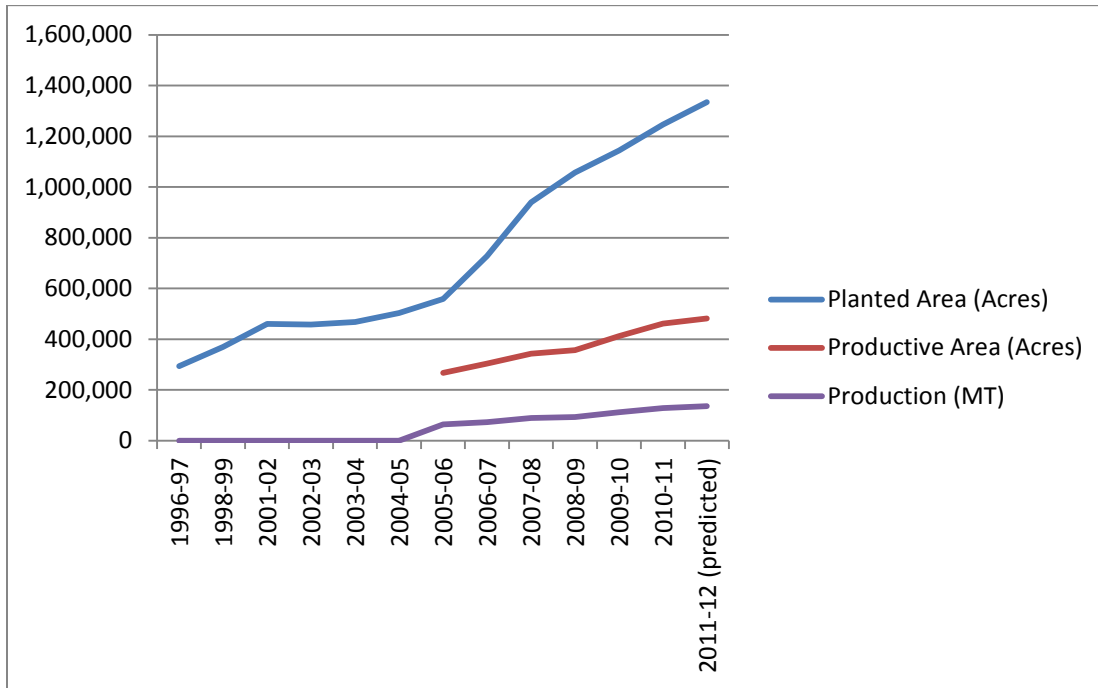
<sup>88</sup> Theingi Tun, 2012. "200 foreign businesspersons attend agriculture conference." *Mizzima*. 30 July.

<sup>89</sup> Theingi Tun, 2012. "200 foreign businesspersons attend agriculture conference." *Mizzima*. 30 July.

<sup>90</sup> <http://www.cmtevents.com/eventschedule.aspx?ev=121040>

With the new FIL fresh off the parliament table, the newly elected President Obama giving a speech in the newly constructed students' union at the once-prominent Yangon University on the virtues of democratic reform in Myanmar, and the fourth Union Parliament session coming to a close, all eyes are on Myanmar. Meanwhile, the so-called 'vacant' lands freshly lain bare after the late-monsoon harvest become eligible for industrial agricultural production.

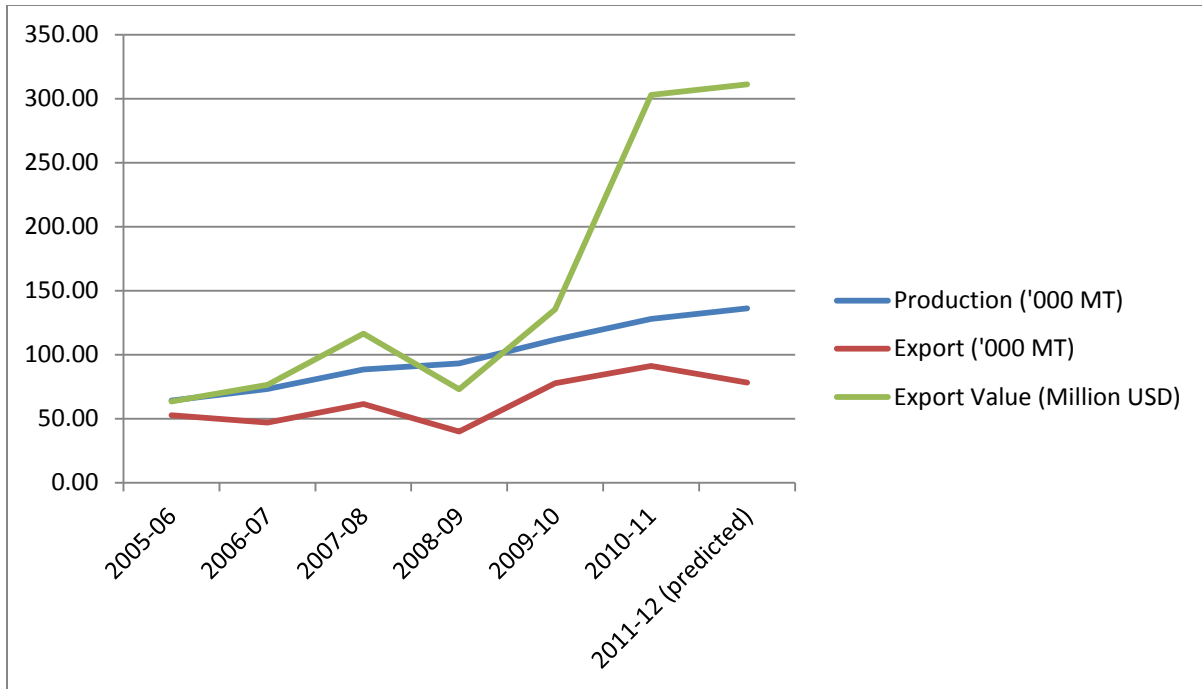
**FIGURES<sup>91</sup>**



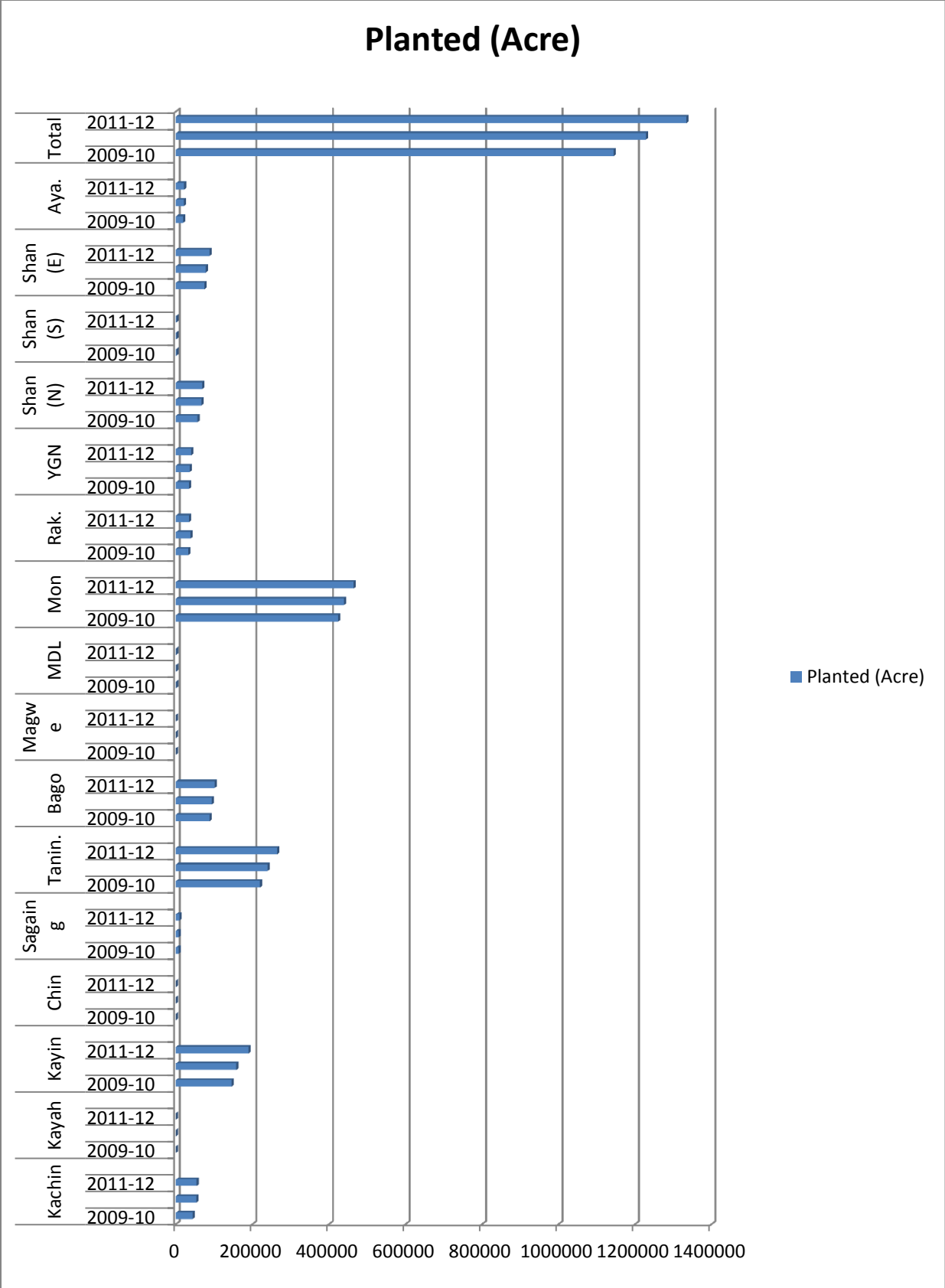
**Figure 1. Rubber Planted Area and Production in Myanmar, 1996-2012.<sup>92</sup>**

<sup>91</sup> The figures are from the tables presented below.

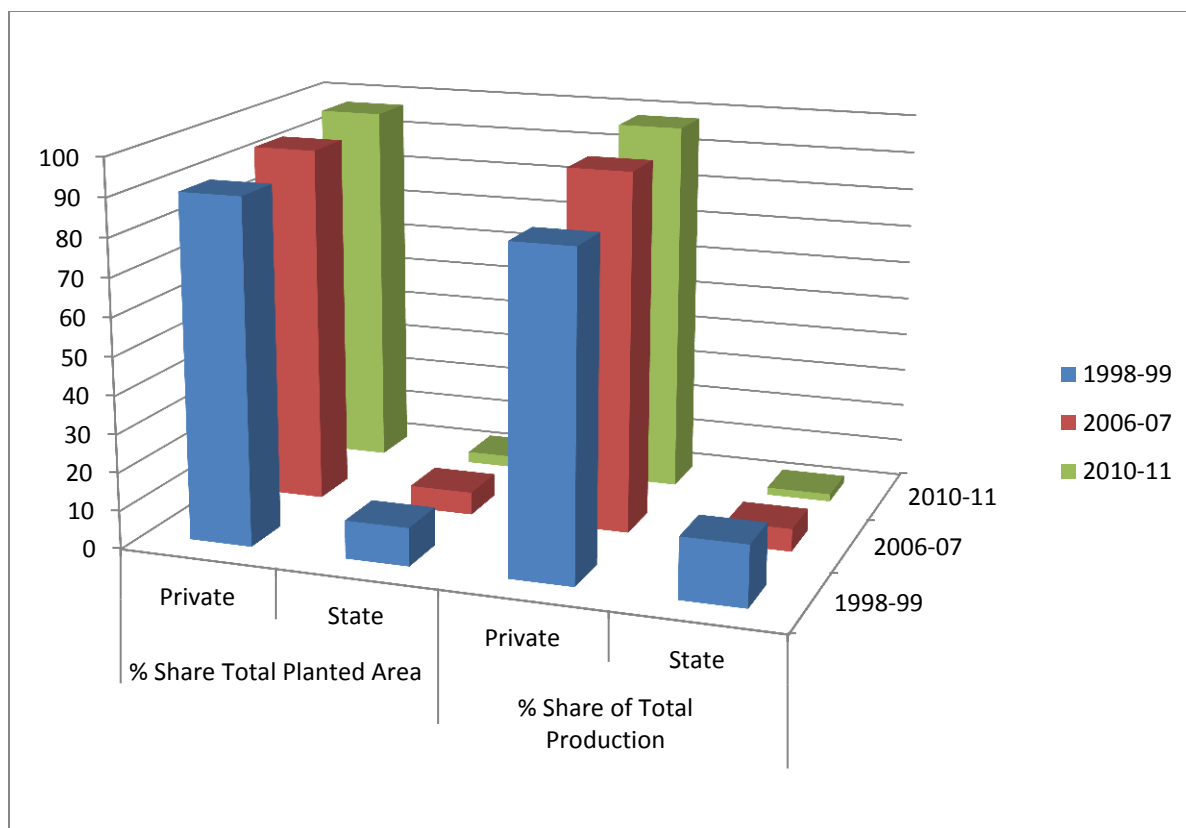
<sup>92</sup> This is the most recent available data provided by the government that is deemed useful for this report, and does not mean that earlier data for some categories is not available or that there was no rubber production before 2005 (incomplete data).



**Figure 2. Rubber Production and Export in Myanmar, 2005-12.**



**Figure 3. Rubber Planted Area by State/Region in Myanmar, 2009-2012.**



**Figure 4. Change in Composition of Private and State Rubber Sectors in Myanmar, 1998-2011.**

## **TABLES**

**Table 1. Agribusiness Concessions by Number of Companies and Area Granted by State/Region, 2011.**

<b>State/Region</b>	<b>No. of companies</b>	<b>Area granted (acres)</b>
Kachin	15	596,180
Kayin	1	2,161
Sagaing	18	100,057
Tanintharyi	36	671,594
Bago (East)	9	5,859
Bago (West)	7	13,913
Magwe	38	202,492
Mandalay	16	10,300
Yangon	7	30,978
Shan (South)	12	65,985
Shan (North)	17	51,111
Ayeyarwady	28	193,353
<b>Total</b>	<b>204</b>	<b>1,943,983</b>

*Source:* DAP, MOAI

**Table 2. Rubber Planted Area, Yield, Production and Export in Myanmar, 1996-2012.**

Year	Planted Area (Acres)	Productive Area (Acres)	Yield (lb/acre)	Production (MT)	Export (MT)	Export (%)	Export Value (Million USD)
1996-97	294,000	-	505	25,792*	-	-	-
1998-99	369000	-	432	23,077*	-	-	-
2001-02	460000	-	523	36,652*	-	-	-
2002-03	457000	-	526	38,819*	-	-	-
2003-04	468000	-	492	38,819*	-	-	-
2004-05	503000	-	513	52,036*	-	-	-
2005-06	559000	267,180	530	64,239	52800	82	63.42
2006-07	728000	303,907	531	73,355	46930	64	76.55
2007-08	940000	342,930	571	88,528	61610	70	116.49
2008-09	1,057,000	356,437	577	93,207	40070	43	73.00
2009-10	1,143,427	411,688	-	111,673	77790	70	135.37
2010-11	1,246,531	460,767	-	127,921	91350	71	302.89
2011-12 (predict)	1,334,163	481,603	-	136,306	78344	57	311.20

\* = *Estimated figure*

Source: Myanmar Agriculture in Brief (2010), MRPPA (2012), MICDE, Directorate of Trade (2012), MOAI

**Table 3. Rubber Planted Area, Productive Area and Production by State/Region, 2009-10 to 2011-12.**

State/Region	Planted (Acre)	Trees Producing (Acre)	Yield (Lb/Acre)	Production (Lb)
<b>Kachin</b>				
2009-10	43377	1337	507	677859
2010-11	53377	2037	573	1167201
2011-2012*	54072	2100	600	1260000
<b>Kayah</b>				
2009-10	111	0	0	0
2010-2011	111	0	0	0
2011-2012*	111	0	0	0

<b>Kayin</b>				
2009-10	145693	29423	627	18440188
2010-11	157756	32000	627	20064075
2011-2012*	189747	44595	639	28497134
<b>Chin</b>				
2009-10	15	0	0	0
2010-11	15	0	0	0
2011-12*	15	0	0	0
<b>Sagaing</b>				
2009-10	6581	10	540	5400
2010-11	6581	15	540	8100
2011-2012*	8451	20	560	11200
<b>Tanintharyi</b>				
2009-10	219295	100936	473	47770129
2010-11	239295	105822	480	50841145
2011-12*	264146	106317	531	56424963
<b>Bago</b>				
2009-10	88281	10244	503	5151907
2010-11	93581	10272	503	5162606
2011-2012*	101121	20011	539	10785175
<b>Magwe</b>				
2009-10	95	0	0	0
2010-11	142	0	0	0
2011-12*	95	0	0	0
<b>Mandalay</b>				
2009-10	381	0	0	0
2010-11	431	0	0	0
2011-12*	431	0	0	0
<b>Mon</b>				
2009-10	423692	212905	636	135440867
2010-11	438692	219957	636	139994642
2011-12*	464477	284194	665	188986732
<b>Rakhine</b>				
2009-10	31380	1341	359	481940
2010-11	37909	1341	365	490000
2011-2012	34317	1381	369	510000
<b>Yangon</b>				
2009-10	34442	5114	417	2133054
2010-11	35329	5342	428	2285527
2011-12*	39208	7683	506	3890292
<b>Shan (North)</b>				
2009-10	56065	10085	636	6584725
2010-11	66065	10085	665	6708922



<i>2011-12*</i>	68359	10478	637	6674410
<b>Shan (South)</b>				
<i>2009-10</i>	839	78	801	62500
<i>2010-11</i>	1178	100	794	79400
<i>2011-12*</i>	1040	95	801	76110
<b>Shan (East)</b>				
<i>2009-10</i>	74176	2681	477	1280078
<i>2010-11</i>	77351	2681	540	1448000
<i>2011-12*</i>	87180	4579	715	3274563
<b>Ayarwaddy</b>				
<i>2009-10</i>	18731	136	700	95200
<i>2010-11</i>	20000	136	720	97920
<i>2011-12*</i>	21393	150	747	112000
<b>TOTAL</b>				
<i>2009-10</i>	<b>1143148</b>	<b>374290</b>	<b>583</b>	<b>218123847</b>
<i>2010-11</i>	<b>1227813</b>	<b>389788</b>	<b>586</b>	<b>228347538</b>
<i>2011-12*</i>	<b>1334163</b>	<b>481603</b>	<b>624</b>	<b>300502579</b>
				<i>(136306 MT)</i>
* = predicted figure				
<i>Source: compiled from MAS (2010) and MICDE (2012), MOAI</i>				

**Table 4. Kachin State Rubber Planted and Planned, 2006-07 to 2009-10.**

<b>Kachin State Rubber 100,000 Acres Target Program</b>											
<b>(Acres)</b>											
<b>District/Township</b>	<b>2006-07</b>	<b>2008</b>	<b>2008-09</b>			<b>2009-10 (up to Nov 30 2009)</b>			<b>2009-10 (up to Nov 30 2010)</b>		
	<i>concession</i>	<i>concession</i>	<i>concession</i>	<i>planted</i>	<i>% planted</i>	<i>concession</i>	<i>planted</i>	<i>% planted</i>	<i>concession</i>	<i>planted</i>	<i>% planted</i>
<b>Myitkyina District</b>	<b>11718</b>	<b>21012</b>	<b>32630</b>	<b>15931</b>	<b>49</b>	<b>19516</b>	<b>4177</b>	<b>21</b>	<b>52146</b>	<b>20108</b>	<b>39</b>
Myitkyina	7144	11523	16997	9756	57	9196	2018	22	26193	11774	45
Waingmaw	3889	7823	12740	5817	46	8260	2161	26	21000	7978	38
Danai	682	1663	2890	337	12	2060	6	0.3	4950	343	7
N Jang Yang	3	3	3	3	100	0	0	0	3	3	100
Chipwe	0	0	0	18	0	0	0	0	0	18	0
<b>Monhyin District</b>	<b>3708</b>	<b>7425</b>	<b>12072</b>	<b>4362</b>	<b>36</b>	<b>7807</b>	<b>148</b>	<b>2</b>	<b>19879</b>	<b>4510</b>	<b>23</b>
Monhyin	1793	3094	4720	1911	40	2732	86	3	7452	1997	27
Mogaung	1298	3157	5481	1959	36	3903	44	1	9384	2003	21
Hpakant	617	1174	1871	492	26	1172	18	2	3043	510	17
<b>Bamaw District</b>	<b>3719</b>	<b>9295</b>	<b>16265</b>	<b>18093</b>	<b>111</b>	<b>11710</b>	<b>666</b>	<b>6</b>	<b>27975</b>	<b>18759</b>	<b>67</b>
Bamaw	973	2460	4319	696	22	3123	210	7	7442	1179	16
Mansi	639	1485	2542	834	33	1777	92	5	4319	926	21
Shwegu	725	1840	3234	122	4	2342	7	0	5576	129	2
Momauk	1382	3510	6170	16168	262	4468	357	8	10638	16525	155
<b>TOTAL</b>	<b>19145</b>	<b>37732</b>	<b>60967</b>	<b>38386</b>	<b>63</b>	<b>39033</b>	<b>4991</b>	<b>13</b>	<b>100000</b>	<b>43377</b>	<b>43</b>

Source: MAS, Myitkyina Office, MOAI, 2010.

Year	Total Planted Area (Acre)	Share Percent		Total Production (MT)	Share Percent	
		Private	State		Private	State
1998-99	369403	90	10	22943	84	16
2006-07	728329	94	6	73355	94	6
2010-11	1246531	97	3	127921	98	2

*Source: MRPPA, 2012*

**Table 6. Yunnan Companies' Opium Crop Substitution Projects in Northern Myanmar\***

	Mu**	Hectares**	Acres**	Tonnenes***
<i>Rubber</i>	290860	19391	47916	18877
Corn	35900	2393	5913	11090
Castor-Oil	32000	2133	5270	5000
Rice	24480	1632	4032	9792
All other	173600	11573	28597	44756
<b>TOTAL</b>	556840	37123	91732	89515

*Source: Compiled based on data provided at*

<http://xsbm.mofcom.gov.cn/aarticle/gonggao/200809/20080905777443.html>

and [http://xw.km169.net/kmpap/2008-09/02/content\\_1563164.htm](http://xw.km169.net/kmpap/2008-09/02/content_1563164.htm) (last accessed October 2009), which only provides a limited data set from Kunming municipal government and Xishuangbanna Prefecture Bureau of Commerce sources and is in no way exhaustive.

\*Data provided included crops actually sown up to 2008, and planned planted areas in 2009.

\*\* This refers to the quantity of Beijing approved import quotas from Myanmar through this programme.

## APPENDIX

### **I. 2nd Commercial Farm Asia, 11-12 Oct, 2012, Yangon, PARKROYAL Yangon**

<http://www.cmtevents.com/eventschedule.aspx?ev=121040>

Confirmed Speakers and topics as of 30 July 2012.

1. **OPENING ADDRESS** : Senior Official from the Ministry of Agriculture & Irrigation, Myanmar
  
2. **ECONOMIC REFORM & DEVELOPMENT IN MYANMAR**
  - Investment, trade & finance reform to drive investment
  - Privatization concept of SOE in Myanmar
  - How will the global crisis impact on Myanmar's economic development?(tbc) Winstonne Set Aung, *Presidential Economic Advisor*  
Office of the President, Republic of the Union of Myanmar
  
3. **PROCEDURE & GUIDELINES OF SETTING UP COMMERCIAL FARM & RELATED BUSINESSES IN MYANMAR**
  - License & permit issues
  - Update on investment law*Director*  
Directorate of Investment & Company Administration (DICA)  
Ministry of National Planning and Economic Development
  
4. **LATEST UPDATE ON FALLOW LAND LAW AND FARM LAND LAW IN MYANMAR**
  - Real Sense of "Ownership of Land" in Myanmar
  - The State is the Ultimate Owner of All the Land
  - Private lands can now be part of foreign investment, but how and to what extend
  - New flexibilities on land laws in line with new laws of FDIU Than Maung, *Senior Associate and Advocate*  
Kelvin Chia Yangon Ltd
  
5. **AGRIULTURE INVESTMENT & OPPORTUNITIES IN MYANMAR – SPECIAL FOCUS ON RUBBER & OIL PALM**  
U Hla Myint, *Advisor*, Myanmar Rubber Planters & Producers Association  
*Chief Executive Officer*, Myanmar Plantation Management & Advisory Co. Ltd  
Hishamuddin Koh, *Executive Chairman*, Myanmar Plantation Management & Advisory Co. Ltd
  
6. **RUBBER PLANTATION INVESTMENT IN ASEAN**
  - Demand/supply projections & price trends
  - Comparison of investment in Laos, Cambodia & Thailand

- Challenges and opportunities
  - Which business model works best?
  - Update on venture into Myanmar
- Dr. Luckchai Kittipol, *CEO & President*  
Thai Hua Rubber Public Co., Ltd

**7. LEGAL ISSUES FOR FARMLAND INVESTMENTS IN CAMBODIA/MYANMAR & RESOLVING DISPUTES**

- Overlapping claims
  - Acquiring land banks or existing farmland
  - Management of land settlement schemes
  - Structuring share holder ownership
  - When things don't work out - exiting the investment & pitfalls to avoid.
- Alessio Polastri, *Managing Partner*  
P&A Asia- Legal & Tax Advisor

**8. FINANCING FARMLAND INVESTMENT - ROLE OF IFC**

- Role in ensuring global food security
  - Scaling up private investment in agriculture
- German Vegarra, *Global Head Agribusiness & Forestry*

**9. GLOBAL OUTLOOK FOR PULSES**

- Special reference to Myanmar
  - Role of pulses trade & industry in helping solve global food and nutritional crisis and reduce hunger
- Sudhakar Tomar, *Managing Director*  
Hakan Agro DMCC  
*Honorary Chairperson (Communications)*  
*International Pulses trade & industry confederation*

**10. REVIVING THE RICE INDUSTRY IN MYANMAR**

- Rice output and plans for further paddy investment
  - Investment prospect for rice mills, warehouse and trading hub
  - Staying competitive in the world of rice trade
- U Ye Min Aung, *Secretary General*  
*Myanmar Rice Industry Association*

**11. COMMODITIES TRADING IN MYANMAR – CHALLENGES & OPPORTUNITIES**

- U Aung Zaw Oo, *Managing Director*  
Aung Naing Thitsar Co. Ltd

**12. UPDATE & DEVELOPMENT OF HYBRID RICE**

- Increasing yield and profitability potential
  - Regulation on rice seed import in SE Asia region
- Alex Merege, *Global Head Rice Seed & Trait*  
*Head of Seed Operation APAC*  
Bayer CropScience

**13. PROSPECT OF SUGARCANE INVESTMENT & DOWNSTREAM PROCESSING INDUSTRY IN MYANMAR**

U San Thein, *Vice President*  
*Myanmar Sugarcane & Sugar related Manufacturers & Traders Association*  
*Former GM, Ministry of Agriculture and Irrigation*

**14. COMMERCIAL INVESTMENT OF BIOFUEL CROPS IN MYANMAR**

- Bioenergy demand/supply outlook
  - Prospect of Jatropha crops & update on commercial investment
  - Investment opportunities & challenges
  - Farm management issues - Business model evaluation, Skill labor management, Farm productivity management for maximum profits
  - Investment plans into other crops
- Tin Htut Oo, *Chief Operating Officer*  
Plantation Resources Pte Ltd

**15. ASIA'S ROLE IN GLOBAL FOOD SECURITY: THE IMPORTANCE OF BIOTECHNOLOGY, STEWARDSHIP AND EFFICIENT TRADE REGULATIONS**

Dr. Tan Siang Hee, *Executive Director*  
CropLife Asia

**16. SCIENTIFIC INTERVENTION IN AGRICULTURE TO AUGMENT PRODUCTIVITY**

- Soil management
  - Seed management
  - Farm mechanization
  - Post harvest challenges
- Dr. Sudhir Kumar, *APAC Agricultural Vice President*  
SGS Group

**17. WATER RESOURCE MANAGEMENT & SOLUTION FOR AGRI-INVESTMENT**

- Drip irrigation and green house technology – the way to increase productivity and to reach sustainability
  - Advanced irrigation
  - Successful case study in South East Asia
- Gal Yarden, *Managing Director*  
Netafim Mekong Region

**18. PROSPECT OF AGRICULTURAL INVESTMENT IN LAOS**

- What policies & incentives are in place to attract investment?
- What is the duration required to proceed with a farming project?
- Land concessions & labor issues
- Sovereign guarantees & Export legislation
- Key crops suitable for investment

Dr. Sengpaseuth, *Deputy Director of Extension & database division*  
*Dept of Agricultural Extension & Cooperatives*  
Ministry of Agriculture & Forestry, Laos

**19. POST-HARVEST MANAGEMENT IN MYANMAR**

- Logistics of moving produce from farm to market
- Warehousing and storage facilities
- Post-Harvest Technology and value addition of produce

*Senior Representative*

Post-Harvest Technology Application Center (PTAC)

Ministry of Commerce

**20. FOOD SECURITY IN ASIA**

- World food outlook & need for sustainable agriculture development
- Sharing environmental best practices
- Developing agricultural markets, including opportunities for small scale farmers
- Development and adoption of new agricultural technologies and enabling regional food trade

Sumiter Broca, *Policy/Program Office*

FAO Regional Office for Asia and the Pacific

**21. SUPPLYING AGRICULTURE INPUT MATERIALS IN MYANMAR**

- Market outlook of fertilizer & agrochemicals
- Local production and import requirements
- Challenges of supplying into Myanmar
- Prospect of organic fertilizer growth

Dr. Sein Myint, *President*

Supreme Bio-Tech Group

**II. Statement by political parties and civil society in response to the Second Commercial Farm Asia 11-12 Oct 2012, Yangon, Myanmar**

1. While disputes over land tenure in the region are on-going and cannot be settled, the lease and disposal of land to outsiders must not be permitted.
2. Proper documentation must be given to the household after taxes are paid for a certified government land map and survey.

3. The government must publish in government gazettes and state owned newspapers the new land laws to help raise awareness among the population.
4. EIAs, SIAs, and HIA must be done first before granting land use titles to the private sector.
5. Disputes over land tenure must be mitigated, and the government must stop taking action against residents without arbitrary rules or regulations, according to section 25 of the Vacant, Fallow, and Virgin Land Law.
6. With respect to Vacant, Fallow, and Virgin Land Law, the government must seek feedback from citizens. In the event of severe land conflicts, the project must be suspended.
7. The laws and rules of the Vacant, Fallow, and Virgin Land Law must be harmonized and further scrutinized by the Hluttaw (Parliament).
8. Local residents, or those that have resided in that area for more than twenty years, have priority over the vested right to utilize or occupy those lands.
9. Bribery and corruption within government at different levels is a major obstacle for cultivators to secure land tenure. This needs to be addressed.
10. The government should provide technical inputs, capital, and appropriate knowledge directly to smallhold farmers to their benefit.

### **III. Farmland Law, 2012**

Unofficial Translation by UN-Habitat

Pyidaungsu Hluttaw Law No.11 of 2012

Day of 8th Waxing of Tagu 1373 ME

(30th March, 2012)

The Pyidaungsu Hluttaw enacted this Law.

#### **CHAPTER I.**

#### **NAME, ENFORCEMENT AND DEFINITIONS**

1. This Law shall be called the Farmland Law.
2. This Law shall enforce on the date as the President of the Republic of the Union of Myanmar may, by notification, direct.
3. The following expressions contained in this Law shall have the meaning given here under:
  - (a) “farmland” means designated lands as; paddy land; ya land; kiang land; perennial plant land; dhani land; garden land; land for growing of vegetables and flowers; and alluvial island. In this expression, it does not include land situated within any town or village boundary used for dwelling, religious building and premises, and public - owned land which is not used for agriculture purpose;
  - (b) “paddy land” means land mainly grow for rice paddy, rain fed or irrigated.
  - (c) “alluvial island” means land has flooded yearly and it’s land texture and location can vary in accord with water channel.
  - (d) “right for farming ” is defined that as the State is original owner of all lands, giving permission for farming in conformity with this law and bylaw, rule and regulation of this law so that agricultural production capacity develop, excluding exploring gems,



mines, petroleum, gas and natural resources below and above ground;

(e) “agriculturist” means any person who is in compliance with any one of the following conditions:-

(1) is or was engaged in agriculture (or) livestock breeding (or) both as his principal means of livelihood (or) ;

(2) supervises the land use for agriculture (or) livestock breeding (or) both as his principal means of livelihood during years concerned;

(3) invests capital and engages directly or supervises in the production of seasonal crops, orchard, perennial crops (or) commercial livestock breeding as his principal means of livelihood (or);

(4) engaged in agriculture (or) livestock breeding;

(5) using farmland for producing (or) breeding and selling of sapling, seed, and breeding in for agriculture production and livestock breeding purposes;

(f) “agricultural household ” means a group of persons related by blood or marriage, living together as a household of whose head thereof, who shall be an agriculturist ;

(g) “head of household” means any principal member of a household who leads the household activities;

(h) “repair to gain progress by building” means raising values of land at present land owner’s expense or one currently using land’s expense or with his or her working power. The amendment also comprises place for one who works agricultural process or buildings, canals, dams, lakes, wells, embankments, roads and other facilities, excluding, but, land clearing works and procedures not for perpetual development;

(i) “guardian” is defined as one who was vested with authority to keep under-age person or lunatic or their possessions by authoritative court;

(j) “peasant organization” is the one that is formed to help rural development in conformity with law;

(k) “Ministry” means the Ministry of Agriculture and Irrigation;

(l) “Department” means the Settlement and Land Records Department;

## CHAPTER II.

### RIGHT FOR FARMING

4. A person who has the permission of right to use farmland shall have to apply for getting the Land Use Certificate to the Township Land Records Department Office passing it through the relevant Ward or Village Tract Farmland Management Body.

5. With respect to Section 4 of this law, the Office of Township Land Records Department shall scrutinize and submit the cases of right to use farmland to the relevant Township Farmland Management Body.

6. The Township Farmland Management Body shall issue the Land Use Certificate to the following person or organization with respect to existing farmland on the day of enforcement date of this law, by the approval of District Farmland Management Body, after paid the prescribed registration fees and registered at the Township Land Records Department’s Office:

(a) If a person who has right for farming shall be;

i. an agricultural household (or) member of the household;

- ii. head of the household (or) a member of the household (or) guardian who is legally holding and working the land in accordance with existing land law, before this law has been enacted;
- iii. the legal beneficiary either in accordance with this law or rules deriving from this law after its enactment;
- iv. completed the age of eighteen years;
- v. a citizen or guest-citizen or naturalize-citizen

(b) If an organization; Government Department (or) Government Organization (or) Non Government Organizations (or) Company shall have the right to farm.

7. After this Law has enacted, the Township Farmland Management Body shall issue the Land Use Certificate to the following person or organization with respect to revoking farmland and land reclamation by the State, with the approval of District Farmland Management Body, after paid the prescribed registration fees and registered at the Township Land Records Department's Office:

(a) If a person shall be;

- i. engaged in agricultural process using land
- ii. lived in relevant ward or village tract as a resident
- iii. completed the age of eighteen years;
- iv. a citizen or guest-citizen or naturalize-citizen

(b) If an organization; Government Department (or) Government Organization (or) Non Government Organizations (or) Company shall be actually to work with a will for farming.

8. The Township Farmland Management Body shall issue the Land Use Certificate to a person who receive the right for farming by buying (or) exchanging (or) giving (or) inheritance in accordance with the provision of this Law (and) a person who has got the grant of right to do, (and) right to utilize the vacant, fallow and virgin land may apply in accordance with this Law whenever cultivation is completed, after paid the prescribed registration fees and registered at the Township Land Records Department's Office.

### CHAPTER III.

#### RIGHTS RELATING TO PERMITTED FARMS

9. The following rights shall be enjoyed in connection with the right for farming:

- (a) right to have such land in hand , right for farming and gain benefit of such farm;
- (b) right to sell, pawn, lease, exchange, or donate , in whole or in part of the right for farming in accord with prescribed disciplines;
- (c) disputes arising out of inheritance of farmland shall be decided upon by the law respective court in accord with existing law;
- (d) the duration of the right for farming shall continue so long as the stipulated conditions are not breached;
- (e) land development operation are to be carried out by doing joint-venture with the investment of rural cooperative association or private investors;
- (f) in accordance with Foreign Investment Law, foreigner or organization containing foreigner are to be carried out by doing joint-venture;

10. The provisions under the section 4, 5, 6, 7, 8 and 9 of this law shall not apply to the allocation of alluvial land.

11. The disposal of alluvial land can be effected by means of prescribed rules.

## CHAPTER IV.

### CONDITIONS IN RESPECT OF THE RIGHT TO WORK FARMLAND

12. The following conditions shall be complied with in respect of the right to work farmland: -

- (a) any person shall work farmland in accordance with the provisions of this law;
- (b) land-tax and other taxes in respect of farmland assessed by the Ministry shall be paid;
- (c) It is needed to register at related department with fee when the process such as selling, pawning, lending, and donation of right to work farmland is carried out, and the prescribed stamped-duty and registration of deed fees shall be paid;
- (d) Whenever inheriting of completely handing over of lands is carried out in accordance with existing law, It is needed to register at related department in accord with prescribed conditions;
- (e) “pawning” is permitted to acquire investment for agricultural production only, by means of pawning the farmland with a government bank (or) authorized bank;
- (f) farmland shall not be worked without the permission of the relevant farm management body;
- (g) farmland is prohibited using for non-agriculture purpose without permission;
- (h) farmland is prohibited to grow other crop from regular crop without permission;
- (i) farmland shall not be fallow without a sound reason;
- (j) during the period of before getting the right for farming or disputing the right for farming, selling, pawning, lending, exchange or donation of right for farming farmland is prohibited;

13. After this Law enacted, whenever land dispute happens, registered farmland at the department can do official solution.

14. A person who has the permission of right for farming should not be sold, pawned, leased, exchanged or donated to any foreigner or organization containing foreigner without the permission of State Government.

## CHAPTER V.

### FORMATION OF FARM MANAGEMENT BODIES

15. The Union Government may form: -

(a) The Central Farmland Management Body with the Union Minister for Ministry of Agriculture and Irrigation as a Chairman, Deputy Minister for Ministry of Agriculture and Irrigation as Vice Chairman, Director General for the Settlement and Land Records Department as Secretary and the relevant government department officials as members of the body;

(b) The Central Farmland Management Body constituted under the above paragraph

(a), can be reconstituted when necessary;

16. The Central Farmland Management Body may form:

(a) the following farmland management bodies at various levels

- i. Region or State Farmland Management Body;
- ii. District Farmland Management Body;
- iii. Township Farmland Management Body;
- iv. Ward or Village Tract Farmland Management Body;

(b) the farmland management bodies at various levels constituted under the above

paragraph (a), can be reconstituted when necessary;

## CHAPTER VI.

### DUTIES AND AUTHORITY OF THE CENTRAL FARMLAND MANAGEMENT BODY

17. The duties and authority of the Central Farmland Management Body are prescribed as follows:

- (a) to prescribe the duties and authority of the farmland management bodies at various levels for the Region or State, District, Township and Ward or Village Tract;
- (b) to give guidance and control in respect of registration the right for farming, issuing the Land Use Certificate, giving the right for farming and solving land dispute;
- (c) to give guidance and control in respect of selling, pawning, leasing, exchange and donation the right for farming;
- (d) revoking the right for farming in accordance with this Law under the section 19 subsection (c) and (d), section 31 and section 37;
- (e) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for human settlements and housing in rural and urban area in which population and household are increasing ;
- (f) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for school, health center, hospital, clinic, library, bazaar, cemetery, and other buildings to develop social life of the rural people;
- (g) to scrutinize and approve the submission of Region or State Farmland Management Body in respect of using the farmland to be required for agricultural sector development transition from primitive farm to modernize farm mechanization in which warehouse, rice mill, silo, go down, farm road and other buildings were needed to be established;
- (h) to give guidance and control in respect of the allocation of alluvial land and prescribe the policy relating to right for farming;
- (i) to give guidance and control in respect of shifting Taungya cultivation;
- (j) to perform the duty assigned by Union Government in respect of farmland periodically;

18. In accordance with the provisions of this law, the Central Farmland Management Body may delegate authority to the appropriate Farm Management Body for the purpose of farmland valuation in respect of local conditions and current prices related to registration of deeds, transfer of the right for farming which shall be compulsory registered at the office of relevant department in the presence of witness of the Ward or Village Tract Farm Management Body.

## CHAPTER VII.

### TAKING ACTION ON BREACH OF CONDITIONS

19. If the conditions prescribed in section 12 of this law are not met in all or anyone, the Farmland Management Body appointed by the Ministry in this behalf shall, after making enquiry in accordance with the rules made under this Law, decide one or more than one of the following orders:

- (a) to be paid the prescribed fine;
- (b) to be utilized the farmland in the prescribed manner;
- (c) to be evicted from farmland;

(d) to be removed the buildings which were built on farmland without permission;

20. If whosoever having the right for farming under this law, fails to obey the order issued by the Farmland Management Body in accordance with this law under section 19, shall accuse to the respective court after the deadline-date is over.

21. Whosoever who having the right for farming under this law, fails to pay revenue levied by the Ministry, recovery shall be made of such revenue under the law as if it were an arrear of land revenue.

## CHAPTER VIII.

### DECIDING LAND DISPUTES IN RESPECT OF THE RIGHT FOR FARMING AND APPEAL

22. Land disputes in respect of the right for farming shall be decided by the Ward or Village Tract Farmland Management Body, after opening the case file and making actions such as enquiry and hearing about the land disputes.

23.

(a) Whosoever may appeal to the respective Township Farmland Management Body against within 30 days from the date of decision made by the Ward or Village Tract Farmland Management Body in accordance with the section 22 of this law;

(b) Township Farmland Management Body may approve (or) revise (or) cancel the decision made by the Ward or Village Tract Farmland Management Body;

24.

(a) Whosoever may appeal to the respective District Farmland Management Body against within 30 days from the date of decision made by the Township Farmland Management Body in accordance with the section 23 subsection (b) of this law;

(b) District Farmland Management Body may approve (or) revise (or) cancel the decision made by the Township Farmland Management Body;

25.

(a) Whosoever may appeal to the respective Region or State Farmland Management Body against within 60 days from the date of decision made by the District Farmland Management Body in accordance with the section 24 subsection (b) of this law;

(b) Region or State Farmland Management Body may approve (or) revise (or) cancel the decision made by the District Farmland Management Body;

(c) the decision made by the Region or State Farmland Management Body is final;

## CHAPTER IX.

### COMPENSATION AND INDEMNITY

26. Notwithstanding any provision contained in any other existing law, the Central Farmland Management Body must be coordinated with acted for suitable compensation and indemnity in the case of repossession of farmland either in the interest of the State or in the interest of the public. Confiscated farms are to be compensated without any lose. If farm is upgraded with building, it is required to compensate for such building.

27. Whosoever shall not be entitled for getting compensation, if the right for farming or farmland was revoked by the Central Farmland Management Body in accordance with this Law under the section 17 subsection (d).

## CHAPTER X.

### UTILIZATION OF FARMLAND

28. In respect of application for permission to grow other crop from regular crop:-

(a) The Central Farmland Management Body shall give permission to grow other crop on paddy land ,after scrutinize the prescribed condition while rice is the main staple crop of the State and not to diminish the rice sufficiency;

(b) The respective Region or State Farmland Management Body Shall give permission to grow other crop on farmland except paddy land, after scrutinize the prescribed condition;

29. In the long-term national interest of the State, the respective implemented Ministry shall be utilized the farmland for the Project, by the permission of the Cabinet of the Union Government after getting the remarks of the Central Farmland Management Body.

30. In respect of the application to utilize the farmland for other purposes in the interest of the public:-

(a) The Central Farmland Management Body shall give permission to utilize the paddy land for other purposes, with the recommendation of the Region or State Farmland Management Body;

(b) The respective Region or State Government shall give permission to utilize the farmland for other purposes except paddy land, with the recommendation of the Region or State Farmland Management Body;

31. The Central Farmland Management Body shall confiscate the farmland if the farmland is not start to use within six months in the prescribed manner from the date of permission order in accordance with the section 30 of this law, or not completed within the prescribed period.

## CHAPTER XI.

### FARMLAND ADMINISTRATION

32. In confiscating farms in the interests of nation, it is a must to confiscate required least measurement of farm. It is necessary to implement projects within prescribed period as soon as possible. If projects are terminated, farms are to be given back to original legitimate farm owner (person/organization) who has right for farming.

33. Except order or summons of the Union Government or authorities appointed by the Union Government, pasture land and common village land are to remain unchanged.

34. In respect of right to do (or) right to utilize land of vacant, fallow and virgin land which was permitted by the Central Committee for the Management of Vacant, Fallow and Virgin land, for Agriculture purpose, and Livestock Poultry Farming and Aquaculture purposes, shall be considered as stable cultivated farmland under this law when crop production is stable.

## CHAPTER XII.

### CRIME AND PENALTIES

35. Anyone who has right for farming fails to comply with an order issued by the farm management body in accordance with the section 19, (or) decision of land dispute under this Law, shall be sentenced with imprisonment for a term which may at least six months to

maximum two years with fine which may at least three hundred thousand kyat to maximum five hundred thousand kyat.

36. Anyone whomsoever that fails to comply with an order issued in accordance with the section 19 of this law shall be sentenced with imprisonments for maximum years states in section 35 of this law, if he/she has same punishment before.

37. Anyone who has right for farming breach the prohibited states in section 14 of this law, shall be sentenced with imprisonment for a term which may at least one year to maximum three years with fine which may not less than under one million kyat, and then money and materials with relate to crime shall be forfeited to the State.

## CHAPTER XIII.

### GENERAL PROVISIONS

38. "Agriculturists associations" are allowed to organize in accordance with the laws enacted for improvement of the socio economy of farmers.

39. Every member of the Farm Management Body at various levels constituted under this law shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.

40. No suit, prosecution or other proceedings shall lie in court against any member of Farm Management Body at various levels for action carried out in conformity with this law or rules and regulations of this law.

41. Prosecution in accordance with section 37 of this law shall be deemed as Police case.

42. To undertake the provisions of this law: -

(a) The Ministry may issue the necessary rules and regulations with approval of the Union Government;

(b) The Central Farmland Management Body and the Department may issue necessary notifications, orders, directives and procedures;

43. This law revoked the following laws:-

(a) 1953 Land Nationalization Act;

(b) 1963 The Disposal of Tenancies Law;

(c) 1963 The Agriculturist's Rights Protection Law;

I hereby signed in accordance with the Constitution of the Republic of the Union of Myanmar.

U Thein Sein

The President

The Republic of the Union of Myanmar

## IV. The Vacant, Fallow and Virgin Lands Management Law

Unofficial Translation by UN-Habitat

Pyidaungsu Hluttaw Law No.10 of 2012

Day of 8th Waxing of Tagu 1373 ME

(30th March, 2012)

The Pyidaungsu Hluttaw enacted this Law.

## CHAPTER I.

### NAME AND DEFINITIONS

1. This Law shall be called the Vacant, Fallow and Virgin Lands Management Law.
2. The following expressions contained in this Law shall have the meaning given hereunder:-
  - (a) “Central Committee” means the Central Committee for the Management of Vacant, Fallow and Virgin Lands;
  - (b) “Ministry” means the Ministry of Agriculture and Irrigation;
  - (c) “Department” means the Settlement and Land Records Department;
  - (d) “Task Force” means the Task Force for the Management of Vacant, Fallow and Virgin Lands,  
has been formed by this Law;
  - (e) “Vacant land and Fallow land” means land which was done by the tenant before, and then that land was abandoned by the tenant in any reason, not only the State designated land but also for agriculture or livestock breeding purposes;
  - (f) “Virgin land” means land which may be new land or other wood land in which cultivation was never done before. It may have or not with forest, bamboo or bushes, even though ground feature may be plane or not ,and includes the land which has been cancelled legally from Reserved Forest, Grazing ground, and Fishery pond land respectively for Agriculture, Livestock Poultry Farming and Aquaculture, Mining, and Government allowable other purposes in line with law;
  - (g) Security Fees” mean fees prescribed by this law, advance payable to one of the Union Government authorized bank in credit or collateral by persons who are granted the right to do land, right to utilize land in accordance with the type of enterprise;
  - (h) Land Revenue” means land tax rate prescribed by the rule made under this law payable to the State by persons who are granted the right to do land, right to utilize land in accordance with the type of enterprise;
  - (i) “Perennial Plant” means plants grow in compact plantation to gain the benefit from plantation crop (or) perennial plant within a period of time in accordance with the type of the plant;
  - (j) Orchard” means plants grow in either compact plantation or mixed cropping whether it’s no need for replanting as per harvest frequently until the plant is dead;
  - (k) “Seasonal Crops” means crops grow within the growing season period, after harvest and getting income, It must be newly tillage operation and sown for further production;
  - (l) “Mines Exploitation Enterprise” means as same as define in Section2, Sub-section (j) of the Myanmar Mine Law;
  - (m) “Permission Order” means the order of permission has been granted by Central Committee in respect of application for granting right to do land, right to utilize land on Vacant, Fallow and Virgin Lands;

## CHAPTER II

### FORMATION OF VACANT, FALLOW AND VIRGIN LANDS MANAGEMENT CENTRAL COMMITTEE

3. The President may form:-
  - (a) the Central Committee for the Management of Vacant, Fallow and Virgin Lands, with the Union Minister for Agriculture and Irrigation appointed as a Chairman, Director-General of the Settlement and Land Records as Secretary and suitable persons of the



concern government department and organizations , and other suitable persons as members, in order to ensure the management task concerning the use of Vacant, Fallow and Virgin Lands for State Economic Development in relation to commercial agriculture, livestock breeding, mining, and government allowable other purposes in line with law;  
(b) the Central Committee constituted under the above paragraph (a), can be reconstituted when necessary;

### CHAPTER III

#### RIGHT TO DO LAND, RIGHT TO UTILIZE LAND ON VACANT, FALLOW AND VIRGIN LANDS

4. The Central Committee shall permit the right to do, (and) right to utilize land of vacant, fallow and virgin land in the country, for the following purposes:-

- (a) Agriculture;
- (b) Livestock Poultry Farming and Aquaculture;
- (c) Mining;
- (d) Government allowable other purposes in line with law;

5. The following persons and organizations may apply to Central Committee in accordance with the prescribed conditions for carry out the purposes which are stated in Section 4:-

- (a) Myanmar citizen investors;
- (b) Department, Government Organization, and Non Government Organizations;
- (c) Exemption persons who are eligible in accordance with Section 4 of the Transfer of Immovable Property Restriction Law, 1987;
- (d) Joint-Venture of Investors who have right to carry out with Department (and) Government' Organization in accordance with Foreign Investment Law;
- (e) Joint-Venture of Investors who have right to carry out with Myanmar Citizen Investors, in accordance with Foreign Investment Law;

6. The Central Committee shall take the following necessary action in respect of on application matters which are in accordance with Section 5:-

- (a) to get the recommendation of the concern Region or State Government;
- (b) to get the recommendation of the Ministry of Mines for mining, and other concern Ministry for other purposes prescribe in Section4, Sub-section (d);
- (c) to coordinate with the Ministry of Environmental Conservation and Forestry ,and other concern Ministries for the prevention of damage and destruction to the Forest land which are Reserved Forest, and Protected Public Forest; and for conservation of natural regions, watershed area and natural fisheries;
- (d) to submit the necessary suggestion relate to explore the National Land Use Policy to the Union Government;

7. The Central Committee shall permit the grant on application for granting right to do, right to utilize land of Vacant, Fallow and Virgin Lands with the agreement of Myanmar Investment Commission for foreign investment.

8. The Central Committee shall make permission or rejection of the systematic application in order to ensure the management task concerning the use of Vacant, Fallow and Virgin Lands.

9. In accordance with the Section 8,the Central Committee Shall issue the permission order, granting the right to do, right to utilize land of vacant, fallow and virgin lands, after security fees has been paid.

## CHAPTER IV

### CONDITIONS IN ACCORDANCE WITH RIGHT TO DO, RIGHT TO UTILIZE LAND OF VACANT, FALLOW AND VIRGIN LANDS

10. The Central committee shall permit the following land area of Vacant, Fallow and Virgin Lands in relation to commercial agriculture, and livestock breeding purposes:-

(a) Agriculture

(1) In the case of Perennial Plant, not more than 5000 acres at a time and whenever cultivation is completed on 75 percent of the permitted acres, an additional not more than 5000 acres at a time up to a total of 50000 acres shall be permitted frequently. Actual cultivable acre more than 5000 acres at a time shall be permitted for the state interest with the agreement of the Cabinet of the Union Government;

(2) In the case of Orchard, not exceed 3000 acres;

(3) In the case of Industrial Crop, not more than 5000 acres at a time and whenever cultivation is completed on 75 percent of the permitted acres, an additional not more than 5000 acres at a time up to a total of 50000 acres shall be permitted frequently. More than 5000 acres at a time shall be permitted for the state interest with the agreement of the Cabinet of the Union Government;

(4) In the case of rural farmer and a family who want to run manageable farm shall be allowed to use not exceed 50 acres by the permission of one of the respective local organization may be managed;

(b) Livestock, Poultry Farming and Aquaculture

(1) In case of Aquaculture, not exceed 1000 acres;

(2) In case of Livestock breeding and Poultry Farming

(aa) Livestock breeding for buffalo, cattle, horse, not exceed 2000 acres;

(bb) Livestock breeding for sheep, goat, not exceed 500 acres;

(cc ) Poultry farming, pig, not exceed 300 acres;

(3) Animal husbandry not include in sub-section (1)and (2), suitable acres;

(c) Mining purpose shall be permitted with the agreement and coordination with the Union Government of the Ministry of Mine;

(d) Government allowable other purposes in line with law shall be permitted with the agreement and coordination with the Union Government of the relevant Ministry;

11. The Central Committee shall permit the following duration for right to use of Vacant, Fallow and Virgin Lands in relation to commercial agriculture, and livestock breeding purposes:-

(a) Agriculture

(1) For perennial plants and orchard, the duration for right to use land is not exceed 30 years from the year of grant;

(2) For seasonal crops, the duration for right to use land shall continue so long as there is no breach of condition;

(b) For Livestock, Poultry Farming and Aquaculture, the duration for right to use land is not exceed 30 years from the year of grant;

(c) After expire the duration of right to use land in accordance with the above sub-section(a)(1) and sub-section(b), shall continue permission the duration base on type of work ,an additional years frequently up to a total of not exceed 30 years;

(d) For Mining purpose the duration of right to use land shall be permitted with the agreement

and coordination with the Union Government of the Ministry of Mine;

(e) For Government allowable other purposes in line with law the duration of right to use land shall be permitted with the agreement and coordination with the Union Government of the relevant Ministry;

12. The Central Committee shall permit the right to use land in a case where application is made by Investors who have been permitted in accordance with Foreign Investment Law, or by Organizations consisting of Investors who have been permitted in accordance with Foreign Investment Law in areas in which land development operation are unable to be carried out by the citizens.

## CHAPTER V

### SECURITY FEES AND LAND REVENUE

13. The Central Committee may fix the security fees rate to the payable person who will get the permission right to use the vacant, fallow and virgin lands, depending upon the type of enterprise.

14. The Central Committee may fix the land revenue rate to be assessed and suitable period of tax exemption for granting right to use the vacant, fallow and virgin lands, depending upon the type of enterprise and crop.

15. The Department shall be made in the following manner:-

(a) Assessment and collection of land revenue shall be made start from the expire date of tax exemption period to the person who got the permission for granting right to use the vacant, fallow and virgin land depending upon the type of enterprise and crop;

(b) Supervision shall be made on payment of land revenue of person who got the permission for granting right to use the vacant, fallow and virgin lands;

## CHAPTER VI

### CONDITIONS SHALL BE COMPLIED BY PERSON WHO IS GRANTED THE RIGHT TO USE THE VACANT, FALLOW AND VIRGIN LANDS

16. Person who is granted the right to use the vacant, fallow and virgin lands shall be complied the following conditions:-

(a) The land granted shall be used for the purpose granted and in relation to economic enterprise;

(b) The enterprise shall carry out to be completed within four years from the date of grant according to the purpose granted. The prescribed period may be revised by the Central Committee for losing time due to natural disaster and unstable security conditions;

(c) Land granted shall not be mortgaged, giving, sold, leasing or otherwise transferred or divided without the permission of the Cabinet of the Union Government;

(d) Land revenue shall be paid fully for the land granted;

(e) With respect to land granted the conditions prescribed by the Central Committee, shall be compiled;

(f) Except the purpose granted enterprise, exploring other natural resources below and above ground is prohibited;

(g) If natural resources are found in the authorized land and the Government being desirous of extracting the same on a commercial basis resumes the area required therefrom, it shall be surrendered as directed by the Union Government;

## CHAPTER VII

### SUPERVISION

17. The Central Committee shall constitute and prescribed duties of the Task Force and Special Group in respective Region or State, for scrutinizing and co-ordinations with respect to submitted cases of right to use the vacant, fallow and virgin lands.

18. The Central Committee may form occasionally and appoint the Special Board with relevant Departments, to inspect whether the person who is granted right to use vacant, fallow and virgin land shall comply with or not the prescribed conditions to carry out the purpose granted.

19. The Central Committee shall resume the area required in the authorized land, if one of the following situation arises:-

(a) If ancient culture heritage are found in the authorized land;

(b) If infrastructure project or Special project are desired to be constructed on the authorized land, in the interest of the State;

(c) Except the permitted minerals, if other natural resources are found in the authorized land which are permitted for production of mining;

(d) If natural resources are found in the authorized land which are permitted for the purposes described in Section 4, Sub-section (a),(b), and (d);

20. For resuming the area required in the authorized land in accordance with the Section 19, the Central Committee will have to be undertaken in coordination with the department, organization concerned for getting the compensation within the prescribed period, calculated by current value to cover the actual investment cost of the legitimate owner, with the agreement of the Cabinet of the Union Government.

21. If the Central Committee found that the person who is granted right to use vacant, fallow and virgin lands, breach any condition of this law; the security fees deposited shall be forfeited to the State and, shall be revoked the right of land use.

22. The person and organizations who have granted the authorized land before this law is enacted, by the permission of the Central Committee for the Management of Vacant, Fallow and Virgin Lands shall be complied the following conditions:-

(a) Submit the complete record file to the Central Committee, attach with granted area, order issue date and serial number, the statement of actual cultivated area and remaining uncultivated area with photo and document evidence;

(b) Comply this law with respect to cultivated area of vacant, fallow and virgin lands;

(c) It deem as the authorized lands which never reclaimed beyond the prescribed duration, have been revoked by the State;

(d) If the Central Committee found that those persons who are granted such rights fail to adhere or violate the prescribed conditions or fail to fulfill their commitments during the prescribed time, the security fees deposited shall be forfeited to the State and, shall be revoked the right of land use;

## CHAPTER VIII

### GIVING HELP TO PERSONS WHO ARE GRANTED RIGHT TO USE OF VACANT, FALLOW AND VIRGIN LANDS

23. The Central Committee shall make the following matter:-

- (a) If the persons who are granted right to use vacant, fallow and virgin lands, contact and request for technical, good quality seeds and other assistance for carry out agriculture or Livestock breeding purposes, then the Central Committee shall take necessary action to help them;
- (b) If the persons who are granted right to use vacant, fallow and virgin lands, request for getting loan of investment capital or the assistance of materials and services, then the Central Committee shall make necessary recommendation to the concern department and organization;
- (c) If the persons who are granted right to use vacant, fallow and virgin lands, faced with huge amount of damage and loss by natural disaster like as cyclone, request for getting special loan to the State, then the Central Committee shall make necessary recommendation to the relevant Ministry;
24. The Central Committee shall refund the security fees to the persons who are granted right to use vacant, fallow and virgin lands, when the enterprise completed within the prescribed time and conditions.
25. The Central Committee shall make the following matter:-
- (a) When the person who is granted right to use of vacant, fallow and virgin land submit his suffering of dispute, disturbance, encroachment and destroying the benefits with the local farmers, in carrying out the work, the Central Committee shall make co-ordination with relevant department and organization at first, and if unable to coordinate it shall make in accordance with Law;
- (b) The Central Committee shall make co-ordination depend on their desire of the local farmers, not to be lost. whether the existing farmland are included in the authorized area of which are not permitted officially, and ever since before growing by the local farmers;
- (c) The Central Committee shall make in accordance with Law with the agreement of the both sides, if there is an authorized farmers in the authorized area before;

## CHAPTER IX

### OFFENCE AND PENALTIES

26. Anyone whomsoever that destroy the benefit with respect to immovable property on the authorized land , shall be sentenced with imprisonment for a term which may not exceeding three years or with fine which may not exceed one million kyats or with both.
27. Anyone whomsoever that encroach on the authorized land without the permission of the legitimate owner or his representative, shall be sentenced with imprisonment for a term which may not exceeding two years or with fine which may not exceed five hundred thousand kyats or with both.
28. Anyone whomsoever that obstructs the legitimate owner or the person who is working with the agreement of the legitimate owner in the course of their duties on the authorized land, shall be sentenced with imprisonment for a term which may not exceeding one year or with fine which may not exceed three hundred thousand kyats or with both.
29. Anyone whomsoever that fail to comply with an eviction-order on revoking the authorized land shall be sentenced with imprisonment for a term which may not exceeding one year or with fine which may not exceed three hundred thousand kyats or with both.

## CHAPTER X

### GENERAL PROVISIONS

30. Offences in Chapter IX are cognizable offences.

31. The Central Committee have right to call for submitting the situation reports and work completion reports from those persons who are granted the right to use vacant, fallow and virgin lands, to be in line with prescribe conditions.

32. The Central Committee shall submit Half-Yearly Report to the Cabinet of the Union Government on matters concerning the Management of Vacant, Fallow and Virgin Lands. If policy matter happens, submitted systematically to the President for guidance.

33. The Central Committee is formed by this Law, shall handle and carry out the duties and rights of the Central Committee for the management of culturable land, fallow land and waste land which have been formed before this Law is enacted.

34. To undertake the provisions of this law:-

(a) The Ministry may issue the necessary rules and regulations, with the approval of the Union Government;

(b) The Ministry and the Central Committee may issue the necessary notifications, orders, directives and procedures;

I hereby signed in accordance with the Constitution of the Republic of the Union of Myanmar.

U Thein Sein

The President

The Republic of the Union of Myanmar

## V. Foreign Investment Law

The Republic of the Union of Myanmar

Pyidaungsu Hluttaw

2012, Pyidaungsu Hluttaw Law No. 21

3<sup>rd</sup> Waning of Thadingyut 1374 ME

2<sup>nd</sup> November, 2012

The Pyidaungsu Hluttaw enacted this law.

### Chapter (1) Title and Definition

1. This law shall be called the Foreign Investment Law.
2. The words and expressions in this law shall mean as designated hereunder-
  - (a) The state means the Republic of the Union of Myanmar.
  - (b) Commission means Myanmar Investment Commission formed by this law.
  - (c) The Pyidaungsu government means the government of the Republic of the Union of Myanmar.

- (d) Citizen means an associate citizens or a naturalized citizen. This also includes the economic organization formed with the citizen.
- (e) Foreigner means a person who is not a citizen. It also includes an economic organization formed only with foreign investment.
- (f) Sponsor means a citizen or foreigner who proposed to the commission in connection with the investment.
- (g) The proposal means the application submitted to commission by the sponsor together with the draft contract, financial evidence and company documents to get the permission the proposed investment.
- (h) Permit means the order which describe the approval of commission on the proposal.
- (i) Foreign capital means and includes the following invested by a foreigner in the business as per the permit –
  - 1) Foreign currency
  - 2) Machinery, equipment, part of machinery, accessory, tool and other not available in the country.
  - 3) License patent design, machine design, trade mark, copy right and right of valuation on the intellectual property.
  - 4) Competency and technology.
  - 5) The reinvested money with the increment from above or the share dividend.
- (j) The investor means in investor as per approval or an economic organization
- (k) Bank means a domestic bank approved by Pyidaungsu Government.
- (l) The investment means or property supervised by the investor under this law in the territory of the country. this expression includes the following:-
  - 1) Movable property, immovable property and lawful right of pledge and mortgage on other property right.
  - 2) The share of company, stocks and debenture or a certificate of loan.
  - 3) Contractual monetary right or activity designated as financial value.
  - 4) The right of intellectual property in accord with the existing law.
  - 5) Right of business vested by the concerning law or contract including right of mineral exploration and extraction.
- (m) The lessee of land or land user means someone who gets land lease to carry out a type of business upto a certain period by paying tenancy fees to the state as designated.

## **Chapter (2)**

### **The Applicable Economic Activities**

- 3. This law shall apply to the economic activities prescribed by the notification of the commission with the prior approval of Pyidaungsu Government.
- 4. The investment economic activities are designated as restricted or prohibited activities:-
  - (a) The activities prejudicial to the traditional cultures and customs of the ethnic nationalities in the country.

- (b) The activities prejudicial to public health.
  - (c) The activities prejudicial to the natural resources, environment and biodiversity.
  - (d) The activities of importing hazardous or toxic waste material into the country.
  - (e) The factory or activities which produces or use the hazardous chemicals according to the international agreement.
  - (f) Production work and service activity specified by the rules and regulations for the citizen.
  - (g) The import of technology, medicine in utensils pending lab-test or not designated for use.
  - (h) Agriculture in short-term and long-term plantation that could be carried out by the citizens according to the rules and regulations.
  - (i) The livestock breeding that could be carried out by citizens according to the rules and regulations.
  - (j) The fishery in sea which is which can be carried out by citizens according to the rules and regulations.
  - (k) The investment activities within at least ten miles of the boundary demarcation within the state territory except economic zones specified by the Union Government.
5. If the restricted or prohibited investment activities under section (4) is to be exercised, the commission may permit with the approval of Pyidaungsu Government for the benefit of citizen and specially for the benefit ethnic nationalities.
6. For foreign investment in large projects which are considered to substantially to benefit the security of the government and citizen, economic benefit in the surrounding area and living standard of the citizen, the Commission is to submit to the Union Parliament through the Union Government.

### **Chapter (3) Objectives**

7. - To produce the minerals of the state for the sufficient enjoyment of the public and to export the surplus.
- Job creation for the people in line with the progress and expansion of work.
  - To develop human resources to develop the infra-structure such as banking and finance work, highway roads, cross-country highway, national electricity and energy works.
  - To develop high-tech including modern data collection technology.
  - To develop communication network international standard railway, maritime and airway transport in the whole country.
  - To encourage the citizen to be able to do in competition with foreigners.
  - To develop the investment work in line with the international standard.

### **Chapter (4) Fundamental Principle**

8. - The investment shall be approved subject to the following principles:-



- (a) To support the primary objective of national economic development plan, the activities not sufficient with monetary and technology, still not exercisable by the state in citizen.
- (b) To develop job opportunities
- (c) The expansion of export
- (d) To produce products for import substitution
- (e) To produce production commodity which needs large investment.
- (f) To develop high-tech production works in the high skill and high-tech development.
- (g) To support production and services works needing large investment volume.
- (h) To create works needing lesser energy.
- (i) Local development.
- (j) To explore and extract new energy and to develop sustainable energy resources such as new bio-based energy.
- (k) To develop the modern industry.
- (l) Environment Conservation.
- (m) to support data in technology exchange.
- (n) Non-prejudicial to the sovereignty of the state and public safety.
- (o) To develop the citizen intellect and intelligent.
- (p) Do develop banks and banking works commensurate with international standard.
- (q) To create modern service agencies necessary for the state and citizen.
- (r) To suffice short-term and long-term domestic utilization of the state energy in resources.

## **Chapter (5)**

### **Pattern of Investment**

9. Investment may be exercised in the following patterns,
  - (a) Foreign investment activities with hundred percent capital which is permitted by the commission.
  - (b) Joint venture between foreigners and citizens and state economic enterprises.
  - (c) To work in accordance to the agreed upon contract.
  
10. (a) Investment under Section (9) the Pattern investment shall be:-
  - (1) The company must be formed in line with the existing laws.
  - (2) When forming a joint-venture under section (9) (b), the ratio of the foreign capital and local capital is to be decided by the parties forming joint venture company.
  - (3) When invested by the foreigner the minimum investment amount shall be determined by the commission with the approval of the Union Government based on the project wise.
  - (4) When forming joint-venture in restricted sectors not allowed to invest with full capital, the ratio of foreign investment is to propose in accordance to the procedures of the Foreign Investment Law.
  
- (b) When performing investment under subsection (a), if liquidation is exercised with the termination right before the expiration of contract or liquidation is performed on expiration, the existing law of the country shall be followed.

**Chapter (6)**  
**Formation of Commission**

11. (a) The Pyidaungsu Government shall –
- (1) Concerning investment under this law and to carry out duties, a Commission shall be formed with a Chairman of a Union Minister and members shall comprised of Union Ministries, person drawn from government departments and person comprising of professional and other person deemed to have expertise who are not government servants.
  - (2) When forming the commission, vice President, secretary and joint-secretary shall be nominated and empowers.
- (b) Non-government services commission member shall be entitled to salary, expense and allowance permitted by the ministry of national planning and economic development.

**Chapter (7)**  
**the Duties and Power of the Commission**

12. The duties of commission are as follows:-
- (a) When assessing investment proposal, to scrutinize whether the proposal is compliant with fundamental principle of chapter (4) of this law, the financial trust-worthiness the economic advantage or the activities, suitability of technology and environment conservations.
  - (b) To take immediate action if the investor complaints of not fully getting rights entitled as per law.
  - (c) To assess the proposal if it is against the existing law.
  - (d) To submit six-monthly report of performance to the Pyidaungsu Hluttaw through pyidaungsu government.
  - (e) To submit the advise to the Pyidaungsu government for the sake of the easy internal and external investment or to facilitate support.
  - (f) To classify type of investment, amount of investment and term of works and amending of the same with the prior approval of pyidaungsu Government.
  - (g) To coordinate with state and regional government for the foreign investment projects which are being approved by the Union Government.
  - (h) To monitor and be aware of if the mineral resources or the antique material, not connected with works and not contained in the contract on and underground of the permitted land.
  - (i) To assess whether the investor comply with laws, rules and regulations notifications, directives and the condition of contract and if failed to follow, to instruct for compliance and if still not comply, to take action under the law.
  - (j) To designate investment activities not needing to allow tax exemption and relief.
  - (k) To serve the duty designated occasionally by the Pyidaungsu Government.
13. The power of commission are as follows:-

- (a) To assess and accept the proposal not against the existing law with the consideration of the benefit of the state.
  - (b) To issue the approval if the proposal is accepted, to the sponsor or investor.
  - (c) To assess and accept or reject as designated if the application is submitted to extend or amend the term of permit or the agreement.
  - (d) To call for the necessary document and fact from the sponsor or investor.
  - (e) To demand for presentation of supporting documents from the Promotor who proposed to invest.
  - (f) To permit or reject the bank propose by the sponsor or investor to function the monetary works.
14. The commission may form committee and body when performing duties.
15. The commission functional report shall be occasionally put up to the Pyidaungsu Government meeting.
16. The progress of works permitted by the commission shall be reported every three months to the Pyidaungsu Government.

## **Chapter (8)**

### **The Duties and rights of the Investor**

17. The duties of investor are as follows:-
- (a) To abide by the existing law of the Republic of the Union of Myanmar.
  - (b) To form the company and do business as per the existing law.
  - (c) To follow the law rules, procedures, notification, order, directive and condition of the permit.
  - (d) To utilize the land rented or granted by the commission as per designated conditions and the condition of the contract.
  - (e) To sublet mortgage, transfer share and transfer of business to the other individual, during the term of business, for the invested activities, the land and buildings allowed by the approval, with the approval of the commission.
  - (f) Not to change the significant topography and the formation of the land permitted to utilize without the approval of commission.
  - (g) To report to the commission at once when the mineral resources or antique material or treasure trove not permitted in the contract on and the underground of the land permitted to utilize, if permitted by the commission work may continue on the said land, otherwise move to a substituted land that may request by the investor.
  - (h) To perform not to affect environmental pollution and spoilage as per existing law in connection with the investment activities.
  - (i) If all share of foreign investment company is transferred to citizen or a foreigner outright, the prior permit shall be taken from the commission and the approval

permit is returned only then the share transfer shall be registered as per existing law.

- (j) If some share of foreign investment company is transferred to citizen or a foreigner outright, the prior permit shall be taken from the commission and the approval permit is returned only then the share transfer shall be registered as per existing law.
  - (k) To transfer the high-tech competency technology functioned by him to the concerning works department or organization systematically as per the provision of the contract.
18. The right of investor is as follow-
- (a) To exercise the right of selling, exchanging or transferring otherwise as per existing law with the approval of commission.
  - (b) If the investor is a foreign company shall have right to sell its all shares / part of shares to foreigner/ citizen or another foreign company / local company.
  - (c) To expand the primary investment activities with the approval of commission.
  - (d) To reassess, revise and submit to the commission to get the entitled right fully as per existing law.
  - (e) To put up the application to the commission to get the lawful entitled benefits or for the settlement of grievances.
  - (f) In respect to permission given for a foreign investment project, the investor shall have right to submit to the Commission regarding invention of advance technology for production of quality products, enhanced production, reduction of environmental effect in the surrounding area for more benefit to accrue.
  - (g) For benefits of the whole country if foreign investment is to make in the areas difficult in excess, the Commission shall permit more exemption and relief as stated under Chapter (12).

## **Chapter (9)**

### **Application for permit Approval**

19. The investor or sponsor, if wanted to do foreign investment, shall submit the proposal as designated to the commission to get approval.
20. The commission may –
- (a) Accept or reject the proposal within 15 days after the assessment is made on receiving of proposal as per section (19).
  - (b) Shall exercise to allow or not to allow within 90 days to the proposer on receiving it.
21. The investor or sponsor shall institute the investment activities on receiving the approval of commission, after signing the necessary contract with concerning government department / organization or personel, organization.
22. The commission may allow to increase or reduce or amend the term and condition of the contract in accordance with law.

**Chapter (10)**  
**Insurance**

23. The investor shall place the designated type of insurance at any insurance agency which has the right of the insurance in the country.

**Chapter (11)**  
**The Appointment of Employees and Workers**

24. The investor –
- (a) Shall appoint, when appointing citizen skilled workers, technicians and staff, at least 25% of citizen within first 2 years from the commencement date, atleast 50% within second two years, atleast 75% within third 2 years however in the academic basis works the time limit may be extended as deemed to be suitable by the commission.
  - (b) Shall arrange to provide training and courses for the citizen employee to be appointed under section (a) for the progress of competency.
  - (c) Only citizen shall be appointed and the unskilled works.
  - (d) When recruiting labour, it may be exercised from the government labour exchange or internal labour agencies at the discretion of the investor.
  - (e) When appointing citizen skilled workers, technicians and employee the appointment contract shall be signed between employer and employee as per the existing the labour law and rules.
  - (f) Shall arrange salary standard without segregation the citizen employee shall be provided the same as foreigner employee as proportionate division of professional level.
25. The foreigner working at the investment activities with approval shall apply to the commission for the work permit and stay permit issued by the state.
26. The investor –
- (a) Shall sign the appointment agreement as designated when employing staff and labour.
  - (b) Shall perform to get the right as per existing labour law and rules including minimum wages in salary, leave, holiday, overtime charges, grievances, compensation, social security and other labour related insurance, when defining rights in duties of the employer and employee under the appointment agreement and conditions of works.
  - (c) The disputes arising amount employer, employee, employer and employee, workers and technicians or among the staff shall be settled according to existing law.

**Chapter (12)**  
**Exemption and Relief**

27. The commission shall provide tax exemption or relief under subsection (a) from among the following exemption / relief, to the investor for the support of following investment in the country, moreover any or of the remaining exemption / relief may be allowed to enjoy when applying so.
- (a) From the year of starting production or services activities including the starting years upto continuous five years with tax exemption, and if beneficial for the state depending on the progress of investment activities tax exemption / relief for suitable period.
  - (b) To reinvest the profit from works, the reserve fund is allotted and reinvested within one year, the tax exemption / relief on that reinvested profit for the sake of taxation.
  - (c) The depreciation rate as per designated by Government, calculated on the machinery, equipment, building or other working capital, the calculated depreciation may be deducted from the profit.
  - (d) If the products of any production work is exported, then the tax exemption shall be allowed on up to 50% of the profit that export.
  - (e) Right of paying tax by the foreigner on his income in the same rate as the citizen.
  - (f) The expenses for the research and development necessary for the country, shall be deducted from the income.
  - (g) The right of carrying the loss of the continuous three years in continuation with the tax exemption and relief on each enterprise under subsection (a), within two years.
  - (h) To enjoy Duty, other internal tax or both with exemption and relief on the imported machinery, equipment, tools machinery part imported to be use during the establishment period.
  - (i) Right of exemption / relief of duty other internal tax or both on the imported raw material for 3 years after establishment.
  - (j) Exemption or relief of duty, other internal tax or both on the imported machinery, equipment, tools machinery part and accessories necessary for the expanded work with the approval of commission.
  - (k) The exemption and relief of commercial tax on the products manufactured for export.

### **Chapter (13)** **Assurance and Guarantee**

28. The Pyidaungsu Government shall not nationalize the economic activities formed with the approval during the contract period or the extended period if allowed.
29. The Pyidaungsu Government assurances that the investment activities run with the approval of commission shall not be terminated during the contract period without sufficient cause.

30. The Pyidaungsu Government give assurance and guarantee for repatriation of rightful investment amount in the type of foreign currency on the expiry date of the contract.

#### **Chapter (14)** **Permission of Land Use**

31. The commission may allow the investor up to initial (50) years of land use or grant necessary for the economic activities or industry depending on type and amount of investment.
32. The commission may allow the investor extension (10) years and another (10) years depending on amount and type of investment continuously after expiration of the duration allow under section (31).
33. The commission may allow to invest on the land with the initial agreement of land guarantee or land user, with the prior consent of Pyidaungsu Government for the economic development of the country.
34. The commission may occasionally stipulate the tenancy rate of land owned by government department / organization with the prior consent of Pyidaungsu Government.
35. Investment on the rights of the citizens in the agricultural and livestock sectors, locals and foreign investors shall be allowed in joint venture under contract system.
36. The commission, may designate the tenancy period longer than the period grant and use under this law, with the consent of Pyidaungsu Government, for those who want to invest in the less developed and poor communication regions, for the economic development of the whole country.

#### **Chapter (15)** **Foreign Capital**

37. The commission shall register the name of investor according to the foreign currency accepted by the bank as foreign capital. When so registering the type of foreign capital shall be described.
38. The foreign capital carrier may withdraw the foreign capital designated by the commission within stipulated period on termination.

#### **Chapter (16)** **Transfer Right of Foreign Currency**

39. The investor has the right to remit abroad, through the foreign bank in the country according to the exchange rate of the concerning foreign currency –
- (a) The foreign currency entitled by the investor of foreign currency.
  - (b) The foreign currency approved by the commission to with draw by the foreign capital carrier.
  - (c) The net profit after deducting taxes and funds from the annual profit entitled by the investor.
  - (d) Due remaining money after deducting taxes and reserving living expenses from the salary and allowance received by the foreign employee.

### **Chapter (17)** **Foreign Currency Matters**

40. The investor –
- (a) Can remit abroad through any foreign bank according to exchange rate of the concerning currency.
  - (b) Shall exercise the monetary matters of works by opening foreign currency bank account or kyat currency bank account and the currency accepted by the foreign bank and Myanmar.
41. The employees working in the economic activity formed with permission shall open foreign currency account or kyat currency account at any foreign bank in the country.

### **Chapter (18)** **Administration penalties**

42. The commission may award the following administrative penalties / penalty to be investor who violated the provision of this law, rules, regulations, procedure, notification, order or directive or any condition of the permit –
- (a) Warning
  - (b) Temporary suspension of tax exemption and relief
  - (c) Revocation of permit
  - (d) Black listed with no further issue of permit

### **Chapter (19)** **Arbitration**

43. If any dispute arise out of investment activities-
- (a) The disputes among personal shall be amicably settled.
  - (b) Unless settled by subsection (a) -
    - (1) Unless method of solution is included in the contract, the existing laws of the country shall be followed.



- (2) If method of solution is stipulated in the contract, the said method of solution shall be followed.

## **Chapter (20)**

### **General**

44. The commission may issue under this law if any proposal of mutual benefit between the investor and Pyidaungsu Government or Government department / organization legally empowered by the Pyidaungsu Government to carry out feasibility study, exploration calculated and extraction upto the commercial production stage by using the capital of the investor on joint-venture with the state or citizen in the extraction works of large volume to invest, in the oil & gas and mining works to suffice the energy requirement of the state in citizen and to export the surplus. if the investment activities can be performed with the commercial extraction, to cover the benefit the proportionate profit shall be divided between the investor in Pyidaungsu Government or any empowered government department / organization and citizen JV partner.
45. The investor sanctioned by the foreign investment law of Union of Myanmar (SLORC Law No. 10/1988) before the existence of this law shall be deemed to be invested under this law.
46. The investor shall be criminally prosecuted if any evidence is formed to be deliberately miss representing in connection with the schedules, documents, finance and labour employment attached with the proposal to commission and concerning government department / organization.
47. Notwithstanding any provision in the existing law the matters regarding any provision of this law shall be exercised by this law.
48. The commission shall convene meetings as designated.
49. The decision imposed by the commission under the power vested by this law.
50. There shall be no action taken under civil or criminal procedure against any commission member or any member of committee of body, any serviceman for the matter executed in good faith according to the power instructed by this law.
51. To carry out the provision of this law, the ministry of national planning and economic development or any government organization—
- (a) Shall execute the clerical works
  - (b) Shall incur the expenses
52. The investor working with the permit of the commission of Union of Myanmar Foreign Investment Law (SLORC law No. 10/1988) about to be revoked shall continuous to work and enjoy benefit up to expiration as per conditions of the contract.

53. The Commission shall submit to the nearest Pyidaungsu Hluttaw meeting through Pyidaungsu Government if prejudicial to the benefit of the state and citizen as a crucial matter, when permitting the foreign investment activities as per section (3) and section (5).
54. If any provision of this law is in conflict with any fact of international treaty and agreement approved and accepted by the Republic of the Union of Myanmar, the provision of international treaty and protocol shall prevail.
55. Before the promulgation of rule and procedure after enactment of this law the rules and regulation issued under the law of (SLORC Law No. 10/1988), unless repugnant to this law, may be exercised.
56. When executing the provision of this law-
- (a) The ministry of national planning and economic development shall promulgate the necessary rule, regulations, procedure, order, notification and directive within (90) days of the commencement of this law with the approval of Pyidaungsu Government.
  - (b) The commission may issue the necessary order notification in directive
57. The foreign investment law of the Union of Myanmar (SLORC Law No. 10/1988) is herewith revoked by this law.

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I hereby sign in compliance to the constitution of the Republic of Myanmar  
President

The Republic of the Union of Myanmar

Translated into English by U Tin Win, Managing Partner of UTWGa