

9. Myanmar

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A. Introduction

Manufacturers, sellers and others involved in the supply chain must pay more attention to quality control, product safety and product liability than at any time in the past. The Republic of the Union of Myanmar is an agriculture-based country in the region of Southeast Asia with a total land area of 676,578 square kilometres and a total coastline of 2,832 kilometres. Myanmar has been transitioning to a market-oriented economy since 1989. This has involved a series of economic reforms aimed at widening the range of economic activities in the country while also giving priority to private sector participation.

Product safety and product liability are important for achieving market access and improving consumers' welfare. The government has laid down economic policies with a view to alleviating poverty and enhancing the socio-economic status of the people by assuring increased market penetration and encouraging the public to follow good practices regarding product safety and liability. The Ministry of Commerce is the main department responsible for consumer protection in general, but many other regulatory bodies are also directly or indirectly involved in securing product safety.

B. Sources of Product Safety Law

The Myanmar Constitution indirectly implies consumer protection. In principle, the Union shall earnestly strive to improve the health of the people.¹ The State will take care of citizens' health and enact laws accordingly if necessary. The main general law

¹ Constitution of the Republic of the Union of Myanmar (2008), s 28(a).

concerned with product safety is the *Consumer Protection Law* (2014). The Law also guarantees the formation of a central committee for consumer protection. However, implementation of this Law is still underdeveloped.

The following are additional laws directly or indirectly related to product safety in Myanmar :

- *The Penal Code* (1861)
- *The Code of Criminal Procedure* (1861)
- *The Code of Civil Procedure* (1st January, 1909)
- *Contract Act* (1872)
- *The Sea Customs Act* (1878)
- *The Land Customs Act* (1924)
- *The Poisons Act* (1919, amended in 2014)
- *The Sale of Goods Act* (1930)
- *Public Health Law* (1972)
- *The Pesticide Law* (1990)
- *Myanmar Marine Fisheries Law* (1990) (amended in 1993)
- *The Forest Law* (1992)
- *The National Drug Law* (1992, amended in 2014)
- *The Plant Pest Quarantine Law* (1993)
- *Animal Health and Development Law* (1993)
- *Science and Technology Development Law* (1994)
- *The Insurance Business Law* (1996)
- *The National Food Law* (1997, amended in 2013)
- *Myanmar Medical Council Law* (2000).
- *The Traditional Medical Council Law* (2000).
- *The Control of Smoking and Consumption of Tobacco Product Law* (2006)
- *The Private Health Care Services Law* (2007, amended in 2013)
- *Teeth and Mouth Medical Council Law* (2011)
- *The Export and Import Law* (2012)
- *The Essential Supplies and Services Law* (2012)
- *Chemical Safety Law* (2013)
- *The Standardization Law* (2014)

There are also related laws for various specific professional services, forests, fisheries and mining.

C. Criminal Liability

Persons who fraudulently use false instruments for weighing, or possess and sell false weight and measurement instruments shall be punished with one year imprisonment under sections 264 to 267 of the *Penal Code*. Any person who contaminates food or drink intended for sale, or sells noxious food or drink shall be liable for six months' imprisonment or a fine under sections 272 and 273 of the *Penal Code*.

Criminal liability also arises under the *Penal Code* for persons using or selling products with false or counterfeit trade marks and for making or possessing any instrument used to produce counterfeit trade marks. Penalties range from one to three years imprisonment under sections 482, 483, 485 and 486 of the *Penal Code*.

D. Civil Liability and the Contract Act

In accordance with the *Consumer Protection Law* (2014), consumers are protected not only through criminal actions but also by civil actions relating to the defective goods. The consumer may sue for specified harms under civil law alongside criminal actions for defective products.² For instance, there are many prohibitions on misleading and deceptive advertisement and incorrect statements on product quality. Any entrepreneur who violates these prohibitions shall, on conviction, be punished with a maximum of three years imprisonment or with a fine not exceeding Kyat 5,000,000 (equivalent to US\$5000).³ Under section 26, the entrepreneur shall have the burden of proof that there was no intention to mislead the buyer in the ways outlined in section 9 of the *Consumer Protection Law*.

If there is a consumer dispute, mediation and conciliation can be carried out by the Consumer Dispute Settlement Body. When examining the entrepreneur who is accused of illegal conduct by the Consumer Dispute Settlement Body, the extent of loss

² Consumer Protection Law (2014) (Myanmar), s 24.

³ Consumer Protection Law, s 23.

suffered by the consumer is a key factor.⁴ Complaints in written or oral form by consumers relating to the goods or services are accepted by the Consumer Dispute Settlement Body.⁵

One or more of the following actions can be taken by the Consumer Dispute Settlement Body :⁶ warning ; severe warning ; remedial order ; prohibition on the sale and distribution of goods ; recall of goods ; destruction of goods ; and the revocation of a licence temporarily or permanently, in which case the Consumer Dispute Settlement Body will coordinate with the relevant ministry.

For general claims for unsafe goods against manufacturers and others not direct contractual relationships, consumers must sue in regular courts for negligence based on tort law derived originally from English law. Otherwise, the Contract Act can impact indirectly on it because contracts are the first instrument used to run business activities. If the clauses concerning the activities of manufacturers are broken by one of parties, he or she must compensate to the party who suffers loss or damage as a result of such breach.

The *Contract Act* was promulgated on 1 September 1872 as the India Act IX 1872. The Act provided for contractual relationships between two or more parties, individuals, companies or governments. It deals with all aspects of contracts such as formation, performance, indemnities and guarantees, bailment and agency.

Offer, acceptance, promise and consideration are the elements required in order to form a contract in Myanmar. When a proposal is accepted, it becomes a promise. In general, all agreements are contracts if they are made by the free consent of parties competent to contract for lawful consideration and with a lawful object. According to the *Contract Act*, every promise and every set of promises forming the consideration for each other is an agreement. Thus, all agreements are contracts if they are made by the free consent of parties competent to contract, for lawful consideration and with a lawful object, and are not thereby expressly declared to be void.

When a contract has been breached, the party who suffers loss or damage as a result of such breach is entitled to receive from the breaching party compensation.

⁴ Consumer Protection Law, s 18(d).

⁵ Consumer Protection Law, s 318(d).

⁶ Consumer Protection Law, s 19.

According to the Act, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from its breach.

E. Product Safety Regulation Generally

There are many government ministries and private sector organisations that monitor and implement specific product safety measures in Myanmar. Under the aegis of the Ministry of Commerce, the *Consumer Protection Law* (2014) also seeks generally to secure safe products and services. The Law imposes prison sentences on those who break the law, for instance if fake goods are sold as high-quality products. Section 6 of the *Consumer Protection Law* obliges suppliers to provide safe goods and services, in that consumers have rights to guarantees given by traders and to receive full and correct information on the goods or services purchased. Consumers, in return, are to obey decisions by tribunals on disputes between consumers and businessmen, and must not make false accusations against businessmen in an attempt to damage the businessmen, according to sub-section (c) of section 6.

The *Consumer Protection Law* states that anyone who sells unsafe and low quality goods, or expired goods to consumers will face a jail term of up to three years, or a fine of Kyat 5,000,000. In severe cases both penalties may apply. Section 24 of the law provides that a consumer has the right to sue in accordance with the civil law, even if the convicted has served his or her jail sentence.

F. Laws Relating to Foods and Drugs

The *National Food Law* (1997),⁷ the *National Drug Law* (1992),⁸ and the

⁷ The *National Food Law* was enacted by the State Law and Order Restoration Council on 3 March 1997, pursuant to *The State Law and Order Restoration Council Law No. 5/97*.

⁸ The *National Drug Law* was enacted by the State Law and Order Restoration Council on 30 October 1992, pursuant to *The State Law and Order Restoration Council Law No. 7/92*. This Law is amended by Pyidaungsu Hluttaw on 5th April 2014, pursuant to *Puidaungsu Hluttaw Law No.22/2014*.

Traditional Drug Law (1996)⁹ are the key laws relating to product safety and liability for foods and drugs. Section 2 (a) of the *National Food Law* describes “food” as “edible things that human beings can readily eat or drink, ingredients included therein and food additives except for drugs”. It further explains that the expression “food” “includes things determined as food by the Ministry of Health by notification from time to time”. As such, the Ministry of Health is the central ministry which has authority to declare what kind of foods are regulated by the Law.

Further, “drug” is defined in the *National Drug Law*. Section 2 (b) of the said Law states that “drug means a substance for use, whether internal or external, in the diagnosis, prevention and treatment of disease, birth control or for any beneficial effect in human beings and animals”. In addition, “this expression includes a substance determined as a drug by the relevant Ministry by notification from time to time.” Furthermore, the *Traditional Drug Law* provides, in section 2 (a), that ‘traditional drug means a local concoction for use either directly or indirectly, whether internally or externally, in the diagnosis, prevention and treatment of diseases, promotion of health or for any beneficial effect in human beings and animals.’ Accordingly, not only the *National Drug Law* but also the *Traditional Drug Law* legislates for both human beings and animals while the *National Food Law* only regulates human beings.

It is clear that these laws are intended to protect public health and to enhance product safety and liability. This is evident from the purpose of the laws. The aims of the *National Food Law* are :

“to enable consumption of food of genuine quality, free from danger, to prevent the public from consuming foods that may cause danger or are injurious to health, to supervise the production of controlled food systemically and to control and regulate the production, import, export, storage, distribution and sale of food systematically.”¹⁰

Section 3 of the *National Drug Law* establishes the Myanmar Food and Drug Board of Authority with the following aims: (a) to enable the public to use genuine

⁹ The *Traditional Drug Law* was enacted by the State Law and Order Restoration Council on 25 July 1996, pursuant to *The State Law and Order Restoration Council Law No. 7/92*. This Law is amended by Pyidaungsu Hluttaw on 28 February 2014, pursuant to *Puidaungsu Hluttaw Law No.8/2014*.

¹⁰ *National Food Law* (1997), s 3.

quality, safe and effective drugs ; (b) to register drugs systematically ; (c) to enable the public to consume genuine quality and safe foods ; and (d) to control and regulate systematically the manufacture, import, export, storage, distribution and sale of food and drugs.¹¹ Additionally, the aims of the *Traditional Drug Law* are :

“to promote and develop traditional medicine and traditional drugs ; to enable the public to consume genuine quality, safe and efficacious traditional drugs ; to register traditional drugs systematically ; and to control and regulate systematically the manufacture of traditional drugs.”¹²

In order to establish a sound legal framework to ensure product safety and liability, the *National Food Law* provides for quality assurance, labelling and advertisement. For example, section 18 provides that :

“a person who produces, imports, exports, stores, distributes or sells food shall strictly abide by the order, directive and conditions issued by the relevant Government department or organization or Board of Authority in respect of quality assurance of food, labelling and advertisement.”¹³

Likewise, the provisions for quality assurance and for labelling and advertisement are contained in sections 9 and 10 respectively. In particular, section 9 regulates pharmaceutical raw materials in respect of quality assurances for drugs. Under the *Traditional Drug Law*, traditional drugs that are below standard quality shall be seized by the direction of the Department of Traditional Medicine.

Under the *National Food Law*, the Myanmar Food and Drug Board of Authority¹⁴ has power to determine “good production practices with respect to quality assurance of food” ; to lay down “the policy relating to the inspection, control and laboratory analysis of food” ; and to determine detailed criteria and standards for food.¹⁵

¹¹ National Drug Law (1992), s 3.

¹² Traditional Drug Law (1996), s 3.

¹³ National Food Law, s 18.

¹⁴ The Board of Authority is supplemented by the following members : Director-General of the Development Affairs Department ; the then Ministry of Progress of Border Areas and National Races and Development Affairs with each representative from Yangon City Development Committee ; Mandalay City Development Committee ; and experts in Food Science, Food Microbiology, Food Industrial Technology, and Toxicology : *National Food Law*, s 4.

¹⁵ *National Food Law*, s 6.

This Board of Authority is chaired by the Minister for the Ministry of Health.¹⁶ The *National Drug Law* also empowers the Board of Authority to determine “good practices for quality assurance in respect of the manufacture, clinical tests and laboratory analyses of the pharmaceutical raw materials or registered drugs and all matters relating to drugs”; to determine and cancel “any type of substance as a drug”; and to stipulate “terms and conditions relating to food”.¹⁷ Pursuant to the *Traditional Drug Law*, this Board of Authority is also conferred powers to stipulate ‘terms and conditions relating to the quality assurance of the registered traditional drug’; and to declare ‘substances determined as traditional pharmaceutical raw materials’.¹⁸ Accordingly, the Board of Authority headed by the Minister for the Ministry of Health is mainly responsible for ensuring the effective implementation of product safety, in particular for foods and drugs.

According to the *National Food Law*, a person who wants to produce controlled food¹⁹ shall apply for a licence to the government department or organisation concerned with the approval of the Department of Health.²⁰ If a person wants to produce food other than controlled food, they may apply for a licence to the relevant department or organisation without needing approval from the Department of Health.²¹ By the *National Drug Law*, a person who wishes to manufacture, store, distribute and sell pharmaceutical raw materials or registered drugs shall apply for a licence.²² Similarly, “a person desirous of manufacturing a registered traditional drug shall apply for a licence to the Board of Authority” under the *Traditional Drug Law*.²³ Therefore, anyone who wishes to produce, distribute or sell any food or drug requires a licence from the relevant government authority so that product safety and product liability can be monitored.

If a person does not meet any requirement for product safety and breaches any stipulation of the licence granted to them, they shall be prohibited from conducting their business and their licence shall be withdrawn. In accordance with the *National Food*

¹⁶ *National Drug Law*, s 4.

¹⁷ *Ibid*, s 5.

¹⁸ *Traditional Drug Law*, ss 9 (e), (g).

¹⁹ Controlled Food means food determined as controlled food by the Board of Authority from time to time : *National Food Law*, s 2 (c).

²⁰ *National Food Law*, s 9.

²¹ *Ibid*, s 11.

²² *National Drug Law*, s 8.

²³ *Traditional Drug Law*, s 17.

Law, a person who is liable for the “production, storage, transport, distribute or sale of food under unhygienic conditions” and “causing a person who has contracted food-home infection or who is a carrier of the germs of the said infection to enter or work on the premises for production, storage or sale of food” may be temporarily or permanently prohibited.²⁴ Furthermore, any person who is involved in producing, importing, exporting, storing, distributing or selling food that may be poisonous, dangerous or injurious to the health of the consumer, or food that is under the necessary standards and quality requirements shall be punished with imprisonment for a term which may extend to three years or with a fine which may extend to Kyat 30,000, or both.²⁵

Under the *National Drug Law*, any people who “manufacture, import, export, store, distribute or sell a fake drug, a drug differing from standards, a deteriorated drug, an adulterated drug ; or a drug with harmful substances ; or a dangerous drug which is determined as not fit for utilization by the Ministry of Health by notification”²⁶ shall be punished with fine which may extend from a minimum of Kyat 5,000 to a maximum of Kyat 50,000 or with imprisonment for a term which may extend to seven years, or both.²⁷

In addition, the *Traditional Drug Law* provides that any person who sells “a deteriorated traditional drug” or “a traditional drug which is determined as unfit for use by the Ministry of Health by notification”²⁸ shall be punished with a fine which may extend to Kyat 30,000 or with imprisonment for a term which may extend to three years or with both.²⁹ As noted, financial punishment is relatively low compared to the custodial punishment.

In order to monitor product safety, the Department of Food and Drug Administration (“FDA”) was formed under the Ministry of Health.³⁰ It has five divisions: the Food Control Division, Drug Control Division, Medical Device and Cosmetics Control Division, Laboratory Division, and Administrative Division. The

²⁴ *National Food Law*, s 13.

²⁵ *Ibid*, ss 22, 28.

²⁶ *National Drug Law*, s 15.

²⁷ *Ibid*, s 18.

²⁸ *Traditional Drug Law*, s 28.

²⁹ *Ibid*, s 31.

³⁰ See : <<http://www.moh.gov.mm/>>.

FDA applies a safety and quality parameters assessment for both local and imported food based on Codex Alimentarius Commission (a joint FAO and WHO organisation) guidelines.

Since 2014, the Department has been conducting school food safety checks nationwide. The *FDA* collected and inspected 2,615 marketed food samples, announcing the products that violated safety standards in newspapers and public media.³¹ Remarkably, the *FDA* has no power to impose any punishment including fines or to take legal action against the violators for criminal liability. However, the Board of Authority formed under the respective Laws mentioned above may terminate or cancel the licence granted to the violator.

Furthermore, the Drug Control Division performs both pre- and post-market control activities. The *FDA* issued 2,506 drug registration certificates and 77 drug importation approval certificates during 2013. At the same time, it rejected 264 drugs for registration due to concerns about quality, safety and efficacy. The post-market drug samples of 254 products were tested in a drug quality control laboratory in the same year. The *FDA* notified public and healthcare professionals about counterfeit and unregistered medicine. In this way, the Department enhances the enforcement of the law and regulations governing food and drugs, as well as the application of quality assurance systems and control systems. As has been observed, Myanmar uses its best efforts to provide efficient and effective mechanisms for product safety and liability.

Examples of the *FDA*'s activities are numerous. The *FDA* investigated drug stores in 2013 after receiving complaints from the public and found many illegally imported antibiotics and malaria and urinary tract medicines that were being sold in Myanmar. In 2014 police charged 15 business owners who ran pharmacies in Yangon with selling illegal medicine.³² The *FDA* is also "to bolster its recent campaign against foods that are not safe for consumption". It also takes careful consideration on "new food products which are not safe for health entering the market" for which "laboratories

³¹ Full details are available at : <<http://www.moh.gov.mm/>>.

³² Myint SYS, 'Mingalar market, an illegal medicine cabinet', Myanmar Times, 25 August 2014, available at : <<http://www.mmtimes.com/index.php/national-news/11439-mingalar-market-an-illegal-medicine-cabinet.html>>.

need to be upgraded.”³³

To tackle unsafe products and to enhance product liability, the Ministry of Commerce forms mobile teams specifically for the investigation of illegal products. According to the statistics of the Committee for the Control of Illegal Trade, unsafe foods worth approximately Kyat 2,000,000,000 were seized by mobile teams in the last two and a half years since November 2012. It reported that ‘most of the commodities are frozen meat, sausage, noodles and water bottles that are not certified by the *FDA*. In addition, beer, liquor and chicken were illegally imported into the country.’³⁴

In addition to the above-mentioned laws, the Control of Smoking and Consumption of Tobacco Product Law (2006)³⁵ was enacted to protect people from the danger of tobacco products.³⁶ Under this law, a person who publicly advertises for the wide distribution and sale of cigars and tobacco products shall be punished with a fine from a minimum of Kyat 2,000 to a maximum of Kyat 50,000 for their first offence. Repeat offenders may be punished with imprisonment for a term of up to two years and shall also be liable for a fine of a minimum of Kyat 50,000 to a maximum of Kyat 200,000.³⁷ Moreover, a person who violates of the limitation related to the production, distribution or sale of such products shall be punished with a fine ranging from a minimum of Kyat 10,000 to a maximum of Kyat 30,000 for the first offence and be punished with imprisonment for a term which may extend to one year and a fine ranging from a minimum of Kyat 30,000 to a maximum of Kyat 100,000 for second and subsequent offences.³⁸ Though tobacco products are neither food nor drug, they are particularly described in the special law in order to promote public health.

Another organisation which is involved in the implementation of product safety and product liability is *the Union of Myanmar Federation of Chambers of Commerce*

³³ Thu P, ‘FDA to Step Up Food Safety Crackdown’, Myanmar Business Today, 12 February 2015, available at : <<http://www.mmbiztoday.com/articles/fda-step-food-safety-crackdown>>.

³⁴ Oo TM, ‘Mobile Team Seize Unsafe Food worth K2 Billion’, Myanmar Business Today, 14 July 2015, available at : <<http://www.mmbiztoday.com/articles/mobile-team-seize-unsafe-food-worth-k2-billion>>.

³⁵ The Control of Smoking and Consumption of Tobacco Product Law was enacted by the State Peace and Development Council on 4th May 2006.

³⁶ *Control of Smoking and Consumption of Tobacco Product Law*, s 3.

³⁷ *Ibid*, s 11.

³⁸ *Ibid*, s 13.

and Industry (“UMFCCI”) is a forum for dialogue and discussion between the private sector and government agencies on matters involving international trade. It has 35 subsidiary trade associations in various sectors. *The Myanmar Agro-based Food Processors and Exporters Association (“MAFPEA”)* is one of the associations which deals with product testing services for processed food export commodities in conformity with HACCP norms beside the ISO standards. MAFPEA has established the *Food Industries Development Supporting Laboratory (“FIDSL”)* in the UMFCCI premises with Japanese Technical Assistance and it is now rendering services to all producers and exporters of processed food.

On the other hand, regarding the industry-wide codes or guidelines which are to be followed by all business organisations are prepared and developed by business associations founded under the UMFCCI such as the Myanmar Pharmaceutical Association, Myanmar Fishery Association, and other entrepreneurs’ associations. The government-supported entrepreneurs associations help develop and implement industry-wide codes and guidelines in order to ensure product safety and product liability.

G. Laws Relating to Agriculture Products

The Ministry of Agriculture and Irrigation is designated as the National Plant Protection Organization (“NPPO”) and it is responsible for issuing phytosanitary and import certificates for plant products. The Ministry is also responsible for the inspection of such products and their authorisation to enter the country. The head of the Plant Protection Division is the official contact point for the IPPC. The Ministry has implemented the National Integrated Pest Management Policy. There exists information exchange systems regarding IPM between Myanmar and other ASEAN countries and international organisations. The Ministry has been conducting the management and control of pesticide residue in food as well as pest risk assessment in the country. The *Pesticide Law (1990)* calls for the formation of the Registration Board under the guidance of the Myanmar Department of Agriculture. The Board’s role is to test pesticides’ or active ingredients’ labelling claims as well as their bio-efficacy on the crops. For pesticide residue on food, a Pesticide Analytical Laboratory under MOA has been legally recognised and is carrying out activities related to residue survey and monitoring in agricultural food commodities. Currently, the New Zealand Agency for International Development has provided technical assistance in the field of Phytosanitary

Capacity Development.

The *Pesticide Law (1990)*, in relation to product liability, provides that any person who, without a permit or license, imports or exports the pesticide or toxic substances, engages in an enterprise compounding and selling pesticide or toxic substances, engages in an enterprise selling repacked prepared mixtures of pesticide imported into the country, sells pesticide or toxic substances and employs children of 16 years and under, pregnant women, or nursing mothers in handling or in the use of pesticide, shall be liable to punishment. This consists of a fine that may extend to Kyat 10,000 or imprisonment for a term which may extend to one year, or both. In addition, the exhibits involved in the offence shall also be confiscated.

Under this Law, a person who uses the pesticide contrary to the directions for use, transports or offers for sale pesticide along with foodstuffs, shall be liable for punishment with a fine which may extend to Kyat 5,000 or with imprisonment for a term which may extend to three months or with both. In addition, exhibits involved in the offence shall also be confiscated.

In order to ensure safety in the use of fertiliser in agricultural sectors, the *Fertilizer Law* was enacted in 2002. This Law prohibits: the compounding, mixing, repackaging or storing of fertiliser for commercial purposes without a licence ; the production, importation or exportation of fertiliser for commercial purposes without a registration certificate ; the sale of fake fertiliser or fertiliser not in conformity with original specifications ; and the sale of fertiliser mixed with toxic substances. Punishments include imprisonment for a term which may extend to three years or a fine which may extend to Kyat 150,000, or both. In addition, order shall be passed to confiscate the exhibits involved in the offence.

H. Laws Relating to Fisheries

The Ministry of Livestock, Fisheries and Rural Development is the National focal point for the OIE in Myanmar. The Department of Fisheries under the Ministry of Livestock, Fisheries and Rural Development has benefited from FAO's assistance to implement *GMP* and *HACCP* quality management systems. A testing laboratory for fishery products was established in Yangon for the analysis of microbiological

organisms and for conducting chemical tests, in order to verify that the *GMP* and *HACCP* systems are effectively implemented in all supply chains. An animal disease diagnosis laboratory was also established in Yangon and the Ayarwaddy Divisions to control fish and shrimp diseases.

The *Myanmar Marine Fisheries Law (1990)* was enacted by the *State Law and Order Restoration Council ('SLORC')*, and was amended in 1993. The Director General of the Department of Fisheries issues directives, prohibitions and orders relating to national fishery, including fishery products from time to time in accordance with the *Myanmar Marine Fisheries Law*.

The construction of packaging and the material used in packaging for processed fisheries products must be suitable for use with the food. The construction of packaging and the materials used in packaging for processed fisheries product must not :

1. cause or permit the food to suffer any undesirable physical, biochemical or microbiological deterioration ;
2. impart a taint to the food ;
3. contaminate the food ; or
4. contain a substance that could represent a hazard to health.

On violation of the any terms or conditions of the Directive, criminal action may be taken under the *Myanmar Marine Fisheries Law* and the licence-holder may be liable for the suspension, revocation, termination and cancellation of their licence.

Thus, under the Law, the Ministry of Livestock and Fisheries, subordinated organisations such as the Department of Fisheries, and licence-holders all have duties for product liability. The applicable official control legislation comprises all the relevant fish and fishery products legislation currently in force in the EU. The Myanmar Authorities formally adopted EU food control legislation for fish and fishery products on 3 April 2009 as promulgated in Department of Fisheries Directive 3/2009.

Section 38 of the *Myanmar Marine Fisheries Law* provides that “no person shall keep on board the fishing vessel explosive substances, poisons, chemicals and such other dangerous substances not permitted for use in fishing”. Violation of the section results in imprisonment for a term which may extend to 10 years or with fine which may extend to Kyat 500,000, or both.

The Ministry has been approved by the Food and Veterinary Office of the European Commission as a competent authority. This means that Myanmar is on the list of countries that can export fisheries products to the EU market. At present 13 processing establishments are approved for the EU markets for wild catch fishery products. In addition, the Ministry follows the ASEAN guidelines for National Good Aquaculture Practice and Sanitation Standard Operating Procedures (“SSOP”). It is also a member of Network of Aquaculture Centers in Asia-Pacific (“NACA”) and the Southeast Asian Fisheries Development Center (“SEAFDEC”).

As for quarantine measures for livestock, the Ministry has established six check points for quarantine stations near border areas such as India, Thailand, Bangladesh and China, two airports in Yangon and Mandalay Divisions and three seaports in Yangon and Tanintharyi Divisions and Yakhine State. It has also established six regional diagnostics laboratories all over the country, responsible for disease surveillance, vaccine production, diagnosis, report, control and epidemiological studies. The Myanmar Livestock Federation (“MLF”) has also been set up. The MLF has representatives from livestock owners, producers and traders in different regions. Currently, 26 livestock zones have been established in seven states and regions of the country. The Ministry has laid down Regulations for the Importation and Exportation of Animal and Animal Products and it issues health certificates for animal and animal products for the export of animal and animal products. It cooperates with regional organisations to control the outbreak of disease and works for animal health in line with the ASEAN Working Group on Livestock as well as international organisations.

I. Laws Relating to Industrial Products

The Republic of the Union of Myanmar is trying to develop its industrial economy. The Ministry of Industry is responsible for the product safety of industrial goods and supervises the standards of domestically produced goods as well as imported goods. There are many existing laws concerned with industry in Myanmar ; the Ministry of Industry implements some of them and some are implemented by other Ministries.

The *Myanmar Special Economic Zone Law* (2014) is one of the laws relating to industry. This Law also has provisions concerning product liability. According to this

Law, the investors have to destroy the perished, unusable or sub-standard medicines and food stuffs of the investment business in accordance with the stipulations of the Management Committee at the stipulated place. The responsible persons from the Quarantine Prevention Department of the Department of Health shall carry out quarantine inspections and confinement as necessary so as not to spread contagious diseases in transporting goods which are to be directly imported to the Special Economic Zone or directly transported from the Special Economic Zone. Further, these persons shall, carry out quarantine inspections and confinement so as not to spread contagious disease, as may be necessary, relating to the export or import of items or investment businesses within the Specific Economic Zone.

The *Prevention from Danger of Chemical and Associated Materials Law* was enacted in 2013. According to this Law, if anyone produces, changes and compounds, uses, keeps, stores, distributes, sells, transports, imports or exports the chemicals and associated materials, prohibited by the central body, they shall be punished with imprisonment for a period not exceeding seven years or with a fine of not more than seven lakhs, or with both, and the relevant materials related with the offense shall be confiscated as state property.

J. Laws Relating to Forest Products

The Ministry of Environmental Conservation and Forestry is trying to ensure the conservation of forests, the environment and wildlife. The Ministry mandates businesses to abide by the law. Regulations of the Ministry provide for the emergence of ethical business practices by taking care of product safety and liability. *The Forest Law and the Protection of Wildlife and Conservation of Natural Areas Law* are prominent laws relating to this area.

The *Forest Law* was promulgated in 1992. This Law is concerned with forest products and provides for the offence of unlawfully selling forest produce and other related produce. A person who commits these crimes shall be punished with imprisonment for a term ranging from one year to seven years.

The other prominent law concerned with forest products is the *Protection of Wildlife and Conservation of Natural Areas Law* (1994). Whoever commits any of the following acts shall, on conviction, be punished with imprisonment for a term which

may extend to seven years, a fine which may extend to Kyat 50,000, or with both :

1. killing, hunting or wounding a completely protected wild animal without permission, possessing, selling, transporting or transferring such wild animal or any part thereof without permission ; or
2. exporting without the recommendation of the Director General a completely protected wild animal or a protected wild plant or any part thereof.

K. Laws Relating to Electronic Products

The Ministry of Electric Power carries out measures for the product safety of electrical products and electronics. The Ministry lays down policies, principles and guidelines for the public to be fully aware of product safety and liability.

Regarding product quality and norm specifications, the importers, producers and sellers of electrical appliances shall abide by the quality and norm specifications contained in the international conventions and regional conventions signed by the government of the Republic of the Union of Myanmar and in the rules, regulations, by-laws and procedures issued under the *Electricity Law* (2014).

Moreover, the Ministry shall issue required norms and inspection methods for electricity-related work. The decision of the relevant ministry shall be final and conclusive as to the results of inspections for compliance with electrical norms. Power plants, power lines and power sub-stations of other departments or organizations which are connected to the national grid shall conform to the norms specified by the relevant ministry. Persons engaging in any electricity-related work shall do so in accordance with the rules, norms and procedures issued by the Ministry and shall accept necessary inspections.

No one shall engage in the import, domestic production, export, distribution or sale of electrical appliances that do not conform to the norms stipulated by the ministry. Anyone convicted of having violated the prohibitions under section 48 shall be punished with imprisonment for a minimum of one year to maximum three years and with a fine of minimum Kyat 3,000,000. The property relating to the offence shall be confiscated as state property and destroyed.

In this way, the Ministry of Electric Power carries out its tasks in accordance

with the *Electricity Law* to smoothly regulate the wider use of electric power in a safe way nationwide. This prevents in advance the occurrence of electrical hazards. Implementing effective penalties and specific rules, and issuing the required norms and inspection for product liability and product safety prevents losses to the public and the State.

L. Laws Relating to Science and Technology

The Ministry of Science and Technology is the focal point for implementing Technical Barriers to Trade measures under the WTO. The Department of Standards under the Ministry of Science and Technology is responsible for the harmonisation of standards, technical regulations, conformity assessment procedures, the development and implementation of sectoral Mutual Recognition Arrangements (“MRAs”) on conformity assessment for specific sectors, enhancing technical infrastructure and competency in laboratory testing, calibration, inspection, certification and accreditation. The Department also promotes the application of standards, technical regulations and conformity assessment procedures in line with the requirements of the Agreement on Technical Barriers to Trade and the ASEAN Policy Guideline on Standards and Conformance.

The *Science and Technology Development Law* was enacted in 1994. There is no specific provision for product safety or product liability. However, provisions relating to technology transfer for the promotion of production processes and the improvement of quality of goods are included in the Law. Myanmar Scientific and Technological Research will also conduct the standardisation and specification of weights and measures, equipment and machinery, raw materials and finished goods.

M. Laws Relating to Cross-Border Trading

In 2012, the Republic of the Union of Myanmar enacted the *Export and Import Law*. The Law implements economic principles, lays down the policies relating to export and import, and causes the policies relating to export and import to be in conformity with international trade standards. In respect of product liability, the Law provides that the Ministry of Commerce may determine restricted goods, prohibited

goods and banned goods for export and import.

Under this Law, no person shall export or import restricted, prohibited and banned goods. A person who violates these prohibitions shall be punished with imprisonment for a term not exceeding three years, a fine, or both. By regulating the above sections, the government can guarantee product safety and liability.

The Ministry of Commerce is the focal point for the WTO and also the focal organisation for consumer protection activities in Myanmar. The Ministry enacts laws including the *Export and Import Law*, *Consumer Protection Law*, and so on. It also issues notifications and principles for businesses to take notice of product safety and liability. The Ministry is responsible for issuing licenses and regional preference certificates for overseas trade and cross-border trade, undertaking trade promotion activities, and providing quality assurance services for exported grains.

The Ministry of Commerce is responsible for implementing trade policies in line with the market-oriented economy of Myanmar. Being the focal organisation of the WTO, it follows multilateral trade rules and principles and adopts a transparent, predictable trade policy regime. It implements trade facilitation measures and the National Export Strategy and Enhanced Integrated Framework Project. It also relays trade documents to departments concerned to provide these departments with useful guides. In this way, it further rationalises trade procedures in accordance with the guidebook of UN-ESCAP.

N. Laws Relating to Standardisation

The *Standardisation Law* was promulgated by in 2014 as *Pyidaungsu Hluttaw Law No.28*. Standardisation is a process that involves drawing and prescribing standards by compelling relevant experts to collectively develop the economy. This is done by reference to the interests of producers and consumers, while also considering the necessities of practical utility and safety.

The objectives of this law are :

- determine Myanmar Standards ;
- support export promotion by enhancing the quality of production organisations and their products, production processes and services ;

- protect the consumers and users by guaranteeing that imports and products are not lower than prescribed standards and safe from health hazards ;
- support the protection of the environment ;
- protect the manufacture, distribution and importation of the disqualified goods which do not meet the standards and those which are not safe and endanger the environment ;
- support the establishment of the ASEAN Free Trade Area ;
- enable the reduction of technical barriers to trade ; and
- facilitate technological transfer and innovation by using the standards for the development of national economic and social activities in accordance with the national development programme.

Any person who issues quality recommendations without an accreditation certificate shall be punished with imprisonment for a term not exceeding three years or with a fine of not more than Kyat 3,000,000, or both. Any person who counterfeits any standardisation mark, or uses a standardisation mark, which they are not allowed to use or which is not confirmed by the Council, in any advertisement, sale or possession, shall be punished with imprisonment for a term not exceeding three years, a fine of not more than Kay 3,000,000, or both.

In addition, if any person with a certificate of certification uses a standardisation mark on a product that is not in conformity with the relevant standard shall be punished with imprisonment for a term not exceeding one year, a fine of not more than Kyat 1,000,000, or both.

O. Challenges and Constructive Proposals

The Government has been aiming to bring about the macroeconomic development of the country while reducing poverty and ensuring product safety and security for the people. To implement an effective product safety and monitoring system in the country, the government has been working in collaboration with international organisations as well as regional organisations. Nevertheless, there are issues still to be addressed in the development of product safety.

First, food safety issues arise among consumers partly due to low awareness and weakness in following good consumer behaviour. Building consumers' confidence in product quality and safety mainly through raising awareness of food safety issues and encouraging good consumer behaviour (making informed food purchase choices) should lead the industry to upgrade its practices to meet consumer demand. This would create a "culture of quality" which would help industry competitiveness locally and in export markets. In this regard, a Food Quality Mark System and Food Labelling system could be coupled with consumer education efforts. Moreover, cooperation among trade partner countries and Myanmar, and sharing information and knowledge on product safety issues among those countries, would be helpful for addressing product safety issues.

Secondly, there is a linkage between the quality of the products and the manufacturing capacity of local entrepreneurs. For this purpose, small- and medium-sized enterprises should be encouraged to develop "Good Manufacturing Practice" ("GMP") through capital, human resource and technology support.

Thirdly, there are often costs from poor handling practices and post-harvest application practices. Agricultural producers and farmers should be well-equipped with "Good Agricultural Practice" ("GAP") in this regard. This should be followed by technological support in terms of implementing effective pest management systems, upgrading laboratories, and post-harvest technology.

Fourthly, the public and private sector should work closely to exchange information about regional and international standards and the latest market access opportunities. Capital and human resources are essential for helping government staff and local business people to adapt to current product safety practices and measures. Last but not least, international donor support for infrastructure with high physical quality and capacity building programs for product safety activities are high priority areas for setting up effective product safety recall or supervision systems in Myanmar.

On the other hand, business people need to be fully aware of defective products or services. Product safety failures persist because consumers do not respond to unfair business practices quickly and effectively. However, there is also inadequate knowledge and awareness of business people regarding product safety requirements.

Nowadays, quality assurance and product safety measures are priority areas for achieving market access and enhancing consumer confidence and safety. Building up effective product recall systems and product safety supervision systems is important for the development of a safe and secure human society. In order to ensure the development of product safety mechanisms, product liability becomes important.

Myanmar has been developing a legal framework for implementing product safety measures effectively, with strenuous efforts exerted by mindful public and private sectors. At the same time, close cooperation between international and regional standard organisations will drive efforts towards the development of effective product safety systems and practices. Moreover, public awareness programs for both consumers and the business people and strong enforcement activities for product liability will impact on an ethical business society and build up consumers' confidence. Learning the best practices and exchanging information between local and international experts will be fruitful for encouraging good manufacturing practices and enhancing consumers' welfare in the country.