



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 24 - 29 May 2017

Dear Readers,

Welcome to a new edition of our newsletter.

1. **Draft of a new Myanmar Gemstone Law**

We have uploaded an **English translation of the draft of a new Myanmar Gemstone Law** (<http://tinyurl.com/y8blbamc>) which was published in the state-owned press from 11 to 14 March 2017.

If enacted, the law **will replace the Myanmar Gemstone Law of 1995** (<http://tinyurl.com/y9vpyapq> - the English translation does not take account of two amendments that have been made since).

As the law of 1995, the draft **disallows foreign investment in gemstone extraction** (although we are of the opinion that foreigners can act as service providers to local holders of a production permit).

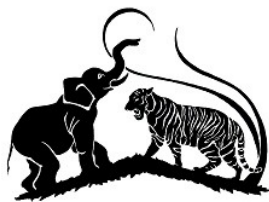
Foreign investment (in a joint venture) in the “**making of finished gemstones, manufacturing of jewelry and selling of raw gemstones, finished gemstones and jewelry**” is **presently allowed**, but requires the approval of the Ministry of Mines and Natural Conservation and the Union Government. The draft removes the “selling of raw gemstones” from the list of allowed activities.

The draft defines a company as a “Myanmar company formed under the Myanmar Companies Act or a company formed solely with Myanmar citizens under the Special Company Act, 1950.” As our readers are aware, a new Companies Law is presently being discussed which will, if enacted, provide for companies with foreign shareholders to be treated as Myanmar companies if foreign ownership does not exceed a (still unspecified) threshold. It remains to be seen if this will have an impact on the prohibition of foreign investments in gemstone extraction.

The draft provides for **licensing procedures only for mid-scale, small-scale and manual gemstone production**. The intention seems to be **to disallow large-scale production**, i.e. extraction in an area of more than five acres.

Furthermore - presumably in response to criticism that the State did not profit much from the lucrative gemstone business in the past -, the draft **specifies the rates of the gemstone tax and service fees**. More precisely, it provides for a gemstone tax of 20% of the value of raw rubies, sapphires, jades and diamonds and 10% of the value of other raw gemstones, and service fees of 3% of the sales price of raw gemstones and 1% of the sales price of processed gemstones.

- 1 -



The draft furthermore contains **obligations of gemstone miners to limit environmental and social impact, reconstruct the site after the end of the production, establish a budget of 2% of the investment for social purposes and cooperate in investigations of the Myanmar Extractive Industries Transparency Initiative (MEITI) and local organizations for environmental conservation.**

2. **Implementation of the new Myanmar Investment Law**

In a good sign, the **MIC has recently issued the first “endorsements”**, i.e. permission to use land long-term and/or enjoy tax incentives. This means that the new Myanmar Investment Law is being implemented and, given the apparent speed with which the endorsements were rendered, that the endorsement procedure is, as intended, less cumbersome than the MIC permit procedure (which the new law has retained only for very large projects).

In this context, the MIC advises that **all investors carrying out** activities specified in MIC notification 15/2017 (<http://tinyurl.com/yasp99dy>, so-called “**restricted activities**”) **must inform** the MIC or the respective State or Regional Committee Office about this until 29 March 2019, even if the investor has an existing MIC permit (<http://tinyurl.com/y7r6ydw9>).

3. **Form E**

On 2 May 2017, DICA issued a list of companies established in the 2014/15 financial year that still have to file their first form E (which is a list of shareholders and directors and other corporate information): <http://tinyurl.com/y9v2varh>. Representatives of companies founded in the 2014/15 financial year should check whether their company is on this list and take appropriate action, i.e., either file form E or inform DICA if their company is erroneously on this list.

4. **New laws**

Among the new laws and drafts of new laws that were recently published in the state-owned press, the **draft of a new Registration Law** is noteworthy. It will, if enacted, replace the Registration Act of 1908. Unfortunately, the draft contains, as the present law, the requirement for lease agreements for a term in excess of one year to be registered. Foreign-invested companies, even those with an MIC permit, quite often find it difficult to comply with this requirement as registration officers quite often refuse to register lease agreements with a foreign party for a variety of reasons.



5. Sale of business assets

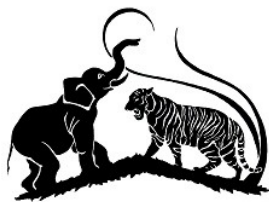
An acquaintance of ours is selling the assets of his business renting out office space. The special characteristic is that the offices are not in a brick and mortar building, but in wooden cubes in a lovely garden. The cubes can be disassembled and transported easily and it is these cubes that he is selling. They are ideal for a landowner or someone with access to land wishing to make money from the land without a big investment, possibly as a temporary arrangement. Please contact us if you are interested.

6. Electricity and energy news

- (a) **YCDC to invite tenders for waste-to-energy projects in June and July:** <http://tinyurl.com/y76snnqe>
- (b) **China National Petroleum Corp. receives first crude through Myanmar-China pipeline:** <http://tinyurl.com/y8hyjzwx>, while CITIC Group, China's biggest conglomerate, seeks to acquire an 85% controlling interest in the Kyaukpyu port and SEZ: <http://tinyurl.com/yb5o4ytl>
- (c) **Two local companies receive MIC permits for two offshore supply bases in Ayeyawady Region:** <http://tinyurl.com/ybt3long> (scroll down to nos. 19 and 20; the companies are SIM Co., Ltd. and Myint & Associates Offshore Supply Base Ltd.). Construction of a third offshore supply base in Mon State has apparently been suspended after protests from residents (<http://tinyurl.com/ycdc9pvp>). This is all a bit confusing as MOGE originally wanted to call a tender to select suitable providers. The consultant to a foreign provider sums it up nicely here: <http://tinyurl.com/ydxx2nat>.
- (d) **Puma Energy opens storage facility in Thilawa** (<http://tinyurl.com/ycgne9lw>) and seems to have obtained green light from the MIC to sell petrol in the country (<http://tinyurl.com/y82o67d3>). The wholesale and retail trade of petrol now seems to be open to foreign investment.

7. Market access

- (a) **Central Bank apparently reviewing how to allow foreign banks to offer services to the Myanmar public:** <http://tinyurl.com/y8d62hls>
- (b) Forgot this one in an earlier newsletter: **Notification 3/2017 of the Insurance Business Regulatory Board dated 22 March 2017 now allows all foreign insurers to operate in Special Economic Zones.** They must (i) have been in operation for at least ten years; (ii)



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 24 - 29 May 2017

have assets or a paid-up capital of USD 1 billion in total; and (iii) have an S&P rating of B+ or higher. The initial license fee is USD 30,000; the annual renewal fee USD 10,000. Interested companies must offer a 10% share in the Myanmar operation (“compulsory cession of minimum 10%”) to state-owned Myanma Insurance.

- (c) **Joint China/Myanmar committee set up to establish a “border economic cooperation zone”:** <http://tinyurl.com/yde37eln>
- (d) **Telenor buys twelve-year license for a 2×10MHz block of spectrum in the 1800MHz band:** <http://tinyurl.com/yca94b7a>
- (e) **Uber opens in Myanmar:** <http://tinyurl.com/y9r2wgy8>
- (f) **Unilever forms joint venture in Myanmar:** <http://tinyurl.com/yb5uotgc>
- (g) **Small factories to be made available for rent in the Thilawa SEZ:** <http://tinyurl.com/ybwagufd>
- (h) **The Ministry of Transport and Communications** has shortlisted the following five companies for the development of a **vehicle registration by radio frequency system**: Challenger (Xiamen) Intelligent Co., Ltd.; Detecon Consulting Asia-Pacific Co., Ltd.; Hunan Provincial Communications Planning Survey & Design Institute Co., Ltd.; Moon Co., Ltd.; PCCW Solutions Ltd.

8. Tenders

- (a) **Directorate of Water Resources and Improvement of River Systems:** Manufacturing and delivery of a multifunctional buoy handling vessel (World Bank-funded): <http://tinyurl.com/yag8ozre>
- (b) **Irrigation and Water Utilization Management Department:** National procurement officer (World Bank-funded): <http://tinyurl.com/yarltld6>
- (c) Not a tender in the strict sense, but **Amara Communications Co., Ltd.** is looking for 134 qualified staff to launch its new 4G LTE services: <http://tinyurl.com/ycq222b8>
- (d) **Joint Public Accounts Committee:** National budget consultant and national audit consultant: <http://tinyurl.com/ybg3yixd>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 24 - 29 May 2017

- (e) **Myanma Timber Enterprise:** Sale of teak and hardwood round logs and sawn timber: <http://tinyurl.com/yb5pay83>
- (f) **Ministry of Education:** Construction of workshops, dormitories and open sheds at 15 places throughout the country (ADB-funded): <http://tinyurl.com/yatuvrck>
- (g) **Department of Electric Power Planning:** Supply of ACSR conductors (World Bank-funded): <http://tinyurl.com/yafwmpad>

We hope that you have enjoyed reading our newsletter and found it useful.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director