



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 8 - 28 September 2016

Dear Readers,

It's been a while, but - welcome to a new edition of our newsletter.

1. Myanmar Investment Law approved by the Lower House

The **new Myanmar Investment Law** seems to have been **approved today by the Lower House** (<http://tinyurl.com/h46lj62>). (You can download our translation of the draft law here: <http://tinyurl.com/jtv4dbx>).

2. American sanctions to be lifted

This is the best news in a long time: The US State Department announced on 14 September 2016 that the **US will lift its sanctions against Myanmar** (<http://tinyurl.com/gvzjd46>). Once the President has passed an executive order ending the “national emergency” with regard to Myanmar, the **US sanctions targeting this country will be (almost entirely) history**. In particular, the individuals and entities included in the “List of Specially Designated Nationals and Blocked Persons” (**SDN List**) under the Myanmar-specific sanctions programme will be **removed** from this list.

However, some Myanmar nationals may **still be targeted under other programmes**. A journalist knowledgeable of the matter points out that measures under the Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act (“**JADE Act**”) - which prohibits the US import of Myanmar jadeite and rubies - may remain in place, there may still be **restrictions on assisting the military**, and some Myanmar nationals may be blocked by **measures targeting drug trafficking or assistance to North Korea**.

On a related note to the lifting of US sanctions, **the import of many goods from Myanmar** (but not textiles...) into the US **will be subject to the “Generalized System of Preferences”**, i.e. a reduction of tariff rates, from November on.

3. Minimum capital of microfinance companies increased

On 29 August 2016, the **Microfinance Supervisory Committee** issued a number of directives (<http://tinyurl.com/zxba4vy> - text in Myanmar) with **important changes to the regulatory framework of microfinance companies**. Most importantly, directive no. 11/2016 **increases the minimum capital** as follows:

- (a) Deposit-taking microfinance company: **Ks. 300,000,000** (previously: Ks. 30,000,000)
- (b) Non-deposit-taking microfinance company: **Ks. 100,000,000** (previously: Ks. 15,000,000)



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Existing companies **have two years to increase their capital**, or to find a partner with whom they can cooperate to meet the capital requirements. This may be an **opportunity for foreign investors to invest in a local company** that would otherwise find it difficult to raise its capital.

4. **Criteria for cross-border loans**

Likewise in August, the Central Bank published, on its website, a list of **conditions to be met by a borrower in order to obtain Central Bank approval for a cross-border loan**. Please find our English translation inside this newsletter.

Among others, the Central Bank requires a borrower to have at least “USD 500,000 of brought-in capital or equity”. However, one of our clients with much lower equity obtained approval for a cross-border loan just a few weeks before this notice appeared on Central Bank’s website, so it may be worth applying even if not all criteria are met.

5. **Always annoying: Stamp duty in case of collateralized loans**

This isn’t exactly “news” as the Internal Revenue Department issued this letter already in November 2015. In it, it specifies **the stamp duty amounts for the most common security documents**. This letter primarily **deals with domestic loans and does not cover all the sophisticated security arrangements** that can be seen in cross-border financing, but is nevertheless interesting. According to the circular, the following stamp duty applies:

- (a) Mortgage by deposit of title deed: 1.5% of the secured amount
- (b) Pledge of movable property: Approx. 0.0065% of the secured amount
- (c) Bank guarantee: 1.5% of the secured amount

Although quite old already, we have included a translation of IRD’s letter in this newsletter as it has recently cropped up in our practice and we feel that some competitors quote from it quite wrongly.

6. **How to obtain a manufacturing permit in Myanmar**

DICA published a **pretty good guide on how to obtain an MIC permit for a manufacturing company** (<http://tinyurl.com/jayf9lw>). Investors should in particular have a look at the “contract templates”. Actually, the guide just specifies the headings and the order of the headings, but if you deviate from them, your application may not progress until you have amended your contracts to mimic the list.



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7. Market access developments

- (a) The Myanmar Times reports that **foreign insurance firms will be allowed to operate in the country early 2017** (<http://tinyurl.com/z57pvps>). Frankly speaking, we had such announcements already previously, but so far, only three restricted onshore licenses have been granted in the Thilawa SEZ. Maybe this time it's for real? In any case, we anticipate that foreign insurance companies will only be allowed to apply for an onshore license if they already have a rep office in the country.
- (b) Reports that there is a **ban on the construction of new hotels** in Yangon, Mandalay, Taunggyi, Nyaung Shwe and Kalaw seem to be **untrue**: <http://tinyurl.com/zeu9gmu>. True, however, are reports that the Ministry of Hotels and Tourism has reduced license fees: <http://tinyurl.com/hayg57j>.
- (c) **Shift from coal-fired power plants to hydropower**: <http://tinyurl.com/h29dlm>. The new government intends to shift the previous government's emphasis on the development of coal-fired power plants to hydropower projects. Developers of coal-fired power plants have reported for a while already that their projects are meeting with opposition from the new government.
- (d) **Myanmar's broadband spectrum auction**: A very informative article on the new government's first spectrum auction can be found here: <http://tinyurl.com/hlzhhg>

8. Seminar: Investment in the power sector in Myanmar

The Ministry of Electricity and Energy will announce the **winners of a tender to build a 300-megawatt power plant in Yangon** next week: <http://tinyurl.com/jr32oyv>

In this context: There are still **places available at our seminar on investment in the power sector on 27 October**; you are cordially invited. Please find the seminar announcement inside the newsletter.

9. New team member

Please welcome our new accountant, **Daw Hnin Yi Phyo**, to our team!

We trust that you will find this newsletter useful and hope that you will enjoy reading it.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director



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Press review (7 August - 28 September 2016)

- Only foreigners with business visas allowed to stay overnight outside hotels; tourists are not: <http://tinyurl.com/gpjt5hs> (One would say that it is about time that the NLD-led government changes this ridiculous bit of legislation.)
- Ministry of Hotels and Tourism halves license fees: <http://tinyurl.com/hayg57j>
- They have managed to make it more difficult to do business in Europe, but: the UK intends to make it easier to do business in Myanmar: <http://tinyurl.com/j4jdt9e>
- Foreigners to be allowed into the Myanmar insurance market in 2017: <http://tinyurl.com/z57pvps>
- Tender to provide a waterway express and taxi service in Yangon imminent: <http://tinyurl.com/gv2w7b8>
- Yangon power plant tender winner to be announced next week: <http://tinyurl.com/jr32oyv>
- Myanmar bets on hydro in new energy plan: <http://tinyurl.com/h29dlnm>
- Government eyes Ks. 200 billion for first treasury bond auction: <http://tinyurl.com/gsldebuk>
- UMFCCL elects new president: <http://tinyurl.com/znxvofs>
- New US trade preferences highlight challenges for Myanmar exporters: <http://tinyurl.com/hqgh957>
- Car importers are having a tough time - these two articles explain some of the woes: <http://tinyurl.com/jbqmvak>, <http://tinyurl.com/h98epdl>
- Expired jade mining licenses not to be renewed: <http://tinyurl.com/jt7mtyx>
- Tanintharyi Region government to take back undeveloped land from companies that have failed to implement proposed agriculture projects: <http://tinyurl.com/jp9939y>

(Often, land holders have leased land from the government with a view of finding an investor who would pay for its development. All these lease agreements contain clauses that oblige the land holder to develop the land within a certain period of time; otherwise, the government would take it back. Invariably, the land holder does not meet this deadline. It occurs to us that, instead of paying extortionate prices to the land holder, investors should consider, more often



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that is the case now, whether it makes sense to request the government to take the land back and give it to the investor instead.)

- Telenor and MPT apply for spectrum auction: <http://tinyurl.com/hlzhgy>



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SEMINAR INVITATION:

INVESTING IN MYANMAR'S POWER SECTOR

Date and time	Thursday, 27 October 2016, 2:30pm - 4:00pm
Place	Sule Shangri-La, 223 Sule Pagoda Road, Yangon
Topics	<ul style="list-style-type: none">▪ Institutional and legal framework of the power sector▪ Opportunities for foreign investors in power generation: selling turnkey facilities; construction and operation of coal-fired, gas-fired and hydro power plants; power generation with renewable energy▪ Opportunities for foreign investors in supply, engineering and distribution▪ Project documentation: MoA, BOT contract, power purchase agreement, fuel supply agreement▪ Land issues▪ Project finance▪ Government guarantees
Speakers	<ul style="list-style-type: none">▪ Sebastian Pawlita▪ U Nyein Chan Zaw
Language	English
Fee	The event is free of charge.
Registration	Please register by sending an e-mail to sebastian@lincolnmyanmar.com or nyeinchanzaw@lincolnmyanmar.com , stating the name of your company and the names of the participants.



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Central Bank criteria for the approval of cross-border loans

- Convenience translation -

Informing about the criteria for obtaining approval of offshore loans by the Central Bank of Myanmar

1. The Foreign Exchange Management Regulation state that anyone residing in the country shall obtain prior permission from the Central Bank of Myanmar relating to the written documents for obtaining loans from abroad, or borrowing/obtaining loans from abroad in other ways.
2. Therefore, said persons shall fulfill the following requirements and apply for permission through the Myanmar Investment Commission or directly to the Central Bank of Myanmar.
 - (a) Application for obtaining loans addressed to Office no (55), The Central Bank of Myanmar, Naypyitaw,
 - (b) Company corporate documents (company registration certificate, form VI, Form XXVI, memorandum and articles of association),
 - (c) The annual report of the nearest financial year, audited by an audit firm recognized by the government
 - (d) Draft of the loan agreement stating all facts relating to the loan (including the loan repayment system),
 - (e) Bank documents concerning the injection of equity, evidencing the paid-up capital of the company,
 - (f) Other documents which the applicant thinks necessary.
3. The Central Bank of Myanmar shall scrutinize the submitted documents and will approve based on the following criteria-
 - (a) Whether the company has transferred at least 500,000 US dollars of brought-in capital or equity to the country,
 - (b) Whether the applicant is a business institution with regular foreign currency income according to the Foreign Exchange Management Law and Regulations,
 - (c) Capability of repayment from domestic income if there is no sufficient foreign currency income and plans for prevention of possible changes of the exchange rates,



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- (d) Bringing in at least 80% of the equity amount stated in the permission issued by the Myanmar Investment Commission,
- (e) Debt to equity ratio is between maximum 3:1 to 4:1,
- (f) Whether the terms and conditions in the loan agreement and documents are completed and genuine,
- (g) The tenure for repayment in the loan agreement is mid-term or long-term, and the repayment schedule is in conformity with the loan agreement.



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Letter from the IRD concerning stamp duty on security agreements

- Convenience translation -

Ministry of Finance

Inland Revenue Department

Information and Inspection Sub-Department

Letter No. Pa Ta Kha/Tha Sa/2-1(Htwe)/2015(882)

Dated 30th November, 2015

Re: To implement the full collection of stamp duty for mortgage-deeds, movable property mortgage-deeds and bonds

1. Nowadays, giving out loans is more competitive among banks in Myanmar due to the development of the private banking sector. However, inspections have shown that stamp duty is not being fully paid as prescribed in the Myanmar Stamp Act for contracts such as granting bank loans with collaterals and acting as guarantor by a banking institution; therefore, the stamp duty shall be collected as follows:

(a) For a loan agreement of a bank with the mortgage [*“APaung PyitSee”* - literally, *“pawned objects”*] of immovable property such as land and buildings, stamp duty shall be paid as follows according to no. 40, Appendix Schedule (1) -

- If only ownership documents are provided to the bank 1.5%

(b) For a loan agreement of a bank with a pledge [*“APaung PyitSee”* - same word as above *“mortgage”*] of movable property, stamp duty shall be paid as follows according to no. 6, Appendix Schedule (1) -

Types of contract	Payable stamp duty
(a) Repayment after three months: If the monetary amount is -	Kyats
- Not exceeding five million kyats	450
- Between five and seven million kyats	650
- Between seven and nine million kyats	800
- Between nine and thirteen million kyats	1200
- Between thirteen and seventeen million kyats	1500
- Between seventeen and twenty-one million kyats	1900



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Types of contract	Payable stamp duty
- Between twenty-one and twenty-five million kyats	2250
- Between twenty-five and thirty million kyats	2700
- Between thirty and fifty million kyats	4500
- Between fifty and seventy-five million kyats	6750
- Between seventy-five and one hundred million kyats	9000
- Any ten million kyats (or part of ten million kyats) in addition to one hundred million kyats	650
(b) Repayment before three months:	Half of the above amounts

- (c) If a bank or a business with a good reputation acts as a guarantor for loans or the purchase of movable or immovable property among banks or among organizations, or between a bank and a business organization: This is an obligation and included in the scope of application for bonds which are not otherwise provided for by the Myanmar Stamp Act or the Court Fees Act. Therefore, 1.5% of the value or amount of money in the contract shall be paid as stamp duty for such agreements according to No.15, Appendix Schedule (1).
2. Banks are only paying Ks. 2500 Ks stamp duty according to their own opinion for contractual documents such as third party guarantees and mortgages of movable/immovable property. The contracts for which only Ks. 2500 are payable are security-bonds or mortgage-deeds for the due execution of an office or to account for money or other property received or executed by a surety to secure the due performance of a contract. For instance, an undertaking between employer and employee and an agreement by which the employee is promised that he/she will keep working at the same company after finishing a scholarship abroad.
3. Therefore, the Township Tax Offices shall avoid underpayments and collect the full amount of stamp duty for the above contracts.

Nyunt Tin
(Director)

[Distribution list: omitted.]



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