

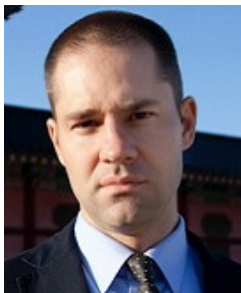


Dear Readers,

Welcome to a new edition of our newsletter.

1. New foreign attorney

We are proud to welcome **Dr. Benjamin Wagner** to our firm.



Benjamin is an attorney and member of the US state bars of Hawaii and Minnesota. He worked in South Korea for many years as a legal advisor for banks and as law lecturer. Benjamin has extensive experience in international litigation and arbitration. He acted as a consultant for UNAIDS, Human Rights Watch and Advocacy International. Benjamin worked as a corporate attorney in Cambodia and came to Myanmar in 2016 as the general counsel of a local bank. He speaks English and Korean.

2. Latest draft of the Companies Bill published

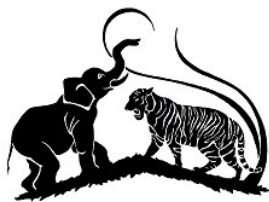
On 14th July 2017, DICA published the latest (English) version of the Companies Bill (<http://tinyurl.com/y792jalr>) which is presently pending at the Amyotha Hluttaw (upper house). News reports suggest that it may be enacted before the end of this year.

We have analysed the bill in depth for our premium subscribers.

Readers should be aware that the bill contains onerous registration requirements for overseas companies with non-recurring business interests in Myanmar (such as, e.g., a construction company having landed a contract in Myanmar, but with no interest in establishing itself permanently in the country). Such companies would presently often simply come to Myanmar, fulfill their contract and leave again without setting up anything. If the bill is enacted as it is presently drafted, these companies will have to translate their corporate and constitutional documents to Myanmar, register, authorise an ordinarily resident person to accept service of documents, notify the Myanmar authorities of changes at their headquarters during their presence in the country, and file audited financial statements.

3. MoC Notification 38/2017 establishes a system to examine fraudulent import prices

Since November 2016, the Ministry of Commerce has accepted the prices in invoices and sales contracts when examining applications for import licenses (instead of substituting them with the Ministry's own prices). By extension, the Ministry of Planning and Finance also started to accept,



for customs duty and commercial tax purposes, the prices submitted by the importer. However, as was probably to be expected, the Ministry of Commerce has since discovered that many prices submitted are manipulated. In response, it published, on 21st June 2017, Notification 38/2017 which sets up an examination system through which the conduct of suspected companies can be reviewed up to seven years back. We have translated the notification for our premium subscribers.

4. **Law Amending the Special Goods Tax Law enacted**

The Law Amending the Special Goods Tax Law (Law No. 17/2017) was enacted on 27th July 2017. We will upload an English translation to our homepage once it is ready.

5. **Modern intellectual property legislation on the horizon?**

A Patent Bill, Trademark Bill and Industrial Design Bill have been published on the parliament's homepage and in the state-owned press. This is usually an indication that we will see the laws enacted - maybe not soon, but also not "never". Premium subscribers will receive a translation of the bills (although it may take us a while to translate them).

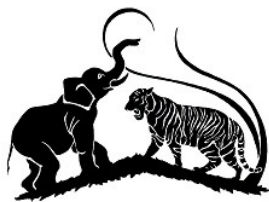
6. **Law Amending the Stamp Act increases duty rates for the transfer of immovable property in Yangon and Mandalay, fails to reduce the penalty for late-stamping**

A law amending the Stamp Act (English translation: <http://tinyurl.com/y9lwsodx>), enacted on 1st August 2017, brings about the following changes:

(a) **Increase of duty rates in Yangon and Mandalay**

Our last newsletter (<http://tinyurl.com/yakz99n6>) - in which we wrote about the draft of the law - contained a lengthy explanation of the calculation of stamp duty for the transfer of immovable property. In a nutshell, there are two provisions outside the Stamp Act that call for an increase of the "Basic Duty" of 2% of the value of the transaction by another 2% ("Surcharge I") if the property is located in Yangon or Nay Pyi Taw, namely, section 63 (1) of the Yangon Development Trust Act of 1921 and section 36 (a) of the Nay Pyi Taw Development Law of 2009. The Mandalay City Development Law of 2002 contained a similar provision for property in Mandalay, but was abolished in 2016.

In addition to Surcharge I, section 3-A (1) of the Myanmar Stamp Act in its previous version contained a "Surcharge II" of 2% that was added to any property transaction outside of Yangon, Nay Pyi Taw and Mandalay.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 28 - 3rd August 2017

If we understand the wording of the amendment of 1st August 2017 correctly, the exemption from Surcharge II now only applies to Nay Pyi Taw and not to Yangon and Mandalay anymore.

The former and the new duty rates for the transfer of immovable property should therefore be as follows:

	Old rate	New rate since 1 st August 2017
Yangon	Basic Duty + Surcharge I = 4%	Basic Duty + Surcharge I + Surcharge II = 6%
Nay Pyi Taw	Basic Duty + Surcharge I = 4%	Basic Duty + Surcharge I = 4%
Mandalay	Basic Duty = 2%	Basic Duty + Surcharge II = 4%
Rest of Myanmar	Basic Duty + Surcharge II = 4%	Basic Duty + Surcharge II = 4%

(b) No reduction of the penalty for late-stamping

The draft proposed to reduce the penalty for late-stamping (which in practice means stamping more than one month after the date shown in the instrument) from ten times the applicable duty to three times the applicable duty, but this change unfortunately did not make it into the final law.

(c) Confirmation of duty reductions

The amendment confirms the following duty reductions made by Ministry of Planning and Finance Notification No. 146/2016 already with effect 1st October 2016:

No. in Schedule 1	Description	Old rate	New rate
15	Bond	1.5%	0.5%
23	Conveyance	3%	2%
35(c)	Fine or premium or money advanced in addition to rent (if the stamped lease agreement is executed)	Ks. 600	Ks. 300
62	Transfer of shares or debentures	0.3%	0.1%

Nos. 15 and 23 are often referenced to in other numbers of Schedule 1. The reduction of the stamp duty rates for bonds and conveyances means that rates for other instruments



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 28 - 3rd August 2017

have gone down as well, e.g. for lease agreements with a term of not more than 3 years from previously 1.5% of the annual rent to now 0.5%, and for lease agreements with a term in excess of 3 years from previously 3% of the annual rent to now 2%.

7. Development of 2.205 acres in Yankin Township, Yangon

State-owned Heavy Industries Enterprise No. (3) has a garment factory sitting on 2.205 acres in Yankin Township and wishes to develop an international standard “Myanmar international business centre” on this plot with the help of foreign and/or local investors: <http://tinyurl.com/yb6m365a>.

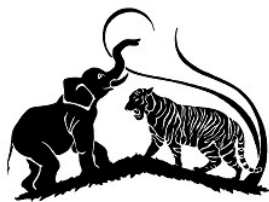
8. Devolution of the MIC endorsement application process

All State and Regional Investment Commissions have now been established (<http://tinyurl.com/yatqrga9>; texts in Myanmar). Endorsement applications have to be filed with these Commissions if the investment amount does not exceed USD 5 million or Ks. 6 billion. Such applications cannot be filed with the MIC in Yangon anymore.

9. Central Bank Notifications promoting stability in the banking sector

The Central Bank issued several notifications on 7th July 2017 aimed at promoting stability in the banking sector:

- (a) The **Liquidity Ratio Requirement Regulation** (Notification 19/2017, <http://tinyurl.com/ycf6pvsa>) obliges all banks to maintain a minimum liquidity ratio of 20%, calculate the liquidity ratio position daily and report weekly to the Central Bank.
- (b) The **Large Exposures Regulation** (Notification 18/2017, <http://tinyurl.com/yaichaut>) prohibits banks from taking on a financial exposure of more than 20% of its core capital in respect to a single counterparty or group of connected counterparties and contains certain other restrictions.
- (c) The **Asset Classification and Provisioning Regulations** (Notification 17/2017, <http://tinyurl.com/y8wvx5qp>) classifies loans as “standard”, “watch”, “substandard”, “doubtful” and “loss” depending on the number of days past due date. A loan whose repayment is still pending more than 180 days past due date is considered lost; the bank has to set aside funds equivalent to 100% of the loan to make up for the impairment.
- (d) The **Capital Adequacy Regulation** (Notification 16/2017, <http://tinyurl.com/y6uyp32s>) provides for certain capital buffers to capture risks.



Banks have six months to implement the new regulations.

10. Immigration

- (a) The Ministry of Labour, Immigration and Population has specified **permanent residency requirements**. Foreign experts and investors having resided in the country for three years (two years if they are married to a Myanmar national) within a ten year period can apply: <http://tinyurl.com/y9v3z4m8>
- (b) **Overstaying:** Recent personal experience has triggered the author of these lines to encourage readers to exercise a bit of caution when overstaying. As such, overstaying is not a problem if one is prepared to pay a USD 3 fine per day at the airport when leaving the country. However, those having stayed in the country for more than 90 consecutive days (counted from the last entry date, not the expiry of the permitted stay period) have to come to the airport with a foreigner registration certificate (<http://tinyurl.com/ydcf9as8>). If you don't have one - bad luck, you cannot board the plane, unless you have a local partner and employees who are good at performing miracles fast.

We suppose that those with a long-term multiple entry visa (e.g., a one year business visa) would have the same problem if they stayed in excess of 90 consecutive days without having obtained a foreigner registration certificate.

- (c) **Visa fees:** The Ministry of Labour, Immigration and Population changed the fees for stay permits and re-entry visas: <http://tinyurl.com/yas9934w>. Stay permits and re-entry visas are needed (in addition to a foreigner registration certificate) if a foreigner wishes to stay in excess of (70 or) 90 consecutive days, but did not enter the country with a visa that would allow him to do so.

11. Electricity and energy news

- (a) The long-awaited **Petroleum and Petroleum Products Law** (Law No. 20/2017 dated 1st August 2017) is out. We will send an English translation to our premium subscribers in due course.
- (b) Middle Paunglaung hydropower project to be completed in 2020-2021: <http://tinyurl.com/y8a5bhok>
- (c) Union Minister of Electricity and Energy resigns: <http://tinyurl.com/yb32bley>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 28 - 3rd August 2017

(d) Finally: Singapore's MOSB to become first foreign oil and gas supply base: <http://tinyurl.com/y9hlumbh>

(e) Mini-grids coming to light up rural Myanmar: <http://tinyurl.com/ybc2pf2s>

12. Investment guide in Japanese

We have updated and adapted our short investment guide and made it available in Japanese: <http://tinyurl.com/yxcbkwwk>

13. Market access and other news

(a) Land registration system to be improved: <http://tinyurl.com/y7vn6s5r>

(b) The MIC published a list of 10 prioritized sectors and welcomes foreign and local investors to invest in them: <http://tinyurl.com/ycbfbssm>. One has the impression, however, that some items on the list belong to wishful thinking. Listed is, e.g., "agriculture", but foreigners are being told that they cannot invest due to instances of soil degradation and other bad precedence. Listed is furthermore "logistics", but we do not really believe that the (unofficial) requirement of having a local joint venture partner owning at least 30% of the shares has been lifted. Listed is also "education", but we understand that unofficial market access restrictions exist in this sector as well.

(c) As the second company after Wave Money, Ooredoo's Myanmar Fintech has acquired a mobile financial services license: <http://tinyurl.com/yam7xufb>

(d) Myanma Insurance and private insurance companies have obtained permission to offer four more types of insurance: (i) personal accident insurance; (ii) marine hull insurance; (iii) travel insurance and (iv) farmer's life insurance: <http://tinyurl.com/y885uj5k>

(e) Myanmar and Vietnam sign MoU for bilateral real estate development: <http://tinyurl.com/ycpv5nzd>

(f) Only brand-new vehicles may be manufactured in the semi-knock down (SKD) system: <http://tinyurl.com/y7maht46>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 28 - 3rd August 2017

14. Tenders

- (a) **YCDC Engineering Department (Roads and Bridges):** Drainage infrastructure improvement for Yangon's six downtown townships (World Bank funded): <http://tinyurl.com/y86wxbdp>
- (b) **Myanma Railways:** Signalling works and rolling stock procurement works for the Yangon Circular Railway Line (JICA funded, so only Japanese companies and Myanmar-invested joint ventures with Japanese majority ownership can bid): <http://tinyurl.com/y8lpdwcg>
- (c) **Directorate of Water Resources and Improvement of River Systems:** Supply of an amphibious multipurpose dredger to be deployed in the Ayeyarwady River (World Bank funded): <http://tinyurl.com/y7iodzsz>
- (d) **Department of Rural Development:** Supply of 2,200 raincoats and 2,900 backpacks with project logo (IDA funded): <http://tinyurl.com/ycl8cne5>
- (e) **Minig Enterprise No. (2):** Sale of metal concentrates: <http://tinyurl.com/ycwk3pt6>
- (f) **Myanma Railways:** Purchase of spare parts for locomotives: <http://tinyurl.com/y7d4rx66>
- (g) **Japan International Cooperation System:** Reconstruction of schools: <http://tinyurl.com/ydgsdtyr>
- (h) **Nay Pyi Taw Development Committee:** Lease of a cement plant: <http://tinyurl.com/ybwqhpyf>

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

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director