



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 30 - 28th August 2017

Dear Readers,

Welcome to a new edition of our newsletter.

1. Petroleum and Petroleum Products Law

Please find our analysis of the new Petroleum and Petroleum Products Law here: <http://tinyurl.com/ya84rmpf>

The new law explicitly states that officially collected samples may be tested by “organisations with a testing license” instead of an officer from the Ministry of Electricity and Energy. This may be an opportunity for specialised private businesses and institutions.

2. Green Energy

Please find the slides of our presentation at the “Myanmar Green Energy Summit 2017” here: <http://tinyurl.com/ybwb84sh>.

3. Tender for three airports

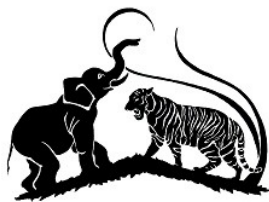
The Department of Civil Aviation invites local/foreign consortiums to submit expressions of interest for the development, financing and operation of airports in Heho, Kawthaung and Mawlamyine: <http://tinyurl.com/ybmcj744>

4. Franchise opportunity: fish restaurant

The owners of two prosperous fish restaurants in Singapore (combined turnover per month: USD 300,000) have recently opened their flagship store in Yangon. They are looking to expand their operations in Myanmar and are looking for potential franchisees. Please contact us if you are interested (sebastian@lincolnmyanmar.com or nyeinchanzaw@lincolnmyanmar.com).

5. Tax and other bills

Recently, a few important tax bills (Tax Appeals Tribunal Bill, Bill Amending the Commercial Law) and other bills (Myanmar Tourism Bill, Bill Amending the Vacant, Fallow and Virgin Land Management Law) have been published. We will analyse the tax bills in the next newsletter (together with the amendments to the Special Goods Tax Law) and the other bills in the following newsletter.



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The “IP bills” series is now complete; four bills concerning (i) trademarks, (ii) industrial designs, (iii) patents and (iv) copyright have now been published. We will analyse them in one of our next newsletters.

A bill is the draft of a law that has been introduced to parliament, it is not a law yet.

6. Public companies and the Yangon Stock Exchange

In an effort to dissuade the public from buying shares from operators of Ponzi schemes (see here for recent examples: <http://tinyurl.com/yc2sgnak>, <http://tinyurl.com/ydanerea>), the Directorate of Investment and Company Administration (DICA) released, in the third week of August, a list of 55 public companies that are “allowed to sell their shares to the public” (here is DICA’s announcement in Kyemon: <http://tinyurl.com/yb4ez3ys>).

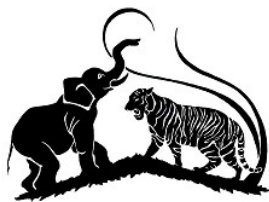
Just a few weeks earlier, the Ministry of Planning and Finance (of which DICA is a part) had reduced the corporate income tax rate for companies listed on the Yangon Stock Exchange (YSX) from 25% to 20% in order to make the YSX more attractive.

Presently, only four companies (which are also part of DICA’s list of 55) are listed on the YSX. DICA’s move could have undermined the effort to get more companies to list as, if it had been followed through, 51 out of the 55 companies would have been able to sell their shares over-the-counter without having to go through pre-listing vetting and complying with YSX regulations.

The Securities Exchange Commission was therefore quick to point out (possibly based on section 55 (b) Securities Exchange Law that prohibits persons without a permit from “carrying out the functions of ... an over-the-counter market”) that, in spite of DICA’s announcement, the 51 companies are not allowed to sell their shares to the public unless they obtain a permit from the Securities Exchange Commission to do so (<http://tinyurl.com/ycefxu53>).

7. Electricity and energy news

- (a) Call for mini-grid proposals to receive subsidies and technical assistance: <http://tinyurl.com/yc65hoev>
- (b) PTT to conduct study to construct and operate a large LNG FSRU in Tanintharyi: <http://tinyurl.com/ybcpp9bz> (most of the gas would go to Thailand, though)
- (c) Myanmar not going to purchase electricity from abroad: <http://tinyurl.com/ycrycrt3>



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- (d) Electricity subsidies and lack of decision-making hold back growth of electricity production: <http://tinyurl.com/y9pq323b> (see in this context also our presentation: <http://tinyurl.com/ybwb84sh>)
- (e) New sub-station expected to light up Kayin State villages: <http://tinyurl.com/ybu2ro98>
- (f) Interra Resources Ltd. negotiating expansion of exploration and development in Chauk and Yenangyaung oil fields: <http://tinyurl.com/y9uefzl4>
- (g) Made Island offshore supply base receives green light: <http://tinyurl.com/ya532db3>
- (h) Selling solar power systems in installments to farmers apparently a success: <http://tinyurl.com/y8da8c2q>

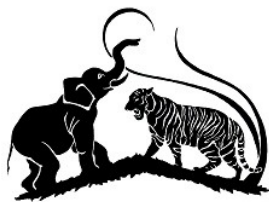
8. Market access and other news

- (a) **Grab to invest USD 100 million in Myanmar to remove Uber from the market:** <http://tinyurl.com/yavkq2h5>
- (b) **State counselor instructs chief ministers to review MoUs signed by the previous administration:** <http://tinyurl.com/y9burcrr>
- (c) **Large hotel project near Shwedagon Pagoda:**

A joint venture among Ayeyar Hinthar and three Japanese companies was given MIC approval for the construction of a large mixed use complex located between U Wisara Road and Shwedagon Pagoda Road (<http://tinyurl.com/yb2m7rrf>). This is quite a curious piece of news at it is, at least from the press reports about the project, not apparent what makes it different from the five MIC approved development projects whose permits were revoked in 2015 on the grounds that their implementation would negatively impact the view on, and the structure of, Shwedagon Pagoda.

- (d) **IFC co-finances Shwe Taung's cement plant in Mandalay:** <http://tinyurl.com/yb2m7rrf>

Interesting bit of news as IFC's financial participation may be interpreted as a kind of high-level exoneration of Shwe Taung's founder and chairman who stands accused of being a former crony with a dubious past.



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- (e) **American businesses lobby to have Myanmar removed from US list of jurisdictions “of primary money-laundering concern”:** <http://tinyurl.com/yalj2crk>

The article is a bit inaccurate in that it states that American banks are prohibited from “trading in Myanmar”. This is not so; rather, American banks are allowed to engage in Myanmar-related business, but have to exercise “special due diligence” according to section 312 PATRIOT Act when maintaining correspondent accounts for Myanmar banks and private accounts for Myanmar citizens. This administrative burden (and, perhaps, the misguided notion that US sanctions targeting Myanmar are still in place), combined with the relative insignificance of the Myanmar market for American banks, make it difficult for American companies to use their own banks in Myanmar-related transactions and, in a broader context, can still make USD transfers in and out of the country a nightmare.

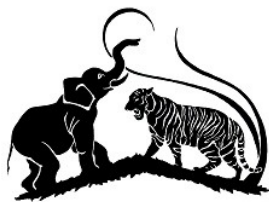
We therefore all hope for Myanmar’s speedy removal from the list. However, given the Central Bank of Myanmar’s weak enforcement of its own regulations (see next item for an example) - which implies inefficiency in countering money-laundering and terrorist activities -, this may be an idle hope for the time being.

- (f) **OK Dollar apparently operating without a license:** <http://tinyurl.com/ycn9fu2k>, <http://tinyurl.com/yb7x64d6>

Fascinating read. OK Dollar is one of the biggest and certainly the most visible operator of mobile financial services for which it would have to either team up with a bank or obtain a mobile financial services license (see our analysis of the Regulation on Mobile Financial Services here: <http://tinyurl.com/yb7axoed>). OK Dollar seems to have done nothing of that sort and also does not seem to consider itself bound by mandatory consumer protection and anti-money laundering rules.

The article claims that the Central Bank is taking a hands-off approach and is not intervening. This is unfortunately consistent with our observation that some authorities seem to consider themselves to be only responsible for supervising those (unfortunate?) businesses that applied for a license to the exclusion and benefit of those that never bothered.

It would be interesting to know if the banks keeping OK Dollar’s accounts would close them if presented with proof of the company operating without a license.



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(g) Myanmar exporters applying for a Myanmar-specific bar code with global bar code administration body: <http://tinyurl.com/ybb7xeqa>

(h) Yangon Price Valuation Board lowers real estate values used for calculating taxes: <http://tinyurl.com/ydgx6gy>

The Price Valuation Board of the Internal Revenue Department lowered the assumed value per square foot from Ks. 550,000 to 500,000. This value is used as the minimum price for calculating the buyer's "income tax on income that has escaped assessment" and stamp duty.

The tax authorities consider the purchase price of real estate to be income of the buyer that hitherto escaped assessment if the buyer cannot prove that the funds for purchasing the property had been previously declared and subjected to income tax. The income tax rates are as follows:

Hitherto undisclosed income	Income tax rate
Up to Ks. 30,000,000	15%
Ks. 30,000,000 - 100,000,000	20%
From Ks. 100,000,001	30%

The stamp duty for the transfer of real estate in Yangon was increased from 4% to 6% of the purchase price on 1st August 2017.

By lowering the assumed value per square foot, the Price Valuation Board makes it in effect cheaper to buy property.

(i) Police crackdown on counterfeited smartphones: <http://tinyurl.com/yc7qywk>

(j) Construction of rural roads and bridges to be transferred from Ministry of Construction and Ministry of Agriculture, Livestock and Irrigation to new, 3,000 head-strong agency under the Ministry of Construction: <http://tinyurl.com/y8qddmhc>

(k) UMFCI takes over Myanmar Business Forum Secretariat from IFC: <http://tinyurl.com/y8kdxrcv>

(l) Yangon City circular train to be upgraded from October 2017 to 2022: <http://tinyurl.com/y8u8b2vl> Costs are said to be USD 301.29 million with USD 94.76 million from Myanmar and USD 206.53 million as a loan from Japan.



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9. Tenders

- (a) Yangon Region Government invites bids for cashless payment on busses: <http://tinyurl.com/yaes9d4y>
- (b) Directorate of Water Resources and Improvement of River Systems: Purchase of a server, desktop and accessories (World Bank funded): <http://tinyurl.com/y8t6fcct>
- (c) Myanma Oil and Gas Enterprise: Purchase of spare parts: <http://tinyurl.com/yaxd8x4c>

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

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