



Dear Readers,

Welcome to a new edition of our newsletter.

1. New Companies Law passed by parliament - seminar invitation

As communicated in our newsletter yesterday, parliament passed the new Myanmar Companies Law on 23 November 2017. The president now has 14 days to sign it or return it to parliament with remarks. The plans are apparently for the new Companies Law to go live in early 2018, although this may be an ambitious timeline considering all the preparatory work that DICA still has to undertake.

In any case, the new law contains important changes for businesses operating in the country, such as

- a registration requirement for foreign contractors,
- a requirement to have at least one resident director,
- the possibility to have a harmless foreign minority participation without making a company a “foreign company”,
- the possibility to set up a company with only one shareholder and one director,
- the abolition of the “permit to trade”,
- the abolition of the “company’s objectives” in its constitution,
- sweeping protection of minority shareholders,
- extensive provisions on the powers and duties of a director;
- possibility to have a tailor-made constitution, including provisions for different classes of shares,
- hefty penalties for failures to make required filings and keep registers,
- and, and, and...

In order to enable investors to profit from the new Companies Law and remain compliant, we will hold a **seminar on 19 December 2017 from 2:30 to 4:00 p.m. at Sule ShangriLa** in which we will explain the changes and suggest what measures to take. The participation fee is Ks. 10,000



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 36 - 26th November 2017

per person payable at the reception desk. The seminar will be held in English. 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.

2. **MIC notification accords tax incentives on imports to suppliers of export-oriented businesses**

According to section 77 (b) Myanmar Investment Law, export-oriented businesses importing raw materials and partially manufactured goods for the purpose of the manufacture of goods for export may apply for an exemption from customs duty and commercial tax levied at the import-stage. An “export-oriented business” is a business whose “income” (revenue?) is composed of 80% or more of foreign currency derived from exports (Rule 97).

MIC Notification No. 87/2017 dated 20 November 2017 (<https://tinyurl.com/y7z2hqlc>) broadens the scope of businesses that are eligible for tax incentives: Investors supplying all their finished and semi-finished goods to “100% export-oriented businesses” without supplying the domestic market may also apply for an exemption from customs duty and commercial tax on imported raw materials and semi-finished goods.

3. **MIC notification defines “semi knock-down” for the automotive sector**

As our readers are probably aware, there are numerous restrictions on the import of vehicles, in particular on the import of vehicles that are to be used in Yangon. In particular, the Vehicle Import Supervisory Committee will allow the import of used vehicles from 1 January 2018 only if they are left-hand drive and manufactured in or after 2014 or 2016. Furthermore, imported new or used cars cannot be registered in Yangon unless they replace an old car. A good description on the import restrictions can be found here: <https://tinyurl.com/ybbn74mp>.

Vehicles imported in parts and assembled in the country are considered to be locally produced. It is reported (<https://tinyurl.com/ybbn74mp>) that locally produced vehicles are subject to significant tax benefits in comparison to imported vehicles, although we are not sure what these tax benefits consist of (maybe lower customs duty on the import of parts compared to the import of an entire vehicle?). Furthermore, locally produced cars can be registered in Yangon even if they do not replace an old car.

Against this background, it is attractive for vehicle importers to be classified as a “semi knock-down” producer by the authorities. MIC Notification No. 85/2017 (<https://tinyurl.com/ycvo4cwk>) dated 16 November 2017, having retroactively come into effect on 12 June 2017, provides that a car must be imported in at least 10 specific groups of components which must then be assembled in Myanmar in order for an import business to be



classified as a semi knock-down producer (i.e., a manufacturer). The Notification describes the groups of components.

4. Two new ministries formed

Parliament (<https://tinyurl.com/y8r43xp4>) approved the formation of two new Union ministries, a “Ministry of the Office of the Union Government”, to be headed by U Thaung Tun (currently the national security advisor), and a “Ministry for International Cooperation”, to be headed by U Kyaw Tin (currently deputy minister for foreign affairs). The aim is apparently a reduction of the workload of the present administration, in particular of State Counsellor Daw Aung San Suu Kyi.

5. US considering “targeted sanctions” against military officials

Following Rex Tillerson’s recent visit to Myanmar, the US Department of State has unfortunately shifted stance on the crisis in Rakhine State and is considering “targeted sanctions” in addition to other measures (among others, a visa ban in place since 25 August 2017) aimed at the military (<https://tinyurl.com/y8j9q73>).

Earlier, a bipartisan group of lawmakers had introduced legislation (<https://tinyurl.com/y7tkls5p>) that will, if passed, among others oblige the US president to (i) submit a “visa ban list” of military officials involved in human rights abuses, (ii) provide a reason if leaders of units involved in “clearance operations” are not put on the SDN list, and (iii) decide whether to keep Myanmar in the Generalized System of Preferences.

Furthermore, the bill provides for (iv) an obligation of US representatives in international financial institutions to support projects only if they do not involve or benefit the military, and (v) an authorisation of the US Secretary of Treasury to prohibit or restrict correspondent accounts for banks that hold property for persons on the visa ban list.

We have prepared a detailed analysis of the proposed sanctions regime and its expected implications for foreign investors for our premium subscribers.

6. Open-ended overdraft loans to be converted to 3 year loans

Banks in Myanmar usually grant loans for a one year period, but likewise usually, this period is almost automatically extended annually. Fearing the accumulation of bad debt disguising as so-called “overdraft loans”, the Central Bank, by Notification No. 17/2017 (<https://tinyurl.com/y8wvx5qp>) dated 7 July 2017, originally required banks to request annual repayment, starting from 7 January 2018. In recent directive No. 7/2017 (<https://tinyurl.com/yaeae45e>) dated 24 November 2017, the Central Bank, however, backed



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 36 - 26th November 2017

down, allowing the conversion of open-ended overdraft loans into term loans with a maturity of up to three years and a quarterly repayment schedule.

Reuters has the full story here: <https://tinyurl.com/y724yncm>

7. Franchise opportunity

The owners of “Singapore’s #1 Korean fried chicken restaurant” (four outlets in Singapore and two in Malaysia) are planning to expand to Myanmar and are looking for a franchisee. Please contact sebastian@lincolnmyanmar.com or nyeinchanzaw@lincolnmyanmar.com if you are interested.

8. Recent bills

An “Explosives Bill” was published in the state-owned press on 23 November 2017. If enacted, the law will cover the production, possession, use, sale, transport and import of explosives, replacing the Explosives Act of 1884.

Further pending bills are a bill amending the Law Protecting Farmers’ Rights and Promoting Their Interests, a bill amending the Television and Broadcasting Law and a bill amending the Maternal and Child Care Law.

A “bill” is the draft of a law that has been submitted to parliament. It is not a law yet.

9. Electricity and energy news

(a) **Yangon to receive 24-hour electricity supply** (106 MWs by Thakayta power plant, 108 MWs by Thaton combined-cycle gas turbine power plant, 225 MWs by Myingyan combined-cycle gas turbine power plant, expected to be operational in the beginning of 2018): <https://tinyurl.com/y8exw3dy>

(b) However, the **owners of the Mingyan power plant presently seem to be locked in fierce battle**: <https://tinyurl.com/y7w2ukjp> (fascinating read)

10. Market access and other news

(a) **MIC invites investments in Kayin State (electric power generation, transmission and distribution; bonded warehouse; establishment of industrial estates; infrastructure for the transport sector; industry; agriculture; hotels and tourism)**: <https://tinyurl.com/yam9auvn>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 36 - 26th November 2017

- (b) MIC no longer grants approval for businesses using wood from natural forests:
<https://tinyurl.com/ybl26zxd>
- (c) YCDC plans to build two more reservoirs, add 100 million gallons of water per day to Yangon's water supply for USD 867 million (JICA financed):
<https://tinyurl.com/yc8xex7u>
- (d) Mottama to develop office tower in Yangon for USD 30 million:
<https://tinyurl.com/y8rh5aaq>
- (e) Industrial zones to be built by Chinese entrepreneurs in Taninthayi and Ayeyawady:
<https://tinyurl.com/y769gskh>
- (f) Mytel says investment has reached USD 1 billion; to sell first SIM cards in early 2018:
<https://tinyurl.com/y94numjs>; <https://tinyurl.com/ya5e7r8w>
- (g) Import of aircraft, parts increase, reflecting higher investments in the sector:
<https://tinyurl.com/y9rfr3nv>
- (h) Myanmar trade promotion body Myantrade and EuroCham sign trade promotion MoU: <https://tinyurl.com/y7kak2by>
- (i) SHC Capital Asia to buy, among others, "Balloons over Bagan" for SGD 69.7 million:
<https://tinyurl.com/yak9blhf>
- (j) Norwegian paint company Jotun opens factory in Myanmar:
<https://tinyurl.com/ydcjz76s>

11. Tenders

- (a) **Mandalay City Development Committee:** Construction and completion of solid waste reception facilities (ADB funded): <https://tinyurl.com/y7u2pskn>
- (b) **Myanma Railways:** Design and construction of the Baukhtaw station area in Yangon
<https://tinyurl.com/y9wgdfd5>
- (c) **Department of Civil Aviation:** Construction, financing and operation of the Muse airfield: <https://tinyurl.com/y8fgdh4u>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 36 - 26th November 2017

- (d) **Department of Highways:** Purchase of double cab project inspection vehicles, laboratory equipment and office equipment (IDA funded):
<https://preview.tinyurl.com/yb5bqxjv>

- (e) **Electric Power Generation Enterprise:** Preparation of an Environmental and Social Impact Assessment (ESIA) for the New Ywama Power Plant in Yangon:
<https://tinyurl.com/y8dxhbf7>

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

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director