



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 38 - 10th December 2017

Dear Readers,

Welcome to a new edition of our newsletter.

1. Reminder: Seminar on the new Companies Law on 19 December 2017

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 hope to make some helpful suggestions. The participation fee is Ks. 10,000 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.

The invitation can be downloaded here: <https://tinyurl.com/yatcab3s>

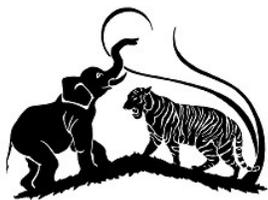
2. Some thoughts on the increased penalties in the new Companies Law

According to a press report (<https://tinyurl.com/yccwfzug>), the new Companies Law ("CL" - Pyidaungsu Hluttaw Law No. 29/2017 dated 6 December 2017; an unofficial English translation can be found on DICA's homepage: <https://tinyurl.com/y9jwv8hj>) **will enter into force in summer 2018.**

The new law will change a lot of things (many for the better, some for the worse), and investors should use the run-up to familiarise themselves with the new law and determine what adaptations to make to their structures in order to be ready when the new law goes live.

An important change (for the worse, we think) is that **penalties will matter**. The present Companies Act ("CA"), enacted in 1914, contains a lot of penalties as well, but the amounts of the fines have not been updated for decades and are insignificant. Furthermore, only a court could impose a fine (sections 278(1), 279 CA), and DICA in practice does not seem to sue a non-compliant person. The CA provides for imprisonment for certain offences (e.g., section 282 CA: willfully making a false statement), but we are not aware that this would have been relevant in recent years.

In contrast, the **new CL has modernised the penalty amounts**. They are now significant and may be imposed multiple times, e.g., on the company and, in addition, on each of the company's directors. Furthermore, DICA is empowered to collect penalties without court intervention by issuing "penalty notices" (section 439 CL).



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The CL provides for “prescribed offences” for which a specific penalty amount (e.g., “Ks. 1,000,000”) is stated. DICA may issue penalty notices for prescribed offences. Furthermore, the CL has a general penalty clause (section 457) which seems to apply to any contravention of the CL irrespective of whether it is sanctioned with a specific penalty amount. We suppose that a court (but not DICA) could, with regard to a contravention for which no specific penalty amount is stated, impose a penalty at its discretion, although an express clause to this effect - which was included in an earlier draft - is not included in the final law.

Against this background, **compliance will become important under the new CL** (for both local and foreign-invested companies as the penalties are the same). Although not compulsory, **investors may consider installing a company secretary** (i.e., a corporate compliance specialist) in office. To a certain extent, **this should be a defence to directors** charged with an offence as the directors could claim to have taken all reasonable and proper steps to avoid non-compliance (section 460 CL). Please do not hesitate to contact us in this regard; we provide reliable company secretary services for a reasonable price.

We have inked a comparison of the compliance requirements under the new CL and the present CA which is available to our premium subscribers.

3. **Big tender from the Ministry of Planning and Finance**

The Ministry of Planning and Finance is soliciting bids for the “supply, implementation and support of an integrated tax administration system (ITAS) and related linkages”: <https://tinyurl.com/y8optee>

4. **Yangon Stock Exchange**

TMH Telecom Public Company is to become the fifth company to list of the Yangon Stock Exchange (<https://tinyurl.com/y94hr5bu>), and this seems to be the first real IPO in that the company will apparently issue new shares instead of their shareholders floating existing ones - possibly a much better story as the offer of existing shares in an IPO lacks a bit of credibility: Why would their owners wish to part with them if they think that they’ll increase in value?

Furthermore, YSX plans to launch an online stock trading system: <https://tinyurl.com/y828mesl>

5. **Electricity and energy news**

(a) **Myingyan sponsors met conditions precedent and reached full financial close:** <https://tinyurl.com/ycz8ss63>



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- (b) **Myanmar's largest oil-refinery project cancelled:** <https://tinyurl.com/yapclha8>

(This would have been a joint venture between MEHL, MPE and Yangon Engineering Group (Myanmar side: 70%) and Guangdong Zhenrong (foreign side: 30%) with a proposed investment amount of USD 2.6 billion, but MEHL says that the foreign side failed to inject funds. The project was very controversial on the ground and it is interesting to note that it was one of the projects approved at the last minute by the outgoing previous government. With this mega-project being cancelled, the 2015/16 foreign direct investment figures do not look so impressive anymore.)

- (c) **Pay-as-you go solar energy company SolarHome installs 1,000 systems:** <https://tinyurl.com/yctkx7e>
- (d) **TTCL finalising funding for power plant in Kayin State:** <https://tinyurl.com/y7jjjpmo>

6. Market access and other news

- (a) **Government to regulate ride-hailing apps to protect smaller operators:** <https://tinyurl.com/y9zlrt4r>
- (b) **11 new industrial zones planned in Yangon Region:** <https://tinyurl.com/y9lk3fu5>
- (c) **Mon State expects fresh FDI next year:** <https://tinyurl.com/ydb4v4qe>
- (d) **Golden Myanmar Business Exchange plans USD 5 million data centre:** <https://tinyurl.com/y747q45z>
- (e) **Still no decision on hotels in Bagan heritage zone:** <https://tinyurl.com/y92o89b8>
- (f) **Plans to set up three fishery breeding zones in Yangon:** <https://tinyurl.com/yay75kws>

7. Tenders

- (a) **Myanma Petrochemical Enterprise:** Sale of 3,000 metric tons of petroleum coke: <https://tinyurl.com/yde52ddb>
- (b) **Department of Urban and Housing Development:** Construction of 5.96 km of community roads and culverts in Mandalay (funded by Japan Fund for Poverty Reduction): <https://tinyurl.com/ydeajpd9>
- (c) **Myanma Timber Enterprise:** Sale of teak and hardwood round logs and sawn timber: <https://tinyurl.com/yc8jm6aq>



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- (d) **Department of Rural Development:** Purchase office furniture and office equipment (IDA funded): <https://tinyurl.com/y7utnho5>
- (e) **Department of Rural Road Development:** Road rehabilitation works in Ayeyarwaddy Region: <https://tinyurl.com/ybb34g4m>
- (f) **Department of Highways:** Road construction in Rakhine State (IDA funded): <https://tinyurl.com/yaw3f8fk>
- (g) **Department of Rural Development:** Purchase of various items such as printers, scanners, office furniture (IDA funded): <https://tinyurl.com/y935xxsq>
- (h) **Myanma Oil and Gas Enterprise:** Purchase of various equipment: <https://tinyurl.com/yc3nlf4p>

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

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director