



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 44 - 3<sup>rd</sup> April 2018

**Dear Readers,**

Welcome to a new edition of our newsletter.

**1. New, massive (think Shenzhen) city to be built adjacent to Yangon**

One would think that, after Nay Pyi Taw, there is no more appetite in Myanmar for building new cities, but plans to build a new city adjacent to Yangon (twice the landmass of Singapore) are apparently serious (<https://tinyurl.com/yd3qyyda>). A new company - under the Special Companies Act of 1950, 100% owned by the government of Yangon Region - to develop the project was launched on 31 March 2018 with directors whose names are illustrious: Mr. Serge Pun, the chairman of First Myanmar Investment/Yoma Strategic Holdings, will serve as CEO; other directors are, apart from Yangon Region ministers, a former foreign minister from Singapore.

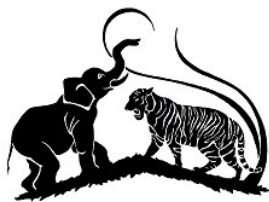
The new company has a homepage (<https://tinyurl.com/yalthj3w>). It does not contain an awful lot of information about the project (yet?), but it appears that the developers want investors to submit bids (possibly, unsolicited) which they will then publish, inviting competitors to challenge them with a lower bids ("Swiss Challenge").

The homepage contains no information on how the project should be financed, and there is now information on current land ownership. This interview (<https://tinyurl.com/yclrskrs>) suggests that all land will be owned by the project company and should be leveraged to make up for the limited capital.

Mr. Pun announced that as long as he was CEO of the project company, none of his companies would bid for any work in the development. We suppose, however, that his business partners are not prevented from bidding.

**2. Fees for company incorporation reduced since 1 April 2018**

DICA reduced company incorporation fees by Ks. 250,000 with effect 1 April 2018 (<https://tinyurl.com/ya4blwqr>). Including stamp duty and the fees for filing forms 6 and 26, incorporation fees for a foreign-invested company are now Ks. 465,000 (approx. USD 351). We suppose that the registration fee for a branch has been reduced correspondingly; including stamp duty, it should now be Ks. 415,000 (approx. USD 313).



### **3. Implementation of the new Companies Law**

In preparation for the launch of the new Companies Law (on 1 August 2018, according to DICA), DICA has published draft application forms for company incorporation for the awareness of the public: <https://tinyurl.com/ydfkhut7>

### **4. Implementation of the Myanmar Investment Law**

The MIC has published standard criteria set by the Ministry of Information (<https://tinyurl.com/y7hstgfi>) and the Ministry of Home Affairs (<https://tinyurl.com/ycy7lydc>) for foreign investments in certain businesses. Readers will note that foreigners may not own more than 30% of investments in broadcasting businesses. This is at odds with the new Myanmar Companies Law which treats companies with a foreign ownership ratio of up to 35% as local companies.

### **5. Import of goods by foreign-invested companies (in particular, service centres)**

As is common knowledge, there are still many restrictions on the import of goods by foreign-invested companies for trading purposes.

For foreign-invested service companies, the situation has become much more relaxed in the recent 10 months or so. Irrespective of whether they have, or have not, an MIC permit or endorsement, such companies may import the goods that they require in order to perform their services.

Foreign-invested service centres - e.g., workshops operated by a foreign car manufacturer or producer of electronic goods - may import and store spare parts and replacement parts in order to (i) use them when repairing defect goods, (ii) sell them to a customer to replace broken equipment and (iii) sell them to distributors of their goods to enable them to repair broken goods.

In short, foreign-invested service centres may operate a repair shop and do with spare and replacement parts what repair shops usually do with them. They may, however, not start a full-scale sales business: They may have a stock of spare and replacement parts, but not a showroom in which the parts are displayed, and they may not specifically solicit the public to purchase spare and replacement parts from them by, e.g., running advertising campaigns with the slogan “buy original spare parts from us” (but they could advertise with “we repair your broken goods only with original spare parts”).



### 6. Minimum wage

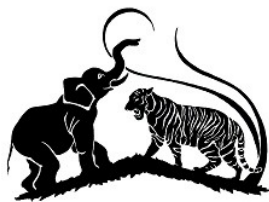
The National Committee for Setting the Minimum Wage set the new minimum wage to Ks. 4,800 per day (up from Ks. 3,600) or Ks. 600 (up from Ks. 450) per hour in March. However, we understand that the new minimum wage still requires approval from the Union Government and in particular the President's signature; it is therefore not yet officially in force (at least we have not come across any official announcement). The plan was for the new minimum wage to enter into force on 1 April 2018. As we suppose that the President's signature is simply delayed due to the recent change in office, we think that employers should be prepared to pay the new minimum wage starting from April 2018.

The new minimum wage will not apply to businesses with less than 10 workers and family businesses (i.e., businesses where the workers are family members).

### 7. Union Tax Law 2018 enacted

The Union Tax Law 2018 (Pyidaungsu Hluttaw Law 10/2018) was enacted on 30 March and entered into force on 1 April 2018. An English translation is available to our premium subscribers. In a nutshell:

- (a) Unfortunately, parliament voted a tax amnesty out of the law (see next section).
- (b) The financial year of private companies and businesses remains as it is (1 April to 31 March). State-owned enterprises, however, will have a financial year in line with the new fiscal year (1 October to 30 September). (The reason for moving the fiscal year by six months continues to be a mystery to us.)
- (c) "Vehicles with minimum 1501 CC to maximum 2000 CC being vans, saloons, sedans, estate wagons and coupés, except a double cab 4 door pickup" are now subject to 10% special goods tax instead of previously 20%.
- (d) This is a bit cryptic in the original, but apparently, the special goods tax base for goods produced in the country shall not be higher than for those that are imported in order to make it possible for the former to compete.
- (e) Parliament tinkered a bit with the list of goods that are exempt from commercial tax. Importantly, gold ingots are exempt, as are "X-ray films, plates and other X-ray material, pharmaceutical apparatus and equipment" (previously, the latter exemption only applied if a hospital imported or produced the goods itself).



- (f) “Services consisting in the publishing of books, magazines, journals and newspapers” have been added to the list of services exempt from commercial tax.

There were press reports previously (<https://tinyurl.com/ydhfkjv4>) that the Ministry of Planning and Finance intended to abolish withholding taxes (outside the Union Tax Law), but this does not seem to have materialized.

### 8. No tax amnesty

In what was a big disappointment, the NLD shot down an attempt by the Ministry of Planning and Finance to introduce a tax amnesty in the Union Tax Law 2018.

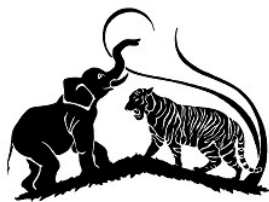
The bill provided for a reduced income tax rate of 3% or 5% on hitherto undisclosed income if it was reported within the first or the second half of the 2018/19 financial year. We understand that it was modeled after a recent tax amnesty in Indonesia which is broadly considered to have been a success, having resulted in the declaration of USD 366 billion in assets and the payment of USD 10.2 billion in (reduced) taxes on these assets (<https://tinyurl.com/y7nmumqy>). If only a fraction of these amounts were to materialize in Myanmar, (i) Myanmar’s budget deficit would be reduced; (ii) the declared assets could be put to productive use, leading to further investments and jobs; (iii) land ownership would be registered, thus reducing obstacles to investment; and (iv) Myanmar’s tax base would increase as the assets would be known to the tax authorities.

Unfortunately, at least some senior economists within the NLD - who, as far as we are aware, so far have not come up with proposals how to tap Myanmar’s vast amount of undisclosed assets for productive use - were of the opinion that this all was not worth a try.

Apart from a few more outlandish claims (“‘black’ money ... would crash into Myanmar from malicious organizations such as the terror group Islamic State” <https://tinyurl.com/yat5elwk> - seriously, the amnesty would have only applied to “citizens living in the country or abroad”, not to foreigners), the main arguments seem to be that the amnesty would be unfair to honest taxpayers and enable the laundering of money from criminal activities (<https://tinyurl.com/ycvbudzg>).

We do not think that these arguments hold water.

The fairness argument may make sense in a country where tax evasion is not widespread, but it does not in Myanmar where people either do not have sufficient income to engage in meaningful tax evasion, or do engage in tax evasion. We apologize to all honest taxpayers, but let’s face it, tax compliance here is low. Furthermore, not all compliant taxpayers (like, e.g., us)



are necessarily against the amnesty; we, for one, are much in its favour. One should also bear in mind that many people consider tax rates in Myanmar to be too high in comparison to what the state actually provides in return.

We also do not think that one should link the tax amnesty with the problem of money laundering; the two are separate things. The draft of the Union Tax Law 2018 (which in section 25 contained the amnesty) would not have prevented “action for illegal trading or ownership of property or action according to the Anti-Money Laundering Law”. Irrespective of the proposed amnesty, current tax laws do not contain safeguards against money derived from a crime entering into the system. Rather, these safeguards are elsewhere (and may indeed have to be strengthened), in particular in Central Bank Directive 21/2015 on CDD Measures which requires banks to report transactions in excess of Ks. 100 million, and the practice of the Registration of Deeds Office (at least in Yangon) to send contracts worth more than Ks. 100 million to the Criminal Investigation Department of the Myanmar Police Force.

The omission of the tax amnesty from the Union Tax Law 2018 is not necessarily the end of it. In Indonesia, the government managed to push the amnesty through parliament only after months of strong opposition. It is to be hoped that proponents of a tax amnesty in Myanmar - it is clear that it would have to offer substantially reduced rates in order to be attractive - will not stop working towards it. It is at least reported that the Ministry of Planning and Finance intends to work on a new draft.

### **9. Tax Management Bill**

A “Tax Management Bill” was published on 29 March 2018. This is the draft of a modern procedural law for income tax, commercial tax and special goods tax. We note in particular that it provides for advance rulings, i.e. written information from the Internal Revenue Department how to interpret tax law provisions in a specific case from which the Department may not deviate later. A translation of the Bill will be made available to our premium subscribers in due course and we suppose that we will publish an analysis in one of our next newsletters.

The bill will, if enacted, come into force retroactively with effect 1 April 2018.

### **10. Registration of Deeds Law**

A new Registration of Deeds Law (Pyidaungsu Hluttaw Law No. 9/2018) was enacted on 20 March 2018. It will enter into force on the date set by presidential notification and, at that point, replace the Registration Act of 1908.



The new law does not seem to be much more than a rehash of the 1908 Registration Act. In particular,

- lease agreements for immovable property for a period in excess of one year and agreements pertaining to the transfer of immovable property have to be registered (with regard to the former - what for? This is a major hindrance to foreign investment as registration is often not possible, even with an MIC permit);
- mortgage agreements have to be registered with the exception of a mortgage by deposit of title-deeds;
- unregistered agreements for which a registration requirement exists are void and cannot be enforced;
- there is an exemption from the registration requirement if the document benefits the government;
- the period within which registration has to be applied for is 120 days, with the possibility to extend it for another 120 days due to reasons;
- fees, and penalties for late registration, have to be set by the Ministry of Agriculture, Livestock and Irrigation.

### **11. Mines Rules issued**

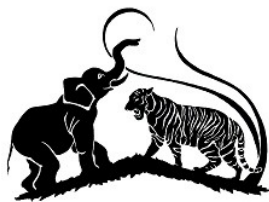
The Ministry of Natural Resources and Environmental Conservation apparently issued new Mines Rules on 13 February 2018 (<https://tinyurl.com/yc4bfrbj>). One of the main changes is apparently that small and mid-sized mines are now within the remit of Regional and State governments instead of the Union government. However, the newspaper writes that it could not independently verify the contents of the new Mines Rules as “they have not yet been distributed publicly” and had to be bought in person from the ministry in Nay Pyi Taw.

### **12. Our labour law services**

We mentioned already in our last newsletter that we got an e-mail from a long-standing client saying that “[... Bank] always suggest we use their lawyers but the fees are exorbitant”. We would like to take this cue to introduce, in no particular order, our services. This time: our labour law services. Please do not hesitate to request a fee proposal; we are sure that we can offer you a good package deal.

Our labour law services comprise in particular:

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- Bilingual preparation of standard employment contracts according to the template of the Ministry of Labour, Immigration and Population including an individualized annex and registration of the Myanmar version with the township labour office;
- Bilingual preparation of individualized labour contracts for companies with not more than 5 employees
- Payroll: calculation of the monthly tax and social security deductions/payments; payment on behalf of the client; preparation of the annual reconciliation; calculation and claim of benefits under the Social Security Law; advice on double taxation treaties; obtaining tax residency certificates for foreign employees;
- Immigration compliance for foreign employees (obtaining “form C” and foreigner registration certificate, assistance with visa extension, stay permit, multi re-entry visa and labour card - MIC companies only)
- Assistance in labour disputes: Bilingual preparation of all required documents in Myanmar and English; bilingual representation at every stage of the labour dispute: (i) township conciliation body; (ii) arbitration body; (iii) arbitration council in Nay Pyi Taw

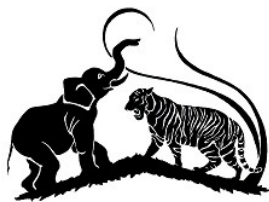
A full list of our services can be found in our brochure: <https://tinyurl.com/y83qvwro>

### **13. Intellectual property**

The four intellectual property bills were approved by the upper house in February 2018 and are awaiting approval from the lower house. While it is therefore likely that they will be enacted in the not-too-distant future, it will still take considerable time for them to enter into force.

All four bills (once enacted, laws) are to enter into force on a date specified by presidential notification, and this date will surely be quite far away as the Ministry of Education (which will take over from the Ministry of Agriculture, Livestock and Irrigation which currently registers declarations of ownership with regard to intellectual property, in particular trademarks) first has to create the entire modern registration infrastructure.

While it is true that the bills currently do not contain transition periods, there is not a great deal that trademark owners can do at this point. They'll have to wait until the new forms and procedures come out, much like observers are currently studying the draft application forms issued by DICA in anticipation of the enforcement of the new Companies Law.



### 14. Electricity and energy news

- (a) EUR 9 million allocated to rural electrification project in southern Shan State: <https://tinyurl.com/y8ray939>
- (b) Total to begin extraction of natural gas in Gulf of Mottama: <https://tinyurl.com/yd2dpt5c>
- (c) PTTEP confirms commitment to Myanmar oil and gas: <https://tinyurl.com/y9rf6qmq>
- (d) LPG distribution to be increased: <https://tinyurl.com/yabkl2gi>
- (e) Natural gas export brings USD 3bn in the 2017/18 fiscal year: <https://tinyurl.com/ydzbjal7>
- (f) Thaketa gas plant commences supplying power: <https://tinyurl.com/ybyexsve>
- (g) Myanmar still negotiating LNG import, purchase price: <https://tinyurl.com/ya5vj28o>

### 15. Market access and other news

- (a) Myanmar has a new president: <https://tinyurl.com/y9o83psm>
- (b) No money for new projects in interim budget April to September 2018: <https://tinyurl.com/y9yl45z9> (All money for new projects seems to have been shifted out of the interim period to the first full new fiscal year. Ah, well... Hydropower projects seem to have been delayed to free up funds for other projects.)
- (c) Myanmar seeks soft loan from Japan to rescue Hanthawaddy airport project as consortium pulled out: <https://tinyurl.com/y885kdkp>
- (d) Myanmar to allow casinos (maybe, at least in border towns): <https://tinyurl.com/yctex3x9>
- (e) Overview of the planned development of Yangon: <https://tinyurl.com/y8bhf5kn> (lots of planned industrial zones)
- (f) USD 65 million bulk terminal built in Thilawa: <https://tinyurl.com/ycgghf9d>
- (g) The MIC invites investors to develop a “Myanmar-China economic corridor”: <https://tinyurl.com/yczh9jf9> (apparently includes housing projects, industrial zones,





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agricultural zones, IT businesses, logistics hubs, border trade posts, tourism businesses and other services)

- (h) **International Fund for Agricultural Development to invest USD 65.2 million to support eastern Myanmar farmers:** <https://tinyurl.com/yauprfg8>
- (i) **Uber selling its SEA business to Grab:** <https://tinyurl.com/ydygygyi> (cartel law impact?)
- (j) **MyTel starts selling SIM cards:** <https://tinyurl.com/y8stozow>

## 16. Tenders

- (a) **Department of Rural Road Development:** Construction of two bridges (KfW funded): <https://tinyurl.com/y9xclpxx>
- (b) **Department of Power Transmission and System Control:** Construction of a 500kV transmission line (Korean companies only): <https://tinyurl.com/ydcbtrkj>
- (c) **Department of Rural Development:** Supply, installation and maintenance of solar PV systems for households and public facilities: <https://tinyurl.com/ycfvm4sj>
- (d) **Social Security Board:** Development and implementation of a social security development system: <https://tinyurl.com/y84z4ngg>

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

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director