



**Dear Readers,**

Welcome to a new edition of our newsletter.

### **1. Trademark Law**

In order to celebrate the World Intellectual Property Day last Friday, we uploaded our English translation of the new Trademark Law to our homepage (<https://tinyurl.com/y65cr9pt>) and prepared an analysis (<https://tinyurl.com/y2cf2peb>).

Additionally, we uploaded an English translation of the Registration of Deeds Law 2018 (<https://tinyurl.com/y4nezt6j>) as this is an important piece of legislation for the registration of declarations of trademark ownership until the new registration system is in place.

### **2. New Consumer Protection Law - compulsory Myanmar language labelling postponed**

A new Consumer Protection Law (Pyidaungsu Hluttaw Law No. 9/2019) was enacted on 15 March 2019, replacing the “old” (it’s only from 2014) Consumer Protection Law.

The Consumer Protection Central Committee will be replaced with the Myanmar Consumer Protection Commission and the Consumer Dispute Settlement Bodies at regional and state level with Consumer Affairs Committees.

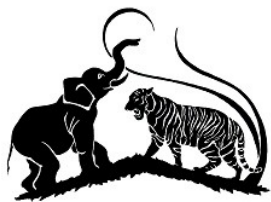
The new law is about twice as long as the old one and increases the burden of compliant entrepreneurs significantly, at least in comparison to the old situation (perhaps not so much in comparison to international standards).

On the flip side, however - and this has already been widely reported in the press -, the requirement to have Myanmar language labels - which was originally meant to be introduced with effect 26 April 2019 by virtue of Central Consumer Protection Committee Notification 1/2018 - has been postponed until 15 March 2020 as the corresponding chapter 18 on labelling will only enter into force after one year from the enactment of the new law (the remainder of the new law entered into force on 15 March 2019).

Chapter 18 reads:

*“Expressing the description of goods*

41. *The entrepreneur shall express, with regard to the description of the goods, the following items as specified based on the types of goods -*



- (a) *Mark of the goods;*
  - (b) *type, size, number and net weight of the goods; storage instructions and usage instructions for the goods;*
  - (c) *manufacturing date and expiry date; batch number;*
  - (d) *if the goods are imported into the country, name and address of the importer, name and address of the manufacturer;*
  - (e) *manufacturing location or re-packaging location if the goods are imported into the country from abroad;*
  - (f) *name of the raw materials contained in the goods, quantity and ratio of the raw materials;*
  - (g) *description of side-effects and incompatibilities; precaution notice;*
  - (h) *information that the relevant government department has instructed to express.*
42. *The entrepreneur may express scientific research of a relevant organisation and health and nutritional guarantees on the goods.*
43. *The entrepreneur shall express the description of the goods according to section 41 sub-sections (b) and (g) in the Myanmar language, in the Myanmar and another language or in the Myanmar language and other languages.”*

An English translation of the new law is available to our premium subscribers.

It should be noted that Myanmar language or bilingual labelling requirements have long existed and still exist for foodstuff by virtue of Food and Drug Administration Directive No. 1/1998.

### **3. Workplace Safety and Health Law**

Likewise, a Workplace Safety and Health Law (Pyidaungsu Hluttaw Law No. 8/2019) was enacted on 15 March 2019. However, it will only enter into effect on a later date specified by presidential notification.

The law will apply to basically every sector:

- (a) Factories, workshops and warehouses to which the 1951 Factories Act applies;



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- (b) businesses to which the 2016 Shops and Establishments Law applies;
- (c) manufacturing business;
- (d) industrial and handicraft business;
- (e) construction business;
- (f) engineering businesses;
- (g) mining and processing business; gemstone excavation and processing businesses;
- (h) oil and gas business;
- (i) business related to a port;
- (j) agricultural business;
- (k) livestock business;
- (l) fishery business near to or remote from the shore;
- (m) educational service business;
- (n) healthcare service business;
- (o) communication business;
- (p) transportation business;
- (q) hotel and tourism business;
- (r) businesses specified from time to time in a notification by the Ministry of Labour, Immigration and Population with the consent of the Union government as the result of coordination with the relevant ministries, committees and groups.

Once in effect, businesses will have to register with the Factories and General Labour Laws Inspection Department. Furthermore, anyone wishing to construct, expand or demolish a building or install, place or expand machines or equipment or change their use shall notify the department. Employers must appoint a health and safety manager and, if the number of employees exceeds the threshold specified by the Ministry of Labour, Immigration and Population, establish a workplace safety and health committee made up of employer and employee representatives.



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Administrative action may be taken and criminal penalties apply in case of non-compliance.

We will translate the law in due course for our premium subscribers.

An English translation of the law at its draft stage is available here: <https://tinyurl.com/yxr9swpo>.

#### **4. Other laws enacted or drafted**

Further laws recently enacted include a Preservation of Cultural Heritage Law, a Law Amending the Myanmar Accountancy Council Law, a Law Amending the Engineering Council Law and a Myanmar Gemstone Law.

Bills recently tabled include an Aquaculture Bill and a Urban and Regional Development Planning Bill.

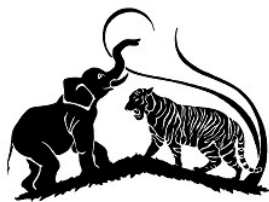
#### **5. Central Bank Directives**

On 25 March 2019, the Central Bank issued several directives concerning

- the qualification of directors and chief executive officers (“Directive on Fit and Proper Criteria”, <https://tinyurl.com/yxpvgvhp>);
- the composition of the board of directors, the duties, powers and responsibilities of directors and other matters concerning directors (“Directive on Directors of Bank”, <https://tinyurl.com/y5xr9vmj>);
- the qualification, appointment, duties, responsibilities, rights and reporting requirements of external auditors and other matters concerning external auditors (“Directive on External Auditors”, <https://tinyurl.com/y27wopg7>);
- related party transactions (“Related Parties Directive”, <https://tinyurl.com/y6njhy2d>); and
- the acquisition of an interest of 10% or more in a bank (“Directive on Acquisition of Substantial Interest”, <https://tinyurl.com/y3bvnbp9>).

#### **6. Liberalisation of the insurance market**

The long-awaited liberalisation of Myanmar’s insurance market is finally taking shape. On 25 April 2019, the Ministry of Planning and Finance announced that five foreign life insurers met the licensing criteria and would be eligible for life insurance licenses after completion of the



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“pre-license” procedure (<https://tinyurl.com/y42pqtbg>). The five insurers are AIA Company Limited, Chubb Tempest Reinsurance Limited, Dai-ichi Life insurance Company Limited, Manufacturers Life Insurance Company and Prudential Hong Kong Limited; they will be able to operate through 100% foreign-owned subsidiaries.

Furthermore, the following foreign insurers will form joint ventures (more precisely, they will buy into existing local insurance companies) with a 35% foreign ownership stake (<https://tinyurl.com/y5428x9l>):

Foreign company	Myanmar company	Insurance type
Tokyo Marine Holdings	Grand Guardian Insurance	Non-life
Nippon Life Insurance	Grand Guardian Insurance	Life
Mitsui Sumitomo Insurance	IKBZ Insurance	Non-life
Sompo Holdings	AYA Myanmar Insurance	Non-life
Thai Life Insurance	Citizen Business Insurance	Life

### 7. Casinos to become legal

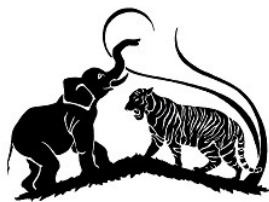
According to press reports (<https://tinyurl.com/y5mlx2p6>), a new Gambling Law (an English translation of the original text of the bill is available on our homepage: <https://tinyurl.com/yf2seh4>) is expected to be enacted in May. It is expected that this law will contain language allowing the operation of casinos catering to foreigners. However, details will probably be set out in rules and regulations, presumably issued by the Ministry of Home Affairs.

### 8. Public procurement, sales and leases

This isn't exactly news and, admittedly, it is being honoured more in the breach than the observance, but we get asked about it a lot. For our readers, we have uploaded a translation of Directive No. 1/2017 of the President's Office, setting out “tender procedures to be followed by government departments and organisations in construction, purchase, procurement of services, lease and sale”: <https://tinyurl.com/yy7egqkt>

### 9. Tax news

- (a) **Notification 38/2019** does away, with effect from 1 May 2019, with the exemption from the 2% advance corporate income tax payment upon export for taxpayers practicing the self-assessment system at the Large Taxpayers Office and Medium Taxpayers Office No. 1. The other exemptions (e.g., import of machinery, equipment and construction



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materials for the first three years after the completion of construction if the business enjoys an MIC tax exemption) seem to remain intact.

*(In this context - dear competing law firm, we appreciate that you consider our texts and translations to be good enough to lift passages from <https://tinyurl.com/y4kl5tyy>, but we'd appreciate it even more if you indicated the source.)*

- (b) We suppose that this only puts existing administrative practice in writing, but it's annoying nevertheless. According to **Instruction 1/2019** from 20 February 2019, rent for land is deductible as business expenses (good), rent paid in advance is deductible only in the year in which the payment is made (bad) and a land-use premium (which is called "lease premium" in the Instruction) is not deductible at all (very bad).

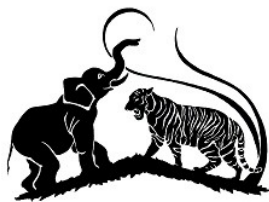
As land owners often like to sell land instead of leasing it out, but foreign investors can only lease and not purchase, it is quite common for foreign investors to be asked to pay the entire rent (e.g., for 50 years) up-front. If these investors are required to deduct the entire advance payment as expenses for tax purposes in the first year instead of spreading the deduction over the life of the lease (as one would do in accounting), they are at a disadvantage as they typically wouldn't have much revenue in the first year to deduct expenses from.

Often, investors wishing to lease land are requested to pay a "land-use premium" in addition to the rent (which is somewhat at odds with the Transfer of Property Act which supposes that the lessee pays either a one-off "premium" or a periodical "rent", but not both - but then, it's a lessor's market).

The tax authorities apparently understand the land-use premium to be a payment made in order to acquire the lease (i.e., a "capital expenditure") instead of an additional rent under a different name. Although section 10(b) Income Tax Law prohibits the deduction of capital expenditures, we see no good reason why the land-use premium shouldn't be amortised over the life of the lease (as it would be done in accounting) in the same manner as capital expenditures for the acquisition of machines and buildings are depreciated over their useful life.

#### 10. Electricity and energy news

- (a) Myanmar Hydropower Developer Association goes independent:  
<https://tinyurl.com/y4j6vhbp>



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- (b) Private airline Myanmar Golden Airlines receives approval to import and distribute aviation fuel, making a dent in state-owned Myanma Petroleum Products Enterprise's monopoly: <https://tinyurl.com/yyft6q8s>
- (c) PetroChina opens its first filling station in Myanmar: <https://tinyurl.com/yyqm3rq8>
- (d) Scheduled power outages in major cities: <https://tinyurl.com/yyz5hxjl>
- (e) 15 offshore and 18 onshore blocks to be put on tender in April (this article from March claims): <https://tinyurl.com/y4colhkf> (Although they didn't happen this month, the tenders are really expected to go out soon - please contact us if you are interested; Sebastian advised successful tender bidders in the 2013 round.)
- (f) China's pipeline brings electricity to Kyaukphyu: <https://tinyurl.com/y63xcsr5>

#### 11. Market access and other news

- (a) Myanmar to lift ban on sending domestic workers to Singapore: <https://tinyurl.com/y63kcpwf>
- (b) China to increase Myanmar's rice export quota: <https://tinyurl.com/y4bbp76h>
- (c) More than 50 jade mine workers feared dead in landslide: <https://tinyurl.com/y2h3x7xk>
- (d) Tokyo leasing firm buys 1/5 of Yoma Fleet: <https://tinyurl.com/y3nhw2co>
- (e) Craft beer in Myanmar: <https://tinyurl.com/y6atwej3>
- (f) Myanmar economy losing momentum, IMF warns: <https://tinyurl.com/y3y6tdq3>
- (g) Telenor now largest 4G network in Myanmar: <https://tinyurl.com/y65djiyen>
- (h) Ministry of Construction goes soft on broken highway contracts: <https://tinyurl.com/y378dezz>
- (i) U Aung Naing Oo, DICA's director general, promoted to director general of the Office of the Union Investment and Foreign Economic Relations, succeeded by DICA's deputy director U Thant Zin Lwin: <https://tinyurl.com/y3z7c8ej>
- (j) Hantharwady International Airport back on radar: <https://tinyurl.com/y34ryssm>



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

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