



Dear Readers,

Welcome to a new edition of our newsletter.

1. **Foreigners allowed to export rice and other goods**

With Notification 24/2019 dated 6 June 2019, the Ministry of Commerce allows 100% foreign-invested companies and joint venture companies to purchase and export rice and other goods.

Goods	Requirements
Meat and fish	Approval from the Livestock and Veterinary Department and Fisheries Department
Various kinds of beans, corn and sesame as powder, modified for consumption or processed	Approval from the Food and Drug Administration and other relevant departments
Rice and broken rice	USD 3 million minimum investment contributed by bank transfer from abroad; warehouse; Myanmar Rice Federation membership
Pulp and paper	To comply with applicable rules and regulations
Seeds	To comply with the Seed Law
Refined metals	Approval from the Mines Department
Semi-finished and finished fruit products	License from the relevant department according to the Food Law
Wood furniture	Approval from the Forest Department

2. **Privilege for fertilisers, seeds, pesticides, hospital equipment, construction materials and agricultural equipment finally revoked**

With Notification 23/2019 dated 21 May 2019, the Ministry of Commerce finally revoked trading privileges that foreign-invested companies enjoyed under previous notifications. (Actually, this was already done by Ministry of Commerce Newsletter 2/2018 dated 26 July 2018, but the ministry does not seem to have followed through.)

More precisely, foreign-invested importers and traders of fertilisers, seeds, pesticides, hospital equipment, construction materials and agricultural equipment will, if they wish to keep their importer and exporter registration certificate, have to apply for a retail and/or wholesale permit according to Ministry of Commerce Notification 18/2018 **until 19 August 2019** (90 days after the date of Notification 23/2019) and comply with the minimum investment requirements.



The minimum investment amount for 100% foreign-invested trading companies is USD 3 million for retail, USD 5 million for wholesale and USD 8 million for both retail and wholesale. Companies have **5 years** to top up their capital.

The penalty for non-compliance is the revocation of the company's exporter and importer registration certificate after two warnings.

Notification 23/2019 does not mention brand-new cars and construction machinery which foreigners can (or were able to?) import and sell under Ministry of Commerce Notifications 16 and 17/2017 in a joint venture.

3. Copyright Law enacted

As the last piece of the quadruplet of intellectual property laws, the Copyright Law was enacted on 24 May 2019. It will enter into force on the date specified by the president in a notification.

Once in force, the law will comprehensively protect literary and artistic works as well as related rights.

Foreign works, i.e. works created by authors who are not a Myanmar citizen or resident, are protected only if they are first published in Myanmar or published in Myanmar within 30 days after their publication abroad.

Economic rights are protected -

- during the life of the author and for 50 years after the author's death;
- in case of an audiovisual or cinematographic work, for 50 years after its publication or, if there is no publication, its creation; and
- in case of a work of applied art, for 25 years after its creation.

Registration is available, but voluntary.

Computer programs are explicitly protected as literary and artistic works.

In the same manner as in the other IP laws, the Copyright Law allows rights holders to enlist the assistance of the customs authorities to prevent infringing goods entering the country.

The law provides for the establishment of "organisations that collectively manage copyright and related rights" which are authorised to represent authors, artists and other rights holders in the collection of license fees.



The law furthermore recognises and protects technological safety measures and systems that help prevent or track infringements by placing information as to the author and the terms of use in a copy of a work or a work that is being transmitted to the public.

An English translation of the Copyright Law is available to our premium subscribers.

4. **Power barge tenders to be called in July?**

The Ministry of Electricity intends to call tenders for gas to be delivered via floating power plants to generate the electricity required to meet rising demand by summer 2020 (<https://tinyurl.com/y35yk6x6>). Frontier Myanmar reports that the plan is for the tenders to be called in July, and that submissions will in principle be by invitation only.

However, the country's big LNG projects (<https://tinyurl.com/y428lm97>) do not exactly seem to be on track due to, among others, different opinions about the LNG price, and in 2017, a power barge en route from Turkey to Yangon had to change course mid-travel as it turned out that there was no budget to purchase its power, so potential providers would have to be very careful about the commercial terms.

This article is excellent reading about the background of the currently frequent and long power cuts and what the ministry intends to do about it: <https://tinyurl.com/y4qhuuvv>

5. **Amendment to the Labour Dispute Resolution Law cements status quo**

Since June last year, the labour dispute resolution system (conciliation body, arbitration body, arbitration council), which had provided a comparatively swift and affordable avenue for employees to seek redress for labour grievances, has not accepted individual labour cases such as complaints about unpaid salary, unpaid overtime or unfair dismissal.

Rather, employees are told to take such cases to the ordinary courts which is often not a realistic option.

The Law Amending the Labour Dispute Settlement Law for the Second Time, enacted on 3 June 2019, cements this situation. It distinguishes between

- (a) **“disputes concerning a right”**, which are disputes “concerning a right of employers or workers prescribed in a labour law”, and
- (b) **“disputes concerning a benefit”**, which are disputes “concerning a collective agreement, disputes concerning the benefits to which most of the workers are entitled, even though



they are not within the scope of labour law rights, and disputes concerning the relationship at the workplace”.

Only “disputes concerning a benefit” are eligible to be heard by the labour dispute resolution system which means that the ordinary courts are the only option for most individual disputes.

Furthermore, the law increases the number of representatives from both sides in the workplace coordinating committees from two to three. Workplace coordinating committees have to be formed in enterprises with more than 30 workers; the new law introduces a fine from Ks. 300,000 to Ks. 1,000,000 for failure to do so.

An English translation of the law is available on our homepage: <https://tinyurl.com/y4vsw6t7>

6. General Administration Department now under the Ministry of the Office of the Union Government

This wasn't much in the news, but the plans to shift the General Administration Department (“GAD”) from the (military-controlled) Ministry of Home Affairs to the (NLD-controlled) Ministry of the Office of the Union Government have been implemented. This is hugely significant as the GAD is the office to go to for (well, almost) all aspects of life.

<https://tinyurl.com/y2p9hwkw>

7. Liquor import ban to be relaxed, license system to be overhauled

It appears that the Ministry of Commerce has drafted regulations that would allow the import of liquor other than wine (whose import is already allowed now). Furthermore, the licensing system for the sale of alcohol (which currently consists in no new licenses being issued at all) seems to be in the process of being overhauled. This process may be helped by the General Administration Department (which is in charge of liquor licenses) now being under the Ministry of the Office of the Union Government.

<https://tinyurl.com/y6qdrdxk>

8. New financial year

It's now official: All private businesses will have to adopt a new financial year with effect 1 October 2019 (IRD letter dated 28 May 2019). The period from 1 April to 30 September 2019 will be a separate, short financial year (“transition period”) and separate audited financial



statements and tax returns will have to be prepared and filed for this period until 31 December 2019.

9. **New Tax Management Law**

A Tax Management Law (Pyidaungsu Hluttaw Law No. 20/2019) was enacted on 7 June 2019. For the first time, there is a unified tax procedure for “income tax, commercial tax, special goods tax and other types of taxes of which the Director General of the Inland Revenue Department is in charge according to a law”. The new law will enter into force on 1 October 2019 which coincides with the start of the new financial year.

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

Important provisions of the new law include:

- Uniform taxpayer registration number for all taxes once a public announcement to this effect is made;
- taxpayer can request a **tax clearance certificate**;
- **public rulings** and **advance rulings**;
- **anti-avoidance provision**;
- companies must appoint a **Myanmar-resident representative** for tax purposes;
- document retention period: **7 years**
- limitation period for new or re-assessment: **6 years** (12 years in case of deception) after the tax assessment year;
- **two-stage appeal**: Within 30 days to the Director General and, thereafter, within 90 days to the Tax Appellate Tribunal;
- **tax claw-back** from shareholders post liquidation;
- **interest** on under- or overpaid taxes to be assessed according to the specified procedure; Ministry of Planning and Finance may set interest with the consent of the Union Government;
- **finances** may be levied within 7 years (12 years in case of deception) after the violation



- **long list of fines;** fines either expressed as a percentage of the unpaid tax or as a fixed amount;
- **punishment for tax evasion** (“intentionally and in bad faith avoiding tax assessment, tax payment or tax collection or claiming a refund without entitlement”): Up to 7 years imprisonment, a fine equivalent to the higher of the tax or Ks. 250,000, or both.

10. **New rules for microfinance companies**

With Directive 1/2019 dated 5 June 2019, the Microfinance Business Supervisory Committee changed, **with effect 1 June 2019**, the interest rate and fees for microfinance companies as follows:

- Maximum interest rate on micro loans: 28% p.a. (2.3% per month) - down from 30% p.a.;
- minimum interest rate on compulsory savings: 14% p.a. (1.2% per month) - apparently down from 15% p.a.;
- minimum interest rate on voluntary savings: 10% p.a. (0.8% per month) - same as previously;
- Fees including loan service fee, fines, digital service fee, social welfare fee, life insurance fee, membership fee, document fee: If the term of the loan is 12 months, these fees shall in total not be higher than 2% of the loan amount. If the loan has a different term, the fees shall be based on the actual term (example: term = 8 months → max. fees = 2% x 8/12 = 1.33% of the loan)

Furthermore, in a letter dated 4 June 2019, the Financial Regulatory Department requested the 3 INGOs and 16 NGOs that are currently licensed to set up a company under the Myanmar Companies Law and apply anew for a microfinance license.

11. **Time to appoint an ordinarily resident director or authorised officer is running out**

This is to remind our readers that companies, branches and rep offices that were in existence prior to the Myanmar Companies Law coming into force on 1 August 2018 only have until **31 July 2019** to find a director (in case of a company) or authorised officer (in case of a branch or rep office) who is ordinarily resident in Myanmar.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 62 - 21 June 2019

The Companies Law requires each company to have at least one director and each branch or rep office to have an authorised officer who is ordinarily resident in Myanmar. This person may be a Myanmar national or foreigner, provided that he or she resides in the country for 183 or more days during each 12 months period following the date of registration (in case of companies, branches and rep offices that were registered after the new Companies entered into force) or following 1 August 2018 (in case of companies, branches and rep offices that were registered prior to the new Companies Law entering into force).

We will be happy to provide a nominee director or authorised officer fulfilling these requirements to those clients having difficulties finding a suitable person within their own organisation.

Furthermore, we would like to remind our readers that **those companies that re-registered keeping their original memorandum and articles of association** have to file a **special resolution to this effect until 31 July 2019** if they wish to keep the objects in their memorandum of association.

12. Debt collection seminar

We have uploaded the presentation of our debt collection seminar: <https://tinyurl.com/y5qaz9t8>.

13. Electricity and energy news

- (a) In a somewhat rare piece of positive news in the electricity sector, approval of the 135 MW Kyaukphyu gas-to-power project is reported to be imminent: <https://tinyurl.com/y4ykc3v2>
- (b) Official: Emergency power projects impossible without price rises: <https://tinyurl.com/yxzk73h8>
- (c) This appears to be somewhat contradictory - Yangon Chief Minister vows to keep foreign fuel retailers out: <https://tinyurl.com/y4znc4rh>, but Thai's PTT and KBZ sign fuel storage, wholesale and retail agreements: <https://tinyurl.com/y6xve6yv>
- (d) Smart meter project said to reduce power outages, but approval needed: <https://tinyurl.com/y29k63mr>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 62 - 21 June 2019

(e) Japan's Shikoku Electric Power and Chugoku Electric Power to buy stake in Ahlone thermal power plant from a TTCL unit: <https://tinyurl.com/y2jjwzr4>

(f) World Bank warns Myanmar to double electricity sector investment: <https://tinyurl.com/y4kgoat2>

14. Market access and other news

(a) Adani to develop container terminal port in Myanmar: <https://tinyurl.com/y49j9286>

(b) Golden Myanmar Airlines backs out of Kawthoung airport modernisation: <https://tinyurl.com/y3o47pm4>

(c) Adani Myanmar to develop container terminal in Yangon's Ahlone Township: <https://tinyurl.com/y3kgtnac>

(d) More Chinese airlines moving to Myanmar: <https://tinyurl.com/y4fjnozz>

(e) IFC takes stake in Yoma Bank in first for Myanmar: <https://tinyurl.com/y3o8pyeu>

(f) New Competition Commission already under fire: <https://tinyurl.com/yxgtam93>

(g) Myanmar to allow private plantations to export timber: <https://tinyurl.com/y34b5ylc>

(h) Wider variety of insurance products expected with foreign market entrants: <https://tinyurl.com/yx8mvhnk>

(i) Consolidation expected in banking industry: <https://tinyurl.com/yywffgxq>

(j) Myanmar risks to return to money-laundering watch list: <https://tinyurl.com/yxv878nc>

(k) Myanmar signs on as observer for BRI tax cooperation pact: <https://tinyurl.com/y3peshp9> (This thing is called BRITACOM - if anybody has a concise summary of how it actually operates, or is supposed to operate, we would be grateful to have it.)

(l) Toyota to assemble vehicles in Myanmar: <https://tinyurl.com/y553tloz>

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

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director