



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

Dear Readers,

Welcome to a new edition of our newsletter.

1. Importer/exporter registration certificates: Update them until 3 September 2019

Companies incorporated (as well as branches, rep offices and cooperative societies registered) before 1 August 2018 that have since re-registered under DICA's new electronic registration system also have to update their exporter/importer registration certificate. Exporter/importer registration certificates are issued by the Department of Trade under the Ministry of Commerce and required by every company, branch, rep office or cooperative society wishing to import goods into the country.

According to Department of Trade Newsletter 4/2019 dated 3 July 2019, companies (and, presumably, branches, rep offices and cooperative societies) **that have not filed an application for updating their exporter/importer registration certificate must do so by 3 September 2019** or risk being struck off from the register of exporters/importers.

The application documents for companies, branches and rep offices are as below. There is a slightly different list for cooperative societies. The application fee appears to be Ks. 10,000.

- (a) Application on stationary with a letterhead that includes the phone number, fax number and e-mail address of the company (or branch or rep office);
- (b) registration certificate issued by DICA's online system; print-out of the company extract;
- (c) old exporter and importer registration certificate (original);
- (d) copy of the national registration card or passport of the director or managing director (or the "authorised officer") representing the applicant.

2. New law to transform MPT

According to the **Myanmar Telecommunication Corporation Law** (Pyidaungsu Hluttaw Law No. 23/2019 dated 6 August 2019), **Myanmar Posts and Telecommunications (MPT)**, the state-owned enterprise under the Ministry of Transport and Communications ("**Ministry**") that, together with Japan's KDDI, operates one of the country's four telecom networks, will be transformed into **Myanmar Telecommunication Corporation** (the "**Corporation**") which,



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

although still fully owned by the Union, will (presumably) be more independent from the Ministry and have some features of a private enterprise.

The law is not in force yet; it will enter into force on the date notified by the president.

The Corporation will be run by a board of directors appointed by the Ministry with the consent of the Union government, composed of at least 7 and at most 11 persons. The board will be composed of the chairman, a CEO, 1 financial expert, 1 management expert, 1 business expert, 1 legal expert and telecommunication experts.

The Corporation will take over all assets, liabilities, licenses, contracts, etc. of MPT by universal succession.

Current business partners of MPT will note that according to section 22(f), the board of directors “has the right to continue the contract as previously, continue or cease the operation after amending the contract, or terminate the contract if required, concerning any businesses under a contract made between MPT and companies or organisations from Myanmar or abroad in the form of a joint venture, partnership or any form of cooperation.”

The Corporation will be allowed to provide mobile financial services through a separate subsidiary and to invest in other telecom-related businesses. With the approval of the Ministry, it may engage in telecom-related projects under the BOT system.

The Corporation shall establish its own budget with the consent of the Ministry. Nevertheless, it shall “put its expenses and revenue in the Union Budget according to the Union Budget Law”, so we suppose that - which is important for lenders and other business partners - the Union will foot the bill if the Corporation is making a loss. Conversely, the Corporation shall contribute “the profit share of the Union government (as specified annually) from its net profit”.

There is a specific provision in the law that obliges the Ministry to instruct the Corporation to pay back foreign loans obtained by MPT from the Corporation’s own budget.

The law specifically states that employees of the Corporation are not public servants, but shall be treated according to the labour laws in force, including the Social Security Law. They shall be treated as “public servants” only for purposes of criminal law.

Of note, claims by the Corporation and companies and organisations formed in cooperation with the Corporation will be time-barred only after 60 years.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

3. New licensing round for foreign banks

In a sign that more foreign banks will be allowed in, consulting firm Roland Berger (that already assisted the Central Bank in choosing foreign banks in the previous two licensing rounds) has been selected again to provide consultation services for the selection of foreign banks (<https://tinyurl.com/y2e2djv8>).

4. Labour law seminar

We have uploaded the presentation of our labour law seminar held on 25 July 2019 here: <https://tinyurl.com/yyfc49np>

5. Short financial year: Some issues clarified

As our readers are aware, 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 is 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 2 January 2020.

Ministry of Planning and Finance Notification 64/2019 dated 5 August 2019 - we have uploaded an English translation to our homepage: <https://tinyurl.com/y26fjbhj> - clarifies some issues around the transition period, among them most importantly:

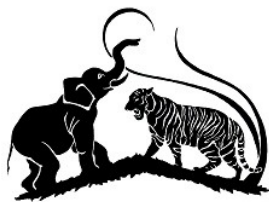
(a) Tax exemption thresholds

In order to calculate whether the revenue of a company is below the respective tax exemption thresholds (special goods tax: Ks. 20,000,000 p.a.; corporate income tax: Ks. 50,000,000 p.a.) during the transition period, the revenue is doubled. If the product does not exceed the respective threshold, the respective tax is not attracted.

(b) Corporate income tax calculation

We understand that corporate income tax during the transition period shall be calculated as follows:

	Revenue during the transition period
./.	Expenses during the transition period excluding depreciation, interest and donations
	<hr/>
	Income I



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

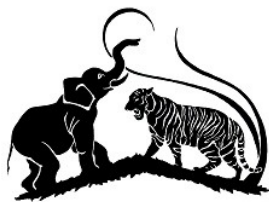
x	2
	Income II
./.	Depreciation during the transition period
./.	Actual interest payments during the transition period
	Income III
./.	Donations to approved organisations made during the transition period (max. 25% of Income III)
	Income IV
x	Tax rate 25% (20% for listed companies)
	Calculated corporate income tax
/	2
	Payable corporate income tax

We ran this through Excel several times using different numbers each time, and it appears to us that this formula results on average in a higher tax payment in comparison to a calculation on the basis of a six months period. Companies with high donations might profit, though, as might companies with a loss during the transition period (on the assumption that (negative) "Income IV" will be allowed as loss carried forward).

(c) Calculation of personal income tax on salary

Residents do not have to pay personal income tax on salary if the income during the transition period, multiplied by 2, does not exceed the threshold of Ks. 4,800,000. If the income exceeds this amount, we understand that the personal income tax shall be calculated as follows:

	Salary during the transition period
x	2
	Income I
./.	Basic allowance: 20% of Income I; max. Ks. 10,000,000
./.	Spouse allowance: Ks. 1,000,000
./.	Child allowance: Ks. 500,000 per child
./.	Parent allowance: Ks. 1,000,000 per parent living together with the taxpayer
./.	Life insurance premium paid during the transition period
./.	Employee's part of the social security contributions paid during the



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

	transition period
./. (possibly:)	Donations to approved organisations made during the transition period (max. 25% of Income I)
	<hr/> Income II
x	Tax rate 0%-25% for each bracket
	<hr/> Calculated personal income tax
/	2
	<hr/> Payable personal income tax

A foreigner is considered to be a Myanmar resident during the transition period if the number of days that he or she stays in the country multiplied by two exceeds 183.

Salary from a Myanmar source of non-resident foreigners shall be calculated as follows:

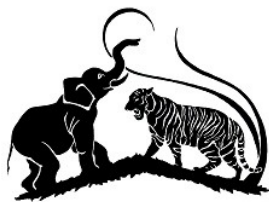
	Salary from a Myanmar source during the transition period
x	2
	<hr/> Income
x	Tax rate 0%-25% for each bracket
	<hr/> Calculated personal income tax
/	2
	<hr/> Payable personal income tax

6. New Petroleum Exploration, Drilling and Production Bill

The new bill was published on 13 August 2019. According to cursory review, it has essentially the same contents as the old bill from 2018 (read our analysis of the old bill here: <https://tinyurl.com/y86qy7ya>). Among the new provisions is a requirement for petroleum business permit holders to set up a research and development fund and the necessity to obtain an MIC permit.

7. Arbitration centre opened

In a ceremony on 3 August 2019, the “Myanmar Arbitration Centre” (MAC) announced the commencement of its operations. The centre is operated by a private company limited by guarantee, set up by the Union of Myanmar Federation of Chambers and Commerce and Industry (UMFCCI) in March this year.



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

The centre could well be the nucleus of a full-fledged alternative resolution mechanism for commercial disputes in the future. Currently, however, it has several shortcomings which, in our opinion, do not make it very suitable for foreign investors as a means of resolving disputes with local business partners. Also with regard to purely local disputes, we suppose that it will still take a while for local entrepreneurs to recognise the centre as an alternative to the court system. To summarise,

- (a) The centre appears to have a roster of arbitrators, but this list - which would ideally include each arbitrator's CV and area of expertise - is not available (yet?), even upon request. We understand that all of the centre's arbitrators are Myanmar nationals.

(Compare the well-presented list of arbitrators at the Vietnam International Arbitration Center - "VIAC" - for contrast: <http://eng.viac.vn/danh-sach-trong-tai>)

- (b) The centre apparently requires the contract from which a dispute arose to be governed by Myanmar law. Clause 17 of the centre's arbitration procedures - which are available at UMFCCL as part of a booklet, but not online - reads:

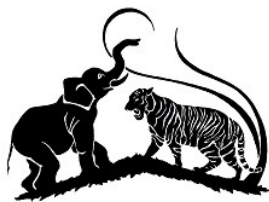
17.1 *The Arbitral Tribunal shall decide the dispute, which is submitted for settlement by arbitration, according to respective existing prescribed law of the Republic of the Union of Myanmar.*

17.2 *If the Arbitral Tribunal has been expressly authorized by the Parties, it shall decide the dispute with justice, equity and good conscience.*

17.3 *The Arbitral Tribunal shall decide all disputes in accordance with the terms of the contract. In deciding as such, the usage of the trade customs that are applicable to economy and commerce shall be taken into consideration.*

(In contrast, VIAC's arbitration rules - <https://tinyurl.com/y6xkttty4> - expressly state in clause 24.2 that for disputes with a foreign element, the tribunal shall apply the law agreed by the parties.)

- (c) The centre's arbitration procedures do not expressly allow the parties to nominate arbitrators that are not on the centre's roster. The sample form which the claimant has to submit to the centre to start arbitration contains the following wording:



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

“It is agreed to conduct the arbitration by appointing () arbitrators of Myanmar Arbitration Centre. (or) A request is made to appoint the following person(s) as arbitrators by the Myanmar Arbitration Centre to conduct the arbitration.”

It may very well be that a person or persons not on the centre’s roster may be appointed in the second alternative, but given that the roster is not (yet?) public, it would be good to have an unambiguous statement to this effect in the arbitration procedures.

(In contrast, VIAC’s arbitration rules in clauses 12 and 13 expressly allow the parties to select arbitrators who are not on VIAC’s list.)

- (d) We have not really understood how a sole arbitrator would be appointed from reading the centre’s arbitration procedures.
- (e) The costs for conducting arbitration at the centre are not known yet.
- (f) The centre does not appear to deliver the “statement for arbitration” to the respondent, requiring the claimant to do this instead (OK, this is not a big deal).

8. Liberalisation of the insurance market

As of today, the following foreign insurance companies have been accepted to operate in the country:

Date	Foreign insurer	Country	Local JV partner	Type	Foreign ownership
25 April 2019	AIA	Hong Kong	-	Life	100%
25 April 2019	Chubb Tempest Reinsurance	Bermuda	-	Life	100%
25 April 2019	Dai-ichi Life	Japan	-	Life	100%
25 April 2019	Manufacturers Life Insurance	Canada	-	Life	100%
25 April 2019	Prudential Hong Kong	Hong Kong	-	Life	100%
2 August 2019	Taiyo Life Insurance	Japan	Capital Life Insurance	Life	35%
2 August 2019	Thai Life Insurance	Thailand	Citizen Business Insurance	Life	35%
2 August 2019	Nippon Life Insurance	Japan	Grand Guardian Life Insurance	Life	35%
2 August 2019	Sompo Japan Nipponkoa Insurance	Japan	AYA Myanmar General Insurance	Non-Life	35%
2 August 2019	Tokio Marine	Japan	Grand Guardian General Insurance	Non-Life	35%
2 August 2019	Nichido Fire Insurance	Japan	IKBZ Insurance	Non-Life	35%

Joint ventures between Thailand’s Muang Thai Insurance, Muang Thai Life Assurance and South Korea’s DB Insurance and their respective local counterparts seem to have failed due to a clause



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

in the request for proposal that required the foreign joint venture partner to subscribe to new shares in the local company instead of purchasing existing shares from the local company's owner (<https://tinyurl.com/y25e7y3p>).

9. Electricity and energy news

- (a) Energy minister returns to work after medical leave
- (b) The sleeping Chipwi hydropower project: <https://tinyurl.com/y5xsds96>
- (c) Coco Island to have electricity by end 2020: <https://tinyurl.com/y3ve2nsk>
- (d) Myanmar issues tender for rooftop PV: <https://tinyurl.com/yy9k7wtm>

10. Market access and other news

- (a) Myanmar to pick the country's first deep-sea port location next year (and to establish six inland ports): <https://tinyurl.com/y2tjm9og>
- (b) Yangon Stock exchange apparently plans to set up an OTC market: <https://tinyurl.com/yyho78ma>
- (c) FDI jumps 77% to USD 2.1 billion in first half of 2019: <https://tinyurl.com/y4y89oet>
- (d) Thai Life Insurance acquires 35% in Citizen Business Insurance: <https://tinyurl.com/y3vx9dcl>
- (e) Myanmar appoints ex-World Bank economist as deputy industry minister: <https://tinyurl.com/yxh9bvto>
- (f) Yangon trials digital construction permit system: <https://tinyurl.com/y4p58kde>
- (g) Foreigners allowed to trade at the Yangon Stock exchange "after October": <https://tinyurl.com/y48h64oq>
- (h) US eases visa requirements for Myanmar citizens: <https://tinyurl.com/yxvdz57f>
- (i) Japanese entities are taking kickbacks for foreign trainees: <https://tinyurl.com/y3ul357k>
- (j) Auditor says country's foreign debt tops USD 10 billion: <https://tinyurl.com/y5jl7ove>
- (k) Oway looks to raise funds: <https://tinyurl.com/yxz7mvvc>



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

- (l) Hotels in Nay Pyi Taw struggle to survive: <https://tinyurl.com/y6ehjpsc>
- (m) Mandalay goes “smart city”: <https://tinyurl.com/yxdxyumn>
- (n) UN calls for boycott of Myanmar companies with military links: <https://tinyurl.com/y5vutegs>
- (o) Myanmar telco Frontiir bags USD 30 million from UK development finance group: <https://tinyurl.com/yylu8hko>
- (p) Myanmar’s currency black market thrives in banks’ shadows: <https://tinyurl.com/y2hnp7vg>

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

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Director



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 65 - 20 August 2019

About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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