



Dear Readers,

Welcome to a new edition of our newsletter.

1. Follow-up on the SAC's new Registration of Associations Law

(a) The past may yield advice

As reported in our [last newsletter](#), the SAC's new Registration of Associations Law ([English translation](#)) makes it a criminal offence to operate or cooperate with a not-for-profit association (irrespective of whether this is a local association or the Myanmar presence of an international non-governmental organisation - "INGO") which is not registered with the relevant registration board (a committee ultimately controlled by the Ministry of Home Affairs).

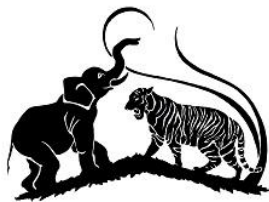
It is probably important to remember that non-governmental organisations ("NGOs") had to operate in a similarly restrictive environment already from 1988 to 2014 under the (then) Establishment of Associations Law ([English translation](#)).

How NGOs coped with the restrictions at the time might provide valuable insight into how they might cope now, and readers are therefore encouraged to read the following texts from 2011 on [INGOs](#) and [local CSOs](#) in Myanmar.

(b) No by-laws out yet

The SAC's new law exerts pressure on NGOs to try to quickly (re-) register. However, no by-laws have been published yet, and as long as this is not the case, it is unlikely that the authorities will handle any applications. We understand that filing applications now may therefore be futile or even dangerous, as if an application gets rejected for incomplete documents or information, there is now only one chance to remedy this within 30 days, and if this remedy fails, the NGO is barred from registration for good.

We therefore understand that NGOs are, as a general rule, probably best advised to monitor the situation, make up their mind as to if or how they want to proceed with their activities in Myanmar, and wait for the by-laws to make filings (if any).



(c) 60 days deadline to register

The SAC's new law orders unregistered NGOs to apply for registration within 60 days from the date of enactment of the law (i.e. by 27 December 2022 by our calculation), but this timeline seems to be unrealistic in many cases:

- It is hard to see how an INGO might possibly be able to collect all memoranda and recommendations required to apply for registration within 60 days.
- The registration requirements for a local CSO are less onerous, but also a local CSO has to obtain a recommendation from the government department concerned with its activities - if this is feasible within 60 days is not certain.

As explained further above, a rushed application may be dangerous as there is only limited opportunity to remedy it if it is defective.

(d) NGOs whose registration certificate expired

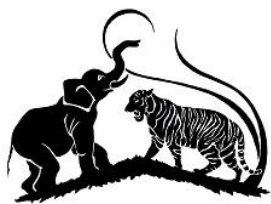
A registration certificate is valid for 5 years; the term of validity uniformly ends either on 30 June or on 31 December. We understand that the authorities did not renew registration certificates of NGOs that expired on 31 December 2020 or thereafter, although the respective NGO might have filed an application for renewal in time.

According to information received from the Ministry of Home Affairs by phone, all NGOs with expired registration certificates (also those whose applications for renewal were not handled by the authorities) must apply for a new registration certificate if they wish to continue operating; it is to be hoped that the old memoranda and recommendation letters may still be used.

(e) Finding solutions outside of the Registration of Associations Law

Among others, the Registration of Associations Law does not apply to

- Organisations established under any other law in force;
- organisations that work directly or indirectly on religious, economic or political issues in accordance with the laws in force; and
- for-profit associations and organisations.



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(aa) Organisations established under any other law in force

The first bullet point is obviously the most intriguing: The 2017 Companies Law is another law in force, and companies (as well as the Myanmar branches of INGOs) registered with the Directorate of Investment and Company Administration (“**DICA**”) should therefore arguably qualify as organisations to which the Registration of Associations Law does not apply.

Of note, the 2017 Companies Law newly introduced a “company limited by guarantee”, which in common law jurisdictions is a typical vehicle for non-profit purposes.

The simple solution therefore appears to be for INGOs to register a branch and for local CSOs to establish companies limited by guarantee - and they are rid of the restrictions imposed by the SAC’s new Registration of Associations Law, or so the thinking might go.

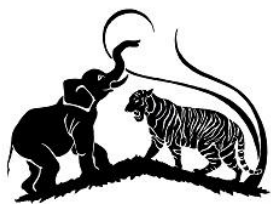
However, we very much suppose that this was an oversight in the drafting of the new Registration of Associations Law (it would just be too simple!), and we expect that, in some way or another, the plug will probably be pulled sooner or later from this simple solution.

(bb) Organisations that work on religious, economic or political issues

Some NGOs might want to explore operating under the umbrella of a monastery or other religious institution; this option might only be available to some local CSOs and not to INGOs.

“Organisations that work on economic issues” seems to refer to business associations such as chambers of industry and commerce which do not impose themselves as a good conduit for conducting classical NGO activities.

We would not know what “organisations that work on political issues” might refer to other than political parties (which are covered in a separate subparagraph, though).



(cc) For-profit associations or organisations

It is not self-evident why NGOs should want to switch to for-profit activities, but this might be a robust option to leave the scope of application of the Registration of Associations Law behind.

(f) Winding up an NGO

If decision-makers in an NGO come to the conclusion that it is no longer feasible or desirable to continue the NGO's operations in Myanmar, it is time to plan for winding up the NGO. This (roughly) involves the following steps:

(aa) Special requirement if the NGO is registered with a registration board

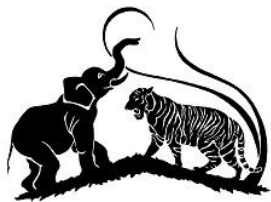
If an NGO that is registered with a registration board should be wound up, care should be taken to comply with section 51 of the new Registration of Associations Law as there is otherwise the risk that the authorities will confiscate the NGO's assets. In this context, it is probably to have all executive members sign the resolution to wind up the NGO and submit it to the registration board for approval within 7 days after the resolution having been passed (section 28(j)).

It is currently not yet clear whether special requirements also apply to an NGO that was registered with a registration board, but whose registration certificate has expired; at least according to the wording of the law, there should be no special requirements.

(bb) Things to do prior to starting official winding-up procedures

As is also the case with commercial enterprises, winding up an NGO can be done most smoothly if the NGO is tidied up prior to starting official winding-up procedures (taking into account certain security aspects). This usually entails the following:

- If the NGO has a memorandum of understanding with a government entity, the memorandum should be checked as to the terms and conditions for terminating it;



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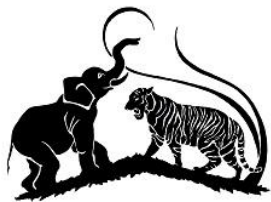
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- terminating existing contracts; paying outstanding debt (if any); collecting outstanding receivables (if any); withdrawing monies from the bank account; notifying partners of the impending end of operations;
- terminating employees (1 month notice or, *in lieu*, salary payment; severance allowance depending on the length of service; possibly more generous benefits if the employment contract, employment handbook or internal guidelines provide for them); in the unlikely event that the NGO notified the Factories and General Labour Law Inspection Department (“FGLLID”) of the commencement of its operations, notifying the FGLLID of the permanent closure at least 10 days prior to the end of operations;
- if the NGO so far withheld personal income tax from the salary paid to its employees, notifying the tax office of the termination of the employees until the 10th day after the end of the month in which the termination becomes effective; collecting the tax booklets (if no online filing) and handing them to the employees;
- if the NGO so far filed associations income tax returns and/or commercial tax returns, notifying the tax office of the business closure at least 15 days prior to the end of operations; filing an association income tax return and/or commercial tax return for the period from the beginning of the current financial year until the date of the end of operations within 1 month (associations income tax return) or 15 days (commercial tax return) after the end of operations; and
- distributing the NGOs remaining money and other assets as provided for in the memorandum of understanding with a government entity (if any), the NGOs constitutional documents (if any), or as decided by the NGO’s members or owner.

(cc) **Official winding-up procedures**

After the NGO is tidied up, it may be officially dissolved as follows:

- **If the NGO is incorporated (company limited by shares; company limited by guarantee):**



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- The company's members resolve by special resolution to wind up the company and appoint a liquidator (must be a registered "insolvency practitioner").
- The liquidator has to notify DICA (online) within 2 days of his or her appointment together with a declaration by the company's directors (accompanied by a statement of the company's assets and liabilities) that the company is solvent.
- The liquidator then winds up the company's affairs (if there still is anything to wind up - ideally, the company had already been cleared of anything when the liquidator was appointed), prepares an account on how he or she conducted the winding-up, and calls a members' meeting (requires 28 days notice, unless there are so few members that it is possible to get all of them to sign a written resolution) to explain the account.
- Within 1 week after the meeting, the liquidator sends (online) a copy of the account and the meeting minutes to DICA which DICA, upon receipt, registers. The company is dissolved after 3 months from the date of this registration.

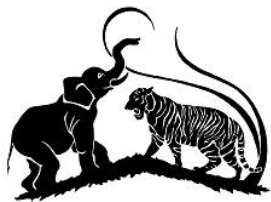
■ **If the NGO is the branch (registered with DICA) of a foreign INGO:**

The INGO has to inform DICA that it ceased its operations in Myanmar within 21 days after having done so, and thereafter DICA should deregister the branch (if all goes well, within 60 days at the latest).

■ **If the NGO is an unincorporated association (sometimes referred to as a common law association):**

As such, nothing has to be done (if we assume that the NGO was indeed tidied up as we suggested in paragraphs above), as the association ceased to exist because its objects and purposes were fulfilled.

We think, however, that it might often be a good idea if its members (if they can still be ascertained) congregated and passed a documented resolution to the effect that the association is terminated and its former



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members have no claims and responsibilities among themselves and against each other anymore.

This is in particular so if certain members were entrusted with property from others - they might wish to obtain documentation from the author(s) of the trust confirming that they disposed of the property as intended.

2. DICA again issues recommendation letters for in-country visa renewal

As from 25 October 2022, DICA is again issuing recommendation letters for the in-country renewal of visas, but there still appears to be a backlog of applications filed during the two months hiatus.

Applicants will first have to file an online application via visaonline.dica.gov.mm and then provide physical copies of the application documents (among them copies of the applicant's professional certificates); the number of sets seems to depend on the number of ministries from which DICA intends to obtain recommendations.

At the very least, DICA sends the application to the Department of Immigration (under the Ministry of Immigration and Population) in Nay Pyi Taw which checks it against a blacklist; DICA can issue the recommendation letter after the Department OKs the application.

Recommendation letters for MIC companies have to be applied for through movas.dica.gov.mm, and for companies with an investment permit from the Thilawa SEZ Management Committee from the one-stop service centre in the Thilawa SEZ.

3. DICA says it will step up "the quality of its inspections"

In an announcement published on 4 November 2022 ([English translation](#)), DICA contends that companies and their directors and shareholders are slack with their compliance obligations (DICA identifies the following deficits: failure to file the annual return; registered office not at the indicated address; failure to maintain registers and other data; using a personal instead of a corporate bank account; failure to obtain additional licenses and permissions after company registration; failure to comply with the "duties of directors and members") and says it will step up "the quality of its inspections".

According to the announcement, DICA will use MyCo's electronic monitoring capabilities to ensure corporate compliance.



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Companies (and branches) hiring a company secretary do not have to worry about compliance deficits. We offer such services for a reasonable price; please do not hesitate to contact us (info@lincolnmyanmar.com) if you are interested.

4. Import in border trade may only be done by companies with income from abroad in their bank accounts

According to the Trade Department's export/import newsletter dated 31 October 2022 ([English translation](#)), importers of goods in border trade may obtain an import license from the Trade Department (or, if the goods to be imported do not require an import license, file an import declaration with the Customs Department) only if they can show that they have sufficient export earnings or other remittances from abroad in their bank account.

This scheme will be piloted in the Myanmar-Thai border trade starting from 1 November 2022.

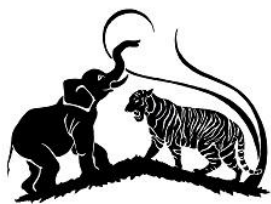
5. COVID-19 loan repayment period extended by 1 year

According to a press release dated 4 November 2022 of the Working Committee to Address the Impact of COVID-19 on the National Economy ([Burmese language](#)), the loan repayment period for the 5,990 companies that took out loans from the COVID-19 fund has been extended by 1 more year, provided that the borrower paid interest for the first two years and used the loan for its intended purpose.

We hope that you have found this information useful.

Sebastian Pawlita
Managing Director

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Director



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About Lincoln Legal Services (Myanmar) Limited

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