



**Dear Readers,**

Welcome to a new edition of our newsletter.

### **1. Counter-terrorism rules**

As was widely reported, the SAC's Ministry of Home Affairs issued rules ([English translation](#), some chapters omitted, but still a long read) to flesh out the Counter-Terrorism Law on 1 March 2023.

The Counter-Terrorism Law was enacted in 2014, partly for domestic purposes and partly to implement various international conventions of which Myanmar is a member.

Some parts of the rules stick out:

- The rules explicitly suspect that money and assets from NGOs flow to “terrorists”, and that “terrorists” masquerade as NGOs to secure funding. They order the creation of an inspection team tasked with conducting regular and random checks of the finances of NGOs.
- The rules provide for prohibition and freezing orders with regard to funds kept with banks and financial institutions. This is in addition to prohibition and freezing orders provided in anti-money laundering legislation.
- According to the rules, teams operating under the SAC's Anti-Terrorism Central Committee may themselves or order telecommunication and internet providers to cut off, limit, and intercept communication for up to 60 days.

This is in addition to provisions in the Telecommunications Law that allow the Union Government to order providers to “intercept any information and communication that affect national security or law and order” and, furthermore, empower the Ministry of Transport and Communications with the approval of the Union Government to “temporarily suspend telecommunication services, restrict specific forms of communication, jam and intercept communication, and hand over or take control of telecommunication equipment” if this is “in the public interest”.

- The rules provide for a witness protection programme of which one feature is access to legal advice and assistance in accordance with the Legal Aid Law. However, when the SAC amended the Legal Aid Law in 2021, it removed (among others) witnesses from the list of eligible recipients.



### 2. Implementation of the Trademark Law 2019

#### (a) Trademark Law 2019 to enter into effect on 1 April 2023

On 10 March 2023, the [SAC ordered](#) the Trademark Law 2019 to enter into effect on 1 April 2023.

#### (b) What happened so far

To recap:

In order to comprehensively overhaul Myanmar's outdated intellectual property protection system, the country's parliament enacted four IP laws (on trademarks, industrial design rights, patents, and copyright) in 2019.

The Trademark Law was to be implemented first. To this end, a newly created IP Department under the Ministry of Commerce commissioned an online filing system to shift the registration of trademarks from paper-based "declarations of ownership" registered with the Registration of Deeds Office under the Ministry of Agriculture, Livestock and Irrigation to proper registration of the trademark itself.

Declarations of ownership document a person's claim to a trademark, but do not create trademark rights - these rights are created through the trademark's actual use in commerce. In contrast, once the online filing system is fully up and running, trademark rights will be created through registration of the trademark, and a person who applied for the registration of a trademark first may, even if he never used it, at least in principle prohibit any latecomer from registering and using the trademark.

The online filing system went live as a slimmed-down version in October 2020: Trademark owners with a registered declaration of ownership or evidence of actual use of the trademark in Myanmar (in practice, a "cautionary notice" published in a newspaper) were invited to upload (either in person or through an agent) scans of their documentation to the system. This "soft-opening period" was expected to end in April 2021, but continues to this day due to well-known events.



**(c) What will happen now**

**(aa) Trademark owners who already uploaded scans of a registered declaration of ownership, cautionary notice, or other proof of actual use in Myanmar**

Trademark owners who already uploaded scans of their documentation to the system will now have to (i) appoint a trademark representative and (ii) pay the registration fee.

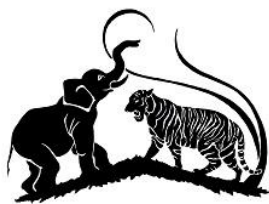
We will of course be happy to act as your trademark representative. A separate appointment is required for each trademark (there may be a “bulk” solution if the company has more than 10 trademarks); the appointment has to be notarised and legalised if the trademark owner is a company registered abroad.

The filing and registration fees have not been officially announced yet, but are expected to amount to (i) MMK 150,000 for the application and (ii) MMK 150,000 for the registration **per class**. It is possible to “drop” classes to save on the fees.

We are not entirely sure about the course of events and the timeline after the entire package (application for mark registration - form TM-1; appointment of representative - form TM-2; scan of the declaration of ownership, cautionary notice, or other proof of use of the trademark in Myanmar before 1 April 2023; proof of fee payment) is uploaded, but ultimately, we suppose that

- at some point, the IP Department will have to start reviewing the applications;
- then publish the trademarks online; and
- if there are no objections from competing trademark owners within 60 days, register the trademarks.

We furthermore understand that the filing date - important because of the shift from a “first-to-use” to a “first-to-file” system - will be deemed to be 1 April 2023 (the date on which the Trademark Law entered into effect) for all trademarks whose owners uploaded scans proving that the trademark was used in Myanmar before 1 April 2023.



# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

## NEWSLETTER 104 - 27 March 2023

The online filing system is currently closed to upgrade it, in particular to deal with fee payments. It is expected to open again on 3 April 2023, and it may be possible from that date to upload the package. **However, please do not rush as there is no deadline (yet) for applications for the registration of existing trademarks.**

**(bb) Trademark owners who used their trademark before 1 April 2023, but have not uploaded anything yet**

We understand that once the online filing system is back from being upgraded on 3 April 2023, trademark owners who have proof of actual use from before 1 April 2023 (registered declaration of ownership, cautionary notice, other proof), but have not uploaded anything yet, may still do so for an undefined period of time in order to profit from the common filing date.

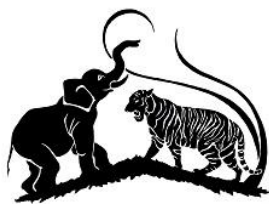
**(cc) Owners of new trademarks**

Owners of new trademarks (never used, or first proven use after 1 April 2023) will have to wait with applying for trademark registration until the online filing system is fully operational (the IP Department calls this the “grand opening”).

### 3. Courts dealing with trademark matters

Against the background of the Trademark Law taking effect on 1 April 2023, the Supreme Court issued several notifications on 24 March 2023 specifying which courts will handle matters under the Trademark Law from 1 April 2023:

Sr. no.	Matter	Competent court	Source
1	The following powers of the Intellectual Property Rights Court: (a) Deciding on claims relating to the infringement of intellectual property rights under the Trademark Law; (b) deciding on applications for a provisional order under section 77(a) Trademark Law.	Kyauktada District Court	Supreme Court Notification 238/2023 dated 24 March 2023
2	The following powers of the Intellectual Property Rights Court: (a) Deciding on applications according to section 66 Trademark Law to review a	High Court of Yangon Region	Supreme Court Notification 235/2023 dated 24 March 2023

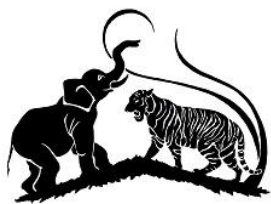


Sr. no.	Matter	Competent court	Source
	decision of the Intellectual Property Rights Agency; (b) deciding on applications according to section 72 Trademark Law to review a suspension order issued by the customs department's director general.		
3	Original jurisdiction in criminal matters of the Intellectual Property Rights Court to try and adjudicate offences under the Trademark Law	(a) Court of the Self-Administered Division; (b) courts of self-administered zones; (c) district courts	Supreme Court Notification 236/2023 dated 24 March 2023
4	Deciding on appeals and objections against judgments, orders and decisions of the Intellectual Property Rights Court	High Court of Yangon Region	Supreme Court Notification 239/2023 dated 24 March 2023
5	Deciding on appeals and objections against judgments, orders and decisions in criminal matters under the Trademark Law passed by the Court of the Self-Administered Division, or the courts of self-administered zones or the district courts within their jurisdictions	High courts of the regions and states	Supreme Court Notification 237/2023 dated 24 March 2023

Of particular note, infringement claims are going to be centrally heard by the Kyauktada District Court in Yangon. There may be an overlap for a while as the Supreme Court notifications only cover claims under the Trademark Law, and infringement claims may also be brought (and have been frequently brought for decades) under common law principles; in the latter case the competent court is the one in whose jurisdiction the defendant resides or carries on business or the infringement was committed.

#### 4. Further restrictions on exports and imports

- (a) According to the Ministry of Commerce's Export/Import Newsletter 6/2023 dated 22 March 2023 ([text in Burmese](#)), all exports will require an export license from 1 April 2023. Export license applications for commodity lines for which previously no export licenses



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

### NEWSLETTER 104 - 27 March 2023

were needed may be made through the automatic licensing system in Myanmar Tradenet 2.0.

- (b) According to the Ministry of Commerce's Export/Import Newsletter 7/2023 dated 22 March 2023 ([text in Burmese](#)), imports to a customs warehouse will, from 1 April 2023 (for an initial period of 6 months), require the issuance of an import license prior to the ship arriving at the port, as is already the case with any other import.

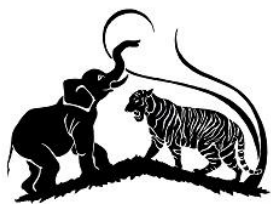
#### 5. Update on the registration of NGOs

Actually, there is no update. We understand from an officer at the Ministry of Home Affairs that they are currently not trying to go after (big) INGOs. Things may be somewhat different for small local CSOs as press reports suggest that they are being summoned to meetings.

We hope that you have found this information useful.

Sebastian Pawlita  
Managing Director

Nyein Chan Zaw  
Director



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 104 - 27 March 2023

### 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:

- Sebastian Pawlita, Managing Director  
Phone: +95-9-262546284 (English)  
E-Mail: [sebastian@lincolnmyanmar.com](mailto:sebastian@lincolnmyanmar.com)
- Nyein Chan Zaw, Director  
Phone: +95-9-790488268 (Burmese)  
E-Mail: [nyeinchanzaw@lincolnmyanmar.com](mailto:nyeinchanzaw@lincolnmyanmar.com)

Office address: La Pyi Wun Plaza, Room 409 (4<sup>th</sup> Floor), 37 Alan Pya Pagoda Road, Dagon Township, Yangon

Web: [www.lincolnmyanmar.com](http://www.lincolnmyanmar.com)