



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 105 - 2 April 2023

Dear Readers,

Welcome to a new edition of our newsletter.

1. DICA requires proof of paid-up capital, police certificates for new companies

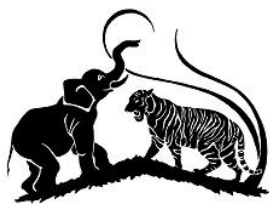
With an undated notification uploaded to its website on 1 April 2023 ([English translation](#)), DICA notified the public that newly established companies have to send the following to DICA by e-mail within 2 months from their incorporation:

- (a) Evidence that the paid-up capital shown in the MyCo system has been credited to a bank account opened in the company's name;
- (b) the following information for natural persons listed as company directors or shareholders:
 - (1) copy of the national scrutiny card and a certificate from the relevant township police that the director actually resides at the address stated in form "Ka";
 - (2) for foreign nationals, proof of compliance with the Registration of Foreigners Rules, 1948 (for example, immigration form "C");
- (c) confirmation from the relevant township police that the registered office address of the company listed in the MyCO system is actually located on the ground and that the company is planning to open an office;
- (d) if a shareholder of the company listed in the company's register is a legal person or a legal entity, evidence related to the organisation.

DICA says that failure to comply will result in the company not being able to file its annual return (the first one has to be filed within 2 months from company incorporation) which will ultimately result in the suspension and deregistration of the company.

These new requirement currently only apply to companies newly established on or after 1 April 2023 and not (yet?) to older companies.

There is no guidance in DICA's notification how this will square with foreign directors or shareholders who do not reside in Myanmar and consequently do not have Myanmar immigration forms.

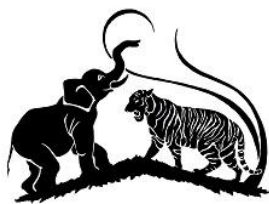


2. Implementation of the Trademark Law 2019

(a) Trademark registration fees announced

On 1 April 2023, the Intellectual Property Rights Agency was established ([English translation](#)) which, on the same day, announced the fees for trademark registration ([English translation](#)):

Sr.	Type of service applied for	Unit	Fee (MMK)
(a)	Accepting and examining an application for trademark registration (TM-1)	Per class	150,000
(b)	Accepting and examining a request to allow a re-application for trademark registration following a failure to comply with prescribed rules (TM-3)	Per one request	100,000
(c)	Examining a request to correct clerical and other errors in a trademark application, and making the correction (TM-4)	Per one request	50,000
(d)	Examining a request to limit the list of goods or services in an application for trademark registration, and limiting the list (TM-6)	Per one request	50,000
(e)	Examining a request to divide an application for trademark application, and dividing the application (TM-7)	Per one request	100,000
(f)	Examining an application for opposition to a trademark registration (TM-8)	Per one request	150,000
(g)	Registering a trademark	Per class	150,000
(h)	Examining and approving a request to issue a certified copy of a trademark registration certificate (TM-9)	Per one request	50,000
(i)	Examining a request to amend information recorded in the trademark register that may be amended, and making the amendment (TM-10)	Per one request	50,000
(j)	Examining an application to extend the term of the registration of a trademark, and recording the extension (TM-11)	Per class	300,000



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Sr.	Type of service applied for	Unit	Fee (MMK)
(k)	Examining an application to record the transfer of trademark rights, and recording the transfer (TM-12)	Per one trademark	100,000
(l)	Examining an application to record a license to use a registered trademark, and recording the license (TM-13)	Per one trademark	100,000
(m)	Examining a request to declare a registered trademark invalid (TM-15)	Per one request	150,000
(n)	Examining a request to cancel a registered trademark (TM-16)	Per one request	100,000
(o)	Examining a request to change the name of the representative, and changing the name (TM-17)	Per one request	20,000
(p)	Examining and approving a request to extend a specified time period (TM-18)	Per one request	50,000
(q)	Examining an application for an appeal (TM-19)	Per class	500,000

(b) Procedure

The Department of Intellectual Property published a brief primer on how to proceed with (re-) registration in the “second phase” ([English translation](#)).

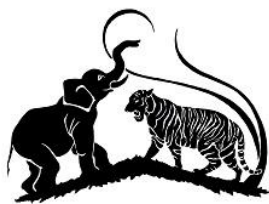
Applications for (re-) registration of trademarks may be either filed in person (or through a representative) at the reception desks of the Intellectual Property Department in Nay Pyi Taw and in Yangon or online (only through a representative).

Applicants wishing to file in person will have to [make an appointment online](#).

A trademark representative must be a Myanmar national, have an online account with the Department of Intellectual Property (“WIPO file user account”) and passed a representative training course. Please do not hesitate to contact us if we (more precisely, one of our lawyers) should act as your trademark representative for online filing.

(c) Trademark Registration Rules

The long-awaited Trademark Registration Rules were published on 31 March 2023 ([Burmese text](#)). We will be happy to provide an English translation, but would charge some money.

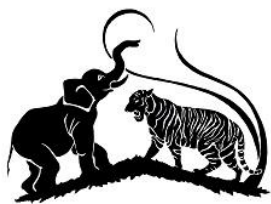


In terms of the re-registration of existing trademarks, the rules provide for the following:

Chapter 4

Priority right of use

12. *If a trademark owner applying under section 93(a) of the Law wishes to enjoy the priority right of use under rule 13 for the following trademarks, he shall apply to the Registration Officer in accordance with the provisions of this chapter within 6 months from the date of the official acceptance of the application for trademark registration.*
 - (a) *Trademarks registered at the Registration of Deeds Office before the Law came into force in accordance with Direction 13 of the Registration Act 1908 or the Registration of Deeds Law (Pyidaungsu Hluttaw Law No. 9/2018);*
 - (b) *Trademarks not registered at the Registration of Deeds Office in accordance with Direction 13 of the Registration Act 1908 or the Registration of Deeds Law (Pyidaungsu Hluttaw Law No. 9/2018), but in actual use in the domestic market before the Law came into force.*
13. *The trademark owner shall enjoy the priority right of use for a period of five years from the date of official acceptance of the application for trademark registration for goods or services for which such trademark is used. Based on the priority right of use, he has, during this time period, the right to oppose under section 26 Trademark Law and the right to defend under section 27 Trademark Law.*
14. *When applying for the registration of trademarks under rule 12(a), evidence of the registration at the Registration of Deeds Office and evidence of a notification of the registered trademark in a local newspaper, magazine or journal shall be submitted.*
15. *When applying for the registration of trademarks under rule 12(b), evidence such as tax receipts or expense receipts, payment receipts or receipts for goods, statistics, advertisements for marketing or sales promotion and announcements by the trademark owner in a local newspaper, magazine or journal shall be submitted, if these items show the use of the trademark.*
16. *If an applicant claiming a priority right of use under rule 12(a) for a trademark is not the owner of the trademark registered at the Registration of Deeds Office in accordance with the Registration Act before the Law came into force, he shall, for this claim, submit evidence to the Registration Officer that the trademark owner transferred or changed the name at the Registration of Deeds Office.*



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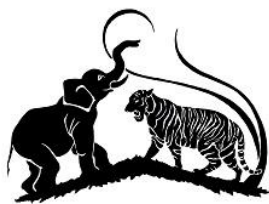
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17. *Regarding the supporting documents submitted with the application:*
 - (a) *The trademark for which trademark rights are sought shall be identical with the trademark registered at the Registration of Deeds Office in accordance with the Registration Act before the Law came into force, or with the trademark that was not registered, but in actual use in the domestic market, and the goods or services for which the trademark is used shall also be identical.*
 - (b) *Inconclusive evidence and an expanded list of goods or services will not be considered.*
18. *The priority right of use shall not apply to the priority rights referred to in sections 31 and 32 of the Law.*
19. *With respect to trademarks that were registered upon a corresponding application, the trademark owner has the right to enjoy the trademark rights from the date of the filing of the application for the duration of the registration period, as well as the priority right of use in this chapter during the period specified in rule 13.*

We hope that you have found this information useful.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director



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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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