

# Accompanying progress

## News Flash Myanmar

Latest news on law, tax and business in Myanmar

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## Our Yangon office welcomes addition to the team

As of May 2017, the Yangon office's team has grown. We are being reinforced by Lutz Koch, Alexander Rindfleisch and Khin Lei Lei Yee. Mr. Koch and Mr. Rindfleisch have been working for a different legal service provider in Yangon for over four years. Ms. Yee has been supporting their office as a paralegal for about one year. We are very happy to welcome such an experienced addition to our team.

As of June 2017, Mr. Ursus Negenborn has left our office on his own wish after four years of thriving and fruitful work. We wish him all the best for the future.

## Central Bank threatens again to penalize unlawful use of foreign currencies

As early as 2015, the Central Bank of Myanmar (CBM) had issued letter 904/2015 in which Ministries, Regions and State Governments were requested to make all payments concerning domestic transactions in Kyats and refrain from specifying prices in a foreign currency. As it was not followed, it was identically issued again in late 2016. The obligation was extended to the private sector by a regulation of CBM in late 2015.

With these measures, CBM aimed at reducing artificial demand for foreign currency in the country because it contributes to destabilizing the Kyat's foreign exchange rate.

However, the use of dollars in business transactions is still highly spread – both in government bodies and private businesses. Payments within the hotel, restaurant, air travel and international school sectors are particularly concerned. Therefore, Director General of the Foreign Exchange Management Department U Win Taw recently announced to explore options for penalizing the use of dollars, for example by sensitizing related ministries and by setting up fines.

It has yet to be established if these measures will tackle the actual problem behind the widespread use of dollars, namely the public's low trust in the stability of the local currency.

## New Investment Law brings about central changes for foreign investors

The Myanmar Investment Law came into force on 1<sup>st</sup> January 2017 and replaced the Foreign Investment Law as well as the Myanmar Citizens Law, meaning that it is applicable to local as well as foreign investments. It has been concretized by the Myanmar Investment Rules, issued by the Myanmar Investment Commission on 30<sup>th</sup> March 2017.

This long-awaited statute brings some central innovations for foreign investors. For instance, smaller projects that are not considered strategic are no longer required to obtain a full MIC permit, but can instead apply for an Approval. This is sufficient as permission to use land as well as to obtaining tax incentives. Furthermore, investors no longer need to employ a certain quota of local staff.

There are also aspects that have not changed. There is still a list of prohibited activities for foreign investors, concretized by the Investment Rules. Concerning the lease of land, the concept of a 50-year-lease with the possibility of two 10-year-extensions stays the same. Moreover, parties are still required to first try to resolve a dispute amicably before filing a court or arbitration proceeding – however, the Investor Assistance Committee who is to take up dispute resolution has not yet been established.

Overall, this law has been received very positively and the simplifications it provides may prove to be true alleviations in investment processes.

## News on Trading

### Ministry of Commerce allows foreign companies to trade

Although it is not explicitly forbidden in any law, foreign companies have been restricted from trading of goods in Myanmar – the undertaking they hand in for registration

is not allowed to entail trading. Instead, foreign companies can form a joint venture with a local company, where the latter takes care of the trade issues. Notification no. 96/2015 of the Ministry of Trade and Commerce accordingly allowed joint venture companies to trade fertilizers, seeds, pesticides and hospital equipment.

Notification No. 36/2017, published by the Ministry of Commerce on 12<sup>th</sup> June 2017, now allows 100 % foreign owned companies to engage in the trading of:

- Fertilizers
- Seeds
- Insecticides
- Hospital Equipment and
- Materials used for Construction.

As soon as foreign companies have added trading of these specified items in their business objectives with DICA, they can pursue trading in the same way as a local company. Note that an export/import licence may be required for some goods – the Ministry of Commerce gives more detailed information upon individual request.

Concerning the trade of other goods, it has been and still is unclear how this issue is handled under the new Myanmar Investment Law. The Ministry of Commerce has not yet clarified if and under what conditions foreign companies can obtain individual permissions for trading. However, it has orally assured to be setting up tendering procedures for the allocation of trading licenses, which still need to be adopted by the cabinet. Upon request for a timeline, they answered that they hope it will be a matter of months. We will keep you informed about any advances and concretizations on the issue.

### MIC announces prioritized sectors for investment

On 28<sup>th</sup> June 2017, the Myanmar Investment Commission published an announcement according to which certain investments of local as well as foreign companies will be “prioritized”. Promoted sectors include agriculture, livestock production, education services and healthcare industry. However, this announcement is not yet being implemented. It remains unclear how the envisaged prioritization is going to be put into practice.

## New Union Tax Law 2017

With the beginning of the new financial year on 1st April 2017 the new Union Tax Law came into force.

While there have not been any significant changes to income tax (corporate income tax amounts to 25%; personal income tax is imposed with a progressive rate ranging from 0% to 25%), changes to special goods and commercial tax have been greater:

Myanmar has not yet implemented a Value Added Tax Scheme, but instead levies a commercial tax on the majority of goods and services. For instance, the threshold amount of the commercial tax exemption has increased from 20 million to 50 million Kyat. Furthermore, imports not exceeding a certain De-minimis Value Threshold shall be exempt from tax. There have also been some changes in which goods and services are granted exemption from the tax.

Special goods tax is levied on certain goods in addition to commercial tax. The number of taxed goods has been raised to 17 and the rates have been altered.

## Update on new Companies Act

The new Companies Act which is to replace its over a century old predecessor has still not been adopted by parliament. However, the Myanmar Times reported in May that parliament is to give priority to outstanding bills in its upcoming session.

## Myanmar and Singapore sign Memorandum of Understanding to facilitate investment

On 8th June 2017 International Enterprise (IE) Singapore and Myanmar Investment Commission agreed on a Memorandum of Understanding to strengthen the economic relations between the two countries. It was signed on occasion of the 6th Singapore-Myanmar Joint Ministerial Working Committee meeting. In the fiscal year 2016 Singapore was Myanmar's top foreign investor with investments amounting to 3.8 billion USD.

Both parties hope that this collaboration will enhance quality of products and services and facilitate market access for businesses in both countries. Additional investment is especially anticipated in urban and housing solutions, utilities, transport and logistics, manufacturing, oil and gas, as well as professional services in Myanmar.

## Ministry of Labour to publish new Employment Contract

A Senior Officer announced that the Ministry of Labour, Immigration and Population will soon issue a new template for Employment Contracts, as 7Day Daily reported on 3rd July 2017.

The ministry hopes to officially publish the new template within two weeks. Starting from that day, newly registered employments will need to use the new template contract. Existing contracts will, however, not need to be renewed.

### Accompanying progress

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