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In this our latest newsletter, we provide information on some of the most important recent legal developments in Myanmar, and profile Daw Khin Cho Kyi, one of Myanmar's leading lawyers, who joined MHM Yangon as Senior Myanmar Legal Adviser on 1 January 2019.

1. Recent CBM reforms

The CBM, which is the supervisory body for banks and non-bank financial institutions in Myanmar, has introduced a significant number of new reforms since the start of this year. The following table summarises some of the major reforms of the CBM in 2019.

Date	Instrument	Summary
January 15	Directive No. 1/2019	The maximum interest rate that can be applied to bank loans and the minimum rate that must be applied to savings accounts have been revised from fixed rates to rates based on the CBM's cash rate.
January 15	Directive No. 2/2019	Home loans can be offered for terms of more than three (3) years, up to five (5) per cent of a bank's total loan portfolio, or above this limit with the CBM's prior approval.
January 24	Directive No. 3/2019	Myanmar banks are permitted to include subordinated debt in their supplementary or Tier 2 capital, up to a maximum of fifty (50) per cent of their Tier 1 capital, with the CBM's prior approval.
January 29	Letter No. ma b aba / baan si sit / 1 (1/2019)	Myanmar banks are permitted to accept up to thirty five (35) per cent foreign investment from

		foreign banks with the CBM's prior approval.
January 30	Directive No. 4/2019	The Japanese yen and Chinese renminbi have been permitted to be used to make international payments or settle accounts.
February 4	Instruction No. 5/2019	The CBM changed the way it calculates its Reference Exchange Rate for the kyat against the US dollar. It is now calculated based on interbank and bank-customer deals rather than the CBM's foreign exchange auctions.
March 25	Directive No. 8/2019	A fit and proper person test will apply to directors, substantial shareholders, auditors and officers of financial institutions. CBM approval is also required for appointments of directors and chief executive officers.
March 25	Directive No. 9/2019	This directive prescribes certain matters relating to the appointment, meetings and responsibilities of directors. In particular, directors can hold office for only up to three (3) consecutive terms of up to three (3) years. One (1) or more independent, non-executive directors are also required to be elected to the board of each bank, based on the size of the board. The board of directors is also required to adopt a written policy on conflicts of interest.
March 25	Directive No. 10/2019	Appointments of auditors are required to be approved by the CBM, and must meet the prescribed qualifying criteria (for example, the auditor must have an appropriate prior work experience), and an auditor and an audit firm, respectively, cannot be appointed for more than three (3) and five (5) consecutive years.
March 25	Directive No. 11/2019	This directive sets out restrictions on lending by banks to their related parties (including officers and major shareholders) and the obligation of banks to report such transactions to the CBM.
March 25	Directive No. 12/2019	Under this directive, the CBM's prior approval

		is required to acquire ten (10) per cent or more of the shares, or control, of a Myanmar bank.
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The Financial Institutions Law sets out the broad framework for the regulation of financial institutions in Myanmar, and provides the CBM responsibility for prescribing directives on a case-by-case basis to implement the Financial Institutions Law. In the past, the CBM directly issued such directives to financial institutions, but did not publish them. However, this practice changed a few years ago, and the CBM's instruments are now publicly available, improving transparency for all stakeholders.

As evidenced by its recent reforms, the CBM has been actively involved in the recent deregulation of barriers to foreign investment in Myanmar, permitting foreign investment in banks. It is expected that barriers to investment in non-bank financial institutions will also be deregulated in the near future, and developments at the CBM should be watched closely in this respect.

2. Enactment of the intellectual property laws

Myanmar has now enacted the four long-awaited intellectual property laws:

Act	Status
Trademark Law	Enacted on January 30, 2019
Industrial Design Law	
Patent Law	Enacted on March 11, 2019
Copyright Law	Enacted on May 24, 2019

These laws are not yet effective, however. They will enter into force on a day to be prescribed by the President by notice.

The protection of intellectual property rights under Myanmar's previous laws was inadequate. Although the Copyright Act of 1914 existed in Myanmar, it had rarely been used, and there were no statutes in force for the protection of trademarks, industrial designs or patents. Declarations of the ownership of trademarks could be registered under the Registration of Instruments Law of 2018 (and its predecessor law, the Registration Act), but this only offered prima facie proof of the ownership of trademarks, providing only limited legal protection of such rights. The enactment of a full suite of intellectual property laws now paves the way for a modern framework for the protection of intellectual property in Myanmar.

The new Copyright Law protects works of (i) nationals or residents of Myanmar, (ii) persons other than nationals or residents of Myanmar that is first published in Myanmar,

or published in Myanmar within thirty (30) days of publication outside Myanmar, and (iii) works protected by intellectual property treaties to which Myanmar is a party. At present, however, Myanmar is not a party to any major intellectual property treaties, such as the Berne Convention and the Universal Copyright Convention. As a result, protection under this law is limited to the situations described in (i) and (ii) above, and this law is not expected to improve the previous situation for the protection of copyrights in Myanmar.

In terms of trademarks, a particular issue for business in Myanmar will be the relationship between the new Trademark Law and existing registrations of trademarks under the Registration of Instruments Law. The Trademark Law adopts a first-to-file system of trademark ownership. Therefore, trademark owners should register their trademarks (whether or not already registered under the Registration of Instruments Law) as soon as possible upon its entry to force. On the other hand, the Trademark Law grants priority to trademarks already in use in Myanmar at the time of its enactment. The nature of this priority is subject to forthcoming regulations to be made under the law. However, it can be assumed that holders of trademarks registered under the Registration of Instruments Law will be granted a period to register their trademarks before others.

It will therefore be important to monitor the date of entry to force of these laws and carefully consider the application of these laws to your business, as well as the rules to be prescribed in future under these laws.

3. Implementation of the Condominium Law

On April 6, 2019, a licence was issued to thirty two (32) developers engaged in real estate development and sales under the Condominium Law. The Condominium Law, which was enacted in 2016, has not been fully implemented to date. The issue of these licences is a major step towards full implementation, but in addition, there will need to be: (i) approval of individual condominium developments; (ii) registration of the project land as collectively held by the condominium owners; and (iii) commencement of the operation of the condominium register.

Importantly, one of the thirty two (32) licensed companies is a foreign developer. As the Condominium Law requires developers to acquire ownership of the project land, it would be difficult for a foreign developer to undertake this business on its own, however, it could do so jointly with a domestic developer, which could hold the land.

In addition to the Condominium Law, an Apartment Law is also currently under consideration. This law will provide for the development, management and sale of apartments for the middle or low income market. Previously, it was understood that this law would be enacted by the Yangon Regional Government and would only apply to

Yangon Region, but it is now expected to be enacted as a Union-level law, and be capable of applying in principle across Myanmar.

Many housing projects are currently under consideration, mainly within and around Yangon Region. The legal framework, including for the subdivision of land rights, is now being developed to support such projects, and in the future, it will be necessary to consider whether the Condominium Law or the Apartment Law should be used in a particular project.

4. Publication of the Payment of Wages Rules

On April 30, 2019, the Ministry of Labour, Immigration and Population of Myanmar (the “**Ministry**”) published its Notification No. 193/2018 dated December 12, 2018, titled the Payment of Wages Rules (the “**Rules**”), pursuant to the Payment of Wages Law. The Rules specify, among others, the timing of payment of wages by employers and restrictions on deductions from wages. While the Rules were issued on December 12, 2018, they were only published on April 30, 2019. The main developments under the Rules are:

(1) Procedure for deductions of penalties from wages

Under the Payment of Wages Law, penalties may only be deducted from an employee’s wages if provided for in their employment contract and approved by the Ministry. The Rules specify the prescribed form for seeking such prior approval. The Rules therefore clarify the procedure for such approvals, and it is expected that this requirement will be strictly enforced in future.

(2) Method of calculating overtime wages

The following table describes how to calculate the hourly wages required to be paid as overtime wages. Under the Payment of Wages Law, overtime wages are required to be twice the basic salary, but no specific method for calculating overtime wages was specified. The Rules now set out how to calculate this amount as follows:

Wage type	Method to calculate overtime wages
Monthly wages	$\frac{\text{Monthly wage} \times 12 \text{ (months)}}{44 \text{ (hours) or } 48 \text{ (hours)} \times 52 \text{ (weeks)}} \times 2$
Daily wage	$\frac{\text{Daily wage} \times 6 \text{ (days)}}{44 \text{ (hours) or } 48 \text{ (hours)}} \times 2$
Piece rate wage	$\frac{\text{Average working hours per 1 day} \times 6 \text{ (days)}}{44 \text{ (hours) or } 48 \text{ (hours)}} \times 2$

* In the above calculation, 44 (hours) or 48 (hours) refers to the statutory working hours per week applicable to the worker concerned.

Please note that the Rules are applicable to all businesses, so the application of the Rules by the Ministry, including its future development, will be of interest to all businesses in Myanmar.

5. Issue of Notification on trading of particular goods by foreign companies

(1) Introduction

The Ministry of Commerce (“**MOC**”) issued Notification No. 23/2019 (the “**Notification**”) on May 21, 2019, imposing new requirements for the retail and wholesale trade of six (6) items ((i) agricultural chemicals, (ii) seeds, (iii) fertilizers, (iv) medical equipment, (v) building materials, and (vi) agricultural equipment, collectively, the “**Goods**”) by foreign-invested companies. The Notification applies as of its date of issue.

The retail and wholesale trading sector was opened to foreign-invested companies under Notification No. 25/2018, dated May 8, 2018 (the “**2018 Notification**”). However, the Goods (as well as automobiles and heavy machinery) had been permitted to be traded by foreign-invested companies prior to the issue of the 2018 Notification. The 2018 Notification itself did not provide any exceptional treatment for the Goods, but according to MOC officials, such treatment was expected to be provided (that is, the Goods were not expected to be subject to the requirements (including regarding the amount of initial investment) of the 2018 Notification).

(2) The Notification

(i) Registration and initial investment requirements

Foreign-invested companies proposing to engage in retail and wholesale trade of the Goods must now register with the MOC within ninety (90) days from the date of the Notification. Such companies must also meet the requirements for initial investment under the 2018 Notification set out below, within five (5) years of the date of registration with the MOC:

Type	80% or less foreign capital	More than 80% foreign capital
Wholesale	USD 2 million	USD 5 million

Retail	USD 700,000	USD 3 million
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(ii) Retail area

Under the Notification, foreign-invested companies that engage in retail trade of the Goods will be subject to the restrictions on floor area under the 2018 Notification (that is, the shop floor area must be more than nine hundred and twenty nine (929) square meters). A five (5) year transition period will be provided for companies to comply with these requirements from the date of registration.

(3) The Notification Assessment and Future Prospects

The Notification clarifies the situation regarding retail and wholesale trade of the Goods by foreign-invested companies, and provides that this is subject to the same requirements set out in the 2018 Notification. That is, the Notification standardises the trading of the Goods by foreign-invested companies.

This means that, with the exception of the distribution of agricultural equipment, which previously required a joint venture with a local company, under the Notification, stricter requirements will apply to the wholesale and retail trade of the Goods.

Since the 2018 Notification, the MOC has been actively liberalising restrictions on foreign companies. For example, it lifted the ban on imports for foreign services companies in December 2018. Following the Notification, only the import and sale of automobiles and heavy machinery are outside the 2018 Notification. However, it is worth watching whether trading of these goods will also be brought under the framework of the 2018 Notification in future.

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Our latest newsletter's special feature presents an interview with Daw Khin Cho Kyi, one of Myanmar's most senior lawyers



With more than forty (40) years' experience in the legal profession in Myanmar, Daw Khin Cho Kyi joined MHM Yangon as a Senior Myanmar Legal Adviser on 1 January 2019. We celebrated her joining MHM Yangon at our fifth anniversary celebrations on 8 March 2019. Kana Manabe, co-representative partner of MHM Yangon, caught up with Daw Khin Cho Kyi to share her insights on the legal profession and find out how she became a leading lawyer in Myanmar.



Why did you choose to study law?

My interest in law was mainly motivated by my father, who worked as an assistant Attorney General of the Myanmar Government. I am the only one of his five children who chose to study law and pursue a legal career. My siblings went to medical school and became doctors.

I managed to pass the entrance examination to the Department of Law of Yangon University easily. However, due to the political situation at the time, the universities were closed for 5-6 months, and there was a gap before the university semester started. I spent that time learning Myanmar shorthand (stenography). I developed my shorthand skill and English typing so that I could assist my father to write his four legal textbooks, and these were subsequently published.

What is Myanmar shorthand?

Actually, shorthand was primarily used for court reporting at the time. As there were no computers or tape recorders like today, court secretaries used Myanmar shorthand to

transcribe what was said in court. Today, this has been replaced by modern technologies, but a shorthand system continues to exist for Myanmar language, like other languages.

What did you do after graduating from university?

I applied for a lecturing tutor position at the Department of Law of Yangon University. I had to pass the Public Service Commission's examination, and was appointed lecturing tutor from 1977. I worked there until 1984, before sitting for an exam to directly join the government services one grade higher rank and starting a new job as a judicial officer Grade (3) of the Supreme Court (then, called the Chief Court).

"It is the duty of lawyers to know the law and firmly maintain the position that anything that is contrary to the law is wrong."



What subjects did you teach at Yangon University?

I taught land law, family law, labour law and taxation law. At the time, I was also completing my LL.M. from Yangon

University. At that time, an LL.M. took five years to complete in Myanmar. It involved three years of coursework and two years of thesis writing.

5 years! This is very long compared to other countries. But why did you decide to quit your job at Yangon University to work as a judicial officer at the Supreme Court?

Actually, I was very happy working as a lecturing tutor. It was academic and I had intellectual independence. However, the Government was expected to grant scholarships to judicial officers to study abroad. This was a very good opportunity as it was very difficult for Myanmar people (especially girls) to get passports to travel abroad at the time. My father therefore strongly encouraged me to take this opportunity, to study law overseas. There were only four places out of eight LL.M applicants who sat the examination for a judicial officer, and I was lucky to be selected as one of the four.

Unfortunately, General Ne Win, the leader of Myanmar's socialist government at the

time, later refused to permit scholarships to any judicial officers to study law abroad, because he felt there was no value to the study of foreign laws.

That is very competitive. Were judicial officers equivalent to judges today?

No, they were not. Judicial officers acted like legal advisers to the judges. At that time, a law degree was not a qualification for a judge in Myanmar. People with different backgrounds and specialisations could be elected as judges, because judges were elected by the people, rather than appointed by the government. Accordingly, judicial officers holding law degrees assisted judges, especially those with no legal background, by providing legal opinions and advice on their cases.



However, following the 1988 protests and riots, there was a radical change in Myanmar's system of government and the judicial sector. All of Myanmar's then lay judges were made redundant, and judicial officers such as I were appointed as judges. I worked as a judge in Yangon division until 1995.

How did you find working as a judge?

I was generally happy as this is a dignified and prestigious post. However, I felt uncomfortable sentencing people to prison. Working at the court I also had less independence compared to working as a lecturing tutor at university.

As a result, I decided to go to New York and Canada in 1994-1995. I took one year leave without pay from the judicial services and went to New York to explore a career with the United Nations. The United Nations offered me a position; however, I did not take up that position and came back to Myanmar for a proper resignation from the government service in the end.

I then left for Canada with my uncle, who was appointed ambassador to Canada. Through his connections, I met with a senior executive of one of my future clients, who suggested that I could best contribute to Myanmar in private practice, through assisting foreign companies to establish in Myanmar. Through him, I was offered an opportunity to work as a senior consultant and an advocate for Lucy Wayne & Associates, then part-owned by Lucy Wayne and Al Chandler. I worked there 2 years from 1996-1997.

I learnt a great deal from my time working with Lucy Wayne & Associates, and with Al's encouragement, I opened my own firm, Myanmar Legal Services Limited, in 1997-98.

Beginning as a lecturing tutor and then working for government first as a judicial officer and then as a judge, I then became a lawyer and worked in private practice for more than 20 years.

Your professional life is truly fascinating. You have experienced and witnessed all of the major changes and developments in the legal profession in Myanmar. Based on this experience, what is your view about Myanmar's development and its direction?

Myanmar law originally followed English common law (under the Burma Codes). In 1964 the government ordered teaching in English to cease, and adopted a socialist rule of law. Only after about 50 years was teaching in English allowed again. However, law is taught mostly in Burmese language to this day, A large number of laws were enacted after 1988, but not in the context of English common law. The increase in foreign investment and lending by foreign financial institutions has required the regulators to adopt laws and interpretations necessary for the private sector to develop. There are no recent court precedents in many sectors regarding these new legislative developments, and there has been no arbitration award under the recent arbitration law to date. Foreign lawyers need to understand this background, and the lack of English, and accept that development of the law and judiciary will take years.

Do you have any advice for our lawyers at MHM Yangon?

It is the duty of lawyers to know the law and firmly maintain the position that anything contrary to the law is wrong. If you have to deal with a government officer and you sense that something they are proposing does not seem to be right, you must not stop there, but should try to clarify the position from a higher-level officer.

Lastly, apart from your legal life, what do you usually do in your free time?

I like cooking very much. I can cook a variety of Myanmar food. In particular, I like Indian food. For sport, I like to play badminton, which is a very common sport, particularly for women, in Myanmar.

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