



## MHM Yangon Newsletter

### MHM Yangon Newsletter Vol. 6

#### Introduction

In this our latest newsletter, we provide information on some of the most important recent legal developments in Myanmar. The topics discussed in this newsletter are as follows:

1. **Lifting of the ban on the trading of shares by foreigners on the Yangon Stock Exchange (“YSX”)**
2. **Investigation by the Anti-Corruption Commission (“ACC”) – Resignation of the Minister for Industry**
3. **Release of the Report by the Independent International Fact-Finding Mission on Myanmar of the United Nations (“UN”) Human Rights Council**

#### Legal Developments

1. **Lifting of the ban on the trading of shares by foreigners on the Yangon Stock Exchange (“YSX”)**

Earlier this year, the Securities and Exchange Commission of Myanmar (“SECM”) issued Notification No. 1/2019 dated 12 July 2019 (the “Notification”) announcing that foreigners will be permitted to trade shares on the YSX.

The Notification defined the “foreigners” who would be permitted to trade on the YSX as foreign nationals (any person who is not a Myanmar citizen) and foreign companies (companies incorporated outside Myanmar). Importantly, no local residency requirements (such as a requirement to establish a local office for a foreign company) apply under the Notification.

The Notification did not specify when trading by foreigners on the YSX would commence. This date was to be announced after the YSX developed further regulations implementing the Notification. Pursuant to the Notification, on 6 September 2019, the YSX published its Framework for Trading by Foreign Investors (the “Framework”), providing a more detailed structure for share trading by foreigners. According to the Framework, foreign share trading on the YSX will commence around November 2019.

Based on the Notification and the Framework, it is also likely that foreigners residing in Myanmar and foreign companies with a local

#### Key Contacts

**Kana Manabe**  
 TEL +95-1-255137 (Yangon)  
 TEL +65-6593-9762 (Singapore)  
[kana.manabe@mhm-global.com](mailto:kana.manabe@mhm-global.com)

**Win Naing**  
 TEL +95-1-255147 (Yangon)  
[win.naing@mhm-global.com](mailto:win.naing@mhm-global.com)

**Nirmalan Amirthanesan**  
 TEL +95-1-255196 (Yangon)  
[nirmalan.amirthanesan@mhm-global.com](mailto:nirmalan.amirthanesan@mhm-global.com)

**Tony Grundy**  
 TEL +65-6593-9756 (Singapore)  
[tony.grundy@mhm-global.com](mailto:tony.grundy@mhm-global.com)

**Chandler MHM Limited**  
 7th-9th, 12th and 16th Floors  
 Bubhajit Building  
 20 North Sathorn Road  
 Bangkok 10500, Thailand  
[www.chandlermhm.com](http://www.chandlermhm.com)

**MHM Yangon**  
 #1603-1604, 16<sup>th</sup> Floor,  
 Sakura Tower,  
 339 Bogyoke Aung San Road,  
 Kyauktada Township, Yangon  
 Myanmar  
[mhm\\_yangon\\_info@mhm-global.com](mailto:mhm_yangon_info@mhm-global.com)  
[www.mhmjapan.com](http://www.mhmjapan.com)

presence in Myanmar will be permitted to trade on the YSX first, while the system for foreigners who are not locally present will be implemented in future. This is because foreigners will need to open a local bank account denominated in Myanmar kyats, and their identities will need to be verified at the time of opening a securities trading account.

In addition, listed companies are free to set their own limit for shareholding by foreigners without being bound by the definition of a foreign company under the Myanmar Companies Law (that is, thirty five (35) per cent). Each listed company can therefore set an upper limit that is suitable for its particular circumstances, taking into account Myanmar's foreign investment regulations and whether it owns immovable property or not. The YSX will suspend purchase orders by foreigners for any company where there is a risk of exceeding the prescribed upper limit for foreign shareholding (that is, where the foreign shareholding in that company reaches within five (5) per cent of the upper limit for foreign shareholding prescribed by the company).

Since its launch in December 2015, only five (5) companies have listed on the YSX, and trading on the YSX has remained limited. The Notification and the Framework are intended to provide a much needed boost to the YSX by permitting foreign participation. The release of the Notification and the Framework should see a lift in share trading in anticipation of the introduction of foreigners to the market, and it will be interesting to observe future trends to confirm the impact of permitting foreigners to participate in trading on the YSX.

## **2. Investigation by the Anti-Corruption Commission (“ACC”) – Resignation of the Minister for Industry**

In Myanmar, the ACC is authorised to conduct investigations under the Anti-Corruption Law. The ACC has been very active recently. An important recent development was the resignation on 26 July 2019 of the Minister for Industry, U Khin Maung Cho, who was under investigation for corruption.

This is the second case of a cabinet minister resigning amidst allegations of corruption since the ruling National League for Democracy Party formed government, after the former Minister of Planning and Finance, U Kyaw Win, resigned in May 2018. It has also been reported that the Ministry of Electricity and Energy is currently being investigated by the ACC for alleged corruption involving senior public servants and government ministers.

The ACC is reportedly hiring more than one hundred (100) new staff in addition to existing employees, who are almost three hundred (300) in number, to further enhance its investigative capabilities.

These developments are a timely reminder of the importance of keeping in mind compliance matters when conducting business in Myanmar.

## **3. Release of the Report by the Independent International Fact-Finding Mission on Myanmar of the United Nations (“UN”) Human Rights Council**

On 5 August 2019, the Independent International Fact-Finding Mission on Myanmar, formed by the UN Human Rights Council to investigate the facts and circumstances of alleged recent human rights violations by military and security forces and abuses in Myanmar, particularly in

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Rakhine State, published a report (the “**Report**”).

The Report calls for targeted economic sanction by the UN and its member states against military companies, in particular, Myanmar Economic Holdings Limited (“**MEHL**”) and Myanmar Economic Corporation (“**MEC**”). It also suggests officials of several Myanmar conglomerates should be investigated for crimes against humanity for making financial contribution towards the construction of a border fence along the Myanmar-Bangladesh border.

It should be noted that the Report itself does not have any legal effect, and whether sanctions will actually be imposed or not will depend on the decision of the UN Security Council (in the case of UN sanctions) and each of its member states (in the case of country-specific sanctions). As a result, the Report does not immediately affect the business community in Myanmar. However, it would be advisable to monitor the response of the international community to the Report.

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This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact person(s) at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed in the far-right column.