

MHM YANGON

Newsletter

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Key Contacts

Kana Manabe
TEL +95-1-8255137 (Yangon)
TEL +65-6593-9762 (Singapore)
(kana.manabe@mhm-global.com)

Win Naing
TEL +95-1-8255147 (Yangon)
(win.naing@mhm-global.com)

Nirmalan Amirthanesan
TEL +95-1-8255196 (Yangon)
(nirmalan.amirthanesan@mhm-global.com)

Tony Grundy
TEL +65-6593-9756 (Singapore)
(tony.grundy@mhm-global.com)

1. Commencement of registration of trademarks under the Trademark Law

Registration of trademarks under Myanmar's 2019 Trademark Law (the **Law**) is expected to begin this month. The Law was enacted on January 30, 2019 but has yet to enter into force. The Law is expected to be enforced from the middle of 2020, but filings of trademarks are expected to commence this month for (i) trademarks already in use in Myanmar, and (ii) trademarks already registered under the 2018 Registration of Instruments Law. In preparation for this, the staff of the Ministry of Education, in whose portfolio the proposed Intellectual Property Office that will administer the Law will be located, has been providing training on the online registration system for trademarks in the latter part of 2019. Trademarks which can be filed under the Law prior to its entry into force need to be filed as soon as possible once filing is possible.

2. The DICA has issued a directive on disclosure of beneficial ownership

On November 15, 2019, the DICA issued Directive No. 17/2019 (the Directive). The Directive took effect on January 1, 2020. It aims to enhance the transparency of the beneficial ownership of legal entities and arrangements in Myanmar, improve accountability, and deter tax evasion, money laundering and terrorism financing. We summarise below some key points in relation to the Directive.

First, this directive requires all entities to keep up-to-date information on

MHM Yangon
#1603-1604, 16th Floor,
Sakura Tower,
339 Bogyoke Aung San Road,
Kyauktada Township, Yangon
Myanmar
mhm_yangon_info@mhm-global.com
www.mhmjapan.com

their beneficial ownership, and provide timely submissions to the DICA and the Internal Revenue Department of Myanmar (IRD). The submissions to the DICA are to be made online through their website. However, this form has not been published on the DICA's website as of the date of this newsletter.

The Directive also mandates that all entities must cooperate to the fullest extent possible with the relevant authorities to allow them to determine the substantial beneficial ownership information, including by authorising certain designated professionals (called Designated Non-Financial Business and Professions), such as agents for the establishment of the company, and professional advisers such as lawyers and accountants to assist the relevant authorities. The Directive provides that entities that fail to provide accurate and current information in line with the Directive will be liable to be penalised under the 2014 Anti-Money Laundering Law.

As a practical compliance measure, once the DICA publishes the online form for reporting beneficial ownership information, we would recommend completing and filing this form promptly.

In terms of the broader implications of the Directive, we note it has been announced in the context of the Anti-Money-Laundering Law as described above. The Office of the President of Myanmar also recently announced the Anti-Money Laundering Order (Order No. 45/2019) on 14 November 2019, and the enactment of the Directive can be viewed as part of a series of regulatory measures aimed at preventing money laundering. However, there are concerns that the information provided under the Directive on beneficial ownership of entities in Myanmar may be used in enforcing other regulations, such as compliance with foreign investment regulations, rather than the original purpose of preventing money laundering. It will be necessary to keep an eye on how the Directive is administered to assess how it affects the enforcement of other regulations.

3. Reduction of the penalty for late or incorrect stamping of documents

The Law Amending the Myanmar Stamp Act (Law No. 32/2019) was passed on November 26, 2019, amending the 1899 Myanmar Stamp Act. This amendment reduces the penalty for late or incorrect payments of stamp duty from ten (10) times the correct amount of duty, or the deficient portion thereof, to three (3) times that amount.

Date	Penalty amount
Before November 26, 2019	Ten (10) times the correct amount of duty to be paid or the deficient portion thereof
On and from November 26, 2019	Three (3) times the correct amount of duty to be paid or the deficient portion thereof

Myanmar has had a large penalty for non-compliance with stamp duty up to now. With this amendment, it is now among the Southeast Asian countries with a relatively smaller penalty for late or incorrect stamping. A reduction in the penalty may lead to more compliance and payment of stamp duty. At the same time, compliance with the Myanmar Stamp Act is important more broadly because failure to pay stamp duty can affect the legal value of documents, as they cannot be admitted as evidence. Therefore, it is advisable for documents required to be stamped under the Myanmar Stamp Act to be stamped in accordance with the Myanmar

Stamp Act irrespective of this amendment.

4. Myanmar-language labelling under the 2019 Consumer Protection Law

On December 3, 2019, Myanmar's Consumer Protection Commission issued Directive No. 2/2019 (the "**Directive**") regarding the obligation to include Myanmar-language labels on goods under the 2019 Consumer Protection Law (the "**Law**").

The Law was enacted on March 15, 2019. However, it provided that the Myanmar-language labelling requirements would only come into force one (1) year after the date of enactment of the Law. The Directive clarifies that the following types of information need to be provided in Myanmar language on product labels: (i) description of the product, (ii) size, quantity and net amount of the product, (iii) directions for storage, (iv) directions for use, (v) any side effects, (vi) any allergy warnings, and (vii) other warnings. The labelling obligation applies to eight types of goods pursuant to the Directive: food products, household goods, infant products, communications products, medicines and food supplements, cosmetics, personal care items and business goods.

The labelling obligations under the Law apply to all "Business Entrepreneurs" which are defined to include all entities in the supply chain (including importers, wholesalers, and retailers). In this regard, some authorities have indicated that it would be advisable for those involved in the supply chain for products affected by the labelling obligation under the Law and the Directive to agree in advance how they will comply. Such companies should determine how they will fulfil their labelling obligations and who will be responsible for meeting the obligation. As this obligation will come into force soon, decisions regarding compliance need to be made as soon as possible.

5. Amendment of the Foreign Exchange Management Law and the possibility of restrictions on foreign currency-denominated transactions

A bill (the "**Bill**") to amend the 2012 Foreign Exchange Management Law ("**FEML**") is currently being considered by Myanmar's Parliament. The FEML governs the regulation of foreign exchange in Myanmar, including remittances to, and capital transfers (including through loans) from, overseas.

The Bill proposes wide-ranging amendments to the FEML. One major amendment proposed in the Bill is the restriction of transactions denominated in foreign currencies in Myanmar. Section 8 of the Bill provides that 'determinations of the price of, and the making or receiving of payments in foreign exchange for, the sale, transfer or lease of goods, services and capital assets within Myanmar shall be in accordance with the regulations and directives of the Central Bank of Myanmar' (the "**CBM**"). In addition, section 50 of the Bill provides that 'nobody shall specify a price or make or receive payments in foreign currency for the sale, transfer or lease of goods, services or capital assets within Myanmar in contravention of the applicable regulations and directives'. Violations of section 50 of the Bill are proposed to attract criminal penalties.

There have been news reports that the Bill will prohibit prices being displayed in, and payments for goods or services in, a foreign currency. However, the terms of the Bill only require compliance with the rules of

the CBM, and the Bill does not of itself prohibit transactions denominated in a foreign currency. Nonetheless, given the widespread use of the US dollar in transactions in Myanmar, the Bill has the potential to cause substantial confusion, subject to how it is implemented, and the CBM's policies in respect of the Bill. It will be necessary therefore to closely monitor how the Bill is implemented, having regard to the implications for businesses in Myanmar described above.

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 any of the Key Contacts listed in the far-right column.