

MYANMAR LEGAL MHM

Newsletter

1. Enactment of the Insolvency Law

A new Insolvency Law (Law No. 1/2020) (the “**Law**”) was enacted by the Myanmar legislature on February 14, 2020. The Law provided that it would come into force on a date to be determined by notification by the Office of the President of Myanmar. On March 25, 2020, the Office of the President issued Notification No. 50/2020, providing for the immediate entry to force of the Law, other than Part X (relating to cross-border insolvencies). Part X of the Law will enter into force on upon the issue of a specific notification by the Office of the President, pursuant to section 1(b) of the Law.

The Law provides for the liquidation and, in particular, rehabilitation, of companies, something that was not available in Myanmar previously. It also includes specific provisions concerning the rehabilitation and liquidation of small and medium-sized enterprises. The Law implements the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, introducing a modern insolvency framework to Myanmar.

It should be noted that the Law contains provisions that may restrict the enforcement of security interests, depending on the operation of the rehabilitation proceedings for distressed companies.

On 29 April 2020, the Supreme Court of the Union issued Notification No. 321/2020 prescribing the rules implementing the Law. On 26 March 2020, the Union Government issued Notification No. 25/2020 establishing the Insolvency Practitioners’ Regulatory Council pursuant to section 15 of the Law. This Council is responsible for the administration of the Law. However, the Law has not yet been fully implemented, and in particular, the framework for the appointment of insolvency practitioners required to operationalise the Law remains pending.

Companies in Myanmar should consider carefully the implications and opportunities presented by this Law for their business, particularly financing transactions, as the Law is further developed and implemented.

2. Release of the Project Bank website

On February 26, 2020, the Government of Myanmar published its website for the Project Bank (the “**Website**”).

As we noted in the eighth volume of our newsletter in January 2020, the Office of the President of Myanmar had announced in Directive No. 2/2019 dated August 30, 2019 that public-private partnership projects being considered by the Myanmar government and certain projects proposed by investors (“**PPP Projects**”) must be registered in the Project Bank. A Swiss Challenge system would be used to compare investors’ proposals for such PPP Projects. This Website provides the outline, current status, financing methods, total cost, and other information regarding the PPP Projects registered in the Project Bank.

The publication of this website means investors will have an overview of each

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PPP Project and improves transparency for investors. On the other hand, it means regulation of particularly large-scale PPP Projects is becoming increasingly complex. It is important to keep in mind therefore that the processes for implementing such PPP Projects may become more complex in the future.

You can access the Website at the following link:

<https://projectbank.gov.mm/en/>

3. Commencement of trading of shares by foreigners on the Yangon Stock Exchange ("YSX")

The Securities and Exchange Commission of Myanmar (the "SECM") announced in Instruction No. 2/2020 (the "Instruction") dated March 6, 2020, that it will permit trading of shares in listed companies by foreign persons and corporations on the YSX from March 20, 2020.

As we noted in the sixth volume of our newsletter in October 2019, the SECM announced in July last year that it would soon permit foreigners to trade shares in listed companies. The Instruction clarifies the procedures for opening securities accounts and the timing for commencing trades. Previously, it was thought that trading would be permitted by resident foreigners only. However, under the Instruction, foreign nationals may trade shares in listed companies regardless of whether they are residents or not.

As of today, only five companies are listed on the YSX (a sixth company was scheduled to be listed on March 20, 2020, but this listing date has been deferred). The commencement of trading of listed shares by foreigners is expected to stimulate trading on the YSX.

4. Reduction of interest rates by the Central Bank of Myanmar ("CBM")

The CBM announced two rounds of reductions in interest rates in March and a further round in April 2020. First, on 12 March 2020, it issued Directive No. 1/2020 reducing the bank rate of the CBM under section 4(i) of the Central Bank of Myanmar Law (Law No. 16/2013) by half a per cent to nine and a half (9.5) per cent, with effect from 1 April 2020. It brought forward the date of this reduction to 16 March 2020 by Letter No. Ma Ba Ba/ MP/FIR/Ngwe Kyae Muwada/112/2019-2020) dated 13 March 2020.

Subsequently, on 24 March 2020, the CBM issued Directive No. 4/2020, reducing the bank rate of the CBM by a further one (1) per cent with effect from 1 April 2020. On 27 April 2020 it issued Directive No. 8/2020 reducing the bank rate of the CBM, minimum interest rate on deposits and maximum interest rate on loans secured by certain prescribed forms of collateral by a further one and a half (1.5) per cent. Following these reductions, the new interest rates applicable in Myanmar are:

Type of interest	New rate after reduction (%)
Annual Interest Rate of the CBM	7
Minimum bank deposit rate for savings deposits, savings certificates and time deposits	5
Maximum lending rate (including all charges) for loans secured by the forms of collateral prescribed by the CBM (such as land and buildings)	10
Maximum lending rate (including all charges) for other loans	14.5

This move by the CBM is likely to provide much needed relief to the Myanmar economy, and businesses in Myanmar, which are already coping with the financial stress caused by COVID-19.



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5. Amendment of the criteria announced by the CBM for the approval of offshore loans

In January 2020, the CBM revised its announcement (“**Announcement**”) setting out the documents required to be submitted to, and the criteria considered by, the CBM, when approving offshore loans.

The key amendment to the Announcement is to the equity capital required of the borrower and the debt-to-equity ratio following disbursement of the loan. Different criteria will apply depending on whether the borrower holds a permit from the Myanmar Investment Commission (“**MIC**”) or not. These key amendments are summarised below:

Criteria	Before change	After change
Equity capital of the borrower	Whether the equity capital of the borrower exceeds US\$500,000 or not	The borrower’s equity capital is required to exceed US\$500,000 if it has an MIC permit, and US\$50,000 if it does not have an MIC permit
Debt-to-equity ratio	Whether the debt-to-equity ratio is within a maximum of 3:1 and 4:1 or not	The borrower’s debt-to-equity ratio is required to be within a maximum of 4:1 if it has an MIC permit, and 3:1 if it does not have an MIC permit

The criteria for borrowers with MIC permits has not changed substantially, but offshore loans can now be extended to smaller-scale projects which do not have an MIC permit following the amendments to the Announcement, allowing such projects to raise funds. Please note that the criteria described in the Announcement are the general considerations of the CBM when approving offshore loans only and are not mandatorily required to be applied by the CBM. The CBM is expected to make its decision in respect of each application for approval of an offshore loan on a case-by-case basis after considering the particular circumstances of each application.

One criterion that was not amended in the Announcement is “whether the loan tenure is medium-term or long term”. Typically, loans of more than one year will be classified as “medium term or long-term”, but this has not been officially confirmed by the CBM. There is, therefore, scope for further clarification and greater transparency regarding the CBM’s process for approving offshore loans.

The revised Announcement can be accessed at the following link:
<https://www.cbm.gov.mm/content/2066>

➤ Changes at our firm

For your information, as of 10 March 2020, the Firm has been rebranded as “Myanmar Legal MHM Limited” (and “Myanmar Legal MHM” for short). At the same time, we relocated to larger premises in Junction City.

The background to these changes is that Daw Khin Cho Kyi joined us as an external advisor on 1 January 2019. Since that time we have been working together for our Japanese and non-Japanese clients including many clients of our Bangkok office, Chandler MHM. Both Daw Khin Cho Kyi and we believe that this change of name is appropriate to reflect the way in which we are providing services to our clients.

Daw Khin Cho Kyi is a seasoned and skilful practitioner with over 40 years of legal experience in the public sector as well as in private practice in Myanmar. Over the course of her legal career she has developed an extensive network of professional relationships in Myanmar and internationally. She has acted as legal adviser for many private Myanmar and international corporate entities as well as multilateral international foundations and financial institutions, foreign embassies, law firms, etc.

Daw Khin Cho Kyi is ranked as a Band 1 Individual Lawyer by Chambers

Global 2020 and Chambers Asia-Pacific 2020.

Daw Khin Cho Kyi will also continue her role as Managing Director of Myanmar Legal Services Limited but will encourage her clients to instruct Myanmar Legal MHM so that the services can be provided to clients with Daw Khin Cho Kyi and Myanmar Legal MHM working as a single team.

New address:

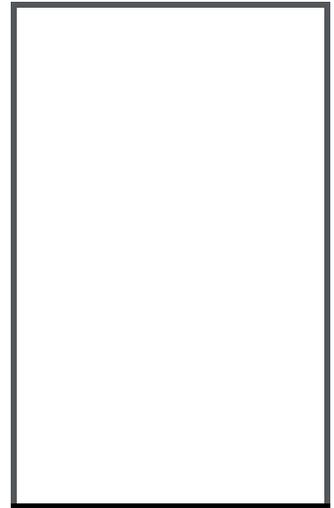
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This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Myanmar Legal MHM Limited. If you should have any inquiries about the publications, or would like more information about Myanmar Legal MHM Limited, please contact mhm_yangon@mhm-global.com.