

MYANMAR LEGAL MHM

Newsletter

In this edition of our newsletter, we provide the following legal updates:

- **New Private Placement for Securities** – a recent notification from the Securities and Exchange Commission of Myanmar (“SECM”) sets out the requirements for public companies to undertake private placement of securities without a prospectus including to qualified investors and small scale offerings ([further details here](#)).
- **New Industrial Zone Law** – a new Industrial Zone Law (Law No. 7/2020) (“IZ Law”) will regulate the development of industrial zones and provide a new process (separate to the Myanmar Investments Law regime) for approving investment into industrial zones under the law ([further details here](#)).
- **New Draft E-Commerce Guidelines** – the Ministry of Commerce (“MOC”) has released new guidelines in relation to e-commerce which suggest that the Myanmar government is planning to establish a new licensing regime for e-commerce ([further details here](#)).
- **Draft Trademark Rules** – draft rules for the implementation of the 2019 Trade Mark Law (including trade mark registration, oppositions, invalidations and cancellations) were distributed for comments this July ([further details here](#)).
- **Deregulation of Alcohol Importation** – a new MOC notification removes import prohibitions on all alcohol products other than beer for local Myanmar companies ([further details here](#)).
- **Amended AJCEP enters into force** – the amendment to the ASEAN-Japan Comprehensive Economic Partnership will enter into force on 1 August 2020 (including in Myanmar) – while the practical impact may be limited for Japanese investment into Myanmar, this continues a trend of closer economic partnership between Japan and the ASEAN region including Myanmar ([further details here](#)).

In addition, we provide details of a new appointment at our firm – we have expanded our team at Myanmar Legal MHM with the appointment of Julian Barendse as counsel – Julian is an experienced international corporate lawyer, specialising in cross-border M&A, who was formerly an M&A Counsel at Allens Linklaters (having lived and worked in Melbourne and Tokyo) ([further details here](#)).

LEGAL UPDATES

1. PRIVATE PLACEMENTS

On May 15, 2020, the Securities and Exchange Commission of Myanmar (“SECM”) issued Notification No. 1/2020 setting out the requirements for private placements of securities by public companies.

Under the Securities Exchange Law (Law No. 20/2013) and the Securities Exchange Rules 2015, when public companies issue securities, in principle, they are required to submit a prospectus to the SECM and obtain its prior approval. The Securities Exchange Rules provide an exemption where the offer is restricted to qualified investors, or to only a small number of investors or the total offers within a period of six months is below a specified threshold (“private placements”). This Notification prescribes requirements and procedures for private placements to qualified investors and for small offerings.

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Types of private placements	Summary of requirements (under Notification No. 1 / 2020)
Offerings to qualified investors	Securities must be offered to only to specified qualified investors which include banks, securities companies, and insurance companies.
Small offerings	The total offered amount of the same securities within any six-month period must not exceed five hundred (500) million kyats (approximately US\$370,000 as at the date of this newsletter).

According to Notification 1/2020 (which only applies for private placement of securities by public companies), private placements of corporate bonds is subject to a further regulation. We understand based on our communication with the SECM that this further regulation will include standard forms to be distributed to the investors for the private placements of corporate bonds. There is growing interest in Myanmar in private placements of corporate bonds. Although it is desirable for the SECM to establish a clearer regulatory framework for corporate bond issues, until this happens, such issues will need to be through the application of existing securities regulations.

2. ESTABLISHMENT OF THE INDUSTRIAL ZONE LAW

Myanmar enacted Industrial Zone Law (Law No. 7/2020) (the "IZ Law"), on May 26, 2020. Myanmar already has several industrial zones, but no specific regulations have been enacted to govern their establishment and operation. The IZ Law imposes penalties, among others, for a failure to develop an industrial zone within the agreed timeline, and prescribes the developer's obligation to take necessary measures to avoid any environmental harm from the development. Although not specified, it seems that the "industrial zones" to be developed under the IZ Law are expected to be those developed on government-owned land.

A significant feature in the IZ Law is that the Central Committee formed under this law will review proposals to develop an industrial zone, and the Regional Committee formed under this law will designate sites for industrial zones, and screen and approve investors to conduct their business in an industrial zone. In addition, the Central Committee is allowed to grant certain incentives to investors by notification where it considers it appropriate. This in effect introduces a separate investment permitting system in addition to the existing legal framework under the Myanmar Investment Law ("MIL").

In Myanmar, all investments, including foreign investments, are subject to the MIL. The implementation of a separate permitting system under the IZ Law fragments the unified and systematic permitting system under the MIL through which all the investment decisions have been centralized under the Myanmar Investment Commission, which was easy for investors to understand. The movement under the IZ Law as described above can be regarded as a backward step from the recent improvement back towards the previous legal framework (prior to the implementation of the MIL), in which the relevant governmental authority used to make individual investment decisions. The detailed procedures for the implementation of the IZ Law are yet to be released.

3. PUBLICATION OF DRAFT E-COMMERCE GUIDELINES

The Ministry of Commerce of Myanmar ("MOC") has released draft Guidelines on the Operation of E-Commerce, dated May 8, 2020 ("Draft Guidelines").

Local press reports indicate the Draft Guidelines were prepared to promote e-commerce in response to the goal of "Promoting Innovative Products & Platforms" in the COVID-19 Economic Relief Plan announced by the Myanmar government on April 27, 2020. The Draft Guidelines suggest that the government is planning to establish a new licensing regime for e-commerce, but it is unclear what the legal grounds for this regime would be. According to MOC officials, they will develop legislation and regulations related to e-commerce simultaneously with developing the Draft Guidelines.

In 2018, the MOC opened retail and wholesale trading to foreign investment by a notification, but at that time the MOC's view was that such activities which were not conducted at a physical store, including e-commerce, would not be permitted for foreign investors. However, many businesses, including foreign businesses, are interested in utilising e-commerce in Myanmar. Going forward, the MOC is expected to prescribe new regulations for e-commerce, which will be



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of interest to the Myanmar business community and potential investors.

4. SOLICITATION OF COMMENTS ON THE DRAFT TRADEMARK RULES

On June 29, 2020, the Trademark Division of Intellectual Property Department of the Ministry of Commerce of Myanmar ("MOC") distributed draft rules to implement and enforce the Trademark Law (Law No. 3/2019) ("Draft Rules") to a several law firms in Myanmar. Comments on the draft were due by July 17, 2020. The Draft Rules mainly cover procedures relating to trademark registration, including for oppositions to registration and invalidations or cancellations of trademarks. We previously noted in Volume 9 of our newsletter that filings of the following trademarks would commence prior to the entry to force of the Trademark Law: (i) trademarks that are already in use in Myanmar; and (ii) trademarks that have already been registered under the Registration of Instruments Law (Law No. 9/2018). The Draft Rules also set out the procedure for the registration of such priority trademarks.

The Trademark Law was enacted on January 30, 2019 but has not yet entered into force. The implementation of this law is significantly behind schedule due to the COVID-19 pandemic and other factors. It is expected to be implemented in 2021 at the earliest. The timing of the advance acceptance procedures for existing trademarks has not yet been determined, but as the release of the Draft Rules signify, the government is gradually making progress towards implementing the Trademark Law. We recommend businesses in Myanmar closely monitor the progress towards implementing this legislation to ensure they can take advantage of the priority registration of existing trademarks.

5. DEREGULATION OF ALCOHOL IMPORTATION

On May 25, 2020, the Ministry of Commerce of Myanmar ("MOC") issued Notification No. 38/2020 and Notification No. 39/2020 relaxing restrictions on the importation of alcohol products.

Previously, the MOC had prohibited the imports of such products other than certain exceptions such as wine. Notification No. 38/2020 removes all alcohol products other than beer from the list of products which are not permitted to be imported. Notification No. 39/2020 clarifies the procedure to import of alcohol products. The import permit will only be granted under Notification No. 39/2020 to Myanmar companies, that is companies with foreign shareholding of thirty five (35) per cent or less. It is understood that foreign companies with a greater proportion of foreign shareholding will continue to be prohibited from importing alcohol products.

6. FIRST PROTOCOL TO AMEND THE AGREEMENT ON COMPREHENSIVE ECONOMIC PARTNERSHIP AMONG JAPAN AND THE MEMBERS STATES OF ASEAN ENTERS INTO FORCE

On June 15, 2020, the Government of Japan notified ASEAN member states, including Myanmar, that the domestic procedures required for the entry into force of the First Protocol to Amend the Agreement on Comprehensive Economic Partnership among Japan and the member states of ASEAN (the "Revised Protocol") had been completed. As a result, the Revised Protocol would come into force on August 1, 2020.

The Revised Protocol is additional to the commitments of the parties on trade in services, movement of natural persons and cross-border investment set out in the Agreement on Comprehensive Economic Partnership among Japan and the member states of ASEAN signed in 2008. However, at least with regard to cross-border investment, it does not result in significant deregulation beyond what is already offered under the Myanmar Investment Law (Law No. 40/2016) ("MIL") and the Agreement between the Government of Japan and the Government of the Republic of the Union of Myanmar for the Liberalisation, Promotion and Protection of Investment. As a result, the practical impact of the Revised Protocol is expected to be limited.

FIRM UPDATE – JULIAN BARENDSE JOINS YANGON OFFICE

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Julian Barendse has joined our ASEAN practice recently in Yangon as a Myanmar Legal MHM Counsel. Julian has extensive experience in cross-border M&A and was previously an M&A Counsel at Allens/Linklaters. He has extensive experience assisting Japanese investors throughout the Asian region and Australia including through secondments to Nagashima Ohno & Tsunematsu and Mitsui & Co in Tokyo and Australia. His recent experience includes assisting Japanese, European, US and Australian clients on a range of transactions and investments including in the oil and gas, renewable power, logistics, infrastructure, tech, and food and beverage sectors.

Julian brings a commercial and practical approach to leading and negotiating transactions for his

clients.

Message from Julian Barendse

“I am delighted to be joining MHM’s ASEAN practice – a top quality, international and growing Asian regional practice. I look forward to working closely with my colleagues to provide a first class offering to international investors in Myanmar and regionally.”



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