

# MYANMAR LEGAL MHM

## Newsletter

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

- **Update on sanctions** – we provide an update on sanctions against various Myanmar persons and entities by the United States, United Kingdom and European Union;
- **Security situation and martial law** – we provide an update on the imposition of martial law on parts of Yangon and the security situation generally;
- **Myanmar Investment Committee** – we provide an update on recent activities of the Myanmar Investment Committee and details of its membership;
- **Myanmar Banking Sector Update** – we provide details regarding various directives of the Central Bank of Myanmar impacting the Myanmar banking sector;
- **Committee Representing the Pyidaungsu Hluttaw (CRPH)** – we provide an update regarding the CRPH; and
- **Appointment of new State Administration Council member** – we provide an update on the membership of the State Administration Council.

### LEGAL UPDATES

#### 1. UPDATE ON SANCTIONS

There have been a number of recent developments regarding the sanctions imposed on Myanmar since a state of emergency was declared on 1 February 2021 under Order No. 1/2021 of the Office of the President of Myanmar (Pro Tem) (“**State of Emergency Order**”).

In particular, the United States Treasury’s Office of Foreign Assets Control has expanded its list of Specifically Designated Nationals and Blocked Persons who are sanctioned under Executive Order 14014 titled Blocking Property With Respect To The Situation In Burma issued on 11 February 2021. As at 9 April 2021, 16 current and former military leaders, the two adult children of the Commander-in-Chief of Myanmar’s armed forces (“**CIC**”), five companies affiliated with Myanmar’s armed forces (including the major military-affiliated conglomerates Myanma Economic Holdings Public Company Limited (“**MEHPCL**”) and Myanmar Economic Corporation (“**MEC**”)), six companies affiliated with the CIC’s children, two military units (including the 33<sup>rd</sup> Light Infantry Division, which was already a sanctioned entity) and the Myanmar government-owned Myanmar Gems Enterprise.

On 4 March 2021, the United States Department of Commerce also specifically designated Myanmar’s Ministry of Home Affairs, Ministry of Defence, MEHPCL and MEC as entities to whom sensitive equipment subject to the United States’ Export Administration Regulations should not be sold.

The European Union, United Kingdom and Canada have also imposed targeted sanctions to date. The Council of the European Union passed two regulations and decisions on 22 March 2021, amending the existing framework for sanctions under Council Decision 2013/184/CFSP of 22 April 2013 and Council Regulation (EU) No 401/2013 of 2 May 2013, and providing for asset freezes and travel bans of (i) individuals from Myanmar’s armed forces, police force or Border Guard Police (including those responsible for obstructing the provision of humanitarian assistance or independent investigations into alleged serious human rights violations), (ii) individuals and entities undermining democracy or the rule of law in Myanmar, (iii) entities owned or controlled by, or which generate revenue for, provide support to, or benefit, Myanmar’s armed forces, and (iv) associated individuals and entities. As at 9 April 2021, 11 individuals have been designated (including the CIC).

The United Kingdom’s sanctions are pursuant to the new sanction regime established following Brexit under the Sanctions and Anti-Money Laundering Act 2018, and the Burma (Sanctions) (EU Exit) Regulations 2019 established concurrently with Brexit to preserve certain existing sanctions, both

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comprising asset freezes and travel bans of sanctioned individuals. As at 9 April 2021, 9 individuals, MEHPCL and MEC have been designated under these regimes in connection with the State of Emergency Order (including the CIC) (being in addition to existing sanctions which had been in place for certain Myanmar military personnel under the Global Human Rights Sanctions Regulations (2020)). Canada added nine individuals (including the CIC) to its list of sanctioned individuals under the Special Economic Measures (Burma) Regulations of 2007, which impose freezes on the Canadian assets of, and prohibit certain transactions with, sanctioned individuals (in addition to existing sanctions which had been in place).

Further sanctions may be expected from those jurisdictions and potentially other jurisdictions (such as Australia).

## 2. SECURITY SITUATION AND MARTIAL LAW

The security situation in Myanmar has become increasingly challenging since the State of Emergency Order, with ongoing demonstrations and protest activities being suppressed with reports of violence.

The State Administration Council (“SAC”), which was formed by the CIC on 2 February 2021 and which is exercising the powers of both the executive and legislative branches of Myanmar’s government, issued Orders No.1/2021 dated 14 March 2021, Order No.2/2021 dated 15 March 2021 and Orders No. 3/2021 dated 15 March 2021 imposing martial law on six (6) townships in Yangon (Hlinethaya, Shwepyitha, Dagon Myothit (South), Dagon Myothit (North), Dagon Myothit (Seikkan) and North Okkalapa townships), conferring administrative and judicial authority in those areas to a regional commander of the armed forces. As part of the martial law order, military tribunals are empowered to try those in the area (including civilians) with breaches of certain laws (including in relation to exciting disaffection towards the Myanmar government).

In addition, as a result of the overall security situation, foreign embassies have issued alerts to their citizens, with the British Embassy recently advising its citizens to leave Myanmar by commercial means. The ongoing security situation is expected to result in a decrease in the expatriate labour force in Myanmar.

## 3. MYANMAR INVESTMENT COMMISSION (“MIC”)

The SAC appointed the members of the MIC on 4 March 2021 by issuing Notification No. 30/2021. The current members of the MIC are set out below.

Names	Position	Background
Lt. Gen Moe Myint Tun	Chairman	Member of SAC
U Aung Naing Oo	Vice Chairman	Union Minister for Investment and Foreign Economic Relations
U Khin Maung Yee	Member	Union Minister for Natural Resources and Environmental Conservation
Dr Thida Oo	Member	Union Attorney General
U Nyunt Aung	Member	Deputy Minister for Commerce
U Win Thaw	Member	Deputy Governor of the Central Bank of Myanmar (“CBM”)
U Kyaw Min Oo	Member	Permanent Secretary of the Ministry of Agriculture, Livestock, and Irrigation
U Min Htut	Member	Director General of Internal Revenue Department of the Ministry of Planning, Finance and Industry
U Thant Sin Lwin	Secretary	Director General of the Directorate of Investment and Company Administration (“DICA”)

DICA issued a press release on 24 March 2021 announcing that the MIC had held its first meeting at the Office of the SAC in Naypyidaw, chaired by Lieutenant-General Moe Myint Tun, and with all members of the MIC in attendance. DICA noted in its press release that ten (10) new projects had been approved in the communications, manufacturing, hotel business and electricity generation sectors.

It will be important for foreign investors to monitor the activities of the MIC in future in assessing the prospects for obtaining approval for future projects. A particular point of concern for investors is likely



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to be that the MIC is chaired by Lieutenant-General Moe Myint Tun, who is the subject of sanctions by the United States, European Union and United Kingdom.

#### 4. MYANMAR'S BANKING SECTOR

Since the State of Emergency Order, Myanmar's banking services have become highly disrupted, in particular by the civil disobedience movement. Media reports indicate that most banks have had to close branches due to staff shortages, and are largely maintaining their businesses through ATMs and supporting online banking services.

The SAC and CBM have responded to this by seeking to require Myanmar's banks to open as soon as possible. On 5 March 2021, the CBM issued Letter No. MaBaBa/NaPaTa/FIS/ (32/2021) asking all banks to resume their operations starting 8 March 2021, based on certain notifications by the SAC's Administrative Office to the CBM. On 9 March 2021, the Office of the SAC issued Letter No. 27(3)/111/(7/Council Office) to the CBM requesting it to open private banks as soon as possible, and to transfer business accounts held at private banks that were unable to open to government-owned Myanma Economic Bank, MEC-owned Innwa Bank or MEHPCL-owned Myawaddy Bank.

On 23 March 2021, the CBM issued Letter No MaBaBa/MP/FIR/BannSiSitt/BannKhwe (54/2020) imposing a weekly fine of 5,000,000 kyats on Myanmar Oriental Bank Limited for failing to reopen around 40 per cent of its branches for the period 15 March to 19 March 2021. According to the CBM, the rate of the fine imposed on banks that fail to open each week would be based on the size of bank and the percent of its branches which are not open:

Size of bank	Percentage of non-operational branches and fine amount (kyat)		
	Up to 50 %	50 % to 75 %	75% and above
Large bank	10,000,000	20,000,000	30,000,000
Medium bank	5,000,000	10,000,000	15,000,000
Small bank	2,000,000	4,000,000	6,000,000

On 24 March 2021, the CBM issued Letter No. 887/KaKa(1)/3/376/2020-2021 requesting banks to take measures to ensure that their employees return to work as urgently as possible and take action against any employees who fail to return to work in accordance with the law.

Further, there have been concerns around the liquidity of banks, as individuals and companies withdraw money from their accounts. In response, on 1 March 2021, the CBM had issued Letter No. 28/2021 limiting cash withdrawals from banks and automated teller machines 2,000,000 kyat a week for individuals and 20,000,000 kyat a week for businesses.

Further complicating the compliance environment for Myanmar's banks, the CBM has issued a number of requests for information on private accounts (for example, on 19 March 2021, the CBM issued Letter No. MaBaBa/MP/FIR/BaanSiSitt/AML/CFT (175/2021) requesting banks to disclose the account details of safety deposit boxes of customers.

The compliance environment for Myanmar's banks has become very complicated since the State of Emergency Order. It will be important to monitor the effect the CBM's interventions have on the sector and the wider economy.

#### 5. UPDATE REGARDING COMMITTEE REPRESENTING THE PYIDAUNGSU HLUTTAW ("CRPH")

Members of the National League for Democracy have formed the CRPH to represent the members of the Pyidaungsu Hluttaw (that is, the Union Parliament) who were unable to assume office as a result of the State of Emergency. The CRPH (which is not recognised by the SAC as having any authority) has been active in issuing instruments on a range of matters, including among others:

- promoting public sector strikes, a key feature of the civil disobedience movement that has developed in response to the State of Emergency Order (most recently issuing a Notification on 21 March 2021 that only those civil servants who refuse to work before 31 March 2021 will be given credit by the CRPH for supporting the Myanmar people);
- encouraging Myanmar taxpayers to not pay taxes (an instrument was issued on 3 March 2021 proclaiming that the Law Amending the Union Tax Law had been passed, suspending tax payments until 30 September 2021); and
- asserting that governmental permits issued after the State of Emergency Order were not valid (under a Notification No. 1/2021 dated 13 March 2021 signed by U Tin Tun Naing, the CRPH

provided that permits issued by the MIC after the State of Emergency Order were illegal, and not valid).

On 12 March 2021, it was announced that the CRPH had engaged Volterra Fietta, a public international law firm, to pursue legal proceedings in response to the State of Emergency Order.

Businesses in Myanmar may seek to monitor the proclamations of the CRPH as part of their operational risk assessments (although the SAC does not recognise any authority of the CRPH).

## 6. APPOINTMENT OF A NEW SAC MEMBER

On 17 March 2021, the SAC issued Order No. 104/2021 to appoint Dr Bnyar Aung Moe as a new member of the SAC. The current members of the SAC are:

Name	Position	Party
Senior General Min Aung Hlaing	Chair	Military
Vice Senior General Soe Win	Vice-Chair	
General Mya Tun Oo	Member	
General Tin Aung San	Member	
General Maung Maung Kyaw	Member	
Lieutenant General Moe Myint Tun	Member	
P'doh Mahn Nyein Maung	Member	Kayin People's Party
Thein Nyunt	Member	National Democratic Force
Khin Maung Swe	Member	
Aye Nu Sein	Member	Arakan National Party
Jeng Phang Naw Htaung	Member	
Maung Ha	Member	
Sai Long Hseng	Member	Union Solidarity and Development Party
Daniel Saw	Member	Karenni National Progressive Party
Lieutenant-General Aung Lin Dwe	Secretary	Military
Lieutenant-General Ye Win Oo	Joint secretary	
Dr Bnyar Aung Moe (newly appointed]	Member	

## FIRM UPDATE – PUBLICATION OF ARTICLE ON MERGERS & ACQUISITIONS IN MYANMAR

Myanmar Legal MHM contributed the Myanmar chapter of the fifth edition of the *Legal500* volume on mergers and acquisitions, published in April 2021. This chapter provides our insights based on our on the ground experience advising on inbound mergers & acquisitions transactions in Myanmar.

We trust this publication will be helpful to your future investments in Myanmar. You can access this publication at the link [HERE](#).