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# MYANMAR

## Legal Updates



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- **COVID-19 situation in Myanmar** – we provide an update on the current situation with respect to the spread of COVID-19 in Myanmar and related legal measures;
- **Update on sanctions** – we provide an update on the international sanctions programmes applicable to Myanmar;
- **Reorganisation of government** – we provide an update on the reorganisation of the Myanmar government and government departments;
- **Myanmar Investment Committee ("MIC")** – we provide an update on recent activities of the MIC;
- **Myanmar Banking Sector Update** – we provide details on some recent directives and policies of the Central Bank of Myanmar ("CBM") affecting the banking sector; and
- **Myanmar Insolvency Law** – we provide an update on the implementation of the Myanmar Insolvency Law.

## Legal updates

### 1. COVID-19 Situation in Myanmar

In response to the spread of COVID-19 in Myanmar, the Myanmar government has implemented lockdowns to restrict movement in affected areas and implemented a continuous national holiday under SAC Order No. 211/2021 (which has been extended to 31 August 2021 by Notification No. 247/2021).

On 7 July 2021, lockdowns were imposed in a number of townships in Magway Region, Mon State and Yangon Region under Order No. 278/2021 of the then Ministry of Health and Sports ("MOHS"), with further townships in Yangon Region and Bago Region added on 11 July 2021 under Order No. 285/2021 of the MOHS. On 12 July, a number of townships from Kachin State, Kayin State, Sagaing Region, Magway Region, Shan State and Ayeyarwady Region were placed under lockdown under Order No. 278/2021 of the MOHS. The rapid increase in COVID-19 (and the government's response) are having a serious impact in Myanmar, including on the operation of, and investment in, projects in Myanmar. There have also been significant



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disruptions to the operation of government departments and agencies, with governmental offices closed during the continuous national holiday.

## 2. Update on Sanctions

The sanctions applied by the United States Treasury's Office of Foreign Assets Control ("OFAC"), European Union, United Kingdom and Canada in response to the state of emergency declared in Myanmar on 1 February 2021 have been further expanded.

The OFAC 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 of 10 February 2021, to include the State Administrative Council ("SAC"), the entity established to govern Myanmar during the term of the state of emergency, on 17 May 2021. A further 22 individuals (including Myanmar government ministers, and family members of sanctioned individuals) were added on 2 July 2021. Notably, among those sanctioned on 2 July 2021 was U Aung Naing Oo, Minister for Investment and Foreign Economic Relations, who previously served as a senior bureaucrat under the former National League for Democracy and Thein Sein administrations and played a major role in the opening of Myanmar to foreign investment.

As at 31 August 2021, in total, almost 80 individuals, companies and government entities have been sanctioned by the United States, including current and former military leaders (including the Commander-in-Chief ("CIC"), who was already a sanctioned individual) and their family members, the SAC, government enterprises (such as the Myanma Gems Enterprise, Myanma Timber Enterprise and Myanmar Pearl Enterprise) and companies affiliated with the Myanmar armed forces (including the major military-affiliated conglomerates Myanma Economic Holdings Public Company Limited ("MEHPCL") and Myanmar Economic Corporation ("MEC")).

On 6 July 2021, the United States Commerce Department's Bureau of Industry and Security also added four entities (King Royal Technologies Co., Ltd., Wanbao Mining and its two subsidiaries in Myanmar) to its Entity List 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 expanded their respective lists of sanctioned individuals. As at 31 August 2021, 29 individuals have been sanctioned by the European Union (including the CIC, as well as MEHPCL and MEC), while 10 individuals have been sanctioned by the United Kingdom (including the CIC) in connection with the state of emergency, as well as the SAC, MEHPCL and MEC, and three government enterprises (the Myanma Gems Enterprise, Myanma Timber Enterprise and Myanmar Pearl Enterprise). These are in addition to existing sanctions which had been in place for certain Myanmar military personnel under the Global Human Rights Sanctions Regulations (2020).

As at 31 August 2021, Canada has added 16 individuals (including the CIC) to its list of sanctioned individuals as well as seven companies affiliated with the CIC's children and the Myanmar military and three government enterprises (the Myanma Gems Enterprise, Myanma Timber Enterprise and Myanma Pearl Enterprise), under the Special Economic Measures (Burma) Regulations of 2007.

### 3. Reorganisation of government

On 1 August 2021, the SAC formed a "Provisional Government of the Union of Myanmar", under Order No. 152/2021 of the SAC. The CIC (the chairman of the SAC) was designated as "State Prime Minister" and the Vice Chairman of the SAC (Vice Senior General Soe Win) was designated as deputy prime minister. On the same day, the SAC also formed the state and regional governments under Order No. 153/2021.

The SAC has also implemented a number of governmental administrative changes:

- On 1 August 2021, it split the Ministry of Labour, Immigration and Population into the Ministry of Labour and the Ministry of Immigration and Population under Order No. 150/2021, and the MOHS into the Ministry of Health and the Ministry of Sports and Youth Affairs under Order No. 151/2021.
- On 17 June 2021, it issued Order No. 138/2021, splitting the Ministry of Education into the Ministry of Education and the Ministry of Science and Technology.
- On 5 May 2021, the SAC issued Order No. 119/2021 announcing that the General Administration Department, which performs a key role in the administration of Myanmar's government, would be transferred from the Ministry of the Office of the Union Government to the Ministry of Home Affairs.
- On 3 May 2021, the SAC issued Order No. 117/2021 splitting the former Ministry of Planning, Finance and Industry into the Ministry of Planning and Finance and the Ministry of Industry.

These developments reverse changes to the administration of government by the former National League for Democracy-led government.

On 17 June 2021, the SAC also formed a Ministry of Cooperatives and Development of Rural Affairs, to focus on regional areas.

### 4. Myanmar Investment Commission ("MIC")

The Directorate of Investment and Company Administration ("**DICA**") issued a press release on 7 May 2021 announcing that the MIC had held its second meeting at the Office of the SAC in Naypyidaw, chaired by Lieutenant-General Moe Myint Tun, with all members of the MIC in attendance. At the meeting, the MIC reportedly approved 15 new projects, including a US\$2.5 billion LNG power generation project, and two expansions of the existing projects.

State and regional investment committees reportedly held meetings in late June or early July 2021, with the Yangon Region Investment Committee reporting that it had met on 7 July 2021 by video conference and approved one project in the manufacturing sector.

## 5. Myanmar's Banking Sector

We note significant updates in Myanmar's banking sector:

- **Restrictions on Foreign Employees**

The Central Bank of Myanmar ("CBM") issued its Letter No. 4/2021 of August 2, 2021 (the "Letter") regulating the appointment of foreign nationals to local Myanmar banks. This letter requires CBM's prior approval for the employment of foreign employees and restricts the number of foreign employees according to the size of the bank, with foreign employees being restricted from certain senior positions such as CEOs and division heads. Foreign banks should carefully monitor this issue given the potential for a significant impact on operations in Myanmar.

- **Regulation of foreign exchange**

According to local news reports, the CBM notified local banks in early August that they would shift their exchange rates to a managed exchange rate system in response to the rapid depreciation of the kyat against the U.S. dollar since February this year. The details of the above notice have not been disclosed, but in the future, it appears that the exchange rate at the time of the most recent foreign currency auction by CBM will be published as a reference rate by CBM with a requirement that banks in Myanmar undertake foreign exchange transactions within prescribed bounds of this rate. This may result in a foreign exchange mechanism under which CBM sets a reference rate that differs from the actual market rate, which may hinder transactions involving foreign currencies. Therefore, future developments need to be closely monitored.

- **Liquidity measures**

The CBM on 17 June 2021 requested banks to take measures to proactively manage their liquidity and assets and liabilities. For example, it recommended banks to set limits on withdrawals on savings accounts, and limiting transfers to current accounts and withdrawals on time deposits, instead encouraging electronic fund transfers. The CBM also recommended limiting cash withdrawals by digital businesses on the receipts of digital sales to twice or three times per month, up to 50 per cent of their total digital sales in that month.

- **Minimum reserves**

On 7 May 2021, the CBM issued Directive No. 6/2021 reducing the minimum reserve that banks are required to maintain (which was already reduced from five per cent to three and a half per cent of total deposits in April 2020 due to COVID-19) to three per cent. It also issued Directive No. 7/2021 permitting banks to include 100 per cent of the value of treasury bonds irrespective of their remaining term in calculating their liquidity (previously banks had already been permitted to include 90 per cent of the value of bonds with a maturity of at least one year from April 2021 due to COVID-19, up from 50 per cent).

These measures reflect the current fragility in this sector.

## 6. Implementation of Myanmar Insolvency Law

As noted in our May 2020 newsletter, Myanmar enacted an Insolvency Law on 14 February 2020 which came into force on 25 March 2020 (except for Part X relating to cross border insolvency) and Insolvency Rules 2020 were issued on 28 April 2020. The Myanmar Insolvency Law provides a modern and comprehensive law dealing with the insolvency of corporations, partnerships and individuals. It also includes a new mechanism for corporate rescue and rehabilitation for the purposes of rescuing viable businesses experiencing financial difficulties.

As reported in our January 2021 newsletter, on 3 November 2020, DICA issued Notification No 95/2020 setting out the procedures for registering insolvency practitioners under the Insolvency Law. In order to practice as an insolvency practitioners, a practitioner must be issued an insolvency practitioner registration certificate by the Myanmar Insolvency Practitioners' Regulatory Council ("IPRC") and registered as an insolvency practitioner by DICA. Only members of the professional association for insolvency practitioners in Myanmar (the Myanmar Association of Insolvency Practitioners Inc ("MAIP"), established on 1 June 2020) will be eligible to be issued a practising certificate. In May 2021, MAIP issued membership certificates for its inaugural members. Registration of practitioners by IPRC through DICA is still forthcoming.

This will remain a topic to closely monitor. Our firm has a relevant Myanmar insolvency expert undertaking this process to become one of the inaugural insolvency practitioners.

## Firm Update – Publication of Article on Mergers & Acquisitions In Myanmar

"Myanmar Legal MHM contributed the Myanmar chapter of the fifteenth edition of the Getting the Deal Through volume on project finance. This chapter provides our insights based on our on the ground experience advising on project financing transactions in Myanmar.

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

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