

March 2023

MYANMAR

Legal Updates



Key Contacts



Julian Barendse

+95-1-9253650

✉ julian.barendse@mhm-global.com



Nirmalan Amirthanesan

+95-1-9253657

✉ nirmalan.amirthanesan@mhm-global.com



Sooksun Popun-Ngarm

+95-1-9253659

✉ sooksun.popun-ngarm@mhm-global.com

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

- **Implementation of Myanmar's Trademark Law** – we provide an update on the entry into force of the Trademark Law;
- **Extension of the State of Emergency** – we provide details of the extension of the State of Emergency in Myanmar;
- **DICA announcement regarding nominee shareholders and directors** – we provide an update on a recent DICA announcement with respect to nominee shareholders and directors; and
- **Foreign Exchange Restrictions Update** – we provide details of a notification providing an exception to foreign currency restrictions for certain foreign owned companies.

LEGAL UPDATES

1. IMPLEMENTATION OF MYANMAR'S TRADEMARK LAW

On 10 March 2023, the State Administration Council announced (under Notification 82/2023) that the Trademark Law (Law No. 3/2019), enacted on 30 January 2019, would enter force on 1 April 2023. Prior to that, the Department of Intellectual Property of the Ministry of Commerce invited trademark registration representatives, who would be responsible for filing trademark applications in Myanmar, to attend a training course in February in preparation for the implementation of the law. As we noted in the [October 2020 edition](#) of our newsletter, filings for registrations of trademarks already in use or registered under the Registration of Instruments Law (Law No. 9/2018) have been accepted since 1 October 2020 under Order No. 63/2020 of the MOC dated 28 August 2020. Trademarks for which such filings have been made will be registered under the Trademark Law with effect from the date it takes effect.

It would be advisable for all businesses in Myanmar that have not yet filed their existing trademarks to do so prior to the Trademark Law taking effect. In addition businesses that acquire trademarks after the date of the Trademark Law should promptly register such trademarks, as the Trademark Law adopts a first-to-file system of trademark ownership.

We can assist you to register your trademarks under the Trademark Law through the new electronic registration system. Please do not hesitate to contact us if you would like more information regarding the Trademark Law, including registering your trademarks.

2. EXTENSION OF THE STATE OF EMERGENCY



Tony Grundy

+65-6593-9756 (Singapore)

tony.grundy@mhm-global.com



Takeshi Mukawa

+95-1-9253652

takeshi.mukawa@mhm-global.com



Kana Manabe

+95-1-9253653

kana.manabe@mhm-global.com



Atsushi Inoue

+95-1-9253653

atsushi.inoue@mhm-global.com

On 1 February 2023, the National Defence and Security Council of Myanmar ("**NDSC**") issued Notification 1/2023 extending the state of emergency, which had been declared on 1 February 2021 under Order No. 1/2021 of the Office of the President of Myanmar (Pro Tem), by six months (that is, until 1 August 2023). This extension is expressed to be granted under section 425 of Myanmar's Constitution, which provides that the NDSC may upon the submission of the Commander-in-Chief of the Defence Services ("**CIC**") extend the period of the state of emergency for six months with "normally" up to two extensions. According to the notification, the NDSC considered that the current circumstances of Myanmar were not "normal" such that it notified an extension beyond the two extensions referred to in the Constitution.

This has the effect that, according to the notification, legislative, executive and judicial power in Myanmar remains vested in the CIC. The State Administration Council ("**SAC**") and Union Government ministers have been maintained to support the CIC in administering government with some personnel changes under Orders 5/2023, 6/2023 and 7/2023 of the SAC. In particular, Maung Maung Kyaw, formerly head of Myanmar's air force, is no longer a member from the SAC, and six individuals (Khin Maung Swe, Thein Nyunt, Saw Daniel, Sai Lone Seng, Aye Nu Sein and Banyar Aung Moe) have been moved to a new advisory body to the SAC called the SAC's Central Advisory Body (along with three other individuals).

Given the notification would seem to contemplate that the state of emergency can continue to be extended, it is difficult to estimate when the next elections will be held.

3. UPDATE ON INTERNATIONAL SANCTIONS

New international sanctions have been implemented by various international jurisdictions (coinciding with the second anniversary of the declaration of the state of emergency).

In particular, Australia implemented its first sanctions with effect from 1 February 2023, sanctioning:

- the CIC, Soe Win, Ye Win Oo, Moe Myint Tun, Mya Tun Oo, Tin Aung San, Aung Lin Dwe and Mahn Nyein Maung (who are members of the SAC);
- Maung Maung Kyaw, Khin Maung Swe, Thein Nyunt, Saw Daniel, Sai Lone Seng, Aye Nu Sein and Banyar Aung Moe (who were formerly members of the SAC until 1 February 2023, as noted above);
- Soe Htut (Minister for Home Affairs); and
- the major military-affiliated conglomerates Myanma Economic Holdings Public Company Limited and Myanmar Economic Corporation.

On 31 January 2023, the United States Treasury's Office of Foreign Assets Control ("**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 Union Election Commission and Mining Enterprise No. 1 and Mining Enterprise No. 2, senior energy officials Myo Myint Oo (Minister for Energy) and Aung Min and Than Min (Managing

Director and Deputy Managing Director, respectively, of the Myanma Oil and Gas Enterprise), former and current military officials Htun Aung (head of Myanmar's air force) and Hla Swe, and Htoo Htwe Tay Za, daughter of the Myanmar businessman Tay Za.

On 31 January 2023, the United Kingdom also sanctioned Asia Sun Trading Company Limited and its current director and owner Zaw Min Tun and former director and owner Win Kyaw Kyaw Aung, and Cargo Link Company Limited, allegedly for supplying fuel to Myanmar's air force, while Canada sanctioned military officials Htein Win, Htin Latt Oo, Than Hteik, Nyunt Win Swe, Phone Myat and Thet Pon. Canada has also banned the export, sale, supply or shipment of aviation fuel to Myanmar's military administration.

4. DICA ANNOUNCEMENT REGARDING NOMINEE DIRECTORS AND SHAREHOLDERS

On 17 January 2023, DICA issued Directive No. 7/2023 announcing that it would not permit nominee directors or shareholders. This directive was issued under section 462(a)(ii) of the Myanmar Companies Law (Law No. 29/2017) ("**MCL**").

Companies should ensure their directors (including those appointed for the purposes of complying with the requirements in section 4 of the MCL for at least one director to be ordinarily resident in Myanmar) understand the obligations and duties of directors under the MCL, and obtain their written agreement to act as directors.

We note that shareholders in the context of a joint venture typically reserve the right to nominate directors to the board of the joint venture company to represent their interests in the operation of the company (as recognised under section 166(d) of the MCL). We do not consider that directors appointed in accordance with such arrangements are intended to be restricted by DICA's directive.

In relation to nominee shareholders, we note that under section 98 of the MCL no notice of any trust is permitted to be entered on the register of members of a company or is receivable by the DICA (as registrar) (other than certain exceptions for legal representatives of deceased persons and insolvent persons).

5. FOREIGN EXCHANGE RESTRICTIONS UPDATE

We have previously provided updates on the introduction last year of foreign exchange restrictions in Myanmar ([most recently in our November 2022 newsletter](#)).

We understand that on 30 December 2022, the Central Bank of Myanmar ("**CBM**") notified authorised dealer banks in Myanmar that the Foreign Exchange Supervisory Committee ("**FESC**") had determined that for companies with a foreign ownership greater than 35% ("**Foreign Companies**"), it would not be necessary for banks to compulsorily convert foreign currency-denominated amounts held by them to Myanmar kyat, and that such currency could be permitted to be used for their own use or converted to kyat at banks. We understand that the notice also provides, however, that:

- Foreign Companies continue to require FESC approval to make outbound remittances; and
- Foreign Companies may not undertake export of non-value added agriculture or livestock products, while those undertaking export of value added agriculture or livestock products remain subject to the requirement under Notification 36/2022 to convert 65% of the export proceeds to Myanmar kyat.

The information provided in this newsletter is summary in nature and does not purport to be comprehensive or to render legal advice. Please contact our lawyers or email us at mhm_ygn_info@mhm-global.com if you would like to obtain advice about specific situations.

Contact Us

Myanmar Legal MHM Limited
Level 16, #16-01/02
Junction City Tower
No. 3A, Bogyoke Aung San Road
Pabedan Township, Yangon, Myanmar
www.mhmjapan.com

The information provided in this newsletter is summary in nature and does not purport to be comprehensive or to render legal advice. Please contact our lawyers or email us at mhm_ygn_info@mhm-global.com if you would like to obtain advice about specific situations.