

July 2023

# MYANMAR

## Legal Updates



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

- **Foreign Exchange Restrictions Update** – we provide an update of recent foreign currency measures implemented by the Central Bank of Myanmar ("CBM") and other Myanmar government agencies;
- **Update on International Sanctions** – we provide an update on international sanctions with respect to Myanmar;
- **Implementation of Myanmar's Insolvency Law** – we provide a recent update on the implementation of Myanmar's insolvency regime;
- **Implementation of Myanmar's Trademark Law** – we provide an update on the entry into force of the Trademark Law; and
- **New requirements for incorporating companies in Myanmar** – we provide an update on a new reporting requirement announced by the DICA with respect to newly incorporated companies in Myanmar.

## LEGAL UPDATES

### 1. FOREIGN EXCHANGE RESTRICTIONS UPDATE

We have provided updates in our newsletters over the past year (available at [this link](#)) on the implementation of foreign exchange restrictions in Myanmar since April 2022. Among others, under these restrictions, all foreign currency remittances from Myanmar are required to obtain the prior approval of the Foreign Exchange Supervisory Committee ("FESC"), which was formed under Order No. 28/2022 of the State Administration Council of Myanmar on 4 April 2022.

#### (1) Myanmar's foreign exchange rate

Under Directive no. 11/2022 of the CBM dated 10 August 2022, authorised dealer banks ("AD Banks") and licensed money changers (and companies permitted to undertake cross-border payments or remittance) are required to conduct all foreign exchange transactions within a trading band of 0.3 per cent of the CBM's published reference exchange rates for foreign currency conversions (please see further [item 2\(2\) of our November 2022 newsletter](#)).

On 21 June 2023, the CBM issued Letter No. FE-1/789, establishing an 'online trading program', under which AD Banks are required to submit daily transaction lists between 10:00 a.m. and 11:30 a.m., indicating planned foreign currency transactions with their customers (including trade and non-trade transactions, to be identified



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separately). The CBM would coordinate and decide on such transactions, including the exchange rate.

On 22 June 2023, the CBM announced that six AD Banks had participated on the first day of the online trading program, resulting in US\$6,890,000 worth of foreign currency transactions at exchange rates ranging from 2,920 to 2,922 Myanmar kyats per US\$ (that is, well above the CBM's reference exchange rate).

We note that the Letter No. FE-1/789 does not provide that the rate determined by CBM through the online trading program has effect outside of those permitted transactions. Consequently, the existing reference rates under Directive No. 11/2022 would continue to apply to foreign exchange transactions generally.

Investors in Myanmar should keep a close eye on the development of this platform.

## (2) Remittances of foreign currency offshore

In relation to remittances of foreign currency, the Ministry of Planning and Finance ("MOPF") recently introduced a Standard Operating Procedure ("SOP") to be followed by AD Banks and the Internal Revenue Department ("IRD") to confirm the payment of tax on all remittances above US\$10,000 from 1 May 2023.

Under the SOP, AD Banks are responsible for confirming that all taxes payable on any remittances above US\$10,000 have been paid. The IRD is obliged to issue documentary evidence to the remitting person confirming payment of tax or that no tax is payable, and answering any queries AD Banks or the remitting person may have.

Subsequently on 11 May 2023, the MOPF published the list of documents required to be submitted to AD Banks by those wishing to make a remittance of foreign currency offshore for the purposes of the SOP.

Further, in May 2023, the Directorate of Investment and Company Administration ("DICA") issued a notice setting out a list of documents that all companies registered with DICA which do not have a permit under the Myanmar Investment Law (Law No. 40/2016) are required to submit to the DICA prior to making foreign currency remittances. The implications of this requirement are not yet clear (including whether and what role DICA would expect to play a role in remittances of foreign currency overseas).

## 2. UPDATE ON INTERNATIONAL SANCTIONS

On 21 June 2023, the U.S. Treasury Department'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' ("Sanction List") to include Myanmar's Ministry of Defence and the state-owned financial institutions, Myanmar Foreign Trade Bank ("MFTB") and Myanmar Investment and Commercial Bank ("MICB") and, in doing so, made reference to MFTB and MICB enabling conversion of kyat to foreign currency for revenue-generating state-owned enterprises (including the Myanmar Oil and Gas Enterprise). The effect of this on the foreign currency situation in Myanmar remains to be seen, however, it could potentially further reduce the availability of foreign currency in Myanmar.

In addition, the sanctioning of MFTB and MICB may complicate the business environment for companies in Myanmar with income denominated in a foreign currency. For example, under the CBM's Directive No. 2/2023 dated 25 January 2023, tax on foreign currency-denominated earnings was required to be paid via bank

transfer in foreign currency to the Myanma Economic Bank, which would credit the amount in kyats to the IRD's kyat account, or through foreign currency accounts of the taxpayer opened at MFTB or MICB.

Previously, on 24 March 2023, OFAC sanctioned Asia Sun Group, Asia Sun Trading Co., Ltd., and Cargo Link Petroleum Logistics Co., Ltd, referring to the entities as operating in the defence sector of the Myanmar economy (in relation to jet fuel) as well as Star Sapphire Group of Companies, Star Sapphire Trading Company Limited and Star Sapphire Group Pte. Ltd (a Singapore company), being controlled by sanctioned individuals, Tun Min Latt and his spouse Win Min Soe allegedly for importing equipment for Myanmar's armed forces. Asia Sun Group has previously been sanctioned by the European Union and Canada, while Asia Sun Trading Company Limited and Star Sapphire Group of Companies were already the subject of sanctions by the United Kingdom.

In addition, on 20 July 2023, the European Union sanctioned senior government officials Aung Kyaw Min, Myint Kyaing, Porel Aung Thein, Pwint San and Thet Khaing Win, senior military official Kyaw Swar Lin, and the state-owned enterprise No. 2 Mining Enterprise. Myint Kyaing, Pwint San and the No. 2 Mining Enterprise have been previously sanctioned by the OFAC. On 27 March 2023, the United Kingdom also sanctioned Tun Min Latt, as well as Shoon Energy Pte Limited and its director Khin Phyu Win.

### 3. UPDATE REGARDING IMPLEMENTATION OF MYANMAR'S INSOLVENCY LAW

On 27 June 2023, the Myanmar Insolvency Practitioner Regulatory Council (the "**IP Council**") released four notifications to further implement the Insolvency Law (Law No. 1/2020), by forming the Insolvency Practitioner Certification Committee, Disciplinary Committee and Executive Committee, as well as publishing the IP Council's logo.

The Insolvency Practitioner Certification Committee will consist of seven members and chaired by U Thant Sin Lwin, the Director-General of the DICA. The primary responsibility of this committee is to issue insolvency practitioner certificates to qualified candidates. To be eligible to be issued an insolvency practitioner certificate, candidates must have a minimum three years' experience as a certified public accountant (CPA) or 15 years' experience as an advocate.

As noted in our previous newsletters (most recently in item 4 of our [\*\*November 2022 newsletter\*\*](#)) the implementation of the Insolvency Law remains pending as no insolvency practitioners have been registered to date. The formation of these committees may signify a preparedness on the part of the IP Council to register insolvency practitioners and implement the Insolvency Law. We will monitor and report on any further developments in the implementation of the Insolvency Law. We note that procedures under the Insolvency Law, such as the liquidation or appointment of a rehabilitation manager to a company, are unable to be undertaken without registered insolvency practitioners.

## 4. IMPLEMENTATION OF MYANMAR'S TRADEMARK LAW

As we noted in item 1 of our [March 2023 newsletter](#), Myanmar's Trademark Law (Law No. 3/2019), enacted on 30 January 2019, came into effect on 1 April 2023. A number of implementing regulations have been issued to provide guidance on the administration and enforcement of the Trademark Law, in particular with the Intellectual Property Department of the Ministry of Commerce issuing the Rules for the Registration of Trademarks set out in Notification No. 17/2023, dated 31 March 2023, providing guidance on trademark registrations, renewals and related procedures. Other regulations include Notification No. 1/2023 of the Ministry of Commerce dated 1 April 2023 forming the Intellectual Property Agency and Notification No.'s 235/2023, 236/2023, 237/2023, 238/2023 and 239/2023 issued by the Supreme Court of Myanmar regarding jurisdiction of Myanmar's courts in relation to trademark matters, as well as notifications by the Intellectual Property Agency such as Notification No. 1/2023 notifying of its fees for trademark registrations.

The implementation of the Trademark Law marks a significant milestone in strengthening intellectual property rights in Myanmar. All businesses should consider registering their trademarks, and we can assist you to do so 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.

## 5. NEW REQUIREMENTS FOR INCORPORATING COMPANIES IN MYANMAR

On 1 April 2023, DICA published a notice titled 'Notification to Companies' on its website, outlining an additional reporting requirement for newly established companies in Myanmar. The notice states that all newly established companies must submit specific documents to DICA together with their annual returns required to be submitted within two months of their incorporation under section 97(a) of the Myanmar Companies Law (Law No. 20/2017). These documents include proof that all shares are fully paid up, and certain identity documents in relation to shareholders and directors of the company, and a certificate issued by the police station in the township where the company's registered office address is located confirming its registered office address.

We note that following this notice, it would not be possible for companies to issue partly paid shares on incorporation, however there do not appear to be any limitations at present on issuing partly paid shares after incorporation. Companies should continue to monitor similar notifications from the DICA and other Myanmar government agencies that may impact compliance or corporate structure.

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](mailto:mhm_ygn_info@mhm-global.com) if you would like to obtain advice about specific situations.

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