



Myanmar Legal/Regulatory and Investment Newsletter May 2023

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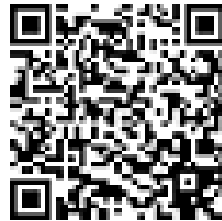
Telegram

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Legal/regulatory developments

DICA reminder on operating licenses. On 19 April, the Directorate of Investment and Company Administration (DICA) released a notice on its website stating that any company incorporated via DICA that wishes to undertake business activities in an area subject to operating licence requirements must obtain the required operating licence from the relevant Ministry or Department. That has always been the case, so this DICA's announcement is only a reminder, not a new development. We don't know if there is any particular issue that prompted DICA to put out a reminder about this.

https://www.dica.gov.mm/sites/default/files/document-files/announcereg_co.18-4-23.pdf

Possible new Myanmar government foreign borrowings. The new Union Budget Law – Myanmar's Union-level public treasury appropriations law – for the 2023-24 financial year contains provisions stating that the Union-level government is entitled to obtain domestic or foreign loans - including by issuing bonds or other debt securities - with the approval of the State Administration Council (SAC). The Central Bank of Myanmar will provide consultation on rates, and other terms and conditions, for any government borrowings. Given the significant headwinds facing Myanmar's economy, it seems likely that Myanmar will need to increase its level of foreign borrowings. If it does do so, hopefully it will try to ensure that the source and currency of any loans are such that the risk of exposure to further sanctions and oppressive or exploitative loan conditions is minimized.

<https://www.gnlm.com.mm/union-government-allowed-to-raise-local-foreign-loans-with-approval-of-sac/#article-title>

Customs duty exemptions for solar equipment imports. The Ministry of Planning and Finance (**MoPF**) has granted new customs duties exemptions for the import of a range of solar power equipment, with a view to further promoting investment in the solar industry. Customs duty exemptions – along with other tax-related incentives – are already readily available via the Myanmar Investment Commission (**MIC**) for solar power projects that have MIC-approval. The MoPF's new customs duty exemptions are therefore presumably principally aimed at providers of small-scale home, office and factory solar installations whose business activities would not meet the threshold for applying to the MIC.

<https://www.gnlm.com.mm/solar-relevant-components-exempt-from-customs-duties/>

Yangon rooftop solar feed-in tariff scheme. Following on from the Naypyitaw Electricity Supply Enterprise's recent announcement that it is introducing a solar power solar feed-in tariff scheme for the Naypyitaw Union Territory, the Yangon Electricity Supply Corporation announced on 21 April that it will also introduce a solar feed-in tariff scheme for Yangon Region. Electricity will be purchased at the following rates:

- 100 Kilowatt to 1 Megawatt 85 kyats/kWh
- 1 Megawatt to 10 Megawatt 80 kyats/kWh

(These are the same rates as published for Naypyitaw).

Full details of the scheme and how to participate are apparently still being created. This is an interesting development for the solar rooftop sector. Feed-in tariffs make commercial and industrial solar rooftops installations more feasible as they provide revenue to the solar rooftop company on days when the factory/office/whatever that's in the relevant building is closed and not using electricity.

<https://elevenmyanmar.com/news/electricity-excess-from-solar-panels-installed-by-the-public-will-be-purchased-at-85-kyats-per>

SOP for tax compliance on outbound remittances. On 25 April 2023, the Ministry of Planning and Finance (**MoPF**) published a 'Standard Operating Procedure' (**SOP**) on required steps/processes for checking on whether tax has been paid when remitting foreign currency from Myanmar to abroad. The SOP states that it took effect on 1 May 2023 and that it applies to outbound remittances in excess of USD10,000 (or equivalent in other currencies).

The SOP is principally directed at what steps/processes banks have to follow before processing any outbound payment. There is no indication that the SOP affects the restrictions on making outbound transfers. It therefore appears that the SOP specifies the steps to be followed by: persons/businesses making transfers that are exempt from the restrictions; and persons/businesses that have first obtained Foreign Exchange Supervisory Committee permission to make (non-exempt) outbound transfers.

The specific requirements set out in the SOP principally relate to provision to the remitting bank of documentary evidence that relevant tax assessments and payments have been completed.

<https://www.mopf.gov.mm/sites/default/files/SOP.pdf>

<https://www.lincolnmyanmar.com/wp-content/uploads/2023/04/SOP-for-tax-payments-when-transferring-money-abroadx.pdf>

The Internal Revenue Department (**IRD**) also circulated an announcement on the tax documents required to be presented in support of outbound remittances of profits, payments for purchases of goods, service fee payments and IP royalties. This announcement is a short sub-set of the information in the MoPF's SOP on tax-related

steps/processes for remitting foreign currency abroad. The IRD announcement has less information, but includes some more specific references to the names/reference numbers of specific relevant tax documents.

<https://www.facebook.com/winhtutaung.cpa.accountants/posts/pfbid02fvqnjeaMjVSyfNRdNXqNjDyxR41Zt7hLHhwUNdEpzb4zLHYUTJvxhaJipWrYHi6w/>

IRD reminder on 2022-23 tax filing deadline. On 25 April, the IRD published its usual reminder that tax filings for the financial year ended 31 March 2023 are due to be made by 30 June.

<https://www.ird.gov.mm/en/blog/announcement/notice-file-income-tax-returnannual-salary-statement-and-annual-commercial-tax>

If you need any assistance with your finalizing your tax filings or would like to discuss the requirements, please feel free to drop us a note at: contact@calibreco.com

Online taxpayer registration. The IRD's online tax system is being further expanded to allow registration of new taxpayers to be done entirely online using the 'Electronic Taxpayer Registration System'.

Currently, various parts of the IRD's income tax sections are at various stages of implementation of online tax filing and assessment. The 'Large Taxpayers Office' allows full taxpayer self-assessment and online filing through the IRD's 'Self-Assessment System' (SAS). The various Medium and Small taxpayers offices (there are multiple numbered offices within each stratum) essentially allow online filing of returns via the SAS, but IRD personnel in those offices usually still print out and manually assess returns at the 'back-end', as they did before the SAS was introduced.

The new development allows the first step of registering as a taxpayer in the SAS to be done entirely online from the user's desktop. Hopefully this will be followed by a continuing roll-out of e-government initiatives to improve the efficiency of the IRD and Myanmar's tax collection.

[https://www.ird.gov.mm/sites/default/files/eRegistration_Advertisement\(270423\).pdf](https://www.ird.gov.mm/sites/default/files/eRegistration_Advertisement(270423).pdf)

AML/CFT regulations for CPAs. The Myanmar Accountancy Council (**MAC**) released Directive 1/2023 on 28 April "regarding Anti-Money Laundering (AML) and Combatting the Financing of Terrorism (CFT) for Accountants". The Directive has not been widely publicized, but has circulated on social media and we understand that the MAC forwarded the Directive to licensed Certified Practising Accountants (**CPA**).

The Directive is expressed to have been made by the MAC under section 69(c) of the Anti-Money Laundering Law with the "agreement of the Anti-Money Laundering Central Body". Section 69(c) allows (amongst other bodies) "the Competent Authority" to issue regulations with the approval of the Central Body. The Anti-Money Laundering Rules state that the Central Body can designate Competent Authorities by issuing a notification. (It therefore seems that there can be different Competent Authorities for different sectors/activities). We have not seen any such notification confirming that the MAC is the AML/CFT Competent Authority for accountants, but this seems to be implied by the fact that the Directive has been issued.

The Directive is expressed to apply to persons carrying out activities within section 2(c) of the Myanmar Accountancy Council Law and section 3(w)(iv) of the Anti-Money Laundering Law. However, we have checked directly with the MAC and been told that the Directive is intended to apply only to accountants that are registered with the MAC, which essentially means CPAs (as opposed to any person who provides accounting services as described in section 2(c) of

the Myanmar Accountancy Council Law). In terms of the activities of CPAs covered by the Directive, these are (per section 3(w)(iv) of the Anti-Money Laundering Law):

- buying and selling immovable property;
- managing money, securities or other assets of the client;
- managing banks, savings or securities accounts;
- organizing contributions for the establishment, operation or management of companies;
- establishing, operating and managing legal organizations or arrangements and buying and selling of business entities.

To the best of our knowledge, there may be many CPAs helping clients to establish legal organizations (i.e. incorporate companies), but few CPAs in Myanmar would be undertaking any of the other activities under the above dot points.

The practical effect of the Directive may therefore be limited. However, there are other related services areas – in particular, legal services and corporate services – that are not yet subject to AML/CFT regulations. Presumably, the release of regulations for CPAs may prompt the release of regulations in other areas in the near future. The contents of the Directive may therefore be illustrative for the types of AML/CFT compliance requirements likely to be imposed on other services areas.

In brief, CPAs are required to:

- Appoint an appropriately qualified AML/CFT compliance officer and notify the MAC and FIU of the compliance officer's details.
- Cooperate with, and provide accurate answers to survey questions forming part of, any MAC onsite or offsite AML/CFT inspection – and provide any other information/evidence requested by the MAC.
- Establish internal AML/CFT policies and procedures.
- In respect of relevant clients/activities:
 - o Carry out AML/CFT 'loss risk assessments' to determine whether potential clients are high risk or low risk.
 - o Conduct AML/CFT due diligence on lower risk clients and their beneficial owners, and enhanced due diligence on high risk clients and their beneficial owners.
 - o Check potential client names against consolidated lists on the FIU's website (<https://www.mfiu.gov.mm>), the United Nation's Security Council website (<https://www.un.org/securitycouncil/content/un-sc-consolidated-list>), and lists of persons names under UN Security Council Resolution 1718 (2006) and successor resolution 2231 (2015) – and inform the FIU if the client's name is on any list.
 - o Retain records of business activities relating to relevant clients.
 - o Report suspicious transactions or activities to the FIU [above a specified amount – but the specified amount doesn't seem to be specified].

It's a little unclear on the face of the Directive how some of these requirements are supposed to be complied with. Presumably the Directive is meant to be read together with the AML Law and other practical guidance from the CBM or FIU or MAC.

Increase to bank MMK minimum reserve ratio. On 2 May the Central Bank of Myanmar (**CBM**) announced an increase to the minimum reserve ratio required to be maintained in Myanmar Kyat for Myanmar banks with a view to combatting inflation and in light of the country's overall economic situation. All banks are required to increase their MMK reserve ratio to 3.5 percent (from the previous requirement of 3 percent) by 23 May.

The CBM is of the view that the banking sector has overall stabilized and is performing more strongly. A range of banking performance statistics were included in its announcement regarding the MMK reserve ratio. Myanmar's loan-to-GDP ratio in February 2023 was 28 percent, with lending in the inter-bank market having increased almost 100% since the previous year. Banks have strengthened their provision of financing for trade and the CBM has been able to significantly decrease its short-term loan servicing. The level of non-performing loans held by banks had decreased almost 11 percent year on year. At the end of March, the amount held on deposit by banks with the CBM had increased 35 percent, and the cash amount held by banks themselves had increased 36 percent, compared with the same period last year.

<https://elevenmyanmar.com/news/cbm-increases-the-minimum-reserve-requirement-ratio-that-banks-must-keep-in-myanmar-kyats-from>

New Private Education Law. The SAC issued a new Private Education Law (PEL) on 12 May 2023. The new PEL repeals the previous Private School Registration Law 2011. The PEL requires independent or private schools for basic education, vocational education and training and higher education to register with new central or regional Supervisory Committees to be established by the Ministry of Education under the PEL. Full registration criteria are still to be released. Registrations will be renewable on a five-yearly basis. Existing independent and private schools will be given one year to register under the PEL. Operating a private or independent school without registration is a criminal offence under the PEL.

It appears that, where relevant, establishment of wholly foreign-owned and foreign-local joint venture private education businesses will also still need Myanmar Investment Commission approval under its Notification 7/2018 relating to private education services.

The PEL also requires independent or private school teachers (whether foreign citizens or locals) to register with the relevant Supervisory Committee. Teacher registrations will be renewable on a three-yearly basis. Teaching without a registration is also made a criminal offence. Independent or private schools are required to notify the relevant Supervisory Committee of the appointment or dismissal of teachers within 14 days.

Requirements for exporter/importer registration. The Ministry of Commerce (**MoC**) issued a new Notification 35/2023 on 10 May dealing with requirements for companies to register as importers/exporters (which is a pre-condition for obtaining an import or export licence for specific imports/exports). The new Notification does not appear to make many changes to the overall process and requirements, but rather consolidates and updates previous requirements (which were drawn from a number of different MoC procedures and announcements over recent years).

Interestingly, the Notification states that the Department of Trade (**DoT**) within the MoC will verify and decide on exporter/importer registration applications within 15 working days. There is also a reference to verifying "on the ground" – which is not further detailed, but may mean site visits will become part of the registration process. The Notification also includes some appeal procedures for exporters/importers whose registrations have been suspended by the DoT.

<https://www.commerce.gov.mm/sites/default/files/Notification%2035-2023%20%28EIR%20Procedure%29.pdf>

Committee formed to work on new foreign agent/national security law. The Ministry of Home Affairs (**MoHA**) released a Notification (178/2023) on 24 March, which has only recently been published in English in the Government Gazette on 12 May. The Notification provides for the formation of a committee to work on drafting of a law to "prevent

and restrain agents under foreign influence from being contacted by foreign states and interfering in various fields such as politics, security, economy and culture in the Union". The drafting process will commence with a review of similar legislation from other jurisdictions. The committee formed under the Notification contains representatives from various Ministries and Departments, with MoHA being the most heavily represented.

It appears that what may be intended is to develop an 'umbrella' piece of legislation that 'sits above' all type of organisations and activities in Myanmar and requires reporting of relevant funding sources and activities, and prohibits relevant conduct and affiliations, regardless of who is doing it. If so, this type of law should result in taking a lot of the pressure and confusion away from the formation and regulation of operating entities in Myanmar. With appropriate umbrella national security legislation in place, DICA and the GAD can go about incorporating/registering and regulating not-for-profit companies and NGOs without having to worry about national security issues that should properly be separately dealt with.

Trade mark re-registration deadlines extended. The Intellectual Property Department released an announcement on 16 May that extends the deadline for:

- payment of re-registration application fees and submission of 'Form TM-2' nominations of filing representatives for re-registrations of pre-existing paper-based trade mark registrations from the previous deadline of 31 May to the new deadline of 30 June 2023; and
- making priority applications for re-registration of pre-existing trade marks to the period of six months following 26 April 2023.

Investment news

Tin mining suspension in Wa State? It was reported that on 17 April authorities in the Wa Self-Administered Division (WSAD) issued a directive that all mining activities in the WSAD must cease by 1 August. Although a little unclear, it seems that between the issue of the directive and 1 August, existing mining operations are required to scale down, or possibly to conduct near mine exploration only and cease production immediately. Reports also say that the directive states that the shut-down is intended to allow for activities to protect remaining mineral resources and establish a more formal structure for regulation of mining activities in the WSAD.

It is estimated that the WSAD provides around 10% of global tin concentrate supply, and close to 80% of China's tin concentrate supply (<https://www.reuters.com/article/china-tin-myanmar-idUSKBN2WF0CC>). (Some reports speculate that 'most' WSAD tin production is exported to China. It would all be going to China – there isn't really anywhere else it can go from there). Global tin prices jumped on the back of the reports. But there does not seem to have been any further news on the issue as yet. The rest of the world only realised that the WSAD had major tin production activities in late 2014 or early 2015, when Indonesia temporarily banned exports of tin concentrate (as part of its on-again, off-again efforts to try to force miners to vertically integrate and do more processing and value-adding within Indonesia). This was expected to cause a price spike that did not actually happen. No-one could figure out why until it was revealed that there was significant tin production in the WSAD supplying China's market. Given the general opacity of the WSAD, it remains to be seen what recent reports really mean and what the effect will actually be.

<https://www.internationaltin.org/notice-circulating-that-myanmars-wa-state-mine-operations-are-to-be-suspended/>
<https://www.reuters.com/article/tin-myanmar-idUSKBN2WE0KH>

KIO/KIA area rare earth mine shutdown. There have been reports that the KIO/KIA agreed to require the staged shut-down of some rare earth mining operations in KIO/KIA-controlled areas of Kachin State in response to local community protests that have been ongoing since December. The mines are apparently operated by Chinese

companies. These are presumably newer mining operations. There are several long-established rare earth production projects in KIO/KIA and Border Guard Force areas along the Chinese border in Kachin State. Those projects are presumably past the stage of community protests given their longevity (although those projects might remain unpopular locally). We therefore assume that it's likely that the projects that the KIO/KIA has agreed to shut down are newer operations that have only been started in the last two years.

<https://www.voanews-com.cdn.ampproject.org/c/s/www.voanews.com/amp/chinese-companies-reportedly-halt-rare-earth-mining-in-myanmar-after-protests/7056236.html>

Further banking cooperation with Yunnan Province. There was some very limited reporting in late April of a meeting on 25 April between the Myanmar Banking Association and Dehong State Bank (and possibly some other Chinese financial institutions) to discuss expansion of the cross-border RMB payment system for border trade. Dehong is a semi-autonomous Shan and Kachin prefecture in south-west Yunnan Province, located across the border from Muse.

The 25 April meeting apparently discussed: opening of mutual deposit accounts between Chinese and Myanmar banks; establishment of agency banking; joint announcements of exchange rates between banks in the Dehong and Muse regions; and improving the efficiency of payment channels for cross-border trade.

https://facebook.com/story.php?story_fbid=pfbid0DiXYy4eowTV2FTuRK29tu8VoFTirXr8o8QRynUPoxNTX165djTxDczECByspVsntl&id=100071915201292&mibextid=Nif5oz

Possible electricity tender? A small local newspaper has reported that an unnamed official from the Directorate of Investment and Companies Administration within the Ministry of Investment and Foreign Economic Relations has stated that a major government tender for the electricity sector is in the works. We caution that this does not look like an official announcement and does not come with any details. However, the need for increased electricity generation and improved distribution is clear for everyone sweating through blackouts in the current heatwave. From that perspective, new formal public sector sourcing initiatives would not be surprising.

<https://www.facebook.com/1515097075471500/posts/pfbid02aKqEbkFF2nnUpcaq3XRrFMPBThgQCPM6zjCx8FTG21RKtsbY1DoLj9YHSnh8crNkl/?mibextid=Nif5oz>

Anyone who feels they might be interested in any upcoming electricity generation tender (if there is in fact one), but who is not familiar with regulation of Myanmar's electricity sector and who would like to sharpen their pencil on that front before anything is announced, please feel free to drop us a note at: contact@missionlegalmm.com

Delayed opportunity for Indian petroleum supply. The Chairman and Managing Director of Indian State-owned Numaligarh refinery in Assam State has stated in an interview that the company had developed detailed plans to establish retail distribution of petroleum in Sagaing State, working with an (unnamed) local partner, but those plans are now on hold due to the security and political situation in Myanmar. The MD stated that Numaligarh intends to revisit those plans "once the situation becomes conducive".

North-eastern India has its own oil and gas resources and a number of State-owned refineries are located in the region. From a simple proximity perspective, it's a logical source from which to be importing petroleum commodities for at least the western Myanmar States and Regions.

<https://energy.economictimes.indiatimes.com/news/oil-and-gas/assams-numaligarh-refinery-keen-to-set-up-retail-outlets-in-myanmar/99921030>

Sittwe Port opening. The Sittwe Port section of the India-funded Kaladan Multimodal Transit Transport Project started operations on 9 May (or thereabouts) when the inaugural ship arrived in Sittwe from Syama Prasad Mookerjee Port near Kolkata. Unfortunately, this was just days before Cyclone Mocha hit Sittwe. We have not yet heard anything about how much damage the new port sustained.

We understand that there is still a decent amount of work to be done on river dredging to allow ships to transport cargo by river to an inland port at Paletwa in Chin State, and construction of a highway from Paletwa to Mizoram in India. Conflict in the area – including the Arakan Army conflict prior to the current broader conflict – has caused significant delays to the project. But there seems to be a renewed push on at present to get the highway built and the whole project linked up. The project is a strategic priority for the Indian government as it is actually designed to provide a new freight transport route into north-eastern India as an alternative to the only connection available at present, being the theoretically vulnerable Siliguri Corridor (the skinny bit between the bottom of Nepal/Bhutan and the top of Bangladesh).

<https://indiashippingnews.com/india-funded-sittwe-port-in-myanmar-set-to-open-on-9-may>

Sale of Adani Port. The Adani group's subsidiary that holds its investment in its port project in Yangon, Adani Ports and Special Economic Zone Limited, suddenly announced on 4 May that it had completed the sale of the project for the much reduced price tag of USD30m. Sources say Adani has invested USD195m in the project, which is not yet operational. The reduced price seems to have been negotiated to allow the deal to close without waiting for the grant of regulatory approvals – which Adani had claimed were the delaying factor in closing previous negotiations for a sale. Adani also admitted that pressure from shareholders to exit sanctions-hit Myanmar was a key factor in agreeing to the cut-price sale. The buyer has been named as “Solar Energy Limited”. But releases from Adani provide no information on the company (not even its jurisdiction).

<https://asia.nikkei.com/Business/Business-deals/India-s-Adani-Group-sells-Myanmar-port-for-a-loss-making-30m>

MEC obtains operating rights for Moehti Moemi. After rumours that it may become involved in the project had been circulating for some time, Myanmar Economic Corporation (**MEC**), which is owned by the Ministry of Defence, has apparently finally been granted a mineral production licence for the Moehti Moemi gold project in Yamethin Township, Mandalay Region.

Moehti Moemi has had a somewhat chequered history. The project was first discovered by Canadian company, Ivanhoe Mines, when it was active in Myanmar during the late 90s and early 2000s (in particular, in developing the Monywa copper project). It has been the site of significant illegal small-scale mining. In 2011, a subsidiary of local conglomerate National Prosperity Group was granted a production licence for Moehti Moemi. They failed to bring the project up to sufficient production levels to meet contractual government revenue obligations, the licence was cancelled and one of the directors of the company was imprisoned for offences relating to mining without a licence.

Some people with limited knowledge of mining get excited by Moehti Moemi because it has very high grade, but very narrow, veins of visible gold. Mineral ore is just dirt/rock that contains commercial levels of a mineral – being levels that allows enough mineral to be recovered to be able to sell at a profit after mining and processing costs. Dirt/rock that does not contain sufficient levels of a mineral to be commercial is referred to as ‘waste’. Done properly, large-scale mining requires detailed prior assessment of the grade, structure and location of the body of ore to allow

planning of how to mine in a way that prioritises digging up of ore and minimizes digging up of waste so that the mining and processing can be done efficiently and profitably for a long time.

A lot of efficiency comes from economies of scale – using major plant and equipment to mine and process large volumes of ore. That is very hard to do when the ore body is very narrow – because it’s very difficult to mine the ore without also mining a lot of waste around it. So, even if the ore is very high grade, it’s easy to lose money if it’s structured as very narrow veins. And therein lies the rub for Moehti Moemi. It’s not a good project just because you can see visible gold. (Every technical expert we know who’s looked at it has a modest to low opinion of it).

<https://myanmar-now.org/en/news/junta-owned-mec-takes-over-gold-mine-formerly-run-by-imprisoned-tycoon/>

Kengtung proposed for airport upgrade. The latest addition to the list of Myanmar airports slated for upgrade and expansion is Kengtung airport. Prime Minister Senior-General Min Aung Hlaing announced the upgrade on a recent visit to Kengtung. The goal of the upgrade is to allow Kengtung to service larger aircraft to open up air connections with Laos, China and Thailand and promote the socio-economic development of north-east Shan State.

<https://www.myanmaritv.com/news/inspection-airport-upgrading-pm-inspected-kengtung-airport-upgrading-works>