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# Myanmar Law Update 2018

## **Myanmar Update #4**

May 23, 2018

Royal Thai Embassy, Yangon, Myanmar

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**November 17, 2017**

**Ministry of Commerce No. 55/2017  
prescribing the foreign JV companies to  
trade prescribed farm machineries**

# Ministry of Commerce No. 55/2017 prescribing the foreign JV companies to trade prescribed farm machineries

- ▶ In **Notification No. 55/2017**, the Ministry of Commerce (MOC) allows a joint venture company to trade 158 types of farm machineries and products with prescribed HS Code lines.
- ▶ No specific share ratios prescribed, shall be allowed according to permitted Equity ratio of foreign JV companies when company registration.
- ▶ Permitted foreign JV companies to trade farm machineries retail/wholesale.
- ▶ It shall be allowed and permitted to foreign JV companies with the same rules and procedures which allow current local companies in trading.

# January 22, 2018

**Ministry of Commerce No. 8/2018  
prescribing the goods that allowed to be  
exported in January 2018**

# Ministry of Commerce No. 8/2018 prescribing the goods that allowed to be exported

- ▶ In **Notification No. 8/2018**, the Ministry of Commerce (MOC) allows foreign Investor in collaboration with Myanmar citizen (joint venture company) to export the High Grade Finished-goods manufacturing investment in Myanmar for 22 types of products.
- ▶ No specific share ratios prescribed in the notification.
- ▶ As the manufacturing business is required the approval of the MIC and relevant ministries, the share ratios may be subjected to the MIC's decision.

# Ministry of Commerce No. 8/2018 prescribing the goods that allowed to be exported

## ► List of Products that allowed to be exported;

1. Meat and fish;
2. Crops;
3. Various kind of plastics;
4. Paper pulp and various kind of papers;
5. Enamel wares and kitchenware including pot, bowl, plate, spoon, knife, folks, etc.;
6. Flammable solid, liquid, gaseous fuels and aerosol (Acetylene, Gasoline, Propane, Hair Sprays, Deodorant, Insect Spray);
7. Oxidants, compressed gases, corrosive chemicals;
8. Value added manufactured products such as biscuits, wafers, all kinds of noodles and vermicelli;
9. All kind of confectionery including sweet, cocoa and chocolate;
10. Processing of canned food products except milk and dairy products;
11. Malt, malt liquors and non-aerated products;
12. Methylated spirits, alcohol and non-alcoholic beverages;
13. All kind of purified water and ice;
14. All kind of soaps;
15. All kind of cosmetics products;
16. Veterinary vaccines and medicines;
17. Animal food products and supplements;
18. Seeds;
19. Agricultural insecticide, fertilizer, hormone, weed killer etc.;
20. Purified Ores;
21. High grade manufactured products from crops and fruits raw materials; and
22. Wood Furniture

**May 9, 2018**

**The Ministry of Commerce  
Notification No. 25/2018**



# Permission for foreign-owned company and joint venture company to conduct a trading business

- ▶ In **Notification No. 25/2018**, the Ministry of Commerce (MOC) allows foreign owned Companies, Companies collaboration with Myanmar citizen and foreign persons (Joint Venture Companies) are allowed to carry out wholesale and retail business in Myanmar with the following criteria.

	100% foreign-owned	Joint Venture (Myanmar party is up to 20%)	Joint Venture (Myanmar party is 20% and above)
Retail	USD 3,000,000 (excluding the property's rent amount)		USD 700,000 (excluding the property's rent amount)
Wholesale	USD 5,000,000 (excluding the property's rent amount)		USD 2,000,000 (excluding the property's rent amount)

## Permission for 100% foreign-owned company and joint venture company to conduct a trading business (con't d)

- ▶ This notification may affect to the new Companies Act with respect to the structure of 35% foreign shares and 65% local shares to maintain the status of a 'local company.
- ▶ Retail / Wholesale permit issued by the Ministry of Commerce and the MIC Permit / Endorsement are required prior to the establishment of a company.
- ▶ “**Retail**” means the sale of goods in low quantity purchased by citizens for consumption and not for resale.
- ▶ “**Wholesale**” means the sale of goods in large quantity purchased by retailers or manufacturers.

### Note:

- ▶ A local company with an initial investment amount of less than USD 700,000 are exempted from the registration of the retail or wholesale business.
- ▶ In the event that an initial investment amount has reached to USD 700,000, a local company is required to register with the MOC.

## Permission for 100% foreign-owned company and joint venture company to conduct a trading business (con't d)

- ▶ **Operational Restriction**; a company **must not**:
  - operate a retail or wholesale premises, including minimarkets and convenience stores, with a floor area of less than 929 square meters;
  - operate a business outside the times, days, and location prescribed by the development committee of the relevant region, state, city, or other local authorities;
  - distribute unsafe or substandard goods in breach of relevant laws; and
  - sell goods prohibited under the law.

# Permission for 100% foreign-owned company and joint venture company to conduct a trading business (con't d)

## Registration for trading

- ▶ Register with the **Ministry of Commerce** by supplying the following documents;
  - Certificate of company registration;
  - Copy of the company's Myanmar Investment Commission (MIC) endorsement, (or MIC permit if the company falls under the MIC permit requirement scheme);
  - Recommendation letter from the relevant City Development Committee or Township Development Committee of the region or state;
  - Lists of group of goods to be sold retail or wholesale; and
  - Detailed descriptions of the business plan prescribing the amount of initial capital investment, the location, and the area to be occupied in square meters.
- A company wishes to expand a branch is required to apply for the approval from the MOC within 90 days in advance.

## Permission for 100% foreign-owned company and joint venture company to conduct a trading business (con't d)

100% Myanmar-owned companies established before this notification came into effect which operating a retail or wholesale business.



Having initial investment amount from USD 700,000



Apply for the retail / wholesale registration with the MOC within 150 days from the date of this notification

# New Myanmar Union Tax Law 2018

# New Myanmar Union Tax Law 2018

- ▶ Came into effect on 1 April 2018;
- ▶ Financial year of all taxpayers is still remain the same (1 April to 31 March) except for the State-owned enterprise;
- ▶ No notable changes with 2017 Union Tax Law.
- ▶ Following Union Government Meeting 17/2017 on September 7, 2017, the Myanmar government has decided to change the country's budget year calendar from the previous system, which ran from April 1 to March 31, to a new system, which runs from October 1 to September 30. The aim of this change is to optimize national budgetary management and revenue collection.

# Personal Income Tax

Description		Tax Rate 2018 (From 1 April 2018)
Personal Income Tax rates for remuneration received for resident local, foreigner		Progressive rate ranging from 0-25%
From (Kyat)	To (Kyat)	
1	2,000,000	0%
2,000,001	5,000,000	5%
5,000,001	10,000,000	10%
10,000,001	20,000,000	15%
20,000,001	30,000,000	20%
30,000,001 and above		25%
Rate for salary income of non-residents foreigner		0 - 25% (no relief exempted)
Rate for salary income of non-residents citizen		0 %
Rate for non-resident citizens on other income		10%
Tax deductions and reliefs		Basic allowance 20% but shall not exceed MMK 10,000,000 Parent – MMK 1,000,000 Spouse – MMK 1,000,000 Children – MMK 500,000



# Corporate Income Tax

Description of income	Tax Rate (%) 2014	Tax Rate (%) 2017	Tax Rate (%) 2018
A Company registered and incorporated in Myanmar	25%	25%	25%
Non-resident foreigner	35%	25%	25%
A company which under the permission of MIC after incentive period	-	Specifically provided at 25%	Specifically provided at 25%
Exemption of newly established small and medium enterprises	Exempt from Corporate Income Tax if income does not exceed 5,000,000 MMK for 3 years in a row	Exempt from Corporate Income Tax if income does not exceed 10,000,000 MMK for 3 years in a row	Exempt from Corporate Income Tax if income does not exceed 10,000,000 MMK for 3 years in a row

# Withholding Tax Rates on Payments

Types of Payments	Resident citizens and foreigners Recipients	Non-Resident foreigners Recipients
Interest	0%	15%
Royalties for the use of Licenses, Trademark, Patent Right etc.	15%	20%
Payment for procurements within the country and work done under a contract or an agreement or any other forms of agreement for state organizations, development committees, cooperatives, partnerships, and companies and organizations formed and registered under any existing law.	2%	2.5%
Payment for work done and procurements from the country under a contract or an agreement or any other forms of agreement for foreign entrepreneurs or foreign companies.	2%	2.5%

# Awareness for the Investment in Myanmar

# Awareness for the Investment in Myanmar

## Contractual Awareness

- ▶ Every transactions should be governed by **written agreement** included with significant clauses, for example;
  - name of each party;
  - services to be provided or products to be distributed;
  - period of the agreement / renewal option;
  - payment and term of payment;
  - event of default;
  - termination;
  - governing law/ dispute resolution.

# Awareness for the Investment in Myanmar

## Contractual Awareness (Cont' D)

- ▶ Lease agreement executed in Myanmar must be affixed with the stamp duties at the rate prescribed below and endorsed with the relevant Revenue Department **within 1 month** from the execution date.

Lease Period	Stamp Duties Rate
Less than 1 year	0.5 % of total lease amount
1 – 3 years	0.5 % of average annual rent
3 years onwards	2 % of average annual rent

- ▶ In the event that the stamp duty is not paid and endorsed with the relevant revenue department in time, the revenue department will impose an annual penalty of **10 times** of the overdue stamp duty.

# Awareness for the Investment in Myanmar (Cont'd)

## Contractual Awareness (Cont' D)

Myanmar Court does not apply and enforce foreign laws.



The Parties should consider electing Myanmar laws as the governing law of the contract.

- However, Myanmar Court **recognizes and enforces** a foreign arbitral award of NY Convention Member.

## Awareness for the Investment in Myanmar (Cont'd)

### Registration Awareness for the MIC Company

- ▶ MIC Company is required to register the long term lease agreement with the Office of Registration of Deeds (ORD) **within 120 days from the date of execution** in which Myanmar translation of such agreement is also needed.
- ▶ Failure to comply, the ORD will impose a fine on a case by case basis.

# Awareness for the Investment in Myanmar (Cont'd)

## Cybercrime Awareness

- ▶ Example Forms of Cybercrime exist in Myanmar
  - Fraudulent email;
  - Phishing; and
  - Malware
- **Fraudulent email** = the email sent with the intention of extracting money or obtaining personal details such as bank account details. The sender may provide fake information to extract the money.
- No specific law in Myanmar for taking action on cyber fraud emails and bank account.
- Normally, the police will take action only when the victim is Myanmar citizen or Myanmar registered entities who made the payments in Myanmar to hackers on fraud accounts.



# Awareness for the Investment in Myanmar (Cont'd)

## Cybercrime Awareness (Cont'd)

### How to Prevent

- ▶ Always discuss with your partner or the parties of the agreement that you entered into if you received some suspicious email, e.g. email informing the change of bank account, in order to prevent the risk; and
- ▶ Make sure to confirm with your partner using alternate communication channel e.g Line, Viber, Phone etc. before making any payments.

# Current Myanmar IP Law and Practices

# Current Myanmar IP Law and Practice

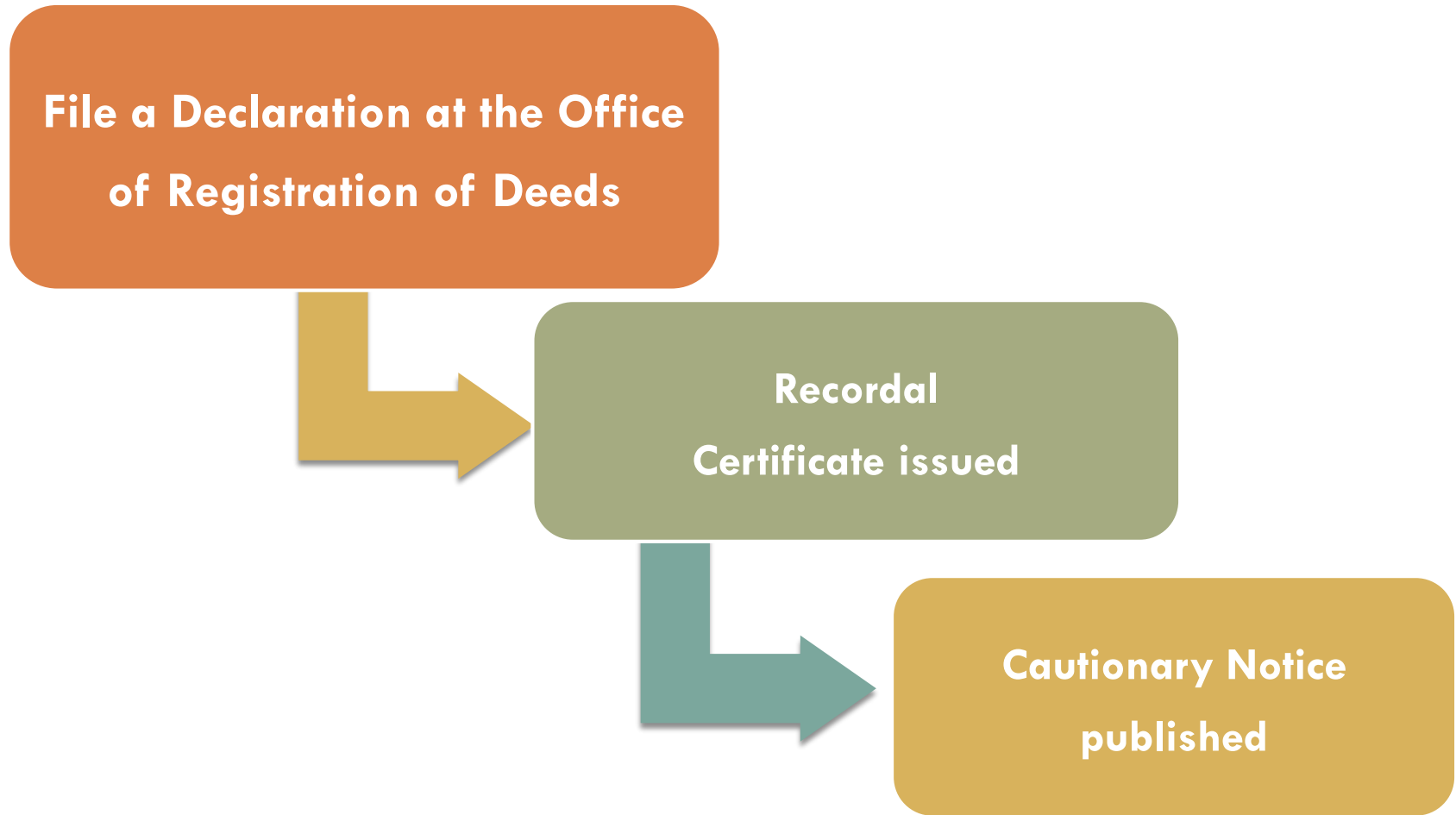
Trademarks may be registered under Section 18(f) of the Registration Act with the following particulars:

- ▶ Declaration of the mark
- ▶ Name of the company, individual, or firm
- ▶ Class(es) of goods

Marks can be rejected if they are objectionable on *moral* or *legal* grounds or if they are likely to impinge *religious* sentiments.

- ▶ **Renewal** – Based on current practice, the renewal of a registration is usually done once every three years through one of the following options:
  - Renewal by reregistration in the form of a Declaration;
  - Renewal by republication in local daily newspapers or weekly journals; or
  - Renewal by both reregistration and republication.

# Protect Your IP – Recordal System





# Overview: Myanmar Trademark Bill 2017

# Changes introduced by the Myanmar Trademark Bill 2017

## The bill will allow for:

- ▶ Reregistration of existing trademarks
- ▶ Recognition of priority rights
- ▶ Recognition of well-known marks
- ▶ Mandatory registration of trademark licenses
- ▶ Introduction of substantive and procedural examination processes

# Changes introduced by the Myanmar Trademark Bill 2017

## **The bill will allow for:**

- ▶ Availability of opposition and cancellation actions
- ▶ Registration of geographical indications
- ▶ Protection of trade names
- ▶ New border control measures
- ▶ Availability of civil and criminal remedies

# Term of Protection and Renewal

- ▶ Ten (10) years from the date of application
- ▶ Renewal must be filed within six (6) months prior to the expiry of the term
- ▶ Grace period of six (6) months from the date of expiry is allowed
- ▶ Renewal of a registration will be published after approval



# Penalties

- ▶ Imprisonment of a term not exceeding 3 years, a fine not exceeding 2 million kyat, or both, for the following convictions:
  - Counterfeiting of a mark
  - Using a counterfeit mark on goods or services
  - Possession of any articles used for counterfeiting a mark
  - Trading and distributing and/or importing and exporting goods bearing a counterfeit mark

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