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The last 12 months were marked by the gradual adjustment of established policies to address fast-changing developments particularly in the fiscal and monetary sphere. The spotlight remained with the Central Bank of Myanmar as it sought to address foreign exchange challenges and the depreciation of the Kyat. Beginning in 2022, the CBM issued policies that significantly influenced the operation of businesses and impacted the overall economy. In 2023, these policies appear to have reached a functional equilibrium, and even featured the relaxation of certain restrictions for those engaging in on-shore and off-shore trade.

In other areas, we also observed changes in the employment and tax sectors, specifically with respect to new tax exemptions for renewable energy and foreign tax credits for Myanmar nationals living abroad. The Ministry of Commerce also issued regulations to regulate the e-commerce sector. Significant legislation in the intellectual property sector also came into effect under the Trademark Law, Industrial Design Law, and Copyright Law came into effect in 2023, with the Myanmar Intellectual Property Office gearing up to transition into the new intellectual property registration framework provided under these laws.

In this issue of our year-end newsletter, we provide legal updates on notable developments affecting the manner by which business is conducted in Myanmar. This information provided here is, of course, not exhaustive. For other KCY Newsletters issued in 2023, please visit www.kcyangon.com/media.

A. Significant laws enacted in 2023

No.	Name	Date
1	Political Parties Registration Law	26 Jan 2023
2	2023 Union Tax Law (amended on 12 Sep2023)	30 Mar 2023
3	2023-2024 Fiscal Year National Planning Law	31 Mar 2023
4	2023-2024 Fiscal Year Union Budget Law	31 Mar 2023
5	Weapons Law	11 May 2023
6	Private Education Law	12 May 2023
7	Law Repealing Freshwater Fisheries Law	27 Jul 2023

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B. Significant rules, regulations, and notifications issued in 2023

No.	Name	Date
1	DICA Directive 7/2023 - Announcement for nominee directors	17 Jan 2023
2	MIC Notification 1/2023 – Classification of electric vehicles and related activities as promoted sector	15 Feb 2023
3	SAC Notification 82/2023 – Trademark law enforcement date	10 Mar 2023
4	Union Supreme Court Notification 235/2023 – IP Court Jurisdiction for Trademarks	24 Mar 2023
5	MOC Notification 17/2023 - Trademark Rules	31 Mar 2023
6	MOC Notification 18/2023 – Export Negative List	31 Mar 2023
7	MOC Notification 19/2023 – Import Negative List	31 Mar 2023
8	IP Agency Notification 1/2023 – Official fees for trademark registration application	1 Apr 2023
9	IP Department Announcement 1/2023 – Second stage trademark registration	1 Apr 2023
10	IP Department Announcement 2/2023 – Fee payment methods for trademark registration	1 Apr 2023
11	MOPF SOP for verifying tax clearance upon remittance of FC	25 Apr 2023
12	Union Government Notification 4/2023 – EV commercial tax exemption	8 May 2023
13	MOC Notification 35/2023 – Exporter Importer Registration	10 May 2023
14	MOPF Notification 37/2023 – Custom duty reduced for SKD & CKD	31 May 2023
15	MOC Notification 40/2023 – Procedures for unauthorized imports	9 Jun 2023
16	MOL Overtime Guidelines	20 Jun 2023
17	MOL Shift Work Guidelines	20 Jun 2023
18	MOC Bulletin 9/2023 – Auto and non-auto import licensing for border trade	21 Jun 2023
19	CBM Letter FE-1/789 – Online Trading of FE	21 June 2023
20	MOC Bulletin 11/2023 – Advance TT liberalization	28 Jun 2023
21	MOC Bulletin 13/2023 – Advance TT liberalization amendment	6 Jul 2023
22	CBM Notification 15/2023 – Compulsory conversion down to 50%	13 Jul 2023
23	MOPF Notification 50/2023 – Customs rules for protection of trademark rights	14 Jul 2023
24	MOC Notification 51/2023 – Online sales business registration	21 Jul 2023
25	MOC Notification 50/2023 – Online sales essential service	21 Jul 2023
26	MOPF Notification 63/2023 – Withholding tax for healthcare professionals	25 Aug 2023
27	MOC Bulletin 1/2023 – E-Commerce Guidelines	5 Sep 2023
28	MOC Notification 67/2023 – Industrial design rules	29 Sep 2023
29	Union Supreme Court Directive 3/2023 – AML CTF Due Diligence for Lawyers	29 Sep 2023
30	Minimum Wage Working Committee Notification 2/2023 – Minimum Wage Amendment	9 Oct 2023
31	COP related to information gathering, investigation, and taking action for prevention of financial fraud via telecom networks	15 Oct 2023
32	SAC Notification 217/2023 – Industrial design law enforcement date	18 Oct 2023
33	SAC Notification 218/2023 – Copyright law enforcement date	18 Oct 2023
34	MOC Notification 70/2023 – Copyright Rules	23 Oct 2023
35	Union Supreme Court Notification 960/2023 – Adjudication procedures for industrial design	27 Oct 2023
36	Union Supreme Court Notification 973/2023 – Adjudication procedures for copyright law	27 Oct 2023
37	MOC Bulletin 10/2023 – China border trade banking system	31 Oct 2023
38	CBM Letter FE-1/2937 – Removing Prescribed Rates for Online Trading	5 Dec 2023
39	CBM Notification 26/2023 - Compulsory conversion down to 35%	6 Dec 2023
40	CBM Notification 27/2023 – Export earnings repatriation period reduced	25 Dec 2023

C. Continuing adjustments to foreign exchange policies

The Central Bank of Myanmar (“**CBM**”) continues to adjust its foreign currency policies to respond to foreign exchange pressures on the Myanmar Kyat.

By the end of 2022, the CBM had in place a policy that required the mandatory conversion of 65% of incoming foreign currency. Exporters were permitted to retain 35% of their earnings in foreign currency accounts for personal use or third-party sales at market rates within 30 days. Exceptions were made for entities engaged in foreign direct investments approved by the Myanmar Investment Commission (“**MIC**”), which allowed them to retain 100% of their foreign currency, but any outbound foreign currency remittances required the approval by the newly-established Foreign Exchange Supervisory Committee (“**FESC**”).

For 2023, the CBM's foreign exchange policies remained largely the same. In July 2023, the mandatory conversion rate was adjusted from 65% to 50% of export earnings (see item 22, Section B). This was further refined on December 6, 2023, resulting in the "35-65-30 Rule," allowing 35% of export earnings to be converted to Myanmar Kyat while the remaining 65% could be utilized or sold to third parties within a 30-day period. The period to remit export earnings into Myanmar banks was also adjusted from 45 days to 30 days for export earnings received from exports to Asian countries and from 90 days to 60 days for export earnings received from exports to all other countries (see item 40, Section B).

Effective June 21, 2023, the CBM centralized foreign currency trading between exporters and importers through an online trading system, which required banks to submit daily transaction proposals for CBM approval (see item 19, Section B), but by December 5, 2023, the CBM permitted banks to freely trade foreign currency on the online trading system, based on prevailing market rates (see item 38, Section B). The CBM also increased the minimum Myanmar Kyat reserve ratio for banks in May 2023 from 3% to 3.5% to mitigate inflation, citing enhanced bank performance and increased liquidity of the Myanmar Kyat.

Together with these CBM changes, the Ministry of Planning and Finance established a Standard Operating Procedure for verifying tax clearance prior to remitting foreign currency abroad (see item 11, Section B). These procedures apply to transactions exceeding US\$10,000 and involve compliance measures for the Internal Revenue Department (IRD), Authorized Dealer banks, and taxpayers.

D. Import export policy adjustments and eCommerce registration

For 2023, the Ministry of Commerce (“**MOC**”) aligned its import and export policies with the CBM foreign exchange regulations. Collaborating with the FESC, the MOC transitioned to streamlining import-export decisions through the Myanmar Tradenet 2.0 system. Instead of categorizing goods as license and non-license, the system now distinguishes between automatic and non-automatic licensing, enabling enhanced monitoring of trade activities, including border trade.

In August 2023, the MOC relaxed regulations for border trade participants, particularly for exporters engaged in China-Myanmar trade, where transactions in Chinese Yuan (RMB) were permitted. Additionally, MOC Bulletin 11/2023 (see item 20, Section B) eased advance telegraphic transfer requirements for certain exports like pulses, corn, sesame, and beans. Exporters now have the flexibility to deposit 20% of export proceeds (35% for

companies established within three years) as a guarantee, provided the proceeds are received within 15 working days.

The MOC updated the Exporter Importer Registration (“EIR”) Notification (see item 13, Section B), maintaining existing procedures but introducing specific timelines for the Department of Trade: 15 working days for new registrations and 3 working days for amendments and renewals. All EIR processes are now conducted via the Myanmar Tradenet 2.0 system.

In July 2023, the MOC categorized "online sales" as an "essential service" under the 2012 Essential Supplies and Services Law (see item 25, Section B). This designation empowered the Department of Trade to issue relevant directives, notifications, and regulations. Subsequently, the MOC mandated registration for e-commerce businesses (see item 24, Section B) and launched an e-commerce registration portal at <https://www.ecomreg.gov.mm>, thereby formalizing the e-commerce landscape in Myanmar.

E. New intellectual property laws came into effect

Myanmar’s previously-enacted intellectual property laws have finally come into effect in 2023 upon the Myanmar President’s notification, the Trademark Law on April 1, 2023, and the Industrial Design Law and Copyright Law both coming to effect on October 31, 2023 (see items 3, 32, and 33, Section B).

Prior to effectivity, MOC had initiated a phased transition to align with these laws. Currently, phase two of trademark registrations allows within a specified timeframe applications for both new and existing trademarks. For a detailed roadmap, refer to our previous newsletter, Issue No. 74, available at www.kcyangon.com/media. The MOC has established fee structures and prescribed forms for trademark, copyright, and industrial design registrations. It is anticipated that an online registration system, akin to the Department of Trade's Myanmar Tradenet 2.0, will be implemented. Accordingly, the Myanmar Intellectual Property Office has launched an online platform at <https://efiling.ipd.gov.mm/>. Additionally, implementing rules for the Copyright Law, Industrial Design Law, and Trademark Law were published in 2023.

F. New daily minimum wage

In October 2023, the National Committee for Setting the Minimum Wage announced an adjustment, setting the minimum wage at 5,800 Kyats for an 8-hour working day (see item 30, Section B). This adjustment maintains the previous daily wage of 4,800 Kyats and introduces an additional allowance of 1,000 Kyats per day. Consequently, the overtime rate remains consistent at 600 Kyats per hour.

G. Company registration now requires proof of paid-up capital

In April 2023, the Directorate of Investment and Company Administration (“DICA”) announced that in order to facilitate AML & CTF activities and to ensure compliance with prevailing laws, it now requires additional documentation to be submitted at the time of submission of the first annual return within two months of incorporation. Namely, it is now required to submit the evidence of paid-up capital, residential police recommendation or foreigner registration for each company director, police recommendation for physical address of the company, and documents related to the shareholders.

H. New Private Education Law

On 12 May 2023, the Ministry of Education (“**MOE**”) issued the 2023 Private Education Law (see item 6 of Section A) which supersedes the previous 2011 Private School Registration Law. This Private Education Law mandates the formation of the Central Supervisory Board as well as the compulsory registration of private basic education schools, private technical and vocational education training schools, and private higher education institutes. This new law also requires the private school teachers to register with the supervisory board. We have discussed the details of the new law in our newsletter here. Subsequently, the MOE published notifications directives relating to international schools, higher education institutes, and national curriculum private schools further specifying the registration requirements and reporting requirements as well as respective fees.

I. Tax updates

The Union Tax Law 2023 (“**UTL 2023**”) for the fiscal year 2023-2024 featured notable amendments that include commercial tax exemptions for solar-related equipment and electronic vehicles (EVs). This aligns with the MOC’s customs duty exemptions for solar and EV imports and the MIC’s designation of solar and EV sectors as promoted industries. The UTL 2023 also modifies the Special Goods Tax by incorporating diamonds and emeralds, previously exempt, under jewelry and gemstone taxation. Amendments to the UTL 2023 have also imposed a taxes on salary and non-salary-related income earned by non-resident Myanmar citizens overseas. Detailed explanations and calculations are available in our newsletter, Issue No. 77, at www.kcyangon.com/media.

The UTL 2023 also introduces provisions for foreign tax credits which allow Myanmar nationals residing abroad to offset taxes paid in foreign countries against corresponding Myanmar tax liabilities. Preliminary investigations indicate eligibility for deductions irrespective of Myanmar's Double Taxation Agreements. Currently, Myanmar has such agreements with Vietnam, UK, Thailand, Singapore, South Korea, Malaysia, Laos, and India.

J. Increased KYC Due Diligence Compliance for Legal and Financial Services

The State Administration Council issued Standard Operating Procedures (SOP) to combat financial fraud *via* telecom networks. The SOP mandates enhanced Know Your Customer (KYC) protocols for Mobile Financial Service Operators (MFS Operators) and stricter requirements for foreigners registering mobile payment accounts and telecom SIM cards. At the same time, financial institutions that are MFS Operators must rigorously verify foreign nationals' documentation, including passports, visa validity, sources of income, employer endorsements, addresses, and proof of residence. The DICA has also been mandated to review documents submitted for company incorporations as per Section 6 (B) of the Myanmar Companies Law.

The Union Supreme Court has relatedly issued a directive mandating customer due diligence (CDD) for lawyers, notary publics, and legal professionals and requires covered persons to secure identification documents and information from clients and transactional parties. Law firms are also required to designate a senior management individual to serve as Compliance Officer and supervise the CDD process. Legal professionals are also required to promptly notify the Financial Intelligence Unit of transactions exceeding MMK 100,000,000 and US\$10,000.

About Kelvin Chia Yangon (KCY)

KCY has been in active operation in Myanmar since 1995, currently with offices in Yangon and Mandalay. KCY is the firm of choice for those seeking to navigate Myanmar's fast-changing and complex Supervisory landscape, a jurisdiction in which KCY has gained in-depth legal expertise from the numerous transactions it has handled.

Our main practice areas

Foreign Investments | Incorporation and Company Maintenance | General Corporate and Commercial | Due Diligence | Mergers and Acquisitions | Joint Ventures and Production Sharing Agreements | Investment Funds | Energy/Oil and Gas | Natural Resources/Mining | Banking | Project and Project Financing | Manufacturing | Education | Agriculture | Real Estate | Infrastructure | Construction | Telecommunications | Compliance / Supervisory | Licensing and Permits | Labour and Employment | Immigration | Taxation | Insurance | International Arbitration | Intellectual Property | Special Economic Zones

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