

Insights

MYANMAR POSTCARD - 28 FEBRUARY 2020

Feb 28, 2020

Beneficial Ownership Directive

The Directorate of Investment and Company Administration (“DICA”) issued Directive No 17/2019 on Disclosure of Beneficial Ownership Information (“Directive”) on 15 November 2019. The Directive took effect from 1 January 2020.

The Directive applies to all legal persons and legal arrangements incorporated in Myanmar. Legal persons is defined as any entities other than natural persons that can own property or establish permanent customer relationships with financial institutions and includes companies, corporations, joint ventures, body corporates, foundations, partnerships or associations and other similar entities. Legal arrangements refer to express trust or other similar legal arrangements.

Under the Directive, legal persons or arrangements are required to submit to DICA and the Inland Revenue Department, the relevant facts regarding their beneficial owners. The Directive does not specify a deadline to comply with this obligation. While the Directive provides that all legal persons and arrangements are required to submit their beneficial ownership information using the online forms available on the DICA website at the time of writing no further information on the reporting procedure has been released as yet. We strongly recommend that legal persons and arrangements collect and update information regarding their beneficial owners for their own records.

Beneficial Ownership is defined as the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement (which includes but is not limited to companies, partnerships, associations and trusts or similar arrangements)

A beneficial owner is any individual who:

- holds, directly or indirectly more than 5% of the shares and/or voting rights of a private company, public company or a corporation;
- has, directly or indirectly, the right to appoint and remove the majority of the board of a private company, public company or a corporation; and

- has the right to exercise, or actually exercises, significant influence or control over a public or private company or corporate entity.

The Directive also provides that all legal persons and legal arrangements are required to maintain the information and records for a least five years after the date on which the company is dissolved or otherwise ceases to exist and in the case of a professional intermediary or the financial institution, five years after the date on which a Person ceases to be a customer.

All legal entities and legal arrangements are also required to cooperate with the competent authorities to the fullest extent possible in determining the beneficial owner by:

(a) authorising one or more natural persons resident in Myanmar, accountable to DICA, to provide all basic information and available beneficial ownership information, and giving further assistance to the authorities; and/or

(b) authorising a Designated Non-Financial Business and Professions (“DNFBPs”) in Myanmar, accountable to DICA, for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities.

The Directive states that DNFBPs include:

(a) Company service providers which, as a business, provide any of the following services to third parties:

- Acting as formation agent of legal organisations;
- Acting as a director or secretary of a company, a partner of a partnership, or as a person in a similar position in another legal entity or arrangement; and
- Providing a registered office or accommodation or business address or correspondence or administrative address for a company, a partnership or any other legal entity or arrangement.

(b) Persons, including lawyers and accountants, who provide any of the following services:

- Organisation of contributions for the creation, operation or management of companies; and
- Creation, operation or management of legal entities or arrangements.

New Insolvency Legislation Passed

On 14 February 2020, Myanmar enacted the new [Insolvency Law](#). This replaces the existing regime comprising the Yangon Insolvency Act 1909 and the Myanmar Insolvency Act 1920.

The new law aims to provide a modern regime for corporate insolvency and personal bankruptcy, and adopts the United Nations Commission on International Trade Law (“UNCITRAL”) with respect to cross-border insolvency.

In relation to personal insolvency, it is notable that the new law provides that voluntary settlement agreements may be reached between the creditor and the debtor as an alternative to bankruptcy proceedings. Under these arrangements, part of the debt may be written off or paid over a period of time. This is aligned with the practice across common law jurisdictions.

In relation to corporate insolvency, the new law provides for a choice between liquidation and the novel option of rehabilitation proceedings. With the latter option, a company will be overseen by an insolvency practitioner, which will implement a rehabilitation plan approved by the company's creditors for a period of 3 months subject to further extension. During this period, the insolvency practitioner becomes personally liable for the company's debts, while the secured creditors are barred from enforcing security without the court or the insolvency practitioner's approval. However, if the company continues to be insolvent upon completion of the rehabilitation plan, it will automatically be subject to liquidation.

In particular, there is a dedicated rehabilitative process for 'micro and small to medium enterprises' ("MSMES"), which are businesses with debts of no more than US\$7,500 or an individual or partnership with debts of no more than US\$750. This form of enterprise takes up around 80% of the economy. For MSMEs, the rehabilitation proceedings are more flexible: while an insolvency practitioner will be appointed to advise the company, the personnel at the MSMEs remain in control. The downside, however, is that the insolvency practitioner will not be personally liable for the MSME's debts, as compared with the general rehabilitation proceedings.

Furthermore, as the new law adopts UNCITRAL provisions, it is expected to provide assurance to foreign investors, by providing a framework for co-operating and coordinating financial rescue across countries.

New Gas Fields Discovered in Myanmar

Posco International, a subsidiary of the Korean steel manufacturer Posco, announced on 17 February that it discovered a gas reservoir located offshore near Rakhine, Myanmar. The company estimates that it could yield about 38 million cubic feet of natural gas daily. The company claims that it will be carrying out assessment drilling on site, and expects to produce a development plan within two to three years.

The newly discovered reservoir is located within the Shwe natural gas project. Posco International Corporation has a majority stake in the project, being the 51% shareholder. The remaining shareholders of the Shwe natural gas project are Myanma Oil and Gas Enterprise, Korea Gas Corporation, Oil and Natural Gas Corporation Videsh Limited and Gail (India) Limited. The project is expected to run for 35 years and is currently in its 6th year, as reported by the Myanmar Times.

Posco International has been extracting natural gas at the Shwe project site since 2013, and mainly sells to China by way of China National Petroleum Corporation. The newly discovered gas field forms part of a number of new developments for the company, which will commence its Phase 2

production at the Shwe gas field and the Shwe Phyu gas field in 2021 and 2022 respectively. The company has also announced further plans to conduct experimental drilling around the Yan Aung Myin field. According to the Korea Herald, the company's overseas gas production project has contributed to its financial success in 2019, which saw its highest operational profits so far (US\$511 million).

Posco International's discovery comes amidst a potential uptick in natural gas exploration in Myanmar. According to the Asia Times, as of January 2020, it has been suggested that the Myanmar government will announce the bidding of 15 offshore blocks and 18 onshore blocks for exploration. This follows the announcement of a new exploration agreement at Block A6 between the local MPRL E&P Company, the French company Total and the Australian company Woodside Energy in December 2019. This ultra-deepwater project has been seen as a welcome boost to the market, as this is the first new gas development that has commenced under the current administration, and features key international investors.

International Court of Justice orders Myanmar to protect Rohingya

The International Court of Justice ("ICJ") delivered a strong message to the Myanmar government on 23 January, concluding in a provisional Order (The Gambia v Myanmar (Application of the Convention on the Prevention of Genocide)) that Myanmar must "take all measures within its power" to prevent genocidal acts by state actors against the Rohingya, including by the military or irregular armed units.

Looking forward, the ICJ requires the Myanmar government to provide regular reports on steps it takes to implement the Order to the ICJ – the first by 23 May 2020 and every 6 months after – until a final decision has been made by the court.

The unanimous 15-judge decision will increase international focus on the Myanmar government which to date has denied a genocide actually took place.

COVID-19 impacts Myanmar tourism and order trade

The COVID-19 outbreak beginning in China late last year has dealt a hard blow to the tourism and border trade in Myanmar.

Myanmar's decision to suspend visas on arrival for Chinese tourists, and the cancellation of flights by airlines between the two countries have resulted in a sharp decline in the number of Chinese visitors to Myanmar. Earlier this month, the Ministry of Hotels and Tourism had also asked travel and tour companies to temporarily stop providing tourism-related services to Chinese travellers to Myanmar.

Chinese tourists make up more than 17% of Myanmar's documented 4.36 million visitors in 2019. According to industry publication TTR Weekly, China occupies the top spot for the most number of

tourist arrivals through Yangon International Airport in 2019, accounting for 26% of all such arrivals. Given that Chinese tourists represent such a large market segment, the measures taken by Myanmar authorities will inevitably have a strong negative effect on employment in the tourism industry.

China has also made the decision to suspend border trade through Muse, Chinshwehaw and Lweje in Shan State and Kampaitee in Kachin State, until February 23 2020. Recent local media reports noted that border trade was almost at a stand-still. The value of Sino-Myanmar border trade through the Muse gate is estimated to have been US\$1.9 billion between 1 October 2019 to 31 January 2020, according to Myanmar's Ministry of Commerce. The export of perishable products such as watermelons, muskmelons, seafood and tissue-culture bananas has fallen significantly and this has affected exporters, transport companies and labourers on farms in Sagaing Region and Kachin and Shan states. The Ministry of Commerce and the Myanmar Fruit, Flower and Vegetable Producers and Exporters Association have been exploring alternatives, such as the sale of such goods in the domestic market such as in Yangon. The association has also advised its members to delay picking the fruit until the border reopens again soon.

The general director of the Department of Trade at the Ministry of Commerce, U Min Min, said that daily earnings from border trade had plummeted to US\$1 million from US\$10million since China ordered the border trade suspension.

RELATED PRACTICE AREAS

- Real Estate
- Finance
- Corporate

MEET THE TEAM



Tun Zaw Mra

Co-Author, Singapore

tunzaw.mra@bclplaw.com

+65 6571 6628

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.