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Insights

MYANMAR POSTCARD - MAY 2020

May 13, 2020

Further relief for Myanmar hotels - exemption on licence fees and deferment of land lease payments

The hotel and tourism sector in Myanmar and across the globe has been severely affected by the COVID-19 pandemic. Since 19 March 2020, Myanmar has closed all land borders with its neighbouring countries and from 31 March 2020 to 15 May 2020, all international commercial passenger flights are banned from landing in Myanmar. As a result, the occupancy in many hotels is currently running low (some in single digits) and certain hotels have temporarily ceased operations.

In response, the Government has introduced various relief measures to help hotel and tourism companies. On 15 April 2020, the Ministry of Hotel and Tourism announced that licence fees for new applications or renewals for hotel business licences, hostel licences, tour agency licences and tour guide licences had been waived for one year, from 1 April 2020 to 31 March 2021. It was also reported that land lease payments for 26 state-owned hotels and 21 private hotels had been deferred for six months to allow these businesses further cash flow to mitigate the effects of the pandemic.

A COVID-19 fund has been established to provide loans capped at a one percent interest rate to companies owned by Myanmar nationals in the priority sectors, which includes the hotel and tourism sector. Tax deferrals have also been made available to companies in priority sectors. Further details can be found on our previous blog: Myanmar Government introduces tax deferments and establishes a COVID-19 fund.

The measures discussed above are part of the initial wave of reliefs for the economy and the hotel sector. More plans and measures are expected to be rolled out and updated.

New insolvency rules released

On 28 April 2020, the Union Supreme Court of Myanmar released the new insolvency rules ("**Insolvency Rules**"). These supplement the new Insolvency Law 2020 ("**Insolvency Law**"), a product of a law reform project initiated by the Asian Development Bank. The Insolvency Law applies to both individual debtors and entities registered or operating in Myanmar, and came into effect on 25

March 2020 (save for cross-border insolvency provisions which will come into effect on such later date as will be notified). The release of the Insolvency Rules is timely as it provides further details on the implementation of the nascent insolvency and restructuring regime, a key ethos of which is to promote the rehabilitation of viable businesses in distress (in lieu of liquidation only) at the behest of the company, certain of its secured creditors or following court order, via a series of 'rescue' and 'plan' processes.

In the 'rescue' process, a rehabilitation manager will manage the affairs of the company in the interests of the creditors as a whole, whilst a rehabilitation plan is determined with creditors. The plan is to be voted on within a statutory period of four months from the date of appointment and must be accepted by a majority of creditors. It may subsequently be varied. The extent to which the rehabilitation plan is binding on secured creditors – and the extent to which a court may regulate the enforcement of their security – is set out in the Insolvency Law. A secured creditor with security over all or the majority of an entity's assets is also entitled to replace a rehabilitation manager at the outset of their appointment. In addition, the Insolvency Law clarifies the circumstances in which a secured creditor may appoint a receiver and the statutory powers of receivers, among other matters. Directors should also be cognisant of the wrongful trading provisions.

Creditors of Myanmar companies should be aware of the 'reviewable transactions' provisions of the Insolvency Law with respect to invalid floating charges, preferences, extortionate credit transactions and transactions at an undervalue, and the hardening periods applicable to these in both rehabilitation and liquidation contexts . They should also note the statutory moratorium on the enforcement of security or litigation and arbitration proceedings whilst an entity is in the 'rescue' stage of rehabilitation (other than in certain specific instances). Guarantors of the company's debts are likewise protected during this period.

The Insolvency Law and the Insolvency Rules set out protocols for the registration and regulation of insolvency practitioners in Myanmar (including foreign practitioners). It is hoped that these, in conjunction with the new rehabilitation procedure whose overarching objective is to rescue entities as a going concern, will support the growth of a turnaround and 'rehabilitation manager and advisor' community to assist Myanmar's corporate sector in these challenging times.

Please see the unofficial English translation of the Insolvency Law and the Myanmar version and the unofficial English translation of the Insolvency Rules for further details.

We consider the Insolvency Law, in particular the streamlined 'lighter touch' MSME rehabilitation regime, in further detail in our February edition of Myanmar Postcard.

Preliminary operating licences granted to 7 more foreign banks

As part of plans to further open up the domestic Myanmar banking market to foreign banks, the Central Bank of Myanmar ("**CBM**") has been implementing incremental licensing exercises since 2013.

In a statement announced on 9 April 2020, the CBM granted preliminary operating licences to seven Asian banks. The four banks to be granted branch licences were the Bank of China (Hong Kong SAR branch), Cathay United Bank, Korea Development Bank and Mega International Commercial Bank and the other three banks – Siam Commercial Bank of Thailand, Industrial Bank of Korea and KB Koomin Bank – were granted subsidiary licences. These seven foreign banks will have nine months to demonstrate that they are able to fulfil the business plans set out in their applications before being issued with final licences.

Wholesale banking activities are permitted with either a branch licence or a subsidiary licence. From 1 January 2021, a subsidiary licence will also permit banks to take on limited onshore retail banking activities, allowing a foreign bank holding a subsidiary licence to establish up to ten places of business or off-site ATMs. Existing foreign bank branches (a full list is available on the CBM website) may also apply to convert a branch into a subsidiary from June 2020 if the branch has operated in Myanmar for at least three full years.
The seven new operating licences granted to foreign banks brings the number of foreign banks allowed to do business in Myanmar to 20.

Reduction in interest rates

The CBM has cut interest rates for the third time in the past two months. Following Directive No. 8/2020 issued on 27 April 2020, the CBM interest rate was further reduced by 1.5 percent on 1 May 2020, from 8.5 percent to 7 percent.

The current minimum interest rate for bank deposits is 5 per cent (2 percent less than the CBM interest rate). The current maximum interest rates for lending are 10 percent for secured loans (3 percent above the CBM interest rate) and 14.5 percent for unsecured loans, including any interest on the loans. These measures are intended to promote business' liquidity and provide support to borrowers.

Previous cuts to interest rates were made earlier this year on 12 March and 24 March following the announcement of the pandemic. Read more about these developments in last month's Myanmar Postcard.

Extension of compliance deadline by CBM

The CBM has extended the deadline for compliance with four banking regulations released in 2017.

Initially, banks had until 31 August 2020 to comply with Notification No. 16/2017 (Capital Adequacy Regulation), Notification No. 17/2017 (Asset Classification and Provisioning Regulations), Notification No. 18/2017 (Large Exposures Regulation) and Notification No. 19/2017 (Liquidity Ration Requirement Regulation). The new deadline for compliance has been extended to 31 August 2023 to account for the economic disruption caused by the COVID-19 pandemic.

The regulations are intended to bring local practices in line with international standards through a number of measures, including requiring banks to maintain a minimum liquidity ratio of 20% and to switch from long-term overdraft loans to three year term loans. Banks should decide on a timeframe to ensure their compliance by 2023 and submit monthly reports on their progress to the CBM.

MEET THE TEAM

Tun Zaw Mra

Co-Author, Singapore

tunzaw.mra@bclplaw.com
+65 6571 6628
