

Dear Readers,

Welcome to a new edition of our newsletter.

1. Reinstating struck-off companies

A company must file annual returns (filing fee: MMK 50,000) with the Directorate of Investment and Company Administration (“DICA”) under the State Administration Council (“SAC”). The first annual return is due within 2 months from the date of incorporation and subsequent returns are due within 1 month from the respective anniversary of incorporation.

A company failing to file its annual return on time has 28 days to pay a MMK 100,000 late fee and do the filing, failing which the company is suspended. The suspension may be lifted by filing a corresponding application and paying an additional MMK 100,000 as application fee.

If the company does not file an application to have the suspension lifted within 6 months, DICA may strike off the company. A struck-off company may only be reinstated with a court order (court fees and newspaper charges approx. MMK 500,000, timeline approx. 1-2 months; competent court is the district court).

A suspended or struck-off company may not sponsor a visa or a visa extension (and there is a waiting period of 1 year after reinstatement before it may sponsor a visa extension again), its directors and shareholders may not set up a new company or be newly appointed as directors of other companies, and banks may prevent the company from using its bank account and deny the company’s loan application.

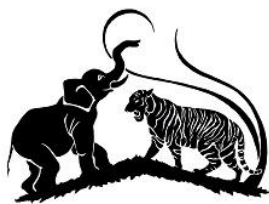
Please do not hesitate to contact us if you require assistance with reinstating your company after it was suspended or struck off.

2. Notification explaining how to prosecute or sue taxpayers

On 13 June 2024, the Ministry of Planning and Finance under the SAC issued Notification 44/2024 ([English translation](#)) (the “Notification”) which explains the process for conducting (i) criminal proceedings to prosecute tax offences and (ii) civil proceedings to recover tax arrears.

(a) Criminal proceedings to prosecute tax offences

Myanmar criminal law generally distinguishes between cognisable and non-cognisable offences as follows:



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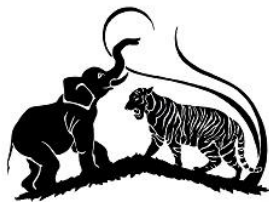
Sr.	Cognisable offences	Non-cognisable offences
1.	Defined as an offence for which the police may arrest without warrant under “any law ... in force” (s. 4 (1) (f) Code of Criminal Procedure - “CCP”)	Defined as an offence for which the police may not arrest without warrant (s. 4 (1) (n) CCP)
2.	Police may record information received as a “first information report” and start investigating on their own (s. 154, 156 CCP)	Police shall record summary of information received and refer the informant to the township court; may only investigate with order of the township court (s. 155 CCP)
3.	Police may make arrest (s. 4 (1) (f), 54 (1) CCP) or search (s. 51 CCP) without a warrant	Police requires warrant to make an arrest (s. 4 (1) (n) CCP) or search (s. 48, 51 CCP)
4.	Offender may be arrested by any private citizen (s. 59 (1))	“Citizen arrest” not specifically allowed
5.	Police may take preventive action according to s. 149-153 CCP	Police may take preventive action only with court order
6.	Often not bailable	Often bailable
7.	Complainant may usually not withdraw charges	Complainant may usually withdraw charges

The Notification defines and distinguishes (i) tax evasion (section 77 Tax Administration Law) as cognisable offence (“the police have the right to take action”) from (ii) failure to keep tax matters confidential (section 80 Tax Administration Law) and (iii) obstructing tax administration (section 78 (b) Tax Administration Law) as non-cognisable offences (“the police do not have the right to take action”).

Additionally or alternatively to certain fines, tax evasion carries a maximum penalty of 7 years imprisonment whereas the other two offences carry a maximum penalty of 1 year imprisonment.

The procedure for taking action against tax officers who fail to keep tax matters confidential (offence (ii)) is not specified in the Notification.

For tax evasion (offence (i)) and the obstruction of tax administration (offence (iii)), the Notification specifies forms and explains the procedure to start prosecution as follows:



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- The township revenue department head or officer in charge shall demand the potential offender to explain and disclose reasons for non-compliance within a time of 15 days, to be extended by another 15 days upon reasonable request by the taxpayer;
- if the explanation is not satisfactory, this officer shall request permission to press charges from the Regional/State revenue department head who shall, in his turn, forward the request to the IRD director general who shall, again in his turn, approve the request if presented with a list of witnesses (presumably, the officers from the tax audit team) and the details of the officer who will act as the “delegated complainant”; and
- the delegated complainant shall then file a complaint at the police station (cognisable offence) or township court (non-cognisable offence) where the tax office concerned is located.

The Notification furthermore allows the delegated complainant to request, with the director general’s approval, approval from the law office (public prosecutor’s office) or court to settle or withdraw the prosecuted case, provided that the taxpayer made full payment in between.

(b) Civil proceedings to recover tax arrears

We understand that the Myanmar tax authorities may not avail themselves to a procedure that is available to tax authorities in many jurisdictions, which is, the ability to enforce their own payment notices without court intervention by simply requesting (without a court order) a court bailiff or other bailiff to collect money from delinquent payers.

From our reading of the Notification, a township revenue department wishing to collect arrears has to go through a process similar to the criminal proceedings (ultimately, the IRD director general’s approval is required) to be able to sue a taxpayer in court in order to obtain an enforceable judgment.

The Notification specifies that such suit might be directed against the following defendants:

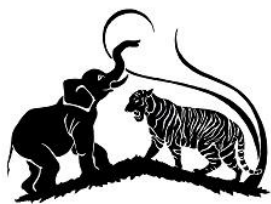
- (aa) In case of a company that is currently operating, this company;



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- (bb) in case of a company that has ceased to operate and has not been liquidated,
 - (1) chairman;
 - (2) managing director;
 - (3) members of the board of directors;
 - (4) general manager;
 - (5) operator doing the management on the company's behalf;
- (cc) in case of a partnership, the members of the partnership;
- (dd) in case of a trust, the trustee;
- (ee) in case of a group of individuals other than a company or partnership, the person responsible for entering receipts and payments into the accounts on behalf of such group of individuals;
- (ff) in case of a citizen or foreigner living abroad, the manager of the business organisation owned by such a person in the Union or the person in charge of the business affairs of such person;
- (gg) if a person has two or more representatives, all such representatives;
- (hh) in case of liquidated companies:
 - (1) shareholders within 1 year prior to the time of liquidation of the company;
 - (2) if the cause of action against the company arose during a time when the shareholders owning the company were different from the shareholders at the time of liquidation, such shareholders;
- (ii) if the taxpayer died or an indebted company's property is seized, the administrator, agent or trustee of the taxpayer's property or the person who continues or closes the business that is subject to tax;
- (jj) in case of a business operation subject to tax for which mortgaged land or other assets are used, the mortgagee.



(c) Own thoughts

We think that the Notification provides transparent and valuable insight into the process of how tax liabilities are enforced in Myanmar.

We are aware of taxpayers that are worried by their service providers telling them in the darkest colours how the tax authorities might take action against them if they do not “pay right away,” although the taxpayers might not be entirely convinced of the tax liability, even that much down the line.

Such taxpayers may wish to take cognisance of the actual procedure and its potential timeline and ask their advisors whether their dark assessment is set in stone. Depending on the case, there may still be room to rectify things and/or negotiate, although it is of course always preferable to avoid a situation where tax enforcement or even criminal proceedings might become an issue.

3. Private schools

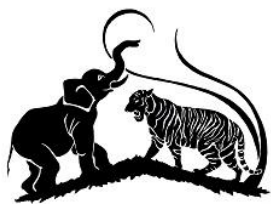
As some readers seem to have had renewed enquiries from their shareholders, we uploaded our [English translation](#) of the Private Education Law issued by the SAC in May 2023. State-owned Global New Light of Myanmar [reported](#) that almost 1,300 private schools (re-) registered.

4. Number of “automatic licensing system” types of goods reduced

Export/Import Newsletter 8/2023 dated 25 April 2023 ([Burmese](#)) abolished the possibility to officially import goods without an import license from 1 June 2023. It specified 3,075 types of goods for which previously no import license was required as qualifying for “automatic licensing” in Myanmar Tradenet 2.0. Import licenses for other goods had to be obtained by “non-automatic licensing”.

Export/Import Newsletter 9/2023 dated 21 June 2023 ([Burmese](#)) reduced the number of types of goods qualifying for automatic licensing from 3,075 to 1,525. Furthermore, automatic licensing was made available only for sea trade. In border trade, the import of all goods was made subject to non-automatic licensing.

Export/Import Newsletter 4/2024 dated 16 July 2024 now reduces the number of types of goods qualifying for import through automatic licensing to 72 from 1 August 2024.



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CONVENIENCE TRANSLATION - ACCURACY NOT GUARANTEED

**Government of the Republic of the Union of Myanmar
Ministry of Commerce
Department of Trade
Export/Import Newsletter No. 4/2024**

Date: 16 July 2024

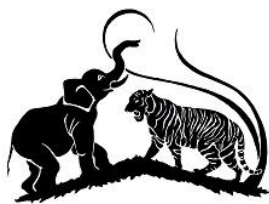
Subject: Amendment and publication of the non-automatic licensing system for goods that used to be approved for the import from abroad with the automatic licensing system

1. Goods may be imported from abroad with the automatic licensing system and the non-automatic licensing system in Myanmar Tradenet 2.0 so that trading business is carried out in an orderly manner. Therefore, the lines of goods that may be imported with the automatic licensing system was announced in Export/Import Newsletter 9/2023.
2. To prevent some lines of goods for which applications may be made with the non-automatic licensing system being mixed with applications with the automatic licensing system and their import, the attached 1,460 lines of goods with their 10 digit HS codes which used to be approved with the automatic licensing system according to Export/Import Newsletter 9/2023 will be approved with the non-automatic licensing system after the application for an import license.
3. Therefore, it is hereby notified that from 1 August 2024, import licenses will be approved with the non-automatic licensing system for the import of goods covered by the attached 1,460 lines of goods.

Department of Trade

Attachment

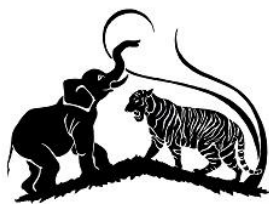
List of lines of goods for which the change from the automatic licensing to the non-automatic licensing system will be allowed



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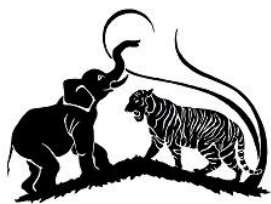
Chapter no.	HS Code 2022 line of goods	Lines of goods previously allowed with the automatic licensing system	Lines of goods now allowed to change to non-automatic licensing	Lines of goods for which the automatic licensing system will still be allowed	Type of goods included by HS chapter
09	65	2	2		Vanilla.
15	210	5	5		Natural vegetable oil; plant wax and beeswax.
18	16	1	1		Byproducts from cocoa shell and cocoa production.
22	75	4	4		Water and ice.
25	89	1	1		Chalk.
27	95	1	-	1	Aviation oil.
30	112	3	3		Plaster used for teeth and bones and first aid kit.
34	67	13	11	2	petroleum-based aircraft lubricants; wax and artificial wax; polishing creams and powders.
35	22	6	6		Buffalo glues and animal-derived glues.
37	54	48	48		Photo or film materials.
39	385	4	4		Masks used for welding, hospital materials, protective materials against chemicals and heat, all made from plastic.
40	215	46	42	4	Synthetic rubber and rubber raw materials.
44	270	219	219		Fuel wood, wood and wood-based materials.
45	7	7	7		Cork and cork products.
46	28	27	27		Materials made from African/European grass or straw or other woven (braided) materials; basket materials and rattan materials.
48	255	1	1		Record sheets used in diagnostics.
65	15	4	4		Parts used in making hats.
66	7	2	2		Walking sticks, sticks with a seat,



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					whips, horse whips and similar objects.
67	12	9	9		Decorations made of feathers; wigs; artificial flowers and plants made of linen.
68	86	1	1		Plaster mold used to make dentures
70	119	6	4	2	Aircraft safety glass and laboratory glass.
74	79	42	42		Copper; construction and household items made of copper.
75	20	17	17		Nickel; construction materials made of nickel.
78	12	11	11		Lead sticks and lead plates.
82	76	35	35		Metal carpentry tools and kitchen tools.
83	73	37	37		Metal-based general household appliances.
84	1322	475	461	14	Boiler; engine; turbine; agricultural devices.
85	897	101	82	19	Electric motors, generators and their accessories.
86	25	20	-	20	Railway or electric locomotives, passenger cars and parts thereof; materials to be installed on railway tracks and parts thereof; mechanical (including electromechanical) traffic signals.
87	1148	25	25		Agricultural tractors and their accessories.
88	31	10	2	8	Parts of aircraft and spacecraft.
90	244	150	150		Hospital and surgical equipment.
91	54	39	37	2	Time and speed measuring devices installed in vehicles and machinery.
92	25	17	17		Musical instruments, their parts and related materials.
94	128	34	34		Seats (vehicles, machines), hospital supplies
95	97	42	42		Children's tricycles, Scooter children's toys and sports equipment.
96	123	57	57		Broom; typewriter ribbon; various



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					kinds of wheels and clips; cleaning supplies.
97	19	10	10		Materials related to painting.
		1532	1460	72	

We hope that you have found this information useful.

Sebastian Pawlita
Managing Director

About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

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