

AustCham Myanmar Webinar
5 May 2020

Employment Issues & Restructuring Strategies for Business in Myanmar

Chris Hughes, Partner

 SCMlegal

Points to be covered

- Impact of COVID-19 on business
- Strategies to address impacts and ride out the storm
- Relevance of Insolvency Law 2020
- Policy issues
- Takeaways
- Q & A

COVID-19 Impacts

Key impacts - operational disruption

- Supply chain disruption – supplies in; products out
- Closure of workplaces / workplace restrictions
- Unavailability of employees
- New compliance obligations

Key impacts - financial disruption

- Reduction in demand
- Financial stress of customers and suppliers
- Decreased availability of finance

Key impacts – P&L

- Revenues decreased; costs same or increased
- Staffing costs
- Property and plant costs
- Financing costs
- Supply costs
- Tax

Key impacts – solvency concerns

- Insolvent – “unable to pay debts as and when they become payable” (*Myanmar Insolvency Law 2020 - MCL*)
- Solvency test – “company able to pay debts as they become due; assets exceed liabilities” (*Myanmar Companies Law 2017 - MCL*)
- Duty to avoid reckless trading – “directors and officers must not allow business to carry on in a manner likely to create a substantial risk of serious loss to the company’s creditors” (MCL s170)
- Duty in relation to obligations – “directors and officers must not agree to a company incurring an obligation unless they believe at the time, on reasonable grounds, that the company will be able to perform the obligation when required to do so” (MCL s171)
- Consequences of insolvency:
 - Loss of investment
 - Loss of jobs
 - Potential personal liability of directors and officers (including shadow directors) to creditors for company debts

Strategies to Address COVID-19 Impacts

Available responses

- Cut or defer costs and contractual obligations
- Raise finance
- Access Government support: Covid-19 Economic Relief Plan
- Claim on insurance
- Seek protection under the Myanmar Insolvency Law

Available responses – cost reductions

- Contractual mechanisms
 - Frustration (termination of obligations)
 - Force majeure (suspension of obligations)
 - MAC / MAE (termination or suspension of obligations)
 - Re-negotiation of obligations (temporary or permanent)

Available responses – employment costs

- Inflexible and highly regulated labour environment
- Significant regulatory uncertainty in circumstances where workplaces are required to close or staff are required to stay home
- Where possible, clarify policies and make temporary changes to employment conditions by individual agreement with employees and document these
 - Use of leave entitlements while away from the workplace
 - Reductions in hours and salaries
 - Provide a timeframe for these measures and conditions for their removal
- In a unionised environment seek assistance from industry associations and MOLIP and build consensus
- Assist staff to access SSB benefits and other assistance
- Act responsibly and without discrimination

Available responses – funding

- Equity injections – existing or new investors
 - MCL enables wide range of instruments to de-risk investments (redeemable preference shares, convertible securities, partly-paid shares)
 - Debt to equity / loan to own transactions could be considered
 - Dilution issues for joint ventures (capital-in-kind; unpaid shares)
- Debt – bank; non-bank; Government supported; DFI
- Trade – receivables funding; extended terms of trade; pre-payments
- Insurance

Relevance of Insolvency Law 2020

Framework and implementation

- Insolvency Law 2020 took effect on 25 March
- Insolvency Rules 2020 issued 28 April
- Governs all matters relating to insolvency of companies and individuals, with special provisions for MSMEs
- Supreme Court is the implementing authority and High Court has primary jurisdiction
- DICA will act as the Registrar
- Licenced Insolvency Practitioners will conduct receiverships, rescues and rehabilitations, liquidations and winding-ups and bankruptcy proceedings under the MIL
- Insolvency Practitioners Regulatory Council will oversee practitioner registrations and set standards
- Insolvency Practitioners' Association will help to regulate and provide professional development for practitioners (with the MICPA playing this role in the interim)
- Implementation of the MIL is at an early stage
- Like the Myanmar Companies Law, Investment Rules and other reforms, was prepared by Aussie advisers and based on Aussie knowhow!

Corporate Rescue and Rehabilitation

- New and powerful mechanism to enable rescue of viable businesses (or parts of them) rather than liquidation
- Facilitates new ownership arrangements and a restructuring of debts
- Flexible mechanism overseen by “Rehabilitation Manager”, controlled by creditors / creditor committees and supervised by the Court
- Business continues to trade during the rehabilitation process with restrictions on the claims that can be made against the company and other protections
- Process may be initiated by Board, secured creditors or Court (on application of creditor) in circumstances of insolvency or near insolvency.
 - Very important means for directors and company officers to manage their duties and avoiding personal liability
- Rehabilitation Manager is appointed, financial assessment is made, creditors are identified, Rehabilitation Plan is developed and then, if approved by creditors, implemented
- Process must occur as quickly and efficiently as possible and in the interests of creditors as a whole
- First creditors meeting must occur within 30 days; Rehabilitation Plan must be voted on within 3 months

Rehabilitation Plans

- Very flexible. May be prepared by Rehabilitation Manager or other interested party
- Must be approved at a meeting of creditors by a simple majority of those present by both number and value
- Once approved it is binding on all parties – shareholders, creditors and officers (subject to secured creditor rights, as may be limited by the Court)
- Would usually result in either the sale of the restructured business to a new investor or its acquisition by key creditor(s) through a debt to equity conversion
- Creditors will have their debts restructured and classes of creditors may be treated differently, however overall return to creditors must be likely to produce a return at least equal to the likely return if there was no Plan
- Moratorium on claims against the company continues while Plan is implemented and Plan terminates once implementation complete and creditor claims are dealt with (unless terminated earlier by creditors or the Court)
- Business continues in its restructured form after conclusion of the plan.

Policy Issues

Policy issues to consider

- The Government's Covid-19 Economic Reform Plan is welcomed by AustCham Myanmar. Thoughtful and practical measures to support business, workers and households and commitments to preserve the reform gains which have been made
- The key constraint on Government action is the very poor state of the revenue base. No Government can provide the desired healthcare, welfare and economic stimulus in a crisis without a strong tax system
 - COVID-19 exposes the need for a new deal between the Government and the people to reform the system and ensure compliance
- While there have been improvements, the finance sector is struggling to mobilise the capital needed by business to get through this current crisis. More needs to be done to strengthen the banks, develop non-bank financial institutions and make the capital markets function in a meaningful way
- We need to plan how to rebound from this demand and supply shock. Look at it as an historic opportunity to accelerate the reform process (in public and private sectors) and build long term prosperity. Do as much as possible and as quickly as possible on the most strategic infrastructure projects; restructure State owned enterprises; reform tax and labour laws; increase compliance and reduce corruption; accelerate finance sector liberalisation; go digital. There is a strong basis for the next wave of reforms and an even greater need.

Takeaways

Takeaways

- The COVID-19 impact on business has been severe and will be long lasting
- The Government is helping, but business needs to face up to the challenges itself with a clear head
- Those who take action quickly and cleverly to adapt and restructure will have the best chance of surviving (and even becoming stronger)
- Be transparent and responsible in your dealings – explain, persuade, document and disclose

Q & A

AustCham' Myanmar : Upcoming Webinars

12 May 2020 | 1:00PM

Government of Myanmar response to COVID-19 & the current political landscape
(Vriens & Partners)

15 May 2020 | 11:00AM

Supporting mental health & wellbeing throughout your organization during COVID -19
(Marble Psychological Services)

SCM: your legal partner in Myanmar



Stefan Chapman

E: stefan.chapman@scm-legal.com

M: +95 9795 758 272



Chris Hughes

E: chris.hughes@scm-legal.com

M: +95 9256 147 067



Min Min Ayer Naing

E: minmin.ayernaing@scm-legal.com

M: +95 9792 804 909

“SCM are very responsive and supportive, with lots of in-country experience... They are especially good at helping us come up with strategies.”

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