



Competition Regulations and Anti-Bribery Laws

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Competition Law and Rules

The Competition Law of Myanmar

The Act

- Enacted 24 February 2015
- Came into force on 24 February 2017
- The Ministry of Commerce:
 - will implement rules and regulations to supplement the Competition Law
 - will receive complaints prior to the establishment of the Myanmar Competition Commission (**MCC**)
- The Ministry of Commerce released its initial Competition Rules on 9 October 2018

The Competition Rules of Myanmar

Notification No. 50/2017

- Enacted 9 October 2017
- Expands procedural elements of the Competition Law (timeframes, departments etc)
- Clarify aspects of the Competition Commission and the Leniency Program
- The Competition Rules **do not**:
 - set merger notification thresholds
 - set dominance / market power thresholds
 - clarify how interaction will work with other regulators (eg, PTD or CBM)

Principles of The Competition Law

- Based on international best practices
- The Competition Law generally reflects the major elements of the European Union and United Kingdom regimes
- Four key pillars of the Competition Law:

1

Anti-competitive agreements

2

Abuse of market power

3

Unfair practices

4

Merger control / market monopolisation

Where do we foresee initial activity

Cartel conduct

- Generally the “low hanging fruit”
- Price fixing, output restrictions, market sharing, bid-rigging
- No clear definition of an “agreement”

Mergers

- Less likely without thresholds
- HOWEVER, possible that this might focus on international mergers and acquisitions
- Some existing markets with few competitors

Unfair competition

- Slightly unique to Myanmar
- Misleading consumers
- Damaging reputation
- Intimidating other businesses
- “Predatory pricing”
- Importing goods in an unfair manner

Possible steps to mitigate

Cartel conduct

- Review existing agreements
- Conduct training for salespeople
- Consider all existing interactions with competitors (eg, trade associations)
- Leniency (under the Rules)

Mergers

- Consider whether merger will have a real impact on competition
- Possibility to make a soft approach to the Ministry of Commerce

Unfair competition

- Review concepts of “unfair competition”
- Review agreements with competitors
- Review marketing material and practices
- Know, or reasonably estimate, your cost price

Leniency / immunity (Competition Rules)

- Very similar to the EU process
- The Commission operates a leniency/immunity policy whereby companies that provide information about an infringement of the law in which they participated might receive full or partial immunity
- Maximum of five applicants
- Upon receipt of notification of the Commission, the Court may grant:
 - 100% immunity to the first person who provide complete supporting evidence in assistance to an investigation
 - 80% if first cannot provide complete information
 - Up to 50% for the second person who provides supporting evidence
 - Up to 30% for the third, fourth, fifth person



2

Anti-Corruption Law

Anti-Corruption Law

- Misusing designation / position to give a benefit or prohibit a benefit
- Political post holder – 15 years
- Authorised person – 10 years
- Anyone else – 7 years
- Guidelines for the acceptance of gifts:
 - Value <25,000 kyats
 - Value <100,000 kyats per year
 - Family or personal relationship (except if clear benefit)
 - Value <100,000 kyats at Christmas/Thadingyut
- Fruit and perishables

2018 amendments

- Fourth Law Amending the Anti-Corruption Law signed 21 June 2018
- Broadens the scope to commit offences that are committed:
 - on board ships/planes registered in Myanmar
 - abroad

	Existing	New
Definition of corruption	Existing (but clarified): doing or abstaining from doing an act required under the law, or wrongfully obstructing a right	Expansion: causing loss or detriment to assets and property of the State in the process of handling or managing public funds
Complainant	Sufferer	Anyone
Commencement	Various	Widely known information indicating corruption
Continuation	Must have witnesses	Must have material or valid supporting evidence
Appeal	N/A	Must appeal to Union Government who makes final decision
Political post holder	Must be in political post	Can be prosecuted after leaving post
Wrong information	Vague provision regarding defamation	Providing wrong information with intention to cause damage up to 3 years / fine



3

Compliance

Next Steps to Stay Ahead | Best Practice

Consider implementing a competition compliance programme



Compliance programmes should be tailored to your business

However, certain general features are essential for the rising expectations of competition authorities and must be included as a minimum in any programme

These are the building blocks of an effective compliance regime

Next Steps to Stay Ahead | Building Blocks

Building Blocks:

1

Leadership and the Support of Senior Management (“Tone from the Top”)

- Visible, active and regularly reinforced eg personal all-staff emails; designated senior management with monitoring and reporting obligations.

2

Risk Assessment

- Periodically identify the nature and level of a company’s compliance risks.

3

Standards and Controls

- Produce a compliance policy document and establish a reporting framework for staff. Consider requiring compliance commitments from staff.

4

Training

- On induction and a continuing basis to reinforce the message and keep staff updated with changes in the law.

5

Evaluation

- On a regular basis eg testing employees; reporting; formal audits or competition law ‘healthchecks’.



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