

## MYANMAR

## Update on Myanmar's IP laws

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Myanmar's general election, which took place on November 8, was the first nationwide vote since the military junta's dissolution in 2011. It was also the first poll contested by opposition party the National League for Democracy (NLD) in 25 years. Rapid economic reforms since 2011 have resulted in enormous growth opportunities. With the NLD winning a sweeping majority in both houses of parliament, the country now enters a transitional phase with the quasi-civilian government gradually transferring power to the NLD.

It is unclear how the NLD's win will shape Myanmar's economic agenda, but foreign direct investment (FDI) in the country has seen steady growth, providing some measure of stability and predictability. Aung San Suu Kyi has taken steps to ensure the handover is smooth, and she has taken a cooperative approach with the military administration. Investors and IP owners are certainly being cautious, however, allowing themselves time to assess and observe the political reform process.

In July, the Thein Sein government issued draft laws for industrial designs, patents, trade marks and copyright, inviting public opinion and consultations. These IP laws will have a significant impact on business, and they should make Myanmar a more attractive country for investment. This is because IP owners will be better able to protect and preserve their IP rights in the country.

### Draft Industrial Design Law

According to the draft law, to be eligible for protection, industrial designs must be original and genuine and not published, used, displayed, or declared to the public abroad or domestically before making an

application. The term of a registered industrial design is five years from the application date, and it can be renewed for two additional terms of five years each. The duration of a registered industrial design is 15 years.

Importantly, this law empowers the Union Supreme Court to establish an IP office and IP courts to hear IP cases. In addition, it will repeal The Burma Patents and Designs (Emergency Provisions) Act, 1946.

### Draft Patent Law

Chapter 5 of the draft patent law holds that a patent must be genuine, have an inventive step, and be utilized in industry. The term of a patent is 20 years from the date of the patent application, and annuity fees are to be paid to the registrar for the prescribed periods to maintain the patent registration. Any court proceedings relating to patents will follow the provisions that are enacted for IP courts under the law on industrial designs.

### Draft Trade Mark Law

The term of a registered trade mark is 10 years from the filing date, and it can be renewed for additional 10-year terms. Furthermore, both domestic and foreign owners of marks can apply under this law. Again, court proceedings will be under the jurisdiction of the IP courts.

Importantly, trade mark owners who have registered a declaration of trade mark ownership with the Office of the Registry of Deeds and Assurances under the Registration Act before this law comes into force must apply for a new registration under the new law, and there will be no transitional period. International trade mark owners have a priority claim to register their international trade marks.

### Draft Copyright Law

At present, protection of original literary, artistic, musical, and dramatic works exists under the 1914 Copyright Act. The existing law does not accord protection to foreign copyright – Myanmar is not a signatory to the Paris Convention for the

Protection of Industrial Property, nor is it a signatory to the Berne Convention for the Protection of Literary and Artistic Works. It has, however, signed the TRIPs Agreement under the WTO and is therefore obligated to implement adequate IP legislation.

Under the draft copyright law, protection will cover works created by nationals of other member states that adhere to treaties or conventions that relate to copyright. The protection will principally last for the lifetime of the creator and an additional 50 years after his or her death. The infringement of copyright is considered both a criminal and civil offence.

There is a lot to be said for Myanmar's draft IP laws. The country's industrial design law is separate from its patent law, unlike many jurisdictions, offering greater protection for industrial designs. Furthermore, the copyright law will recognise foreign copyright, meaning that foreign copyright holders' works would be protected in Myanmar.

It is expected that Myanmar's new government and parliament will be set up in March or April 2016. The draft laws will be open to public opinion and further revisions after they are published in a local newspaper.

As the government has shown a commitment to protecting intellectual property, refining investment laws, and acclimating Myanmar to the international community, investors can feel confident that future iterations of the draft laws will support foreign business.