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## **ESTABLISHING A LEGAL ENTITY UNDER MYANMAR LAW**

– May 2017 –

## I. THE MYANMAR INVESTMENT COMMISSION PERMIT

### 1.1. Myanmar Investment Commission permit requirement

An investor wishing to set up a business may implement an investment project in Myanmar:

- Either by obtaining a permit (the “**MIC Permit**”) from the Myanmar Investment Commission (the “**MIC**”) under the Myanmar Investment Law 2016 (the “**MIL 2016**”) and incorporating a Limited Company under the Myanmar Companies Act 1914 (the “**MCA 1914**”) and (the “**MIL Project**”), or
- By incorporating a Limited Company under the MCA 1914 only (the “**Local Project**”) and obtaining an endorsement (the “**MIC Endorsement**”) from the MIC (the “**MIC Endorsement Project**”)¹.

### 1.2. Myanmar Investment Commission permit criteria

An investor must apply for an MIC Permit where one of the following conditions is met:

- (i) The investment is deemed to be strategic:  
This is notably the case where the investment is made in the technology (information, communication, medical etc.), transport, energy, building urban development infrastructure or media sectors and has an expected investment value exceeding USD 20 million, where the investment is made pursuant to the grant of a concession or any form of public procurement and has an expected investment value exceeding USD 20 million, or notably where the investment is made in a border region or conflict area.
- (ii) The investment is deemed to be “*capital intensive*”:  
An investment is deemed to be capital intensive where the expected investment value exceeds USD 100 million.
- (iii) The investment is deemed to have a “*large potential*” impact on the environment and the local community;
- (iv) The investment uses a public authority-owned land or building;
- (v) The investment is subject to an investment proposal to the MIC as may be decided by the Government of Myanmar.

Where an investment does not require an application for an MIC Permit, the investment project may be registered under the MCA 1914 only, under which, foreign investors may set up an entity under the form of:

- A limited liability company;
- A branch office; or
- A representative office.

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<sup>1</sup> The MIC Endorsement enables a company incorporated under the MCA 1914 only to apply for tax incentives and the right to enter into long term lease agreements.

## II. INCORPORATION OF A PRIVATE COMPANY LIMITED BY SHARES (“LC”)

The MCA 1914 distinguishes between the following types of corporate entities:

- Companies limited by shares;
- Companies limited by guarantee; and
- Unlimited companies.

These companies can be either public or private. In a private company limited by shares, the transfer of shares is restricted and the public cannot be called upon to subscribe for shares. This section focuses on private companies limited by shares, which are the most common form of company in Myanmar.

### 2.1 Shareholding requirement and management structure

LCs must have a minimum of two shareholders but not more than 50. The liability of the shareholders is limited to the amount of shares it has agreed to take up.

There shall be, at least, two directors, one of which must be a managing director. There is no requirement for directors to be resident in the Republic of the Union of Myanmar.

However, please note that under the draft Companies Law (expected to be enacted before the end of the year), if it is approved in its current form, an LC will need at least one resident director in Myanmar.

### 2.2 Minimum capital of a LC

The minimum required capital for an LC is **US\$ 50,000** in the services sector and **US\$ 150,000** for the manufacturing sector, with power of the General Meeting to alter such capital from time to time in accordance with the regulations of the LC.

It is mandatory to contribute half of the above-mentioned share capital upon incorporation of the LC (the balance of the initial capital must be contributed within five years).

The capital brought in can be held in US dollar, Euro or Singaporean dollar accounts with a government bank or with the private banks licensed to exchange foreign currencies.

### 2.3 Joint venture requirement

The MIC has issued a “negative list” dated 10 April 2017 providing a list of business activities which:

- (i) shall only be carried out by the Union Government;
- (ii) are prohibited to foreign investors;
- (iii) are open to foreign investors (the “**Foreign Investor**”) in the form of a joint-venture with a Myanmar citizen or a Myanmar investor (the “**Myanmar Investor**”); and
- (iv) may be carried out by a Foreign Investor with the approval of the relevant Union Ministry.

Except as otherwise stated under Myanmar Law, where a joint-venture requirement applies, a Myanmar Investor shall hold a minimum direct shareholding or interest in the joint-venture company of 20%.

### III. REGISTRATION OF A BRANCH OR A REPRESENTATIVE OFFICE IN MYANMAR

A branch or representative office can be registered under the MCA 1914. Please note that branch and representative offices registered in Myanmar do not have their own legal personality. As a result, the parent company shall be liable for the activities of its branch or representative office in Myanmar.

#### 3.1 Scope of activity

##### a) *Branch office*

A branch office is allowed to carry out business activities and issue invoices in its own name. The Memorandum and Articles of Association of the parent company have to be translated into Myanmar and duly notarized and consularized by the Myanmar Embassy of the country where the parent company is incorporated. The scope of business of the parent company does not apply automatically to the Myanmar branch office. Thus, the branch office has to submit its intended scope of activities together with its registration file to the Directorate of Investment and Company Administration (the “DICA”).

##### b) *Representative office*

A representative office may only act as a liaison office and its services are limited to market research, feasibility studies, and collecting data useful for the head office. A representative office is not authorized to generate any revenue or income in Myanmar. A representative office is allowed to receive funds from its parent company in order to cover its expenses in Myanmar, but will not be able to issue any invoice in its own name.

Representative offices shall be named as “Parent company name (representative office)”.

#### 3.2 Minimum capital of a branch or representative office

The minimum capital contribution for a branch or representative office is **US\$ 50,000** (the same as an LC).

Half of such amount shall be deposited upon registration with a government bank or private bank licensed to exchange foreign currencies.

The balance of the initial capital must be contributed within five years. The capital brought in can be held in US dollar, Euro or Singaporean dollar bank accounts.

#### 3.3 Management structure of a branch or representative office

Unlike LCs, which require the appointment of directors, a branch or representative office needs only to appoint an authorized representative in Myanmar, which can be a foreign citizen.

**IV. COMPARATIVE CHART**

Please see below a table summarizing the advantages and drawbacks of incorporating an LC or registering a branch or representative office under the MCA 1914.

	<b>Advantages</b>	<b>Drawbacks</b>
<b>LC</b>	<ul style="list-style-type: none"> <li>- No liability incurred by the parent company for its Myanmar LC</li> <li>- Subject to a 2% withholding tax on all payments received from Myanmar entities</li> </ul>	<ul style="list-style-type: none"> <li>- 25% corporate income tax</li> <li>- Taxation on a worldwide basis</li> <li>- Appointment of an auditor</li> <li>- Submission of annual audited financial statements to the tax administration</li> </ul>
<b>Branch office</b>	<ul style="list-style-type: none"> <li>- Taxation on income derived from sources within Myanmar only</li> </ul>	<ul style="list-style-type: none"> <li>- 25% corporate income tax</li> <li>- Subject to a 2.5% withholding tax on all payments received from Myanmar entities</li> <li>- Parent company fully liable for the operations of the Myanmar branch office</li> <li>- Appointment of an auditor</li> <li>- Submission of annual audited financial statements to the tax administration</li> </ul>
<b>Representative office</b>	<ul style="list-style-type: none"> <li>- No corporate income tax</li> </ul>	<ul style="list-style-type: none"> <li>- No revenue/income can be generated in Myanmar (no invoice can be issued in the representative office's name)</li> <li>- Parent company fully liable for the operations of the representative office</li> <li>- Appointment of an auditor</li> <li>- Submission of annual audited financial statements to the tax administration</li> </ul>

## IV. REGISTRATION PROCESS

### 4.1 Form of Permit and Registration Certificate

An investor wishing to establish an LC, branch or representative office in Myanmar is required to obtain from the DICA:

- a business license (the “**Form of Permit**”<sup>2</sup>); and
- a registration certificate (the “**Registration Certificate**”).

The Registration Certificate is issued once and for all whereas the Form of Permit is issued for a **five-year** renewable maximum term. The application for the renewal of the Form of Permit is to be made at least 30 days prior to the date of expiry.

Once the application file has been submitted to the DICA, the granting of a Form of Permit and Registration Certificate usually takes about **two to three months**.

### 4.2 Temporary Form of Permit and Registration Certificate

Please note that an investor has the choice to apply for a temporary Form of Permit (the “**Temporary Form of Permit**”) and Registration Certificate (the “**Temporary Registration Certificate**”) when lodging the application file for LC incorporation or registration of a branch/representative office with the DICA.

The DICA usually issues the Temporary Registration Certificate and Temporary Permit to Trade within **seven days** from the date of submission of the application file.

We would like to bring your attention to the fact that such Temporary Registration Certificate does not prejudice any future decisions from the DICA in relation to the issuance of the final Registration Certificate to the LC or branch/representative office.

Temporary Registration Certificate and Form of Permit are valid for **six months** and allow the investor to carry out all the activities provided for by the scope of activity of the LC or branch/representative office (e.g. entering into a lease agreement, employment agreement). Upon expiry of the Temporary Registration Certificate, the LC or branch/representative office cannot carry on its activities in Myanmar unless it has obtained a final Registration Certificate.

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<sup>2</sup> Also known as “Permit to Trade” or “Form 1”.

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