

Luther.

Establishing a Corporate Set-Up in Myanmar

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We would be delighted to guide and assist you with the establishment of a business presence in Myanmar.

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I. Introduction

As in most jurisdictions, foreign persons or corporations are not allowed to carry out activities in Myanmar without having registered a legal presence in the country. The relevant legal restrictions can be found in various laws, such as the Myanmar Investment Law (2016) and the Myanmar Companies Law (2017), which stipulate registration requirements for foreigners wishing to establish a place of business or carry out business in Myanmar.

Pursuant to sec. 43 Myanmar Companies Law (2017), an overseas corporation shall not carry out any business in Myanmar unless it is properly registered, noting that in the following cases a corporation shall not be deemed to carry out business because it:

- Conducts an isolated transaction that is completed within a period of 30 days, not being one of a number of similar transactions repeated from time to time;
- Is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute;
- Holds meetings of its directors or shareholders or carries on other activities concerning the management of its internal affairs;
- Maintains a bank account;
- Effects a sale of property through an independent contractor;
- Solicits or procures an order that becomes a binding contract only if the order is accepted outside the Union;
- Lends money, creates evidence of a debt or creates a charge on property; or
- Secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or invests its funds or holds property.

It should be noted, that sec. 12 Myanmar Companies Regulations (2018) provides that the term “carrying out business” includes activities carried out with and without a view to any profit. Accordingly, any overseas corporation carrying out activities in Myanmar shall be registered, even if such activities are not profit-generating.

II. Registration of a Business Presence

We set out below an overview of the types of business vehicles typically available for foreign investors, namely the incorporation of a subsidiary in form of a private **Company Limited by Shares** and the registration of an **Overseas Corporation**.

When registering a business presence in Myanmar, generally three (3) options exist:

- Registration under the Myanmar Companies Law (2017),
- (Additional) registration under the Myanmar Investment Law (2016); or
- (Additional) registration under the Special Economic Zone Law (2014) for businesses located in a Special Economic Zone.

1. Registration under the Myanmar Companies Law (2017)

On 1 August 2018, the new Myanmar Companies Law (2017) came into effect, repealing and replacing the previous Companies Act (1914).

1.1 Company Limited by Shares

Foreign investors tend to establish a private Company Limited by Shares (“Company”) for their business activities in Myanmar. A Company is a fully-fledged, independent legal entity which may carry out any legal business activities in accordance with the laws of Myanmar.

A Company must have a minimum of one (1) shareholder, either a natural person or a corporate entity. There are no minimum share capital requirements and the shareholding can be 100 % foreign. However, certain activities such as Retail and Wholesale Trading may require a minimum investment prescribed in the relevant regulations.

It should be noted, that the Myanmar Companies Law (2017) maintains the distinction of Myanmar and foreign (owned) companies, which may affect the eligibility of the Company to carry out certain restricted business activities set out in Notification No. 15/2017 of the Myanmar Investment Commission or acquire land within Myanmar under the current legal confines of the Transfer of Immovable Property Restriction Law (1987). Pursuant to the Myanmar Companies Law (2017), a Company

would be considered foreign (owned), if more than 35% of the ownership interest are directly or indirectly controlled by foreign persons. While this definition includes contractual control, it is silent on economic participation, which may allow for a higher economic interest of a foreign investor in a Myanmar owned Company.

A Company must further appoint a minimum of one (1) director, who must be a natural person. While all directors in a private Company may be foreign, at least one (1) director must be an ordinary resident in Myanmar, i.e. reside in Myanmar for 183 days or more within twelve (12) months. It is important to note that the shareholders are responsible for the appointment of a resident director. Hence, in situations where the sole resident director is leaving Myanmar or no resident director is appointed, the shareholders are duty-bound to appoint a new resident director as soon as possible, but no later than within six (6) months. If the Company continues business without appointing a new resident director, the shareholders may be liable for the Company's debts and liabilities. If required, we may provide a nominee resident director.

For tax purposes, a Company is treated as a resident tax payer. The applicable corporate income tax rate is 25% on profits generated from income derived from sources within and outside of Myanmar, unless a double taxation agreement provides otherwise. Myanmar has entered into double taxation agreements with Singapore, Malaysia, India, South Korea, Thailand, Laos, UK and Vietnam.

The following documents have to be provided for the incorporation of a Company:

- Official **Form A 1** (Application for incorporation as a private Company);
- A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of each director, individual shareholder, every representative of a corporate shareholder and company secretary;
- For every corporate shareholder, a copy of the corporate documents (e.g. Register Extract and/or Certificate of Incorporation and constitutional documents);
- A copy of the Company's constitution;
- A letter of consent of the person(s) acting as director(s); and
- A letter of consent of the person acting as company secretary.

All the above documents need to be submitted in English.

A Company must, from the date of its incorporation, have a registered office within Myanmar to which all official commu-

nications and notices may be addressed. It is common practice that Companies choose, initially at least, to have their registered office at the address of the company secretary, since the registered office does not have to be at the same address as the Company's actual place of business.

A Company may appoint a company secretary who must be a natural person. The company secretary is in certain aspects comparable with a notary, although this is not a public but an internal one. The company secretary is responsible to keep proper corporate records and maintain the requisite corporate registers as well as the corporate filings required under the Myanmar Companies Law (2017). In order to ensure the timely discharge of these duties, it is common practice in Myanmar for external lawyers or service providers to act as a company secretary. Suffice to say, we offer full company secretarial services.

With the exception of Small Companies (as defined in the Myanmar Companies Law (2017)), every Company must further appoint an accredited auditor. Luther offers the full range of bookkeeping and accounting services and can recommend suitable audit firms.

1.2 Overseas Corporation (Branch Office)

Any overseas corporation carrying out business in Myanmar – whether or not for the purpose of generating profits – shall register a Branch Office with the Directorate of Investment and Company Administration.

A Branch Office is able to act independently and to engage in legitimate profit-making activities. However, a Branch Office will not be treated as a separate legal entity from the overseas corporation it represents. Consequently, any and all contracts it enters into and the legal obligations, debts and liabilities arising therefrom, shall be binding and enforceable against the overseas corporation.

Any overseas corporation intending to register a Branch Office in Myanmar is required to appoint an authorized officer, who is authorised to accept service of documents in Myanmar on behalf of the overseas corporation and must be an ordinary resident of Myanmar. A person is considered to be an ordinary resident in Myanmar if they stay in the country more than 183 days per year. If required, we may provide a nominee resident authorized officer.

For tax purposes, a Branch Office is treated as a non-resident foreign entity. All profits derived from Myanmar are taxed

at a rate of 25%, the same rate that applies to local or resident companies.

For the registration, the following documents have to be provided:

- Official **Form A 8** (application for registration as an overseas corporation);
- Evidence of incorporation of the overseas corporation (not older than 30 days);
- A copy of the overseas corporation's constitutional documents;
- A Myanmar translation of the overseas corporation's constitutional documents and a summary statement in English duly certified by a director;
- A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of every director of the overseas corporation;
- A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of the authorised officer; and
- A letter of consent of the person acting as the authorised officer.

Comment Luther: The Myanmar Companies Law (2017) no longer requires the submission of notarized and legalized documents. With the exception of the Myanmar language translation of the overseas corporation/organization's constitutional documents, all documents must be submitted in English. Hence, if the original documents (e.g. Memorandum and Articles of Association) are in another language, an official translation must be provided. We can arrange for a translation into Myanmar language, if required.

As a general rule, since the Branch Office is not a separate legal entity, changes relating to the officers and details of the overseas corporation, as well as its audited annual accounts, must be filed with the Directorate of Investment and Company Administration. If these documents are not in the English language, official translations must be provided. Further, the Branch Office has to prepare financial statements in respect of its business operations in Myanmar.

A Branch Office must, from the date of its registration, maintain a registered office in Myanmar, to which all official communications and notices may be addressed. The registered office does not have to be at the same address as the Branch Office's actual place of business. While there is no formal requirement for a Branch Office to appoint a company secretary, its compliance and filing obligations are similar to those of a Company, and we would recommend appointing someone who provides the services of a company secretary.

2. (Additional) Registration under the Myanmar Investment Law (2016)

In 2016, the Myanmar Investment Law was signed into law, coming into effect on 1 April 2017 and repealing and replacing the previous Foreign Investment Law (2012) and the Myanmar Citizens Investment Law (2013). One year later, the Ministry of Planning and Finance issued the Myanmar Investment Rules (2017) and the Myanmar Investment Commission ("MIC") published the following notifications:

- Notification No. 10/2017 – Investments Zones eligible for income tax exemptions;
- Notification No. 13/2017 – Classification of promoted investment sectors; and
- Notification No. 15/2017 – List of restricted investment activities.

2.1. Types of Investment

The Myanmar investment regime provides for several categories of investments:

- Prohibited investments;
- Restricted investments;
- Promoted investments; and
- Investments requiring a Permit from the Myanmar Investment Commission.

Prohibited Investments

The following investments shall be prohibited:

- Investments which may bring hazardous or poisonous waste into the Union (hazardous and poisonous waste means all substances listed or prohibited under the Prevention from Danger of Chemical and Associated Materials Law (2013) and the Environmental Conservation Law (2012) or as otherwise determined by the Ministry of Industry and the Ministry of Natural Resources and Environmental Conservation or other competent authorities as prohibited from being imported, exported, stored, traded, manufactured or otherwise produced within the Union; the production or use of such substances in connection with an investment is prohibited, subject to any express statutory exception or dispensation or approval of a competent authority);
- Investments which may bring technologies, medicines, flora and fauna or instruments into the Union which are still being tested abroad or which have not been obtained approval for use, planting and cultivation except for investments made for the purpose of research and development;

- Investments which may affect the traditional culture and customs of the racial groups within the Union;
- Investments which may affect the public health;
- Investments which may cause significant damage to the natural environment and ecosystem; and
- Investments which manufacture goods or provide services that are prohibited under the law.

Comment Luther: Pursuant to the Myanmar Investment Rules (2017), the Myanmar Investment Commission may issue notifications with respect to prohibited investments. Kindly note that no such notification has been published so far.

Restricted Investments

On 10 April 2017, the Myanmar Investment Commission issued a list of restricted investment activities (Notification No. 15/2017), such as:

- Investments allowed to be carried out only by the Union of Myanmar;
- Investments that are not allowed to be carried out by foreign investors (i.e. companies with more than 35% foreign interest);
- Investments allowed only in the form of a joint venture with a Myanmar citizen or Myanmar company (subject to any express exception in the relevant notification, the minimum direct shareholding or interest of a Myanmar citizen investor (or group of them) in the joint venture must be 20%); and
- Investments permitted only with the recommendation of the relevant Ministry.

An investor proposing to make such an investment shall notify the Myanmar Investment Commission or State/Regional Committee within three (3) months from the commencement of the investment. The requirement to notify the Myanmar Investment Commission shall, however, not apply to small companies or investors submitting a Proposal or Endorsement application in respect of the investment.

Comment Luther: It should be noted that some Ministries may not issue recommendations for foreign investors, in contradiction of the provisions of Notification No. 15/2017. In such cases, investors may approach the Myanmar Investment Commission for assistance.

Promoted Investments

Further, the Myanmar Investment Commission issued Notification No. 13/2017 and Notification No. 10/2017 concerning promoted investment sectors eligible for tax- and duty exemptions or reliefs and regions in the Union which, depending on their level of development, are designated for income tax exemptions of up to seven (7) consecutive years (Zone 1), five (5) consecutive years (Zone 2) or three (3) consecutive years (Zone 3), including the year of commencement of commercial operations.

2.2 Registration Procedure

Investment Screening

An investor may submit an application to the Myanmar Investment Commission for screening and non-binding guidance on whether the proposed investment is of the following kind:

- Whether a Proposal is required to be submitted to the Myanmar Investment Commission under sec. 36 Myanmar Investment Law (2016);
- Which is likely to be submitted to the Pyidaungsu Hluttaw for approval prior to the issuance of the MIC Permit;
- Which is prohibited under sec. 41 Myanmar Investment Law (2016) and any related notification;
- Which is restricted under sec. 42 Myanmar Investment Law (2016) and any related notification; or
- Which is promoted under sec. 43 Myanmar Investment Law (2016) and any related notification.

Comment Luther: The assessment of the Myanmar Investment Commission shall only provide guidance for the investor, but not express any likelihood of approval. It is non-binding and may be conditional.

MIC Permit

Under the Myanmar Investment Law (2016), only the following types of investment shall require the submission of a proposal for an MIC Permit:

- Investments that are strategic for the Union of Myanmar;
- Large capital intensive investments;
- Investments which have a large potential impact on the environment and the local community;
- Investments which use state-owned land and buildings; and/or
- Designated investments by the government.

Accordingly, most investments no longer require an MIC Permit.

Comment Luther: Confirmation whether or not an investment requires an MIC Permit can be obtained through an investment screening application with the Myanmar Investment Commission.

According to **Form 2**, the investor shall submit the following information and documents:

- Information on the applicant company (incl. copy of certificate of incorporation and evidence about business and financial conditions);
- Information on parents companies (incl. copy of certificate of incorporation and evidence about business and financial conditions);
- Type of proposed investment;
- Type of business organization;
- List of shareholders and profile of the parent company;
- Parent company's technical experience;
- Particulars of company incorporation;
- Particulars of paid-up capital of the investment business;
- Detailed list of foreign capital to be brought in;
- Details of local capital to be contributed;
- Particulars of loans (if any);
- Particulars about the Investment business (e.g. investment location(s), type of land and area requirement for land/building(s); annual production; annual electricity requirement; annual requirement of water supply; list of equipment and required materials);
- Detailed information about financial standing; and
- List of local/foreign employees.

In the annexure, the investor shall describe and summarize the proposed investment.

Comment Luther: Information shall be provided for at least the first ten (10) years of your proposed investment project (i.e. the period after commencement of business, excluding the construction period). The plan should include employment use, cash flow, as well as taxes paid to the government.

Further information/documents that may be required include:

- Business plan, annual investment schedule and sales projections (including internal rate of return) with a minimum of ten (10) years forecast (from commencement of business, excluding the construction period);
- Employee / HR plan with a minimum of ten (10) years forecast (from commencement of business, excluding the construction period), with information on foreigners/locals, professions and positions, salaries, etc.;

- Annual production plan (min. ten (10) years);
- Lists of equipment, machinery and construction materials to be imported and purchased locally;
- Social security for employees and social welfare plan;
- CSR plan;
- Fire prevention plan;
- Map of location and layout of all initial sites;
- Draft of lease agreement, together with land ownership documents of the lessor, of all initial sites;
- Additional documents detailing the applicants' type of business activity may be requested, such as quality assurance certification, standards and guidelines, evidence of arrangements for the proper storage and handling of chemical raw materials, etc.;
- Evidence of financial conditions (bank account statement); and
- Environmental protection plan (if requested).

If required by the Ministry of Natural Resources and Environmental Conservation, the investor shall further obtain an Environmental Impact Assessment.

Comment Luther: An application for long-term land use and/or tax incentives may be submitted concurrently with the proposal.

MIC Endorsement

Investors who do not have to apply for an MIC Permit may apply for an MIC Endorsement from the Myanmar Investment Commission to enjoy additional benefits under the Myanmar Investment Law (2016), such as long-term land use or tax and duty incentives.

While an MIC Endorsement for long-term land use may be available for most investors, the application for tax- and duty incentives will be limited to promoted businesses meeting certain criteria and requirements.

Applications involving long-term land use with investments not exceeding USD five (5) million will be processed at the State/Regional level, with the close involvement of senior Directorate of Investment and Company Administration staff stationed in the State/Region.

Comment Luther: While the MIC Endorsement system was meant to simplify and streamline the application for long-term land use rights and tax- and duty incentives, it is in practice comparable to an MIC Permit application.

According to **Form 4-A**, the investor shall submit the following information and documents (as applicable):

- Information on the applicant company (incl. copy of certificate of incorporation and evidence about business and financial conditions);
- List of shareholders and profile of the parent company;
- Parent company's technical experience;
- Particulars of company incorporation;
- Financial details;
- Particulars of the proposed investment (i.e. production of renewable energy and distribution of off grid electricity) and investment location; and
- Any business licenses.

In practice, the Myanmar Investment Commission is further requesting the following documents:

- Copy of certificate of incorporation and constitutional documents of the parent companies;
- Copy of identification card/passport of the directors;
- Letter of legal representative;
- Financial documents (bank account statement);
- Joint venture agreement (if applicable);
- Recruitment of employees (local/foreign) with remuneration (ten (10) years forecast);
- Annual business plan (ten (10) years forecast);
- Social security for employees, social welfare plan, CSR program, building design, firefighting system, waste water plan; and
- Any other documents relevant to the project (licenses, permits, permissions etc.).

2.3. Benefits and Incentives

The new investment regime provides that any (foreign) investor holding an MIC Permit or MIC Endorsement may apply for the right to enter into long-term leases and receive tax- and duty incentives.

(Long-term) Land Use

Under the Transfer of Immovable Property Restriction Law (1987), foreign investors are generally not allowed to enter into lease agreements with a duration exceeding one (1) year. The Myanmar Investment Law (2016) does, however, provide, that any (foreign) investor may apply for land rights authorization and enter into long-term leases of up to 50+10+10 years with private landlords, or – in case of state owned land – the relevant government departments or government organiza-

tions, if the investor has obtained a Permit or Endorsement issued by the Myanmar Investment Commission.

Comment Luther: Neither Myanmar Citizen investors nor Myanmar companies (not exceeding 35% foreign interest) shall be required to obtain a land rights authorization from the Myanmar Investment Commission.

An application for long-term land use should be submitted concurrently with the application for an MIC Endorsement by filing **Form 7-A**.

The application for land rights authorization must further provide:

- The area, type and location of the land or buildings;
- The information related to the landlord(s) of the land or buildings;
- If applicable, recommendation letter or similar document or approval from a State or Regional Government or other governmental department and governmental organization endorsing any proposed change in use of the land to carry out the investment (it should be noted that if is located in a designated zone, such as industrial zone, hotel zone or trading zone, a recommendation or approval is not necessary);
- Whether the investor's proposed use of the land will require any significant alteration of topography or elevation of the land, as contemplated in section 65(f) of the Myanmar Investment Law (2016);
- The period of the proposed long-term land use; and
- Lease agreement (draft).

Pursuant to the checklists of the Myanmar Investment Commission, the investor shall further provide:

- Land ownership documents of the lessor; and
- Location maps / layout plan.

Tax Incentives or Reliefs

Any eligible investor who has been issued either an MIC Permit or MIC Endorsement may submit an application for tax incentives or reliefs as provided for under sec. 75, 77 and 78 Myanmar Investment Law (2016).

Applications using Form 6 may be submitted together with or subsequent to an application for a Permit or an Endorsement from the Myanmar Investment Commission, providing the zone in which the investor proposes that more than 65% of the value of the investment will be carried out and the list of machinery, equipment, instruments, machinery components, spare parts

and construction materials to be imported for the construction and implementation of the investment; including a calculation of the total value of all such imports for which a custom duty exemption is being applied.

Upon application, the Myanmar Investment Commission may grant the following exemptions or reliefs from customs duty and other internal taxes to the investor:

- Income tax exemptions for a period of seven (7) consecutive years for investments in Zone (1), income tax exemptions for a period of five (5) consecutive years for investments in Zone (2), and income tax exemptions for a period of three (3) consecutive years for investments in Zone (3), including the year of commencement of commercial operations;
- Exemptions or reliefs from customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, construction materials unavailable locally, and materials used in the business, which are imported as they are actually required, during the construction period or during the preparatory period of the investment business;
- Exemptions or reliefs from the customs duty or other internal taxes or both on the importation of the raw materials and partially manufactured goods conducted by an export-oriented investment business for the purposes of the manufacture of products for export;
- Reimbursement of customs duty or other internal taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export;
- If the volume of investment is increased with the approval of the Myanmar Investment Commission and the original investment business is expanded during the permitted period of investment, exemption or relief from the customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, materials used in the business, and construction materials unavailable locally, which are imported as they are actually required for use in the business which is being expanded as such;
- Exemption or relief from income tax if the profit obtained from the investment business that has obtained an MIC Permit or an MIC Endorsement is re-invested in such investment business or in any similar type of investment business within one (1) year;
- Right to depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on a depreciation rate which is less than the stipulated lifetime of the machinery, equipment, building or capital assets used in the investment; and

- Right to deduct expenses which are incurred for the research and development relating to the investment businesses carried out within the Union and actually required for the economic development of the Union from the assessable income.

Investments are eligible for tax incentives or reliefs:

- If they are in a promoted economic sector (Notifications No. 13/2017); and
- Carried out in a location as Zone 1, Zone 2 or Zone 3 (Notification No. 10/2017); and
- Involve the expenditure of additional funds or application of further capital of an amount exceeding USD 300,000.

3. (Additional) Registration under the Special Economic Zone Law (2014)

Investors intending to establish their business in a Special Economic Zones have to register under the Special Economic Zone Law (2014).

Comment Luther: The registration under the Special Economic Zone Law (2014) and the Myanmar Investment Law (2016) are (currently) mutually exclusive.

The Special Economic Zones are linked to major infrastructure projects, including the construction of deep sea ports, power grids and pipelines to neighbouring countries. Several Special Economic Zones are currently under development in Myanmar, with the Thilawa Special Economic Zone currently being the only zone that is fully commercially operational.

Investors intending to set up business in the Thilawa Special Economic Zone have the right to engage in the following business activities:

- Manufacturing of finished products, manufacturing of processed goods, warehousing, transport, provision of services;
- Import of raw materials used in the investment, packaging materials, machinery, equipment, tools;
- Transportation and import of fuel from domestic sources and overseas to the special economic zone;
- Sale of manufactured goods domestically or overseas in accordance with the stipulations;
- Wholesale trading of goods;
- Establishment and opening of offices for the investment business and for overseas services with the approval of the management committee at the specified location in the special economic zone; and

- Engaging, with the approval of the management committee, in other economic businesses which are not forbidden.

When deciding about an investment application, the Management Committee will consider certain criteria of the proposed investment, such as creation of employment opportunities, technology transfer, export, energy- and water demands and the reputation of the investor. The specific guidelines and regulations for every Special Economic Zone provide more details regarding the application procedure, specifying the economic activities that may be operated in the Special Economic Zone and the requirements for obtaining an investment permit.

Notification No. 81/2014 to the Special Economic Zone Law (2014) for the Thilawa Special Economic Zone stipulates minimum capital requirements for different types of investment (additional investment requirements apply for wholesale trading companies):

- Export-oriented manufacturing business in a free zone: USD 750,000;
- Export-related service business in a free zone: USD 500,000;
- Supporting business in a free zone: USD 300,000; and
- Manufacturing or service business in a promotion zone: USD 300,000.

In May 2015, the Management Committee of the Thilawa Special Economic Zone issued the Instruction on the Scope of “Trading Activities Permitted for Investors in the Thilawa Special Economic Zone” (Instruction 2/2015), pursuant to which foreign investments into wholesale trading activities are subject to additional requirements, such as a minimum investment of USD 2,000,000 or USD 3,000,000 for businesses distributing their own products or third-party products respectively.

3.1. Investment in Thilawa Special Economic Zone

Thilawa is divided into a free zone for export-oriented industries including their supporting industries and a promotion zone for companies active on the domestic market. A company is considered export-oriented if the exports amount to a minimum of 75% of the production in value. Incentives are offered for both investments in the free zone and the promotion zone.

Benefits available to export-oriented investors in the free zone are as follows:

- Income tax holidays for the first seven (7) years from the commencement of the commercial operation;

- Tax relief of 50% for additional five (5) years on the income tax rate for the second five (5) years;
- Tax relief of 50% for the third five (5) years on the profit which is reserved from the business as a reserve fund if it is reinvested within one (1) year in the business;
- Import exemption from customs duties and other taxation paid at the time of importation on raw materials for production, machinery, instruments and necessary spare parts for production; motor vehicles and construction of the factory, warehouse and office;
- Import exemption from customs duties and other taxation paid at the time of importation on trading goods, motor vehicles and other materials which are essential for the business for free-tax wholesale trading, export trading as well as services and transportation;
- Permission to carry forward losses for five consecutive years after the year in which the losses were incurred;
- General exemption from commercial tax may be given;
- Exemption from commercial tax may be given for manufactured goods which will be exported;
- Exemption from commercial tax may be given for goods imported from the domestic market or the promotion zone into the free zone;
- Exemption of income tax for the dividends distributed to each shareholder based on the profits accrued locally for which tax has been paid (note: Myanmar currently does not levy any withholding tax on dividends); income tax deductions for training of skilled or semi-skilled worker and staff of the management sector, as well as expenses for research and development related to the investment project;
- Possibility to enter into long term lease agreements (50 years with an option to renew for a further term of 25 years);
- Possibility to sell, mortgage, lease, exchange or gift land lease, land use and buildings to third parties; and
- No restriction or control of prices on the products, services or goods manufactured in the free zone.

Investments intending to serve primarily the domestic market shall be established in the promotion zone and may enjoy incentives such as:

- Tax holiday for the first five (5) years from the commencement of the commercial operation;
- Tax relief of 50% for additional five (5) years on the income tax rate for the second five (5) years;
- Tax relief of 50% for the third five (5) years on the profit which is reserved from the business as a reserve fund if it is reinvested within one (1) year in the business;
- Import relief from customs duties and other relevant taxation for five (5) years from the commencement of business

on the import of equipment and instruments not for sales as well as spare parts, the construction materials for factory, warehouse and office, motor vehicles and other materials which are essential for the business;

- Import refund of customs duties and other taxation paid at the time of importation on raw materials and other goods for production if the finished or semi-finished goods produced from those materials are exported abroad or into the free zone;
- Permission to carry forward losses for five consecutive years after the year in which the losses were incurred;
- Exemption from commercial tax;
- Exemption of income tax for the dividends distributed to each shareholder based on the profits accrued locally for which tax has been paid (note: Myanmar currently does not levy any withholding tax on dividends); tax deductions for training, research and development related to the investment project;
- Possibility to enter into long term lease agreements (50 years with an option to renew for a further term of 25 years);
- Possibility to sell, mortgage, lease, exchange or gift land lease, land use and buildings to third parties; and
- No restriction or control of prices on the products, services or exported goods manufactured in the promotion zone.

3.2 Registration Procedure

As the investments in a Special Economic Zone are under the ambit of the Special Economic Zone Law (2014), the Management Committee of the respective Special Economic Zone will handle the investment applications.

Thilawa offers a One-Stop Service Centre, where all relevant licenses, permits and approvals can be applied for and additional services are offered (e.g. labour registration or visa services for foreign employees). The One-Stop-Service-Centre is staffed by representatives from:

- Commerce and Consumer Department, Ministry of Commerce;
- Department of Custom, Ministry of Finance;
- Department of Revenue, Ministry of Finance;
- Department of Immigration and National Registration, Ministry of Immigration and Population;
- Labour Department, Ministry of Labour;
- Department of Human Settlement and Housing Development, Ministry of Construction;
- Myanmar Port Authority; and
- Directorate of Investment and Company Administration.

The One-Stop-Service-Centre offers streamlined procedures for matter such as:

- Company administration;
- Tax filing;
- Financing/Central Bank matters;
- Immigration and visa matters; and
- Import/export procedures.

The general procedure for registration in the Thilawa Special Economic Zone is as follows:

- The investor shall complete a questionnaire provided by the Management Committee;
- A land reservation agreement shall be signed with the developer of the Special Economic Zone before submitting the investment application;
- A complete and comprehensive investment application shall then be submitted to the Management Committee, which shall include:
 - Investment Application **Form 1** and its cover letter;
 - Location of the land in the Special Economic Zone, and location of the factory;
 - Water supply and electricity supply plan;
 - Building/factory construction plan;
 - Plan for installation of machinery and equipment; and
 - Environmental management plan.
- The Management Committee will examine the submitted application and take a decision within 30 days;
- After receiving the permit, the land lease agreement can be signed with the developer and has to be submitted to the Management Committee within six (6) months after issuance of the investment permit;
- The new company has to be registered at the One-Stop Service Center of the Special Economic Zone, which can be done at the time the investment application is submitted. However, the new company's registration will only be completed when the investment permit is granted. The same documentation is required as for a company registration with the Company Registration Office.
- The building permit and fire safety certificate have to be obtained. The respective application can be submitted at the time of the investment application and will first be reviewed by the developer, to check if the standards are in compliance with their regulation, and then by the Management Committee, to check further compliance.
- For every investment project an Environmental Conservation and Prevention Plan has to be submitted. For some industries, additionally an Initial Environmental Evaluation Report or an Environmental Impact Assessment is required.

Comment Luther: The details of the application would be determined by us in close liaison with the Management Committee of the respective Special Economic Zone.

After obtaining the above mentioned permits, the project may commence with:

- Construction of warehouse and facilities, connection of infrastructure (e.g. water, sewage, electricity), application for Electricity and Boiler Certificate;
- Tax registration;
- Exporter/importer registration, filing of master list and material list;
- Employment registration;
- Immigration matters for foreign employees; and
- Registration of loans/financing/FX-transactions.

Please note that commercial operations must commence within three (3) years after issuance of the investment permit. On special request, an extension may be granted

III. Our Services & Fees

Please find below our fees for the registration of an entity, as well as for the compliance services provided by us for its ongoing administration.

1. Registration of a Corporation

Registration under the Myanmar Companies Law (2017)

Our professional fee for the entire registration of a Private Company Limited by Shares or the Branch Office of an overseas corporation under the Myanmar Companies Law (2017) is fixed at USD 2,500 (net). This fee does not include official fees (approx. USD 200) and other disbursements.

If required, the drafting of a customized Constitution for a Private Company Limited by Shares will be charged on an hourly basis. A fee cap may be agreed in advance depending on the complexity of the project.

(Additional) Registration under the Myanmar Investment Law (2016) or the Special Economic Zone Law (2014)

The fees for the application of an MIC Permit or MIC Endorsement under the Myanmar Investment Law (2016) or the registration under the Special Economic Zone Law (2014) will be charged on an hourly basis.

A fee cap may be agreed in advance depending on the complexity of the investment project.

2. Bank Account Opening

The opening of a bank account with a private Myanmar bank is included in our registration fee (please see above no. 1). Due to the very different procedures for the opening of an account with a governmental Myanmar bank or a private foreign bank, our assistance in this regard will be charged on a time spent basis.

3. Company Secretary

Our fee for the provision of a Company Secretary and the routine services required from a Company Secretary is USD 1,200 (net) per year.

4. Registered Office

If required, we can provide a registered office address for a fee of USD 300 (net) per year.

5. Nominee Resident Director/Officer

For the provision of nominee directors and officers residing in Myanmar, we charge a fee of USD 300 (net) per month. We may ask for a standard indemnity from our clients covering the strict personal liability of our nominees for certain corporate obligations of the company in Myanmar.

6. Book-Keeping, Payroll and Taxation Services

For clients whose operations do not necessitate the employment of a full-time accountant, we offer bookkeeping services, including preparation of commercial tax documentation and payroll processing. Our fees for such services are generally volume based and we would be happy to provide you with a separate fee quote for this. Please note however, we do not provide auditing services but could recommend proper and reasonably priced audit firms to you.

7. Immigration

For clients with foreign employees we offer immigration-related services, such as the application of Visa, Long-Term Stay Permits and Labour Cards.

Whilst comprehensive, we hope that the above information is useful to you. Should you have any questions or should you like to explore any of the options covered in more detail, please do not hesitate to come back to us.

IV. Your Contacts



Alexander Bohusch
Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
alex.bohusch@luther-lawfirm.com



Fabian Lorenz, M.A.
Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
fabian.lorenz@luther-lawfirm.com



Fanny Tatin
Avocat/Attorney-at-law (France)
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
fanny.tatin@luther-lawfirm.com



Thi Ha
Higher Grade Pleader
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
thi.ha@luther-lawfirm.com



Maung Maung Min Khaung
Higher Grade Pleader
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
maungmaung.minkhaung@luther-lawfirm.com



Saw Thaw Tu Htoo
Higher Grade Pleader
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
saw.thaw.tu.htoo@luther-lawfirm.com



Nang Kay Si Kham
Higher Grade Pleader
Luther Law Firm Limited
Myanmar
Phone +95 1 500021
nang.kay.si.kham@luther-lawfirm.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editor: Alexander Bohusch, Rechtsanwalt/Attorney-at-law (Germany),
Luther Law Firm Limited, Luther Corporate Services Limited, Uniteam Marine Of-
fice Building, Level 8, Unit #1, 84 Pan Hlaing Street, Sanchaung Township
11111 Yangon, Myanmar, Phone +95 1 500 021, Fax +95 1 502 852,
HP (MM): +95 9 425 0136 00, HP (SG): +65 9 829 1829, alexander.bohusch@
luther-lawfirm.com

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contact@luther-lawfirm.com

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