

Luther.

# Memo: Legal Obligations of Branch Offices under Myanmar Law

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**Luther Law Firm Limited**  
Uniteam Marine Office Building, Level 8, Unit #1  
84 Pan Hlaing Street, Sanchaung Township  
11111 Yangon, Myanmar  
Phone +95 1 500 021, Fax +95 1 502 852  
alexander.bohusch@luther-lawfirm.com

## A. Introduction

Unless exempted<sup>1</sup>, any overseas corporation or other body corporate shall not carry out business in the Union of Myanmar – whether or not for the purpose of generating profits – unless it is properly registered with the Directorate of Investment and Company Administration (“DICA”).<sup>2</sup>

Division 9 (“Other corporations authorised to register or taken to be registered under this Law – Corporations formed under other laws in force in the Union”) of the Myanmar Companies Law (2017) provides regulations for the registration of overseas corporations (hereafter “Branch Office”) in Myanmar.

Under the law, a Branch Office is able to act independently and engage in legitimate profit-making activities. A Branch Office will, however, 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, are binding and enforceable against the overseas corporation.

The following memorandum provides an overview of the most relevant general legal obligations applicable to Branch Offices under Myanmar law. Some of these obligations have to be complied with upon registration of an overseas corporation, while others have to be complied with continuously during the course of a business.

Failure to comply with such legal obligations can lead to administrative action against the Branch Office, its authorized officer and the director(s) of the overseas corporation.

## B. Compliance Obligations

A Branch Office has to ensure compliance with numerous laws upon registration and commencement of business in Myanmar.

### I. Myanmar Companies Law (2017)

Various obligations stipulated in the Myanmar Companies Law (2017) will apply with effect from the date of registration with DICA.

#### 1. Authorised Officer

Any overseas corporation intending to register a Branch Office in Myanmar is required to appoint an authorized officer acting as its representative.<sup>3</sup>

The authorized officer must be ordinarily resident in Myanmar, i.e. be a permanent resident under an applicable law or be resident in Myanmar for at least 183 days in each twelve (12) months’ period commencing from (i) in case of a Branch Office registered under the previous Companies Act (1914), the date of commencement of the Myanmar Companies Law 2017 or (ii) in case of a Branch Office registered under the Myanmar Companies Law (2017), the date of registration of the Branch Office.<sup>4</sup>

The authorized officer must keep all duplicate originals of the application and all documents accompanying and maintained with the Branch Office’s records.<sup>5</sup> Further, the authorized officer is authorized to accept service of documents in Myanmar on behalf of the Branch Office of the overseas corporation.

It is important to note that the overseas corporation is responsible for having an authorized officer ordinarily resident in Myanmar. Hence, in situations where the sole resident authorized officer is leaving Myanmar or no resident authorized officer is remaining due to other reasons, the overseas corporation will be duty-bound to appoint a new resident authorized officer and notify DICA within seven (7) days from the date of the change.<sup>6</sup> If no such replacement is made within that period and the business continues to operate, the overseas corporation will be liable to a fine of MMK 250,000.<sup>7</sup>

***Our Service:*** For the provision of a nominee authorised officer, we charge USD 300 (net) per month / USD 3,600 (net) per year.

1 See sec. 43 (b) Myanmar Companies Law (2017).

2 Sec. 43 (a) Myanmar Companies Law (2017).

3 Sec. 1 (c) (iii) Myanmar Companies Law (2017).

4 Sec. 1 (c) (xix) Myanmar Companies Law (2017).

5 Sec. 47 (d) Myanmar Companies Law (2017).

6 Sec. 51 (e) Myanmar Companies Law (2017).

7 Sec. 52 Myanmar Companies Law (2017).

## 2. Registered Office Address

A Branch Office shall have a registered office address in Myanmar to which all communications and notices may be addressed.<sup>8</sup>

**Our Service:** For the provision of a registered office address, we charge USD 25 (net) per month / USD 300 (net) per year.

## 3. Use of Name

Every overseas corporation carrying on business in Myanmar through a Branch Office must ensure that its full name and the name of the country where it was incorporated are clearly stated in written communications sent by, or on behalf of, the overseas corporation. These details must be clearly stated in any documents issued or signed by, or on behalf of, the overseas corporation that evidence or create a legal obligation of the overseas corporation. They must further be prominently displayed at the registered office and principal place of business of the Branch Office in Myanmar.<sup>9</sup>

## 4. Annual Return

Every overseas corporation conducting business in Myanmar must within 28 days of the end of its financial year file an Annual Return with DICA to confirm and update its particulars.<sup>10</sup>

## 5. Financial Statements of Overseas Corporation

Every overseas corporation conducting business in Myanmar shall, at least once each calendar year and at intervals of no more than 15 months, file a balance sheet made up to the end of its last financial year, a copy of its cash flow statement for its last financial year, and a copy of its profit and loss statement for its last financial year (in such form and containing such particulars and including copies of such documents as the corporation is required to prepare by the law in its place of origin) with DICA.<sup>11</sup>

## 6. Change of Name of Overseas Corporation

An overseas corporation that changes its name must file a notice of the change of name with DICA within 28 days.<sup>12</sup>

<sup>8</sup> Sec. 47 (b) (v) Myanmar Companies Law (2017).

<sup>9</sup> Sec. 50 Myanmar Companies Law (2017).

<sup>10</sup> Sec. 53 (a) (i) Myanmar Companies Law (2017).

<sup>11</sup> Sec. 53 (a) (ii) Myanmar Companies Law (2017).

<sup>12</sup> Sec. 44 (b) Myanmar Companies Law (2017).

## 7. Alteration of Details

Every overseas corporation conducting business in Myanmar must within 28 days of a change file notice of the following:

- Any alteration to the instrument constituting or defining the constitution of the overseas corporation;
- Any change of the director(s) or the residential addresses of the director(s) of the overseas corporation;
- Any change of the address of the registered office or principal place of business of the overseas corporation overseas; and
- Any change of the address of the registered office or principal place of business of the overseas corporation in the Union. Notice of the proposed change must be given prior to the company effecting the change in the address of its registered office or principal place of business.

Further, any change of the authorized officer or the address of the authorized officer or the appointment or change in details of any other person authorised to accept service of documents in Myanmar on behalf of the overseas corporation shall be filed with DICA within seven (7) days.<sup>13</sup>

## 8. Beneficial Ownership

Pursuant to Directive No. 17/2019 issued by DICA, any Branch Office shall obtain and keep records of certain information relating to its beneficial owners. Such information shall further be registered with DICA.

It should be noted that at the time of this memorandum, the procedures for the filing with DICA have not yet been implemented in practice.

## 9. Maintenance of Corporate Records

The authorised officer of a Branch Office must keep all duplicate originals of the application and all documents accompanying and maintained with the Branch Office's records.

<sup>13</sup> Sec. 51 Myanmar Companies Law (2017).

## 10. Ceasing of Business

Within 21 days after ceasing to carry out business in Myanmar, an overseas corporation must file a notice stating that it has so ceased, and, subject to being satisfied of compliance with other applicable laws, DICA will remove the overseas corporation's name from the register.<sup>14</sup>

**Our Service:** For an annual lump-sum fee of USD 1,200 (net) per year, we offer clients all routine corporate secretarial services. Only non-routine services, e.g. ad hoc assignments such as handover of corporate secretarial files and rectification of prior de-faults, liaising with banks, amendment of constitutional documents, legal and tax advisory services as well as matters requiring additional work such as physical participation in board or general meetings (e.g. for the purpose of taking minutes) will be charged on a time spent basis. An indicative fee for non-routine services would be provided before commencement of each assignment.

## II. Employment Laws

Any Branch Office having employees in Myanmar will be subject to the obligations stipulated in the various employment laws.

### 1. Registration of Business

Under Myanmar employment law, any employer opening a shop/establishment shall, within ten (10) days of such opening, send a notice to the Inspector of the Factories and Labour Law Inspection Department with the following details:

- Name, address, phone, fax, email of the shop/establishment;
- Type of shop/establishment;
- Name, ID number, residence address, phone, fax, email of employer;
- Name, ID number, residence address, phone, fax, email of manager or person-in-charge representing the employer;
- Number of employees; and
- Name, passport number, nationality, residence-permit duration and residence address of expatriate employee.<sup>15</sup>

**Comment Luther:** The employer shall use Form 1 "Notice of opening of shop/establishment" of the Shops and Establishment Rules (2018). In case of a subsequent change, the employer shall use Form 2 "Notice of Change of Address / Type of Business / Expansion of Business / Change of Owner / Change in Appointments of Employees".

### 2. Registration of Employment Contracts

Employers must enter into written employment contracts with their employees within 30 days of employment.<sup>16</sup> Employers with five (5) or more employees must further register the employment contracts with the relevant Township Labour Office ("TLO") for registration.

**Our Service:** For further information, please refer to our memo "Myanmar Employment Law". The review and drafting of customized employment contracts and/or registration of employment contracts with the relevant TLO is billed based on the time spent by our attorneys.

### 3. Employment Records & Forms

Under the current legal framework, employers in Myanmar must maintain employment records and comply with various filing obligations. Forms contained in both the Shops and Establishment Rules (2018) and the Leave and Holidays Rules (2018) shall be completed by the employer and either kept ready for ad hoc inspection by the Factories and General Labour Law Inspection Department ("Inspector") or be filed with the Inspector.

As employers and managers or supervisors representing the employer may be penalized with fines, imprisonment or both penalties for non-compliance with these statutory obligations, it is crucial to know which records must be maintained and which forms must be kept or filed with the labour authorities.

**Our Service:** Please refer to our memo on employment records and forms for further information. The maintaining and filing of these forms is offered as part of Luther's Payroll Services and charged on a headcount basis.

<sup>14</sup> Sec. 55 (a) Myanmar Companies Law (2017).

<sup>15</sup> Rule 3 Shops and Establishment Rules (2018).

<sup>16</sup> Sec. 5 (a) Employment and Skills Development Law (2013).

#### 4. Workplace Safety and Health Manager & Committee

Under the Occupational Safety and Health Law (2019), enterprises shall either appoint an Occupational Safety and Health Manager or form an Occupational Safety and Health Committee, depending on the size of the workforce.

**Comment Luther:** For further information, please refer to our memo “Myanmar Employment Law”.

#### 5. Workplace Coordinating Committee

Employers with 30 or more employees must form a Workplace Coordination Committee, which shall be notified to the relevant Township Conciliation Body by filling Form A. The Workplace Coordination Committee shall consist of an even number of six (6) members, equally representing the employer and the employees. The employees’ representatives shall be elected by the employees. In case of unionized employees, the labour organization may nominate candidates.

**Comment Luther:** For further information, please refer to our memo “Myanmar Employment Law”.

### III. Social Security and Personal Income Tax

Any Branch Office with employees will have to comply with the employer obligations stipulated in Myanmar’s personal income tax and social security laws.

#### 1. Registration for Personal Income Tax

In order to facilitate the payment of the employees’ personal income tax, every employer has to register its employees with the relevant Township Office of the Inland Revenue Department.<sup>17</sup>

**Our Service:** Personal Income Tax registration is offered as part of Luther’s Payroll Services and charged on a head-count basis.

#### 2. Filing and Payment of Personal Income Tax

Employers are required to withhold, file and pay their employees’ personal income tax from their salaries at the time of payment.<sup>18</sup> The tax to be paid must be estimated based on the expected annual income and be withheld in equal instalments and filed and paid monthly. Finally, an employer shall furnish yearly the annual salary statement as prescribed by the Regulations within three (3) months from the end of the income year.<sup>19</sup>

Employers failing to withhold and pay their employees’ personal income tax are deemed to be at default and liable for such payments.<sup>20</sup>

**Our Service:** Personal Income Tax filing and payment is offered as part of Luther’s Payroll Services.

#### 3. Registration with the Social Security Fund

Unless exempted, employers with five (5) or more employees shall register with the relevant Township Office of the Social Security Fund.<sup>21</sup> The registration must be submitted within ten (10) days from the appointment of the fifth (5th) employee.

Employers further have to register each new employee within ten (10) days from the appointment and notify the relevant Social Security Office within ten (10) days of any transfer, resignation or death of an employee.

**Our Service:** Social Security Fund registration is offered as part of Luther’s Payroll Services and charged on a head-count basis.

#### 4. Filing and Payment of the Social Security Fund Contributions

Employers are required to withhold the employees’ social security contributions from their salaries, to be filed and paid monthly together with the employer’s contributions to the relevant social security township office before the 15th of the month following the salary payment.<sup>22</sup>

**Our Service:** Social Security filing and payment is offered as part of Luther’s Payroll Services.

17 Sec. 16 (d) Income Tax Law (1974) as amended in 2016.

18 Sec. 16 (d) Income Tax Law (1974).

19 Sec. 18 Income Tax Law (1974).

20 Sec 16 (g) Income Tax Law (1974).

21 Sec. 11 (a) Social Security Law (2012).

22 Sec. 64(b) Social Security Rule (2014)

## IV. Corporate Tax

Unless exempted, any Branch Office, whether it is profit generating or not, is subject to certain tax filing obligations.

### 1. Bookkeeping

While not expressly stipulated in the law, any Branch Office is required to file its taxes based on a return of income, which shall provide for the profit & loss details of the Branch Office in respect of the overseas corporation's activities within Myanmar:

- All sums of money received and expended by the Branch Office and the matters in respect of which the receipt and expenditure takes place;
- All sales and purchases of goods by the Branch Office;
- All assets and liabilities of the Branch Office; and
- Any other financial matters prescribed under this Law or other applicable law.

These financial records shall be prepared based on the Myanmar financial year (1 October to 30 September).

**Our Service:** For companies whose operations do not necessitate the employment of a full-time accountant, we offer bookkeeping services. Our fees for such services are generally volume based.

### 2. Corporate Income Tax Registration

Every Branch Office carrying on business in Myanmar must submit a Business Taxpayer Registration Form in both English and Myanmar language for the initial corporate income tax registration. The form must be filed with the relevant Medium Taxpayers Office (MTO) 1 or 2, or the Large Taxpayers Office (LTO) no later than one (1) month before the date of commencement of business. Taxpayers are further required to submit a duly completed IRD Information Gathering Worksheet.

### 3. Filing and Payment of Corporate Income Tax

Branch Offices, which are considered non-resident for taxation purposes, are subject to corporate income tax of 25% levied on any profit derived from the activities in Myanmar.

The tax is due at the time of receiving the income<sup>23</sup> and payable in advance in quarterly instalments computed on the estimated total profit for the financial year.<sup>24</sup> Every Branch Office shall further furnish a return of income for the financial year within three (3) months from the end of each financial year.<sup>25</sup> The figures in the SAS return must be expressed with Myanmar Kyat.

Any tax withheld by customers from the payments to the Branch Office (withholding tax) may be set off against the annual tax obligations.<sup>26</sup>

It should be noted that the Internal Revenue Department may determine the profit not only based on the Branch Office accounts, but may also take into account a proportion of the worldwide income or any other basis considered reasonable, if it concludes that the income cannot be ascertained accurately.

**Our Service:** Corporate Income Tax filing and payment is offered as part of Luther's Accounting Services.

### 4. Filing and Payment of Withholding Tax

Pursuant to Notification No. 47/2018, it is no longer required to withhold tax from payments for the purchase of goods or services to resident citizens and resident foreigners. Payments to non-resident foreigners for the purchase of goods or services performed within Myanmar shall however be subject to withholding tax of 2.5%. Similarly, payments of interest or royalties may be subject to withholding tax.

Branch Offices deducting withholding tax from payments to their foreign suppliers shall file and pay the applicable withholding tax within seven (7) days from such payment.

**Our Service:** Withholding Tax filing and payment is offered as part of Luther's Accounting Services.

23 Sec. 15 (a) Income Tax Law (1974).

24 Sec. 16 (a) Income Tax Law (1974).

25 Sec. 17 (a) Income Tax Law (1974).

26 Notification No. 47/2018, Ministry of Planning, Finance & Industry



## 5. Commercial Tax Registration

Unless exempted, any Branch Office carrying out production or service activities and exceeding the threshold of MMK 50,000,000 taxable supplies in any one financial year shall apply with the relevant Township Revenue Officer for Commercial Tax Registration.<sup>27</sup> The application shall be submitted one (1) month prior to the commencement of business.<sup>28</sup>

Further, any Branch Office commencing operation shall furnish a letter of intimidation with the prescribed form within ten (10) days from the commencement of business to the relevant Township Revenue Officer.<sup>29</sup>

**Our Service:** *Our fee for the initial Commercial Tax registration is USD 500 (net). For each renewal of the registration, we charge a fee of USD 400 (net).*

## 6. Filing and Payment of Commercial Tax

Branch Offices having taxable proceeds from the sale of goods or services must pay Commercial Tax monthly within ten (10) days after the end of the relevant month.<sup>30</sup> In addition, quarterly returns must be submitted to the relevant Township Revenue Officer within one (1) month after the end of the relevant quarter, and annual returns within three (3) months after the end of the relevant year.<sup>31</sup>

**Our Service:** *We offer Commercial Tax filing services only in combination with our accounting services.*

## 7. Stamp Duty

Stamp duty is a form of tax charged on certain legal instruments (e.g. lease contracts, loan agreements) in the form impressed stamps or the affixation of physical stamps on the instrument in question. The payment and affixation of the stamps is generally due before or at the time of execution of the instrument.

The penalty for unpaid or underpaid stamp duty is three times the amount of the unpaid or underpaid stamp duty.

<sup>27</sup> Sec. 11 (a) Commercial Tax Law (1990).

<sup>28</sup> Sec. 3 Commercial Tax Regulations (2012).

<sup>29</sup> Sec. 11 (b) Commercial Tax Law (1990).

<sup>30</sup> Sec. 12 (a) Commercial Tax Law (1990).

<sup>31</sup> Sec. 13 (a) Commercial Tax Law (1990).

## V. Miscellaneous

### 1. Anti-Corruption Code

Pursuant to the Anti-Corruption Law (2013), "corruption" is defined - inter alia - as a "direct or indirect act by any person to give or purport to give or accept or obtain or purport to obtain from any person bribes in order to cause an act in abuse of official duties or otherwise or to refrain from acting in accordance with law or to give someone rights to which he is entitled by law or to give someone rights to which he is not entitled by law or to improperly deny someone's legal rights." Corruption may be penalized with fines, imprisonment or both penalties.

On 19 October 2018, the Anti-Corruption Commission issued Notification No. 14/2018, announcing fundamental principles for private enterprises to prevent corruption and guide them when dealing with ministries, government organizations and enterprises in Myanmar's private business sectors.

Pursuant to this Notification, private companies are required to:

- Define a sound and effective anti-corruption policy, which shall have the support of the highest level of management;
- Effectively identify, analyse and assess risks of corruption;
- Maintain strict, detailed measures for sensitive areas with a high risk of corruption;
- Apply anti-corruption measures not only to their own entity but also to affiliated businesses;
- Maintain accurate and systematic accounts and records;
- Maintain HR Management policies supportive of anti-corruption measures;
- Maintain trustworthy mechanisms for the reporting of suspected corruption; and
- Maintain regular assessment of anti-corruption measures.

On 16 January 2019, the Directorate of Investment and Company Administration published a notice advising all companies and corporations registered in Myanmar (including Branch Offices) to follow these fundamental principles and establish anti-corruption guidelines.

**Our Service:** *We would be happy to guide and assist you with the drafting and establishment of your anti-corruption guidelines.*

### 2. Immigration

Any Branch Office employing foreigners in Myanmar must ensure that they hold valid immigration documents.



As Myanmar did not yet establish a comprehensive system of work passes/permits, most foreign employees currently only hold a (multiple-journey) business visa.

By law, foreigners residing in Myanmar for more than 90 days are required to apply for a Foreigner Registration Certificate ("FRC"). However, this requirement is in practice rarely enforced. As a consequence, most foreigners residing in Myanmar – even on a long-term basis – refrain from applying for an FRC.

**Our Service:** *Applying for Business Visa, Foreigner's Registration Certificate and Long Term Stay Permit is offered as part of Luther's Services.*

Since October 2016, foreigners occupying residential premises shall, within 24 hours of their arrival, further be reported by their landlord to the relevant Ward Administration Office and Township Office of the Department of Labour (using a copy of the Hotel Arrival Report/Form C).

### 3. Lease Agreements

When leasing the first office, Branch Offices must observe the various restrictions and requirements applicable to leases in Myanmar.

**Our Service:** *For further information and our services in this regard, please refer to our memo "Leasing of Property in Myanmar".*

#### Lease Term

The Transfer of Immovable Property Restriction Law (1987) limits the term for leases of immovable property to foreign corporations. As a general rule, no person shall grant a lease of immovable property for a term exceeding one (1) year to a foreign corporation, and correspondingly, no foreign corporation shall receive a lease of immovable property for a term exceeding one (1) year.<sup>32</sup>

Myanmar laws provide certain exemptions from the aforementioned restrictions. For example, the Myanmar Investment Law (2016) provides that any (foreign) investor who has ob-

tained a Permit or Endorsement from the Myanmar Investment Commission ("MIC") may enter into long-term lease agreements of up to fifty (50) years with the possibility of two (2) extensions of ten (10) years each.<sup>33</sup>

Further, a sublease from a lessor who has obtained a Permit or Endorsement from the Myanmar Investment Commission may be entered into for the same term, even if the lessee did not obtain a Permit or Endorsement from the Myanmar Investment Commission.

#### Stamp Duty

The Stamp Act (1899) stipulates that lease agreements are subject to the payment of stamp duty. Unless the relevant instrument has been executed outside of Myanmar, the payment and affixation of the stamps is generally due on or before the date of execution of the instrument in questions.

#### Registration of Long-Term Leases

Any lease agreement exceeding the term of one (1) year or reserving a yearly rent shall be registered with the Register of Deeds Office.<sup>34</sup>

### 4. Offshore Loans

Any offshore loan provided to a Myanmar borrower must obtain prior approval from and be registered with the Central Bank of Myanmar as stipulated in the Foreign Exchange Management Law (2012) and the Foreign Exchange Management Regulations (2014).

The criteria for the approval of an offshore loan are as follows:

- Whether the amount of equity capital of the applicant exceeds USD 500,000 (if the applicant is a MIC permitted company) or USD 50,000 (if the applicant is a company registered only at the Directorate of Investment and Company Administration).
- Whether the applicant (borrower) has an access to a matching foreign exchange income or not.

32 Sec. 5 Transfer of Immovable Property Restriction Law (1987).

33 Sec. 50 (b) and (c) Myanmar Investment Law (2016).

34 Sec. 17 (1) Registration Act (1909). For leases of immovable property for a term not exceeding one (1) year, and leases exempted under section 17 Registration Act (1909), registration pursuant to sec. 18 Registration Act (1909) is optional.

- Whether the borrower is able to repay the loan from the income generated from domestic business, and has plans to mitigate the exchange risk even it does not have a foreign exchange income.
- Whether the borrower has already transferred 80% of equity committed in MIC permit or not.
- Whether Debt to Equity Ratio is within a maximum of 4:1 or not if the applicant is a MIC permitted company or within a maximum of 3:1 or not if the applicant is a DICA registered company.
- Whether there are completion and correctness of terms and conditions mentioned in loan agreement and documents or not.
- Whether the loan tenure is medium-term or long-term, and loan repayment schedule is consistent with loan agreement or not.

Any payment of interest on a loan, or re-payment of a principal loan amount, will require submission of the duly signed, stamped and approved loan agreement and has to be made in accordance with the repayment schedule as filed with and approved by the Central Bank of Myanmar.

#### **5. Business Registration (City / Regional Development Committee)**

Certain businesses may be required to register their premises to obtain a business license, e.g. from the Yangon City Development Committee.

## **C. Luther in Myanmar**

Active in Myanmar since 2013, Luther is one of the largest law firms and corporate services providers in Yangon. Our international team of more than 50 professionals consist of lawyers, tax consultants, corporate secretaries and accountants from Germany, France, Italy and Myanmar.

With our “one-stop” service solution, Luther Law Firm Limited and Luther Corporate Services Limited provide a comprehensive range of services to assist and advise clients in all stages of the business lifecycle, namely, from the establishment of a Myanmar business, through on-going legal and tax advice, bookkeeping, accounting, payroll and payment administration up to the dissolution of enterprises.

We devise and help our clients to implement legal, tax and corporate compliance structures that work and let them focus on being successful in Asia’s last frontier market. Myanmar’s legal framework is governed by both old and new laws and regulations, as well as internal policies and practices of the Myanmar authorities. Many laws dating back to the colonial and post-independence periods are, with more or less changes, still in force. Since its political and economic opening in 2011, Myanmar has embarked on a comprehensive reform process and is currently overhauling its legal framework.

Our local and international colleagues have the necessary knowledge, experience and commercial expertise to serve our more than 450 clients in this rapidly developing country, including multinational investors, MNCs and SMEs, development organizations, embassies, NGOs and local conglomerates.

To advise each client in the best possible way, our lawyers and tax advisors – in addition to their specialized legal and tax expertise – have expert knowledge of specific industries.

Further, our team members are well connected and actively participating and holding positions in various chambers to stay abreast of the latest developments, such as the European Chamber of Commerce in Myanmar, the German Myanmar Business Chamber, the British Chamber of Commerce and French Myanmar Chamber of Commerce and Industry.

We offer pragmatic solutions and recommendations based on best practice guidelines. We never compromise on quality and we always put our clients first. Our lawyers are trained to deliver work products that comply with the highest standards and we will not settle for less.

## I. Legal and Tax Advisory Services

Our international and Myanmar lawyers provide comprehensive legal and tax advice in all areas of commercial law, including:

- Establishment of a Myanmar Business
- Cessation of a Myanmar Business
- Compliance
- Contract Law
- Corporate Law, Investment Structuring and Joint Ventures
- Employment and Labour Law
- Foreign Direct Investment and Market Entry
- Immigration Law
- Intellectual Property Law
- International Trade and Distribution Law
- Financial Transactions
- M&A Advisory
- Non-Profit Sector
- Real Estate Law
- Tax Advice and Tax Structuring

### Establishment of a Myanmar Business

- Advising on the type of entity to be established and the optimal corporate & tax structure
- Preparation of Constitutions and other constitutional documents
- Incorporation of limited companies
- Registration of foreign companies (“Branch or Representative Offices”)
- Application for Permits and Endorsements under the Myanmar Investment Law 2016
- Registration under the Special Economic Zone Law 2014
- Registration of associations, foundations, social enterprises and non-governmental organizations

### Cessation of a Myanmar Business

- Liquidation of Companies
- De-Registration of Overseas Corporations (Branch / Representative Office)
- Repatriation of surplus

### Compliance

- Anti-corruption compliance
- Corporate governance and corporate compliance
- Labour law compliance
- Regulatory compliance
- Tax compliance

### Contract Law

- Negotiation and drafting of commercial agreements
- Registration of deeds and contracts with the authorities
- Advice and assistance on stamp duty payments

### Corporate Law, Investment Structuring and Joint Ventures

- Capital measures (increase and reduction in capital, cash and in kind)
- Advice to members of executive and supervisory boards
- Shareholders agreements, constitutions and rules of procedure
- National and international joint ventures
- PPP projects
- Liquidation and insolvency proceedings
- Disputes among shareholders

### Employment and Labour Law

- Employment contracts for employees, managers and directors
- Employment policies
- Registration of employment contracts with Myanmar labour authorities
- Corporate restructuring, redundancy and compensation plans
- Secondments
- Social Security Insurance

### Foreign Direct Investment and Market Entry

- Support and advice on the choice of location
- Advice with regard to the appropriate market entry and restrictions under the Myanmar Investment Law
- Planning, structuring and formation of companies, subsidiaries and branch offices
- Representation vis-à-vis regulatory authorities

### Immigration Law

- Visa, Long-Term Stay Permits and Foreigner Registration Cards
- Labour Cards
- Guest Residence Reports
- Form C (Occupation of Residential Premises)

### Intellectual Property Law

- Development and implementation of IP protection strategies
- Registration of trademarks, designs and patents
- License agreements, research and development agreements
- Outsourcing contacts

### International Trade and Distribution Law

- Registration of foreign trading companies
- Review of general terms and conditions
- Supply and procurement agreements
- Distributorship and sales agency agreements

### Financial transactions

- Banking, Finance and Insurance Law
- Corporate finance
- Loan and security agreements
- Registrations with the Central Bank and FRD
- Legal Opinions

### M&A Advisory

- Support in M&A transactions, privatizations and the establishment of joint venture companies
- Domestic and cross-border acquisitions by asset or share deal
- Due diligence
- Acquisition and project financing, including convertible loans
- National and international corporate restructuring measures
- Post-merger integration

### Non-Profit Sector

- Advice with regard to the appropriate legal structures for non-governmental organizations, development organizations, foundations, social enterprises and charities
- Planning, structuring and formation of companies limited by guarantee, associations and NGOs
- Representation vis-à-vis regulatory authorities
- Tax exemptions

### Real Estate Law

- Negotiation and drafting of sale and purchase agreements and leases
- Financing structures
- Representation vis-à-vis public authorities

### Tax Advice and Tax Structuring

- International tax (inbound and outbound)
- Direct and indirect taxes
- Tax structuring of M&A transactions
- Transfer pricing
- Remedies and actions relating to taxation and public charges

## II. Corporate Services

Luther provides the complete range of corporate secretarial services to businesses in Myanmar, including:

- Corporate Secretarial Services
- Individual and Corporate Tax Compliance
- Human Resources & Payroll Administration
- Accounting & Financial Reporting
- Payment Administration

### Corporate Secretarial Services

- Provision of personnel to assume statutory positions
  - Company secretary
  - Nominee director / officer
- General statutory compliance services
  - Advice on best practice, corporate governance and compliance with Myanmar law
  - Corporate restructuring
  - Setting up, custody and maintenance of statutory books and registers
  - Preparing and lodging of prescribed forms and requisite documents with the Directorate of Investment and Company Administration (DICA) and the Myanmar Investment Commission (MIC)

- Preparation of notices, minutes, and other documents pertaining to directors' and shareholders' meetings (Annual General Meeting and Extraordinary General Meeting)
- Provision of registered office address

■ **Managing changes:**

- Change of name
- Change in constitutional documents
- Change in capital structure (transfer of shares, new issuance of shares)
- Change of shareholders
- Change of directors, representatives, auditors and company secretaries
- Change of registered office address
- Opening of bank accounts and managing changes of bank signatories

**Individual and Corporate Tax Compliance**

- Commercial tax registration
- Preparation, calculation, filing and payment of commercial tax
- Preparation, calculation, filing and payment of withholding tax
- Preparation, calculation, filing and payment of personal income tax
- Applications for relief under Double Tax Agreements
- Advice on complex and international tax structures
- Negotiations with the Inland Revenue Department
- Payment of stamp duty

**Human Resources & Payroll Administration**

- Processing and payment of employee expense claims
- Computation of salaries
- Computation of social security contributions
- Computation of personal income taxes
- Provision of payroll reports & financial journals
- Payment of salaries net of personal income tax and social security contributions
- Filing and payment of personal income tax and social security contributions
- Ensuring compliance with tax and social security reporting requirements

**Accounting & Financial Reporting**

■ **Bookkeeping**

- Setting up the chart of accounts
- Recording of all payments and funds received
- Preparation of monthly bank reconciliation statements
- Recording of all sales and trade debtors
- Recording of all purchase and trade creditors
- Recording of prepayments and accruals
- Recording of all assets purchased and related depreciation
- Recording of all commercial tax (CT) on taxable purchases/ supplies
- Extraction of monthly trial balances and general ledger

■ **Management reports**

- Compiling of profit and loss account and balance sheet
- Generating aged financial analysis of debtors and creditors
- Business advisory services such as accounting reports and preparation of business plans
- Budget preparation, comparison and analysis of key components of financial performance

■ **Statutory accounting**

- Preparation of financial statements and notes to the financial statements
- Review and computation of tax and deferred tax provisions for inclusion into financial statements

**Payment Administration**

- Administration of cash funds deposited with us or in client's own bank accounts
- Cash flow forecasting and processing of accounts receivables
- Account signatory services to enable settlement of company payment obligations, and observance of "four-eyes-principle"
- Issuance of payment vouchers and arrangement of payments

## D. Luther in Asia

### I. Expertise

Our Myanmar office works closely together with the other Luther offices in Asia and Europe. We take a holistic approach, dealing with Asia-wide compliance issues, assisting with the setting up of international holding structures and ensuring proper repatriation of profits.

We provide the complete range of legal and tax advice to clients doing business in and from Asia. To offer a seamless service, we have teams in Europe as well as in Asia, led by partners with many years of experience on both continents. That way, we can immediately answer questions concerning investment decisions and provide our clients with an accurate assessment of the particularities of their projects, no matter where they are located.

Our lawyers unite substantial practical knowledge in important legal areas and cover the entire spectrum of law in Asia and beyond. We support foreign investors in the assessment of location and investment criteria, the structuring of investment projects, acquisitions and joint ventures. Finding and implementing solutions for sensitive areas like technology transfer and know-how protection also form part of our work. Alongside our clients we negotiate with future partners and local authorities and ensure the enforcement of their rights, in and out of court as well as in arbitration proceedings.

The services of our lawyers are complemented by our accountants, HR specialists and tax consultants offering all the services one would necessarily associate with a “one-stop” concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in the Asian “common law” countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to assist comprehensively on all business matters in Asia. Our tax experts advise on individual and corporate tax compliance as well as on withholding tax issues, on Double Taxation Agreements and on complex international tax structures. Our accountants and professionals carry out the time-consuming administrative tasks of the accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

### II. Singapore

Singapore is a leading international trading & financial hub. As such, it serves as Asian headquarter for many international companies operating within the Asia-Pacific region. With a staff strength of more than 90, Luther is by far the largest continental European law firm in Singapore. More than 25 lawyers from Singapore, Germany, France and other jurisdictions cover the whole range of corporate and commercial legal work as well as the structuring of investments within South and South East Asia. Our team is supported by excellent local Singaporean lawyers, notary publics, tax advisors, accountants, corporate secretaries and other professionals.

### III. Shanghai

Shanghai is the main hub for doing business in China, and with a team of more than 20 international lawyers, Luther is the largest German-speaking law firm in the city. Our China team consists of German and Chinese legal experts most of whom have over a decade of experience in developing and entering the Chinese market. Luther Shanghai is fully authorized to offer legal services including litigation and provides advice on all questions of Chinese law. Our legal team is supported by Chinese tax advisors, accountants, corporate secretaries and other professionals.

### IV. Asia

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Bangkok (Thailand), Delhi-Gurugram (India), Kuala Lumpur (Malaysia) and Jakarta (Indonesia). This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners and “best friends” in Australia, Hong Kong, Japan, New Zealand, the Philippines, South Korea and Vietnam.

# Our Locations

Our and our local partners' offices in important European and Asian markets





# Hits the Mark. Luther.

Luther is one of Germany’s leading commercial law firms. With approximately 420 lawyers and tax advisors, we can advise you on all aspects of German and international commercial law. We have offices in every economic centre throughout Germany. We also have our own offices in ten locations around the world: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advice is tailored to our clients’ corporate goals. We take a creative, dedicated approach to achieving the best possible economic outcome for each of our clients.

The name Luther is synonymous with expertise and commitment. We thrive on managing whatever you ask us to advise on, and pride ourselves on finding the best possible solution for every client. Not too much and not too little – always hits the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always consider the economic impact of our advice, whether it concerns structuring advice or a legal dispute.

We deal with complex projects every day. Luther’s experienced and highly specialised advisors have worked together closely for many years. We offer our clients the best possible service. Our fast, efficient communication, round-the-clock availability and flexibility mean we are there when you need us.

Luther has been named “Law Firm of the Year 2019” by the German legal publisher JUVE.

Luther Myanmar is ranked in the Asia Pacific Guides 2020 of Chambers and Legal 500.

## About us

<p>Lawyers and Tax Advisors</p> <p><b>420</b></p>	<p>Locations</p> <p><b>20</b></p>	<p>Long-Standing Connections to Commercial Law Firms Worldwide</p> 	<p>Offices in International Financial Centres and Investment Locations</p> 
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# Luther.

Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen,  
Frankfurt a.M., Hamburg, Hanover, Kuala Lumpur, Jakarta, Leipzig, London,  
Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon

You can find further information at:

[www.luther-lawfirm.com](http://www.luther-lawfirm.com)

[www.luther-services.com](http://www.luther-services.com)

