

Luther.

Memo: Legal Obligations of Companies under Myanmar Law

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A. Introduction

A foreign investor 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”).

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 and may generally carry out any legal business activities in accordance with the laws of Myanmar.

The following memorandum provides an overview of the most relevant general legal obligations applicable to Companies under Myanmar law. Some of these obligations have to be complied with upon registration of a Company, 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 Company, its director(s) and sometimes even its shareholder(s).

B. Compliance Obligations

Legal obligations may become applicable with effect from incorporation, commencement of business or be subject to certain thresholds specified under the relevant Myanmar laws.

I. Myanmar Companies Law (2017)

The Myanmar Companies Law (2017) provides for obligations upon registration and commencement of business, as well as ongoing obligations and regulations concerning the administration of the Company.

A. Administration of a Company

A Company has full legal capacity to carry on any business or activity both within and outside the Union.¹

The two main organs of a Company are the board of directors (“Board”) and the meeting of the members (“Members”). While the Members are the owners of a company, its business is, to the extent that it is not by law required to be exercised by the Members at a general meeting, governed by the Board as the managing body of the Company.

The rights, powers, duties and obligations of the Company, its Board and its Members are stipulated in the Myanmar Companies Law (2017) and the Company’s constitution,² provided that the constitution has no effect to the extent that it is inconsistent with the Myanmar Companies Law (2017).³ The constitution⁴ must be prepared in Myanmar language, but may in addition be prepared in English language⁵, and may, by special resolution, be altered. Any changes of the constitution must be filed with DICA within 28 days of the special resolution being passed.⁶

1. Members

A private Company registered under the Myanmar Companies Law (2017) must have at least one (1) member⁷ (whether a natural person or a corporate entity), but not more than 50 Members (not including persons who are in the employment of the Company).⁸ Members are the owners of the Company, represented by the shares in the Company held by each member.

1 Sec. 5 (a) Myanmar Companies Law (2017).

2 Sec. 11 (b) Myanmar Companies Law (2017).

3 Sec. 12 (a) Myanmar Companies Law (2017).

4 Sec. 11 (a) Myanmar Companies Law (2017).

5 Sec. 16 Myanmar Companies Law (2017).

6 Sec. 18 (a) Myanmar Companies Law (2017).

7 Sec. 4 (a) (iv) Myanmar Companies Law (2017).

8 Sec. 2 (a) (i) Myanmar Companies Law (2017).

While the Members are not involved in the day to day management of the Company, certain matters require their approval, either by ordinary or special resolution, as stipulated in the Companies Law (2017) or the Company's constitution.

These matters include (not exhaustive):

- Change of the name of the Company (special resolution),⁹
- Alteration of the constitution (special resolution),¹⁰
- Appointment or removal of director(s) (ordinary resolution),¹¹
- Certain changes of the Company's share capital or share classes (special resolution),¹²
- Appointment of the auditor (ordinary resolution), provided that the first auditor may be appointed by the Board;¹³
- Approval of director(s)'s fees (ordinary resolution);¹⁴
- Change of the Company's type (special resolution),¹⁵ and
- Voluntary winding up of the Company and appointment of a liquidator (special resolution).¹⁶

The Members are further entitled to certain information concerning the affairs of the Company, such as the Company's statutory registers and annual financial statements.

2. Shares

Subject to the constitution of the Company, the Board may at any time issue shares, securities which convert into shares or options to subscribe for shares or debentures, to any person, on the terms and in any number as the board thinks fit.¹⁷

The shares or other securities of any member in a Company are considered moveable property, transferable in the manner provided or permitted in the law and the constitution of the Company.¹⁸ Shares do no longer have a nominal or par value¹⁹ and may be issued fully or partly paid, provided that if the shares are issued partly paid, the terms of issue must specify when calls may be made and the shareholder is liable to pay such calls.²⁰

9 Sec. 25 (d) Myanmar Companies Law (2017).

10 Sec. 17 Myanmar Companies Law (2017).

11 Sec. 173 and 174 Myanmar Companies Law (2017).

12 Sec. 112 (iv) Myanmar Companies Law (2017).

13 Sec. 279 (b) Myanmar Companies Law (2017).

14 Sec. 186 Myanmar Companies Law (2017).

15 Sec. 57 (a) Myanmar Companies Law (2017).

16 Sec. 345 Myanmar Companies Law (2017).

17 Sec. 63 (a) Myanmar Companies Law (2017).

18 Sec. 60 (a) Myanmar Companies Law (2017).

19 Sec. 60 (b) Myanmar Companies Law (2017).

20 Sec. 63 (b) Myanmar Companies Law (2017).

A Company's constitution may, but does not have to provide that new shares shall be offered to the Members in proportion to the existing shares held by each member.²¹

A share in a Company may confer on the holder such rights as prescribed for the share class including the right to vote at a meeting, the right to dividends, and the right to a share in the distribution of assets upon liquidation of the Company.²² The Company's power to issue shares and other securities, and determine the terms of such shares and other securities, includes the power to issue:

- Shares of different classes;
- Shares which may be redeemable;
- Shares which have preferential or restricted rights to distributions of capital or income;
- Shares which have special, limited, or conditional voting rights; and
- Shares which do not have voting rights,
- options to acquire shares;
- Securities to convert into shares; or
- Other interests.²³

Changes in the share capital or changes of Members have to be filed with DICA within 21 days,²⁴ provided that any transfer of shares is subject to stamp duty at a rate of 0.1%.

3. Directors

Directors of a Company may be Myanmar citizens or foreigners, residing within or outside of Myanmar, provided that every Company must appoint at least one (1) director who is ordinarily resident in the Union of Myanmar.

Comment Luther: "Ordinarily resident" means a person who is a permanent resident of the Union of Myanmar under an applicable law or is resident in the Union of Myanmar for at least 183 days in each 12 months' period commencing from (i) in case of an existing Company or a body corporate registered under a repealed law, the date of commencement of this Law or (ii) in case of any Company or body corporate registered under the Myanmar Companies Law (2017) the date of registration of the Company or body corporate.²⁵

21 Sec. 63 (c) Myanmar Companies Law (2017).

22 Sec. 61 (a) Myanmar Companies Law (2017).

23 Sec. 62 (b) Myanmar Companies Law (2017).

24 Sec. 71 and 86 Myanmar Companies Law (2017).

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

It is important to note that the shareholders of the Company are responsible for having a director ordinarily resident in the Union of Myanmar on the Board. Hence, in situations where the sole resident director is leaving Myanmar or no local director is remaining due to other reasons, the shareholders will be duty-bound to appoint a new resident director as soon as possible, but no later than six months. If no such replacement is made within that period and the business continues to operate after the six months' deadline expires, the shareholders could be held personally accountable for the Company's debts and liabilities.

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

If a Company appoints a new director, or a person ceases to be a director of the Company because he or she has resigned, be removed or become unfit to be a director, such change shall be filed with DICA within 28 days from the date of the change.

4. Board of Directors

Together, all directors of a Company form the Board. The Board is charged with the function of managing the Company's business.²⁶ It may exercise all powers of the Company except any power that the Myanmar Companies Law (2017) or the constitution of the Company require the Company to exercise in general meeting.

A Company is represented by all directors collectively, i.e. the Board as an organ of the Company – and not by one (1) director singly. Hence, in theory every transaction a Company enters into has to be approved by the Board.

In practice the Board may of course delegate its powers to act for the Company (and sign agreements on the Company's behalf) to individual directors (or other persons), and it should be noted that the Myanmar Companies Law (2017) provides for the assumption, that a contract duly executed by two (2) directors has been approved by the Board.

5. Passing of Resolutions

The decisions of the Board or the general meeting of the Members are embodied in resolutions.

The Myanmar Companies Law (2017) allows for different ways to pass a resolution.

²⁶ Sec. 160 Myanmar Companies Law (2017).

Meetings

Decisions of the Board or the Members are generally to be made by a resolution passed at a meeting duly convened by giving notice to the directors or Members eligible to vote, and with a quorum of directors or shareholders attending the meeting.

As an alternative to physical meetings, the Myanmar Companies Law (2017) allows that a meeting of the Board may be held by telephone conferencing or other means of simultaneous intercommunication, if consented by all directors or as per the constitution of the Company.²⁷

While the Myanmar Companies Law (2017) does not provide for any explicit rules concerning general meetings of the Members held by technological means, it acknowledges this possibility if the Company's constitution so provides and if compliance with the requirements for notification and voting under the Myanmar Companies Law (2017) is ensured. Such meetings must be held in a manner that all shareholders can attend and must be properly conducted.²⁸

Minutes of a meeting shall be signed by the chairman of the meeting, and constitute conclusive evidence of the resolutions that have been passed at the meeting.²⁹

Written Resolutions

Alternatively, the Myanmar Companies Law (2017) also recognizes the possibility to pass resolutions in writing in lieu of holding a meeting.³⁰ Written resolutions of the Board shall be signed by all directors entitled to vote, containing a statement that they are in favour of the resolution. It is not necessary that every director signs on the same copy of the respective document, but separate copies of the document in the same form may be signed and the resolution is passed when the last director signs.³¹

Similarly, resolutions of the Members of a private Company may be passed in writing without a general meetings being held if all shareholders entitled to vote sign a document containing a statement that they are in favour of the resolution set out in the document. Signing in counterparts is also permitted.³²

²⁷ Sec. 145 (ii) Myanmar Companies Law (2017).

²⁸ Sec. 151 Myanmar Companies Law (2017).

²⁹ Sec. 157 (a) Myanmar Companies Law (2017).

³⁰ Sec. 157 Myanmar Companies Law (2017).

³¹ Sec. 156 (c) Myanmar Companies Law (2017).

³² Sec. 156 (d) Myanmar Companies Law (2017).

Extracts of Minutes / Written Resolutions and Certified True Copies

Once a resolution has been duly passed in a (virtual) meeting or by written resolution, the Company may issue an extract or true copy of the resolution, which can customarily be certified by a director and/or the company secretary.

Any extract or true copy certified by two (2) directors or a director and the company secretary would further meet the requirements for the assumptions stipulated in sections 31, 29 of the Myanmar Companies Law (2017).

6. Common Seal

A Company may adopt a common seal, but is not required to do so.³³

If a Company has adopted a common seal, it may execute a document with the seal is affixed, if the execution is witnessed:

- If the Company has only one (1) director - that director;
- Two (2) directors of the Company; or
- A director and a company secretary of the Company.³⁴

7. Bank Account

A Company shall open and maintain at least one (1) bank account with a licensed bank in Myanmar.³⁵

It should be noted that while a Company is in principle permitted to open bank accounts outside of Myanmar, the Foreign Exchange Management Regulations (2014) stipulate that such account opening shall require the prior approval of the Central Bank of Myanmar.³⁶ In practice, such approval is rarely granted.

8. Winding Up

The winding up of a Company may be either (i) by the Court, (ii) voluntary, or (iii) subject to the supervision of the Court.³⁷

³³ Sec. 4 (b) Myanmar Companies Law (2017).

³⁴ Sec. 29 (c) Myanmar Companies Law (2017).

³⁵ Sec. 215 (d) Myanmar Companies Law (2017).

³⁶ Sec. 11 Foreign Exchange Management Regulations (2014).

³⁷ Sec. 292 Myanmar Companies Law (2017).

A Company may be wound up voluntarily:

- When the period (if any) fixed for the duration of the Company by the constitution of the Company expires, or the event (if any) occurs on the occurrence of which the constitution provides that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily;
- If the Company resolves by special resolution that the Company be wound up voluntarily; or
- If the Company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.³⁸

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution.³⁹ After the resolution has been passed, the Company has to cease to carry on its business, except for those actions that are required for the successful process of winding up.⁴⁰ The Company is required to give notice of the resolution of winding up by advertisement in the Gazette and in a daily newspaper within 10 days of passing the resolution.

B. Corporate Compliance

1. Name

A Company shall not be registered with a name identical to that by which a body corporate in existence is already registered, or so nearly resembling that name as to be calculated to deceive or otherwise likely to mislead or cause confusion. An exception may be granted if the existing company is in the course of being dissolved and signifies its consent.⁴¹

Once incorporated, a Company must ensure that its name is clearly stated in (i) every written communication sent by, or on behalf of, the Company; and (ii) every document issued or signed by or on behalf of the Company that evidences or creates a legal obligation of the Company.⁴²

Any Company may, by special resolution and subject to compliance with the Myanmar Companies Law (2017) and the

³⁸ Sec. 345 Myanmar Companies Law (2017).

³⁹ Sec. 346 Myanmar Companies Law (2017).

⁴⁰ Sec. 347 Myanmar Companies Law (2017).

⁴¹ Sec. 25 (a) Myanmar Companies Law (2017).

⁴² Sec. 27 Myanmar Companies Law (2017).

filing of notice in the prescribed form with DICA, change its name. The Company must make the filing within 28 days of the special resolution being passed.⁴³

2. Registered Office Address

Every Company shall from the date of its incorporation maintain a registered office address in Myanmar to which all communications and notices may be addressed.⁴⁴

The registered office does not have to be the same address as the Company's business address, and many Companies choose to register their address with the company secretary.

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

Any change of the registered office address (or the main business address) shall be registered with DICA.

3. Company Secretary

While not mandatory, many Companies choose to appoint a professional company secretary to ensure compliance with the statutory requirements stipulated in the Companies Law (2017).⁴⁵

43 Sec. 25 (d) Myanmar Companies Law (2017).

44 Sec. 141 (a) Myanmar Companies Law (2017).

45 Sec. 4 (b) Myanmar Companies Law (2017).

Any appointment or change of the company secretary shall be filed with DICA within 28 days from the date of the change.

Our Service: For an annual retainer fee of USD 1,200 (net) per year, we offer clients all routine corporate secretarial services at no additional fee.

4. Corporate Records, statutory registers and mandatory filings

Any Company must comply with various corporate secretarial obligations and statutory requirements, such as:

- Setting up, custody and maintenance of statutory books (Minute Book, etc.) and registers (Register of Members, Register of Directors and Secretaries, Register of Mortgages and Charges, etc.) in accordance with the requirements stipulated in the Companies Law (2017)
- Preparation and maintenance of notices, minutes, and other documents pertaining to directors' and shareholders' meetings, to be kept in the Minute Book of the Company;
- Preparation and lodging of all prescribed forms and requisite documents with DICA, e.g. annual returns and corporate changes such as the entity's name, constitutional documents, capital structure (transfer or issuance of shares), shareholders, directors, managers, auditors or the registered office address.

Mandatory filings with DICA include (not exhaustive):

Corporate Action	Time Limit	Provision(s)
Alteration of constitution	28 days from the day of passing the special resolution	Sec. 18 (a)
Annual return	within two months of its incorporation and once at least every year (but no later than one month after the anniversary of its incorporation)	Sec. 97
Appointment, resignation, removal or cessation of directors	28 days from the change	Sec. 141
Appointment, resignation, removal or cessation of secretary	28 days from the change	Sec. 141
Capital reduction	21 days from the reduction	Sec. 112 and 113
Change of address	28 days from the day of passing the special resolution	Sec. 141
Change of Company's name	28 days from the day of passing the special resolution	Sec. 25 (d)

Corporate Action	Time Limit	Provision(s)
Change of Company's type	28 days from the day of passing the special resolution	Sec. 58 (c)
Creation of mortgage or charge	28 days from the creation	Sec. 229 (a)
Issue of new shares	21 days from the issue	Sec. 71 (a)
Modification of mortgage or charge	28 days from the modification	Sec. 232
Redemption of shares	21 days from the redemption	Sec. 74 (e) and (f)
Transfer of shares	21 days from the change	Sec. 86

5. Annual Return

Within two (2) months from its incorporation and thereafter at least once in every year (but no later than one (1) month after the anniversary of its incorporation), a Company must file a return of its particulars with DICA in the prescribed form to confirm and update its particulars.⁴⁶

Non-compliance with this requirement will result in the suspension and ultimately the strike off of the Company from the register.

6. Financial Records

Every Company shall maintain written financial records to enable the preparation of financial statements in Myanmar language or English language in accordance with the applicable accounting standards with respect to:

- All sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place;
- All sales and purchases of goods by the Company;
- All assets and liabilities of the Company; and
- Any other financial matters prescribed under this Law or other applicable law.⁴⁷

The records shall be kept at the registered office address of the Company or at such other place as the directors think fit, and shall be open to inspection by the directors during business hours.

⁴⁶ Sec. 97 (a) Myanmar Companies Law (2017).

⁴⁷ Sec. 258 (a) Myanmar Companies Law (2017).

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.

7. Audit

Unless exempted as a Small Company, the financial statements of a Company shall be audited by an independent auditor.⁴⁸

The auditor has a right of access at all times to the financial records, books and accounts and vouchers of the Company, and is entitled to such information and explanation from the directors and officers of the company as deemed necessary.⁴⁹

The auditor shall make a report to the Members of the Company on the accounts examined by him, and on every financial statement laid before the Company at its annual general meeting.⁵⁰

Comment Luther: Small Companies may enjoy simplified statutory requirements, such as exemptions from appointment of external auditors and holding of Annual General Meetings.

Under the Myanmar Companies Law (2017), "Small Company" means a company, other than a public company or subsidiary of a public company, which satisfies the following conditions: (i) it and its subsidiaries have no more than 30 employees and (ii) it and its subsidiaries had annual revenue in the prior financial year of less than MMK 50,000,000 Kyats in aggregate.

⁴⁸ Sec. 260 (b) Myanmar Companies Law (2017).

⁴⁹ Sec. 280 (a) Myanmar Companies Law (2017).

⁵⁰ Sec. 280 (b) Myanmar Companies Law (2017).

8. Annual General Meeting

Unless exempted as a Small Company, every Company must hold an Annual General Meeting (hereafter “AGM”) at least once in every calendar year, with the first AGM to be held within 18 months from the date of incorporation, and all subsequent AGMS to be held not more than 15 months after the holding of the last preceding AGM.⁵¹

During the AGM, the annual financial report, directors’ report and auditor’s report⁵² must be read and the auditors for the next financial year be appointed.⁵³ The chairman must allow a reasonable opportunity for the Members to ask questions or make comments about the management of the Company. Further, the Company’s auditor shall attend the AGM, and the chairman must allow reasonable opportunity for the Members to ask the auditor questions about the audit, audit report or accounts of the Company.⁵⁴

Our Service: *The preparation of the Annual General Meeting is part of our Corporate Secretarial Services and includes the lodgements of the minutes and the statutory annual compliance forms with DICA.*

9. Beneficial Ownership

In order to tackle money laundering and tax evasion, Myanmar introduced mandatory disclosure of beneficial ownership for all companies. Pursuant to Directive No. 17/2019 issued by DICA, every Company shall, from 1 January 2020, obtain and keep records of certain information relating to its beneficial owners. Such information shall further be registered with DICA and the Internal Revenue Department (“IRD”). A Beneficial Owner is a natural person who:

- Holds, directly or indirectly, more than 5% of the shares or voting rights of the Company;
- Has the right to, directly or indirectly, appoint and remove the majority of the Board or other governing body of the Company; or
- Has the right to, or actually, exercises significant influence or control over the Company.

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.

51 Sec. 146 (a) Myanmar Companies Law (2017).

52 Sec. 260 (b) Myanmar Companies Law (2017).

53 Sec. 146 (b) Myanmar Companies Law (2017).

54 Sec. 146 (d) Myanmar Companies Law (2017).

II. Employment Laws

Any Company 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 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.⁵⁵

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.⁵⁶ Employers with five 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

55 Rule 3 Shops and Establishment Rules (2018).

56 Sec. 5 (a) Employment and Skills Development Law (2013).

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.

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 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 Company 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.⁵⁷

Our Service: Personal Income Tax registration is offered as part of Luther’s Payroll Services and charged on a headcount 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.⁵⁸ 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 months from the end of the income year.⁵⁹

Employers failing to withhold and pay their employees’ personal income tax are deemed to be at default and liable for such payments.⁶⁰

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 or more employees shall register with the relevant Township Office of the Social Security Fund.⁶¹ The registration must be submitted within 10 days from the appointment of the fifth employee.

Employers further have to register each new employee within 10 days from the appointment and notify the relevant Social Security Office within 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 headcount basis.

⁵⁷ Sec. 16 (d) Income Tax Law (1974) as amended in 2016.

⁵⁸ Sec. 16 (d) Income Tax Law (1974).

⁵⁹ Sec. 18 Income Tax Law (1974).

⁶⁰ Sec 16 (g) Income Tax Law (1974).

⁶¹ Sec. 11 (a) Social Security Law (2012).

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.⁶²

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

IV. Corporate Tax

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

1. Corporate Income Tax Registration

Every Company 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 month before the date of commencement of business. Taxpayers are further required to submit a duly completed IRD Information Gathering Worksheet.

2. Filing and Payment of Corporate Income Tax

Companies incorporated in Myanmar are subject to corporate income tax levied on their profits. The general corporate income tax rate applicable to business profits is 25%.

It should be noted, however, that if a Company additionally registered under the Myanmar Investment Law 2016 or the Special Economic Law Zones 2014, it may enjoy certain tax benefits and exemptions.

Corporate income tax is due at the time of receiving the income⁶³ and payable in advance in quarterly instalments

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

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

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

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

66 Sec. 11 (a) Commercial Tax Law (1990).

67 Sec. 3 Commercial Tax Regulations (2012).

68 Sec. 6 Commercial Tax Regulations (2012).

computed on the estimated total profit for the financial year.⁶⁴ Every Company shall further furnish a return of income for the financial year within three months from the end of each financial year.⁶⁵ The figures in the return of income must be expressed in Myanmar Kyat.

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

3. 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.

Companies deducting withholding tax from payments 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.

4. Commercial Tax Registration

Unless exempted, any Company 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.⁶⁶ The application shall be submitted one month prior to the commencement of business.⁶⁷

Further, any Company commencing operation shall furnish a letter of intimidation with the prescribed form within 10 days from the commencement of business to the relevant Township Revenue Officer.⁶⁸

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).

5. Filing and Payment of Commercial Tax

Companies having taxable proceeds from the sale of goods or services must pay Commercial Tax monthly within 10 days after the end of the relevant month.⁶⁹ In addition, quarterly

69 Sec. 12 (a) Commercial Tax Law (1990).

returns must be submitted to the relevant Township Revenue Officer within one month after the end of the relevant quarter, and annual returns within three months after the end of the relevant financial year.⁷⁰

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

6. 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.

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;

⁷⁰ Sec. 13 (a) Commercial Tax Law (1990).

- 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 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 Company 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, Companies 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 year to a foreign corporation, and correspondingly, no foreign corporation shall receive a lease of immovable property for a term exceeding one year.⁷¹

Myanmar laws provide certain exemptions from the aforementioned restrictions. For example, the Myanmar Investment Law (2016) provides that any (foreign) investor who has obtained a Permit or Endorsement from the Myanmar Investment Commission (“MIC”) may enter into long-term lease agreements of up to 50 years with the possibility of two extensions of 10 years each.⁷²

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 year or reserving a yearly rent shall be registered with the Register of Deeds Office.⁷³

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

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

73 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.

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.
- 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 contracts

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



The shown locations are either Luther legal or corporate services offices and/or offices of our local cooperation partners.

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>420</p>	<p>Locations</p> <p>20</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.

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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

www.luther-services.com

