

Luther.

Myanmar News Anti-Corruption Compliance

August 2019

Table of Content

I. Introduction

Page 3

II. Anti – Corruption Law (2013)

Page 3

III. Your Contacts

Page 5

I. Introduction

Many foreign and local investors name corruption across all sectors as the most serious obstacle for doing business in Myanmar. While the government is increasingly addressing transparency on a ministerial level, corrupt practices remain deeply-rooted and pervasive in the public and private sectors.

Under the current legal framework, anti-corruption is primarily regulated by the Penal Code (1861) and the Anti-Corruption Law (2013), which repealed and replaced the previous Prohibition of Bribery Act (1948).

The Anti-Corruption Law (2013) provides for the establishment of an Anti-Corruption Commission and criminalizes active and passive bribery in the public sector, abuse of office and attempted corruption. While the original law primarily addressed the acceptance of bribes by public officials, the revised law now extends the prohibition to the accepting and giving of bribes by any person.

Corruption may be penalized with fines, imprisonment or both penalties.

II. Anti – Corruption Law (2013)

The Anti-Corruption Law (2013) was enacted to provide a coordinated criminalization of corruption, implement effective mechanisms to combat corruption, increase public awareness, promote ethical practices, good governance and the rule of law as well as taking action effectively against persons who commit corruption.

1. Anti-Corruption Commission

On 25 February 2014, the first Anti-Corruption Commission was formed to oversee the implementation of the Anti-Corruption Law (2013). It may investigate and direct the seizure of funds and property derived from corruption and instruct the relevant prosecution authorities to take action against any person engaged in corrupt practices prohibited under the law.

2. Corruption Prohibited under the Law

Following the latest amendment, the Anti-Corruption Law (2013) now defines Corruption – 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.”*

The change from prohibiting merely the acceptance of bribes by officials in the original law, to prohibiting also the promise or giving of bribes by any person, significantly widens the scope of the Anti-Corruption Law (2013).

While the original law of 2013 already provided, that conspiracy, aiding and abetting in an offence shall also be an offence under the law, the amended wording clarifies that the penalized prohibition includes corrupt acts by private individuals and corporations.

3. Directive Concerning Acceptance of Gifts

The Anti-Corruption Law (2013) stipulates a wide prohibition on the acceptance of gifts, but certain exemptions may apply.

The most detailed rules were published in April 2016 in the form of a directive by the Office of the Union President concerning the acceptance of gifts (“Directive”), subject to which

government cabinet members, members of commissions/organizations formed by the government and public service personnel are prohibited to accept gifts from individuals and corporations believed to be provided by reason of the recipient's office.

Pursuant to the this Directive, the following gifts (in the form of money and valuable items such as gold, silver, air-tickets, free lodging, free meals, entertainment, golf club membership fees, etc.) **may not be accepted**:

- Gifts from an individual and corporation desiring or requesting a beneficial act empowered by the recipient's office;
- Gifts from an individual and corporation engaged in or purporting to engage in economic relations with an organization under the recipient's authority or supervision;
- Gifts from an individual and corporation which will benefit from the recipient taking action in the exercise of the recipient's official duties; and/or
- Gifts from an individual and corporation which will benefit from the recipient refraining from taking action in the exercise of the recipient's official duties.

Gifts which may not be accepted shall be dealt with as follows:

- The gifts must be returned; or
- If the recipient wishes to accept the gift, the market price of the gift must be reimbursed to the gift provider; or
- Perishable gifts (flowers, fruits) shall be distributed among the staff in the department.

The following gifts **may be accepted**:

- A gift not exceeding Myanmar Kyats 25,000 in value, provided that the total value of all gifts accepted from the individual or corporation shall not exceed Myanmar Kyats 100,000 per year;
- A gift provided not by reason of the recipient's office, but by reason of family or personal relationship; and/or
- A gift of not more than Myanmar Kyats 100,000 in value on the occasion of an auspicious day, provided that the recipient shall not accept more than one such gift from the individual or corporation per year.

4. Anti-Corruption Code of Ethics

On 19 October 2018, the Anti-Corruption Commission issued Notification 14/2018, announcing fundamental principles for private enterprises to prevent corruption and guide them when dealing with ministries, government organizations or actors 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;
- To effectively identify, analyze and assess risks of corruption;
- To maintain strict, detailed measures for sensitive areas with a high risk of corruption;
- To apply anti-corruption measures not only to their own entity but also to affiliated businesses;
- To maintain accurate and systematic accounts and records;
- To maintain HR Management policies supportive of anti-corruption measures;
- To maintain trustworthy mechanisms for the reporting of suspected corruption; and
- To 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.

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

5. Practice Statement

On 29 October 2018, the Internal Revenue Department of the Ministry of Planning and Finance published the Practice Statement No. 1/2018, clarifying how the Internal Revenue Department treats the cost of gifts provided to public officials for income tax purposes.

According to this Practice Statement, the Internal Revenue Department will not allow income tax deductions in respect of gifts made to public officials. Under the Income Tax Law (1974), the costs for such gifts shall either qualify as a personal or inappropriate expenditure.

III. Your Contacts



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



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



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



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



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



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



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

Imprint

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

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

Copyright: These texts are protected by copyright. You may make use of the infor-
mation contained herein with our written consent, if you do so accurately and cite
us as the source. Please contact the editors in this regard
contact@luther-lawfirm.com

Disclaimer

Although every effort has been made to offer current and correct information, this
publication has been prepared to provide information on recent regulatory and le-
gal developments in Myanmar only. It is not exhaustive and thus does not cover
all topics with which it deals. It will not be updated and cannot substitute individ-
ual legal and/or tax advice. This publication is distributed with the understanding
that Luther, the editors and authors cannot be held responsible for the results of
any actions taken on the basis of information contained herein or omitted, nor for
any errors or omissions in this regard.

Luther Rechtsanwaltsgesellschaft mbH advises in all areas of business law. Our clients include medium-sized companies and large corporations, as well as the public sector.

Berlin, Brussels, Cologne, Dusseldorf, Essen, Frankfurt a. M., Hamburg, Hanover, Leipzig,
London, Luxembourg, Munich, Shanghai, Singapore, Stuttgart, Yangon

Luther Corporate Services: Delhi-Gurugram, Kuala Lumpur, Shanghai, Singapore, Yangon

Your local contacts can be found on our websites www.luther-lawfirm.com and www.luther-services.com.



Hits the mark. Luther.

