Establishing a Corporate Set-Up in Myanmar
Updated: March 2016
We should be delighted to guide and assist you in deciding on whether and if so, how best to establish a business presence in Myanmar.

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We set out below an overview of the types of business vehicle typically available for foreign investors, namely a Branch Office or a Representative Office of a foreign company or a subsidiary in form of a Limited Company.

When forming or registering a business in Myanmar, generally three options exist: (i) registration under the Companies Act (1914) only, (ii) additional registration under the Foreign Investment Law (2012) or (iii) additional registration under the Special Economic Zone Law (2014) for businesses located in a Special Economic Zone.

Please note that a new Companies Law has been submitted to the Myanmar Parliament and may be enacted in the near future. The information provided herein is thus subject to change.

1. Registration under the Companies Act

The registration under the Companies Act currently still consists of two main steps: (i) The application for a Trade Permit, followed by (ii) the registration with the Company Registration Office.

1.1. Trade Permit

Any foreign investor conducting business in Myanmar is required to obtain a so called “Trade Permit”. Under the Companies Act (1914), any Branch or Representative Office, or subsidiary of a foreign company, as well as any joint venture between a foreign investor and a local person is considered “foreign”. Exemptions apply only for joint ventures entered into by foreigners with a Myanmar government entity under the Special Company Act.

Update: Pursuant to the draft of the revised Companies Law, only companies with a certain percentage of foreign ownership will be considered “foreign”.

Approval of the application for such Trade Permit may be subject to certain conditions imposed by law or ministerial policy. Please note that despite the fact that the required permit is called “Trade Permit”, a foreign entity, whether Branch Office or Limited Company, is with few exemptions not allowed to carry out trading activities. The most notable exemption applies...
to investors in Special Economic Zones. Other investors are in general only allowed to conduct services or manufacturing activities. The possibility remains to trade through Myanmar companies that do not have any foreign shareholders.

In order to obtain a Trade Permit, a certain capital must be brought physically into Myanmar. The registration of a company under the Companies Act (1914) generally requires a capital of USD 50,000. Higher amounts may apply for registrations under the Foreign Investment Law (2012) or the Special Economic Zone Law (2014).

The capital requirement applies to Limited Companies as well as Branch Offices and Representative Offices. It should be noted though, that the capital may be fully spent in the course of the business.

**Update:** Pursuant to the draft of the revised Companies Law, the Trade Permit requirement will be abolished.

### 1.2. Branch Office

A Branch Office is able to act independently and to engage in legitimate profit-making activities (such as services, but not trade).

However, a Branch Office will not be treated as a separate legal entity from the foreign company it represents. Consequently, any and all contracts it enters into and the legal obligations, debts and liabilities arising therefrom, shall be binding and enforceable against the foreign company.

For tax purposes, a Branch Office is treated as a non-resident foreign entity. All income of a Branch office derived from Myanmar is taxed at a rate of 25%, the same rate that applies to resident companies.

The formalities to register a Branch Office under the Companies Act (1914) (without additional approval under the Foreign Investment Law (2012)) are more cumbersome than those of the incorporation of a Limited Company, both in volume and complexity.

The following documents of the foreign company have to be provided for the registration of the Branch Office:

- Notarised and legalised copy of the Memorandum and Articles of Association of the foreign company;
- Board of directors’ resolution of the foreign company approving the registration of the branch in Myanmar, the intended investment amount, and the appointment of a representative;
- Notarised and legalised copy of an appointment letter for the authorized person; and
- Notarised and legalised copy of the annual report or the audited financial statements of the foreign company for the previous two years.

All the above documents need to be submitted in English. Hence, if the original document (e.g. Memorandum and Articles) is in another language, an official translation must be provided. We can arrange translation services, if necessary.

The processing of the application takes about two to four months. An official registration fee of MMK 1,000,000 (approx. USD 800) applies.

It is however possible to get a temporary registration certificate and a temporary trade permit within approx. two to four weeks from submission of the complete documents. The temporary certificates are valid for up to six months.

### 1.3. Representative Office

A foreign company may also choose to register a Representative Office. However, like a Branch Office, its main disadvantage is that a Representative Office is not a separate legal entity and its liabilities accordingly cannot be limited.

One further disadvantage is that the activities of a Representative Office are restricted. The Representative Office is only allowed to carry out non-profit making activities, such as market observation and promotional and liaison work for the foreign company. It will not be permitted to engage in any commercial activities.

Since the registration requirements, procedure and costs are the same as for the registration of a Branch Office, most investors choose to either incorporate a Limited Company or a Branch Office instead.

### 1.4. Limited Company

A Limited Company is a fully-fledged, independent legal entity. In general, foreign investors tend to establish a Limited Company for their business activities in Myanmar.

A Limited Company must currently have a minimum of two shareholders, whether natural persons or corporate entities.
The shareholding can be 100% foreign. Please note, however, that certain activities and business segments might require such percentage of local shareholding as the authorities may determine, or may even be blocked for foreign investment. A Limited Company must further appoint a minimum of two directors, both of which can be foreign. There is currently no requirement for the directors to be resident in Myanmar.

*Update: Pursuant to the draft of the revised Companies Law, companies may in future be incorporated with one shareholder and one director. Please note, though, that at least one director will have to be an ordinary resident of Myanmar.*

As mentioned above, a Limited Company is in most cases not allowed to trade but can provide all kinds of services and can in general engage in profit generating activities.

For tax purposes, a Limited Company is treated as a resident entity. The applicable tax rate is 25%. Tax is generally also applicable to income from sources outside of Myanmar, unless a double taxation agreement with such other country provides otherwise. Currently, Myanmar has double taxation agreements (“DTA”) in force with Singapore, Malaysia, India, South Korea, Thailand, Laos, UK and Vietnam.

For the incorporation and registration of a Limited Company under the Companies Act (1914) with the Company Registration Office, the following information and documents are required:

- Intended name of the Limited Company to be formed;
- Intended activities;
- Estimated expenditure for the first year of operations;
- Particulars of the individual shareholders (passport details, residential address, occupation) or in case of corporate shareholders a board of directors’ resolution of each shareholder approving the incorporation of the Limited Company in Myanmar, stating the intended investment amount, and the appointment of a representative; and
- For corporate shareholders, a register extract or Certificate of Incorporation and the Articles of Association.

All the above documents need to be submitted in English. Hence, if the original document (e.g. the Certificate of Incorporation) is in another language, a translation must be provided. We can arrange translation services, if necessary.

The processing of the application takes about two to four months. An application fee of MMK 1,000,000 (approx. USD 800) applies.

It is however possible to get a temporary registration certificate and a temporary trade permit within approx. one week from submission of the complete documents. The temporary certificates are valid for up to six months.

2. Foreign Investment Law (2012)

The registration of a company under the Foreign Investment Law (2012) requires the same steps as for a company registering under the Companies Act (1914), but is subject to the prior approval by the Myanmar Investment Commission (“MIC”). Generally, not only the conditions for a registration under the Foreign Investment Law (2012) are higher (e.g. regarding share capital, employment of local workforce), but the processing time of an application under the Foreign Investment Law (2012) may also take longer than a registration under the Companies Act (1914).

While the additional registration under the Foreign Investment Law (2012) is generally optional for foreign investors, certain activities such as manufacturing and infrastructure projects as well as investments restricted under Notification 26/2016 can usually only be undertaken by so-called MIC-companies.

Foreign investments under the Foreign Investment Law (2012) require a permit issued by the Myanmar Investment Commission. The Myanmar Investment Commission will consider certain criteria of the proposal foreign investment when deciding whether to approve the investment under the Foreign Investment Law (2012) or not.

The main criteria include:

- Development of local employment opportunities;
- Know-how transfer;
- Promotion and expansion of exports;
- Support and development of the local infrastructure;
- Development of a modern and energy efficient industry;
- Manufacturing of goods that are currently imported; and
- Protection and conservation of the environment.

While the Foreign Investment Law (2012) does not specify the minimum amount of capital required for a company in order to obtain approval from Myanmar Investment Commission, in our experience the Myanmar Investment Commission will usually require investments (in cash or in kind) of USD 500,000 – 1 Million.

The main advantages of a registration under the Foreign Investment Law (2012) are significant tax incentives, as well
as the possibility to enter into long term lease agreements (50 years with the possibility to extend for two additional terms of ten years each).

Section 27 of the Foreign Investment Law (2012) lists, amongst others, the following benefits:

- 5-year tax holiday that may be extended;
- Tax exemption for re-invested profits;
- Accelerated depreciation on capital assets;
- Tax relief on income tax up to 50% on profits from exports;
- Tax deductions for research and development;
- Exemptions from customs duties on capital assets to be used in the business imported during construction period;
- Exemption from customs duties on raw materials imported during the first three years of production;
- Relief on customs duties on imports for expansion of the business; and
- Exemption from commercial tax for exports.

**Update:** Pursuant to the draft of the Myanmar Investment Law, the Myanmar Investment Commission will get more flexibility with regard to the awarding of incentives. For example, income tax exemptions for three up to seven years may be granted depending on the location of the investment project.

The Foreign Investment Law (2012) is complemented by guidelines and regulations providing more details regarding the application procedure, specifying the economic sectors into which foreign investments are allowed and, as stated above, the criteria to be met and conditions the Myanmar Investment Commission may impose in order to approve an application.

The procedure for the registration with the Myanmar Investment Commission under the Foreign Investment Law (2012) is as follows:

i. The investor shall prepare a complete and comprehensive proposal.

ii. The proposal shall be submitted to the Myanmar Investment Commission. The Commission Office will examine the submitted application to assess whether the documents are complete.

iii. The accepted proposal will be submitted to the weekly meeting of the Proposal Assessment Team and the investor will be informed on whether the proposal has been accepted or rejected by the Myanmar Investment Commission.

iv. The Commission Office will coordinate and consult with the Regional Government and relevant Ministries on their recommendations for the accepted proposal.

v. Upon receiving the recommendation, the proposal will be submitted to the Myanmar Investment Commission meeting.

vi. The MIC permit will be issued to the investor upon obtaining the approval from the Myanmar Investment Commission.

The details of the application would be determined by us in close liaison with the Myanmar Investment Commission, with which we have been dealing on similar projects previously.

### 3. Special Economic Zones

Companies intending to set up business in one of the Special Economic Zones have to register under the Special Economic Zone Law (2014). Such application process includes the application for company registration with the Company Registration Office. The registration under the Special Economic Zone Law (2014) and the Foreign Investment Law (2012) are (currently) mutually exclusive.

The Special Economic Zones are linked to major infrastructure projects, including the construction of deep sea ports, power grids and pipelines to neighboring countries. Several Special Economic Zones are currently under development in Myanmar, with the Thilawa Special Economic Zone being the first to be operational.

Subject to certain conditions, investors in the Thilawa Special Economic Zone generally have the right to engage in any business which is not prohibited under the law, including manufacturing and provision of services, as well as wholesale trading activities.

When deciding about an investment application, the Management Committee will consider certain criteria of the proposed investment, comparable to the criteria applied by the Myanmar Investment Commission for investments under the Foreign Investment Law (2012). The specific guidelines and regulations for every Special Economic Zone provide more details regarding the application procedure, specifying the economic activities that may be operated in the Special Economic Zone and the requirements for obtaining an investment permit.

Notification 81/2014 to the Special Economic Zone Law (2014) for the Thilawa Special Economic Zone stipulates minimum capital requirements for different types of investment
(additional investment requirements apply for wholesale trading companies):

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

### 3.1. Investment in Thilawa

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

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

- Income tax holidays for the first seven years from the commencement of the commercial operation;
- Tax relief of 50% for additional five years on the income tax rate for the second five years;
- Tax relief of 50% for the third five years on the profit which is reserved from the business as a reserve fund if it is reinvested within one year in the business;
- Import exemption from customs duties and other taxation paid at the time of importation on raw materials for production, machinery, instruments and necessary spare parts for production; motor vehicles and construction of the factory, warehouse and office;
- Import exemption from customs duties and other taxation paid at the time of importation on trading goods, motor vehicles and other materials which are essential for the business for free-tax wholesale trading, export trading as well as services and transportation;
- Permission to carry forward losses for five consecutive years after the year in which the losses were incurred;
- General exemption from commercial tax may be given;
- Exemption from commercial tax may be given for manufactured goods which will be exported;
- Exemption from commercial tax may be given for goods imported from the domestic market or the promotion zone into the free zone;

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

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

In May 2015, the Management Committee of the Thilawa Special Economic Zone issued the Instruction on the Scope of “Trading Activities Permitted for Investors in the Thilawa Special Economic Zone” (Instruction 2/2015). Pursuant to this instruction, foreign investors in the Thilawa Special Economic Zone will, subject to certain requirements, be permitted to carry out import and wholesale trading activities throughout the country.

Some restrictions remain however: retail sale outside of the Thilawa Special Economic Zone is excluded from the trade permission, as is the sale of “four-wheel vehicles” and motorcycles, for which special regulations by the Ministry of Commerce apply.

3.3. Registration Process

As the investments in a Special Economic Zone are under the ambit of the Special Economic Zone Law (2014), the Management Committee of the respective Special Economic Zone will handle the investment applications. Thilawa offers a so-called One-Stop-Service-Centre, where all relevant licenses, permits and approvals can be applied for and additional services are offered (e.g. labour registration or visa services for foreign employees). The One-Stop-Service-Centre is staffed by representatives from:

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

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

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

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

- The investor shall complete a questionnaire provided by the Management Committee;
- A land reservation agreement shall be signed with the developer of the Special Economic Zone before submitting the investment application.
A complete and comprehensive investment application shall then be submitted to the Management Committee, which shall include:

- Location of the land in the Special Economic Zone, and location of the factory;
- Water supply and electricity supply plan;
- Building/factory construction plan;
- Plan for installation of machinery and equipment;
- Environmental management plan; and
- Investment Application Form (Form-1) and its cover letter.

The Management Committee will examine the submitted application and take a decision within 30 days.

After receiving the permit, the land lease agreement can be signed with the developer and has to be submitted to the Management Committee within six months after issuance of the investment permit;

The new company has to be registered at the One-Stop-Service-Center of the Special Economic Zone, which can be done at the time the investment application is submitted. However, the new company’s registration will only be completed when the investment permit is granted. The same documentation is required as for a company registration with the Company Registration Office:

- Intended name of the Limited Company to be formed;
- Intended activities;
- Estimated expenditure for the first year of operations;
- Particulars of the individual shareholders (passport details, residential address, occupation) or in case of corporate shareholders a board of directors’ resolution of each shareholder approving the incorporation of the Limited Company in Myanmar, stating the intended investment amount, and the appointment of a representative, a register extract or Certificate of Incorporation and the Articles of Association.

The building permit and fire safety certificate have to be obtained. The respective application can be submitted at the time of the investment application and will first be reviewed by the developer, to check if the standards are in compliance with their regulation, and then by the Management Committee, to check further compliance.

For every investment project an Environmental Conservation and Prevention Plan has to be submitted. For some industries, additionally an Initial Environmental Evaluation Report or an Environmental Impact Assessment is required.

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

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

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

Please note that commercial operations must be commenced within three years after issuance of the investment permit. On special request, an extension for this period can be granted.

II. Costs to register an entity in Myanmar

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

1. Registration of an entity

Incorporation/registration under the Companies Act (1914)

Our professional fee for the entire registration/incorporation of a Limited Company, a Branch Office or a Representative Office under the Companies Act (1914) is fixed at USD 3,500. This fee does not include official fees (approx. USD 800), stamp duty (approx. USD 65) and other disbursements.

Registration under the Foreign Investment Law (2012) or the Special Economic Zone Law (2014)

The fees for the entire registration under the Foreign Investment Law (2012) or the Special Economic Zone Law, including the incorporation/registration under the Companies Act (1914), will be charged on an hourly basis.
A fee cap may be agreed in advance depending on the complexity of the investment project.

2. Bank account opening

We may assist you with the opening of a bank account in Myanmar. Due to the very different procedures for the opening of an account with (i) a private Myanmar bank, (ii) a governmental Myanmar bank, or (iii) a private foreign bank, our assistance in this regard will be charged on a time spent basis.

3. Commercial Tax Registration

Our fee for the filing of the Commercial Tax Registration is USD 500. Please note, that the registration is valid for one year and must be renewed. Our fee for the renewal is USD 400.

4. Company Secretary

For an annual fee of USD 1,200, Luther Corporate Services Ltd may provide the following corporate secretarial services:

- Appointment of a Company Secretary;
- Custody and maintenance of the companies’ registers and minutes book;
- Attending to the auditor during the annual review of the company’s corporate records;
- Annual General Meeting and lodgments:
  - Preparing and filing of minutes of board meeting/BOD resolution;
  - Notice/invitation of the Annual General Meeting;
  - Minutes of (Annual) General Meeting;
  - Lodging of annual statutory compliance forms with the Company Registration Office.
- Resolutions and Statutory Returns:
  - Changes in officers of company;
  - Change of registered office;
  - Changes of representatives.

Non-routine services such as handover of existing corporate secretarial records, attendance at physical meetings, MIC filings as well as advisory matters requiring additional work will be charged on a time spent basis. An indicative fee for non-routine services may be provided before commencement of each assignment.

5. Nominee Director/Officer

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

6. Registered Office

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

7. Book-Keeping Services, Payroll and Tax Compliance

For businesses whose operations do not necessitate the employment of a full-time accountant, Luther Corporate Services Ltd offers bookkeeping services, including preparation of commercial tax documentation and payroll processing. Our fees for such services are generally volume based and we would be happy to provide you with a separate fee quote for this.

Please note, however, that we do not provide auditing services but may recommend proper and reasonably priced audit firms to you.

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

Yours faithfully
Luther Law Firm Limited

Alexander Bohusch
Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 230 1609/+95 1 230 1917
alex.bohusch@luther-lawfirm.com
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.


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

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