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Myanmar News

- I. Myanmar Investment Rules, 2017 (Draft)
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I. Myanmar Investment Rules, 2017 (Draft)

Introduction

On 18 October 2016, the bill of the new Myanmar Investment Law, 2016 was signed into law, combining and replacing the Foreign Investment Law, 2012 and the Myanmar Citizens Law, 2013.

One month later, on 17 November 2016, the Myanmar Investment Commission published Notification No. 123/2016, according to which investment proposals prepared under the – formally not being in effect anymore – Foreign Investment Law, 2012 and Citizens Investment Law, 2013 would be accepted until 31 December 2016; the new Law should be applicable from 1 January 2017 onwards. However, in practice, the Myanmar Investment Commission (“MIC”) has further postponed this date and investment proposals in accordance with the new Myanmar Investment Law, 2016 will be accepted only with effect from 1 April 2017.

On 13 January 2017, the Ministry of Planning and Finance published a first draft of the long awaited Myanmar Investment Rules, 2017. The draft is one of the by-laws implementing the Myanmar Investment Law, 2016 and contains provisions on types of investments, submission and approval of investment applications, long term lease agreements and tax incentives. On 23 January 2017, the ministry published a second draft which contains additional provisions on the authorities applying the new Myanmar Investment Law, 2016 (e.g. conduct of the members of the Myanmar Investment Commission) and investor disputes. On 4 February 2017, the ministry published a third draft, addressing reporting requirements, investor responsibilities, administrative penalties and other miscellaneous and transitional matters. A final draft, taking into account comments from the public, is expected to be published shortly.

Finally, in February 2017, the Myanmar Investment Commission published a draft of a new list of restricted investment activities pursuant to section 42 of the Myanmar Investment Law, 2016, listing types of investment activities which only the Union government can undertake, which are not permitted for foreign investors, which are permitted only as a joint-venture with resident citizens / citizen owned entities and investment activities which are subject to specifically prescribed conditions (e.g. approval from relevant ministries).

The drafts are still subject to government review as well as comments and feedback of interested parties and may be changed accordingly. Pursuant to U Aung Naing Oo, Secretary of the Myanmar Investment Commission, the Myanmar Investment Rules, 2017 shall be ready and enacted before the beginning of the new Financial Year (i.e. 1 April 2017).

Please find below a short summary of the drafts. Kindly note, that the thresholds in the brackets may be subject to further review before issuance of the Myanmar Investment Rules, 2017.

1. MIC Permit

When forming or registering a business in Myanmar, generally two options exist: (i) registration under the Companies Act, 1914 only, or (ii) registration as an MIC-company under the Myanmar Investment Law, 2016 (with the registration under the Special Economic Zone Law, 2014 for businesses located in a Special Economic Zone as third option).

Before the enactment of the new Myanmar Investment Law, 2016, the additional registration under the Foreign Investment Law, 2012 was generally optional for foreign investors. Certain business activities such as manufacturing and infrastructure projects as well as investments restricted pursuant to Notification No. 26/2016 did however require a Permit issued by the Myanmar Investment Commission.

Under the new Myanmar Investment Law, 2016, investors must submit a Proposal to the Myanmar Investment Commission and apply for a Permit only for the following businesses:

- Businesses / investment activities that are strategic for the Union;
- Large capital intensive investment projects;
- Projects which have large potential impact on the environment and the local community;
- Businesses / investment activities which use state-owned land and buildings; and / or
- Businesses / investment activities which are designated by the government to require the submission of a Proposal to the Myanmar Investment Commission.

1.1. Investments that are strategic for the Union

Pursuant to rule 11 Draft Myanmar Investment Rules, 2017, the following businesses / investment activities are considered strategic for the Union:

- Businesses / investments in the communications, technology, transport infrastructure, energy infrastructure, urban development infrastructure, extractive / natural resources, agricultural, urban land or media sectors [with an expected investment value exceeding US\$ [20] million];
- Businesses / investments made pursuant to the grant of a concession, agreement or similar authorisation by an authority [with an expected investment value exceeding US\$ [20] million] (according to the comments in the draft, the Myanmar Investment Commission will have the final decision of the relevant authority in relation to the investment where the grant, agreement or approval was made following a transparent and competitive procurement process);
- Businesses / investments in a border region or conflict affected area [with an expected investment value exceeding US\$ [10] million];
- Businesses / investments which will be conducted across the national border [with an expected investment value exceeding US\$ [20] million] (according to the comments in the draft, the investment will not be considered to be conducted across the border if the only cross border activity is to distribute goods and there is no material physical infrastructure used by the investor or an associate in relation to the investment outside the country);
- Businesses / investments primarily made for agriculture related purposes with the right to occupy or use more than [1000] acres of land; or
- Businesses / investments primarily made for non-agricultural related purposes with the right to occupy or use more than [100] acres of land.

1.2. Capital intensive investments

An investment is capital intensive, if the expected investment value exceeds US\$ [100 million] (rule 12 Draft Myanmar Investment Rules, 2017).

1.3. Investments that have a large potential impact on the environment and the local community

Pursuant to rule 13 Draft Myanmar Investment Rules, 2017, an investment is considered to have a large potential impact on the environment and the local community, if:

- It has been or is likely to be classified as [an Environmental Impact Assessment Type Project under the Environmental Conservation Law, 2012];
- The project is located under a designated protected area or biodiversity area under the Environmental Conservation Law, 2012; or
- It includes rights to occupy or use land which:
 - Has been or is likely to be acquired through expropriation, compulsory acquisition procedure or by agreement in advance of such expropriation or compulsory acquisition procedure in accordance with the laws of the Union and will either cause the relocation of at least [100] individuals permanently residing on such land or comprises an area of more than [100] acres;
 - Comprises an area of more than [100] acres and would be likely to cause involuntary restrictions on land use and access to natural resources to any person having a legal right to such land use or access;
 - Comprises an area of more than [100] acres and which is the subject of a pre-existing bona fide claim or dispute by a person regarding rights to occupy or use such land in a way which would conflict with the proposed investment; or
 - Would otherwise adversely impact the legal right of at least [100] individuals occupying such land to continue to occupy such land.

1.4. Businesses / investment activities which used state-owned land and buildings

Pursuant to rule 14 Draft Myanmar Investment Rules, 2017, an investment is taken to use state-owned land and buildings if an authority has land, buildings or relevant land rights and is authorised to transfer or deal in such land, buildings or rights in the capacity of an owner or occupier. It does not include land use rights arising from the grant, alteration or other adminis-

tration of land rights pursuant to a statutory land administration process within the responsibility of the authority.

However, pursuant to rule 15 Draft Myanmar Investment Rules, 2017, an investor is not required to apply for a Permit under section 36 (d) Myanmar Investment Law, 2016, if:

- The consideration or value of other payments to be made in respect of the acquisition and use of such land rights by the investor is less than US\$ [5] million in aggregate and the investor is leasing or licensing the land or building for a term of five (5) years or less (including any option the investor may have to an extension of such land rights) (this will only apply where the investor obtains rights to use multiple areas of state-owned land and buildings as part of the investment - the aggregate consideration for all such rights issued by any authority shall be used); or
- The investor sub-leases or licences such state-owned land or buildings from a person who:
 - Has previously obtained the right to use the state-owned land or building from an authority in accordance with the laws of the Union (including the Myanmar Investment Law, 2016); and
 - Is authorised to sub-lease or sub-licence the state-owned land or buildings in accordance with the rights granted from the authority; and the land and buildings are to be used by the investor in a manner permitted under the lease, agreement or other instrument by which the land rights were granted by the authority to the person.

According to the comments in the drafts, this does not cover the applications for grant land or other administration processes under the Farmland Law, 2012 or the Vacant, Fallow or Virgin Land Management Law, 2012 (noting that these may still be covered by other rules in the drafts).

1.5. Businesses / investment activities which are designated by the government to require the submission of a Proposal to the Myanmar Investment Commission

In addition, the government may designate businesses / investment activities requiring the submission of a Proposal to the Myanmar Investment Commission, the circumstances in which a Proposal shall be submitted to the Pyidaungsu Hluttaw (i.e. the national-level bicameral legislature, consisting of the upper and lower house) for approval, and other criteria or conditions which may apply to the assessment of a Proposal or grant of a

Permit, including determining a minimum cash investment that must be made as a proportion of the total investment amount (rule 20 Draft Myanmar Investment Rules, 2017).

2. Investment submissions

Pursuant to rule 37 Draft Myanmar Investment Rules, 2017 an investor shall make all submissions to the Myanmar Investment Commission in accordance with the Myanmar Investment Law, 2016 and the Myanmar Investment Rules, 2017, i.e. either (i) submit a Proposal to the Myanmar Investment Commission if the investment requires an Permit under section 36 Myanmar Investment Law, 2016 or (ii) apply for an Endorsement if the investor wishes to apply for a land use right and / or tax- or duty incentive.

Every submission must:

- Be in writing;
- In Myanmar or English language;
- Where it is a Proposal, include a summary of the proposed investment in English and Myanmar language;
- Be signed by an authorised representative of the investor and each other applicant, where relevant;
- Be completed on the prescribed form, where applicable;
- Contain the information as specified by the Myanmar Investment Commission;
- Contain information which is true and complete in all respects and not misleading;
- Be lodged with the Office of the Directorate of Investment and Company Administration or the relevant State or Regional Committee Office; and
- Be lodged with the relevant submission fee.

2.1. Proposal (application for MIC Permit)

An investor must submit a Proposal to the Myanmar Investment Commission, if the investment requires a Permit under section 36 Myanmar Investment Law, 2016. (A land use right and / or tax incentive application may be submitted concurrently with the Proposal.)

Pursuant to rule 39 Draft Myanmar Investment Rules, 2017 the proposal shall include the following information:

- The Investor, and any other person holding a significant direct or indirect interest in the Investment;
- The principal location or locations of the Investment;
- A description of the sector in which the Investment is to be made and the activities and operations to be conducted;

- The proposed amount of the Investment;
 - A description of the plan for the implementation of the Investment (including expected timetable); and
 - Such other information as prescribed by the Commission from time to time.

Pursuant to rule 56 Draft Myanmar Investment Rules, 2017, the Myanmar Investment Commission will publish a summary of the Proposal, which may include information to be disclosed pursuant to rule 39 Draft Myanmar Investment Rules, 2017 and such other information the publication of which it considers beneficial to the interests of the Union. The Myanmar Investment Commission shall however consider investor's requests to refrain from publishing confidential, commercially-sensitive or other sensitive information regarding the investment.

The procedure for the registration with the Myanmar Investment Commission under the Myanmar Investment Law, 2016 is as follows:

- The investor shall prepare a complete and comprehensive Proposal and submit it to the Myanmar Investment Commission.
- Once the Proposal has been submitted and the correct application fee paid, it shall be screened for eligibility and completeness at the Office of the Directorate of Investment and Company Administration (or such other place designated by the Myanmar Investment Commission):
 - If it is determined that the Proposal is eligible and complete, it will be accepted and the Proposal shall undergo substantive assessment by the Proposal Assessment Team and then be submitted to the Myanmar Investment Commission for review and determination at the meeting of its members; or
 - If determined that the Proposal is incomplete, ineligible for approval or on other relevant grounds, the Myanmar Investment Commission may reject the Proposal within [15] working days of receipt and give the investor notice of the rejection and an explanation of the grounds of rejection within further [10] working days.
- If the Proposal is accepted (or deemed to be accepted), the Myanmar Investment Commission will have up to additional [60] working days to complete its assessment and make its determination. The time period for the assessment of the Proposal can be suspended (e.g. if the Myanmar Investment Commission requires additional information from the investor or another party to make its assessment and determination on the Permit and any related application) and / or

extended if the Secretary of the Myanmar Investment Commission determines that the complexity or novelty of the Proposal or other circumstances mean that it is beneficial to the interests of the Union to allow an extension.

- The Myanmar Investment Commission may require that an authorised representative of the investor attends meetings of the Proposal Assessment Team or the Myanmar Investment Commission at which the Proposal is being considered;
- The Myanmar Investment Commission may require the investor to provide more information relevant to the Proposal at any stage of the process, including prior to acceptance for substantive consideration or before submitting the Proposal to the Myanmar Investment Commission for review at the meeting of the members of the Myanmar Investment Commission, including the chairman and the vicechairman.
- The Myanmar Investment Commission will consult with other authorities as necessary or desirable in the conduct of the assessment of a Proposal, and all such authorities shall be required to make relevant personnel and other resources available to ensure that the timeframes prescribed for the assessment of the Proposal are met.
- During assessment, the Myanmar Investment Commission shall consider whether the investor and / or the Proposal satisfies the following criteria:
 - The investor is acting, and the investment will be made, in accordance with the laws of the Union;
 - The investment is one for which a Permit is required;
 - The Proposal is in accordance with the Myanmar Investment Law, 2016 ;
 - The investor has demonstrated a commitment to carry out the investment in a responsible and sustainable manner, including by, as relevant, limiting any potentially adverse environmental and social impacts;
 - The investor or holding company or an associate involved in the management of the investment have business experience and acumen relevant to the investment;
 - The investor has demonstrated its financial commitment to the investment;
 - The investor is of good character and business reputation; and

- The investment is compatible with national development, security, economic, social and cultural policies, taking into consideration development, security, economic, social and cultural policy objectives announced by the Union government or the government of any State or Region affected by the investment.
- Upon approval, the Myanmar Investment Commission will issue the Permit.

The Myanmar Investment Commission may issue further guidelines on the Permit application and assessment procedure.

2.2. Endorsement

For all other businesses / investment activities, an additional application with the Myanmar Investment Commission will no longer be required.

One of the main advantages of a registration under the Foreign Investment Law, 2012 was the possibility to enter into long term leases and receive tax- and duty incentives. In future, any investor who wishes to apply for a long-term land use right and / or tax and duty incentives may apply for an Endorsement.

While the situation will thus not change for investors with a Permit issued by the Myanmar Investment Commission, all other investors without an Permit may in future submit an Endorsement application to the Myanmar Investment Commission to enjoy the rights to use land under chapter (12) and the exemptions and reliefs granted under sections 76, 77 and 78 Myanmar Investment Law, 2016.

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

The new Endorsement system will simplify and streamline the application for land use rights and tax- and duty incentives. Fewer documents have to be furnished to the authorities, and subject to further government consideration, it will be possible that, following a transitional period, applications involving investments of less than US\$ 5 million will be handled at the State / Regional level, with the close involvement of senior Directorate of Investment and Company Administration staff stationed in the State / Region. It is also likely that certain Endorsement applications (and related land use right and / or tax incentive applications) will be determined by designated Directorate of Investment and Company Administration officials.

The procedure for the Endorsement application with the Myanmar Investment Commission under the Myanmar Investment Law, 2016 is as follows:

- The investor shall prepare a complete and comprehensive Endorsement application and submit it to the Myanmar Investment Commission.
- Once the Endorsement application has been submitted and the correct application fee paid, it shall be screened for eligibility and completeness at the Office of the Directorate of Investment and Company Administration (or other place designated by the Myanmar Investment Commission):
 - If determined that the Endorsement application is eligible and complete, it shall be submitted for review and determination at the meeting of members; or
 - If determined that the Endorsement application is incomplete, ineligible for approval or on other relevant grounds, the Myanmar Investment Commission may reject the Endorsement application within [15] working days of receipt and give the investor notice of the rejection and an explanation of the grounds of rejection within a further [10] working days.
- If the Endorsement application is accepted (or deemed to be accepted), the Myanmar Investment Commission will have up to a further [60] working days to complete its assessment and make its determination. The time period for the assessment of the Endorsement application can be suspended (e.g. if the Myanmar Investment Commission requires additional information from the investor or other party to make its assessment and determination on the Endorsement application) and / or extended if the Secretary of the Myanmar Investment Commission determines that the complexity or novelty of the Endorsement application or other circumstances mean that it is beneficial to the interests of the Union to allow an extension.
- The Myanmar Investment Commission may require that an authorised representative of the investor attends meetings of the Myanmar Investment Commission at which the Endorsement application is being considered.
- The Myanmar Investment Commission may require the investor to provide more information relevant to the Endorsement application at any stage of the assessment process.
- The Myanmar Investment Commission will consult with other authorities as necessary or desirable in the conduct of the

assessment of an Endorsement application, and all such authorities shall be required to make relevant personnel and other resources available to ensure that the timeframes prescribed for the assessment of the Endorsement application are met.

- The Myanmar Investment Commission may delegate the authority for assessing the Endorsement application and issuing an Endorsement to a State or Regional Committee if the value of the investment is less than US\$ 5 million or to another officer of the Myanmar Investment Commission of director level or above or committee of Myanmar Investment Commission officials formed for that purpose;
- The Myanmar Investment Commission shall apply the following criteria:
 - The investor is acting, and the investment will be made, in accordance with the laws of the Union;
 - The application for an Endorsement is in accordance with the Myanmar Investment Law, 2016;
 - The applicant is an investor as defined by the Myanmar Investment Law, 2016;
 - The Endorsement application relates to an investment as defined by the Myanmar Investment Law, 2016; and
 - The investor is eligible to receive one or both of the land use right and / or tax – or duty incentives applied for with the Endorsement application.
- Upon approval, the Myanmar Investment Commission will issue the Endorsement.

2.3. (Long-term) land use

Under the Foreign Investment Law, 2012, only MIC-companies were eligible to enter into long-term leases of up to 50 years with the possibility to extend for two (2) additional terms of ten (10) years each. The new Myanmar Investment Law, 2016 now provides that any (foreign) investor may enter into long-term leases with private landlords, or – in case of state owned land – the relevant government departments or government organizations, if the investor has obtained a Permit or Endorsement issued by the Myanmar Investment Commission.

Upon issuance of a Permit or an Endorsement, a (foreign) investor may enter into leases with an initial term of up to 50 years (again with the possibility to extend for two (2) additional terms of ten (10) years each). Longer periods of land utilization or land leases may be allowed by the Myanmar Investment Commission to promote the development of difficult-to-access regions with lower economic development. Pursuant

to rule 211 Draft Myanmar Investment Rules, 2017 an investor who has been issued a land rights authorisation shall within 20 Working Days of entering into a land or building lease agreement submit its details to the Myanmar Investment Commission. Further, the investor shall obtain an approval of a change of land use covered by the land rights authorisation, and submit a copy of the relevant document to the Myanmar Investment Commission.

2.4. Tax- and duty incentives

The Foreign Investment Law, 2012 allowed for various incentives, which were available for investors who had received a Permit of the Myanmar Investment Commission. Benefits included significant tax- and duty incentives, such as extendable five (5) year tax holidays, tax exemption for re-invested profits, tax relief on income tax up to 50% on profits from export as well as time limited relief from custom duties on the import of capital assets or raw materials.

Pursuant to the Myanmar Investment Law, 2016, any investor may, upon issuance of a Permit or an Endorsement, apply for the benefits provided in the Myanmar Investment Law, 2016, which include similar tax exemptions and customs duty reliefs as the former Foreign Investment Law, 2012.

Pursuant to rule 100 Draft Myanmar Investment Rules, 2017, the Myanmar Investment Commission may approve or refuse some or all of the tax incentives applied for by the investor. It may grant a tax incentive in whole or in part and subject to conditions, including that any transactions between the investor and its affiliates relevant to the investment be on arms' length terms.

A further change is the Myanmar Investment Commission's authority to propose regions and states within Myanmar as zones with different income tax exemptions (i.e. up to seven (7) years in zones of least development, up to five (5) years in zones with moderate development and up to three (3) years in developed zones).

Pursuant to sec. 65 (h) Myanmar Investment Law, 2016, the investor shall prepare and keep proper records of books of account and annual financial statement, and necessary financial matters relating to the investments which are performed by permit or endorsement in accordance with internationally and locally recognized accounting standards.

In case that the Investor has received a tax incentive, rule 200 Draft Myanmar Investment Rules, 2017 stipulates that the investor shall retain all relevant financial records and information

for the longer of [seven (7)] years, or the period required by any other applicable law, following the assessment year in which the investor benefited from the tax incentive.

3. Investment screening application

Pursuant to rule 42 Draft Myanmar Investment Rules, 2017, an investor may submit an investment screening application to the Myanmar Investment Commission for non-binding guidance on whether a proposed investment is of the kind:

- Where a Proposal to the Myanmar Investment Commission is required to be submitted under section 36 Myanmar Investment Law, 2016;
- Likely to be submitted to the Pyidaungsu Hluttaw for approval under section 46 Myanmar Investment Law, 2016 prior to the issuance of the Permit;
- Which is prohibited under section 41 Myanmar Investment Law, 2016 and any related notification;
- Which is restricted under section 42 Myanmar Investment Law, 2016 and any related notification; or
- Which is promoted under section 43 Myanmar Investment Law, 2016 and any related notification.

Once the assessment is complete, the Myanmar Investment Commission shall issue the guidance, which will not express a likelihood of an approval being granted, is non-binding and may be conditional.

4. Import of goods

Due to ministerial policy, the import of goods is – with few exceptions (e.g. for investors in the Thilawa Special Economic Zone) – generally restricted for foreign investors .

Pursuant to rule 139 Draft Myanmar Investment Rules, 2017, an investor making an investment under the Myanmar Investment Law, 2016 may import any equipment, goods or materials relevant to the investment without requiring any specific approval from the Myanmar Investment Commission. Where any licence or other approval is required under an applicable law to proceed with such an import, the investor may apply to the relevant authority for and the relevant authority must give effect to this rule and issue such a licence if the relevant legal requirements are met.

5. Prohibited investments

Pursuant to section 41 Myanmar Investment Law, 2016, the following investments shall be stipulated as prohibited investment:

- Businesses / investment activities which may bring or cause hazardous or poisonous waste into the Union (hazardous and poisonous waste means all substances listed or prohibited under the Prevention from Danger of Chemical and Associated Materials Law, 2013, the Environmental Conservation Law, 2012 or otherwise determined by the Ministry of Industry, Ministry of Natural Resources and Environmental Conservation or other competent authorities as prohibited from being imported, exported, stored, traded, manufactured or otherwise produced within the Union. The production or use of such substances in connection with an investment is prohibited, subject to any express statutory exception or dispensation or approval of a competent authority.);
- Businesses / investment activities which may bring technologies, medicines, flora and fauna and instruments which are still being tested abroad or which have not been obtained approvals for use, planting and cultivation except for investments made for the purpose of research and development;
- Businesses / investment activities which may affect the traditional culture and customs of the racial groups within the Union;
- Businesses / investment activities which may affect the public health;
- Businesses / investment activities which may cause significant damage to the natural environment and ecosystem; and
- Businesses / investment activities which manufacture goods or provide services that are prohibited in accordance with applicable laws.

Pursuant to rule 21 Draft Myanmar Investment Rules, 2017, the Myanmar Investment Commission may, with the approval of the government from time to time issue notifications of prohibited investments under section 41 Myanmar Investment Law, 2016.

6. Restricted investments

Pursuant to section 42 Myanmar Investment Law, 2016, the following investment activities shall be stipulated as restricted investments:

- Investment activities allowed to be carried out only by the government;
- Investment activities restricted to foreign investors (under the new Draft Myanmar Companies Law 2017, a Myanmar company will be able to have a degree of foreign investment which is expected to be up to 35%. Such a Myanmar company would not be restricted from making investments covered by this section.);
- Investment activities allowed only in form of a joint venture with a citizen owned entity or a citizen of Myanmar (subject to any express exception in the relevant notification, the minimum direct shareholding or interest of a Myanmar citizen investor (or group of them) in the joint venture is 20%. Further, the minimum direct shareholding or interest of a Myanmar citizen investor in the joint venture may be held by a Myanmar company (or group of them).); and
- Investment activities permitted only with the recommendation of the relevant ministries.
- Investment activities requiring the approval of relevant ministries:
 - *Domestic and international air transport (No D 3.32, 3.33). (Kindly note, that this would imply a change from the current requirement to form a joint venture with a citizen / citizen owned entity, as only approval from the Ministry of Transport and Communication would be required);*
 - *All electricity related business to be connected to the electric power system (No D 5.2); and*
 - *Development of Utility Scale Solar Plants (No D 5.3).*

Pursuant to the remarks at the end of the draft, where there are restricting provisions in respect of investments in laws administered by the relevant ministries and bodies, such law must be complied with.

Banks, insurance and financial services are to proceed according to the permissible programmes of the relevant ministries and bodies.

Please find a translation of the draft list below.

In February 2017, the Myanmar Investment Commission published a draft of the list of restricted investments pursuant to rule 27 Draft Myanmar Investment Rules, 2017. The draft list contains sections similar to Notification No. 26/2016, which was previously published under the Foreign Investment Law, 2012.

Apart from the reference to resident citizens for joint venture activities (previous lists did not provide for a residence-requirement), the draft introduces new restricted business activities, but also contains some liberalizations.

One of the most notable additions is a reference to retail trading in the form of a joint venture with a Myanmar resident citizen or citizen owned entity, which may imply a general relaxation of the current trade prohibition, particularly with regard to wholesale trading activities. (For further information on trading activities in Myanmar, we refer to our memorandum on "Trade Restrictions"). Other major changes include:

- Investment activities not permitted to foreign investors:
 - *Sending of patients to hospitals abroad (No B 13);*
 - *Tourist guide (No B 14); and*
 - *Mini-markets, convenience stores (No B 15).*
- Investment activities permitted only as joint-venture with a resident citizen or citizen owned entity:
 - *Foreign language newspaper / periodicals (No C 1);*
 - *Domestic travel (No C 33); and*
 - *Retail trading having a floor area of [(100x100) 10,000 square feet or 929 square metres] or more) (No C 34).*

7. Promoted sector investments

Pursuant to rule 35 Draft Myanmar Investment Rules, 2017, the Myanmar Investment Commission may, with the approval of the government, from time to time issue notifications of:

- Promoted sectors under section 43 Myanmar Investment Law, 2016 and other investment activities which may receive tax- and duty exemptions or relief; and
- Places in the Union which are to be designated under section 75 Myanmar Investment Law, 2016 as Zone 1, Zone 2 or Zone 3 depending on their level of development.

Kindly note, that the drafts do not specify which investments will be promoted (i.e. are eligible for tax- and duty exemptions) respectively which places in the Union will be designated under section 75 Myanmar Investment Law, 2016 as Zone 1, Zone 2 or Zone 3. Separate notifications specifying types of promoted investments and places in the different investment zones will be issued by the Myanmar Investment Commission.

We do however understand that it is intended to include, amongst others, most manufacturing- and production businesses (with the exception of alcohol and tobacco enterprises), investments in the agricultural sector, as well as hotel and tourism businesses in the list of promoted businesses.

Further, the Myanmar Investment Commission may prescribe minimum investment criteria to be satisfied for an investment to be eligible to receive tax- or duty incentives and may further prescribe a maximum value of tax incentives that may be granted to any investment, promoted sector or generally in any period. The eligibility criteria could include a minimum cash investment that must be made as a proportion of the total investment amount. Minimum investment criteria could include any one or a combination of factors such as the proposed investment value, the anticipated level of job creation and the application of new or enhanced technology.

8. Delegation of authority

Pursuant to section 27 Myanmar Investment Law, 2016, the Myanmar Investment Commission may form committees and bodies as necessary to exercise its powers or functions in the same way and with the same effect as if it had been exercised directly by the Myanmar Investment Commission (subject to the conditions and restrictions given or imposed by the Myanmar Investment Commission).

8.1. Proposal Assessment Team

Pursuant to rule 68 Draft Myanmar Investment Rules, 2017, the Myanmar Investment Commission may delegate the authority for assessing Proposals and issuing a Permit to a State or Regional Committee if the value of the investment is less than US\$ 5 million. The Proposal Assessment Team shall review Proposals, provide recommendations to the Myanmar Investment Commission on the application of the assessment criteria in the Draft Myanmar Investment Rules, 2017 and assess whether these criteria have been satisfied.

8.2. State or Regional Committee

Every State and Region of the Union shall form a State or Regional Committee, which shall have such powers and functions as may be set out in the Myanmar Investment Law, 2016, the Myanmar Investment Rules, 2017, or as may be delegated by the Myanmar Investment Commission (rule 155 Draft Myanmar Investment Rules, 2017).

8.3. Third parties

The Myanmar Investment Commission may engage independent contractors, advisors or other third party service providers to assist in performing its duties and functions under the Myanmar Investment Law, 2016 and the Myanmar Investment Rules, 2017 (rule 166 Draft Myanmar Investment Rules, 2017).

However, this rule does not permit the Myanmar Investment Commission to delegate any of its powers or authorities to such third party.

9. Investor assistance

Pursuant to rule 167 Draft Myanmar Investment Rules, 2017 and similar to the Thilawa Special Economic Zone, where investments are subject to the Special Economic Zone Law, 2014, the Myanmar Investment Commission may establish a One Stop Service Centre to:

- Provide guidance to investors on the implementation of their investments;
- Accept applications and submissions as may be required under an applicable law in relation to the implementation of an investment;
- Accept requests for information as may be made under section 48 (a) Myanmar Investment Law, 2016 on any measures or decisions taken by any authority;
- Assist the Investor Assistance Department to resolve grievances and provide assistance to investors; and
- Assist the Investment Monitoring Department in the performance of its duties.

The One Stop Service Centre will be staffed by representatives from:

- Central Bank of Myanmar;
- Internal Revenue Department;
- Customs Department;
- Directorate of Trade;
- Department of Labour;
- Department of Immigration and National Registration;
- Directorate of Industrial Supervision and Inspection;
- Directorate of Investment and Company Administration;
- [Natural Resource and Environmental Impact Assessment Division]; and
- [Food and Drug Administration].

10. Reporting

The Draft Myanmar Investment Rules, 2017 contain provisions on reporting standards for investors who have received a Permit or tax incentive approval. Pursuant to rule 210 Draft Myanmar Investment Rules, 2017, the investor must within three (3) months of the end of the financial year submit an annual report to the Myanmar Investment Commission, including information on:

- Its progress in implementing the investment;

- Any material variations to the investment as implemented from the description presented in the application, including (i) the amount of the investment and any changes in capital invested; (ii) any change in shareholders or parties with an interest in the investor; (iii) the employment performance of the investment; (iv) the impact of the investment on the environment and local community; and (v) the land used in the investment and changes to land or land uses.
- How the investor and the investment are supporting the relevant objectives of the Myanmar Investment Law, 2016;
- The investor's compliance with the conditions of the approval and any instances of non-compliance;
- Any material operating licences, permits and approvals obtained by the investor since the approval or date of the previous annual report;
- In the case of an investor with a Permit, how it has demonstrated its commitment to carry out the investment in a responsible and sustainable manner;
- In the case of an investor with a tax incentive approval (i) the estimated value of the tax incentives that the investor has claimed or benefited from in the year and a breakdown of these by type of incentive; (ii) any recalculation and reimbursement of tax incentives required due to the operation of the Myanmar Investment Rules, 2017 or confirmation that no such recalculation and reimbursement is required; (iii) confirmation of the applicable zone of the investment if the investor benefits from an exemption in accordance with section 75 Myanmar Investment Law, 2016; and (iv) the export earnings of the investment;
- The audited financial statements of the investor; and
- Such other matters as may be prescribed by the Myanmar Investment Commission.

11. Transfer of Funds

Pursuant to section 59 Myanmar Investment Law, 2016 any transfer of funds shall be allowed only after all tax obligations relevant to the intended transfer amount have been met in accordance with Myanmar tax laws.

For the transfer of certain funds (i.e. proceeds from the total or partial sale or liquidation of an investment or property owned in connection with an investment, awards resulting from any settlement of investment disputes, or compensation or other pay-

ments made pursuant to investment or expropriation) and in case the investor has any outstanding tax obligations, or any contingent or disputed obligations, within Myanmar, the investor must seek the Myanmar Investment Commission's approval by lodging a submission containing all relevant information concerning the proposed transfer, including information concerning the tax obligations and the proposed manner of dealing with these. The Myanmar Investment Commission will give its approval if it is satisfied that the investor's obligations will be met or if it is otherwise satisfied that the transfer is not contrary to the interests of the Union (rule 216 Draft Myanmar Investment Rules, 2017).

12. Insurance

Pursuant to rule 218 Draft Myanmar Investment Rules, 2017 every investor must take out the following types of insurance in respect of the investment:

- Damage to third party property;
- Death and injury to third parties (including employees); and
- Such other insurances as the Myanmar Investment Commission may prescribe.

13. Investor disputes

The Myanmar Investment Commission shall establish and manage a grievance mechanism to inquire about and resolve issues before they become legal disputes and to prevent the occurrence of disputes. If investment disputes between the investor and the Union or between the investors are not able to be settled amicably, it shall be complied and settled in accord with the dispute settlement mechanism as stipulated in the relevant agreement. Otherwise it shall be complied and settled in court or arbitral tribunal in accord with the applicable laws.

Pursuant to rule 174 Draft Myanmar Investment Rules, 2017, any investor who believes in good faith that a decision of an authority in respect of his investment was incorrectly made, that an application for a permit, licence, registration or approval was incorrectly refused by an authority, or that any right, protection or approval benefiting him under the Law has been not granted, may submit notice of grievance or dispute to the Investor Assistance Department.

14. Administrative Penalties

Pursuant to section 85 Myanmar Investment Law, 2016, the Myanmar Investment Commission may impose one or more of the following administrative penalties against an investor who vio-

lates any of the rules, regulations, procedures, notifications, orders, directives, or terms and conditions contained in the Permit or Endorsement:

- Censure;
- Temporary suspension of business;
- Temporary suspension of tax exemptions and reliefs;
- Revocation of the Permit or Endorsement; and/or
- Listing the business in a blacklist for which no Permit or Endorsement shall be granted in the future.

II. List of Restricted Investments (Draft)

Please find below an unofficial translation of the draft list published by the Myanmar Investment Commission.

Publication with invitation for comments on the List to be issued by the Myanmar Investment Commission of Investment Activities Restricted under Section (42) of the Myanmar Investment Law

(A) Investment activities only the Union can undertake

Sr.	Type of Investment Activity
1.	Security and defence related manufacturing as prescribed by notification of the cabinet from time to time
2.	Defence-related munitions production and related services
3.	Issuance of national postage stamps, establishment of [pillar] mail boxes reserved for the official national postal service operator, and establishment and rental of P.O boxes
4.	Air-traffic control services
5.	Waterways navigation pilot services
6.	Management and conservation of natural forests and forest reserves, other than businesses concerned with reduction of carbon-footprint
7.	Exploration, prospecting, feasibility study and exploitation of radioactive metals such as uranium and thorium
8.	Administration of the electric power system
9.	Electrical inspection

(B) Investment activities not permitted to foreign investors

Sr.	Type of Investment Activity	Remarks
1.	Printing and publishing of periodicals [and] all publications in indigenous languages including the Burmese language	
2.	Freshwater fishing, and related services	
3.	Livestock	Below 1,000 animals in case of poultry, below 50 animals in case of cattle, below 100 animals in case of pigs, sheep and goats
4.	Processing and distribution of animal products	
5.	Manufacture and distribution of animal feed	
6.	Establishment of animal quarantine stations (examination and certification of animals to be carried out by the Department of Livestock Veterinary Care	
7.	Pet care services	
8.	Extraction of forest products from forest-land and natural forests within forest-covered, government-administered land	
9.	Exploration, prospecting, feasibility study and exploitation of medium- and small-scale mineral production in accordance with Mining Law	
10.	Hand digging and exploitation of shallow petroleum wells of up to a depth of 1,000 feet	
11.	Printing and distribution of visa stickers and stay-permit certificates	
12.	Exploration, prospecting and exploitation of jade/ gems	
13.	Sending of patients to hospitals abroad	
14.	Tourist guide	
15.	Mini-market, convenience store	

(C) Investment activities permitted only as joint-venture with resident citizen or citizen-owned entity

Sr. Type of Business	Condition
1. Foreign language newspaper/periodicals	
2. Fishing-net factories	Factories to be established in accordance with the laws, procedures, directives, rules and regulations of the Department of Fisheries at areas where fishing business is developed, and produce prescribed size(s) of nets.
3. Construction of fish unloading port; of fish auction market	To be carried out in accordance with the laws, procedures, directives, rules and regulations of the Department of Fisheries.
4. Research on livestock and fisheries	To be carried out in accordance with the laws, procedures, directives, rules and regulations of the Department of Fisheries.
5. Processing of aquatic products	
(a) CMP system	
(b) Re-export	To be carried out in accordance with the laws, procedures, directives, rules and regulations of the Department of Fisheries.
6. Import, breeding/production and re-export of animal and aquatic species	Species detrimental to local biodiversity, species and environment are not allowed for import/distribution.
7. Fresh-/salt-water aquatic-farms	To be carried out in accordance with the laws, procedures, directives, rules and regulations of the Department of Fisheries, through Good Aquaculture Practise – GaqP)
8. Pet breeding and distribution	
9. Veterinary Clinics	
10. Cultivation and production of cereal crops and distribution in the local market, and exporting	
11. Electric power generation with output of 30 MW or less	
12. Production, domestic distribution and sale of various kinds of goods such as ceramic-coated goods, pots, pans, spoons, knives, forks etcetera	
13. Production, domestic distribution and sale of various kinds of plastic goods	
14. Production, domestic distribution and sale of various kinds of products including footwear, handbags etcetera made from various types of leather, cured or uncured, other than artificial-leather	
15. Production, domestic distribution and sale of [wood] pulp and various kinds of paper	
16. Production, domestic distribution and sale of chemical-products based on domestic naturals resources	
17. Production, domestic distribution and sale of flammable solids, liquids, gases and aerosols such as acetylene, gasoline, propane, hair-sprays, perfumes, deodorants, insect-sprays	
18. Production, domestic distribution and sale of oxidizing-reagents (oxygen, hydrogen-peroxide), and compressed-gas (acetone, argon, hydrogen, nitrogen, acetylene)	
19. Production, domestic distribution and sale of caustic-reagents (sulphuric acid, nitric acid)	

Sr.	Type of Business	Condition
20.	Production, distribution and sale of various kinds of gases (in gaseous, liquid and solid forms) of industrial use	
21.	Value-added production, domestic distribution and sale of cereal-based products such as biscuits, wafers, noodles all kinds, vermicelli, rice-noodle	
22.	Production, domestic distribution and sale of confectionary including candy, cocoa and chocolate	
23.	Processing/production, canning and domestic distribution and sale of foodstuff other than milk and milk-products	
24.	Germination of barley; activities for production, domestic distribution and sale of alcoholic beverages obtained through germination of barley	
25.	Production, rectification, purification, bottling etcetera for beverage and non-beverage alcohol, spirits etcetera; and [their] domestic distribution and sale	
26.	Production, domestic distribution and sale of various kinds of ice made from purified water	
27.	Purified drinking-water	
28.	Production, domestic distribution and sale of various kinds of oil	
29.	Production, domestic distribution and sale of various kinds of soap	
30.	Production, domestic distribution and sale of various kinds of cosmetics	
31.	Establishment, sale and rental of apartments/condominiums	
32.	Establishment of new towns	Joint-venture with governmental organization only
33.	Domestic travel	
34.	Retail trading	Must have Floor Area of [(100x100) 10,000 square feet or 929 square metres] or more

(D) Investment activities requiring the approval of relevant ministries

Sr.	Type of Business	Condition
1 Activities which require obtaining approval of the Ministry of Information		
1	Combined operation of Print Media and Broadcasting Media	
2	FM radio transmission	
3	Direct To Home (DTH) video transmission	
4	DVB-T2 video transmission	
5	Cable TV	
6	Cinema Production	
7	Cinema presentation	
2 Activities which require obtaining approval of the Ministry of Agriculture, Livestock and Irrigation		
1	Investment activities related to fish resources and fish species	
2	Sea fishing	
3	Production and sale of animal vaccines	
4	Production and sale of veterinary medicines	
5	Breeding lots, and production and sale of baby animals (chicken, duck, quail)	
6	Conducting of genetic research, species conservation, production and sale of species	
7	Importing of breeding stock, carrying out breeding, and sale (breeding stock animal, seminal fluid vials and embryo)	
8	Bio-hazard testing laboratory services related to animal fees and animal products	
9	Animal disease diagnostic laboratory services	
10	Private veterinary hospital	
11	Research and diagnostic services related to animal health	
12	Breeding of Bos Frontalis (mythun)	
13	Apiary and apiary products	
14	Production and sale of animal feed supplements	
15	Production and sale of animal feed	
16	Production and sale of pet food	
17	Import, multiplication/production, domestic distribution and sale, re-export of seeds	
18	Import, multiplication/production and distribution of new species of plants	
19	Production, stocking, distribution and export of agricultural insecticides, fertilizer, hormones, herbicides et cetera	
20	Production and export of hybrid paddy seeds intended for planting only (i.e., not for eating)	
21	Cultivation	
22	Laboratories related to agriculture	
23	Research related to agriculture and agricultural products	
3 Activities which require obtaining approval of the Ministry of Transport and Communication		
1	Motor-vehicle registration inspection	

Sr. Type of Business	Condition
2 Driver training centres	
3 Development of new railway lines/stations	
4 Running of railways	
5 Development, manufacture and maintenance of train engines, passenger carriages, cargo carriages and machinery spare-parts	
6 Electric power generation for use in railways	
7 Dry Port to be operated in conjunction with railways	
8 Postal services	
9 [Tele]communication services	
10 Production and distribution of satellite communication equipment	
11 Production and distribution of radar communication equipment and auxiliary equipment	
12 Production and distribution of radio communication equipment	
13 Production and domestic distribution of mobile-phone handsets	
14 Civil aviation training	
15 Aircraft maintenance	
16 Airport hotel	
17 Ground services for aircrafts	
18 Air transport marketing and sales	
19 Air-ticket sales using computer network system	
20 Aircraft chartering services (excluding crew)	
21 Aircraft chartering services (including crew)	
22 Production and distribution of aircraft on-board food	
23 Air cargo	
24 Small-scale inspection and maintenance of aircrafts	
25 Apron services on arrival/rest-stop/departure of aircraft	
26 Airport passenger arrival/departure services	
27 Passenger luggage related ground-support services	
28 Air-cargo handling	
29 Aircraft re-fuelling	
30 Airport security services	
31 Development, maintenance, management and operation of airports	
32 Domestic air transport	
33 International air transport	
34 Rental of aircraft related equipment	
35 Establishment and operation of training centres for waterways transport	
36 Dockyard services for ship building and repairs	
37 Coastal and Inland Waterways Passenger Transport services	
38 Coastal and Inland Waterways Cargo Transport services	
39 Waterways Transport Auxiliary Services	
40 International Passenger Transport Services (non-coastal)	

Sr. Type of Business	Condition
41 International Cargo Transport Services (non-coastal)	
42 Crewed watercraft chartering services	
43 Un-crewed watercraft chartering services	
44 Tugboat services	
45 Shipbreaking services	
46 Vessel brokering service	
47 Vessel standards inspection services	
48 Development of slipways, shipyards, wet docks, dry docks at river/stream areas, river-bank areas and coastal areas; construction of jetties and landing-stages, vessel landing with digging of channels	
49 Construction of container-yards and warehouses at river-bank areas and coastal areas	
50 Construction of river piers	
51 Development and maintenance of water-routes	
52 Port area expansion	
53 Port and waterways services	
54 Sunken vessel recovery services	
55 Shipping agent	
56 Deep-water ports and international multi-purpose terminals	
4 Activities which require obtaining approval of Ministry of Natural Resources and Environmental Conservation	
1 Extraction of timbre from forest-land and forest-covered, government-administered land	
2 Establishment of forest plantations (teak, hardwood, bamboo, cane et cetera)	
3 Establishment of forest plantations and [engaging in] wood-based industries and related enterprises	
4 Eco-tourism in forest-land and nature reserves	
5 Commercial import and re-generation, distribution and sale of genetic modification material/equipment, and genetically modified organisms	
6 High-technology forestry-sector research and development such as tissue-culture, conservation and production et cetera of quality, pure strains of rare, valuable wood plants	
7 Development of advanced technology, research and development, and human resources in the forestry sector	
8 Commercial import, re-generation of natural plants and wild animals, domestic sale and export for profit	
9 Businesses concerned with reduction of carbon-footprint	
10 Large-scale exploration, prospecting, feasibility study and exploitation of minerals with foreign investment	
11 Large-scale exploration, prospecting, feasibility study and exploitation of minerals with citizen investment	
12 Polishing of gemstones and making of jewellerys, sale of gemstone-based articles with foreign investment	
13 Extraction, polishing of gemstones and making of jewellerys, sale of polished gemstones, jewellerys, gemstone-based articles with citizen investment	
14 Pearl culture and farming	

Sr. Type of Business	Condition
5 Activities which require obtaining approval of Ministry of Electricity and Energy	
1	Large-scale electricity related business (electricity related businesses capable of generating more than 30 MW in accordance with per Electricity Law)
2	All electricity related business to be connected to the electric power system
3	Development of Utility Scale Solar Plant
4	Import, manufacture, construction and installation of machinery, equipment and spare-parts/supplies needed for construction and installation of various kinds of off-shore platforms
5	Import/export, transport, storage, distribution and sale of petroleum, natural-gas and petroleum-products; and construction, installation and operation of related storage-tanks, loading/ unloading docks, pipelines, auxiliary machinery, equipment and plants
6	New construction and installation of various kinds of petrochemical plants; investment in and refurbishment of existing plants; and [their] operation
7	Development of Offshore Supply Bases for support of materials/equipment and services related to on-shore and off-shore exploration and exploitation of petroleum and natural gas
8	Import, manufacture, construction and installation of machinery, equipment and spare-parts/supplies needed for exploration, prospecting, survey of petroleum and natural gas with geological, geo-physical, geo-chemical techniques, and interpretation [of results]
9	Import, manufacture, construction and installation of machinery, equipment and spare-parts/supplies needed for operations related to extraction and analysis of petroleum and natural gas
10	Import, manufacture, construction and installation of machinery, equipment and spare-parts/supplies needed for operations related to transport of, and construction of network of pipelines for, petroleum and natural gas
6 Activities which require obtaining approval of the Ministry of Industry	
1	Large-scale paper pulp production
2	Quality testing and certification services
3	Production of vaccines
4	Production, distribution and sale of medicines derived from narcotics and psychoactive substances
7 Activities which require obtaining approval of the Ministry of Health and Sports	
1	Production of seasoning powder
2	Private hospitals
3	Private general healthcare
4	Private mobile healthcare
5	Private hospice
6	Private indigenous medicine hospital

Sr. Type of Business	Condition
7 Private indigenous medicine clinic	
8 Private indigenous medicine and medical equipment production	
9 Indigenous medicine production	
10 Trading of raw material ingredients of indigenous medicines	
11 Cultivation of indigenous medicine plants	
12 Research and analysis of indigenous medicine	Must be carried out in collaboration with the Department of Indigenous Medicines, Research and Development Division or professionals under the Department of Medical Research.
13 Research on production of vaccines and diagnostic kits	Must be carried out in collaboration with the Department of Medical Research, and Department of Vaccine Research
8 Activities which require obtaining approval of the Ministry of Construction	
1 All roads administered by the Ministry of Construction and new roads to be constructed in parallel to those roads; bypass roads and roads connecting to those roads;	Road territory shall remain under the administration of the Ministry of Construction. All matters to be carried out within road territory require approval from the Ministry of Construction.
2 Roads restricted as being of strategic importance to national security	
3 Elevated express way, tunnel, inner ring road, outer ring road, interchange, underpass, overpass or flyover, semi-underground road, submersible tunnel	
4 Development of bridges of 180-feet or more	
5 Manufacture and domestic distribution of bridge related materials and equipment (such as PC Strand, PC bar, Anchor, etc.), Plate Girder, Steel Truss, reinforced concrete, pre-reinforced concrete et cetera	
6 Establishment of new towns, and urban and regional development	
7 Urban and regional development of 100 acres and above	
8 Development and sale of industrial-zone related residential apartments buildings with gross floor area of 50,000 square metres, and of residences affordable by the public	
9 Urban-redevelopment of 4-acres and above in Region/state capitals, other than Nay Pyi Taw, Yangon and Mandalay	

Remarks:

- (1) Where there are restricting provisions in respect of investments in laws administered by the relevant ministries and bodies, such law must be complied with.
- (2) Banks, insurance and financial series are to proceed according to the permissible programmes of the relevant ministries and bodies.



Alexander Bohusch

Rechtsanwalt/Attorney-at-law (Germany)
Luther Law Firm Limited
Myanmar
Phone +95 1 513 307
alex.bohusch@luther-lawfirm.com

Imprint

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

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

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contact@luther-lawfirm.com

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