A. Regulatory Framework

Myanmar employment law is governed by both old and new laws and regulations, as well as internal policies and practices of the Department of Labour of the Ministry of Labour, Immigration and Population (“Ministry of Labour”).

Many laws dating back to the colonial period and post-independence period are, with more or less changes, still in force. Since its political and economic opening, Myanmar has embarked on a comprehensive reform process and is currently overhauling its legal framework. Existing laws were revised or replaced, and new laws enacted.

In practice, employer-employee relationships are, however, heavily influenced by the policies and practices of the Ministry of Labour. Regulations and notices issued by the Ministry of Labour and its departments provide for the interpretation of the existing laws, but also additional requirements imposed on employers and employees.

I. Relevant Laws (not exhaustive)

- Employment and Skills Development Law (2013)
- Employment Restriction Act (1959)
- Factories Act (1951) as amended 2016
- Labour Organization Law (2011)
- Leave and Holidays Act (1951) as amended 2014
- Minimum Wage Law (2013)
- Occupational Safety and Health Law (2019)
- Oilfields (Labour and Welfare) Act (1951)
- Payment of Wages Law (2016)
- Shops and Establishment Law (2016)
- Social Security Law (2012)
- Workmen’s Compensation Act (1923) as amended 2005

Further, various sector-specific laws contain labour regulations.
II. Relevant Rules, Regulations and Policies (not exhaustive)

- Instructions of the Factories and General Labour Inspection Department
- Leave and Holidays Rules (2018)
- Minimum Wage Rules (2013) as amended 2018
- Ministry of Labour Directive No. 615/2/a la ya – law 2/12 (1584) – Overtime
- Ministry of Labour Notification No. 1/2015 – Labour Contracts
- Ministry of Labour Notification No. 140/2017 – Template Employment Contract
- Ministry of Labour Notification No. 84/2015 – Severance Payments
- National Minimum Wage Committee Notification No. 2/2015 – Minimum Wage
- Settlement of Labour Dispute Rules (2010)
- Shops and Establishments Rules (2018)

Many policies and notifications of the Ministry of Labour, such as the official Employment Contract Template, are not compulsory under the current laws. Since the Employment and Skills Development Law (2013) does however provide that employment contracts must be registered, the relevant Township Labour Offices will often only accept the prescribed template of the Ministry of Labour, employers will often have little choice. Further, any amendment or annexure to the prescribed template must be approved by the Township Labour Office.

III. Outlook

Employment and Skills Development Rules

On 30 August 2013, the Employment and Skills Development Law (2013) was enacted. By-laws for the implementation of this law, to be issued as Employment and Skills Development Rules, have long been in the drafting. The latest (Draft) Employment and Skills Development Rules were published in February 2017, varying significantly from the previous versions of 2013 and 2015. No rules have however yet been issued. Instead, the Ministry of Labour published various notifications, addressing specific issues such as the format of employment contracts.

IV. Cautionary Note – Liability for Violations of Statutory Duties

It should be noted, that liabilities under the various labour laws of Myanmar may extend not only to the employing company or its Board of Directors, but often also to managers, license holders and the direct supervisors or superiors of an employee, as well as to some extend owners and shareholders of the employing enterprise.

For example, the Shops and Establishment Law (2016) defines employer as a “person owning or being in charge of a shop or establishment or being an official managing agent of the employer or heir or legal receiver of shares in case of death of the employer”.

The Payment of Wages Law (2016) defines employer as a “person who is responsible for payment of remuneration to an employee, subsequent to requiring such employee to work under an individual or collective employment contract, written or verbal, in a commercial enterprise, manufacturing enterprise, service enterprise or agricultural and animal husbandry enterprise. The expression includes contractors, legal managing agent, a person responsible for administrating such employee on behalf of the employer, an inheritor to the employer on the employer’s death and the authorized representative, but excludes a labour-incharge/foreman”.

The Minimum Wage Law (2013) defines employer as a “person who is responsible to pay such worker after employing one or more workers under the employment agreement at the commercial, production and service, agricultural and livestock breeding business. The expression includes the following persons as the employer:

- The administrative representative of the employer;
- The person who is responsible, on behalf of the employer, to manage or pay remuneration to the worker;
- Heir, successor or legal representative of the employer when he die;
- If it is a partnership firm, each or all partners or the person who is delegated by the partnership firm to manage the work is the employer;
- If it is a company established under the Myanmar Companies Act, the Board of Directors or directors or the person who is delegated by the company to manage the work in accord with law, is the employer;
- If it is a cooperative society formed under the Cooperative Society Law, members of the executive committee or directors of the cooperative society are the employers”. 

B. Applicable Laws

Depending on the nature of the employer’s business, different laws may be applicable.

I. Shops and Establishment Law (2016)

The Shops and Establishment Law (2016) shall apply to the following types of businesses:

- Shops;
- Commercial establishments;
- Public entertainment establishments;
- Industrial establishment not relevant to the Factories Act (1951); and
- Any other establishment declared by the Ministry through notification as relevant to this law.

Comment Luther: In practice, the labour authorities apply the Shops and Establishment Law (2016) to all enterprises not governed by any other specialized law. Consequently, even non-profit organizations would be required to comply with its provisions.

Further, the law provides for definitions of employee, meaning “a person wholly or principally employed in the shop or establishment, including persons who are employed in a clerical capacity or as a cashier, messenger, guard, caretaker, watchman, sweeper, driver, vehicle-attendant or cook (provided that such expression shall not include any dependents of the employer such as the husband, wife, child, father, mother, brother and sister)”.  

II. Factories Act (1951)

The Factories Act (1951) as amended in 2016 shall apply to factories, which are defined as “any premises including the precincts thereof whereon ten (10) or more workers are working, or were working on any day of the preceding twelve (12) months, and in any part of which a manufacturing process is being carried out with the aid of power or is ordinarily so carried out and also includes such premises whereon 20 or more workers are working, or were working on any day of the preceding twelve (12) months, and in any part of which a manufacturing process is being carried out without the aid of power or is ordinarily so carried out, provided that this does not include a mine subject to the Myanmar Mines Law (1994)”.

Further, the law provides for definitions of workers, being “a person employed, whether for wages or not, in any manufacturing process, or in cleaning any part of machinery or premises used for the manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or the subject of the manufacturing process, including the supervisor, accountant, clerk, security man, driver, cleaning worker, cook, postman, gardener and general worker who is solely employed in a place which does or does not relate to the manufacturing process”.

III. Other Laws (non-exhaustive)


The Overseas Employment Law (1999) shall apply to the following types of overseas employment:

- Employment in any Foreign Country for a limited period of time other than the following employments (this expression shall also include employment in the United Nations Organization and any of its Specialized Agencies):
- Employment of Seafarers; and
- Employment in a Foreign Country of any Government Servants or Experts assigned by any Government department or organization.

2. Oilfields (Labour and Welfare) Act (1951)

The Oilfields (Labour and Welfare) Act (1951) contains definitions of workers being active in Myanmar’s oilfields sector, meaning “a person directly or (through an agent) indirectly employed, with or without remuneration, in the production of oil/gas, or in the cleaning of any equipment or utilities in the production of oil/gas, or in any other occupation related to or incidental to the production of oil/gas”.

C. Registration of Employers

I. Opening a Business

1. Shop or Establishment

Under the Shops and Establishment Rules (2018), an employer who opens a shop or establishment shall, within ten (10) days of such opening, send a notice to the relevant Inspector of the Factories and Labour Law Inspection Department (“Inspector”), providing the following particulars and copies of the licenses issued by relevant departments or committees (if any):

- Name, address, phone, fax, email of the shop/establishment;
- Type of shop/establishment;
- Name, ID number, address, phone, fax, email of employer;
- Name, ID number, residential address, phone, fax, email of manager or person-in-charge representing the employer;
- Number of employees; and
- Name, passport number, nationality, residence-permit duration and residential address of all foreign employees.


2. Factory

Similar obligations shall apply to businesses governed by the Factories Act (1951). An occupier who occupies or use any premises as a factory shall, at least 15 days before commencing operation, inform the Inspector of the following:

- Name and situation of the factory;
- Name and address of the occupier;
- Address to which communications relating to the factory may be sent;
- Nature of the manufacturing process;
- Nature and amount of power to be used;
- Name of the factory manager; and
- Numbers of workers likely to be employed in the factory.

II. Closing a Business

1. Shop or Establishment

An employer wishing to temporarily or permanently close a shop or establishment shall at least ten (10) days prior to such closure notify the Inspector. The employer shall use Form 3 “Notice of temporary/permanent closure of shop/establishment” of the Shops and Establishment Rules (2018).

2. Factory

Again, similar obligations shall apply to factories under the Factories Act (1951). An occupier wishing to close down the factory temporarily or indefinitely shall, except as required by law, at least one (1) month prior to the closing of the factory send a notice stating the reasons to the Inspector. If for any reason such notice cannot be given, prior intimation shall be sent to the Inspector as early as possible before the factory the factory is closed down. If the factory has to be closed down due to some unforeseen and sudden emergency or breakdown of machinery, the fact shall be intimated to the Inspector within 48 hours after closing down.

If the factory closed down is a factory employing not more than 15 workers, the Inspector shall be intimated within seven (7) days after closing down.
D. Registration of Employment Contracts


According to the Employment and Skills Development Law (2013), an employer must enter into written employment contracts with employees within 30 days of employment. An employer convicted of failing to sign employment contracts may be punished with imprisonment of up to six (6) months or with a fine or both.

Employers with five (5) or more employees must submit the employment contracts to the relevant Township Labour Office for registration (see Notification No. 140/2017). Employment contracts not registered with a Township Labour Offices may be declared void.

Comment Luther: No employment contract has to be signed during a pre-employment probation or training period, but we would recommend to at least sign an appointment letter with most important terms of employment.

II. Official Employment Contract Template

In August 2015, the Department of Labour of the Ministry of Labour issued Notification 1/2015, announcing that with effect from September 2015, all employees in Myanmar must be employed under a prescribed Employment Contract Template.

While the requirement of having a written employment contract had been in place since the enactment of the Employment and Skills Development Law (2013), the instructions relating to a “prescribed employment contract template” came as a surprise.

Unfortunately, the first official Employment Contract Template was drafted for factory workers and not suitable for most businesses, and the Union of Myanmar Federation of Chambers of Commerce and Industry (“UMFCCI”), labour unions, but also international organization and other stakeholders, filed petitions to withdraw or at least amend Notification 1/2015.

On 31 January 2017, the Ministry of Labour convened a tripartite meeting, in which it was resolved that representatives of employers and employees would jointly work on a new Employment Contract Template. In subsequent bipartite meetings, UMFCCI and labour unions negotiated a draft, which was eventually presented to the National Tripartite Dialogue Forum (“NTDF”).

After a final bipartite meeting on 28 February 2017, the UMFCCI and labour unions resolved outstanding issues at the NTDF meeting on 27 May 2017 and submitted their final draft to the Ministry of Labour for review and approval. On 28 August 2017, a new Employment Contract Template was officially announced.
E. Employment Terms

I. Employment Contract

According to the Employment and Skills Development Law (2013), the following particulars shall be included in every employment contract:

- Type of employment;
- Probation period;
- Wage/salary;
- Location of the establishment;
- Term of the employment agreement;
- Working hours;
- Days-off, holidays and leave days;
- Overtime;
- Meal arrangements during the work hours (if any);
- Provision of accommodation (if any);
- Provision of medical treatment (if any);
- Provision of transportation to/from work (if any);
- Obligations of the employee;
- Obligations of the Employer;
- Training of the employee (if any);
- Resignation by employee;
- Termination/dismissal by employer;
- Mutual termination;
- Other matters;
- Amendments/supplements to employment contract; and
- Miscellaneous.

In practice, employers are required to follow the official Employment Contract Template published by the Ministry of Labour, which is based on the above provisions.

II. Contract Term

The term of employment is not regulated under any applicable law.

The Employment Contract Template stipulates that the term of the employment shall be stated in detail, but does not provide any restrictions on fixed or unlimited terms. However, upon expiry of a fixed term contract, and provided there was no breach of the terms of employment by the employee, termination or change of work and/or payment conditions, the employment contract shall be extended. The Employment Contract Template explicitly provides, that the employer shall not refuse to extend the contract term without valid reasons (i.e. the renewal/extension of the employment contract shall be the normal case).

Further, the Employment Contract Template provides, that an employee’s length of service shall be calculated from the date of joining the factory/workshop/enterprise/company until termination (i.e. the accumulated length of all renewed fixed terms).

Comment Luther: This provision clarifies the calculation of the length of employment for Notification 84/2015 of the Ministry of Labour concerning severance payments for the termination of employment contracts by the employer. Under this Notification, the amount of the severance payment depends on the time of consecutive employment, with a payment of up to 13 monthly salaries for employees having been employed for more than 25 years.

III. Probation Period

While the Employment and Skills Development Law (2013) provides for the possibility to agree upon a probation period, it does not stipulate any further details.

Pursuant to the Employment Contract Template, the probation period shall, however, not exceed three (3) months. If the employer deems a probation period to be unnecessary, the employee may be appointed without probation period.

Comment Luther: The Leave and Holidays Rules (2018) provide that during the probation period, the employee shall be entitled to casual leave, (unpaid) medical leave and maternity leave.

In the absence of any further provisions, the Employment Contract Template does not distinguish between employees on probation and employees who have completed their probation period, since rules on termination and other terms are identical.

IV. Working Hours

Business and working hours are stipulated in various laws, most importantly the Shops and Establishment Law (2016) and the Factories Act (1951).

1. Shops and Establishment Law (2016)

The Shops and Establishment Law (2016) provides for six (6) working days of up to eight (8) hours per day (48 hours in total per week). Pursuant to the official Employment Contract Template, the regular working hours, as well as meal and rest times, shall be stated in detail. If required due to the nature of the enterprise, this provision may, upon mutual agreement between the employer and employee, be amended in accordance with the applicable laws.
At least one (1) day per week shall be granted as a paid rest day. Ordinarily, Sunday of each week shall be designated as the rest day. If necessary (e.g. due to the nature of the enterprise), the employer and employee may mutually agree on any other day of the week as the rest day.

**Comment Luther:** If an employee has to work on the weekly rest day, an alternative day shall be granted within three days prior to or following the weekly rest day. The employee may further be entitled to overtime pay (please see below).

The Leave and Holidays Rules (2018) provide that in case of any work on weekly rest days, the employer shall maintain Form 4 ("Monetary entitlement record on weekly rest days") and forward it every month to the Inspector. Further, in case of any overtime work on weekly rest days, the employer shall maintain Form 5 ("Monetary entitlement record of working overtime on weekly rest days") for a minimum of twelve (12) months.

Employees other than watchmen or guards shall be granted a break of at least 30 minutes after four (4) continuous hours of work. The sum of working hours, rest period and overtime shall not however exceed eleven (11) hours per day.

The Shops and Establishment Rules (2018) provide that the employer shall display a notice informing the employees about the working hours at each workplace, and inform the Inspector accordingly. If employees are required to work fixed working hours, the employer shall file Form 4 "Notice of working hours" with the Inspector. If employees are required to work shifts or on a rotation system, the employer shall file Form 5 "Notice of working hours with shift system" with the Inspector.

In general, no work shall be carried out beyond midnight. Any enterprise with 15 or more employees which, by nature of business, does not need, but wants to open round-the-clock, (i.e. 24 hours per day), shall procure the permission from the Inspector by applying seven (7) days in advance, using Form 7 "Application for permission to operate round-the-clock" of the Shops and Establishment Rules (2018). The Inspector shall scrutinize the application and grant permission using Form 8 "Grant of permission to operate round-the-clock", which shall be valid for a maximum of two (2) months and be displayed near the working hours’ notice.

### 2. Factories Act (1951)

Under the Factories Act (1951), ordinary working hours are eight (8) hours per day and 44 hours per week (48 hours if the work must for technical reasons be carried out continuously throughout the day), with a break every five (5) hours and spread over no more than ten (10) hours.

The Factories Act (1951) provides that a notice of working hours shall be displayed and properly maintained every day in every factory. The manager of the factory shall submit two (2) copies of such notices to the Inspector before the factory is opened. In case of any change, the manager shall submit two (2) copies to the Inspector.

### V. Overtime

Depending on the nature of the enterprise, the employer and employee may mutually agree on the employee working overtime in accordance with the applicable laws.

#### 1. Shops and Establishment Law (2016)

Under the Shops and Establishment Law (2016), any work in excess of eight (8) hours per day or 48 hours per week is considered overtime. Total hours of overtime shall not exceed twelve (12) hours per week (or 16 hours in case of special needs).

**Comment Luther:** Accordingly, even if an employee works only 40 hours per week, the ninth (9th) hour on a working day would be considered overtime (although the weekly working hours do not exceed 48 hours).

*It should further be noted, that the Shops and Establishment Law (2016) no longer provides for an exception for managers. Accordingly, all employees shall be entitled to overtime compensation.*

Both the Shops and Establishment Law (2016) and the official Employment Contract Template stipulate that the payment of overtime pay shall be computed in accordance with the applicable employment laws. While the Shops and Establishment Law (2016) and its by-law are lacking such provision, the Ministry of Labour published a statement in 2017, according to which the overtime pay of an employee shall be calculated as follows:

\[
\text{Hourly Rate} = \frac{2 \times \text{basic salary} \times 12 \text{ months}}{52 \text{ weeks} \times 44 \text{ hours (or 48 hours)}}
\]
The payment of overtime pay is mandatory in case of overtime work. A set-off by granting additional leave days in lieu is not allowed. Overtime work does however require the request/instruction/approval by the employer, and it would be prudent to stipulate in the contract that no overtime pay shall be paid unless approved in advance by the employer.

The Shops and Establishment Rules (2018) provide that the employer shall send Form 6 “Overtime payment records” to the Inspector within ten (10) days from the pay-day.

2. Factories Act (1951)

Under the Factories Act (1951), any work in excess of eight (8) hours per day and 44 hours per week (respectively 48 hours for continuous work) is considered overtime. Under the provisions of the law, total hours of overtime should be limited to a maximum of twelve (12) hours per week (respectively 16 hours for non-continuous work). According to a directive of the Director General of the Factories and General Labour Laws Inspection Department of the Ministry of Labour, overtime for factories workers shall however be limited to a maximum of 20 hours per week as follows:

- From Monday to Friday: 15 hours (three (3) hours x five (5) days); and
- On Saturday: five (5) hours.

Any employee required to work overtime is entitled to double the regular wage/salary in accordance with the Factories Act (1951).

The working hours/overtime schedule shall be agreed with the workers, approved in writing by the Department of Labour and displayed in the premises.

If workers are required to work on the weekly rest day, a notice shall be put up in the factory, informing on the substitute rest day, which shall also be submitted to the Inspector.

Comment Luther: On 3 October 2019, the Myanmar Investment Commission (MIC) announced that companies registered under the Myanmar Investment Law (2016) and holding an MIC Permit or Endorsement shall seek written approval from an employee required to work overtime on a weekday (Monday to Friday); overtime work shall not exceed three (3) hours per weekday or five (5) hours on a Saturday.

For overtime work on a weekly rest day (Sunday) or a public holiday, companies shall seek written approval from the employee and an acknowledgment from the Workplace Coordination Committee.

In each four (4) week period, no employee shall be required to work more than on one (1) weekly rest day (Sunday).

VI. Public Holidays

Under the Leave and Holidays Act (1951), every employee shall be granted paid public holidays as announced by the Government in the Myanmar Gazette. Any employee required to work on a public holiday shall be entitled to overtime pay.

Comment Luther: Under the Leave and Holidays Rules (2018), any employer who wants to operate on a public holiday shall procure the permission from the Inspector, using Form 8 (“Application for operating a business on public holidays”).

In case of any work on public holidays, the employer shall maintain Form 2 (“Monetary entitlement record on public holidays”) for a minimum of twelve (12) months. Further, in case of any overtime work on public holidays, the employer shall maintain Form 3 (“Monetary entitlement record of working overtime on public holidays”) for a minimum of twelve (12) months.

On average, Myanmar has 25 public holidays per year, depending on the date of the variable holidays:

<table>
<thead>
<tr>
<th>Holiday</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Year</td>
<td>1 January</td>
</tr>
<tr>
<td>Independence Day</td>
<td>1 4 January</td>
</tr>
<tr>
<td>Union Day</td>
<td>1 12 February</td>
</tr>
<tr>
<td>Peasants Day</td>
<td>1 2 March</td>
</tr>
<tr>
<td>Full Moon Day of Tabaung</td>
<td>1 variable</td>
</tr>
<tr>
<td>Armed Forces Day</td>
<td>1 27 March</td>
</tr>
<tr>
<td>Maha Thingyan (Water Festival)</td>
<td>5 13 – 17 April</td>
</tr>
<tr>
<td>May Day</td>
<td>1 1 May</td>
</tr>
<tr>
<td>Full Moon Day of Kasong</td>
<td>1 variable</td>
</tr>
<tr>
<td>Full Moon Day of Waso (beginning of Buddhist Lent)</td>
<td>1 variable</td>
</tr>
<tr>
<td>Full Moon Day of Thadingyut (end of Buddhist Lent)</td>
<td>3 variable</td>
</tr>
<tr>
<td>Eid al-Adha</td>
<td>1 variable</td>
</tr>
</tbody>
</table>
VII. Leave

Leave is governed by the Leave and Holidays Act (1951) and the Leave and Holidays Rules (2018), but additional rules may apply in accordance with other laws, such as the Social Security Law (2012) for employees contributing to the Social Security Fund.

Under the Leave and Holidays Rules (2018), an employee requesting leave shall fill in and submit Form 1 ("Application for leave") to the employer or manager during normal working hours. The employer shall maintain these forms for a minimum of twelve (12) months, kept ready for ad hoc inspection by the Inspector.

Further the employer shall, within seven (7) days from the beginning of each month, send to the Inspector a notice with Form 7 ("Leave record table"), containing particulars on leave days taken by the employees.

1. Casual Leave

Every employee is entitled to six (6) days of paid casual leave per year, which shall be granted in case of unforeseen, sudden circumstances.

Casual leave may be taken to a maximum of three (3) consecutive days at a time, except in case of special circumstances such as religious or compulsory social events and may not be enjoyed in conjunction with any other type of leave.

Untaken casual leave may not be carried forward to the subsequent year.

Comment Luther: While the Leave and Holidays Act (1951) does not stipulate conditions when and how casual leave shall be allowed, the Leave and Holidays Rules (2018) provide that casual leave entitlement shall accrue at the rate of one (1) day on completion of every two (2) months of employment with full pay.

2. Earned Leave (Annual Leave)

Employees are entitled to a minimum of ten (10) days annual leave per year of employment, which may be taken consecutively or separately, provided the employee has completed twelve (12) consecutive months of employment with a minimum of 20 working days per month. For each month without the minimum of 20 full days of work, one day may be deducted from the minimum annual leave entitlement.

If leave is taken commencing prior to and including the day following a public holiday, then the said public holiday shall be counted as a leave day, and be deducted from the employee's leave entitlement. Similarly, if leave is taken commencing prior to and including the day following a weekly rest day, then the said rest day shall be counted as a leave day, and be deducted from the employee's leave entitlement.

Earned leave may be accumulated and carried forward for up to three (3) years, as agreed between the employer and the employee.

Comment Luther: In case of closing of the shop/establishment, termination/dismissal of the employee and resignation of the employee (or his descendants in case of death of the employee) shall be entitlement to receive monetary compensation for any untaken annual leave. The employer shall maintain Form 6 ("Monetary entitlement record for annual leave") for a minimum of twelve (12) months.

3. Medical Leave

Medical leave is primarily governed by the Leave and Holidays Act (1951). Employees contributing to the Social Security Fund may further be entitled to additional leave and other benefits as stipulated in the Social Security Law (2012).

Under the Leave and Holidays Act (1951), employees are entitled to 30 days of paid medical leave per year, provided that they have completed six (6) months of service. Employees covered by the Social Security Law (2012) are also entitled to 30 days of medical leave (if they have completed six (6) months of service), but may enjoy additional leave in case of certain work injuries and illnesses.
Comment Luther: Theoretically, employees covered by the Social Security Law (2012) may receive part of their salary from the Social Security Fund, but in practice, such medical leave is often also granted as paid leave.

The Leave and Holidays Rules (2018) introduce medical leave for the donation of blood, providing that employees are entitled to medical leave on the day of and the day following the blood donation.

4. Maternity and Paternity Leave

Maternity leave is primarily governed by the Leave and Holidays Act (1951). Employees contributing to the Social Security Fund may be entitled to additional leave and other benefits as stipulated in the Social Security Law (2012).

The Leave and Holidays Act (1951) provides that female employees shall enjoy six (6) weeks of paid maternity leave before and eight (8) weeks after delivery. The Leave and Holidays Rules (2018) stipulate that maternity leave can be requested by submitting a medical certificate from a registered physician or a physician recognized by the Social Security Board.

Comment Luther: There seems to be a discrepancy between the law and the current practices of the labour authorities. The official Employment Contract Template provides that a female employee shall enjoy maternity leave upon completion of six (6) months of service. Under the law, a female employee can enjoy maternity leave (but not benefits, such as cash benefits) without having completed a specified period of service.

Female employees covered by the Social Security Law (2012) are also entitled to 14 weeks of maternity leave (which they may already enjoy before completing six (6) months of service), but may further enjoy additional four (4) weeks in case of twins or up to six (6) weeks in case of a miscarriage (exception: criminal abortion).

Further, the Social Security Law (2012) provides that female insured employees shall be entitled to enjoy the following benefits if they have worked for a minimum of one (1) year at the relevant establishment before enjoying leave and paid contributions for a minimum of six (6) months within the said year:

- 70% of their average monthly salary as maternity expenses for a single delivery, 75% for twin delivery and 100% for triplet delivery and above (calculated based on the salary threshold of MMK 300,000 per month applicable for contributions to the Social Security Fund);
- 70% of their average salary for maternity leave in case of miscarriage (calculated based on the salary threshold of MMK 300,000 per month applicable for contributions to the Social Security Fund).

Comment Luther: While employees covered by the Social Security Law (2012) receive part of their salary from the Social Security Fund, in practice, such maternity leave is often also granted as paid leave and any payments from the Social Security Fund may be reimbursed to the employer.

Male employees covered by the Social Security Law (2012) may enjoy 15 days of paternity leave after confinement of their insured wife and 70% of the average annual salary (calculated based on the salary threshold of MMK 300,000 per month applicable for contributions to the Social Security Fund) as benefit for their leave period.

In case of an uninsured wife, male employees shall enjoy 25% of the average monthly salary as maternity expenses for single delivery, 37.5% of the average monthly salary for twin delivery and 50% of the average monthly salary for triplet delivery and above (calculated based on the salary threshold of MMK 300,000 per month applicable for contributions to the Social Security Fund).

5. Funeral Leave

The new Employment Contract Template introduced the additional category of funeral leave. Employees shall be entitled to leave in accordance with the law without deduction from their minimum wage in case of death of a parent or family member. If the statutory leave entitlement has been exhausted, unpaid leave may be granted upon mutual agreement between employer and employee.

Comment Luther: Myanmar labour law does not provide for separate funeral leave. Since the Employment Contract Template provides, that such leave shall be granted in accordance with the law, and explicitly refers to the option to grant unpaid leave, it may be the intention that Funeral Leave be deducted from casual or earned leave entitlement.
VIII. Salary and Minimum Wage

While the employer and employee may agree on a wage/salary in accordance with the provisions of the law, the government enacted the Minimum Wage Law (2013). The first minimum wage was determined in August 2015, with the latest increase in May 2018.

1. Salary

Salaries are to be paid at the end of the month or, depending on the size of the employing enterprise, between five (5) to ten (10) days before the end of the month, as stipulated in the Payment of Wages Law (2016). The employer is permitted and required to withhold income tax and social security contributions from the payment. Other deductions, e.g. for absence, may only be withheld within the limits stipulated in the law.

Comment Luther: Myanmar law does currently not require any specific bonus payments, but a one (1) month’s salary bonus on the occasion of the Thingyan festival in April is common practice.

2. Minimum Wage

A minimum wage has been prescribed for all enterprises with ten (10) or more employees.

According to Notification 2/2018, the minimum wage is MMK 4,800 per day for eight (8) hours of work (excluding break time) calculated at a rate of MMK 600 per hour.

The Minimum Wage Law (2013) defines wage as the basic salary excluding pension and gratuity payments, social security cash benefits, allowances (for travel, accommodation, meals, electricity charges, water service charges and duties, taxes, medical treatment and recreational purposes) and severance payments.

Per definition, wage also includes bonuses and overtime compensation, but in practice, overtime payment is not considered for the calculation of the minimum wage.

IX. Medical Benefits

Unless exempted, any employer with five (5) or more employees shall register with the relevant Township Office of the Social Security Fund. Employees covered by the Social Security Law (2012) are entitled to visit government hospitals and receive other benefits granted under the law. Employees not contributing to the Social Security Fund may be entitled to benefits under the Workmen’s Compensation Act (1923) in case of work injuries, but have otherwise no statutory right to medical treatment.

Comment Luther: In practice, many employers provide medical allowances or medical insurance to their employees, both out of corporate social responsibility, but also for employee retention purposes.

X. Resignation, Dismissal and Termination

Myanmar employment laws provide few details on resignation by the employee and termination or dismissal by the employer. Conditions and requirements are primarily governed by the policies of the Ministry of Labour, most importantly the official Employment Contract Template.

1. Resignation of the Employee

Pursuant to the official Employment Contract Template of the Ministry of Labour, the employee shall give the employer a minimum of one (1) month’s notice prior to resignation.

Comment Luther: While the Employment Contract Template provides for the employer’s permission for the resignation of an employee, we would submit that the resignation is a unilateral act not requiring permission, unless a minimum fixed term of employment or training bond was agreed upon.

The Employer shall permit the resignation with disbursement of any outstanding salary/wage for the days actually worked and compensation for remaining earned leave days, but shall not be required to pay severance pay to the Employee. The resignation of an employee who attended training at the employer’s expenditure shall be subject to the provisions of the Employment and Skills Development Law (2013).

Comment Luther: The Employment and Skills Development Law (2013) does not contain any specific provisions on the resignation of employees who attended training at the employer’s expenditure. We would thus recommend to agree on clear reimbursement obligations with any employee receiving training.

2. Termination by the Employer

Pursuant to the Employment Contract Template, the termination of an employee shall be done in writing and signed, and the employer shall keep records of the reason for termination. While the law does not provide for any specific reasons for the dismissal or termination of employees, the Department of La-
bour will usually require such termination or dismissal to be carried out in accordance with the reasons specified in the employment contract or work rules.

**Dismissal**

For ordinary misconduct, an employee shall be given a written warning for the first (1.) and second (2.) violation and sign an undertaking for the third (3.) violation. In case of any further violation within twelve (12) months from the undertaking, the employer shall be entitled to dismiss the employee without having to pay severance pay.

If no further violation is committed within twelve (12) months from the undertaking or a case of ordinary misconduct, all previous offences of the employee shall be cancelled.

**Comment Luther:** Since the Employment Contract Template is silent on the consequences of grave misconduct, it can be assumed that an immediate, summary dismissal is permitted. The Employer has the option to attach Employment Rules as annexures to the Employment Contract, specifying different categories of misconduct and levels of disciplinary action.

**Termination for Other Reasons**

The employment contract may be terminated for the following reasons stipulated in the official Employment Contract Template:

- Winding-up of the business of the employer;
- Suspension of business due to unforeseeable events; and
- Death of the employee.

**Comment Luther:** Additional reasons for termination may be stipulated in an annexure to the official Employment Contract Template. Any amendment/supplement to the official Employment Contract Template shall however be submitted to the relevant Township Labour Office for review, approval and registration.

**Termination by Notice**

Other than as aforesaid, the employer may terminate an employee by giving one (1) month’s notice and payment of statutory severance pay, provided that the employee shall not be terminated in contravention of any laws or regulations.

**Redundancy**

Pursuant to the official Employment Contract Template, terminations due to redundancy shall be coordinated with a representative of the Labour Organization and a representative of the Workplace Coordination Committee, or, in the absence of a Labour Organization, directly with the Workplace Coordination Committee.

**3. Cancellation of Employment**

Upon mutual agreement between the employer and the employee, the employment contract may be cancelled.

**Comment Luther:** The Employment Contract Template contains no further details on the cancellation of the employment by mutual agreement. A mutual termination by execution of a termination agreement between employer and employee should however always be possible.

**4. Severance Payment**

Employees terminated by notice or with payment in lieu of notice shall be entitled to severance payments as follows:

<table>
<thead>
<tr>
<th>Term of Employment</th>
<th>Severance Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 6 months</td>
<td>-</td>
</tr>
<tr>
<td>6 months – 1 year</td>
<td>0.5 month’s salary</td>
</tr>
<tr>
<td>1 year – 2 years</td>
<td>1 month’s salary</td>
</tr>
<tr>
<td>2 years – 3 years</td>
<td>1.5 months’ salary</td>
</tr>
<tr>
<td>3 years – 4 years</td>
<td>3 months’ salary</td>
</tr>
<tr>
<td>4 years – 6 years</td>
<td>4 months’ salary</td>
</tr>
<tr>
<td>6 years – 8 years</td>
<td>5 months’ salary</td>
</tr>
<tr>
<td>8 years – 10 years</td>
<td>6 months’ salary</td>
</tr>
<tr>
<td>10 years – 20 years</td>
<td>8 months’ salary</td>
</tr>
<tr>
<td>20 years – 25 years</td>
<td>10 months’ salary</td>
</tr>
<tr>
<td>&gt; 25 years</td>
<td>13 months’ salary</td>
</tr>
</tbody>
</table>
XI. Accounts, Records and Registers

Under the Shops and Establishment Rules (2018), the employer shall maintain the following records for a minimum of twelve (12) months:

- Copies of notices required to be sent by employer;
- Notice concerning work hours;
- Permission to operate round-the-clock according to nature of enterprise (if any);
- Attendance (Form 9 “Employees daily attendance record”);
- Employee register;
- Child employees registration (if any) (Form 10 “Child employee register”);
- Overtime records;
- Overtime payment records;
- Payment of remuneration records; and
- Leave records.

If necessary, the Inspector may raid shops/establishments in the presence of two (2) witnesses. Upon signing of with Form 11 “Search Form and Seizure of Evidence”, he may seize such accounts, records and registers as evidence.

XII. Compliance Obligations

General compliance with the law, as well as business practices cannot be taken for granted in Myanmar. Employment contracts and company policies should provide for the relevant obligations to be observed by the employees.

1. Confidentiality

Employees should be clearly advised of their confidentiality obligations, both during and after cessation of the employment.

2. Legal Compliance

In accordance with the instructions of the Anti-Corruption Commission and the Directorate of Investment and Company Administration, employers shall implement anti-corruption guidelines. These should not only address the bribery of officials, but also the acceptance of gifts and invitations and the handling of donations and sponsoring.

3. Non-Compete Obligations

It should be noted, that post-contractual non-compete obligations for employees are not permitted and void in accordance with the Myanmar Contract Act (1872).

Comment Luther: Non-solicitation obligations should however be valid if reasonable.
F. Distinction between Employees & Consultants

I. General

While it is generally possible to engage individuals as independent contractors, Myanmar law does currently not expressly require (Myanmar citizen) contractors to register a sole proprietorship/business. Unless exempted, such contractors are merely required to register for Commercial Tax with the relevant Township Revenue Officer if and when their taxable turnover exceeds MMK 50,000,000 per financial year.

In theory, the same principles apply as in other jurisdictions, and the distinction between independent services (by a consultant or contractor) and employment should be made based on criteria such as:

- **Control** - What is the nature and degree of control that the hiring enterprise has over the way in which the contractor is to perform the work?
- **Chance of profit/risk of loss** - Does the contractor have an opportunity to make a profit or loss?
- **Investment** - Does the contractor have an investment in materials, equipment, or other personnel required to perform the work?
- **Integration** - To what extent is the contractor’s work an integral part of the hiring organization’s operations?
- **Duration** - What is the duration of the engagement?
- **Payment/Benefits** - What payments and benefits does the contractor receive?

**Comment Luther:** While it is to some extent possible to control these factors in the drafting of a service contract, the test is based on the actual facts of the engagement rather than the wording of the contractual agreements. For example, where an engagement provides for full-time services by a single individual for a longer duration, it is likely that such would be considered employment under the law. Only if it is very clear that an engagement constitutes independent services (e.g. the individual is also providing equipment and materials, and is engaged for the same services by more than one customer), it may be safe to consider the service provider an independent contractor.

In practice, the distinction between employees and independent contractors may thus be rather difficult. Since the labour authorities in Myanmar are very employee-friendly and interested in protecting the employees’ rights under Myanmar labour law, a service engagement may thus be considered “hidden employment”, with all consequences provided under the law for defaulting employer obligations, such as social security fund contributions, personal income tax filing or leave and holiday provisions.

II. Foreign Consultants

In general, as in almost every other country, foreign persons are not allowed to provide independent services in Myanmar without first registering their business. Consequently, any foreigner intending carry on business in Myanmar shall register with the Directorate of Investment and Company Administration, as stipulates in Myanmar’s investment and company laws. Without such registration requirement, it would not be possible to enforce investment restrictions, nor tax-and other obligations.

Foreigners would thus have to incorporate a Myanmar company or register a branch office of their overseas business in Myanmar to provide services within the country, with such company/branch office acting as employer of the foreigner.
G. Workplace Safety and Health

I. General

Health and safety rules are primarily stipulated in the Factories Act (1951), including:

- Precautions against “occupational hazards” and creation of a “healthy and hygienic work environment”;
- Provision of protective gear and respective training;
- Measures to prevent damage to the hearing and health of workers due to noise issuing from the manufacturing process of the factory, and to prevent accidents;
- Arrangement of escape routes and fire alarms;
- Measures must be in place to avoid damaging the natural environment in cleaning up of wastes, spillages, fumes, dust and odours from the manufacturing process;
- Regular cleaning and maintenance (cleaning of the floor once per week, painting of internal walls and ceilings once per year, redoing enamel paint and varnish once every three (3) years);
- Ensuring cleanliness, ventilation, fresh air, temperature control, absence of dust and smoke, sufficient lighting;
- Provision of separated and sufficient toilets in clean condition;
- Provision of clean drinking water (separated from the toilet by at least 20ft);
- Provision of spittoons and garbage bins;
- Provision of at least one (1) first-aid box or medical box at every factory, depending on the number of employees;
- Provision of adequate dining room and rest areas for premises with more than 100 workers;
- Provision of a nurse room or clinic with one (1) doctor and one (1) nurse in full-time attendance for premises with more than 250 workers;
- Factories having 100 or more married female workers with offspring under six years of age shall provide day-care centers for each factory or collection of factories as prescribed by the Ministry of Labour. In case of factories having less than 100 married women, the employer may provide other appropriate arrangements for their offspring under six years of age;
- The employer shall make arrangements as needed upon presentation by a female worker with medical certificate from a registered physician that she is unable to work in the workplace during times of menstruation;
- Only light duties shall be given to pregnant female workers in order to avoid detrimentally affecting the pregnancy; female workers with pregnancy period of seven months or more shall not be given overtime work or nightshift work;
- Notification requirement to the social security clinic or workers’ hospital with regard to any occupational illnesses and any suspicion that an occupational illness has occurred, as well as compliance with the social security clinic or workers’ hospital recommendation how to deal with an occupational illness;
- Prohibition of child labour;
- Restrictions on juvenile workers, which shall not be exposed to working environments causing danger, damaging health, interfering with opportunity for education, damaging moral integrity and honour, exploitation of labour;
- Prohibition of drugs, smoking, using fire, drinking alcohol and chewing betel nuts and gums at the workplace; and
- In order to reduce and eliminate workplace accidents and occupational diseases, the employer shall cause the in-charge of workplace safety and health, supervisors and workers to attend training courses recognized by the Ministry of Labour on workplace safety and health.

II. Occupational Safety and Health Manager & Committees

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

While an Occupational Safety and Health Manager is appointed by the employer, an Occupational Safety and Health Committee shall comprise of the same number of representatives of the employer and employees.

Comment Luther: While the law stipulates that managers shall be appointed and committees be formed in accordance with the specifications of the Ministry of Labour, no further information (e.g. on qualification requirements, number of members) is provided.
The Occupational Safety and Health Manager shall ensure a safe and healthy workplace in accordance with the Occupational Safety and Health Law (2019) and its rules, orders and directives. The Occupational Safety and Health Committee shall have the following duties:

- Regular examination of the situation impacting occupational safety and health and preparation of an appraisal;
- Advising the employer on prevention of occupational accidents and education plans;
- Facilitating the cooperation between the employer and workers to give training for the improvement of the occupational safety and health;
- Supervising the assessment of occupational safety and health hazards; and
- Such any other prescribed occupational safety and health functions.

H. Dispute Resolution System

Myanmar's labour dispute resolution system is primarily governed by the Settlement of Labour Dispute Law (2012) as amended in 2019.

The objective of the law is to provide an alternative to litigation, with a process that shall be fair and quick, minimizing the financial impact that could result from a strike or lock-out. Although the system is administered by the Ministry of Labour, the tripartite composition of the township, state/regional and national bodies includes worker and employer representatives in the process of seeking equitable resolutions.

In case of labour dispute, the following bodies may be called upon for resolution.

I. Individual Dispute

In case of an individual dispute (e.g. termination of an employee), the employer or employee may complain to the relevant Township Conciliation Body, which shall consist of eleven (11) members – the chairperson (assigned by the relevant State/Regional Government), three (3) employers’ members (elected by the employers or employer organizations), three (3) workers’ members (elected by workers or members of labour organizations), one (1) township level representative, two (2) distinguished persons trusted and accepted by both the employers’ and workers’ members and one (1) person assigned by the Ministry Secretary. The term of the Conciliation Body is two (2) years.

The Township Conciliation Body shall within (3) working days assist the parties to the dispute to reach a mutually agreed through neutral third-party intervention. Kindly note, that the conciliator assists the parties to settle the dispute, but is not empowered to impose a settlement.

If the dispute cannot be settled, each party may file a law suit with the relevant court.

Comment Luther: In practice, many disputes are heard by one (1) representative of the Township Conciliation Body only. Further, the process usually exceeds the above mentioned timeline.
II. Collective Dispute

Collective dispute (e.g. working conditions, payment of wages) shall be settled by the following bodies:

- Workplace Coordination Committee (1st instance);
- Township Conciliation Body (2nd instance);
- State/Regional Dispute Settlement Arbitration Body (3rd instance); and
- Dispute Settlement Arbitration Council (Final instance).

1. Workplace Coordination Committee

Companies with 30 or more employees must form a Workplace Coordination Committee, which shall be notified to the relevant Township Conciliation Body by filling Form A. The Workplace Coordination Committee shall consist of an even number of four (4) members, equally representing the employer and the employees. The employees’ representatives shall be elected by the employees. In case of unionized employees, the labour organization may nominate candidates (but may not further influence the electoral process). The term of a Workplace Coordination Committee is one (1) year.

Grievances shall be negotiated and settled by the Workplace Coordination Committee within five (5) working days. A record of the settlement shall be sent to the relevant Township Conciliation Body.

Comment Luther: Companies with less than 30 employees may form a Workplace Coordination Committee. If no such committee is formed, the employer shall negotiate directly with the employees.

2. Township Conciliation Body

If a collective dispute cannot be settled amicably, the employer, the employees or the labour union may complain to the relevant Township Conciliation Body (please see above). If no conciliation is reached, the Township Conciliation Body shall inform the Regional/State Arbitration Body within two (2) working days.

3. Regional/State Arbitration Body

The State/Regional Dispute Settlement Arbitration Body consists of eleven (11) members: three (3) government members, three (3) members nominated by employer organizations, three (3) members nominated by labour organizations and two (2) distinguished persons.

As an independent and neutral third party, it shall make a binding decision within seven (7) working days. If a party is not contempt with the decision, it may carry out a strike/lock-out (please see below) and/or call upon the Arbitration Council for a final decision.

4. Arbitration Council

The Arbitration Council is the highest labour dispute instance. It consists of 15 members: five (5) members selected by the Ministry of Labour, five (5) members nominated by employer organizations and five (5) members nominated by labour organizations. It shall form a tribunal and make a decision within seven (7) working days (in special cases 14 days).
I. Trade Unions & Strikes

Since 2011, labour unions may be formed at the factory level if at least 10% of all workers (but in any case not less than 30 workers) of the factory approve the formation of the labour union. Umbrella organizations may be formed at the township, regional and national level.

The labour unions shall have the right to negotiate and settle issues with the employer if employees are unable to obtain and enjoy the rights contained in the labour laws. They may also demand re-employment of employees dismissed by the employer, if there is cause to believe that the reasons of such dismissal were based on labour organization membership or its activities, or were not in conformity with the labour laws. Labour unions further have the right to support the employees in collective bargaining and assist in the preparation of employment agreements, as well as send representatives to the conciliation body for the settlement of disputes between the employer and employees.

Employers shall not impede their employees’ participation in a labour union. Further, they shall grant employees being members of a labour union’s executive committee up to two (2) days leave per month for labour union activities.

Employees organized in a labour union may, under certain conditions, go on strike, if the general dispute resolution mechanisms failed. The requirements for a strike are:

- Strike demands must be within the scope of competence of the union (e.g. higher wages, reinstitution of terminated workers, adequate overtime payment, etc.);
- More than 50% of the workers must approve the strike;
- Township labour organization must approve the strike; and
- Permission from the conciliation body must be obtained.

Employees providing essential services (e.g. water and electricity services, health services, telecommunication services, etc.) are not permitted to strike. Stricter rules and a requirement to provide minimum services apply to employees providing public utility services (e.g. transportation business, port and cargo business, postal service, etc.).
J. Our Services

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

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

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

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

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

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

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

Legal and Tax Advisory Services

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

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

Establishment of a Myanmar Business

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

Cessation of a Myanmar Business

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

Compliance

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

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

Corporate Law, Investment Structuring and Joint Ventures

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

Employment and Labour Law

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

Foreign Direct Investment and Market Entry

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

Immigration Law

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

Intellectual Property Law

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

International Trade and Distribution Law

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

Financial transactions

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

M&A Advisory

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

Non-Profit Sector

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

Real Estate Law

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

Tax Advice and Tax Structuring

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

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

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

Corporate Secretarial Services

- Provision of personnel to assume statutory positions
  - Company secretary
  - Nominee director / officer
- General statutory compliance services
  - Advice on best practice, corporate governance and compliance with Myanmar law
  - Corporate restructuring
  - Setting up, custody and maintenance of statutory books and registers
  - Preparing and lodging of prescribed forms and requisite documents with the Directorate of Investment and Company Administration (DICA) and the Myanmar Investment Commission (MIC)
  - Preparation of notices, minutes, and other documents pertaining to directors’ and shareholders’ meetings (Annual General Meeting and Extraordinary General Meeting)
  - Provision of registered office address
- Managing changes:
  - Change of name
  - Change in constitutional documents
  - Change in capital structure (transfer of shares, new issuance of shares)
  - Change of shareholders
  - Change of directors, representatives, auditors and company secretaries
  - Change of registered office address
  - Opening of bank accounts and managing changes of bank signatories

Individual and Corporate Tax Compliance

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

Human Resources & Payroll Administration

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

Accounting & Financial Reporting

- Bookkeeping
  - Setting up the chart of accounts
  - Recording of all payments and funds received
  - Preparation of monthly bank reconciliation statements
  - Recording of all sales and trade debtors
  - Recording of all purchase and trade creditors
  - Recording of prepayments and accruals
  - Recording of all assets purchased and related depreciation
  - Recording of all commercial tax (CT) on taxable purchases/supplies
  - Extraction of monthly trial balances and general ledger
- Management reports
  - Compiling of profit and loss account and balance sheet
  - Generating aged financial analysis of debtors and creditors
  - Business advisory services such as accounting reports and preparation of business plans
  - Budget preparation, comparison and analysis of key components of financial performance
- Statutory accounting
  - Preparation of financial statements and notes to the financial statements
  - Review and computation of tax and deferred tax provisions for inclusion into financial statements

Payment Administration

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

Expertise

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

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

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

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

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

Singapore

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

Shanghai

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

Asia

Our two principal Asian offices in Singapore and Shanghai are complemented by offices and teams in Yangon (Myanmar), Delhi-Gurugram (India), Kuala Lumpur (Malaysia) and Jakarta (Indonesia).

This network of Luther offices is further strengthened by the long-established business relationships that we have successfully developed both locally and with our regional partners and “best friends” in Australia, Hong Kong, India, Japan, New Zealand, the Philippines, South Korea, Thailand and Vietnam.
L. Our Locations

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

10 offices in Germany:
- Berlin
- Cologne
- Dusseldorf
- Essen
- Frankfurt a. M.
- Hamburg
- Hanover
- Leipzig
- Munich
- Stuttgart

The shown locations are either Luther legal or corporate services offices and/or offices of our local co-operation partners.
Luther Rechtsanwaltsgesellschaft mbH is one of the top addresses among German commercial law firms. From our ten German offices and six international offices, our lawyers and tax advisors advise their clients both in legal disputes and in organisational issues. We focus on providing efficient and far-sighted advice which leads to the desired commercial results. This, together with the sensible allocation of time and personnel resources, provides the basis for our innovative advice.

Luther provides legal and tax advice in all areas relevant to companies, investors and the public sector. Knowledge of the market in which our clients are active is a prerequisite for providing successful advice. That’s why our lawyers and tax advisors, in addition to their specialised legal knowledge, also focus on advising clients from particular industries.

Our approach is interdisciplinary. Legal and tax issues are in our opinion often closely linked, and long-term commercial and financial implications should not be overlooked either. We benefit from the close working relationship between our lawyers and our tax advisors as well as from years of experience working with business consultants, accountants and bankers. We are, of course, also able to provide advice to our clients in international matters. We have our own foreign offices, which are located at six important finance and investment centres in Europe and Asia. In addition, we have long-standing, close relationships with business law firms in all relevant jurisdictions around the world.

In Continental Europe, Luther is part of a group of independent law firms each of which is one of the leading law firms in its own country. These law firms have a strong track record in cross-border projects and are engaged in an ongoing exchange of information about new market trends and legal developments.

Practice Areas

- Antitrust Law
- Capital Markets, Banking & Finance
- Commercial & Distribution Law, Product Liability/ Product Compliance
- Complex Disputes
- Compliance & Internal Investigations
- Corporate/M&A
- Data Protection Law
- Employment Law
- Energy Law
- Environment & Planning Law, Regulatory
- IP and Copyright Law
- IT Law
- Insurance Law
- International Trade Law
- Notarial Services
- Public Procurement Law
- Public Subsidies/State Aid Law
- Real Estate
- Restructuring & Insolvency
- Tax Law
- White-collar Crime & Tax Offences

Our Industries

- Energy
- Health Care & Life Science
- Information Tech & Telecommunications
- Mobility & Logistics
- Real Estate & Infrastructure
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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.


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