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Myanmar Newsflash | August 2020

Draft e-Commerce Registration Procedures

I. Introduction

E-commerce in Myanmar is currently not formally regulated, and often operated through social media platforms, resulting in a lack of accountability and protection for buyers and consumers. As a consequence, the Ministry of Commerce intends to implement a regulatory framework for the registration of businesses engaged in e-commerce activities in Myanmar.

On 10 July 2020, the Department of Trade under the Ministry of Commerce issued a first draft of the new Registration Procedures for e-Commerce Platforms. Please find attached an unofficial translation for your information.

It should be noted that the draft procedures do not provide for the authorisation or approval to engage in trading activities per-se. Rather, the permission to engage in trading activities would be based on existing regulations, such as wholesale and/or retail business licenses issued by the Ministry of Commerce.

II. Requirements

To register a platform with the Ministry of Commerce, applicants shall comply with the following criteria:

- (I) Be registered in accordance with the Myanmar Companies Law 2017;
- (II) Maintain a registered formal domain name (e.g. .com, .com.mm);
- (III) Be engaged in e-commerce for goods and/or services within Myanmar;
- (IV) Maintain all relevant permits, approvals or licenses from the Ministry of Commerce and other relevant authorities for the trade of goods and/or services; and
- (V) Comply with the Consumer Protection Law 2019 and cooperate with the relevant authorities in case of consumer complaints.

III. Prohibition

It should be noted that online games, gambling, trading of cryptocurrencies (e.g. bitcoins), illegal share trading and the sale of goods that are restricted or banned from import under any applicable law are prohibited.

IV. Registration process

While the draft procedures remain vague with regard to the registration process, the Ministry of Commerce indicated that the registration will be submitted through an online application system and that the registration will be free of charge. A logo certifying the completion of the registration will be issued to the applicant for publication on its e-commerce platform. Further, the Ministry of Commerce will publish a list of registered e-commerce platforms on its website.

V. Terms and conditions of the registration

The registration certificate will valid for five years and can be renewed no later than three months before its expiry. The e-commerce platform must comply with all applicable laws (including the E-Commerce Guidelines 2020) and display the logo certifying the registration. Further, registered platforms must ensure that the personal data collected from the customers is protected and used only for the purpose of the e-commerce transactions.

Platforms providing e-commerce services and marketplaces (i.e. platforms allowing third-party sellers and buyers to trade) shall collect and maintain the necessary details of the participants, and shall assume responsibility to resolve any dispute arising between sellers and customers.

A list of all participants on the marketplace should be submitted to the authorities every six months.

Annex I

Unofficial Translation of the Draft Procedures

Government of the Republic of the Union of Myanmar
Ministry of Commerce (“MOC”)
Department of Trade (“DOT”)

Letter No.: KaThaRa(Oo)nee-pyin-nyar/2019-2020(1458)
Date: 2020-JUL-10

Table of Contents

Sr.	Content	Page
1.	Introduction	
2.	Objectives	
3.	Businesses eligible for registration	
4.	Compliance criteria of registered companies	
5.	Registration Process	
6.	Application Vetting	
7.	Benefits of Registering	
8.	Conclusion	
Annexes		
A.	Application Form (e-Commerce (Online Shop) Registration)	
B.	Certificate Sample (e-Commerce Online Shop)	
C.	Sample Logo Designs	
D.	Web Page Sample Design	

(DRAFT) ECOS Registration Process

Introduction

1. The MOC is implementing the e-Commerce Online Shops (“ECOS”) Registration Process with the objective of supporting the development of e-commerce in the Republic of the Union of Myanmar, enhance confidence of parties engaging in e-commerce, and to enable legislation of other necessary statutory procedures. The MOC is acting based on the authority conferred under “Goal 5: Promoting Innovative Products & Platforms (“PIPP”)” of the COVID-19 Economic Relief Plan. The registration by MOC only confirms that the business is operated by the registered enterprise.

Objectives

2. In the Republic of the Union of Myanmar, e-commerce is primarily carried out via social media platforms such as Facebook, instead of formal marketplace/platforms. As a consequence, there is abundance of counterfeiting and difficulties in traceability. Accordingly, the objectives are to ensure trust between sellers and buyers, to protect the rights of consumers, and to be able to resolve disputes in accordance with the framework provided in the procedures of the respective laws.

Eligibility Criteria

3. Companies meeting the following criteria can register an ECOS with the MOC:
 - a. be duly registered under the Myanmar Companies Law 2017 to operate its business.
 - b. be engaged in ECOS with a registered formal domain/sub-domain such as .com or .com.mm under https.
 - c. be located in Myanmar and trade goods and/or services online.
 - d. have obtained approvals from other relevant departments in respect of the trade of goods and/or services.
 - e. comply with the rules and procedures stipulated in the Consumer Protection Law 2019, and cooperate with relevant authorities in case of consumer complaints.

Compliance by registering companies

4. Companies registering for ECOS with the MOC shall comply with the following terms and conditions:
 - a. the registration is valid for five (5) years, and must be extended three (3) months before it expiry.
 - b. business must be conducted in accordance with prevailing laws, procedures and regulations.
 - c. must cooperate with the relevant department and publish the Certified/Approved Logo on the business' website.
 - d. a company which provides e-commerce platform (marketplace) services shall, under its own arrangements, collect and maintain necessary details of the participants of its marketplace.
 - e. shall assume responsibility to resolve any dispute arising between sellers and buyers of its ECOS marketplace.
 - f. online games, gambling, commerce with digital money/bitcoins, illegal share trading, and the sale of goods which are restricted or banned from import under any applicable law, and transacting of sales in unapproved manners are absolutely prohibited.
 - g. an up-to-date list of online sellers participating in the registered market place must be submitted every six (6) months.
 - h. customer data must be protected against use for purposes other than commerce.
 - i. terms and conditions contained in 2020 E-commerce Guidelines issued by the MOC must be fully complied with.

Registration Process

5. The registration will be carried out as follows:
 - a. the MOC will issue the registration procedures for ECOS activities.
 - b. the MOC will implement an online application system to facilitate the registration process.
 - c. it will be included as module in Myanmar Tradenet Website, and will not require becoming a member.
 - d. no registration fees will be collected from the business owner.
 - e. the business owner must complete the Application Form.
 - f. if found to be acceptable after verification of the data provided in the application, a certificate will be issued online (Annex-B proposed form for certificate to be issued).
 - g. the logo certifying completion of registration will be provided via script file for display on the relevant ECOS.
 - h. for further trust of consumers, details related to registered ECOS will be formally published at www.commerce.gov.mm or the Myanmar Tradenet website.

Application Vetting by the Department

6. The DOT will review the applications for registration as follows:
 - a. review of data submitted online with undertaking of veracity by business owner, and confirmation whether business is being transacted at the provided website URL;
 - b. confirmation whether the company registration and PaThaKa registration in the system are correct.
 - c. confirmation of the details submitted by the applicant;
 - d. submission of the required documents for departmental administrative approval;
 - e. issue a certificate to confirm the registration to the business owner; and
 - f. display the logo on the website.

Benefits of Registering

7. Business owners will enjoy the following benefits by registering:
 - a. obtain more trust from sellers and customers in respect of its business;
 - b. proper dispute resolution between sellers and customers;
 - c. attract business from informal social commerce to registered marketplaces;
 - d. legal transaction in case of purchasing or finding markets abroad, including export-import procedures; and
 - e. in the event of foreign aid concerning e-commerce, domestic companies will be better connected in accordance with their type of business.

Conclusion

8. The E-commerce Task Force has been formed since 2018 under the lead of the MOC, with participation from relevant government departments and private sector stakeholders, with the objective of promoting ECOS and necessary legislation in the Republic of the Union of Myanmar. By continuing with the voluntary ECOS Registration System, confidence will be raised by creation of a good environment for both businesses and customers, and implementation of an e-commerce eco-system, affording more protection for consumers, and assistance in the further development of the digital economy of the Union.

Suggestions So Far for Consideration

1. The situation is that it is still alright for Wholesale-Retail Businesses (WRBs) not to register, because registration is not mandatory but voluntary only.
2. Online sales is just one method for distribution services, and thus review must be made so that they are in accordance with conditions imposed for WRBs.
3. Prevailing policies must be taken in account in allowing foreign-interest companies for wholesale.
4. To consider ground inspection to ascertain physical office, warehouse.
5. To consider matters in respect of Post Office Law in respect of delivery types.
6. To continue discussion on use of the term 'voluntary'.
7. To conduct separate discussion in respect of incentives. (In other countries, preferential treatment is provided in invitations for capacity building et cetera).
8. According to ASEAN needs, it is relaxation after strictness. Therefore, it is necessary to go voluntary way first, then only consider the mandatory way.
9. It is found from studies that those with registered domain names cannot overcome those operating in social media.
10. If social media is covered, SME might be overwhelmed.
11. To consider the fact that currently there is wide use of online/mobile games and there are money transfers.
12. To consider that In online games, regional events are included as e-sport, and money transfers are being carried out via websites.
13. To consider sanctions for violation of rules.
14. To consider procedure for revocation of registration.

Luther in Myanmar

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

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

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

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

To advise each client in the best possible way, our lawyers and tax advisors – in addition to their specialised 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 Advisory Services

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

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
- Representation vis-à-vis regulatory authorities
- Application for Permits and Endorsements under the Myanmar Investment Law 2016 and the Special Economic Zone Law 2014

Establishment of a Myanmar Business

- Advising on the type of entity to be established and the optimal corporate & tax structure
- Incorporation of limited companies and registration of foreign corporations (“Branch or Representative Offices“)

Corporate Law, Investment Structuring and Joint Ventures

- National and international joint ventures, PPP projects
- 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
- Disputes among shareholders

M&A Advisory

- Support in M&A, domestic and cross-border acquisitions by asset or share deal
- Due diligence
- Corporate restructuring measures
- Post-merger / closing integration

Finance Advisory

- Banking, finance and insurance law
- Corporate finance
- Loan and security agreements
- Registrations with the Central Bank and FRD
- Legal opinions

Real Estate Law

- Sale and purchase agreements and leases
- Financing structures

Non-Profit Sector

- Advice on the appropriate legal structures for NGOs, development organisations, foundations, social enterprises and charities
- Registration of companies limited by guarantee, associations and NGOs
- Application of tax exemptions

Compliance

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

Employment and Labour Law

- Employment and secondment contracts, employment policies
- Registration of employment contracts with Myanmar labour authorities
- Corporate restructuring, redundancy and compensation plans

Immigration Law

- Visa, long-term stay permits and foreigner registration cards
- Labour Cards
- Form C (Occupation of Residential Premises)

Contract Law

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

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

Intellectual Property Law

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

Tax Advisory and Business Process Outsourcing Services

Our tax advisors, company secretaries and accountants support clients with a complete range of BPO services, including:

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
 - Setting up, custody and maintenance of statutory books and registers
 - Filings 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
 - Provision of registered office address
- Managing changes:
 - Change of name
 - Change in constitutional documents
 - Change in capital structure (transfer of shares, issuance of shares)
 - Change of shareholders, directors, representatives, auditors and company secretaries
 - Change of registered office address
- Cessation of a Business
 - Liquidation of Companies
 - De-Registration of Overseas Corporations (Branch / Representative Office)

Tax Advice and Tax Structuring

- International tax (inbound and outbound)
- Direct and indirect taxes
- Tax structuring of M&A transactions
- Transfer pricing

Tax Compliance

- Commercial tax and special goods tax
- Corporate income tax and withholding tax
- Personal income tax
- Applications for relief under Double Tax Agreements
- Liaison with the Internal Revenue Department
- Payment of stamp duty

Accounting and 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, purchase and trade debtors
 - Recording of prepayments and accruals
 - Recording of assets 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
 - Budget preparation, comparison and analysis of key components of financial performance
 - Statutory accounting
 - Preparation of financial statements and notes to the financial statements

Human Resources and Payroll Administration

- Processing and payment of employee expense claims
- Computation of salaries, social security contributions and personal income taxes
- Provision of payroll reports and 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

Payment Administration

- Administration of cash funds deposited with us or in client's own bank accounts
- Account signatory services to enable settlement of company payment obligations and observance of "four eyes principle"
- Cash flow forecasting and processing of accounts receivables
- Issuance of payment vouchers and arrangement of payments

Luther in 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 creation of international holding structures and ensuring tax-efficient 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 professionals and tax consultants offering all the services one would necessarily associate with a “one-stop shop” concept, from outsourced administration to accounting, payroll and tax compliance. Additionally, we provide corporate secretarial services, especially in Asian “common law” countries.

Collectively, our lawyers, tax consultants and professionals combine the competence and experience necessary to comprehensively 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 accounting and payroll functions a business must undertake, allowing our clients to concentrate on growing their business.

Singapore

Singapore is a leading international trade and financial hub. As such, it serves as Asian headquarters 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 full 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 authorised 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.

Region

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

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

Hits the Mark. Luther.

Luther is one of Germany's leading commercial law firms. With approximately 420 lawyers and tax advisors, we can advise you on all aspects of German and international commercial law. We have offices in every economic centre throughout Germany. We also have our own offices in ten locations around the world: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advice is tailored to our clients' corporate goals. We take a creative, dedicated approach to achieving the best possible economic outcome for each of our clients.

The name Luther is synonymous with expertise and commitment. We thrive on managing whatever you ask us to advise on, and pride ourselves on finding the best possible solution for every client. Not too much and not too little – always hits the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always consider the economic impact of our advice, whether it concerns structuring advice or a legal dispute.

We deal with complex projects every day. Luther's experienced and highly specialised advisors have worked together closely for many years. We offer our clients the best possible service. Our fast, efficient communication, round-the-clock availability and flexibility mean we are there when you need us.

Luther has been named "Law Firm of the Year 2019" by the German legal publisher JUVE.

Luther Myanmar is ranked in the Asia Pacific Guides 2020 of Chambers and Legal 500.

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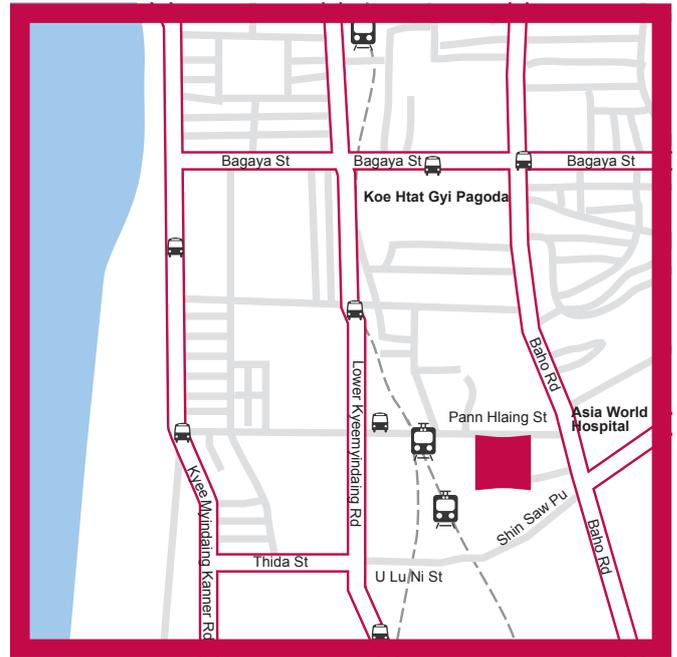
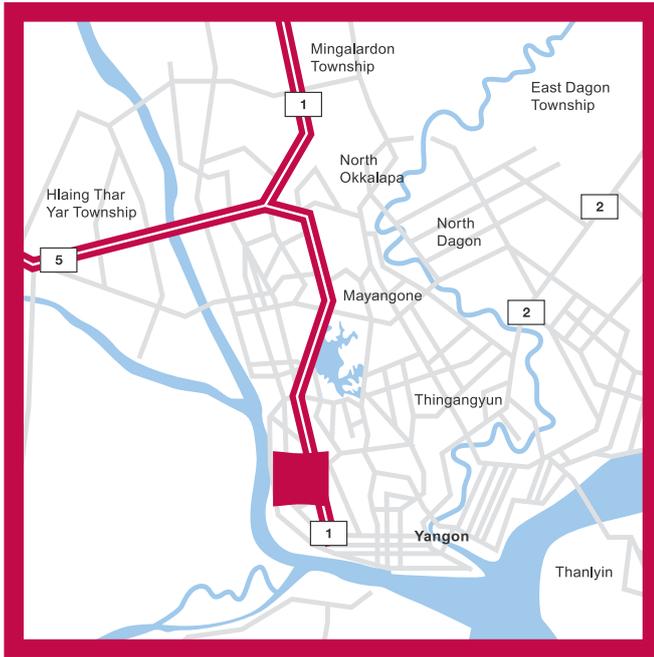
Our Locations

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



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

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