

# Luther.

## Memo: Myanmar Employment Law

Updated: October 2023



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# 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 to overhaul 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
- Income Tax Law (1974)
- Labour Organisation Law (2011)
- Law on the Rights of Persons with Disabilities (2015)
- Law Relating to Overseas Employment (1999)
- 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)
- Settlement of Labour Dispute Law (2012) as amended 2014
- 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)

- Guidelines on Procedures for Overtime Work in Factories and Workshops (2022)
- Guidelines on Procedures for Shift-work in Factories and Workshops (2022)
- Instructions of the Factories and General Labour Law Inspection Department
- Labour Organisation Rules (2012)
- 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 – concerning severance payments
- National Minimum Wage Committee Notification No. 2/2015 – concerning 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 and 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.

## B. Applicable laws

### 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 extent 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 administering such employee on behalf of the employer, an inheritor to the employer on the employer’s death and the authorised representative, but excludes a labourer-in-charge/foreman”.

The Minimum Wage Law (2013) defines employer as a “person who is responsible to pay such worker after employing one (1) 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 dies;
- 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 Law, 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; or
- 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”.

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 specialised law. Consequently, even non-profit organisations 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 or more workers are working, or were working on any day of the preceding twelve 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 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

## C. Registration of employers

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)

#### 1. Overseas Employment Law (1999)

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 Organisation and any of its specialised agencies):

- Employment of seafarers; and
- Employment in a foreign country of any government servants or experts assigned by any government department or organisation.

#### 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”.

### 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 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, e-mail of the shop/ establishment;
- Type of shop/establishment;
- Name, ID number, address, phone, fax, e-mail of employer;
- Name, ID number, residential address, phone, fax, e-mail 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.

The employer shall use Form 1 “Notice of opening of shop/ establishment” of the Shops and Establishment Rules (2018). In case of any subsequent change, the employer shall use Form 2 “Notice of change”.

#### 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.

## D. Registration of contracts

### II. Closing a business

#### 1. Shop or establishment

An employer wishing to temporarily or permanently close a shop or establishment shall at least ten 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 otherwise 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 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 days after closing down.

### I. Employment and Skills Development Law (2013)

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.

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.

**Comment Luther:** *In practice, please note that some Township Labor Offices will only accept registration of employment contracts based on the official template with a term not exceeding the prescribed term of two years.*

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 duration 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 (3) 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 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 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 of 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 scrutinise 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 10 hours.

The Factories Act (1951) provides that a notice of working hours shall be displayed and properly maintained 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.

In July 2022, the Ministry of Labour issued Guidelines on the Procedures for Overtime Work in Factories and Workshops (2022). Pursuant to these guidelines, workers of the following enterprises may carry out work up to 48 hours per week:

- Electric power distribution;
- Ice production plant;
- Oil refinery;
- Timber treatment plant;
- Water and oil pumps;
- Chemical plants, mills extracting oil from fruits/cereals;
- Air/gas-powered machinery; and
- Sugar production plants.

## 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 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 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:

$$\text{Hourly Rate} = 2x \frac{\text{basic salary} \times 12 \text{ months}}{52 \text{ weeks} \times 44 \text{ hours (or 48 hours)}}$$

**Comment Luther:** 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 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 work at continuous production factories) is considered overtime. Under the provisions of the law, total hours of overtime should be limited to a maximum of twelve 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).

Pursuant to the Overtime Guidelines issued by the Ministry of Labour, factories that wish to implement overtime work shall obtain approval from the relevant branch office of the Factories

and General Labour Laws Inspection Department at least seven days prior to the date on which the overtime will be carried out. The working hours/overtime schedule shall be displayed in the factory premises.

If workers are required to work on their weekly rest day, a notice shall be displayed in the factory, informing on the substitute rest day, which shall also be submitted to the Factories and General Labour Laws Inspection Department.

Depending on the number of workers, applications shall be filed with:

Sr.	No. of Workers	Branch-Office under the Department at
1.	Less than 500	Relevant township, district, Industrial-Zone (“IZ”) branch-office
2.	501-1000	Relevant district, IZ branch-office
3.	More than > 1001	Relevant region/state branch-office

The compensation for overtime work shall be calculated as follows:

■ workers with monthly salary:

$$\text{Overtime hourly rate} = 2x \frac{\text{basic salary} \times 12 \text{ months}}{52 \text{ weeks} \times 44 \text{ hours (or 48 hours)}}$$

■ daily-wages workers:

$$\text{Overtime hourly rate} = 2x \frac{\text{daily wage per day} \times 6 \text{ days}}{44 \text{ hours (or 48 hours)}}$$

■ piece-rate workers:

$$\text{Overtime hourly rate} = 2x \frac{\text{average pay per day} \times 6 \text{ days}}{44 \text{ hours (or 48 hours)}}$$

**Comment Luther:** For overtime work on a weekly rest day 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. Shift-Work

Together with the guidelines on overtime work, the Ministry of Labour further published Guidelines on the Procedures for Shift-Work in Factories and Workshops (2022). Pursuant to the Shift-Work Guidelines, factories and workshops which do not qualify as continuous production factories but wish to implement shift work must:

- Apply with the Factories and General Labour Laws Inspection Department for permission to implement shift-work the factory or workshop;
- (Submit an undertaking by the owner and manager confirming that the shift-work will comply with all applicable rules and regulations;
- Submit a letter notifying the Department that an Internal Labour Affairs Work Coordination Committee has been formed; and
- Provide the signed agreement of the worker(s) to work in shifts, endorsed by the above Work Coordination Committee.

## VII. 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 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 months.

The dates of the following public holidays (in chronological order) will be announced annually and notified in the gazette.

Holidays	Days
Independence Day	1
Union Day	1
Peasants’ Day	1
Full Moon Day of Tabauing	1
Armed Forces Day	1
Thingyan Holiday	9
Labor Day	1
Full Moon Day of Kasong	1
Martyr’s Day	1
Full Moon Day of Waso	1
Thadingyut Holiday	3
Full Moon of Tazaungmone	2
National Day	1
Christmas Day	1
Eid al-Adha	1
Deepavali	1
Karen New Year	1

**Comment Luther:** Since 2023, the announcement of the public holidays clarified that public holidays falling on a weekly rest day shall not be substituted by additional days in lieu in the following week.

## VIII. 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 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 of 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 days annual leave per year of employment, which may be taken consecutively or separately, provided the employee has completed twelve 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 (1) 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, the employee (or his descendants in case of death of the employee) shall be entitled 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 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, medical leave is 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 recognised 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 the average annual salary as benefit during maternity leave (calculated based on the salary threshold of MMK 300,000 per month applicable for contributions to the Social Security Fund);
- 50% 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.*

## IX. Salary and minimum wage

While the employer and employee may agree on a wage/salary, the government enacted the Minimum Wage Law (2013) to be observed by employers. The first minimum wage was determined in August 2015, with the latest adjustment notified in October 2023.

### 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 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 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.

On 9 October 2023, the National Minimum Wage Committee issued Notification 2/2023, stipulating an adjusted minimum wage of MMK 5,800 per 8-hour working day, comprising the original minimum wage of MMK 4,800 plus an allowance of MMK 1,000.

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.

## X. 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.*

## XI. 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 Labour 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 and second violation and sign an undertaking for the third violation. In case of any further violation within twelve 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 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.

We understand that an employer terminating staff as a consequence of the winding-up or suspension of business shall give notice (or pay salary in lieu of notice) and pay statutory severance.

**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 without reason by giving one (1) month's notice (or payment of salary in lieu of 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 Organisation and a representative of the Workplace Coordination Committee, or, in the absence of a Labour Organisation, 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 the employer giving notice or with payment in lieu of notice shall be entitled to severance payments as follows:

Term of Service	Severance Amount
< 6 months	–
6 months – 1 year	0.5 month's salary
1 year – 2 years	1 month's salary
2 years – 3 years	1.5 months' salary
3 years – 4 years	3 months' salary
4 years – 6 years	4 months' salary
6 years – 8 years	5 months' salary
8 years – 10 years	6 months' salary
10 years – 20 years	8 months' salary
20 years – 25 years	10 months' salary
> 25 years	13 months' salary

## XII. Accounts, records and registers

Under the Shops and Establishment Rules (2018), the employer shall maintain the following records for a minimum of twelve 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 Form 11 “Search Form and Seizure of Evidence”, the Inspector may seize such accounts, records and registers as evidence.

### XIII. 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. 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 organisation’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 (1) 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.

## G. Safety and health

### 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 to carry on business in Myanmar shall register with the Directorate of Investment and Company Administration, as stipulated 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.

### 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 (6) 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 (6) 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 (7) 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 incharge of workplace safety and health, supervisors and workers to attend training courses recognised by the Ministry of Labour on workplace safety and health.
- 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.

## 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;

## H. Dispute resolution

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, minimising 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 members – the chairperson (assigned by the relevant state/regional government), three employers' members (elected by the employers or employer organisations), three (3) workers' members (elected by workers or members of labour organisations), 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 three (3) working days assist the parties to the dispute to reach a mutually agreed settlement 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 unionised employees, the labour organisation 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 11 members: three (3) government members, three (3) members nominated by employer organisations, three (3) members nominated by labour organisations and two (2) distinguished persons.

# I. Unions & strikes

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 members nominated by employer organisations and five (5) members nominated by labour organisations. It shall form a tribunal and make a decision within seven (7) working days (in special cases 14 days).

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 organisations 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 organisation 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 organised 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, reinstatement of terminated workers, adequate overtime payment, etc.);
- More than 50% of the workers must approve the strike;
- Township labour organisation 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. 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.

## Awards

“The Legal 500 Asia-Pacific 2023” ranked Luther Myanmar in Band 3.



The Legal 500  
Asia-Pacific  
2023

In 2023, both Luther Myanmar and Alexander Bohusch individually were ranked in Band 3 by Chambers Asia Pacific.

The logo for 'Chambers AND PARTNERS' features the word 'Chambers' in a large, bold, serif font, with 'AND PARTNERS' in a smaller, bold, sans-serif font below it. The entire logo is centered on a dark red background.

CHAMBERS  
2023

## 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

## K. 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 26 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), Ho Chi Minh City (Vietnam), 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 and South Korea.

## Hits the mark. Luther.

Luther Rechtsanwaltsgesellschaft mbH is one of the leading corporate law firms in Germany. With some 420 lawyers and tax advisors, we can advise you in all fields of German and international corporate law. In addition to having offices in every economic centre throughout Germany, we are also present in 11 locations abroad: in Brussels, London and Luxembourg in Europe, and in Bangkok, Delhi-Gurugram, Ho Chi Minh City, Jakarta, Kuala Lumpur, Shanghai, Singapore and Yangon in Asia.

Our advisory services are 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" stands for expertise and commitment. With a passion for our profession, we dedicate all our efforts to solving your issues, always providing the best possible solution for our clients. Not too much and not too little – we always hit the mark.

We know how crucial it is to use resources efficiently and to plan ahead. We always have an eye on the economic impact of our advice. This is true in the case of strategic consulting as well as in legal disputes. We have complex projects on our agenda every day. At Luther, experienced and highly specialised advisors cooperate closely in order to offer our clients the best possible service. Thanks to our fast and efficient communication, permanent availability and flexibility, we are there for you whenever you need us.

Luther has been named "Law Firm of the Year: Germany 2021" and also "European Law Firm of the Year 2021" by The Lawyer, one of the most well-known legal magazines worldwide.

Luther Myanmar is ranked in the Asia Pacific Guides 2022 of Chambers and Legal 500.



## About unyer.

unyer, founded by Luther and Fidal in 2021, is a global organisation of leading international professional services firms. Besides law firms, unyer is also open to other related professional services, especially from the legal tech sector. unyer is based in Zurich as a Swiss Verein. unyer is globally connected but has strong local roots in their respective markets.

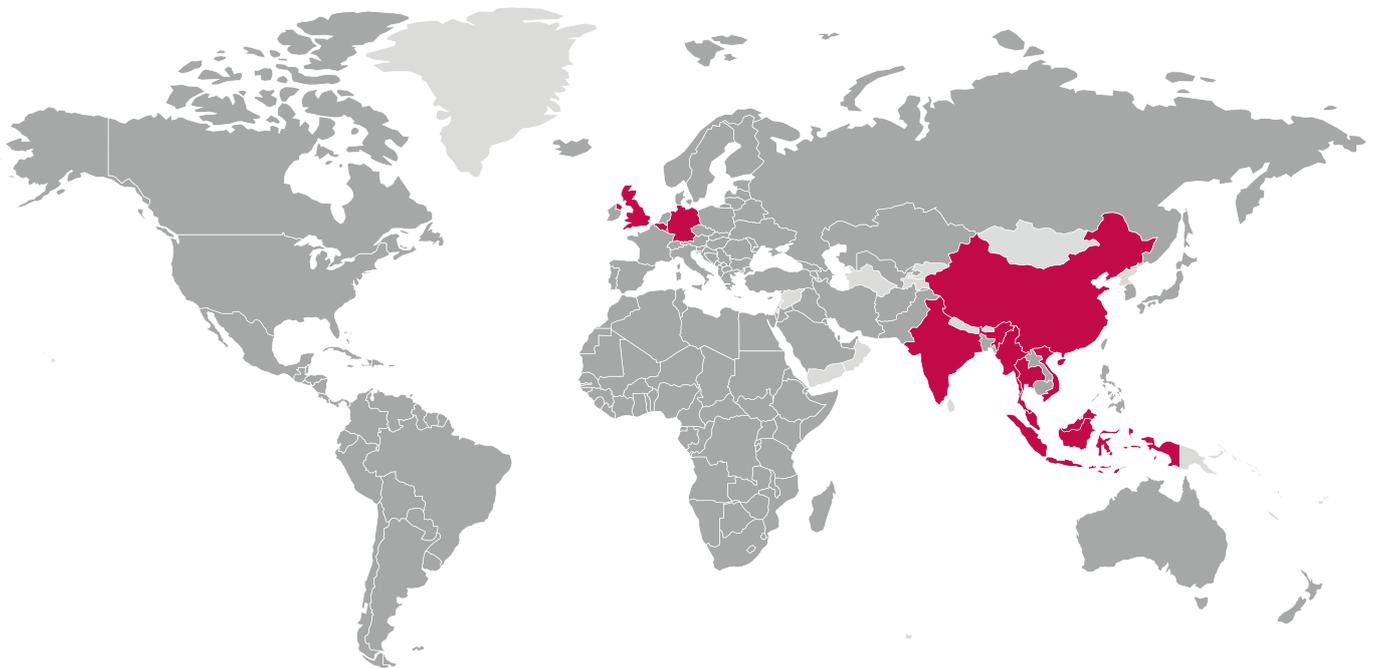
unyer has an exclusive approach and only accepts one member firm from each market. unyer members offer its clients full services across all jurisdictions with a compelling industry focus. The organisation has an annual turnover of more than EUR 650 million and includes over 2,550 lawyers and advisors in more than 14 countries in Europe and Asia. In September 2021, Pirola Pennuto Zei & Associati joined the international organisation. In the spring of 2023, the Austrian law firm KWR joined the group. [www.unyer.com](http://www.unyer.com)



# Our locations

We have a global outlook, with international offices in 11 key economic and financial centres in Europe and Asia. We also maintain close relationships with other commercial law firms in all relevant jurisdictions. Luther is a founding member of unyer (www.unyer.com), a global organisation of leading professional services firms that cooperate exclusively with each other. This way, we ensure a seamless service for our clients throughout their demanding international projects.

Our partner firms are based in Africa, Australia and New Zealand, Europe, Israel, Japan and Korea, the Middle East, Russia and the CIS, South and Central America, the US and Canada.



- Luther locations
- Best friends

**Our locations**

Bangkok	Jakarta
Berlin	Kuala Lumpur
Brussels	Leipzig
Cologne	London
Delhi-Gurugram	Luxembourg
Dusseldorf	Munich
Essen	Shanghai
Frankfurt a.M.	Singapore
Hamburg	Stuttgart
Hanover	Yangon
Ho Chi Minh City	

## Our awards



### JUVE

In the 2022/2023 JUVE Guide to Commercial Law Firms, 52 lawyers from Luther were recommended, and 10 of these were also listed as “leading advisors”. The legal publisher JUVE ranked Luther in 31 areas of law. In 2022, Luther was nominated for the JUVE award “Employment Law” as well as “Real Estate” and was named “Law Firm of the Year” by JUVE in 2019. In the past, Luther already won the JUVE award “Law Firm of the Year 2017 for Environmental and Regulatory Law”.



### The Legal 500

The Legal 500 Germany 2023 recommends Luther in 30 areas of law, with “Top Tier” rankings in two of these areas. 72 lawyers are being recommended, 12 of whom have been specially recognised as “Leading Individual” or “Next Generation Partner”. Luther has also been included for Germany in the first edition of **The Legal 500 Green Guide EMEA 2022**. This guide provides an overview of law firms’ engagement with sustainability, including both work for clients as well as firms’ own best practices and initiatives.



### Chambers

In 2023, Luther was recognised by Chambers Europe for 13 practice areas in Germany as well as in two practice areas in Luxembourg. Moreover, 15 partners were included in the Individual Ranking. Additionally, in 2023, Luther was recognised by Chambers Global in three advisory areas in Germany and Myanmar, while five partners were also included in the Individual Ranking.



### The Lawyer European Awards

Luther has been named “Law Firm of the Year: Germany 2021” and also “European Law Firm of the Year 2021” by The Lawyer, one of the most well-known legal magazines worldwide.



### Kanzleimonitor

Kanzleimonitor 2022/2023 recommends Luther in 25 areas of law and has also included 16 Luther lawyers among the recommended lawyers mentioned by name.

## Best Lawyers

### „Best Lawyers in Germany 2024“

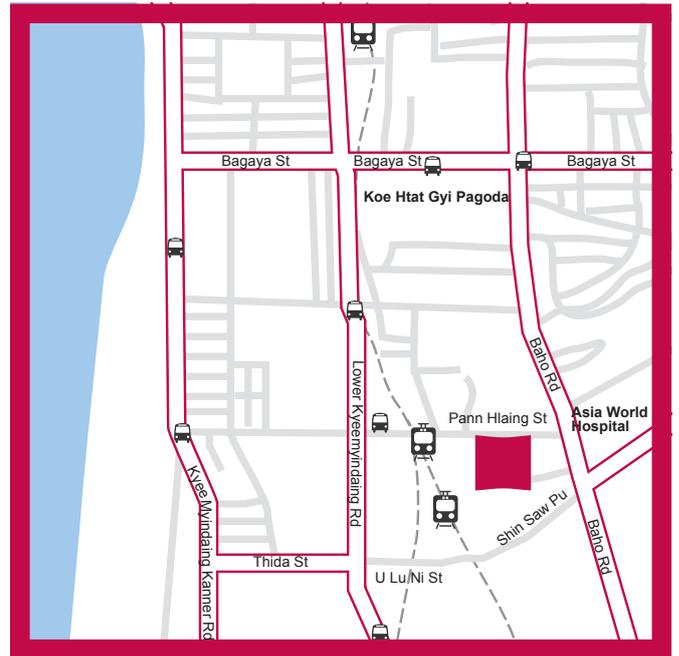
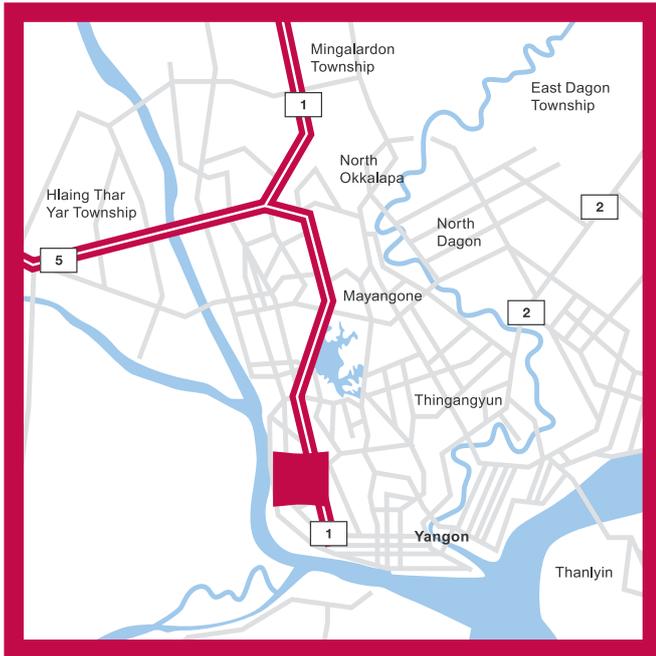
For the year 2024, 99 lawyers have been recommended by Luther as “Best Lawyers in Germany 2024”, an award presented by the US publisher “Best Lawyers” in cooperation with the German Handelsblatt, including one partner as “Lawyer of the Year” for his area of law, and 19 colleagues who have received the recommendation “Best Lawyers - Ones to Watch”.



### WHO'S WHO LEGAL

WHO'S WHO LEGAL listed 21 lawyers in December 2022, four of whom were recognised as Thought Leaders, which is the highest award, and three of whom were named Future Leaders.

# Contact



Description in detail

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# Luther.

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