

# Luther.

## Memo: Myanmar Employment Law

Updated June 2018

# Table of Content

## A. Regulatory Framework

page 2

## B. Registration of Employment Contracts

page 3

## C. Employment Terms

page 4

## D. Distinction between Employees & Consultants

page 10

## E. Workplace Safety and Health

page 11

## F. Dispute Resolution System

page 12

## G. Trade Unions & Strikes

page 13

## Our Services

page 14

## About Luther

page 17

# A. Regulatory Framework

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

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

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

## I. Relevant Laws (not exhaustive)

- Workmen's Compensation Act (1923) as amended 2005
- Leave and Holidays Act (1951) as amended 2014
- Factories Act (1951) as amended 2016
- Oilfields (Labour and Welfare) Act (1951)
- Employment Restriction Act (1959)
- Income Tax Law (1974) as amended by Union Tax Law 2017
- Law Relating to Overseas Employment (1999)
- Labour Organization Law (2011)
- Social Security Law (2012)
- Settlement of Labour Dispute Law (2012) as amended 2014
- Employment and Skills Development Law (2013)
- Minimum Wage Law (2013)
- Payment of Wages Law (2016)
- Shops and Establishment Law (2016)
- Various sector-specific laws which contain labour regulations

## II. Relevant Regulations, Rules and Policies (not exhaustive)

- Settlement of Labour Dispute Rules
- Minimum Wage Rules
- Labour Organization Rules
- Instructions of the Factories and General Labour Law Inspection Department
- National Minimum Wage Committee Notification No. 2/2015 – Minimum Wage
- Ministry of Labour Notification No. 1/2015 – Labour Contracts

- Ministry of Labour Notification No. 84/2015 – Severance Payments
- Ministry of Labour Notification No. 140/2017 – Template Employment Contract

While some of the Ministry of Labour’s internal policies, such as the official employment contract template (please see below), are not required under the current laws, in practice, employers often do not have a choice, but to follow the prescribed requirements.

Since the Employment and Skills Development Law (2013) provides, that any employment contract must be registered, and the relevant Township Labour Offices will often only register the prescribed template of the Ministry of Labour, employers are in practice forced to use the published template. Any amendment or annex must be approved by the labour authorities.

### III. Outlook

#### 1. 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, but not yet been issued. Instead, the Ministry of Labour published various notifications (e.g. Notification 1/2015 on the preparation and execution of employment contracts), addressing specific legal matters.

In February 2017, updated (Draft) Employment and Skills Development Rules were published, varying significantly from the previous versions of 2013 and 2015. The draft is currently being discussed between the Ministry of Labour, the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and the labour unions.

#### 2. Workplace Safety and Health Law

Further, the Ministry of Labour published a (Draft) Workplace Safety and Health Law, which shall complement the Factories Act (1951) and other prevailing laws, rules and regulations governing workplace safety and health. The draft contains provisions for the prevention of workplace hazards and diseases and the establishment of safe and healthy workplaces.

## B. Registration of Employment Contracts

### I. Employment and Skills Development Law

Pursuant to sec. 5 (a) Employment and Skills Development Law (2013), an enterprise must enter into written employment contracts with its employees within 30 days of employment. The employment contract must then be submitted to the relevant Township Labour Office for registration.

An employer convicted of failing to sign an employment contract shall be punished with imprisonment of up to six (6) months or with a fine or with both (sec. 38 Employment and Skills Development Law (2013)). Employment contracts not registered with the 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.*

*While the law does not allow for any kind of exemptions, this requirement is enforced only for employers with five (5) or more employees. This practice of the Township Labour Offices is further provided for in rule 12 (a) (Draft) Employment and Skill Development Rules.*

### II. New Employment Contract Template

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

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

Unfortunately, the first official employment contract template was drafted for factory workers and not suitable for most businesses, and the UMFCCI, labour unions, but also international organization and other stakeholders, filed petitions to withdraw or at least amend Notification 1/2015.

On 31 January 2017, the Ministry of Labour convened a tripartite meeting, in which it was resolved that representatives of employers and employees would jointly work on a new employment contract template. In subsequent bipartite meetings, UM-FCCI 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 UM-FCCI 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.

## C. Employment Terms

### I. Employment Contract

Pursuant to section 5 (b) 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;
- Miscellaneous.

In practice, employers are required to follow the official employment contract template published by the Ministry of Labour, which – in compliance with section 5 (b) Employment and Skills Development Law (2013) – contains the above provisions.

### II. Contract Term

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

Pursuant to the new Employment Contract Template, the term of the employment shall be stated in detail, but is no longer limited to a maximum term.

**Comment Luther:** *Under the former practice of the Department of Labour, the term of an employment contract was limited to a (renewable) maximum term of two (2) years.*

Upon expiry, and provided that there was no breach of the terms of the employment by the employee, termination or change of work and/or payment conditions, the employment contract shall be extended. The new Employment Contract

Template explicitly provides, that the employer shall not refuse to extend the contract term without valid reasons (i.e. the extension of the employment contract shall be the normal case).

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

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

### III. Probation Period

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

Pursuant to the new 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:** *While the former Employment Contract Template contained additional provisions regarding probation period (e.g. the employee shall not be paid less than 75% of the basic wage during the probation period), the new Employment Contract Template lacks specific information on the payment of wages/salaries, employment after probation period and termination or resignation during probation period.*

*In the absence of any further provisions, the new Employment Contract Template does thus 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 hours and working times are stipulated in various laws. The general rules are provided in the Shops and Establishment Law (2016), which provides for six (6) working days of up to eight (8) hours per day. Pursuant to the law, at least one (1) day per week shall be granted as a paid rest day. Further, an employee shall be granted a break of at least half an hour after four (4) continuous hours of work.

Different stipulations are found in sector specific laws, such as the Factories Act (1951) and the Oilfields (Labour and Welfare) Act (1951), which provide for 44 hours per week other than for work which has to be done continuously, in which case 48 hours shall apply.

Pursuant to the new 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.

**Comment Luther:** *This may imply, that (e.g.) employers in the hospitality sector may enjoy greater freedom to agree on flexible working hours. It remains to be seen, how the Department of Labour will interpret this provision, as any amendment of the working hours shall be submitted to the relevant authorities for approval.*

Pursuant to Myanmar labour law, 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. Wages/salaries shall be enjoyed on rest days in accordance with prevailing labour laws.

**Comment Luther:** *If an employee has to work on the weekly rest day, he shall enjoy an alternative day of rest in accordance with the prevailing labour law, and may potentially be entitled to overtime pay (please see below).*

## V. Overtime

Depending on the nature of the enterprise, overtime may be carried out in accordance with Myanmar labour law and upon mutual agreement between the employer and the employee. Overtime pay shall be calculated and paid in accordance with the law.

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

Overtime is usually limited to a maximum of 12 hours per week, or 16 hours in cases of special needs. Different stipulations are found in sector specific laws, such as the Factories Act (1951) and the Oilfields (Labour and Welfare) Act (1951).

If an employee is required to work overtime, he is entitled to overtime pay at double the basic wage/salary, to be calculated as follows:

$$\{(\text{monthly salary} \times 12 \text{ months}) / 52 \text{ weeks} / 44 \text{ (or 48) hrs}\} \times 2$$

**Comment Luther:** *The requirement to pay twice the ordinary rate of wage/salary is currently only provided for in sec. 73 (1) Factories Act (1951); the Shops and Establishment Law (2016) lacks a similar provisions (it only provides that the employer cannot request overtime work without paying overtime pay). In practice, however, the labour authorities apply the same overtime compensation rules for all employers.*

*Overtime pay shall be only paid if the employer instructs the employee/gives permission to work overtime. Further, any implementation of a constant overtime policy requires the permission of the relevant authorities (e.g. the Factories and General Labour Law Inspection Department).*

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

## VI. Public Holidays

Under the Leave and Holidays Act (1951), every employee shall be granted paid public holidays as announced by the Government in the Myanmar Gazette. On average, Myanmar has 25 public holidays per year, depending on the date of the variable holidays:

New Year	1	1 January
Independence Day	1	4 January
Union Day	1	12 February
Peasants Day	1	2 March
Full Moon Day of Tabaung	1	variable
Armed Forces Day	1	27 March
Maha Thingyan (Water Festival)	5	13 – 17 April
May Day	1	1 May
Full Moon Day of Kasong	1	variable
Full Moon Day of Waso (beginning of Buddhist Lent)	1	variable
Full Moon Day of Thadingyut (end of Buddhist Lent)	3	variable
Eid al-Adha	1	variable
Deepavali	1	variable
Full Moon of Tazaungmone	2	variable
National Day	1	variable
Kayin New Year Day	1	variable
Christmas Day	1	25 December
New Year Holidays	1	31 December

## VII. Leave

Leave is governed by the Leave and Holidays Act (1951), 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.

### 1. Casual Leave

Every employee is entitled to six (6) days of annual paid casual leave. Casual leave may not be carried forward to the subsequent year and may not be spent for more than three (3) consecutive days at a time, except in the case of religious or compulsory social events (e.g. weddings, funerals). Casual leave may not be enjoyed in conjunction with any other type of leave.

### 2. Earned Leave

Earned leave may be enjoyed for a minimum of ten (10) days consecutively or separately per year of employment, provided the employee has completed twelve (12) consecutive months of service with a minimum of 20 working days per month.

For each month without the minimum of 20 full days of work, one day may be deducted from the minimum earned leave entitlement.

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

### 3. Medical Leave

Medical leave is 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. Theoretically, employees covered by the Social Security Law (2012) may receive part of their salary from the Social Security Fund, but in practice, such medical leave is often also granted as paid leave.

### 4. Maternity and Paternity Leave

Maternity leave is 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 14 weeks of paid maternity leave, to be taken six (6) weeks before confinement and eight (8) weeks after confinement.

Employees covered by the Social Security Law (2012) are entitled to similar 14 weeks of maternity leave, 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). Theoretically, employees covered by the Social Security Law (2012) may receive part of their salary from the Social Security Fund, but in practice, such maternity leave is often also granted as paid leave.

Male employees covered by the Social Security Law (2012) may enjoy 15 days of paternity leave after confinement of their wife.

## 5. Funeral Leave

The new Employment Contract Template introduces 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 new 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.

## VIII. Salary and Minimum Wage

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

### 1. Salary

Salaries are to be paid at the end of the month or, depending on the size of the employing enterprise, between five (5) to ten (10) days before the end of the month, as stipulated in the Payment of Wages Law (2016). The employer is permitted and required to withhold income tax and social security payments. 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 general practice.

## 2. Minimum Wage

Minimum wage is prescribed for all enterprises with more than 15 employees.

According to Notification 2/2015, the minimum wage is MMK 3,600 per day for eight (8) hours of work (excluding break time). For such purpose, the Minimum Wage Law (2013) defines wage as the basic salary excluding pension and gratuity payments, social security cash benefits, allowances (for travel, accommodation, meals, electricity charges, water service charges and duties, taxes, medical treatment and recreational purposes) and severance payments.

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

## IX. Medical Benefits

Employees covered by the Social Security Law (2012) are entitled to visit government hospitals and other benefits as granted under the law. Other employees 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 grant medical allowances or medical insurance to their employees, both out of corporate social responsibility, but also as for employee retention purposes.

## X. Resignation, Dismissal and Termination

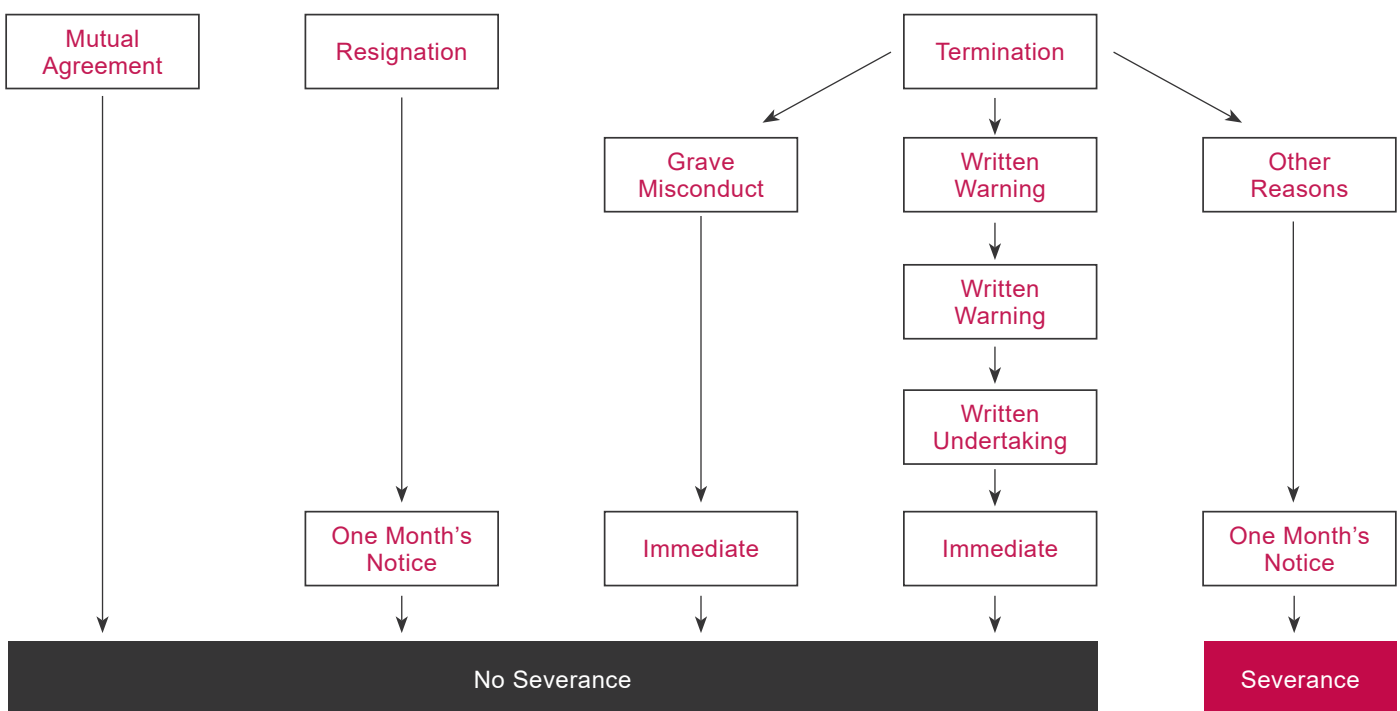
Myanmar employment laws provide few details on resignation by the employee and termination or dismissal by the employer. Conditions and requirements are primarily governed by the policies of the Ministry of Labour, most importantly the official Employment Contract Template.

### 1. Resignation of the Employee

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

**Comment Luther:** While the new 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.

### Resignation and Termination





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:** *Kindly note, that 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

Under the law, an employer is not required to state any reasons for the dismissal or termination of an employee by notice. Pursuant to the practices of the Department of Labour, an employee may, however, only be dismissed or terminated for the reasons specified in the employment contract or work rules.

Pursuant to the new 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.

### Dismissal

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

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

**Comment Luther:** *Since the Employment Contract Template is silent on the consequences of grave misconduct, it can be assumed, that an immediate, summary dismissal is permitted.*

*The Employer has the possibility 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 as stipulated in the official employment contract template:

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

**Comment Luther:** *Additional reasons for termination may be added as an annex to the official employment contract template. Any amendment/supplement to the template shall, however, be submitted to the relevant Township Labour Office for review, approval and registration.*

## Termination by Notice

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

## Redundancy

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

## 3. Cancellation of Employment

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

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

## 4. Severance Payment

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

Term of Employment	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

## XI. Compliance Obligations

General compliance with the law, as well as business practices cannot be taken for granted in Myanmar, and 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

We would strongly recommend the implementation of strict compliance guidelines, not only with regard to 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.*

## D. Distinction between Employees & Consultants

### I. General

Generally, it is possible to engage independent contractors in Myanmar as consultants.

Under Myanmar law, it is, however, currently not expressly required for independent (Myanmar citizen) contractors to register a sole proprietorship/business. Unless exempted, such service providers 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.

However, in practice, the distinction between employees and independent contractors may 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 in many cases be considered "hidden employment", with all consequences provided under the law for defaulting employer obligations, such as social security, personal income tax filing, leave and holiday provisions, etc.

In theory, the same principles apply as in other jurisdictions, and the distinction between service (e.g. consultant or contractor) and employment should be made based on factors, such as:

- Control - What is the nature and degree of control that the hiring organization 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 a 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 work an integral part of the hiring organization's operations?
- Duration - What is the duration of the engagement?
- Payment/Benefits - What payments and benefits does the contractor receive?

**Comment Luther:** *While it is to some extent possible to control these factors in the drafting of a service contract, the test is based on the actual facts of the engagement rather than the wording of the contractual agreements. For example, where an engagement is entered into for the full-time*

*provision of services by a single individual for a longer duration, it is very 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 providing the same services to more than one customer), it may be safe to consider it as engagement of an independent contractor.*

## II. Foreign Consultants

In general, as in almost every other country, foreign persons are not allowed to carry on business in Myanmar without having registered a legal presence in Myanmar. Consequently, any foreigner intending to carry out services in Myanmar on a long-term or related basis shall register a business in Myanmar. Without such registration requirement, it would not be possible to enforce the 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.

## E. Workplace Safety and Health

Health and safety rules are primarily stipulated in the Factories Act (1951).

These Include:

- Precautions against “occupational hazards” and creation of a “healthy and hygienic work environment”;
- Provision of protective gear and respective training;
- Measures to prevent damage to the hearing and health of workers due to noise issuing from the manufacturing process of the factory, and to prevent accidents;
- Arrangement of escape routes and fire alarms;
- Measures must be in place to avoid damaging the natural environment in cleaning up of wastes, spillages, fumes, dust and odours from the manufacturing process;
- Regular cleaning and maintenance (cleaning of the floor once per week, painting of internal walls and ceilings once per year, redoing enamel paint and varnish once every three (3) years);
- Ensuring cleanliness, ventilation, fresh air, temperature control, absence of dust and smoke, sufficient lighting;
- Provision of separated and sufficient toilets in clean condition;
- Provision of clean drinking water (separated from the toilet by at least 20ft);
- Provision of spittoons and garbage bins;
- Provision of at least one (1) first-aid box or medical box at every factory, depending on the number of employees;
- Provision of adequate dining room and rest areas for premises with more than 100 workers;
- Provision of a nurse room or clinic with one (1) doctor and one (1) nurse in full-time attendance for premises with more than 250 workers;
- Factories having 100 or more married female workers with offspring under six years of age shall provide day-care centres for each factory or collection of factories as prescribed by the Ministry of Labour. In case of factories having less than 100 married women, the employer may provide other appropriate arrangements for their offspring under six years of age;
- The employer shall make arrangements as needed upon presentation by a female worker with medical certificate from a registered physician that she is unable to work in the workplace during times of menstruation;

- Only light duties shall be given to pregnant female workers in order to avoid detrimentally affecting the pregnancy; female workers with pregnancy period of seven months or more shall not be given overtime work or nightshift work;
- Notification requirement to the social security clinic or workers' hospital with regard to any occupational illnesses and any suspicion that an occupational illness has occurred, as well as compliance with the social security clinic or workers' hospital recommendation how to deal with an occupational illness;
- Prohibition of child labour;
- Restrictions on juvenile workers, which shall not be exposed to working environments causing danger, damaging health, interfering with opportunity for education, damaging moral integrity and honour, exploitation of labour;
- Prohibition of drugs, smoking, using fire, drinking alcohol and chewing betel nuts and gums at the workplace; and
- In order to reduce and eliminate workplace accidents and occupational diseases, the employer shall cause the in-charge of workplace safety and health, supervisors and workers to attend training courses recognized by the Ministry of Labour on workplace safety and health.

## F. Dispute Resolution System

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

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

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

### I. Individual Dispute

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

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

**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.

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

## II. Collective Dispute

In case of a collective dispute (e.g. working conditions, payment of wages), the employer, employees or labour organizations may complain to the following bodies.

- Workplace Coordinating 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 Coordinating Committee

Companies with 30 or more employees must form a Workplace Coordinating Committee, which 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 a labour organization in the company, the labour organization may nominate candidates (but may not further influence the electoral process of the employees' representatives). The term of a Workplace Coordinating Committee is one (1) year.

**Comment Luther:** The election of a Workplace Coordinating Committee shall be notified to the relevant Township Conciliation Body, by filling Form A.

Grievances should be negotiated and settled by the Workplace Coordinating 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 Coordinating Committee. If no such committee is formed, the employer shall directly negotiate with the employees.

### 2. Township Conciliation Body

In case of non-settlement of a collective dispute, the employer, the employees or the labour union may complain to the relevant Township Conciliation Body (please see above).

If no conciliation is reached, the Township Conciliation Body shall inform the Regional/State Arbitration Body within two (2) working days.

## 3. Regional/State Arbitration Body

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

As an independent and neutral third party, it shall make a binding decision within seven (7) working days.

If a party is not content with the decision, it may carry out a strike/lock-out (please see below) and/or call upon the Arbitration Council for a final decision.

### 4. Arbitration Council

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

## G. Trade Unions & Strikes

Since 2011, labour unions may be formed at the factory level if at least 30 workers and at least 10 % of all workers of the factory approve the formation of the labour union. Umbrella organizations may be formed at the township, regional and national level.

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

The labour unions shall further support the employees in collective bargaining and assist in the preparation of employment agreements.

Employers shall not impede their employees' participation in a union, shall not dominate or control the union, and shall grant, upon recommendation of the executive committee, up to two (2) days leave for activities in the union.

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

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

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

# Our Services

Luther Law Firm Limited and Luther Corporate Services Limited together have the competence and expertise necessary to comprehensively assist and advise clients in all stages of the business lifecycle, namely, from the establishment of a Myanmar business vehicle, through on-going legal and tax advice, bookkeeping, accounting, payroll and cash, fund & payment administration and up to the dissolution of a business. We devise and help you implement legal, tax and corporate compliance structures that work and let you focus on being successful in Asia's last frontier market.

## Legal- and Tax Advisory Services

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

- Corporate law, investment structuring and joint ventures
- Employment law
- Immigration law
- Contract law
- IP law
- Financial transactions
- Real estate law
- Tax advice and tax structuring

## Establishment of a Myanmar Business

We provide fast and efficient service for the formation and registration of Myanmar companies, branch and representative offices, including:

- Advising on the type of entity to be established and the optimal corporate & tax structure
- Preparation of Memoranda and Articles of Association and other constitutional documents
- Registration of limited companies
- Registration of foreign companies ("Branch or Representative Offices")
- Application for Permits and Endorsements under the Myanmar Investment Law 2016
- Registration under the Special Economic Zone Law 2014
- Registration of Associations not-for-profit and International Non-governmental Organizations

## Cessation of a Myanmar Business

We offer advice and assistance on the cessation of businesses in Myanmar. This service includes the preparation and filing of all necessary documents for the voluntary winding-up of a limited company or the closing of a Branch or Representative Office.

## Corporate Secretarial Services

Luther provides the complete range of corporate secretarial services to businesses in Myanmar.

### 1. Provision of personnel to assume statutory positions

- Company secretary
- Nominee director
- Nominee representative

### 2. General statutory compliance services

- Advice on best practice, corporate governance and compliance with Myanmar law
- Corporate restructuring
- Setting up, custody and maintenance of statutory books and registers
- Preparing and lodging of prescribed forms and requisite documents with the Directorate of Investment and Company Administration (DICA) and the Myanmar Investment Commission (MIC)
- Preparation of notices, minutes, and other documents pertaining to directors' and shareholders' meetings (Annual General Meeting and Extraordinary General Meeting)
- Provision of registered office address

### 3. Managing changes:

- Change of name
- Change in constitutional documents
- Change in capital structure (transfer of shares, new issuance of shares)
- Change of shareholders
- Change of directors, representatives, auditors and company secretaries
- Change of registered office address
- Opening of bank accounts and managing changes of bank signatories

## Immigration Services

Luther can assist clients with the application for visas- and immigration permits required for foreigners working in Myanmar, such as:

- Assistance with visa applications
- Application for Foreigner Registration Certificates and Long-Term Stay Permits
- Application for Alien Worker Registration Cards
- Registration of foreign employees with the Myanmar Investment Commission and the Department of Labor
- Assistance with Form C and other immigration requirements

## Individual and Corporate Tax Compliance

We provide tax compliance services, including:

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

## Human Resources & Payroll Administration

We offer full outsourcing services for the management of payroll, personnel data and employee benefits, including:

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

## Accounting & Financial Reporting

Luther provides comprehensive book keeping and accounting services in accordance with the highest international standards.

### 1. Bookkeeping

- Setting up the chart of accounts
- Recording of all payments and funds received
- Preparation of monthly bank reconciliation statements
- Recording of all sales and trade debtors
- Recording of all purchase and trade creditors
- Recording of prepayments and accruals
- Recording of all assets purchased and related depreciation
- Recording of all commercial tax (CT) on taxable purchases/supplies
- Extraction of monthly trial balances and general ledger

### 2. Management reports

- Compiling of profit and loss account and balance sheet
- Generating aged financial analysis of debtors and creditors
- Business advisory services such as accounting reports and preparation of business plans
- Budget preparation, comparison and analysis of key components of financial performance

### 3. Statutory accounting

- Preparation of financial statements and notes to the financial statements
- Review and computation of tax and deferred tax provisions for inclusion into financial statements

## Cash, Fund & Payment Administration

Luther Corporate Services offers cash, fund & payment administration services. For smaller businesses, where segregation of duties is an issue, our service functions as an additional control step with regards to company fund spending.

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



# Luther Asia

## Expertise

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

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

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

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

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

## Singapore

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

## Shanghai

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

## Asia

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

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

## About Luther

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

### Areas of practice

- Antitrust law
- Banking and capital markets
- Commercial and distribution law
- Complex disputes
- Corporate law
- Employment law
- Energy law
- Environment and planning law, regulatory
- Family businesses - entrepreneurial families
- IP and copyright law
- Insurance law
- International arbitration
- International trade law
- Litigation and mediation
- Mergers & Acquisitions
- Property transactions
- Public procurement law
- Public subsidies/state-aid law
- Public-private partnership
- Real estate law
- Restructuring and insolvency
- Tax law
- Technology, media and telecommunications
- White-collar crime & compliance

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

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

### Sector focus

- Automotive and mobility
- Chemicals
- Energy and utilities, renewable energy
- Financial services
- Food, retail and consumer products
- Health care and medical
- Infrastructure, water and waste management
- Insurance
- Logistics
- Mechanical and plant engineering and construction
- Pharmaceuticals and biotechnology
- Public sector
- Real estate
- Shipping and maritime law
- Textile and clothing industry

in Europe and Asia. In addition, we have long-standing, close relationships with business law firms in all relevant jurisdictions around the world. In Continental Europe, Luther is part of a group of independent law firms each of which is one of the leading law firms in its own country. These law firms have a strong track record in cross-border projects and are engaged in an ongoing exchange of information about new market trends and legal developments.

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