

Luther.

Establishing a Corporate Set-up in Myanmar

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Content

- A. Introduction 3**

- B. Registration of a business presence 3**
 - 1. Registration under the Myanmar Companies Law (2017) 3
 - 2. (Additional) Registration under the Myanmar Investment Law (2016) 5
 - 3. (Additional) Registration under the Special Economic Zone Law (2014) 9

- C. Luther in Myanmar 13**
 - Legal and tax advisory services 14
 - Tax advisory and business process outsourcing services 15

- D. Luther in Asia 16**
 - Expertise 16
 - Singapore 16
 - Shanghai 16
 - Region 16

- Hits the mark. Luther. 17**

- About unyer 17**

- Our locations 18**

- Our awards 19**

- Contact 20**

A. Introduction

As in most jurisdictions, foreign persons or corporations are not allowed to carry out activities in the Republic of the Union of Myanmar without having registered a legal presence in the country. The relevant legal restrictions can be found in various laws, such as the Myanmar Investment Law (2016) and the Myanmar Companies Law (2017), which stipulate registration requirements for foreigners wishing to establish a place of business or carry out business in Myanmar.

Pursuant to sec. 43 Myanmar Companies Law (2017), an overseas corporation shall not carry out any business in Myanmar unless it is properly registered, noting that in the following cases a corporation shall not be deemed to carry out business only because:

- Conducts an isolated transaction that is completed within a period of 30 days, not being one of a number of similar transactions repeated from time to time;
- Is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute;
- Holds meetings of its directors or shareholders or carries on other activities concerning the management of its internal affairs;
- Maintains a bank account;
- Effects a sale of property through an independent contractor;
- Solicits or procures an order that becomes a binding contract only if the order is accepted outside the Union;
- Lends money, creates evidence of a debt or creates a charge on property; or
- Secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or invests its funds or holds property.

It should be noted that sec. 12 Myanmar Companies Regulations (2018) provides that the term “carrying out business” includes activities carried out with and without a view to any profit. Accordingly, any overseas corporation carrying out activities in Myanmar shall be registered, even if such activities are not profit-generating.

B. Registration of a business presence

We set out below an overview of the types of business vehicles typically available for foreign investors, namely the incorporation of a subsidiary in form of a private company limited by shares and the registration of an overseas corporation.

When registering a business presence in Myanmar, generally three (3) options exist:

- Registration under the Myanmar Companies Law (2017);
- (Additional) registration under the Myanmar Investment Law (2016); or
- (Additional) registration under the Special Economic Zone Law (2014) for businesses located in a Special Economic Zone.

1. Registration under the Myanmar Companies Law (2017)

On 1 August 2018, the new Myanmar Companies Law (2017) came into effect, repealing and replacing the previous Companies Act (1914).

Under the new Companies Law (2017), applications for the establishment of a corporate set-up or filing of any corporate changes with the Directorate of Investment and Companies Administration (DICA) must be done through the newly established electronic registry system Myanmar Companies Online (MyCO).

Any corporation shall ensure that all the forms and documents filed or lodged through the MyCO-system are properly executed and kept together with the company’s registers and indexes at the registered office.

1.1 Company limited by shares

Foreign investors tend to establish a private company limited by shares (“company”) for their business activities in Myanmar. A company is a fully-fledged, independent legal entity which may carry out any legal business activities in accordance with the laws of Myanmar.

A company must have a minimum of one (1) shareholder, either a natural person or a corporate entity. There are no minimum share capital requirements and the shareholding can be 100% foreign. However, certain activities such as retail and wholesale trading may require a minimum investment prescribed in the relevant regulations.

It should be noted, that the Myanmar Companies Law (2017) maintains the distinction of Myanmar and foreign (owned) companies, which may affect the eligibility of the company to carry out certain restricted business activities set out in Notification No. 15/2017 of the Myanmar Investment Commission or acquire land within Myanmar under the current legal confines of the Transfer of Immovable Property Restriction Law (1987). Pursuant to the Myanmar Companies Law (2017), a company would be considered foreign (owned), if more than 35% of the ownership interest are directly or indirectly controlled by foreign persons. While this definition includes contractual control, it is silent on economic participation, which may allow for a higher economic interest of a foreign investor in a Myanmar owned company.

A company must further appoint a minimum of one (1) director, who must be a natural person. While all directors in a private company may be foreign, at least one (1) director must be an ordinary resident in Myanmar, i.e. reside in Myanmar for 183 days or more within 12 months. It is important to note that the shareholders are responsible for the appointment of a resident director. Hence, in situations where the sole resident director is leaving Myanmar or no resident director is appointed, the shareholders are duty-bound to appoint a new resident director as soon as possible, but no later than within six (6) months. If the company continues business without appointing a new resident director, the shareholders may be liable for the company's debts and liabilities. If required, we may provide a nominee resident director.

For tax purposes, a company is treated as a resident tax payer. The applicable corporate income tax rate is 22% (from FY 2021/22) on profits generated from income derived from sources within and outside of Myanmar, unless a double taxation agreement provides otherwise. Myanmar has entered into double taxation agreements with Singapore, Malaysia, India, South Korea, Thailand, Laos, UK and Vietnam.

The following documents have to be provided for the incorporation of a company:

- Official form A 1 (Application for incorporation as a private Company);
- A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of each director, individual shareholder, every representative of a corporate shareholder and company secretary;
- For every corporate shareholder, a copy of the corporate documents (e.g. Register Extract and/or Certificate of Incorporation and constitutional documents);

- A copy of the company's constitution;
- A letter of consent of the person(s) acting as director(s); and
- A letter of consent of the person acting as company secretary.

All the above documents need to be submitted in English.

A company must, from the date of its incorporation, have a registered office within Myanmar to which all official communications and notices may be addressed. It is common practice that companies choose, initially at least, to have their registered office at the address of the company secretary, since the registered office does not have to be at the same address as the company's actual place of business.

A company may appoint a company secretary who must be a natural person. The company secretary is in certain aspects comparable with a notary, although this is not a public but an internal one. The company secretary is responsible to keep proper corporate records and maintain the requisite corporate registers as well as the corporate filings required under the Myanmar Companies Law (2017). In order to ensure the timely discharge of these duties, it is common practice in Myanmar for external lawyers or service providers to act as a company secretary.

Suffice to say, we offer full company secretarial services. With the exception of small companies (as defined in the Myanmar Companies Law (2017)), every company must further appoint an accredited auditor. Luther offers the full range of bookkeeping and accounting services and can recommend suitable audit firms.

1.2 Overseas corporation (branch office)

Any overseas corporation carrying out business in Myanmar – whether or not for the purpose of generating profits – shall register a branch office with the Directorate of Investment and Company Administration.

A branch office is able to act independently and to engage in legitimate profit-making activities. However, a branch office will not be treated as a separate legal entity from the overseas corporation it represents. Consequently, any and all contracts it enters into and the legal obligations, debts and liabilities arising therefrom, shall be binding and enforceable against the overseas corporation.

Any overseas corporation intending to register a branch office in Myanmar is required to appoint an authorised officer, who is authorised to accept service of documents in Myanmar on

behalf of the overseas corporation and must be an ordinary resident of Myanmar. A person is considered to be an ordinary resident in Myanmar if they stay in the country more than 183 days per year. If required, we may provide a nominee resident authorised officer.

For tax purposes, a branch office is treated as a non-resident foreign entity. All profits derived from Myanmar are taxed at a rate of 22% (from FY 2021/22), the same rate that applies to local or resident companies.

The following documents have to be provided for the registration of a branch office of an overseas corporation:

- Official Form A 8 (application for registration as an overseas corporation);
- Evidence of incorporation of the overseas corporation (not older than 30 days);
- A copy of the overseas corporation's constitutional documents;
- A Myanmar translation of the overseas corporation's constitutional documents and a summary statement in English duly certified by a director;
- A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of every director of the overseas corporation;
- A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of the authorised officer; and
- A letter of consent of the person acting as the authorised officer.

Comment Luther: *The Myanmar Companies Law (2017) no longer requires the submission of notarised and legalised documents. With the exception of the Myanmar language translation of the overseas corporation/organisation's constitutional documents, all documents must be submitted in English. Hence, if the original documents (e.g. Memorandum and Articles of Association) are in another language, an official translation must be provided. We can arrange for a translation into Myanmar language, if required.*

As a general rule, since the branch office is not a separate legal entity, changes relating to the officers and details of the overseas corporation, as well as its audited annual accounts, must be filed with the Directorate of Investment and Company Administration. If these documents are not in the English language, official translations must be provided. Further, the branch office has to prepare financial statements in respect of its business operations in Myanmar.

A branch office must, from the date of its registration, maintain

a registered office in Myanmar, to which all official communications and notices may be addressed. The registered office does not have to be at the same address as the branch office's actual place of business. While there is no formal requirement for a branch office to appoint a company secretary, its compliance and filing obligations are similar to those of a company, and we would recommend appointing someone who provides the services of a company secretary.

2. (Additional) Registration under the Myanmar Investment Law (2016)

In 2016, the Myanmar Investment Law was signed into law, coming into effect on 1 April 2017 and repealing and replacing the previous Foreign Investment Law (2012) and the Myanmar Citizens Investment Law (2013). A year later, the Ministry of Planning and Finance issued the Myanmar Investment Rules (2017) and the Myanmar Investment Commission ("MIC") published the following notifications:

- Notification No. 10/2017 – Investments zones eligible for income tax exemptions;
- Notification No. 13/2017 – Classification of promoted investment sectors; and
- Notification No. 15/2017 – List of restricted investment activities.

2.1 Types of investment

The Myanmar investment regime provides for several categories of investments:

- Prohibited investments;
- Restricted investments;
- Promoted investments; and
- Investments requiring a Permit from the Myanmar Investment Commission.

Prohibited investments

The following investments shall be prohibited:

- Investments which may bring hazardous or poisonous waste into the Union (hazardous and poisonous waste means all substances listed or prohibited under the Prevention from Danger of Chemical and Associated Materials Law (2013) and the Environmental Conservation Law (2012) or as otherwise determined by the Ministry of Industry and the Ministry of Natural Resources and Environmental Conservation or other competent authorities as prohibited

- from being imported, exported, stored, traded, manufactured or otherwise produced within the Union; the production or use of such substances in connection with an investment is prohibited, subject to any express statutory exception or dispensation or approval of a competent authority);
- Investments which may bring technologies, medicines, flora and fauna or instruments into the Union which are still being tested abroad or which have not been obtained approval for use, planting and cultivation except for investments made for the purpose of research and development;
- Investments which may affect the traditional culture and customs of the racial groups within the union;
- Investments which may affect the public health;
- Investments which may cause significant damage to the natural environment and ecosystem; and
- Investments which manufacture goods or provide services that are prohibited under the law.

Comment Luther: Pursuant to the Myanmar Investment Rules (2017), the Myanmar Investment Commission may issue notifications with respect to prohibited investments. Kindly note that no such notification has been published so far.

Restricted investments

On 10 April 2017, the Myanmar Investment Commission issued a list of restricted investment activities (Notification No. 15/2017)), stipulating:

- Investments allowed to be carried out only by the Union of Myanmar;
- Investments that are not allowed to be carried out by foreign investors (i.e. companies with more than 35% foreign interest);
- Investments allowed only in the form of a joint venture with a Myanmar citizen or Myanmar company (subject to any express exception in the relevant notification, the minimum direct shareholding or interest of a Myanmar citizen investor (or group of them) in the joint venture must be 20%); and
- Investments permitted only with the recommendation of the relevant Ministry.

An investor proposing to make such an investment shall notify the Myanmar Investment Commission or State/Regional Committee within three (3) months from the commencement of the investment. The requirement to notify the Myanmar Investment Commission shall, however, not apply to small companies or investors submitting a proposal or endorsement application in respect of the investment.

Comment Luther: It should be noted that some Ministries may not issue recommendations for foreign investors, in contradiction of the provisions of Notification No. 15/2017. In such cases, investors may approach the Myanmar Investment Commission for assistance.

Promoted investments

Further, the Myanmar Investment Commission issued Notification No. 13/2017 and Notification No. 10/2017 concerning promoted investment sectors eligible for tax- and duty exemptions or reliefs and regions in the Union which, depending on their level of development, are designated for income tax exemptions of up to seven (7) consecutive years (Zone 1), five (5) consecutive years (Zone 2) or three (3) consecutive years (Zone 3), including the year of commencement of commercial operations.

2.2 Registration procedure

Investment screening

An investor may submit an application to the Myanmar Investment Commission for screening and non-binding guidance on whether the proposed investment is of the following kind:

- Whether a proposal is required to be submitted to the Myanmar Investment Commission under sec. 36 Myanmar Investment Law (2016);
- Which is likely to be submitted to the Pyidaungsu Hluttaw for approval prior to the issuance of the MIC Permit;
- Which is prohibited under sec. 41 Myanmar Investment Law (2016) and any related notification;
- Which is restricted under sec. 42 Myanmar Investment Law (2016) and any related notification; or
- Which is promoted under sec. 43 Myanmar Investment Law (2016) and any related notification.

Comment Luther: The assessment of the Myanmar Investment Commission shall only provide guidance for the investor, but not express any likelihood of approval. It is non-binding and may be conditional.

MIC Permit

Under the Myanmar Investment Law (2016), only the following types of investment shall require the submission of a proposal for an MIC Permit:

- Investments that are strategic for the Union of Myanmar;
- Large capital intensive investments;

- Investments which have a large potential impact on the environment and the local community;
- Investments which use state-owned land and buildings; and/or
- Investments designated by the government.

Accordingly, most investments no longer require an MIC Permit.

Comment Luther: Confirmation whether or not an investment requires an MIC Permit can be obtained through an investment screening application with the Myanmar Investment Commission.

According to Form 2, the investor shall submit the following information and documents:

- Information on the applicant company (incl. copy of certificate of incorporation, MyCO register extract and evidence about business and financial conditions);
- Information on parent company (incl. copy of certificate of incorporation and evidence about business and financial conditions);
- Type of proposed investment;
- Type of business organisation;
- List of shareholders and profile of the parent company;
- Parent company's technical experience;
- Particulars of paid-up capital of the applicant company;
- Detailed list of foreign capital to be brought in;
- Details of local capital to be contributed;
- Particulars of loans (if any);
- Particulars about the Investment business (e.g. investment location(s), type of land and area requirement; annual production; annual electricity requirement; annual requirement of water supply; list of equipment and required materials; etc.);
- Detailed information about financial standing; and
- List of local/foreign employees.

In the annexure, the investor shall describe and summarise the proposed investment.

Comment Luther: Information shall be provided for at least the first 10 years of your proposed investment project (i.e. the period after commencement of business, excluding the construction period). The plan should include employment use, cash flow, as well as taxes paid to the government.

Further information/documents that may be required include:

- Business plan, annual investment schedule and sales projections (including internal rate of return) with a minimum of 10 years forecast (from commencement of business, excluding the construction period);
- Employee/HR plan with a minimum of 10 years forecast (from commencement of business, excluding the construction period), with information on foreign and local employees, professions and positions, salaries, etc.;
- Annual production plan (minimum of 10 years);
- Lists of equipment, machinery and construction materials to be imported and purchased locally;
- Social security plan for employees and social welfare plan;
- CSR plan;
- Fire prevention plan;
- Map of location and layout of all initial sites;
- Draft of lease agreement, together with land ownership documents of the lessor, of all initial sites;
- Additional documents detailing the applicants' type of business activity may be requested, such as quality assurance certification, standards and guidelines, evidence of arrangements for the proper storage and handling of chemical raw materials, etc.;
- Evidence of financial conditions (bank account statement); and
- Environmental protection plan (if requested).

If required by the Ministry of Natural Resources and Environmental Conservation, the investor shall further obtain an Environmental Impact Assessment.

Comment Luther: An application for long-term land use and/or tax incentives may be submitted concurrently with the proposal.

MIC Endorsement

Investors who do not have to apply for an MIC Permit may apply for an MIC Endorsement from the Myanmar Investment Commission to enjoy additional benefits under the Myanmar Investment Law (2016), such as long-term land use or tax and duty incentives.

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

Applications involving long-term land use with investments not exceeding USD five (5) million will be processed at the State/Regional level, with the close involvement of senior Directorate of Investment and Company Administration staff stationed in the state/region.

Comment Luther: *While the MIC Endorsement system was meant to simplify and streamline the application for long-term land use rights and tax- and duty incentives, it is in practice comparable to an MIC Permit application.*

According to form 4-A, the investor shall submit the following information and documents (as applicable):

- Information on the applicant company (incl. copy of certificate of incorporation, MyCO register extract and evidence about business and financial conditions);
- List of shareholders and profile of the parent company;
- Parent company's technical experience;
- Financial details;
- Particulars of the proposed investment and investment location; and
- Any business licenses.

In practice, the Myanmar Investment Commission is further requesting the following documents:

- Copy of certificate of incorporation and constitutional documents of the parent companies;
- Copy of identification card/passport of the directors;
- Letter of legal representative;
- Financial documents (bank account statement);
- Joint venture agreement (if applicable);
- Employee recruitment plan (local/foreign) with remuneration (10 years forecast);
- Annual business plan (10 years forecast);
- Social security plan for employees, social welfare plan, CSR program, building design, firefighting system, waste water plan; and
- Any other documents relevant to the project (licenses, permits, permissions etc.).

2.3 Benefits and incentives

The new investment regime provides that any (foreign) investor holding an MIC Permit or MIC Endorsement may apply for the right to enter into long-term leases and receive tax- and duty incentives.

(Long-term) Land use

Under the Transfer of Immovable Property Restriction Law (1987), foreign investors are generally not allowed to enter into lease agreements with a duration exceeding one (1) year. The Myanmar Investment Law (2016) does, however, provide that any (foreign) investor may apply for land rights authorisation and enter into long-term leases of up to 50+10+10 years with private landlords, or – in case of state owned land – the relevant government departments or government organisations, if the investor has obtained an MIC Permit or MIC Endorsement issued by the Myanmar Investment Commission.

Comment Luther: *Neither Myanmar citizen investors nor Myanmar companies (not exceeding 35% foreign interest) shall be required to obtain a land rights authorisation from the Myanmar Investment Commission.*

An application for long-term land use should be submitted concurrently with the application for an MIC Endorsement by filing form 7-A.

The application for land rights authorisation must further provide:

- The area, type and location of the land or buildings;
- The information related to the landlord(s) of the land or buildings;
- If applicable, recommendation letter or similar document or approval from a State or Regional Government or other governmental department and governmental organisation endorsing any proposed change in use of the land to carry out the investment (if the land is located in a designated zone, such as industrial zone, hotel zone or trading zone, a recommendation or approval is not required);
- Whether the investor's proposed use of the land will require any significant alteration of topography or elevation of the land, as contemplated in section 65(f) of the Myanmar Investment Law (2016);
- The period of the proposed long-term land use; and
- Lease agreement (draft).

Pursuant to the checklists of the Myanmar Investment Commission, the investor shall further provide:

- Land ownership documents of the lessor; and
- Location maps/layout plan.

Tax incentives or reliefs

Any eligible investor who has been issued either an MIC Permit or MIC Endorsement may submit an application for tax incentives or reliefs as provided for under sec. 75, 77 and 78 Myanmar Investment Law (2016).

Applications using form 6 may be submitted together with or subsequent to an application for a Permit or an Endorsement from the Myanmar Investment Commission, providing the zone in which the investor proposes that more than 65% of the value of the investment will be carried out and the list of machinery, equipment, instruments, machinery components, spare parts and construction materials to be imported for the construction and implementation of the investment, including a calculation of the total value of all such imports for which a custom duty exemption is being applied.

Upon application, the Myanmar Investment Commission may grant the following exemptions or reliefs from taxes customs duties to the investor:

- Income tax exemptions for a period of seven (7) consecutive years for investments in Zone 1, five (5) consecutive years for investments in Zone 2, and three (3) consecutive years for investments in Zone 3, including the year of commencement of commercial operations;
- Exemptions or reliefs from customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, construction materials unavailable locally, and materials used in the business, which are imported as they are actually required during the construction period or during the preparatory period of the investment business;
- Exemptions or reliefs from the customs duty or other internal taxes or both on the importation of the raw materials and partially manufactured goods by an export-oriented investment business for the purposes of the manufacture of products for export;
- Reimbursement of customs duty or other internal taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export;
- If the volume of investment is increased with the approval of the Myanmar Investment Commission and the original investment business is expanded during the permitted period of investment, exemption or relief from the customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts, materials used in the business, and construction materials unavailable locally, which are imported as they are actually required for use in the business which is being expanded as such;

- Exemption or relief from income tax if the profit from the investment business that has obtained an MIC Permit or an MIC Endorsement is re-invested in such investment business or in any similar type of investment business within one (1) year;
- Right to depreciation for the purpose of income tax assessment, after computing such depreciation from the year of commencement of commercial operation based on a depreciation rate which is less than the stipulated lifetime of the machinery, equipment, building or capital assets used in the investment; and
- Right to deduct expenses which are incurred for research and development relating to the investment businesses carried out within the Union and actually required for the economic development of the Union from the assessable income.

Investments are eligible for tax incentives or reliefs:

- If they are in a promoted economic sector (Notification No. 13/2017); and
- Carried out at a location as in Zone 1, Zone 2 or Zone 3 (Notification No. 10/2017); and
- Involve the expenditure of additional funds or application of further capital of an amount exceeding USD 300,000.

3. (Additional) Registration under the Special Economic Zone Law (2014)

Investors intending to establish their business in a Special Economic Zone have to register under the Special Economic Zone Law (2014).

Comment Luther: *The registration under the Special Economic Zone Law (2014) and the Myanmar Investment Law (2016) are (currently) mutually exclusive.*

The Special Economic Zones are linked to major infrastructure projects, including the construction of deep sea ports, power grids and pipelines to neighbouring countries. Several Special Economic Zones are currently under development in Myanmar, with the Thilawa Special Economic Zone currently being the only zone that is fully commercially operational. Investors intending to set up business in the Thilawa Special Economic Zone have the right to engage in the following business activities:

- Manufacturing of finished products, manufacturing of processed goods, warehousing, transport, provision of services;
- Import of raw materials used in the investment, packaging materials, machinery, equipment, tools;

- Transportation and import of fuel from domestic sources and overseas to the special economic zone;
- Sale of manufactured goods domestically or overseas in accordance with the stipulations;
- Wholesale trading of goods;
- Establishment and opening of offices for the investment business and for overseas services with the approval of the management committee at the specified location in the special economic zone; and
- Engaging, with the approval of the management committee, in other economic businesses which are not forbidden.

When assessing an investment application, the Management Committee will consider certain criteria of the proposed investment, such as creation of employment opportunities, technology transfer, export, energy- and water demand and the reputation of the investor. The specific guidelines and regulations for every Special Economic Zone provide details regarding the application procedure, specifying the economic activities that may be operated in the Special Economic Zone and the requirements for obtaining an investment permit.

3.1 Investment in Thilawa Special Economic Zone

Thilawa is divided into a free zone for export-oriented industries including their supporting industries and a promotion zone for companies active on the domestic market. A company is considered export-oriented if the exports amount to a minimum of 75% of the production in value. Incentives are offered for both investments in the free zone and the promotion zone.

Notification No. 81/2014 to the Special Economic Zone Law (2014) for the Thilawa Special Economic Zone stipulates minimum capital requirements for different types of investment (additional investment requirements apply for wholesale trading companies):

- Export-oriented manufacturing business in a free zone: USD 750,000;
- Export-related service business in a free zone: USD 500,000;
- Supporting business in a free zone: USD 300,000; and
- Manufacturing or service business in a promotion zone: USD 300,000.

In May 2015, the Management Committee of the Thilawa Special Economic Zone issued the Instruction on the Scope of “Trading Activities Permitted for Investors in the Thilawa Special

Economic Zone” (Instruction 2/2015), pursuant to which foreign investments into wholesale trading activities are subject to additional requirements, such as a minimum investment of USD 2,000,000 or USD 3,000,000 for businesses distributing their own products or third-party products respectively.

Benefits available to export-oriented investors in the free zone are as follows:

- Income tax holidays for the first seven (7) years from the commencement of the commercial operation;
- Tax relief of 50% for additional five (5) years on the income tax rate for the second five (5) years;
- Tax relief of 50% for the third five (5) years on the profit which is reserved from the business as a reserve fund if it is reinvested within one (1) year in the business;
- Import exemption from customs duties and other taxation paid at the time of importation on raw materials for production, machinery, instruments and necessary spare parts for production; motor vehicles and construction of the factory, warehouse and office;
- Import exemption from customs duties and other taxation paid at the time of importation on trading goods, motor vehicles and other materials which are essential for the business for free-tax wholesale trading, export trading as well as services and transportation;
- Permission to carry forward losses for five (5) consecutive years after the year in which the losses were incurred;
- General exemption from commercial tax may be given;
- Exemption from commercial tax may be given for manufactured goods which will be exported;
- Exemption from commercial tax may be given for goods imported from the domestic market or the promotion zone into the free zone;
- Exemption of income tax on dividends distributed to shareholders based on the profits accrued locally for which tax has been paid (note: Myanmar currently does not levy any withholding tax on dividends);
- Income tax deductions for training of skilled or semi-skilled worker and staff of the management sector, as well as expenses for research and development related to the investment project;
- Possibility to enter into long term lease agreements (50 years with an option to renew for a further term of 25 years);
- Possibility to sell, mortgage, lease, exchange or gift land lease, land use and buildings to third parties; and
- No restriction or control of prices on the products, services or goods manufactured in the free zone.

Investments intending to serve primarily the domestic market shall be established in the promotion zone and may enjoy incentives such as:

- Tax holiday for the first five (5) years from the commencement of the commercial operation;
- Tax relief of 50% for additional five (5) years on the income tax rate for the second five (5) years;
- Tax relief of 50% for the third five (5) years on the profit which is reserved from the business as a reserve fund if it is reinvested within one (1) year in the business;
- Import relief from customs duties and other relevant taxation for five (5) years from the commencement of business on the import of equipment and instruments not for sales as well as spare parts, the construction materials for factory, warehouse and office, motor vehicles and other materials which are essential for the business;
- Import refund of customs duties and other taxation paid at the time of importation on raw materials and other goods for production if the finished or semi-finished goods produced from those materials are exported abroad or into the free zone;
- Permission to carry forward losses for five (5) consecutive years after the year in which the losses were incurred;
- Exemption from commercial tax;
- Exemption of income tax on dividends distributed to shareholders based on the profits accrued locally for which tax has been paid (note: Myanmar currently does not levy any withholding tax on dividends);
- Tax deductions for training, research and development related to the investment project;
- Possibility to enter into long term lease agreements (50 years with an option to renew for a further term of 25 years);
- Possibility to sell, mortgage, lease, exchange or gift land lease, land use and buildings to third parties; and
- No restriction or control of prices on the products, services or exported goods manufactured in the promotion zone.

3.2 Registration procedure

As the investments in a Special Economic Zone are under the ambit of the Special Economic Zone Law (2014), the Management Committee of the respective Special Economic Zone will handle the investment applications.

Thilawa offers a One-Stop Service Centre, where all relevant licenses, permits and approvals can be applied for and additional services are offered (e.g. labour registration or visa services for foreign employees).

The One-Stop-Service-Centre is staffed by representatives from:

- Commerce and Consumer Department, Ministry of Commerce;
- Department of Custom, Ministry of Finance;
- Department of Revenue, Ministry of Finance;
- Department of Immigration and National Registration, Ministry of Immigration and Population;
- Labour Department, Ministry of Labour;
- Department of Human Settlement and Housing Development, Ministry of Construction;
- Myanmar Port Authority; and
- Directorate of Investment and Company Administration.

The One-Stop-Service-Centre offers streamlined procedures for matter such as:

- Company administration;
- Tax filing;
- Financing/Central Bank matters;
- Immigration and visa matters; and
- Import/export procedures.

The general procedure for registration in the Thilawa Special Economic Zone is as follows:

- The investor shall complete a questionnaire provided by the Management Committee.
- A land reservation agreement shall be signed with the developer of the Special Economic Zone before submitting the investment application.
- A complete and comprehensive investment application shall then be submitted to the Management Committee, which shall include:
 - Investment Application Form 1 and its cover letter;
 - Location of the land in the Special Economic Zone, and location of the factory;
 - Water supply and electricity supply plan;
 - Building/factory construction plan;
 - Plan for installation of machinery and equipment; and
 - Environmental management plan.
- The Management Committee will examine the submitted application and take a decision within 30 days.
- After receiving the permit, the land lease agreement can be signed with the developer and has to be submitted to the Management Committee within six (6) months after issuance of the investment permit.

- The new company has to be registered at the One-Stop Service Centre of the Special Economic Zone, which can be done at the time the investment application is submitted. However, the new company's registration will only be completed when the investment permit is granted. The same documentation is required as for a company registration with the Company Registration Office.
- The building permit and fire safety certificate have to be obtained. The respective applications can be submitted at the time of the investment application and will first be reviewed by the developer, to check if the standards are in compliance with their regulation, and then by the Management Committee, to check further compliance.
- For every investment project an Environmental Conservation and Prevention Plan has to be submitted. For some industries, an additional Initial Environmental Evaluation Report or an Environmental Impact Assessment may be required.

Comment Luther: *The details of the application would be determined by us in close liaison with the Management Committee of the respective Special Economic Zone.*

After obtaining the above mentioned permits, the project may commence with:

- Construction of warehouse and facilities, connection of infrastructure (e.g. water, sewage, electricity), application for Electricity and Boiler Certificate;
- Tax registration;
- Exporter/importer registration, filing of master list and material list;
- Employment registration;
- Immigration matters for foreign employees; and
- Registration of loans/financing/FX-transactions.

Please note that commercial operations must commence within three (3) years after issuance of the investment permit. On special request, an extension may be granted.

C. 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 600 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 2022” ranked Luther Myanmar in Band 3 and shortlisted the firm as Law Firm of the Year - Myanmar



In 2022, both Luther Myanmar and Alexander Bohusch individually were ranked in Band 3 by Chambers Asia Pacific.



CHAMBERS
2022

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

D. 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 Rechtsanwalts-gesellschaft 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.

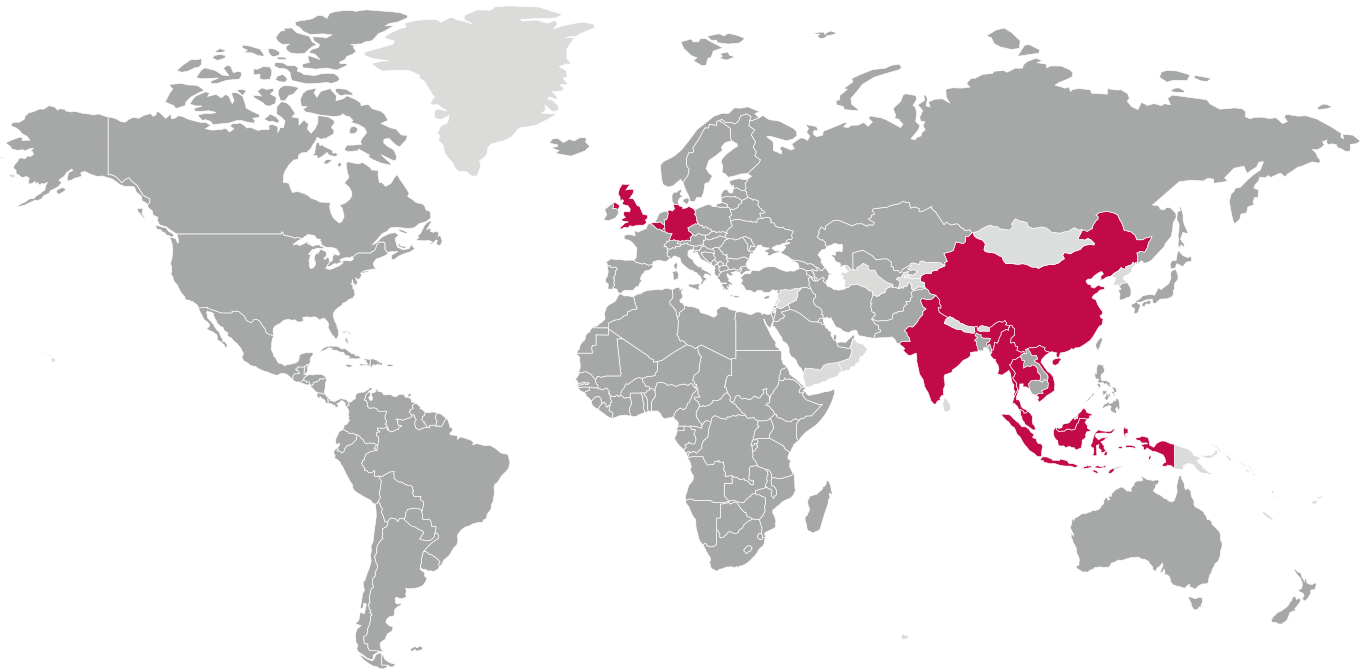
unyer has an exclusive approach and only accepts one member firm from each market. unyer members offer its clients full services across all jurisdictions with a compelling industry focus. The organisation has an annual turnover of more than EUR 650 million and includes over 2,550 lawyers and advisors 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



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”.



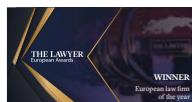
The Legal 500

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“

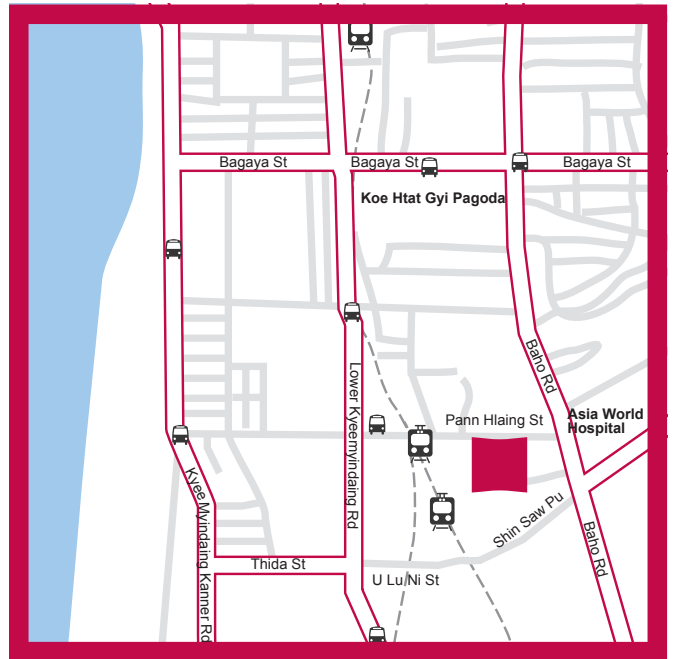
For the year 2024, 99 lawyers have been recommended by Luther as “Best Lawyers in Germany 2024”, an award presented by the US publisher “Best Lawyers” in cooperation with the German Handelsblatt, including one partner as “Lawyer of the Year” for his area of law, and 19 colleagues who have received the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

Although every effort has been made to offer current and correct information, this publication has been prepared to provide only introductory information on regulatory and legal developments in Myanmar. It is not exhaustive and will not be updated; neither does it constitute legal and/or tax advice. This publication is distributed with the understanding that Luther, the editors and authors cannot be held responsible for the results of any actions and/or omission taken on the basis of information contained herein.

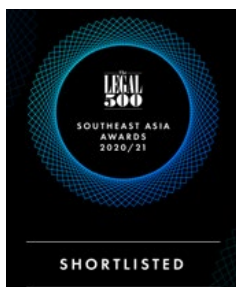
Luther.

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

You can find further information at:

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