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Investing in Myanmar and the new Wholesale & Retail Regulations

Mr Alexander Bohusch
Luther Law Firm Limited
17 September 2018



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- III. Legal Entities and Incorporation/Registration Process
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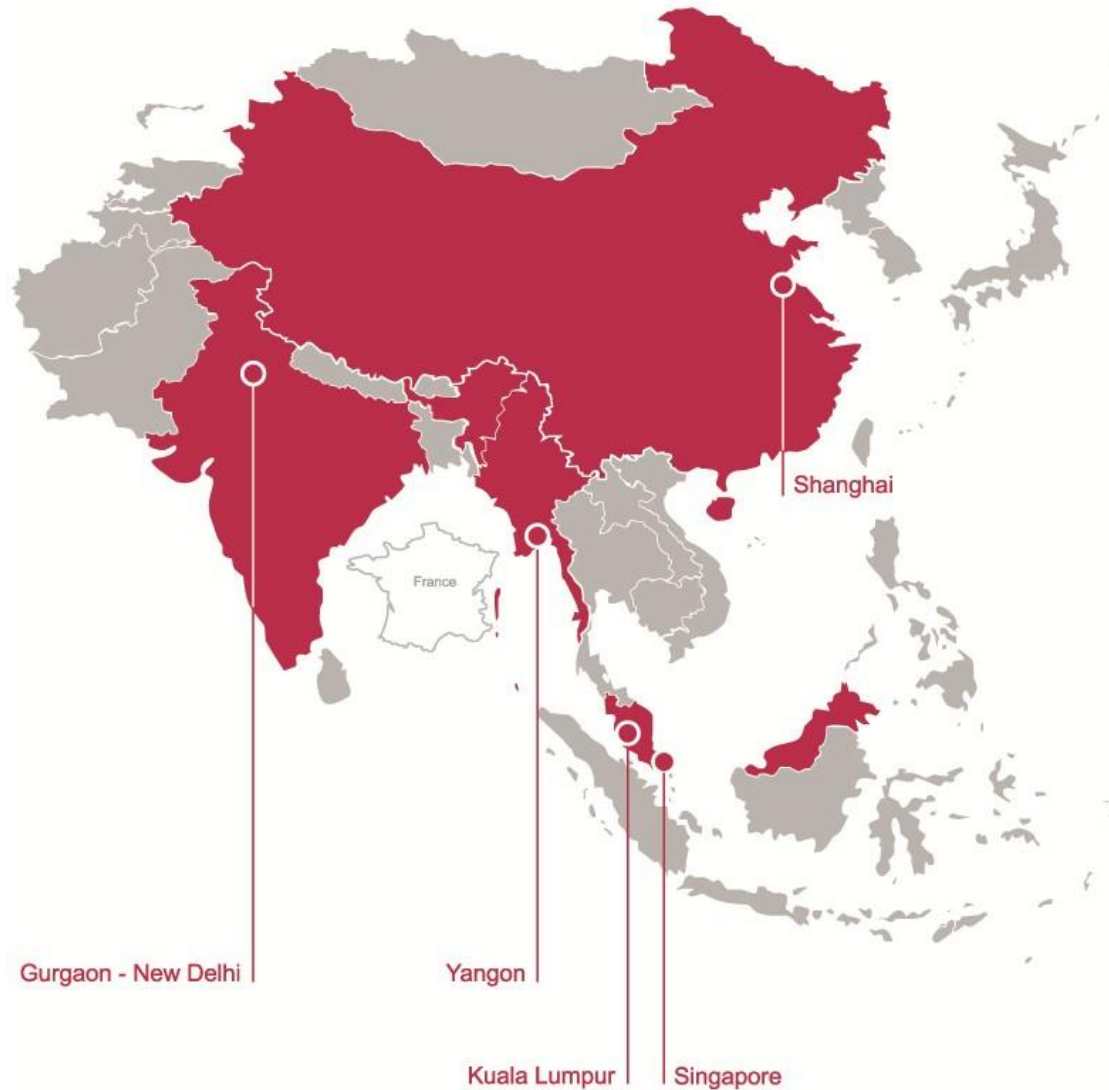
I. About Luther

I. About Luther.

- European law firm with Asian offices in Yangon, Singapore, Kuala Lumpur, Delhi-Gurgaon and Shanghai
- Ca. 380 lawyers and tax advisors in Europe
- Ca. 300 lawyers, tax advisors and professionals in Asia
- In Yangon since 2013 with ca. 50 European and Myanmar lawyers, tax advisors, accountants and professionals
- Provision of:
 - Legal advice
 - Tax advice
 - Incorporation services
 - Corporate secretarial services
 - Accounting
 - HR administration and payroll
 - Cash, fund and payment administration



I. Luther in Asia.



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II. Legal Framework

II. Relevant Laws.



Legal System

- Based on UK law
- Many laws from the British colonial rule period are still in force
- Corporate governance and compliance issues

Notable Regulatory Difficulties

- Unclear investment protection
- Foreign exchange restrictions and difficulties with international payment transactions
- Very few Free Trade Agreements and Double Tax Agreements
- Difficulties to finance transactions and grant securities
- Intransparent customs procedures
- Intransparent taxation
- Different business culture and practice

II. Relevant Laws.

Notable Reforms

- 2012: New Foreign Investment Law
- January 2014: New Special Economic Zone Law
- February 2015: New Competition Law
- January 2016: New Arbitration Law, Law Amending the Factories Act (1951) and new Shops and Establishment Law (2016)
- March 2016: New Notification 26/2016 to the Foreign Investment Law (List of economic activities under prohibition or restriction)
- October 2016: New Myanmar Investment Law
- February 2017: Notification No. 10/2017 to the Myanmar Investment Law (2016) (Development Zones), updated Draft Rules to the Employment and Skill Development Law and updated Draft to the Workplace Safety and Health Law
- March 2017: Myanmar Investment Rules
- April 2017: Notification No. 13/2017 to the Myanmar Investment Law (2016) (Promoted Sectors) and Notification 15/2017 to the Myanmar Investment Law (2016) (Restricted Activities)

II. Relevant Laws.

Notable Reforms

- November 2017: New Myanmar Companies Law
- May 2018: Terms & Conditions for Retail / Wholesale Trading (Notification No. 25/2018)
- July 2018: Announcement of Goods allowed for Wholesale and Retail Trading (Announcement 3/2018)
- July 2018: Prescribed Model Constitution under the Myanmar Companies Law (2017)
- July 2018: New Myanmar Companies Regulations (2018)

Upcoming Reforms

- Review of the Labour Laws
- IP and Trade Mark Laws
- Employment and Skills Development Rules
- Workplace Safety & Health Law

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III. Legal Entities and Registration Process

III. Legal Entities.

Foreign Investment

- 100 % foreign shareholding in companies in Myanmar generally possible
- Some activities are still prohibited for foreign investors (e.g. businesses which may cause damage to the natural environment and eco system)
- Some activities are subject to conditions under the Myanmar Investment Law (2016) and require a certain percentage of Myanmar shareholding (e.g. development, sale and lease of residential apartments and condominiums requires a joint venture with a Myanmar partner) or approval of the relevant ministry or other authorities
- Exemptions from prohibitions and restrictions possible if in the interest of the Republic of the Union of Myanmar

III. Legal Entities.

Registration of Overseas Corporation with DICA (Branch Office)

- Registration required for any overseas corporation carrying on business in Myanmar, which includes activities not for the generation of income
- Branch Office is able to act independently and may generally carry out any legal business activities in accordance with the laws of Myanmar
- No separate legal entity, no limitation of liability
- Any contracts entered into and the legal obligations, debts and liabilities arising therefrom are binding and enforceable against the overseas company
- Treated as non-resident tax payer (payments subject to WHT)
- Corporate tax rate: 25% (identical to Company Limited by Shares) on income generated in Myanmar
- Required to appoint an authorized officer, who must be an ordinary resident of Myanmar (i.e. a person resident in Myanmar for more than 183 days per year)

III. Legal Entities.

Company Limited by Shares

- Company Limited by Shares is a fully-fledged, independent legal entity
- A Company Limited by Shares may generally carry out any legal business activities in accordance with the laws of Myanmar
- Must have a minimum of one (1) shareholder, whether natural persons or corporate entities (shareholding can be 100 % foreign), no minimum share capital requirements
- Must appoint a minimum of (1) director (at least one director must be ordinary resident in Myanmar)
- Applicable tax rate is 25 %
- Tax is generally also applicable to income from sources outside of Myanmar, unless a DTA with such other country provides otherwise (e.g. Thailand)

III. Incorporation/Registration Process.

Generally, three (3) options exist for the establishment of an entity in Myanmar:

- Incorporation with DICA under the Companies Law (2017)
 - Most businesses can be established under the Companies Law (2017)
 - Long-term land use as well as tax and duty incentives (if eligible) under the Myanmar Investment Law (2016) require an Endorsement of the Myanmar Investment Commission
- (Additional) MIC Permit under the Myanmar Investment Law (2016)
 - An MIC Permit is only necessary for defined businesses/sectors, and may require approval from the relevant ministry or a joint venture with a Myanmar citizen/citizen owned entity
 - Long-term land use, tax holidays and duty exemptions (if eligible) can be applied directly without further Endorsement
- (Additional) Registration under the Special Economic Zone Law (2014)
 - Only for enterprises operating in a Special Economic Zone (currently, only Thilawa SEZ is operational)
 - Tax holidays, duty exemptions

III. Incorporation/Registration Process.

Incorporation of a Company under the Companies Law (2017)

- The following documents have to be provided for the incorporation of a Company Limited by Shares:
 - Official Form A 1 (Application for incorporation as a private company limited by shares);
 - A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of each director and company secretary;
 - A copy of the company's constitution;
 - A letter of consent of the person(s) acting as director(s);
 - A letter of consent of the person(s) acting as company secretary(ies); and
 - A share application / agreement to take up shares by the shareholder(s)

III. Incorporation/Registration Process.

Registration of a Branch Office under the Companies Law (2017)

- For the registration of an overseas corporation (Representative Office/Branch Office, the following documents of the overseas corporation have to be provided:
 - Official Form A 8 (application for registration as an overseas corporation);
 - Evidence of incorporation of the overseas corporation (no 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 authorised officer;
 - A copy of the N.R.C (Myanmar citizens) or passport (foreigners) of every director of the overseas corporation; and
 - A letter of consent of the person acting as authorised officer

III. Incorporation/Registration Process.

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

- An investor shall make all submissions (e.g. the Proposal for a Permit, or an application for an Endorsement) to the Myanmar Investment Commission in accordance with the Myanmar Investment Law (2016) and the Myanmar Investment Rules (2017)
- In general, a submission shall meet the following criteria:
 - Be in writing; investment submission shall meet
 - In Myanmar language or in both Myanmar and English language;
 - Proposals shall include summary of the proposed investment in Myanmar or in both Myanmar and English language;
 - Be signed by an applicant (i.e. the investor, authorized representative of the investor, or subsidiary involved in the investment);
 - Be completed on the prescribed form, where applicable;
 - Contain the information as specified by the Myanmar Investment Commission;
 - Contain information which is true and complete in all respects and not misleading;
 - Be lodged with the Directorate of Investment and Company Administration or the relevant State/Regional Committee Office (pursuant to Notification No. 11/2017, the Myanmar Investment Commission defined that investments of more than US\$ five (5) million or Myanmar Kyats Six (6) Billion may be approved by State/Regional Committees); and
 - Be lodged with the relevant submission fee

III. Incorporation/Registration Process.

Myanmar Investment Law (2016) – Long term use of land

- Under Myanmar law, foreigners are currently only allowed to enter into lease agreements of max. one (1) year
- The Myanmar Investment Law (2016) allows any investor with an MIC Permit or Endorsement to apply for long term land use (up to 50 years with the possibility to extend for two (2) additional terms of ten (10) years each)
- Information to be provided in the application:
 - Area, type and location of the land or building;
 - Information relating to the landlord(s);
 - Recommendation letter / approval endorsing any proposed change in the use of the land;
 - Significant alteration of the topography or elevation of the land; and
 - The draft lease agreement
- Assessment criteria:
 - Investor is acting, and the investment will be made, in accordance with the laws of the Union;
 - Application is in accordance with the Myanmar Investment Law 2016;
 - Investor holds or is to be granted a Permit or Endorsement;
 - The land can be used for the intended purpose;
 - If the use will require significant alteration of the topography or elevation of the land, whether such will have a material adverse effect on the environment which cannot be mitigated
- If land is located in a designated zone, such as industrial zone, hotel zone or trading zone, the Myanmar Investment Commission is not required to obtain any recommendation to approve the application; otherwise, approval of the relevant State or Region Authority shall be obtained

III. Incorporation/Registration Process.

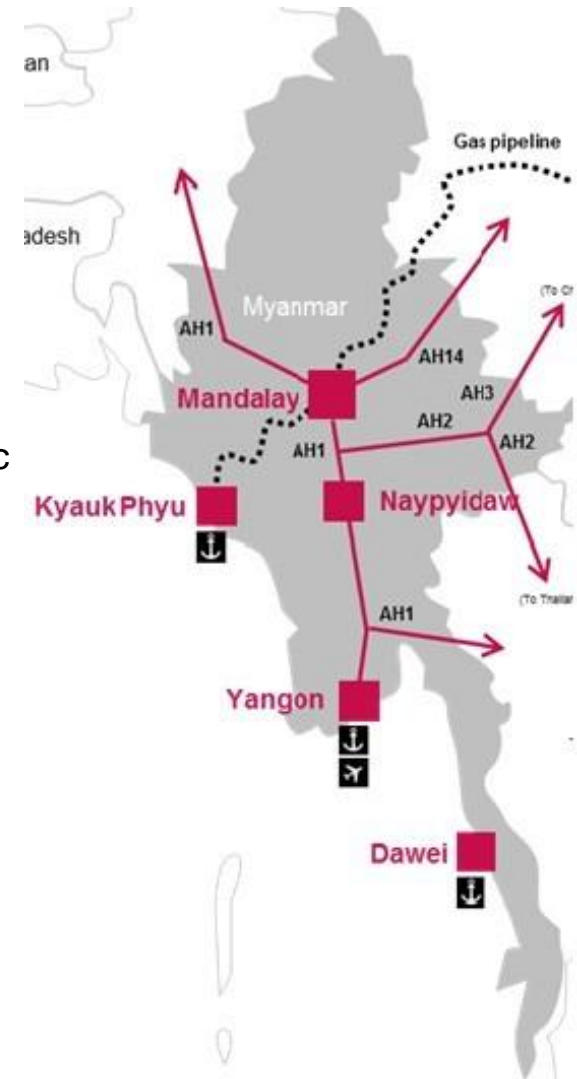
Myanmar Investment Law (2016) – Tax and duty incentives

- Under the Myanmar Investment Law (2016), any eligible investor with an MIC Permit or Endorsement may apply for tax and duty incentives, such as:
 - Corporate Income Tax Exemption (for 3/5/7 years depending on the Zone);
 - Tax exemption for re-invested profits;
 - Increased depreciation rate for machinery, equipment, building or capital assets;
 - Tax deductions for research and development;
 - Exemptions or reliefs from customs duties or other domestic taxes on machineries, instruments, machinery components, spare parts, construction materials not available locally, and materials used in the business, during the construction period, during the preparatory period or for an expansion of the investment business;
 - Exemptions or reliefs from customs duties or other domestic taxes or both on the importation of raw materials and partially manufactured goods conducted by a 100% export-oriented investment business for the purpose of manufacture of products for export; and
 - Reimbursement of customs duties or other domestic taxes or both on imported raw materials and partially manufactured goods which are used to manufacture products for export.
- The MIC has the authority to issue notifications of:
 - Notification 10/2017 dated 22 February 2017 stipulates development zones
 - Notification 13/2017 dated 1 April 2017 stipulates promoted business sectors

III. Incorporation/Registration Process.

(Additional) Registration under Special Economic Zone Law

- Special Economic Zones
 - (1) Thilawa
 - (2) Kyauk Phyu
 - (3) Dawei
- Differentiation between “promotion zone” and “free zone” for domestic and export oriented industries
- Benefits similar to those granted under the Foreign Investment Law, but also similar investment requirements
- Thilawa: Subject to certain conditions, investors allowed to carry out wholesale trading activities in Myanmar



III. Incorporation/Registration Process.

Operation of Thilawa SEZ

- Set up as a One-Stop Service Center 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
 - Labor Department, Ministry of Labor
 - Department of Human Settlement and Housing Development, Ministry of Construction
 - Myanmar Port Authority
 - Directorate of Investment and Companies Administration (DICA)
- Streamlined Procedures for:
 - Company administration
 - Tax filing
 - Financing / Central Bank matters
 - Immigration- and Visa matters
 - Import/Export procedures (no import licenses for products included in Material List)

III. Incorporation/Registration Process.

Registration with the Thilawa Management Committee:

- Investor shall complete a questionnaire provided by the Management Committee;
- Land reservation agreement shall be signed with the developer of the Special Economic Zone before submitting investment application;
- Complete and comprehensive investment application shall be submitted to Management Committee, including:
 - Location of the land in the SEZ, and location of the factory;
 - Water supply and electricity supply plan;
 - Building/factory construction plan;
 - Plan for installation of machinery and equipment;
 - Environmental management plan; and
 - Investment Application Form (Form-1) and Cover letter
- Management Committee will examine the submitted application and make decision within 30 days
- After receiving the permit, land lease agreement can be signed with the developer
- Has to be submitted to the Management Committee within six (6) months after issuance of the investment permit

III. Incorporation/Registration Process.

Registration

- New company has to be registered at the one-stop-service-center of the Special Economic Zone, which can be done at the time the investment application is submitted
- Registration will only be completed when the investment permit is granted
- Same documentation is required as for a company registration with the Company Registration Office.
- Building permit and fire safety certificate have to be obtained
- Respective applications can be submitted at the time of the investment application
- The application 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
- Some industries require additional Initial Environmental Evaluation Report/Environmental Impact Assessment

III. Incorporation/Registration Process.

Tax and other incentives in Free Zone, such as:

- Tax holiday for the first seven (7) years from the commencement of the commercial operation; tax relief of 50% for additional five (5) years; tax relief of 50% for additional five (5) years on the profit which is reserved from the business as a reserve fund if it is reinvested within one 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 for the dividends distributed to each shareholder 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 expensed 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)

III. Incorporation/Registration Process.

Tax and other incentives in Promotion Zone, such as:

- Tax holiday for the first five (5) years from the commencement of the commercial operation; tax relief of 50% 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 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;
- General exemption from commercial tax may be given;
- Exemption of income tax for the dividends distributed to each shareholder 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)

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IV. Historical Trade Restrictions

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1. Historical Background

- Since late 2001, most trading activities were restricted for foreign investors, both through limited approval of imports under the Export and Import Law (2012), as well as the enforcement of the unofficial ban on trade by the Ministry of Commerce (MoC)
- The restrictions have been enforced by the Ministry of Commerce by making the incorporation of companies, renewal of business licenses (“Trade Permit”) and issuance of Exporter/Importer Registration Certificates conditional on the company’s execution of an Undertaking not to Trade

2. Exemptions

- General Exemption: sale of goods produced by a foreign company in the Republic of the Union of Myanmar
- Since 2015, the Ministry of Commerce has granted exemptions from the trade prohibition to address certain needs of the Myanmar market

IV. Historical Trade Restrictions.

2. Exemptions

- Specific Exemptions since 2015:
 - Notification No. 20/2015 concerning the import and sale of motor-vehicles
 - Notification No. 96/2015 concerning the import and sale of agricultural products and hospital equipment
 - Notification No. 56/2016 concerning the import and sale of construction materials
 - Notifications No. 14-17/2017 concerning the import and sale of machines, new and used motor-vehicles in sales centers and showrooms, as well as construction machinery and project equipment.
 - Notification No. 36/2017 concerning the import and sale of chemical fertilizers, seeds, pesticides, hospital equipment and construction materials
 - Notification No. 55/2017, granting permission to foreign-owned Joint Ventures to import and distribute farm equipment

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V. Foreign Investment in Trading Business

V. Foreign Investment in Trading Business.

Available Options since May 2018

	Service Company	Trading Company (inside Thilawa)	Trading Company (outside Thilawa)
Authority	DICA / MIC	Thilawa SEZ Management Committee	DICA / MIC
Activity	Distribution Services	Wholesale	Wholesale and/or Retail
Investment Requirements	No minimum requirements	Approx. USD 6-8 Mio.	Wholesale: USD 5 / 2 Mio. Retail: USD 2 Mio. / 700k
Timeframe until operation	2-4 Weeks	12-24 Months (for warehouse construction)	2-4 Months
Tax Benefits	N/A	Tax Benefits under SEZL	N/A
Legal Fees	Approx. USD 2,500	Approx. USD 15,000	Approx. USD 10,000 – 15,000 (without MIC)

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VI. Distribution Management – Service Set-Up

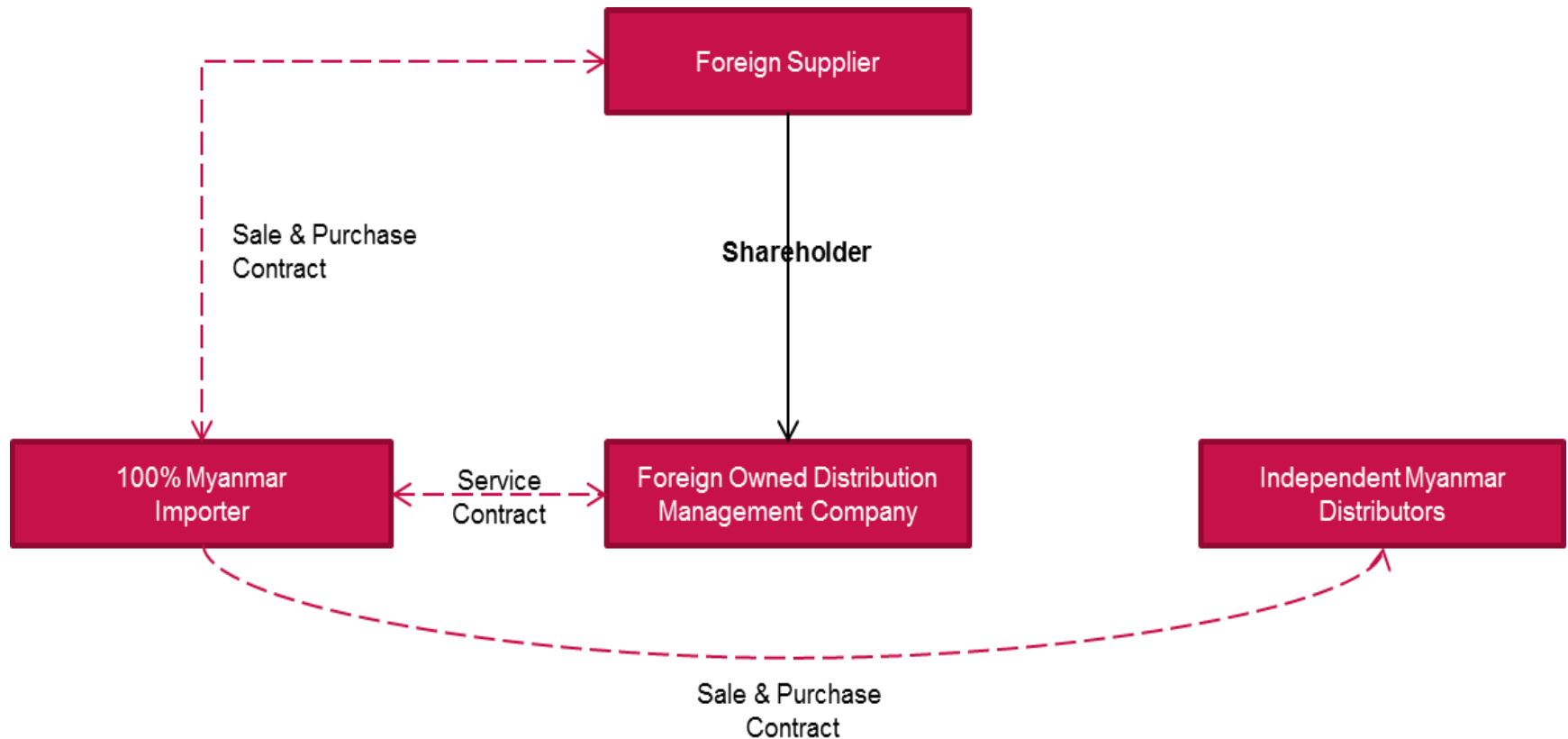
VI. Distribution Management Company.

“Old” Structure to address Trade Restrictions

- In response to the ban on trade enforced by the Ministry of Commerce, various structures involving 100% Myanmar owned companies have been used to carry out distribution in Myanmar
- Profits from the distribution business are either allocated outside Myanmar on the supplier level, or used for the financing of the foreign owned distribution management company as service fees for the management of the distribution
- While this structure currently works and is tolerated by the authorities, it comes with certain risks and disadvantages (e.g. costs, tax and transfer pricing issues, limited possibility to enforce structures in case of disputes)
- Problem: Activities of the foreign owned service company could still be considered to be in violation of Order No. 2/89 on the registration of Business Representatives.

VI. Distribution Management Company.

“Old” Structure to address Trade Restrictions



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VII. Trading Activities in Thilawa Special Economic Zone

VII. Wholesale Trading in Thilawa SEZ

Trading in Thilawa

- 27 May 2015: Management Committee of the Thilawa Special Economic Zone issued Instruction 2/2015 allowing for the establishment of (foreign owned) wholesale trading companies permitted to import and trade within and outside of Thilawa SEZ
- Distinction is made between wholesale of company-group products and wholesale as a distributor / agent for third parties
- Some products, e.g. automobiles, are prohibited for trading in Thilawa and governed by separate regulations

Wholesale of company group products

- Import and wholesale throughout the country is permitted for products manufactured by the foreign investor, its parent company or a group company, provided that the following requirements are met:
 - Minimum investment of USD 2 Million (excluding leasing costs for the land in Thilawa)
 - Establishment of a warehouse at the company's lot in Thilawa
 - The provision of value adding services or activities

VII. Wholesale Trading in Thilawa SEZ

Wholesale as a distributor or agent of third party products

- Foreign investors intending to act as distributors or agents of third parties for the import and wholesale of products throughout Myanmar have to meet the following conditions:
 - The parent company or a group company must have established places of business in at least five (5) countries, a minimum of ten (10) years' experience in international trading, a minimum of three (3) years' average annual consolidated sales of at least USD 500 million and a paid up capital of at least USD 25 million
 - The Myanmar company must be appointment as official agent or distributor by the overseas manufacturer
 - Minimum investment of USD 3 Million (excluding leasing costs for the land in Thilawa)
 - Establishment of a warehouse at the company's lot in Thilawa
 - The provision of value adding services or activities

VII. Wholesale Trading in Thilawa SEZ

Value Adding Services

- Further, investor must provide value adding services, which includes:
 - Repacking, labeling and any other form of processing of imported products
 - Quality control, laboratory testing, maintenance and other technical services

Wholesale

- Wholesale is defined as sale to other businesses for resale or use in the manufacture of goods or supply of services, but also includes the direct sale to end-users in the case of industrial materials in bulk as well as the direct sale of industrial machinery and equipment with a sales price in excess of USD 500,000.

Activities outside Thilawa

- Investor may set up facilities outside of Thilawa, including sales offices

Actual Requirements

- Despite the official capital requirements, in practice, investments of USD 6-8 Mio minimum are required for a pure trading company

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VIII. New Wholesale & Retail Regulations

VIII. New Wholesale & Retail Regulations.

1. Notification No. 15/2017 to the Myanmar Investment Law (2016)

- On 10 April 2017, the Myanmar Investment Commission issued a list of restricted investment activities (Notification No. 15/2017), according to which retail and wholesale trading services shall be generally allowed
- Such trading activities shall, however, require the approval of the Ministry of Commerce

2. Terms & Conditions for Retail/Wholesale Trading (Notification No. 25/2018)

- On 9 May 2018, the Ministry of Commerce issued the new Terms & Conditions for Retail / Wholesale Trading (Notification No. 25/2018), describing which documents and information shall be necessary for foreign-owned companies to apply for a retail/wholesale license
- On 26 July 2018, the Ministry of Commerce issued the Announcement of Goods allowed for Wholesale and Retail Trading (Announcement 3/2018), containing a list of priority/preferential goods permitted for trade by foreign companies and joint ventures
- Further, the Ministry of Commerce issued the Standing Operating Procedure Concerning Applications for Registration of Retail/Wholesale Business, describing in detail the process for registration of a retail/wholesale trading business as well as the necessary documents/information and official fees

VIII. New Wholesale & Retail Regulations.

2. Terms & Conditions for Retail/Wholesale Trading (Notification No. 25/2018)

- Notification No. 25/2018 contains terms and conditions for foreign-owned companies carrying out retail and wholesale trading activities in Myanmar
- Definitions:
 - **Retail** means the sale of goods to the public in small quantities for consumption, but not for re-sale
 - **Wholesale** means the sale of goods in large quantities to retailers for re-sale or to manufacturers for use as input in their production
- In accordance with the prescribed procedures, any such company shall be allowed to engage in retail/wholesale of domestically produced or imported goods (with the exception of restricted/prohibited goods) in the whole of Myanmar
- An enterprise which was granted a retail/wholesale license has the right to import goods under its importer/exporter registration license

VIII. New Wholesale & Retail Regulations.

2. Terms & Conditions for Retail/Wholesale Trading (Notification No. 25/2018)

- For 100% foreign-owned companies, the new Notification provides for the following minimum capital requirements (excluding land rental fees):
 - **Wholesale activities** – USD 5,000,000;
 - **Retail activities** – USD 3,000,000
- For joint ventures with at least 20% Myanmar shareholding, the following minimum capital requirements apply (excluding land rental fees):
 - **Wholesale activities** – USD 2,000,000;
 - **Retail activities** – USD 700,000
- A foreign-owned company shall, however, not engage in retail distribution, including mini-markets and convenience stores, in premises of less than 929 square meters in floor area, as already provided in Notification. 15/2017 of the Myanmar Investment Commission
- Shops in shopping malls are exempted from the floor area requirement, provided that the mall operator holds a valid license

VIII. New Wholesale & Retail Regulations.

2. Terms & Conditions for Retail/Wholesale Trading (Notification No. 25/2018)

- The Standing Operating Procedure concerning Applications for Registration of Retail/Wholesale Business (“SOP”) sets out the registration procedures developed by the Ministry of Commerce, providing further details on the capital contribution requirements and necessary administrative approvals
- **Process for Registration of a Retail/Wholesale Trading Business**
 - Company Registration with DICA/MIC;
 - Recommendation from City or Township Development Committee (incl. Ground Inspection);
 - Retail/Wholesale Registration with the Ministry of Commerce
 - Transfer of Funds

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IX. Other Permits and Licenses

IX. Other Permits and Licenses

- After establishment of an entity, various licenses may be required to carry out the actual business, such as (not exhaustive):
 - Commercial Tax Registration
 - Importer / Exporter Registration Certificate
 - Business Representative License (optional, e.g. for tenders)
 - Registration of Employees with the Department of Labour, Internal Revenue Department, Social Security Fund
 - Construction related approvals (construction permit, electricity and boiler certificate, etc.)
- Further, certain goods shall be registered with the relevant authorities (not exhaustive):
 - Food and Beverages
 - Drugs
 - Fertilizers
 - Pesticides

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X. Taxation in Myanmar

X. Tax - Overview.

- While the principal of permanent establishment is not yet recognized in Myanmar's tax laws, the Myanmar Investment Law (2016) and the Companies Law (2017) require any foreign corporation doing business in Myanmar (including business not for profit) to register
- The Internal Revenue Department is more and more enforcing taxation of foreign enterprises acting in Myanmar without proper registration (e.g. by appointing the Myanmar customers as tax agents of the foreign enterprise)
- Tax on income and profit:
 - Personal income tax
 - Corporate income tax (as withholding tax for non-resident enterprises)
- Tax on turnover:
 - Commercial tax
 - Special goods tax
 - Import tax
- Other levies:
 - Stamp duties
 - Import duties

X. Tax - Corporate Income Tax.

Regulatory Framework

- Income Tax Law (1974) and Income Tax Regulations
- Union Tax Law (annual updates)

General overview

- Corporate Income Tax is payable on any profits derived from Myanmar, and for tax-residents on any profits generated worldwide (unless exempted under a DTA)
- Tax-payers registered in Myanmar are taxed by assessment as well as through withholding taxes charged at the time of payment
- Tax-payers not registered in Myanmar are generally taxed at the time of payment through withholding taxes

X. Tax - Corporate Income Tax.

Tax Rates since 1 April 2015

- Identical tax rates for resident and non-resident enterprises
- 10% on capital gains (Increased rates in the oil and gas sector of 40% – 50%)
- 25% on all other income

Rates before 1 April 2015

- Varied depending on the residence status of the tax-payer
- Higher rates for non-resident companies
 - 35% corporate income tax for a branch of a foreign company
 - 40% capital gains tax for non-resident tax-payers

X. Tax - Income Tax (Withholding Tax).

General

- Withholding tax is applicable to certain payments depending on the residency of the recipient
- Payments to resident recipients:
 - Withholding tax deduction on payments to residents can be offset against the tax-payer's final assessment
 - Withholding tax is not required if the total amount per year is below MMK 1,000,000, no threshold applies to payments in foreign currency
- Payments to non-resident recipients:
 - Withholding tax is deemed a final tax
 - Withholding tax applies to all amounts
 - Exemptions may apply under a Double Tax Agreement

X. Tax - Income Tax (Withholding Tax).

Category of Payment	Withholding-Tax %	
	Resident Citizens and Resident Foreigners	Non-resident Foreigners
Interest payment	-	15.0
Royalties for the use of Licenses, Trademarks, copyright etc.	10.0	15.0
Payment by Union-level organizations, Union Ministries, Nay Pyi Taw Council, Region/state governing-bodies, Union-owned enterprises, Development Committees for purchase of goods, work performed or supply of services within the country under a tender or auction or competitive bidding system or a contract or agreement or other modes	2.0	2.5
Payment by businesses, partnership firms, joint-ventures, companies, organizations composed of individuals, organizations or associations formed and registered under any prevailing law, cooperatives and foreign companies, foreigner-owned businesses, that are collaborating for mutual benefit with the Union for purchase of goods, work performed or supply of services within the country under a contract, agreement or other modes	-	2.5

X. Tax - Commercial Tax.

- Commercial Tax is levied as a turnover tax on a wide range of goods and services produced, traded or rendered within Myanmar as well as the import of goods based on the landed cost (i.e. the sum of the cost, insurance and freight value, and customs duties)
- Exempted from the collection of Commercial Tax are only enterprises not exceeding the statutory annual threshold for taxable supply (sale of goods or services) of MMK 50,000,000
- Commercial Tax shall further be levied on imports not exceeding the Custom Department's *Deminimis Value Threshold*, tariff exemption related to fast-track clearance in accordance with Customs standard
- Commercial Tax on Imports, Sales and Services
 - Any manufacturer, trader and service provider is required to register for Commercial Tax
 - The general Commercial Tax rate on the import or sale of goods and provision of services remains unchanged at 5%
 - Commercial Tax at a reduced rate or 0% apply for certain goods and services, exempted goods and services are announced annually in the Union Tax Law
- Relief or exemptions from Commercial Tax may be granted by the Ministry of Planning and Finance, e.g. in respect of activities carried out with donations, assistance or loans from domestic or foreign organizations

X. Tax - Special Goods Tax.

- In addition to Commercial Tax, Special Goods Tax shall be levied on certain domestically produced and sold goods, as well as the import and export of certain goods
- Special goods domestically produced are taxable according to their value-grade
- Imported special goods will be taxed based on the landed value
- Special Goods Tax on Production, Import and Sale is levied on 17 products, e.g. tobacco, alcohol, cars, at up to 80%
- Special Goods Tax on Export is levied on 5 goods, such as natural gas, logs and conversions, unpolished jade, unpolished ruby, sapphire, diamond, emerald and other unpolished precious stones, polished jade, ruby, sapphire, diamond, emerald and other polished precious stones; and jade, ruby, sapphire, diamond, emerald other polished precious stones attached to jewellery
- Special Goods Tax already paid at the time of purchase, import or manufacture may be deducted from Special Goods Tax levied on exports

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XI. Employment of Foreigners – Immigration Requirements

XI. Employment of Foreigners.

Visa application for entry into Myanmar

- With effect from 11 January 2016, most of Myanmar embassies and consulates only issue single entry visas (some embassies are however still issuing multiple journey visas)
- Foreigners may choose between the following types of visas:
 - Tourist visa
 - Business visa;
 - Employment visa;
 - Social visa;
 - International organizations (official visa);
 - Diplomatic / Official courtesy visa
 - Religious visa;
 - Education visa;
 - Journalist visa;
 - Transit visa
 - Crew Visa; and
 - Workshop / seminar / meeting / research visa
- Visas on arrival and e-visas are available for certain types of visas and certain nationalities

XI. Employment of Foreigners.

Multiple journey / re-entry visas

- Three (3) types of re-entry visas are available, which can be applied for at the Foreigners Affair Branch of the Ministry of Immigration and Population:
 - Multiple journey special re-entry visa;
 - Special re-entry visa or single re-entry visa; and
 - Re-entry visa for foreigners entitled to reside in Myanmar permanently
- Application for multiple journey visas within Myanmar only in combination with an FRC and Long Term Stay Permit
- Pursuant to the Notification of the Ministry of Labour, Immigration and Population of December 2016, some visas, such as multiple re-entry business visa, will be valid and allow foreigners to stay in Myanmar for more than 70 days (up to 12 months). This will however not relieve the foreigner from the requirement to apply for a FRC should he or she intend to stay in Myanmar for more than 90 consecutive days

XI. Employment of Foreigners.

Application within Myanmar and Labour Cards

- On 3 October 2017, the Directorate of Investment and Company Administration announced, that it will facilitate applications for the extension of visas and Long-Term Stay Permits for certain foreigners (and their family members) employed by foreign or local companies in Myanmar. This “one-stop” solution shall streamline the currently rather cumbersome application process. With effect from 21 October 2017, the Directorate of Investment and Company Administration will facilitate applications for the following persons:
 - Members of the Board of Directors of a company incorporated in Myanmar (and their family members); and
 - Foreign technicians employed by foreign and local companies (and their family members).
- For all other employees (and their family members), companies shall apply with the Directorate of Investment and Company Administration and the Department of Immigration and National Registration.
- Companies registered with the Myanmar Investment Commission are already subject to stricter scrutiny and shall apply for a labour card when hiring foreigners for the following positions:
 - Senior management;
 - Technical experts; and
 - Consultants.

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XII. FX - Restrictions

XII. FX - Restrictions.

General

- Any kind of foreign exchange transactions of Myanmar residents are regulated by the Foreign Exchange Management Law (2012) and the Foreign Exchange Management Regulations (2014)
- The Central Bank of Myanmar administers the Foreign Exchange Management Law (2012)
- Foreign exchange is defined as “*foreign currency; all instruments concerning payment in foreign currency or payment abroad; deposits in intergovernmental financial institutions, central banks, treasuries and commercial banks abroad; foreign currency accounts in local banks; and securities in foreign currency and instruments issued or guaranteed by foreign governments, foreign financial institutions and intergovernmental financial institutions*” (sec. 2 (c) Foreign Exchange Management Law (2012))
- Further, the Central Bank of Myanmar Law (2013) defines “foreign exchange” as foreign currency notes; the Contract to be paid in Foreign Currency notes or to be paid in abroad; deposits entrusted in the International Government Financial Institutions, Foreign Central Banks, treasury and Commercial banks; Contracts using in remitting the money from one country to another; and Foreign Currency accounts open in the Local banks (sec. 2 (i) Central Bank of Myanmar Law (2013))

XII. FX - Restrictions.

Restrictions on FX-Transactions/ Foreign Transfers

- In general, all residents of Myanmar must obtain permission of the Foreign Exchange Management Board in all practical dealings with foreign exchange, in connection with borrowing foreign exchange from abroad and repaying the principal and interest thereof, making any payment to persons abroad, opening accounts in foreign banks abroad
- Except with the prior approval of the Central Bank of Myanmar, all persons must transact with an authorised dealer in respect of the buying/borrowing, selling/lending, transfer or exchange of any foreign exchange
- Any contract or agreement made by any person that would directly or indirectly evade or avoid in any way the operation of any provision of the Foreign Exchange Management Law or of any rule, direction or order made thereunder will be rendered void, unless permission is obtained from the Central Bank of Myanmar
- Thus, the use of, and payments and dealings in, foreign exchange are subject to the restrictions of the Foreign Exchange Management Law and permission or authorisation is required from the Foreign Exchange Management Board

XII. FX - Restrictions.

Restrictions on Offshore Bank Accounts

- Any opening of an offshore account shall be approved by the Central Bank of Myanmar prior to the account opening
- In practice, many companies just open the bank account overseas and try to register afterwards (foreign banks usually do not require the approval of the Central Bank of Myanmar)
- Since foreign banks received licenses to operate in Myanmar, the Central Bank of Myanmar has become very strict and asks for good reasons why the company wishes to open an overseas bank account
- Even if the reasons for the bank account opening can be argued, the approval process is rather cumbersome and may take several months

XII. FX - Restrictions.

Restrictions on Foreign Loans

- Under the Foreign Exchange Management Law 2012 and its regulations, residents shall not take foreign loans from abroad or conduct other types of borrowing abroad or documents that are likely to be loans without prior approval of the Central Bank of Myanmar
- A resident who wishes to obtain a loan from a foreign lender shall apply with the Central Bank of Myanmar
- Resident enterprises registered with the Myanmar Investment Commission can apply through Myanmar Investment Commission (MIC)
- The following documents and information have to be furnished to the Central Bank of Myanmar:
 - Application letter for the registration of the loan agreement
 - (Draft) Loan agreement
 - Loan purpose, Re-payment schedule, Time frame (payment period), Terms and conditions of the loan (e.g. consequences of a breach of the agreement)
 - Profile of the borrower and the lender
 - Financial statements for the current year and previous year as approved by an external certified auditor (should be a Certified Public Accountant)
 - Bank credit advise evidence of equity transferred to the company (borrower)
 - Passport copies of the directors of the borrower
- The above documents may be submitted in English and/or Myanmar language (notarized translation may be required)

XII. FX - Restrictions.

Criteria for Central Bank approval:

- Whether the equity capital of the applicant is at least USD 500,000
- Whether the borrower has access to a matching foreign exchange income
- Whether the borrower is able to repay the loan from the income generated from domestic business and has a plan to mitigate the exchange risk (even no foreign exchange income)
- Whether the borrower has already paid up 80% of equity committed in MIC Permit
- Whether debt to equity ratio is within a maximum of 3:1 and 4:1
- Whether the terms and conditions mentioned in loan agreement and documents are complete and correct;
- Whether the loan tenure is medium-term or long-term, and loan repayment schedule is consistent with loan agreement

XII. FX - Restrictions.

Onshore Securities

- Myanmar law, which is largely based on colonial English law, recognizes various securities available under the law, such as mortgages of land, pledge or charge of assets, etc.
- It should however be noted, that most securities, while theoretically available, are in practice untested
- Accordingly, very little precedence exists with regard to the creation, registration and perfection of securities, or the enforcement of such
- This affects both the relevant authorities involved in the registration process, as well as the courts in charge of the enforcement of securities

Approval Process

- Depending on the type of security, the following approvals / registrations may be required:
 - Approval of the Myanmar Investment Commission
 - Permission from the Myanmar Central Bank
 - Payment of stamp duty
 - Registration with the Deed Registration Office
 - Registration with the corporate authorities

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XIII. Investor Concerns

XIII. Investor Concerns – General Risks.

Legal Risks

- Intransparent legal system, rule-of-law issues
- Many Myanmar laws are outdated and not suitable for international contracts
- No suitable system to protect IP, trademarks and confidential information
- Unclear tax legislation and implementation
- Slow and intransparent court system

Practical Difficulties

- Political sanctions
- Very few Free Trade Agreements and Double Tax Agreements
- Unclear investment protection
- Difficulties with international payment transactions
- Foreign exchange restrictions
- Difficulties to finance transactions and grant securities
- Intransparent customs procedures
- Different business culture and practice
- Non enforceability of Trust Agreements



XIII. Investor Concerns – General Risks.

Legal Solutions

- Contracts should be drafted in English, or English and Myanmar
- Contractual enforcement of corporate compliance of business partners
- Contracts should be drafted under a neutral law, e.g. Singapore Law
- IP rights should be “registered” in Myanmar, and contractually protected
- Contracts should provide for international arbitration, e.g. Singapore



Arbitration

- Dispute resolution continues to be a significant topic for foreign investors in Myanmar
- On paper, Myanmar’s legal system provides for various dispute resolution mechanisms, such as arbitration in Myanmar, but Myanmar arbitration is under the supervision of the Myanmar courts and almost untested
- Myanmar is however a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”)
- On 5 January 2016, the Myanmar Parliament passed the Arbitration Law 2016:
 - The law provides the legal framework for the implementation of the New York Convention
 - By law, arbitral awards issued in a contracting country should now be recognized and enforceable in Myanmar
 - Enforcement is however still untested

XIII. Investor Concerns – Compliance.

Due Diligence of Business Partners

- (Sanctions-Check)
- Proper corporate set-up
- Valid business permits
- Valid factory permits
- Valid property rights
- Valid insurance
- Corporate compliance
- Tax compliance
- Legal compliance



XIII. Investor Concerns – Compliance.

Compliance of Investor and Business Partners

- (Trade Sanctions – US-OFAC Sanctions)
- Anti-corruption guidelines
- Confidentiality guidelines
- Ethical/legal compliance guidelines: -
 - Child labour, forced labour, abuse of labour
 - Minimum wages, working hours & overtime
 - Collective bargaining
 - Health & safety laws
 - Environmental laws
- Right to audit & regular compliance checks



Q&A

Thank you for your attention.



Contact in Yangon:



Alexander Bohusch

Partner / Attorney-at-law, Germany
Accredited Tax Practitioner (Income Tax), Singapore

Luther Law Firm Limited

Luther Corporate Services Limited

Uniteam Marine Office Building, 8th Floor, Unit#1
No. 84 Pan Hlaing Street
Sanchaung Township, Yangon

Phone: +95 1 500 021

Email: alexander.bohusch@luther-lawfirm.com

www.luther-lawfirm.com

www.luther-services.com