



5 May 2019

## Myanmar's construction sector: Legal and tax framework for foreign companies

Myanmar's construction sector is forecast to see strong growth over the coming quarters, supported by China's Belt and Road Initiative and the development of several major special economic zones, namely, Thilawa in Yangon, Dawei in Tanintharyi and Kyaukphyu in Rakhine.<sup>1</sup> Furthermore, a number of high-profile infrastructure projects are being built, in the pipeline or planned such as an elevated highway in Yangon and the New Yangon City Project; there is also a huge housing demand. Myanmar's infrastructure gap until 2030 is estimated to be worth USD 120 billion.<sup>2</sup>

Foreign construction companies are looking to profit from this boom. In this little brochure, we have summarised the legal and tax framework for their operations in Myanmar. We have limited our overview to pure construction companies, i.e., to those companies wishing to offer only construction services without doubling as real estate developers.

### 1. Market access

There are no market access restrictions for foreign construction companies, at least not for those that do not double as real estate developers. A construction business operating in Myanmar may be 100% owned by foreigners. (Some construction tenders may, however, be only open to 100% Myanmar-owned companies or joint ventures.)

### 2. Corporate vehicle

Like investors in other sectors, foreign construction companies have to decide in which of the following forms they would like to operate in Myanmar:

- Offering construction services without registering a rep office, branch<sup>3</sup> or subsidiary in Myanmar;

<sup>1</sup> <https://www.mmtimes.com/news/fitch-downgrades-gdp-forecast-sees-growth-manufacturing-construction.html>

<sup>2</sup> <http://www.thaibizmyanmar.com/th/thai-myanmar/trade-investment/Non-paper%20-%2018%20Jan%202018%20-%20Investment%20Opportunities%20in%20Infrastructure%20.pdf>

<sup>3</sup> The new Myanmar Companies Law, in force since 1 August 2018, does not differentiate between rep offices and branches and indeed does not even use these expressions. Rather, rep offices and branches are collectively and uniformly referred to as registered overseas corporations. We use the words "rep office" and



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- registering a rep office or branch;
  - registering a subsidiary; or
  - obtaining an investment permit or endorsement from the Myanmar Investment Commission (“MIC”) or Regional or State Investment Committee in addition to registering a subsidiary.
- (a) Offering construction services without registering a rep office, branch or subsidiary in Myanmar**

Until not so long ago, a foreign construction company, at least a foreign construction company hired only for a single construction project in Myanmar, would have opted not to register anything (rep office, branch or subsidiary) at all. Such an arrangement was (and still is) beneficial from a tax perspective in many cases as a foreign company without a registered corporate presence in Myanmar is not obliged to register for tax purposes. Rather, the corporate income tax and commercial tax (VAT) obligations of such a company may be fulfilled through a withholding tax and reverse charge mechanism which might, due to a low withholding tax rate, result in a lower tax burden than could be achieved through tax registration.

However, not registering a corporate presence in Myanmar has several important non-tax drawbacks. For one thing, foreign construction companies without a registered corporate presence cannot import machinery and construction materials into Myanmar. Furthermore, they cannot issue invitation letters required for foreign experts to obtain a visa. They would rely on their principals to do these things for them. Principals are nowadays rather reluctant to do this and instead expect their construction contractors to take care of these matters themselves. Indeed, tender documents for construction work nowadays often contain the requirement that the bidder have a registered corporate presence (usually, a subsidiary) in Myanmar.

Additionally, the new Myanmar Companies Law, in force since 1 August 2018, makes it technically illegal for foreign construction companies to operate in Myanmar without at least registering a rep office or branch.

---

“branch” in this brochure as they are commonly used as a matter of tradition and we think that they are understood better.



### **(b) Rep office or branch vs. subsidiary**

The main legal difference between a rep office or branch on the one side and a subsidiary on the other is that a rep office or branch, unlike a subsidiary, is not a separate legal entity from the foreign headquarters. Rather, the foreign headquarters is liable for the debt of its rep office or branch; it is usually not liable for the debt of its subsidiary. As construction work is inherently high-risk as mistakes may result in high liabilities, it is therefore recommendable to carry out such work through a subsidiary instead of a rep office or branch. A rep office or branch, in contrast, is a suitable vehicle for having a presence in order to explore the market.

From a tax perspective, the tax authorities are more tolerant of loss-making rep offices and branches than they are of loss-making subsidiaries as they are familiar with the concept of a rep office or branch being a cost centre. Whereas it may be a problem getting the tax authorities to accept losses over a prolonged period of time if these losses are sustained by a subsidiary, this problem is far smaller if the losses are sustained by a rep office or branch.

A principal paying the Myanmar rep office or branch of a foreign company for construction services is obliged to withhold 2.5% of the payment as withholding tax; there is no such obligation if the principal pays the Myanmar subsidiary of a foreign company (Ministry of Planning and Finance Notification 47/2018 dated 18 June 2018).

Apart from these aspects, rep offices and branches on the one side and subsidiaries on the other are treated fairly similarly in law and in taxation. Both are easy to set up. Compliance is a bit more onerous for a rep office or branch. On the other hand, a rep office or branch (at least a rep office or branch without external debt) is easier to wind up than a subsidiary.

### **(c) MIC permit or endorsement**

In addition to registering a subsidiary, foreign companies doing business in Myanmar have to apply for an MIC permit or endorsement if (i) their investment involves the use of land and/or (ii) they wish to apply for tax incentives.

The business of foreign construction companies typically does not involve the use of land as they would construct buildings and other infrastructure on land owned by the principal (developer). Furthermore, they would typically not be entitled to tax incentives (although the developer might). Foreign construction companies (that are not at the



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

same time developers of infrastructure projects) would therefore typically not benefit from applying, and presumably not be eligible, for an MIC permit or endorsement.

### 3. Registering a rep office, branch or subsidiary

Together with the new Myanmar Companies Law entering into force, an electronic filing system was introduced on 1 August 2018. Since, it is easy, fast and cheap to register a rep office, branch or subsidiary. Registration can be done within a day; there are no notarisation or legalisation requirements.

There are no minimum capital requirements - a rep office, branch or subsidiary may be set up with a capital of as little as USD 1. (However, construction tender documents may require a certain minimum paid-up capital.)

It should be noted, though, that the new Myanmar Companies Law introduced certain residence requirements. A rep office or branch requires an authorised officer and a subsidiary at least one director who is ordinarily resident in Myanmar. This ordinarily resident authorised officer or director may be a foreign national if this person resides in Myanmar for 183 days or more during any 12 months period following registration.

Furthermore, rep offices, branches and subsidiaries require a registered office in Myanmar. This may be a virtual office or the address of a law firm, accounting firm or other service provider assisting with the registration of the corporate presence.

As part of our incorporation services, we offer nominee resident authorised officers and directors as well as a registered office address.

### 4. Other licenses

As such, a construction company does not require, nor is it eligible for, other licenses.

There are, however, other relevant licenses, and the construction company must cooperate with holders of these licenses. Cooperation may be done through employment or on a case-by-case basis. There is no legal requirement for a construction company to have a license holder on its board or payroll.

#### (a) Construction contractor license

At least in Yangon, there is a “construction contractor” license, issued by the Yangon City Development Committee (YCDC). This license is only given out to individuals, not to companies. The individual must own land worth at least Ks. 60 million (approx. USD



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

40,000) for a small-scale license and Ks. 150 million (approx. USD 100,000) for a large-scale license. Construction contractors with a small-scale license may construct buildings with up to 4 floors; those with a large-scale license may construct buildings of any height.

The land ownership requirement exists so that there is an asset which can be converted to money to pay for damages in case of professional negligence on the part of the construction contractor. (We do not know why the construction contractor is, instead, not required to have an equivalent amount of money in the bank or to purchase insurance.)

A foreign construction company would therefore have to cooperate with a Myanmar individual who either has a construction contractor license already or who owns land worth at least Ks. 60 million or 150 million so that he can apply for a construction contractor license. The construction contractor would, among others, have to sign off on the application for a building permit (if the building has more than 3 floors) and would appear as “licensed contractor” on the green board that has to be erected at each building site. The license fee for a construction contractor license is Ks. 20 million (approx. USD 13,333; small-scale) or Ks. 50 million (approx. USD 33,333; large-scale).

The foreign construction company would appear as “construction company” on the green board.

Due to the land ownership requirement, a construction contractor license is only available to a Myanmar national as foreigners are legally barred from owning land.

### **(b) Licensed engineers**

There are licensed engineers and professional engineers, the latter having higher qualification and prestige. We understand that there are approx. 400 professional engineers in the country, many of them former military engineers. Depending on the type and the size of the project, a foreign construction company would have to cooperate with a licensed and/or a professional engineer as they would in particular have to sign off on the building permit application and supervise construction. Their name(s) would also appear on the green board.

Engineering licenses are in practice only available to Myanmar nationals. There are theoretically limited licenses available to foreign engineers with equivalent qualification, but we are not aware of the Myanmar Engineering Council having issued any so far.



### 5. Construction tenders

At least big tenders would be announced in the Global New Light of Myanmar, a state-owned English language newspaper. However, private developers are under no legal obligation to call construction tenders and may select construction contractors by other means. Often, tender documents nowadays require foreign bidders to have a subsidiary in Myanmar.

### 6. Foreign experts and workers

Myanmar currently does not have a work permit system as such. There was once the draft of a work permit law, but it was thrown out of parliament in March 2017. Rules and regulations sometimes refer to “work permits” in the context of employees working at MIC approved companies. The Department of Labour under the Ministry of Labour, Immigration and Population issues a “registration card (alien worker)” to these employees. These cards do not have to and cannot be obtained by foreign employees working for non-MIC companies, rep offices or branches.

Most foreigners currently working in Myanmar do so on the basis of a business visa. Business visas are available from a Myanmar embassy abroad (single-entry for 70 days/fee: USD 50, or multiple entry for three months/fee: USD 200, six months/fee: USD 400 or 12 months/fee: USD 600) or on arrival - not for all nationalities - at the airports in Yangon, Mandalay and Nay Pyi Taw (single-entry only/fee: USD 50). A business visa requires an invitation letter from a company, rep office or branch registered in Myanmar.

There is no problem obtaining a visa for foreign engineers, technicians and other skilled personnel. However, only Myanmar nationals may be employed for work requiring no skills according to section 51(c) Myanmar Investment Law. This means that it is as such not possible to officially bring unskilled construction workers from abroad to Myanmar. It may be possible to bring foreign construction workers to Myanmar if they can be shown to possess skills that their Myanmar counterparts do not have.

According to the official visa rules (<https://tinyurl.com/y435gflh>), visa applicants are not required to submit proof of professional qualification. However, we are not familiar with current practice at the Myanmar embassies abroad.

Evidence of professional qualification has to be submitted in case of (i) employees at MIC approved companies applying for a “registration card (alien worker)” and (ii) employees at non-MIC companies, rep offices or branches applying for an extension of their business visa in the country.



## 7. Importing machinery and equipment

A rep office, branch or subsidiary providing services is allowed to import all goods that are required for the performance of its services, provided that it does not on-sell them (Ministry of Commerce, Minister's Office, Notification 57/2018 dated 21 December 2018).

The import of goods requires registration with the Ministry of Commerce as exporter and importer. Depending on the goods, the importer may in addition have to secure a specific, separate import license prior to shipment (such a requirement exists, e.g., for vehicles).

The following taxes apply at the import stage:

- Customs duty, its amount depending on the type of goods and the country of origin;
- 5% commercial tax on the landed costs; and
- a 2% corporate income tax advance payment.

If the developer (principal) has an MIC permit or endorsement, it should be granted with an exemption from these taxes. The principal may pass on this exemption to the construction contractor with the approval of the MIC (Rule 112 Myanmar Investment Rules).

If the MIC exemption is not available, the construction contractor may import machinery and equipment under the draw-back or temporary admission system, provided that the goods will not remain in the country for more than two years. As a result, the construction contractor should be entitled to a refund of 7/8 of the customs duty paid or an exemption from customs duty as well as an exemption from commercial tax and the corporate income tax advance payment.

## 8. Repatriation of profits

After-tax profits achieved by a rep office or branch (if any) or a subsidiary may be converted to foreign currency (if the profits were achieved in kyats) and repatriated. There is no withholding tax on the repatriation of dividends or, if any, the profits of a rep office or branch.

## 9. Taxation

A rep office, branch or subsidiary registered in Myanmar is subject to 25% corporate income tax on its income (if any) as shown in its audited annual financial statements drawn up according to the Myanmar Financial Reporting Standards (which are essentially the same as IFRS).



## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

In principle, there is a 3, 5 or 7 year exemption from corporate income tax for certain projects approved by the MIC. MIC Notification 13/2017 dated 1 April 2017 (<https://tinyurl.com/yd94hcfD>) lists several construction-related activities (city development; construction of roads, bridges and railway lines; construction of sea ports, river ports and dry ports) that are in principle eligible for this exemption. However, our understanding is that this exemption is only available to the principal (developer) and not to sub-contractors.

Losses may be carried forward for up to 3 years.

There is no concept of taxing a “deemed profit” of a rep office or branch.

The service fee for the construction work is subject to 5% commercial tax (VAT), provided that the annual turnover exceeds Ks. 50 million (approx. USD 33,333). There is a mechanism for setting off input with output tax.

The construction contract is subject to stamp duty (max. Ks. 150,000 - approx. USD 100).

An employer is obliged to withhold personal income tax from the salary paid to its employees. The tax rates are 0% - 25%, depending on the employee’s taxable income.

Furthermore, Myanmar has a social security system. Employers with five or more employees are required to register them with the Social Security Board. The employer’s contribution is max. Ks. 9,000 (approx. USD 6) per employee and month; the employee’s contribution is max. Ks. 6,000 (approx. USD 4) per month.





## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

### About Lincoln Legal Services (Myanmar) Limited

Lincoln Legal Services (Myanmar) Limited provides the full range of legal and tax advisory and compliance work required by investors. We pride ourselves in offering result-oriented work, high dependability and a fast response time at very competitive prices. Please do not hesitate to contact us:

- Sebastian Pawlita, Managing Director  
Phone: +95-9-262546284 (English)  
E-Mail: [sebastian@lincolnmyanmar.com](mailto:sebastian@lincolnmyanmar.com)
- Nyein Chan Zaw, Director  
Phone: +95-9-790488268 (Myanmar)  
E-Mail: [nyeinchanzaw@lincolnmyanmar.com](mailto:nyeinchanzaw@lincolnmyanmar.com)

Office address: La Pyi Wun Plaza, Room 409 (4<sup>th</sup> Floor), 37 Alan Pya Pagoda Road, Dagon Township, Yangon

Web: [www.lincolnmyanmar.com](http://www.lincolnmyanmar.com)