



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

To:

[Organisation]

[Attn.: Ms./Mr. ...]

Yangon, [Date]

ESTABLISHING AN INGO

Dear Ms./Mr. [...],

Thank you for your e-mail and your interest in our services. Please find in the following an overview of the process of registering an INGO.

1. Form of the establishment: Proper INGO vs. branch

(a) Registering a proper INGO

Registering an INGO is the default mode for a foreign NGO to establish a presence in the country. The government expects all foreign NGOs to register as an INGO with the Ministry of Home Affairs. Unfortunately, registration is quite complicated (and, if outside counsel is hired for assistance, also quite expensive) and there are rather onerous reporting requirements.

Furthermore, properly registered INGOs are much easier to control for the government, and this is something that INGOs may want to bear in mind against the background of events since 1st February 2021. Additionally, registering and operating a registered INGO requires rather close contact with the line ministry, and many have reservations against being seen as collaborating with branches of the government established on 1st February 2021.

In order to register an INGO, the applicant has to secure, in a first step, a memorandum of understanding with a line ministry (in your case, the Ministry of [...]), a recommendation letter from the line ministry and recommendation letters from other ministries (Ministry of Foreign Affairs, Ministry of Planning and Finance and, possibly, other ministries).

In a second step, the applicant has to secure registration of the INGO with the Ministry of Home Affairs.

The key element for obtaining registration is the memorandum of understanding with a line ministry. It is not always possible to obtain (for various reasons, in particular due to a lack of interest on the part of the relevant department within the ministry, an excess of INGOs/NGOs in a particular area, lack of a regulatory framework or, especially



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recently, the political climate). It usually involves several meetings in Nay Pyi Taw (the political capital of Myanmar, approx. 5 hours drive from Yangon, the country's commercial capital).

Operating a registered INGO involves various reporting and record keeping requirements.

(b) Registering a branch instead of an INGO

As it may not always be possible to obtain all recommendation letters easily, some foreign NGOs opt for registering a branch (since a new Myanmar Companies Law entered into effect on 1st August 2018, officially referred to as an “overseas corporation” with a registered presence in Myanmar) with the Directorate of Investment and Company Administration (DICA) instead of the registration of an INGO with the Ministry of Home Affairs.

(Additionally, the new Myanmar Companies Law provides the corporate form of a “company limited by guarantee” for not-for-profit work, but for a variety of reasons, which we will be happy to explain in a personal call or meeting, registering a branch tends to be more recommendable for INGOs.)

Registering a branch without proceeding to obtain official INGO registration with the Ministry of Home Affairs is clearly not how the government wishes things to be done, but it is an easy route that in practice, though not in law, usually allows the foreign NGO to open a bank account, hire employees, issue invitation letters for foreign experts to obtain a visa, and generally operate in the country.

Setting up a branch involves a rather simple procedure without requiring recommendation letters and can be done within days. However, the foreign NGO should know that legally, INGOs must additionally register with the Ministry of Home Affairs.

2. Procedure for registering an INGO

(a) Obtaining an MoU with the line ministry and recommendation letters

Generally speaking, the applicant would first approach the relevant department with an introduction of its organisation and its proposed activities in Myanmar and request a meeting. Several meetings may follow in which details are discussed. Once it is clear that the relevant department is in favor of the project, the applicant submits the draft of an MoU (in English and Myanmar), containing information on the background of the foreign organisation, its objectives, the benefits of the MoU to the population of the project area, an explanation of the program, a budget estimate for the next 3 years, the



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obligations of the INGO and the timeline of the project. The ministry reviews the draft and invites other ministries (at least the Ministry of Foreign Affairs and the Ministry of Planning and Finance) to comment. If all ministries are fine, they issue letters of recommendation.

Our fee for assistance with obtaining an MoU and the recommendation letter (arranging and attending meetings, translations, preparation of the MoU and associated documents): Starting from MMK [...] (including 5% commercial tax)

Additional costs: Travel costs; courier charges for sending documents abroad to the client

Time frame: At the very least, 3 months (more realistically, 12 months)

Regular reporting requirements: Depending on the MoU, reports to the line ministry

(b) Registering the INGO with the Ministry of Home Affairs

Once the recommendation letters are in place, the applicant may proceed to register the INGO with the Ministry of Home Affairs. The application dossier comprises in particular:

- (1) Application form (Myanmar language);
- (2) the recommendation letters;
- (3) list of executive personnel; their CVs; passport (or, if Myanmar nationals, national registration card) copies;
- (4) appointment letters on stationary with the headquarters' letterhead;
- (5) power of attorney on stationary with the headquarters' letterhead (notarized and legalized);
- (6) copies of the corporate documents of the headquarters;
- (7) memorandum and articles of association of the INGO;
- (8) financial status and list of assets of the INGO;
- (9) organisation chart

Our fee for assistance with the registration (preparation of the application file, the memorandum and articles of association, other associated documents; submission in



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Nay Pyi Taw, following up with the Ministry of Home Affairs: Starting from MMK [...] (including 5% commercial tax)

Additional costs: Government fees MMK 100,000; travel costs; courier charges for sending documents abroad to the client

Time frame: In a best-case scenario (but please note the current political climate) approx. 2 weeks until the issuance of the temporary registration certificate; approx. 3 months until the issuance of the final registration certificate

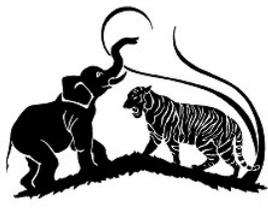
Regular reporting requirements: Annual activity report (and obligation to maintain a number of registers); renewal of the INGO registration every 5 years

3. Registering a branch

In order to register a branch (an “overseas corporation” with a registered presence in Myanmar), we would need the following documents and information from you (PDF copies are sufficient):

- (1) Proposed name of the branch (e.g. “[... LLC] (Myanmar Branch)”
- (2) Office address in Myanmar
- (3) Official company extract for the headquarters company showing the company’s registration number, registered office, and directors and company secretary (if any) with their names, residential addresses, dates of birth and passport numbers, together with an English translation if the document is not in English
- (4) Articles of association or equivalent document of the headquarters company together with an English translation if the document is not in English
- (5) Copy of the passport or, if the person is a Myanmar national, national registration card of the branch’s authorised representative (this is a person residing in Myanmar for at least 183 days in each 12 month period following branch registration who is authorised to receive correspondence for the branch); this person’s residential address in Myanmar, e-mail address and Myanmar phone number
- (6) Financial year of the headquarters company (e.g., “from 1st April to 31st March of the following calendar year”)

Our fee for assistance with the registration of a branch: MMK [...] (including 5% commercial tax) - the fee may increase to cover appropriate translation costs if the headquarters company has particularly long articles of association as we have to translate this document to Burmese.



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Additional costs: Government fees MMK 160,000

Time frame: Approx. 3 days to translate the headquarter company's articles of association; approx. 1-2 days for registration

No minimum capital.

Regular reporting requirements: Filing of an annual return and a copy of the headquarters company's annual financial statements

Please do not hesitate to contact us if you have any questions.

Kind regards

Sebastian Pawlita, Managing Director