

# INGO REGULATORY GUIDE

## MYANMAR

DECEMBER 2015





THOMSON REUTERS  
FOUNDATION

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*Tilleke & Gibbins*

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## IN PARTICULAR, WE WOULD LIKE TO THANK:

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A young boy with dark hair, wearing a light blue t-shirt and yellow shorts, sits on a wooden boat. The boat is made of weathered wood and is on a body of water with gentle ripples. The boy is looking towards the right side of the frame. A white rectangular overlay is positioned on the right side of the image, containing the text 'THE GUIDE' in a bold, black, sans-serif font. In the top right corner of this white overlay, there are three small squares: an orange one, a grey one, and a blue one.

# THE GUIDE





# 1. OVERVIEW

The INGO Regulatory Guide Myanmar has been prepared by Tilleke & Gibbins and the INGO Forum Myanmar to assist International Non-Governmental Organizations (INGOs) better understand the laws of Myanmar.

The guide provides information on the regulatory environment affecting not-for-profit organizations and includes a selective summary of the legal provisions most applicable to INGOs. Information is limited to published existing laws and regulations of Myanmar as of June 2015.

In using this guide, it should be noted that the laws and regulations of Myanmar are often vague and subject to wide interpretation, especially by the relevant authorities of Myanmar. Often there are little to no specific references to the not-for-profit sector making it difficult to assess what should be the legal obligations of INGOs operating in Myanmar.

The guide does not prescribe legal advice. The guide is intended to provide the best available information possible to INGO Forum Myanmar members in order to provide organizations with a range of information to consider in their decision-making processes. Legal counsel should be sought directly with lawyers as information provided in the guide can not be comprehensive or the 'final word' on regulatory issues given the complex and opaque legal landscape in Myanmar.

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The following laws, regulations, and guidelines have informed the guide:

- The Association Law of 2014 and its by-law 2015;
  - The Internal Revenue Department circular in The Mirror (29 Sept, 2014);
  - The Income Tax Law of 1974 as amended in 2014;
  - The Union Tax Law 2015;
  - The Commercial Tax Law 1990 as amended in 2015;
  - The Social Security Law of 2012;
  - The Leave and Holidays Act of 1951; (revised in 2006 and 2014)
  - The Employment and Skill Development Law 2013;
  - The Settlement of Labour Dispute Law 2012;
  - Labour Organization Law 2011;
  - The Shops and Establishments Act 1951;
  - 2011 Guidelines for UN Agencies, International Organizations and NGO/INGOs on Cooperation Programme in Myanmar; and,
  - 2006 Guidelines for Systematic and Smooth Implementation of Socio-Economic Development Activities in Cooperation with UN Agencies, International Organizations and NGOs/INGOs.
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## 2. KEY GOVERNMENT ENTITIES

### THE MINISTRY OF NATIONAL PLANNING AND ECONOMIC DEVELOPMENT (MNPED)

The MNPED serves as the coordinating body for cooperation with UN agencies, international organizations, regional organizations, and INGOs. It is in charge of evaluating, reviewing, and reporting to parliament and the international aid effectiveness architecture on aid effectiveness and development planning and cooperation. The Ministry is formed of seven departments, namely:

- The Planning Department, the Directorate of Investment and Companies Administration;
- The Project Appraisal and Progress Reporting Department;
- The Foreign Economic Relations Department;
- The Central Statistical Organization;
- The Central Equipment Statistics and Inspection Department;
- and,
- The National Archives Department.

Of the above, the Foreign and Economic Relations Department is most relevant as the coordinating section and focal point for bilateral and multilateral cooperation with UN agencies and INGOs.

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For more information visit: <https://www.mnped.gov.mm/index.php?lang=en>

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## THE FOREIGN AND ECONOMIC RELATIONS DEPARTMENT (FERD)

FERD is responsible for organizing the annual Myanmar Development Cooperation Forum, reporting on aid effectiveness issues including through the Aid Information Management Systems (AIMS), and coordinating among various line ministries (health, education, rural development etc.) and the Ministry of Home Affairs on development planning and reporting processes. FERD has stated that it can assist INGOs in the registration process and is willing to help INGOs contact line ministries to secure Memorandums of Understanding (MoUs).

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For more information visit the FERD section of the MNPED website:  
[https://www.mnped.gov.mm/index.php?option=com\\_content&view=category&layout=blog&id=17&Itemid=6&lang=en](https://www.mnped.gov.mm/index.php?option=com_content&view=category&layout=blog&id=17&Itemid=6&lang=en)

## THE MINISTRY OF HOME AFFAIRS (MOHA)

The MoHA is responsible for processing INGO registrations as stipulated under the 2014 'Association Law'. The Ministry also oversees the Myanmar Police Force, the General Administration Department, the Prisons Department and the Bureau of Special Investigation.

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For more information visit the MoHA website: <http://www.moha.gov.mm>

## THE INTERNAL REVENUE DEPARTMENT (IRD)

The IRD within the Ministry of Finance is the main section involved in taxation. INGO MoUs that refer to general and personal income tax exemptions are often sent to IRD for vetting prior to approval.

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For more information visit the IRD section on Ministry of Finance website:  
<http://www.irdmyanmar.gov.mm/default.aspx>

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## 3. GETTING YOUR LEGAL FOUNDATIONS ESTABLISHED IN MYANMAR: REGISTRATION AND MOUS

### 3.1 UNDERSTANDING THE 2014 'ASSOCIATION LAW'

The new 'Association Law' officially known as the *Law Relating to Registration of Organizations in Myanmar* was enacted by the Pyidaungsu Hluttaw Law No. 31/2014 on 18 July 2014. The law lays out the registration requirements of INGOs and national civil society organizations operating in Myanmar. The 2014 law repeals the earlier Association Registration Law of 1988. Organizations registered under the previous law will be regarded as having been registered under the current law.

'Organization' is defined under the law as referring to national civil society and INGOs. INGOs are defined as "...an organization formed in a foreign country and registered with Union Registration Board with intention to perform any social activity within the country..." (Chapter 1, paragraph 2k). Provisions are made in the law specifically for INGOs as well as for national organizations partnering with INGOs.

Chapter 4, paragraph 7 of the law refers to local organizations registering under the law "...upon their voluntary decision...", however, there remains some ambiguity as to what kinds of national organizations and associations require registration under the law. It should be noted that the reference to the 'voluntary decision' by national organizations is a result of significant negotiation and advocacy between civil society and government officials and marks a stark contrast with the 1988 law which in essence outlawed much of civil society and its activities.

INGOs, in contrast to national organizations, “...must apply to get registration to the Union Registration Board...” in essence making formal registration a requirement (Chapter 5, I paragraph 16). The law outlines six different levels of registration committees from the Union level through to the regional, divisional, and township levels (Chapter III, section 4). While national organizations can choose the level of registration most conducive to their activities, INGOs must register at the Union level.

The Union Registration Board (URB), also called Union Registration Committee, or Union Registration Body consists of:

- the Union Minister, Ministry of Home Affairs;
- the Deputy Minister, President’s Office;
- the Deputy Minister, Ministry of Foreign Affairs;
- the Deputy Minister, Ministry of National Planning and Economic Development;
- the Director General, Directorate of Foreign Economic Relations;
- the Director General, Directorate of Home Affairs; and,
- the Director General, Attorney General’s Office.

The URB’s role is to approve or decline registration applications and issue certificates of registration and renewal (Chapter III, section 6).

In order to put the ‘Association Law’ into practice, the by-laws were passed on June 5 2015 outlining specific steps and procedures. Please refer to Annexure 1 for a summary of the by-laws in English.

While the 2014 ‘Association Law’ is seen as a much improved text helping to create a more enabling environment for civil society in Myanmar, the by-laws are an important step in ensuring more progressive regulations and are indeed established to support both national and international NGOs and civil society.

### 3.2 REGISTRATION PROCEDURES

To fulfill the INGO registration requirements set out in the 2014 ‘Association Law’ and by-law of Association Law 2015, INGOs must register as a not-for-profit organization with the Union Registration Board. To do this, an organization requires:

- a letter of recommendation from the Ministry of Foreign Affairs;
- a letter of recommendation from the Ministry of National Planning and Economic Development;
- a letter of recommendation from the relevant line ministry/

ministries/organizations associated with program activities; and,

- Permission from relevant Region or State Government or Nay Pyi Taw Council where the INGO will operate.

The set of letters must be supported by the following details in the prescribed form (Form 3) issued by the MoHA (See Annex 1):

- Name of Organization
- Name of Chairman
- Name of Representative/authorized person
- Location and Address, Contact phone/fax
- Associated Country
- The activities that shall be conducted in Myanmar
- The names of relevant ministry/ ministries
- Project Plan
- Number of Executives (to apply with Form 4 and Form 4-A)
- Location of Branch Office and its Address, Contact phone/fax
- Name of Representative for Branch Office
- Application Date

It has been suggested that the minimum number of executive members for forming the board is between 10 to 15 people.

The entire set of documents should be submitted to the Union Registration Board (URB) in Nay Pyi Taw. The office of URB will issue the receipt of application with Form 5 and the issuance date of that receipt will be considered as the application date.

According to chapter III, paragraph 17, of the 2014 Association Law a temporary registration certificate is to be issued within 7 days of the application submission. A full certificate of registration is to be issued 90 days after the date of approval. However please note that the by-laws do not mention these registration timelines.

Denials of registration are to be issued through a letter of the URB within 30 days. In this event, organizations are permitted to request an explanation and can re-apply for registration.

Fees for registration are Myanmar Kyat (MMK) 100,000. Any changes to activities or areas or operations requires permission once again from the Union Registration Board (chapter IX, paragraph 33).

Usually the full registration process takes about one year or longer. According to the functions of Union Registration Board, defined under subsection (A-8) of section 3, the URB may issue a temporary registration certificate after scrutinizing the objectives and operation activities of the applicant.

### 3.3 MEMORANDUM OF UNDERSTANDING (MOU) PROCEDURES

In addition to being registered in Myanmar in accordance with the 2014 'Association Law', INGOs also need to negotiate MoUs with specific line ministries in order to implement programmes. This is a parallel and separate process from registration and usually involves multiple line ministries and MNPED. Unlike registration there is no law or single document outlining steps required for obtaining MoUs with the process varying considerably depending on the line ministries involved, areas of operation, and types of activities being proposed or implemented. MoUs can take anywhere from a minimum of one year upwards of three years to negotiate and secure approval. Some INGOs have reported that they have been able to obtain interim 'letters of authorization' from their main line ministry granting them permission to start programs while awaiting formal approval of their MoU. This however appears to remain at the discretion of individual line ministries and officials.

#### THE MAIN MOU ELEMENTS:

##### A) Basic Cooperation Agreement

This is an outline agreement to be signed between an INGO and the Union of Myanmar to be submitted to the MNPED. This agreement is then forwarded to the relevant line ministries, Office of Attorney General, Foreign Affairs Policy Committee, and the Cabinet for their comments and approval.

##### B) Project Proposal(s)

These should outline the entire intended operations to be carried out in Myanmar by an INGO and should include the scope of work, specific areas/regions for program implementation, objectives, activities, personnel, and other relevant details.

##### C) Memorandum of Understanding (MOU)

The draft MOU spells out under which line ministry an INGO will report on its program activities. In order to secure an MoU an INGO must identify the line ministry to which it wishes to be primarily associated and seek a letter of recommendation from this ministry. This information along with the Basic Cooperation Agreement and project proposals should be submitted to the main line ministry and should then be passed from that line ministry to the MNPED's FERD. However, in practice, it is unclear as to how consistently line ministries share MoUs and accompanying documentation with FERD/MNPED.

Draft MoUs submitted to line ministries should also include any specific requests such as employee personal income tax exemptions or exemptions on customs duties etc. Though there are no guarantees whether such exemptions would be accepted, and current practice seems inconsistent on how differently line ministries handle these issues, nevertheless some INGOs have found success in receiving tax exemptions through this route.



## 4. TAXATION: UNDERSTANDING THE TAX LANDSCAPE

The following are the laws on tax relevant for INGOs:

- The 1974 Income Tax Law (amended in 1989, 2006, 2011 and 2014) is the substantive income tax law and outlines the basic principles and requirements.
- The 2014 Income Tax Law which amended the 1974 law.
- The 2015 Union Taxation Law which sets out the revised rates of taxation for the current year.

None of the above laws specifically refer to INGOs making it unclear as to the precise obligations and requirements on INGOs. The 1974 and 2014 laws refer to charitable organizations which INGOs could use as applicable to the international not-for-profit sector. However, the 2015 law does not explicitly refer to either charitable organizations or INGOs, nor does it refer to exemptions or relief for charitable purposes.

The tax environment is complex and opaque for most INGOs. Yearly amendments to the tax laws, at least in 2014 and 2015, has made it even more difficult to know which provisions apply to INGOs – especially in cases where there are gaps or omissions in the law. This section attempts to provide INGOs with as much information available on the relevant laws in recent years. Information will need to be updated regularly as new laws and regulations are developed.



#### 4.1 TAX EXEMPTIONS: AN OVERVIEW OF RELEVANT PAST AND PRESENT LEGAL PROVISIONS

INGOs are eligible for tax exemption but will need to register for reporting requirements with the Internal Revenue Department (IRD). According to section 5 of the Income Tax Law 1974 INGOs are not liable to pay any tax on income which is used for charitable purposes or social causes.

**Chapter IX, section 31a** of the 1974 Income Tax Law refers to making agreements with other countries and international organizations relating to income tax. The section states that “...if the agreement is notified, the terms of the said agreement shall be followed, notwithstanding anything contained in any other provisions of the Law.” This could be useful for INGOs if they are able to negotiate an MoU with the Myanmar government including general and personal income tax exemptions. If such an agreement or MoU exists, then the INGO will be exempt from general and personal income tax obligations in Myanmar.

However, if the MoU or other agreement does not explicitly grant such an exemption, then INGO employees could be taxable in the same way as employees of a limited Myanmar Company.

To date the vast majority of INGOs have not been able to successfully include tax exemption provisions in their MoUs, with at least a few organizations reporting that such propositions have been removed by line ministries. Others report that such language is removed by the IRD. However, based on discussion from INGO members it appears that at least a few organizations have been able to successfully negotiate tax exemption language into their MoUs. Even when such tax exemptions are in MoUs, until such time that the MoU/agreement is approved and notified, employees are considered liable to pay income tax and remit to the Internal Revenue Department.

**Section 5ai of the 1974 Income Tax Law** allows for “...income received by a religious or charitable institution and applied solely for religious or charitable purposes...” to be exempt from income tax. Section 5 also refers to the Union Government being able to grant tax exemption, tax relief, and other benefits in respect of tax.

**Under the Commercial Tax Law (2014 Amendment)** the government will exempt the following items as provided under section 8b:

- Donations by local or international donors or internal organizations for social, religious, health or educational purposes;
- Goods supplied by local or international organizations to the State;
- Equipment from donors or international organizations that is imported in order to be used by scholars or practitioners who are engaged in the development of the State; and,
- Goods used by diplomats if the exemption or relief is granted on a reciprocal basic.

**Section 5-1 of the 2014 Law Amending the Income Tax Law** upholds that the law does not apply to: “Income achieved by any religious or charitable organization and used exclusively for matters of religion or charity...” Section 5b1 states that “Any person earning income for which the Union Tax Law grants tax exemption, relief or other benefits is entitled to such exemption, relief or benefit”. Section 5b2 states that “The Union Government has the right to grant exemptions or relief from income tax or grant other benefits related to the tax for the following income types –

- (aa) Income obtained from donations for social, religious, health or educational causes in the country from domestic or foreign employers or international organizations;
- (bb) aid provided for the country by domestic or foreign organizations;
- (cc) interest paid on soft loans or official development aid loans;
- (dd) donated property or donations provided by domestic or foreign organizations in the event of natural disasters.”

**As per an announcement published by the Internal Revenue Department in the Mirror on Sept 29, 2014**, the current Income Tax Law 1974 (and its amendments) and Commercial Tax Law (and its amendments) grant tax exemptions on income received in the form of donations for use in education, health, social, religious and charitable purposes. Please refer to Annex 2 for a full summary in English of the Burmese announcement.

The announcement further goes on to explain that the exemption would only be considered and permitted when exemption on income of employees is granted by the following international instruments:

- the 1954 United Nations Act on Privileges and Immunities;
- the 1961 Vienna Convention Agreement on Diplomatic Relations;
- the 1963 Vienna Convention Agreement on Counselor Relations; and,
- any reciprocal MoUs or agreements.

Regarding MoUs, note that these tax exemptions do not automatically apply to INGO employees until such time the agreement/MoU is notified.

**Of importance, the 2015 Union Taxation Law does not include a similar section to 36d of the 2014 law** granting tax exemption on income received by donation to use for education, health, social, religious, literature, arts and culture from local and foreign organizations. Nor is there a similar clause to section 5 of the 1974 Income Tax Law or 2014 amendment referring to exemptions. With the omission of these important references in the 2015 Union Taxation Law which came into effect in April 2015 it appears that INGOs have less legal ground to claim tax relief and exemptions for both general and personal income tax purposes.

## 4.2 PERSONAL INCOME TAX OF EMPLOYEES

### SELF-ASSESSMENT SYSTEM

An individual is assessed as a resident or non-resident tax payer. The self-assessment system places the responsibility to calculate and declare tax liability on the tax payer. Local and foreign employees must assess their level of tax to be paid to the IRD.

Self-assessment should be based on the salary rates set out in appointment letters and contracts. If such a letter states the employee is to work in Myanmar for a period exceeding six months, then the employee will automatically be considered as a resident tax payer even if they stay for only a few days at a time for work in the country. Generally for a total of only a few days of work, such as 3-4 days, self-declarations are not made.

Section-9 of the 1974 Income Tax Law states that income tax is based on “...salary, wages, annuity, pension, gratuity; and any fees, commissions or prerequisites received in lieu of or in addition to any salary and wages”. Section 16d explains the required deductions which should be sent to Internal Revenue Department within seven days in accordance with section 14b and c of the Income Tax Regulations. The IRD’s subsequent audit can take time, and if excess tax is paid, individuals may be eligible for refunds.

### RESIDENT TAX PAYERS

An individual who resides in Myanmar for a period of **more than 183 days** in a year will be considered as a resident tax payer. A **resident tax payer** must pay tax on income received through **sources in**

**Myanmar and abroad.** Income received in Myanmar is calculated by summing the income for the **days worked in Myanmar**. Unless tax exemptions are granted, most international staff who are based in Yangon or elsewhere in the country and receiving salaries offshore for work performed in Myanmar are required to self-assess their tax liability as described above and pay tax to the IRD.

Residents, as defined in the law, will be subject to the following progressive rates as per the 2015 Union Taxation Law.

Sr No.	Income layer for assessing income tax on the remaining income after offsetting it with specified reliefs	Income tax rate
1	1-2,000,000	0% - Tax exempt
2	2,000,001 - 5,000,000	5%
3	5,000,001 - 10,000,000	10%
4	10,000,001 -20,000,000	15%
5	20,000,001 -30,000,000	20%
6	30,000,001 and above	25%

### NON-RESIDENT TAX PAYERS

An individual that earns income while working in Myanmar for any period of **between 1 and 183 days in a year** will be considered as non-resident tax payer. Non-resident and resident tax payers are subject to the **same rates** as per the 2015 Union Taxation Law making the previous flat rate of 35% for non-resident tax payers **no longer applicable**. Non-resident tax payers can now enjoy the same progressive rates of taxation as resident tax payers, set out in the above table.

### DOUBLE TAXATION

It may take a considerable amount of time before the government is able to fully implement existing double tax treaties let alone negotiate new treaties. Double Tax Agreements (DTA) are international treaties which govern tax between countries usually on payment and liability of Income tax, Dividend, Interest, Royalties and Capital gains tax. Such treaties normally cap or reduce the amount of tax that an eligible company has to pay. This coverage will vary depending on each DTA. Current double taxation agreements exist with:

- **Myanmar - India:**  
[http://www.irdmyanmar.gov.mm/PDF/India2\\_21\\_48\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/India2_21_48_PMmm.pdf)
- **Myanmar - UK:**  
[http://www.irdmyanmar.gov.mm/PDF/United%20Kingdom2\\_25\\_00\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/United%20Kingdom2_25_00_PMmm.pdf)
- **Myanmar - Thailand:**  
[http://www.irdmyanmar.gov.mm/PDF/Thailand2\\_24\\_42\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Thailand2_24_42_PMmm.pdf)
- **Myanmar - Vietnam:**  
[http://www.irdmyanmar.gov.mm/PDF/Vietnam2\\_25\\_17\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Vietnam2_25_17_PMmm.pdf)
- **Myanmar - Singapore:**  
[http://www.irdmyanmar.gov.mm/PDF/Singapore2\\_24\\_23\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Singapore2_24_23_PMmm.pdf)
- **Myanmar - Laos:**  
[http://www.irdmyanmar.gov.mm/PDF/Laos2\\_23\\_13\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Laos2_23_13_PMmm.pdf)
- **Myanmar - Malaysia:**  
[http://www.irdmyanmar.gov.mm/PDF/Malaysia2\\_23\\_46\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Malaysia2_23_46_PMmm.pdf)
- **Myanmar - Republic of Korea:**  
[http://www.irdmyanmar.gov.mm/PDF/Republic%20of%20Korea2\\_24\\_06\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Republic%20of%20Korea2_24_06_PMmm.pdf)

As per the IRD announcement of September 29, 2014 in The Mirror, international staff of INGOs may get exemptions for income tax for instance if they are part of a Geneva Convention or UN treaty or under a double tax avoidance treaty.

#### WITHHOLDING TAX

INGOs are to deduct withholding tax in accordance with the notification no. 41/2010 and 167/2011 of Ministry of Finance and Revenue read with Section-16e of the Income Tax Law. Withholding tax would be deducted on payments made for:

- the settlement of licenses, trademarks and patents;
- the payment for services and purchases of goods in the country;
- under a deed of contract; or,
- a deed of agreement or any agreement by co-operatives, partnerships, companies and organizations where applicable.

Apart from the tax exemptions already mentioned it is possible to obtain further exemptions and tax relief under the terms of the MOU executed with a ministry. Exemptions can extend to having import taxes on personal items and vehicle registrations being waived.

#### DISPARITY IN ENFORCEMENT AND APPLICABILITY OF INCOME TAX

Enforcement mechanisms in Myanmar are limited and combined with changing and unclear tax rules for the not-for-profit sector, particularly in the 2015 Union Taxation Law, where there is a gap in what the law states and what is enforced. While strong

enforcement measures are not in place, this may change in the years to come making the importance of obtaining tax relief or exemption status for not-for-profits and INGOs vital.

At present the law requires that all staff (including local and international) to self-assess their tax liability based on the above procedures described. Avoiding payment of income taxes could amount to tax evasion and could be liable for penalties under the law should the tax authorities decide to pursue this issue more aggressively at a later date. For this reason, obtaining tax exemptions and relief is an important step to pursue for INGOs.

#### ALLOWANCES TO REDUCE TAX BURDEN

As per section 30 and 31 of the Union Taxation Law 2015, a **resident tax payer** can avail of allowances to reduce tax burden such as for a basic allowance of 20% of the respective income provided that it does not exceed MMK 10,000,000. They may also get allowances for children or spouses, even if they reside abroad, such as allowances of MMK 1,000,000 for married couples, MMK 1,000,000 for each parent that lives together with the taxpayer, and MMK 500,000 for every child.



## 5. WORK VISAS OVERVIEW

The general practice seen in Myanmar in the absence of work permit regulations is that an expatriate employee may visit Myanmar on a single entry business visa for a 70 day stay. The types of visas available are limited and do not account for the specific type of work done by INGOs. An employee or consultant is required to present a letter of invitation from their organization (or a sponsoring organization), a copy of the organization's registration card, a completed business entry visa application form, and \$50 USD per visa application.

If the INGO does not have a registered local presence in Myanmar, then the INGO employee must obtain an invitation letter from a registered local Myanmar agency or another registered INGO working in collaboration with the organization.

The single entry business visa may be repeated three times before one can be considered for a multiple entry business visa. This is at the discretion of the authorities, however quite a few INGOs have reported being able to successfully secure multiple entry visas through this route. The multiple entry business visa may be granted for up to 6 months at a time and eventually may be extended to one year.

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## 6. PERMANENT RESIDENCY

The Ministry of Immigration and Population of Myanmar issued Regulations (*made under S.16 of Burma Immigration (Emergency Provisions) Act,1947*) for a Permanent Residency Program for foreigners on 18 Nov 2014 by notification 1/2014 issued by the Ministry. These regulations allow foreigners and ex-Myanmar citizens to apply for permanent residency if they are experts, skilled persons, or investors.

The criteria for eligibility have been sub-divided into a number of categories. There are separate requirements for those interested in investing long term in Myanmar. There are also provisions for individuals married to Myanmar citizens who may now apply for permanent residency. Individuals may apply for a five year stay which is renewable for a five year term at a time.

Applicants must reside in and/or travel to Myanmar for no less than three years. When residing in Myanmar, the applicant should not stay abroad for more than 90 consecutive days within a year. Fees are \$500 USD for initial application; \$1000 USD per annum for a foreigner; and \$300 USD per annum for every legal offspring between 7 and 18 years of age.

Please refer to Annex 3 for links to the regulation.

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## 7. LEAVE ENTITLEMENTS

All employees working in Myanmar on a local employment contract covered under Myanmar labor laws are eligible for the following minimum number of leaves as per the labor laws of the country.

### EARNED LEAVE

Section 4 of the Leave and Holidays Act sets out earned leave. This is the equivalent of 'annual leave' and is accumulated in every 12 month cycle. On completion of the first 12 months of employment every employee above the age of 15 years will be eligible for 10 consecutive days of paid leave. The earned leave must be taken within three months from completion of one year of service with the company.

For the purposes of determining 12 months of continuous service, every employee must complete 20 working days every month notwithstanding any disruptions due to illegal strikes, lockout, sickness or accident. Before earned leave is taken the employee should be paid for it in advance. In case of termination of the employment contract for any reason, the employee is eligible to be paid for earned leave.

### PUBLIC HOLIDAYS

Every employee is to be granted any and all gazetted public holidays amounting to 24 days in a calendar year as per section 3 of the Leave and Holidays Act. This includes 10 days leave for Myanmar New Year celebrations which have been declared as public holidays

as per notification no. 1/2007 dated 16 February 2007 by the State Peace & Development Council. There is no statutory obligation to provide an alternative holiday when a public holiday coincides with a weekly off day. However for purposes of wages, if an employee works on a public holiday coinciding with a weekly off day, then the employee must be paid for that day.

#### **CASUAL LEAVE**

There are 6 days of casual leave granted to every employee as per section 5 of the Leave and Holidays Act. It should not be taken along with any other holidays and it will be considered to have lapsed if it is not taken within the year.

#### **MEDICAL LEAVE**

For purposes of medical leave, section 6 of the Leave and Holidays Act allows up to 30 days to every employee for sickness. An application for medical leave must be supported by a medical certificate from a certified medical officer, doctor, or any other certified medical practitioner. To be eligible for paid medical leave, an employee must complete 6 months of service otherwise they will be considered to be on unpaid medical leave. This leave cannot be accumulated and will lapse if not used.

#### **MATERNITY LEAVE**

Section 7(a) of Leave and Holidays Act and Section 25 (c) of Social Security Law sets out that every female employee is eligible for six weeks leave prior to delivery, and a minimum of 8 weeks and up to a maximum of 14 weeks, after delivery. In case of a twin delivery, an employee is eligible for an additional 4 weeks maternity leave post-delivery. In case of an unfortunate miscarriage, an employee is entitled to 6 weeks leave.

#### **PATERNITY LEAVE**

Section 28(a) of Social Security Law allows male employees to be entitled to 15 days leave for infant care after delivery.

#### **ADOPTION LEAVE**

Every employee is eligible for leave of up to 8 weeks for child care in case of adoption of a child who has attained less than one year of age as per Section 25 (f) of Social Security Law.

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## 8. SOCIAL SECURITY BENEFITS

**T**he Social Security Law 2012 provides for a number of benefits to employees. The law is applicable to any organization with more than five employees. Section 12 (a) of the law states that international organizations are exempt from “compulsory registration”. However, section 12 (c) of the law also allows employees who are not required to register compulsorily to do so voluntarily under this law, and if they make contributions towards the fund, they can avail of its benefits. Those who register under this law are entitled to medical treatment and cash benefit for sickness, maternity, confinement, retirement and for funeral benefit. Medical treatment can be taken for up to 26 weeks starting from date of treatment. For cash benefit, employees need to have worked for at least 6 months with the organization.

Employers and workers should contribute to the social security fund as per the rates set by the Ministry of Labor in consultation with the Union Government. A unique feature of this legislation is that it mentions the unemployment benefit insurance scheme when cash benefits are given to unemployed persons. Employers must contribute 3% of the employee’s salary towards the social security fund as of 1st April 2014. The insurance contribution is capped at 15,000 MMK. The Social Security Board is now allowing non-compulsory industries to contribute towards the insurance scheme.

**Employees not insured** by the Social Security Law can still be covered by the Workmen’s Compensation Act in case of any work related accidents. The National Profile on Occupational Safety

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and Health issued by the Factories and General Labor Law Inspection Department provide for this alternative requirement. The Ministry of Labor has issued notifications that amend the amount of compensations regarding death, injury and advance payment of compensation to dependents as follows:

- Death resulting from injury – MMK 150,000 to MMK 450,000
- Permanent total disablement – MMK 200,000 to MMK 600,000
- Advance payment to dependent in the case of Deceased employee – MMK 100,000

These amounts are standard and enforced through decisions of the Arbitration Council for labor disputes as well.

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A photograph of a railway track in Myanmar. In the foreground, a tall, dark signal post stands on the left side of the track. The track itself is made of wooden sleepers and metal rails, receding into the distance. Several people are visible: two men in the mid-ground near the signal post, and a woman in a white shirt and red pants walking on the track in the background. The scene is hazy, possibly due to smoke or mist, and the lighting is soft, suggesting early morning or late afternoon. A white rectangular box is overlaid on the right side of the image, containing the word 'APPENDICES' in large, bold, black capital letters. In the top right corner of this box, there are three small squares: an orange one, a grey one, and a blue one.

# APPENDICES

# APPENDICES

## ANNEX 1

### REGULATION OF ASSOCIATION REGISTRATION (2015) (BY-LAWS)

The Ministry of Immigration enacted this Association Regulation Law on June 5, 2015 in Burmese language and in accordance with Section 40(a) of the Association Law, 2014. A short **summary of the main provisions and the attached forms have been translated into English.**

#### Summary

This Regulation has 7 Chapters and 26 Sections. Chapter (I) provides the title and definition. Chapter (II) states the formation and functions of the registration boards. Chapter (III) and Chapter (IV) states the registration of INGOs. Chapter (V) mentions renewal of the registration certificate.

**Section 2(d).** Application Date means the issue date of Form 5, within a calendar year, from the relevant registered body after submitting the complete application letter to relevant registration body in order to register.

**Section 9.** Organizations that apply for registration as an INGO shall be in compliance with the following conditions;

- (a) Shall protect rules of law and security of the State.
- (b) Shall enhance development of state's social sector.
- (c) Shall respect the right of citizens.
- (d) Shall respect national solidarity, religion and belief.
- (e) Shall be strong social organizations that can support the welfare of

citizens and state development.

**(f)** Shall present and attach the recommendations of relevant organizations and Union Ministry which are related with the aims, programs of the organization.

**Section 10.** In applying for registration of INGOs, the executive member of the organization shall have the following qualifications:

- (a)** May be a Foreigner or naturalized foreigner, and citizens of Myanmar who would coordinate with them,
- (b)** Person who has attained (18) years,
- (c)** Not being a religious person (not a monk or brother etc.),
- (d)** Person who are not undergoing imprisonment INGO Regulatory Guide 2015 Thomson Reuters Foundation 25,
- (e)** Person who are not of unsound mind,
- (f)** Not being members who are in contact with expressly or implied with groups which are announced as illegal organization or terrorist group or their members.

**Section 11.** The responsible person of INGO shall, in accordance with the provisions of section 9 and 10, apply to the Union Registration Board with objectives and operation activities of association, recommendation from relevant Ministry and organization, recommendation and permission from relevant Region/State government or Nay Pyi Taw Council where the associations may operate, and with Form 3, Form 4, Form 4(a) issued under this regulation. The Registered Board shall issue the Form 5 when receiving the application form and shall assume the issuance date of receipt as the application date to register.

**Section 12.** When applying under section 11, the recommendation letter from the Ministry of National Planning and Economic Development (NPED) and Ministry of Foreign Affairs (MoFA) shall be submitted also.

**Section 13.** With respect to the application of registration, the Office of Union Registration Board shall submit the application to the Union Registration Board meeting after completing necessary formalities. The Union Registration Board shall, after scrutinizing in accordance with the Laws, send notice to the relevant association on the approval of registration.

**Section 15.** The registered INGOs shall, if desirous to continue operations, apply to renew registration with the Union Registration Board with Form 3, Form 4 and Form 4(a) within 30 days before expiry.

**Section 18.** Any association that fails to submit the annual report for 5 consecutive years and applies to renew the registration certificate; such association shall apply again for the registration certificate with a fresh application.

**Section 19.** If an association fails to submit the annual report not for 5 consecutive years but only for interim years, it shall state the reasons of such default when renewing the registration.

**Section 22.** INGOs shall, regarding the activities within the country, systematically keep on books as follows;

- (a)** The accounting books of the income and outcome of association;
- (b)** Fund, debt, bonds, stock share, debentures;
- (c)** Usage of funds for moveable property and immovable property;

**Section 23.** The registered association shall submit the annual report and financial statement to the relevant registration Board every December.

**Section 24.** The use of mark, seal, and design of uniform that is owned by the registered association shall be in compliance with the existing Laws.

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**FORM – 1**

**APPLICATION FOR REGISTRATION**

In Accordance with the Law Relating to Registration of Associations/Organizations

- 1. Name of Association/organization: .....
- 2. Location of Association: .....
- 3. Date of establishment: .....
- 4. Objective of Association: .....
- 5. Programme of Association: .....
- 6. Number of executives members of the Association (to describe with Form -4 and Form-4A): .....
- 7. Number of Members: .....
- 8. Funds and properties owned by Association (to describe with attachment):.....
- 9. Activities already carried out by Association: .....
- 10. Organizational structure/Articles of Association (to describe with attachment):.....
- 11. Specific submissions: .....
- 12. Date of Application: .....

**APPLICANT**

Signature:..... Name: .....

Responsibility in Association:..... Citizenship Scrutiny Card No.: .....

Residence Address:.....



**FORM – 2**

**APPLICATION FOR EXCHANGE/RENEWAL OF REGISTRATION CERTIFICATE**  
 In Accordance with the Law Relating to Registration of Associations/Organizations

- 1. Name of Association/organization: .....
- 2. Location of Association: .....
- 3. Date of establishment: .....
- 4. Objective of Association: .....
- 5. Programme of Association: .....
- 6. Number of executives members of the Association (to describe with Form -4 and Form-4A): .....
- 7. Number of Members: .....
- 8. Funds and properties owned by Association (to describe with attachment): .....
- 9. Activities already carried out by Association: .....
- 10. Organizational structure/Articles of Association (to describe with attachment): .....
- 11. Numbers of renewal: .....
- 12. Expiration period (to describe with attachment): .....
- 13. Specific Submission: .....
- 14. Date of Application: .....

**APPLICANT**

Signature: ..... Name: .....

Responsibility in Association: ..... Citizenship Scrutiny Card No.: .....

Residence Address: .....



**FORM – 3**



**APPLICATION FOR REQUEST OF REGISTRATION**

In Accordance with the Law Relating to Registration of Associations/Organizations

- 1. Name of INGO: .....
- 2. Name of Principal of INGO: .....
- 3. Name of In-charge of INGO: .....
- 4. Address of INGO: .....
- 5. Contact Phone/fax number of INGO: .....
- 6. Country where association is based: .....
- 7. Type of programme to be undertaken in the Union of Myanmar: .....
- 8. Line Ministries: .....
- 9. Programme to be undertaken (to describe with attachment): .....
- 10. Number of executives members in the INGO (to describe with Form-4 and Form-4A): .....
- 11. Location of branch office, if any: .....
- 12. Name of In-charge of branch office: .....
- 13. Phone number/fax number of branch office: .....
- 14. Date of Application: .....

**APPLICANT**

Signature: ..... Name: .....

Responsibility in Association: ..... Citizenship Scrutiny Card No.: .....

Residence Address: .....



**FORM – 4**

**LIST OF EXECUTIVE MEMBERS OF ASSOCIATION/ORGANIZATION**

Name of Association: .....

Location of Association: .....

Date of Application: .....

Sr.	Name and responsibility of executive	Names of parents	Current occupation and residence address (to describe accurately)	Former occupation (to describe accurately)	Scrutiny card number
(1)	(2)	(3)	(4)	(5)	(6)

\_\_\_\_\_

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**FORM – 4A**

**CURRICULUM VITAE OF EXECUTIVE MEMBER OF ASSOCIATION**



- 1. Name: .....
- 2. Name of Father/mother: .....
- 3. Date of Birth: .....
- 4. Education: .....
- 5. Race/religion: .....
- 6. Citizenship Scrutiny Card No.: .....
- 7. Current occupation: .....
- 8. Former occupation: .....
- 9. Responsibility in Association: .....
- 10. Name of spouse: .....
- 11. Residence Address/Phone number: .....

**I VOUCH FOR THE VERACITY OF THE ABOVE PARTICULARS.**

Signature: .....

Name: .....

Date: .....



**FORM – 5**

*(To record at the Registration Office)*

**RECEIPT OF THE APPLICATION FOR REQUEST OF REGISTRATION OF LOCAL NGO/INGO**

The application for request of registration of ..... apply as Local NGO/INGO was receipt on the day of ..... year, ..... month, ..... day at ..... o'clock.

**APPLICANT**

Name .....  
 Responsibility.....  
 ..... Association/Organization



**RECIPIENT**

Name .....  
 Position/Duty.....  
 ..... Registration Office

*(Return it to the Applicant)*

**RECEIPT OF THE APPLICATION FOR REQUEST OF REGISTRATION OF LOCAL NGO/INGO**

The application for request of registration of ..... apply as Local NGO/INGO was receipt on the day of ..... year, ..... month, ..... day at ..... o'clock.

**APPLICANT**

Name .....  
 Responsibility.....  
 ..... Association/Organization



**RECIPIENT**

Name .....  
 Position/Duty.....  
 ..... Registration Office



## ANNEX 2

SUMMARY (ENGLISH) OF THE IRD ANNOUNCEMENT  
ON SEPT 24, 2014

September 29, 2014, The Mirror - Originally published in Burmese

## Request to International Non-Government Organizations

\* The current Income Tax Law and Commercial Tax Law grant tax exemption regarding income received by donation to use for the education, health, social, religious and charitable purposes, income received by manufacturing the goods or performance of services.

\* Unless exemption on income is granted by 1954 United Nations Act on Privileges and Immunities, 1961 Vienna Convention Agreement on Diplomats relations, 1963 Vienna Convention Agreement on Counselor relations, and reciprocal MoUs or agreements, all the employees from INGOs are liable pay income tax in accordance with Section-9 of Income Tax law on their income under head of salary including salary, wages, annuity, pension, gratuity; and any fees, commissions or perquisites received in lieu of or in addition to any salary and wages.

\* Any person responsible for disbursement of payment under head of salary to the employees of those INGOs shall, at the time of payment, deduct the income tax on the amount payable in accordance with Section-16(d) of Income Tax Law, and paying the deduction to Internal Revenue Department in accordance with Section-14(b) of Income Tax Regulations within seven days from the deduction made, and submitting the details of deduction to Internal Revenue Department in accordance with Section-14(c) of Income Tax Regulations within seven days from the deduction made.

\* All INGOs are liable to deduct the withholding tax in accordance with the notification 41/2010 of Ministry of Finance and Revenue with reference to the provisions of Section-16(e) of Income Tax Law on payment settlement of license, Trademark and Patent, or payment for services and purchases of goods in the country, under a deed of contract, deed of agreement or any agreement by Co-operatives, Partnerships, Companies and Organizations.

\* The tax clearance should conduct when buying and title changing of moveable and immoveable properties owned by INGOs.

\* The respective INGOs are liable to response the inquiries concerning with the income made by the officers from Company Circle Tax Office, Township Tax Office and State/Region Tax Office in accordance with Section-42 of Income Tax Law.

\* For the questionable matters we are happy to assist you.

Internal Revenue Department

Ph: 067-430001, 01-378372

## ANNEX 3

## ONLINE LINKS TO LAWS &amp; REGULATIONS OF MYANMAR

## 1. Permanent Residence of a Foreigner Rules:

- <http://www.mip.gov.mm/wp-content/uploads/2014/12/ReNewPR-law.pdf>

## 2. Double Tax Treaties:

- *Myanmar - India:* [http://www.irdmyanmar.gov.mm/PDF/India2\\_21\\_48\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/India2_21_48_PMmm.pdf)
- *Myanmar - UK:* [http://www.irdmyanmar.gov.mm/PDF/United%20Kingdom2\\_25\\_00\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/United%20Kingdom2_25_00_PMmm.pdf)
- *Myanmar - Thailand:* [http://www.irdmyanmar.gov.mm/PDF/Thailand2\\_24\\_42\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Thailand2_24_42_PMmm.pdf)
- *Myanmar - Vietnam:* [http://www.irdmyanmar.gov.mm/PDF/Vietnam2\\_25\\_17\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Vietnam2_25_17_PMmm.pdf)
- *Myanmar - Singapore:* [http://www.irdmyanmar.gov.mm/PDF/Singapore2\\_24\\_23\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Singapore2_24_23_PMmm.pdf)
- *Myanmar - Laos:* [http://www.irdmyanmar.gov.mm/PDF/Laos2\\_23\\_13\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Laos2_23_13_PMmm.pdf)
- *Myanmar - Malaysia:* [http://www.irdmyanmar.gov.mm/PDF/Malaysia2\\_23\\_46\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Malaysia2_23_46_PMmm.pdf)
- *Myanmar - Republic of Korea:* [http://www.irdmyanmar.gov.mm/PDF/Republic%20of%20Korea2\\_24\\_06\\_PMmm.pdf](http://www.irdmyanmar.gov.mm/PDF/Republic%20of%20Korea2_24_06_PMmm.pdf)

## 3. Labor Laws:

- [www.moi.gov.mm/laws](http://www.moi.gov.mm/laws)

Maintained by the Ministry of Information. Provides newly enacted laws available in Burmese

## 4. For more legal resources and unofficial english translations please refer to:

- [www.pwplegal.com](http://www.pwplegal.com)

Polastri Wint & Partners maintains a sizeable number of up to date unofficial English language versions of Burmese laws, some of which are available upon request.

- <http://www.president-office.gov.mm/zg/?q=hluttaw/laws>

Maintained by the Office of Hluttaw (Parliament) . Provides links to newly enacted laws in Burmese.

## ANNEX - 4

### KEY GOVERNMENT CONTACTS

#### MINISTRY OF NATIONAL PLANNING AND ECONOMIC DEVELOPMENT (MNPED)

*URL:* <https://www.mnped.gov.mm/>

*Address:* Building No(1), Nay Pyi Taw, Myanmar

*Telephone:* +95 67407013

#### FOREIGN ECONOMIC RELATIONS DEPARTMENT (FERD)

*Contact:* Moh Moh Naing, Assistant Director

*Address:* Building No(1), Nay Pyi Taw, Myanmar

*Telephone:* 067 407346

#### INTERNAL REVENUE DEPARTMENT, NAY PYI TAW

*URL:* [www.irdmyanmar.gov.mm/](http://www.irdmyanmar.gov.mm/)

*Address:* Office 26, Nay Pyi Taw

*Telephone:* 067 430001

#### INTERNAL REVENUE DEPARTMENT, YANGON

*Contact:* Tax Service Unit

*Address:* No. 59/61, Pansodan Street, Lower Block, Kyauktada Township, Yangon

*Telephone:* 01 378370, 01 378372

#### MINISTRY OF HOME AFFAIRS

*Contact:* Daw Than Than Swe, Assistant to Director, General Administrative Department

*Address:*

*Telephone:* 067 412418

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# FEEDBACK



COMMENTS, CORRECTIONS, AND SUGGESTIONS FOR IMPROVEMENT ARE WELCOME.

FEEDBACK CAN BE SENT TO:

**Tilleke & Gibbins Myanmar Ltd.**

No. 1608, 16th Floor, Sakura Tower  
339 Bogyoke Aung San Road  
Kyauktada Township, Yangon, Myanmar  
T: +95 1 255 208  
F: +95 1 255 207

Email: [myanmar@tilleke.com](mailto:myanmar@tilleke.com)  
[www.tilleke.com](http://www.tilleke.com)

**INGO Forum Myanmar**

C/O PSI office, No.16, Top Floor,  
West Shwe Gone Dine 4th St.,  
Bahan Township, Yangon, Myanmar

Email: [info.ingoforum@gmail.com](mailto:info.ingoforum@gmail.com)  
[www.ingoforummyanmar.org](http://www.ingoforummyanmar.org)

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