



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED



LABOUR LAW IN MYANMAR

28th November, 2017

REGISTRATION OF LABOUR CONTRACTS



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EMPLOYMENT AND SKILL DEVELOPMENT LAW

- Entered into force on 1 December 2013
- Section 5(a)(1): Employer must present the employee with an employment contract for signing within 30 days after the commencement of the employment
- Section 5(a)(2): Prior training or probationary period without employment contract possible
- In practice: Appointment letter → probationary period → employment contract



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EMPLOYMENT AND SKILL DEVELOPMENT LAW

- Section 5(b): 21 items of minimum contents, but no prescribed text:
 - Type of work;
 - probationary period;
 - Wages or salary;
 - place of work;
 - term of the contract;
 - working hours;
 - rest days, holidays and leave;
 - working overtime;
 - meal arrangements during work hours;
 - accommodation;



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EMPLOYMENT AND SKILL DEVELOPMENT LAW

- medical treatment;
- ferry arrangements and travelling;
- rules to be followed by the employee;
- period for which the employee agreed to work after having attended training arranged by the employer;
- resignation and dismissal;
- contract termination;
- responsibilities according to the terms in the contract;
- termination of the contract by mutual agreement;
- other matters;
- amending the contract;
- miscellaneous



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EMPLOYMENT AND SKILL DEVELOPMENT LAW

- **Section 5(g): Employer “shall submit a copy of the employment contract” to the competent township labour office**
- **Section 36: Penalty for “violating a prohibition in any rule, regulation, condition, notification, order or directive issued under this law”: Imprisonment up to one year or fine or both**



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EMPLOYMENT AND SKILL DEVELOPMENT LAW

- **Section 38: Penalty for an employer for failing to provide an employment contract within 30 days after the commencement of the employment: Imprisonment up to six months or fine or both**



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LABOUR CONTRACT TEMPLATE

- **First template: MoL Notification from 31 August 2015: “Employers and employees must sign employment contracts in the prescribed form”**
- **Only one template (drafted for factory workers) for all sectors, businesses, salaries, jobs...**
- **Many employees did not like the template themselves**
- **Township labour offices did not allow deviations from the template**



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LABOUR CONTRACT TEMPLATE

- How employers dealt with the issue:
 - Preparing an individual labour contract with a clause stating that this was the employee's wish
 - Filing a dummy contract and signing a second, real one
 - Filing an annex with the township labour office
 - Foreigners seconded from the foreign headquarters to Myanmar can have an individualised employment contract with the headquarters governed by foreign law



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LABOUR CONTRACT TEMPLATE

- **Second template: MoL Notification 140/2017 and Announcement 4/2017 dated 28 August and 1 September 2017**
 - New template, but still “one fits all” approach
 - However, template is shorter than the old one, so more companies might find it possible to use it in combination with an individualised annex
 - Must be used in enterprises with more than five employees
 - Must be in the Myanmar language only; bilingual versions are not registered
 - Requires signing at township labour office



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LABOUR CONTRACT TEMPLATE

- Questionnaire and list of employees
- One copy for employer, one copy for employee, one copy for township labour office



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LABOUR CONTRACT AND STAMP DUTY

- Possible numbers in Schedule 1 to the Stamp Act:
 - No. 57 (security-bond or mortgage-deed): Ks.2,500
 - No. 5(c) (agreement or memorandum of agreement if relating to joint venture agreement, production or profit sharing contract, construction agreement or other similar agreement or contract): 1% of the value, max. Ks. 150,000
 - No. 5(d) (agreement or memorandum of agreement if not otherwise provided for): Ks. 300



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REGISTERING FOREIGN EMPLOYEES



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TYPES OF VISA

- Diplomatic
- Tourist
- Business (single/multiple)
- Social (single/multiple)
- Religious (single/multiple)
- Transit
- Official (single/multiple)
- Employment
- Education (single/multiple)
- Journalist
- Crew (single/multiple)
- Workshop, seminar, meeting or research



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REGISTRATION REQUIREMENT

- (Theoretically) within 24 hours of arrival, foreigners staying at their own accommodation or at accommodation provided by their company must register their arrival with (i) the ward administration office and (ii) the township immigration department (“Form C”)
- Renewal required if (i) new visa and (ii) no foreigner registration certificate (FRC)
- Required docs: Passport with visa, copies of corporate documents, appointment letter or employment contract, lease agreement



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REGISTRATION REQUIREMENT

- Theoretically, landlord has to sign
- Foreigners staying in the country for more than 90 consecutive days have to obtain a “foreigner registration certificate” (FRC) from the township immigration department
 - Without FRC, it may not be possible to leave the country depending on the circumstances
 - Application to be made sufficiently in advance
 - Valid for one year until 30 November



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FOREIGNERS EMPLOYED BY AN MIC COMPANY

- Employment by an MIC company requires MIC approval
- If an MIC company retains a freelancer: No MIC approval required
- If a foreigner is seconded from the headquarters: No MIC approval required
- Approval to be applied for within 7 days after the arrival of the foreigner at the latest (if the deadline is missed: easiest solution is for the foreigner to fly in again)



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FOREIGNERS EMPLOYED BY AN MIC COMPANY

- Obtaining MIC approval with a tourist visa is not possible, but whether business or employment visa does not matter
- Required documents and information:
 - Application letter, form 12-A, application fee (Ks. 5,000), passport copy, number of foreign/local employees according to MIC proposal, number and details of existing foreign/local employees, copy of latest quarterly performance report



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FOREIGNERS EMPLOYED BY AN MIC COMPANY

- Evidence of expertise (copy of the certificate to be signed by the company's director; notarial translation to be provided if not in English); depending on the claimed level of expertise: university degree
- Details of previous employment in Myanmar, in particular the salary
- In case of a replacement: Proof that the previous foreign employee left the country (copy of the flight ticket)



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DICA RECOMMENDATION LETTER

- Required for a visa extension, stay permit and, possibly, a foreigners registration certificate (FRC)
- Available for foreign directors, branch representatives and experts employed by a non-MIC company or branch
- For employees of an MIC company, MIC approval (see previous slides) should be sufficient for a visa extension, stay permit and FRC
- Has to be applied for at least 3 weeks (better: 6 weeks) prior to the expiry of the visa



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DICA RECOMMENDATION LETTER

- Required for a visa extension, stay permit and, possibly, a foreigners registration certificate (FRC)
- Available for foreign directors, branch representatives and experts employed by a non-MIC company or branch and their family members
- For employees of an MIC company, MIC approval (see previous slides) should be sufficient for a visa extension, stay permit and FRC



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DICA RECOMMENDATION LETTER

- **Foreigners at “trading companies” have to obtain a recommendation letter from the Ministry of Commerce**
- **Has to be applied for at least 3 weeks (better: 6 weeks) prior to the expiry of the visa**
- **Although not official, the number of foreigners per company for whom recommendation letters are available is limited (the more local employees, the more foreigners may obtain a recommendation letter)**



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DICA RECOMMENDATION LETTER

- Required documents and information, among others:
 - Application letter
 - Undertaking (“the employee will not commit crimes and is not blacklisted”)
 - Copies of the corporate documents
 - Current business activities of the company and evidence thereof
 - Proof of tax payment by the company and, if the foreigner has stayed in Myanmar for longer, proof of tax payment by the foreigner
 - Number and details of all local and foreign employees
 - Copy of the employment contract



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DICA RECOMMENDATION LETTER

- Evidence of expertise (copy of the certificate to be signed by the company's director; notarial translation to be provided if not in English); depending on the claimed level of expertise: university degree



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LABOUR DISPUTES: HANDLING MEDIATION AND ARBITRATION



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CURRENT DISPUTE RESOLUTION SYSTEM

- Established by the 2012 Settlement of Labour Dispute Law
- Theoretical distinction between individual and collective disputes
- Township conciliation body (township level); arbitration body (regional/state level); arbitration council (Union level)
- In enterprises with more than 30 employees, there should theoretically be a “workplace coordinating committee”



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CURRENT DISPUTE RESOLUTION SYSTEM

- If mediation in individual disputes at the township conciliation body fails, the case should theoretically go to court. In practice, the case progresses to the arbitration body and the arbitration council.



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TERMINATING AN EMPLOYMENT RELATIONSHIP



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RULES ON DISMISSALS

- **Standard labour contract: Fixed term contract.**
Nevertheless, both employer and employee can terminate the contract during the term fairly easily.
- **Termination by the employee:**
 - **By giving 7 days (during probationary period) or 30 days (during regular period) notice**
 - **Employer does not have to pay compensation**



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RULES ON DISMISSALS

- **Termination by the employer:**
 - **During the probationary period: By giving one month notice and paying one month probationary salary (no payment in case of dismissal for “important reasons”)**
 - **During the regular period: By giving “one month’s” notice and paying compensation (MoL’s standard labour contract)**



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RULES ON DISMISSALS

- **Termination by the employer: Disciplinary dismissal -**
 - **Possible during probationary and regular period**
 - **Employer does not have to pay compensation**
 - **Requires an offence committed within 12 months after three warnings: (i) first written warning; (ii) second written warning; (iii) warning with undertaking to be signed by the employee**
 - **Certain grave misconduct (specified in the standard work rules) justifies dismissal without warnings.**



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RULES ON DISMISSALS

Period of employment	Amount of compensation
6 month - less than 1 year	1/2 month's salary
1 year - less than 2 years	1 month's salary
2 years - less than 3 years	1 1/2 month's salary
3 years - less than 4 years	3 months' salary
4 years - less than 6 years	4 months' salary
6 years - less than 8 years	5 months' salary
8 years - less than 10 years	6 months' salary
10 years - less than 20 years	8 months' salary
20 years - less than 25 years	10 months' salary
25 years and more	13 months' salary



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WORKING HOURS; OVERTIME; HOLIDAYS



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WORKING HOURS

- **Factories Act 1951 as amended:**
 - **Regular working hours: Not more than 8 hours/day and 44 hours (48 hours if “continuous work” is required)**
 - **Break time: 30 min after 5 working hours**
 - **Maximum working hours incl. break time: 10 hours/day**
 - **Max. 6 working days/week**
 - **Sunday is off-day, but may be replaced with another off-day within three days prior to/after the Sunday**



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WORKING HOURS

- **Shops and Establishments Law 2016:**
 - **Regular working hours: Not more than 8 hours/day and 48 hours/week unless the parties agree otherwise**
 - **Break time: 30 min after 4 working hours**
 - **Maximum working hours incl. break time: 11 hours/day**
 - **Max. 6 working days/week**
 - **Employer must designate one day per week as off-day**



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OVERTIME

- **Factories Act 1951 as amended:**
 - **Not more than 16 hours/week (12 hours/week for “continuous work”)**
 - **Overtime salary: 2x basic salary**
 - **Formula for calculating overtime salary must be displayed in a visible place**
 - **Overtime policy requires approval from the Factories and General Labour Law Inspection Department**



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OVERTIME

- **Shops and Establishments Law 2016:**
 - **Not more than 12 hours/week (16 hours/week in “special cases”); no work “past midnight”**
 - **Overtime salary: Not specified**



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LEAVE

- **Leave and Holidays Act 1951 as amended: Paid leave -**
 - **Earned leave: 10 days**
 - **Casual leave: 6 days**
 - **Maternity leave: 6 weeks before and 8 weeks after giving birth**
 - **Medical leave: 30 days**
 - **Public holidays**



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MISCELLANEOUS



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MISCELLANEOUS

- Effects of a business transfer
- Protection of business secrets
- Non-compete clauses
- Labour outsourcing



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CONTACT



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CONTACT

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