



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

NEWSLETTER 31 - 6th September 2017

Dear Readers,

Welcome to a new edition of our newsletter, a special edition to make our readers aware that the Ministry of Labour, Immigration and Population has a **new employment contract template**.

The Employment and Skill Development Law of 2013 provides for a minimum content that each employment contract must have, but does not require the parties to use a certain format. Nevertheless, as a matter of practice, employers had to copy the (at the time: unofficial) template issued by what was then the Ministry of Labour, Employment and Social Security if they wanted to submit an employment contract (as required by the Employment and Skill Development Law) to the township labour office for approval.

On 31st August 2015, the Ministry issued Announcement 1/2015 which officially made the use of the template compulsory for any business, irrespective of the sector, job type, salary, number of employees, etc.

On **1st September 2017**, the Ministry (now known as the Ministry of Labour, Immigration and Population) **replaced** the template **with a new template**. The Myanmar version of the new template can be downloaded here: <http://tinyurl.com/ycqjuuqgw>. We have prepared an English translation which we are happy to provide to existing and prospective clients and premium subscribers. Please contact us if you wish to receive a copy (sebastian@lincolnmyanmar.com or nyeinchanzaw@lincolnmyanmar.com).

The new template is shorter than the old one and a few paragraphs have been reshuffled, but on the whole, there are not a lot of material differences. In contrast to the old template, the new template in particular:

- contains provisions indicating that employers are not free to dismiss employees at will (but we still think that it is possible to validly dismiss an employee by paying the severance allowance prescribed in Notification 84/2015 and giving one month's notice or paying salary *in lieu* of the notice);
- requires the employer to liaise with the workplace coordinating committee and, if there is a union in the enterprise, additionally with the representative of the labour organisation in case of a "reduction of the number of workers or dismissal of an employee" (although this clause may turn out to be moot in many cases as there is no workplace coordinating committee in most enterprises and, in any case, its formation is only compulsory if the enterprise has more than 30 employees);



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- explicitly prohibits the employer from refusing to renew an employment contract “without sufficient reason”;
- introduces an obligation on the part of the employer to grant an employee leave without pay to attend the funeral of a family member or parent if no more “leave granted by the law” is left;
- clarifies that employers are obliged to conclude an employment agreement with “interns and trainees irrespective of whether they are paid”.

Announcement 4/2017 (an English translation can be found here: <http://tinyurl.com/yce9lzjz>), published yesterday in Myanma Alinn, specifies that “employers and workers in factories, workshops, workplaces, companies, businesses and government departments and organizations **with more than five workers**” must use the template.

The Announcement makes reference to a Notification 140/2017 dated 28 August 2017. We could not get hold of the Notification at short notice, but will upload a translation to our homepage as soon as it is available.

The **cardinal error of the old template** - namely, that it attempts to provide a one-fit-all contract irrespective of the sector, job, location, salary and other idiosyncrasies - **does not seem to have been removed by the new template**. The idea behind having the templates was, and presumably still is, to protect factory workers, many of whom used to work (and may still be working) without the protection of a written contract providing for minimum standards. As this concept is not transferrable to all jobs, we will **probably continue to see the workarounds** that were developed for the old template, in particular:

- Some township labour offices allow the parties to attach an annex to the template in which they can spell out what they have negotiated. It should be noted, however, that the township labour offices tend to refuse an annex if it contains provisions that are disadvantageous to the employee.
- Some employers use individual employment contracts which they do not submit to the township labour office. Sometimes, they include a clause stating that it was “the employee’s wish” to have an individual contract.
- Foreigners may be employed by the foreign headquarters and seconded to the Myanmar subsidiary. In this case, it is not necessary to use the template as the employment contract is governed by foreign law and not subject to Myanmar requirements.



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It should be noted in this context that the new template contains a mechanism to change it. According to clause 21 (c), “the employment contract can be amended to reach international standards by agreement of the employer and more than 50% of the workers of the relevant factory, workshop, company and business according to the nature of the business, provided that the rights and benefits accorded by the labour laws are not affected.”

We hope that you have enjoyed reading our newsletter and found it useful.

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