

26<sup>th</sup> April 2020

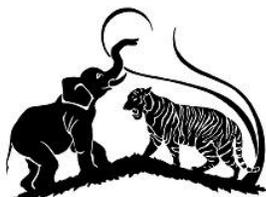
## COVID-19 COUNTERMEASURES IN MYANMAR

### A. Resources in English

We have uploaded English translations of government announcements and other resources [on our homepage](#) (under “Laws in English”). We are updating and expanding this section regularly.

### B. Current restrictions on movement (as of 26<sup>th</sup> April 2020, not exhaustive)

- International commercial passenger flights are prohibited from landing in Myanmar [until 15<sup>th</sup> May 2020](#).
- This issuance of all visa types and visa-free travel are suspended [until 15<sup>th</sup> May 2020](#).
- Business visas may be renewed in-country by filing an application with the Directorate of Investment and Company Administration [up to 5 days prior to visa expiry](#) (previously, the lead time was at least 3 weeks). We suggest not to wait until visa expiry as an extension of expired visas is apparently not possible.
- Anecdotal evidence suggests that tourist visas may be renewed in-country for up to 90 days.
- Goods are to flow unimpeded [according to the Ministry of Commerce](#).
- [50% of all government employees must work from home](#). Many non-essential government services are suspended. Government officers in charge of a certain matter may be in quarantine and unavailable.
- [Gatherings of five or more people are banned](#) throughout the country with limited exceptions.
- [There is a curfew from 10:00 pm to 4:00 am in Yangon Region](#) (until 18<sup>th</sup> June 2020) and many other Regions and States. Furthermore, 10 townships in Yangon Region have been [placed under semi-lockdown](#).



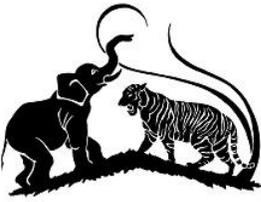
## LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

- The quarantine period for persons arriving from abroad or suspected of having had contact with a COVID-19 case [has been extended to 21 days](#) facility or hotel quarantine and 7 days home quarantine.
- There is a rather sweeping system in place to trace those suspected of having had contact with an infected person. Anybody caught up in the net is placed in facility or hotel quarantine for 21 days and in home quarantine for 7 days. Apartment blocks, hotels, compounds, factories and streets in which a COVID-19 case was found are rigorously locked down; persons trapped inside are quarantined. Quarantine breakers risk criminal prosecution under [section 18 Prevention and Control of Communicable Diseases Law](#).
- Travelling in the country has become very difficult. Travellers risk being put into quarantine upon arrival (among others, this applies to [visitors to Nay Pyi Taw](#) wishing to meet officials there) or being prohibited from passing through certain townships or villages, especially if they have a Yangon number plate as most infections with the SARS-CoV have been detected in Yangon so far.
- [Workers are not allowed to protest in groups](#).
- “Factories, workshops and establishments” are [ordered shut until they have been inspected for “COVID-19 prevention compliance”](#); theoretically, these inspections are supposed to be conducted until 30<sup>th</sup> April 2020.
- The Ministry of Health and Sports instructs households throughout the country [to appoint one person to go shopping](#) and restrict shopping to once per week.
- There are various restrictions at Regional, State and township levels such as shop closures and limiting restaurants to offer only take-away meals.
- Despite the vagueness of some announcements, people engaging in what could be termed “risky behaviour” risk criminal prosecution under various provisions of the [Natural Disaster Management Law](#).

### C. Business operation and employment

#### 1. Closure of “factories, workshops and establishments” until inspections are carried out

In the evening of 19<sup>th</sup> April 2020, the Ministry of Labour, Immigration and Population [announced](#) that factories, workshops and establishments (rendered as “departments” in the linked



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translation) were to close from 20<sup>th</sup> April 2020 until an inspection team, composed of officials from the Ministry of Health and Sports, the Ministry of Labour, Immigration and Population and other persons, certifies their compliance with the [COVID-19 prevention measures drawn up by the Ministry of Health and Sports](#) (there is also a [bare-bone version](#)).

The plan is to carry out inspections by the following order of priority: (i) pharmaceutical factories; (ii) food production factories; (iii) factories, workshops and establishments claiming to be in compliance; (iv) factories and workshops with more than 1,000 workers; and (v) other factories, workshops and establishments.

All inspections are supposed to be carried out until 30<sup>th</sup> April 2020. This period may (or may not) have been extended in the meantime to 15<sup>th</sup> May 2020 in line with a somewhat confusing [statement on “the extension of the rules and directives issued by the central COVID-19 prevention committee”](#), but also this possibly extended timeline appears to be quite unrealistic, given that there are more than 6,000 factories in Yangon Region alone.

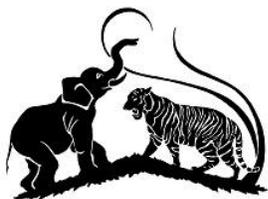
The announcement at least theoretically does not only apply to factories, but to all businesses irrespective of their location, line and size. However, we understand that the respective Union Territory, Regional and State offices of the Factories and General Labour Laws Inspection Department wrote on 20<sup>th</sup> April 2020 to those businesses that are scheduled to be inspected, requesting them to notify their preparedness as soon as possible. At least one of our clients that is decidedly not a manufacturing business was contacted in this way.

Owners and managers keeping a business open without approval from the inspection team risk [complaints on the part of the employees](#) and subsequent [unspecified “legal action” by the authorities](#), possibly prosecution under the Natural Disaster Management Law.

We think that businesses should do the following:

- Any business should review whether it meets the criteria set forth in the [Ministry of Health and Sport’s prevention guidelines](#), furthermore check whether there are sector-specific guidelines (e.g. for the [sales activities](#)) and, apart from that, apply common sense.
- Businesses notified by the Factories and General Labour Laws Inspection Department should attempt to make an appointment with the inspection team as soon as possible and only open with the Department’s or team’s approval.
- Other businesses should try to contact the Factories and General Labour Laws Inspection Department if they are (still) unsure whether they can open.

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### 2. Suspension or reduction of salary payments

Employers may wish to suspend or reduce salary payments in particular for the following reasons:

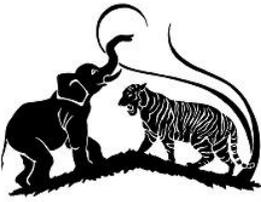
- (1) Economic hardship due to lack of income caused by the general economic downturn (e.g., in the media industry, reduction of the advertising income);
- (2) lack of work due to cancelled orders, orders that do not materialise or the unavailability of raw materials;
- (3) inability on the part of the employer to give employees access to their workplace due to government intervention (e.g., workplace closure until inspection; closure due to the discovery of an infection with the SARS-CoV virus in the workforce);
- (4) employees are absent as they cannot return to work due to travel restrictions or being quarantined following a non-work related COVID-19 contact;
- (5) an employee is quarantined for having contracted the SARS-CoV virus.

There is no system in place in Myanmar according to which an employer could unilaterally suspend or reduce salary payments in times of a crisis. All COVID-19-related government announcements and measures so far have omitted any mention of who pays the affected employees. There are also no wage subsidies available, with the very limited exception of an [EU funded programme](#).

In **cases (1)-(3)**, the employer can in our opinion legally reduce the salary stated in the employment contract only if the employees concerned agree. As, however, the bargaining power of many employees is not strong at the best of times and much less so now, it is probably not too difficult to solicit an agreement (see [this example](#)).

At least theoretically, the reduced salary may not be lower than the minimum wage (as section 14(h) Minimum Wage Law stipulates that “if work has to be paused due to the failure of the employer to provide work, the full wage has to be paid as if the work was done full time”).

It should be noted that any changes to an employment contract in a business with more than 5 employees at least theoretically have to be approved by the township labour office ([para. 3](#) Ministry of Labour, Immigration and Population Notification 140/2017).



In **case (4)**, we think that the employer can unilaterally decide not to pay salary for the time missed, although it would of course be a nice move if he didn't. If the absence is sufficiently short, the employee may decide to take paid casual leave.

**Case (5)** is a normal leave on medical certificate; either 60% of the salary is paid by the Social Security Board or, if the employee is not covered, the employer has to pay the basic salary for up to 30 days.

If the interruption is sufficiently short, the employer may request employees to take their paid annual earned leave during the interruption. Theoretically, the employer has to fix the time at which earned leave may be taken within the first three months of the employment year ([section 4\(3\) Leave and Holidays Act](#)), but we think that this timing requirement would not be given much weight in this situation.

### 3. **Mass dismissals**

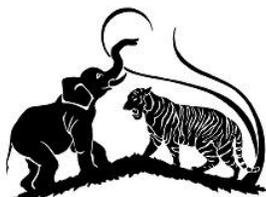
An employer wishing to temporarily or permanently close his business has to do the following. We understand that similar obligations exist if the employer wishes to keep the business open with a massively reduced workforce.

- Notifying the Factories and General Labour Laws Inspection Department. The regular notice period is 1 month prior to the closure for factories ([section 8\(6\) Factories Act](#); shorter or subsequent notice periods apply in emergencies or in case of smaller factories) and 10 days prior to the closure for other businesses (Rule 5(a) Shops and Establishments Rules);
- notifying the [Social Security Board](#);
- if there is a union or workplace coordinating committee in the enterprise, liaising with it when dismissing employees (clause 15(b)(4) standard labour contract).

The Factories and General Labour Law Inspection Department and the Social Security Board also have to be notified when the business is resumed.

Termination of an investment approved by the Myanmar Investment Commission, a Regional or State Investment Committee or the Thilawa SEZ Management Committee requires approval of the MIC, etc. (which involves a refund of the tax benefits if the investor is unlucky).

According to administrative practice, an employer must observe a one month notice period when dismissing employees or pay the corresponding basic salary instead. Furthermore,



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employees are entitled to the following severance allowance (Ministry of Labour, Employment and Social Security Notification No. 84/2015 dated 3<sup>rd</sup> July 2015):

Period of employment	Severance allowance
6 months - less than 1 year	Last basic salary for 1/2 months
1 year - less than 2 years	Last basic salary for 1 month
2 years - less than 3 years	Last basic salary for 1 1/2 months
3 years - less than 4 years	Last basic salary for 3 months
4 years - less than 6 years	Last basic salary for 4 months
6 years - less than 8 years	Last basic salary for 5 months
8 years - less than 10 years	Last basic salary for 6 months
10 years - less than 20 years	Last basic salary for 8 months
20 years - less than 25 years	Last basic salary for 10 months
25 years and more	Last basic salary for 13 months

#### 4. Social security

It should be noted that Myanmar's social security benefits in essence only cover medical treatment and (reduced) salary payments in case of illness or pregnancy. There are no unemployment benefits.

Employees made redundant are entitled to [social security benefits](#) for [up to one year](#).

Social security contribution payment obligations are [suspended during the time of business closure](#).

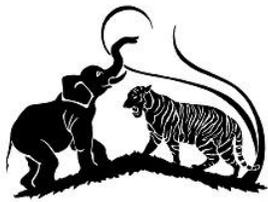
An employer is obliged to [maintain a list of employees entitled to social security benefits and make it available upon request](#).

Payment of the monthly social security contributions [is deferred by 3 months](#).

#### 5. Occurrence of an infection

If an employee had "close contact" with an infected person, this employee will be facility quarantined and the employee's colleagues are not allowed to come to work until the employee's lab result is available. If the employee tested positive, the colleagues will be facility quarantined as well.

In essence, this means that an employee (or manager, supervisor or owner, for that matter) who had "close contact" will usually shut down the entire business.



Employers must keep a list of the contact details of their employees, a daily attendance record and report any suspicion of an infection immediately to the nearest health centre.

Details are contained in the [Ministry of Health and Sport's guidance](#).

### D. Suspension, deferral or cancellation of contractual obligations

Unlike some other jurisdictions, Myanmar has not enacted specific legislation that would suspend, defer or cancel contractual obligations affected by the COVID-19 pandemic (such as, e.g., a compulsory deferral of rental payments).

Businesses feeling unable to meet obligations would usually first try to negotiate a solution and, if this fails, review their contract as to whether - and if yes, how - they can trigger a force majeure clause. Typically, a force majeure clause allows a party affected by an unforeseeable and uncontrollable event to suspend its obligation(s) for the duration of the event by notifying the other party. Force majeure clauses are (or at least: should be) individually drafted. They therefore vary from contract to contract; prior to relying on such a clause, one should read it and understand what it actually says.

If there is no force majeure clause in the contract, a party impeded by the COVID-19 pandemic from performing its contractual obligations may possibly rely on section 56 Contract Act 1872 which states: "A contract to do an act which, after the contract is made, becomes impossible, [...] becomes void when the act becomes impossible [...]."

The main difference between a typical force majeure clause and section 56 Contract Act is that, whereas a typical force majeure clause only suspends the affected party's obligation(s) for the duration of the force majeure event, section 56 terminates the contract for good.

### E. Relief measures and taxation

The government is apparently planning stimulus measures worth several hundred million USD, [but not much has leaked out yet](#).

Currently, there is a [Ks. 100 billion](#) (approx. USD 70 million) fund for soft loans benefitting citizen-owned CMP businesses, hotels and tourism companies and SMEs.

In the same notification, the Ministry of Planning, Finance and Industry announced the following tax reliefs:



- The quarterly corporate income tax and monthly commercial tax advance payments to be made by (we suppose 100% citizen-owned) CMP businesses, hotel and tourism companies and SMEs are postponed until 30th September 2020;
- exemption from the 2% corporate income tax advance payment on exports until 30<sup>th</sup> September 2020.

To the extent of our knowledge, there are currently no further tax reliefs or deferral of deadlines; in particular, income tax on salary still has to be paid monthly and in full.

Various ministries and government departments have, however, reduced license and other fees; in particular:

- The [Myanmar Investment Commission reduced its fees by 50%](#);
- the Ministry of Commerce exempts medicines and medicinal raw materials [from import license fees](#);
- the Ministry of Hotels and Tourism [exempts businesses from license fees for one year](#) and allows a [deferral of land lease payments until 30<sup>th</sup> September 2020](#).

### F. Corporate compliance

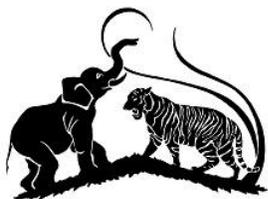
#### 1. Resident director or authorised officer

Any private company incorporated in Myanmar must have at least one director (section 4(a)(v) Myanmar Companies Law) and any branch or rep office an authorised officer (section 1(c)(iii) Myanmar Companies Law) who is ordinarily resident in the country. This person may be a Myanmar national or a foreigner, provided that he or she resides in the country for at least 183 days during any 12 month period following the start of the online filing system on 1<sup>st</sup> August 2018 or, if this is later, the date of registration of the company, branch or rep office (section 1(c)(xix) Myanmar Companies Law).

Many foreign directors and authorised officers left the country and, given that realistically the current travel restrictions are not likely to be lifted unless there is a vaccine, may not be able or willing to return in time to fulfill the residence requirements.

Companies, branches and rep offices in such a situation may wish to consider appointing a resident person from within their own organisation or a nominee from a service provider in order to fulfill the residence requirements.

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Companies, branches and rep offices having appointed nominees who are foreign nationals from a service provider may wish to consider seeking assurance that this person is currently in Myanmar.

### 2. Meetings, resolutions and filings

Thanks to a new Companies Law passed in 2017, current travel restrictions should not impact the ability of companies with regard to meetings, resolutions and filing deadlines.

It is not necessary to hold board or shareholders' meetings in Myanmar; they may be held anywhere practical, as can be inferred from section 151(a)(i) Myanmar Companies Law.

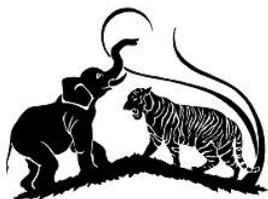
Board meetings (and, we would say if so provided in the company's constitution, also shareholders' meetings) may be held by electronic means (section 145(a)(ii) Myanmar Companies Law).

Resolutions may be passed by written consent *in lieu* of a meeting (section 156 Myanmar Companies Law).

Statutory corporate filings may be made online on [myco.dica.gov.mm](http://myco.dica.gov.mm).

## G. Banks, microfinance and insurance

- [Bank interest rates](#) are reduced to min. 6.5% (MMK deposits); max. 11.5% (secured MMK loans) and max. 14.5% (unsecured MMK loans) p.a.; furthermore, there are temporary changes in the [liquidity requirements](#) and of the [liquidity ratio calculation formula](#).
- The opening hours of banks are shortened to [10:00 am to 2:00 pm](#), starting from 28<sup>th</sup> April 2020.
- [Microfinance companies](#) are to refrain from "forcible collection" and to provide emergency services only.
- [Insurance companies](#) are to report every two weeks their activities on "corporate social responsibility for insured persons" (whatever this may be) and their emergency response action plan if the insured person is in an emergency.



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### 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:

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