

Dear Readers,

Welcome to a new edition of our newsletter.

1. Importer/trader for corn and/or rice in Thailand

Most importantly, we would like to speak to importers or traders of corn or rice in Thailand, preferably Mae Sot, as we have started an export business. If you are interested, please contact nyeinchanzaw@lincolnmyanmar.com.

2. Resident director/authorised officer

A company incorporated in Myanmar requires at least one resident director and a branch of an overseas corporation a resident authorised officer. This person may be a foreigner, provided that he or she is physically present in the country for at least 183 days during each 12 month period following registration.

This residence requirement was suspended with effect 29 March 2020 (due to COVID travel restrictions) until “the official reopening date”. As the ban on the landing of commercial airliners ended on 17th April 2022, one probably has to consider the country to be “officially reopened”.

In any case, we understand that the Directorate of Investment and Company Administration (“DICA”) considers the residence requirement to be applicable again.

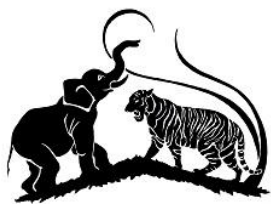
Please contact us if you cannot or do not wish to appoint a resident director or authorised officer from within your organisation. We will be happy to provide a nominee.

3. Overtime and shift systems in factories

Possibly in response to reports that appeared even in the state-owned press of factory workers being exploited by employers, the SAC’s Ministry of Labour published on 23rd June 2022 instructions on (i) **overtime** and on (ii) **shift systems** in factories.

(a) Overtime

The instructions on overtime ([English translation](#)) mostly summarise what can be found in the Factories Act 1951, a Factories and General Labour Laws Inspection Department (“FGLLID”) directive from 2012 and the Payment of Wages Rules 2018.



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Overtime requires prior permission from the FGLLID which has to be applied for 7 days in advance.

Depending on the size of the factory (up to 500, 501-1,000, more than 1,000 workers) and its location (inside or outside an industrial zone), the point of contact is the FGLLID office at township, district or regional/state level or in the respective industrial zone.

Among others, proof of agreement of the workers concerned has to be submitted.

The instructions define 9 types of processes that for technical reasons must be continuous throughout the day (electricity supply; ice machines; petroleum refinery; timber dehumidifying; water or oil pumping stations; wind or gas power stations; chemical industry; mills for extracting oil from crops; sugar mills). The regular weekly working hours in these businesses is 48 hours; they are 44 hours in other factories.

Overtime may not exceed 3 hours per day from Monday to Friday and 5 hours on Saturday in a regular factory. In a factory that has to operate continuously, overtime may not exceed 2 hours 40 minutes per day from Monday to Saturday.

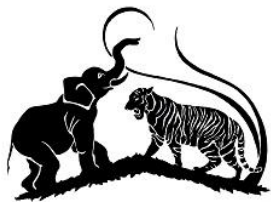
Overtime on Sunday or a gazetted holiday would require consultation with the FGLLID.

The instructions furthermore provide the formula for calculating the overtime pay for workers receiving a monthly wage, for day laborers, and for part-time workers.

(b) Shift system

The instructions on operating shift systems ([English translation](#)) seem to be intent on reigning in some questionable practices and restrict shift work in particular as follows:

- Shift work requires permission from the FGLLID and is only allowed for the 9 types of processes that for technical reasons must be continuous (at least this is what the instructions seem to say);
- a workplace coordination committee must be in place;
- agreement of the workers concerned and consent from the workplace coordination committee required;
- workers may not be required to work a day shift and a night shift in a row.



Furthermore, the instructions oblige the employer to make arrangements to ensure occupational safety of shift workers, among them

- the establishment of an “an occupational safety and health committee” (how this would be done is not clear as the Occupational Safety and Health Law 2019 that governs these committees was never signed into effect by the president);
- arranging transportation vehicles for workers and accommodation for night shift workers; and
- making plans for the evacuation of night shift workers in case of natural disaster.

4. **Compulsory conversion**

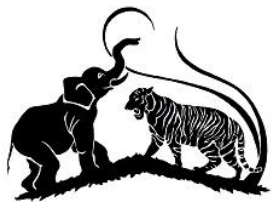
(a) **Foreign Exchange Supervisory Committee sets up reception desk at DICA**

The Japan External Trade Organisation (“JETRO”) reported on 27th June 2022 that the Foreign Exchange Supervisory Committee (which must approve any outbound remittance) recently set up a reception desk at DICA. Applicants wishing to obtain approval for an outbound remittance must file an application through the MIC or through DICA and provide:

- Cover letter ([sample](#)) on stationary with the company’s letterhead, addressed to the Chairman of the MIC or the Director General of DICA;
- table summarising the application ([sample](#));
- bank statement showing the remaining balance;
- MIC permit (if applicable);
- certificate of incorporation and company extract; and
- evidence of the need to make an outbound remittance (invoice, contract, etc.).

JETRO made enquiries with DICA according to which (i) the timeline is 1 month and (ii) an application is in particular reviewed for the following 6 items:

- Company properly incorporated?
- Remittance for business reasons?



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- Application should not be the resubmission of an attempt made before 1st April 2022 to obtain approval for an outbound remittance.
- A remittance of dividends should not be made out of the paid-up capital.
- All taxes paid?
- If MMK have to be converted to a foreign currency prior to making the remittance, what is the reason for it and how much have to be converted.

Furthermore, we suppose that the fate of the application would also much depend on, among others, whether the purpose of the remittance is to pay for an item that is favoured or not favoured by the SAC's current policy, the background of the applicant, and the availability of foreign currency.

(b) More “targeted exemptions”

A [CBM letter dated 29th June 2022](#) specifically exempts the foreign currency account of Woori Bank with MFTB; the foreign currency accounts of SEZ Management Committees and their named subsidiaries; the Export-Import Bank of India; China National United Oil Corporation (Myanmar Branch); and Punjab National Bank Yangon Representative Office.

(c) Partial backtracking on the direct use of RMB in border trade

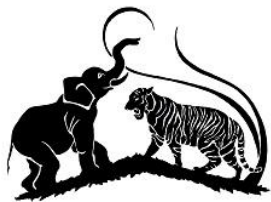
On 3rd March 2022, the Central Bank set out procedures for the direct settlement in RMB and THB in the Muse 105th Mile, Myawaddy and Tachileik border trade areas.

At least for the Muse 105th Mile zone, this was [rescinded on 2nd July 2022](#) for the export of rice, pulses, corn and oilseeds which may now only be sold for USD.

We suppose that also in other border trade areas, these crops may only be sold for USD, but we haven't seen a corresponding notification.

5. Recommendation letters from trade organisations required for import licenses

JETRO furthermore reports that, as a result of the dramatic increase in the types of goods for which an import license is needed, the Ministry of Commerce is increasingly outsourcing part of the approval process to trade organisations.



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The latest example seems to be the Myanmar Food Processors and Exporters Association (MFPEA) whose recommendation letter is now required for an importer to obtain an import license for foodstuff. Importers seem to have to convey their import plans for 2022/23 to the association, and the association seems to allocate quota to the applicants based on the amounts that they imported in the past.

6. Checklist series

In our “checklist” series this time: “[Corporate compliance](#)”.

We hope that you have found this information useful.

Sebastian Pawlita
Managing Director

Nyein Chan Zaw
Director



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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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