

# LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

## NEWSLETTER 186 - 19 January 2025

**Dear Readers,**

Welcome to a new edition of our newsletter.

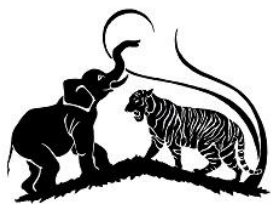
### **1. Labour law seminar**

Download seminar invitation [as PDF](#)

We reviewed a number of internal employment manuals for NGOs and INGOs recently and found that we always had the same comments. As we think that these issues are of general interest, we will hold a labour seminar with the following topics. The seminar is open to anyone, not just to NGOs and INGOs.

- The difficult ways for employees to take action against unfair labour practices - how risky is it for employers not to comply with labour laws?
- Financial consequences if fixed-term contracts are not renewed
- Length and extension of the probationary period
- Difference between overtime work and work on a weekly rest day or public holiday
- Compensation for overtime work and work on a weekly rest day or public holiday with time off instead of money
- The limited number of disciplinary sanctions in Myanmar: Dismissal for ordinary violations, dismissal for serious violations, fines
- Providing for deductions from the salary in labour contracts and employment manuals
- No mandatory retirement age for employees in private businesses and organisations
- How to handle the withdrawal of employees due to a worsening security situation
- How to include terms and conditions in the labour contract or employment manual that seem to be sensible, but are not provided for in Myanmar's labour laws?
- Other topics

<b>Date and time</b>	Thursday, 20 <sup>th</sup> February 2025, 2:30pm - 4:00pm
<b>Place</b>	Rose Garden Hotel, 171 Upper Pansodan Road, Yangon



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<b>Speaker</b>	Sebastian Pawlita
<b>Language</b>	English
<b>Participation fee</b>	MMK 25,000 per person, payable in cash at the reception desk
<b>Registration</b>	Please register by sending an e-mail to <a href="mailto:info@lincolnmyanmar.com">info@lincolnmyanmar.com</a> , stating the name of your organisation and the names of the participants.
<b>Suggesting a topic</b>	If you wish us to discuss a particular topic at the seminar, please do not hesitate to include this in your registration e-mail; we will be happy to amend the agenda.

## 2. Advance rulings on origin

### (a) Rules of origin and certificates of origin

Rules of origin determine in which country goods are considered to have been produced. They are in particular used to determine whether goods may be imported duty-free or at reduced tariffs according to the Asean Trade in Goods Agreement (ATIGA) or other trade agreements that Myanmar is a member of.

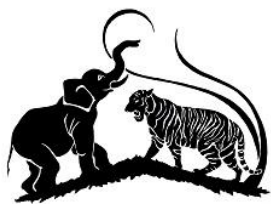
The Myanmar National Trade Portal [writes](#) that as an ASEAN member, Myanmar participates in preferential trade agreements with Australia and New Zealand, China, India, Japan, and Korea. Myanmar is also a signatory of the Global System of Trade Preferences (GSTP) among developing countries and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC).

Certificates of origin are used to document the origin of goods for the purposes of preferential tariff treatment. They are issued in the exporting country by the authority designated by the exporting country's government. If Myanmar is the exporting country, they are [issued](#) by the Ministry of Commerce under the State Administration Council ("SAC").

When importing goods into Myanmar, the certificate of origin issued in the exporting country must be submitted together with the customs declaration if preferential tariff treatment should be claimed. Sample certificates can be accessed on the National Trade Portal's [website](#).

### (b) New: Advance rulings on origin

We do not know whether there have been significant problems with certificates of origin (such as Myanmar Customs not accepting them from certain countries and denying



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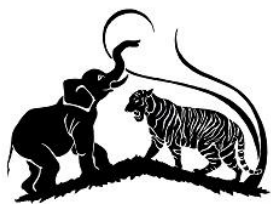
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preferential tariff treatment). In any case, it is now possible to obtain a legally binding opinion as to the origin of goods from Myanmar Customs in advance, which should reduce the risk of unpleasant surprises when importing goods with a certificate of origin.

Ministry of Planning and Finance Notification 91/2024 dated 27 December 2024 ([text in Burmese](#)) allows importers to apply to the Customs Department (head office) or relevant regional customs office for an advance ruling on origin. For each type of goods, the applicant must fill in the form prescribed by the Customs Department and submit the application in person or by post in two sets or electronically at least 60 days prior to the arrival of the goods, together with the following documents and information:

- (1) Samples of the goods to be imported;
- (2) photographs;
- (3) drawings;
- (4) catalogues;
- (5) production plans;
- (6) evidence and documents related to the composition of the goods;
- (7) production processes related to the materials constituting the goods;
- (8) information and documents necessary according to the rules on origin specified in the relevant free trade area;
- (9) opinion regarding the region of origin, if any;
- (10) copy of the previous application if applying for similar goods;
- (11) reason if the applicant does not wish the advance ruling on origin to be disclosed to the public.

The Customs Department shall notify the applicant if it takes longer than 60 days from the date of complete submission of the application to issue the advance ruling. It may reject the application if the goods are identical to those for which the applicant already filed an application within the last 3 years, a dispute has arisen for the goods between the applicant and the Customs Department



which has not yet been resolved, or the goods are prohibited according to laws, rules, notifications, orders, directives and procedures in force.

The applicant must submit the original ruling at the time of submission of the import declaration, upon which the Customs Department must check whether goods imported match the description in the ruling. The ruling can be used as a reference for 3 years from the date of issue.

If the applicant requested that the advance ruling on origin not be made public, the Customs Department may make it public only after more than 180 days.

The Customs Department may amend or revoke the advance ruling if there are changes in the laws, rules, notifications, orders, directives and procedures in force, if the rules of origin under free trade agreements change, or if there was a misinterpretation or the applicant provided incorrect information. In this case, the applicant must return the original ruling within 7 days from having been notified of the amendment or revocation.

### **3. Two important directives for insurance companies**

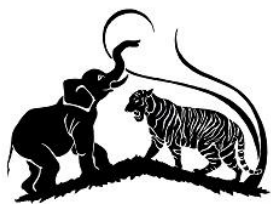
#### **(a) Insurance Accounting Directive**

##### **(aa) Scope of application, accounting standard, submission to the Financial Regulatory Department**

On 27 December 2024, the Insurance Business Regulatory Board under the SAC issued Directive 1/2024 ([text in Burmese](#)), to “prescribe how financial statements are to be presented based on insurance accounting as a method of supervision by the Insurance Business Regulatory Board to ensure the financial stability of insurance operators.” It applies to all licensed insurance operators.

Insurance operators must prepare annual financial statements according to the IFRS (as an exception, state-owned Myanmar Insurance may switch to IFRS “once it is ready”) and submit them to the Financial Regulatory Department within 4 months after the end of the financial year. They must notify the Department in advance of any unavoidable delays.

The Directive will take effect starting from the 2025-2026 financial year and repeals Directive 2/2017. The impact arising from the repeal of Directive 2/2017 and the implementation of the new Directive (e.g., the introduction of new technical provisions for existing insurance policies, and the transfer of various reserves to the retained



earnings account) must be dealt with according to the IFRS. The Directive allows for omitting information that is difficult to calculate “due to changing the financial year or other circumstances”.

### **(bb) Income tax**

Insurance operators must calculate income tax according to the Income Tax Law and Regulations and the directives issued by the Internal Revenue Department.

### **(cc) Technical provisions in the statement of financial positions**

Insurance operators must calculate by actuarial methods and separately set aside as a liability in the statement of financial positions “technical provisions” for future payments under each of their insurance policies and may thereafter transfer their life insurance reserves, general insurance reserves, general contingency reserves and other reserves included in their net assets to the retained earnings account.

Life insurers must separately set aside as technical provisions: (i) actuarial provisions, (ii) unearned premium reserve (UPR), (iii) outstanding claims provision, (iv) incurred but not reported claims (IBNR), and (v) other insurance provisions. The technical provisions of general insurers must be composed of the same elements, except for actuarial provisions.

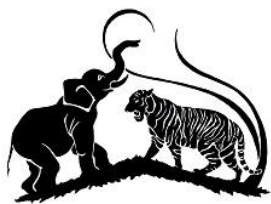
When a policy is reinsured, the insurance operator must not set aside provisions for the reinsured segment.

Setting aside “other insurance provisions” for future obligations under insurance policies requires approval from the Financial Regulatory Department.

The Directive prescribes in detail how life insurers must calculate actuarial provisions and outstanding claims and IBNR provisions, and how general insurers must calculate UPR provisions and outstanding claims and IBNR provisions.

### **(dd) Revenue and expenses in the profit and loss statement**

In the profit and loss statement, insurance operators must report as revenue (literally, “income”) all insurance premiums received from their policyholders, and as expenses all insurance claims paid to their policyholders, as well as commissions and other costs for the sale of insurance policies.



Premiums paid to, and compensations received from, reinsurers must be deducted from the gross premium revenue and the expected claims payouts respectively and reported separately.

Differences in reserves, in liabilities for claims payouts and in other provisions at the end of the last financial year and at the end of the current financial year must be reported as revenue or expenses.

#### **(ee) Insurance funds**

When an insurance operator sells a participating policy according to which the policyholder will receive a dividend, and/or sells insurance types that pay out claims and benefits based on the profits and losses incurred from investing premiums, such as universal life insurance and unit-linked insurance, it must from the relevant financial year separately establish a participating policy fund, a non-participating policy fund and/or an investment-linked fund, and keep separate the assets and liabilities and separately calculate the revenue and expenses of each fund.

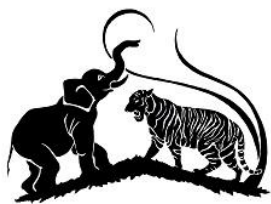
The surplus of a fund not linked to investments must be distributed by transferring it either (i) from the participating and non-participating policy fund to the shareholders' fund, or (ii) from the participating policy fund to the fund for the insurance policy owner's dividends.

When the actuary recommends transferring the surplus of a participating policy fund to the shareholders' fund, not more than 30% of the surplus may be transferred.

The surplus of a policy fund that distributes dividends shall be reported under liabilities in the insurance operator's statement of financial positions as other insurance provisions ("special provision for the payment of dividends to policyholders").

When distributing policyholders' dividends, the insurance operator must notify the Financial Regulatory Department in advance of how it calculated (i) the special reserve for paying the dividends and (ii) the dividends to be paid to each policyholder.

The insurance operator may not transfer assets from an investment-linked fund except for transfers based on insurance policies such as premium collection or the payment of claims or benefits, or with prior approval from the Financial Regulatory Department. It must calculate the difference between the revenue and expense accounts of the



investment-linked fund and report it as actuarial provisions in its statement of financial positions.

**(b) Investment Directive**

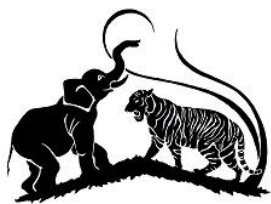
**(aa) Purpose and effective date**

Likewise on 27 December 2024, the Insurance Business Regulatory Board under the SAC issued Directive 3/2024 ([text in Burmese](#)), to “clarify the areas in which insurance operators may invest according to the investment plan referred to in rules 10 (b) and 33 (a) Insurance Business Licensing Rules and related procedures, to ensure the financial stability of insurance business operators and to facilitate effective and efficient asset management.” It will take effect from the 2025-2026 financial year.

**(bb) Assets that an insurance operator may invest in**

The Directive allows insurance operators to invest in the following “non-regulated assets” (i.e., the assets of an insurance operator that remain after deducting from the total assets any funds and government treasury bonds deposited with Myanmar Economic Bank according to rule 7 insurance Business Licensing Rules):

- (1) Cash and bank deposits in Myanmar;
- (2) treasury bonds and securities issued by the Ministry of Planning and Finance, the Central Bank of Myanmar, state-owned organisations, and Regions/States and the Nay Pyi Taw Council;
- (3) bonds issued by companies and organisations established in Myanmar that have been assigned an investment grade and creditworthiness rating by Moody’s, Standard & Poor’s, Fitch and any of their affiliate agencies;
- (4) shares, stocks, bonds and debentures, and rights, options and warrants relating thereto, issued or proposed to be issued by listed companies and public companies with more than 100 shareholders;
- (5) other assets approved by the Insurance Business Regulatory Board from time to time, such as capital assets in Myanmar or other assets denominated in foreign currency.



Assets referred to in (3)-(5) from a single entity may not exceed 10%, and all assets referred to in (3)-(5) may not exceed 20% of an insurance operator's total non-regulated assets. Furthermore, the Insurance Business Supervisory Board may individually prescribe an upper limit for assets referred to in (5).

### **(cc) Investment plan**

When an insurance operator wishes to invest in non-regulated assets or modify an approved investment plan, it must submit a new or the modified investment plan with the information specified below to the Financial Regulatory Department to obtain the approval of the Insurance Business Regulatory Board. Cash, bank deposits and life insurance loans do not need to be disclosed, and assets purchased to operate the insurance business do not count as investments.

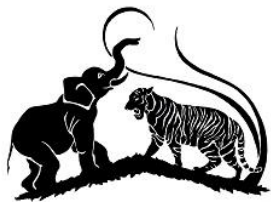
- Details of the investment manager appointed by the board of directors to manage investment risks;
- investment risk management policy including the capital adequacy ratio specified in the Solvency Directive and the actions to be taken when the capital adequacy ratio falls below the specified level;
- liquidity risk management policy that includes the expected cash inflows and outflows during the financial year, liquidity needs, relevant liquid assets that must be continuously held, and actions to be taken when liquid assets are reduced;
- other matters determined by the Financial Regulatory Department.

The investment plan must provide for the adequate management of potential losses from non-regulated assets intended for investment and a management plan for the timely payment of claims and other expenses to policyholders.

The Financial Regulatory Department has 90 days after receipt to review the investment plan before it must forward it to the Insurance Business Regulatory Board for further review and approval.

Once the investment plan is approved, the insurance operator may, at its own discretion and responsibility, purchase, hold, sell and manage non-regulated assets within the scope of Directive 3/2024.





### **(dd) Risk management**

Insurance operators must ensure the following to manage the risk of investment loss:

- The investment manager must manage investments according to the insurance operator's investment/liquidity risk management policies, ensure that current investments remain within the capital adequacy ratio, and maintain investment conditions so that liquid assets meet liquidity needs.
- Employees responsible for implementing the investment plan must maintain records of the current investment activities and regularly report the latest status to the investment manager.
- The internal auditor must regularly review whether the insurance operator's investment activities are conducted according to the investment/liquidity risk management policies and report the audit findings to the investment manager and the board of directors.
- The board of directors is responsible for appointing and supervising the investment manager, improving investment performance, and managing the risk of losing liquidity.

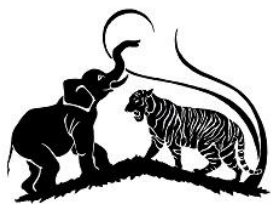
### **(ee) Reporting requirements, supervision by the Financial Regulatory Department**

The insurance operator must submit the results of the investment plan's performance for each financial year to the Financial Regulatory Department according to the Solvency Directive.

The Financial Regulatory Department must regularly review the investment activities of insurance operators to ensure that they are carried out as prescribed and that insurance operators are financially stable. It may request other information which insurance operators must promptly submit.

We hope that you have found this information useful.

Sebastian Pawlita  
Managing 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:

Sebastian Pawlita, Managing Director  
E-Mail: [sebastian@lincolnmyanmar.com](mailto:sebastian@lincolnmyanmar.com)

Phone: +95-9-262546284 (English) or +95-9-428372669 (Myanmar)

Office address: No. 35 (D), Inya Myaing Road, Golden Valley, Bahan Township, Yangon Region

Web: [www.lincolnmyanmar.com](http://www.lincolnmyanmar.com)