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A JOINT LAW VENTURE



# MYANMAR

## Employment Guide

# INTRODUCTION

Labour laws in Myanmar are outdated, and there is no single, uniform piece of employment legislation regulating employment in Myanmar. Instead, a plethora of different laws exist regulating the employment sector.

## Q & A: GENERAL MYANMAR EMPLOYMENT LAW

### 1 Is there any current active labour law and any other legislation regulating the terms of employment in Myanmar?

The Employment and Skill Development Law of 2013 (“**ESD Law**”) provides a list of specific contractual terms that must be included in every employment contract.<sup>1</sup> Under §5(b) (1-21) of the ESD Law, the prescribed contractual terms include:

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|---|--|
| ✓ The type of employment                                | ✓ Regulations to be followed by the employees                              |
| ✓ The probation period                                  | ✓ Training   |
| ✓ Wage, salary  | ✓ Resignation and termination of service                                   |
| ✓ Location of employment                                | ✓ Termination of employment contract                                       |
| ✓ Term of employment contract                           | ✓ Obligations in accordance with the employment contract                   |
| ✓ Working hours   | ✓ Mutual cancellation of employment contract between employer and employee |
| ✓ Days off, holiday and leave                           | ✓ Other matters  |
| ✓ Overtime  | ✓ Regulating and amending the employment contract                          |
| ✓ Meal arrangements during work hours                   | ✓ Miscellaneous  |
| ✓ Accommodation   |  |
| ✓ Medical treatment                                     |  |
| ✓ Ferry arrangement to place of business and travelling |  |
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<sup>1</sup> §5(b) of the Employment and Skill Development Law 2013:

“The following particulars shall be included in the employment agreement: (1) the type of employment; (2) the probation period;(3) wage, salary; (4) location of the employment; (5) the term of the agreement; (6) working hour; (7) day off, holiday and leave; (8) overtime;(9) meal arrangement during the work hour; (10) accommodation; (11) medical treatment; (12) ferry arrangement to worksite and travelling; (13) regulations to be followed by the employees; (14) if the employee is sent to attend the training, the limited time agreed by the employee to continue to work after attending the training; (15) resigning and termination of service; (16) termination of agreement; (17) the obligations in accord with the stipulation of the agreement; (18) the cancellation of employment agreement mutually made between employer and employee; (19) other matters; (20) specifying the regulation of the agreement, amending and supplementing; (21) miscellaneous.”

The Ministry of Labour has prescribed these (above) contractual terms into a standard employment contract, which is applicable to all employees, in both the public and private sector. All employment contracts in Myanmar must now conform with a standard employment contract (“**Employment Contract**”). This is the closest authority Myanmar has to regulating all of the contractual terms of employment.

## **2 Can the language of the contract be in English? If not, which language should the contract be in? Is a dual language contract permissible by law?**

It is common practice in Myanmar for companies to adopt a letter of appointment or offer letter (“**LOA**”) and thereafter use the Employment Contract. The Employment Contract builds on the basic terms adopted in the LOA. Generally, there is no requirement on the chosen language used in the LOA; however, the Ministry of Labour requires that upon registration of the Employment Contract it is in bilingual format (both Myanmar and English).

## **3 Who should be the signing authority of the contract? Can this be done by the company’s human resources department based in the head office or in Myanmar?**

The company can nominate anyone as the authorised signing delegate of the Employment Contract. Therefore, it is possible for the human resources department based in the head office to be the signing authority; however, such individual must be present in Myanmar for the actual signing of the Employment Contract at the relevant Township Labour Office. Given this, and in the traditional sense, the Chief Representative or Country Manager (“**Representative**”) of the company is the preferred signing authority of the Employment Contract (as the Representative would be based in Myanmar as well as would have management oversight for all employees of the company).

## **4 Does the employer need more than two original copies of the contract (besides one for the employee and one for the company)? If yes, then what are these required for?**

Yes, three original versions of the Employment Contract are executed with one original for the employee, one for the company, and the other for the Township Labour Office.

## **5 Does the employment contract need to be filed with any authorities?**

Yes. The Employment Contract will need to be registered with the relevant Township Labour Office.





## 6 Does an individual need to have any work permit before employment?

For local staff, each employee should obtain an employment card from the Township Labour Office of where the company is located. That said, this requirement is rarely followed by the employee or required by the employer. We believe it is an old legacy requirement from when Myanmar was ruled by the military junta. There is no requirement for expatriate staff to have a work permit per se (at this time, however we are hearing rumors that this could change), instead they are required to hold a valid business visa or Stay Permit.

Business visas are valid for 70 - 90 days from the issue date. A holder is allowed to stay in Myanmar generally for 70 days from the date arrival in Myanmar. Thereafter, he or she must leave Myanmar and re-enter, and apply for a new Business visa. However, a Stay Permit dispenses with the need to leave and re-enter every 70 days. This Stay Permit is valid for six months and may be extended for further six-month periods. However, the application procedure is long, complicated and involves a great deal of supporting documents. A Work Permit is granted only to foreign workers whose employer has an MIC Permit (investment permit).

Most foreign nationals need a visa to enter Myanmar. The only exception to this rule is that Singapore (starting from 1 December 2016), Thailand, Vietnam Philippines, Indonesia, Cambodia and Laos nationals are allowed to travel into Myanmar without a visa (usually for 14 days, though in some cases, longer). However, we cannot guarantee that the Myanmar Government is actively applying this new policy.

**7 Is there any ruling regarding the ability of the company to transfer an employee from one location to another location within Myanmar?**

Under Myanmar law, transfer or secondment of an employee from one location to another location within Myanmar is generally allowed. However, the benefits and salary permitted of the employee should not be less than the employee's current entitlements. Years of service should also be transferred over and the transfer or secondment should be properly documented with the employee.

**8 What is the maximum allowed probation period by law? Can the company extend the probation period beyond this duration? If so, by how much?**

Under Myanmar law the maximum statutory probation period shall not exceed three months and is not extendable.

**9 What is the required time in terms of a notice period to be given to an employee/by an employer during the probation period and thereafter?**

During the probation period, an employee can resign from his/her employment by giving advance written notice of at least seven days, the required period under Myanmar law.

On the other hand, the employer must provide 30 days' advance notice in writing to the employee of its intention to terminate the Employment Contract during the probation period. Alternatively, the employer can provide one month's salary in lieu of notice.

Unless subject to probation, an employee may usually resign by giving 30 days' advance notice in writing, unless otherwise stated in the Employment Contract. The employer at its option may pay salary in lieu of the notice period. Upon the resignation or termination of the employee, the employee should return all property issued to or held by him/her on or before the last day of employment.

**10 Does the company have to justify/state reasons to terminate an employee during the employee's probation period and thereafter? Can the company pay salaries in lieu of notice?**

During the probation period, the employer is not technically required to provide reasons for terminating an employee. Myanmar law provides that the employer may terminate the employment of the employee during the probation period with "sufficient grounds" for such termination by giving one month's advance notice in writing. Myanmar law provides that an employer reserves the right at any time to dismiss the employee (without severance payment and without notice) for any gross misconduct.

Generally, an employer can also terminate the employee's employment immediately (without severance payment) due to misconduct if the employee commits a violation of the employee handbook and the employer's code of conduct, after having received at least three prior warnings (one can be verbal, but the other warnings must be in writing) during his/her service with the employer.

The employer will always have at its option to pay salary in lieu of any notice period.

## **11 Is there any external tribunal/body that needs to be notified in case of a termination of an employee?**

In the case of termination of an employee, there is no mandatory requirement under Myanmar law for an employer or employee to notify either the Conciliation Body or the Dispute Settlement Arbitration Council ("DSAC"). In practice, employee disputes arising from termination are usually settled through amicable negotiation between the parties.

However, an aggrieved employer or employee may refer their complaint to the Conciliation Body for a three-day conciliation. If no agreement is reached during conciliation, the complainant may refer the matter to Court,<sup>2</sup> or request that the Conciliation Body refer the matter to the DSAC for arbitration.<sup>3</sup> The DSAC generally makes a decision concerning the dispute within seven days of the matter being referred.<sup>4</sup>

## **12 Does an employer need to pay severance to an employee?**

Paying severance to an employee depends on the circumstances giving rise to the employee's termination.

Generally, an employer can terminate the employee's employment immediately (without severance payment) due to misconduct if the employee commits a violation of the employee handbook and the employer's code of conduct, after having received at least three prior written warning letters during his/her service with the employer.

In the case of standard termination of employment, termination standard practice calculations are based on the employment period:

- ❖ From the completion of six months to less than one year, a severance payment in the amount of half of one month's salary;

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<sup>2</sup> §23 of the Settlement of Labour Dispute Law (2012).

<sup>3</sup> §25 of the Settlement of Labour Dispute Law (2012).

<sup>4</sup> §27 of the Settlement of Labour Dispute Law (2012).

- ❖ From the completion of one year to less than two years, severance payment in the amount of one month's salary;
- ❖ From the completion of two years to less than three years, severance payment in the amount of one and a half month's salary;
- ❖ From the completion of three years to less than four years, severance payment in the amount of three months' salary for severance pay;
- ❖ From the completion of four years to less than six years, severance payment in the amount of four months' salary;
- ❖ From the completion of six years to less than eight years, severance payment in the amount of five months' salary;
- ❖ From the completion of eight years to less than ten years, severance payment in the amount of six months' salary; and
- ❖ From the completion of ten years to less than 20 years, severance payment in the amount of eight months' salary.

### **13 Does the employer need to obtain approval from an external body on salary and benefits package?**

No, provided the salary complies with the Myanmar's Minimum Wage Law Labour (2013).<sup>5</sup> Myanmar has set a minimum wage of Kyats 3,600 (\$2.80 USD) per day calculated at a rate of Kyats 450 (US\$ 0.35) per hour (approximately \$56 USD per month on a standard five-day work week).

### **14 Are there any bonuses and additional salaries payable which are stipulated by the labour law? If so, what are they?**

No, although it is common (not statutory) in Myanmar to provide all employees with yearly bonuses of one month's salary during the Thingyan Water Festival (Myanmar New Year) in April.

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<sup>5</sup> Minimum Wage Law Labour (March 2013).





## 15 What is the rate for personal income tax?

An employer is required to deduct and withhold Personal Income Tax (“PIT”) for its employees in Myanmar. PIT must be withheld on behalf of each employee and remitted to the tax authorities on a monthly basis. In practice, quarterly returns are filed within 30 days after the end of either period. An annual statement of PIT withheld is due to be filed within three months from the end of the fiscal year.

PIT is based on a progressive rate of assessable income as set out below:

Income Tax Bands for Individuals		Rate of taxation
Assessable income (MMK)		(% of income)
From	To	
1	2,000,000	0%
2,000,001	5,000,000	5%
5,000,001	10,000,000	10%
10,000,001	20,000,000	15%
20,000,001	30,000,000	20%
Above 30,000,000		25%



**16 Are there any elements of the salary package that must be paid as stipulated by the labour law such as a seniority allowance, vacation bonus, family allowance, Christmas bonus, etc.? If so, what are these allowances/bonuses and do these have to be paid at a specific period? Can the employer decide not to make any payment when an employee is leaving? How are they calculated for an employee who joined the company during the fiscal/calendar year?**

Allowances are discretionary for the employer and the aforementioned allowances are not required per Myanmar law.

If the employer intends to provide these allowances to an employee, we recommend that these allowances be labeled as discretionary allowances under the Employment Contract, thus reserving the company's right to pay and calculate such an allowance as it sees fit. That said, once the allowance has been provided, regardless if policies change in company, it will be difficult to legally change the allowance to the detriment of the employee.

**17 Does the labour law stipulate a minimum break between working hours and what are the maximum working hours?**

Myanmar law stipulates a minimum break period of 30 minutes (usually taken for lunch).

Depending on the industry, there are a maximum number of hours that employees can work before they are required to be paid overtime. For office settings, the maximum number of hours per week is 44, with a maximum of eight hours per day. Anything beyond this will require overtime pay at double the workers normal rate.

Traditionally the official working hours for most businesses is 8:30 a.m. to 5:00 p.m. (Monday to Friday) 12:00 p.m. to 12:30 p.m. (with provision for 30 minutes' lunch or rest period).

**18 What is the rate of overtime for hours worked after office hours, beyond the regular normal weekly hours, on public holidays, rostered days off, Saturdays, Sundays, etc.?**

According to the Shops and Establishments Act of 1951<sup>6</sup> (the "**Relevant Labour Legislation**"), overtime "*shall be calculated at the rate of double the ordinary rate of wages payable to him*". Generally, overtime pay is required for work in excess of normal office working hours (exceeding an eight-hour day) and any work on public holidays, Saturdays and Sundays.

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<sup>6</sup> Shops and Establishments Act of 1951.

Overtime is considered as hours worked beyond the legal limit on a daily and weekly basis being eight hours per day, and a total of 44 hours per week. Consequently, even if an employee has worked less than 44 hours a week, overtime shall only be paid on hours worked over eight hours on a daily basis. Given that most employers are no longer observing a ½ day work requirement on Saturdays, we are seeing employers provide overtime for any work hours exceeding 40 hours per week (rather than the 44 hours per week in the law, which contemplated a five and half day work week).

Under the Relevant Labour Legislation (which still is viewed by the Ministry of Labour as the leading law on employment and welfare in Myanmar), overtime shall be based solely on the basic wage and not inclusive of any allowances.

## 19 What does the labour law stipulate in terms of number of annual leave days that must be given to all employees?

Generally speaking, the two most common forms of leave are '*casual leave*' and '*earned leave*' (also referred to as annual leave). We will touch upon the latter first. According to the Leave and Holidays Act of 1951 ("**Leave and Holidays Act**"), an employee is entitled to ten working days of earned leave per year once he/she has completed 12 months of continuous service for the same employer. Consequently, prior to the completion of the first 12 months of continuous employment, employees are not entitled to any earned leave. As such, Myanmar law does not provide earned leave to new joiners.

Earned leave is accrued from the date the employee commences employment and does not necessarily need to run from 1 January to 31 December. It is up to the employer if they decide to allow for earned leave to be accumulated by employees from year to year. There is nothing preventing an employer allowing for leave to be split. It is common practice for employers to develop Employee Handbooks to incorporate additional provisions including policies relating to accumulated and split leave not included in the Employment Contract.

Employees are also entitled to six days of paid casual leave per contractual year. Casual leave is given to all employees, even employees falling under the probationary period. Any casual leave not taken is forfeited, and if an employee resigns or is terminated without cause, there is no pay out of any unused casual leave.

If an employee resigns before the completion of the first twelve months of continuous employment, even though the employee is not entitled to any leave, the leave is still accrued and therefore must be paid out. Any earned leave should be paid: "at a rate equivalent to the daily average of the wages or pay (as the case may be) for the days on which he had worked during the 30 days immediately

preceding” the termination of the Employment Contract. Settling payment should be made within two days following the termination (resignation) of the Employment Contract.

## **20 What is the sick leave policy during the probation period and upon completion of the probation period?**

For an employee on probation he/she is not entitled to any sick leave and any leave taken due to illness is generally unpaid for the first six months. Myanmar law provides that employees are only entitled to 30 days of paid sick leave per contractual year after the completion of the first six months of continuous service. If an employee wishes to take sick leave during probation this will generally be unpaid.

## **21 How many public holidays are stipulated by the labour law? Is there any mandatory roll over of the public holiday if it falls on a rest day (weekend)?**

In Myanmar, there are on average 25 days of public holidays per year. If an employee is required to work on any official public holidays he shall be paid double the usual rate of pay. There is no mandatory roll over of the public holiday if it falls on a weekend.

Myanmar law recognises all public holidays. The number and date of each public holiday is fixed and gazetted annually by the Ministry of Home Affairs.

## **22 What is the duration of maternity leave stipulated by the labour law for married/single mothers, for one baby or multiple children, before the birth and after birth? How many weeks prior to confinement should the employee inform the company?**

Under Myanmar law there is generally no distinction on married/single mothers or on the number of children born. All female employees are entitled to 14 weeks of paid maternity leave (six weeks before the birth of the child and eight weeks after the birth, with an extra four weeks in case of twins) for each child. In the case of a miscarriage, a female employee is allowed to take up to six weeks of paid leave. The employee will be required to file a claim with the relevant Township Social Security office to claim for salary during the maternity leave.

The law is silent on the notice period that an employee is required to inform her employer, however, it is common practice in Employee Handbooks that usually three months’ advance notice (before the birth) is provided to the employer.

### **23 What is the rate of payment during maternity leave? Is there any refund of maternity days paid by the social security to the employer/employee and if so, what is the process?**

Under the Social Security Law, if the employee has worked for the employer for more than one year, and contributed for at least six months to the Social Security plan, she shall be entitled to receive 70 percent of her salary. In addition, the employee should be able to receive maternity expenses equivalent to an amount representing the following percentages of her average wage per month:

- ❖ 50 percent for single delivery; or
- ❖ 75 percent for twins; or
- ❖ 100 percent for triplets and above.

Maternity leave is paid under the first tier of the Social Security Plan (see specifics of Social Security Plan at question 35) and the Social Security System (through the Health and Social Care Insurance coverage). Meanwhile, the employer does not have to pay the salary of the employee during maternity leave, nor the Social Security Plan contribution.<sup>7</sup>

### **24 What are the contributions paid to the social security (or any other government institution) by the company and the employee? Are the contribution rates subject to any salary limit? What are the benefits provided by the social security? What are the calculations and benefits formula?**

Employers with more than five employees fall under the purview of §11 of the Social Security Law of 2012<sup>8</sup> requiring compulsory registration of its employees with the Social Security Board (“SSB”). The benefits provided to employees under the Social Security plan (detailed in the Social Security Law of 2012), includes leave entitlements and monetary amounts for each benefit, such as: “Sickness” benefits; “Maternity” benefits; “Funeral” benefits; “Temporary disability” benefits; “Permanent disability” benefits (“**Social Security Plan**”).

Currently, the total rate of contribution on a monthly basis is five percent of the employee’s wage, inclusive of allowances apportioned three percent to the employer and two percent to the employee with a capped total maximum contribution amount of Kyat 15,000 per month (approximately USD11.50).

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<sup>7</sup> Rule 61(a) of the Social Security Rules.

<sup>8</sup> §11 of the Social Security Law 2012.



Foreign employees fall within the labour laws of Myanmar, and therefore, fall within the Social Security Law. Contributions would follow the same requirements and contribution cap in place for Myanmar employees.

**25 What access (i.e. to what type of medical cover/benefits) do the Social Security contributions provide and for whom? Are the employee and all dependents covered?**

It is our understanding that the Social Security contributions to the Social Security Plan cover only basic access to medical care expenses and cash benefit: for “sickness; maternity; funeral grants and cash transferred to the family assistance fund.”<sup>9</sup> To our knowledge, the Social Security Plan will not apply to dependents.



**26 Does the labour law stipulate any benefits in case of industrial injury or death due to industrial accident? Does the Social Security contributions cover medical care for work related accidents and illness?**

Currently, Myanmar law does not stipulate any specific benefits in the case of industrial injury or death due to industrial accident where a company is making contributions to the Social Security Plan. Companies making contributions to the Social Security Plan are exempt from the provisions of the Workmen’s Compensation Act of 1923 relating to industrial injury or death due to industrial accidents.

Currently, there is very basic coverage under the Social Security Plan for medical care expenses and a cash benefit for sickness for work related accidents and illnesses. However, this is very basic

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<sup>9</sup> The Social Security Law 2012.

and not comprehensive coverage. The Social Security Plan is still in its infancy, but has been designed to later include additional benefits such as: invalidity; survivor benefit insurance; unemployment benefits; and the provision of a housing fund. It is unclear when these additional benefits will be included in the Social Security Plan.

## **27 What are the gratuity/end of service/pension entitlements stipulated by the labour law?**

There is no gratuity/end of service/pension entitlements stipulated under Myanmar law for private sector employees.

Presently there is no pension plan required by Myanmar law compelling private sector employees or employers to make pension contributions. It is also not common for foreign and local companies in Myanmar to provide additional private pension plans to their employees.

## **28 What is the retirement age for men and women? Is there an early/late retirement age?**

The retirement age for men and women in the private sector is not prescribed, however, the retirement age for civil servants is 60 years old.

## **29 What is the government regulation on employing expatriate employees in Myanmar? Is there any restriction in terms of the number of expatriate employees that can be employed in Myanmar? Who would provide approvals, work permits and other documents, if any, for these expatriate employees?**

At this stage employing expatriate employees and the provision of quotas is largely regulated under §24 of the Foreign Investment Law of 2012<sup>10</sup> and relates to foreign companies holding an investment permit (“**MIC Permit**”).

Generally, all foreign workers require visas to work inside Myanmar. All visas require the foreign worker to leave the country at least once every 70 or 90 days. For additional information, please see our answer at question [6] in this regard.

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<sup>10</sup> §24 of the Foreign Investment Law of 2012.

**30 Does the employer need to advise or engage with any unions or other social partners prior to the start of operations?**

We are currently not aware of any unions or other social partners prior to the start of operations that employers are required to advise or engage with. We would, however, suggest you discuss this further with the government department regulating your businesses industry sector.

**31 Does the employee handbook that outlines pay, allowances and the employment regulations need to be attested by an authority? If so, please explain by whom and whether the entire content or only certain sections need to be attested.**

An Employee Handbook is not required to be attested by any Myanmar authority but must be registered with the relevant Township Labour Office.

# For More Information

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