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Myanmar Employment Law

Mr Alexander Bohusch
30 November 2017



Agenda.

- I. Legal Framework
- II. Official Employment Contract Template and Myanmar Employment Law
- III. Additional Requirements under the Factories Act (1951)
- IV. (Draft) Workplace Safety and Health Law
- V. Dispute Resolution
- VI. Trade Unions, Strikes & Lock-Outs
- VII. Employees & Consultants
- VIII. Immigration
- IX. Payroll
- X. Social Security
- XI. Personal Income Tax



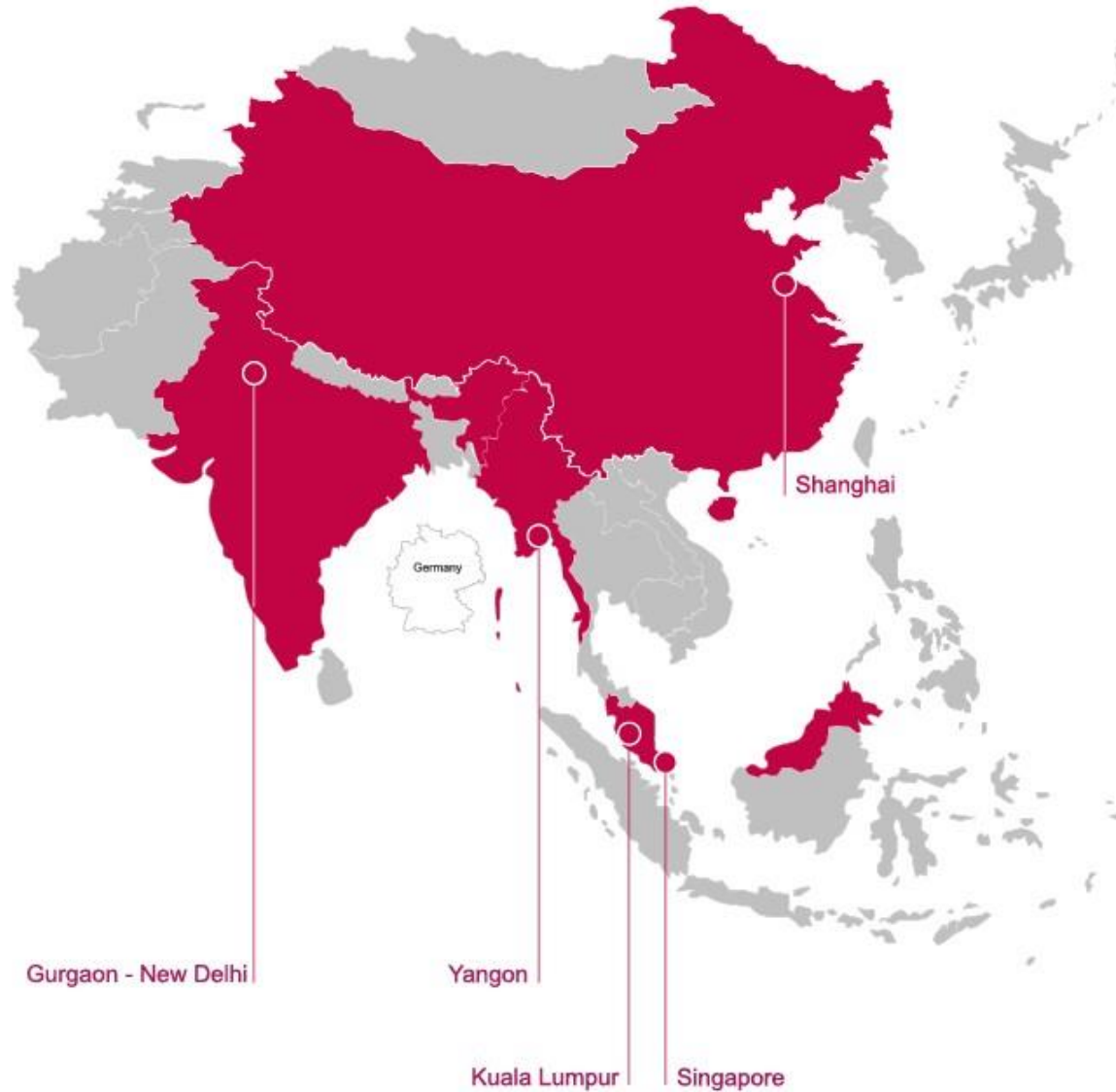
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About Luther

About Luther.

- European law firm with Asian offices in Yangon, Singapore, Kuala Lumpur, Delhi-Gurgaon and Shanghai
- Ca. 350 lawyers and tax advisors worldwide
- In Yangon since April 2013, currently ca. 40 European and Myanmar lawyers, tax advisors and accountants
- Provision of:
 - Legal advice
 - Tax advice
 - Incorporation services
 - Corporate secretarial services
 - Accounting
 - HR administration and payroll
 - Cash, fund and payment administration

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I. Legal Framework

I. Legal Framework.

Relevant Acts and Laws

- Workmen's Compensation Act (1923)
as amended 2005
- Leave and Holidays Act (1951)
as amended 2014
- Factories Act (1951)
as amended 2016
- Oilfields (Labour and Welfare) Act (1951)
- Employment Restriction Act (1959)
- Income Tax Law (1974)
- Law Relating to Overseas Employment (1999)
- Labour Organization Law (2011)
- Social Security Law (2012)
- Settlement of Labour Dispute Law (2012)
as amended 2014
- Employment and Skill Development Law (2013)
- Minimum Wage Law (2013)
- Payment of Wages Law (2016)
- Shops and Establishment Law (2016)
- Various sector-specific laws which contain labour regulations



I. Legal Framework.

Relevant Regulations, Rules and Policies of the Ministry of Labour

- Settlement of Labour Dispute Rules
- Minimum Wage Rules as amended 2016
- Labour Organization Rules
- Instructions of the Factories and General Labour Law Inspection Department
- Instructions of the Attorney General's Office on Taxation of Housing Benefits
- Ministry of Labour Notification No. 2/2015 on Minimum Wage
- Ministry of Labour Notification No. 140/2017 on Labour Contracts
- Ministry of Labour – Template Employment Contract

Current Drafts

- Workplace Safety and Health Law
- Employment and Skills Development Rules

Current Discussions

- Reform of the Labour Organizations Law



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II. Official Employment Contract and Myanmar Employment Law

II. Registration of Employment Contracts.

Employment Contract

- Pursuant to sec. 5 (a) Employment and Skills Development Law (2013), an enterprise must enter into written employment contracts with its employees within 30 days of employment
- The employment contract must then be submitted to the relevant Township Labour Office for registration

Non-Compliance

- An employer convicted of failing to sign an employment agreement shall be punished with imprisonment for up to six (6) months or with a fine or with both (sec. 38 Employment and Skills Development Law (2013))
- Employment contracts not registered with the Labour Department may be declared void

Comment Luther

- *No employment contract is required during a pre-employment probation or training period, but we would recommend to at least sign an appointment letter with most important terms of employment*
- *While the law does not allow for any kind of exemptions, this requirement is enforced only for employers with five (5) or more employees; this practice of the Township Labour Offices is further provided for in rule 12 (a) Draft Rules to the Employment and Skill Development Law (2013)*

II. Employment Contract Template.

Old Template

- In August 2015, the Department of Labour of the Ministry of Labour, Immigration and Population (Ministry of Labour) issued Notification 1/2015, announcing that with effect from September 2015, all employees in Myanmar must be employed under a prescribed employment contract template
- While the requirement of having a written employment contract had been in place since the enactment of the Employment and Skills Development Law (2013), the instructions relating to a “prescribed employment contract template” came as a surprise
- Unfortunately, the official employment contract template was drafted for factory workers and not suitable for most businesses, and the UMFCCI, labour unions, but also international **organizations** and other stakeholders, filed petitions to withdraw or at least amend Notification 1/2015

II. Employment Contract Template.

New Template

- On 31 January 2017, the Ministry of Labour convened a tripartite meeting, in which it was resolved that representatives of employers and employees would jointly work on a new employment contract template. In subsequent bipartite meetings, UMFCCI and labour unions negotiated a draft, which was eventually presented to the National Tripartite Dialogue Forum (NTDF)
- After a final bipartite meeting on 28 February 2017, the UMFCCI and labour unions resolved outstanding issues at the NTDF meeting on 27 May 2017 and submitted their final draft to the Ministry of Labour for review and approval
- On 28 August 2017, the new Employment Contract Template was officially announced (Notification 140/2017)

Comment Luther

- *As before, amendments of the official template are possible by preparing an annex to the template which may include additional/deviating provisions; the annex has to be approved by the Township Labour Office at the time of filing*

II. Employment Contract.

- Pursuant to section 5 (b) Employment and Skills Development Law (2013), the following particulars shall be included in every employment contract:
 1. Type of employment
 2. Probation period
 3. Wage/salary
 4. Location of establishment
 5. Term of employment
 6. Working hours
 7. Days-off, holidays and leave
 8. Overtime
 9. Meal arrangements (if any)
 10. Accommodation (if any)
 11. Medical treatment (if any)
 12. Transportation (if any)
 13. Obligations of the employee
 14. Training of the employee (if any)
 15. Resignation by employee
 16. Termination/dismissal by employer
 17. Contractual obligations
 18. Mutual termination agreement
 19. Other matters
 20. Amendments/supplements to employment contract
 21. Miscellaneous



II. Employment Contract.

1. Type of Job

- The new Employment Contract Template contains information on the type of business, the employee's designation/level, department and a summary of duties

2. Probation Period

- While the Employment and Skills Development Law (2013) provides for the possibility to agree on a probation period, no further details are stipulated under the law
- Pursuant to both the former and the new Employment Contract Template, the probation period shall, however, not exceed three (3) months
- If the employer deems a probation period to be unnecessary, he may appoint the employee without probation period

II. Employment Contract.

Comment Luther

- *While the former Employment Contract Template contained some more provisions regarding probation period (e.g. the employee shall not be paid less than 75 % of the basic wage during his probation period), the new Employment Contract Template lacks specific information on the payment of wages/salaries, employment after probation period and termination and resignation during probation period*
- *In absence of any further provisions, the new Employment Contract Template does not actually distinguish between employees on probation and employees who have completed their probation period, since rules on termination and other terms are identical*
- *The only difference is, that the requirement to sign and register an employment contract does only apply after completion of the probation period*

II. Employment Contract.

3. Wage/Salary

- The new Employment Contract Template provides for the options to agree on daily wage, piece-rate or monthly salary in either Myanmar Kyat or foreign currency (e.g. US Dollar)
- Depending on the employee's performance and subject to the prescribed minimum wage, the wage/piece-rate/salary may be amended from time to time by mutual agreement between the employer and employee
- Minimum Wage
 - Minimum wage has been prescribed in Notification 2/2015 for all enterprises with more than 15 employees at MMK 3,600 per day for eight (8) hours of work (excluding break time)
 - The Minimum Wage Law (2013) defines wage as the basic salary excluding pension and gratuity payments, social security cash benefits, allowances (for travel, accommodation, meals, electricity charges, water service charges and duties, taxes, medical treatment and recreational purposes) and severance payments
 - Per definition, wage also includes bonuses and overtime compensation, but in practice, overtime payment is not considered for the calculation of the minimum wage

II. Employment Contract.

- Payment of Salary
 - Sec. 4 Payment of Wages Law (2016) provides, that an employer shall, in case of hourly, daily, weekly job or a job of any other time interval, or temporary job or piece-job, disburse remuneration for such job to the employee upon completion of the job or at any time period agreed with the employee; the period of time agreed between the employer and employee shall, however, not exceed one (1) month
 - Salaries for permanent employees shall be disbursed monthly:
 - If the workforce does not exceed 100 employees, remuneration shall be disbursed on the end date of the period of remuneration:
 - If the workforce exceeds 100 employees, remuneration shall be disbursed within five (5) days of the end of the period of remuneration
 - In case of termination by the employer, the remuneration payable shall be paid within two (2) business days from the termination date
 - In case of voluntary resignation by the employee, payment shall be made on the end date of the period of remuneration
 - In case of death of an employee, the remuneration shall be paid to the legal inheritor within two (2) business days from the date of such decease

II. Employment Contract.

4. Location

- The location of the workplace of the employee shall be stated in detail (i.e. number, street/road, ward/village/industrial-zone, township and region/state in Myanmar)

Comment Luther

- *This requirement can result in difficulties in the event of a move of the employer's operation, e.g. to a new address*
- *If the employer requires an employee to work at different locations (e.g. offices in Yangon and Mandalay), we would recommend to list all locations in the employment contract*

II. Employment Contract.

5. Term of Employment

- The term of employment is not regulated under the applicable laws
- Upon expiry of a fixed term employment, and provided that there was no breach of the terms of the employment by the employee, termination or change of work and/or payment conditions, the employment contract shall be extended
- The new Employment Contract Template explicitly provides, that the employer shall not refuse to extend the contract term without valid reasons (i.e. the extension of the employment contract shall be the norm).
- Further, the new Employment Contract Template provides, that an employee's length of service shall be calculated from the date of joining the factory/workshop/enterprise/company until the termination (i.e. the accumulated length of all renewed fixed terms)

Comment Luther

- *Pursuant to the former practice of the Department of Labour, an employment contract could not exceed two (2) years (it could, however, subsequently be renewed for further term(s)), which was neither in line with Myanmar employment laws and the principle of freedom of contract, nor with the needs of many of employees and seemed to contradict Notification 84/2015 of the Ministry of Labour concerning severance payments for the termination of employment contracts by the employer based on the duration of an employee's employment*

II. Employment Contract.

6. Working Hours

- Pursuant to the new Employment Contract Template, the regular working hours, meal and rest times shall be stated in detail
- If required due to the nature of the enterprise, this provision may, however, upon mutual agreement between the employer and employee be amended in accordance with the applicable laws

Comment Luther

- *This may imply that (e.g.) employers in the hospitality sector may enjoy greater freedom to agree on flexible working hours*
- *It remains, however, to be seen, how the Department of Labour will interpret this provision, as any amendment of the working hours shall be submitted to the relevant authorities for approval*

II. Employment Contract.

Factories Act (1951)

- **Working hours (per day/week) - „Regular worker“:** not more than eight (8) hours per day and 44 hours per week
- **Working hours (per day/week) - Worker carrying out work that must be done continuously:** not more than eight (8) hours per day and 48 hours per week
- **Days per week:** shall not exceed six (6) days per week, i.e. one weekly rest day (ordinarily Sunday)
- **Minimum rest period:** 30 minutes after five (5) hours of work
- The combined working hours and rest break shall not exceed ten (10) hours per day

Shops and Establishment Law (2016)

- **Working hours (per day/week):** not more than eight (8) hours per day and 48 hours per week
- **Days per week:** shall not exceed six (6) days per week, i.e. one weekly rest day (ordinarily Sunday)
- **Minimum rest period:** 30 minutes after four (4) hours of work
- The combined working hours and rest break shall not exceed eleven (11) hours per day

II. Employment Contract.

Factories Act (1951)

Child (14-15 years)

- Maximum 4 hours/day, no overtime, no work on Sundays
- No work between 6:00 PM and 6:00 AM
- Only two shifts allowed, no overlap, and only allowed in one factory
- No hazardous work (harmful to health, deterring the education and in a workplace wherein child would be exploited)

Adolescent (16-17 years)

- Can work as an adult if in possession of a medical certificate
- Without a medical certificate, must work under the restrictions for those aged 14 – 16

Young Person (14-17 years)

- Medical certificate of fitness required
- Prohibited from cleaning, lubricating, or adjusting machinery while a machine is in motion
- Prohibited from being employed in a factory where a cotton opener is at work
- Prohibited from lifting, carrying or moving heavy loads likely to cause injury



II. Employment Contract.

Shops and Establishment Law (2016)

Child (14-16 years)

- Not more than 4 hours/day working time, with 30 minutes rest each day
- No work between 6:00 PM and 6:00 AM
- At least one rest day/week

Young Person (14-18 years)

- Prohibited from working unless in possession of a medical certificate proving fitness to do so
- Not allowed to work in hazardous conditions of work, which are specifically identified

II. Employment Contract.

Other relevant Laws and Standards

- Child Law (1993) (currently under revision)
 - Age: not defined
 - Where underage workers are already employed or discovered, companies should strive to support reasonable remediation measures that promote social integration of children and enable them to enroll in school or alternative education programs
- MGMA Code of Conduct (2015)
 - Age: 15 years
 - Where underage workers are already employed or discovered, companies should strive to support reasonable remediation measures that promote social integration of children and enable them to enroll in school or alternative education programs

II. Employment Contract.

International Laws and Standards as applied in Myanmar

- ILO 138 Minimum Age Convention (not ratified yet)
 - 13 – 15 years: Light Work
 - 15 – 18 years: Regular Work
 - 18 years: Hazardous Work
 - Exceptions may apply to developing countries
- ILO 182 Worst Forms of Child Labor Convention (ratified in 2013)
 - Minimum age: 18 (no exceptions)
 - Type of work: worst forms and hazardous Work

II. Employment Contract.

International Laws and Standards as applied in Myanmar

- ILO 190 Worst Forms of Child Labor Recommendation (nonbinding)
 - Minimum age: 18
 - Exception: 16, if the work has been negotiated with workers and unions, and “the health, safety, and morals of the children concerned are fully protected, and the children have received adequate specific instruction or vocational training in the relevant branch of activity”
 - Type of work: Hazardous Work
- UN Convention of the Rights of the Child (1989) (ratified in 1991)
 - Minimum age: not defined
 - Introduction of a minimum age for employment and regulation of the hours and conditions of employment; appropriate penalties and sanctions in case of violations
 - Protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development

II. Employment Contract.

7. Public Holidays

- Under the Leave and Holidays Act (1951), every employee shall be granted paid public holidays as announced by the Government in the Myanmar Gazette; on average, Myanmar has 25 public holidays per year, depending on the date of the variable holidays:

New Year's Holidays	1	1 January
Independence Day	1	4 January
Union Day	1	12 February
Peasants Day	1	2 March
Full Moon Day of Tabaung	1	variable
Armed Forces Day	1	27 March
Maha Thingyan (Water Festival)	5	13–17 April
May Day	1	1 May
Full Moon Day of Kasong	1	variable
Full Moon Day of Waso (beginning of Buddhist Lent)	1	variable
Martyr's Day	1	19 July
Full Moon Day of Thadingyut (end of Buddhist Lent)	3	variable
Eid al-Adha	1	variable
Deepavali	1	variable
Full Moon of Tazaungmone	2	variable
National Day	1	variable
Kayin New Year Day	1	variable
Christmas Day	1	25 December

II. Employment Contract.

Leave Days

- Myanmar law recognizes various types of leave
- In general, leave is governed by the Leave and Holidays Act (1951), but additional rules may apply in accordance with other laws, such as the Social Security Law (2012) for employees contributing to the Social Security Fund
- Casual Leave
 - Every employee is entitled to six (6) days of paid casual leave per year of employment
 - Casual leave may not be carried forward to the subsequent year and may not be spent for more than three (3) consecutive days at a time, except in the case of religious or compulsory social events (e.g. weddings, funerals)
 - Casual leave may not be enjoyed in conjunction with any other type of leave

II. Employment Contract.

- Earned Leave
 - Earned leave may be enjoyed for a minimum of ten (10) days consecutively or separately per year of employment, provided the employee has completed twelve (12) consecutive months of service with a minimum of 20 working days per month
 - For each month with less than the minimum of 20 full days of work, one day may be deducted from the minimum earned leave entitlement
 - Earned leave may be carried forward and can be accumulated up to three (3) years, unless otherwise agreed between employer and employee

II. Employment Contract.

- Medical Leave
 - Medical leave is governed by the by the Leave and Holidays Act (1951) and, for employees contributing to the Social Security Fund, further by the Social Security Law (2012)
 - Under the Leave and Holidays Act (1951), employees are entitled to 30 days of paid medical leave per year, provided that they have completed six (6) months of service
 - Employees covered by the Social Security Law (2012) are also entitled to 30 days of medical leave (if they have completed six (6) months of service), but may enjoy additional leave in case of certain work injuries and illnesses
 - Theoretically, employees covered by the Social Security Law (2012) may receive part of their salary from the Social Security Fund, but in practice, such medical leave is often also granted as paid leave

II. Employment Contract.

- Maternity & Paternity Leave
 - Maternity leave is governed by the by the Leave and Holidays Act (1951) and, for employees contributing to the Social Security Fund, by the Social Security Law (2012)
 - Under the Leave and Holidays Act (1951), employees are entitled to 14 weeks of paid maternity leave, to be taken six (6) weeks before confinement and eight (8) weeks after confinement
 - Employees covered by the Social Security Law (2012) are entitled to similar 14 weeks of maternity leave, as well as:
 - Additional four (4) weeks in case of twins
 - Up to six (6) weeks of leave in the event of a miscarriage (exception: criminal abortion)
 - Male employees covered by the Social Security Law (2012) may enjoy 15 days of paternity leave after confinement of their wife
 - Theoretically, employees covered by the Social Security Law (2012) may receive part of their salary from the Social Security Fund, but in practice, such maternity leave is also often granted as paid leave

II. Employment Contract.

- Funeral Leave
 - The new Employment Contract Template introduces the additional category of funeral leave
 - Employees shall be entitled to leave in accordance with the law without deduction from their minimum wage in case of death of a parent or family member
 - If the statutory leave entitlement has been exhausted, unpaid leave may be granted upon mutual agreement between employer and employee

Comment Luther

- *Myanmar labour law does not provide for separate funeral leave*
- *Since the new Employment Contract Template provides that such leave shall be granted in accordance with the law, and explicitly refers to the option to grant unpaid leave, it may be the intention that Funeral Leave be deducted from casual or earned leave*

II. Employment Contract.

8. Overtime

- Every work in excess of eight (8) hours per day or 44/48 hours per week is considered overtime
- Even if employees work only 40 hours per week, the ninth (9th) hour on a working day would be considered overtime (even if weekly working hours do not exceed 44/48 hours)
- Overtime shall be calculated as $\{(monthly\ salary \times 12\ months) / 52\ weeks / 44\ (or\ 48)\ hrs\} \times 2$

Comment Luther

- *Overtime pay shall only be paid if the employer instructs the employee/gives permission to work overtime.*
- *Any implementation of a constant overtime policy requires the permission of the relevant authorities (e.g. the Factories and General Labour Law Inspection Department); for any regular overtime in factories and workshops, a proposal with the signatures of all proposed employees shall be submitted to the Factories and General Laws Inspection Department*
- *It should further be noted, that the new Shops and Establishment Law (2016) no longer provides for an exception for managers; accordingly, all employees are entitled to overtime compensation*



II. Employment Contract.

Factories

- **„Regular“ worker:** not more than 16 hours overtime per week
- **Worker in a position who must work continuously:** not more than 12 hours overtime per week
- The overtime wage/salary is double the normal wage/salary
- No set-off of overtime
- Overtime on the weekly rest day: substitute rest day

Offices and Shops

- **Overtime per week:** Not more than 16 hours overtime per week
- The overtime wage / salary is double the normal wage/salary
- No set-off of overtime
- Overtime on the weekly rest day: substitute rest day

II. Employment Contract.

9. Meal Arrangements

- Under Myanmar law, employers are not required to provide meals to their employees
- Whether employers provide their employees with meals shall, however, be clearly stated in the employment contract

10. Accommodation

- Under Myanmar law, employers are not required to provide accommodation to their employees
- Whether employers provide their employees with accommodation shall, however, be clearly stated in the employment contract

II. Employment Contract.

11. Medical Care

- Employees covered by the Social Security Law (2012) are entitled to medical treatment in accordance with the Social Security Law (2012)
- Work-related injuries of employees not covered by the Social Security Law (2012) shall be handled in accordance with the law (e.g. the Workmen's Compensation Act (1923)) and the employer shall arrange for medical treatment at its own expenditure (i.e. for workplace injuries, occupational diseases and sickness in the workplace)

12. Ferry to/from Workplace & Travel

- Under Myanmar law, employers are not required to arrange for transportation to/from the workplace
- Whether employers provide their employees with transportation to/from the workplace shall, however, be clearly stated in the employment contract

II. Employment Contract.

13. Employee Rules

- The new Employment Contract Template explicitly allows for the use of employment rules, which may be prescribed upon mutual agreement between the employer and employee in accordance with the nature of the enterprise

Comment Luther

- *The new Employment Contract Template provides, that rules specifying categories of ordinary/grave misconduct and levels of disciplinary action shall be attached to Employment Contracts as annexures*
- *While no further information is provided, we understand, that such categories/levels of disciplinary action shall be submitted to the relevant authorities for approval*

II. Employment Contract.

14. Training

- The employer and employee may mutually agree upon a training in accordance with the Employment and Skills Development Law (2013)
- A separate agreement shall be executed in accordance with the law concerning the attendance of occupational skills training courses

Comment Luther

- *In contrast to the former Employment Contract Template, no further information on training is contained in the new Employment Contract Template*
- *If training is provided prior to employment, no employment contract has to be registered until the employment is confirmed*
- *The Employment and Skills Development Law (2013) does not contain specific provisions on training at the employer's expenditure, e.g. the consequences in the event of a resignation of employee*
- *We would recommend to agree on clear reimbursement obligations with any employee receiving training*

II. Employment Contract.

15. Resignation

- Currently not regulated by law
- The conditions and requirements are primarily governed by the policies of the Ministry of Labour, most importantly the contract template
- The new Employment Contract Template provides for the possibilities for the employee's resignation, by giving the employer a minimum of one (1) month's prior notice of resignation

Comment Luther

- *While the new Employment Contract Template provides for the employer's permission for the resignation of an employee, we would submit that the resignation is a unilateral act not requiring permission, unless a minimum fixed term of employment was agreed*

II. Employment Contract.

16. Termination

- Currently not regulated by law
- The conditions and requirements are primarily governed by the policies of the Ministry of Labour, most importantly the contract template
- Pursuant to the new Employment Contract Template, the termination of an employee shall be done in writing and signed, and the employer shall keep records of the reason for termination
- Dismissal
 - An employee who violates the prescribed rules shall – for ordinary misconduct – be given written warnings for the first (1.) and second (2.) violation and sign an undertaking for the third (3.) violation
 - In case of any further violation within twelve (12) months from the undertaking, the employer shall be entitled to terminate the employment contract without payment of compensation
 - If no further violation is committed within twelve (12) months from the undertaking or a case of ordinary misconduct, all previous offences of the employee shall be cancelled

Comment Luther

- *Since the Employment Contract Template is silent on the consequences of grave misconduct, it can be assumed that an immediate, summary dismissal is permitted*

II. Employment Contract.

- Termination for reason (with payment of severance, as applicable)
 - Winding-up of the business of the employer
 - Suspension of business due to unforeseeable events
 - Death of the employee

- Termination by notice
 - Other than for a reason as set out above, the employer may terminate the employment of an employee with at least one (1) months' notice in advance and payment of severance pay, provided that such termination does not violate any applicable law

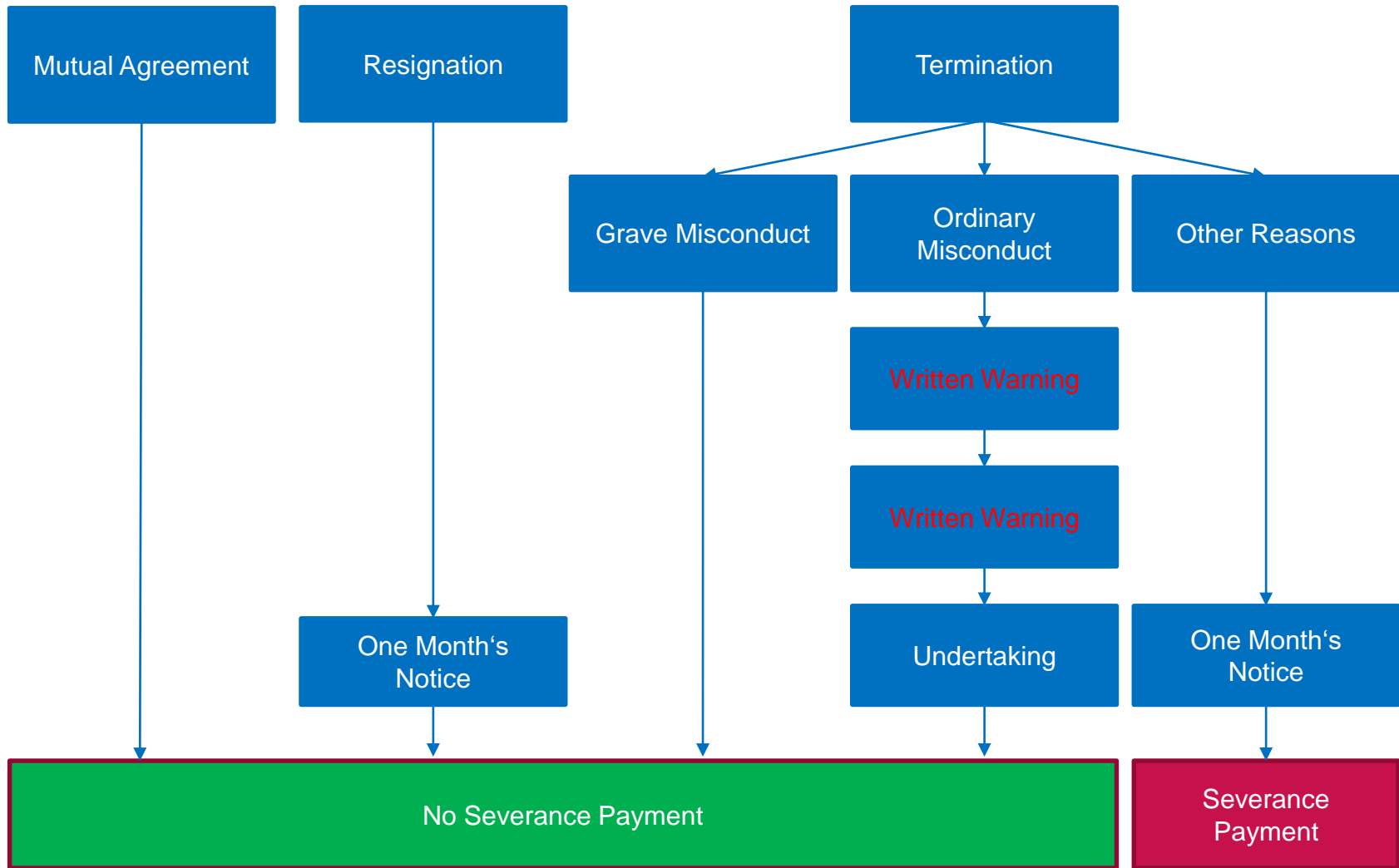
- Redundancy
 - The new Employment Contract Template recognizes redundancy as a reason for termination
 - Employers shall coordinate with labour organizations in respect of redundancies and termination of employees
 - If no labour organization has been formed, the employer shall coordinate with the Workplace Coordination Committee (if any)

II. Employment Contract.

- Severance Pay
 - Severance pay was formally introduced by Notification 84/2015
 - During Probation, only outstanding payments at the time of termination are payable
 - In case of a dismissal with reason or resignation of the employee, no severance payment is payable
 - In case of a termination by notice, or for insufficient reason, severance is payable as follows:

Term of Employment	Notification 84/2015
6 months – 1 year	½ monthly salary
1 – 2 years	1 monthly salary
2 – 3 years	1 ½ monthly salaries
3 – 4 years	3 monthly salaries
4 – 6 years	4 monthly salaries
6 – 8 years	5 monthly salaries
8 – 10 years	6 monthly salaries
10 – 20 years	8 monthly salaries
20 – 25 years	10 monthly salaries
More than 25 years	13 monthly salaries

II. Employment Contract.



II. Employment Contract.

17. Contractual Obligations

- Employer
 - The employer shall not discriminate and refrain from denying equal opportunity based on membership of association, race, religion, gender and age
 - Foreign employers, supervisors, experts and family members shall respect and abide by prevailing laws, culture and customs of Myanmar
 - The employer shall respect and comply with prevailing laws of the Union of Myanmar including prevailing labour laws
 - The employer shall be able to sue and be sued in accordance with law
 - The employer shall inform employees about their rights and benefits
 - The employer shall give special priority to workplace safety in accordance with business needs

II. Employment Contract.

- Employee
 - The employee shall comply with instructions concerning workplace safety, issued in accordance with the needs of the enterprise
 - The employee shall wear such workplace safety equipment prescribed in accordance with operational needs when entering the workplace
 - The employee shall, at the workplace and during work hours, refrain from consuming intoxicants, causing harassment, danger or physical harm to colleagues
 - The employee shall keep confidential information disclosed as such by the employer and shall refrain from extracting, using, copying, removing or deleting documents, accounts or records related to the business without order or permission
 - The employee shall abide by the rules and regulations issued from time to time in agreement subsequent to negotiation between the employer and employee representatives
 - The employee shall pay taxes and fees required to be contributed or paid by prevailing laws at the prescribed rates
 - The employee shall respect and abide by the prevailing labour laws
 - The employee shall be able to sue and be sued in accordance with law

II. Employment Contract.

18. Cancellation of Employment

- Upon mutual agreement between the employer and employee, the employment contract may be cancelled

Comment Luther

- *The new Employment Contract Template contains no more details on the cancellation of the employment by mutual agreement*
- *A mutual termination by execution of a termination agreement between employer and employee should, however, always be possible*

19. Other Matters (Labour Disputes)

- Labour Disputes between the employer and the employee shall be resolved through mediation
- If an amicable solution cannot be achieved, the dispute shall be resolved in accordance with the Settlement of Labour Disputes Law (2012) and any other prevailing laws

II. Employment Contract.

20. Formulation, Amendments & Addition of Contractual Terms

- Upon signing, the employment contract shall be submitted to the relevant Township Labour Office
- The employment contract may be amended by agreement between the employer and the majority of the employees as required due to the nature of the enterprise, subject to compliance with the labour law and international standards
- Any amendment of or supplement to the submitted employment contract shall be in accordance with prevailing labour laws, mutually agreed upon and submitted to the Township Labour Office

Comment Luther

- *Pursuant to the former Employment Contract Template and practice of the Department of Labour, any employment contract shall be submitted to the Township Labour Office for review, approval and registration*

II. Employment Contract.

21. Miscellaneous

- The employee shall be entitled to enjoy all rights, protections and benefits provided in labour laws and related laws
- Additional rights and duties may be prescribed by the employee manual of the employer, which shall be deemed a part of the employment contract

Comment Luther:

- *It should be noted, that post-contractual non-compete obligations for employees are not permitted and void in accordance with the Myanmar Contract Act (1872)*
- *Non-solicitation obligations should, however, be valid under Myanmar law*
- *It is further recommended to include very clear confidentiality and compliance obligations, including restrictions on bribery, acceptance of gifts, etc.*

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**III. Additional Requirements
under the Factories Act
(1951) as amended in 2016**

III. Factories Act – Summary.

Factories

- Any premises where five or more workers work, or have been working on any day during the previous twelve months, and which is carrying out or ordinarily carries out any part of a manufacturing process with the assistance of power. The expression also includes any premises where ten or more workers work, or have been working on any day during the previous twelve months, which is carrying out or ordinarily carries out any part of a manufacturing process, without the assistance of power. Furthermore, motor-vehicle repair workshops, motor-vehicle painting, printing presses and oil-mills are included; and other workplaces also may as needed be designated [as factories] through notification.

Workers

- A person employed, whether for wages or not in any manufacturing process, or in cleaning any part of machinery or premises used for manufacturing process, or in any other kind of work whatsoever incidental to or connected with, the manufacturing process or the subject of the manufacturing process, including supervisors, accountants, clerks, security men, drivers, cleaning workers, cooks, postmen, gardeners and general workers who are solely employed in a place which does not relate to manufacturing process or in a place which relates to manufacturing process

III. Factories Act – Summary.

Provisions on

- Health (Chapter III, sec. 13-22)
- Safety (Chapter IV, sec. 23-43)
- Welfare (Chapter V, sec. 44-51)
- Working Hours (Chapter VII and VIII, sec. 59-84)
- Punishments and Procedures (Chapter IX, sec. 85-98)

III. Factories Act – Summary.

Health (Chapter III)

- Cleanliness (sec. 13, 14)
- Ventilation and temperature (sec. 15)
- Dust and fume (sec. 16)
- Artificial humidification (sec. 17)
- Overcrowding (sec. 18)
- Artificial lighting (sec. 19)
- Drinking water (sec. 20)
- Latrines and urinals (sec. 21)
- Spittons (sec. 22)

III. Factories Act – Summary.

Examples

- Cleanliness
 - “Every factory and the compound there of shall be kept clean and kept free from effluvia arising from any drain, privy or other nuisance, (...)” (sec. 13 (1) Factories Act (1951))
- Ventilation and Temperature
 - “Effective and suitable arrangement shall be made in every factory for securing and maintaining in every workroom adequate ventilation by the circulation of fresh air, and such equable temperatures as will secure workers therein reasonable conditions of comfort and health; (...)” (sec. 15 (1) Factories Act (1951))

III. Factories Act – Summary.

Safety (Chapter IV)

- Fencing of machinery (sec. 23)
- Work on a near machinery in motion (sec. 24)
- Employment of young persons on dangerous machinery (sec. 25)
- Devices for cutting off power (sec. 26)
- Shuttlings engine (sec. 27)
- Casing of new machinery (sec. 28)
- Prohibition of employment of women and children near cotton openers (sec. 29)
- Hoists and lifts (sec. 30)
- Cranes and such other lifting and hoisting machinery (sec. 31)
- Revolving machinery (sec. 32)
- Pressure plant (sec. 33)
- Floors, passages, stairs and means of access (sec. 34)
- Pits, sumps, openings in floors, etc (sec. 35)
- Excessive weights (sec. 36)
- Protection of eyes (sec. 37)
- Precautions against dangerous fumes (sec. 38)
- Explosive or inflammable dust, fume, etc (sec. 39)
- Arrangement to be made against cases of fire (sec. 40)
- Power to require specifications of defective parts or tests of stability (sec. 41)
- Safety of buildings and machinery (Sec. 42)

III. Factories Act – Summary.

- Overcrowding
 - “No room in a factory shall be overcrowded to such an extent as to be injurious to the health of the workers employed therein.” (Sec. 18 (1) Factories Act (1951))
- Lightning
 - “In every part of a factory where workers are working or passing, there shall be provided and maintained sufficient and suitable lighting natural or artificial.”
(sec. 19 (1) Factories Act (1951))
- Drinking Water
 - “In every factory, effective arrangements shall be made to provide at points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.” (sec. 20 (1) Factories Act (1951))

III. Factories Act – Summary.

Welfare (Chapter V)

- Washing facilities (sec. 44)
- Facilities for storing and drying clothing (sec. 45)
- Facilities for sitting (sec. 46)
- First aid appliances (sec. 47)
- Canteens (sec. 48)
- Rest sheds, rest rooms and lunch rooms (sec. 49)
- Day-care (sec. 50)

III. Factories Act – Summary.

- First Aid Appliances
 - “Every factory with more than two hundred fifty workers shall provide a treatment station or hospital. Such clinic shall be kept under the supervision of such medical officer and nursing staff as may be prescribed therein.” (Sec. 47 (3) Factories Act (1951))
- Day-Care
 - “Factories having 100 or more married female workers with offspring under five years of age shall provide day-care centres for each factory or collection of factories as prescribed by the Ministry of Social Welfare, Relief and Resettlement. In case of factories having less than 200 married women, the employer may provide other appropriate arrangements for their offspring under six years of age.” (sec. 50 (1) Factories Act (1951))

III. Factories Act – Summary.

- Working Hours (Chapter VII and VIII, sec. 59-84)
 - Working hours (per day / week): not more than eight (8) hours per day and 44 hours per week
 - Working hours (per day / week) - Worker in a position who must work continuously: not more than eight (8) hours per day and 48 hours per week
 - Minimum rest period: at least 30 minutes after five (5) hours of work
 - The combined working hours and rest break shall not exceed ten (10) hours per day
- Overtime
 - „Regular“ worker: not more than 16 hours overtime per week
 - Worker in a position who must work continuously: not more than 12 hours overtime per week

III. Factories Act – Summary.

- Working Days per Week
 - No adult worker shall be required to work in a factory on a Sunday
 - Exception:
 - Worker has had or will have a full holiday on one of the three days immediately before or after that Sunday;
 - the manager of the factory has, before that Sunday or the day substituted therefore, whichever is earlier, delivered at the office of the Inspector a notice of his intention to require the worker to work on the Sunday and of the day to be substituted therefore, and displayed in the factory a notice to that effect for not less than 24 hours before any of such two days which ever is earlier and until the expiry of such two days whichever is later
 - Provided that no substitution shall be made, which will cause any worker to work for more than ten (10) consecutive days without a full holiday

III. Factories Act – Summary.

- Substituted Holiday
 - Whereas a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 60, a worker is deprived of any of the weekly holidays for which provision is made in subsection (1) of that section, he shall be allowed, within the calendar month in which the holidays were due to him or within the two calendar months next after that month, substituted holidays equal to the number of holidays equal to the number of holidays so lost.

III. Factories Act – Summary.

- Register of Adult Workers
 - Every factory shall maintain a register of adult workers showing: –
 - Name of each worker;
 - Kind of work;
 - Group, if any, in which the workers is included; and
 - In case of shift work, the relay to which the worker is assigned.
 - The register shall be maintained to enable the inspector to inspect the same at all times during working hours or while any work is being carried on in the factory

III. Factories Act – Summary.

- Register of Juvenile Workers
 - Every factory shall maintain a register of juvenile workers showing: –
 - Name of each juvenile worker in factory and names of parents;
 - Kind of work;
 - Group, if any, in which the juvenile worker is included;
 - In case of shift work, the relay to which the juvenile worker is assigned.
 - Where his group working in shifts, the relay to which he is assigned; and
 - number of certificate of fitness.
 - The register shall be maintained to enable the inspector to inspect the same at all times during working hours or while any work is being carried on in the factory

III. Factories Act – Punishments and Procedures.

Punishments

- 1st Offence
 - “If in or in respect of any factory or place prescribed or declared under this Act to be a factory, the manager and the occupier thereof contravened any provisions of this Act or any rule or order made there under, they shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine not less than Kyats twenty lakhs, or with both; and if, after such punishment, they continue to contravene, each of them shall be punishable for each day that they continue so to offend with fine not exceeding Kyats one lakh.” (sec. 85 Factories Act)
- 2nd Offence
 - “If any person who has been convicted under section 85 is again convicted of contravening of the same provision, he shall be punishable on such subsequent conviction with imprisonment for a term which may extend to six months or with a fine of minimum Kyats thirty lakhs to maximum Kyats fifty lakhs, or with both.”(sec. 86 Factories Act)

III. Factories Act – Punishments and Procedures.

Procedures – Inspectors (sec. 11 Factories Act (1951))

- Inspectors may enter as they think fit any place which is or which they have reason to believe to be used as a factory (sec. 11 (1) a Factories Act (1951))
- They may make such examination of the premises , and machinery , and of any other document together with prescribed register relating to the factory and record on the spot or otherwise such statement of any persons as they may deem necessary for carrying out the purposes of the Factories Act (1951)
- They may exercise such other powers as may be necessary for carrying out the purposes of the Factories Act (1951)
- But: Provided that no person shall be compelled to answer any question or give any evidence tending to incriminate himself

III. Factories Act – Punishments and Procedures.

Procedures – Court Orders (sec. 89 Factories Act (1951))

- The courts may, in addition to the sentence passed on the occupier or the manager of the factory for an offence punishable under this Act, make orders
- Such order shall, in the interest of justice regarding the offence so committed, contain such measures as may be specified, to be taken within a fixed periods.
- Where such an order is made, the occupier or the manager of the factory, as the case may be, shall not be punishable under this Act in respect of the continuation of the offence during the period allowed or extended by the Court
- Provided that on the expiry of such period allowed or extended, if the order of the Court has not been fully complied with, the occupier or manager shall be deemed to have committed a further offence and shall be punishable with imprisonment for a term which may extended to six months or with fine which may extend to one hundred rupees for each day that he continues so to offend or with both

Luther.

IV. (Draft) Workplace Safety and Health Law

IV. (Draft) Workplace Safety and Health Law.

Objectives of the Draft Law

- Implement workplace safety and health regulations for all industries
- Stipulate obligations of the relevant stakeholders to reduce and eliminate workplace accidents and occupational diseases
- Ensure the early prevention of workplace hazards arising from Myanmar's economic development
- Raise productivity
- Establish safe and healthy workplaces in accordance with regional and international standards

IV. (Draft) Workplace Safety and Health Law.

Relevant Enterprises

- Factories, workshops and warehouses
- Construction enterprises
- Engineering enterprises
- Mineral extraction and processing, gems extraction and processing enterprises
- Petroleum and natural gas enterprises
- Chemical industry enterprises
- Port enterprises and regular loading/unloading enterprises
- Agricultural enterprises and livestock breeding enterprises
- Educational service enterprises and healthcare enterprises
- Communication and transportation enterprises
- Enterprises and workplaces thereof as prescribed from time to time through notification

IV. (Draft) Workplace Safety and Health Law.

Prior-Sanction and Business-Licenses

- Any person who wishes to establish an enterprise relevant to the Draft Workplace Safety and Health Law shall for a workplace safety and health business license
- Any person who wishes to carry out a construction, extension or demolition of buildings, placement, installation, addition or modification of machinery or equipment in enterprises relevant to the law, shall apply for prior sanction

IV. (Draft) Workplace Safety and Health Law.

Duties of Employers

- Employers shall evaluate the level of hazard of machinery and equipment, process materials, organic materials and chemical substances utilized in the workplace to avoid detrimental health effects, provide their employees with the appropriate body protection and gear to avoid workplace accidents and occupational diseases and implement protective, preventive and emergency response measures
- Employers shall form Workplace Safety and Health Committee and appoint Workplace Safety and Health Officers
- Employers shall bear the costs of medical check-ups for employees who have suffered a workplace accident or occupational disease and are not covered under the Social Security Law 2012 (sec. 30 Draft Workplace Safety and Health Law
- Employers shall be obliged to notify, investigate and report workplace accidents to the Factory and General Labour Laws Inspection Department:
 - In case of death of an employee, such notification shall be done not later than one (1) hour after occurrence or, in remote areas, not later than 24 hours after the occurrence
 - If an employee is unable to return to work for 48 hours or more after being involved in a workplace accident, such shall be reported within 72 hours

IV. (Draft) Workplace Safety and Health Law.

Duties of Employers (cont.)

- Employers shall not dismiss or demote any employee for any of the following reasons:
 - workplace accident or occupational disease, before receiving a medical certificate from an accredited physician
 - lodging a complaint concerning a safety or health hazard issue
 - carrying out a function of the Workplace Safety and Health Committee
 - discontinuation of work due to an imminent workplace accident or occupational disease

Duties of Designers, Manufacturers, Exporters, Suppliers and Importers

- Designers, manufactures, exporters, suppliers and importers of hazardous materials, machinery and equipment to be utilized in workplaces shall, subsequent to testing and evaluation, procure safety certificates issued by the relevant departments
- Employees shall wear and utilize safety suits, materials and equipment issued by the employer and comply with workplace safety and health related instructions and suggestions under the law

IV. (Draft) Workplace Safety and Health Law.

Offenses and Penalties

- In case of non-compliance with obligations under the law, Workplace Safety and Health Officers, employers, employees, designers, manufacturers, exporters, suppliers, importers, commissioners, installers or de-commissioners of plants, workplaces, machinery and equipment, accredited physicians, Workplace Safety and Health Auditors or training providers or any individual or entity may be subject to imprisonment and/or fines

Administrative Penalties and Appeal

- In case of violation of provisions of the law, the Director General of the Factory and General Labour Laws Inspection Department may suspend an enterprises business license (or sanction), require the business license holder to submit explanations and impose administrative penalties such as fines or the suspension or cancellation of the business license
- Any person being dissatisfied with an administrative decision may lodge an appeal to the Appeal Committee within 30 days of such decision

IV. (Draft) Workplace Safety and Health Law.

Inspectors

- The Ministry of Labour may appoint inspectors to carry out inspections and take action against defaulting workplaces
- To ensure their independency, inspectors shall neither be employed by any enterprise relevant to the law, nor engage in any business directly or indirectly connected thereto
- The Inspectors may at any time without need of warrant enter inspect and investigate any workplace relevant to the law by showing their Identification Card
- Any inspector, having reason to believe that a workplace constitutes a risk of bodily injury or health hazard to employees or damage to any property, may notify the employer in writing to provide remedies within a specified time; should the employer fail to comply with the instructions, the inspector may prohibit the continued operation of the relevant employer's business
- Should a workplace be inadequate to continue operations, deemed as hazardous to people working in the workplace or constitute an imminent danger of workplace accidents, the inspector may order the whole of any part of a workplace to be suspended

Luther.

V. Dispute Resolution

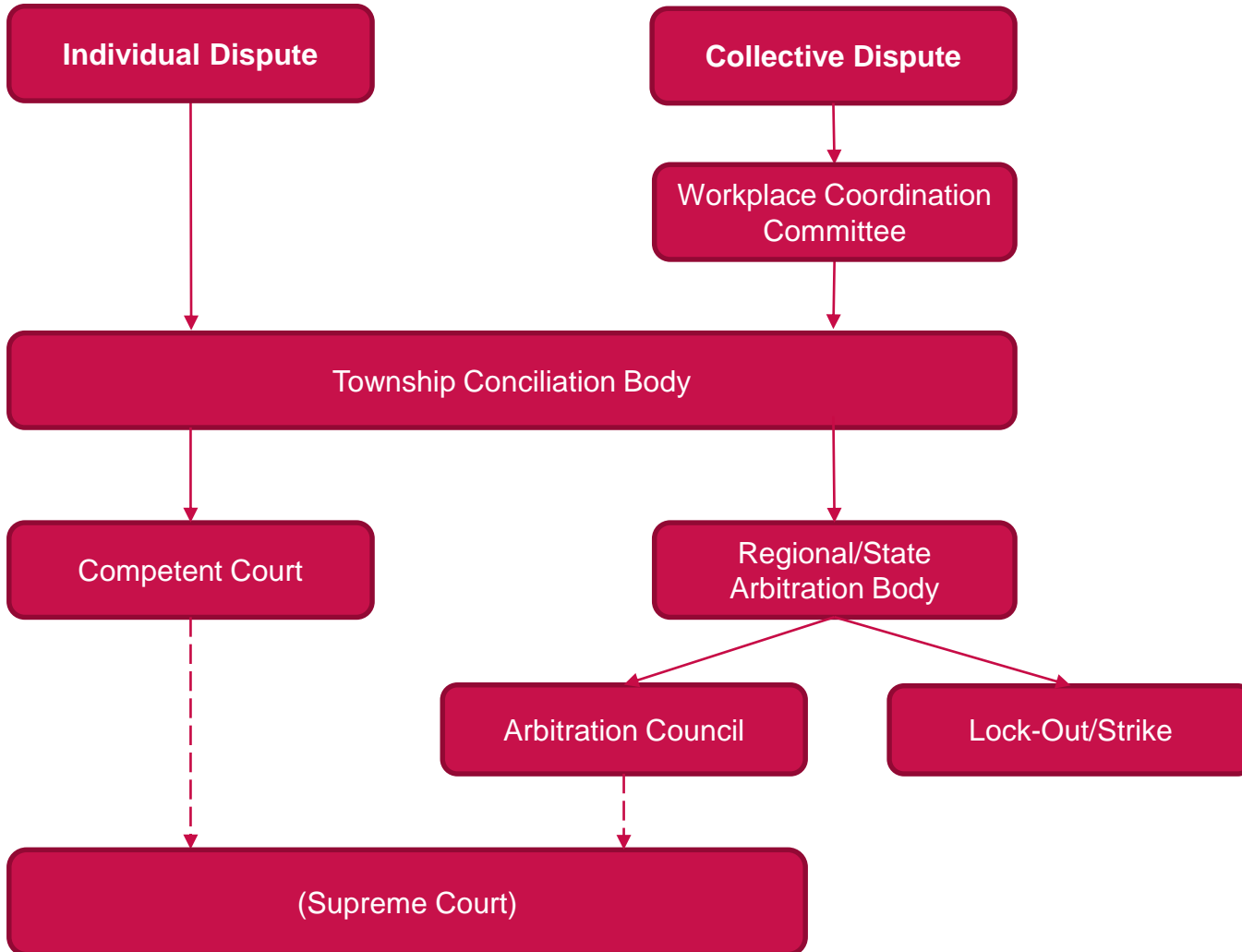
V. Dispute Resolution – Overview.

- Myanmar's labour dispute resolution system is governed by the Settlement of Labour Dispute Law (2012) to safeguard workers' rights, peaceful workplaces, and obtain rights fairly, rightfully, and quickly by settling disputes of the employer and employees justly through conciliation or arbitration
- A distinction is made between individual and collective disputes
- The law outlines a multilevel process for disputes that begins with internal negotiation, for individual disputes between the employer and the employee, for collective disputes within the enterprise at the Workplace Coordination Committee
- If no agreement is reached, the following bodies may be called upon for resolution
 - Township Conciliation Body
 - Competent Court (in case of an individual dispute, for any party which is not satisfied with the decision of the Conciliation Body)
 - Regional/State Arbitration Body
 - Union Dispute Settlement Arbitration Council
 - (Supreme Court)

V. Dispute Resolution – Overview.

- The goal is to provide an alternative to litigation, with a process that is fair and quick, minimizing the financial impact that could result from a strike or lockout:
 - Conciliation: Procedure which assists the parties to the dispute to reach a mutually agreed settlement, through neutral third-party intervention; conciliator assists the parties to settle the dispute and is not empowered to impose a settlement
 - Arbitration: Procedure for settling disputes by submitting them to an independent and neutral third party for a final and binding decision
- Although the system is administered by Ministry of Labour, Immigration and Population, the tripartite composition of the township, state/regional and national bodies includes worker and employer representatives in the process of seeking equitable resolution

V. Dispute Resolution – Overview.



V. Dispute Resolution – Coordination Committee.

Companies with more than 30 employees

- Companies with more than 30 employees shall form a Workplace Coordination Committee for negotiating and concluding collective agreements
 - **Labour organization(s):** Workplace Coordination Committee shall be formed as follows:
 - Two (2) workers' representatives (nominated by the labour organization(s))
 - Two (2) employer representatives
 - **No labour organization(s):** Workplace Coordination Committee shall be formed as follows:
 - Two (2) workers' representatives (elected by the workers)
 - Two (2) employer representatives

Companies with less than 30 employees

- Forming of Coordination Committee not compulsory (but optional!)

Filing

- The election of a Workplace Coordination Committee shall be notified to the relevant Township Conciliation Body, using Form A.

V. Dispute Resolution – Coordination Committee.

Duties

- Workplace Coordination Committee shall promote/negotiate:
 - Good relationship between the employer and workers/labour organization(s);
 - Employment conditions;
 - Terms/conditions of workplace safety & health; and
 - Welfare/productivity

Term & Vacancies

- One (1) year
- Vacancies shall be filled with representatives of the concerned party

V. Dispute Resolution – Coordination Committee.

Procedure (Workplace Coordination Committee)

- If the workers, labour organization or the employer (by themselves or by representatives) complain to the Workplace Coordination Committee, it shall negotiate and settle the conflict within five (5) days from the day of the receipt of the request (excluding official public holidays)
- The Workplace Coordination Committee shall keep records of the settlement and shall send a report to the relevant Conciliation Body

Procedure (No Workplace Coordination Committee)

- The employer shall negotiate, coordinate and settle with the workers or with their representatives within five (5) days from the day of the receipt of the request (excluding public holidays)
- The employer shall keep records of the settlement and shall send a report to the relevant Conciliation Body
- If no settlement is reached, the employer or employees may complain to the Township Conciliation Body

V. Dispute Resolution – Township Conciliation Body.

Formation

- Region/State Government shall form Conciliation Bodies in the townships
 - Chairperson (Person assigned by the relevant Region/State Government)
 - Three (3) employer's members (elected by the employers or employer organizations)
 - Three (3) workers' members (three representatives elected by workers or Member the labour organizations)
 - One (1) departmental representative of the relevant township level
 - Two (2) distinguished persons trusted and accepted by both the employer's and workers' members
 - One (1) person assigned by the Ministry Secretary

Term & Vacancies

- Two (2) years
- Vacancies shall be filled with representatives of the concerned party

V. Dispute Resolution – Township Conciliation Body.

Procedure

- The Township Conciliation Body is one of conciliation, not arbitration
- It does not issue a decision, but shall support the parties to reach a mutual agreement and resolve their dispute
- The Township Conciliation Body shall determine the type of dispute (i.e. individual or collective) and conciliate / settle the dispute within three (3) days
- The employer may appoint a representative of the employer or the labour organizations may appoint a representatives of the workers before the period of conciliation; if no labour organization has been established, the workers shall elect their representatives
- Upon agreement of both parties, the decision of the Arbitration Body shall come into force on the day of decision making

Special Economic Zones

- If there is no separate provision for a special economic zone, the relevant Region/State Government shall form special Conciliation Body

V. Dispute Resolution – Township Conciliation Body.

Non-Settlement

- In case of an individual dispute, any party which is not satisfied with the conciliation may apply to the competent court
- In case of a collective dispute, the Township Conciliation Body shall refer the Regional/State Arbitration Body

Comment Luther

- *Distinction between individual and collective disputes is not always clear*
- *As a consequence, individual disputes often go through the arbitration system as well, in part because this is viewed as the more effective mechanism compared to the courts and a way to help protect worker rights*

V. Dispute Resolution – Arbitration Body.

Formation

- The Ministry of Labour shall, with the approval of the Union Government, form the Dispute Settlement Arbitration Body in the Regions or States as follows:
 - One (1) person assigned by the relevant Region Chairperson or State Government
 - Three (3) persons selected from the nomination list submitted by the employer organizations
 - Three (3) persons selected from the nomination list submitted by the labour organizations
 - One (1) departmental representative selected by the relevant Region or State Government
 - Two (2) distinguished persons trusted and accepted by the employers or relevant employer organizations and the labour organizations
 - One (1) person assigned duty by the Ministry Secretary

Term & Vacancies

- Two (2) years
- Vacancies shall be filled with representatives of the concerned party

V. Dispute Resolution – Arbitration Body.

Procedure

- Parties usually have legal assistance/representation
- The Arbitration Body will issue a decision within seven (7) days (excluding public holidays)
- The decision of the Arbitration Body shall come into force on the day of decision if both parties agree with it
- If the relevant parties (i.e. employer and employees) agree to amend the decision within three (3) months from the day of coming into force, the new agreement shall supersede the relevant part of the arbitration decision

Non-Settlement

- If either party is not satisfied with the decision of the Arbitration Body (except for a decision in respect of essential services), the following options may be exercised:
 - Application by both parties to the Arbitration Council for its decision within seven (7) days (excluding public holidays) from the day of receipt of the decision of the Arbitration Body
 - Carrying out a Lock-Out/Strike in accordance with the relevant law (not for essential services)

V. Dispute Resolution – Arbitration Council.

Formation

- The Ministry of Labour shall form the Dispute Settlement Arbitration Council with 15 qualified persons of good standing from legal experts and experts in labour affairs as follows:
- Five (5) persons selected by the Ministry
- Five (5) persons selected from the nomination list submitted by the employer organizations
- Five (5) persons selected from the nomination list submitted by the labour organizations

Vacancy & Term

- Vacancies in the Arbitration Council shall be filled as required by the concerned party
- The term of the Arbitration Council is two (2) years

V. Dispute Resolution – Arbitration Council.

Procedure

- Dispute Settlement Arbitration Council shall form a Tribunal, which shall make a final decision on the collective dispute within 14 days (excluding public holidays) from the day of receipt of collective dispute and send the decision to the relevant parties within two (2) days
- Tribunal may hold a formal hearing or base its decision on the provided documents
- The decision of the Tribunal shall be deemed as the decision of the Arbitration Council and come into force on the day of its decision
- The Arbitration Council shall send the copy of decision passed by the Tribunal to the Minister and the relevant Regional/State Governments
- If the relevant parties (i.e. employer and employees) agree to amend the decision within three (3) months from the day of coming into force, the new agreement shall supersede the relevant part of the arbitration decision

V. Dispute Resolution System - Implementation.

Implementation & Trends

- More than 1,200 cases were officially received by Township Conciliation Bodies in 2016, successfully resolving 85% of them through conciliation
- Arbitration Bodies received more than 150 cases in 2016, resolving 32%
- The Arbitration Council received 90 cases in 2016

(Source: Ediger, Laura and Chris Fletcher. 2017. "Labor Disputes in Myanmar: From the Workplace to the Arbitration Council." Report. BSR, San Francisco)

V. Dispute Resolution System – Prohibitions.

Employer

- No employer shall fail to negotiate and coordinate in respect of the complaint within the prescribed period without sufficient cause
- No employer shall alter the conditions of service relating to workers concerned in such dispute at the consecutive period before commencing the dispute within the period under investigation of the dispute before the Arbitration Body or Tribunal, to affect the interest of such workers immediately

Employer and/or Employees

- No party shall proceed to lock-out/strike without negotiation, conciliation and arbitration
- No party shall carry out a lock-out/strike within the effective period of a decision of the Arbitration Body or the Arbitration Council or any collective agreement
- Nobody shall force workers who are not desirous to participate in a strike
- No party shall fail to abide by or carry out any condition contained in an agreement concluded before an arbitration body
- No party shall fail to provide the arbitration body with the necessary documents to examine the dispute
- Upon notice, no party shall fail without sufficient cause to appear before the Arbitration Body or Tribunal

Luther.

VI. Trade Unions, Strikes & Lock-Outs

VI. Trade Unions, Strikes & Lock-Out.

Labour Organization Law (2011)

- The purpose of the Labour Organization Law is to:
 - Protect the rights of workers
 - Promote good relations among workers and between the employer and workers
 - Enable workers to form and administer labour organizations systematically and independently
- The law applies to workers of both private and state-owned enterprises

VI. Trade Unions, Strikes & Lock-Out.

Formation of Labour Organizations

- In companies with at least 30 employees, labour organizations may be formed if at least 10% of all workers of the factory approve of the formation
- With very limited exceptions (e.g. defence service personnel, policemen), all workers have the right to join a labour organization and the right to resign from such if they choose
- This includes daily wage earners, temporary workers, apprentices and trainees, migrant workers, agricultural workers, teachers and government employees
- Workers in civilian operations owned by the Myanmar Economic Corporation have the right to form and join labour organizations
- No one may force, threaten, or use undue influence on any worker to participate or not participate in a labour organization (this prohibition does not extend to normal, lawful efforts to convince workers as part of an organizing campaign)
- Workers are restricted to joining labour organizations that operate within their profession, trade or activity

VI. Trade Unions, Strikes & Lock-Out.

Rights

- Draw up own constitutions and rules
- Form umbrella organizations at the township, regional and national level
- Elect representatives
- Organize own administration, activities, and programmes without interference
- Operate free from discrimination or retaliation
- Negotiate and settle with the employer if employees are unable to obtain and enjoy the rights contained in the labour laws
- Send representatives to the conciliation body for the settlement of disputes between the employer and employees
- Collective bargaining/dispute resolution
- Preparation of employment agreements
- Demand re-employment of employees dismissed by the employer (e.g. if there is cause to believe that the reasons of such dismissal were based on labour organization membership or activities)
- Join workers and their employer in discussions with the Government about worker's rights or interests contained in the labour laws
- Engage in industrial action, including strikes, in accordance with the relevant laws
- Assign workers to spend up to two (2) days per month on Labour Organization duties

VI. Trade Unions, Strikes & Lock-Out.

Duties

- Representation of the employees
- Protection of the rights and interests of the employees
- Understanding the functions and duties of the employees
- Assist in drafting work-rules, individual employment contracts, bonds, and other individual agreements between the employer and employees
- Provide skill training to improve productivity
- Support members on housing, welfare, cooperatives and other issues
- Conduct peaceful meetings, strikes and other collective activities in compliance with the law and its rules

VI. Trade Unions, Strikes & Lock-Out.

Registration of Labour Organisations

- Constitutions or rules of Labour Organizations must have the approval of the majority of their members and contain the following:
 - Name of the Labour Organization
 - Purpose of the formation of the Labour Organization
 - Process for granting membership, issuing membership certificates and resigning from membership
 - Process for electing, assigning duties, removal, and resignation of Executive Committee members
 - Process for holding of meetings
 - Process for establishment, maintenance and use of the Labour Organization's funds
 - Process for monthly and annual auditing of funds

VI. Trade Unions, Strikes & Lock-Out.

Registration of Labour Organisations

- Basic and Region/State Labour Organizations must submit constitutions and letters from founding members (Basic) or Executive Committee members (Regional/State) to the Township Registrar
- Confederations and Federations must submit their constitutions and a letter confirming that Executive Committee members have agreed to the constitution to the Chief Registrar
- Labour Organizations in the same sector or activity can join together (or split apart again) if their rules permit it and a majority of their Executive Committees approves. Labour Organizations must apply to the Township Registrar when merging or separating
- Labour Organizations should be registered, or provided with precise reasons for which their registrations were rejected, within 60 days from receipt of the original application

Executive Committee

- Executive Committees shall have odd numbers of elected members:
 - Basic Organizations shall have five (5) or more members
 - Townships, Region/State, seven (7) - 15 members
 - Labour Confederations, 15 - 35 members

VI. Trade Unions, Strikes & Lock-Out.

Membership Dues and Use of Funds

- Monthly membership dues paid by workers to a Labour Organization shall not exceed two percent (2%) of the members' monthly wages
- Basic Labour Organizations must share monthly membership dues with the Township, Regional/State, Federation, and Confederation that they are members of as directed by each Labour Organization's Federation
- In practice, union membership dues are often fixed and do not fluctuate based on monthly wages
- Labour Organizations may create their own funds for admission fees, monthly membership dues, income from Labour Organization cultural or sport activities, donations from employers, grants from the Government
- Labour Organization funds may only be used for the matters listed in their constitutions and rules, such as social welfare, education, health, culture, sports, skills training and other matters agreed by a majority of the members at a general meeting of the Labour Organization

VI. Trade Unions, Strikes & Lock-Out.

Membership Dues and Use of Funds (cont.)

- Labour Organizations must open a bank account in Myanmar for their funds and must follow the Control of Money Laundering Law in administering their funds
- Labour Organization funds are maintained by its Executive Committee
- The Executive Committee must show each month's income from membership dues and other sources, as well as each month's spending
- An annual statement of the Labour Organization's accounts must be sent to the Township Registrar (Basic, Township, and Regional/State) or Chief Registrar (Confederation and Federations) at the end of the financial year

VI. Trade Unions, Strikes & Lock-Out.

Employers' Duties

- Shall not impede their employees' participation in a union
- Shall not dominate or control the union
- Shall grant, upon recommendation of the Executive Committee, up to two (2) days leave for activities in the union
- Shall recognize the labour organizations of their enterprises and sectors as the organizations representing the workers
- Shall not take any actions to create Labour Organizations or bring Labour Organizations under their control by financial or other means
- Shall assist as much as possible if Labour Organizations request the employer's help in the interest of the employees

VI. Trade Unions, Strikes & Lock-Out.

Strike

- Employees organized in a labour union may, under certain conditions, go on strike, if the general dispute resolution mechanisms failed (e.g. arbitration)

Definition

- Collective action taken by decision of some or all workers resulting in a suspension of work, a refusal to work or to continue to work, or a slow-down or other collective actions that are designed to limit production or services relating to social or occupational matters in any dispute (sec. 2 (i) Settlement of Labour Dispute Law (2012))
- This expression does not include the employees' exercise of their right to remove themselves, having reasonable justification to believe that the work situation presents a sudden and serious danger to their life or health

VI. Trade Unions, Strikes & Lock-Out.

Strike Requirements

- Strike demands must be within the scope of competence of the union (e.g. higher wages, reinstatement of terminated workers, adequate overtime payment, etc.)
- More than 50 % of the workers must approve the strike
- Township labour organization must approve the strike
- Permission from the Conciliation Body must be obtained

But:

- Employees in essential sectors are not permitted to strike (e.g. water supply services, electricity services)
- Stricter rules and a requirement to provide minimum services apply to employees providing public utility services (e.g. transportation business, port and cargo business, postal service, etc.).

VI. Trade Unions, Strikes & Lock-Out.

Lock-out

- The Employer may, under certain conditions, carry out a lock-out, if the general dispute resolution mechanisms failed (e.g. arbitration)

Definition

- Temporary closing of the workplace of any trade, suspension of work or refusal by the employer to allow the employees at the work site to continue to work in consequence of the situation of any dispute of the employer and workers which remains in dispute (sec. 2 (h) Settlement of Labour Dispute Law (2012))

Luther.

VII. Employees & Consultants

VII. Consultants & Employees.

General

- Possible to engage independent contractors in Myanmar
- Currently not expressly required for independent (Myanmar citizen) contractors to register a sole proprietorship/business under Myanmar law
- Businesses are merely required to register for Commercial Tax if and when their turnover exceeds MMK 50,000,000 per financial year
- Distinction between employees and independent contractors thus rather difficult
- Since the labour offices in Myanmar are very employee-friendly, and interested in protecting the employees' rights under Myanmar labour law, the engagement of an individual contractor may thus in many cases be considered "hidden employment", with all consequences for the employer provided under the laws for defaulting employer obligations such as social security, personal income tax filing, annual leave- and holiday provisions, medical leave, etc.

VII. Consultants & Employees.

Legal Basis

- In theory, the same principles apply as in other jurisdictions, and the distinction between service and employment should be made based on various factors, such as:
 - Control - What is the nature and degree of control that the hiring organization has over the way in which the contractor is to perform the work?
 - Chance of profit/risk of loss - Does the contractor have an opportunity to make a profit or a loss?
 - Investment - Does the contractor have an investment in the materials, equipment, or other personnel required to perform the work?
 - Integration - To what extent is the work an integral part of the hiring organization's operations?
 - Duration - What is the duration of the engagement?
 - Payment/Benefits - What payments and benefits does the contractor receive?

VII. Consultants & Employees.

Legal Basis

- While it is to some extent possible to control these factors in the drafting of a service contract, the test is based on the actual facts of the engagement rather than the wording of the contractual agreements
- For example, where an engagement is entered into for the full-time provision of services by a single individual for a longer duration, it is very likely that such would be considered employment under the law
- Only if it is very clear that an engagement constitutes independent services (e.g. the individual is also providing equipment and materials, and is providing the same services to more than one customer), it may be safe to consider it as engagement of an independent contractor

VII. Consultants & Employees.

Foreign Consultants

- In general, as in almost every other country, foreign persons are not allowed to carry out activities IN Myanmar without having registered a legal presence in Myanmar; the new Companies Law recently approved by the parliament provides in this regard, that no registration shall be required for an *“isolated transaction that is completed within a period of 30 days, not being one of a number of similar transactions repeated from time to time”*
- I.e. any foreigner intending to carry out services in Myanmar on a long term basis shall register a business in Myanmar
- Without such registration requirement, it would not be possible to enforce the investment restrictions, nor tax- and other obligations
- Foreigners would thus have to incorporate a Myanmar company or register a branch of their overseas business in Myanmar to provide such services, with such company/branch acting as employer of the foreign consultant

Luther.

VIII. Immigration

VIII. Immigration.

Visa Regulations

- With the exception of citizens of Brunei, Cambodia, Indonesia, Laos, the Philippines, Singapore, Thailand and Vietnam, any foreigner wishing to enter Myanmar must obtain a valid visa
- With effect from 1 December 2016, foreigners may choose between twelve (12) different types of visas
 - Diplomatic/official courtesy visa (GDC/GOC)
 - Official visa
 - Tourist visa
 - Business visa
 - Employment visa
 - Social visa
 - Religious visa
 - Education visa
 - Journalist visa
 - Crew visa
 - Workshop/seminar/meeting/research visa
 - Transit visa

VIII. Immigration.

Re-Entry Visas

- Business visas, social visas, religious visas, crew visas, education visas and official visas may be issued for multiple-entry

Comment Luther

- *Some visas, such as multiple re-entry business visas, now allow foreigners to stay in Myanmar for the full term of the visa, e.g. up to twelve (12) months.*
- *Even if the new visas allow for longer stays, it should be noted, that such visas will not relieve foreigners from the requirement of applying for a Foreigner Registration Certificate (hereafter FRC), should they intend to stay in Myanmar for more than 90 consecutive days*

Employment Visas

- Pursuant to this visa regulations, a foreigner may apply for an employment visa
- For the application of an employment visa, the foreigner shall submit an invitation letter or appointment letter from the employer and must hold a labour card from the Ministry of Labour
- Due to the limited issuance of labour cards to foreigners, most persons working in Myanmar do, however, in practice still hold a business visa

VIII. Immigration.

Long-Term Stay Permit & FRC

- By law, foreigners residing in Myanmar for more than 90 days are required to apply for an FRC
- Unless foreigners stay in Myanmar for more than 90 consecutive days, this requirement is, however, rarely enforced by the Myanmar authorities
- As a consequence, most foreigners residing in Myanmar – even on a long-term basis – refrain from applying for an FRC (and Long-Term Stay Permit) due to the rather cumbersome application process
- FRCs are primarily applied for by foreigners requiring a Long-Term Stay Permit or working for enterprises established under the previous Foreign Investment Law 2012 or the new Myanmar Investment Law 2016
- The issuance of a Long-Term Stay Permit within Myanmar, which is only available to persons holding an FRC, allows foreigners to stay in Myanmar for the full term of the visa and the Long-Term Stay Permit (e.g. for twelve (12) months)

VIII. Immigration.

Long-Term Stay Permit & FRC

- On 3 October 2017, the Directorate of Investment and Company Administration announced, that it will facilitate applications for the extension of visas and Long-Term Stay Permits for certain foreigners (and their family members) employed by foreign or local companies in Myanmar
- This “one-stop” solution shall streamline the currently rather cumbersome application process
- With effect from 21 October 2017, the Directorate of Investment and Company Administration will facilitate applications for members of the Board of Directors of a company incorporated in Myanmar (and their family members) and foreign technicians employed by foreign and local companies (and their family members)
- All applications shall be submitted to the Directorate of Investment and Company Administration at least three (3) weeks before the expiry date of the applicant’s current visa; applications submitted after this deadline shall not be accepted

Comment Luther

- *Trading companies shall apply directly with the Ministry of Commerce*
- *For all other employees (and their family members), companies shall apply with the Directorate of Investment and Company Administration and the Department of Immigration and National Registration*

VIII. Immigration.

Guest Residence Report

- After issuance and collection of the FRC and Long-Term Stay Permit, a Guest Residence Report shall be filed with the relevant Township Immigration Department
- Please note that strictly speaking, such a Guest Residence Report must be updated weekly
- In practice, however, this is generally not done anymore

Form C

- Since October 2016, foreigners (whether they hold a Long-Term Stay Permit or not) occupying residential premises of private owners, shall, within 24 hours after arrival, be reported to the relevant Ward Administration Office and Township Office of the Department of Labour (using a copy of the Hotel Arrival Report/Form C)

VIII. Immigration.

Comment Luther

- *Neither the Registration of Foreigners Act 1940 nor the Registration of Foreigners Rules 1948 contain any provisions on the occupation of residential premises by foreigners*
- *The terms and conditions for business visas as published by the Ministry of Labour do, however, provide, that foreigners may stay at hotels, motels and guest houses holding legal licenses issued by Myanmar Government, and factories and workshops legally permitted as well as human dwellings; as long as the person in question provides the exact address*
- *Upon enquiry, various immigration offices verbally confirmed that holders of a business visa are eligible to occupy residential premises*
- *According to the immigration offices, the premises should, however, be rented by an entity registered in Myanmar, and may then be offered to a foreigner employed by such entity*

VIII. Immigration.

Labour Cards

- Companies registered with the Myanmar Investment Commission are already subject to stricter scrutiny and shall apply for a labour card when hiring foreigners as senior managers, technical experts or consultants

Comment Luther

- *Limited information is currently available on the criteria and process for the application for a labour card*
- *The new announcement of the Myanmar Investment Commission does not contain any definitions of the terms “senior managers”, “technical experts” and “consultants”*
- *Further, it does not specify whether this shall apply to short, medium or long-term appointments, or to any kind of appointment*

Luther.

IX. Payroll

IX. Payroll.

Wage/Salary

- Possible options in Myanmar Kyat or foreign currency (e.g. US Dollar):
 - Daily wage
 - Piece-rate
 - Monthly salary
- Depending on the employee's performance and subject to the prescribed minimum wage, the wage/piece-rate/salary shall be amended from time to time by mutual agreement between the employer and employee

Minimum Wage

- Minimum Wage Law came into force in 2013
- Pursuant to Notification 2/2015, minimum wage rate shall be MMK 3,600 (USD 2.65) for an eight (8) hour work the day and shall be binding for all enterprises with more than 15 employees
- Per definition, wage includes benefits, bonuses and overtime, but in practice, overtime payment is not accounted for the calculation of the minimum wage
- One weekly rest day is considered a paid day (i.e. minimum wage of MMK 3,600 for such rest day)
- Minimum wage to be revised regularly

IX. Payroll.

Deductions from salary

- Deductions are only permissible as provided by law:
 - Absence from work without leave
 - Accommodation, ferry, meal costs
 - Statutory contributions (income tax, social security)
 - Repayment of advances
 - Deductions by order of a court or tribunal
- With the exception of absence from work without leave, deductions may in total not exceed 50% of the salary
- Fines are permissible as provided by law:
 - Losses by reason of intentional disregard or negligence and acts or omissions in bad faith
 - Violations of workplace rules specified in the employment contract as liable for a fine
- Fines shall be approved by the Labour Department and must be affixed in public locations at the workplace

Luther.

X. Social Security Fund

X. Social Security.

■ **Registration of the Employer**

- Registration with relevant township office of the Social Security Fund is compulsory for employers of five (5) or more employees unless exempted under the law
- Registration must be submitted within ten (10) days from the appointment of the fifth employee
- The relevant township office will issue a registration certificate for the employer

■ **Non-Compliance**

- An employer who fails to comply with the responsibility to register will, on conviction, be punished with imprisonment for a term not exceeding one (1) year or with a fine or with both

X. Social Security.

- **Obligations of the Employer and the Employee:**
 - The employer has to prepare the documents for the employee's registration
 - Form 2
 - Form Health Certificate
 - The employee has to undergo a medical examination in the appointed government clinic or township hospital (free of charge) and register with the relevant Social Security Fund township office
 - Two (2) to three (3) months after submission, the Social Security Fund will issue a Social Security Fund registration number for the employee
 - Up to six (6) months after submission of the registration documents, the Social Security Fund township office will issue a Social Security Fund smart card for the employee



X. Social Security.

■ **Filing and Payment**

- Employers must file and pay social security monthly before the 15th of the month following the salary payment with the relevant social security township office
- Employers must withhold employees' social security contributions from the salaries
- Total rate of contribution is 5% of wages (including all recurring allowances and benefits), 3% and 2% of which are contributed by the employer and the employee respectively (total monthly contribution is limited to a maximum amount of MMK 15,000)
- Social security contributions must be made in MMK

■ **Non-Compliance**

- Employers in default may be punished with imprisonment, a fine, or both

Luther.

XI. Personal Income Tax

XI. Personal Income Tax.

Filing and Payment of Personal Income Tax

- Pursuant to sec. 16 (a) Income Tax Law (1974), employers are required to withhold and disburse their employees' personal income tax from their salaries at the time of payment
- The tax to be paid must be estimated based on the expected annual income and be withheld in equal installments
- While the payment should be done monthly pursuant to the law, the tax authorities currently prefer a quarterly filing and payment
- Furthermore, employers are required to file an annual salary statement within three (3) months after the end of the income year (sec. 18 Income Tax Law (1974))

Non-Compliance

- Employers failing to withhold and pay their employees' personal income tax are deemed to be at default and liable for such payments (sec. 16 (g) Income Tax Law (1974))

XI. Personal Income Tax.

Taxable Income – Employment Income

- Taxation of salary and other employment income is governed by sec. 9 Income Tax Law (1974)
- Pursuant to the law, this includes:
 - Salary, wages, annuity, bonuses, award; and
 - Fees or commissions received in lieu of or in addition to the salary and wages
- Benefits provided in kind, like health insurance, cars, etc. are not explicitly mentioned in the law, but most benefits in kind are taxable pursuant to the practice of the IRD (e.g. health insurance, employee shares, etc.)
- Exception: Housing provided by the employer

XI. Personal Income Tax.

Taxation of Housing Benefits

- For housing benefits, the tax authorities have in the past applied Circular No. 2, which was issued 1958 under the repealed Myanmar Income Tax Act
- According to this Circular, accommodation provided by the employer was not taxable at its actual value, but at an amount equal to 10% and 12.5% of the employee's annual salary for unfurnished and furnished housing respectively
- Pursuant to a notification of the Attorney General's Office in August 2015, Circular No. 2 shall no longer be applied
- With effect from 1 April 2015, accommodation provided by the employer shall not be considered a taxable benefit of the employee
- Such tax exemption does, however, only apply to accommodation owned by or rented in the name of the employer and provided to the employee free of charge
- A housing allowance paid to the employee continues to be taxable

XI. Personal Income Tax.

Taxable Period

- Taxable period of an individual is from 1 April to 31 March
- Income earned during the financial year is assessed to tax in the assessment year, which is the year following the financial year

Residence status

- The taxation of income depends on the individual's residential status in Myanmar
- Under the Income Tax Law (1974), locals and resident foreigners (*staying in Myanmar for a period of 183 days or more during any year of assessment from 1 April to 31 March*) are taxed on all income derived from sources within and outside Myanmar and are eligible for allowances
- Non-resident foreigners (*staying in Myanmar for a period of less than 183 days during any year of assessment from 1 April to 31 March*) are taxed only on their income derived from Myanmar

Comment Luther:

- *Please note the intended change of the fiscal year to 30 September, which will likely also affect the personal income tax year*

XI. Personal Income Tax.

Union Tax Law (2017)

- No major changes have been announced for the taxation of individuals with personal income tax rates remaining unchanged at 0%-25%
- Personal basic relief for residents at 20% of the salary income (capped at MMK 10,000,000)
- No income tax shall be levied on individuals earning less than MMK 4,800,000 per year
- In addition, tax reliefs for resident tax payers living together with parents, a spouse or children remain unchanged:
 - Co-resident parent relief: MMK 1,000,000 per parent;
 - Spouse relief: MMK 1,000,000; and
 - Child relief: MMK 500,000 per offspring

XI. Personal Income Tax.

Personal Income Tax Rates (*)

Sr.	Chargeable Income Range per Annum	Tax Payable per Range and Annum	Accumulated Tax Payable	Tax Rate (%)
1	1	2,000,000	-	0%
2	2,000,001	5,000,000	150,00	5%
3	5,000,001	10,000,000	650,00	10%
4	10,000,001	20,000,000	2,150,000	15%
5	20,000,001	40,000,000	4,150,000	20%
6	30,000,001	and above		25

(*) With effect of Income Year 2017/18 (1 April 2017), no income tax shall be levied on any person earning not more than MMK 4,800,000 per annum

XI. Personal Income Tax.

Calculation of Individual Taxable Income

Total Income		XXX in MMK
Less	Basic Allowance (20% of the income, max. MMK 10 Mio.)	(XXX)
Less	Spouse Allowance (MMK 1,000,000)	(XXX)
Less	Child Allowance (MMK 500,000 per child)	(XXX)
Less	Co-Resident Parent Allowance (MMK 1,000,000 per co-resident parent)	(XXX)
Less	Premium Myanmar Life Insurance (for employee/spouse)	(XXX)
Less	Others (SSC, etc.)	(XXX)
Sum		(XXX)

XI. Scenario – Overview.

Example:

Two (2) foreign employees and one (1) Myanmar employee

Myanmar employee **A** starts on 1 April, has an unemployed wife, two (2) children in school and lives with his parents and mother in law

Foreign employee **B** from Spain starts on 1^oDecember, has an unemployed wife and two (2) children in school

Foreign employee **C** from Singapore also starts on 1 December, but still maintains an apartment in Singapore, where his family lives

XI. Scenario – Overview.

Employee A:

Myanmar employee A starts on 1 April, has an unemployed wife, two (2) children in school and lives with his parents and his mother in law.

Taxed as resident on a his worldwide income

- **Rule:** Residents of Myanmar are generally taxed on their worldwide income
- **Rule:** Employment income is taxed at progressive rates of 0% to 25%

Deductions and allowances

- **Rule:** Residents are eligible for deductions and allowances
- Basic relief (20% of the total salary income, limited to MMK 10,000,000)
- Spouse relief (MMK 1,000,000)
- Child relief (MMK 500,000 per child)
- Co-resident parent relief (MMK 1,000,000 per parent)
- Other reliefs (e.g. life insurance contributions and employee contributions toward Social Security Fund)

XI. Scenario – Taxation of Employee A.



Resident Myanmar Employee A:

- Employment during the financial year: 1 April – 31 March (12 months)
- Unemployed wife, two (2) children and three (3) co-resident parents
- Salary of MMK 3,000,000 per month
- Housing allowance of MMK 800,000 per month
- Annual Bonus of MMK 4,500,000

Calculation of Taxable Income		Amount in MMK
	Salary	36,000,000
	Housing Allowance	9,600,000
	Annual Bonus	4,500,000
	Total Income	50,100,000
Less	Basic Allowance (20% of the income, max. MMK 10 Mio.)	(10,000,000)
Less	Spouse Relief (MMK 1,000,000)	(1,000,000)
Less	Child Relief (MMK 500,000)	(1,000,000)
	Co-resident Parent Relief (MMK 1,000,000)	(3,000,000)
Less	Others (Life Insurance Premium, SSC, etc.)	-
	Taxable Income	35,100,000
	Tax	(5,425,000)

XI. Scenario – Taxation of Employee B.

Employee B:

Foreign Employee B from Spain starts on 1st of December, has an unemployed wife and two (2) children in school

Taxed as non-resident

- **Rule:** Foreigners staying in Myanmar for a period of less than 183 days during any year of assessment (year in which income is assessed to tax: 1 April – 31st March) are taxed as non-residents

Taxed at progressive rates of 0%-25%

- **Rule:** Non-resident foreigners are taxed on their employment income at progressive rates of 0%-25%
- **Rule:** All other income is taxed at 25%

No deductions and allowances

- **Rule:** only residents are eligible

XI. Scenario – Taxation of Employee B.

Resident Foreign Employee B:

- Employment during the financial year: 1 December – 31 March (4 months)
- Unemployed wife, two (2) children
- Salary of MMK 3,000,000 per month
- Apartment provided by the employer (monthly rent of MMK 1,500,000)
- Annual Bonus of MMK 3,000,000

Calculation of Taxable Income		Amount in MMK
	Salary	12,000,000
	Free Housing	-
	Annual Bonus	3,000,000
	Total Income	15,000,000
Less	Basic Allowance (20% of the income, max. MMK 10 Mio.)	-
Less	Spouse Relief (MMK 1,000,000)	-
Less	Child Relief (MMK 500,000)	-
	Co-resident Parent Relief (MMK 1,000,000)	-
Less	Others (Life Insurance Premium, SSC, etc.)	-
	Taxable Income	15,000,000
	Tax	(1,400,000)



XI. Scenario – Taxation of Employee C.

Employee C:

Foreign Employee C from Singapore starts on 1 December and still has an apartment and family in Singapore

Scenario 1:

- Salary is borne by an employer outside Myanmar

Scenario 2:

- Salary is borne by the Myanmar employer

Scenario 3:

- Employee works both for an employer in Singapore and Myanmar, salaries are borne by the respective employers in Myanmar and Singapore

XI. Scenario – Taxation of Employee C.

Double Tax Agreements (DTA)

- If a non-resident resides in a country with which Myanmar has entered into a DTA, and such recipient is able to provide a Certificate of Residency issued by the tax authority of such country of residence, tax shall be processed at the rate prescribed in such tax treaty
- Myanmar signed eight (8) DTAs, but it should be noted, that not all of them provide for a full exemption
 - United Kingdom
 - Socialist Republic of Vietnam
 - Republic of Korea
 - Malaysia
 - Republic of India
 - Republic of Singapore
 - Lao Peoples' Democratic Republic
 - Thailand

XI. Scenario – Taxation of Employee C.

Double Tax Agreement:

- Agreement between the Government of the Republic of Singapore and the Government of the Union of Myanmar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
 - Question I – Residency pursuant to Art. 4 Double Tax Agreement
 - Question II – Taxation of employment income pursuant to Art. 15 Double Tax Agreement
 - Question III – Consequences for taxation of income (Art. 24 Double Tax Agreement)

XI. Scenario – Taxation of Employee C.

Art. 4 (2) – Residency

Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the state in which he has a permanent home available to him;
- (b) If he has a permanent home available to him in both states, he shall be deemed to be a resident of the state with which his personal and economic relations are closest (centre of vital interests);
- (c) if the state country in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either state, he shall be deemed to be a resident of the state in which he has an habitual abode;
- (d) if he has an habitual abode in both states or in neither of them, he shall be deemed to be a resident of the state of which he is a national;
- (e) if the status of resident cannot be determined according to the above, the competent authorities of the states shall settle the question by mutual agreement.

XI. Scenario – Taxation of Employee C.

Art. 15 – Taxation of Employment Income

- (1) Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that state unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other state.
- (2) Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned state if:
 - (a) the recipient is present in the other state for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
 - (b) the services are rendered for, or on behalf of, a person who is not a resident of the other state; and
 - (c) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state; and
 - (d) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other state.

XI. Scenario – Taxation of Employee C.

Employee is considered a resident of Singapore for the purpose of the Double Tax Agreement

Scenario 1:

- Less than 183 days in Myanmar, salary borne outside Myanmar
- Employee C is taxable only in Singapore

Scenario 2:

- Less than 183 days in Myanmar, but salary is borne in Myanmar
- Employee C is taxable in Myanmar, Myanmar tax will be allowed as credit against Singapore tax (but: tax exempted in Singapore as foreign income)

Scenario 3:

- Employment both in Singapore and Myanmar, salaries borne by two different employers
- Myanmar employment income taxable in Myanmar (and allowed as credit against Singapore tax, but exempted in Singapore as foreign income)
- Singapore employment income taxable in Singapore only

XI. Personal Income Tax.

Other Taxable Income (Non-Employment)

- Taxable non-employment income includes:
 - Business income (e.g. income from moveable properties, royalties and interest)
 - Income from a profession (i.e. rendering of a service with one's skill for fees, e.g. by doctors, lawyers)
 - Capital gains from the sale of capital assets
 - Other income from investments, except dividends received from an association of persons which are exempt from income tax
- Declaration of non-employment income is an obligation of the individual, not the employer

Q&A

Thank you for your attention.



Contact in Yangon:



Mr Alexander Bohusch

Partner / Attorney-at-law (Germany)

Luther Law Firm Limited

Luther Corporate Services Limited

Uniteam Marine Office Building, 8th Floor, Unit#1

No. 84 Pan Hlaing Street

Sanchaung Township, Yangon

Phone: +95 1 500 021

Email: alex.bohusch@luther-lawfirm.com

www.luther-lawfirm.com

www.luther-services.com