



Luther.

Myanmar Employment Law

Ms Nang Kay Si Kham
Mr Fabian Lorenz
Luther Law Firm Limited
6 August 2018

Agenda.

- I. Legal Framework
- II. Payroll
- III. Social Security
- IV. Personal Income Tax
- V. Hiring of Employees & Registration of Employment Contracts
- VI. Official Employment Contract and Employment Law
- VII. Factories Act 1951 (as amended in 2016)
- VIII. Dispute Resolution System
- IX. Trade Unions, Strikes & Lock-Outs
- X. Labour Inspection
- XI. Labour Law Updates



Luther.

I. Legal Framework

I. Legal Framework.

Relevant Acts and Laws

- Workman'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)
as amended by Union Tax Law 2016
- 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 Generals Office on Taxation of Housing Benefits
- Ministry of Labour Notifications on Employment Contracts
- Ministry of Labour Notification on Minimum Wage
- Ministry of Labour – Template Employment Contract
- Ministry of Labour – Template Work Rules
- Ministry of Labour – Template Pay Slip



I. Legal Framework.

Current Drafts

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

Current Discussions

- Labour Organizations Law



Luther.

II. Payroll

II. Payroll.

Payment of salary to the employee

- Payment (to be made on a working day):
 - Up to 100 employees: by the end of the month
 - 101-500 employees: within 5 days of the end of the month
 - 501-1,000 employees: within 7 days of the end of the month
 - More than 1,000 employees: within 10 days of the end of the month
 - Upon termination: within 2 days from the termination date
 - Upon resignation: by the end of employment
- Cash, cheque, bank transfer within Myanmar
- Overseas transfer of salaries - has to be approved by the Central Bank of Myanmar

II. Payroll.

Minimum Wage

- Minimum Wage Law came into force in 2013
- Wage: “fee, wage or salary entitled to be obtained by an employee for carrying out hourly work, daily work, weekly work, monthly work or any other part-time work with an employer”
- Includes by definition benefits, bonuses and overtime
- In practice, overtime payment not accounted for calculation of the minimum wage (different interpretation by the respective township possible)

II. Payroll.

Minimum Wage

- Specifically not included:
 - Travel allowances;
 - Pension payments and gratuities for service;
 - Social security cash benefits;
 - Allowances for accommodation and meals, electricity charges, water service charges and duties and taxes;
 - Medical treatment allowances and creation allowances;
 - Compensation for dismissal from work and compassionate allowance;
 - Other fees not considered wage in accordance with Minimum Wage Law (2013) as stipulated by notification of the Ministry of Labour, Immigration and Population with the approval of the Union Government
- Law provides for a salaried employee's right to enjoy 1 paid rest day a week

II. Payroll.

Minimum Wage

- Reduced minimum wage for workers during 3 months of training period and during probation period of 50% respectively 75%
- Minimum wage to be revised regularly (at least every two years)
- New Minimum wage since 14 May 2018
- Notification No. 2/2015 was repealed and replaced by Notification No. 2/2018

II. Payroll.

	Notification 2/2015	Notification 2/2018
Minimum wage (8 hour working day)	MMK 3,600 (approx. USD 2.65)	MMK 4,800 (approx. USD 3.53)
Minimum wage (per working hour)	MMK 450 (approx. USD 0.33)	MMK 600 (approx. USD 0.44)
Geographical scope	In the entire Union of Myanmar	In the entire Union of Myanmar
Exceptions for small and family enterprises	If 15 or less employees	If 10 or less employees

II. 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.

III. Social Security

III. 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

III. 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



III. 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.

IV. Personal Income Tax

IV. Personal Income Tax.

Taxable Income

- Any income received by an employee from the employer is taxable:
 - salary, wages, annuity, pension, gratuity; and
 - any fees, commissions or perquisites received in lieu of or in addition to any salary and wages.
- Exempted from income tax is only housing provided by the employer (i.e. employee occupies residential premises of the employer)

Tax Rate

- Personal income tax is levied at progressive rates of 0–25%
- Income below MMK 4,800,000 is exempted from taxation

IV. Personal Income Tax.

Residents

- Locals and resident foreigners (staying in Myanmar for a period of 183 days or more during any year of assessment) are taxed on their worldwide income
- Locals and resident foreigners are eligible for deductions and allowances, such as basic relief, co-resident parent relief, spouse relief, child relief and other reliefs, such as life insurance contributions and employee contributions towards the Social Security Fund

Non-Residents

- Foreigners staying in Myanmar for a period of less than 183 days during any year of assessment are taxed only on income derived from sources within Myanmar
- Non-residents are not eligible for deductions and allowances
- Tax exemptions may be available pursuant to the existing Double Tax Treaties (e.g. with Singapore or Thailand)

IV. Personal Income Tax.

Registration of Employees for Personal Income Tax

- Employers have to register their employees with the relevant township office of the Internal Revenue Department to facilitate the payment of the employees' personal income tax

Preparation, Filing and Payment of Personal Income Tax

- Pursuant to sec. 16 (a) Income Tax Law, 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, guaranteed income, filed by the employer with the relevant authorities and paid to the Myanmar Economic Bank within seven (7) days from the date of salary payment; In practice, many tax offices currently prefer a quarterly filing and payment of the withheld personal income tax

IV. Personal Income Tax.

Annual Computation and Filing of Personal Income Tax

- Declaration has to be submitted within three (3) months after the end of the income year
- For all employees employed by the employer in the previous income year (including employees who resigned)

Non-Compliance

- Employers failing to withhold and pay their employees' personal income tax are deemed to be at default and liable for such payments

Luther.

V. Hiring of Employees & Registration of Employment Contracts

V. Hiring of Employees.

Juvenile Workers

- Child Law states that children have the right to engage voluntarily in work permitted by the law, as well as the rights permitted to hours of employment, rest, and leisure
- Minimum working age is 14 years (sec. 75 Factories Act)
- Restrictions and special requirements apply
- Definitions
 - **Child:** a person "who has attained fourteen years of age but not attained sixteen years of age and who is granted permission to work by a registered physician"
(sec. 2 (a) Factories Act)
 - **Adolescent:** a person "who has attained sixteen years of age but not attained eighteen years of age." (sec. 2 (b) Factories Act)
 - **Young person:** someone who is either a child or an adolescent (sec. 2 (c) Factories Act)

V. Hiring of Employees.

Foreign Investments

- Foreign investors must hire Myanmar citizens for work that does not require special expertise
- Employers must provide relevant training in order to improve the skills of Myanmar citizens
- Previously for MIC Companies, Myanmar citizens must represent at least 25% of the total number of skilled workers, technicians, and staff during the first two years of operations. This percentage had to increase to at least 50% during the 2-4 years of operation, and to at least 75% in years 4-6; with the enactment of the new Myanmar Investment Law 2016, this quota-system was abolished (appointment of foreign workers must however be approved).
- Employers may hire a larger percentage of foreign employees for technological and managerial work with the approval of the SEZ's management committee

V. Registration of Employment Contracts.

Employment Contract

- Any enterprise must enter into written employment contracts with its employees within 30 days of employment (sec. 5 (a) Employment and Skills Development Law (2013))
- Employment contract must be approved by and registered with the relevant township office of the Labour Department

Non-Compliance

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

V. Registration of Employment Contracts.

- The Ministry of Labour, Immigration and Population has issued a **Standard Employment Contract**, the terms of which are in practice applied to all employees
- By Notification of the Ministry of Labour, Employment and Social Security, employers are required to use the official template contract
- Numerous international organizations, UMFCCI and employers have filed petitions against the template contract
- 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 Department of Labour at the time of filing

Luther.

VI. Official Employment Contract and Employment Law

VI. Official Employment Contract and Employment Law.

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)*

VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

Practice (Examples)

- NO registration of employment contracts
- Drafting an individual employment contract based on the official template and annex and submission to the Township Labour Office for review, approval and registration
- Filing an employment contract and signing another agreement for internal use only
- Providing foreigners working in Myanmar with an employment contract with the offshore headquarter governed by foreign law

Comment Luther:

- *As non-compliance did not have any immediate effects, many employers did not bother to register their employee's employment contracts*
- *Myanmar authorities focused on labour intensive industries (e.g. garment sector)*

VI. Official Employment Contract and Employment Law.

Payment of Stamp Duty

- Stamp duty is a form of tax charged on certain legal instruments (e.g. lease contracts) and requires the affixation of physical stamps on the instrument in question
- Myanmar Stamp Act (1899) stipulates which instruments are subject to payment of stamp duty
- Payment and affixation of the stamps is generally due before or at the time of execution of the instrument
- Possible numbers in Schedule 1 to the Myanmar Stamp Act (1899):
 - No. 57 (security-bond or mortgage-deed): MMK 2,500;
 - No. 5 (c) (agreement or memorandum of agreement if relating to joint venture agreement, production or profit sharing contract, construction agreement or other similar agreement or contract): 1% of the value, max. MMK 150,000; or
 - No. 5 (d) (agreement or memorandum of agreement if not otherwise provided for): MMK 300

VI. Official Employment Contract and Employment Law.

- The written employment contract shall contain the following minimum terms:
 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



VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

- 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

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

6. Working Hours

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

VI. Official Employment Contract and Employment Law.

6. Working Hours - 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



VI. Official Employment Contract and Employment Law

6. Working Hours - 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

VI. Official Employment Contract and Employment Law.

6. Working Hours - 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

VI. Official Employment Contract and Employment Law.

6. Working Hours - 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

VI. Official Employment Contract and Employment Law.

6. Working Hours - 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

VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

7. 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

VI. Official Employment Contract and Employment Law.

▪ **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

VI. Official Employment Contract and Employment Law.

■ **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

VI. Official Employment Contract and Employment Law.

■ **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

VI. Official Employment Contract and Employment Law.

■ **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*

VI. Official Employment Contract and Employment Law.

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*



VI. Official Employment Contract and Employment Law

8. Overtime

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

VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

- 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 no violate any applicable law

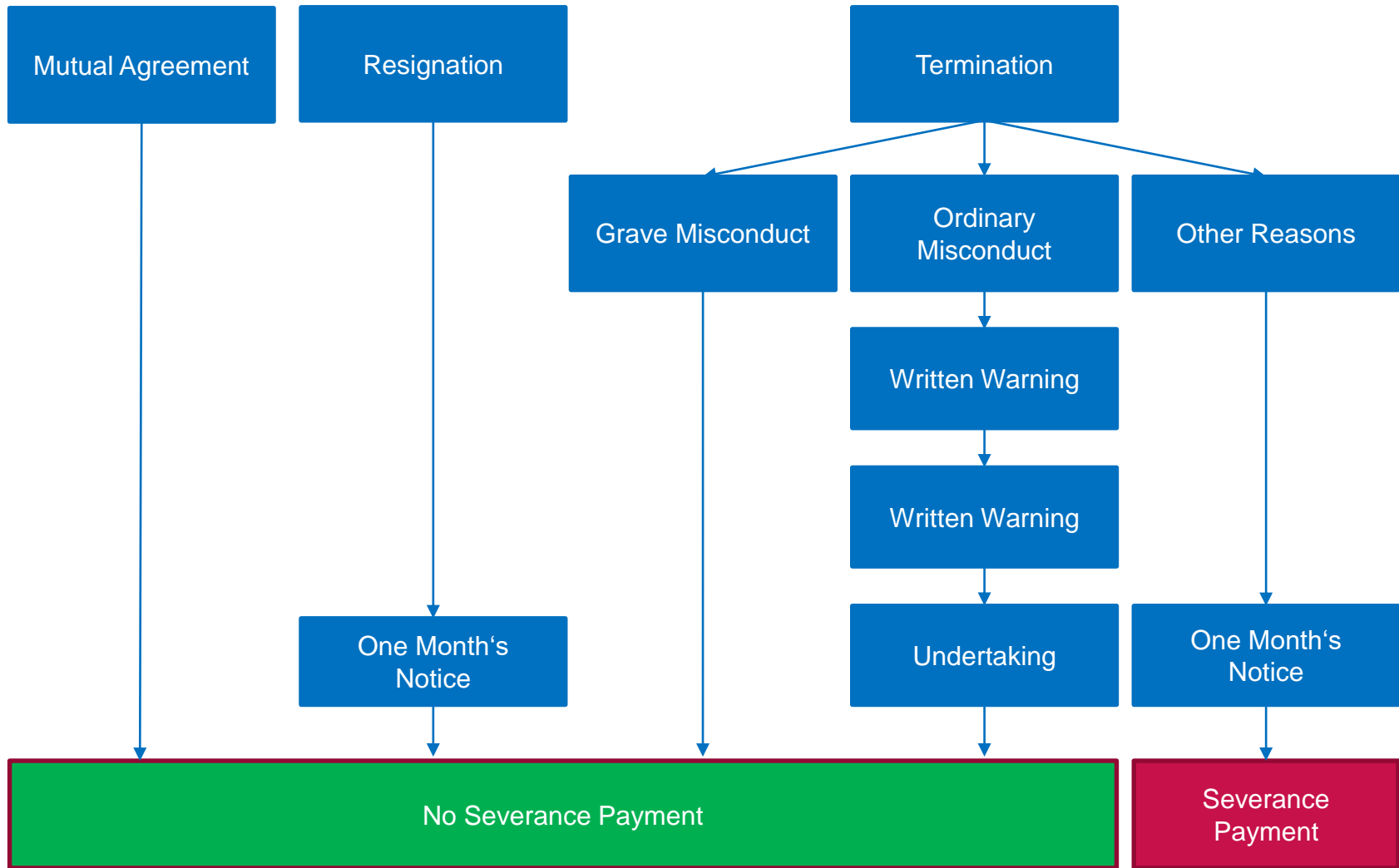
- Redundancy
 - The new Employment Contract Template recognizes redundancy as a reason for termination
 - Employers shall coordinate with labour organizations in respect of redundancies and termination of employees
 - If no labour organization has been formed, the employer shall coordinate with the Workplace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

VI. Official Employment Contract and Employment Law.

- 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

VI. Official Employment Contract and Employment Law.



VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

- 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

VI. Official Employment Contract and Employment Law.

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

VI. Official Employment Contract and Employment Law.

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*

VI. Official Employment Contract and Employment Law.

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.*

Luther.

VII. Factories Act 1951 (as amended in 2016)

VII. 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 (IX, 85-98)

VII. Factories Act – Provisions on Health.

- **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)

VII. Factories Act – Provisions on Health.

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)
- 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)

VII. Factories Act – Provisions on Safety.

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)
- Shuttling 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)

VII. Factories Act – Provisions on Safety (Ex.).

- 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)
- 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)
- 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)

VII. Factories Act – Provisions on Welfare.

- 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)

VII. Factories Act – Provisions on Welfare (Ex.).

- 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)
- 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)

VII. Factories Act – Provisions on Working Hours.

- 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

VII. Factories Act – Provisions on Working Hours.

- 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

VII. Factories Act – Provisions on Working Hours.

- 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.

VII. Factories Act – Registers.

- 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

VII. Factories Act – Registers.

- 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

VII. 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)

VII. Factories Act – Punishments and Procedures.

Procedures – Inspectors (sec. 11 Factories Act)

- 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)
- 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

VII. Factories Act – Punishments and Procedures.

Procedures – Court Orders (sec. 89 Factories Act)

- 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.

VIII. Dispute Resolution System

VIII. Dispute Resolution System – Overview.

- Myanmar's labour dispute resolution system is governed by the Settlement of Labour Dispute Law (2012)
- Mechanism for safeguarding workers' rights, peaceful workplaces, and obtain rights fairly, rightfully, and quickly by settling the dispute of the employer and worker justly through conciliation or arbitration

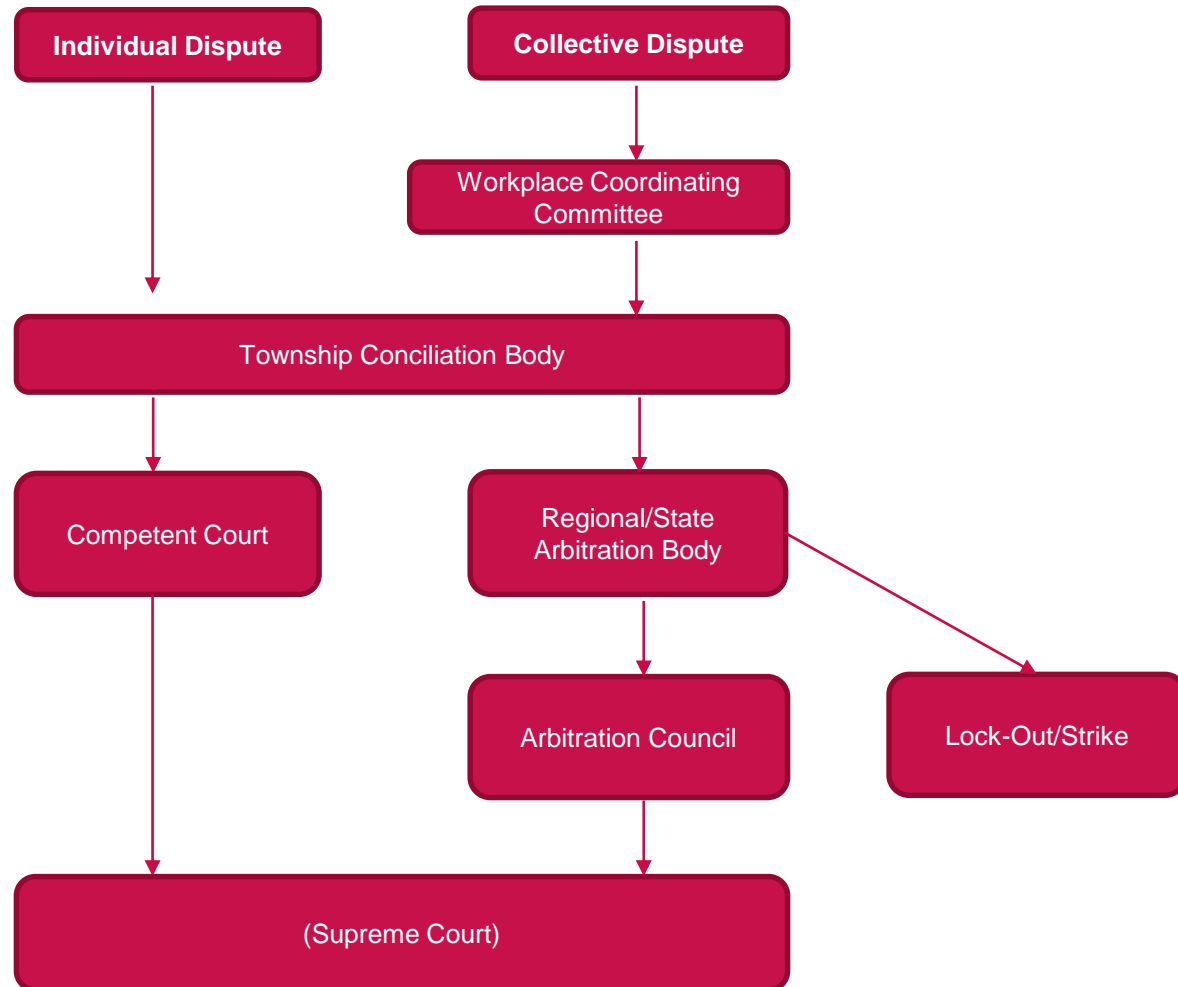
VIII. Dispute Resolution System – Overview.

- The law outlines a multilevel process for disputes that begins at the enterprise with a **Workplace Coordinating 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 (in case of an individual/collective dispute, for any party which is not satisfied with the decision of the Arbitration Council)

VIII. Dispute Resolution System – 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

VIII. Dispute Resolution System – Overview.



Luther.

Workplace Coordinating Committee

VIII. Dispute Resolution System – Coordinating Committee.

Companies with more than 30 employees

- Companies with more than 30 employees shall form a Workplace Coordinating Committee for negotiating and concluding collective agreements
 - **Labour organization(s):** Workplace Coordinating 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 Coordinating 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 Coordinating Committee not compulsory (but optional!)

VIII. Dispute Resolution System – Coordinating Committee.

Duties

- Workplace Coordinating 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

VIII. Dispute Resolution System – Coordinating Committee.

Procedure (Workplace Coordinating Committee)

- If the worker, labour organization or the employer (by themselves or by representatives) complain to the Workplace Coordinating 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 Coordinating Committee shall keep records of the settlement and shall send a report to the relevant Conciliation Body

VIII. Dispute Resolution System – Coordinating Committee.

Procedure (NO Workplace Coordinating 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 official public holidays)
- The employer shall keep records of the settlement and shall send a report to the relevant Conciliation Body

VIII. Dispute Resolution System – Coordinating Committee.

Non-Settlement

- **Individual Disputes**

- Employer or employee/workers may file a law suit with a Labour Court

- **Collective Disputes**

- If desirous to continue to carry out the conciliation in respect of the non-settled dispute, the employer or employees/workers may complain to the Township Conciliation Body

Luther.

Township Conciliation Body

VIII. Dispute Resolution System – Township Conciliation Body.

- Region/State Government shall form Conciliation Bodies in the townships

Formation

- 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

VIII. Dispute Resolution System – Township Conciliation Body.

Procedure

- The Conciliation Body shall determine the type of dispute (i.e. individual or collective) and conciliate / settle the dispute within three (3) days
- The dispute of interest that cannot be settled by negotiating and coordination between employer and the labour organizations, the employer may appoint the representative of the employer or the labour organizations may appoint the representatives of the workers before the period of conciliation
- Where no labour organization exists, the workers shall elect their representatives
- In case of an individual dispute, any party which is not satisfied with the conciliation may apply to the competent court

Special Economic Zones

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

VIII. Dispute Resolution System – 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

Non-Settlement

- If no conciliation is reached, the Township Conciliation Body shall inform the Regional/State Arbitration Body and parties within two (2) working days

Luther.

Regional/State Arbitration Body

VIII. Dispute Resolution System – Arbitration Body.

Formation (uneven total of 11 persons)

- 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 Member submitted by the employer organizations;
 - Three (3) persons selected from the nomination list Member submitted by the labour organizations;
 - One (1) departmental representative selected by the relevant Member Region or State Government;
 - Two (2) distinguished persons trusted and accepted by the Member employers or relevant employer organizations and the labour organizations; and
 - One (1) person assigned duty by the Ministry Secretary.

Term & Vacancies

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

VIII. Dispute Resolution System – Arbitration Body.

Procedure

- Parties usually have legal assistance/representation
- Binding 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 (not including official holidays) from the day of receipt of the decision of the Arbitration Body; or
 - Carrying out a **Lock-Out/Strike** in accordance with the relevant law

Luther.

Dispute Settlement Arbitration Council

VIII. Dispute Resolution System – Arbitration Council.

Formation (uneven total of 15 persons)

- 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

VIII. Dispute Resolution System – 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 official public holidays) from the day of receipt of collective dispute and send the decision to the relevant parties within two (2) days;
 - Make a decision on a lock-out/strike seven (7) days (excluding official public holidays) from the day of receipt of such dispute and send the decision to the relevant parties within two (2) days.
- Tribunal may hold a formal hearing or base its decision on documents
- The Arbitration Council shall send the copy of decision passed by the Tribunal to the Minister and the relevant Regional/State Governments

Luther.

Confirmation, Amendment and Effectiveness of Decision

VIII. Dispute Resolution System – Confirmation, Amendment and Effectiveness of Decision.

- Upon agreement of both parties, the decision of the Arbitration Body shall come into force on the day of decision making
- The decision of the Tribunal shall be deemed as the decision of the Arbitration Council; such decision shall come into force on the day of its decision
- 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
- The following persons shall comply with the decision:
 - All persons relevant to the dispute;
 - Legal successors of the employer involved in the dispute; and/or
 - All employed persons at the time of the dispute or thereafter

VIII. Dispute Resolution System – Confirmation, Amendment and Effectiveness of Decision.

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%
- **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)

Luther.

Judicial System

VIII. Dispute Resolution System – Judicial System.

Individual Disputes

- If either party is not satisfied with the outcome at the Township Conciliation Body, they may take the case to court (rather than to an Arbitration Body)

Collective Disputes

- Collective disputes not resolved by the Township Conciliation Body must go to the Arbitration Body
- In addition, either party can appeal an Arbitration Body or Arbitration Council decision to the Supreme Court

Practice

- Distinction between individual and collective disputes is not always clear
- The law describes an individual dispute as between an employer and one or more worker, while a collective dispute is between an employer (or employer organization) and a labor organization, but it can be hard to determine whether the dispute is with the worker(s) or with a labor organization, and individual disputes often go through the arbitration system as well, in part because this is viewed as a more effective mechanism than the courts and a way to help protect worker rights

Luther.

Prohibitions

VIII. 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

VIII. Dispute Resolution System – Prohibitions.

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 to amend a decision or agreement of an arbitration body
- No forcing of workers who are not desirous to participate in the 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

Non-Compliance

- Parties in default may be punished with fines

Luther.

IX. Trade Unions, Strike & Lock-Out

IX. 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; and
 - Enable workers to form and administer labour organizations systematically and independently
- The law applies to workers in these sectors and enterprises, both private and state-owned

Luther.

Labour Organization

IX. 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), every worker has 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 other government employees
- Workers in civilian production 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

IX. 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

IX. Trade Unions, Strikes & Lock-Out.

Duties

- Representing the workers;
- Protecting the rights and interests of the workers;
- Understanding the functions and duties of the workers;
- Assist in making work-rules, individual employment contracts, bonds, and other individual agreements between the employer and workers;
- Providing skill training to improve productivity;
- Support members on housing, welfare, cooperatives and other issues;
- Conduct meetings, strikes, and other collective activities peacefully and following the law, as well as their own rules

IX. 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;
 - Processes for granting membership, issuing membership certificates and resigning from membership;
 - Processes for electing, assigning duties, removal, and resignation of Executive Committee members;
 - Processes for holding of meetings;
 - Processes for establishment, maintenance, and use of the Labour Organization's funds;
 - Process for monthly and annual auditing of funds

IX. 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

IX. Trade Unions, Strikes & Lock-Out.

Executive Committee:

- Executive Committees shall have odd numbers of members, and they shall be elected:
 - Basic Organizations shall have five (5) or more (but always an odd number) members;
 - Townships, Region/State, seven (7) - 15 members; and
 - Labour Confederations, 15 - 35 members

IX. Trade Unions, Strikes & Lock-Out.

Membership Dues and Use of Funds

- Monthly membership dues paid by workers to a Labour Organization maximum of two percent (2%) of the member's monthly wages
- Basic Labour Organizations must share monthly membership dues to 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 according to 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
- Any person convicted of violating this provision will be fined and/or imprisoned for up to one year
- 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 spending
- An annual statement of the Labour Organization's accounts must be sent at the end of the financial year to the Township registrar (Basic, Township, and Regional/State) or Chief Registrar (Confederation and Federations)

IX. Trade Unions, Strikes & Lock-Out.

Employers Duties:

- Shall not impede their workers' 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 employers' help in the interest of the employers' workers

Luther.

Strike

IX. 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 workers' 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

IX. 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; and
- Permission from the conciliation body must be obtained

But: Workers in essential sectors are not permitted to strike (e.g. water supply services, electricity services)

IX. Trade Unions, Strikes & Lock-Out.

Main Courses of Strikes

- No salary increment
- Unpaid Wages
- Dismissal without cause
- Compulsory overtime
- Employer's defiance the authority decision

IX. Trade Unions, Strikes & Lock-Out.

- **Yangon Factory Targeted in Violent Labour Dispute Supplied Clothes to H&M**
 - Unpaid overtime wages (Ref: Myanmar Business Today, 13 Mar 2017)
- **Workers strike over wage demands**
 - Wages and working condition (Ref: Myanmar Times News, 30 Nov 2016)
- **200 workers strike over unpaid wages**
 - Unpaid wages from Hallmark Garment Factory (Ref: Myanmar Times News, 13 Jan 2017)
- **Striking Yangon workers plan march on city centre**
 - Salary increment and compensation for exposure to dangerous chemicals for departing employees (Ref: Myanmar Times News, 23 Dec 2016)

IX. Trade Unions, Strikes & Lock-Out.

- **Law, Labour Disputes and Trade Union Building in Myanmar**
 - Low wages, forced and unpaid overtime, and the firing of organized workers (Ref: Governance Across Border, 23 Mar 2017)
- **Bread factory workers begin sit-in strike in Yangon city centre**
 - Improved labour rights and the reinstatement of nearly 200 workers (Ref: Mizzima News, 7 Apr 2017)
- **Hundreds of Myanmar Garment Workers Mark Seventh Day of Labor Strike**
 - Full payment of salary (Ref: RFA, 14 Dec 2015)

Luther.

Lock-Out

IX. 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 workers 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.

X. Labour Inspection

X. Labour Inspection.

Registering and Licensing Enterprises (FA Sec. 6,8)

- Enterprises must be registered and licensed by the Ministry of Labour, Immigration and Population
- At least 15 days before beginning operations, employers must submit the following information:
 - Name and address in full of the employer, business, or company;
 - Communications address (phone number, fax number and e-mail address);
 - Nature of the business or manufacturing process;
 - Kind of trade, load power of electricity and machine power to be used;
 - Name of the relevant manager;
 - Number of workers likely to be employed in the factory;
 - Notice of period of work (referred to as the NPW), which must then be displayed in a highly visible area in the workplace;
 - Notice of the occupier (or owner), if different from manager
- Enterprise owners must submit plans for enterprise sites, construction, and expansion to the Chief Inspector for approval. If the Ministry does not respond to plans within three months, the plans are approved (rejection by the Chief Inspector of plans may be appealed to the MOLIP within 60 days)
- Enterprises that intend to close or suspend operations must notify the Chief Inspector one month before work stops, or as early as possible; another 15-day notice must be submitted before resuming operations

X. Labour Inspection.

Inspection Powers (FA Sec. 10,11)

- Inspectors have the power to enter and examine the premises, machinery, and documents of any enterprise, including the records concerning wages, overtime, payroll, deductions, and may at any time inspect for signs of illegal child labour
- Inspectors may take and record statements, though no one may be compelled provide information that may incriminate him/herself

X. Labour Inspection.

Enforcing Health and Safety Standards (FA Sec. 15, 18, 38-42, 52-56, 99)

- The inspectors have the following powers for protecting and improving worker health and safety:
- Prohibit the use of enterprises or parts of enterprises if danger to human safety is imminent;
- Require employers to make plans, carry out safety tests, and/or make changes on a deadline if any party of an enterprise creates a danger to human life or safety
- Prohibit work in a chamber, tank, or confined space until certified as free from dangerous fumes and is fit for use by people;
- Restrict the use of any specified materials or processes
- Prohibit or restrict the employment of young women and young workers in enterprises or classes of enterprises determined to be dangerous
- Certify repairs or alterations to machines or containers with explosive or flammable materials
- Require employers to display additional information for workers relating to their health, safety, and welfare including the maximum number of workers allowed in each area
- Require periodic medical examination of workers involved in dangerous work
- Investigate causes of accidents or diseases among workers, and take samples of any substance used in the factory, keeping results confidential
- Report findings to the relevant Social Security township office

X. Labour Inspection.

Enforcing Wage and Compensation Standards

- Under the under the Minimum Wage Law (2013), inspectors may enforce wage and compensation standards by:
 - Enter and inspect any workplace in order to determine that it complies with the law;
 - Review and copy all payroll, lists of workers, schedules and other wage documents relating to workers at the workplace;
 - Review and copy all payroll, lists of workers, schedules and other wage documents relating to outside contract workers from other employers;
 - Require employers to post an easy-to-see notice showing wage rates for workers in the enterprise, pay days, and processes for fines against workers and deductions from pay;
 - Set averages, in consultation with employer and worker representatives, for piece-rate workers in order to calculate their overtime pay
- Inspectors must report their wage findings to the relevant Ministry department, and the department shares the findings with the relevant Wage Committee

Non-compliance

- Employers face imprisonment of up to one year and/or fines if convicted of making false records or deceitful reports in their payroll documents

Luther.

XI. Labour Law Updates

XI. Labour Law Update

- On 30 August 2013, the Myanmar parliament enacted the Employment and Skill Development Law; by-laws to implement the Employment and Skills Development Law 2013 have been discussed, but were never issued
- In August 2015, the Ministry of Labour published Notification 1/2015 on the preparation and execution of employment contracts; employers and employees were required to execute employment contracts using the prescribed employment contract template of the Ministry of Labour; the template – drafted for factory workers, and not suitable for most businesses – was heavily criticized for not meeting requirements of both employers and employees for limiting the principle of freedom of contract
- In February 2017, updated Draft Rules to the Employment and Skill Development Law 2013, including provisions on the execution of employment contracts and a new employment contract template, were discussed between the Ministry, labour unions and UMFCCI; while not yet issued, the Draft Rules provide some insights on future changes
- Further, the Ministry of Labour published the Draft Workplace Safety and Health Law, containing – inter alia – provisions for the prevention of workplace hazards and diseases and establishment of safe and healthy workplaces
- Once enacted, the Workplace Safety and Health Law will complement the Factories Act 1951 (as amended in May 2016) and other prevailing laws, rules and regulations governing workplace safety and health

Luther.

Draft Rules to the Employment and Skill Development Law 2013

XI. Draft Employment and Skill Development Rules.

- The latest draft of the Employment and Skill Development Rules varies significantly from the previous versions published in 2013 and 2015, containing provisions on:
 - Myanmar Labour Market
 - Employment Agency Services
 - Employer Obligations
 - Employment Contracts (*The draft of the Employment and Skill Development Rules provides for a new employment contract template; We do however understand, that this contract is currently undergoing further review in coordination with the UMFCCI and the Myanmar Labour Unions*)
 - Employment and Skill Development Teams
 - Employee Skill Development and Training Programs
 - Employee Skill Development Fund

XI. Draft Employment and Skill Development Rules.

- Employer Obligations
 - Pursuant to the Draft Employment and Skill Development Rules, the employer has the following duties:
 - Enter into employment contracts with the appointed workers;
 - Communicate with employment and labour exchange offices, licensed companies or job fairs in order to appoint workers;
 - Send completed CVs of the hired workers to the relevant employment and labour exchange office;
 - Send the number of hired workers, the number of vacant workers and the total number of workers to the relevant employment and labour exchange office every three (3) months; and
 - Inform and request the vacant job positions or the job positions which will be vacant from the relevant employment and labour exchange office in accordance with the existing law
 - Private enterprises and organizations shall further nominate a resident director or management person as representative for employment matters, and communicate his/her details (i.e. name, position, Passport/NRC number, phone number, fax, e-mail address, company and residential address) to the relevant employment and labour exchange office

XI. Draft Employment and Skill Development Rules.

- Employment Contracts
 - The draft of the Employment and Skill Development Rules provides for a new employment contract template; we do however understand, that this contract is currently undergoing further review in coordination with the UMFCCI and the Myanmar Labour Unions
 - Restriction to Employer to five or more Employees:
 - While the Employment and Skill Development Law 2013 provides that any employment contract is to be registered, this requirement is currently only enforced for employers with five (5) or more employees
 - This existing practice of the employment and labour exchange offices seems to be confirmed in the Draft Employment and Skill Development Rules, which stipulate that Chapter 3 (Execution of Employment Contracts) applies only to employers of five (5) or more employees
 - Review, Approval and Registration of the Employment Contract:
 - Upon mutual agreement between the employer and employee, the draft employment contract shall be submitted to the relevant employment and labour exchange office, which shall review the draft and approve it within 30 days; should any changes be required under Myanmar labour law, the employment and labour exchange office shall send the draft back to the employer, who shall re-submit it upon amendment
 - After approval/revision of the employment contract, the employment contract shall be signed by both the employer and employee in the presence of the employment and labour exchange officer; the employment and labour exchange office shall validate and record the employment contract, one original of which is to be kept by the employer, and one original of which is to be given to the employee

XI. Draft Employment and Skill Development Rules.

■ Terms of Employment Contracts

■ Probation Period

- Pursuant to the Draft Employment and Skill Development Rules, an employee may be employed with or without a probation period
- Should the employee be placed on probation, such period shall however not exceed three (3) months. Prior to appointing the employee under probation, the employer may further engage the employee for pre-employment training of up to three (3) months (adding up to a total of six (6) months training/probation period before formally appointing the employee); after two (2) months of probation period, the employee shall be informed, providing valid reasons, whether or not (s)he will be appointed; if desirous of appointing the employee, both parties shall execute an employment contract
- Any pre-employment training and probation period shall be counted towards the length of employment
- The Draft Rules lack any provisions on the payment of wages/salaries, termination or resignation during probation period

■ Term of Employment Contract

- The Draft Employment and Skill Development Rules do no longer limit the maximum term of an employment contract, but only that the term shall be agreed upon between the employer and employee; the draft does however stipulate, that in the event of an extension or renewal of an employment, the previous employment shall be counted towards the total length of employment

XI. Draft Employment and Skill Development Rules.

- **Working Hours**
 - Pursuant to the Draft Employment and Skill Development Rules, working hours, meal and rest times shall be stated precisely in the employment contract in accordance with labour laws; the draft does however explicitly allow for the working hours may however be agreed between the employer and employee depending on the nature of the workplace
- **Overtime**
 - Pursuant to the Draft Employment and Skill Development Rules, overtime may be carried out upon agreement between the employer and employee and shall be paid for in accordance with Myanmar labour law
- **Medical Care**
 - In case of work-related sickness, accidents or injuries, diseases or death at the workplace, the employer shall be liable in accordance with relevant labour laws
- **By-Laws to be complied with by Employees**
 - For factories, workshops, workplaces and enterprises, employers shall formulate by-laws to be complied with by the employees in accordance with laws; employees staying in quarters provided by the employer shall abide by hostel by-laws prescribed by the employer

XI. Draft Employment and Skill Development Rules.

- Resignation and Dismissal
 - The Draft Employment and Skill Development Rules provide, that no employer shall illegally terminate an employment or dismiss an employee without valid reasons, and any termination shall be notified to the employment and labour exchange office.
 - According to the draft, an employment may be terminated as follows:
 - Resignation: Employees may resign by giving 30 days' notice and sound reasons
 - Dismissal: The Draft Employment and Skill Development Rules provide, that employers may dismiss employees for reasons such as violations of the law or criminal acts, and would then not be required to pay severance compensation
 - Termination: While not expressly mentioned, we understand that in all other cases, termination shall be made with 30 days' notice and payment of severance compensation in accordance with the law
 - Termination/cancellation of employment contract upon mutual negotiation: Pursuant to the Draft Employment and Skill Development Rules, the employer and employee may also negotiate to terminate the employment contract

XI. Draft Employment and Skill Development Rules.

- Employment and Skill Development Teams
 - Chapter 4 of the Draft Employment and Skill Development Rules contains provisions on the forming of Employment and Skill Development Teams and their duties and responsibilities
- Employee Skill Development and Training Program
 - Chapter 5 of the Draft Employment and Skill Development Rules contains provisions on the development of employee skills and training programs
 - Employers shall carry out training programs for their employees, and any employers having training programs and/or training schools/departments, shall submit their training programs to the Employment and Skill Development Team
- Employee Skill Development Fund
 - The Skill Development Team shall have the right to set up a fund to develop the working skills of employees
 - The Ministry of Labour shall stipulate by notification which industries, production-, agricultural-, commercial- and services businesses will have to contribute
 - Exemptions apply to employers providing training to their employees on their own
- Employment Agency Services
 - Employment agency firms [*Note: In this draft still restricted to Myanmar companies*] shall apply for a one-year license to the Ministry of Labour and shall – inter alia – be entitled to carry out labour recruiting services and receive a service fee of not more than one (1) time of the hired worker's salary from the employer, which shall not be deducted from the worker's income

Luther.

Draft Workplace Safety and Health Law

XI. 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; and
 - Establish safe and healthy workplaces in accordance with regional and international standards
- 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; and
 - Enterprises and workplaces thereof as prescribed from time to time through notification

XI. Draft Workplace Safety and Health Law

- **Prior-Sanction and Business-Licenses**
 - Pursuant to sec. 8 (a) and 9 (a) of the law, any person who wishes to establish an enterprise relevant to the Draft Workplace Safety and Health Law shall apply to the Director General of the Factory and General Labour Laws Inspection Department 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
- **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

XI. 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 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
 - 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; or
 - discontinuation of work due to an imminent workplace accident or occupational disease
 - 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

XI. Draft Workplace Safety and Health Law

- 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
- 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

Q&A

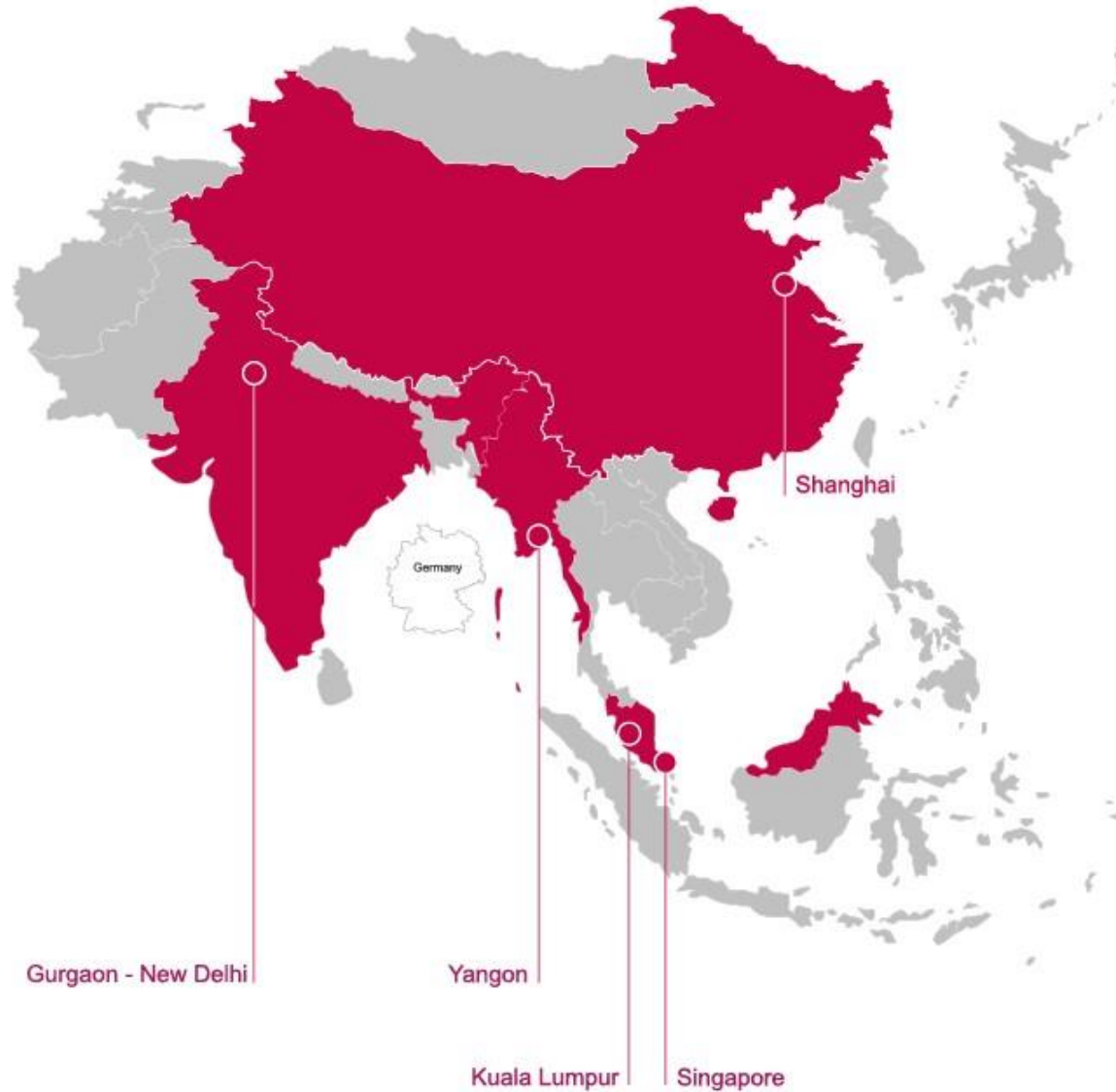
Luther.

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

Luther in Asia.



Thank you for your attention.



Contact in Yangon:



Mr Fabian Lorenz

Associate / Attorney-at-law (Germany)

Ms Nang Kay Si Kham

Legal Advisor (Myanmar)

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: fabian.lorenz@luther-lawfirm.com

nang.kay.si.kham@luther-lawfirm.com

www.luther-lawfirm.com

www.luther-services.com