



HUMAN RESOURCES GUIDE TO MYANMAR



CCI FRANCE MYANMAR
FRENCH MYANMAR CHAMBER OF COMMERCE & INDUSTRY

CCI France Myanmar, the French Myanmar Chamber of Commerce and Industry, now brings together around 160 Members from 15 nationalities (40% French, 40% Myanmar, 20% others).

We offer business services, such as market studies, sourcing, matchmaking, and offices to rent in our two business centres (Yangon and Mandalay).

In addition, we dedicate our time to help our Members to grow, by organizing 40 networking and business events per year, and we help them to find new contacts by actively promoting them.

But, what makes us truly unique is our expertise in human resources.

We have developed a wide ranges of services, such as wage portage, recruitment and trainings, and we aim to share our knowledge with publications available for free to anyone.

Recently, we have launched our first salary survey. Now, thanks to this Human Resources Guide to Myanmar, we hope to contribute to the improvement of human resources standards and practices in the country.

ABOUT CCI FRANCE MYANMAR'S HR COMMITTEE

One of the main challenges of companies settled in Myanmar is the human resources and the issues which are related to them: low average level of education, lack of professional skills and of experience, difficulties in implementing international standards and processes, challenging legal & labour framework, misunderstandings in cross-cultural environment, staff turnover, and so on.

In this context, CCI France Myanmar has decided

to create a Human Resources Committee for its members. The main objective of this committee is to discuss the human resources challenges faced by companies in Myanmar and identify actions and projects which could be implemented to tackle these issues.

This guide is a collective effort based on the contributions of the Members of our Human Resources Committee.

ACKNOWLEDGEMENT

Our special thanks to Luther Law Firm for preparing the legal summaries in this guide.



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Guillaume REBIERE
Executive Director
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Companies operating in Myanmar, foreign and local ones alike, have to face an absence of proper economic and social data, which present a tremendous challenge in terms of human resources.

While the Myanmar Labour Laws provide rules and regulations on how most of the legal matters at work should be handled in Myanmar, they do not cover all issues and situations that employers and employees encounter in their daily work.

In addition, the Myanmar legal framework, like any other in the world, offers a wide margin of interpretation, bringing uncertainty to companies on how to properly implement their human resources processes in compliance with the law.

Many companies, because of their lack of knowledge, lack of verified information and unreliable counsel, navigate in dangerous and grey waters, thus putting themselves at risk.

This is where experience helps bring some light. And this is where our present guide comes in play.

Indeed, this guide aims at providing very concrete and realistic information and advice, based on the experience of the skilled members of our Human Resources Committee, to all companies operating in Myanmar.

Thanks to the knowledge shared by Myanmar

and foreign professionals after years of working in Myanmar, many practical solutions will come to hand on recruitment, contracts, leaves, offices hours, conflict resolution, recruitment...

The guide will, in every chapter, provide a recap of what official laws, rules & regulations say, as well as advice and examples from professionals in human resources, who have found and implemented adapted solutions when faced with the same situations.

We hope to make this publication a pocket “Swiss Army knife” providing all the necessary tools for companies operating in Myanmar, to overcome any challenge put in their way in terms of human resources.

This guide will be, of course, updated annually to keep track of the many changes happening in Myanmar.

Meanwhile, we also invite all of you who would like to work and to keep in touch with human resources matters on a more regular basis, to join our Human Resources Committee and to share your own expertise with our community.

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Who can work or hire workers in Myanmar and how?



Minimum age

Legal

No person under the age of 14 shall be employed in a shop or an establishment (sec. 13 Shops and Establishment Law, 2016), as well as in a factory (sec. 75 Factories Act, 1951)



Experience from our HR Committee members

Hans VAN BEEK – MyJobs Myanmar: “We mainly hire people older than 22. It is not a requirement but I think we have hired a very few people whose age is below, it is because we need employees with a certain level of experience and most of the people we hire have a Bachelor Degree so they would be in university before that”.

Common Practices

Even though the Myanmar Labour Law requires a minimum age of 14 years old, most international companies apply an older minimum age.

International companies apply often the limits from their home countries when these are stricter than in Myanmar. Some supplier contracts with multinationals based in Myanmar require the supplier to declare that they do not provide or use child labour, and require a minimum age of 18 for certain types of work.

In small locally owned businesses like e.g. tea shops it is not uncommon to see 8 or 10-year old children working in the operations. Do not take this as a sign that this is allowed. As an officially registered company, one shall adhere strictly to the law. In most office environments, the employees have finished university and are often 18 or older.



Requirements to hire an employee in Myanmar

Legal

Any local or foreign employer must enter into written employment contracts with its employees within 30 days of employment (sec. 5 (a) Employment and Skills Development Law 2013). No employment contract has to be signed 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 was confirmed by Notification 140/2017, issued by the Ministry of Labour on 28 August 2017.



Common Practices

The first step to be able to hire employees in Myanmar is to operate a formally established legal entity. This legal entity employs the employees and is the counter part in the employment contract for the employee.

If an organization wants to start certain activities in Myanmar before it has established its own local legal entity, it could do so by agreeing with a company already here to put the first employees on that company's payroll. Some organizations, such as CCI France Myanmar, provide this wage portage service for a certain fee. It would be just a bridge-solution that comes at an extra monthly cost, but allows the company to get started. While the majority of these entities (partners, suppliers, special companies...) usually charge around 25% - 30% of their clients' monthly gross salary, CCI France Myanmar only charges 15%.

It will be easier to find a supplier for such kind of

staffing service when it relates to white-collar office staff and much more difficult or close to impossible for off-site blue-collar workers.

As written above, the basic requirement is to have an established local legal entity that can hire the employees. This can be a foreign owned, local owned or joint-venture legal entity.

Having a connection to the local Labour Office in the township where the legal entity has its registered address is important.

Particularities of Myanmar working culture

Key points

1. The Myanmar work force appreciates and prioritizes job security, and a good office culture.
2. Building a solid team is not only about hiring the right people, but also keeping them in your organization.
3. The economy is young and high-performers and high-potentials have more often than not a range of job opportunities to select from.

According to a work force survey of The Boston Consulting Group and The Network, these are the top 10 job preferences of the work force in Myanmar:

#1	Job security	(company culture)
#2	Collaborative working approach	(company culture)
#3	Good relationship with colleagues	(company culture)
#4	High-performance culture	(company culture)
#5	Creative and innovative work environment	(company culture)
#6	Good work-life balance	(company culture)
#7	Career development possibilities	(job content)
#8	Learning & skills training	(job content)
#9	Company values	(employer image)
#10	Opportunities to lead and take responsibility	(job content)



Experience from our HR Committee members

Simon BRUCE – MyWorld: “Myanmar people do not work well in a confrontational environment, so employers need to make sure that the culture is relatively friendly and considerate of family. For instance, if one of their relatives is sick, they will probably take a day off. Providing space that allows them to eat lunch together is also extremely important, as food is key to Myanmar culture.”



Employees often refer to their colleagues as their work family, and family is central to Myanmar culture

Particulars of Myanmar working culture

Many people in Myanmar still have only a few years of working experience in a full market economy. There are few older siblings or parents who worked in an economy as the current work force is experiencing.

This implies that managers are often training and coaching their people a large part of the time,

for job specific elements but also for generic normal work behavioural aspects (e.g. it is maybe not smart for your career to put on Facebook that you are frustrated with your manager).

Experience from our HR Committee members

Marc ROLLET - Synapse Original: "Myanmar is a very young country with half of the population under 25 years old, which means that the country shows a lot of dynamism and energy to move on from the past. At the same time, there are some big challenges, such as skills management and absences..."



How to avoid cultural or negative discrimination

As most of Myanmar people are used to adding information such as their religion, age, weight... on their CV, it can be complicated to avoid it.

Example of a typical Burmese CV



NAME

Address

Phone

E-mail

PERSONAL DATA

Sex : Female
Marital Status : Single
Height : 5feet, 2 inches
Weight : 218 lbs
Date of Birth : 2nd May 1977
National Registration No. : 12/UKM(Naing)175764
Health : Hypertension
Strong & Weak Points : Much interested in working
Position Desired : Any suitable possible position at your esteemed company
Expected Salary : Above USD 1400

SPECIAL INTERESTS and GOALS to ACHIEVE

To become an active and successful business woman who could show up people how to achieve goals and dreams.

EXPERIENCES

- February 2016~Present Indochine Textile Co., Ltd.
Part Time Social Compliance Auditor
 - Auditing the Garment Factories whether they are in compliance with the basic requirements of Social Requirements and workplace requirements.
 - Accommodated the factories by providing and training necessary preparation on work place and Set-up the Garment Factory in Myanmar for producing woven wears and export to U.S.A in accordance to comply with international standard.



Experience from our HR Committee members

Chit Chit Naing – Novotel Yangon: “Novotel has a specific experience as we have 13 disabled employees who receive equal salary, service charge and employee benefits like the other employees. There are 3 kinds of disabled employees (Intellectual Impairment, Physical Challenge and Deaf & mute) that we recruit in collaborating with Shwe Min Tha Foundation, a non-profitable organization for the persons with disabilities, and Mary Chapman School for the deaf applicants. We also provide them training by making their colleague work close to them and ensuring them to feel as a part of the team.”



Template of contract and annexes

Legal

The Department of Labour of the Ministry of Labour, Immigration and Population (Ministry of Labour) issued Notifications, according to which employees in Myanmar must be employed under a prescribed employment contract template. This requirements is currently enforced for employers with five or more employees.



Experience from our HR Committee members

Hans VAN BEEK – MyJobs Myanmar: “All our employees have two employment contracts. One in Myanmar and one in English, but we made sure that there are no contradictions between them. The English contract is from our own templates and is more detailed. The Myanmar one is from the Labour Office. It is the same contract for foreigners and Myanmar nationals.”

Update

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.

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 .



To be officially recognized, all employment contracts must be registered at the local Labour Office

Obligatory information in contract

Legal

Pursuant to the Employment and Skills Development Law (2013), the following particulars shall be included in every employment contract:

Type of employment	Provision of transportation to/from work (if any)
Probation period	Obligations of the employee
Wage/salary	Obligations of the Employer
Location of the establishment	Training of the employee (if any)
Term of the employment agreement	Resignation by employee
Working hours	Termination/dismissal by employer
Days-off, holidays and leave days	Mutual termination
Overtime	Other matters
Meal arrangements during work hours (if any)	Adding, changing or amending the rules of the Contract
Provision of accommodation (if any)	Miscellaneous
Provision of medical treatment (if any)	

Non-compete rules

Legal

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 if reasonable.

Registration of contract with Labour Office

Legal

Employment contracts must be submitted to the relevant Township Labour Office for registration.

An employer convicted of failing to sign an employment contract shall be punished with imprisonment of 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 township labour offices may be declared void.

Common Practices

Complying with the following requirements can be quite challenging. The labour authorities lack a standard policy on the registration of employment contracts, and different Township Labour Officers will provide different answers (e.g. whether all employers will have to register employees; whether all employees shall be registered).

Further, some Township Labour Officers seem not to follow the current labour laws, refrain from issuing a written confirmation in case an employer submits employment contracts, and are not allowed to register them.



Experience from our HR Committee members

For registration of contracts with the Labor Office, companies can follow this process:

1. *Modify some clauses and paragraphs to be in line with the company sector;*
2. *Submit the draft Employment Contract to the Township Labour Exchange Office in both Myanmar and English versions;*
3. *Negotiate with Township Labour Exchange Officer;*
4. *When the Township Labour Exchange Officer approves the draft employment contract, they will issue an endorsement letter with letterhead, official seal and authorized Officer's signature;*
5. *When new comers join or when it is time to renew employment contracts, the company has to print 3 copies of the employment contracts: one for the employee, one for the employer and the last copy for Township Labour Exchange Office.*

Other legal documents



Employee handbook

Legal

Myanmar Employment Law does not provide any details on employee handbooks and does not dictate that a staff handbook automatically becomes part of the terms and conditions of employment.

Pursuant to the official employment contract template, the use of employment rules is explicitly allowed, but shall be prescribed upon mutual agreement between the employer and employee in accordance with the nature of the enterprise. Rules specifying categories of ordinary/grave misconduct and levels of disciplinary action shall be attached.

Common Practices

Neither under the law nor under the official employment contract template of the Ministry of Labour shall it be required to submit employee handbooks for review, approval and registration.

Some Township Labour Officers, however, request employers to submit such documents (sometimes requiring translations in Myanmar language) for official approval.

Internal rules & regulations (e.g. Standard Operating Procedure or Delegation of Authority)

Common Practices

Most Myanmar companies and workers are not used to having one SOP (Standard Operating Procedures) and implementing them can be a real struggle since, until very recently, most of the workers have been used to a very basic job and are trying to take non compliant shortcuts when facing complicated processes. However, if the handbook has any legally relevant provisions (termination reasons, etc), it has to be approved and registered with the Labour Department as part of the contract.

Annexes...

Legal

The employer may attach Employment Rules as annexures to the Employment Contract, but shall submit them to the Township Labour Office for review, approval and registration.



Minimum wage

Legal

In accordance with Minimum Wage Law (2013), the National Committee for Determination of Minimum Wage has issued Notification 2/2018, according to which the minimum wages rate shall be MMK 4,800 per working day with eight working hours, uniformly for workers in the Union of Myanmar, regardless of location or type of business. Exemptions shall only apply for small and family enterprises with less than 10 employees.

Common Practices

Not all employers comply with this requirement and may pay their employees less than this minimum wage or make deductions that are not in compliance with the requirements of the Payment of Wages Law (2016).

PIT and other taxes

Legal

Any income received by an employee from the employer is taxable at progressive rates of 0–25%:

⇒ salary, wages, annuity, bonuses, award and fees or commissions received in lieu of or in addition to the salary or wages from the employer

Exempted from income tax is only income below MMK 4,800,000 per year and housing provided by the employer (i.e. employee occupies residential premises of the employer).

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. Both 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.

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. Such non-resident foreigners are not eligible for deductions and allowances.

Further, tax exemptions may be available pursuant to the existing Double Tax Treaties (e.g. with Singapore or Thailand).

Common Practices

Employees are responsible for paying income tax on basic salary, service charge and even bonus. The Finance Department calculates the tax payment as per the guideline before pay day. The company deducts taxable amount from the employees and remits it to income tax department on a monthly basis on behalf of employees.

Taxes refund

Legal

Pursuant to Income Tax Law (2016), any person satisfying the Assessment Committee with supporting evidence that the amount of tax paid by him or on his behalf for any year exceeds the amount which he is properly chargeable under this Law shall be entitled to a refund of such excess. If any excess payment of tax has been found by the Assessment Committee such excess shall also be refunded to the relevant assessee. Further pursuant to sec. 37 (b) Income Tax Law (2016), the claim for refund is to be made only within one year from the date of receipt of the letter of intimation that such refund is due.

Common Practices

In practice, however, it can be very difficult to receive such refunds and usually the Government does not refund the overpaid income tax amount.

Specifics on incentives, commissions and bonuses

Legal

Myanmar law does currently not require any specific bonus payments, but a one (1) month's salary bonus on the occasion of the Thingyan festival in April is general practice. Kindly note that such payments are currently fully taxable.

Common Practices

Most of the companies contribute incentives and commissions on sales based on the target and own criteria and award Bonus minimum one month and maximum three months depending on business and revenue



Experience from our HR Committee members

Vanina BUTORI – Yever: "We developed a salary range with a minimum and a maximum pay rate for each position we have in the company. The first position is junior analyst, after analyst and then consultant. Salary of recruits relies on their diploma and previous working experience. Depending on how they are successful in performing their job, employees can expect a salary increase and promotion. There are a base salary and a monthly bonus. In the beginning, we set monthly objectives and gradually, when employees gain experience we increase the term of their objectives. Among the benefits we provide, we have an annual allowance for cultural and sports activities, and they also can use their professional tools (laptop, mobile phone, etc.) for personal use at their home."

Pensions

Legal

While the Social Security Law (2012) provides for a Pension Fund, no such system has been established yet in Myanmar

Common Practices

There is no pension scheme in most of the companies in Myanmar yet or only for foreigners .

Working hours



Legal working hours

Legal

Business hours and working times are stipulated in various laws.

The general rules are provided in the Shops and Establishment Law (2016), which provides for six (6) working days of up to eight (8) hours per day. Pursuant to Myanmar labour law, at least one (1) day per week shall be granted as a paid rest day. Ordinarily, Sunday of each week shall be designated as the rest day. If necessary (e.g. due to the nature of the enterprise), the employer and employee may mutually agree on any other day of the week as the rest day. Wages/salaries shall be enjoyed on rest days in accordance with prevailing labour laws. Further, an employee shall be granted a break of at least half an hour after four (4) continuous hours of work.

Different stipulations are found in sector specific laws, such as the Factories Act (1951) and the Oilfields (Labour and Welfare) Act (1951), which provide for 44 hours per week other than for work which has to be done continuously, in which case 48 hours shall apply.

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

Factories Act (1951)	Shops and Establishment Law (2016)
<p>Working hours (per day/week) - „Regular worker“: not more than eight (8) hours per day and 44 hours per week</p> <p>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</p> <p>Days per week: shall not exceed six (6) days per week, i.e. one weekly rest day (ordinarily Sunday)</p> <p>Minimum rest period: 30 minutes after five (5) hours of work</p> <p>The combined working hours and rest break shall not exceed ten (10) hours per day</p>	<p>Working hours (per day/week): not more than eight (8) hours per day and 48 hours per week</p> <p>Days per week: shall not exceed six (6) days per week, i.e. one weekly rest day (ordinarily Sunday)</p> <p>Minimum rest period: 30 minutes after four (4) hours of work</p> <p>The combined working hours and rest break shall not exceed eleven (11) hours per day</p>

Legal working hours

According to The Factory Act of 1951, the working hours shall not :

- Exceed 8 working hours per day or 44 hours per week (Sec-59, 62)
- Exceed 48 hours per week for the work which has to be done continuously (Sec-59)
- There must be a minimum 30 minutes interval after each 5 working hours (Sec-63)
- The combined working hours and interval time shall not exceed 10 hours per day
- The working days shall not exceed 6 days per week (Sec – 60)
- There must be one day holiday each week (Sunday). If Sunday service is required, there must be a substitution of another day. (Sec -60)

Common Practices

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.

Special shifts, working times and derogations in specific industries

Legal

Pursuant to Shops and Establishment Law (2016), in case of the following shops, commercial establishments and public entertainment establishments, the employer may open for 24-hours according to nature of work by giving advance notice to the Department:

- ⇒ shops at an airport, port, highway depot or railway stations; road or bridge toll-gates; hotel, motel, inns, guesthouses and clubs;
- ⇒ hospitals, clinics and shops selling pharmaceuticals and pharmaceutical equipment;
- ⇒ enterprises for public electricity or light or gas or water distribution or communications, and other essential public services, shops and necessary exempted by the Ministry through notification.

Pursuant to this law no person employed in a shop or establishment shall be required or permitted to work for more than 4-hours in any one day, unless he has been allowed an interval for rest of at least half an hour during that day. Furthermore, the sum of hours worked and rest period shall not exceed 11-hours per day, including, in case of shops, commercial establishments and public entertainment establishments.

For persons who work as watchmen or guards, the above described rest period shall not be provided.

Factories Act (1951):

No adult worker shall be required or allowed to work in a factory for more than 44 hours in a week; provided that an adult male worker in a factory engaged in work which for technical reasons must be continuous throughout the day may work forty-eight hours in a week.

No adult worker shall be required to work in a factory on a Sunday unless he has had or will have a full holiday on one of the three days immediately before or after that Sunday.

The periods of work of an adult worker in a factory inclusive of intervals for rest, shall be so arranged that such periods shall not spread over more than ten hours in any day, save with the permission of the President and subject to such conditions as he may impose, either generally or in the case of any particular factory.

Night shift

Where a worker in a factory works on a shift which extends beyond midnight, the following day for him shall be deemed to be the period of twenty-four hours beginning with the end such shift and his work-hours after mid-night shall be counted as those of the previous day.

Common Practices

There is no specific shift and working time according to 1951, Factory Act this is possible an agreement to be found regarding working time exemption between the Company and the Employee. In that case, the Labor Office needs to be informed 3 days in advance the overtime to start. In case of urgent need, the overtime can be asked to the Employee with no Labor Office notification.

Overtime and compensations

Legal

Depending on the nature of the enterprise, overtime may be carried out in accordance with Myanmar labour law and upon mutual agreement between the employer and the employee.

Overtime pay shall be calculated and paid in accordance with the law. Under the Shops and Establishment Law (2016), any work in excess of eight (8) hours per day or 48 hours per week is considered overtime. Accordingly, even if an employee works only 40 hours per week, the ninth (9th) hour on a working day would be considered overtime (although the weekly working hours do not exceed 48 hours).

Overtime is usually limited to a maximum of 12 hours per week, or 16 hours in cases of special needs. Different stipulations are found in sector specific laws, such as the Factories Act (1951) and the Oilfields (Labour and Welfare) Act (1951).

If an employee is required to work overtime, he is entitled to overtime pay at double the basic wage/salary, to be calculated as follows:

$$\{(monthly\ salary \times 12\ months) / 52\ weeks / 44\ (or\ 48)\ hours\} \times 2$$

$$\{(daily\ salary \times 6\ days) / 44\ (or\ 48)\ hours\} \times 2$$



Public holidays

Legal

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.

Common Practices

All employees are entitled to all gazette Public Holidays per calendar year. Should you be asked to work the on Public Holiday(s), double of your basic salary will be paid out.

Myanmar Public Holidays in 2019

Month	Date	Holiday Name
January	1	New Year Day
January	4	Independence Day
January	6	Kayin New Year
February	12	Union Day
March	2	Peasants' Day
March	20	Full Moon of Tabaung
March	27	Armed Forces Day
April	13, 14, 15, 16, 17	Thingyan Festival & Myanmar New Year
May	1	Labour Day
May	18	Full Moon of Kasong
July	16	Full Moon Day of Waso
July	19	Martyr's Day
October	12, 13, 14	Pre-Full Moon Day of Thadingyut
November	10, 11	Full Moon of Tazaungmone
November	21	National Day
December	25	Christmas Day
December	26	Kayin New Year
December	31	New Year Eve

Earned leaves



Experience from our HR Committee members

Every year of completed service, staff, both Expatriate and Local, is entitled Annual Leave as mentioned below.

Executive Committee Members	21 days
Department Head	15 days
Assistant/ Section Head	15 days
Supervisor	12 days
Rank & File	12 days

Annual leave is pro-rated in first year of service and calculated from the date of commencement to 31st December. Unconsumed annual leave cannot be carried forward to next year without the Employer's prior approval. This approval must be obtained by the 1st December of the current year.

Legal

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 without the minimum of 20 full days of work, one day may be deducted from the minimum earned leave entitlement. Earned leave may be accumulated and carried forward for up to three (3) years, as agreed between the employer and the employee.

Casual leaves

Every employee is entitled to **six (6) days** of annual paid casual leave. 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.

Medical leaves

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.

Maternity and paternity leaves

Maternity leave is governed 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

Others

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.

Myanmar Labour Law does not provide for separate funeral leave (or any other additional type of 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.

Summary

Type of leaves	Number of days /per year
Public holidays	25 days
Earned leaves	10 days
Casual leaves	6 days
Medical leaves	30 days
Maternity/paternity leaves	14 weeks / 15 days



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Introduction

Legal

Myanmar currently lacks a comprehensive safety and insurance legal system. The Ministry of Labour published a (Draft) Workplace Safety and Health Law last year, which shall complement the Factories Act (1951) and other prevailing laws, rules and regulations governing workplace safety and health. The draft contains provisions for the prevention of workplace hazards and diseases and the establishment of safe and healthy workplaces, but has not yet been signed into law.

Common Practices

In Practice, the approach to safety is very different from an organisation to another. Typically local subsidiaries of international companies will tend to apply safety rules derive from their own standards, most of the time industry standards. Oil & Gas industry for instance have very high standards globally and they apply to Myanmar too. Safety culture remains to be nurtured in Myanmar and only managers exposed to best practice from overseas will apply safety standards.

Obligations and liability of employer

Legal

The official Employment Contract Template provides for the following contractual obligations:

- The Employer shall not discriminate or deny equal treatment to the Employee based on union membership, race, religion, gender or age
- Foreign Employers, supervisors, professionals and family members shall respect and abide by the applicable laws as well as the culture and customs of the Republic of the Union of Myanmar
- The Employer shall respect and comply with the applicable laws of the Republic of the Union of Myanmar
- The Employer shall have the right to sue and be sued in accordance with the applicable laws
- The Employer shall inform the Employee about their rights and benefits of the employment
- The Employer shall give special priority to workplace safety and health in accordance with the needs of the business

Further obligation may be attached as an annex to the employment contract.

Obligations and liability of employer

Common Practices

While we see that legal provisions are very light in Myanmar when it comes to safety and occupational health some key global concept remains applicable. If the employer may not face law enforcement for lack of safety standards other risks may arise from poor safety standards such as reputational risks.

An employer's Duty of Care is the obligation of an organization to assume its responsibility for protecting its employees from risks and threats when at work. The responsibility of organizations to look after their employees is now widely, although not uniformly, protected by legislation in many countries.

According to Global Benchmarking Surveys, five key functional groups currently own the Duty of Care agenda: HR, security, senior management, travel and risk management.

Duty of Care towards employees may then translate very differently from a company to another.



Recommendations from our HR Committee

Work-related injuries and diseases caused by industrial health conditions at work trigger legal compensation as well as disruption to manufacturing operations. In order to mitigate these risks, it is advisable that companies do the following:

- ⇒ Conduct pre-employment health assessments for employment candidates.
- ⇒ Conduct annual health checks for current staff.
- ⇒ Conduct a workplace health assessment once per year.
- ⇒ Seek professional guidance on occupational health related matters.

When complying with local occupational health legislation, companies benefit from a return on prevention through avoidance of the below:

- ⇒ Direct costs (e.g. compensation, lengthy hospitalization, post-incident medical costs)
- ⇒ Indirect costs (e.g. salary and administrative costs, productivity losses)
- ⇒ Human costs (e.g. talent retention) of an accident/disease at the workplace

Obligations and liability of employee

Legal

The official Employment Contract Template provides for the following contractual obligations:



The Employee shall comply with instructions issued in accordance with needs of the enterprise concerning the workplace safety and health;



Before entering the workplace, the Employee shall wear workplace safety equipment as prescribed in accordance with the operational needs of the Employer;



The Employee shall refrain from consuming intoxicants or causing harassment, danger or physical harm to colleagues at the workplace and during working hours;



The Employee shall not, without permission, disclose confidential information of the Employer. The Employee shall not extract, use, copy, remove, delete and/or carry outside any documents, accounts and/or records related to the business of the Employer;



The Employee shall abide by the rules and regulations issued from time to time upon mutual agreement between representatives of the Employer and Employee;



The Employee shall pay taxes and fees in accordance with the applicable laws;



The Employee shall respect and comply with the applicable labour laws; and



The Employee shall have the right to sue and be sued in accordance with the applicable laws.

Further obligation may be attached as an annex to the employment contract.

Common Practices

In practice employee's obligations are describe in each company in a "Code of conduct" or the "Employee handbook".

Social security

Legal

Social Security Law 2012 provides for the following social security systems:

- ⇒ Health and Social Care Insurance system;
- ⇒ Family Assistance Insurance System;
- ⇒ Invalidity Benefits, Superannuation Benefit and Survivors Benefit Insurance System;
- ⇒ Unemployment Benefit Insurance System; and
- ⇒ Other Social Security System.

Note that currently only the Social Security Fund has been established.

While registration with the relevant Township Office of the Social Security Fund is compulsory for any employer of five (5) or more employees (sec. 11 (a) Social Security Law (2012)) in conjunction with the policies of the Ministry of Labour, Immigration and Population), international organizations are exempted (sec. 12 (a) Social Security Law (2012)). If desirous to enjoy social security benefits under this Law, employers and employees may, however, register voluntarily and contribute to the Social Security Fund (sec. 16 (b) Social Security Law (2012)).

In case of non-compliance, any employer shall be liable to imprisonment for a term not exceeding one (1) year or with a fine or with both (sec. 94 (a) Social Security Law (2012)).

Employers must withhold employees' social security contributions from the salaries and file and pay social security monthly before the 15th of the month following the salary payment with the relevant social security township office.

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).

Medical insurance

Legal

Employees covered by the Social Security Law (2012) are entitled to visit government hospitals and other benefits as granted under the law. Other employees may be entitled to benefits under the Workmen's Compensation Act (1923) in case of work injuries, but have otherwise no statutory right to medical treatment.

In practice, many employers grant medical allowances or medical insurance to their employees, both out of corporate social responsibility, but also as for employee retention purposes.

Common Practices

There are two different practices:

⇒ 1st practice

The first by Local companies, either they provide only the SSB system, or they offer a self-insured / administered program. In practical terms, self-insured employers pay for each out of pocket claim as they are incurred instead of paying a fixed premium to an insurance company (can be extended for family members, depending on the company).

Currently, Local companies are more hesitant to move to a medical insurance scheme provided by a third party due to their lack of knowledge and awareness of it. However, this situation is slowly changing as more Local companies move to an insured solution for Employee Benefits such as Medical, Life and Personal Accident coverage.

⇒ 2nd practice

The second by Foreign / JV companies and NGOs, most of them offer medical insurance for their employees (many of them include coverage to direct family members, as well) provided by Local or foreign insurance companies. The level of coverage and benefits chosen are very varied (Hospitalization, Outpatient, Maternity, Dental, Optical, Hearing...), depending on requirements and budgets of the company. Some Foreign companies and NGO's will provide staff with a self-insured program.

The reason why Foreign companies and NGOs offer this benefit is due to their headquarters overseas being very familiar with medical insurance. Thus, many of these companies and NGO's will require their branch office in Myanmar also provide a plan to its Local employees.



Recommendations from our HR Committee

By providing or moving to a medical insurance solution, rather than a Self-Pay, Self-Administered scheme, a company can:

Significantly reduce the amount of administration required by HR and Finance teams in handling and paying employees medical bills

Eliminate the uncertainty of the company's financial liability in the event of a significant claim > transfer of risk from your balance sheet to the insurer

Assist with the recruitment and retention of employees by providing an innovative and new Employee Benefit

Position the company as an employer of choice; helping to improve staff motivation and morale

Provide confidentiality and privacy to employees regarding their health conditions

Safety at work

Legal

The Factories Act (1951) contains numerous safety provisions (e.g. sec. 24 on working near a machinery in motion).

Further, pursuant Social Security Law (2012), the employer and workers shall co-ordinate with the Social Security Board or insurance agency in respect of keeping plans for safety and health in order to prevent employment injury, contracting disease and decease owing to occupation and in addition to safety and educational work of the workers and accident at the establishment. The employer shall incur the costs of medical treatment for employment injury occurring from criminal action or omission of the employer, or occurring from employer's failure to keep occupational safety plans and protections, and other benefits entitled to enjoy under this Law in accord with the stipulations without fail.

Further, pursuant Draft Workplace Safety and Health Law, the Union Government shall form the National Workplace Safety and Health Council, which shall formulate national policies and programs, periodic assessment, review and revision for successful Implementation of the provision of the law, coordinate and cooperate with relevant governmental departments and organizations and local and foreign entities in respect of improvement in working conditions and workplace safety and health and announce to the public hazardous occurrences and actions to prevent such from occurring.

The National Council shall further promote workplace safety and health and carry out workplace safety and health promotion campaign and activities, research and awareness campaigns on workplace safety and health collaboration with other organization promoting workplace safety and health.

Draft Workplace Safety and Health Law governs the appointment and powers of inspectors:

- to enter, inspect and investigate at any workplace relevant to this Law, at any time without need of warrant by showing Inspector's Identification Card;
- to inspect and investigate machinery, equipment, tools, raw materials, finished products, organic and chemical substances etc; to confiscate as evidence, materials/equipment restricted or prohibited by the National-Council, and to take action against a workplace under sub-section (a);
- to examine, investigate, obtain and confiscate as evidence records and documents related to the workplace and processes;
- to obtain photographic and video records in respect of working conditions and processes which may be harmful to workplace safety and health;
- to obtain photographic, video and documentary evidence related to investigation of Occupational-Diseases, hazardous occurrences and Workplace-Accidents;
- to evaluate, measure and record, at any workplace, the magnitude and duration of exposure of persons in such workplace to environmental pollution, radiation, hazardous materials and physical objects including noise, light, heat, cold, particles and emissions;
- to examine for Occupational-Disease with the help of an Accredited-Physician, any person working in the workplace; and
- to request in-charge persons of hospital clinics to provide, under prescribed confidentiality, the information related to treatment or death, and autopsy reports in respect of a patient being treated for Workplace-Accident or Occupational-Disease.

Safety inspections

Legal

Pursuant to Factories Act (1951), inspectors may enter as they think fit any place which is or which they have reason to believe to be used as a factory. 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) and exercise such other powers as may be necessary for carrying out the purposes of the Factories Act (1951).

What to do in case of accident at work- Social Security Law (2012)

Legal

Pursuant to the official employment contract template, for any worker not covered by the Social Security Law (2012), the Employer shall provide at its own expense medical treatment in the following cases:

- ⇒ Workplace injury
- ⇒ Work-related disease, and/or
- ⇒ Sickness at the workplace.

Any employee covered by the Social Security Law (2012) shall enjoy medical treatment in accordance with the applicable law.

The employer shall report immediately to the relevant township social security office if a serious occupational accident has occurred to his insured worker. There shall not be any delay without sufficient cause to report as such; a team of officers and staff who inspect the establishments shall, if it is found that the occurrence of employment injury, decease and contracting diseases, report to the relevant township social security office in accord with the stipulations.

Work-related injuries of Employee not covered by the Social Security Law (2012) shall be handled in accordance with the applicable Workmen's Compensation Act.

C) Loss of capacity:

- In case loss of capacity for work is 20 per cent and under, the right to enjoy monthly cash benefit entitled to such person for five years
- Loss of capacity for work is from over 20 per cent to 75 per cent, the right to enjoy monthly cash benefit entitled to such person for seven years in installment
- Loss of capacity for work is over 75 per cent, the right to enjoy monthly cash benefit entitled to such person for nine years in installment. (Section 58)

D) An insured who obtained the permanent partial disability.

Common Practices

In addition to the SSB, Local and foreign insurers are able to propose a Group Personal Accident (GPA) Insurance policy, which provides compensation in the event of injuries, disability or death caused solely by violent, accidental, external and visible events. This compensation is a lump sum paid to the employee or to family in case of death.

Local and Foreign companies are increasingly familiar with availability of a GPA policy, and will buy it, subject to the requirements and budget of the company.

Group Personal Accident policies will typically have a fixed sum insured ranging from \$1,000 to \$10,000 assured per employee. Local companies tend to opt for lower limits than Foreign companies or NGO's, though the nature of the business and risk to employees also determines coverage limits.

Compensations after accident, pensions of invalidity -Social Security Law (2012)

Legal

The Social Security Law (2012) provides for temporary and permanent disability benefits:

1. Temporary disability benefit

The insured who suffers reduction or cessation of earnings by reason of incapable to work of employment injury can get free medical treatment and temporary disability benefit of 70 per cent of average wage within four months prior to occupational accident to enjoy commencing from the date of incapacity for work, to a maximum of 12 months under medical certificate. (Section 55)

2. Permanent disability benefit

- A) After the expiration of 12-month period of temporary disability benefit, it shall be converted to enjoy permanent disability benefit. (Section 56)
- B) The insured is entitled to the cash benefit for permanent partial disability if there is likely to cause permanent partial loss of capacity for work. As regards that benefit, cash benefit calculated based upon 70 per cent of average wage of a month within four months before employment injury. (Section 57)



Recommendations from our HR Committee

- ⇒ Premiums for Personal Accident as compared to medical insurance is very low, so companies on a stricter budget may want to offer PA insurance as an entry-level employee benefit to its staff, then migrate to Medical Insurance later.
- ⇒ Offering Personal Accident coverage, due to its lower costs, is another way to provide an insurance benefit to more staff, especially those companies with many employees of a lower level job description (e.g. manual laborers). Some foreign insurers offering medical plans include PA coverage as a standard benefit, so this is worth considering, as well.
- ⇒ Eliminate the uncertainty of the company's financial liability in the event of a significant claim > transfer of risk from your balance sheet to the insurer's balance sheet.

Life insurance and compensations in case of death

Legal

When the insured is deceased of employment injury:

A person nominated by the insured shall be entitled to enjoy survivors' benefit as follows in installment or in lump sum, according to the desire of that person, based on contribution period according to the average wage within four months before that insured is deceased:

- ◇ if it is contributed 60 months and under, 30 times of an average wage for a month;
- ◇ if it is contributed over 60 months to 120 months and under, 50 times of an average wage for a month;
- ◇ if it is contributed over 120 months to 240 months and under, 60 times of an average wage for a month;
- ◇ if it is contributed over 240 months, 80 times of an average wage for a month;

If there is no nominated person contained in sub-section (a), persons who have depended upon the earnings of that insured shall enjoy the survivors' benefit in the following order contained in sub - section (a), in installment or in lump sum according to the desire of that person in accord with the stipulations:

- ◇ wife or husband of the deceased;
- ◇ if there is no wife or husband of the deceased, children of that person;
- ◇ if there is no wife, husband and children of the deceased, mother and father of that person.

Common Practices

In addition to the SSB, Local and Foreign insurers are able to offer a Group Life Insurance policy which is a contract between the company and the insurer, whereby the insurer promises to pay a designated beneficiary an agreed sum of money, in the case of death of an employee by any cause.

Local and Foreign companies are very familiar with this insurance, and many offer a Life insurance benefit to its staff, depending on requirements and budget of the company.

For Local nationals, Group Life Insurance policies will typically have a fixed sum insured ranging from \$1,000 to \$10,000 assured per employee. For Expatriate staff, it is more common to choose a multiple of annual salary (e.g. 2x-4x) as the death benefit/sum insured. Local companies tend to opt for lower limits than Foreign companies or NGO's, though the nature of the business and risk to employees also determines coverage and limits.



Recommendations from our HR Committee

Premiums as compared to medical insurance are much lower and so more affordable for companies, which is why some companies may wish to offer Life insurance as a starting point to moving towards insured solutions of employee benefits.

Eliminate the uncertainty of the company's financial liability in the event of a significant claim > transfer of risk from your balance sheet to the insurer.



Experience from our HR Committee members

Marc ROLLET – Synapse Original: *"Each of our employee has a life insurance which covers injuries. The company contributes every year and if the employee is injured or worse, a fund is released and goes to the employee or his/her family. If the employee can no longer work, he/she would be entitled to compensation for temporary disability."*

Conflict resolution



Myanmar's labour dispute resolution system is primarily governed by the Settlement of Labour Dispute Law (2012). The objective of the law is to provide an alternative to litigation, with a process that shall be fair and quick, minimizing the financial impact that could result from a strike or lock-out. Although the system is administered by the Ministry of Labour, the tripartite composition of the township, state/ regional and national bodies includes worker and employer representatives in the process of seeking equitable resolutions.

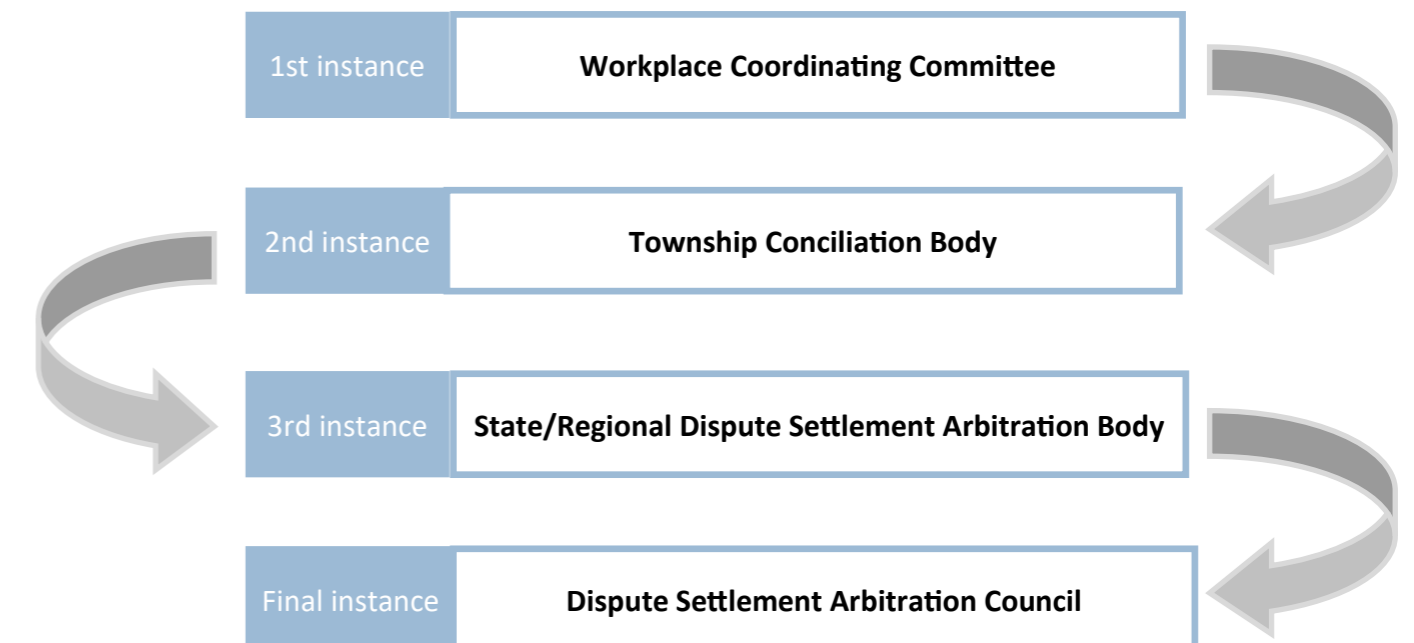
In case of labour dispute, the following bodies may be called upon for resolution:

Individual Dispute

In case of an individual dispute (e.g. termination of an employee), the employer or employee may complain to the relevant Township Conciliation Body, which shall within three (3) working days assist the parties to the dispute to reach a mutually agreed through neutral third-party intervention. Kindly note, that the conciliator assists the parties to settle the dispute, but is not empowered to impose a settlement. If the dispute cannot be settled, each party may file a law suit with the relevant labour court.

Collective Dispute

In case of a collective dispute (e.g. working conditions, payment of wages), the employer, employees or labour organizations may complain to the following bodies.



1- Workplace Coordinating Committee

Companies with 30 or more employees must form a Workplace Coordinating Committee, which shall consist of an even number of four (4) members, equally representing the employer and the employees.

The employees' representatives shall be elected by the employees. In case of a labour organization in the company, the labour organization may nominate candidates (but may not further influence the electoral process of the employees' representatives). The term of a Workplace Coordinating Committee is one (1) year.

The election of a Workplace Coordinating Committee shall be notified to the relevant Township Conciliation Body, by filing Form A.

Grievances should be negotiated and settled by the Workplace Coordinating Committee within five (5) working days. A record of the settlement shall be sent to the relevant Township Conciliation Body.

Companies with less than 30 employees may form a Workplace Coordinating Committee. If no such committee is formed, the employer shall directly negotiate with the employees.

2- Township Conciliation Body

In case of non-settlement of a collective dispute, the employer, the employees or the labour union may complain to the relevant Township Conciliation Body (please see above). If no conciliation is reached, the Township Conciliation Body shall inform the Regional/State Arbitration Body within two (2) working days.

3- Regional/State Arbitration Body

As an independent and neutral third party, the State/Regional Dispute Settlement Arbitration Body shall make a decision within seven (7) working days. If a party is not content with the decision, it may carry out a strike/lock-out and/or call upon the Arbitration Council.

4- Arbitration Council

The Arbitration Council is the highest labour dispute instance and shall make a final and binding decision within seven (7) working days (in special cases 14 days).

Definition of professional faults and of sanctionable conduct

According to the official Employment Contract Template, Employment Rules, specifying different categories of misconduct and levels of disciplinary action, shall be attached to the Employment Contract as annexures and shall be complied with by the Employee (i.e. for ordinary and grave misconduct and disciplinary action).

Warnings and sanctions

The law is silent on the warning system, however, in the official employment contract template, there is a provision regarding the warning. For ordinary misconduct, an employee shall be given a written warning 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 dismiss the employee without having to pay severance pay.

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.



Experience from our HR Committee members

Hans VAN BEEK –MyJobs Myanmar: "In general my experience here is that if you sit around the table and discuss the situation with your employees, then you can come to an agreement."

Termination of contract



Myanmar laws provide few details on termination of a contract. The conditions and requirements are primarily governed by the policies of the Ministry of Labour, most importantly the official Employment Contract Template.

How to prevent it?

Common Practices

It is impossible to retain all staff, so companies should not aim for this and often it is not desirable. Companies should aim to keep their staff turnover lower than 15% and focus on retaining the high performers. In Myanmar, as there is such a shortage of talent companies will try to entice people to join them with money and due to the Myanmar culture this is often the easiest way to get them to join. However this isn't the best idea for recruitment and is definitely a bad retention method. Below are ideas we see in the market that work.

Ethical / Good Practice

- ⇒ Offer retention or LTI bonus
- ⇒ Create a working environment that is enjoyable and challenging
- ⇒ Offer attractive but not excessively high salaries
- ⇒ Be transparent with your staff about long term career opportunities and ask for input about what the staff want to achieve and where they want to go with their career
- ⇒ Be conscious of cultural issues (family and food)

Unethical / Bad Practice

- ⇒ A contract with penalties / bonds if they end the contract early
- ⇒ Refusing to accept a resignation
- ⇒ Offering a counter offer / promotion after they resign

Dismissal / Resignation

Resignation

Legal

Pursuant to the official Employment Contract Template of the Ministry of Labour, the employee shall give the employer a minimum of one (1) months' notice prior to resignation.

The Employer shall permit the resignation with disbursement of any outstanding salary/wage for the days actually worked and compensation for remaining earned leave days, but shall not be required to pay severance pay to the Employee. The resignation of an employee who attended training at the employer's expenditure, shall be subject to the provisions of the Employment and Skills Development Law (2013).

Common Practices

If someone resigns, then they must serve out their notice period but are eligible to take any Annual Leave that is outstanding and up to 3 days Casual Leave during each month they are serving their Notice Period.

NOTE: Employees are not able to take more than 3 days of Casual Leave in a month. If there is any outstanding Annual Leave then they are entitled to receive payment for this. However Casual Leave and Medical Leave balances do not need to be paid out.

Termination

Under the law, an employer is not required to state any reasons for the dismissal or termination of an employee by notice. Pursuant to the practices of the Department of Labour, an employee may, however, only be dismissed or terminated for the reasons specified in the employment contract or work rules. 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

Legal

For ordinary misconduct, an employee shall be given a written warning 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 dismiss the employee without having to pay severance pay. 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.

Common Practices

Based on the Notice Period in the contract, usually 1 month, you can have someone leave by just giving them an official notice. If notice is given, the employee is not automatically immediately released from work. During the notice period, the employee still has to work; unless the employee is sent on garden leave, or "payment in lieu of notice" is made. In this situation, they are no longer required to come to work from the date of the notification, are entitled to the salary for the notice period, any outstanding Annual Leave balances, Severance Pay if they have worked for the organization for longer than 6 months (see table below). No reason is needed for the termination, provided you follow the rules about the payments.

However there is a 4 step process to dismiss someone without having to pay out the Notice Period or Severance, however outstanding Annual Leave still needs to be paid out.

Direct discussion, with a witness giving the employee a verbal warning about a work related matter that is not satisfactory

2nd-3rd

The labor law does not specify a time frame between each of the steps.

Written notification identifying the issues, and time frame to expect improvements

4th

Final letter that is equal to the termination letter.



Experience from our HR Committee members

Marc ROLLET – Synapse: "We have set up a process which includes the following steps:

- 1- Exit interview to explain him/her the reasons of the termination of his/her employment contract
- 2- Official email notification
- 3- One month notice period according to labour law regulations
- 4- The employee can choose not to execute his/her notice period but he/she will be paid in any case during that time ."

Termination for Reason

The employment contract may be terminated for the following reasons as stipulated in the official employment contract template:

- ⇒ Winding-up of the business of the employer
- ⇒ Suspension of business due to unforeseeable events
- ⇒ Death of the employee.

Additional reasons for termination may be added as an annex to the official employment contract template. Any amendment/supplement to the template shall, however, be submitted to the relevant Township Labour Office for review, approval and registration.

Termination by Notice

Other than as aforesaid, the employer may terminate an employee by giving one (1) months' notice and payment of statutory severance pay, provided that the employee shall not be terminated in contravention of any laws or regulations.

Further Documents

The law does not provide for any statutory entitlement. The employer and the employee may agree upon the documents to which the employee shall be legally entitled (e.g. reference letter).

Common Practices

When an employee leaves an organization they are legally entitled to receive their Tax Book, SSB Card and Payslip. They are also able to request a Recommendation Letter but this is not something they are entitled to.

Severance pay and other compensation

Legal

Pursuant to Notification 84/2015, employees terminated by notice or with payment in lieu of notice shall be entitled to severance payments as follows:

Term of Employment	Severance Amount
< 6 months	-
6 months – 1 year	0.5 month's salary
1 year – 2 years	1 month's salary
2 years – 3 years	1.5 months' salary
3 years – 4 years	3 months' salary
4 years – 6 years	4 months' salary
6 years – 8 years	5 months' salary
8 years – 10 years	6 months' salary
10 years – 20 years	8 months' salary
20 years – 25 years	10 months' salary
> 25 years	13 months' salary

Redundancy

Pursuant to the official Employment Contract Template, terminations due to redundancy shall be coordinated with a representative of the Labour Organization and a representative of the Workplace Coordination Committee, or, in the absence of a Labour Organization, directly with the Workplace Coordination Committee.

Cancellation of Employment

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

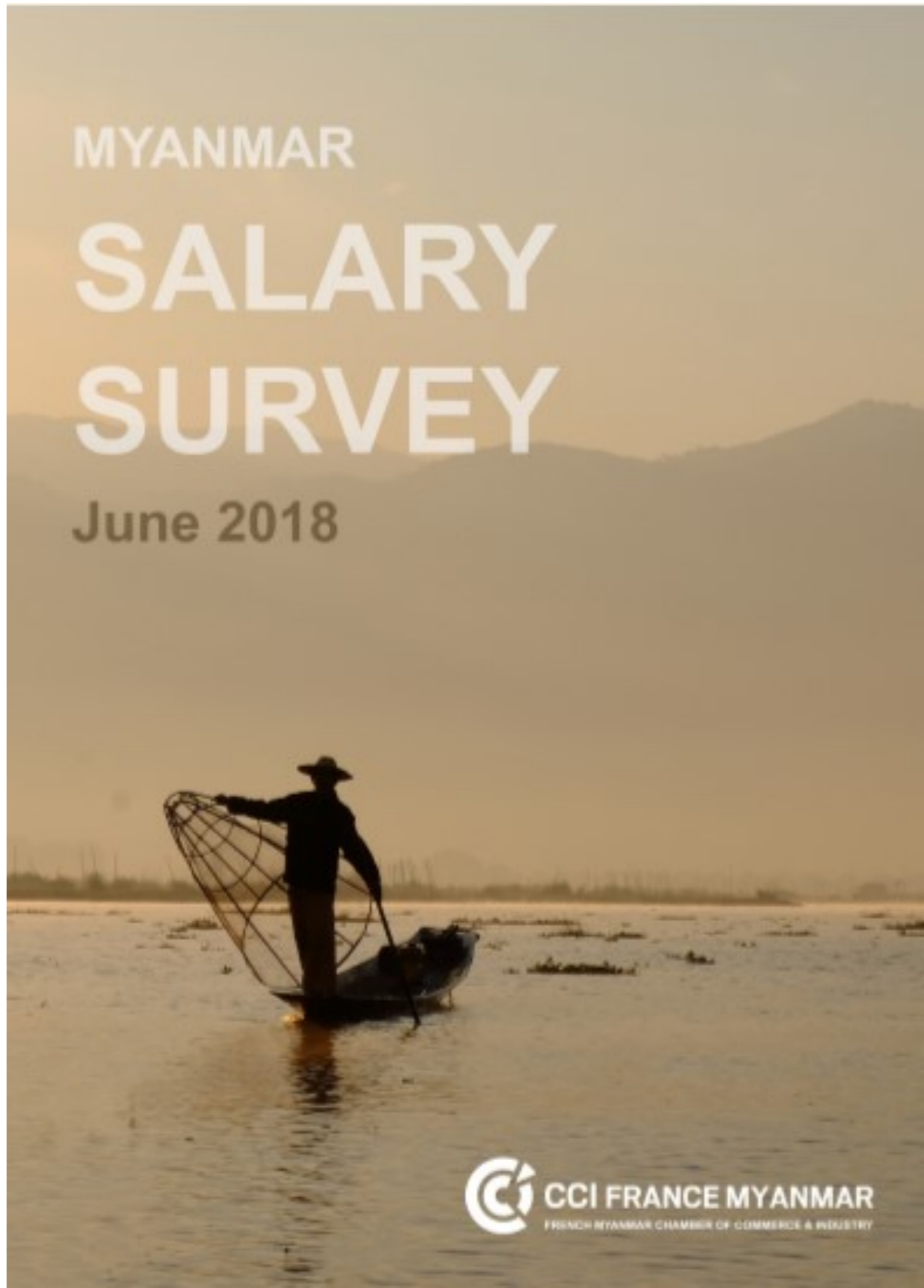
Documents to which the employee is legally entitled

Employment Contract

Pursuant to sec. 5 (a) (1) Employment and Skills Development Law (2013), the employer shall provide the employee with a written employment contract within 30 days of commencement of employment.

Social Security Card

Upon appointment, the employee shall 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 or three 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.



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Vanina BUTORI -Yever

Turnover is a natural component of any organization. However, this is one of the key issues in Myanmar's labour market as the labor turnover rates can be high, especially at the entry level.

When turnover is not managed, it can have a lasting impact on any organization that will exhaust itself in recruiting, training and maintaining skills without actually contributing to create added value for the organization and its various stakeholders, which includes in the first place customers and employees.

The first question to ask yourself is to (i) evaluate your turnover performance and compare it over time (e.g. are there any cyclical developments explaining important variations?) and also to (ii) compare it to your peers in Myanmar (the lack of data might make the exercise difficult) or in the ASEAN area based on data published by different companies in sectors comparable to yours.

To improve a good work environment and thus lower the turnover rates, employers usually invest in actions and activities that promote team spirit, cohesion of the team and good relations with colleagues. In Myanmar, depending on the sectors and culture of the company, at team's level managers usually organize birthday parties, go out for eating a meal. More extensively at company's level, you can also find games, annual staff parties or annual trips.

These actions constitute one of the multi-layers approach to tackle turnover and will not be sufficient anymore as Myanmar market is more and more competitive. Companies also develop

actions to improve financial compensations and career development such as employee recognition programs, subsidizing meals, transportations and accommodation, pension, loans programs, healthcare benefits, or providing quality training.

To get an interesting perspective on Myanmar's labour market, a recent global talent survey published by The Boston Consultant Group and The Network indicates that Myanmar employees value job security and company culture above anything else.

The second question is to consider whether there are any shortcomings in management practices. Some managers may lack soft skills to handle their teams in a professional and respectful way. Coping with stressful situations can lead some managers to overuse control and authority above managing and leading skills, and for example confuse scolding with feedback. Some employees, especially for entry level, will quit if they feel too much pressured or have to cope with high level of stress. Therefore, creating a work environment that motivates, respects everyone and give confidence should be taken into account.

Finally, some departures may be difficult to anticipate: some employees leave because they will take care of relatives, start a family or return home. They value family first and it is difficult to compete with it as an employer.

Simon BRUCE – MyWorld Career

“Reducing turnover is extremely challenging because as a culture, they are very short-sighted. They will always think the next step is going to be better because it is new. They won’t think too deeply about it and just make a move. They do not really change because it is not their dream job but because the change is what excites them.

So to reduce turnover, I give them lots of attention. We have around 60 people in our companies. I am very strict but also very supportive. So, as a boss, you really need to engage with them on a personal level while still giving them strong guidance as a leader. Additionally as a culture, they get form bonds very quickly which can be a challenge as a business leader to deal with as they will often reveal more than they should to new colleagues.

The thing that works for us is that we are very transparent with a flat organization structure. We have a hierarchy but this doesn't mean I am the ultimate decision maker. My team are very comfortable to come to see me to tell me if I made a mistake and we encourage easy communication between levels.

To expand on my point earlier, another way to reduce the turnover is understanding that Burmese love bonding with people. So companies need to be very careful that they don’t let the staff become too close too quickly. The danger is if one person leaves, all may then leave. It is very common to see an entire team leave a company based on one person leaving.”

Jean-Martial CARPENA

“Our industry (Oil & Gas) hires mostly on fixed-term contracts applying above-average remuneration packages for technical & engineering job categories. Such employment terms & conditions allow to manage turnover within an more than acceptable range. To avoid high turnover we also provide retainer or performance bonuses, with faster career progression track.

In order to mitigate turnover risks, the employee engagement phase is a critical moment. I recommend a solid mutual understanding of the job tickets by both the employer and the

candidate prior to selection process. The hiring assessment and evaluation should be done in full transparency with the candidate (packages, benefits, early termination conditions, severance pays eligibility, paid holidays, overtime etc...) to avoid conflict due to misunderstanding of the TCs at the early stage of the employment process.”

CSR - Obligations in Myanmar for foreign companies

Legal

The Myanmar Investment Law (2016) and its by-laws provide for some CSR responsibilities of investors.

Pursuant to Myanmar Investment Rules (2017), the MIC must assess every investment proposal and determine if it is beneficial to the interests of Myanmar. In making its assessment, the MIC shall consider whether the investor has demonstrated a commitment to carry out the investment in a responsible and sustainable manner, including by, as relevant, limiting any potentially adverse environmental and social impacts. In the commitment, it includes without limiting to environmental conservation actions, compliance with environmental conservation policies, human rights and application; if the investment is compatible with national development, security, economic, social and cultural policies, taking into consideration development, security, economic, social and cultural policy objectives announced by the Government or the government of any State or Region affected by the Investment.

Pursuant to rule Myanmar Investment Rules (2017), the investor must, after obtaining the Permit, submit the status of performing environmental and social impact assessment to the Commission during the course of doing business.

What is considered CSR in Myanmar

Legal

There is no clear definition of what is considered CSR in Myanmar (see for example the website of “Myanmar Centre for Responsible Business”).

Common Practices

Corporate Social Responsibility (CSR) is usually seen through the lenses of philanthropy and charity in Myanmar. Companies will value their donations and highlight how much they give back to the society. This approach is extremely limited and may be counterproductive as some companies may consider that their donations will give them the right to endorse questionable business practices.

Different players are trying to raise awareness about what CSR could be for companies operating in Myanmar. The Myanmar Center for Responsible Business (MCRB) is keen to promote the Creating Shared Value concept, AVPN is organizing since 2017 a yearly forum to raise awareness and spread good practices regarding responsible business and the European Chamber of Commerce publishes each year in its White Book a dedicated chapter about CSR where it will fully embrace the definition provided by the European Commission.

So far, Myanmar Companies were encouraged to support the UN Global Compact. In July 2018, 191 companies are considered as participants. Unfortunately, the commitment of certain companies was not strong enough and a significant number of corporations has been removed from the list.

Hopefully, more companies are transforming the way they are considering CSR. For some of them, it is now a strategic tool to enhance the way they are managing their business. They are more open and ready to engage with their stakeholders to design better strategies which will create economic and social values on the long term. Other are now disclosing their non-financial performance, like CMHL. These trends are ultimately captured in the Pwint Thit Sa report: it discloses a ranking of the most responsible and transparent Myanmar companies. Doing business sustainably and responsibly will probably become a key factor of differentiation for companies looking to build strong bonds with their key stakeholders especially their customers, employees and investors.

Tax exemptions and other incentives

Investors who have received an investment permit from the MIC may enjoy certain tax benefits in accordance with sec. 74-78 Myanmar Investment Law (2016). As mentioned above, investors must submit the status of performing environmental and social impact assessment to the MIC during the course of doing business. If an investor does not comply with this requirement, the MIC could revoke the license and the investor would not be able to enjoy tax benefits anymore.

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