



**Offshore Operators in Myanmar
Employment Obligations
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BANGLADESH | CAMBODIA | INDONESIA | LAO P.D.R. | MYANMAR | SINGAPORE | THAILAND | VIETNAM



Relevant Laws for Offshore Operators as Employers

Relevant Laws:

- Social Security Law 2012
- Minimum Wage Law 2012
- Immigration Act 1947
- Employment and Skill Development Law 2013
- Foreign Investment Law 2012
- Payment of Wages Act 1936
- Leave and Holidays Act 1951

- ❑ Social Security Law of 2012 and Social Security Act of 1954 – once rules and regulations for the 2012 Law are passed, the 1954 Act will be fully superseded. Until then, the two exist alongside each other.
- ❑ Social security fund contributions for employer and employee of 3% and 2% respectively of monthly wages, (capped at MMK 9,000 and MMK 6,000). The funds these contributions are paid monthly into a fund that will be further developed in the rules and regulations to accompany the 2012 Law.
- ❑ Contributions to social security funds mentioned above make employers exempt from provisions of the Workmen’s Compensation Act of 1923.
- ❑ In addition to the social security payments to various insurance and benefits funds for employees, the Myanmar government can determine what companies must also compulsory take “General Liability Insurance”.

- Employers with more than five workers need to provide the benefits detailed in the 1954 Act until rules and regulations for the 2012 Law are passed.
- The 1954 Act includes leave entitlements and monetary amounts for each benefit, but the new rules being drafted to accompany the 2012 Law will considerably raise these antiquated amounts. The types of benefits are:
 - “Sickness” benefits;
 - “Maternity” benefits;
 - “Funeral” benefits;
 - “Temporary disability” benefits;
 - “Permanent disability” benefits .

- Social Security Law, 2012:
 - Obligations regarding occupational safety measures and health plans are imposed by Social Security Board.
 - Section 53 (a): *“employers and workers shall coordinate, cooperate and carry out with the Social Security Board, or the insurance agents departments, the necessary occupational safety measures and health plans of employees, in order to prevent employment accidents, injuries, diseases and/or death, which should be in addition to safety and educational works”*.
 - Obligations imposed by the Social Security Board and/or insurance agents, if any, in coordination with employer and employees.
 - In practice, a Social Security Board representative visits companies almost every month to ensure compliance with the contribution payments, insurance obligations etc.

- Factories Act, 1951/Oilfields (Labour and Welfare) Act 1951:
 - Working hours:
 - Higher physical danger risk establishment (e.g. an oil rig): 8 hours/day or 40 hours/week
 - Medium physical danger risk establishment (e.g. factory, oilfield, open mine): 8 hours/day or 44 hours/week.
 - If factory work is part of a continuous process (i.e. technical reasons): admissible 48 hours/week, 10 hours a day
 - Max. 6 days/week (i.e. Sunday = weekly holiday).
 - Overtime:
 - 2x normal pay rate.
 - Work on weekly holiday = alternative day off within a period of 2 months.
 - In Practice: No specific rules for offshore workers except in old law—oilfields act
 - Workers in industrial zones work around 11 hours a day, 6 days a week. Many in oilfields the same, but more dangerous jobs, 40/ week.

- ❑ Prescribes that a committee will set minimum wage levels based on the business sector and the skill demanded of the employee, which only apply to the private sector. The committee has not yet finished this work.
- ❑ The Law distinguishes between “laborers” and “employees”.
- ❑ To date, no minimum wages have been set.
- ❑ Wages in Myanmar vary greatly depending on the nature of the work and the employer, for example skilled vs unskilled workers – “unskilled” work is generally understood to mean work that requires no education or special training.
- ❑ Failure to abide by the minimum wages can result in a fine of about US\$330 and imprisonment for between 1 and 6 months for the employer.
- ❑ The rules allocate committees to different categories of work to devise minimum wages. Work specifically relating to offshore activities is not mentioned in the rules.

- ❑ There slightly different procedures for foreign workers who work for a company that has an MIC permit.
- ❑ All foreign workers require visas to work inside Myanmar.
- ❑ A Stay Permit and Work Permit do not act as visas.
- ❑ All visas require the foreign worker to leave the country at least every 70 days except Stay Permit holders.
- ❑ Foreign workers based in Myanmar can apply for a Stay Permit.
- ❑ The Stay Permit dispenses with the need to leave and re-enter every 70 days for workers that hold multiple-entry visas.

Types of business visa for expatriate workers:

- Business visa: on arrival or by application before departure
 - Letter of invitation from Myanmar company
 - Single-entry valid for 70 days
 - Extendable only by permission of relevant Ministries
- Multiple Entry Visa – three months validity
 - By pre-application with the relevant Myanmar Embassy or Ministry
- Multiple Entry Visa – six months or one year
 - Having visited Myanmar on three single-entry business visas in the course of a year, the applicant can apply for a six-month multiple entry visa
 - After this has expired, the applicant can apply for a one-year multiple entry visa
 - The requirement to have several business visas first can be waived for some companies

Foreign employees of companies in Myanmar that DO have an MIC-Permit:

- Foreign investment laws require the foreign worker to have a Work Permit and a Stay Permit.
- Complicated application procedure that requires a high volume of supporting documentation.
- Application procedures for Work Permits and Stay Permits changes regularly.
- Permits do not act as visas, the foreign employee will still require a visa.

- Passed, but no rules or regulations have been issued. As such, many provisions of the law are not in practice in effect.
- A Technical Skill Development Committee will be formed which will establish a technical skill development fund.
- Employers to pay a levy of 0.5% per month on total wages and salaries of every worker at a company. This fee goes into the fund and is used for a central “Skill Development Team” to:
 - Provide training for skill development or skill enhancement of employees;
 - Provide further training to terminated employees, or employees wanting to change work.
- Levy cannot be deducted from the workers’ wages.

- Employers to inform the relevant township job center of any vacancies.
- Import mandatory contractual provisions that are similar to existing practice (terms, having to complete contract within 30 days, having to file contract with the relevant township office).
- Employment and Skill Development Law appears to make violating the labor contract a criminal offence.
- Rules not yet enacted.

- Layoff Standard practice: calculations based on employment period.
 - Accepted by labor authorities:
 - ≤ 3 months = 1 months' pay.
 - Notice pay for 1 month.
 - > 3 months but ≤ 1 year = 2 months' pay.
 - Notice pay for 1 month plus termination-of-service pay for 1 month.
 - > 1 year but ≤ 3 years = 3 months' pay.
 - Notice pay for 1 month plus termination-of-service pay for 2 months.
 - > 3 years = 5 months' pay.
 - Notice pay for 1 month plus termination-of-service pay for 4 months.
 - Employer is required to withhold income tax obligation from employee's pay.
 - Above could be subject to change upon enactment of rules to Employment and Skill Development Law, 2013.

- All employees must be paid in cash unless they consent in writing to another arrangement in advance,
- Wages must be paid at least once per calendar month and within the first seven days of the month following the relevant month being paid,
- Any deduction to wages by an employer due must be in compliance with the Payment of Wages Act, which include fines, deductions for absence from duty, deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he/she is required to account, where such damage or loss is directly attributable to his/her neglect or default, etc.
- If a deduction is made that the employee does not agree to, the employee is entitled to initiate legal action against the employer.

“worker is entitled to a holiday with pay on every public holiday recognized as such by the State. Employees required to work on official public holidays shall be paid double the usual rate of pay”

- The number and date of each public holiday is set annually by the Ministry of Foreign Affairs.
- The Law sets out annual, casual and medical leave entitlements which are in addition to government-set public holidays.

Number of Days	Occasion
1	Kayin New Year Day
1	Independence Day
1	Union Day
1	Peasants' Day
1	Full Moon Day of Tabaung
1	Armed Forces Day
10	Maha Thingyan (Water Festival) long holidays
1	May Day
1	Full Moon Day of Kasong
1	Full Moon Day of Waso (Beginning of Buddhist Lent)
1	Martyr's Day
1	Full Moon Day of Thadingyut (End of Buddhist Lent)
1	Full Moon of Tazaungmone
1	National Day
1	Kayin New Year Day
1	Christmas Day
TOTAL	25

Statutory Leave Entitlements

Type of Leave	Number of Days Per Year
Casual Leave (paid, unapproved leave)	Six days
Earned Leave	10 days (after first year of employment)
Medical Leave	30 days (after first six months)
Maternity Leave	Six weeks before and after confinement
Public Holidays	Any that fall on a usual working day

Myanmar Contract Act 1872 – provides for freedom of contract

Common practice to provide yearly bonuses of one month's salary at Thingyan Water Festival, which is Myanmar New Year.

Common practice to provide meal benefits to Myanmar employees.

Oilfields (Labour and Welfare) Act 1951

- Specifies different work hour arrangements for “petroleum laborers”
 - 48 hour weeks, up to ten hours a day with breaks at least every 5 hours
 - For women, restriction on working between 6pm and 6am
 - Entitlement to one day leave a week, but this does not have to be a Sunday (as in other labor laws)
- Almost all provisions of the Oilfields Act 1951 can be overcome with an exemption from the President
- Under the Oilfields Act the operator of the oil rig is the “employer” indicating that, despite the PSC, the government of Myanmar is NOT the employer and as such, petroleum laborers are not public servants.

- If employee is not in compliance with work obligations, employee may be discharged without payment of termination benefits after three formal warnings.
- Employee may be dismissed immediately without layoff benefits if:
 - Absent without leave ≥5 days,
 - Drunk and disorderly at workplace.
 - Breaking work rules regarding explosive and flammable substances in places where such materials are stored.
 - Carrying weapons into workplace without permission of authorities;
 - Causing commotion and disorder in workplace; danger or loss of machinery and goods, or grievous hurt to anyone at workplace.
 - Committing bribery and corruption, or criminal offences involving moral turpitude.
 - Entering prohibited areas at workplace without permission;
 - Failure to comply with duties at workplace;
 - Gambling at workplace; or
 - Theft or misappropriation.



Employment Contract for Offshore Operators as Employers

- A company must enter into written employment contracts with Myanmar citizens and foreign staff within 30 days of commencement of the employment;
- Ministry of Labor provides a standard employment contract, which is applicable to all employees, public and private, and shall be deemed to apply in all cases where the employee's written contract is silent;
- Myanmar allows employers and employees to vary the terms of the Standard Employment Contract so long as the variation is not in contravention of Myanmar's labor and employment laws;
- Most companies start with the standard contract and modify it

❑ Contract must cover (among others):

type of employment,
wage or salary,

probation period,
location,

term of agreement,

working hours,

holidays and leave,
meal arrangements,

overtime,
accommodation,

medical care,

travel policy,

training,

resignation and termination

» conditions.

- FIL In the first two years, 25% of the skilled workforce must be Myanmar citizens, by year four this increases to 50% and by year six this increases to 75%.
- Employer must provide training to citizen employees to reach employment demographic targets.
- For unskilled jobs only Myanmar citizens can be employed.
- “Unskilled” not defined in Myanmar law, but generally understood to mean jobs that require the completion of simple tasks and do not require any training or experience or exercise of independent judgment on behalf of the employee



Employee –Employer Disputes

All existing labor law framework applies to employees working on an oil rig.

This includes the right to unionize, lock out and strike.

Currently, there exist no exemptions to this right relevant to rig workers.

- A labor organization must draw up its constitution and rules.
- A labor organization must register. Basic, Township , Region or State Labor Organizations must register with the relevant township registrar.
- Must consist of at least 30 members
- Right to take part in collective bargaining process
- Can't fire employee for labor organizing.
- Nothing in the legislative framework to prevent petroleum workers from forming a labor organization.

Union must vote to go on strike.

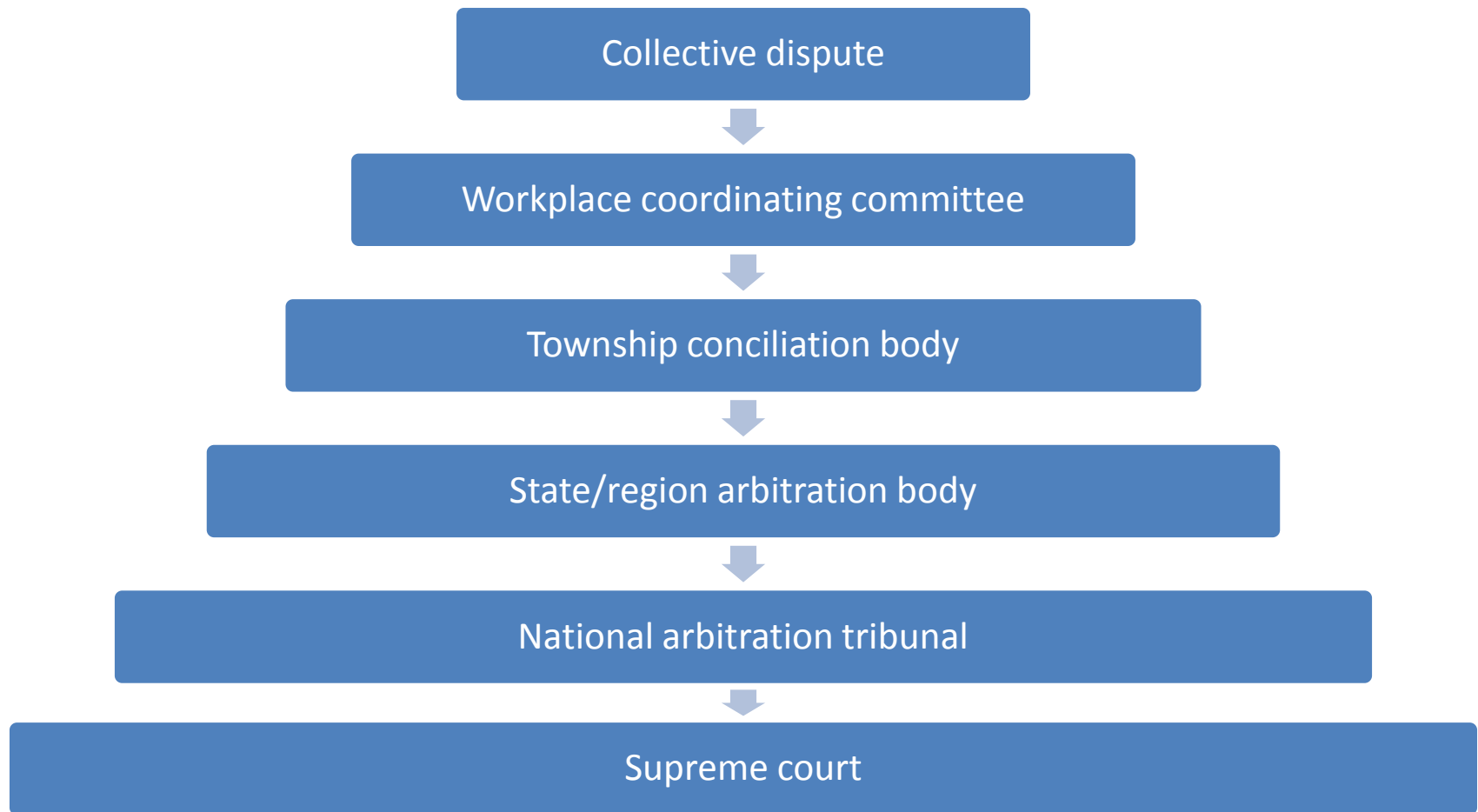
Before strike or lock-out, dispute must have already been elevated to the township level and a conciliation body or tribunal.

For a lock-out – 14 days prior to the lock-out must

- Inform to the township labour organization
- Inform the relevant conciliation body and receive that conciliation body's permission
- Only after receiving permission proceed to lock-out

For a strike – 3 days prior to the strike must

- Stipulate date, place, number of participants, manner and time of the strike
- Inform employer and relevant conciliation body and relevant labour federation
- Receive the permission of the relevant labour federation and conciliation body



- Unconformity with decisions in respect of essential services can be submitted to Tribunal directly (explained below).
- If parties are not satisfied (excl. decisions in respect of essential services):
 - Apply to **ministerial Arbitration Council** within seven (7) working days, or
 - Carry out legal lock-out or strike. [Can't strike until this point]
- Arbitration Council shall form a **Tribunal** to try the case and make decision in respect of collective dispute.
 - Tribunal shall make decision on collective dispute within fourteen (14) working days and send decision to parties within two (2) working days.
 - Decisions in respect of essential services shall be made within seven (7) working days and decision thereof shall be notified to parties within two (2) working days.
 - Arbitration Council shall send copy of decision passed by Tribunal to the Minister and the relevant Region or State Governments.

Thank you



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Employee and Employer Tax Obligations

Income Tax Law of 1974

- Employer responsible for withholding and claiming deductions for income tax on salary at the time of payment to employees;
- Total tax liability for income of citizens and resident foreigners is between two and 25 percent worldwide income – that is, including income earned outside Myanmar;
- For NON-resident foreigners (in the country for less than 183 days in a tax year), taxable income in Myanmar is only income earned in Myanmar. The tax rate is a flat 35 percent;
- All foreign employees of Offshore Operators considered “resident foreigners” under Myanmar law for taxation purposes, even if they are in the country for less than 183 days. This is the same for employees working for any MIC-permit companies;
- Double Tax Avoidance agreements with UK, Malaysia, Singapore, Vietnam, Thailand, Korea, Lao PDR and India.

PIT INCOME BANDS (MMK)		Rate of taxation (% of income)
Assessable income deduction of exemptions (MMK)		
From	To	
1	2,000,000	0%
2,000,001	5,000,000	5%
5,000,001	10,000,000	10%
10,000,001	20,000,000	15%
20,000,001	30,000,000	20%
Above 30,000,000		25%

Although it entered into its first DTA as early as 1953, Myanmar introduced regulations pertaining to applications for DTA relief only in 2011. Under the regulations, to obtain relief under a DTA, taxpayers need to apply administrative procedures for claiming a tax reduction or exemption with the Myanmar tax authorities. Thus, DTA exemptions and reliefs are not automatic and are at the discretion of the Internal Revenue Department (“IRD”).

While taxpayers can now submit an application for tax reductions or an exemption, the sheer novelty of the procedures for DTA applications make obtaining relief, at best, unpredictable. In practice, the tax authorities in Myanmar need to be consulted by the applicant on a case-by-case basis in order to obtain tax treaty relief. The authorities will examine the contracts and the facts of the case before rendering its decision.

Typically, a resident of a contracting state is not subject to tax on income from business profits in Myanmar if either (i) the resident does not have a Permanent Establishment (“PE”) in Myanmar or (ii) it does have a PE in Myanmar but the income is not attributable to the PE.

A Permanent Establishment is a “fixed place of business” continuing in operation for at least six months, such as:

A branch

An office

A factory

A workshop

A mine, oil or gas well, quarry or other place of extraction of natural resources

Drilling rig or ship used for exploration or exploitation of natural resources

Building or construction site

Overseas income which was received in Singapore (including those paid into a Singapore bank account) on or after 1 Jan 2010 is not taxable.

However, if – for example - a Singaporean earns \$5,000 a month in Myanmar, if the earnings are associated with his or her work at a “permanent establishment”, being a place of business that has been in Myanmar for more than 6 months, that Singaporean person becomes taxable in Myanmar on that income from his or her work associated with the PE.

- Employment agreements must be entered within 30 days and must address several matters, inter alia:
 - Type of employment:
 - Existing labor laws of Myanmar do not differentiate between normal, temporary or causal employment.
 - Probation period:
 - Max. 3 months
 - Wages or salary:
 - Generally speaking now there is no minimum wage in private sector, but such scenario may change with the enactment of rules to the Minimum Wages Law.
 - Location of the employment;
 - Term of the agreement;
 - Working hours:
 - Shops and Establishments: Max. 48 hours/week.
 - Factories: Max. 44 hours/week.
 - 30min break every 5 hours.

- Minimum one non-working day per week
- Overtime:
 - Overtime pay required for work in excess of normal working hours and work on holidays:
 - 2x the normal pay rate.
- Medical treatment arrangements:
 - Consensus: if employer participates in Social Security scheme, no need to fund other programs, such as medical plans, social welfare, transportation, housing, etc.

- Lack of provisions could be understood as an implicit recognition of equality.
 - Reality: nothing prevents acts that could lead to discrimination and/or harassment.
- Employment agreement templates provided by Ministry of Labor request insertion of sensitive information, such as race or religion.
- Labor laws tend to discriminate negatively:
 - Between Myanmar citizens and non-citizens:
 - E.g.: Constitution, 2008:
 - Only “citizens” enjoy the right to equality.
 - Between Buddhists and non-Buddhists:
 - E.g.: Leave and Holidays Act, 1951:
 - Official public holidays geared towards Buddhists, and include full wages or pay, whereas non-Buddhists may request holidays on occasion of religious festivals without wages or pay.
 - Between married and unmarried couples:
 - E.g.: Social Security Law, 2012:
 - Maternity leave is only in reference to the term “wife” which, under the current practice in Myanmar, excludes common-law partnerships and other sorts of cohabitation.

