



The Impact of Important Laws of Myanmar on Foreign Parties to Offshore PSCs

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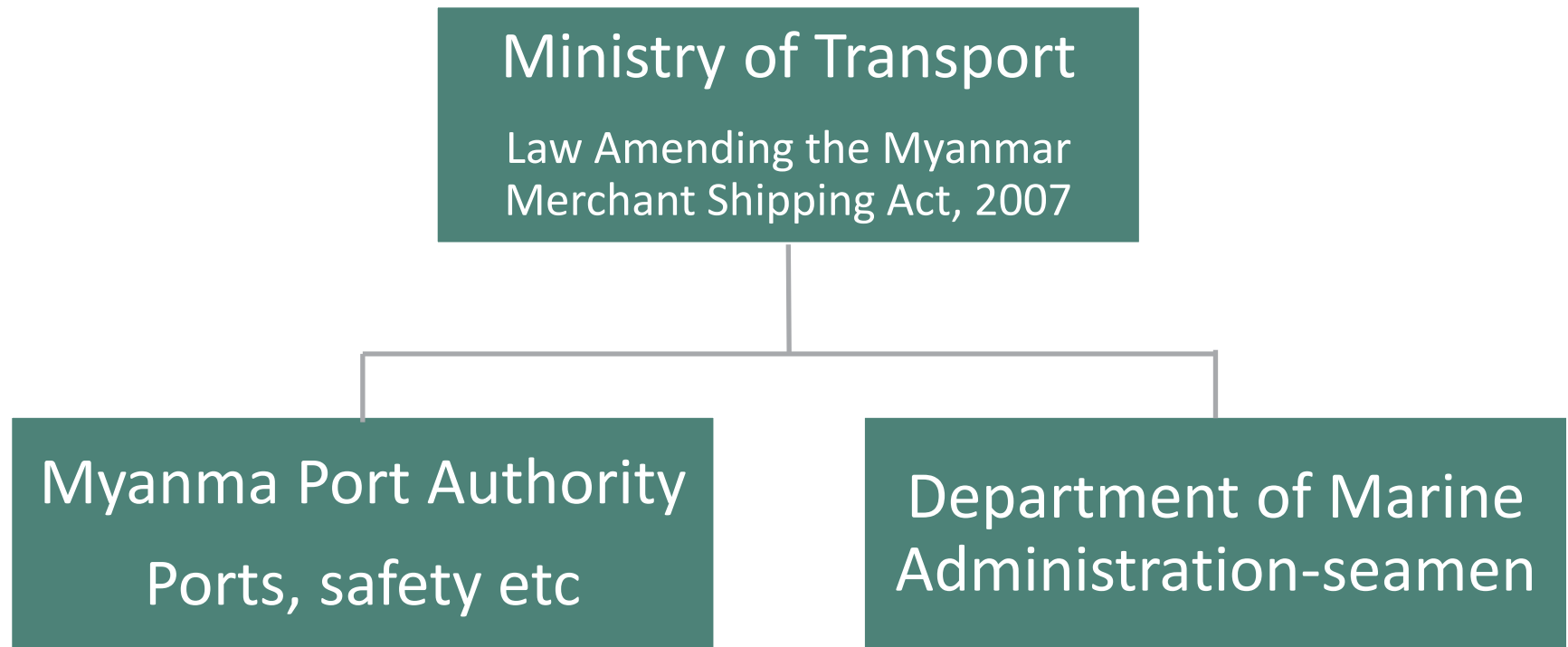
1	Business Structure and Tax
2	Functions of Maritime Authorities
3	Foreign Vessels and Myanmar Waters
4	Environmental Framework and Marine Pollution
5	Labor Obligations

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1. PSC operators (the parties that sign PSCs with MOGE) must do business under the FIL, which has a 5-year tax holiday and thereafter is subject to a 25% tax on net income.
2. Subcontractors to the above operators (for example, individuals or companies providing services to the operators) couldn't file under the FIL because they are providing services and this is not allowed by the MIC. Their income in Myanmar is subject to a 2% withholding tax if they have a company or branch in Myanmar and 3.5% if they don't.

Double taxation agreements with: United Kingdom, Singapore, India, Malaysia, Vietnam, South Korea, Thailand and Laos.

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Myanma Port Authority



Shipping Agency
Department

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Inform Shipping Agency Dept. under MPA

- Owner shall send a letter to Shipping Agency Department, indicating
 - ETA of the ship;
 - ETD of the ship;
 - Specification of the cargo;
 - Shipping particulars, and
 - Person responsible for shipping charges.
 - Request compulsory pilot if ship is above 200 GRT.
 - Shipping Agency Department will return a letter of acceptance.
 - **Shipping Agency Fee is USD 385/ship**



- To operate in Myanmar waters, a foreign vessel would need to register in Myanmar.
- But, Myanmar is not an “open registry”.
- An accepted option is to register a ***bare boat charter***, with dual registration. (Myanmar + foreign registration)
- To register the bare boat charter, the ship is required to have a company in Myanmar.
- At present, the company would need to be a JV with a Myanmar citizen.
There is the big possibility that this will change in the near future.

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- Environmental Conservation Law 2012
- Environmental Conservation Rules 2014
- Environmental Impact Assessment Procedures Bill
- Ministry of Environmental Conservation and Forestry Environmental Conservation Committee
- Environmental Impact Assessment Review Committee
- *Additional subordinate legislation in respect of quality standards, listings of hazardous materials and environmental incidents, etc., yet to be drafted.*

- Must abide by the Environmental Management Plan (EMP) that has received an “Environmental Compliance Certificate” from the Ministry and Environmental Conservation Committee.
- Must collaborate and support Ministry monitoring and investigations of compliance and environmental incidents
- The PSC proponent/subcontractor is responsible for all Ministry costs for monitoring and evaluation
- Must provide six monthly reports to the Ministry on compliance with EMP

- Untested environmental protection framework.
- It is an offence to deviate from the EMP or to not offer full disclosure in the EIA.
- Project proponent must report within 24 hours when there has been a serious environmental incident and within 7 days where there has been an environmental incident likely to have an impact.
- Some environmental offences contained in other legislation in respect of waterways and wildlife.
- Penalties – prison sentencing of up to 5 years, monetary fines of up to MMK 2 million, compensation for damage, costs of remedy, government costs.

- Myanmar is currently a party to MARPOL Annex I/II and is in the process of becoming a party to Marpol annex III, IV, V which are key instruments for sewage and garbage dumping and other environmental protection.
- UNCLOS, 1982(the UN Convention on the Law of the Sea, 1982)
- SOLAS (Safety of Life at Sea, 1974 and its amendment of 1978)
- Loadlines Convention 66 Tonnage Convention 69 and STCW (Standards of training, certification, watch keeping).
- Myanmar has ratified SUA 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.
- In total, Myanmar a party to 28 international conventions impacting on offshore activities.

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- ❑ 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”.

- 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.

- 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.

- 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.

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 contact

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.

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.

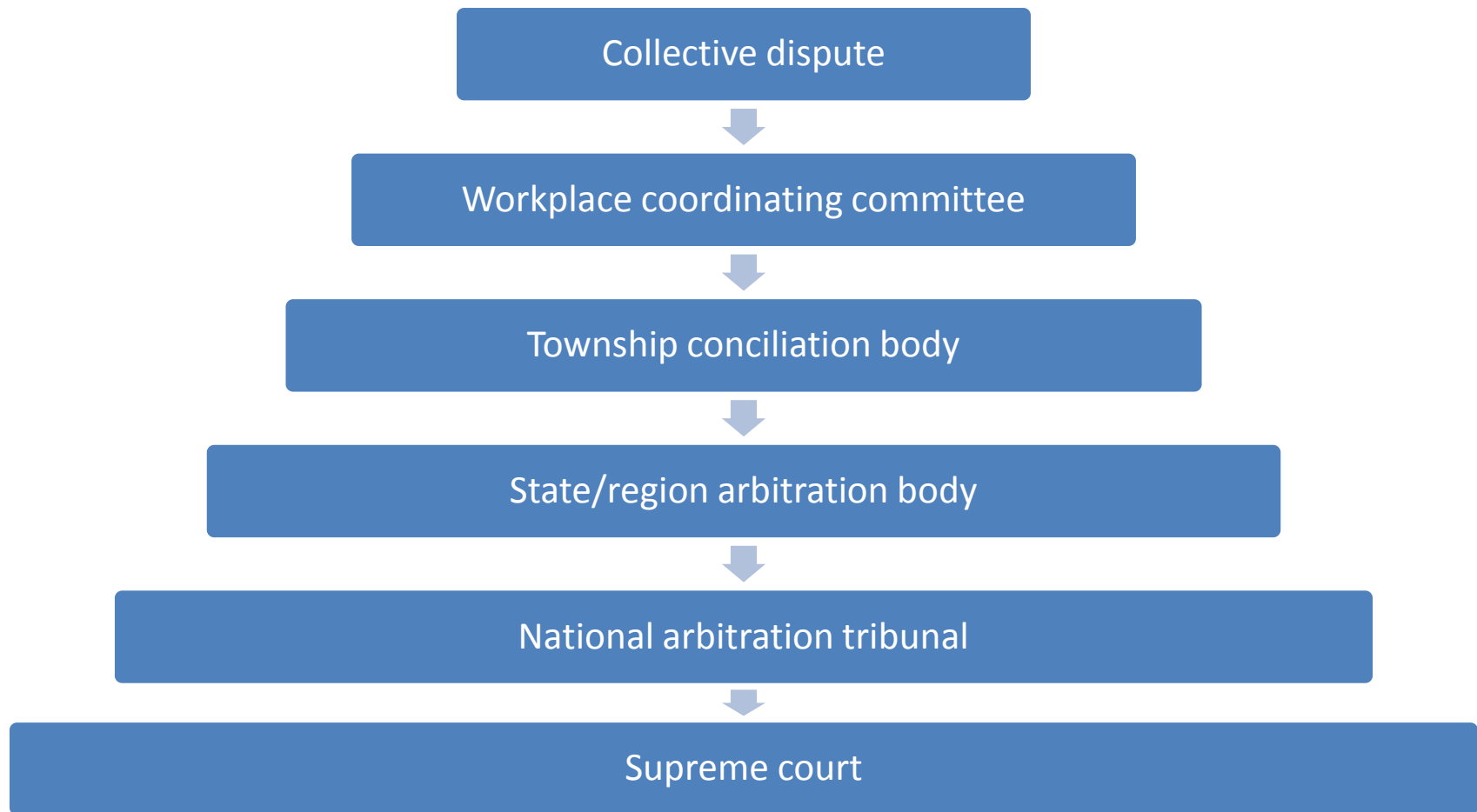
Before strike or lock-out, dispute must have already been elevated to the township level and a conciliation body or tribunal.

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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- ❑ 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.

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

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.



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

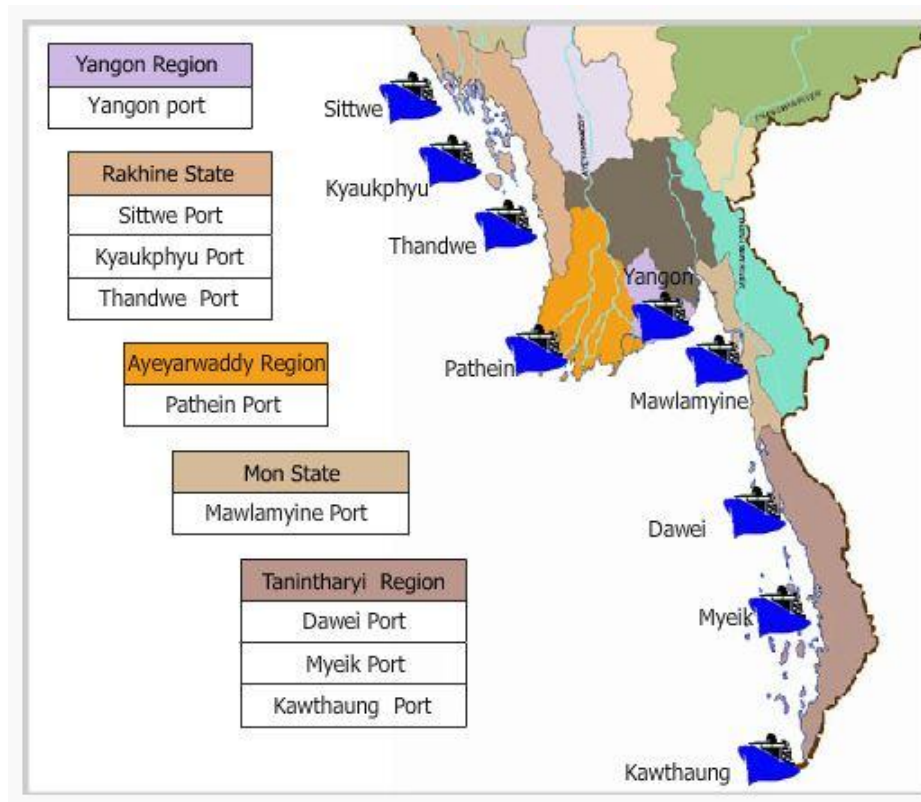
» conditions.

- 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

Ports of Myanmar



- Inspection of the inland powered vessels (cargo, fishing and schooner) and providing penalty and fines for the vessels which contravened the rules and regulation as prescribed by ISV act.
- Investigate when arising accident such as collision in water ways.
- Recruitment and training of new seafarers and presented the certificates of competency, exemptions, clearance and out registrations .
- The rights and welfare of seaman
- Arranging bare boat charters to increase foreign currency earnings.

- Pilotage
- Container and General Cargo Handling and Storage
- Diving Service
- Tug Service
- Shipping Agency Service
- Fire Fighting
- Port Security
- Fresh Water Supply
- Ship Repairs

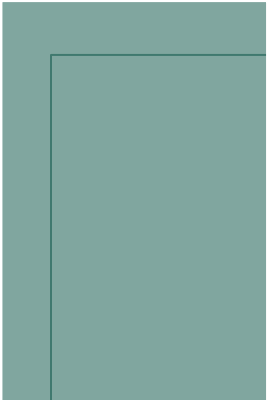


3. FIL Company [both PSC or subcontractor]

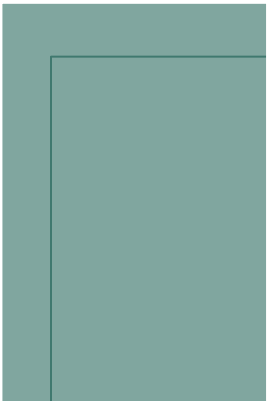
- Special tax incentives:
 - Income tax exemption for a period of at least five (5) consecutive years including the year of commencement of business operation;
 - Income tax exemption or relief on profit accrued from the Project which are kept as a reserve fund for re-investment, and if re-invested therein within one (1) year;
 - Right to deduct depreciation from the profit, after computing it at rate stipulated by Myanmar, in respect of machinery, equipment, building or other capital assets used in the Project for the purpose of income-tax assessment;

- Special tax incentives *cont'd*
 - Right to pay income tax on the income of foreigners at the rates applicable to the citizens residing within Myanmar;
 - Right to deduct expenses from the assessable income incurred for research and development business which are actually required and are carried out within Myanmar;
 - Right to carry and set-off the loss actually sustained within two (2) consecutive years after the enjoyment of exemption or relief from income-tax as contained in sub-section i) above for each Project up to three (3) consecutive years from the year that the loss is sustained;

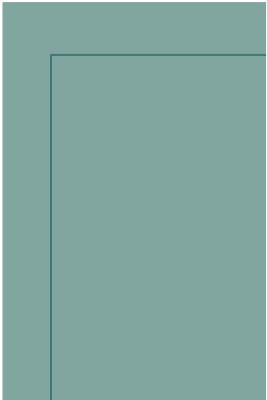
- Special tax incentives *cont'd*
 - Exemption or relief from customs duty or other internal taxes or both on machinery, equipment, instruments, machinery components, spare parts and materials used in the Project which are imported as they are actually required for use during the period of construction of the Project;
 - Exemption or relief from customs duty or other internal taxes or both on raw materials imported for production for the first three (3) years after the completion of construction of the Project;
 - If the volume of investment is increased with the approval of the MIC, and the original investment is expanded during the permitted period, exemption or relief from customs duty or other internal taxes or both on machineries, equipment, instruments, machinery components, spare parts and materials used in the business which are imported as they are actually required to use in the Project expanded as such, and
 - Exemption or relief from commercial tax on the goods produced for export.

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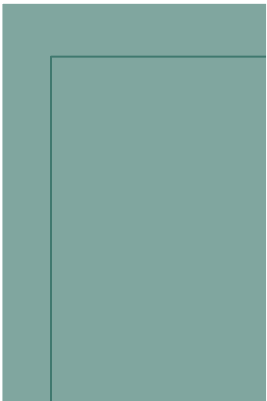
Foreign ships registering in Myanmar, registration fee is according to tonnage

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Up to 5,000 tons ships the registration is approximately USD 10,000 and will increase and decrease according to tonnage.

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Currently, there are foreign supply ships registered as bareboat charters in Myanmar.

Two overlapping teal squares, with the front square being slightly offset to the right and bottom from the back square.

The Master and crew are foreigners, however, this will change in the future, where it will be compulsory at operation level to hire Myanmar nationals. This is not in force yet and there will however be a grace period.