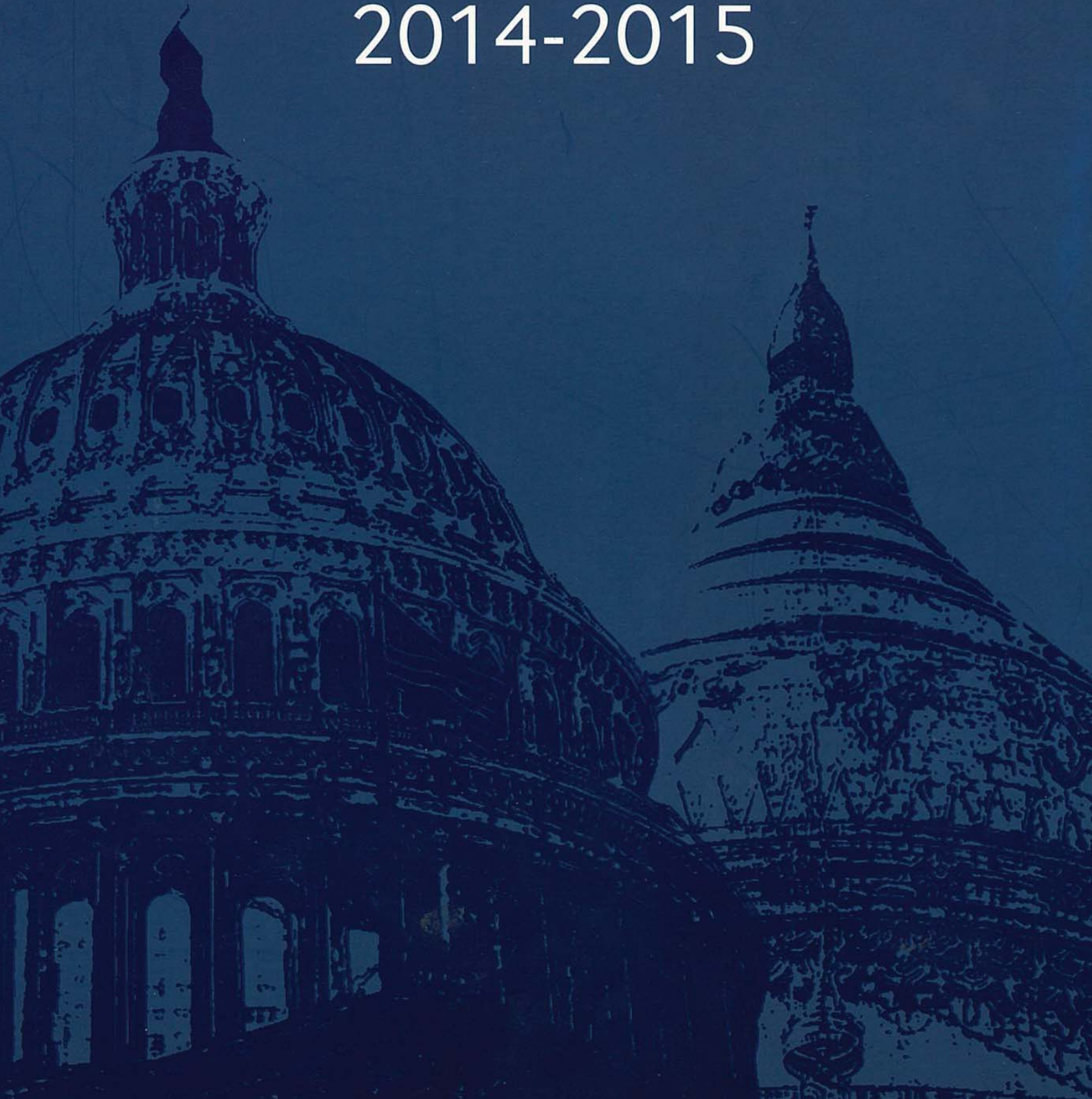


AMCHAM MYANMAR CHAPTER

# Membership Directory

## 2014-2015



# Labor and Employment Regulatory Framework in Myanmar

*Written by: William D. Greenlee, Jr.*

Of the many employment and labor laws in Myanmar, many are technically still in force, but are no longer relevant or are merely broad pronouncements that give the government the right to enact laws and regulations related to labor and employment. However, new labor laws are being drafted.

The new Foreign Investment Law of 2012 ("FIL") contains certain labor-related requirements for foreign investors. This article provides an overview of some key provisions of Myanmar's labor and employment regime that may be relevant to foreign investors.

## Employment Agreements

In Myanmar, a company must enter into written employment contracts with Myanmar citizens and foreign staff within 30 days of employment. The Myanmar Ministry of Labor has issued 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. The Standard Employment Contract is largely provided for convenience. 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.

Furthermore, an employment agreement may address issues such as job description, place of employment, minimum wages, salary, leaves, holiday, overtime fees, damages, workman's compensation, social welfare, working hours, benefits, probation period, termination, and duration of the contract and other insurance relating to workers in stipulating the rights and duties of employers and workers. Employee performance and work standards may be inserted into the employment contract too.

## Minimum Wages, Leave, Overtime and Bonuses

The Minimum Wage Law of 2013 was enacted by parliament, but to-date no minimum wages apply to private sector employers and employees. However, the law commits the Myanmar government to implementing a minimum wage index for different industries that will be updated every two years.

Overtime pay is required for work in excess of normal working hours and for work on holidays. The Shops and Establishments Act of 1951 states that no person employed in a shop or commercial establishment shall work more than 8 hours per day or 48 hours per week (with limited exceptions). The law currently states that there will be 20 working days a month. It further stipulates that any person working in excess of the aforementioned limits is to be paid double their normal wage for that time.

Leaves that are included are annual, casual, medical and maternity leave.

Maternity leave is permitted to a pregnant woman six weeks before confinement and a minimum of eight weeks after confinement with the relevant wages and salary paid. The maternity leave may be entitled and



related to medical leave, as per the recent amendment of the Act.

Annual leave is available to every employee who has completed a period of twelve months continuous service. Annual leave is granted to employees as earned leave with average wages or average pay for a period of ten consecutive days by his or her employer during the subsequent period of twelve months.

In terms of casual leave, the law states that every employee is entitled to six casual leave days per year. Casual leave cannot be combined with other permitted leaves, for example annual leave and it expires and renews on a yearly basis.

Every employee who has completed at least six months continuous service has access to medical leave with average wages or average pay for a period of thirty consecutive days by his employer during the subsequent period of twelve months.

Though not required by law, a common practice is to provide employees with a yearly bonus equal to one month's salary.

### **Termination of Employment Agreement**

It is standard practice in Myanmar that if an employee has been formally warned three times and the employee is at fault and not in compliance with work obligations, then the employee may be discharged without the payment of termination severances.

In the event of a not for cause termination, the employer is obligated to pay the below termination severances, as follows:

- If employed less than three months: one month basic salary (i.e. one month notice pay)
- If employed for three months to one year: two months basic salary (i.e. one month plus one month notice pay);
- If employed for 12 to 36 months: three months basic salary (i.e. two months plus one month notice pay);
- If employed for more than 36 months: five months basic salary (i.e. four months plus one month notice pay).

The Ministry of Labor, Employment and Social Security will issue notifications specifying compensation to be paid by the employer to the employee if the work is completed earlier than the stipulated period or the whole work or any part of it have to be terminated due to unexpected reasons or the work has to be terminated due to various reasons.

### **Recruitment of Expatriates**

For the employment of foreign staff, Myanmar does not yet have a work permit system in place. Foreign nationals who need to reside and work in Myanmar for long periods of time must obtain both a Stay Permit and a multiple-entry special re-entry visa, which are readily available for employees of companies that are in receipt of an investment permit from the Myanmar Investment Commission ("MIC").

In the investment application form submitted to the MIC, investors must include the number of foreign experts/technicians to be employed.

### **Additional FIL Investor Requirements**

For investments under the FIL in Myanmar, additional obligations must be met. The FIL requires the investor to state the number of skilled workers, technicians and staff for skilled business, as well as the number of unskilled workers that the project will require. Furthermore, for skilled positions, the FIL provides an obligation to increase over time the use of local Myanmar staff.

The investor is to achieve at least 25% of its workforce to be Myanmar nationals during the first two years, at least 50% during the second two years, and at least 75% during the third two years. Also annually, on or before January 31, the investor must submit a report to the MIC which details the practices and training methods that have been adopted to improve the skills of Myanmar citizens.

Foreigners who work for investment business under and MIC permit must submit and apply for a work permit and local residence permit issued by the Myanmar Government.

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# Myanmar Banking 101: Transactional Banking, Rules on Foreign Exchange and Repatriation of Funds

*Written by: William D. Greenlee, Jr.*

Banking in Myanmar is not easy. Being a cash-based economy, banks are not nearly as involved in commercial transactions as in most other countries. Credit cards are still not commonly accepted and it was only in 2013 that ATM machines arrived. Visitors often bring in large sums of cash for their expected expenses, and those notes better be crisp U.S. dollars or forget about exchanging it into Myanmar Kyat!

## **Transfer of Money into Myanmar: Logistical Considerations**

For many years, international transactions requiring bank money transfers were almost impossible. This was in part due to the sanctions imposed by the U.S., the EU, Canada and others, that prevented international foreign banks from transacting business with Myanmar banks. For the most part these sanctions have now been removed or loosened. The U.S. has removed four Myanmar banks (Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank and Myanma Investment & Commercial Bank) from the Treasury Department's Specially Designated Nationals, or SDN, List and U.S. banks (and those with connections to the U.S., thus mostly all international banks) can now conduct business with these four Myanmar banks.

Although most sanctions have been removed, most large international foreign banks are still not, for example, wiring funds into Myanmar, although some regional banks have been wiring funds. For the large international banks the issue may be that this new open legal environment is untested, at least in relation to their internal compliance guidelines. This said, it is a common belief that in the near future wiring funds into Myanmar will become easier and easier. In recent headlines it has been reported that Myanmar is preparing to grant as many as 10 international banks licenses for the conduct of commercial lending in foreign

exchange currencies. However, these licenses do not extend to local currency lending.

## **Transfer of Money into Myanmar: Legal Considerations**

As with many countries in the region and/or those that are in relatively early stages of their economic development, Myanmar prefers foreign investment in which a foreign company comes to Myanmar with funds and expertise and opens a business that creates value, such as creating quality employment and infrastructure. As a result, the general rule for foreign investors in Myanmar is that foreign companies must operate through an entity registered in Myanmar (which may be 100% foreign owned, joint venture or branch) in which to conduct their intended business. This rule generally applies to all businesses in all sectors, whether a company is formed under the new Foreign Investment Law of 2 November 2012 (the "FIL") or the Myanmar Companies Act of 1 April 1914 (the "Companies Act").

Following the issuance of the conditional copy of the Myanmar Investment Commission ("MIC") permit (for a foreign entity investing under the FIL) and the temporary Permit to Trade (for a foreign entity investing under the FIL and the Companies Act), the foreign investor must bring into Myanmar (often referred to the "bring capital") 50% of the minimum capital for such company's formation. To accomplish the transfer, foreign investors would have their international bank wire funds to one of the two Myanmar state owned banks and such bank would hold the funds for the foreign investor to physically come and collect.

This process also documents the transfer and satisfaction of the registered capital. This is completed once the second half is wired, which is required within five years after the issuance of the final permit to trade. This is

important for a later repatriation upon liquidation of the investment as funds brought into Myanmar that are either not a part of the 'bring in' capital procedure and/or have not received prior approval from the Central Bank of the Union of Myanmar (the "CBM") will not receive CBM approval for such funds to be wired outside of the country (see below for repatriation details).

Foreign investors are permitted to open a bank account denominated in a foreign currency or in Myanmar Kyat through any bank that is authorized to perform international banking in order to carry out financial transactions. Note, American companies should open an account with one of the four banks that have been removed from the SDN List. For each deposit of funds the foreign investor must submit appropriate documentation to the CBM for review and approval. With respect to MIC companies, the MIC will also have to approve the deposit pursuant to the FIL.

### Repatriation of Funds

The FIL and the Foreign Exchange Management Law (the "FEML") provide for the ability to foreign investors to remit imported capital and net profit (dividends) abroad in a foreign currency, so long as the remittances are made through a bank authorized by the Myanmar Government to perform international banking at the prescribed rate of exchange.

The FEML replaced an earlier, stricter law that required CBM to provide its prior approval for every foreign currency payment out of the country. The FEML is intended, among other things, to liberalize transfer payments by breaking various transfers into two categories, one that no longer requires pre-approval by the CBM, "current account transactions", and one that still does require pre-approval by the CBM, "capital account transactions".

The "current account transactions" include:

- remittances for trading, services fees, settlement of short term bank loans;
- remittances for payment of interest on loans and net income from investments;
- installment loan payments or depreciation on direct investments; and
- inbound or outbound remittance for family living costs.



The "capital account transactions" category provides that foreign currency may be retransferred abroad only after receiving approval from the CBM. The FEML defines capital account transactions as the account transactions, other than the current account transactions as mentioned above. The repayment of principal for the loan permitted by the Union Government, the grant given to foreign country permitted by the Union Government, and the investment made abroad permitted by the Union Government are considered to be capital account transactions.

Practical application of these provisions is still largely unclear as the implementing rules and regulations that provide details to the relevant law have not yet been issued or published. We expect such rules and regulations to be published soon as this is of course a critical issue for all companies investing into Myanmar. In addition such rules and regulations in Myanmar by law are required to be issued within thirty days of the law being issued – the FEML was issued on 10 August 2012. In the meantime there is little certainty as to how these provisions are applied in practice.

Banking in Myanmar is still not easy. However, progress has been made and soon you will likely even be able to go to a store and pay with a credit card! For now, however, you should bring cash.

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**BUSINESS ACTIVITY**

- Legal Practice

**COMPANY PROFILE**

DFDL Myanmar provides a full range of legal and tax services to foreign and local investors operating in Myanmar. Our team of over 20 experienced local and foreign legal advisers in Yangon and Nay Pyi Taw provides efficient, effective and practical legal services at an international standard, coupled with a high level of personal in-depth knowledge of the local environment.

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**BUSINESS ACTIVITY**

- Environmental Products & Services
- Manufacturing -Chemical Elements & Allied Products

**COMPANY PROFILE**

DuPont is a science-powered innovation company. Founded in 1802, DuPont puts science to work by creating sustainable solutions essential to a better, safer, healthier life for people everywhere.

Operating in more than 90 countries, DuPont offers a wide range of innovative products and services for markets including agriculture and food; building and construction; communications; and energy.

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