

Myanmar occupational health and safety framework in the manufacturing sector

Introduction

The purpose of this document is to outline Myanmar's occupational health and safety framework in the manufacturing industry. Please note that this sector is mostly regulated by the Factories Act (1951), whose provisions apply to all premises where a "manufacturing process" is carried on, at least, by (i) 10 workers with the use of power, or (ii) 20 workers without the use of power.

The primary public agency involved in the supervision of occupational health and safety framework for workers in the manufacturing sector is the Factories and General Labour Laws Inspection Department ('FGLLID') under the Ministry of Labour, which is responsible for enforcing occupational health and safety rules, mainly through factory inspections and training. Other agencies involved in regulating occupational health and safety standards include notably the Occupational Health Unit under the Ministry of Health, whose role is to prevent work-related diseases and injuries.

I. OVERVIEW OF HEALTH AND SAFETY PROVISIONS APPLICABLE TO THE MANUFACTURING SECTOR

The Social Security Law (2012) provides a general obligation for employers and workers to comply with the directions of the Social Security Board and insurance agencies in respect of maintaining plans to ensure safety and health in the workplace so as to prevent employee injuries, the contraction of diseases, and to ensure relevant communication of safety guidelines to employees regarding the prevention of accidents in the workplace.

Most health and safety provisions relating to the manufacturing sector are to be found in the Factories Act (1951) and the enforcement of these provisions is entrusted to the FGLLID. A breach by the owner or manager of a factory of such provisions is liable to a fine and, depending on the offense, to imprisonment for a term up to 6 months.

1.1 Health measures

With respect to medical facilities and monitoring, the Factories Act provides that the following requirements shall be met:

- a first aid box must be available and an additional first aid box must be provided if there are more than 150 workers;
- factories with more than 250 workers shall have a dispensary run by a certified nurse;
- a qualified medical doctor recognized by the Social Security Board shall be appointed.

Such doctor is responsible for performing medical check-ups of young workers (under 18¹) or workers engaged in dangerous occupations and/or processes and issuing medical certificates of health and fitness for young workers and taking measures in a factory where the following events are reported:

- (a) cases of illness believed to be caused by the nature of the manufacturing process carried on or other conditions of work prevailing therein, or
- (b) there is a likelihood of damaging workers' health by reason of any change in the manufacturing process carried on, or in the substances used therein, or by reason of the adoption of any new manufacturing process, or of any new substance for use in a manufacturing process, or
- (c) young persons are, or about to be, employed in any work likely to cause injury to their health.

Please note that the appointment of a medical doctor and the provision of first aid boxes, a dispensary and the keeping of medical treatment records are listed, among other standard health and safety requirements, on the FGLLID's checklist used for factory inspections. The Garment Industry Code of Conduct² further provides that regular trainings on matters of health and safety shall be provided at no cost to all workers.

¹ According to the Myanmar Factories Act (1951), children between 13 and 15 are permitted to work up to four hours in a factory subject to certain conditions (certificate of fitness, working hours comprised between 6am and 6pm, etc.).

² The Myanmar Garment Association ('MGMA') released on 1 February 2015 a code of conduct developed with the assistance of the European Union and designed to be followed on a voluntary basis by the MGMA member companies.

In terms of hygiene standards, the Factories Act (1951) sets out general requirements as follows:

- factory to be kept clean and free from effluvia;
- effective arrangements to be made for the disposal of waste and effluences;
- Latrines, adequate washing facilities and spittoons to be provided;
- sufficient supply of clean drinking water available.

Finally, other health-related provisions provided by the Factories Act (1951) include adequate ventilation in workrooms, effective measures to prevent inhalation of dust and fumes and use of sufficient and suitable lighting.

1.2 Welfare facilities

In addition to the above health and safety measures, the Factories Act also requires employers to provide the following facilities to its workers: adequate and suitable rest sheds and rest rooms, sitting facilities, crèches (if there are more than 50 female workers) for children under the age of 6, a dining room (if there are more than 100 workers) and a canteen (where there are more than 250 workers).

Employers adhering to the Garment Industry Code of Conduct and providing dormitories to their workers shall apply to those facilities the same health and safety obligations than those required at the workplace.

II. SOCIAL AND HEALTH INSURANCE CONTRIBUTIONS

According to the Social Security Law (2012), which took effect on 1 April 2014, foreign-owned, as well as citizen-owned investment is subject to compulsory registration with the Social Security Board if it employs a minimum number of employees as determined by the Ministry of Labour in coordination with the Social Security Board. It has to be noted that this threshold currently stands at 5 employees. As of 1 April 2014, social security contributions paid to the Health and Social Care Fund by the employer and the employee amount respectively to 2% of the employee's monthly salary and the employer is also liable to contribute 1% of the employee's payroll earnings to the Employment Injury Benefit Fund (5% contribution in total).

III. EMPLOYMENT INJURY

The occurrence of an accident at the workplace shall be reported to the FGLLID, as soon as possible in case of death and within 72 hours if the worker is incapacitated for 48 hours or more. The relevant township Social Security Office shall also be notified.

An insured worker is entitled to take health care and medical treatment at:

- hospitals and clinics owned by the Social Security Board, or
- state-owned or private hospitals and clinics which concluded an agreement with the Social Security Board, or
- hospitals and clinics established by the employer with the permission of the Social Security Board.

According to the Social Security Law (2012), the costs of medical care related to employment injury resulting from a criminal action or omission of the employer or from the employer's failure to meet occupational health and safety legal requirements shall be borne entirely by the employer.

If the Social Security Law provisions do not apply (where the business employs less than 5 employees or in any case as stated in the Social Security Law (2012)), employees are allowed to benefit from the Workmen's Compensation Act 1923. Under such Act, if personal injury is caused to a worker by an accident arising out of and in the course of his/her employment, the employer is liable to pay compensation.

This publication has been prepared by the law firm Audier & Partners for the purpose of providing a general overview of Myanmar's occupational health and safety framework in the manufacturing sector. The legal information contained in this publication is provided for information purposes only, and is not intended to constitute legal advice. Legal advice should be obtained from Audier & Partners for all specific situations.

The opinions and decisions of the courts of Myanmar, and relevant Conciliation or Arbitration Bodies formed under the Settlement of Labour Disputes Law (2012) in the case of labour disputes, usually remain unpublished and unavailable to the public. Judicial interpretation of the laws of Myanmar is therefore uncertain. Furthermore, the absence of jurisprudence and precedents make it difficult to predict the way in which a Myanmar court, Conciliation or Arbitration Body, would interpret or apply contractual provisions or laws and regulations in force or, more generally, what ground would be relied upon in any decision, judgement or award issued by such authorities.