



Proposed laws affecting foreigners

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Status of the bills

- Foreign Worker Law
 - Factory and General Labour Laws Inspection Department
 - in the works since 2006
- Foreigner Law
 - Immigration Department
 - in the works since 2012
- Both laws been through the AGO and Bills Committee and have been submitted to Parliament to be heard at the next session

Overview

- Foreign Workers Law
 - all foreigners employed in Myanmar to obtain a Work Permit
 - Work Permit is specific to employer and location of employment
- Foreigner Law
 - foreigners staying for more than 90 days and not holding permanent residency must obtain a FRC
 - FRC holders must get prior approval before travelling within Myanmar, leaving the registered address for more than 24 hours

Who it covers – Foreign Workers Law

- Any non-citizens, satisfying the following criteria:
 - skilled employee, earning a salary or being otherwise compensated, entered into an employment contract
- Employers
 - an Enterprise, employer of foreign workers, entered into an employment contract, responsible for the payment of wages, directly or indirectly are responsible for or administer workers
- Enterprise
 - any enterprise in manufacturing, maintenance, construction, industry, transport and services
 - other occupational activity in public and private factories, workshops and other workplaces
- Except diplomats, UN Agencies, pursuant to treaties and tourists

Employee rights and obligations – Foreign Workers Law

- Work permit and stay permit
 - work permit within 30 days of arrival
 - limited to one employer and location – change requires prior approval
- Health check-up
 - within 7 days of arrival and upon renewal of work permit
- Departure from Myanmar
 - for employment grounds or health conditions, require prior consent

Employee rights and obligations – Foreign Workers Law

- Required qualifications
 - evidence of experience or certificate by an internationally recognised assessment body or regional mutual skills recognition program
- Duration
 - shall only work in Myanmar for 4 years
- Compliance with labour law
 - social security, entering into employment agreement within 30 days and register

Employer rights and obligations – Foreign Workers Law

- Preference for citizens
 - give priority to employing citizens with equal skills at equal wage rate
 - no limits placed on numbers, according to the needs of the employer
- Compliance with law
 - comply with labour laws, social security law, payment of income tax, inform on laws, customs and traditions
- Departure from Myanmar
 - liable to transport employees out of Myanmar upon end of employment or on health grounds

Administration – Foreign Workers Law

Foreign Workers Supervisory Body	• Representatives from relevant ministries
Chief Registrar	• Director General, Department of Labour
State and Regional Registrar	• Head of the State and Regional Departments of Labour
Township Registrar	• Officer of the Township Department of Labour • Chief Representative of the Department of Labour in a SEZ

Administration – Foreign Workers Law

- Foreign Workers Supervisory Body
 - approve or reject work permit applications
 - checking medical certificates
 - supervisory and compliance
- Chief Registrar
 - approve or reject work permit and other applications (by delegation)
 - supervisory
- State and Regional Registrar
 - review and give recommendations on work permit and other applications
 - supervising Township Registrars

Administration – Foreign Workers Law

- Township Registrar
 - review work permit applications (including applications through MIC)
 - issue and renew work permits (following supervisory board approval)
 - collection of fees
 - approve employees leaving Myanmar
 - carry out of workplace inspections
 - receive claims against employers
 - review evidence of skills of foreign employees
 - prosecutions under the Law
 - receive semi-annual reports on foreign employees from employers

Penalties – Foreign Workers Law

- Select penalties
 - working type of business or location not permitted in Work Permit– fine MMK5-10 lakh
 - expired permit – MMK10,000 per day, 1-3 months MMK10 lakh, > 3 months MMK10 lakh + revoking Work Permit
 - change type of work or location – imprisonment 3 months and/or fine MMK10 lakh
 - working without a Work Permit – imprisonment 6 months or fine MMK15-30 lakh + deportation
 - falsifying documents relating to work permit, skills and job – imprisonment 7 years and fine MMK50 lakh
 - not entering into an employment contract, refusing inspections and failing to comply with other provisions – imprisonment 1 month or fine MMK5 lakh
 - employer face similar penalties of imprisonment and fines

Obligations - Foreigner Law

- Covers foreigners in general, however, certain exceptions.
 - foreigners staying more than 90 days require a FRC
 - does not apply to foreigners holding permanent residency
 - Law does not apply to diplomats or to UN officials with diplomatic status
 - FRC must be handed in when departing the country to be validated within 30 days of returning to the country
 - obtain approval for travel for more than 24 hours from registered address
 - obtain approval for relocating from registered address
 - foreigner must register with Registrar within 24 hours of arriving destination
 - landlords must inform the Registrar details of foreigners staying at the their accommodation

Administration – Foreigners Law

- Registrar – no less than a chief of a township immigration and manpower office
- Immigration Officer – no less than an assistant immigration officer from the Union Ministry or State or Regional Ministry
 - registration as required under the law
 - checking compliance
 - approving travel

Powers - Foreigner Law

- Powers of the Registrar or Immigration Officials
 - carrying out an investigation without a warrant
 - entering property without a warrant for apprehending a foreigner for any violation of the Law

Penalties – Foreigner Law

- Select penalties:
 - failure to apply for a FRC – imprisonment 6 months to 5 years and fine MMK50,000 to 500,000
 - failure to obtain travel permission – imprisonment 6 months to 1 year and MMK50,000 to 100,000
 - most penalties – imprisonment 6 months to 5 years and fine MMK50,000 to 500,000
 - Union Minister can deport a foreigner for being convicted under any law or without even being charged for a violation of the Foreigner Law.

Salient points

- All foreigners working in Myanmar will require a work permit
 - no limit on numbers
 - unclear what skill level will need to be demonstrated
 - unclear if this will apply to business owners who don't get a salary (dividends)
 - can foreigners obtain a new work permit after 4 years
- New Myanmar Investment Law and draft rules do not place restrictions on the number of foreigners that can be employed as skilled labour
- Foreigners with FRC will have onerous travel restrictions

Salient points

- 90 day rule for FRC
 - foreigners staying less than 90 days appear to not require a FRC
- Penalties
 - severe with lengthy prison sentences
- Administration
 - contact mainly with township and other local officials includes high risk of corruption
 - no time limits of approvals can lead to corruption and delays

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