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# Myanmar News

- I. Draft Workplace Safety and Health Law
- II. Draft Employment and Skill Development Rules

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# I. Introduction

In February 2017, the Ministry of Labour, Immigration and Population (hereafter Ministry of Labour) published the Draft Workplace Safety and Health Law, containing provisions for the prevention of workplace hazards and diseases and the establishment of safe and healthy workplaces. This article provides an overview of the most important changes introduced by the proposed law.

We further take this opportunity to update you on the ongoing reform of Myanmar's labour law, particularly the drafting process of the long-awaited Employment and Skill Development Rules and its consequences for the official employment contract template.

***Please note, that below summaries are based on the current drafts available to us, which are subject to further change and review. Accordingly, this news alert can only provide an indication of possible legal reforms to come.***

## II. Draft Workplace Safety and Health Law

The Draft Workplace Safety and Health Law will complement the Factories Act 1951 (as amended in May 2016) and other prevailing laws, rules and regulations governing workplace safety and health.

### 1. Objectives of the Draft Workplace Safety and Health Law

The new law is intended to implement workplace safety and health regulations for all industries, stipulate obligations of the relevant stakeholders to reduce and eliminate workplace accidents and occupational diseases, ensure the early prevention of workplace hazards arising from Myanmar's economic development, raise productivity and establish safe and healthy workplaces in accordance with regional and international standards.

### 2. Relevant Enterprises

Pursuant to sec. 4 Draft Workplace Safety and Health Law, this law shall be applicable to the following enterprises:

- factories, workshops and warehouses;
- construction enterprises;
- engineering enterprises;
- mineral extraction and processing, gems extraction and processing enterprises;
- petroleum and natural gas enterprises;
- chemical industry enterprises;
- port enterprises and regular loading/unloading enterprises;
- agricultural enterprises and livestock breeding enterprises;
- educational service enterprises and healthcare enterprises;
- communication and transportation enterprises; and
- enterprises and workplaces thereof as prescribed from time to time through notification.

### 3. Prior-Sanction and Business-Licenses

The Draft Workplace Safety and Health Law introduces a new Workplace Safety and Health permit and business license.

Pursuant to sec. 8 (a) and 9 (a) of the law, any person who wishes to establish an enterprise relevant to the Draft Workplace Safety and Health Law shall apply to the Director General of the Factory and General Labour Laws Inspection Department for a workplace safety and health business license.

Further, sec. 8 (b) Draft Workplace Safety and Health Law provides, that any person who wishes to carry out a construction, extension or demolition of buildings, placement, installation, addition or modification of machinery or equipment in enterprises relevant to the law, shall apply for prior sanction.

### 4. Duties of Employers

The Draft Workplace Safety and Health Law contains a number of provisions applying to each employer relevant to the law.

### a. General Duties of Employers

Pursuant to sec. 28 Draft Workplace Safety and Health Law, employers shall evaluate the level of hazard of machinery and equipment, process materials, organic materials and chemical substances utilized in the workplace to avoid detrimental health effects, provide their employees with the appropriate body protection and gear to avoid workplace accidents and occupational diseases and implement protective, preventive and emergency response measures.

Sec. 29 Draft Workplace Safety and Health Law provides further, that employers shall not dismiss or demote any employee for any of the following reasons:

- workplace accident or occupational disease, before receiving a medical certificate from an accredited physician;
- lodging a complaint concerning a safety or health hazard issue;
- carrying out a function of the Workplace Safety and Health Committee; or
- discontinuation of work due to an imminent workplace accident or occupational disease.

Further, employers shall bear the costs of medical check-ups for employees who have suffered a workplace accident or occupational disease and are not covered under the Social Security Law 2012 (sec. 30 Draft Workplace Safety and Health Law).

### b. Formation of Workplace Safety and Health Committees and Appointment of Workplace Safety and Health Officers

At least 30 days prior to the commencement of operations, employers shall prepare a management system to implement workplace safety and health systems appropriate to the relevant industry and submit it the Factory and General Labour Laws Inspection Department (sec. 11 (a) Draft Workplace Safety and Health Law).

Employers with a minimum number of employees (to be prescribed by the Ministry of Labour) shall further form Workplace Safety and Health Committees composed in equal numbers of representatives from the employer and employees (sec. 11 (b) Draft Workplace Safety and Health Law).

Pursuant to sec. 12 Draft Workplace Safety and Health Law, the Workplace Safety and Health Committees shall conduct regular inspections, present suggestions for measures to be

implemented to prevent workplace accidents, promote employer-employee cooperation to obtain training and supporting material/equipment towards the improvement in workplace safety and health and supervise the implementation of the workplace safety and health management system.

Sec. 13 Draft Workplace Safety and Health Law provides further, that employers with a minimum number of employees (to be prescribed by the Ministry of Labour) shall appoint a Workplace Safety and Health Officer. This officer shall supervise workplace safety and health matters and carry out relevant duties and functions as announced by the Ministry of Labour, sec. 14 Draft Workplace Safety and Health Law.

### c. Notification, Investigation and Reporting

The draft law further provides, that employers shall report workplace accidents to the Factory and General Labour Laws Inspection Department.

In case of death of an employee, such notification shall be done not later than one (1) hour after occurrence or, in remote areas, not later than 24 hours after the occurrence. If an employee is unable to return to work for 48 hours or more after being involved in a workplace accident, such shall be reported within 72 hours (sec. 35 Draft Workplace Safety and Health Law).

Similarly, any physician treating an employee affected with a prescribed occupational disease, shall send a report to the employer and the relevant departments within 48 hours of commencing treatment (sec. 36 Draft Workplace Safety and Health Law).

The National Council may form an Investigation Committee to investigate and report on hazardous occurrences, occupational diseases and major workplace accidents (sec. 38, 39 Draft Workplace Safety and Health Law).

## 5. Duties of Designers, Manufacturers, Exporters, Suppliers and Importers

Pursuant to sec. 33 Draft Workplace Safety and Health Law, designers, manufactures, exporters, suppliers and importers of hazardous materials, machinery and equipment to be utilized in workplaces shall, subsequent to testing and evaluation, procure safety certificates issued by the relevant departments.

Any designer, developer, commissioner and de-commissioner of any plant, workplace, machinery or equipment shall take due care to prevent detrimental effects on safety and health during

the construction, installation and de-commissioning of such plant, workplace, machinery or equipment (sec. 34 Draft Workplace Safety and Health Law).

## 6. Duties of Employees

The Draft Workplace Safety and Health Law also contains a list of duties to be complied with by the employees.

Pursuant to sec. 32 Draft Workplace Safety and Health Law, employees shall wear and utilize safety suits, materials and equipment issued by the employer and comply with workplace safety and health related instructions and suggestions under the law.

They shall further prevent detrimental effects to their own and other employees' safety and health, and immediately report the discovery of any condition, circumstance or event detrimental to workplace safety and health to the employer and the Workplace Safety and Health Officer.

## 7. The National Workplace Safety and Health Council

Pursuant to sec. 6 (a) Draft Workplace Safety and Health Law, the Union Government shall form the National Workplace Safety and Health Council, which shall formulate national policies and programmes, periodic assessment, review and revision for successful implementation of the provisions of the law, coordinate and cooperate with relevant governmental departments and organizations and local and foreign entities in respect of improvement in working conditions and workplace safety and health, and announce to the public hazardous occurrences and actions taken to prevent such from occurring.

The National Council shall further promote workplace safety and health and carry out workplace safety and health promotion campaigns and activities, research and awareness campaigns on workplace safety and health and collaboration with other organizations promoting workplace safety and health.

## 8. Inspectors

To implement the objectives of this law, the Ministry of Labour may appoint inspectors to carry out inspections and take action against defaulting workplaces (sec. 15, 16, Draft Workplace Safety and Health Law). To ensure their independency, inspectors shall neither be employed by any enterprise relevant to the

law, nor engage in any business directly or indirectly connected thereto (sec. 18 Draft Workplace Safety and Health Law).

Pursuant to sec. 19 Draft Workplace Safety and Health Law, the Inspectors may at any time without need of warrant enter, inspect and investigate any workplace relevant to the law by showing their Identification Card. They may inspect and investigate machinery, equipment, tools, raw materials, finished products, organic and chemical substances, confiscate materials/equipment restricted or prohibited by the National Council as evidence and take action against workplaces.

Any inspector, having reason to believe that a workplace constitutes a risk of bodily injury or health hazard to employees or damage to any property, may notify the employer in writing to provide remedies within a specified time. Should the employer fail to comply with the instructions, the inspector may prohibit the continued operation of the relevant employer's business (sec. 23 Draft Workplace Safety and Health Law).

Should a workplace be inadequate to continue operations, deemed as hazardous to people working in the workplace or constitute an imminent danger of workplace accidents, the inspector may order the whole or any part of a workplace to be suspended (sec. 20 Draft Workplace Safety and Health Law). The resumption of the whole or any part of the workplace may be ordered when the employer is found to have complied and performed in accordance with the suspension order (sec. 21 Draft Workplace Safety and Health Law). The Chief Inspector or its delegate may further prosecute any person who fails to comply with an order (sec. 22 Draft Workplace Safety and Health Law).

## 9. Administrative Penalties & Appeal

In case of violation of provisions of the law, the Director General of the Factory and General Labour Laws Inspection Department may suspend an enterprises business license (or sanction), require the business license holder to submit explanations and impose administrative penalties such as fines or the suspension or cancellation of the business license (sec. 44 Draft Workplace Safety and Health Law).

Any person being dissatisfied with an administrative decision may lodge an appeal to the Appeal Committee within 30 days of such decision (sec. 47 Draft Workplace Safety and Health Law).

## 10. Offenses and Penalties

In case of non-compliance with obligations under the law, Workplace Safety and Health Officers, employers, employees, designers, manufacturers, exporters, suppliers, importers, commissioners, installers or de-commissioners of plants, workplaces, machinery and equipment, accredited physicians, Workplace Safety and Health Auditors or training providers or any individual or entity may be subject to imprisonment and/or fines (sec. 54-67 Draft Workplace Safety and Health Law).

# III. Draft Employment and Skill Development Rules

## 1. Introduction

On 30 August 2013, the Myanmar parliament enacted the Employment and Skill Development Law 2013, pursuant to which every employee shall be employed under a written employment contract within 30 days of employment. Sec. 5 (b) Employment and Skills Development Law sets out the minimum terms to be provided in each employment contract. The law further provides, that the employment contract shall be submitted to the respective township labour office for review, approval and registration.

By-laws for the implementation of the Employment and Skills Development Law 2013, to be issued as Employment and Skill Development Rules, have long been in the drafting, but not yet been issued. Instead, the Ministry of Labour published Notification 1/2015 on the preparation and execution of employment contracts. With effect from September 2015, employers and employees were required to execute employment contracts and disburse salaries using the prescribed employment contract template of the Ministry of Labour. The mandatory use of an “official employment contract template” – drafted for factory workers, and not suitable for most businesses – was heavily criticized by both labour unions and employers for not meeting requirements of employers or employees, limiting the principle of freedom of contract and contradicting the Employment and Skill Development Law 2013, which allows for far more flexible contract terms.

After petitions by international organizations and industry associations, as well as numerous meetings between government officials and representative of both employers and employees,

the Ministry of Labour recently resumed work on the Employment and Skill Development Rules.

This section provides an overview of the changes proposed in the latest draft of the Employment and Skill Development Rules available to us, which varies significantly from the previous versions published in 2013 and 2015.

## 2. Myanmar Labour Market

Pursuant to sec. 4 (a) (1) Employment and Skill Development Law 2013, the Ministry of Labour shall set up Employment and Labour Exchange Offices in the Union territory, Regions/ States, districts, townships, industrial zones, special economic zones and areas with plenty of workers admissible to employment, and carry out job fairs and local employment services.

To receive relevant statistics and to appoint workers, township audit groups shall scrutinize the workplace labour force for the vacancies in State-owned and Co-operative owned sectors; in terms of appointing for the vacancies in private factories, establishments and enterprises, joint-ventures, the relevant Employment and Labour Exchange Office shall check the workplace labour force and the hired labour force.

## 3. Employment Agency Services

Employment agency firms [*Note: In this draft still restricted to Myanmar companies*] shall apply for a one-year license to the Ministry of Labour and shall – inter alia – be entitled to carry out labour recruiting services and receive a service fee of not more than one (1) time of the hired worker’s salary from the employer, which shall not be deducted from the worker’s income.

## 4. Employer Obligations

Pursuant to the Draft Employment and Skill Development Rules, the employer has the following duties:

- Enter into employment contracts with the appointed workers;
- Communicate with employment and labour exchange offices, licensed companies or job fairs in order to appoint workers;
- Send completed CVs of the hired workers to the relevant employment and labour exchange office;

- Send the number of hired workers, the number of vacant workers and the total number of workers to the relevant employment and labour exchange office every three (3) months; and
- Inform and request the vacant job positions or the job positions which will be vacant from the relevant employment and labour exchange office in accordance with the existing law.

Private enterprises and organizations shall further nominate a resident director or management person as representative for employment matters, and communicate his/her details (i.e. name, position, Passport/NRC number, phone number, fax, e-mail address, company and residential address) to the relevant employment and labour exchange office.

## 5. Employment Contracts

Pursuant to section 5 (a) (1) Employment and Skill Development Law 2013, an employer is required to execute an employment contract within 30 days of appointment of an employee. The employment contract must then be submitted to the relevant employment and labour exchange office for review, approval and registration.

An employer convicted of failing to sign an employment agreement will be punished with imprisonment for up to six (6) months and/or a fine (sec. 38 Employment and Skills Development Law 2013). Non-registered employment contracts may be declared void.

Pursuant to section 5 (b) Employment and Skill Development Law 2013 the following particulars shall be included in the employment contract:

- Type of employment;
- Probation period;
- Wage/salary;
- Location of working place;
- Term of employment;
- Working hours;
- Days-off, holidays and leave;

- Overtime;
- Meal arrangement(s) during working hours;
- Provision of accommodation (if any);
- Provision of medical treatment (if any) ;
- Provision of transportation to/from work (if any);
- Regulations to be followed by the employee;
- Training period;
- Resignation by employee;
- Termination/dismissal by employer;
- Obligations in accord with the stipulation(s) of the agreement;
- Mutual cancellation of employment agreement between employer and employee;
- Other matters;
- Specifications on amendments of/supplements to the agreement; and
- Miscellaneous.

***The draft of the Employment and Skill Development Rules further provides for a new employment contract template. We do however understand, that this contract is currently undergoing further review in coordination with the UMFCCI and the Myanmar Labour Unions.***

### a. Restriction to Employers of five (5) or more Employees

While the Employment and Skill Development Law 2013 provides that any employment contract is to be registered, this requirement is currently only enforced for employers with five (5) or more employees.

This existing practice of the employment and labour exchange offices seems to be confirmed in the Draft Employment and Skill Development Rules, which stipulate that Chapter 3 (Execution of Employment Contracts) applies only to employers of five (5) or more employees.

#### b. Review, Approval & Registration of the Employment Contract

Upon mutual agreement between the employer and employee, the draft employment contract shall be submitted to the relevant employment and labour exchange office, which shall review the draft and approve it within 30 days. Should any changes be required under Myanmar labour law, the employment and labour exchange office shall send the draft back to the employer, who shall re-submit it upon amendment.

After approval/revision of the employment contract, the employment contract shall be signed by both the employer and employee in the presence of the employment and labour exchange officer. The employment and labour exchange office shall validate and record the employment contract, one original of which is to be kept by the employer, and one original of which is to be given to the employee.

#### c. Probation Period

While the Employment and Skills Development Law 2013 provides for the possibility to agree on a probation period, no further details are stipulated under the law.

Pursuant to the Draft Employment and Skill Development Rules, an employee may be employed with or without a probation period.

Should the employee be placed on probation, such period shall however not exceed three (3) months. Prior to appointing the employee under probation, the employer may further engage the employee for pre-employment training of up to three (3) months (adding up to a total of six (6) months training/probation period before formally appointing the employee). After two (2) months of probation period, the employee shall be informed, providing valid reasons, whether or not (s)he will be appointed. If desirous of appointing the employee, both parties shall execute an employment contract.

The Draft Employment and Skill Development Rules further clarify, that any pre-employment training and probation period shall be counted towards the length of employment.

The new provisions are similar to the existing employment contract template published by the Ministry of Labour in 2015, lack however any provisions on the payment of wages/salaries, termination or resignation during probation period.

#### d. Term of Employment Contract

The term of an employment contract is not regulated under the applicable laws. Pursuant to the employment contract template published by the Ministry of Labour in 2015, the term of an employment contract could however not exceed two (2) years, subject to further renewals.

This practice was neither in line with Myanmar labour laws and the principle of freedom of contract, nor with the needs of many of Myanmar's employees. In addition, the fixed-term of a maximum of two (2) years contradicted Notification 84/2015 of the Ministry of Labour, stipulating severance payments for the termination of employment contracts by the employer depending on the duration of employment of up to 25 or more years.

The Draft Employment and Skill Development Rules do no longer limit the maximum term of an employment contract, but only that the term shall be agreed upon between the employer and employee. The draft does however stipulate, that in the event of an extension or renewal of an employment, the previous employment shall be counted towards the total length of employment.

#### e. Working Hours

Business hours and working times are stipulated in various laws. The general rules are provided in the Shops and Establishment Law 2016, which provides for six (6) working days of up to eight (8) hours per day. Further, an employee shall be granted a break of at least half an hour after four (4) continuous hours of work.

Different stipulations are found in sector specific laws, such as the Factories Act 1951 and the Oilfields (Labour and Welfare) Act 1951, which provide for 44 hours per week other than for work which has to be done continuously, in which case 48 hours shall apply.

Pursuant to the Draft Employment and Skill Development Rules, working hours, meal and rest times shall be stated precisely in the employment contract in accordance with labour laws. The draft does however explicitly allow for the working hours may however be agreed between the employer and employee depending on the nature of the workplace.

#### f. Rest Days, Public Holidays and Leave Days

Pursuant to the Draft Employment and Skill Development Rules, employees shall enjoy weekly rest days, public holidays and leave days in accordance with Myanmar labour laws.

Pursuant to the Shops and Establishment Law 2016, at least one (1) day per week shall be granted as paid rest day. Public holidays are governed by the Leave and Holidays Act 1951, pursuant to which every employee shall be granted paid public holidays as announced by the Government in the Myanmar Gazette. On average, 26 public holidays are announced every year, depending on the date of the variable holidays:

The Leave and Holidays Act 1951 also governs the other types of leave, but additional rules may apply in accordance with other laws, such as the Social Security Law 2012 for employees contributing to the Social Security Fund.

### **Casual Leave**

Every employee is entitled to six (6) days of paid casual leave per year of employment. Casual leave may not be carried forward to the subsequent year and may not be spent for more than three (3) consecutive days at a time, except in the case of religious or compulsory social events (e.g. weddings, funerals). Casual leave may not be enjoyed in conjunction with any other type of leave.

### **Earned Leave**

Earned leave may be enjoyed for a minimum of ten (10) days consecutively or separately per year of employment, provided the employee has completed twelve (12) consecutive months of service with a minimum of 20 working days per month.

For each month without the minimum of 20 full days of work, one day may be deducted from the minimum earned leave entitlement.

Earned leave may be carried forward and can be accumulated up to three (3) years.

### **Medical Leave**

Medical leave is governed by the Social Security Law 2012 and the Leave and Holidays Act 1951. Under the Leave and Holidays Act 1951, employees are entitled to 30 days of paid medical leave per year, provided that they have completed six (6) months of service.

Employees covered by the Social Security Law 2012 may enjoy additional leave in case of certain work injuries and illnesses. Theoretically, employees covered by the Social Security Law 2012 may receive part of their salary from the Social Security Fund, but in practice, such medical leave is often also granted as paid leave.

### **Maternity and Paternity Leave**

Maternity leave is governed by the Social Security Law 2012 for employees contributing to the Social Security Fund and by the Leave and Holidays Act 1951 for employees not covered by said law.

Under the Leave and Holidays Act 1951, employees are entitled to 14 weeks of paid maternity leave, to be taken six (6) weeks before confinement and eight (8) weeks after confinement.

Employees covered by the Social Security Law 2012 are entitled to similar 14 weeks of maternity leave, but may further enjoy additional four (4) weeks in case of twins or up to six (6) weeks in case of a miscarriage (exception: criminal abortion). Theoretically, employees covered by the Social Security Law 2012 may receive part of their salary from the Social Security Fund, but in practice, such maternity leave is also granted as paid leave.

Male employees covered by the Social Security Law 2012 may enjoy 15 days of paternity leave after confinement of their wife.

### **g. Overtime**

Pursuant to the Draft Employment and Skill Development Rules, overtime may be carried out upon agreement between the employer and employee and shall be paid for in accordance with Myanmar labour law.

Under the applicable law, every work in excess of eight (8) hours per day or 44/48 hours per week is considered overtime. Accordingly, even if an employee only works 40 hours per week, the ninth (9th) hour on a working day would be considered overtime, even if the weekly working hours do not exceed 48 hours.

Pursuant to the Shops and Establishment Law 2016, overtime is limited to a maximum of 12 hours per week, or 16 hours in cases of special needs. Similar stipulations are found in sector specific laws, such as the Factories Act 1951 and the Oilfields (Labour and Welfare) Act 1951.

Overtime pay shall be calculated as double the basic wage/salary. In case of work on the weekly rest day, the employee shall additionally be granted a substitute rest day.

#### **h. Meal Arrangements, Accommodation, Transportation to/from Workplace & Travel**

Employers are not required to provide meal arrangements, accommodation, transportation to/from the workplace and travel allowances to their employees. Whether they do or not shall however be clearly stated in the employment contract.

#### **i. Medical Care**

In case of work-related sickness, accidents or injuries, diseases or death at the workplace, the employer shall be liable in accordance with relevant labour laws.

#### **j. By-Laws to be complied with by Employees**

For factories, workshops, workplaces and enterprises, employers shall formulate by-laws to be complied with by the employees in accordance with laws. Further, employees staying in quarters provided by the employer shall abide by hostel by-laws prescribed by the employer.

#### **k. Resignation and Dismissal**

Myanmar labour laws provide few details on termination and dismissal of employees.

The Draft Employment and Skill Development Rules provide, that no employer shall illegally terminate an employment or dismiss an employee without valid reasons, and any termination shall be notified to the employment and labour exchange office.

According to the draft, an employment may be terminated as follows:

##### **Resignation**

Employees may resign by giving 30 days' notice and sound reasons.

##### **Dismissal**

Under the law, an employer is not required to state any reasons for the termination of an employee by notice. Pursuant to the employment contract template published by the Ministry of Labour in 2015, an employee could however only be terminated for the reasons specified in the employment contract or work rules. Even during the probation period, termination required one (1) months' notice and strong reasons for the termination.

The Draft Employment and Skill Development Rules provide, that employers may dismiss employees for reasons such as violations of the law or criminal acts, and would then not be required to pay severance compensation.

If an employee violates the terms of the employment contract or the work rules, the employer shall in the first instance give an oral warning and keep record of the warning; in the second instance give a written warning and keep record; in the third instance cause the employee to sign an undertaking (that it shall be the last offense); and in the fourth instance, the employer may dismiss the employee without compensation.

It should be noted, that although the employer is not required to pay compensation upon dismissal, he is still liable for payment of benefits in accordance with Myanmar labour laws, rules, orders and directives.

##### **Termination**

While not expressly mentioned, we understand that in all other cases, termination shall be made with 30 days' notice and payment of severance compensation in accordance with the law.

##### **Termination/cancellation of employment contract upon mutual negotiation**

Pursuant to the Draft Employment and Skill Development Rules, the employer and employee may also negotiate to terminate the employment contract.

#### **l. Supplements/Amendments**

Pursuant to the Draft Employment and Skill Development Rules, employment contracts may be amended by agreement between the employer and employee (or, for collective agreements, the majority of employees).

We assume however, that such amendments must also be submitted to the employment and labour exchange office for review, approval and registration.

#### **m. Miscellaneous**

Any additional matters shall be stated precisely. Other matters not stated in the contract but are contained in labour laws shall be dealt with in accordance with prevailing laws.

## 6. Employment and Skill Development Teams

Chapter 4 of the Draft Employment and Skill Development Rules contains provisions on the forming of Employment and Skill Development Teams and their duties and responsibilities.

## 7. Employee Skill Development and Training Programs

Chapter 5 of the Draft Employment and Skill Development Rules contains provisions on the development of employee skills and training programs.

Employers shall carry out training programs for their employees, and any employers having training programs and/or training schools/departments, shall submit their training programs to the Employment and Skill Development Team.

## 8. Employee Skill Development Fund

Pursuant to section 26 Employment and Skill Development Law, 2013, the Skill Development Team shall have the right to set up a fund to develop the working skills of employees. Details of the funding may now be found in the Draft Employment and Skill Development Rules, pursuant to which the Ministry of Labour shall stipulate by notification which industries, production-, agricultural-, commercial- and services businesses will have to contribute. In setting the applicable rates, the Ministry of Labour shall determine that not less than 0.5% and not more than 2% of the base salary of an employee shall be contributed (unless exempted). The Draft Employment and Skill Development Rules further provide, that employers shall only contribute after a businesses' operation period of at least one (1) year.

Exemptions apply to employers providing training to their employees on their own. In such a case, they may apply for reimbursement of the training cost from the Employee Skill Development Fund.

# Annex - Unofficial English Translation

## (DRAFT) Workplace Safety and Health Law

### Chapter 1: Title, Effectiveness and Definitions

1. –
  - a. This Law shall be known as the **Workplace Safety and Health Law**.
  - b. This Law shall come into force on a date stipulated by the Union President through notification.
2. The following expressions contained in this Law shall have the meanings given hereunder:
  - a. **Employee** means any person who earns his livelihood through remuneration obtained from physical or mental labour in any enterprise relevant to this Law and any workplace of such enterprise.
  - b. **Employer** means the individual or entity which is responsible for paying remuneration to an employee employed in any enterprise relevant to this Law and any workplace in such enterprise, or which is responsible to provide the benefits stipulated under this Law for employees and to perform the obligations stipulated under this Law for employers. The expression encompasses the legal managing agent of the employer, the person authorized to administer employees on behalf of the employer, and in the event of the employer's death, his heir, legal receiver of shares, main contractor and subcontractor.
  - c. **Workplace** means any premises [or] building where any process of any enterprise under Chapter (3) herein, and encompasses the following:
    - (1) land, building or any part of building;
    - (2) any motor-vehicle, train, vessel or aircraft;
    - (3) any temporary or permanent installation on land, or under or over water offshore;
    - (4) any camp or movable structure.
  - d. **Workplace-Accident** means death or injury through work activity or any accident arising while carrying out work activity.
  - e. **National-Council** means the National Workplace Safety and Health Council formed under this Law.
  - f. **Occupational-Disease** means any disease stipulated through Notification by the National-Council in coordination with the Ministry of Health and Sports as a disease which is acquired through contact with hazardous conditions while carrying out work activities.
  - g. **Hazardous-Occurrence** means any occurrence stipulated through Notification by the National-Council as an occurrence which may possibly cause disease or injury to individuals in the workplace or to the general public.
  - h. **Hazardous-Material/Objects** any material or equipment stipulated through Notification under this Law by the National-Council as hazardous.
  - i. **Hazardous-Enterprise** means any enterprise prescribed under this Law through Notification by the National-Council as hazardous.

- j. **Major Workplace-Accident** means any event such as explosion, debris, emission, fire et cetera which may cause major hazard to individuals in the workplace, to the general public or to the environment, due to hazardous [work] process or objects used in hazardous [work] processes.
- k. **Ministry** means the Ministry of Labour, Immigration and Manpower.
- l. **Department** means the Factory and General Labour Laws Inspection Department.
- m. **Director-General** means the director general of the Factory and General Labour Laws Inspection Department.
- n. **Chief-Inspector** means the Director-General of the Factory and General Labour Laws Inspection Department.
- o. **Inspector means** [a] workplace inspector from the he Factory and General Labour Laws Inspection Department.
- p. **WSH-Officer** means the competent individual authorized according to workplace by the employer for workplace safety and health matters under this Law.
- q. **WSH-Committee** means a committee formed according to workplace by the employer for workplace safety and health matters under this Law.
- r. **Accredited-Physician** means a physician or oral and dental surgeon who holds a registration certificate or license to practice from the Republic of the Union of Myanmar Medical Council or Oral and Dental Medicine Council, and who is accredited as a workplace safety and health expert by the Ministry.
- s. **WSH-Auditor** means an individual or entity recognized by the Director-General to conduct, free of charge or not, audits and certification as safe of workplace safety and health related issues in respect of hazardous materials and equipment in enterprises relevant to this Law and workplaces of such enterprises.
- t. **Prior-Sanction** means a permit in respect of workplace safety and health, issued in advance under this Law to enable carrying on of business.
- u. **Business-License** means the license issued in respect of activities related to workplace safety and health.
- v. **Accreditation-Certificate** means a certificate issued by the Director-General to an individual or entity who is qualified to carry out any matter under this Law.
- w. **Training-Provider** means an individual or entity possessing an Accreditation-Certificate issued by the Director-General for providing, free of charge or not, training on workplace safety and health.
- x. **Process** means any process carried out in any workplace relevant to this Law.

## Chapter 2: Objectives

- 3. The objectives of this Law are as follows:
  - a. effective implementation of workplace safety and health matters in every industry;
  - b. stipulation of functions of relevant stakeholders under this Law including employers and employees in respect of reduction and elimination of Workplace-Accidents and incidence of Occupational-Diseases;

- c. enabling early protection and prevention by relevant stakeholders under this Law including employers and employees against workplace hazards and Occupational-Diseases which may arise from economic development;
- d. raising productivity through safety and health of employees in the workplace through prevention of Workplace-Accidents and Occupational-Diseases.
- e. establishment of safe and healthy workplaces though prescribing workplace safety and health specifications which are appropriate to own country in accordance with regional and international standards.

### Chapter 3: Prescribing and de-prescribing of relevant enterprises

- 4. This Law shall be relevant to the following government departments, organizations, cooperative societies, joint-ventures or private enterprises, and branches and workplaces thereof in the entire Union of Myanmar, whether under citizen ownership or foreign ownership:
  - a. factories, workshops and warehouses;
  - b. construction enterprises;
  - c. engineering enterprises;
  - d. mineral extraction and processing, gems extraction and processing;
  - e. petroleum and natural gas enterprises;
  - f. chemical industry enterprises;
  - g. port enterprises and regular loading/unloading enterprises;
  - h. agricultural enterprises and livestock breeding enterprises;
  - i. educational service enterprises and healthcare enterprises;
  - j. communication and transportation enterprises;
  - k. enterprises and workplaces thereof as prescribed from time to time to be relevant to this Law through notification by the Ministry with the approval of the Union Government Cabinet.
- 5. The Ministry:
  - a. may if needed announce through notification the detail list of enterprises and workplaces thereof under Section (4).
  - b. may, in coordination with representatives from relevant employer associations and employee unions, amend the enterprises and workplaces thereof under Section (4).

## Chapter 4: Formation and Functions of the National Workplace Safety and Health Council

6. The Union Government Cabinet:
  - a. shall form the National-Council chaired by [a] Vice-president of the Union, and composed of suitable persons from relevant Union ministries, governmental departments, organizations; representatives of employers and employees, and workplace safety and health experts as members.
  - b. may stipulate a vice-chair and a secretary from among the members.
  - c. may amend as needed the composition of the National-Council formed under sub-section (a).
7. The functions of the National-Council are as follows:
  - a. Formulation of national-level policies and programmes, periodic assessment, review and revision for successful implementation of the provisions of this Law;
  - b. Coordination and cooperation with relevant governmental departments, governmental organizations, local and foreign entities in respect of improvement in working conditions, and workplace safety and health;
  - c. Formation of working-committees as needed, and assignment of functions thereto;
  - d. Formulation and approving for publication of workplace-related codes;
  - e. Restricting or prohibiting use of processes and organic, chemical and radioactive substances et cetera which are harmful to health;
  - f. Announcement to the public of hazardous occurrences and actions taken to prevent them from occurring;
  - g. Arrangements for imparting lessons related to workplace and environmental safety in various sectors of academic and practical education, including high technology, medicine and vocational;
  - h. Formation as needed of technical working-groups composed of equal numbers of government, employers and employees;
  - i. Formation of the Appeal-Committee to hear appeals lodged under Section (46) and Section (47);
  - j. Submitting of Activities Reports to the Union Government Cabinet.

## Chapter 5: Issuance of Prior-Sanction and Business-License

8. –
  - a. Any person who wishes to establish an enterprise relevant to this Law shall apply as prescribed to the Director-General for a Prior-Sanction in respect of workplace safety and health.
  - b. Any person who wishes to carry out construction, extension, demolition of buildings, placement, installation, addition or modification of machinery and equipment according to processes in enterprises relevant to this Law, shall apply through Region/state Departmental-offices as prescribed to the Director-General for a Prior-Sanction in respect of workplace safety and health.

- c. The Director-General, subsequent to scrutiny of an application under sub-sections (a) and (b), may issue a Prior-Sanction or, in case of not being in accord with prescribed criteria, refuse to issue a Prior-Sanction. If a Prior-Sanction is issued, it shall be done imposing terms and conditions, and after collecting fees prescribed by the Ministry.

9. –

- a. Any person who wishes to establish an enterprise relevant to this Law shall apply as prescribed to the Director-General for a Business-License in respect of workplace safety and health.
- b. The Director-General, subsequent to scrutiny of an application under sub-section (a), may issue a Business-License or, in case of not being in accord with prescribed criteria, refuse to issue Business-License. If Business-License is issued, it shall be done imposing terms and conditions, and after collecting fees prescribed by the Ministry.
- c. The Department shall maintain a Registry of Business-Licenses issued under sub-section (b).

10. –

- a. A person who receives a Business-License under Section (9) shall, if he wishes with to continue the enterprise after expiry of its term, apply within thirty days before expiry as prescribed to the Director-General for extension of term of the Business-License.
- b. The Director-General, subsequent to scrutiny of an application under sub-section (a), may approve extension of term of the Business-License or refuse extension. If Business-License term is extended, it shall be done after applicant is caused to pay extension fees.

## Chapter 6: Formation of WSH-Committees and Appointment of WSH-Officers

11. The employer:

- a. shall, minimum thirty days prior to commencement of operations, prepare and submit to the Department, a management system to implement workplace safety and health matters appropriate to the relevant industry.
- b. shall, in enterprises with no less than the number of employees prescribed by the Ministry, form as prescribed, WSH-Committees composed of equal number of representatives of employer and employees, so that workplaces are safe and healthy.
- c. shall carry out in accordance with directives of the Ministry in respect of composition, eligibility and selection, appointment and functions of members of WSH-Committees formed under sub-section (b).

12. The functions of WSH-Committees are as follows:

- a. Conducting regular inspection for conditions harmful to WSH, and presenting reviews to meeting of the relevant committee;
- b. Presenting suggestions for measures to be implement to prevent Workplace-Accidents;
- c. Promoting employer-employee cooperation to obtain training and supporting material/equipment toward improvement in workplace safety and health;
- d. Supervising the implementation of the relevant workplace safety and health management system;
- e. Putting up to the Director-General matters which the committee cannot handle;

- f. Carrying out workplace safety and health functions as assigned by the Ministry and the Department.
13. The employer, in workplaces with no less than the number of employees prescribed by the Ministry, shall appoint a person possessing qualifications prescribed by the Ministry, to the position of WSH-Officer, in order to provide close supervision of workplace safety and health matters.
14. The WSH-Officer shall provide close supervision so that workplaces are safe and healthy, and also carry out relevant functional duties and other functions announced by the Ministry.

## Chapter 7: Appointment of Inspectors, Powers and Functions of the Chief-Inspector and Inspectors

15. The Ministry may appoint Inspectors as needed to implement the objectives of this Law.
16. The Chief-Inspector may delegate to Inspectors as needed to carry out inspection of and taking action against workplaces.
17. Inspectors:
- a. shall fully discharge functions for inspection as assigned.
  - b. shall as prescribed submit a report of inspection findings.
18. The Chief-Inspector and Inspectors shall not be employed by any factory workshop, enterprise or division, nor engage in any business directly or indirectly connected thereto.
19. The Chief-Inspector and Inspectors has the power to carry out the following toward WSH:
- a. to enter, inspect and investigate at any workplace relevant to this Law, at any time without need of warrant by showing Inspector's Identification Card;
  - b. to inspect and investigate machinery, equipment, tools, raw materials, finished products, organic and chemical substances et cetera; to confiscate as evidence, materials/equipment restricted or prohibited by the National-Council, and to take action against a workplace under sub-section (a);
  - c. to examine, investigate, obtain and confiscate as evidence records and documents related to the workplace and processes;
  - d. to obtain photographic and video records in respect of working conditions and processes which may be harmful to workplace safety and health;
  - e. to obtain photographic, video and documentary evidence related to investigation of Occupational-Diseases, hazardous occurrences and Workplace-Accidents.
  - f. to evaluate, measure and record, at any workplace, the magnitude and duration of exposure of persons in such workplace to environmental pollution, radiation, hazardous materials and physical objects including noise, light, heat, cold, particles and emissions;
  - g. to examine for Occupational-Disease with the help of an Accredited-Physician, any person working in the workplace;
  - h. to request in-charge persons of hospital clinics to provide, under prescribed confidentiality, the information related to treatment or death, and autopsy reports in respect of a patient being treated for Workplace-Accident or Occupational-Disease.

20. The Chief-Inspector or Inspectors may order the whole of any part of a workplace to be suspended in the following circumstances:
- a. Non-suitability to continue operations due to occurrences of Workplace-Accident, deaths [or] hazardous occurrences by reason of the workplace or positioning of machinery or components or equipment;
  - b. Non-suitability to continue operations due to violation of or failure to comply with any provision of this Law;
  - c. Deemed as hazardous to people working in the workplace due to act, omission, negligence or carelessness of any person;
  - d. Need to clear away employees due to imminent danger of Workplace-Accident.
21. The Chief-Inspector or Inspectors:
- a. shall allow the resumption of the whole or any part of the workplace, when the employer is found under scrutiny to have complied and performed in accordance with the suspension order.
  - b. shall notify such allowing of resumption under sub-section (a) to the employer and to relevant departments.
22. The Chief-Inspector:
- a. may prosecute or if needed, delegate any suitable Inspector to prosecute any person who fails to comply with an order issued under Section (20).
  - b. may, in respect of the order suspending the whole or any part of the workplace, allow under terms and conditions, the carrying out of activities which become permissible due to altered circumstances.
23. The Chief-Inspector or Inspectors:
- a. having reason to believe occurrence of bodily injury or health hazard to employees or damage to any property, due to any workplace, factory, workshop, objects or process, may notify the employer in writing to provide remedies within specified time.
  - b. may prohibit the continued operation of the relevant employer's business, in case of failure to comply with instructions under sub-section (a).
24. The Chief-Inspector and Inspectors shall require the employer ordered under Section (23) sub-section (a) to report completion of carrying out for compliance, attaching full supporting records and evidence.
25. The Chief-Inspector shall delegate to Inspectors specific duties in respect of compilation of data on hazardous material/objects and workplaces utilizing them; and to conduct special inspections if needed, and to prohibit the utilization of such materials.
26. The Chief-Inspector shall direct the employer and WSH-Officer in workplaces which utilize hazardous material/objects to provide training to employees in respect of potential for hazardous occurrence, prevention of hazardous occurrence, contingency plans, response methods and first-air in case of hazardous occurrence.
27. The Chief-Inspector may assign any Inspector to bring charges at the relevant law court against any person committing an offense of violation of any provision of this Law.

## Chapter 8: Duties of Employers and Employees

28. With regard to workplace safety and health and welfare, the employer:

- a. shall notify as prescribed the intended commencement of operations to the Department and procure the approval of the Director-General, minimum fifteen days in advance.
- b. shall, in accordance with prevailing law, rules, regulations and bylaws, have in place measures required to evaluate the level of hazard of machinery and equipment, process materials, organic materials and chemical substances utilized in the workplace, and to avoid detrimental effects on health from handling them.
- c. shall issue and require working with use of appropriate bodily protection and auxiliary kit and gear to avoid Workplace-Accidents and Occupational-Diseases.
- d. shall have put in place protective and preventive measures, as well as emergency response measures.
- e. shall, at enterprises having the number or more of employees prescribed by the Ministry, provide clinics, with appointment of Accredited-Physicians and nurses, provisioned with necessary medicaments and auxiliary materials/equipment.
- f. shall arrange for the management including himself, employees and their representatives to attend prescribed training courses and refresher courses according to industry.
- g. shall have put measures in place for immediate notification to the employer through the WSH-Officer in case of any Workplace-Accidents or life-threatening or major health damage to any employee, or arising of conditions which may lead to such events.
- h. shall involve the managing-agent of the employer, employer's representative, employees' representatives and all employees in the measures taken.
- i. shall have put systems in place for safety and health of those in the workplace and in the vicinity, in respect of movement of machinery and equipment, buildings, tools and transport of input materials or wastes.
- j. shall, when faced with imminent Workplace-Accident, immediately stop the process, clear away employees and carry out necessary rescue measures; and may also re-locate employees to work in other suitable workplaces.
- k. shall maintain workplace safety and health related instructions, warning signals, notices, posters and direction signboards as prescribed.
- l. shall regulate and control to comply with precautions in the entry to and exit from restricted or prohibited hazardous zones in the workplace.
- m. shall disseminate to employees and persons connected to the workplace, the workplace safety and health manuals and guidelines issued by relevant ministries for academic, technical, general knowledge and capacity-building purposes.
- n. shall draw up fire prevention plans, and conduct drills, and training of employees to systematically use fire-fighting equipment.
- o. shall consent to entry and investigation, requesting of documentation and confiscation of evidence by the Chief-Inspector and Inspectors.

- p. shall cause employees in industries stipulated by the Ministry as hazardous, to work only within the prescribed hours.
- q. shall bear the workplace safety and health related costs.

29. The employer shall not dismiss or demote any employee on any of the following grounds:

- a. Workplace-Accident or Occupational-Disease, before receiving a medical-certificate from an Accredited-Physician;
- b. lodging a complaint concerning a safety or health hazard issue;
- c. carrying out a function of the WSH-Committee;
- d. discontinuation of work due to imminent Workplace-Accident or Occupational-Disease.

30. The employer shall bear the costs of medical check-up to determine the magnitude of loss in working capacity and class of disability of an employee who has suffered Workplace-Accident or Occupational-Disease, and who is not covered by the 2012 Social Security Law.

31. The employer:

- a. may restrict or prohibit working by employees who are not qualified in terms of health as shown by medical check-up by an Accredited-Physician.
- b. shall, upon presentation of evidence of recovery by an employee restricted or prohibited under sub-section (a), allow him to return to work in the original post or in [a different] suitable workplace.
- c. shall have measures in place to prevent detrimental effects on the health of pregnant or lactating mothers.
- d. shall arrange for suitable duties if an employee disabled through Workplace-Accident wishes to work.

32. Employees:

- a. shall systematically wear and utilize safety suits, materials and equipment issued by the employer in respect of workplace safety and health.
- b. shall comply with workplace safety and health related instructions and suggestions under this Law and rules issued under this Law from by the employer, WSH-Committee or the WSH-Officer.
- c. shall comply with workplace safety and health related instructions, rules, symbols, wall-posters, notices and warnings and prohibitions.
- d. shall systematically handle and utilize workplace equipment, tools, machines, machinery components, vehicles, electricity and other articles.
- e. shall take grave care against detrimentally affecting his own and other employees' safety and health through his act or omission in the workplace.
- f. shall cooperate in the discharge by the employer, WSH-Officer of their functions under this Law.
- g. shall, upon discovering any condition, circumstance or event detrimental to WSH, immediately report in person or through his closest supervisor to the employer and the WSH-Officer.

- h. may refuse to continue to work in conditions of imminent danger, but shall not refuse to carry out alternative work assigned by the employer.
- i. may select representatives for timely communication, coordination and collaboration in workplace safety and health matters between employees or with employee unions in different workplaces.

## Chapter 9: Duties of Designer, Manufacturer, Exporter, Supplier, Importer, Developer, Commissioner and De-commissioner

33. Designers, manufactures, exporters, suppliers, importers of hazardous material/objects, machinery and equipment to be utilized in workplaces shall procure the safety certificate issued by the relevant department subsequent to testing and evaluation, and also carry out the following:
- a. to ensure, in the design and development of plants, machinery and equipment, that no detrimental effects shall occur on safety and health of employees who use the said workplace machineries and equipment properly and systematically.
  - b. to have arrangements in place to conduct tests and inspections as needed whether design and development has been carried out as per sub-section (a) to be free of detrimental effects on safety and health.
  - c. to supply users with information and updates needed for utilization without detrimental effects on safety and health.
  - d. to conduct research needed to reduce or eliminate as much as possible conditions which may lead to detrimental effects on safety and health.
34. Any designer, developer, commissioner and de-commissioner of any plant, workplace, machinery or equipment, shall take due care for avoidance of detrimental effects on safety and health in the construction, installation and de-commissioning of such plant, workplace, machinery or equipment.

## Chapter 10: Notification, Investigation and Reporting of Accidents, Hazardous-Occurrences, Workplace Poisoning and Disease

35. The employer is required to carry out the following:
- a. to notify as prescribed to the Department through suitable communication method any death from Workplace-Accident, no later than one hour after occurrence or in case of remote areas, no later than twenty-four hours.
  - b. to notify as prescribed to the Department in case of [an employee] being unable return to his normal work for forty-eight hours or more after being involved in a Workplace-Accident, the reasons for such inability, within seventy-two hours.
  - c. to send to the relevant department a report containing the following data, attaching records of medical examination by an Accredited-Physician in respect of poisoning or possible poisoning of an employee through the process or materials/equipment utilized in the workplace or incidence on an employee of a prescribed Occupational-Disease.
    - (1) Name, Citizenship Scrutiny Card and full address of the affected employee;
    - (2) Diagnosis, cause and severity;
    - (3) Type of industry and other relevant details including the name, address of the employer, where the affected employee works or had worked.

36. Any Accredited-Physician who treats a current or former employee affected with a prescribed Occupational-Disease, shall send a report containing data as per Section (35) sub-section (c) to the employer and prescribed relevant departments within forty-eight hours of commencing treatment.

37. –

- a. Inspectors hearing of Workplace-Accidents, hazardous occurrences, Occupational-Diseases or workplace poisoning shall investigate.
- b. No one shall completely or partially remove, destroy or add to materials, equipment, tools, machinery and positionings/layouts related to a Workplace-Accident, hazardous occurrence, Occupational-Disease, workplace poisoning, without the approval of the Chief-Inspector.
- c. The prohibition of sub-section (b) shall not apply to actions needed for safety of life and property and rescue activities.
- d. The Chief-Inspector may allow the employer to remove, uninstall, add or modify to materials, equipment, tools, machinery and positionings/layouts which may lead to deaths from Workplace-Accidents or Occupational-Diseases.

38. The National-Council may form an Investigation-Committee with suitable persons and assign duties for investigation as needed of hazardous occurrences, Occupational-Diseases and major Workplace-Accidents.

39. An Investigation-Committee formed under Section (38):

- a. has authority to enter premises related to the matter under investigation, only for purposes of investigating matters as per Section (38).
- b. has authority to summon, question and obtain testimony of persons related to the matter under investigation.
- c. has authority to obtain necessary documents, accounts, contracts, evidences, plans/designs/models and samples.
- d. shall submit a report containing findings from investigation, assessment and suggestions to the National-Council within seven days.

## Chapter 11: Role of WSH-Auditors and Training-Providers

40. Any qualified person who wishes to work as an WSH-Auditor or trainer shall apply as prescribed to the Director-General to obtain an Accreditation-Certificate.

41. The Director-General:

- a. shall scrutinize an application under Section (40) and either approve the issuance of an Accreditation-Certificate for an WSH-Auditor or Training-Provider, or refuse issuance if not in accordance with criteria.
- b. shall, if approved under sub-section (a), cause payment of fees stipulated by the Ministry and issue an Accreditation-Certificate for WSH-Auditor or Training-Provider, imposing conditions and a term of validity.
- c. shall maintain a registry of WSH-Auditors Training-Providers issued with Accreditation-Certificates.

42. –

- a. A person who has received an Accreditation-Certificate under Section (41) sub-section (b) and wishes to continue working after expiry of its valid term, shall, within thirty days before such expiry, apply as prescribed to the Director-General for extension of the valid term of the Accreditation-Certificate.
- b. The Director-General shall scrutinize an application under sub-section (a) and either approve the extension of valid term of the Accreditation-Certificate or refuse extension if not in accordance with criteria. If [the application is] found to accord with criteria for extension of valid term of the Accreditation-Certificate, [the Director-General] shall cause payment of extension fees stipulated by the Ministry and extend the valid term of the Accreditation-Certificate.

43. –

- a. An WSH-Auditor, upon conducting auditing of workplace safety and health matters and finding to be safe, shall issue as prescribed a safety certificate to the employer.
- b. WSH-Auditors and Training-Providers shall strictly comply with terms and conditions imposed by the Department.

## Chapter 12: Administrative Penalties

44. The Director-General:

- a. shall, upon finding violation, by a person who under Section (8) sub-section (c) received a Prior-Sanction, of any prescribed term or condition, suspend for a specified period or cancel the Prior-Sanction.
- b. shall, upon finding violation by a person who under Section (9) sub-section (b) received a Business-License, of any prescribed term or condition, send notice of suspension of Business-License.
- c. shall require the Business-License holder to submit explanations within seven days of receipt of the notice.
- d. shall, upon finding the employer's explanation under sub-section (c) to be insufficient grounds, impose administrative penalties of causing prescribed fines to be paid, or suspending the Business-License for a specified time, or cancelling the Business-License.

45. The Director-General:

- a. shall send a notice of suspension of permission to operate upon finding infringement of any of the following by an WSH-Auditor or Training-Provider:
  - (1) misrepresentation in application for WSH-Auditor or Training-Provider Accreditation-Certificate;
  - (2) unsuitability to continue as WSH-Auditor or Training-Provider;
  - (3) breach of any term or condition imposed by the Department.
- b. shall require the WSH-Auditor or Training-Provider to submit explanations within seven days of receipt of the notice.
- c. shall, upon finding the explanation under sub-section (c) from the WSH-Auditor or Training-Provider to be insufficient grounds, impose administrative penalties of causing prescribed fines to be paid, or suspending the Accreditation-Certificate for a specified time, or cancelling the Accreditation-Certificate.

## Chapter 13: Appeal

46. –

- a. Any person dissatisfied with an order under Section (20) or with a prohibition of continued operations under Section (23) sub-section (b), issued by the Chief-Inspector or Inspectors, may lodge an appeal to the Appeal-Committee formed by the National-Council, within thirty days of such order or prohibition.
- b. The Appeal-Committee shall consider the appeal lodged under sub-section (a) and confirm, amend or cancel the order or prohibition of the Chief-Inspector or Inspectors.

47. –

- a. Any person dissatisfied with an administrative decision made under Section (44) or Section (45) by the Director-General, may lodge an appeal to the Appeal-Committee within thirty days of such decision.
- b. The Appeal-Committee shall consider the appeal lodged under sub-section (a) and confirm, amend or cancel the administrative decision made by the Director-General.

48. In respect of appeals, the decision of the Appeal-Committee is final and conclusive.

49. If no appeal is lodged against a decision of the Director-General to cancel a Prior-Sanction or Business-License under Section (44) or to cancel an Accreditation-Certificate under Section (45), the Prior-Sanction or Business-License or Accreditation-Certificate shall be returned to the Department within seven days after completion of thirty days. If appeal is lodged, but the Director-General's decision is confirmed by the Appeal-Committee under Section (47) sub-section (b), the Prior-Sanction or Business-License or Accreditation-Certificate shall be returned to the Department within seven days after the decision [on the appeal].

## Chapter 14: Prohibitions

50. No one:

- a. shall construct, extend or modify a building for any activity relevant to the objectives of this Law, without a Prior-Sanction issued by the Director-General.
- b. shall engage in any business relevant to this Law, without a Business-License issued by the Director-General.
- c. shall work as an WSH-Auditor or Training-Provider without an Accreditation-Certificate issued by the Director-General.

51. No employer:

- a. shall fail to comply with any order under Section (20) by the Chief-Inspector or Inspectors for suspension or shut down of a workplace or process.
- b. shall fail to comply with terms and conditions imposed under Section (22) sub-section (b).
- c. shall fail to comply with instructions issued by the Chief-Inspector or Inspectors under Section (23) sub-section (a).
- d. shall procure the approval of the Director-General under Section (28) sub-section (a) within the prescribed time.

e. shall cause employees to work beyond prescribed working hours as per Section (28) sub-section (p) in activities stipulated as hazardous by the Ministry.

f. shall fail to bear the workplace safety and health costs as per Section (28) sub-section (q).

52. No one shall completely or partially remove, destroy or add to materials, equipment, tools, machinery and positionings/layouts related to Workplace-Accident, hazardous occurrence, Occupational-Disease, workplace poisoning, without the approval of the Chief-Inspector as per Section (37) sub-section (b).

53. No person shall disclose except as testimony in a court of law, any business-related secrets of which he became aware in the course of performance of his duties under this Law, while in office or after retiring from office.

## Chapter 15: Offenses and Penalties

54. Any WSH-Officer who is convicted of failure to comply with any obligation provided in Section (14) shall be imposed with imprisonment not extending beyond three months, or with a fine of minimum Kyats five lakhs to maximum Kyats ten lakhs, or with both penalties.

55. Any employer who is convicted of failure to comply with any provision of Section (11), Section (28) sub-sections (b) to (o), Section (29) and Section (31) shall be imposed with imprisonment not extending beyond three months, or with a fine of minimum Kyats ten lakhs to maximum Kyats fifty lakhs, or with both penalties.

56. Any employee who is convicted of failure to comply with any obligation provided in sub-sections of Section (32) other than sub-sections (e) and (g), shall be imposed with a fine not exceeding Kyats thirty thousand.

57. Any employee who is convicted of wilful violation of any provision under Section (32) sub-sections (e) and (g), shall be imposed with imprisonment not extending beyond three months, or with a fine of maximum Kyats one lakh, or with both penalties.

58. Any designer, manufacture, exporter, supplier, importer, commissioner, installer or de-commissioner of plant, workplace, machinery and equipment, who is convicted of failure to comply with any obligation provided under Section (33) and Section (34) shall be imposed with imprisonment not extending beyond three months, or with a fine of minimum Kyats ten lakhs to maximum Kyats fifty lakhs, or with both penalties.

59. Any employer who is convicted of failure to comply with any obligation provided under Section (35) shall be imposed with imprisonment not extending beyond one month, or with a fine of not less than Kyats twenty lakhs, or with both penalties.

60. Any Accredited-Physician who is convicted of failure to comply with any provision under Section (36), shall be imposed with a fine not exceeding Kyats five lakhs.

61. Any WSH-Auditor or Training-Provider who is convicted of failure to comply with any provision under Section (43) sub-section (b) shall be imposed with imprisonment not extending beyond three month, or with a fine of minimum Kyats ten lakhs to maximum Kyats fifty lakhs, or with both penalties.

62. Any individual or entity which is convicted of violation of any prohibition under Section (50) shall be imposed with imprisonment not extending beyond three month, or with a fine of minimum Kyats twenty lakhs to maximum Kyats fifty lakhs, or with both penalties.

63. Any employer:

- a. who is convicted of violation of any prohibition under Section (51) sub-sections (a), (b) and (c), shall be imposed with imprisonment not extending beyond six months, or with a fine of minimum Kyats thirty lakhs and maximum Kyats fifty lakhs, or with both penalties.
  - b. who continues violation after conviction under sub-section (a), shall be fined Kyats one lakh for each day of continued violation.
64. Any employer who is convicted of violation of any prohibition under Section (51) sub-sections (d), (e) and (f), shall be imposed with imprisonment not extending beyond three months, or with a fine of minimum Kyats twenty lakhs and maximum Kyats fifty lakhs, or with both penalties.
65. Any person who is convicted of violation of any prohibition under Section (52) shall be imposed with imprisonment not extending beyond six months, or with a fine of minimum Kyats thirty lakhs and maximum Kyats one hundred lakhs, or with both penalties.
66. Any person performing duties under this Law who is convicted of violation of any prohibition under Section (53) shall be imposed with imprisonment not extending beyond six months, or with a fine of minimum Kyats five lakhs and maximum Kyats fifteen lakhs, or with both penalties.
67. Any person who is convicted of violation of the any of the rules, orders or instructions issued under this Law shall be imposed with imprisonment not extending beyond six months, or with a fine not less than Kyats twenty lakhs, or with both penalties.

## Chapter 16: Administration of Accident Prevention Activities

68. In the more effective implementation of workplace safety and health of employers and employees, the National-Council shall carry out the following, with use of expenditure from the Ministry's budget:
- a. workplace safety and health promotion campaigns and activities;
  - b. Research and awareness campaigns on workplace safety and health;
  - c. Collaboration with [other] organizations promoting workplace safety and health.

## Chapter 17: Miscellaneous

69. During national emergency, the Union Government Cabinet may through notification exempt under terms and conditions any workplace from any or all of the provisions under this Law for a suitable period.
70. Members of the National-Council, working-committees, investigation-committees who are not public servants shall be deemed as public servants under Section (20) of the Criminal Law while in performance of duties assigned under this Law.
71. Members of National-Council who are not public servants shall be entitled to honorariums and allowances granted by the Union Government Cabinet.
72. The Ministry shall form and assign duties to staff needed to carry out the office functions of the National-Council.
73. All expenses and staff costs related to working-committees formed as needed under this Law shall be borne from the Ministry's budget.

74. No Inspector who legally perform duties assigned under this Law shall be charged under civil or criminal procedures.

75. workplace safety and health provisions contained in the 1951 Factories Act and other prevailing laws, rules, regulations, by-laws, notifications, orders, directives and procedures may continue to be exercised unless contrary to this Law.

76. In the implementation of this Law:

- a. the Ministry may issue necessary rules, regulations and bylaws with the approval of the Union Government Cabinet.
- b. the National-Council and the Ministry may issue necessary notifications, orders, directives and procedures; the Department may issue necessary orders and instructions.



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