

A NEW LEGAL ENVIRONMENT FOR OCCUPATIONAL SAFETY & HEALTH IN MYANMAR

On the 15th March 2019, the Law 8/2019 on Occupational Safety and Health (“OSH”) was enacted by the Assembly of the Union of Myanmar. With the new OSH Law, Myanmar intends to promote safe and secure workplaces for workers in the Union and increase their efficiency and productivity. To achieve this goal, the OSH Law will introduce health and safety standards, in accordance with international and regional standards already established. To implement these standards, duties are provided for both employers and employees, accompanied by sanctions whenever employers and employees are in breach.

EXECUTIVE SUMMARY

The OSH Law 8/2019:

- Applies to both foreign and domestic companies, either privately owned or State owned;
- Is supplementing the Factories Act and the Shops and Establishments Law¹;
- Requires the business to register with the Factories and General Labour Laws Inspection Department;
- Requires the obtaining of a safety certificate in some sectors;
- Requires appointing a “Person in Charge” for OSH and establishing an OSH Committee;
- Sets OSH standards and duties for employers and employees;
- Requires the appointment of an Inspection Officer to supervise the implementation of the Law by the relevant stakeholders;
- Provides sanctions for those who do not comply;
- Will be effective after the adoption of rules and regulations by the relevant ministries.

1. Factories Act focuses on the occupational safety and health of the employees working in factories while the Shops and Establishments Law regulates this aspect in the sector of commercial and industrial establishments.

HISTORICAL BACKGROUND

Since the Factories Act of 1951, the Government of Myanmar has worked on various employment laws containing health and safety requirements. However, it recently started working on a unified framework which lead to the issuance of this new Law.

1951

The Factories Act of 1951 provides health and safety rules for all companies carrying out “manufacturing process”

2016

Law Amending the Factories Act (1951) and new Shops and Establishment Law

2017

Ministry of Labour publishes a comprehensive draft of the Occupational Safety and Health (OSH) Law

March

2019

Union Parliament enacts the new Occupational Safety and Health Law

2019 onward

The President needs to sign the new OSH Law and the rules and regulations of the relevant ministries are pending

SCOPE OF APPLICATION

As the OSH Law imposes significant duties, it is necessary to know whether your company falls within its scope of application.

An exhaustive list of relevant businesses, industries and services is provided under Chapter III Section 4 of the Law, which may be expanded by notification from the Ministry of Labour, Immigration and Population (the “Ministry”).

This list is particularly extensive and covers a broad range of sectors and industries from manufacturing, construction, oil and gas to educational services and hotels and tourism.

The OSH Law does not differentiate between the type of business, whether public or privately owned, domestic or foreign.

RELATION WITH EXISTING LEGISLATION

The Factories Act of 1951 which provides health and safety rules for all companies carrying out “manufacturing process” and the Shops and Establishments Law of 2016 which regulates, inter alia, the working hours of employees in the sector of commercial and industrial establishments shall still be in force.

The OSH Law specifies in Chapter III Section 4 that the businesses covered by these laws are included in its scope.

REGISTRATION AND NOTIFICATION

Any companies falling into the scope of application of the Law shall register to the Factories and General Labour Laws Inspection Department (the “Department”).

Additionally, any company going through major changes (closing, relocating, changes of business activity or/and ownership) or in case of occupational accident must notify the Department.

Same notification to the Department is required for businesses wishing to:

- Build, extend, demolish a building; or
- Place, install, extend or change use of machinery.

SAFETY CERTIFICATE & AUTHORISED EXAMINER

The (i) manufacturer, and the importer or seller, of hazardous materials and machinery as well as a (ii) business which operates in the building, installation, dismantling and demolition of workplaces must obtain a safety certificate.

This certificate will be provided by an “Authorised Examiner” (or the relevant government department) after a thorough examination of all OSH standards, which have not been provided yet.

The “Authorised Examiner” will be appointed by the Director General of the Factories and General Labour Laws Inspection Department (or “Chief Inspection Officer”).



OCCUPATIONAL SAFETY AND HEALTH PERSON IN CHARGE AND COMMITTEE

The company must appoint an “OSH Person In Charge” (the “PIC”) that will closely supervise the OSH at the workplace.

The PIC shall ensure a safe and healthy workplace, observe the OSH law, rules, orders and procedures issued to implement this law.

All companies falling within the scope of application of the Law shall form an “OSH Committee”. The OSH Committee (the “Committee”) will have to comprise an equal number of employers and workers’ representatives.

The Ministry will specify the characteristics of such Committee and the number of employees required to institute said Committee.

The Committee shall act as an advisor to the employer and act as a supervisor of the implementation of the OSH Law to improve the coordination between workers and employers and provide training to develop OSH.

STANDARDS & DUTIES CREATED

OSH standards will be prescribed by the National OSH Council to be formed by the Government which will notably ensure coordination between national and international standards.

The National OSH Council will have several duties:

- Prescribing national level policies and procedures;
- Coordinating with governmental entities and local and international organisations;
- Prescribing a list of hazardous businesses and workplaces;

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To comply with these standards, employers and the workers are subject to new duties (Chapter VIII Section 26 to 31):

The duties of the employers:

- Assessment of workplace risks (and likelihood to occur);
- Medical check-up of the workers;
- Provision of a clinic (depending on the number of workers);
- Personal Protective Equipment on free of charge basis;
- Display danger notices and signs;
- Safety plans (fire, accident);
- OSH training courses (see above the purpose of the OSH Committee);
- Chain of reporting to the PIC with out risk of dismissal.

The duties of the workers:

- Use of Personal Protective Equipment;
- Comply and cooperate with employers and PIC’s instructions;
- Notify PIC’s of any condition or event that will have a negative impact on OSH.

Further duties and obligations are anticipated and stipulations from the Ministry detailing the exact duties are still pending.

INSPECTION OFFICERS, PROHIBITIONS AND PENALTIES

The Ministry will appoint inspection officers to implement the objectives of the OSH Law. Such officers will hold specific powers to do so, such as entering workplaces for inspection or prohibiting the employer from continuing to operate if it does not follow instructions. The OSH Law provides several prohibitions.

It goes from failing to comply with the instructions issued by an inspection officer to failing to register (see “registration and notification” above).

OSH Law then provides for a broad array of sanctions, such as fines (up to 10,000,000 MMK) and prison sentences for more severe breaches.

For instance, a business which did not obtain the safety certificate for demolition of a workplace shall pay a fine of at least 1,000,000 MMK (up to 5,000,000 MMK) or be punishable with imprisonment for a term up to 3 months.

Another example is when an employer failed to inform the Department in case of occurrence of hazardous event, it is punishable with a fine of 2,000,000 MMK or imprisonment for a term up to 1 month.

THE CHALLENGES AND OPPORTUNITIES OF THE NEW LAW

The Myanmar government will soon form the “OSH Council”, which will include Government members, representatives of both employers and employees, as well as experts in the field of Occupational Safety and Health. One of the OSH Council first duty will be to develop the new rules and regulations, and to launch promotional campaigns to raise awareness among the local and international business community.

The new law is an encouraging step forward to enhance employees working conditions and raise the Health, Safety and Environment (HSE) and Sustainability standards in the country. It aligns with the government efforts to attract Foreign Direct Investments (FDI) as most foreign businesses consider health, safety and sustainability as key factors to validate future investments.

If the law can have positive impacts on companies’ productivity and country overall attractiveness, it is still not clear if the required resources to carry out such implementation and subsequent law enforcement will be sufficient.

In the meantime, most workplaces in Myanmar are still operating below international health and safety standards.

Anticipating the enforcement of this new law represents a strategic investment and competitive

advantage for Myanmar-based companies, with the opportunity to increase their productivity, enhance employees attractiveness and loyalty, and raise their compliance levels towards both domestic regulations and relevant international standards.

The information above is provided for reference purposes only and is not intended to constitute legal or health and safety advices. Additional advice should be obtained from a qualified legal counsel or OSH specialist as per the contact shared below.

FOR FURTHER INFORMATION OR ADVICE, PLEASE CONTACT US.

Audier & Partners Myanmar Co. Ltd.

Mr. Eddy Jabnoue

Attorney-at-law New York
& Country Director

eddy.jabnoue@audierpartners.com

audierpartners.com

+95 9 96 103 12 57

International SOS Myanmar

Mr. Guillaume Sautier

Country Director

Guillaume.sautier@internationalsos.com

internationalsosfoundation.org

internationalsos.com

+95 (0) 1 657 922