



LINCOLN LEGAL SERVICES (MYANMAR) LIMITED

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Updated requirements for “work permits” (MIC companies only) and DICA recommendations for visa extensions and stay permits (non-MIC companies)

DICA has published updated requirements for obtaining “work permits” (needed by foreign employees of MIC companies - <http://tinyurl.com/yb8wtawd>) and DICA recommendation letters for visa extension and stay permits (<http://tinyurl.com/y9ml66y6>); these updated requirements came into force on 21 October 2017.

Some experts are severely critical of this development (“a bureaucratic regulatory nightmare without any sunshine ability” - <http://tinyurl.com/yc6jq94r>), but as shown in our analysis, we think that this criticism is largely misplaced. At least presently, Myanmar is one of the most permissive countries when it comes to employing foreigners.

We will discuss this topic in detail at our labour law seminar on 28 November 2017 (please find the invitation here: <http://tinyurl.com/yamho7wv>).

At the seminar, we will also provide you with an update on planned foreigners legislation.

1. “Work permits” (MIC companies only)

According to section 51 (a) Myanmar Investment Law (<http://tinyurl.com/y73g35bq>), qualified persons of “any nationality” may be “appointed” as “senior manager, technical and operational expert, and consultant” whereas positions for which no skills are required may only be filled with Myanmar nationals (section 51 (c)). The Myanmar Investment Rules furthermore prescribe that MIC approval is required when appointing a foreigner (Rule 206 - <http://tinyurl.com/me2aesl>).

The requirements for obtaining MIC approval of an appointment are laid down in form 12-A (“application for work permit” - <http://tinyurl.com/yd6wvz8r>) and, now, the updated list (<http://tinyurl.com/yb8wtawd>).

MIC approval is only required for an “appointment” which in a Myanmar context means employment (this is generally so, but can in this case specifically be inferred from section 51 (d) Myanmar Investment Law which requires the signing of an employment contract to effect an appointment). MIC companies hiring foreign freelancers are not required to obtain MIC approval.

Furthermore, companies without an MIC permit or endorsement are not required to obtain MIC approval when hiring foreigners.



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In a nutshell, the following has to be submitted to the MIC:

- Cover letter;
- copies of the foreigner's passport, certificate or degree, CV;
- filled-in form 12-A;
- number of Myanmar and foreign employees submitted in the MIC permit or endorsement application;
- list of existing Myanmar and foreign employees with each employee's name, expertise level and position;
- copy of the latest quarterly performance report;
- power of attorney (if the application is not filed by the investor himself).

The application has to be filed prior to, or within seven days after, the arrival of the foreigner. While this period may be too short in some cases, we do not think that it is entirely unreasonable.

Upon a foreigner resigning, the MIC company has to submit the resignation letter and a copy of the air ticket. This requirement is being criticised as "highly problematic" (<http://tinyurl.com/yc6jq94r>), but, as a matter of fact, it is not new (as can be seen from this DICA announcement dated 8 September 2016: <http://tinyurl.com/y7ye5x2a>), and nobody seems to have had any problems with it so far.

What is (sort of) new is that the MIC company has to provide proof of the foreign employee's expertise by submitting a copy of this person's certificate or degree. This requirement is explicitly spelled out in the Myanmar Investment Rules (Rule 206) from 30 March 2017 and hardly a surprise given that only foreigners with skills should be employed; rather, it is a surprise that this requirement should not have existed earlier.

Critics argue that the updated rules do not specify whether they apply to "short, medium or long-term appointments, or to all appointments", and that there are no clear criteria for distinguishing between foreign employees and foreign experts (<http://tinyurl.com/yc6jq94r>). However, in our opinion, it is quite clear that the requirement to seek MIC approval applies, as it did in the past, to any employment of a foreigner by an MIC company. If all MIC companies are, or will be, in compliance with this requirement in practice is another matter.



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2. DICA recommendations for visa extensions and stay permits (non-MIC companies)

Foreigners staying in their own accommodation or accommodation provided by their employer have to report their arrival (or ensure that their landlord reports their arrival) to the Ward Administration Office and the Immigration Department (“form C”). For this procedure, no recommendation letter from DICA is required.

Foreigners staying for more than 90 consecutive days have to apply for a foreigner registration certificate (FRC) sufficiently in advance so that the FRC is issued before the 90 days are up. Furthermore, foreigners wishing to extend their stay beyond the period permitted by their visa without leaving the country to renew the visa have to apply for a visa extension and a stay permit. FRCs, visa extensions and stay permits are not issued by DICA, but by the Immigration Department which, however, requests, among others, the submission of a DICA recommendation letter.

Our understanding is that, as previously, foreign employees working at companies with an MIC permit or endorsement require a recommendation from the MIC and not from DICA.

According to the updated list of requirements (<http://tinyurl.com/y9ml66y6>), a recommendation letter is available to any member of the board of directors of a foreign company, any “foreign technician” employed by a foreign or 100% Myanmar-owned company and the family members staying with these persons. We think that the drafters of the list (unintentionally) got the scope a bit too narrow: Obviously, not only “foreign technicians”, but any foreign employees with skills are eligible for a DICA recommendation letter as are the representatives of a branch or rep office of a foreign company.

In a nutshell, the following is required to apply for a DICA recommendation letter:

- Application letter;
- undertaking;
- passport copy and photos;
- copies of the corporate documents;
- description of the current business activities of the company (including copies of permits and licenses and, **if so requested by DICA, evidence of tax payments**);
- list of all Myanmar and foreign employees;
- power of attorney if the foreigner cannot come to DICA in person;



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- **professional qualification certificate of the employee;**
- copy of the employment contract;
- description of the job title and all responsibilities of the foreign employee.

The items in bold are, at least officially, new (and possibly unwelcome, but it is probably hard to argue against them with honest intent), although DICA has requested professional qualification certificates for at least three months now.

Interestingly, “trading companies” must apply to the Ministry of Commerce instead of DICA. The scope of application of this rule should be quite narrow; we expect it to apply only to those foreign-invested companies that are allowed to import and sell goods (in particular, brand-new cars; construction materials; fertilisers; seeds; pesticides; hospital equipment) under a Ministry of Commerce Notification.

The application for the DICA recommendation letter has to be filed at least three weeks prior to the expiry of the visa. This is being heavily criticised (<http://tinyurl.com/yc6jq94r>), but in our opinion just reflects the fact that the Immigration Department expects applications for visa renewals, etc., to be filed three weeks prior to the visa’s expiry date.

Another criticism levelled at DICA’s list is that it exempts foreign members of the board of a 100% Myanmar-owned company, but this is nonsense as foreigners cannot become board members of 100% Myanmar-owned companies.

On the whole, DICA’s updated list does not significantly alter the process for obtaining a foreigner registration certificate, visa extension or stay permit and, unlike others apparently, we do not have any particular problems with it.