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The International Comparative Legal Guide to:

Corporate Immigration 2016

3rd Edition

A practical cross-border insight into corporate immigration law

Published by Global Legal Group, with contributions from:

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London SE1 3PL, UK
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
August 2016

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ISBN 978-1-911367-07-9
ISSN 2054-7579

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Myanmar

Harvey Law Group

Jean-François Harvey



Bastien Trelcat



1 Introduction

1.1 What are the main sources of immigration law in your jurisdiction?

The *Burma Immigration (Emergency Provisions) Act, 1947* and its *Amendment Act, 1990* prescribe the legal and regulatory scheme for entry into the country. This legislation is supported by additional statutes enacted by the government, which outline the requirements for presence in Myanmar, including the *Burma Citizenship Law, 1982* and the *Permanent Residence of a Foreigner Rules, 18 November 2014*.

The *Foreign Investment Law (FIL)* along with the *Citizens Investment Law (CIL)*, implemented on 2 November 2012 and 29 July 2013 respectively, play a role in dictating corporate immigration regulations.

1.2 What authorities administer the corporate immigration system in your jurisdiction?

The current framework is empowered through several authorities working in tandem in order to make determinations on applications for entry, extensions of stay, and leave to remain. The Ministry of Immigration and Population (MOIP), through its Immigration and National Registration Department, administers the immigration system, which includes overseeing corporate immigration.

Depending on the grounds for a business-related endeavour, additional permits may be required from other entities to facilitate entry, including the Myanmar Investment Commission (MIC), the Directorate of Investment and Company Administration (DICA), and the Ministry of Labour, Employment and Social Security.

1.3 Is your jurisdiction part of a multilateral agreement between countries (EU/NAFTA/MERCOSUR) which facilitates the movement of people between countries for employment purposes?

No specific multilateral agreement/treaty has been signed between Myanmar and other countries to facilitate movement between countries for business/employment purposes.

However, developments in mobility related to employment can be seen in the Association of South East Asian Nations (ASEAN), of which Myanmar has been a member since 23 July 1967. The implementation of an economic community plan, with the objective of integrating the economies of ASEAN states into a single market,

has helped facilitate movement for employment purposes. As a member of ASEAN, Myanmar is also part of ASEAN's Mutual Recognition Agreements which enable the mobility of professionals and skilled workers among Member States. The schemes have eight categories of workers: engineers; tourism professionals; dentists; architects; surveyors; accountants; nurses; and doctors.

Moreover, Myanmar is also a member of the World Trade Organization (WTO) and, by extension, a member of the WTO's General Agreement on Trade in Services, which allows the presence of persons from one WTO member in the territory of another for the purpose of providing a service.

2 Business Visitors

2.1 Can business visitors enter your jurisdiction under a relevant visa waiver programme?

No visa waiver programme is in force in Myanmar. Business visitors, as with all other foreign visitors, are required to obtain a visa for entry. However, for ease of use, the visa system offers electronic business visas (eVisas) allowing the submission of online applications.

The eVisa is only applicable for travellers/visitors entering the territory either through Yangon International Airport, Nay Pyi Taw International Airport or Mandalay International Airport.

2.2 What is the maximum period for which business visitors can enter your jurisdiction?

The period varies according to the visa category. A single-entry business visa has a three-month validity from the date of issue and allows a duration of stay of 70 days.

A multiple-entry business visa is valid for six months to a maximum of one year from the date of issue and grants a duration of stay of 70 days to those who have previously applied for a business visa on at least three business trips within a calendar year. Both business visas and multiple-entry visas are extendable.

2.3 What activities are business visitors able to undertake?

The laws do not set a specific scope of authorised activities for business visitors. However, in practice, scheduling exploratory business visits allows business visitors to look into the market, formulate and confirm business plans/strategies, attend meetings or seminars, or search for offices.

The new Notification on visa issuance, released by the MOIP on 9 January 2016, implemented new visa categories that business visitors may now use for their stay in Myanmar. Among the new visa categories, the following are applicable to business visitors: workshops; seminars; meetings; and research.

2.4 Are there any special visitor categories which will enable business visitors to undertake work or provide services for a temporary period?

A visitor with a business visa can undertake work or provide services if they are a director or engaged as a general manager or other senior post in a company. There is no specific temporary period visa.

2.5 Can business visitors receive short-term training?

If short-term training is part of the employment, a business visa holder could receive such training. Otherwise, business visitors are not eligible.

3 Immigration Compliance and Illegal Working

3.1 Do the national authorities in your jurisdiction operate a system of compliance inspections of employers who regularly employ foreign nationals?

A system of compliance inspections of employers has not been set. The control of employers who regularly employ foreigners is overseen by the MIC.

Applications/proposals submitted to the MIC related to investing and conducting business in the country have to satisfy several requirements, including a full declaration of the number of foreigners to be hired by the future employer.

The MIC has a key role in the compliance inspections. In addition to scrutinising the application/proposal of the investment, the MIC is responsible for ensuring that the investment business abides by the submitted project as well as the relevant applicable laws. Therefore, the MIC has the power to take action against the employer in case of non-compliance. Often, this will result in imposing administrative penalties including the suspension of business activities.

Moreover, the Union Government is informed by the MIC, which reports on adherence to the conditions on the part of employers, at tri-monthly meetings.

3.2 What are the rules on the prevention of illegal working?

Any foreigner working illegally may be prosecuted under Section 13(1) of the *Burma (Myanmar) Immigration Emergency Provisions Act, 1947*.

3.3 What are the penalties for organisations found to be employing foreign nationals without permission to work?

Administrative penalties imposed on non-complying organisations include: censure; temporary suspension of tax exemption and relief; suspension of work; revocation of the work permit granted; or being blacklisted with no further issuance of any permit in the

future. Employers may also be liable for criminal penalties, under the above-mentioned *Act*, Section 13(5).

4 Corporate Immigration – General

4.1 Is there a system for registration of employers who wish to hire foreign nationals?

Myanmar does not currently have an official registry of employers who hire foreign nationals. However, as stated in Section 3.1 of the FIL, employers/investors are registered with several authorities. Other than the MIC, the Directorate of Labour, operating under the Ministry of Labour, is the competent authority for the issuance of work permits. Those who obtain work permits are still responsible for obtaining the relevant entry visa and stay permit from the Immigration and National Registration Department, which operates under the MOIP.

Additionally, employers hiring foreign nationals must register with the Immigration and National Registration Department to help foreign employees obtain a Foreign Registration Certificate, which is required by all foreigners who plan to reside in Myanmar for over 90 days.

4.2 Do employers who hire foreign nationals have ongoing duties to ensure immigration compliance?

Under the FIL, the number of foreign technical staff must be stipulated as part of the proposal to the MIC.

Moreover, pursuant to the *Employment and Skill Development Law, 2013*, all signed employment contracts must be sent to the Township Labour Office for approval.

For employers operating in the Thilawa Special Economic Zone (SEZ) in Myanmar, according to Notice No. 02/2015 of the Thilawa Special Economic Zone Management Committee, the investor shall apply for Foreign Worker Employment Registration for their foreign employees at the Labour Section of the One-Stop Service Centre (OSSC), through the Front Office of the OSSC. The Labour Section of the OSSC issues a Foreign Worker Employment Registration Card after reviewing the submitted documents based on the recruitment status which was submitted by the investor to the Thilawa SEZ Management Committee (TSMC) in advance.

Two other key Special Economic Zones (SEZs) are currently being implemented within Myanmar. In Rakhine State, work has begun on the KyaukPhyu SEZ, and in the south of the country, Dawei, in the Thanintharyi Region, could be key to growing Myanmar's economy in the future.

4.3 Do the immigration authorities undertake routine inspections of employers who sponsor foreign nationals, to verify immigration compliance?

They do not carry out routine inspections but the immigration authorities know whether foreigners comply with the necessary rules and regulations.

4.4 Do the immigration authorities maintain a list of skilled occupations which may be filled by foreign nationals?

Notification No. 1/2014 of the MOIP regarding permanent residence for foreign nationals only provides a brief definition of what an

expert is. According to this Notification, an expert is a “qualified scholar in the respective fields according to the requirement of work”.

The 2015 draft of the new law on investment provides that “investors have the right to employ or engage qualified persons of any nationality to fill senior management, technical, professional and advisory positions in the investor’s enterprise in the Union in accordance with the existing laws of the Union”.

4.5 Is there a recognition that some occupations may be in short supply and do special exemptions apply to certain sectors and occupations?

Such exemptions do not exist in Myanmar.

4.6 Are there annual quotas for different types of employment-related work permits or visas?

There is no annual quota in force.

4.7 Are there restrictions on the number of foreign workers an employer may sponsor, in relation to a maximum percentage of foreign workers in the employer’s workforce?

Under the 2012 FIL, preference is given to Myanmar citizens and foreign investors have a six-year transitional period. Investors must ensure that locals occupy at least 25% of the total employees within the first two-year period, at least 50% within the second two-year period, and at least 75% within the third period from the commencement of the business.

The 2015 draft of the Investment Law no longer contains such quota; an employer may appoint Myanmar citizens or foreigners alike at skilled labour, ensuring that there is no discrimination in remuneration. At this time, it is not possible to ascertain when the new law will take effect.

4.8 Are employees who are sponsored to work in your jurisdiction required to demonstrate language proficiency?

No language proficiency condition has been set.

4.9 Are employees who are sponsored to work in your jurisdiction required to undergo medical examinations before being admitted?

Employees are not required to undergo medical examinations prior to admittance.

4.10 Are employees who are sponsored to work in your jurisdiction required to have medical insurance or are they entitled to any free public medical services?

Foreign employees are not required to have medical insurance, nor are they entitled to free medical services.

4.11 Does the work permit system allow employees who hold work permits to be seconded to a client site?

Myanmar laws do not recognise the notion of secondment.

5 Highly Skilled Visas

5.1 Is there an immigration category which covers highly skilled individuals?

Myanmar does not have a specific immigration visa category for highly skilled individuals; however, the government recognises the need for foreign expertise in order to develop its economy.

Highly skilled foreign individuals may also apply for permanent residency as an “expert” under the *Permanent Residence of a Foreigner Rules*, if they are a qualified scholar in their respective field(s).

6 Investment or Establishment Work Permits

6.1 Is there an immigration category which permits employees to be authorised to work based on investment into your jurisdiction?

As per the FIL, businesspeople looking to invest in Myanmar may invest in the form of an incorporated company in accordance with the legal and procedural framework provided by DICA and the MIC.

Foreign investors may apply for an investment permit from the MIC, a trade permit from DICA, and register their companies with the Companies Registration Office as provided under the Companies Act.

Companies may also register under the FIL, which is generally optional, although the processing time for additional registration generally takes longer. The advantages of registration under FIL are significant tax benefits and the possibility of entering into long-term lease agreements.

Foreign investors who do not need to obtain an investment permit will still be required to obtain a trade permit and a registration certificate.

Those who seek to invest in order to be authorised for work may also apply for permanent residency (PR), after holding a visa, as a “person who desires to invest and operate business”. Applicants granted PR are granted a five-year duration of stay, with five-year extensions available thereafter.

7 Temporary Work Permits

7.1 Is there an immigration category permitting the hiring of temporary workers for exchanges, career development, internships or other non-economic purposes?

Since 11 January 2016, new visa categories have been implemented, including an education non-immigrant visa. This visa has been set for individuals wishing to study, to come on a work-study tour or observation tour, to participate in projects or seminars, or to attend a conference or training course.

This type of visa includes students wishing to do an internship in Myanmar.

However, temporary workers may wish to consider obtaining a business visa, which allows for a stay of up to 70 days.

7.2 Are there sector-specific temporary work permit categories which enable foreign workers to perform temporary work?

This is not applicable in Myanmar.

8 Group or Intra-Company Transfer Work Permits

8.1 Does a specific immigration category exist for inter-company transfers within international groups of companies?

Given that Myanmar does not have an established work permit system, there is no specific immigration category that exists for inter-company transfers within international groups of companies.

8.2 What conditions must an employing company or organisation fulfil in order to qualify as part of a group of companies?

This is not applicable in Myanmar. Please see question 8.1 above.

8.3 What conditions must the employer fulfil in order to obtain a work permit for an intra-company group employee?

This is not applicable.

8.4 What is the process for obtaining a work permit for an intra-company group employee?

This is not applicable.

8.5 What is the process for the employee to obtain a visa under the intra-company group transfer category?

This is not applicable.

8.6 How long does the process of obtaining the work permit and initial visa take?

This is not applicable.

8.7 How long are visas under the “initial” category valid for, and can they be extended?

This is not applicable.

8.8 Can employees coming under the intra-company transfer route apply for permanent residence?

This is not applicable.

9 New Hire Work Permits

9.1 What is the main immigration category used for employers who wish to obtain work permits for new hires?

As there is no formal work permit system, employers may obtain work permits by submitting an application to the MIC with supporting documentation on their company, relevant information on the new hire, and details of the work term.

Based on the current regulations, a work permit is required only for foreign experts and technicians working for companies set up under the Myanmar Foreign Investment Act. For a company set up under the Myanmar Companies Act, a work permit is currently not required.

9.2 Is there a requirement for labour market testing, to demonstrate that there are no suitable resident workers, before a work permit can be issued to new hires?

The FIL provides that foreign companies have a six-year period in order to fulfil the government objective of employing a local workforce. Myanmar citizens must make up 25% within the first two years, at least 50% within the third and fourth years, and at least 75% during the fifth and sixth years. Foreign investors should ensure that these requirements are met when considering requesting a work permit for new hires.

9.3 Are there any exemptions to carrying out a resident labour market test?

This not applicable in Myanmar.

9.4 What is the process for obtaining a work permit for a new hire?

An investor must first file an investment application form with the MIC indicating the number of foreign experts/technicians to be employed. Once approved, the investor will obtain an MIC permit and the company will have to apply to the Directorate of Labour, a subsidiary of the Ministry of Labour, for an appointment and work permit. It is also necessary to obtain a valid visa and stay permit with the Immigration and National Registration Department of the MOIP.

9.5 What is the process for the employee to obtain a visa under the intra-company group transfer category for a new hire?

This is not applicable in Myanmar.

9.6 How long does the process of obtaining the work permit and initial visa for a new hire take?

The processing time to obtain a business visa, if the form is filled through the eVisa process, is three business days, whereas it takes approximately seven working days to obtain a stay permit and multiple-journey special re-entry visa following submission of the application to the Myanmar immigration authorities.

9.7 How long are initial visas for new hires granted for and can they be extended?

A business visa will permit a stay in Myanmar of up to 70 days and is valid for three months. A multiple-entry business visa can be obtained after three business visits to Myanmar and will permit a stay of 70 days while being valid for six months to one year.

A multiple-entry business visa provides the basis for obtaining a stay permit, which is not, in itself, a visa. A single-stay permit allows an individual to work for three months to one year without re-entering Myanmar. A multi re-entry stay permit allows an individual to work for one year with travel permitted.

9.8 Is labour market testing required when the employee extends their residence?

This is not applicable in Myanmar.

9.9 Can employees coming as new hires apply for permanent residence?

Permanent residence can be applied for once an individual has resided in Myanmar for at least three years and has not left for 90 consecutive days within a year; the individual must also have a valid visa.

10 Conditions of Stay for Work Permit Holders

10.1 What are the conditions of stay of those who obtain work permits and are resident on this basis?

Due to the absence of a work permit system in Myanmar, those who obtain a work permit must also obtain a business visa and stay permit as a stay permit is not, in itself, a visa. When used alongside a business visa, a stay permit grants an additional 3–12 months on the permitted 70-day duration of stay.

A Foreigner's Registration Certificate (FRC) is required for those who intend to stay in Myanmar for more than 90 days consecutively, in addition to a valid visa.

10.2 Are work permit holders required to register with municipal authorities or the police after their arrival?

Those who obtain an FRC must file a Guest Residence Report with their respective Township Immigration Department.

11 Dependants

11.1 Who qualifies as a dependant of a person coming to work on a sponsored basis?

Applications for dependants are not available in Myanmar.

11.2 Do civil/unmarried or same-sex partners qualify as family members?

The Myanmar government does not recognise unmarried or same-sex partners under existing laws and therefore such partners would not qualify as family members.

Unmarried partners may only be qualified as family members if they practise Myanmar Buddhism. The Myanmar Buddhist Customary Law does not require a marriage ceremony or certificate as requisites to a legal marriage, as long as friends and relatives view the couple as married.

There is no such exemption for same-sex partners as same-sex relationships are criminal under Section 377 of the Penal Code.

11.3 Do spouses and partners have access to the labour market when they are admitted as dependants?

Applications for dependants are not available in Myanmar.

11.4 Do children have access to the labour market?

Under the *Factories Act, 1951* a child under the age of 13 years is prohibited from working. A child who is between the ages of 13 and 15 may work for a maximum of four hours a day and shall not be permitted to work between the hours of 6 p.m. and 6 a.m. The period of work for all children shall be limited to two shifts which shall not overlap, and both of which shall not exceed five hours inclusive of intervals. Child workers are required to take Sundays off, with no exceptions.

12 Permanent Residence

12.1 What are the conditions for obtaining permanent residence?

Following Notification No. 1/2014, obtaining permanent residence is allowed for two categories of people: foreigners; and ex-citizens of Myanmar.

A foreigner is entitled to apply for permanent residence in several cases: as an expert; as a person who desires to invest and operate a business; and as someone who is under the responsibility of a Myanmar citizen.

An applicant granted PR shall have an initial length of stay of five years, which can be renewed at five-year intervals thereafter.

A permanent resident will have rights, including the right to stay and work in other areas except any restricted or prohibited area officially declared as such by the State; to apply for Myanmar Citizenship; and to purchase an apartment. The policy will enable scholars, experts, intellectuals and investors from other countries, as well as former Myanmar citizens, to contribute to national development.

Applicants desiring to invest and operate a business shall comply with the following conditions:

- they must hold a valid visa and apply for permanent residence after having resided in Myanmar for at least three years, and not have left Myanmar during that time for over 90 consecutive days within a year;
- they must be able to invest, pay tax, and submit official documentation proving their finances according to the relevant laws;
- they cannot be an international refugee or someone who has obtained political asylum in another country;
- they cannot have a criminal record; and
- they must be in good health and free of contagious diseases.

For those applying for permanent residence as "experts", proof of experience and qualifications are required in addition to the conditions specified above.

12.2 Is it possible to switch from a temporary work visa to a work visa which leads to permanent residence?

Myanmar does not have a formal work permit regulatory scheme but the *Permanent Residence of a Foreigner Rules* allow for visa-holders to obtain permanent residence if they have resided in Myanmar for three years and have not left Myanmar within that time for 90 consecutive days within a year.

13 Bars to Admission

13.1 What are the main bars to admission for work?

Visitors who intend to work in Myanmar must apply for a business visa and work permit if they are sponsored by companies registered under the FIL.



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Jean-François Harvey founded Harvey Law Group (HLG) in Montréal, Québec in 1992. He completed a Bachelor of Laws Degree from the University of Ottawa and was appointed to the Québec Bar in 1992, and is a member in good standing of both the Québec and Canadian Bar Associations.

Jean-François is recognised internationally as an expert in immigration law, and he brings a wealth of experience in providing comprehensive immigration law services to corporations and high-net-worth individuals.

He also brings extensive experience in commercial legal matters, and in particular has advised on many high-value due diligence and merger and acquisition activities for a broad range of international and multinational industries.

13.2 Are criminal convictions a bar to obtaining work permission or a visa?

Permanent residence applicants intending to invest and operate a business in Myanmar are barred from admission if they have a criminal conviction.



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In 2004, Bastien Trelcat relocated to Shanghai, where he advised several leading companies throughout China and Europe in their M&A transactions, including structuring and negotiation of joint ventures.

Mr. Trelcat is a partner of HLG and acts as the Managing Partner of HLG Thailand. He also plays an important role in the development of the South East Asia market.



Founded in 1992 by Jean-François Harvey, the Montréal-based Harvey Law Group (HLG) has maintained a presence throughout Asia, South America and the Middle East from the beginning. Today, it has evolved into a leading international immigration and business law firm that has developed a worldwide reputation of excellence by providing sophisticated legal representation to businesses and individuals. With offices notably in Hong Kong, Bangkok, Ho Chi Minh City, Hanoi, Da Nang and Yangon, along with a regional and international network, HLG has an extensive team that can provide exceptional support to a diverse global clientele.

In summary, the strength of HLG stems primarily from its well-recognised and respected expertise as well as its well-defined approach towards legal services based on quality, time-honoured practices fused with a corporate culture that emphasises and cultivates a client-focused attitude. Simply and precisely put, HLG is veteran, yet pioneering; firmly grounded, yet progressive.

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