



International
Labour
Organization

Voluntary Labour Compliance Assessment

for Myanmar Garment Manufacturers Association



Voluntary Labour Compliance Assessment for Myanmar Garment Manufacturers Association (MGMA)

ILO - Improving labour relations for decent work and sustainable
development in the Myanmar garment industry
(in parallel with ILO-GIP)

Institutional Capacity of Employers' Organizations Project
(ILO-ACT/EMP Myanmar)



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Foreword

In the current globalized economy, in which Myanmar is on a constant quest to increase its share of exports of garments, challenges are many and global competition is fierce. The industry already boasts close to 600 factories and employs more than half a millions people. It not only generates foreign exchange and revenues for the country, but also creates essential formal jobs for Myanmar women and men, which, when they are decent jobs further contribute to the prosperity of the country, its communities and people.

To maintain this course, the Myanmar garment industry will need to constantly offer something different and unique that adds value in order to continue to attract sound investments, responsible international brands and factories. This is the dream contained in the Myanmar Garment Manufacturers Association (MGMA) Made in Myanmar vision.

In the XXIst century, one of the essential pre-requisites to realize this vision is the industry's commitment toward compliance with national social and labour laws and, increasingly international standards, so as to meet the expectations of the global community. Many researches have proven that responsible garment brands, being sensitive to their global reputation, rightfully pay attention to the industry's respect for such requirements upon making sourcing decisions. An attractive, if not essential, business proposition for these brands is not limited to the quality and consistency of the products made; it also includes a demonstration of high social and labour standards compliance.

In addition, compliance with national laws and international standards also offer factories tangible benefits in terms of fewer industrial disputes and lower labour turnover in the short term; increased productivity in the medium term and improved overall competitiveness in the long term. Increased compliance with national laws and international standards will bring about positive outcomes for workers, the industry and the government of Myanmar.

The responsibility for the compliance with national laws ultimately reside with the government's labour inspectorate authority. Sectoral business associations and MGMA particularly, can however play a pivotal supportive role in proactively helping their members to voluntarily assess their level of compliance with relevant laws and standards. MGMA, and the support it provides through its Employers Services package, which now includes the new Voluntary Labour Compliance Assessment (VLCA) tool presented here, is more than ever equipped to assist its members and ensure that compliance is not a one off "tick the box" operation, but that it arises from an industry and a factory's conscious strategy toward continuous improvement, contributing to the factory and the industry's performance, reputation and the realization of the Made in Myanmar vision.

Donglin Li
Liaison Officer
ILO Yangon

Preface

The Myanmar Garment Manufacturers Association has a dream: sending “Made in Myanmar” garments all over the world, make Myanmar an important sourcing destination for responsible brands and be the highest revenue earning industry in Myanmar.

In our ten-year strategic vision (2015-2025), we projected the industry to grow and provide employment to at least 1 million workers and reach US \$8-10 billion in value. We are aiming at slowly moving out from the low added value “cut, make and pack” model and step into high quality “freight on board” system which would ensure a brighter future for the industry.

In order to achieve these ambitious targets, there is an underpinning condition: demonstrating that we produce garments in an ethical and sustainable manner and that factories operating in Myanmar, not only respect core international labour standards and comply with national legal requirements, but also have in place strong policies compliant with labour and social standards which is also important export requirements.

The Voluntary Labour Compliance Assessment (VLCA) is a new important tool in the hand of the MGMA to support factory-members in their effort to continuously improve their labour compliance and social performance as well as their business reputation by meeting the expectations of customers and stakeholders. The VLCA will provide a thorough, yet not intrusive assessment of all the aspects related to labour compliance ranging from employment relationship to working conditions and working environment, up to worker-treatment and industrial relations practices. It is the role of MGMA, as a mature business association, to provide leadership and guidance to our members and accompany each of our members in this “compliance journey”. The VLCA supports our MGMA’s Code of Conduct enhancing the industry’s understanding of responsible corporate behaviour. This is an essential process in the interest of the entire garment business community in Myanmar: *Made in Myanmar* garment should be synonymous with ethical and sustainable garment production.

We feel that this service can be very beneficial especially for those local factories, which may still be lagging behind and are hesitant in embarking in processes for exporting garments in high value markets; the VLCA will provide them with an honest and confidential assessment on their readiness, or the steps to be taken to be ready, to embark in such a process.

We are very thankful for the support provided by the ILO Liaison Office in Myanmar in developing the tool and in launching the service for our factory-members.

We are sure that the VLCA will be one of the ingredients of MGMA’s advocacy and service provision work through which we seek to shape an environment where sustainable garment trade can flourish.

Khine Khine Nwe
Secretary General
Myanmar Garment Manufacturers Association

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The Voluntary Labour Compliance Assessment tools have been translated in Myanmar by Top HR.

The ILO in Myanmar

The International Labour Organization (ILO) is a specialized United Nations agency that aims to promote decent work. This includes opportunities for work that are productive and deliver a fair income; security in the workplace and social protection on for families; better prospects for personal development and social integration; freedom for people to express their concerns, organize and participate in the decisions that affect their lives; and equality of opportunity and treatment for all women and men. With its unique tripartite composition, the ILO is well placed to assist governments, workers and employers' organizations to address challenges related to sustainable development through sound industrial relations at the enterprise, industry and national levels. The ILO has an ongoing engagement with its tripartite constituents in Myanmar on the basis of an agreed Decent Work Country Programme and has been working to build the capacity of workers' and employers' organizations in Myanmar.

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The responsibility for opinions expressed in the guide and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Responsibility for the interpretation of Myanmar Law rests with the appropriate institutions of the Government of the Republic of the Union of Myanmar and ultimately the Courts. This guide, developed in good faith, attempts to provide clarity of existing legal provisions however the ILO accepts no responsibility in the event that provisions herein are disputed or found to be incorrect.



I. Introduction

The current global market environment presents opportunities, but also challenging obstacles for Myanmar, which strives to enhance its share of exports in the garment sector. Attracting buyers and investments to generate sustainable and productive employment requires the political commitment of the industry, including that of the Myanmar Garment Manufacturers Association (MGMA) and its members. One of the pre-requisites for the growth and sustainability of the sector lies in the assurance toward the compliance with social and labour standards that meets the international community's expectations.

Therefore, as a country that needs to build on the opportunities in the global marketplace and market its goods and services, the Myanmar garment industry would benefit from offering investors, international brands and ultimately customers a different and unique business proposal. While product or service *quality* factor in, value addition is substantially enhanced through demonstrating high social and labour standards. Today, with growing international scrutiny on how goods and services are produced, much emphasis is given to these aspects. This is the vision embedded in the "Made in Myanmar" brand.

Good labour practices offer business benefits allowing enterprises to improve and diminish labour turnover in the short term, improve productivity in the medium term, and improve business' competitiveness in the long term. To integrate a better labour practices vision into an enterprise's business management, good labour standards performance must arise as an integral strategy of continuous improvement that contributes to firm competitiveness and not only as a required obligation.

Labour standards performance has two levels: (i) the compulsory compliance or adherence to the national laws and regulations; and (ii) the voluntary compliance with business/brand code of conducts or trade related requirements that go beyond legal requisites. In the clothing industry, many international purchasers demand compliance with those higher standards, which include not only labour, but also good environmental practices, sound security management practices, and the adequate handling of suppliers.

In particular, access to the European market whose totaled value was €2,295 million in 2018, 74% of which comes from the garment industry,¹ requires full compliance with a set of labour standards which are higher than what Myanmar national regulation currently requires.

Even in trade negotiations agreements, the ratification and implementation of core International Labour Standards (ILS) is continuously playing an increasing role with the EU being more reluctant to extend Generalized System of Preference (GSP) for countries not complying or not showing progress in complying with core labour standards.

The ultimate compliance assessment with national minimum standards resides in the government's labour inspectorate authority. However, today more than ever, our societies require committed and innovating business leaders to promote economic development whilst preserving environmental capital and improving people's working and living conditions. In this context, sectoral business associations, such as MGMA, can play a pivotal role in helping companies measure their labour practices and improve their compliance with national and international labour standards.

¹ <https://ec.europa.eu/trade/policy/countries-and-regions/countries/myanmar/>

The ILO and the MGMA recently conducted a needs assessment amongst company-members which clearly highlighted the need for a voluntary labour audit service. Thus, this labour audit service was designed to provide company-members with a solid and confidential assessment of their performance, identify non-compliance or deficiencies in compliance with national labour standards, and measure their performance vis a vis more advanced labour standards or international certification requirements. Once a member completes the assessment, the labour audit might also provide a clear indication on measuring the company readiness to embark in a certification process (for example BSCI/amphori certification) which international buyers often require for certain markets.

The service is named Voluntary Labour Compliance Assessment (VLCA) to encourage Myanmar garment companies to exceed in legal compliance beyond local requirements, assess their operations against higher standards, and ultimately excel in performance. With this objective, VLCA provides a tool for MGMA to conduct an audit with the company, as well as the company to conduct a self-assessment of labour standards performance. The following five main areas and sub-areas of the company will be reviewed as part of the VLCA audit:

- 1. Employment relationship**
 - a) Employment Contracts
 - b) Work Rules
 - c) Contract Termination

- 2. Working conditions**
 - a) Working Hours
 - b) Wages
 - c) Overtime
 - d) Entitlements (including Social Security)
 - e) Benefits

- 3. Working environment**
 - a) Safety and Health

- 4. Worker treatment**
 - a) Forced Labour
 - b) Child Labour
 - c) Discrimination
 - d) Harassment

- 5. Industrial relations**
 - a) Freedom of Association
 - b) Collective Bargaining
 - c) Dispute Resolution

These labour standards areas are explored through questions (i.e. using Yes/No/Not Applicable (NA) format) which gauge compliance with Myanmar legal requirements and with higher standards requirements based on ILO conventions and recommendations. Upon completion of the audit, including the contributions of workers gathered through interviews and a company self-assessment, the data is analyzed to determine compliance levels. Once MGMA issues a final report to the company, MGMA and the company will determine an “improvement plan” to increase compliance with labour standards as needed for better performance.

VLCA presents MGMA member companies with an invaluable tool to assist them in understanding where improvements are needed in labour standards performance to excel as a business in Myanmar and in the global market.



II. What is Voluntary Labour Compliance Assessment (VLCA)?

A. VLCA Description

VLCA is a labour standards assessment tool that can provide an in-depth look at your company's performance against national labour laws and international labour standards. VLCA assists you to ensure compliance and enhance your standards, thereby increasing your business performance, productivity and attractiveness.

“ If you enhance your labour standards and exceed basic legal requirements, your company will excel in performance. ”

B. Statutory essentials compliance

Your company must meet the minimum legal requirements established by law or 'statute'. These requisites are *statutory essentials* to your company operating legally in Myanmar.

Myanmar laws establish the basic requisites that your company as an employer of people must follow to not violate national laws. Particularly in the garment industry, measuring your labour performance against international standards provides a broader perspective for how your company can succeed in the global market.

C. Non-statutory essentials

While not based on Myanmar's laws, the outside standards are non-statutory essentials as they are critical to your company's success. The company should not view these outside standards as optional or measures to implement once local law compliance is confirmed; rather, the international standards and practices should be integral to the company's mission and action plans for achievement of performance goals. By integrating these additional standards and following international best practices, the company establishes a commitment to achieving a better workplace which can thrive nationally and internationally.

1. International Labour Organization and other United Nations standards

The ILO sets standards for countries in establishing their labour laws. These standards take various forms and may be integrated into Myanmar's laws in some areas where the country has ratified an ILO Convention. Where adopted into Myanmar law, your company must adhere to the requirements.

To date, Myanmar has ratified three of the eight ILO fundamental Conventions² which address core labour principles: freedom of association, forced labour, worst forms of child labour and discrimination.

Core Convention	Ratification status ³
Freedom of Association and Right to Organise Convention, 1948 (No. 87)	Yes
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	No
Forced Labour Convention, 1930 (No. 29)	Yes
Abolition of Forced Labour Convention, 1957 (No. 105)	No
Minimum Age Convention, 1973 (No. 138)	No
Worst Forms of Child Labour Convention, 1999 (No. 182)	Yes
Equal Remuneration Convention, 1951 (No. 100)	No
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	No

In addition, improving labour standards impacts heavily on achieving a country's development goals. Thus, the ILO standards seek to realize the Decent Work concept toward reaching broader development initiatives.

2. International standards and certifications

International buyers often require their suppliers to comply with advanced labour standards or meet international certification requirements, such as the Business Social Compliance Initiative (BSCI) certification, recently renamed amphori/BSCI, which assists companies to increase social compliance in their global supply chains. VLCA can provide a solid and confidential measure of your company's readiness for embarking on outside certification processes, such as amphori/BSCI, which will make your company more attractive to international buyers.

² At the time of publishing this guide, the Myanmar parliament had announced its intention to ratify the ILO Convention 138.

³ ILO webpage, "Ratification for Myanmar". Available online at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103159

3. Best labour practices

On certain labour issues, Myanmar legislation is sometimes silent and elsewhere vague. ILO standards not yet adopted into a law provide guidance and a reference on how your company should treat its workers even if not legally required.

“Although the best labour practices are not a legal requirement, they have become, in several industries, market requirements.”⁴

Striving to meet market requirements in your industry will allow your company to compete in the national, regional and global marketplaces.



III. Why should my company use VLCA?

Investing in human capital leads to greater financial outcomes – this is the business reason for better labour standards performance. Your company’s people at all levels must be treated with fairness, dignity and respect, as well as be provided with a decent and safe workplace. As a result, your company benefits from increased productivity achieved by motivated, dedicated workers who are less likely to leave your company in search for better workplaces.

Human capital investment outcomes

1. **Competitive:** Your company’s ability to compete in the market will increase with greater focus on your labour standards. Furthermore, your company’s heightened labour standards will contribute to Myanmar’s development and ability to achieve favorable rankings to continuously attract foreign investment.
2. **Attractive:** Establishing a good workplace attracts committed workers, as well as investors. By demonstrating that you exceed the minimum requirements, you give workers a reason to stay and dedicate themselves to their work. Meanwhile, you show investors that you are committed to reducing risk and increasing profitability.
3. **Profitable:** Workers will work harder and better if you operate according to high labour standards; productive workers make your company more profitable.

⁴ ILO DWT and Country Office for Central America, Haiti, Panama and Dominican Republic. (2014). A Guide for Enterprise Diagnostics [pdf]. San Jose. Retrieved from https://www.ilo.org/actemp/publications/WCMS_622648/lang--en/index.htm

4. **Image:** Your company's reputation is crucial to its survival. No positive gains are achieved from low or non-compliant labour standards. While a company might realize a short-term financial gain from not providing, for example, required safety equipment for a certain job, the long-term effects in the event of a workplace accident will be exponentially devastating to the business.
5. **Trustworthy:** Workers stay with a company that gives them a reason to be loyal and committed to the company's mission. The employer-employee relationship requires reliance by both parties on collective commitment to values and adherence to standards. Your company's commitment to good labour standards demonstrates that your workers, suppliers, buyers, and regulators can trust you to comply with your obligations.
6. **Access:** Basic labour law compliance allows your company to reach a certain level of market access. Heightened labour standards performance achieves greater access to financing rates and funding. Your company's access to skilled and unskilled workers also increases with commitment to good labour standards.
7. **Legitimate:** Labour law compliance and better labour standards performance beyond the minimal requirements demonstrates that your company is committed to being an exemplary competitor in the industry.

“Compliance with the labour legislation offers legitimacy and allows gaining the respect and loyalty of the customers, suppliers, the government and other interested audiences. This image improvement may impact on creating greater acceptance from these groups.”⁵

Higher labour standards are tantamount to financial capital when you seek to be as productive and profitable as possible. Commitment to good labour standards performance as an investment in your human capital is one of the soundest investments your company can make.

⁵ Ibid.



IV. How do I use VLCA?

A. Process: getting started and completing the audit

To get started using VLCA, the steps are as follows:

1. Contact MGMA to request an VLCA audit of your company.
2. Once you provide the relevant contact information, an MGMA officer will be assigned as your VLCA Audit Officer (VAO) and will contact you to schedule a brief introductory meeting.
3. A date will be set by which you will need to provide the required documents to the VAO.
4. The VAO will schedule a date(s) to conduct the on-site audit of your company, including interviews with workers.
5. You will complete a self-evaluation assessment provided in the toolkit and provide it to the VAO by a scheduled date.
6. The VAO will provide you with a final report, and will schedule a date to discuss the reports with you after you have had the opportunity to review them.
7. Improvement plan – MGMA and the VAO will assist you in preparing an improvement plan for your company's improvements.

B. Analysis areas: topics the audit will cover

The following five main areas and sub-areas of your company will be reviewed as part of the VLCA audit.

- 1. Employment relationship**
 - a) Employment Contracts
 - b) Work Rules
 - c) Contract Termination
- 2. Working conditions**
 - a) Working Hours
 - b) Wages
 - c) Overtime
 - d) Entitlements (including Social Security)
 - e) Benefits
- 3. Working environment**
 - a) Health and Safety

4. Worker treatment

- a) Forced Labour
- b) Child Labour
- c) Discrimination
- d) Harassment

5. Industrial relations

- a) Freedom of Association
- b) Collective Bargaining
- c) Dispute Resolution

You will find below: (i) a brief description of each labour area; (ii) a concise note about Myanmar's requirements on that topic; and (iii) the most common non-conformities within these labour areas.

1. Employment contract

a) Description

The purpose of the employment contract is to set the expectations for how the employment relationship will function. The importance of clear and legally compliant documentation to help establish a good, functional employment relationship cannot be underestimated. In many countries, employers can use their own employment contract so long as it complies with local law.

b) Myanmar requirements

In Myanmar, entities with more than five workers must use a government-issued template standard employment contract (SEC) and register it with the relevant township labour office. The Employment and Skills Development Law, 2013 (ESD Law) requires employment contracts to contain certain topics which are reflected in the template. The SEC states the minimum employment requirements.

c) Common non-conformities

Employment contract non-conformities take various forms. The most common non-conformity is to not enter into employment contracts. Any worker within a company, including temporary, part-time, casual, and seasonal workers should sign an employment contract in some form.

Where employment contracts do exist, often times the contract does not meet the Myanmar legal requirement of being in the form of the SEC template. If not in the SEC template, the employment contract may be missing required topics.

Further, employment contracts in any format are often not clear on areas of contract expiration, termination, and dispute resolution. In addition, employers sometimes enter into a series of temporary contracts with workers in an effort to avoid the commitments afforded to permanent workers.

2. Working conditions

Good labour standards performance requires focus and improvement on working conditions, which encompasses various areas. The below topics cover working hours, overtime, and health and safety, while other working conditions are discussed separately.

a) *Working hours*

1. *Description*

Working hours are limited by law to allow proper rest between work periods. Relevant legislation provides break periods during the working hours, and a weekly rest day on Sundays for entities covered by the Factories Act, 1951 (“Factories Act”). Work required on a Sunday would need to be agreed upon with the workers, approved by the labour authority, and the employer must replace the Sunday with a rest day within the 3 days preceding or 3 days superseding that Sunday.

2. *Myanmar requirements*

Adult workers in factories shall not be required to work more than 8 hours per day or 44 hours per week. The workday must be arranged to allow workers at least 30 minutes rest after no more than five hours of work. Rest periods are unpaid. In factories, the workday composed of work periods and rest intervals may not exceed a total of 10 hours.

3. *Common non-conformities*

Common non-conformities include: setting shift schedules which exceed the legal limits on working hours; requiring longer working hours without counting it as overtime work; not providing the legally required breaks; and requiring work on rest days and holidays.

b) *Wages (Minimum wage)*

1. *Description*

Companies must pay all workers at least the legally required minimum wage. Minimum wages are reviewed periodically. No exceptions exist to this requirement.

2. *Myanmar requirements*

The current minimum wage has been set at 600 Myanmar Kyat (MMK) per hour, and 4,800 MMK per day.⁶ This daily rate is based on an 8-hour day, and does not include overtime, bonuses, incentives, or any other allowances. Part-time workers must be paid on a *pro rata* basis. The minimum wage does not apply to small businesses with less than ten workers, nor to family businesses.

3. *Common non-conformities*

Although required to enter into employment contracts and pay workers a minimum wage, companies often fail to enter into contracts to avoid treating workers as indefinite term workers who are entitled to the minimum wage and other benefits. Other non-conformities include: not increasing wages to the minimum wage when the law changes; and using a change in the minimum wage law to reduce higher wages down to the minimum wage.

c) *Overtime*

1. *Description*

Overtime work is any work done outside the contracted working hours which must be based on Myanmar statutory limits on working hours.

⁶ Notification on Minimum Wage No.2/2018 effective May 14, 2018. The minimum wage review is foreseen in May/June 2020.

2. *Myanmar requirements*

Overtime hours for workers in factories are regulated under a Directive⁷: overtime hours shall not exceed 20 hours per week; these 20 hours can be worked as follows: 15 hours from Monday to Friday (3 hours x 5 days) and 5 hours for Saturday. Workers who work more than 8 hours per day or 44 hours per week must be paid at twice the ordinary wage rate (not including allowances) for overtime hours.

Piece-rate workers who work overtime are paid twice their average earnings. These averages are set by the Chief Inspector in consultation with the employer and worker representatives.

3. *Common non-conformities*

Overtime work non-compliance commonly takes the form of Myanmar companies failing to: obtain required approvals prior to the overtime work; limit the overtime working hours per the law; and/or pay the worker for the overtime at all or at the legally prescribed rate.

d) *Entitlements: Social Security*

1. *Description*

Social security is the insurance a country provides its citizens when they lose income due to an illness, accident, unemployment, medical event or death.

2. *Myanmar requirements*

Under the Social Security Law (SSL, 2012) in Myanmar, only insured persons with the Social Security Board (SSB) and making contributions to the relevant funds are eligible to receive the benefits conferred by the SSB. Registration is compulsory for companies that have more than five workers. All economic sectors are required to participate in the social security programme with few exception listed in the SSL. Workers employed by exempted companies may voluntarily register and make contributions, which the employer must match. The voluntary benefits are the same with the benefits of compulsory registration. The benefits available to members of the SSB are as follows:

- Sickness
- Maternity
- Maternity expenses for insured woman
- Miscarriage
- Adoption of a child under 1 year of age
- Paternity
- Maternity expenses for paternity
- Right to take medical care for up to one year of an infant of an insured female worker
- Funeral expenses
- Continuous medical care
- Education allowance for children of workers with low income
- Financial assistance for families of insured workers who encounter natural disasters

⁷ Directive No.615/2/a la ya- law 2/12 (1584), dated December 11, 2012

- Benefit for temporary disability due to injury at work site
- Benefit for permanent disability due to injury at work site
- Survivors' benefit for worker's death

These benefits are available to workers who contribute the required amount to the fund which depends on whether the member is under or over 60 years of age at the time of joining. If under 60, the employer and worker each contribute 2 per cent of the worker's monthly salary to the Health and Social care Fund; in addition, the employer contributes 1 per cent to the Employment Injury Fund. (The Invalidity, Superannuation and Survivors Benefit, and Unemployment Benefit funds are not accepting contributions and hence are not in-force).

3. *Common non-conformities*

Myanmar companies do not always comply with the SSB registration requirement for company and for their workers – this is the most significant non-conformity. Failing to participate in the system stifles its development and progress towards providing a more comprehensive and effective social insurance program for Myanmar workers.

If registered with the SSB, companies may deduct the contribution amount from their workers, but not forward the funds or the total amount due to the SSB. Further, companies may deduct the full amount (5 percent) from the workers thus failing to contribute as an employer to the health and Social Care Fund. Companies may also declare lower salaries to SSB to lower the contribution amount, which results in a future reduced benefit to a worker who may need the SSB assistance. Companies may also register workers late and not immediately after hiring them which results in delayed access to several SSB benefits. Further, companies hold the social security membership cards rather than give them to workers; this may prevent workers from accessing membership benefits when needed.

3. Working Environment

a) *Health and Safety*

1. *Description*

Occupational health and safety is a serious area of concern for the garment industry and one on which to focus attention during an audit. Both employers and workers have obligations with respect to ensuring health and safety in the workplace.

2. *Myanmar requirements*

The Occupational Safety and Health Law has recently been passed by Parliament, though not yet made effective by Presidential notification pending the drafting of accompanying regulations. The Factories Act sets forth numerous requirements on factory safety and health. Among the requirements are that workspaces must be a minimum of 500 cubic feet with sufficient lighting; proper ventilation and sanitation systems must exist, as well as fire warning systems and properly maintained and clear (unlocked) exits. Employers with more than 100 workers must provide an eating area and rest area with drinking water facilities. The government may require factories with more than 250 workers to provide a canteen to be overseen by a committee that includes workers' representatives. A full set of the requirements can be found in the relevant legislation as well as in the ILO Guide to Myanmar

Labour Law 2017.⁸ Once effective, the Occupational Safety and Health Law will require your company to create a joint OSH committee with independently selected workers representatives, implement additional preventative measures, trainings, and reporting systems in the event of occupational accidents or likelihood of danger to workers' life or health.

The expense of improving workplaces to comply with safety and health requirements is an investment with a promising return.

3. *Common non-conformities*

Companies often fail to comply with all the detailed requirements of the safety and health legislation, namely: not providing a safe working environment, not providing a proper staff canteen and a sanitation system which are appropriate for the number of staff employed, not providing the proper safety equipment for the job, and failing to train workers on equipment use and general workplace safety.

4. Worker treatment

a) *Forced labour*

1. *Description*

A worker being threatened to either work or be punished in some way is a serious human rights violation. Your company must reject any form of forced labour.

2. *Myanmar requirements*

The 2008 Constitution states that forced labour is prohibited except hard labour as a punishment for persons convicted of crimes or labour required in a state of emergency with duties assigned by the Union of Myanmar in accord with the law (Article 359). Several laws prescribe sanctions for use of forced labour, including the Penal Code Sec. 374, Ward and Village Tract Administration Law, Sec. 27 and Anti-Trafficking in Persons Law, Sec. 3. Violators of these laws are subject to imprisonment and/or fines.

3. *Common non-conformities*

Common forms of forced labour in practice in Myanmar relate to both the public and private sectors. These include, but are not limited to:

- Public works – use of the population as workers to undertake national development projects, such as road construction, bridge building, dam building, etc;
- Community service – Use of people in the repair and maintenance of public structures such as schools, government buildings, public gardens, military establishment etc;
- Forced and underage recruitment into the armed forces;
- Forced portering – use of people in conflict zones to carry military food rations and ammunition between locations;
- Sentry duty – use of people to be on duty in warfare strategic locations with a demand that they report on enemy intrusion at the given strategic position;

⁸ At the time of publishing this guide, the ILO was preparing the 2019 edition of the ILO Guide to Myanmar Labour Law.

- Forced labour related to land confiscation – either where the confiscation of land is used as a threat to forced labour or the confiscation of their land enables the authorities to exact forced labour upon the person/farmers;
- Forced cropping – where people are forced to grow a crop not voluntarily chosen;
- Trafficking;
- Debt bondage.⁹

Further, forced overtime work in excess of the legal overtime limits is another form of forced labour which violates the law.

b) *Child labour*

1. *Description*

Subjecting a child to work which is harmful to his/her health, welfare, and interferes with the child's education and development must be avoided. A child's age and the nature of the work are the relevant factors in determining whether a company is exploiting child labour.

2. *Myanmar requirements*

No one under the age of 14 may be employed.

“Child worker” is defined as a juvenile who is 14 or 15 years, and must receive a certificate of fitness from a certifying surgeon in order to work legally. While at work, the young worker must carry a token referring to the certificate of fitness. The Child Law, 1993 states that children have the right to engage voluntarily in work permitted by the law, as well as the rights permitted to hours of employment, rest, and leisure. However, a child worker may work only 4 hours per day, and may not work between 6:00PM and 6:00AM. A child worker may not work in another factory after having completed work in one factory on the same day.

Workers who are 16 and 17 years old are defined as “adolescent workers,” and must be qualified as fit to work by a certifying surgeon. All workers under 18 must carry an identification card (ID) or notice of their certificate of fitness while working.

No one under 18 may engage in work that is deemed hazardous under the governing laws. (For more information, see Chapter 14 – Child Labour).

Companies must keep a register of all child workers in their premise which must include:

- The name of the worker and the names of parents;
- The type of work;
- Working hours;
- Proof of certificate of fitness.¹⁰

The relevant legislation sets out further requirements regarding wages, overtime, and annual leave.

⁹ ILO Liaison Office in Myanmar. (2017). ILO Guide to Myanmar Labour Law. Yangon.

¹⁰ ILO Liaison Office in Myanmar. (2017). op cit.

3. *Common non-conformities*

Child labour restrictions are violated in Myanmar by workplaces where children are too young, untrained, working in dangerous conditions, working at night, not medically certified as fit to work, and assigned to work more than approved working hours.

c) Discrimination

1. *Description*

Discrimination is treating workers differently due to some trait of theirs which results in inequality. ILO Convention 111 defines discrimination as: “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”.¹¹

2. *Myanmar requirements*

Per the Constitution of Myanmar, every citizen has the right to enjoy equality, liberty and justice irrespective of their gender, social status, education, beliefs and ethnic group. Per the Minimum Wages Law, 2013, women must be entitled to the same rights and salaries as those received by men in respect of similar work.

Myanmar has not ratified ILO Core Convention No. 111 on Discrimination (Employment and Occupation), and legislation needs to be developed further on this issue. Nonetheless, companies in Myanmar should strive to eliminate discriminatory practices and treat workers equally.

3. *Common non-conformities*

Given the lack of legal framework, the non-conformities are similar across industries and stem from antiquated perspectives of and approaches to the employment relationship. If your company practices include any of the following or others which could be directly or indirectly discriminatory, these will need to be addressed:

- Unequal pay for female workers as compared to their male counterparts performing the same work;
- Pre-hire or pre-promotion pregnancy tests;
- Not hiring or promoting workers based on a discriminatory factor, e.g. gender, age, race, sexual orientation, religion, political opinion, disability, trade union (Basic labour organization (BLO) membership);
- Dismissing or reducing salaries of women who are pregnant or on maternity leave.

d) Harassment

1. *Description*

Workplace harassment can take various forms, including bullying and sexual harassment. In any form, whether physical, verbal, emotional or psychological, harassment is harmful behavior to the victim and must be eliminated from workplaces.

¹¹ ILO webpage, “C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)”. Available online at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111

2. Myanmar requirements

Myanmar law is devoid of restrictions on workplace harassment, though the Penal Code provides some protections for women against assault in general:

- Whoever assaults or uses undue force against any woman, intending to outrage or cause undue distress to such a woman, will be punished with a term of imprisonment, a fine, or both.
- Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such words or sounds be heard, or that such a gesture or object be seen, by such a woman, or intrudes upon the privacy of such a woman, will be punished with a term of imprisonment, a fine, or both.

As for laws protecting women against discrimination and violence, Myanmar acceded to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1997. Further, a draft law on the Protection and Prevention of Violence Against Women has been in draft form since 2013, but has not been finalized yet. This bill stipulates the need to protect women from all forms of violence, including domestic abuse, marital rape, sexual violence, harassment by stalking, harassment in work place and public place and violence through tradition and customary practice.

Sexual abuse is a criminal offense under the Penal Code. Sexual harassment in the workplace would be considered a criminal offence as there is no other law to address it.

3. Common non-conformities

Non-conformities with regard to workplace harassment would rely on international standards given the developing framework of Myanmar law. Thus, an audit would examine whether a company has any policies and procedures to address workplace harassment, and the enforcement level of those policies.

“Discrimination can be direct or indirect and [does not] necessarily have to be intentional; practices that appear to be neutral may result in discriminatory practices.”¹²

¹² ILO DWT and Country Office for Central America, Haiti, Panama and Dominican Republic. (2014). Op.cit.

5. Industrial Relations

a) Freedom of association and collective bargaining

1. *Description*

Freedom of association is among the ILO core conventions and applies to both workers and employers. The right to organize and join groups to advance occupational interests should be part of any garment company seeking to adhere to international standards.

As a result of the freedom of association, collective bargaining is a means to negotiate and agree on various workplace issues, commonly working hours, salaries, and benefits.

2. *Myanmar requirements*

While Myanmar has ratified ILO Convention No. 87, Myanmar law is still developing with respect to freedom of association and collective bargaining. Collective agreements are made in practice, however, they are not yet strictly regulated. To meet international labour standards, your company should strive to recognize the right to freedom of association and collective bargaining through internally adopted policies and procedures. In Myanmar, a company-level trade union is called a Basic Labour Organization (BLO).

3. *Common non-conformities*

Any action which restrict the formation or operation of labour groups or trade unions would violate the fundamental right to freedom of association. These violations commonly take the form of dismissing workers attempting to form a trade union, prohibiting union leaders and members from engaging in union activities, enticing leaders/members to leave the trade union, refusing to give overtime or other work-related promotion to trade union members/leaders and refusing to engage in and honour collective bargaining agreements. Employers violate the law by influencing the formation of a trade union or attempting to dismantle the trade union.

b) Dispute Resolution

1. *Description*

Dispute resolution establishes a means to resolve issues that arise in the employment relationship, individually or collectively. Disputes may arise over statutory or contractually agreed worker rights, or they may involve workers interests upon which the employer and workers do not yet agree.

2. *Myanmar Requirements*

The Settlement of Labour Disputes Law, 2012 (SLDL) with the Second Amendment to the SLDL, 2019, sets out a system by which workplace grievances shall be settled. Employers in any business or trade where more than 30 workers are employed must form a Workplace Coordinating Committee (WCC) consisting of an equal number of employers' and workers' representatives; if there is one or more Basic labour Organizations (BLO), three representatives nominated by each labour organization; if there are no labour organizations three representatives elected by the workers. Any grievances raised before the WCC by either the employer, workers or a BLO member must be negotiated and a settlement sought within 5 days.

If a settlement cannot be agreed between the parties at WCC level then the law requires the grievance to be referred to the relevant Township Conciliation Body (TCB).¹³ The TCB shall determine whether it is an interest or right dispute and seek to conciliate within 3 days. In the case of a right dispute, if either party is dissatisfied with the outcome, they must then initiate civil proceedings in the competent court. This option is not available for interest disputes.

If the TCB is unable to resolve an interest dispute to the parties' satisfaction, then it must refer the matter to the Dispute Settlement Arbitration Body (AB)¹⁴ who must issue a decision within 7 days. If either party is dissatisfied with the decision the following options may be utilized:

- Either party may proceed to strike or perform a lockout in accordance with the Labour Organization Law, 2011.
- Both parties may apply within 7 days of the decision from the AB to have the dispute heard by the Arbitration Council (AC).

3. *Common non-conformities*

When workplaces grievances arise, employers may not have a policy and procedure to handle them. Thus, disputes may not be handled appropriately or based on the procedure set out by local law. Some employers may not have formed a WCC. Companies which interfere with strike action during a dispute resolution process are in violation of the law.

With the summary of the audit areas set out above, next is a description of the toolkit which will be used to implement the audit service.

C. Toolkit: the tools used by VLCA and your company for the labour audit

Below is a brief description of the toolkit used to implement the labour audit service.

1. **Tool #1, Annex A – Required documents:** list of required documents that your company will provide prior to the audit.
2. **Tool #2, Annex B – Voluntary Audit Officer (VAO) Questionnaires and guidelines:** interview questions and guidelines for the VAO.
3. **Tool #3, Annex C – VAO Audit & Self-evaluation assessment, post-assessment report, and final report:** an evaluation tool for the VAO to audit your company and for your company to assess its own labour standards performance, including reports to assess the compiled data.
4. **Tool #6, Annex D - Improvement plan:** format of plan to improve labour standards based on the assessment report and final report.

¹³ Formed at State/Region level

¹⁴ Also State/Region-level



V. What happens after the audit?

Once the audit is complete, the VAO will issue a final report and an improvement plan to your company. The final report will summarize all the areas of concern which need to be acted up to improve your labour standards performance. The improvement plan will set out specific actions to be taken to reach the objectives in the plan.



VI. How can your company access VLCA?

Please contact the MGMA Labour Officer at:

Myanmar Garment Manufacturers Association (MGMA)
<https://www.myanmargarments.org/>
9 Floor, UMFCCI Tower
29 Min Ye Kyaw Swar Street,
Yangon, Myanmar

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labourofficer.myanmargarments@gmail.com

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Monday-Friday, 9:30 AM-5:30 PM



Notes

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