

Heightened Human Rights Due Diligence - Brand Guidance Myanmar

INTRODUCTION

[Fair Wear's Human Rights Due Diligence Policy](#) outlines the responsibility of brands in relation to human rights due diligence, including prevention of harm to workers and improvement of working conditions where rights are at risk or violated. The policy uses the definition as introduced in the United Nations Guiding Principles on business and human rights (UNGP, 2011), where the concept of human rights due diligence is described in guiding principle 17 and 18 of the UNGP. Related to doing business in conflict areas UN has provided [specific guidance](#) for heightened actions for governments and brands.

Since the lifting of the economic sanctions Fair Wear has regarded Myanmar as a country that carries additional risks regarding the implementation of labour standards. Therefore, sourcing from Myanmar requires additional specific measures from Fair Wear member companies, in addition to what Fair Wear requires of its member companies in other production countries. These are laid down in [Fair Wear Enhanced Monitoring Framework for Myanmar dated](#) April 2018.

With the deteriorating situation in Myanmar since the coup in February 2021, the key question is whether brands can still conduct meaningful human rights due diligence or whether sourcing in Myanmar causes greater harm to the rights of workers than good. Fair Wear expects its members to reassess their presence in Myanmar and in consultation with its stakeholders updated its guidance to the below 'heightened Human Rights Due Diligence' to help guide this assessment.

HEIGHTENED HUMAN RIGHTS DUE DILIGENCE

- All member brands and their suppliers in Myanmar are to refrain from buying any goods and services from companies that are known to be linked to – or owned by – the military services of Myanmar.

More specifically:

- Member brands are to refrain from sourcing from factories in the three Special Economic Zones (SEZ) Dawei, Kyauk Phyu and Thilawa, as the legal framework is considered not to provide adequate protection of workers' rights including proper

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access to grievance mechanisms. Furthermore, the development of the SEZ's is often associated with land grabbing and forced evictions.

- Member brands are required to refrain from sourcing from companies with known direct links to the military, including in particular with companies that fall under the economic conglomerates owned by the army, i.e. the Myanmar Economic Corporation (MEC) and the Union of Myanmar Economic Holdings (UMEH, also known as Myanmar Economic Holding Ltd. or MEHL). This includes factories that are operating from Ngwe Pinlae Industrial Zone and Pynmabin Industrial Zone, which are owned by UMEH/MEHL.

Furthermore, considering the current situation in Myanmar:

- Member brands that are not active in Myanmar at present, HRDD can only lead to the conclusion to not start producing in Myanmar.
- Brands that are already active in Myanmar should not start production at new production locations in Myanmar (even if these fall under the same mother company of another factory producing for the brand).
- Brands should conduct heightened human rights due diligence and carefully weigh all relevant aspects before placing new orders. More details below.
- When it becomes increasingly difficult, or no longer possible, to harness your leverage to address and remediate labour violations, if and when these occur, or when you are not able to adequately monitor the working conditions at your suppliers, brands should consider responsible disengagement.
- Whenever deciding to stop, decrease or pause sourcing from a supplier, the utmost care must be taken to assess the impact on workers. Workers' rights need to be respected and, in case of lay-offs, workers need to receive their legal entitlements, including severance pay. Also, the intentions of the brand related to exit from a supplier should be clearly and timely communicated by the brand to their business partner, and where applicable by the supplier to the factory, in a comprehensive manner. The timeline for exiting a factory should be proportional to the percentage volume the brand has within the factory. It is recommended to refer to our responsible exit strategy available on our website.

Fair Wear has started to elaborate an initial list of questions/issues that should/could be looked into as part of heightened HRDD. The list can be found in Annex I.

When the answer to these questions identifies certain red flags, issues for which there must be zero-tolerance, brands would need to consider pausing when it is considered that prospects for timely remediation/improvement are possible or withdrawing from the factory.

These red flags include:

- 1** Factory engaging with the military or entities who are on the US, EU sanction list.
- 2** Ties between the factory and the military. For example: ownership of companies and the land on which factories rented link to military entities including in particular with companies that fall under the economic conglomerates owned by the army, i.e. MEC, MEHL, Ngwe Pinlae Industrial Zone and Pynmabin Industrial Zone etc.
- 3** If the factory, or its mother company, is owned by members of the junta, senior military leadership or their families, or individuals that are known 'cronies' of the military.
- 4** Taking advantage of the current political instability, the factory has suppressed the union in a way of violation of the Township Conciliation Agreement or Violations of previous bipartite agreements negotiated in the past. Former collective agreement between unions and employers that were unilaterally abolished by employer.
- 5** Workers and trade unionists that are punished for participating in protests and strikes against the coup.
- 6** Significant lack of trust between buyer and factory management that prevents brands from monitoring the situation. For example, no communication possibilities or no access to information to conduct human rights due diligence.
- 7** Significant deterioration of working conditions possibly affecting several labour standards.
- 8** No possibility to address problems collectively for workers.
- 9** No proper access to a grievance mechanism for workers that addresses their issues.

Should one of these red flags be present, responsible disengagement is required.

HOW FAIR WEAR SUPPORTS AND VERIFIES HRDD IN MYANMAR

Fair Wear continues to actively engage with stakeholders and partners on the ground to get as much information as possible to inform our members. Our local team monitors media reports and is in contact with local stakeholders and workers despite the challenging circumstances.

Complaints handling

Fair Wear has since the coup not been able to conduct in-factory visits for audits or factory trainings. This is due to the coup, and the fact that factories are generally based in industrial zones that fall under martial law, which increase the security risks for Fair Wear local staff travelling to the factories. In addition, COVID-19 prevented the audit team from traveling and the trainers from gathering workers to participate in a training.

However, it is worth pointing out that throughout the coup and despite its challenges, Fair Wear has been able to continue operating its local **complaints helpline**; one of the very few functioning channels for workers to seek access to remedy. Particularly in the absence of the rule of law, the leverage of brands becomes increasingly important. It is an extraordinary achievement that we have been able to resolve cases with the support of our member brands.

However, in the last years there has been an increase in worker turnover, and a growing number of workers with whom we have been in contact in the past no longer work for factories concerned. At the same time, doing factory training has become more difficult. We therefore decided to print additional **worker information cards**, which contains our COLP and the complaints helpline number, and we will ask brands to urge suppliers (and ask for proof) to provide these cards to all the workers in the factories concerned.

Information collection: virtual assessments, worker voice and direct input

In the absence of on-site audits, and in order to support brands in assessing whether the situation is deteriorating for multiple labour standards (number 7 of the red flags), we are exploring the possibility to conduct virtual assessments. The local audit team, which has experience with such assessment, has developed a protocol, which a.o. includes the dissemination of worker Information cards, offsite worker Interviews (by telephone), stakeholder interviews, document Inspection and virtual factory tour. We would like to pilot this approach in a few factories in the new year to see whether it would generate sufficient reliable information. Please note that we are in discussion with some brands to plan the first virtual assessment. Of course we should realize that a virtual assessment may never be as comprehensive as a normal audit, but it may be the best we can do under these difficult circumstances.

In an attempt to get clarity on specific situations in members' supply chain factories, we hope to use our connections to actively check in with workers. Our local team can observe near factories and try to speak to workers as much as possible.

Moreover, Fair Wear is translating the worker awareness raising videos to Burmese, which can be shared with workers and management to promote awareness of labour rights and the complaints helpline.

Responsible Exit Strategy for Myanmar

Whenever brands do decide to stop, decrease or pause sourcing from a supplier, the utmost care must be taken to assess the impact on workers. For this, we urge to as much as possible consult them collectively. Workers' rights need to be respected and, in case of lay-offs, workers need to receive their legal entitlements, including severance pay. This means agreements must be made to ensure the legal payments are done where applicable. Also, the intentions of the brand related to exit from a supplier should be clearly and timely communicated by the brand to their business partner, and where applicable by the supplier to the factory, in a comprehensive manner. Given that not all steps of Fair Wear's regular

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responsible exit strategy can be followed, further considerations on responsible exit are communicated to Fair Wear Member Brands.

Annex I: Heightened HRDD KEY QUESTIONS

References used:

- HRDD policy for FW members
- UN Guiding Principles
- OECD Due Diligence Guidance for RBC 2018
- <https://socialeurope.eu/human-rights-due-diligence-and-myanmar>
- <https://www.hrw.org/news/2021/11/19/letter-human-rights-watch-institutional-shareholders>
- https://www.ethicaltrade.org/sites/default/files/shared_resources/Human%20rights%20crisis%2C%20Myanmar_o.pdf
- <https://mneguidelines.oecd.org/OECD-Garment-Forum-2020-Session-Note-Enhance-Due-Diligence-Myanmar.pdf>
- https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/129703.pdf
- https://www.ethicaltrade.org/sites/default/files/shared_resources/ETI%20Statement%20on%20Sourcing%20From%20Myanmar%2027-08-2021_o.pdf

Crimes against humanity

1. Are inhumane acts like murder, enforced disappearance, torture, rape, severe deprivation of liberty etc. happening to workers in general?

Ethical Business Investments/ relationship

2. Is the factory engaging with the military or entities who are on the US, EU sanction list? Are there any ties between the factory and the military? For example: ownership of companies and the land on which factories rented link to military entities including in particular with companies that fall under the economic conglomerates owned by the army, i.e. MEC, MEHL, Ngwe Pinlae Industrial Zone and Pynmabin Industrial Zone etc.
3. Is the factory, or its mother company, owned by members of the junta, senior military leadership or their families, or individuals that are known 'cronies' of the military?
4. Do suppliers remain neutral/trustworthy?
5. Do suppliers force workers to pay social security fund without benefiting from the social security system?
6. Are there any joint enterprise structures and/or business relationships that these questions would apply to?

Forced labour

7. Has the factory management called in the army to suppress unrest, to arrest workers' leaders who participated in CDM or democratic movement or for COVID vaccinations, etc?
8. Were workers able to join the CDM or democratic movement?
9. What is the contract situation of workers?
10. Has the situation changed to no employment contracts as well as no extension of the EC?
11. Has there been any change in the production targets?
12. Is there any form of punishment that violates workers' rights if the workers are behind the target?

13. Is there any case of workers' salary being withheld or reduced during resignation?

Freedom of Association

14. Are unions free to operate as before the coup? Eg. Is there not more restriction on union activities or prohibition of union activities in the workplaces?
15. Have union leaders been disproportionately dismissed or targeted for dismissal?
16. Taking advantage of the current political instability, has the factory suppressed the union in a way of violation of the Township Conciliation Agreement or Violations of previous bipartite agreements negotiated in the past? Were Former collective agreement between unions and employers abolished by employer one sided?
17. Are workers and trade unionists punished for participating in protests and strikes against the coup?
18. Is there short notice to workers/ union members to resume their work after three days leave/ absent? If not, are workers automatically fired from work without any compensation?
19. When factories reopened, did they inform and re-hire only non-union members?
20. When re-hiring or new recruiting, have workers been forced to make a (verbal) pledge not to get involved or form union inside the factory?
21. Is there any pre-employment warning that workers will be fired if you join union or participate in union/ labour support activities?
22. Does the factory publish new workplace rules without consulting with workers' representatives or unions?
23. Have union leaders or active workers who have been laid off been blacklisted so that they will not get any job in another/ the same industry?
24. Have factories failed to provide any leaves (casual, annual, sick or without paid) to unionists or workers who had joined democratic movement or CDM?
25. Have factories threatened the union leaders not to get involved in any political movement as well as union activities?
26. Does the factory cooperate when military is asking factory owners to disclose the names and addresses of trade union leaders, to arrest them, and when they are going door-to-door in worker dormitories and hostels searching for them?

Discrimination

27. Were workers who joined the CDM or democratic movement penalized in some way, e.g. by treating them as illegally absent or intimidated or fired?

Child Labour

28. Has the factory recruited child or young workers?
29. When child labors are recruited, are they paid the minimum wage? Have the appropriate medical certificates been arranged?
30. Is the factory still using Age Verification System during recruitment?

Wages

31. How are the wages of workers affected? Is there less pay but more work?
32. Did factory pay workers on the payday or is the payment of wages delayed?
33. Are workers underpaid only minimum wage although they work over 8 hours?
34. Were dismissed workers paid their legal dues, including severance pay?

35. If there is more idle time (e.g. because fabric arrives late), are workers remunerated for these hours?
36. Are there any changes in allowances and benefits provided by the factory? Have they been reduced or cancelled?
(Example: no ferries, no bonuses as before. In addition, employer detects or fines more than 4,800 kyats which is more than minimum wage for one day off/ absence or leave. Working hours are up to 5PM/ 7PM in the evening. (In some industrial zone townships, curfew time start at 6PM/8PM). What is the situation in the factory?)
37. When there are changes in the wages and benefits, are workers or their representatives consulted/ give consent?

Working hours

38. Are there any changes in the regular working hours?
39. Is production planning disrupted due to the political unrest in the country? Does it cause unannounced or mandatory overtime at work?
40. Does the factory still provide at least one day off in 7-day period and public holidays as per the law?

OSH

41. Are workers able to safely travel to the factory by regular transportation?
42. Are safe and healthy working conditions provided as before?
43. Does the factory still follow the COVID 19 measures?
44. How is the working atmosphere in the factory? More abusive? Are there more harassment cases?
45. Taking advantage of political instability and lack of rule of law, have there been incidents of foreign or domestic management who abused/assaulted/sexually harassed workers?
46. Do workers (mostly domestic migrants) have to pay additional fees to the military, e.g. for residence permits, guest registration fees or other penalties?

Legally binding employment

47. Does the factory hire workers with proper contracts and benefits? Is there any use of long-term casual workers with lower pay?
48. Has the factory discontinued employment contracts without any valid reason?

Grievance Mechanisms

49. Is there any state laws enforcement mechanism for workers to file a complaint? Does this still function or has this failed?
50. are there regular factory visits or checks by labour inspectors as before? Are the labour officials trusted by workers?
51. Do any respected and trustful grievance mechanisms for workers remain?
52. Are the workers safe to file a complaint to state or private disputes settlement mechanisms?

Responsible sourcing impact

53. Did the factory have to downsize?
54. Is production still running?

55. Have delivery times for finished goods been impacted? What about the import of raw material/fabric?
56. Has the factory temporarily closed without notice and without informing workers when they reopen?
57. Has the factory permanently closed without paying compensation?

Relevant sources of information to verify whether companies and individuals are linked to the military:

1. UNFFM Report

https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf

2. Sanctions List

UK Sanctions on Myanmar

<https://www.gov.uk/government/publications/financial-sanctions-burma>

EU Sanctions on Myanmar

<https://burmacampaign.org.uk/about-burma/targeted-sanctions/burma-sanctions/>

US Sanctions on Myanmar

<https://www.state.gov/burma-sanctions/>

Australia Sanctions on Myanmar

<https://www.dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/myanmar-sanctions-regime>

Canada Sanctions on Myanmar

https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng

3. Foreign Investment relationship with military

<https://burmacampaign.org.uk/take-action/dirty-list/>

4. Military owned/linked companies

<https://burmacampaign.org.uk/media/The-Boycott-List.pdf>

<https://www.justiceformyanmar.org/stories/myanmar-military-controlled-businesses-associates-that-require-targeted-sanctions>