MAYER·BROWN
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2013-2014

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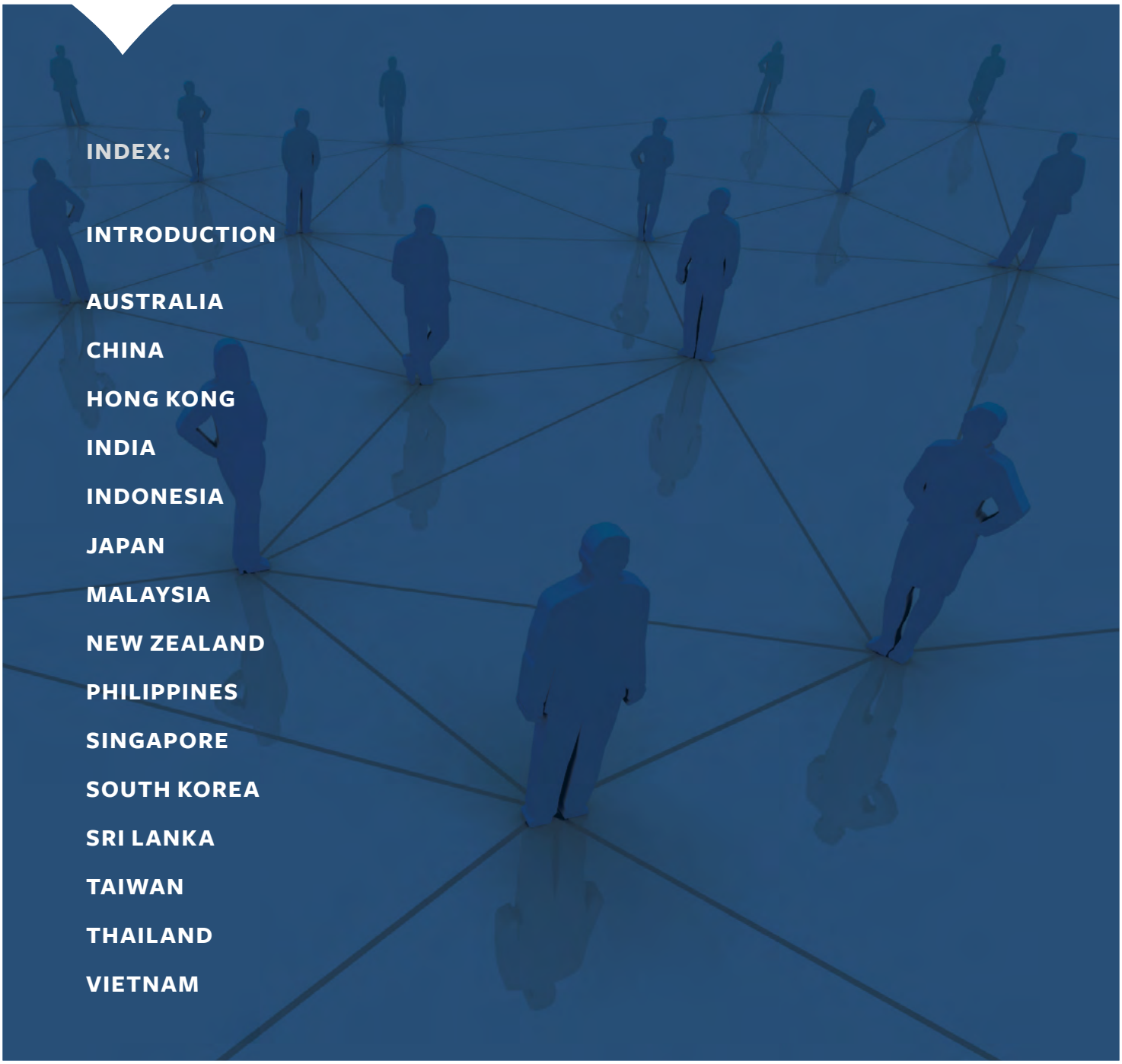

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INTRODUCTION

UPDATED AS AT MARCH 2014

Asia's legal and human resources advisors are often required to function across multiple jurisdictions. Staying on top of employment-related legal developments is important but can be challenging.

To help keep you up to date, Mayer Brown JSM produces the **Asia Employment Law: Quarterly Review**, an e-publication covering 15 jurisdictions in Asia. It is updated every quarter.

In this fifth edition, we flag and provide comment on anticipated employment law developments during the first quarter of 2014 and highlight some of the major legislative, consultative, policy and case law changes expected during the rest of the year.

This publication is a result of ongoing cross-border collaboration between 15 law firms across Asia with whose lawyers Mayer Brown JSM has had the pleasure of working with closely for many years. For a list of contributing lawyers and law firms, please see the *contacts page*.

We hope you find this edition useful.

With best regards,

Duncan Abate
Partner
+852 2843 2203
duncan.abate@mayerbrownjsm.com

Hong Tran
Partner
+852 2843 4233
hong.tran@mayerbrownjsm.com

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LOOKING BACK

AUSTRALIA 14 NOV 2013

Building and Construction Industry (Improving Productivity) Bill introduced into Federal Parliament

The Coalition Government elected to office on 7 September 2013 introduced the *Building and Construction Industry (Improving Productivity) Bill 2013* into Federal Parliament. One of the first bills to emanate from the new Government, this proposed legislation reflects the Coalition's desire to tackle unlawful conduct by trade unions in the construction industry as a major priority.

The Bill proposes to expand the scope of regulation of the building industry by including the transportation or supply of goods to building sites and offshore resources platforms; re-establish the Australian Building and Construction Commission with strong investigatory powers; and impose new limits on unlawful industrial action and picketing with higher penalties for non-compliance.

A Senate Committee considering the Bill is due to report at the end of March. The Government is unlikely to obtain Parliamentary support for passage of the Bill until after the composition of the Senate changes on 1 July 2014. However, there will be increased pressure on the Labor Opposition and Greens to pass the Bill before 1 July in light of recent corruption allegations against the Construction, Forestry, Mining and Energy Union which have been widely reported in the Australian media.

More...

AUSTRALIA 14 NOV 2013

Fair Work (Registered Organisations) Amendment Bill introduced into Federal Parliament

Also high among the Coalition Government's legislative priorities is a new scheme of regulation for Australian trade unions and employer organisations (although the Bill implementing this scheme is mostly directed at unions, in response to corruption scandals in the Health Services Union and now the CFMEU).

The *Fair Work (Registered Organisations) Amendment Bill 2013* proposes to increase the financial, disclosure and transparency obligations of officials within registered unions and employer bodies; significantly increase the penalties for serious breaches of officers' duties; and create a new regulatory agency, the Registered Organisations Commission, to oversee the new laws. These changes are largely modelled on the system of regulation for companies and corporate directors under the *Corporations Act 2001* (Cth). The Bill was passed by the House of Representatives on 12 December 2013, and is now being considered by A Senate Committee.

On 10 February 2014, the Government announced the establishment of a Royal Commission to inquire into union governance and corruption. Former High Court of Australia Judge, The Honourable John Dyson Heydon QC AC, will lead the inquiry and will be asked to report to the Government by the end of 2014.

More...

AUSTRALIA 12 DEC 2013

Federal Court prevents Toyota from holding workforce ballot on enterprise agreement changes

In *Marmara v Toyota Motor Corporation Australia Limited* [2013] FCA 1351, Justice Bromberg of the Federal Court of Australia found that the company had breached the 'no extra claims' clause in its enterprise agreement by seeking changes to the agreement which it considered necessary to remain competitive.

The decision, handed down the day after Holden announced it would close its Australian manufacturing operations in 2017, appears to have deprived Toyota of access to the agreement variation provisions under the *Fair Work Act 2009* (Cth). These provisions enable parties to vary enterprise agreements during their term, using a consensual process including an opportunity for employees to vote on any proposed changes.

Justice Bromberg subsequently issued an injunction preventing a ballot on the proposed agreement variations from taking place. However, Toyota has appealed against the judge's decision and the Federal Government has indicated it will intervene in support of the appeal. (*con't*)

AUSTRALIA
12 DEC 2013

The Holden closure and Toyota decision triggered a debate, which continued into the new year, over appropriate levels of government assistance for Australian manufacturing industry. In late January, the Government announced it would not provide further funding to ensure the continued survival of struggling fruit processor SPC Ardmona (owned by Coca-Cola Amatil). The Prime Minister and Employment Minister have indicated that companies in this situation must reduce employment entitlements under their enterprise agreements, before seeking further public funding.

On 10 February 2014, Toyota announced that like Holden, it will cease producing cars in Australia in 2017.

AUSTRALIA
13 DEC 2013

Full Federal Court upholds unfair dismissal ruling in favour of novice Facebook poster

In *Linfox Australia Pty Ltd v Fair Work Commission* [2013] FCAFC 157, the Full Federal Court upheld a Fair Work Commission (FWC) Full Bench decision that an employee was unfairly dismissed despite his posting of highly offensive comments about his managers on Facebook.

The Court held that the FWC had not made any jurisdictional error in its ruling that the employee should be reinstated (*Linfox Australia Pty Ltd v Stutsel* [2012] FWAFB 7097). The Full Bench had taken into account the employee's age; his 22 years of service with the employer and good employment record; and his inexperience in using Facebook and lack of understanding of its privacy settings.

In other decisions involving social media misuse by employees, the FWC has taken a harder line – finding that employees were lawfully dismissed for serious misconduct where their Facebook posts or Twitter comments (even outside the workplace) have damaged the employer's reputation or other business interests.

More...

AUSTRALIA
17 DEC 2013

Who employs labour hire workers? Fair Work Commission rejects the concept of 'joint employment'

In *FP Group Pty Ltd v Tooheys Pty Ltd* [2013] FWCFB 9605, a Full Bench of the FWC held that FP Group was the true employer of workers it supplied to Tooheys under a labour hire arrangement.

In reaching this conclusion, the Full Bench rejected FP Group's argument that Tooheys was a joint employer of the workers, and held that the concept of joint employment has not been endorsed by Australian authorities. The Full Bench also held that the role of the FWC does not extend to developing the common law.

More...

AUSTRALIA
19 DEC 2013

Full Federal Court finds Victorian Government's implementation of Construction Code lawful

In *State of Victoria v Construction, Forestry, Mining and Energy Union* [2013] FCAFC 160, the Full Federal Court overturned a number of earlier decisions of Justice Bromberg (including the imposition of A$53,000 in civil penalties) to find that the State of Victoria did not breach the *Fair Work Act 2009* (Cth) through its implementation of the Victorian Government's Construction Code and Implementation Guidelines.

The Full Court decision legitimises the State Government's use of procurement policy to pursue industrial relations objectives, by requiring tenderers for government-funded building projects to comply with certain obligations (including not having "union-friendly" clauses in their enterprise agreements).

The CFMEU has lodged an application in the High Court of Australia for special leave to appeal against the Full Federal Court's decision.

AUSTRALIA
1 JAN 2014

New anti-bullying laws take effect

The former Labor Government's amendments to the ***Fair Work Act 2009*** (Cth) commenced operation, enabling workers to seek orders from the FWC to stop workplace bullying. (*con't*)

LOOKING BACK

AUSTRALIA

1 JAN 2014

Although large numbers of bullying claims were anticipated, as at the end of January only 44 claims had been lodged with 6 of these withdrawn during the Commission's preliminary assessment process. However, many Australian workers were on annual leave during this period; and the level of claims is still expected to climb as people become more familiar with the FWC's new anti-bullying jurisdiction.

More...

AUSTRALIA

22 JAN 2014

Some details emerge of Federal Government's proposed Paid Parental Leave scheme

One of the Coalition's key election policies was the introduction of a new Paid Parental Leave (PPL) scheme, providing mothers with 26 week's pay at their actual pay (capped at A$150,000 per annum) following the birth of a child. This would replace the current PPL scheme, under which mothers receive 18 weeks' pay at the national minimum wage, from 1 July 2015.

Legislation implementing the new PPL scheme has not yet been introduced into Parliament. However, following speculation that the Government may attempt to override employers' existing PPL arrangements, the Social Services Minister indicated that employers will continue to be able to operate their own PPL policies to attract staff (with the new scheme applying as a minimum standard).

The revamped PPL scheme will be funded by a 1.5% levy on Australia's 3,000 largest companies, and for this reason has been unpopular with some business leaders.

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY:

CORRS CHAMBERS WESTGARTH lawyers

LOOKING BACK

CHINA

1 MAR 2014

Interim Provisions on Labour Dispatch take effect

Wording: PRC Ministry of Human Resources and Social Security (MOHRSS) issued on 24 January 2014 the Interim Provisions on Labour Dispatch ("Interim Provisions"), which will become effective as of 1 March 2014. As one of the supporting regulations to the Amendments to the PRC Labour Contract Law, it further characterises the labour dispatch arrangement as an auxiliary mode to mainstream employment arrangements, specifies the utilisation limit of labour dispatch arrangements, elaborates on the statutory circumstances and restrictions for returning a labour dispatch staff back to the labour dispatch company, and fixes the duration of the transitional period for compliance with the statutory utilisation limit of labour dispatch arrangements.

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: MAYER·BROWN JSM

LOOKING BACK

HONG KONG
JAN-DEC
2013

9 convictions for under-payment of statutory minimum wage

As at the end of 2013, there have been 35 convicted summonses of 9 cases against employers for under-payment of statutory minimum wage since the Minimum Wage Ordinance came into force on 1 May 2011. One employer was fined HK$25,000. These cases involved employers from various sectors such as elderly care, security, trading and personal services. The prosecutions were brought by the Labour Department.

More...

HONG KONG
24 JAN
2014

Standard Working Hours Committee holds fifth meeting

The Labour and Welfare Bureau set up a Special Committee on Standard Working Hours in the first quarter of 2013. The Committee on Standard Working Hours has now held its fifth meeting and is considering the progress reports of its two working groups (WGs) on "Working Hours Consultation" and "Working Hours Study".

The Committee supported the Consultation Group's proposal on the commencement of public engagement and consultation on working hours. For details, please refer to "Standard Working Hours Committee commences public engagement and consultation" below.

On working hours study, the Committee has been briefed on the relationship between working hours and the macroeconomic environment and the analysis of the socio-economic characteristics of employees with longer working hours. Surveys on working hours will be conducted in the second quarter of 2014 to collect working hours statistics and views on working hours issues from workers, including those in sectors with relatively longer working hours or distinctive working hours patterns.

More...

HONG KONG
27 JAN
2014

Chief Executive's 2014 Policy Address: Policy initiatives of the Labour and Welfare Bureau

The Labour and Welfare Bureau will launch two pilot projects with the Vocational Training Council in the first quarter of 2014. These two projects will provide about 480 on-the-job training places in 2014. Further, the government will provide additional 1000 places for another on-going training scheme for young people.

The Labour Department will continue to support the employment of young people, middle-aged and persons with disability by providing allowance to employers under the Youth Employment and Training Programme, the Employment Programme for the Middle-aged and the Working Orientation and Placement Scheme.

More...

HONG KONG
28 JAN
2014

Standard Working Hours Committee commences public engagement and consultation

The Committee on Standard Working Hours launched its public engagement and consultation exercise on working hours. The Committee has held its first meeting with two employers' associations and a labour organisation to listen to their views on working hours issues. The Committee is expected to meet other major employers' associations and labour organisations on 13 and 14 February 2014.

The Committee will organise symposia and forums to conduct consultation in four directions, namely (i) the sectors with relatively longer working hours mentioned in the Report of the Policy Study on Standard Working Hours, (ii) specific occupations/professions, (iii) the general public in districts and (iv) other major industries and organisations. Over 30 consultation sessions are expected to be convened in the first half of 2014.

More...

LOOKING FORWARD

HONG KONG
PENDING
2014

Contracts (Rights of Third Parties) Bill 2013

The Bill proposes a variation to the common law rule of privity which would enable a non-party to a contract to enforce the terms. The Bill excluded certain kinds of contracts, including a contract of employment against an employee. The Consultation Bill is expected to be introduced into the Legislative Council in early 2014.

More...

LOOKING FORWARD

HONG KONG
PENDING (1 JUNE)
2014

Maximum mandatory contribution to be increased

On 17 July 2013, the Legislative Council passed an amendment to increase the maximum relevant income level from $25,000 to $30,000 per month, with effect from 1 June 2014. Accordingly, the maximum mandatory contribution amount will increase from $1,250 to $1,500 per month from 1 June 2014.

More...

HONG KONG
PENDING
2014

Paternity Leave Legislation Update

Draft legislation has now been proposed which will introduce paternity leave and paternity leave pay for many of Hong Kong's employees. This legal update sets out the key elements of the proposed new benefit.

Who is entitled to Paternity Leave?

1. Every employee who is employed under a "continuous contract" (i.e., satisfies the "418" rule) is entitled to three days' Paternity Leave in respect of the birth1 of each child2 of which he is the "father".
2. The term "father" is not defined in the new legislation. It is, however, defined in section 5 of the Parent and Child Ordinance (Cap.429)3 which provides that a man is presumed to be the father of a child if:-
   - » the father was married to the mother at the time of conception or birth, or
   - » he is registered as the father on the register of births.

When can Paternity Leave be taken?

3. The three days of Paternity Leave can be taken consecutively or separately. Such days can be taken at any time in the period commencing four weeks prior to the expected date of birth and ending 10 weeks after the actual date of birth.

Note: A father can take Paternity Leave before, as well as after, the birth.

More...

HONG KONG
PENDING
2014

Discrimination Law Review

A consultation paper is being drawn up to consider proposed amendments to the Anti-Discrimination Ordinances. These amendments are likely to involve substantive changes. A public consultation is expected to be launched some time in 2014.

More...

HONG KONG
PENDING
2014

New minimum wage level to be proposed in 2014

The Minimum Wage Commission will review the Statutory Minimum Wage rate. It is expected that the Commission will submit a proposal on minimum wage level adjustment to the Chief Executive by the end of 2014.

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

INDIA
18 NOV 2013

Amendment to Rules under the Employees State Insurance Act, 1948 ("ESI Act")

Rule 56-A of the Employees' State Insurance ("**ESI**") (Central) Rules, 1950 titled Confinement Expenses provides that a woman entitled to the benefits under the ESI Act shall be paid a sum of INR 2,500 as a medical bonus on account of confinement expenses. This medical bonus is paid to pregnant women where medical facilities under the Employees' State Insurance Scheme are not available. Through a notification dated 3 July 2013, the Ministry of Labour and Employment had proposed to increase the amount of medical bonus payable to eligible women from INR 2,500 to INR 5,000.

By a circular dated 18 November 2013, the ESI Corporation has confirmed the proposed amendment and the amount payable as medical bonus on account of confinement expenses has been increased from INR 2,500 to INR 5,000.

More...

INDIA
9 DEC 2013

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Now in Force

Wording: The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the "**Act**") received the assent of the President on 22 April 2013. However the Act did not come into force as the Rules under the Act were yet to be formulated. Some of the significant obligations of an employer under this Act are:

- Provide a safe working environment for women.
- Constitute an internal complaints committee and display the order constituting the committee so that it can be easily seen.
- Undertake workshops and training programmes at regular intervals for the purpose of raising employee awareness about sexual harassment.
- Provide assistance during an inquiry.
- Promptly initiate action in accordance with the recommendations provided by the committee on the basis of the inquiry.
- Treat sexual harassment as a misconduct, take appropriate action in response to such misconduct, and keep members of the internal complaints committee informed

On 9 December 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (the "Rules") were notified and the Act came into force with effect from the same date. The Rules facilitate the implementation of various provisions in the Act, for example, by setting out the procedure and timelines for conducting an enquiry under the Act.

All employers are now required to set up an internal complaints committee at each of their offices and must also have a policy on sexual harassment. Non-compliance with the provisions of the Act is punishable with a fine which may extend to INR 50,000 in the first instance. Repeated violations are likely to result in higher penalties which could include cancellation of the employer's licence or registration to do business.

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: TRILEGAL

INDONESIA
11 SEP 2013

Outsourcing of Labour Supply Restricted to Five Circumstances

Under Section 17(2) of Reg. 19, the type of work that can be delegated to the Labour Supplier must be "supporting services or activities that are not directly related to the main production process". Section 17(3) states that "supporting services as intended by section (2) shall include (*meliputi*):

a. cleaning services;
b. catering services for employee/labour;
c. security services;
d. supporting services in mining and oil industry; and
e. transportation services for employee/labour".

The Ministry of Labour has recently issued a ruling letter to our firm confirming that these are the only circumstances in which outsourcing of labour supply is permitted.

The Ministry of Labour also confirms that any activities outside of these five circumstances can be outsourced through a services agreement arrangement (rather than outsourcing of labour supply) provided that the intended activities fall within the ancillary activities identified in the relevant industry association "Flowchart" and user company's "Description" as being open to outsourcing by services agreement.

INDONESIA
19 SEP 2013

Limitation Period on Employee Claims Struck Down

The two year limitation period for employees to file claims for wages and benefits under Article 96 of the Manpower Law has been struck down by Constitutional Court Decision No.100/PUU-X/2012. Given the resulting increased risk of old claims, employers are well advised to properly document and process employee terminations.

INDONESIA
19 NOV 2013

Increased Protection for Outsourced Workers: Regulation 19

The Ministry of Labour recently issued Regulation 19 clarifying the restrictions and requirements applicable to the outsourcing of labour supply and subcontracting of work between companies. The focus of attention has been on outsourcing – labour supply. However, all subcontracts of services are also subject to various new restrictions (i.e., non-core activities only), registration requirements for the service contracts themselves, and various supporting documents.

Some industry associations have issued the necessary "Flowchart" describing the core activities in their respective industries in contrast with the ancillary activities that can be subcontracted to service providers. All companies wishing to enter into or continue services agreements after November 19, 2003, must file their own "Description" of core vs. ancillary activities at the Ministry of Labour which must be consistent with the industry Flowchart.

The Ministry of Labour has recently published SE.04/Men/VIII/2013 which was dated August 26, 2013 regarding Guidelines for Implementing Regulation of MOMT Reg. No.19 of 2012. This decree clarifies the procedures and forms to file outsourcing related documents with the Ministry of Labour.

"Controversy Over Outsourcing Regulation in Indonesia: Third-Party Contracting Arrangements"

INDONESIA
30 DEC 2013

New Rules on Hiring Expatriates

Minister of Manpower and Transmigration ("MOMT") issued MOMT Regulation No. 12 of 2013 regarding Procedures for Employing Foreign Manpower ("MOMT Reg 12") which contemplates several changes to the previous 2008 regulation and introduces a new mechanism on the temporary hiring of foreign employees.

Requirements to hire a foreign worker

A foreign candidate must meet provide: (i) suitable educational qualifications, (ii) suitable work experience of at least five years, (iii) an undertaking to transfer knowledge to Indonesians, and (iv) be able to communicate in the Indonesian language. The 2008 regulation merely required either point (i) or (ii), whereas the new regulation requires that both requirements be met. The language requirement is not new and there is no indication that there will be any change of policy in that regard. (*con't*)

LOOKING BACK

INDONESIA

30 DEC

2013

Foreign Worker Utilization Plan

The supporting documents now include a written Indonesian Counterpart Mentoring Program Plan (*Rencana Program Pendampingan*) in addition to the appointment letter of the Indonesian counterpart trainee.

Hiring Foreign Worker for Temporary Work

The MOMT Reg 12 provides a new mechanism to obtain a six month work permit for temporary work which is described as (i) work on a project basis, (ii) work that is related to machinery installation, electricity, after-sales service, or products in its business trial stage.

LOOKING FORWARD

INDONESIA

PENDING

2014

Minimum Wage Increases

Many employers have successfully applied to regional authorities for exemption from the minimum wage increases on financial grounds. Hundreds of these exemption approvals have been recently overturned by the Administrative Court which are now under appeal in the Supreme Court.

The recent Presidential Instruction No. 9 of 2013 dated September 27, 2013 and MOMT Regulation No. 7 of 2013 dated October 2, 2013 regarding Minimum Wage provide that minimum wage decision making by regional governments must take into account "Decent Living Component", productivity and economic growth.

"A Guide to Indonesian Employment Law"

LOOKING BACK

JAPAN

24 DEC

2013

Amendments to the Ordinance for Enforcement of the Equal Employment Opportunity Act

Amendments have been enacted to tighten prohibitions on sexual discrimination and sexual harassment in the workplace. The amendments will come into force on 1st July 2014. Among other things, employers will be prohibited from unreasonably requiring job applicants or employees to accept potential internal transfers involving relocation as a condition for employment, promotion or change of job type. These conditions were occasionally used to discriminate against or harass female workers who are generally considered to have less flexibility in relocating than male workers.

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: ANDERSON MŌRI & TOMOTSUNE

No significant policy, legal or case developments are anticipated within the employment space during 2014 Q1.

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: Shearn Delamore &co.

LOOKING BACK

NEW ZEALAND
9 OCT
2013

Facebook post was used by Court to determine whether there was constructive dismissal

Hook v Stream Group (NZ) Pty Limited [2013] NZEmpC 188:

The Employment Court held that comments that an employee had posted on his public Facebook profile relating to his decision to resign from his employment were admissible for the purpose of determining whether he had been constructively dismissed. The Court rejected the employee's claim, and used his Facebook posts to support its findings that he had resigned of his own volition.

More...

NEW ZEALAND
14 JAN
2014

Making an employee redundant while on maternity leave was ruled unjustified

Ledger v Delmaine Fine Foods Limited [2014] NZERA Auckland 10:

The Employment Relations Authority held that a redundancy that took place during an employee's maternity leave was unjustified. Despite the employer's claims that the redundancy was motivated by genuine economic reasons, the Authority found that the employer had failed to provide any financial records or projected cost savings to support its position. This case further demonstrates the recent trend of the Authority and Court to more closely scrutinise an employer's business case for a redundancy, placing a higher onus on an employer to justify any such decision.

More...

LOOKING BACK

PHILIPPINES
1 JAN 2014

Metro Manila workers' basic pay now P15 higher with Cost Of Living Allowance ("COLA") integration

Starting 1 January 2014, all minimum wage earners in the National Capital Region will enjoy an increase in their basic pay, following the integration of the P15 of the existing P30 COLA into their basic salary. Wage Order NCR-No.18 orders the integration to the basic pay of the P15 of the existing P30 COLA provided under Wage Order NCR-No. 17.

With the integration, the minimum wage rate for private sector workers in the NCR now stands at P466, composed of the P451 basic pay and the other half of the existing COLA, or P15.

More...

PHILIPPINES
1 JAN 2014

Philippine Health Insurance Corporation ("PhilHealth") Increases Contribution Rates

Effective 1 January 2014, PhilHealth has increased the mandatory contributions for the individual paying, overseas workers, and the employed sector.

Excerpts from MC 027-2013

1. The premium rate shall be at 2.5%
2. Salary bracket shall still be used
3. Salary bracket floor shall start at Php 8,000.00, with combined employer and employee contribution at PhP200.00
4. Salary Bracket ceiling shall be pegged at Php 35,000.00, with combined employer and employee contribution at PhP875.00

More...

PHILIPPINES
1 JAN 2014

New Social Security Systems (SSS) Contribution Table, Effective 1 January 2014.

The SSS has implemented a 0.6 percent increase in member contributions, divided equally between employees and their employers. Self-employed and voluntary members, however, would shoulder the entire 0.6 percent hike in monthly contributions, approved by President Aquino last year.

This means employees' monthly contributions will rise to 11 percent of a member's monthly salary from 10.4 percent. 70 percent of the monthly contributions will continue to be paid for by the employer, while the SSS member will shell out the remaining 30 percent.

Also to be raised beginning January is the ceiling for the monthly salary credit from P15,000 to P16,000.

The increase is equivalent to an additional monthly contribution of P6 for every P1,000 increment in the monthly salary credit.

An employee who earns P10,000 a month will now have to remit P1,100, with P746.70 to be shouldered by the employer.

More...

PHILIPPINES
29 JAN 2014

Foreign workers with pending Alien Employment Permit (AEP) application must secure Provisional Working Permit.

Foreign workers who have commenced employment in a local establishment even while their applications for the AEP or employment are still being processed are required to secure a Provisional Working Permit (PWP) from the Bureau of Immigration (BI).

BI Officer-in-Charge Siegfred B. Mison issued Operation Order SBM-No. 2013-019, or the Rules on Provisional Working Permit, reiterated the need for foreign workers to secure a PWP and prescribes the documentary requirements for the PWP.

The PWP shall be valid for three (3) months or until a working (commercial) visa has been issued in favour of the applicant, whichever comes first.

More...

SINGAPORE
11 NOV 2013

Representations to employee by employer on additional payments may be enforceable as a free- standing contract (Daniel John Brader v Commerzbank AG [2013] SGHC 284)

This case involves the then Chief Executive Officer of the bank announcing a retention plan to bank employees at a town hall meeting on 18 August 2008. As part of the retention plan, a discretionary bonus would be provisionally awarded to employees for 2008. However, on 18 February 2009, the management of the bank sent an email to all employees, noting the difficulties faced by the bank over the past year and announced that no bonuses would be paid for 2008 and all provisional bonus awards previously announced would be reduced by 90% pro rata. The employees then commenced an action to claim for either the balance 90% of their provisional bonus awards or alternatively, damages.

The High Court held that the 18 August 2008 announcement satisfied all the elements with regard to the formation of a valid contract: offer, acceptance, consideration and intention to create legal obligations. Therefore, the 18 August 2008 announcement constituted a free- standing contract, separate from the employees' employment contracts, despite the fact that the existing employment contracts stated that the bank retains the discretion to pay variable bonuses to the employees.

More...

SINGAPORE
12 NOV 2013

Parliament Passes Employment, Parental Leave and Other Measures Bill 2013

The Ministry of Manpower ('MOM') has made changes to the Employment Act ('EA') to extend better protection for more workers and improve employment standards, while allowing flexibility for employers where there are practical business concerns. As part of Phase One of the Employment Act Review, feedback was obtained through several platforms including an eight- week public consultation exercise from 19 November 2012 to 11 January 2013. In particular, under the enhanced EA, protection against unfair dismissal and sick leave benefits are extended to professionals, managers and executives ('PMEs') earning up to S$4, 500 a month. Also, non- workmen such as clerical staff and front- line service staff, earning up to S$2, 500 are now protected in terms of working hours, rest days and overtime payments. Previously, PMEs are excluded from the general protection accorded by the EA and the salary threshold for non- workmen covered by the EA was S$2,000. The new EA will also shield workers from excessive pay cuts by employers, with a 25 per cent sub- cap on deductions for accommodation, amenities and services. According to Acting Manpower Minister Tan Chuan- Jin, these changes will benefit some 450, 000 workers. Most of the changes will take effect on 1 April 2014.

More...

SINGAPORE
28 NOV 2013

MOM Takes Action Against 15 More Companies for Discriminatory Job Advertisements

The Ministry of Manpower ('MOM') has taken action against 15 more companies after investigations found the job advertisements of these companies were discriminatory and unaligned with the Tripartite Guidelines on Fair Employment Practices ('TAFEP'). This investigation was similar to an earlier investigation by the MOM in September 2013 regarding discriminatory job advertisements posted by 10 companies. As was required of the 10 companies, these employers will also have to put up online public apologies for 30 days and are barred from hiring new foreign workers during this 30- day period and 6 months following the publication of their apologies. This brings the total number of companies MOM has taken action against for discriminatory hiring practices since March 2013 to 27. MOM expects all employers doing business in Singapore to comply with the TAFEP and put in place fair employment practices. Non compliance will be viewed seriously and all companies and employment agencies ought to familiarize themselves with the TAFEP.

More...

SINGAPORE
18 DEC 2013

Implications on Overtime Work (Monteverde Darvin Cynthia v VGO Corp Ltd [2013] SGHC 280)

This case involves the employee claiming against the employer for overtime pay for hours worked in excess of the statutory limit of 44 normal working hours a week. The main issue was whether the employee's basic monthly wages of S$1, 900 covered the additional 16 hours of work per week done by the employee. The Labour Commissioner had previously held that as the employee had agreed in her employment contract to work for a maximum of 60 hours a week, the employer will only have to pay the 0.5 hourly basic rate premium on overtime hours worked, instead of the full overtime rate of 1.5 times hourly basic rate per overtime hour worked in addition to her basic monthly wages.

The High Court overruled the Commissioner's decision and held that the contractual obligation obliging the employee to work a maximum of 60 hours for a monthly salary of S$1, 900 should not be taken to mean that any possible overtime payment for work done beyond the statutory limit of 44 normal working hours is included in the monthly salary. The employer was therefore ordered to pay the employee 1.5 times the hourly basic rate per overtime hour worked in addition to her basic monthly wages.

The High Court also remarked that even if the 60 hours was phrased as a 'minimum' and not a 'maximum' figure, conditions in the contract of service will only be read to the extent that they are consistent with the provisions of the Employment Act ('EA').

Therefore, this case makes clear that employers cannot artificially raise the amount of working hours covered by the monthly basic pay and only pay the employee 0.5 times the hourly basic rate of pay for every overtime hour worked. This case also clarified that any condition of service less favourable to an employee than those prescribed in the EA, for example, requiring workers to work for a minimum amount of time above the statutory limit of 44 hours a week, will be treated as illegal, null and void, to the extent that it is no less favourable. This would mean that employers will not be allowed to contract beyond the limits set in the EA.

More...

SINGAPORE
6 JAN 2014

Changes to Workplace Safety and Health Incident Reporting Requirements

Pursuant to amendments to the Workplace Safety and Health (Incident Reporting) Regulations, employers will have to report to the Ministry of Manpower ('MOM') all accidents which render their employees unfit for work for more than three days cumulatively. Previously, only accidents which render employees unfit for work for more than three consecutive days need to be reported. These changes came in light of industry feedback received regarding employers' practice of breaking up medical leave of injured employees to circumvent the reporting requirement. MOM hopes that these changes would discourage such practices and also ensure that employees' recovery process is unaffected.

The Work Injury Compensation Regulations was also amended to require employers to report to the Commissioner for Workforce Safety and Health any traffic- related incidents that happen to any employees in his/her course of work. This means that employers will have to update their reporting standards to better track work- related traffic accidents. This amendment was made to emphasize the employer's duty to manage employee traffic safety in the course of work.

Both amendments came into effect on 6 January 2014.

More...

SINGAPORE
13 JAN 2014

Tripartite Guidelines on Issuance of Itemised Payslips

To prepare businesses for mandatory itemised payslips, MOM, along with the National Trades Union Congress ('NTUC') and Singapore National Employers Federation ('SNEF') have developed a set of Tripartite Guidelines on the issuance of itemised payslips. The Guidelines set out how companies can put in place the system of administering payslips, and provide payslip templates that companies may use and customise based on their own needs. As an overview, the payslip should include items such as basic salary, total allowances

(*con't*)

LOOKING BACK

SINGAPORE
13 JAN 2014

and total deductions for each salary period. MOM further highlighted that providing itemised payslips is a good employment practice as it raises employees'awareness of their salary components and facilitates the resolution of salary disputes. For information, mandatory payslips were initially intended to be included as part of the changes to the Employment Act last November but this was not so due to complaints from small and medium enterprises ('SMEs') that such a move would raise administrative costs. Notwithstanding this, it is likely that itemized payslips will become mandatory in the future, and the Guidelines serve as a first step towards it.

More...

SINGAPORE
18 JAN 2014

The Ministry of Manpower ('MOM') Acts Against Unsafe Practices Involving Formwork Structures

On 18 January 2014, the MOM issued an advisory to Professional Engineers to remind them of their obligations in the design, construction and inspection of formwork structures. This advisory is in light of two accidents that had occurred over the past week involving formwork structures at separate construction worksites. While it was fortunate that there were no serious injuries arising from these accidents, the MOM noted that such dangerous occurrences can have catastrophic consequences and result in significant loss of lives. MOM has also decided to step up worksite inspections to check on unsafe practices involving formwork structures from 20 January 2014. Such inspections will target formwork practices at construction worksites such as unsafe design of formwork structures, improper erection of formwork structures, incompatible formwork components, and improper supervision and inspection of formwork structures. These inspections will be in addition to MOM's regular checks on formwork structures as part of its construction safety inspections.

More...

SINGAPORE
24 JAN 2014

Progressive Wage Model for Cleaners

On 20 January 2014, Parliament introduced the Environment Public Health (Amendment) Bill which seeks to amend the Environmental Public Health Act. Under the provisions of the Bill, cleaning businesses in Singapore will have to be licensed within 5 months of the provisions coming into force. Significantly, one of the requirements of the cleaning business licence is that the licensee must submit a progressive wage plan for employees. This wage plan must relate to employees who are Singapore Citizens or Permanent Residents, specify the basic wage payable to employees, be on an increasing scale depending on seniority, responsibilities, work experience and training received and specify the amount of basic wage which should be no lower than the basic wage amount prescribed by the Commissioner of Labour in subsidiary legislation. The amendments are expected to come into force in April 2014 if passed by Parliament.

More...

SINGAPORE
27 JAN 2014

Call for Standard Employment Contracts for all Migrant Workers

The Migrant Workers' Centre ('MWC') is seeking to impose standard employment contracts that outline specific service agreements and employment terms so as to discourage malpractices by errant employment agents. The advocacy group is also calling for the granting of Change of Employer status for deserving migrant workers who have been unfairly treated in their jobs so that these workers can continue working while their disputes are being resolved. MWC also wants a greater say, as equal with the authorities, during the resolution process starting from the point of investigation till closure. Chairman Yeo Guat Kwang pointed that model employment contracts are already available for foreign domestic workers and extending this to all migrant workers would offer better protection and fairer terms of employment.

More...

LOOKING BACK

SOUTH KOREA
1 JAN 2014

A higher rate of minimum wage

Under Article 10 (1) of the Minimum Wage Act and Public Notice of the Ministry of Employment and Labor No. 2013-35, an hourly rate of minimum wage for the year 2014 is set at 5,210 won, which is an increase of 350 won (7.2%) from the hourly rate (4,860 won) of 2013. The increased rate shall enter into force on 1 January, 2014.

More...

SOUTH KOREA
1 JAN 2014 (*Lunar Calendar*)

A new system of substitute holidays

Under Article 3 of the Regulations on the Holidays of Government and Public Offices, in case any day of the Lunar New Year's Holidays or Chuseok Holidays falls on another public holiday, or the Children's Day falls on a Saturday or another public holiday, the first following non-holiday will be a substitute holiday.

More...

SOUTH KOREA
14 JAN 2014

Employers' obligation to get training/education to prevent sexual harassment at workplace

Under Article 13 (2) of the Equal Employment Act, employers are also required to go through the training/education to prevent sexual harassment at workplace, in the same way that employees are required to do so (starting from 14 January, 2014).

SOUTH KOREA
14 JAN 2014

Extended scope of childcare leave beneficiaries

Under Article 19 (1) of the Equal Employment Act, coverage of childcare leave eligibility has been expanded as the age of child eligible for childcare leave has been raised from the previous 'pre-schoolers aged 6 or below' to '8 years in age or younger, or a second grade or lower at elementary school' (effective to the employees who apply for childcare leave on 14 January, 2014 or after).

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: KIM & CHANG

LOOKING BACK

SRI LANKA
1 JUN 2013

2013 Minimum Wage Increase announced

Effective 1st June 2013 the minimum wages decided by the Wages Board for the Janitorial Service Trade have been increased.

SRI LANKA
1 NOV 2013

2013 Minimum Wage Increase announced

Effective 1st November 2013 the minimum wages decided by the Wages Board for Engineering Trade have been increased.

SRI LANKA
1 NOV 2013

2013 Minimum Wage Increase announced

Effective 1st November 2013 the minimum wages decided by the Wages Board for Paddy Hulling Trade have been increased.

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: John Wilson Partners

LOOKING BACK

TAIWAN
10 DEC 2013

Amendments to the "Regulations on the Authorization and Administration of Employers Hiring Foreign Workers"

The Council of Labour Affairs ("CLA") announced in the Lao-Zi-Guan-1020507263 Circular amendments to simplifying the application procedure for foreign workers working in Taiwan, imposing obligations on employers who hire foreign spouses (denizen spouses) to verify their residency documents, allowing more opportunities for foreign independent professionals to work in the Free Economic Pilot Zones of Taiwan, shortening the waiting period and simplifying the process for employers who wish to hire foreign workers, etc. Other than the aforementioned process simplification for employers, which [entered] into effect on 1 January, 2014, all other stated amendments entered into effect immediately upon promulgation.

More...

TAIWAN
11 DEC 2013

Amendments to the Labour Standards Act regarding child workers

Several articles in the Labour Standards Act ("LSA") were revised to provide better protection on child workers. The amendments explicitly require employers who wish to hire workers below the age of 15 to obtain prior approval from the competent authorities, and that child workers shall not work over 40 hours a week. Moreover, the amended provisions now authorize the central authority to stipulate the working standards for child workers, and the LSA now covers workers who are less than 15 years old but do not have a formal employment relationship with their employers. Penalties relevant to the above requirements were also provided in the LSA.

More...

TAIWAN
11 DEC 2013

Amendments to the Act of Gender Equality in Employment regarding menstruation leaves

Prior to the amendment, the number of menstruation leaves is counted together with the number of standard sick leaves, resulting in a *de facto* reduction of the number of the annual standard sick leaves for female workers. In light of this, Article 14 of the Act of Gender Equality in Employment was revised to separately count the two kinds of leaves. Thereafter, menstruation leaves may not be counted against the standard sick leave allowance as long as such leaves do not exceed three days per year. Subsequent menstruation leave taken beyond this limit will count as standard sick leave days.

More...

TAIWAN
25 DEC 2013

Amendments to the Employment Services Act

Certain provisions of the Employment Services Act were amended, including imposing more management responsibilities on private employment service institutions, specifying nursing work as one of the types of employment open to foreign workers in Taiwan, simplifying the notification process whenever there is foreign worker missing and untraceable, providing the requirements and circumstances where employers may apply for replacement of their nursing workers, as well as requiring agents of employers, foreigners and other relevant personnel not to evade, impede, or refuse inspections by government authorities, etc.

More...

TAIWAN
1 JAN 2014

Increase of the minimum wage

On January 1, 2014 the hourly statutory minimum wage increases from NT$ 109 per hour to NT$ 115 per hour.

More...

TAIWAN
1 JAN 2014

Nursing staffs who work in operating rooms, emergency rooms, ICUs, delivery rooms, special treatment rooms or on organ transplant teams are now no longer part of the "make-your-own-hour" system

According to the Lao-Dong-2-10101130829 Circular issued by CLA on 30 March, 2012, nursing staffs who work in the operating rooms, emergency rooms, ICUs, special treatment rooms, or on organ transplant teams are now excluded from the "make-your-own-hour" system under Article 84-1, Paragraph 1, Sub-paragraph 1 of the LSA, which means (*con't*)

TAIWAN **1 JAN** 2014

while they are no longer being able to set their own working hours, regular days off, [days off for] national holidays and female workers' night work through an agreement with their employers, they now fall under the default requirements provided by the LSA. On a side note, certain health workers, such as clean-up for surgery theatres and blood bank workers have already been excluded from the "make-your-own-hour" system since 30 March, 2012.

More...

TAIWAN **8 JAN** 2014

Amendment to Article 29 of Labour Insurance Act

Prior to the amendment, Article 29 of the Labour Insurance Act only provides that "title to any kind of insurance benefit" may not be assigned, offset, attached or mortgaged; so in practice, insurance benefits deposited with the bank or postal account of the beneficiary, such as pensions, may still be subject to offset, attachment or mortgage to the detriment of the retiree or his/her surviving relatives. In light of this, such article was amended to allow a special account specifically for the deposit of pension payments to be set up, which may not be later offset, attached, mortgaged or compulsorily enforced.

More...

TAIWAN **13 JAN** 2014

The LSA will cover workers hired by building management committees

As announced by the CLA in its Lao-Dong-1-10301300004 Circular, from 1st July 2014 onwards, the LSA will be applicable to workers hired by a building management committee that has been established or registered according to the Condominium Administration Act. For workers hired by the building management committee that has not been established or registered according to Condominium Administration Act, the LSA will apply from 1st January, 2015.

More...

TAIWAN **15 JAN** 2014

Amendments to the Labour Pension Act

Several articles under the Labour Pension Act were amended, including extending the labour pension system to self-employed workers and foreign spouses (denizen spouses) who reside and work in Taiwan, authorizing the Bureau of Labour Insurance to unilaterally and retroactively correct or adjust the monthly contribution if it finds that the employee's salary that the employer reported is incorrect, requiring employers to keep relevant documents for a certain period of time, allowing re-employed workers to enrol in the labour pension system again even though he/she has received pension payments before, establishing the early retirement mechanism for disabled workers, loosening the criteria for the establishment of an annuity insurance scheme and allowing workers to elect between individual pension system and annuity insurance scheme, etc. The amendments entered into effect immediately.

More...

TAIWAN **17 JAN** 2014

Clarification regarding Article 43 of the Labour Union Act

Article 43 of the Labour Union Act provides that in case where a labour union has violated a statute, regulation or "union charter", the competent authority may issue a warning or order it to improve within a given period. The competent authority may also order the labour union to suspend a part or all of its business while making the relevant improvements within the stipulated period if the authority deems it to be necessary. The CLA further announced in the Lao-Zi-1-1020127909 Circular that the "union charter" only refers to the contents of charter, not the low-level regulations so drafted pursuant to the authority bestowed by the charter (e.g. guidelines, notes). This clarification is effective immediately.

More...

TAIWAN **17 JAN** 2014

The LSA will apply to workers at private schools who are not part of the official staff list provided to the competent authority for approval or recordation (teachers are not included)

The CLA announced in its Lao-Dong-1-10301300055 Circular that from 1st August 2014 onwards, the LSA will be applied to workers at private schools who are not part of the official staff list reported to the competent authority for approval or recordation. Teachers whose roles are focused on teaching jobs do not fall under this new rule.

More...

2014

AUSTRALIA

CHINA

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INDIA

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MALAYSIA

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SINGAPORE

SOUTH KOREA

SRI LANKA

TAIWAN

THAILAND

VIETNAM

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: 理慈 Lee, Tsai & Partners

No significant policy, legal or case developments are anticipated within the employment space during 2014 Q1.

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: Tilleke & Gibbins

LOOKING BACK

VIETNAM
1 JAN
2014

New Minimum Salaries Applicable to Foreign Invested Enterprises

On 14 November 2013 the government issued Decree No. 182/2013/ND-CP which provides for new regional minimum salaries of employees, including employees of foreign invested enterprises. Decree 182 replaces Decree No. 103/2012/ND-CP (of 4 December 2012).

Decree 182 provides for four regional minimum salaries: VND 2,700,000, VND 2,400,000, VND 2,100,000 and VND 1,900,000, depending on which region the relevant enterprise is located in.

The new regional minimum salaries provided for in Decree 182 apply from 1 January 2014, and are paid to untrained employees performing the simplest of jobs. As from 1 January 2014, employers are required to adjust the minimum salaries to be paid to their employees if those stated in the relevant contracts are lower than the new minimum salaries. Employers are encouraged to pay their employees higher salaries than the regional minimum salaries.

More...

VIETNAM
10 JAN
2014

Official Guiddlines on Payment of Trade Union Fee

To provide guidelines of the provisions of the Law on Trade Union regarding the fee payable to the trade union, on 21 November 2013 the Government issued Decree No. 191/2013/ND-CP ("Decree 191") providing detailed regulations on trade union financial matters. To be effective from 10 January 2014, Decree 191 has clarified the status of businesses where the trade union has not been set up regarding the obligation to pay the trade union fee.

Under Decree 191 it is now clear that all businesses, including foreign-invested enterprises, must pay the fee even there is no trade union operating at the businesses. It is expected that further guidelines from the Vietnam Trade Union will guide how the fee will be paid in case there is no trade union. We note that by law, the setting up of a trade union is rested on the employees. The employer only has an obligation to facilitate the setting up process.

More...

CONTACT LIST

AUSTRALIA

CORRS CHAMBERS WESTGARTH lawyers

John Tuck
CORRS CHAMBERS WESTGARTH
Bourke Place, 600 Bourke Street
Melbourne VIC 3000, Australia
T: +61 3 9672 3257
F: +61 3 9672 3010
E : john.tuck@corrs.com.au

CHINA

MAYER · BROWN JSM

Helen Liao
JSM BEIJING REPRESENTATIVE OFFICE
Suite 1102, Tower 2, China Central Place
79 Jianguo Road Chaoyang District
Beijing 100025, China
T: +86 10 6599 9235
F: +86 10 6598 9277
E: helen.liao@mayerbrownjsm.com

Andy Yeo
JSM SHANGHAI REPRESENTATIVE OFFICE
Suite 2305, Tower II, Plaza 66
1266 Nan Jing Road West
Shanghai 200040, China
T: +86 21 6032 0266
F: +852 2103 5437
E: andy.yeo@mayerbrownjsm.com

HONG KONG

MAYER · BROWN JSM

Duncan Abate
MAYER BROWN JSM
16th - 19th Floors, Prince's Building
10 Chater Road , Central, Hong Kong
T: +852 2843 2203
F: +852 2103 5066
E: duncan.abate@mayerbrownjsm.com

Hong Tran
MAYER BROWN JSM
16th - 19th Floors, Prince's Building
10 Chater Road, Central, Hong Kong
T: +852 2843 4233
F: +852 2103 5070
E: hong.tran@mayerbrownjsm.com

INDIA

TRILEGAL

Ajay Raghavan
TRILEGAL
The Residency, 7th Floor
133/1 Residency Road, Bangalore – 560 025, India
T: +91 80 4343 4666
F: +91 80 4343 4699
E: ajay.raghavan@trilegal.com

INDONESIA

SSEK
Indonesian Legal Consultants

Richard Emmerson
SOEWITO SUHARDIMAN EDDYMURTHY KARDONO
14th Floor, Mayapada Tower
Jl. Jend. Sudirman Kav.28, Jakarta 12920, Indonesia
T: +62 21 521 2038
F: +62 21 521 2039
E: richardemmerson@ssek.com

CONTACT LIST

JAPAN

ANDERSON MŌRI & TOMOTSUNE

Chisato Higashio
ANDERSON MORI & TOMOTSUNE
Izumi Garden Tower, 6-1, Roppongi, 1-chome,
Minato-ku, Tokyo 106-6036, Japan
T: +81 3 6888 1150
F: +81 3 6888 3150
E: chisato.higashio@amt-law.com

MALAYSIA

Shearn Delamore &co

Sivabalah Nadarajah
SHEARN DELAMORE & CO.
7th Floor, Wisma Hamzah-Kwong Hing
No. 1 Leboh Ampang 50100, Kuala Lumpur,
Malaysia
T: +603 2076 2866
F: +603 2026 4506
E: sivabalah@shearndelamore.com

NEW ZEALAND

Simpson Grierson

Phillipa Muir
SIMPSON GRIERSON
Level 27, Lumley Centre,
88 Shortland Street, Private Bay 92518,
Auckland 1141, New Zealand
T: +64 09 977 5071
F: +64 09 977 5083
E: phillipa.muir@simpsongrierson.com

Carl Blake
SIMPSON GRIERSON
Level 27, Lumley Centre,
88 Shortland Street, Private Bay 92518,
Auckland 1141, New Zealand
T: +64 09 977 5163
F: +64 09 977 5083
E: carl.blake@simpsongrierson.com

PHILIPPINES

ROMULO
ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES

Enriquito J. Mendoza
ROMULO MABANTA BUENAVENTURA SAYOC &
DE LOS ANGELES
21st Floor, Philamlife Tower, 8767 Paseo de Roxas
Makati City 1226, Philippines
T: +632 555 9555
F: +632 810 3110
E: enriquito.mendoza@romulo.com

SINGAPORE

RAJAH TANN
Lawyers who know Asia

Kala Anandarajah
RAJAH & TANN LLP.
9 Battery Road, #25-01 Straits Trading Building
Singapore 049910
T: +65 6232 0111
F: +65 6225 7725
E: kala.anandarajah@rajahtann.com

CONTACT LIST

SOUTH KOREA

KIM & CHANG

C.W. Hyun
KIM & CHANG
Seyang Building, 223 Naeja-dong, Jongno-gu
Seoul 110-720, Korea
T: +822 3703 1114
F: +822 737 9091
E: cwhyun@kimchang.com

SRI LANKA

John Wilson Partners

John Wilson
JOHN WILSON PARTNERS
Attorneys-at-Law & Notaries Public
365 Dam Street, Colombo 12, Sri Lanka
T: +94 11 232 4579/+94 11 244 8931/+94 11 232 1652
F: +94 11 244 6954
E: john@srilankalaw.com

TAIWAN

理慈 Lee, Tsai & Partners

Elizabeth Pai
LEE, TSAI & PARTNERS
9F, 218 Tun Hwa S. Road, Sec. 2
Taipei 106, Taiwan, R.O.C.
T: +886 2 7745 3583
F: +886 2 2378 5781
E: elizabethpai@leetsai.com

THAILAND

Tilleke & Gibbins

David Duncan
TILLEKE & GIBBINS
Supalai Grand Tower, 26th Floor, 1011 Rama 3 Road
Chongnonsi, Yannawa, Bangkok, Thailand 10120
T: +66 2653 5538
F: +66 2653 5678
E: david.d@tilleke.com

VIETNAM

MAYER·BROWN JSM

Mai Phuong Nguyen
MAYER BROWN JSM (VIETNAM)
12th floor, Pacific Place, 83B Ly Thouong Kiet
Hoan Kiem District, Hanoi, Vietnam
T: +84 4 3825 9775 x108
F: +84 4 3825 9776
E: phuong.nguyen@mayerbrownjsm.com

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