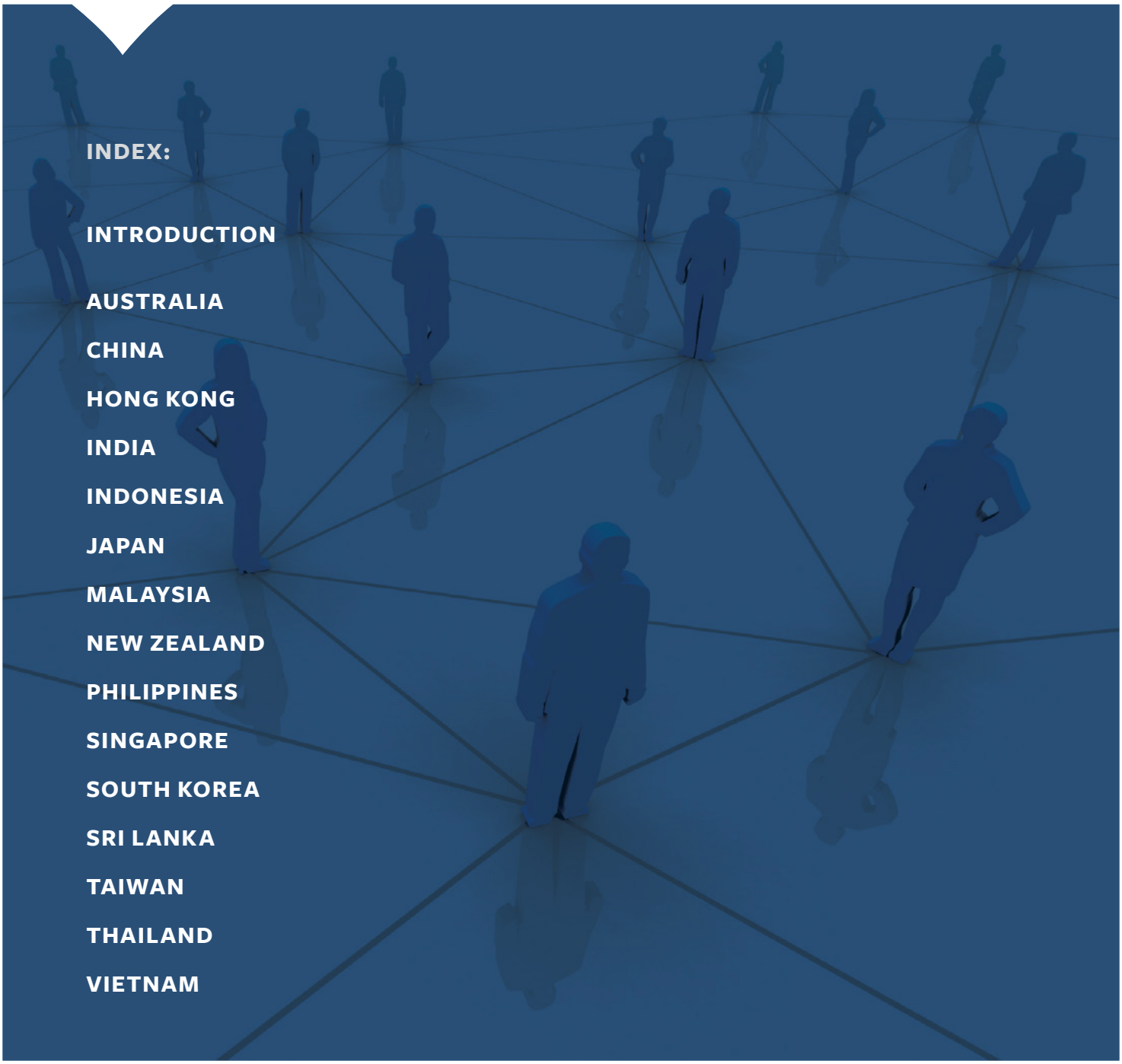
MAYER·BROWN
JSM

Asia Employment Law: Quarterly Review

2014-2015

ISSUE 10: FOURTH QUARTER 2015



INDEX:

INTRODUCTION

UPDATED AS AT DECEMBER 2015

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.

In this tenth edition, we flag and provide comment on anticipated employment law developments during the last quarter of 2015 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2016.

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

MAYER·BROWN
JSM

AUSTRALIA

19 DEC 2014 & **11 FEB** 2015

FWC Full Bench Hands Down Key Ruling on Anti-Bullying Provisions

Under Part 6-4B of the *Fair Work Act 2009* (Cth) (FW Act), workers may bring applications for anti-bullying orders before the Fair Work Commission (FWC). The tribunal has power to make orders that bullying conduct cease or not occur in future, where a worker can show that he/she has been subjected to repeated unreasonable behaviour by another individual or group (although reasonable management action does not constitute bullying).

In *Bowker and Others v DP World Melbourne Ltd; Maritime Union of Australia and Others* [2014] FWCFB 9227, a five-member Full Bench of the FWC made several important findings in a test case on the anti-bullying provisions. The case relates particularly to whether comments made by workers on social media can constitute bullying of another employee while he/she is 'at work' within Part 6-4B. The Full Bench held that the notion of being at work: ' is not limited to the confines of a physical workplace. A worker will be 'at work' at any time the worker performs work, regardless of his or her location or the time of day.' The Full Bench went on to find that comments posted on social media, even outside work hours, could fall within the concept of bullying of an employee 'at work' – as long as the employee to whom the comments were directed was at work when he/she read them.

The test case is continuing, and will also consider the extent to which conduct by trade union officials who enter workplaces can be the subject of anti-bullying orders.

In a more recent decision, *Re P.K.* [2015] FWC 562, the FWC followed previous authority in dismissing the bullying claim of a worker no longer employed in the relevant workplace, on the basis that a former employee could not be at risk of further bullying (one of the requirements for the issuing of an anti-bullying order). In doing so, however, the tribunal member left open the possibility of a sacked worker being able to pursue a bullying claim where they were actively taking steps to dispute their dismissal (e.g., through an unfair dismissal or general protections claim).

AUSTRALIA

19 DEC 2014 & **24 JAN** 2015

Productivity Commission Review of the Fair Work Act Begins

The Coalition Government released the Terms of Reference for a wide-ranging review of the FW Act and related legislation, just before Christmas. The Productivity Commission, which will conduct the review, then released a series of issues papers early in the new year. The issues papers indicate that several long-standing features of Australia's labour relations framework will come under scrutiny in the review process, including:

- Minimum wage levels and the FWC process for setting the minimum wage;
- The regulation of employment conditions through statutory minimum standards and comprehensive industry awards;
- Penalty rates for overtime and weekend work, including whether these should be left to the market to determine.

These and other issues to be addressed in the review have been the subject of consistent employer concerns, so the inquiry holds some promise for recommendations aimed at enhancing workplace flexibility and competitiveness. After receiving submissions from stakeholders, the Productivity Commission will issue a draft report mid-year and a final report in November. A major question remains as to how far the Government will be prepared to proceed with substantial deregulation of workplace relations (heading into an election year in 2016), as this remains a politically contentious issue.

More...

AUSTRALIA

22 DEC 2014

Full Federal Court Confirms Contractual Enforceability of Workplace Policies

In *Romero v Farstad Shipping (Indian Pacific) Pty Ltd* [2014] FCAFC 177, a Full Court of the Federal Court upheld an employee's breach of contract claim based on her employer's failure to deal with a bullying complaint in accordance with its Workplace Harassment and Discrimination Policy.

Upon return from a voyage at sea, the employee, a second officer, made the complaint against the ship's master alleging he had subjected her to relentless and targeted bullying.

Con't

LOOKING BACK

AUSTRALIA 22 DEC 2014

In the course of investigating the complaint, the employer questioned the employee about the captain's allegations as to her competence, capacity and temperament. The employee argued that in doing so, the employer had not investigated her complaint properly under the terms of the Policy; and that as her employment contract stated that all Farstad Shipping policies were to be observed at all time, the employer had breached the contract.

The Full Federal Court, overturning the decision at first instance, held that the Policy formed part of the employment contract because the language used made it clear that there was an expectation of mutual obligations on the part of employer and employee. Further, Farstad breached the Policy by purporting to carry out an investigation into the employee's complaint when its main investigation was into the captain's concerns about her conduct. The matter was remitted to a judge for final determination.

This decision is consistent with previous case law, holding that workplace policies can have contractual effect where they are incorporated into an employment contract through sufficiently clear and certain language. Employers therefore need to be careful to avoid incorporation of policies, such as those relating to grievance resolution, that may give rise to an action for breach of contract if they are not closely followed in practice.

More...

AUSTRALIA 8 JAN 2015

Full Federal Court Ruling Removes Restrictions on State Public Sector Enterprise Agreements

In *United Firefighters' Union of Australia v Country Fire Authority* [2015] FCAFC 1, the Full Federal Court overturned an earlier decision which had found that several clauses in the CFA's enterprise agreement were unconstitutional and therefore invalid. The relevant clauses specified minimum recruitment numbers for career firefighters over a six-year period. Although it had agreed to the inclusion of those provisions in the agreement (made under the FW Act), the CFA later argued that they invalidly intruded on the capacity of the State of Victoria to function as a government (in breach of long-established constitutional principles).

However, the Full Court held that these principles were not infringed in this case, because the Victorian Government had voluntarily agreed to the restrictions imposed by the relevant clauses. There was therefore no impairment of the State's capacity to function. The decision clarifies that enterprise agreements, albeit a form of Commonwealth regulation, can validly cover areas that are otherwise reserved for the States under the applicable constitutional principles.

AUSTRALIA 2 FEB 2015

Government Abandons Expanded Paid Parental Leave Scheme

Prime Minister Tony Abbott announced, in a speech to the National Press Club, that the Government would no longer be pursuing one of its key 2013 election commitments: an expansion of the Paid Parental Leave (PPL) Scheme, from the current provision for 18 weeks' paid leave at the national minimum wage, to 26 weeks' paid leave at an employee's actual wage.

The PPL commitment was jettisoned in an attempt by the Prime Minister to recalibrate the Government's policy agenda, following an unpopular federal budget in 2014 and continuing obstruction of legislation by Labor, Greens and cross-bench Senators in federal Parliament. The proposed expansion of taxpayer-funded PPL was also unpopular in a climate of cuts to government services and expenditure in other areas.

The announcement provides clarity for employers, many of which have adopted their own PPL schemes supplementing the entitlements for employees under the existing government scheme.

AUSTRALIA 10 FEB 2015

Full Bench of the FWC Clarifies Availability of Protected Industrial Action

In *Esso Australia Pty Ltd v AMWU, CEPU and AWU* [2015] FWCFB 210, a Full Bench of the FWC determined that a union may seek a ballot on proposed industrial action, even if some of the claims it is making for a new agreement would not be 'permitted matters' under the FW Act. The unions in this case were attempting to have certain restrictions on the engagement of contractors included in new enterprise agreements (in previous decisions, it has been held that such restrictions are not permitted matters).

Con't

AUSTRALIA

10 FEB

2015

The question then arose whether in seeking the inclusion of the proscribed clauses, the unions were precluded from taking protected industrial action on the basis that they did not meet the requirement in section 443(1)(b) of the FW Act that they must be 'genuinely trying to reach agreement'.

The Full Bench held that the pursuit of non-permitted claims is relevant to the test set out in section 443(1)(b), but is not determinative of the issue. Other factors are also relevant, including whether there is legal clarity as to whether a particular clause relates to a permitted matter or not. In this case, the unions had not pushed hard on the proposed contractor restrictions and in fact had formulated an alternative claim which was capable of including only permitted content. The process for obtaining employee approval of proposed industrial action through a secret ballot should therefore be available.

The decision is also important in the context of the *Fair Work Amendment (Bargaining Processes) Bill* currently before federal Parliament (this Bill was passed by the House of Representatives on 10 February 2015). The Bill proposes to impose new restrictions on protected industrial action, including that bargaining claims not be excessive or adversely affect productivity. Following the *Esso Australia* decision, a leading employer organisation (Australian Industry Group) is lobbying the Government to have a new provision inserted in the Bill precluding the taking of protected industrial action in support of claims for non-permitted matters in an agreement.

AUSTRALIA

22 APR

2015

Termination of Aurizon Enterprise Agreements Signals Change of Approach by Fair Work Commission

In *Aurizon Operations Ltd; Aurizon Network Pty Ltd; Australian Eastern Railroad Pty Ltd* [2015] FWCFB 540, a Full Bench of the Fair Work Commission (FWC) terminated 12 expired enterprise agreements during stalled negotiation for replacement agreements. The employer applied for termination of the current agreements against the objection of unions covering the rail operator's workforce. In previous similar cases, the FWC had been reluctant to terminate applicable agreements based on the concern that this would give employers a significant advantage in bargaining for new agreements.

However in *Aurizon*, the FWC Full Bench rejected the notion that it is inappropriate to terminate an enterprise agreement during bargaining. The Full Bench had particular regard to the employer's argument that many of the terms and conditions in the agreements were inefficient and inflexible, the legacy of the former Queensland Government rail operations in place when Aurizon took over the business through a privatisation process.

The significance of the decision is the opening it creates for employers to seek termination of expired enterprise agreements, so that the base for bargaining becomes the lower wages and conditions in the underlying award. However, the decision was appealed to the Full Federal Court of Australia; the appeal has been heard with the Full Court's decision reserved at the time of writing.

More...

AUSTRALIA

1 MAY

2015

New Judicial Approach to Determination of Penalties for Workplace Law Breaches

In *Director, Fair Work Building Industry Inspectorate v CFMEU* [2015] FCAFC 59, the Full Federal Court departed from over 20 years of authority relating to the ability of enforcement bodies such as Fair Work Building and Construction (FWBC) to make joint submissions (with a party subject to a civil prosecution) about the appropriate pecuniary penalty to be imposed for legislative breaches.

The Full Court determined that penalties agreed upon between FWBC and the CFMEU, for the union's unlawful industrial action, were inadmissible. The Full Federal Court held that the fixation of a penalty is the court's role; and that even where an offender nominates the penalty it is prepared to submit to, the court must still fix the appropriate penalty without regard to any agreed amount.

The decision means that FWBC, the Fair Work Ombudsman and other federal regulators can no longer enter into agreements regarding penalties as a basis for settling enforcement proceedings. This is likely to result in many more such proceedings being contested in future. However, the decision has been appealed to the High Court of Australia.

More...

AUSTRALIA

12 MAY 2015

Federal Government Proposes Restrictions on Access to Paid Parental Leave Scheme

In its 2015 Federal Budget, the Government announced that it would restrict access to the publicly-funded Paid Parental Leave (PPL) Scheme for employees who receive equal or greater benefits under employer-provided PPL schemes.

The maximum PPL entitlement under the Government Scheme is 18 weeks' paid leave, following the birth or adoption of a child, at the level of the national minimum wage. However many employees 'top up' the duration and or the quantum of these benefits through employer PPL schemes.

The proposed limits on access to the Government PPL Scheme are set out in the *Fairer Paid Parental Leave Bill 2015*, currently before Federal Parliament. Although the changes are intended to commence on 1 July 2016, there is considerable doubt whether the Government will be able to secure the support of cross-bench Senators for the amending bill.

More...
More...

AUSTRALIA

3 AUG 2015

Court Ruling Clarifies Who is an "Officer" under the Model Work Health and Safety Act

The decision of the Industrial Court of the ACT in *B McKie v Munir Al-Hasani v Kenoss Contractors Pty Ltd (In Liq)* [2015] ACTIC 1 (3 August 2015) provides several key points of clarification on aspects of the *Model Work Health and Safety Act* (WHS Act):

1. A person will not be an officer if he only has operational responsibilities and does not have any 'corporate obligations' such as the capacity to engage contractors or commit corporate funds.
2. A prosecutor must prove beyond reasonable doubt that a person falls within the definition of 'officer' under the WHS Act before there can be any consideration as to whether the person breached the officer's WHS duty.
3. If a person is charged with breaching one WHS duty only, namely the officer's duty, but the court finds the defendant is not an officer, that person cannot be convicted of breaching the worker's duty even if the evidence establishes that the person breached the worker's duty.

A prosecution against a Project Manager, Mr al-Hasani (for WHS breaches arising from the death of a worker) was dismissed because the Chief Magistrate of the ACT was not satisfied beyond reasonable doubt that Mr al-Hasani was an 'officer' under the WHS Act; and he therefore did not owe the officer's WHS duty.

More...

AUSTRALIA

4 AUG 2015

Productivity Commission Draft Report Recommends Major Changes to Australia's Workplace Relations Laws

The Productivity Commission released its *Workplace Relations Framework: Draft Report*, the first significant indication of the likely direction of its inquiry into Australia's *Fair Work Act 2009* (Cth)) and related legislation. The inquiry was established by the Federal Government late last year, and is due to provide a final report by November 2015.

Perhaps surprisingly, the Draft Report gave Australia's workplace relations system an overall endorsement, stating that it is: *'not systemically dysfunctional. Many features work well – or at least well enough ... The key message of this inquiry is that repair, not replacement should be the policy imperative.'*

The key areas in which the Productivity Commission recommended significant changes are award penalty rates for Sunday work in the café/restaurant, hospitality and retail sectors; enterprise bargaining particularly for major projects; the role and processes of the FWC; and unfair dismissal and general protections claims. Importantly, the Draft Report also proposes the creation of a new avenue for varying award conditions at enterprise level: the 'enterprise contract'.

More...

AUSTRALIA

13 AUG 2015

Federal Court Orders Stevedore to Put Hold on Redundancy "Sackings by Text"

In *Maritime Union of Australia v Sydney International Container Terminals Pty Ltd* (Case No QUD/215), the Federal Court of Australia issued an injunction restraining the employer from proceeding with the redundancies of 97 port workers, pending a full hearing and determination of the union's claim of breach of the redundancy consultation requirements in the applicable enterprise agreement (breach of the agreement would amount to a breach of section 50 of the FW Act). The employees had been dismissed by email/text message.

The case highlights the obligations of employers to effect dismissals in accordance with statutory notice and procedural fairness requirements, and to observe applicable statutory/agreement requirements regarding consultation over redundancies.

AUSTRALIA

1 OCT 2015

Fair Work Commission Ruling Enables Journalist to Pursue Claim Over Social Media Dismissal

In *McIntyre v Special Broadcasting Services Corporation T/A SBS Corporation* [2015] FWC 6768, the Fair Work Commission (FWC) allowed an unlawful termination application brought by a former sport journalist to proceed despite a number of jurisdictional objections. The journalist was dismissed soon after Anzac Day in 2015, for posting a series of 'tweets' that were deemed offensive as they challenged the reasons for and extent of Australia's commemoration of Anzac and the feats of its First World War soldiers.

The journalist initially brought a claim under the general protections provisions in Part 3-1 of the *Fair Work Act 2009* (Cth) (FW Act), alleging that his employment had been terminated for the prohibited reason that he had expressed a political opinion. However, this claim could not be pursued due to the interaction between the general protections and state anti-discrimination law (as discrimination on the basis of political opinion is not unlawful in New South Wales, where the journalist was employed, the general protections had no application).

The journalist therefore instigated an unlawful termination claim under Part 6-4 of the FW Act, which also prohibits dismissal on various discriminatory grounds including an employee's political opinion. The employer opposed this claim on the basis that it was brought outside the 21-day time limit. However, the FWC allowed an extension of time due to the representative error on the part of the employee's lawyer in failing to advise him properly on the general protections issue discussed above.

The decision has highlighted an important but overlooked feature of the general protections provisions: their potential limitations depending on applicable state or territory anti-discrimination laws around Australia. The outcome also paves the way for a decision clarifying the extent of protection from political opinion discrimination, if this case ultimately proceeds to a contested hearing, which would be welcome as there is limited authority in this area.

More...

AUSTRALIA

8 OCT 2015

Federal Court Finds University's Restructure was Unlawful

In *National Tertiary Education Industry Union v Swinburne University of Technology (No 2)* [2015] FCA 180, the Federal Court imposed a penalty of A$14,000 upon a university which created a new corporate entity to provide pre-university programs and English language courses for overseas students.

The Court found that the university had undertaken the proposed restructure, which would have involved making a number of existing staff redundant, in order to minimise union interactions and avoid the operation of industrial instruments setting minimum wages and employment conditions. These actions breached the general protections in Part 3-1 of the FW Act, which protect employees from adverse treatment on the basis of their entitlement to the benefit of an industrial instrument (or as in this case, the threat of such adverse action).

Con't

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

AUSTRALIA
8 OCT 2015

It was held that senior officers of the university had engaged in a deliberate strategy to undermine the employment conditions and job security of its staff, resulting in a calculated contravention of the FW Act. These findings were based in large part on the university's own internal working documents outlining the nature of the strategy and its proposed implementation.

More...

AUSTRALIA
16 OCT 2015

Victorian Government Initiates Inquiry into the Labour Hire Sector

The Government in the state of Victoria has established an inquiry into the labour hire industry and the broader issue of insecure work, following increasing media reports of the exploitation of vulnerable workers by third-party labour hire providers. Labour hire (or agency work as it is referred to in some other countries) has become a major industry in Australia, employing up to half a million workers and generating around $19 billion in annual revenue.

Recently, however, some smaller labour hire operators – particularly those in the fresh food supply chain – have engaged in underpayment of workers and other breaches of workplace, taxation, visa and health and safety laws. The Inquiry has been tasked with obtaining evidence about the extent of these problems, and the sectors and regions within Victoria in which they are occurring.

The Inquiry must also consider and assess potential regulatory solutions, including the viability of a licensing scheme which would ensure that all labour hire agencies are accredited by reference to compliance with minimum labour standards.

Professor Anthony Forsyth of RMIT University and Consultant with Corrs Chambers Westgarth has been appointed as Chair of the Inquiry, which is due to report by 31 July 2016.

More...

AUSTRALIA
20 OCT 2015

Amendments Agreed to Ensure Passage of the China-Australia Free Trade Agreement

The proposed China-Australia Free Trade Agreement (ChAFTA) has been the subject of considerable political wrangling in Australia. The Labour Opposition had expressed strong concerns (reflecting those of the union movement) that ChAFTA would threaten Australian jobs. It was contended that the labour mobility provisions of the treaty would provide easier access for Chinese workers through Australia's skilled migration program (457 visas); and through Investment Facilitation Agreements for major development projects with at least 50% Chinese investment and A$150 million capital expenditure.

In October, the Coalition Government announced some changes to the Australian legislation implementing ChAFTA to address these issues, as part of a deal with the Labour Opposition to obtain its support for the treaty. The changes include clarifying that labour market testing – ensuring that genuine efforts have been made to recruit Australian staff before sponsoring workers on 457 visas – will apply to all work agreements linked to ChAFTA. In addition, overseas tradespersons and those working in specialised occupations will have a condition attached to their 457 visas: that they obtain any licence, registration or membership required under Australian law for their trade or occupation, within a specified period.

The agreement should mean that the Australian implementing legislation will be passed ahead of the 31 December 2015 deadline, ensuring that the benefits of this vital free trade agreement with Australia's major trading partner can be realised.

More...
More...

AUSTRALIA
12 NOV 2015

Fair Work Act Amendments Passed by Parliament

The Government finally secured passage of the first of numerous workplace reform bills that have been stalled in federal Parliament, some for over two years.

Con't

LOOKING BACK

AUSTRALIA

12 NOV 2015

The *Fair Work Amendment Act 2015* (Cth) includes important changes to the process of negotiating greenfields enterprise agreements for major new projects or joint ventures, such as resource and construction projects. Unions have effectively exercised veto rights over many of these projects, by holding out until their wage demands are agreed to. To overcome this, an employer now has the option of seeking FWC approval of its proposed greenfields agreement if no deal can be agreed with a union within a six-month negotiation period.

The amending legislation also delays unions in their efforts to force employers to engage in collective bargaining through protected industrial action. Rather than resorting to this step at a fairly early stage in agreement negotiations (which the Government has described as a 'strike first, talk later' approach), unions must first obtain a majority support determination from the FWC compelling the employer to bargain.

However the Government had to compromise with independent Senators in order to obtain their support for this legislation, with the result that provisions restricting union rights of entry to workplaces and encouraging the making of 'individual flexibility arrangements' were dropped from the original bill.

The more consultative leadership style of Prime Minister Malcolm Turnbull, who replaced Tony Abbott on 14 September 2015, improves the Government's prospects of obtaining support for its remaining workplace reform agenda. This includes proposals to improve bargaining processes more generally under the FW Act; reintroduce a tougher regulator of unlawful union conduct in the construction industry; enhance the compliance regime for registered unions in the wake of recent corruption scandals; and limit employee access to the government-funded paid parental leave scheme.

More...

Click here to view **2014 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

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

CHINA **16 DEC** 2014

Notice on the Schedule of the Public Holidays for 2015

The State Council approved the schedule of the public holidays for 2015, and the Notice on the Schedule of the Public Holidays for 2015 was issued on 16 December 2014.

More...

CHINA **25 DEC** 2014

Opinion on Fostering Human Resource Outsourcing Services by MHRSS, NDRC and MOF

Wording: The Opinion on Fostering Human Resource Outsourcing Services was jointly issued by the Ministry of Human Resources and Social Security, National Development and Reform Commission, and the Ministry of Finance on 25 December 2014, the Opinion offers incentives for companies to use professional outsourcing services in non-core businesses.

More...

CHINA **31 DEC** 2014

The Ministry of Human Resources and Social Security (MOHRSS) issued on 31 December 2014 a draft regulation on enterprise mass layoff, viz. the Provisions on Enterprise Mass Layoff (Draft for Comments) (the "Draft Provisions"). Public comments are invited to be submitted by 31 January 2015. The Draft Provisions provide the detailed procedures and requirements to implement a layoff plan as well as the employer's obligations if the number of the employees who are terminated by mutual consent exceeds 20.

More...

CHINA **1 JAN** 2015

Notice on Tentative Rules for the Social Insurance Contribution of the Labour Dispatch Employees

Tianjin Labour Bureau and Tian Jin Finance Bureau jointly issued a Notice on Tentative Rules for the Social Insurance Contribution of the Labour Dispatch Employees. According to the Notice, host companies now required to directly pay social insurance contributions for labor dispatch workers instead of through dispatch agencies.

More...

CHINA **1 JAN** 2015

Tentative Procedural Rules For Foreign Nationals Working in China for A Short Period was issued by the Ministry of Human Resources and Social Security and other departments jointly effective from 1 January 2015. According to the Rules, foreign nationals working in China less than 90 days on projects at affiliated branches, subsidiaries, and representative offices may enter China on business visas, and foreign nationals working at non-affiliates must obtain work visas.

More...

CHINA **8 JAN** 2015

Draft Amendment on Shanghai Collective Contract Regulations Sought Public Comments

Shanghai Municipal People's Congress solicits comments on amendments to Collective Contract Regulations in Shanghai and the draft amendments target disputes and negotiation and termination of collective contracts. Public comments are invited to be submitted by 23 January 2015.

More...

CHINA **28 JAN** 2015

Shenzhen Raises Minimum Wage Rate to RMB2030 Effective From 1 March 2015

The Shenzhen Municipality Standing Congress approved a proposal that the monthly minimum wage in Shenzhen is increased to CNY2,030, and for a part-time employee, the standard of hourly minimum wage is increased to CNY18.5, effective from 1 March 2015.

More...

CHINA
1 FEB 2015

Regulation on Employment Service and Employment Management

The Regulation on Employment Service and Employment Management was revised by the Ministry of Human Resources and Social Security effective from 1 February 2015. The threshold requirement for unemployment registration has been reduced, and the unemployed individual with urban *hukou* may register their unemployment status at the service agent located in the district where their residing place locates.

More...

CHINA
27 FEB 2015

Rates of Unemployment Insurance, Work-Related Injury Insurance and Maternity Insurance Reduced

The Ministry of Human Resources and Social Security and the Ministry of Finance jointly released several Circulars to reduce the rates of unemployment insurance, work-related injury insurance and maternity insurance respectively to alleviate the burden on enterprises. From 1 March 2015, the unemployment insurance rate will be reduced from 3% to 2%. From 1 October 2015, the rate of the work-related injury insurance will be maintained at the benchmark rate of the national work injury insurance industry corresponding to Type 1 through Type 8 work injury risks of the industries at approximately 0.2%, 0.4%, 0.7%, 0.9%, 1.1%, 1.3%, 1.6% and 1.9%. From 1 October 2015, the rate of the maternity insurance should be adjusted to within 0.5% in the cities where the maternity insurance fund accumulates surplus for over nine months.

More...
More...
More...

CHINA
24 MAR 2015

SAWS Issues Provisions on Employers' Occupational Hazard Prevention and Control

The State Administration of Work Safety (SAWS) issued the Eight Provisions on Occupational Hazard Prevention and Control by Employers (hereinafter referred to as the Provisions). The Provisions specifies requirements in the following eight aspects: accountability, workplace, protective facilities, protective devices, warning notices, regular tests, training and health supervision. The Provisions stresses that employers must provide their employees protective equipment that meet the relevant requirements. They must also conduct occupational health training for their employees; employees are prohibited from working if they are not trained or are deemed unqualified after the training. Employers must also organise occupational health inspections for their employees and establish health surveillance records; they are strictly prohibited from failing to organise health inspections or establish health records.

More...

CHINA
13 MAY 2015

The Notice on Designating An Statutory Holiday for Commemorating the 70th Anniversary of the victory in the Chinese People's War of Resistance Against Japanese Aggression issued

The State Council has designated 3 September as an additional statutory holiday in 2015. This date commemorates the 70th anniversary of the victory in the Chinese people's war of resistance against Japanese aggression. This holiday is applicable to all employees and only being legislated for 2015.

More...

CHINA
JUN 2015

Proposed Changes on Salary Payment Regulations of Guangdong Province Seeking Public Comments

Guangdong Provincial Department of Human Resources & Social Security issued the Decision on Revising Salary Payment Regulations of Guangdong Province (Request for Proposal) (Hereinafter the "Draft") to seek opinions on the Draft by 30 July 2015. The Draft clarifies that all employees should pay salary to employees on the agreed date. If it is agreed that the salary be paid on a monthly basis, the salary payment date shall not be later than the 10th day of the following month.

More...

CHINA
18 JUN 2015

The *Revised Regulation on Collective Agreement of Shanghai* Adopted

The meeting of the Standing Committee of Shanghai People's Congress adopted the revised the Regulations on Collective Agreement of Shanghai (hereinafter the Regulations) by vote, which shall become effective as of 1 October 2015. The Regulations clarifies that pay increase and benefits for overtime work fall within the scope of collective bargain over pay and that in the event that an employer rejects or delays collective bargain without just reasons, the trade union of the city, district and county may issue a correction notice requiring the employer to take corrective actions.

More...

CHINA
1 JUL 2015

Measures Governing Chinese Citizens Travelling to and From the Region of Taiwan Revised

The State Council revised the Administrative Measures governing Chinese Citizens Travelling to and From the Region of Taiwan effective from 1 July 2015, and the entry permit requirements for Taiwan residents are removed.

More...

CHINA
4 AUG 2015

The Implementation Rules on Maternity Insurance of Guangzhou, Issued

After consultation and hearing of public opinions, the new maternity insurance policy which attracted much attention has been officially clarified by the "Notice of the Implementation Rules on Maternity Insurance of Guangzhou" ("The Implementation Rules"). The Implementation Rules were promulgated by the General Office of the Guangzhou Municipal Government and it came into force on 1 October 2015. There are some changes on the treatment standard of participants in the maternity insurance. The major concerns are paternity leave and maternity leave which have finally been settled. The two categories of leave still exist, but the payment of the two categories of leave shall be borne by the employer instead of the Maternity Insurance Fund.

More...

CHINA
5 AUG 2015

Shanghai has issued the Regulations on the Implementation of Talent Introduction from Overseas

Shanghai has published the "Regulations on implementing a more open policy of talent introduction from overseas". The Regulations have clarified that senior level foreign talents approved by the Shanghai Municipal Human Resources and Social Security Bureau can go to the Bureau of Exit-Entry Administration of Shanghai public security to apply for a 5-year valid working residence permit. After working for 3 years in Shanghai, a foreign talent can go to the Bureau of Exit-Entry Administration of Shanghai public security department to apply for a permanent residence credential with the recommendation of the employer. The Regulations have abolished the restriction that a foreigner coming to work in Shanghai is required to have 2-years working experience. For international students with master degree or above obtained in Shanghai colleges and universities, they can apply employment permit and residence permit by producing the certification provided by the Shanghai Pilot Free Trade Zone and Zhangjiang National Innovation Zone Administration Committee. Shanghai has also relaxed the working age restriction of senior level foreign talents employed in China, and has announced that any foreign employee who has applied for a working residence permit and has no record of having breached the law, can apply to the Bureau of Exit-Entry Administration of Shanghai Public Security for a 5-year valid working residence permit.

More...

CHINA
17 AUG 2015

The Revised Regulations on the Standard of Medical Treatment Leave when the Employee Contracted an Illness or Sustained a Non-work-related Injury during Employment in Shanghai

On 17 August 2015, Shanghai Municipal Government printed and distributed the revised Regulations on the prescribed period of leave for medical treatment when an employee contracted an illness or sustained a non-work-related injury during performance of his/her employment contract in Shanghai. The Regulations came into force on 1 May 2015. It is clear from the Regulations that where the accumulative sick leave days has exceeded the prescribed period for medical treatment, an employer can terminate the employment contract with the employee concerned pursuant to the law.

More...

LOOKING BACK

CHINA
18 AUG 2015

The Notice on Wages Calculation and Payment of Arranging Employees to Work on Legal Holiday of 3 September, Issued

"The Notice on wages calculation and payment of arranging employees to work on 3 September" was issued by the Ministry of Human Resources and Social Security, it is as follows:

Where an employer requires its employee to work on 3 September due to the need of business , the employer shall pay wages and arrange time off in lieu; if no time off can be arranged afterwards, the employer shall pay no less than 200 percent of the employee's wages.

More...

CHINA
9 SEP 2015

Measures for the Administration of the Collection and Use of the Employment Security Funds for the Disabled, Issued

The Ministry of Finance issued "Measures for the Administration of the Collection and Use of Employment Security Funds for the Disabled" ("the Measures"). The Measures require that disabled persons' federations and fiscal departments at all levels to publicize for public scrutiny purpose, the expenditure of the security funds supporting the employment and the living of the disabled, annually. Moreover, all localities shall establish an information disclosure system regarding employers' hiring of disabled persons on a pro-rata basis and contribution to the disabled persons' employment security fund.

More...
More...

CHINA
1 OCT 2015

For the first time, Menopause of Female Employees is classified under Labour Protection in Shanxi Province

The People's Congress of Shanxi Province has adopted the Regulations on Labour Protection of Female Employees, which further clarified labour protection and the standard of rights and interests. Under the Regulations, menopause of female employees is now classified as a labour protection. The Regulations came into force on 1 October 2015. In the past, the Special Rules on Labour Protection of Female Employees issued by the State Council were confined to protection of female employees in menstrual period, pregnancy, maternity leave and nursing period. The Regulations extended the scope of labour protection of women by including menopause, for the first time.

More...

CHINA
8 OCT 2015

Tianjin Human Resources and Social Security Bureau issued notice on matters concerning final arbitration award of labour dispute granted in a single arbitration hearing

The Tianjin Human Resources and Social Security Bureau issued the notice on matters relating to applicability of final arbitration award of labour dispute with one arbitration hearing ("the Notice"). According to the Notice, single hearing arbitration is applicable to the followings:

1. Disputes over claims for an amount less than 12 months' minimum monthly wage of Tianjin, in connection with labour remunerations, work-related injury medical fees, statutory severance pay, punitive severance pay, and disputes regarding working hours, rest, leave and holidays, and social insurance arising from the observance of national standards, arbitral awards granted are final and binding as of the dates of issuance.
2. Awards involving labour remuneration, work-related injury medical fees, statutory severance pay and punitive severance pay, where the claim amount under each category is less than the 12 months' minimum monthly wage of Tianjin, are final and binding. The "minimum monthly wage" for such claims is the minimum wage at the time when the award is granted.
3. Awards to individual claimants in collective disputes for claims falling within the circumstances stipulated in Article 47 of the Labour Dispute Mediation and Arbitration Law, are final and binding.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

CHINA

10 DEC

2015

The Notice on Statutory Holidays in 2016, Issued

The General Office of the State Council recently issued the statutory holiday in 2016. According to the Notice, Holidays in 2016 are listed below:

1. New Year's Day: 1 Jan
2. Spring Festival: 7 Feb – 13 Feb , 6 Feb & 14 Feb are working days
3. Tomb-sweeping Day: 4 Apr
4. Labour Day: 1 May
5. Dragon Boat Festival: 9 Jun-11 Jun, 12 Jun is a working day
6. Mid-autumn Festival: 15 Sep-17 Sep , 18 Sept is a working day
7. National Day: 1 Oct-7 Oct ,8 Oct & 9 Oct are working days

More...

Click here to view **2014 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
OCT
2014

Responding to Employees' Misappropriation of Confidential Information

Valuable confidential information, like customer and price lists, technical and financial information, is a common target for misappropriation by employees. We have previously suggested measures and controls that employers can implement in order to minimise such risk. Nevertheless, the risk of theft can never be fully eliminated and it is important for employers to understand know how to react and respond to misuse or theft of confidential information when it happens.

The cases of *Dextra China Limited and Another v Lam Wing Kit [2014] HCA 38/2010* and *Australia and New Zealand Banking Group Ltd v. Chen, Kuei Mei* [2014] HKCFI 1774; HCA 1674/2014 involved departing senior employees who made use of the employers' trade secrets to set up rival businesses; and interim injunctions were subsequently made against the defendant employees for misusing and disclosing their former employers' confidential information.

Through these two cases. we can see how an employer may be able to gain the upper hand in a dispute over breach of an employee's confidentiality obligation by presenting convincing evidence that would persuade the Court to grant injunctions.

More...
More...

HONG KONG
24 DEC
2014

Labour Tribunal Given Expanded Power to Order Security for Payment

On 24 December 2014, the Labour Tribunal Ordinance ("**LTO**") was amended to give the Labour Tribunal general power to order a party to give security for payment of an award or order.

The amended sections 30 and 31 of the LTO have expanded the Labour Tribunal's power to order a party to provide security for the payment of an award or order, either on its own motion or upon the application of a party. If a security order is made against an employer, timely compliance withthe order is crucial. An employer involved in Tribunal litigation should also review on an ongoing basis whether an application for a security order is necessary and whether strategic advantages would be conferred on him by reason of such application.

In this legal update, we look at the possible circumstances for ordering security from a party and the consequences of any non-compliance.

More...

HONG KONG
29 DEC
2014

Published Guidance on Personal Data Protection in Cross-border Data Transfer

On 29 December 2014, the Office of the Privacy Commissioner for Personal Data (the "**PCO**") published Guidance on Personal Data Protection in Cross-border Data Transfer (the "**Guidance**") in preparation for the commencement of section 33 of the Personal Data (Privacy) Ordinance ("**PDPO**").

When section 33 comes into operation, it will prohibit the transfer of personal data from Hong Kong to another jurisdiction, unless the transfer falls within 1 or more of 6 exceptions. These exceptions include, for instance, a transfer (a) to a jurisdiction listed on the "White List" (i.e. jurisdictions that the PCO considers to have personal data protection laws similar to the PDPO) or (b) with the relevant data subject's (e.g. employee's) consent.

In preparation for the commencement of section 33 and to comply with the Guidance, employers should look at where their personal data is being transferred to and consider which available exceptions might apply or can be invoked. Where possible, an employer may consider to rely on more than 1 exception. The White List has not yet been published.

More...

HONG KONG
16 JAN
2015

Increased Minimum Wage Rate to Take Effect from 1 May 2015 in Hong Kong

On 16 January 2015, notice was gazetted to adjust the Statutory Minimum Wage ("**SMW**") rate to HK$32.5 per hour (up from the previous HK$30 per hour). The new rate has come into effect as of 1 May 2015.

Con't

HONG KONG **16 JAN** 2015

To reflect the change to the SMW rate, the previous HK$12,300 monthly cap (above which is not necessary to keep a written record of hours worked) will be increased to HK$13,300 per month.

Employers should take steps to update their payroll procedures to reflect this change.

More...

HONG KONG **23 JAN** 2015

Standard Working Hours Committee Holds 10th Meeting

The Labour and Welfare Bureau set up a Special Committee on Standard Working Hours in the first quarter of 2013. The Standard Working Hours Committee ("**SWHC**") held its 10th meeting on 23 January 2015. The SWHC continued the discussion on the results of the public engagement and consultation on working hours and the dedicated working hours survey conducted by the consulting companies, as well as the analysis of a range of factors for a working hours policy provided by the SWHC secretariat as reported to the two working groups (WGs) on Working Hours Consultation and Working Hours Study last December.

Through the public consultation and dedicated working hours survey, the SWHC collected a wealth of useful information about the latest working hours situation of the workforce and extensive views of the community on working hours policy issues. Having regard to the outcomes of the two WGs, members have agreed to set up a task force to discuss the further work of the SWHC.

More...

HONG KONG **30 JAN** 2015

New MPF Provisions in Hong Kong

On 30 January 2015, the Legislative Council passed certain changes to the Mandatory Provident Fund Schemes Ordinance ("**MPFSO**").

Such changes, when they come into force, will enable the withdrawal of benefits upon the terminal illness of an employee, and also enable a phased withdrawal of accrued benefits at up to 12 withdrawals each year.

In addition, the MPFSO has been amended to permit the disclosure of certain information under certain conditions, covering FATCA compliance (which requires trustees in Hong Kong to make certain disclosures to the US Internal Revenue Service in certain circumstances). This provision is now in force.

More...

HONG KONG **27 FEB** 2015

Statutory Paternity Leave Introduced in Hong Kong

The statutory paternity leave provisions, which were incorporated into the Employment Ordinance ("**EO**") on 24 December 2014, came into operation on 27 February 2015. This introduces three days' paid paternity leave for working fathers (and fathers-to-be).

A male employee will be entitled to paternity leave in respect of the birth of a child if (a) he is the child's father, (b) he has been employed under a "continuous contract" (i.e., satisfying the "418" rule) immediately before taking the leave, and (c) he has complied with the specified "notification requirements".

This legal update takes a look at, amongst other issues, when an employee would be entitled to paternity leave and paternity leave pay, and what steps employers should take.

More...

HONG KONG **11 MAR** 2015

Employer Vicariously Liable for Assault by an Employee on Another

In *Yeung Mei Hoi v Tam Cheuk Shing and Another* [2015] HKCA 109, the Court of Appeal reversed the decision from the Court of First Instance and held that the employer was vicariously liable for an assault committed by its employee to another employee.

In *Yeung Mei Hoi*, a security guard of a residential estate assaulted his supervisor when his supervisor inquired about his failure to report promptly the location of a taxi that had improperly entered into the estate and properly wear his uniform. The security guard was on duty when he lost his temper and assaulted his supervisor. At that moment of time, to the security guard's scope of employment required him to be subject to the supervision and discipline of the supervisor. The Court of Appeal held that the security guard's unauthorised act of assault during this moment was closely connected with his employment.

Con't

HONG KONG **11 MAR** 2015

It further held that the system of supervision and discipline of security guards by a supervising officer put in place by the employer carried with it a risk that the subordinate may react in an unauthorised way in the course of being subject to supervision and discipline. This legal update acts as a reminder to employers that they can still be vicariously liable for unauthorised acts of an employee.

More...

HONG KONG **18 MAR** 2015

Standard Hours Working Committee Holds 11th Meeting

The Standard Working Hours Committee ("**SWHC**") held its 11th meeting on 18 March 2015.

The SWHC considered the findings of the dedicated working hours survey and the public engagement and consultation on working hours reported by two consulting firms. The SWHC agreed in principle to recommend a legislative approach to implement a policy to regulate working hours of employees. The contract between the employer and the employee should state clearly how many hours they need to work for, what will happen if they work overtime, and their meal time and rest time. However, the SWHC is of the view that an "across-the-board" legislative approach would be inappropriate.

More...

HONG KONG **30 MAR** 2015

Competition Commission Clarifies Position on Collective Bargaining and Trade Associations

The Hong Kong Competition Commission (the "**Commission**") published a set of revised draft guidelines ("**Guidelines**") to the Competition Ordinance (Cap. 619) (the "**CO**") on 30 March 2015. The revised Guidelines are a good indication of how the Commission intends to interpret the CO, but they are not legally binding and may be subject to further revisions.

Collective Bargaining

The Commission takes the view in the revised Guidelines that collective bargaining between a group of employees and their employer in relation to employment matters such as salaries and conditions of work will not be considered as a contravention of the CO, as employees are an integral part of the employer. In particular, the Guidelines state that the CO will not apply to collective negotiations between an employer and a trade union where it acts as an agent representing a number of employees.

Employers should take note that the situation would differ if a trade union represents employees of more than one employer in collective negotiations with two or more employers who are competitors in the industry. In such industry-wide collective negotiations, the employees and employers involved would not form part of an integral unit, as such their collective conduct would fall within the scope of the CO.

Trade Associations

The revised Guidelines clarify that any decision or recommendation made by or through a trade association comprising of competitors can potentially be anti-competitive, even if not binding on its members. Employers need to be aware that recommended fee scales and "reference" wages or commission rates suggested by trade associations would likely contravene the CO.

More...

HONG KONG **31 MAR** 2015

New Guidance Note on CCTV Surveillance and the Use of Drones

On 31 March 2015, the Office of the Privacy Commissioner for Personal Data ("**PCO**") published a guidance note entitled *"Guidance on CCTV Surveillance and Use of Drones"* (the "Guidance"), which replaced *"Guidance on CCTV Surveillance Practices"*. It introduces amendments that take into account of new provisions in the Personal Data (Privacy) (Amendment) Ordinance 2012 and incorporates new guidance on responsible use of drones.

The PCO is of the view that drones fitted with cameras could add a new dimension to these privacy concerns by virtue of their unique attributes. These include their mobility, as well as ability to stay in the air for a considerable period of time, and the gathering of information from different vantage points over a broad area.

More...

HONG KONG
15 MAY 2015

New MPF Provisions to Take Effect from 1 August 2015 in Hong Kong

On 15 May 2015, a notice was gazetted to appoint 1 August 2015 as the effective date of certain amendments to the Mandatory Provident Fund Schemes Ordinance

Starting from 1 August 2015, terminal illness will be an additional ground for the early withdrawal of MPF benefits.

As for the phased withdrawal of MPF benefits, the commencement date is yet to be proposed.

More...

HONG KONG
26 MAY 2015

Standard Working Hours Committee holds 12th meeting

The Standard Working Hours Committee ("**SWHC**") held its 12th meeting on 26 May 2015.

The SWHC agreed in principle to recommend a legislative approach to implement a policy relating to working hours of employees. This will include a mandatory requirement for all employers and employees in general to enter into written employment contracts specifying clearly such terms relating to working hours (the "big frame"). The SWHC will also explore whether there is a need for other suitable measure(s) to protect grassroots employees with less bargaining power (the "small frame").

More...

HONG KONG
9 JUN 2015

Hong Kong's Contracts (Rights of Third Parties) Ordinance to commence on 1 January 2016

The Government has gazetted 1 January 2016 as the commencement date of the Contracts (Rights of Third Parties) Ordinance (the "**Ordinance**").

The Ordinance radically reforms Hong Kong's long established privity of contract rule. Once it is in force, a third party may, in certain circumstances, be able to enforce a contract to which it is not a party.

More...

HONG KONG
10 JUL 2015

3 September 2015 Appointed One-Off Holiday in Hong Kong

The Legislative Council has passed a Bill designating 3 September 2015 (Thursday) a one-off additional General Holiday and statutory holiday.

An employer of an employee covered by the Employment Ordinance must grant to that employee a statutory holiday on 3 September 2015 or an alternative or substituted holiday in accordance with the requirements of the Employment Ordinance. If the employee has been employed under a continuous contract for 3 months or more before the statutory holiday, then the employer must also pay statutory holiday pay to the employee.

More...

HONG KONG
13 JUL 2015

Labour Tribunal Exercised Its Expanded Power to Order Security for Payment

The Labour Tribunal exercised its power under the amended section 30 of the Labour Tribunal Ordinance (the 'Ordinance') in the recent case of *Lam Che Fu v The Chinese Kitchen (Sai Kung) Ltd HCLA 16/2015*. The employee claimed overtime pay from his employer. During the hearing, the Tribunal ordered the employee to pay a sum of HK$14,452 into the Tribunal as security for payment of an award (which was to be paid within 7 days).

The employee then applied to the High Court for leave to appeal against this order on the ground that there was an error of law and the Tribunal had wrongly made the order for the security payment.

In rejecting the leave application, the High Court confirmed that it was 'just and expedient' for the Tribunal to order security payment in the circumstances where:

1. The employee failed to substantiate his claim for overtime pay by providing evidence of his claim for wages in arrears and had not raised his complaint to his employer prior to his cessation of employment; and
2. The employee's case was inconsistent and not credible.

Con't

HONG KONG
13 JUL 2015

In short, the employee did not have a strong claim.

Employers are not entirely helpless against unmeritorious claims made against them in the Labour Tribunal. In appropriate circumstances, (if not raised by the Presiding Officer) an employer should consider asking for a security payment under section 30 of the Ordinance.

More...

HONG KONG
17 JUL 2015

Competition Ordinance Comes Into Full Effect on 14 December 2015

The Commencement Notice for the Competition Ordinance (Cap. 619) (the "**Ordinance**") was gazetted on 17 July 2015, appointing 14 December 2015 as the date for full enforcement of the Ordinance.

According to a press release issued by the Competition Commission (the "Commission"), the Commission is "ready to be an effective enforcer of the competition law which will support Hong Kong's open economy by ensuring fair and free markets for all".

The Commission has completed its drafting and consultation of the implementation guidelines, which will be published shortly.

Also in the pipeline are a leniency policy for cartel conduct and a statement of the Commission's enforcement priorities. The Commission's statement of enforcement priorities is an important document which will, short of identifying specific sectors or businesses, give businesses an idea of where the Commission intends to focus its enforcement activity and what considerations may drive the Commission's decision to commence an investigation or market study.

Businesses should ensure their staff understand the competition rules introduced by the Ordinance, how the rules affect commercial strategy and daily operations, and start to take steps to reach a compliant position before the critical date of 14 December 2015.

More...

HONG KONG
20 JUL 2015

New Guidance for the Responsible Collection and Use of Biometric Data

The Office of the Privacy Commissioner for Personal Data published the "Guidance on Collection and Use of Biometric Data" to provide data users who intend to collect biometric data with practical guidance on complying with the requirements under the Personal Data (Privacy) Ordinance. It replaces the previous "Guidance Note on the Collection of Fingerprint Data" issued in May 2012.

Biometric data could be sensitive data as it may be unique and immutable, or it may contain an individual's intimate information relating to health, mental condition or racial origin. Employers using biometric technology should understand the privacy risks associated with the uniqueness, immutability and the inference ability of biometric data. They should only use biometric data where justified and put in place appropriate procedural and technological safeguards to prevent unauthorised access to and wrongful use of biometric data which could lead to identity theft, impersonation or discrimination.

More...

HONG KONG
21 JUL 2015

42 Employers Sanctioned for Placing Blind Recruitment Advertisements

42 employers were sanctioned for placing 46 job advertisements to solicit job applicants' personal data without disclosing their identities. These blind recruitment advertisements ("**Blind Ads**") breached the fairness principle for personal data collection, i.e. the Data Protection Principle 1(2) of the Personal Data (Privacy) Ordinance (the "**PDPO**").

The Privacy Commissioner investigated into and served enforcement notices on the 42 employers concerned directing them to delete the personal data collected and to formulate a company policy of placing recruitment advertisement which complies with the PDPO.

More...

HONG KONG
22 JUL 2015

Standard Working Hours Committee Holds 13th mMeeting

The Standard Working Hours Committee ("**SWHC**") held its 13th meeting on 22 July 2015.

The SWHC continued its discussion on a legislative approach to implement a policy relating to working hours of employees. The SWHC has decided on the parameters used solely for

Con't

HONG KONG
22 JUL 2015

reference in conducting data analyses and impact assessment under the "small frame", which is to protect grassroots employees with lower income, lower skills and less bargaining power.

More...

HONG KONG
30 JUL 2015

Privacy Commissioner Advises Cloud Users on Privacy Concerns

The Office of the Privacy Commissioner for Personal Data ("**PCO**") published a revised information leaflet on "Cloud Computing" to advise cloud users on personal data privacy concerns and the importance of fully assessing the benefits and risks of cloud services.

Employers who are considering cloud computing as a form of outsourcing arrangements should assess the risks associated with entrusting their data to data processors which operate under an environment of pooled computing resources. The outsourcing of any processing or storage of personal data to third-parties does not relieve the organisations' legal responsibility for the protection of the personal data that employers collect and hold. Employers should ensure that the data protection requirements under the Personal Data (Privacy) Ordinance are still effectively complied with by their contractors and sub-contractors.

More...

HONG KONG
26 AUG 2015

The Standard Working Hours Committee Holds 14th Meeting

The Standard Working Hours Committee ('SWHC') held its 14th meeting on 26 August 2015.

The SWHC continued its discussion on a legislative approach to implement a policy relating to working hours on employee. Having regard to the unique circumstances of different trades and occupations, the SWHC considered that an 'across-the-board' legislative approach would be inappropriate. The SWHC agreed in principle to recommend a legislative approach to mandatorily require employers and employees in general to enter into written employment contracts specifying clearly such terms relating to working hours, e.g. the number of working hours, overtime work arrangements and methods of overtime compensation.

The SWHC planned to further consult major employer associations, major labour organisations, relevant trades and professional bodies, etc, on preliminary recommendations on working hours policy directions, so as to gather information for the SWHC's reference in preparing its report.

More...

HONG KONG
14 SEP 2015

Two Companies Convicted for Breach of the Direct Marketing Provisions Under the Personal Data (Privacy) Ordinance

On 9th and 14th September 2015, Hong Kong Broadband Network Limited and Links International Relocation Limited respectively were convicted of breaching the direct marketing provisions under the Personal Data (Privacy) Ordinance ('PDPO'). These are the first set of convictions issued under the direct marketing provisions in Hong Kong which came into effect on 1st April 2013.

The recent cases highlight the fact that even notifying a customer of the data user's services, or of any deals or offers in relation to existing services, amounts to direct marketing and, unless such marketing has been sanctioned by the data subject, the notification will be carried out in breach of the PDPO. An enforcement action in such a scenario is not just a risk, but almost a certainty.

Data users are reminded to: (i) comply with notification obligations under the PDPO and obtain an individual's prior consent before using their personal data for any form of direct marketing; (ii) maintain accurate and up-to-date opt-out lists; and (iii) offer training and monitoring of front-line staff who deal with customers as scripts and template emails provided to them are no adequate substitute.

More...

HONG KONG
30 SEP
2015

The Standard Working Hours Committee Holds its 15th meeting

The Standard Working Hours Committee ('SWHC') held its 15th meeting on 30th September 2015.

The SWHC continued its discussion on whether there is a need to further protect grassroots employees with lower income, lower skills and less bargaining power. Further to the discussion at the last meeting on the impact assessment results of various combinations of parameters on employers and enterprises (particularly small and medium-sized enterprises), the SWHC has received a briefing by the secretariat at the meeting on the possible impacts of these combinations of parameters on the medium- and long-term macro-economic situation of Hong Kong.

More...

HONG KONG
OCT
2015

Privacy Commissioner Gives Guidance to Data Users on Handling Data Breaches

The Office of the Privacy Commissioner for Personal Data published a revised guidance note on 'Data Breach Handling and the Giving of Breach Notifications' to assist data users on handling data breaches and to mitigate loss and damage caused to the data subjects, particularly when sensitive data is involved.

In the event of a data breach, a data user should immediately gather relevant information relating to the breach, take steps to ascertain the breach, assess the potential damage or harm caused by the breach, and consider notifying affected data subjects and interested parties. The data user should also devise a clear strategy to prevent future occurrence of similar breach.

More...

HONG KONG
OCT
2015

Privacy Commissioner Issues Privacy Guidelines on Monitoring and Personal Data Privacy at Work

The Office of the Privacy Commissioner for Personal Data revised its 'Privacy Guidelines: Monitoring and Personal Data Privacy at Work' in October 2015 which provides guidance to employers on assessing whether employee monitoring is appropriate for their business, and how they can develop privacy compliant practices in the management of personal data obtained from employee monitoring. It is the duty of the employer to ensure that such act or practice complies with the Data Protection Principles of the Personal Data (Privacy) Ordinance.

More...

HONG KONG
OCT
2015

Privacy Commissioner Issues Guidelines on Monitoring Helpers in Domestic Households

The Office of the Privacy Commissioner for Personal Data revised the 'Privacy Guidelines: Monitoring and Personal Data Privacy at Work', which highlights certain aspects of the Personal Data (Privacy) Ordinance to employers of domestic helpers, with a view to promoting the protection of data privacy of the helpers in domestic households where employee monitoring is often undertaken.

As employee monitoring is by its nature intrusive upon privacy, an employer should consider whether it is indeed necessary to undertake such monitoring and whether the manner in which monitoring is carried out is reasonable. It is important that the domestic helper is informed of the presence of any video monitoring system in the premises where she works. Lastly, an employer must also ensure that the personal data of the domestic helper collected by means of video monitoring is used for purposes stated in the notification given to her or a directly related purpose, unless otherwise permitted by law.

More...

HONG KONG
9 OCT
2015

The Equal Opportunities Commission Issues Statement on an Alleged Bullying and Sexual Harassment Incident Involving Several Firemen

The Equal Opportunities Commission ('EOC') issued a statement in relation to recent media reports that a fireman was suspected to have been bullied and sexually assaulted by

Con't

LOOKING BACK

HONG KONG 9 OCT 2015

his colleagues. The EOC expressed its concerns about the incident and considered that the suspected mass bullying, which may be in breach of the Sex Discrimination Ordinance ('SDO'), was unacceptable.

Sexual harassment, whether against a man or a woman or a person of the same gender, is unlawful under the SDO. Employers, including Government departments, may be held vicariously liable for any discriminatory and sexual harassment acts done by their employees in the course of their employment, unless the employers can demonstrate that it has taken reasonably practicable steps to prevent the employees from doing the unlawful act.

More...

HONG KONG 28 OCT 2015

The Standard Working Hours Committee Holds its 16th Meeting

The Standard Working Hours Committee ('SWHC') held its 16th meeting on 28th October 2015.

The SWHC agreed that detailed data analysis in respect of employees with monthly wages not exceeding $25,000, weekly working hours exceeding 44 hours and overtime pay rate at 1:1.5 would be carried out in order to assess employees' overtime work situation. Furthermore, in formulating feasible working hours policy options, the possible impacts of different scenarios on employees, employers, enterprises (particularly small and medium-sized enterprises), trades, the overall economy and the labour market must also be carefully considered.

More...

HONG KONG 3 NOV 2015

A Body Check Service Company Fined for the Failure to Comply with an Opt-Out Request

Hong Kong Professional Health Group Limited was convicted and fined at the Tuen Mun Magistrates' Court for the offence under section 35G(3) of the Personal Data (Privacy) Ordinance for failure to comply with the requirement from its client to cease to use his personal data in direct marketing. This is the third conviction of the provisions under the new direct marketing regime since it came into force on 1st April 2013.

More...

HONG KONG 14 DEC 2015

Full Enforcement of the Competition Ordinance

The Competition Ordinance (Cap. 619) came into force on 14th December 2015. The new legislation may make unlawful any arrangement with a competitor which could lead to fixing wages, preventing solicitation of employees, or boycotting of competitors. HR professionals are reminded to avoid disclosing competitively sensitive information with their counterparts at competing employers. Terms of engagement with intermediaries such as recruiters and salary consultants should also be reviewed to ensure employers' interests are appropriately safeguarded.

More...

HONG KONG 1 JAN 2016

The Contracts (Rights of Third Parties) Ordinance

The Contracts (Rights Of Third Parties) Ordinance will come into force on 1st January 2016. The Ordinance radically reforms Hong Kong's long established privity of contract rule. Once it is in force, a third party may, in certain circumstances, be able to enforce a contract to which it is not a party.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

INDIA
12 DEC 2014

Launch of Web Portal for Online Registration of Employers by the Employees State Insurance Corporation (**ESIC**)

The ESIC has launched web services for online registration of employers under the Employees' State Insurance Act, 1948 through the e-Biz portal. The e-Biz platform is operated by the Department of Industrial Policy and Promotion and aims to create a business and investor friendly eco system in India by making all business and investment related regulatory services across Central, State and local governments available on a single portal. From this single website, entrepreneurs will be able to apply and manage various registrations, licenses and clearance etc., thereby obviating the need for an investor or a business to visit multiple offices or a plethora of websites.

More...

INDIA
17 DEC 2014

Proposed Amendment to Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**PF Act**)

The Central Government issued a memorandum on 17 December 2014, calling for comments on the draft amendments to the PF Act. The salient amendments proposed are as follows:

- The PF Act is currently applicable to cover establishments that employ 20 or more persons. The proposed amendment seeks to reduce this threshold and make the PF Act applicable to all establishments employing ten or more persons.
- At present, the provident fund contribution payable under the PF Act is calculated based on the 'basic wages' of the employee. Components such as house rent allowance, bonus, overtime allowance, dearness allowance and other similar allowances are excluded from the existing definition of 'basic wages'. The proposed amendment seeks to make the PF contribution payable on the 'wages' of the employee (which has been given a wider meaning), rather than the 'basic wages'. The term 'wages' has been defined to include all remuneration payable to an employee under the terms of employment (if paid in intervals of 2 months or less). The only components that would be excluded after the amendment are (i) contributions made to the Employees' State Insurance Scheme, (ii) gratuity payments (iii) travelling allowance or concession, and (iv) any sum paid to the employee to defray special expenses incurred by him/her.
- The definition of 'employee' will be changed to exclude apprentices.
- There is currently no limitation period for conduct of quasi-judicial proceedings by the Provident Fund authorities under the PF Act. The proposed amendment seeks to introduce a limitation period whereby the Provident Fund authorities cannot pass any order in respect of period beyond 5 years from the date on which the provident fund contribution became payable.

The proposed amendments are still at a preliminary stage, and a bill would need to be introduced and passed by both Houses of the Parliament, and also receive presidential assent before it becomes law.

More...

INDIA
22 DEC 2014

Apprentices (Amendment) Act, 2014 in Effect from 22 December 2014.

The Apprentices Act, 1961 regulates the training of apprentices in industry. Some of the major changes introduced by the Apprentices (Amendment) Act, 2014 are as follows:

- For organizations operating in more than four states, the implementation of the Apprenticeship Training Scheme will rest with the Central Government, and not the respective State Apprenticeship Advisors.
- The definition of "worker" under the Apprentices Act has been broadened to include contractual workers, daily workers, agency workers, casual workers, seasonal workers, etc. This is to mitigate the effect of employers hiring contractual workers instead of regular workers in order to reduce the number of apprentices.
- Violations under the Apprentices Act have been decriminalized, and imprisonment will no longer be a penalty for non-compliance with the Apprentices Act.

Con't

INDIA
22 DEC 2014

- Establishments are now required to enter details of their trade-wise requirement in respect of apprenticeship training on the web-portal for apprenticeship training.
- Employers are now given the option to inform the apprenticeship adviser by post or email or web-portal about the registration of apprenticeship contracts.
- Apprentices will be given preference for employment over direct recruits.

More...
More...

INDIA
1 JAN 2015

Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Act, 2014 (Amendment Act) in Effect from 1 January 2015

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 earlier exempted employers in relation to establishments employing less than 20 employees from furnishing returns and maintaining registers under 9 labour laws, including the Payment of Wages Act, 1936, the Contract Labour (Regulation and Abolition) Act, 1970 and the Minimum Wages Act, 1948. The key amendments introduced by the Amendment Act are:

- Expanding the coverage of the Act to establishments having up to 40 workers from the existing 19 workers.
- Increasing the number of labour laws in relation to which the exemption has been granted from 9 to 16.
- Simplifying the annual returns and reducing the registers required to be maintained.
- Permitting maintenance of records in electronic form and submission of returns electronically.

More...
More...

INDIA
3 FEB 2015

Notification of Social Security Agreement (SSA) with Norway with effect from 1 January 2015.

Indian authorities have issued circulars notifying that the SSA that India had signed with the Kingdom of Norway will be effective from 1 January 2015.

- India and Norway had signed the SSA on 29 October 2010.
- While India has signed a number of such SSAs, they only come into force once notified. The SSA will help India and Norway in garnering more investment and work opportunities for nationals of both countries and also enhance cooperation on social security between the India and Norway.
- The SSA also provides various benefits to Indian nationals working in Norway. SSAs usually provide for the following social security benefits to Indian nationals working in the other country which is a party to the SSA:
  - » For short-term contracts up to a specified period, no social security contribution would need to be paid under the other country's law by the detached workers provided they continue to make social security payments in India.
  - » These benefits shall be available even when the Indian company sends its employees to that country from a third country.
  - » Indian workers shall be entitled to bring back the social security benefit if they relocate to India after the completion of their service in that country.
  - » Self-employed Indians in the other country would also be entitled to bring back social security benefit on their relocation to India.
  - » The period of contribution in one contracting state will be added to the period of contribution in the second contracting state when determining eligibility for social security benefits.

More...

INDIA

21 MAR

2015

Proposed Labour Code on Wages Bill, 2015 (the **Draft Wages Code**)

The law relating to payment of wages in India is currently dealt with by 4 different central statutes, namely the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. The Draft Wages Code seeks to repeal these 4 laws, and replace them with a single comprehensive code that would deal with all aspects related to wages. Some of the key provisions in the Draft Wages Code include:

- A uniform definition of wages: Currently, each of the 4 statutes has a distinct definition of wages. The Draft Wages Code seeks to provide a uniform definition of wages, which would reduce confusion during implementation of the law.
- Minimum wages: The Draft Wages Code requires the state governments to fix the minimum wages applicable to different employments, and review them periodically. It provides for the constitution of a Minimum Wages Advisory Board in every state for advising state governments on the fixing and revision of minimum wages.
- Payment of wages: The Draft Wages Code provides that wages shall be paid to all employees by depositing them in bank accounts. Wages below a limit fixed by central or state government may be payable in cash. It also contains provisions on permissible deductions from wages.
- Payment of bonus: The Draft Wages Code includes specific criteria on the minimum bonus to be provided by the employer, the eligibility criteria for receipt of bonus, method of calculation of bonus etc.
- Gender Equality: The Draft Wages Code prohibits discrimination on grounds of gender in relation to wages.

The Draft Wages Code is yet to be introduced in Parliament. It would need to be passed by both Houses of Parliament and receive presidential assent before it becomes law.

More...

INDIA

24 APR

2015

Launch of Online Filing of Single Annual Return on the *Shram Suvidha* Portal

The Government had set up a single unified web portal (the "*Shram Suvidha*" Portal) for online registration of units, reporting of inspections, and submission of annual returns and redressal of grievances, in October 2014. The portal operates through a common unique Labour Identification Number ("**LIN**") which will be allotted to all employers. On 24 April 2015, the facility to file a single annual online common return on the portal in place of filing separate returns under eight labour laws was launched. The eight labour laws covered in the common return are:

- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Contract Labour (Regulation & Abolition) Act, 1970;
- The Inter-State Migrant Workmen (RE&CS) Act, 1979;
- The Maternity Benefit Act, 1961;
- The Industrial Disputes Act 1947;
- The Payment of Bonus Act, 1965;
- The Building and Other Construction workers (Regulation of Employment & Conditions of Service) Act, 1996.

Now, instead of multiple returns under the above Acts (and sometimes more than one return in a year), companies only need to e-file a Single Unified Annual return.

More...

INDIA
27 APR 2015

Proposed Labour Code on Industrial Relations Bill, 2015 (**Draft IR Code**)

This Draft IR Code seeks to repeal four important central legislations, viz. the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947, and replace them with a comprehensive code dealing with industrial relations. The key amendments sought to be introduced in the Draft IR Code include:

- Under the current law, Chapter V-B of the Industrial Disputes Act (which contains stringent requirements to be followed by the employers prior to retrenchment and closure, including obtaining prior Government approval) is only applicable to factories, mines and plantations which have employed 100 or more workmen on an average per working day in the preceding 12 months. The Draft IR Code currently proposes to revise this threshold, and make the provisions of Chapter V-B applicable to all establishments in which 300 or more workmen were employed on an average per working day in the preceding 12 months.
- The Draft IR Code makes it more difficult for trade unions to be registered, since at least 10% of the workers establishment, or 100 workers, whichever is less, would need to make the application for registration. Earlier, it was sufficient if seven workers made this application.
- Currently, the provisions of the Industrial Employment (Standing Orders) Act, 1946 is in the first instance only applicable to "industrial establishments" employing more than 100 workmen (lesser in certain States), though its applicability has been extended to commercial establishments by certain State Governments. The Draft IR Code aims to also make the provisions relating to the Standing Orders applicable to all commercial establishments that hire 100 or more workers.

The Draft IR Code is yet to be introduced in Parliament. It would need to be passed by both Houses of Parliament and receive presidential assent before it becomes law.

More...

INDIA
5 MAY 2015

Mandatory Deposit of Contributions Through Internet Banking Under The Employees' Provident Funds Scheme, 1952 (**EPF Scheme**)

Under the EPF (Second Amendment) Scheme, 2015 dated 5 May 2015, employers are mandated to make statutory contributions under the EPF Scheme electronically through internet banking only. Prior to this amendment, employers could remit EPF contributions only by way of bank drafts or cheques. By notification dated 24 June 2015, the Employees Provident Fund Organization has deferred the application of the EPF (Second Amendment) Scheme, 2015 till September 2015 for employers making monthly contributions of less than one lakh rupees. Such employers have been given the option of making payments through bank drafts or banker's cheques or cheques drawn on the local banks as was done earlier. This order was passed to facilitate the transition period for those employers with lower contributions who may not have immediate access to internet banking.

More...

INDIA
20 MAY 2015

Further Amendments Proposed to the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**PF Act**)

The Central Government had issued a memorandum on 17 December 2014, calling for comments to certain proposed amendments to the PF Act. By memorandum dated 20 May 2015, the Central Government made some further changes to the proposed amendments. These key changes are:

- At present, the provident fund contribution (**PF contribution**) payable under the PF Act is calculated based on the "basic wages" of the employee. Components such as house rent allowance, bonus, overtime allowance, dearness allowance and other similar allowances are excluded from the existing definition of "basic wages". The proposed amendment seeks to make the PF contribution payable on the "contributing wages" of the employee (which has been given a wider meaning), rather than on their "basic wages". The term "contributing wages" has been defined to include all remuneration payable to an employee under the terms of employment (if paid at intervals of 2 months

Con't

INDIA
20 MAY
2015

or less). The only components proposed to be excluded are: (i) contributions made to the Employees' State Insurance Scheme; (ii) gratuity payments; (iii) travelling allowances or concessions; (iv) any sum paid to the employee to cover special expenses incurred by him/her; and (v) house rent allowance provided that the same shall not be more than 20% of contributing wages.

- The new amendments also seek to introduce new definitions of wage ceiling, voluntary contribution, small establishment, unorganised sector and unorganised worker.
- The new amendments also propose to bring into effect the option to be provided to the employees to choose between making PF contributions and NPS contributions. As per the proposed amendments, an employee will have a onetime option of joining the NPS. On the exercise of such option, the employee will be deemed to have exited from the Employees' Provident Fund Scheme, Employees' Pension Scheme, Employees' Deposit Linked Insurance Scheme or any other scheme notified under the EPF Act. An employee who is a member of the NPS will have a onetime option of returning to the various Schemes notified under the EPF Act. Any transfer of an employee that occurs as a result of the exercise of the options listed above will be accompanied by the transfer of the accumulated amounts under the EPF Act.

The proposed amendments are still at a preliminary stage, and a bill would need to be introduced and passed by both Houses of Parliament, and also receive presidential assent, before it becomes law.

More...

INDIA
5 JUN
2015

Notification of Social Security Agreement (**SSA**) with Austria

Indian authorities have issued circulars notifying that the SSA that India had signed with Austria will be effective from 1 July 2015.

- India and Austria had signed the SSA on 4 February 2013.
- While India has signed a number of such SSAs, they only come into force once notified. The SSA will help India and Austria in garnering more investment and work opportunities for nationals of both countries and also enhance cooperation on social security between the India and Austria.
- The SSA also provides various benefits to Indian nationals working in Austria. The SSA provides for the following social security benefits to Indian nationals working in Austria:
  - » For short-term contracts up to 60 months, no social security contribution would need to be paid under the other country's law by the detached workers provided they continue to make social security payments in India.
  - » These benefits shall be available even when the Indian company sends its employees to that country from a third country.
  - » Indian workers shall be entitled to bring back the social security benefit if they relocate to India after the completion of their service in that country.
  - » Self-employed Indians in the other country would also be entitled to bring back social security benefit on their relocation to India.
  - » The period of contribution in one contracting state will be added to the period of contribution in the second contracting state when determining eligibility for social security benefits.

More...

INDIA
16 JUN
2015

Amendment to the Apprenticeship Rules, 1992

The Apprentices Act, 1961 (**Apprentices Act**) regulates the training of apprentices in the industry. The Apprentices Act was amended in December 2014 and the Amendment Rules have been notified to operationalise the changes introduced in the Apprentices Act.

The salient features of the Amendment Rules are as follows:

- Employers covered within the ambit of the Apprentices Act who employ 40 or more employees, are now mandatorily required to engage apprentices.

Con't

INDIA
16 JUN 2015

- The number of apprentices in an establishment must be between 2.5% - 10% of the average strength of the workforce (including contract workers) in the preceding financial year.
- Non-engineering degree holders and diploma holders also fall within the scope of apprentices.

More...

INDIA
7 JUL 2015

Enhancement of National Floor Level Minimum Wage (**NFLMW**)

The NFLMW is a non-statutory measure aimed at achieving a uniform wage structure and reduce disparities in minimum wages across the country. Individual State/ Union Territory governments are expected to ensure that the minimum wages in scheduled employments is not below the NFLMW. However, this NFLMW is not binding in nature. The Central Government has revised the NFLMW from the existing INR 137/- to INR 160/- per day, effective from 1 July 2015.

More...

INDIA
31 JUL 2015

Indian Authorities have Issued Circulars Notifying that the SSA that India had Signed with Canada will be Effective from 1 August 2015

- India and Canada had signed the SSA on 6 November 2012.
- While India has signed a number of such SSAs, they only come into force once notified. The SSA will help India and Canada in garnering more investment and work opportunities for nationals of both countries and also enhance cooperation on social security between India and Canada.
- The SSA also provides for the following social security benefits to Indian nationals working in Canada:
  - » For short-term contracts up to 60 months, no social security contribution would need to be paid under the other country's law by the detached workers provided they continue to make social security payments in India.
  - » These benefits shall be available even when the Indian company sends its employees to that country from a third country.
  - » Indian workers shall be entitled to bring back the social security benefits if they relocate to India after the completion of their service in that country.
  - » Self-employed Indians in the other country would also be entitled to bring back social security benefits on their relocation to India.

The period of contribution in one contracting state will be added to the period of contribution in the second contracting state when determining eligibility for social security benefits.

More...

INDIA
20 AUG 2015

Notification Related to Public Holidays for Banks

The Central Government, through the Ministry of Finance, has issued a notification as per which the second and fourth Saturday of each month have been declared as public holidays for banks in India with effect from 1 September 2015. This notification has been issued under section 25 of the Negotiable Instruments Act, 1881, which gives the Central Government the power to declare public holidays for the purposes of banking transactions. The holidays declared under this notification apply to all banks in India, whether or not a bank is classified as a 'Scheduled Bank' under the provisions of the Reserve Bank of India Act, 1934.

More...

INDIA
27 AUG 2015

Amendment to the Employees' Provident Fund Scheme, 1952 (the **EPF Scheme**), Increasing the Avenues for Investment of the Provident Fund Corpus

The EPF Scheme prescribes permissible avenues for investment of provident fund contributions made by the employers and the employees.

Con't

INDIA

27 AUG

2015

The Ministry of Labour and Employment, by notification dated 27 August 2015, has provided that the money accumulated in the Employees Provident Fund can also be invested in the following securities:

- On a first mortgage of immoveable property;
- Units issued by the Unit Trust of India;
- Any other security expressly authorised by the instrument of trust or by the Central Government through a notification in the Official Gazette or by any rule as may be prescribed by a High Court.

More...

INDIA

16 SEP

2015

Enhancement of the Maximum Insurance Payable Under the Employees' Deposit Linked Insurance Scheme (**EDLI**)

The EDLI Scheme is a life insurance scheme applicable to employees covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**). An employer is required to make a monthly contribution of 0.5% of the 'monthly pay' of it's employee (defined as basic wages, dearness allowance and retaining allowance, if any) towards the EDLI Scheme. The contribution payable by an employer can be limited to the amount payable on INR 15,000, even if the employee's monthly pay is greater than INR 15,000.

Under the EDLI Scheme, when an employees die during service, the dependents of the employee are entitled to receive the insurance benefit prescribed under the EDLI Scheme. In the past, the maximum insurance benefit that the dependents could receive under the EDLI Scheme was INR 360,000.

By the Press Release dated 16 September 2015, the Ministry of Labour and Employment has notified that the maximum insurance payable under the EDLI Scheme to the dependents of the deceased employee has been increased to INR 600,000.

More...

INDIA

16 SEP

2015

Draft Amendment Proposal to the Factories Act, 1948

The draft amendment proposal seeks to revamp the existing inspection system provided under the Factories Act, 1948 while at the same time streamlining the process for setting up factories.

The key changes proposed in the draft include:

- Under the existing law, the employee threshold for applicability of the provisions of the Factories Act is dependent on whether the manufacturing process is carried on with or without the aid of power. A factory is currently defined as an establishment which either (i) carries on manufacturing with power and employs at least 10 people or, (ii) carries on manufacturing without power and employs at least 20 people. As per the proposed amendment, a factory is defined as any establishment where a 'manufacturing process' is carried on, and 40 or more people are employed.
- The definition of 'manufacturing process' is also proposed to be amended. As per the proposed definition, a manufacturing process has been expanded to include means any process or activity resulting in any alteration of original character, such as and/or making value addition to the original material acted upon when subjected to the process or activity.
- Creation of a new regulatory body, the Occupational Safety and Health Board of India to regulate the safety and working conditions in factories, as well as the approval and licensing of factories.
- A request for registration of a factory will be deemed to be approved on the expiry of 15 days from the receipt of the requisite documentation by the regulator.
- New provision which provides for equal rights to work opportunities for transgender persons.

LOOKING BACK

INDIA
16 SEP 2015

- Provision of 16 weeks' paid maternity leave for women. Female employees are currently entitled to 12 weeks' paid maternity leave only.

The draft amendment proposal is yet to be introduced in the Parliament. It would need to be passed by both Houses of Parliament and receive presidential assent before becoming law.

More...

INDIA
28 SEP 2015

Circular Clarifying Certain Aspects of the Online Registration of Establishments (**OLRE**) under the EPF Act

Given the practical difficulties faced by establishments in obtaining registration under the EPF Act, the Employees' Provident Fund Organisation (**EPFO**) has issued an internal circular to clarify the process for obtaining an online registration.

This circular has provided the following clarifications:

- Officers of the EPFO cannot insist on the personal presence of an employer during the registration process, when the company has made an online request for a Provident Fund (**PF**) code;
- Once the application has been made, an employer can start making remittances to the Employees Provident Fund immediately. No documents are required to be issued by the EPFO to the employer as a prerequisite for obtaining the PF code or for deposit of remittances;

Physical collection of documents is a separate process, which is not linked to the registration or remittances. Such collection will be made by the officers of the EPFO visiting the establishments themselves.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

INDONESIA
19 JAN 2015

Ministry of Manpower Regulation No. 2 of 2015 dated 19 January 2015 regarding Protection of Domestic Workers ("MOM No. 2")

MOM No. 2 regulates domestic workers (*pekerja rumah tangga*) and domestic worker placement institutions (*lembaga penyalur*).

Protection of domestic workers: MOM No. 2 stipulates requirements for domestic workers and employers, including qualifications and work agreements.

Domestic workers must be at least 18 years old, have a valid ID card and, if they are married, they must secure permission from their spouse. Employers must be mentally and physically healthy and have a sustainable income and a proper residence.

MOM No. 2 requires domestic workers and employers to enter into a verbal or written work agreement. Such agreement may be valid for up to two years and may be extended or terminated by agreement between the parties. The agreement must be reported to the head of the neighborhood community (*rukun tetangga* or RT). It is important to note that employers must register domestic workers with mandatory social security programs as stipulated by MOM No. 2.

Placement Institutions: Domestic worker placement institutions must secure a business license from the respective governor or other appointed officer by submitting a written application along with the required supporting documents. The business license is valid for five years and may be extended for the same period.

Under MOM No. 2, placement institutions must submit monthly reports on the number of domestic workers they placed and other relevant data.

INDONESIA
29 JUN 2015

Ministry of Manpower Regulation No. 16 regarding Procedures to Utilize Foreign Manpower ("MOM No. 16")

MOM No. 16 2015 dated 29 June 2015 has replaced Minister of Manpower Regulation No. 12 of 2013 regarding the same ("Old Regulation").

The controversial Indonesian language proficiency requirement contemplated by the Old Regulation has been dropped by MOM No. 16. Foreigners are not required to demonstrate Indonesian language proficiency to obtain a work permit.

However, two new and equally controversial requirements were introduced under MOM No. 16. These requirements are that (i) non-resident members of the Board of Directors ("BOD") and Board of Commissioners ("BOC") of Indonesian companies, and the Board of Patrons, Board of Management and Board of Supervisors of Indonesian foundations, are required to obtain a work permit in Indonesia, and (ii) a company must employ 10 Indonesians for each expatriate employee.

As expected, these two new requirements have created considerable confusion in the business community. According to MOM No. 16, these requirements are effective as of 29 June 2015. There is no transitional period provided in MOM No. 16 and no clarification whether the regulation applies to arrangements which existed prior to the issuance of MOM No. 16. The MOM has said it will provide clarification on any issues arising out of the issuance of MOM No. 16 in the near future.

INDONESIA
23 OCT 2015

Ministry of Manpower Regulation No. 35 of 2015 dated 23 October 2015 regarding Amendment of MOM Regulation No. 16 of 2015 regarding Procedures for the Utilization of Foreign Manpower ("MOM Reg 35/2015")

The Minister of Manpower ("MOM") has just issued MOM Regulation No. 35 of 2015, dated 23 October 2015 ("MOM Reg 35/2015"), which amends MOM Regulation No. 16 of 2015 regarding Procedures for the Utilization of Foreign Manpower ("MOM Reg 16/2015").

MOM Reg 16/2015 required (i) the employment of 10 local workers for every expatriate employee, (ii) work permits for non-resident Directors and Commissioners of Indonesian companies, and for non-resident Patrons, Management and Supervisors of Indonesian foundations, and (iii) a temporary work permit for expatriates visiting Indonesia to attend certain "meetings", which had been customarily covered by a visit visa.

Con't

LOOKING BACK

INDONESIA
23 OCT 2015

As a result of lobbying by various parties, including the International Chambers of Commerce, the new MOM Reg 35/2015 amends the controversial MOM Reg 16/2015 by:

- Eliminating the 1:10 ratio for hiring expatriates;
- Limiting the requirement for a temporary work permit to the following three activities, which no longer includes "attending meetings": (i) making commercial films that are otherwise authorized, (ii) performing audits, production quality control, or inspections of an affiliate in Indonesia for more than one month, and (iii) performing work related to the installation of machinery, electrical, after-sales service, or products in the business trial phase; and
- Eliminating work permits for non-resident Directors and Commissioners of Indonesian companies, and non-resident Patrons, Management and Supervisors of Indonesian foundations.

MOM Reg 35/2015 came into effect on 23 October 2015.

INDONESIA
23 OCT 2015

Government Regulation No. 78 of 2015 dated 23 October 2015 regarding Wages

Government Regulation No. 78 of 2015 regarding Wages ("GR 78") implements Article 97 of Law No. 13 of 2003 regarding Manpower, and repeals and replaces Government Regulation No. 8 of 1981 regarding the Protection of Wages. The main points of GR 78 are:

1. Wage scale and structure: GR 78 requires employers to prepare a wage scale and structure, taking into consideration the groups, positions, years of service, education, and competencies of employees. Employers must inform employees of the wage scale and structure, and GR 78 requires that a copy of the wage scale and structure be attached to the application to register or renew the company regulation.
2. Minimum wage calculation: GR 78 introduces a new formula to calculate provincial minimum wages each year, beginning in 2016. This new formula as set out below should help create a more certain business environment:

   New minimum wage = current minimum wage + (current minimum wage x (Inflation during the year + % GDP annual increase during the year))

   If the current monthly minimum wage is 2 million rupiah, inflation for the year was 5%, and GDP growth was 6%, the calculation of the new minimum wage would be:

   2 million rupiah + (2 million rupiah x (5% + 6%))

   = 2 million rupiah + (2 million rupiah x 11%)

   = 2 million rupiah + 220,000 rupiah

   = 2.22 million rupiah
3. Payment of wages must be in Indonesian Rupiah (IDR): Article 21 of GR 78 requires wages to be paid in IDR. Article 21 does not differentiate between foreign and local employees. GR 78 does not provide a transitional provision for the application of Article 21, and while the effective date of GR 78 is 23 October 2015, it remains to be seen how and whether this requirement will be applied in practice. GR 78 does not provide any sanctions for failing to comply with Article 21.

LOOKING BACK

JAPAN

28 NOV 2014

Act of Special Measures for Fixed-Term Employees with Special Professional Knowledge (the "Act")

The Special Measures for Fixed-Term Employees with Special Professional Knowledge was promulgated on 28 November 2014. The Act will take effect from 1 April 2015. The Act provides for exceptions to the basic rule under Article 18 of the Employment Contract Act, which generally provides that employees with fixed-term contracts have the right to convert their employment contract to an employment contract without a definite period when employees are employed for more than 5 years under two or more fixed-term employment contracts (the "Conversion Right"). The Act includes the following key points:

i. Under the Act, despite Article 18 of the Employment Contract Act, employees with fixed-term contracts within 10 years do not have the Conversion Right if:

   a. The fixed-term contract employees are engaged in operations scheduled to be completed after a fixed period of time (provided that this period exceeds 5 years), and the employees have high income, advanced technical knowledge, skills and experience; and

   b. The employer receives certification from the Ministry of Health, Labour and Welfare, of a plan of appropriate employment management for the relevant fixed-term employees.

   Employees who fall under this category do not have the Conversion Right during the period of the operations for which they are employed.

ii. Under the Act, despite Article 18 of the Employment Contract Act, fixed-term contract employees do not have the Conversion Right if:

   a. After resignations due to mandatory retirement age, employees are reemployed as fixed-term contract employees by their prior employer or a "special relationship employer" (being an employer who can control the prior employer, per Article 9, Paragraph 2 of the Act Concerning Stabilization of Employment of Older Persons); and

   b. The employer receives certification from the Ministry of Health, Labour and Welfare, of a plan of appropriate employment management for the relevant fixed-term employees.

   Employees who fall under this category do not have the Conversion Right during the period in which they are reemployed after their resignations due to the mandatory retirement age.

JAPAN

29 JUL 2015

Introduction of the Individual Identification Numbers System ("My Numbers System")

The My Numbers System, which will be used to increase administrative efficiency in tax, social security and disaster control matters, will come into effect in January 2016. As part of the implementation of the My Numbers System, every Japanese citizen, medium to long-term resident, and special permanent resident will be assigned an individual identification number ("Individual Number").

Although the issuing of Individual Numbers centres on individuals, private business operators in Japan will also be required to obtain their employees' Individual Numbers for certain administrative purposes, such as withholding income tax from salary payments and applying for health insurance.

In light of the impending use of Individual Numbers in public administration in January 2016, every local government in Japan will commence issuance of Individual Numbers to their constituents from 5 October 2015. As such, business operators will be required to obtain such Individual Numbers from their employees on or after 5 October 2015, and develop a system by which to manage the Individual Numbers so obtained by no later than the end of 2015.

Con't

LOOKING BACK

JAPAN

29 JUL 2015

The following are the four main measures that business operators in Japan should take in order to effectively manage the implementation of the My Number System, especially if they will be handling the Individual Numbers of their employees:

i. Identification of affairs requiring the use of Individual Numbers and establishment and confirmation of the relevant workflow;

ii. Development of a system by which to appropriately verify the identity of individuals when obtaining their Individual Numbers (such as a system that uses the individuals' Individual Number cards, driver's licences, passports or other identification documents for verification);

iii. Establishment of security control measures to ensure the confidentiality of Individual Numbers obtained; and

iv. Implementation of measures to ensure compliance with the Personal Information Protection Act (such as by clearly specifying the purposes for which Individual Numbers may be used).

More...

JAPAN

30 SEP 2015

Amendments to the Worker Dispatch Act

On 30 September 2015, amendments to the "Act for Securing the Proper Operation of Worker Dispatching Undertakings and Protection of Dispatched Workers" ("Act") came into force. These amendments ("Amendments") contain several changes to the laws regulating the supply and use of temporary workers.

Previously, a temporary agency was subject to a permission or notification requirement, if it intended to perform any business operations involving the supply of its workers (i.e., temporary workers) to a client causing them to work for the client under its instructions but not asits employees. The distinction between a permission or notification requirement was dependant on whether temporary workers supplied to the business operations were composed solely of those employed by the temporary agency on a regular basis or not. The Amendments abolished such distinction and now all temporary agencies are required to obtain permission from government authorities to perform such business operations (unless a transitional measure applies).

In addition, restrictions on the permitted period of use by a client of temporary workers were abolished and replaced with the following new restrictions, which apply to almost all categories of temporary work and to almost all types of non-regular temporary workers (unless a transitional measure applies).

(i) A client is only permitted to use the "same" temporary worker for up to three years in the same "smallest organisation unit" (e.g., a division or group) of the client.

(ii) A client is only permitted to use "any" temporary worker at the same "workplace" (e.g., an office, factory or store) for up to three years. However, if the client obtains the opinion of a trade union representing a majority of its employees at the workplace or a person representing a majority of such employees (if no such union exists), the client may be able to use a temporary worker at the same workplace for up to three more years, subject also to the restriction in (i) above (the same will apply thereafter).

Other amendments to the Act which came into force on 1 October 2015, provide that if a client uses a temporary worker in violation of either of the above restrictions, the consequence will be the direct employment by the client of the temporary worker upon the temporary worker's request, unless the client (through no fault) has been unaware of the violation.

The Amendments also set forth measures that a temporary agency must take, such as those for certain temporary workers to secure their employment and those for temporary workers to build their careers.

MALAYSIA

24 NOV

2014

Federal Court Case of Kuantan Beach Hotel Sdn Bhd & Alam Venture Sdn Bhd v Abdul Aziz & 142 Ors [01(f)-45-10/2013(C)

This case relates to an employment dispute that arose from the sale of a hotel's assets (building and land) that housed the operations of the business. The hotel employees were terminated after the previous owner of the hotel's assets went into receivership due to business losses. The purchaser of the assets did not make offers of employment to majority of the employees of the hotel. The Industrial Court and High Court ruled in favour of the hotel and the purchaser and ruled that the employees were not unfairly dismissed.

The Court of Appeal held that on the facts, the transaction was a sale of the hotel's business and this attracted the application of an article of the collective agreement (between the Union representing the employees and the previous owner of the hotel's assets) which provided that "in the event the hotel changing its name of ownership or merging with other companies, the validity of the agreement shall continue to apply and that all the employee shall continue to remain in service to enjoy the same entitlements as contracted for." The Court of Appeal ruled that due to this clause and a provision of the Industrial Relations Act 1967 that provided that a collective agreement binds parties to the agreement as well as its successors, assignees or transferees, the purchaser of the hotel's assets was obliged to make offers of employment to the employees and the failure to do so makes the business purchase liable for unfair dismissal (even though the business purchaser never employed the employees in the first place).

The Federal Court heard the appeal and had on 24 November 2014 upheld the decision of the Court of Appeal. This decision is controversial as it will impact all transactions involving change in business ownership.

MALAYSIA

APR

2015

Can an Employer Unilaterally Vary the Service Charge Imposed?

The issue of service charge imposed by hotels and restaurants was considered by the Industrial Court in the recent case of *National Union of Hotel, Bar & Restaurant Workers, Peninsular Malaysia v Ayer Keroh Resort Sdn. Bhd. (Mahkota Hotel Melaka)*. In this case, the Industrial Court considered the issue of whether Mahkota Hotel Melaka ("Hotel") was able to reduce the service charge imposed on customers from 10% to 5%. A Collective Agreement was entered into between the Hotel and the Union and Service Charge is provided for in the said agreement.

The Industrial Courts have held previously that a party can only vary the terms of a collective agreement under very special circumstances. The Industrial Court has always taken the view that financial distress would not amount to a special circumstance. In the case of *Prestige Ceramics Sdn Bhd v Kesatuan Pekerja Pembuatan Barangan Bukan Logam & Anor,* the High Court held that the Industrial Court cannot automatically assume that financial distress would not amount to special circumstances without first evaluating the underlying factors which had resulted in the financial position in the first place. In the Prestige Ceramics case, the Asian Financial Crisis of 1997 resulted in severe reduction in the demand for ceramic tiles during the said period and the High Court was of the view that the financial crisis could not have been foreseen by the company. Subsequently in the case of *Metal Industry Employees Union v Yodoshi Malleable (M) Sdb Bhd* the occurrence of a fire had exacerbated the company's financial woes and for this reason the Industrial Court was of the view that it amounted to a special circumstance.

In the present Hotel's case, the Hotel had been imposing a service charge of 10 % on its customers for room, food and beverages. However, the Hotel argued that it was left with no alternative but to reduce the service charge imposed on its customers from 10% to 5 % for the following reasons:

a. It has suffered financial losses and reduced revenues for the year 2013 and 2014

b. In order to comply with the Minimum Wages (Amendment) Order 2012, the Hotel had to increase the salaries and wages for its employees with effect from 1 October 2013 and this resulted in significant increase in the overall wage bill. Not only were employees' salary increased to meet the minimum wage of RM 900, longer serving employees were given a proportionate increase based on the length of service.

Con't

LOOKING BACK

MALAYSIA
APR
2015

c. There was increased competition by other hotels in the area and occupancy rates have been on a decline.

After the reduction of the service charge imposed, the Union filed a complaint of non-compliance of the Collective Agreement to the Industrial Court. The Industrial Court in its Award held by a majority that the above amounted to special circumstances for the following reasons:

a. The Collective Agreement between the Union and the Hotel was signed in the year 2010 and the Minimum Wages (Amendment Order) 2012 was not within the contemplation of parties when the said Collective Agreement was entered into.

b. After the implementation of the Minimum Wage, the Hotel had experienced a significant increase in the wage bill despite a reduction in the number of employees.

c. Furthermore, the Hotel has experienced reduction in revenue and losses.

From the decision of the Industrial Court, it is now clear that legislation passed by Parliament can amount to special circumstances if it directly results in the company's financial distress. In addition, an employer must also show that to successfully vary the collective agreement, the events which led to the financial distress must not be in contemplation of parties when the collective agreement was entered into and was beyond the control of either party. The decision of the Industrial Court affirms the position that financial distress can amount to special circumstances and must not be dismissed outright by the Court.

MALAYSIA
23 OCT
2015

Minimum Wage

In the 2016 Budget Speech, the Prime Minister announced that with effect from 1st July 2016, the national minimum wage shall be increased from RM 900 to RM 1000 per month in Peninsular Malaysian and from RM 800 to RM 920 for Sabah and Sarawak and the Federal Territory of Labuan. The new minimum wage will be implemented in all sectors except for domestic services or domestic maids.

MALAYSIA
23 OCT
2015

Contribution to the Social Security Organisation ("SOCSO")

Previously, it was mandatory for those earning RM 3000 and below to contribute to the Social Security Organisation. SOCSO amongst others implements and administers social security schemes such as Employment Injury Scheme and Invalidity Scheme. With the latest budget announcement, those earning up to RM 4000 are now be required to contribute to the scheme.

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

NEW ZEALAND **6 NOV** 2014

The Employment Relations Amendment Act 2014 (Act)

The Act will come into force on 6 March 2015, 4 months after the date on which it received Royal assent.

More...

NEW ZEALAND **1 DEC** 2014

New Privacy Commission Policy

In order to signal a willingness to treat breaches of the Privacy Act 1993 more seriously, the Privacy Commissioner has introduced a new policy to 'name and shame' any agency found to have committed privacy breaches.

More...

NEW ZEALAND **6 DEC** 2014

Sentencing Amendment Act 2014

Amendments to the Sentencing Act 2002 give Courts the power to award people injured in the conduct of a crime, reparation for the short-fall between New Zealand's statutory 'no fault' accident compensation scheme (ACC), and their actual loss. The implication of this is that companies may potentially be liable for higher reparation awards in relation to health and safety prosecutions. Statutory liability insurance policies may need to be checked in order to ensure that levels of cover are adequate.

More...

NEW ZEALAND **26 MAR** 2015

Strengthened Enforcement of Employment Standards

The package of measures to strengthen the enforcement of employment standards announced by the Government in March 2015 will be included in the Employment Standards Bill, to be introduced later in 2015. The measures will include tougher sanctions on employers who breach minimum standards (such as the minimum wage), including the public naming of employers and a potential ban from being an employer for serious and persistent breaches. There will also be clearer record keeping requirements for wages, time, leave and holidays; labour inspectors will have increased information-sharing and information-requesting powers; and a change in approach by the Employment Relations Authority will mean that more cases involving serious and systemic standards breaches will be resolved by the Authority or the Employment Court, rather than being directed to mediation.

More...

NEW ZEALAND **1 APR** 2015

Changes to Minimum Wage and Paid Parental Leave

On 1 April 2015, the adult minimum wage increased to $14.75 (gross) an hour; the Starting-out wage (for 16-19 year olds under certain conditions) increased to $11.80 an hour; and the maximum amount of parental leave payable increased from 14 to 16 weeks.

More...

NEW ZEALAND **2 JUL** 2015

Harmful Digital Communications Act 2015

The new Act covers cyber bullying, and includes new civil penalties for "harmful digital communications" and a criminal offence that carries a penalty of up to two years in prison and a fine of $50,000 for an individual. New Communication Principles provide that digital communications should not, among other things, disclose sensitive personal information; be threatening, intimidating or menacing; be used to harass an individual; or make a false allegation.

More...

NEW ZEALAND **13 JUL** 2015

Proposed Prohibition of "Zero Hour" Agreements

Zero hour employment agreements require an employee to remain available for work but do not guarantee any minimum hours of work. The Government's proposed changes would prohibit these arrangements and require a set minimum number of hours to be specified in the employment agreement. The changes would also require an employer to provide "reasonable compensation" for requiring an employee be on call, but no practical details on this are available yet. Other changes include prohibitions on unreasonable restrictions on the secondary employment of employees; making unreasonable deductions from

Con't

LOOKING BACK

NEW ZEALAND
13 JUL 2015

employees' wages; and cancelling shifts without providing reasonable notice or compensation to the employees. These changes will be included in the Employment Standards Bill, to be introduced later in 2015.

More...

NEW ZEALAND
24 JUL 2015

Health and Safety Reform Bill

Select Committee amendments to the Bill were reported back on 30 July 2015 and include a change in the definition of "officer", so that the officer duty will only apply to those with very senior governance roles (such as directors and chief executives); a distinction made between casual volunteers and volunteer workers, meaning coverage of volunteers remains as it is under current law; increased flexibility for small, low-risk businesses to meet worker engagement and participation requirements; and clarification that PCBUs must discharge any overlapping duties to the extent that they have the ability to influence or control the matter.

More...

NEW ZEALAND
6 OCT 2015

Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

The exposure draft for Worker Engagement, Participation and Representation Regulations has just been released by Ministry of Business, Innovation and Employment on 6 October 2015.

The draft regulations support the new Health and Safety at Work Act by outlining requirements that apply to work groups, health and safety representatives and committees. These will impact on all employers, and cover key matters such as:

- Determining work groups;
- Setting the minimum ratio of health and safety representatives to workers in an organisation (being one representative for every 19 employees);
- The obligations on employers to provide resources, facilities and assistance to conduct elections of health and safety representatives;
- Employers' obligations to fund training for health and safety representatives and allow paid leave to employees to attend such training;
- The establishment of an operation of health and safety committees; and
- The types of work that are excluded from the classification of high-risk sectors or industries.

The exposure draft process is taking place to ensure the regulations are fit for purpose and technically accurate.

More...

PHILIPPINES
20 MAY 2015

Department of Labor and Employment ("DOLE") issues Department Order No. 143, Guidelines Governing Exemption of Establishments from Setting up Workplace Lactation Stations

The Implementing Rules and Regulations of Republic Act 10028 (*The Expanded Breastfeeding Act of 2009*) permits an employer to apply for exemption from setting up the mandatory lactation station. The DOLE Regional Director may grant the exemption for a renewable period of two years, upon determination that the establishment or the facility is not feasible or necessary.

DO No. 143 establishes the guidelines for applying and granting such exemption, under either of the following conditions and provided further that no female clients visit/transact with the establishment:

a. The establishment has no nursing or lactating employee; or

b. The establishment has no pregnant employee.

Republic Act 10028 provides for administrative sanctions and penalties for failure to set up such lactation stations and/or observe mandated lactation periods for nursing employees.

More...

PHILIPPINES
22 JUL 2015

Department Advisory No. 01

With the enactment of R.A. 10151 (*An Act Allowing the Employment of Night Workers*), several new provisions have been added to the Labor Code of the Philippines. This has caused the renumbering of subsequent articles starting from Book Four, Title I, Chapter I.

The DOLE thus issued the correctly renumbered Labor Code.

More...

PHILIPPINES
20 AUG 2015

Department of Labor and Employment (DOLE) Department Order (DO) No. 146-2015

Revised Rules for the Issuance of Employment Permits to Foreign Nationals –Alien Employment Permit (AEP) is a requirement in the issuance of a work visa (9g) to a foreign national to legally engage in gainful employment in the Philippines. The DO requires a foreign national to obtain a Special Temporary Permit (STP) from the Professional Regulation Commission (PRC) in case the employment involves practice of profession and Authority to Employ Alien from the DOLE where the employment is nationalized or partly nationalized.

More...

PHILIPPINES
SEP 2015

Department Order No. 147-15

The DOLE amended the Implementing Rules and Regulations of Book VI of the Labor Code governing the application of the just and authorized causes of termination of employment under Articles 297-299 of the Labor Code by including the criteria therefore as established by jurisprudence.

More...

PHILIPPINES
7 SEP 2015

DOLE Department Order No. 40-1-15

The DOLE revised Books V of the Omnibus Rules Implementing the Labor Code. The revisions affect the rules on certification elections for the sole and exclusive collective bargaining agent and inter-union and intra-union disputes.

More...

LOOKING BACK

PHILIPPINES

8 OCT 2015

DOLE Labor Advisory (LA) No. 13-2015

Applicable Minimum Wage Rates Based on Sector or Industry Classification with Required number of Workers in Relation to Workers of Contractors and Subcontractors - The Advisory prescribes that in determining the applicable wage rates of workers (e.g. in retail and service establishments employing 15 workers or less, or manufacturing establishments employing less than 10 workers) the total number or workers should include not only the workers of the principal or user enterprise, but also the workers of contractors or subcontractors deployed therein, regardless of their position, designation or status of employment and irrespective of the method by which their wages are paid.

More...

SINGAPORE
1 APR 2015

Construction Firm Managing Director Jailed and Fined for Collecting Kickbacks

On 1 April 2015, the Industrial Relations (Amendment) Act 2015 came into operation. On this, with effect from 1 April 2015, recognised rank and file trade unions can represent managerial or executive employees both collectively and on an individual basis, subject to certain limitations. In terms of scope, the rank and file union can only represent managerial or executive employees in relation to breaches of employment contracts, retirement benefits, unfair dismissal, victimisation and re-employment disputes. In addition to the limitation on scope, managerial or executive employees who, inter alia, hold senior management positions, exercise decision-making powers on industrial matters, or who represent their employers in negotiation of industrial matters, are excluded from being represented by trade unions.

More...

SINGAPORE
7 APR 2015

Construction Firm Managing Director Jailed and Fined for Collecting Kickbacks

On 7 April 2015, the MOM Ministry of Manpower ("**MOM**") announced that the managing director of a construction firm had been sentenced by the State Courts to 3 weeks' imprisonment and fined S$169,000 for receiving kickbacks from 24 foreign workers. In addition to the receipt of kickbacks, the managing director was also charged and convicted of obstruction of justice. According to the MOM, the MOM had infringed the provisions of the Employment of Foreign Manpower Act as he had required the foreign workers to pay to him S$7,200 as a condition of employment. On this, the MOM emphasised that most monies collected from foreign workers will be deemed as prohibited employment kickbacks, unless such monies can be properly accounted for.

More...

SINGAPORE
15 MAY 2015

First Individual Convicted for Conducting Employment Agency Activities Without a Licence

On 30 April 2015, a construction worker, Ahmead Rubel ("**Rubel**") from the People's Republic of Bangladesh was convicted in the State Courts for one count of conducting employment agency activities without a valid licence issued under the Employment Agencies Act ("**EAA**"). According to the press release issued by the MOM, in exchange of a fee of S$3,000, Rubel had sent the passport details and other supporting documents of a fellow Bangladeshi worker to the site manger of a construction site, who then proceeded to hire the said worker. For conducting such activities following within the ambit of the EAA without a valid licence, Rubel was fined S$40,000 in default of four months' imprisonment.

More...

SINGAPORE
25 JUN 2015

Ministry of Manpower Cancels Status of Five Accredited Training Provider

Under the Ministry of Manpower's ("**MOM**") workplace safety and healthy framework, only training providers who have been accredited by the MOM are allowed to conduct workplace safety and health courses on behalf of the MOM. According to the MOM, it has received information from the public that five of such Accredited Training Providers ("**ATP**") had allegedly violated the ATP Terms and Conditions. Acting on such information, the MOM commenced its own investigations and found that the five ATPs had, inter alia, failed to ensure language proficiency of trainees and/or failed to uphold the integrity of applicable examinations. Consequently, the MOM made a decision to cancel the ATP status of these five training provides for an indefinite period of time. The MOM further stated that it will continue to investigate all its ATPs, and take all actions as may be necessary.

More...

SINGAPORE
8 JUL 2015

Additional Measures Under the Fair Consideration Framework ("**FCF**")

With effect from 1 October 2015, in addition to advertising the job vacancy on the national Jobs Bank prior to applying for an Employment Pass ("**EP**"), companies operating in Singapore must also state the salary range applicable to such vacancies. In addition, companies in Singapore which have a weaker core of Singaporean citizens at the professional, managerial or executive level may be requested by the Ministry of

Con't

SINGAPORE
8 JUL 2015

Manpower to provide additional information when applying for an EP. Apart from the above enhancements to the FCF, the MOM also announced that a new Employment Claims Tribunal will be set up in the first quarter of 2016 to assist employees who fall outside the ambit of the EA with the resolution of statutory and contractual salary-related disputes.

More...
More...

SINGAPORE
13 JUL 2015

Employment (Amendment) Bill (Bill No 23/2015)

The Bill proposes various amendments to Singapore's Employment Act ("**EA**") which imposes a statutory obligation on employers to provide to employees falling within the ambit of the EA written key employment terms and itemised payslips. The Bill also imposes a statutory obligation on employers to maintain accurate records of their current and ex employees for a period of time. While the Bill imposes the above statutory obligations on employers, the Bill does not provide further details on the mechanics of such obligations, including what constitutes key employment terms, the key items to be provided in the payslips, and the details of the mandatory employee records.

More...
More...

SINGAPORE
22 JUL 2015

Tripartite Alliance for Fair Employment Practices ("**TAFEP**") Clarifies Guidelines For Job Advertisements

The TAFEP re-affirmed its position that employers are required to recruit and select employees on merit, taking into account the prospective candidate's ability to meet the objective requirements of a position. The position was that employers are not supposed to recruit based solely on nationality requirements was also re-iterated. Notwithstanding this, TAFEP confirmed that it is acceptable for employers to state 'Singaporeans only' in their respective job advertisements.

More...

SINGAPORE
29 JUL 2015

Higher Cap Under Work Injury Compensation Act

On 29 July 2015, the Minister for Manpower announced that from next year, the compensation limit for death and permanent incapacity under the Work Injury Compensation Act will be raised to S$36,000 from S$30,000. According to the Minister, this increase in the compensation limit was required to take into account general increase in wage levels and increases in medical costs. In addition, the Minister announced that measures will be put in place to help employees return to work in a shorter time, such as allowing employers to claim for expenses that facilitate an early return to work.

More...

SINGAPORE
5 AUG 2015

Employer Convicted for Offences Under the Employment of Foreign Manpower Act (Cap. 91A) : Fined S$35,000 and given jail term of 16 months

On 5 August 2015, the MOM reported that Lim Leong Chye (**"Lim"**), the managing director of Club De Colors Pte Ltd and a manager of Club GMT Pte Ltd, was convicted of three (3) charges of illegal importation of labour, four (4) charges for receiving "kickbacks" (the practice of collecting monies from foreign workers as consideration for the employment) and three (3) charges of instigating another person to submit false declarations to the MOM. According to the press release issued by the MOM, Lim pocketed profits amounting to S$97,550 from kickbacks received from 16 foreign workers in exchange for their employment by the abovementioned night clubs in Singapore. Lim had also obtained work passes for 11 foreign workers without the intention of employing them. Finally, Lim had instigated the owner of Club GMT Pte Ltd, Sim Chee Kiang (**"Sim"**), to submit false information to the Controller of Work Passes in the application of foreign workers. For the above actions, which are criminal offences under the Employment of Foreign Manpower Act (Cap. 91A), Lim was sentenced to pay a fine S$35,000 and to be imprisoned for 16 months. It is also understood that the MOM will take action against Sim separately.

More...
More...

SINGAPORE
17 AUG 2015

Employment (Amendment) Bill Passed on 17 August 2015

The Employment (Amendment) Bill 2015 has been passed and the companies will be required to comply with the requirements by 1 April 2016. Notwithstanding this, the Ministry of Manpower (**'MOM'**) states that it will provide SMEs with a one year grace period and adopt a light-touch enforcement approach for such SMEs. As an overview, from 1 April 2016, companies operating in Singapore will be statutorily required to provide itemised payslips and written key employment terms to their employees who fall within the ambit of Singapore's Employment Act. The failure to do so will, for now, be regarded as civil infringement and administrative penalties may be imposed by the MOM.

More...
More...

SINGAPORE
23 AUG 2015

Raising of Statutory Retirement Age to 67 by 2017

Wording: On 23 August 2015, Prime Minister Lee Hsien Loong also announced that the re-employment age will be raised from 65 to 67 by 2017. On this, companies will be required to offer re-employment to employees who have attained the statutory retirement age if the employee has satisfactory work performance and is medically fit to continue working.

More...
More...

SINGAPORE
24 AUG 2015

Additional Week of (Voluntary) Government Sponsored Paternity Leave

During the National Day Rally on 23 August 2015, Prime Minister Lee Hsien Loong announced that the Government will pay for one additional week of paternity leave for working fathers. However, this additional week of paternity leave will be implemented on a voluntary basis. Currently, working fathers who fulfil certain statutory conditions are entitled to one week of paid paternity leave and can share one additional week of the sixteen weeks of maternity leave that working mothers get.

More...
More...

SINGAPORE
26 AUG 2015

Maintenance of the Two-Thirds Singaporean Core

On 26 August 2015, the Minister for Manpower, Mr Lim Swee Say reiterated that the Government's goal of attaining a two-thirds Singaporean core in the workforce is a realistic one. According to the Minister, the current ratio in the manufacturing and services sector is about three locals to every one foreigner, the majority of which are Singaporean citizens. In addition to the above, the Minister also mentioned that from 2016, Singaporean citizens and permanent residents will have the option of deferring the Central Provident Fund payout age.

More...
More...

SINGAPORE
5 OCT 2015

Higher Cap Under Work Injury Compensation Act

On 5 October 2015, the Ministry of Manpower (**'MOM'**) announced that the Work Injury Compensation Act (Amendment of Third Schedule) Order 2015 (**'Order'**) had been gazetted and will come into effect on 1 January 2016. The Order increases both the maximum and minimum compensation for death and total permanent disability under the Work Injury Compensation Act (**'WICA'**). The Order also provides for an increment of claims for medical expenses from S$30,000 to S$36,000. By way of an overview, the WICA is a no-fault compensation scheme available to all employees who have suffered an injury in the course of employment.

More...

SINGAPORE
7 OCT 2015

Implementation of Mandatory Health Checks and a Specialised Training Course for Crane Operators

With effect from 1 April 2016, crane operators who have attained the age of 50 years old and above are required to undergo compulsory health checks. Crane operators aged 70 years old and above will also be required to undergo additional medical tests. The frequency of these health checks ranges from once every year to once every two years, depending on the age of the crane operator concerned. According to the Ministry of Manpower (**'MOM'**),

Con't

SINGAPORE

7 OCT

2015

the mandatory health checks aims at improving the overall employability of the crane operators in that early signs of ill health can be identified, and steps taken to treat and manage the condition. In addition, the MOM states that such mandatory health checks prevent future health risks and enables crane operators to be in the profession for a longer periord of time.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

SOUTH KOREA
1 JAN 2015

Requirement to Establish a Workplace Nursery

Previously, employers with 300 or more female employees or with 500 or more employees (regardless of gender) were not required to establish workplace nurseries if they provided a childcare allowance. From 1 January 2015, the relevant law abolished the option of providing childcare allowance, and relevant employers are now required to establish workplace nursery or otherwise provide childcare support by using the services provided by local private nursery facilities.

Employers in violation of the above requirements may be ordered to comply and/or may be subject to fines two times per year, up to 100 million Korean Won in each instance.

SOUTH KOREA
1 JAN 2015

Act on Fair Recruiting Procedures Takes Effect

Pursuant to the rules under the Act on Fair Recruiting Procedures that will start to phase in from 1 January 2015, employers are now required to return hiring documents upon request by an unsuccessful job candidate. Further, employers are required to retain hiring documents for a certain period of time as candidates might ask that they are returned. Violation of the aforementioned requirement may subject the employer to a corrective order by the Ministry of Employment and Labor and an administrative fine up to 3 million Korean Won.

The above rule will start to apply from 1 January 2015 to employers with 300 or more employees or public employers. Employers with 100 to 300 employees must comply with the rules from 1 January 2016, and smaller companies with 30 to 100 employees must start complying from 1 January 2017.

More...

SOUTH KOREA
1 JAN 2015

Increase in National Health Insurance Premium for 2015

The National Health Insurance premium for 2015 has been increased to 6.07% in 2015 from 5.99% in 2014.

More...

SOUTH KOREA
1 JAN 2015

Minimum Wage for 2015

The minimum wage for 2015 is 5,580 Korean Won per hour. This is a 7.1% (or 370 Korean Won) increase from 5,210 Korean Won per hour in 2014. Please note that the 10% reduction in minimum wage that was applicable to surveillance/intermittent workers is no longer applicable as of 31 December 2014. Therefore, surveillance/intermittent workers must be paid at or above the minimum wage.

More...

SOUTH KOREA
7 JAN 2015

Updates to Reduction of Working Hours for Childcare Period

Currently, employees are entitled to take a leave of absence for childcare leave or reduce their working hours for up to 1 year (or a combination thereof, up to a maximum of 1 year). According to an amendment to the law effective as of 1 July 2015, while the leave of absence will remain up to 1 year, any period of reduced working hours can be extended by up to 2 times the previous standard. In other words, if an employee takes a leave of absence for 6 months, up to 12 months can be subject to reduced working hours (i.e., the remaining 6 months x 2).

Further, before the amendment, employees were allowed to use the reduction of working hours for a period of childcare in two splits, however, the new rule will permit employees to split the period of reduced working hours up to three times.

SOUTH KOREA
1 JAN 2016

Minimum Wage for 2016

Wording: The minimum wage for 2016 will be fixed at 6,030 Korean Won per hour. This is an 8.1% (or 450 Korean Won) increase from 5,580 Korean Won per hour in 2015.

No significant policy, legal or case developments are anticipated within the employment space during 2015 Q4.

Click here to view **2014 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

9 JUN 2015

Peoples' Bank (**Appellant**) Vs. Lanka Banku Sevaka Sangamaya(On behalf of EAA Dayananda) (**Respondent**), Supreme Court case no. 106/2012

In this case the Labour Tribunal, on an application made by a workman who was employed by the Peoples' Bank as a clerk challenging his termination, had held that the termination of services of the workman was justified but ordered compensation amounting to Rs. 584,425.25.

The High Court, by its judgment dated 23 March 2011, affirmed the order of the Labour Tribunal.

Being aggrieved by the order of the High Court, the Peoples' Bank had appealed to Supreme Court.

On 9 June 2015 Supreme Court set aside both judgments of the Labour Tribunal and the High Court and allowed the Bank's Appeal. The Supreme Court held that workman was dishonest when he committed the acts of misconduct and that banks expect high standard of honesty from its employees. It was also held that if the employees of banks do not maintain such standards of honesty, the confidence that the members of public have kept in bank system would erode. Therefore, the workman (the respondent) is not entitled to compensation.

The case is significant since there had been previous case law authority in which the grant of compensation to an employee whose employment was terminated for misconduct had been upheld previously. The deciding factor here was the element of dishonesty in the context of the employer being a bank which disentitled the applicant to compensation.

More...

No significant policy, legal or case developments are anticipated within the employment space during 2015 Q4.

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: John Wilson Partners

TAIWAN
21 NOV 2014

Judicial Yuan Grand Justices Interpretation No.726

Question presented due to conflicts in Supreme Court rulings: "If the employer and employee reached a separate agreement on working hours that was not later approved by the local competent authority, is such agreement still bound by the rules of the Labor Standards Act and other laws and regulations?" The Grand Justices believe so. The requirement under Article 84-1 of the Labor Standards Act for the employer to report to the local competent authority any separate agreements reached regarding working hours, vacation days and late night working hours for female employees is compulsory; failure to make such a report does not put those separate agreements outside the corresponding default rules in the Labor Standards Act, namely Articles 30, 32, 36, 37 and 49. Except for where the employer would be negatively affected under public law, a court resolving a civil dispute arising out of such separate and unapproved agreements may apply the Labor Standards Act in revising the terms of such agreements in accordance with the legislative intent to protect the rights of the employee.

More...

TAIWAN
11 DEC 2014

Executive Order Amending the "Act of Gender Equality in Employment"

The Hua-Zhong-Yi-Yi-Zi-10300189191 Executive Order promulgated on 11 December 2014 amends Articles 4, 12, 14-16, 23 and 38-1 of the Act.

The main points covered in the amendments are:

1. The central competent authority shall be the Ministry of Labor, and the guidelines for determining what is considered sexual harassment in the workplace are now clearly stated.
2. Amending the current rules on wages during menstruation leave to half-pay, whether menstruation leave be included as part of sick leave or not.
3. Extend paid pregnancy check leave to five days.
4. Extend paid paternity leave to five days.
5. Childcare unpaid leave may be applied for as soon as the employee has worked for six months for an employer.
6. Childcare unpaid leave may also be available for employees who have adopted children and are living together.
7. Employers with 250 employees or more must provide breastfeeding facilities.
8. Increase penalties to between NT$300,000 and NT$1,500,000 for an employer found in violation of the prohibition on sexual discrimination.

More...

TAIWAN
16 DEC 2014

Starting From 1 January 2015, the Rate for General Accident Labor Insurance is Increased by 0.5%. The Insurance Rate is Now 10% of the Insured's Wages

Pursuant to the Ministry of Labor's letter with Ref. No. Lao-Dong-Bao-Yi-Zi-1030023733 on 15 September 2014 and Article 13, Paragraph 2 of the Labor Insurance Act, the general accident labor insurance rate is now 10% starting from 1 January 2015. The actual effective rate is 9%, as Article 41, Paragraph 2 of the Employment Insurance Act specifically displaces Article 13, Paragraph 2 of the Labor Insurance Act.

More...

TAIWAN
22 DEC 2014

Further Clarification Regarding the Paternity Leave Provisions in Article 15 of the "Act Of Gender Equality in Employment"

The Ministry of Labor's letter with Ref. No. Lao-Dong-Tiao-Shi-Zi-1030132632 on 22 December 2014 makes an additional clarification regarding the extended paternity leave: If the employee's spouse gives birth prior to when the amended Act of Gender Equality in Employment enters into effect, and if the employee wishes to take paternity leave within 15 days before or after the date the spouse gives birth, as the legislative intent for the paternity leave is to provide assistance and care to the female spouse during birth, the employee may request to take a paternity leave of up to 5 days during the aforementioned period.

More...

TAIWAN
6 JAN 2015

The Ministry of Labor Is Strenuously Seeking to Reduce the Ordinary Working Hours to 40 Hours Per Week, and It Is Strengthening Inspections of Labor Conditions

In response to labor organization's move for "40 hour weeks and 2 days off per week", the Ministry of Labor has presented a draft of amendments to the Labor Standards Act for the Executive Yuan's review; the amendments would reduce ordinary working hours to 40 hours per week, and additional measures are proposed to protect the laborer's rights.

More...

TAIWAN
13 JAN 2015

If an Employee is On Medical Leave for Injuries Incurred Due to Occupational Accidents, the Employer Must Still Follow Article 23, Paragraph 2 of the Act for Protecting Worker of Occupational Accidents in Terminating the Employment Agreement

Pursuant to the Ministry of Labor's letter with Ref. No. Lao-Dong-Fu-San-Zi-1030136648 dated 13 January 2015, even in the case where the employee has been rendered physically disabled or mentally incompetent as a result of occupational accidents, the employer must still proceed in accordance with Article 23, Paragraph 2 of the Act for Protecting Worker of Occupational Accidents and wait for the completion of the medical treatment and an official declaration by a government-recognized medical institution that the employee is physically or mentally unable to return to work before terminating the employment agreement. The employer may not unilaterally seek to force the early retirement of such an employee according to Article 54, Paragraph 1 of the Labor Standards Act.

More...

TAIWAN
27 APR 2015

Interpretation of Article 16 of the Act for Gender Equality in Employment

Unpaid parental leave under Article 16 was drafted in consideration that many parents need to personally raise their own children while working. In an effort to encourage employers to create a work environment that is friendly to employees with families and allow employees to enjoy a balance between work and family life, the Ministry of Labor explained in the Lao-Dong-Tiao-4-Zi-1040130693 Circular that if the employer goes beyond the minimum legal requirements and allows those who have worked for less than six months to apply for unpaid parental leave, the rules under Paragraph 2 with respect to such employee's social insurance and employer-paid premiums shall apply. This Interpretation entered into effect on the promulgation date.

More...

TAIWAN
4 MAY 2015

Circular Explaining Questions Over Employees' Use of Communications Software to Apply for Leaves

The Ministry of Labor issued the Lao-Dong-Tiao-3-Zi No.1040130742 Circular to clarify applying for leaves through communications software. Article 10 of the Regulations of Leave-Taking of Workers require employees to verbally or in writing describe the reason for the leave and the number of days requested in advance unless in case of emergencies, where the employee may entrust another to handle the leave-taking procedure. If the employee has a valid reason for taking leave, the employer shall grant it, but if the employee uses messaging software to apply for the leave, he or she must still go through the procedure detailed in the work rules/employment agreement after returning to work.

More...

TAIWAN
6 MAY 2015

The Ministry of Labor issued the "Guidelines on Employee's Use of Time Outside the Workplace"

The Ministry of Labor issued the Lao-Dong-Tiao-3-Zi No.1040130706 Circular to provide guidance on the recognition of hours of work outside the work place and attendance records for certain occupations such as news media reporters, telecommuters, sales personnel and drivers, etc. The Guidelines entered into effect on the date of promulgation.

Due to employers often communicating duties to off-site workers through messaging software or telephone calls, there is a concern of overly long hours for such employees, as well as difficulties regarding the recognition of hours worked and attendance records –

Con't

there is a large gap between the perceptions of the employer and that of the employee in what should count as hours worked and what should count as being present for work. The Guidelines are a result of several meetings from December 2014 to March 2015 with input from reporters, sales personnel, drivers, relevant government agencies, etc.

The main points of the Guidelines are as below:

1. Common rules are added with respect to the recognition of hours worked and attendance record issues for offsite employees, and specific rules are set for news reporters, telecommuters, sales personnel and drivers.
2. The employer and the employee should set out the work hours, rest periods and overtime rules in a written employment agreement, as well as incorporate them in the work rules, to clearly define each party's rights.
3. Even though it may be difficult in practice to clearly delineate "work" and "rest" hours for employees working off-site, the employer is expressly required to give such employees rest hours pursuant to law.
4. Regarding overtime hours:
    1. If the employer causes the employee to work overtime, the time such assignment is issued shall be recorded, while the employee can record the start and finish times for the assignment and send them with the records of communication for the employer's records.
    2. If the employee decides that he or she must continue beyond normal business hours to finish the work assigned, he or she shall report the completion of work to the employer in accordance with the agreed method. The employer and the employee may also stipulate beforehand that employer consent and overtime reporting are not required if the overtime period is within a certain length.
5. The method for recording the offsite employee's work hours are stipulated – it does not have to be limited to time cards or attendance sheets. For example, dashboard cameras, GPS records, messaging, customer signature records, report submission records, driving vouchers (vehicle dispatch receipts) and others may all serve as evidence of work done. In accepting a labor inspection, the employer should present written records.

The Ministry of Labor has emphasized that although the employer and the employee should follow the Guidelines in reaching an optimal method for the determination of work hours for both sides, such method should still be compliant with the mandatory provisions of the Labor Standards Act.

More...

TAIWAN
6 MAY
2015

TAIWAN
29 MAY
2015

Interpretation of the Maternity Leave Rules under Article 15, Paragraph 4 of the Act for Gender Equality in Employment

The Ministry of Labor issued the Lao-Dong-Tiao-4-Zi No.1040130594 Circular to explain that in consideration of the number and amount of time required for prenatal checks, the employer is not allowed to refuse an employee's request for maternity leave in "half-day" units when the employee needs to undergo such medical procedures. Further, due to variances in the doctor's scheduling, the wait required and even traffic, the employee may also choose to take maternity leave by "hours"; the term "five days" in the statute, if calculated by hours, would refer to an eight-hour work day multiplied by five, or a total of forty hours. Once the employee chooses to take maternity leave by "half-days" or by "hours", the choice cannot be subsequently changed.

More...

TAIWAN
3 JUN
2015

Presidential Order for Amendment of the Labor Standards Act

The main points of the amended Articles 4, 30, 79 and 86 per the Hua-Zhong-1-Yi-Zi No.10400064421 Presidential Order are as below:

1. For consistency with the reorganization within the government, the name of the central competent authority (for labor) is amended to be the "Ministry of Labor". (Article 4)

Con't

LOOKING BACK

TAIWAN
3 JUN 2015

2. Following international trends, the statutory ordinary working hours per week is reduced to 40 hours maximum. Further, in consideration of the statute of limitations on requesting wage payments and other practical concerns, as well as the requirement for employers to keep the employee's name card and data for at least five years, the employer is now required to maintain the employee's attendance records, which shall record to the minute the employee's arrival and departure, for five years. The employer also may not refuse an employee's request for a copy of such attendance records. In addition, in reference to international treaties and foreign laws, the employer may no longer adjust regular working hours as a way to reduce payment of wages to employees. (Article 30, Paragraphs 1, 5, 6 and 7)
3. In consideration of creating an employee-friendly workplace and assisting employees' efforts to juggle work and child rearing, as well as increase the rate of employment for women, the employer may now flexibly adjust the start and end times of ordinary working hours per the employee's family caretaking requirements. (Article 30, Paragraph 8)
4. Increase the penalty amount imposed on employers for failure to maintain attendance records or failure to maintain such records for five years, and new penalties under Article 30, Paragraphs 6 and 7 are added. (Article 79)
5. This amendment will enter into effect on 1 January 2016. (Article 86)

More...

TAIWAN
1 JUL 2015

Presidential Order for Amendment of the Labor Standards Act

The main points of the amended Article 58 per the Hua-Zhong-1-Yi-Zi No.10400077211 Presidential Order are as below:

1. An employee's right to a pension under the Old Pension System may not be assigned, offset, seized or provided as a bond. (Paragraph 2)
2. After receiving the pension under the Old Pension System, the employee may provide the relevant supporting documents/certificates and deposit the amount in a dedicated account opened at a financial institution. For the protection of the employee's retirement rights, all amounts deposited in such an account may not be used to offset debts, be seized, provided as a bond or be subject to compulsory enforcement. (Paragraphs 3 and 4)

More...

TAIWAN
1 JUL 2015

Presidential Order for Amendment of the Labor Insurance Act

The main points of the amended Articles 4 and 17-1 per the Hua-Zhong-1-Yi-Zi No.10400077061 Presidential Order are as below:

1. For consistency with the reorganization of the Executive Yuan, the "Executive Yuan Council of Labor Affairs" is amended to state "Ministry of Labor". (Article 4)
2. New rule for labor insurance premiums and penalties now enjoying higher priority than ordinary debts for repayment. (Article 17-1)

More...

TAIWAN
8 SEP 2015

Circular from the Ministry of Labor Explaining the Rules Regarding Menstrual Leaves under Article 14 of the Act of Gender Equality in Employment

The Ministry of Labor issued a Circular with Ref. No. Lao-Dong-Tiao-Shi-Zi-1040131594 on 8 September 2015 to further explain that even if an employee has used up all her annual statutory quota for non-hospitalized sick leaves, she may still apply for additional menstrual leaves under Article 14 of the Act of Gender Equality in Employment, but the employer does not have to provide pay for such additional leave.

More...

LOOKING BACK

TAIWAN
5 OCT 2015

The Drafting of the "Reference Principles Regarding Post-Employment Non-Compete Clauses Between Employers and Employees"

From the Ministry of Labor's Circular with Ref. No. Lao-Dong-Guan-Er-Zi-1040127651 dated 5 October 2015:-

- The non-compete clause should be in writing.
- The employer may only require an employee to sign a non-compete agreement under the followings:
  - i. to protect trade secrets or intellectual property that are protectable under law; and
  - ii. the employee's position comes into contact with the employer's trade secrets or special techniques (not commonly used) that provide it with a competitive advantage.
- The non-compete agreement shall meet the following requirements:
  - i. the restrictions on duration (max 2 years) , region (clearly defined and generally based on the scope of former employer's operation) and potential new employer (clearly defined and limited to those engaged in similar business with the former employer or otherwise competes with the former employer) must be reasonable;
  - ii. compensation must be provided for the non-compete obligation and be of a reasonable amount (a monthly payment of no lower than 50% of the average monthly wages of the employee at the time of departure); and
  - iii. payments made while the employee was still employed could be used as a substitute for the compensation under (ii).

More...

TAIWAN
7 OCT 2015

Circular from the Ministry of Labor Explaining the Rules Regarding Marriage Leave under Article 2 of the Regulations for Leave-Taking of Workers

The Ministry of Labor issued a Circular with Ref. No. Lao-Dong-Tiao-San-Zi-1040130270 on 7 October 2015 to further explain that an employee must use up his or her marriage leave in Article 2 of the Regulations for Leave-Taking of Workers within three months and ten days before the day of marriage. However, the duration may be extended to one year if the employer consents.

More...

TAIWAN
23 OCT 2015

Amendment to the Enforcement Rules to the Labor Standards Act

The Ministry of Labor announced in its Order Ref. No. Lao-Dong-Fu-San-Zi-1040136673 dated 23 October 2015 the amended text in Articles 15 and 29, the newly added Articles 29-1 and 50-4, and the deletion of Article 8. The main points of the amendments are as below:

- The provisions on the payment deadlines for severance and pension under Articles 8 and 29 have already been adjusted to fit with Article 17, Paragraph 2 and Article 55, Paragraph 3 of the Labor Standards Act, thus they are no longer necessary.
- The language in Article 15 is adjusted to fit the employment-related debt priority order under Article 28 of the Labor Standards Act .
- Regarding the requirement under the Labor Standards Act for the employer to maintain enough funds (and make contributions if amount is insufficient) to pay all employees who are expected to retire within the next year, language regarding the calculation method for the number of employees, the employee's service periods and average wages is added in the new Article 29-1.

Con't

TAIWAN

23 OCT

2015

- In the new Article 50-4, if the employer was undergoing liquidation and bankruptcy before Article 28, Paragraph 2 of the Labor Standards Act has entered into effect, and liquidation/bankruptcy has not been completed after the above provision has come into effect, the employees still have a right to request the payment of the pension and severance owed from the Arrear Wage Payment Fund.

More...

LOOKING BACK

THAILAND
12 DEC 2014

Ministerial Regulations Concerning Labour Protection in Agriculture B.E. 2557

The Ministry of Labour issued a new regulation on 12 December, regarding annual leave, overtime pay, and sick leave for agricultural workers.

THAILAND
22 DEC 2014

Ministerial Regulations Concerning Labour Protection in Sea Fisheries B.E. 2557

The Ministry of Labour issued a new regulation on 22 December, which is relevant to operators of sea fishery businesses. Among other things, it expands the definition of fishery work, raises the minimum age for being employed to perform fishery work, and sets out requirements pertaining to rest periods, written employment contracts, reporting to labour officials, work rules, minimum wage, facilities/amenities, and training .

THAILAND
13 FEB 2015

New Penal Code Provisions on Sexual Harassment

The penal code provision on annoyance or bullying of another, or causing another to be ashamed or troubled, has been expanded to also cover sexual harassment, and sexual harassment committed by one's supervisor or a person in a position of authority, in the context of employment. The new provision was gazetted on 13 February 2015 and became effective the following day.

THAILAND
22 JUN 2015

Amendments to Social Security Act

The Social Security Act underwent its fourth amendment, which made several changes to the law. The amendments were gazetted on 22nd June and will become effective in late October. While some proportion of the changes concern internal administrative matters of the Social Security Fund and associated governmental operations, there were some key changes of relevance to employers. Among these, the law now provides framework for reduction of social security contributions in the event of a disaster. Additionally, paternity benefits are now provided. Also, the fund no longer provides compensation for those who resign from employment. A range of other technical changes were also made to benefits eligibility.

No significant policy, legal or case developments are anticipated within the employment space during 2015 Q4.

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: Tilleke & Gibbins

VIETNAM
12 JAN 2015

A New Decree Guiding Implementation of the Labour Code

On 12 January 2015, the government issued Decree No. 05/2015/ND-CP ("Decree 05") guiding implementation of some of articles of the Labour Code No. 10/2010/QH13 dated 18 June 2012 of the National Assembly. Decree 05 provides for specific issues of labour contract, salaries, collective discussion and negotiation, labour discipline, and settlement of labour disputes.

Decree 05 takes effect from 1 March 2015 and replaces:

- Decree No. 196/CP dated 31 December 1994 (as amended by Decree No. 93/2002/ND-CP dated 11 November 2002) on collective labour agreement;
- Decree No. 41/CP dated 6 July 1995 (as amended by Decree No. 33/2003/ND-CP dated 02.4.2003) on labour discipline; and
- Decree No. 11/2008/ND-CP dated 30 January 2008 on damages payment in case of illegal strike.

Labour contracts, collective labour agreements, labour rules and regulations signed or issued prior to the effective date of Decree 05 are required to be reviewed, amended, and supplemented by the parties to comply with Decree 05.

VIETNAM
22 APR 2015

A New Circular Providing Guidance on Recruitment and Management of Vietnamese Employees Working for Foreign Individuals and Organizations in Vietnam

On 22 April 2015, the Ministry of Labor, War Invalids and Social Affairs issued Circular No. 16/2015/TT-BLDTBXH ("Circular 16") on guiding implementation of Decree No. 75/2014/ND-CP dated 28 July 2014 on recruitment and management of Vietnamese employees working for foreign individuals and organizations in Vietnam. The assignment / authorization of the recruitment and management of Vietnamese employees working for foreign employers, application form for recruitment, and periodic reports on the recruitment, assignment and management of Vietnamese employees working for foreign organizations are matters specifically provided for by Circular 16.

Circular 16 takes effect from 6 June 2015 and replaces Circular No. 09/1999/TT-BLĐTBXH dated 15 March 1999.

More...

VIETNAM
23 JUN 2015

A New Circular Providing Guidance On Wages

On 23 June 2015, the Ministry of Labor, War Invalids and Social Affairs issued Circular No. 23/2015/TT-BLĐTBXH ("Circular 23") on guiding implementation of some articles on wages of Decree No. 05/2015/NĐ-CP dated 12 January 2015 ("Decree 05"), including wage level, method of wage payment, monthly wage payment term and formula for calculation of overtime wage, wage for working at night, wage for overtime working at night.

Pursuant to Circular 23, monthly salary shall be paid to the employee on monthly or semi-monthly basis within such working month.

Circular 23 takes effect from 8 August 2015 and the regulations of this Circular are applied from the effective date of Decree 05 (i.e. 1 March 2015).

VIETNAM
1 OCT 2015

A New Decree on Policies for Female Employees

On 1 October 2015 the Government issued Decree No. 85/2015/ND-CP (**"Decree 85"**) guiding implementation some Articles of the 2012 Labor Code regarding policies for female employees.

Pursuant to Decree 85, during periodic health check, female employees are entitled to obstetric check according to a list of the obstetric care regulations issued by the Ministry of Health. For menstrual period duration, female employee shall receive a time-off of 30 minutes per day for at least 3 days per month. During the time of raising infants, female employees are entitled to a time-off of 60 minutes per day to breastfeed children, collect and store milk or to take rest. Female employees are fully paid for the above mentioned time-offs according to the terms and conditions of the labour contracts.

Con't

LOOKING BACK

VIETNAM
1 OCT
2015

In addition, Decree 85 provides that if a pregnant employee has a confirmation given by a competent medical facility that continuing to work will impact negatively the embryo, she, by giving a prior notice to the employer, may unilaterally terminate or suspend the labour contract.

Decree 85 comes into effect from 15 November 2015 and replaces Decree No. 23/CP of the Government dated 18 April 1996.

VIETNAM
7 OCT
2015

A New Decree Amending Decree No. 95/2013/Nd-Cp of the Government Dated 22 August 2013 on Penalties for Administrative Violations Against Labor Matters

On 7 October 2015 the Government issued Decree No. 88/2015/ND-CP (**"Decree 88"**) amending Decree No. 95/2013/ND-CP of the Government dated 22 August 2013 on penalties for administrative violations against employment, social insurance, oversea Vietnamese workers.

Decree 88 has amended a number of Articles which are not detailed under Decree 95. Decree 88 comes into effect on 25 November 2015.

CONTACT LIST

AUSTRALIA

CORRS CHAMBERS WESTGARTH lawyers

John Tuck
CORRS CHAMBERS WESTGARTH
Level 25, 567 Collins 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

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

James M. Minamoto
ANDERSON MORI & TOMOTSUNE
Izumi Garden Tower, 6-1, Roppongi, 1-chome,
Minato-ku, Tokyo 106-6036, Japan
T: +81 3 6888 1056
F: +81 3 6888 3056
E: james.minamoto@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

Chung Teh Lee
LEE, TSAI & PARTNERS
9F, 218 Tun Hwa S. Road, Sec. 2
Taipei 106, Taiwan, R.O.C.
T: +886 2 2378 5780
F: +886 2 2378 5781
E: ctlee@leetsai.com

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

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

About Mayer Brown JSM

Mayer Brown JSM is part of Mayer Brown, a global legal services provider, advising clients across the Americas, Asia and Europe. Our geographic strength means we can offer local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS

AMERICAS
- Charlotte
- Chicago
- Houston
- Los Angeles
- Mexico City
- New York
- Palo Alto
- Washington DC

ASIA
- Bangkok
- Beijing
- Hanoi
- Ho Chi Minh City
- Hong Kong
- Shanghai
- Singapore

EUROPE
- Brussels
- Düsseldorf
- Frankfurt
- London
- Paris

TAUIL & CHEQUER ADVOGADOS
in association with Mayer Brown LLP
- São Paulo
- Rio de Janeiro

Please visit www.mayerbrownjsm.com for comprehensive contact information for all our offices.