

Client Update: Vietnam

December 2019

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Recent Legal Developments in Vietnam

Updates to the Labour Code

On 20 November 2019, the National Assembly adopted an amended Labour Code (“**Amended Labour Code**”), with a view to improving the current Vietnamese legal framework. The Amended Labour Code is expected to take effect on 01 January 2021.

The amendments will apply to (i) Vietnamese employees, foreign employees working in Vietnam, apprentices, trainees, employers, (ii) other agencies, organisations and individuals directly related to industrial relations, and (iii) employees not engaged in formal employment relationships. Below are the key amendments in the Amended Labour Code:

Labour Contracts

- The **seasonal or specific job labour contract will be removed**, resulting in two forms of labour contracts:
 - Definite-term labour contract with a term of up to 36 months
 - Indefinite-term labour contract

Under the current Labour Code, the seasonal or specific job labour contract is applicable for a working term of less than 12 months (but cannot be signed for regular jobs with a term of 12 months or more). A definite-term contract has a term of 12 – 36 months. The removal of is expected to simplify the applicable form of labour contracts.

- **The definition of a labour contract is extended.** Any agreement on labour, in which the contents comprise tasks to be completed, compensation/salary and include supervision and direction from the paying party, will be classified as a labour contract, regardless of the name or label that the contract takes.

The current Labour Code applies a strict test on the creation of an employment relationship, in which there must be an explicit labour contract – regardless of whether the parties’ agreement contain employment-like terms. This extended definition now opens the possibility that even agreements for supposed “independent contractors” can create an employment relationship if they contain certain elements that are associated with an employment relationship.

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- The **labour contract term can no longer be amended by an annex** to the labour contract. Under the current Labour Code, modifications to a labour contract (including the term of employment) are to be amended by an annex.
- There will be clear recognition of **electronic contracts** (e.g., labour contracts formed via email). While not explicitly prohibited, the current Labour Code does not regulate the use of such contracts between employees and employers
- The Amended Labour Code explicitly permits **probation terms** to be incorporated into the labour contract. The present Labour Code had envisaged the execution of a separate probation contract and did not guide whether the common practice of incorporation was permissible.
- There is now a **longer probationary period for managers**. Employees that take up managerial positions can now be subject to a probationary period of up to 180 days. This is as opposed to the current maximum limit of 60 days which is applied across all jobs that require college level or higher professional and technical qualifications.
- **Expatriate work permits may only be extended for maximum period of 2 years**. With this, expats can enter into a number of consecutive definite-term labour contracts, provided that the term of such contracts with the term of the work permit term.

Termination

- Any employee can **terminate the labour contract without cause**, provided that they provide prior notice to the employer. Currently, only employees with an indefinite-term contract can terminate a labour contract (by giving 45 days' notice).
- Employees are entitled to **immediately terminate** the labour contract **without prior notice in certain circumstances**. Under the current Labour Code, employees must provide notice to their employer prior to termination of their labour contract.

Working Hours

- **Maximum overtime hours will be amended**. Overtime work may not exceed 40 hours per month (as opposed to the 30 hours under the current Labour Code for normal weekly work).
- There is an **additional public holiday**, in which employees are entitled to 1 day of fully paid leave on the day immediately preceding or subsequent to National Day (2 September).

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Labour Discipline and Disputes

- Resolution of labour disputes **must first be attempted through mediation** before litigation or arbitration, for disputes relating to individual rights or collective rights. Under the current Labour Code, certain disputes (such as those regarding disciplinary measures, unilateral termination or compensation for damage for allowances) may be pursued directly at the court without the mediation process.
- The Amended Labour Code includes an **arbitration process** for resolving labour disputes, with the mechanism established under the auspices of the provincial authorities. Therefore, in addition to the court process (being the only form of final recourse contemplated by the current Labour Code), disputants may now avail of arbitration as a means of binding resolution.
- The Amended Labour Code defines **sexual harassment** in the workplace. While the current Labour Code allows certain recourse against such harassment (e.g., termination of labour contract), it does not provide a specific definition. The amendments broadly define it as any all mean any behaviour of a sexual nature of anyone towards other(s) at a work place that is not expected or accepted by the recipient(s).

Retirement

- The **retirement age will increase** each year by 3 months for male employees and by 4 months for female employees, until it reaches a maximum of 62 for men (in 2028), and 60 for women (in 2035). The current retirement age is 55 for females and 60 for males.

Other Employment Rights and Benefits

- The **provision of labour to repay a debt** will be prohibited. The amendments prohibit an employer from forcing an employee to perform a labour contract, in order to recompensate for an amount of debt that he/she has borrowed from the employer.
- Under the current Labour Code, the grassroots labour representative organisation is formed under the auspices of the state-run Vietnam General Confederation of Labour. The Amended Labour Code will now allow for **greater freedom of association** in which employees may now form such representative organisations independent from the VGCL upon receiving approval.

Employers will no longer need to notify their salary scale, payroll and labour norms with the district-level labour authorities as presently required in the current Labour Code. Instead, the employer would need to prepare these upon consultation with the grassroots labour representative organisation.)

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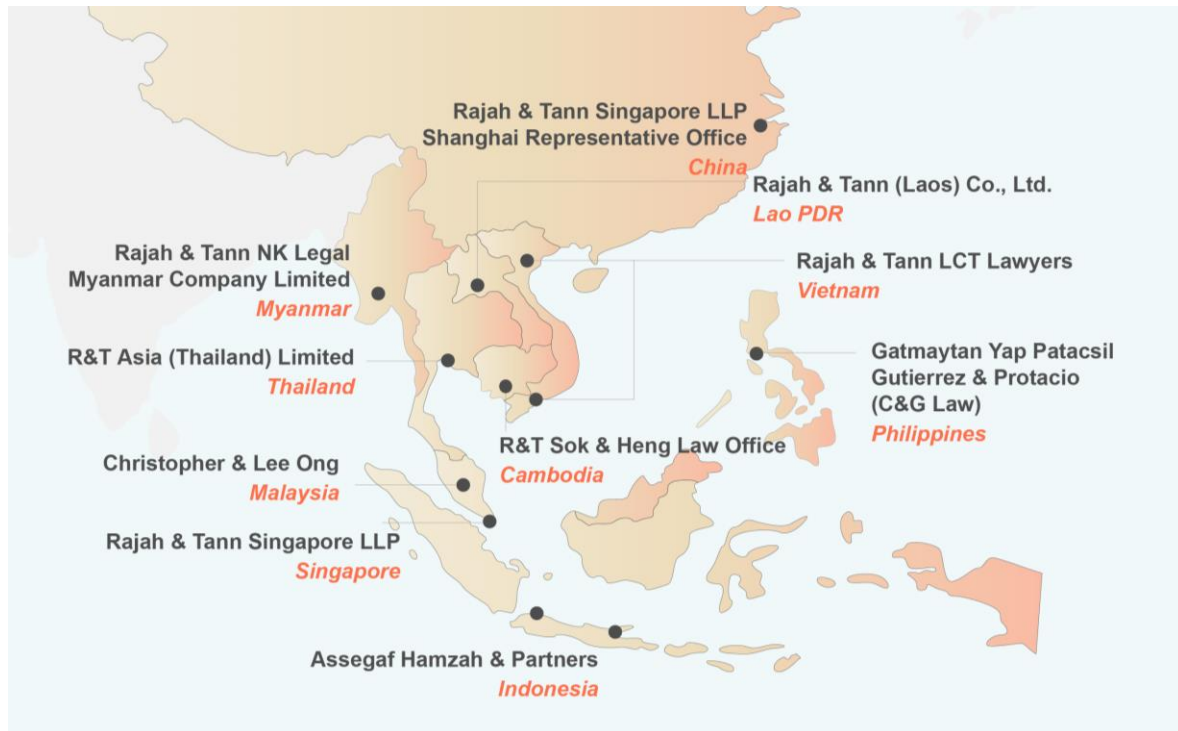
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