

# APAC Employment Law Forecast 2023

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# Overview

DLA Piper's APAC Employment Team has prepared the annual employment law forecast featuring a summary of the major legislative changes and key developments in 2022 that impacted the region and which also explores significant trends for employers in APAC to have on their radar in 2023.

This special annual publication covers 16 jurisdictions in Asia Pacific including Australia, Cambodia, China, Hong Kong, India, Indonesia, Japan, Macao, Malaysia, Myanmar, New Zealand, Singapore, South Korea, Taiwan, Thailand and Vietnam.

This guide does not contain any legal advice but instead is intended to be a general overview and discussion of the subjects dealt with. If you require employment-related advice, please contact the DLA Piper professionals listed in this guide.



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# Australia

Significant changes have been, and will be, made in Australia over 2022 and 2023, affecting all sectors, industries, and employers.

## Respect@Work

- The *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* ("Respect@ Work Act") commenced in late 2022.
- From December 2023, the Respect@Work Act will introduce a positive duty for employers to take "reasonable and proportionate measures" to eliminate unlawful sex discrimination, sexual harassment and victimisation, as far as possible. Employers will need to take additional measures beyond policies and staff training to satisfy this duty.
- The Respect@Work Act also:
  - introduces a prohibition on conduct creating a 'hostile' workplace environment on the basis of sex (i.e displaying obscene or pornographic materials, sexual banter, or making offensive jokes);
  - empowers the Australian Human Rights Commission to investigate and enforce compliance with the positive duty and inquire into systemic discrimination; and
  - lowered the threshold for what will constitute sexual harassment.

## Secure Jobs, Better Pay Act

- The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* ("Secure Jobs, Better Pay Act") introduced a range of changes to Australian employment laws. This includes the following key changes.
  - *Fixed-term employees*

Fixed and maximum term contracts are now capped at 2 years, with limited exemptions. There is also a requirement to give the new Fixed Term Contract Information Statement to fixed-term employees.

- *Flexible working arrangements*

Employees now have the capacity to contest a refusal of a flexible work request. Employers can only refuse such requests on reasonable business grounds. Employees can make an application to the Fair Work Commission ("FWC") if their request is refused and the FWC will have the power to arbitrate these disputes.

- *Pay secrecy terms*

Employees now have a positive right to discuss their remuneration with their colleagues.

Employment contracts which prohibit the disclosure of remuneration, or any terms and conditions of employment that are reasonable necessary to determinate remuneration, will be unlawful and a contravention of the Fair Work Act 2009 (Cth).

- *Multi-employer bargaining*

Complex changes have been introduced to the ways in which trade unions and employers negotiate industrial agreements. This includes that certain sector can now be party to multi-employer bargaining. These changes target industries with low paid workers and typically higher union density.

## Ongoing modern award compliance focus

- Australian regulators and trade unions have indicated an intention to continue to scrutinise compliance with Australia's modern award system.
- Non-compliance continues to be prevalent in various workforces, including failure by employers to ensure tracking of working hours for employees covered by a modern award. Time tracking is required by applicable regulations and is critical to be able to defend an underpayment claim.

## Family and Domestic Violence Leave Pay

- All employees (including part-time and casual employees) will be entitled to 10 days of paid family and domestic violence leave in a 12-month period. This new entitlement will replace the existing entitlement to 5 days of unpaid family and domestic violence leave.

## Paid parental leave

- From July 2023 onwards, entitlement to paid parental leave for employees who meet certain eligibility criteria (which has not changed) will increase from 18 weeks to 26 weeks. There is no change to the amount of leave that an employee can take and this relates only to Government funded payments.

# Cambodia

## Implementation of pension scheme

- Effective from 1 October 2022, monthly contributions of 4% of employees' contributable wages must be made to the pension fund no later than the 15th day of the following month, and will be shared equally by the employer and employee (i.e. 2% each)

## Implementation of new health and safety guidelines to prevent the spread of disease

- To prevent the spread of COVID-19, on 4 January 2022, the Ministry of Labour and Vocational Training ("MLVT") issued new health

and safety guidelines for companies and factories to follow, including prevention and hygiene measures, as well as certain protocols.

## Implementation of labour inspection via the MLVT's online system

- Since 1 January 2022, companies have been required to process their own online labour inspection reports biannually – in June and December.

## Implementation of new thresholds for monthly tax on salary

- From 1 January 2023, the new thresholds for monthly tax on salary are as follows:

No.	Income threshold	Tax rate
1	From KHR0 to KHR1,500,000 (approx. USD0 to USD375)	0%
2	From KHR1,500,001 to KHR2,000,000 (approx. USD375 to USD500)	5%
3	From KHR2,000,001 to KHR8,500,000 (approx. USD500 to USD2,125)	10%
4	From KHR8,500,001 to KHR12,500,000 (approx. USD2,125 to USD3,125)	15%
5	From KHR12,500,001 and above (approx. USD3,125 and above)	20%

## Extension of 2023 foreign employee quota application deadline

- The deadline has been extended from 30 November 2022 to 31 January 2023.
- Possible penalties imposed by the MLVT for failure to apply by the extended deadline include a fine of KHR2.52 million (approx. USD630).
- If employers apply for their foreign employees' 2023 work permits without the quota approval, the MLVT may impose heavier monetary fines and sanctions.

- For workers who are paid on a piece-rate basis: if their productivity is higher than the minimum wage, the higher amount will be applied; otherwise, the minimum wage applies.

## Public holidays for 2023

- The MLVT announced 20 public holidays for 2022.
- Employers in industries and businesses that require work on a regular, non-stop basis are allowed to have workers work on public holidays, with the caveat that workers are given days off in lieu of the holiday on a rotating schedule. A list of the employees working on a rotating schedule for holidays must be maintained for regular inspection by the labour inspectors.
- The hiring of workers to work on public holidays requires the MLVT's approval.

## Minimum wage for 2023

- Effective from 1 January 2023, the new minimum wage for the textile, garment, footwear, travel product, and bag industries, is as follows:
  - For regular workers: USD200 per month.
  - For workers during their probationary period: USD198 per month.

# China

## Protection of women's rights and interests

- At year-end 2022, the legislature revised the Law on the Protection of Women's Rights and Interests ("**Women's Protection Law**"), effective from 1 January 2023. The revised Women's Protection Law emphasises employers' obligations on the prohibition of gender discrimination and the prevention of sexual harassment in workplace, which have been hot topics in China in recent years. We recommend employers to update their internal policies to cover these points accordingly and provide sexual harassment prevention trainings.

## Social insurance compliance

- In 2022, the Ministry of Human Resources and Social Security issued the Measures for the Administrative Supervision of Social Insurance Funds, emphasising the promotion of social insurance compliance. Several provinces and cities, including but not limited to Guangdong, Jiangsu, Beijing and Hangzhou, have implemented local policies to ban non-compliant social insurance practices and arrangements, such as clamping down on "false employment relationships" in the contribution of social insurance. With the gradual expansion of crackdowns on social security non-compliance at the national and local levels, it would be harder or unlikely for employers to pay social insurance for employees in a city different from their registered location. Employers are advised to consider whether they would like to set up branches in more cities on the basis of their business development strategies.

## Personal information protection

- China continues to promote legislation related to personal information protection. The Measures for the Security Assessment of Outbound Data Transfers newly issued in 2022 put forward specific requirements for outbound data transfer. With the advancement of the Measures for the Security Assessment of Outbound Data Transfers, employee personal information protection related issues, especially outbound data issues, shall continue to be a focal point for employers to consider.

## Other policy updates

- The preferential policies on tax-exempt fringe benefits granted to foreign employees and annual one-off bonus have been extended to 31 December 2023 while the preferential tax policy on income from equity incentive schemes of listed companies has been extended to 31 December 2022. The state and local governments have issued policies prohibiting employment discrimination against people who have recovered from COVID-19.

# Hong Kong

## COVID-19 related employment amendments

- On 17 June 2022, the Employment (Amendment) Ordinance 2022 was gazetted into effect to address key employment issues brought about by COVID-19 and the Government's related anti-epidemic requirements. The amendments were generally aimed at:
  - specifying that a day on which an employee is absent from work due to compliance with certain anti-epidemic requirements imposed by the Government could be deemed as sickness days (which would entitle employees to statutory sickness allowance provided that the other relevant conditions are satisfied);
  - specifying that dismissal of an employee by reason of their absence from work due to compliance with certain anti-epidemic requirements imposed by the government would not be a valid reason for dismissal or variation of contract; and
  - specifying that failure of an employee to comply with a legitimate vaccination request made by the employer may form valid grounds for dismissing an employee.

## Abolishment of the MPF offsetting mechanism

- On 17 June 2022, the Employment & Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022 ("Offset Amendment") was published in the Government Gazette. The effective date of the Offset Amendment has not yet been confirmed, but the Government expects full implementation by 2025. When effective, it will abolish the longstanding arrangement which allows employers to use the accrued benefits derived from employers' *mandatory* contributions to offset employees' statutory severance or long service payment ("SP/LSP"). That said, under the Offset Amendment accrued benefits derived from employers' *voluntary* contributions as well as gratuities based on length of service will generally still be able to be used to offset SP/LSP. The offsetting arrangement will not have retrospective effect, as such, employers will generally be able to continue to use the accrued benefits derived from their MPF contributions (whether such contributions are made before or after the effective date and irrespective

of whether the contributions are mandatory or voluntary) to offset employees' SP/LSP in respect of any employment commenced before the effective date.

- In tandem with the Offset Amendment, the Government will be assisting employers with the introduction of 2 support measures, namely the 25-year Government subsidy scheme ("Subsidy Scheme") and the Designated Savings Account Scheme ("DSA Scheme"). The Subsidy Scheme will permit employers to apply for a disbursement from the Government to share employers' expenses resulting from a payment of SP/LSP following the effective date. The DSA Scheme will require employers to save up for their future SP/LSP liabilities following the effective date of the Offset Amendment. The DSA Scheme will require the introduction of a new and separate piece of legislation. Consultation between the Government and the Panel on Manpower on the proposed introduction of the DSA Scheme is expected to occur in the first half of 2023.

## Attracting international talent to Hong Kong

- In October 2022, the Chief Executive of Hong Kong delivered a policy address unveiling a significant policy objective of proactively seeking international talents. In connection with this policy objective, the Government has implemented the following initiatives to facilitate top international talent working in Hong Kong:
  - A new Top Talent Pass Scheme to attract high income individuals (whose annual salary reached HKD2.5 million+ in the past year) and individuals graduating from the world's top 100 universities with 3 years of work experience in the past 5 years. Individuals without the requisite number of years of work experience may still apply but will be subject to an annual quota. Under this new scheme, there is no requirement for the applicants to have first found employment in Hong Kong (which is the case under the existing General Employment Policy – Professionals, and the Admission Scheme for Mainland Talents and Professionals).

- New enhancement measures to the existing General Employment Policy, the Admission Scheme for Mainland Talents and Professionals, the Quality Migrant Admission Scheme, the Technology Talent Admission Scheme and the Immigration Arrangements for Non-local Graduates.

## Increasing the Maximum Penalties for Occupational Safety and Health Offences

- On 13 May 2022, the Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Bill (“**BILL**”) was gazetted, initiating the Bill’s review at the Legislative Council. As at the date of this publication, the Bill is being scrutinized by the Bills Committee. The Bill seeks to amend the Factories and Industrial Undertakings Ordinance and the Occupational Safety and Health Ordinance as well as their subsidiary legislation, generally to:
  - permit offences under the general duty (GD) provisions to be tried on indictment, and to permit the maximum fines and imprisonment terms for extremely serious breaches to carry a maximum fine and imprisonment term of HKD10 million and 2 years respectively;
  - increase the maximum fines for offences from breaches of GD provisions prosecuted summarily and employee GD provisions to HKD3 million and HKD150,000 respectively;
  - categorise other summary offences either as very serious, serious and minor and implement maximum fine levels for such offences to reflect their category of seriousness; and
  - extend from 6 months to 1 year the time limit for prosecutions for offences triable summarily.

## Minimum wage increase

- In line with the usual practice of reviewing the statutory minimum wage rate once every 2 years, the Minimum Wage Commission (“**MWC**”) conducted its new round of review and submitted a report on its recommendation (i.e. to increase the statutory minimum wage rate (currently at HKD37.50 per hour) to HKD40.0) to the Chief Executive in Council on 31 October 2022. On 10 January 2023, the Chief Executive in Council adopted the MWC’s recommendation but the new statutory minimum wage is not expected to come into force until 1 May 2023, subject to approval by the Legislative Council.

## Statutory holiday increase

- In 2021, the Employment (Amendment) Ordinance 2021 was gazetted which amended the Employment Ordinance such that the number of statutory holidays would progressively increase from 12 to 17 days by 2030, with 1 additional statutory holiday to be added every 2 years. The first such additional statutory holiday was effective in 2022, being the Birthday of the Buddha. The next statutory holiday to be added will be in 2024, being the first weekday after Christmas Day.

## Review of the Continuous Contract Requirement under the Employment Ordinance

- Employees classified as under a continuous contract (i.e. continuously employed by the same employer for four or more weeks and working 18 hours or more each week) under the *Employment Ordinance* are entitled to further benefits such as annual leave, severance payment and long service payment. The Government is reviewing this requirement and will shortly commence discussions with the Labour Advisory Board to deliberate how employee benefits and affordability of employers may be balanced.

# India

## Implementation of the labour codes delayed

- The four labour codes i.e., *Code on Wages, 2019, Industrial Relations Code, 2020, Code on Social Security, 2020 ("SS Code")* and *Occupational Health, Safety and Working Conditions Code, 2020* (together "Labour Codes") that will subsume and consolidate 29 existing central labour laws, were originally expected to come into effect on 1 April 2021 and were thereafter delayed on account of pending state rules. While most states have now published their draft rules, the implementation date of the Labour Codes continues to be pushed beyond the year 2022 and could be expected to be implemented in the year 2023. However, no official announcement has been made on the implementation dates by the government.

## Rules relating to work from home ("WFH") relaxed in Special Economic Zones ("SEZ")

- The government of India has notified the Special Economic Zones (Fifth Amendment) Rules, 2022 which has amended the Rule 43A of the Special Economic Zones Rules, 2006. The amended Rule 43A relaxes the requirements for opting for WFH and changes the regime from one of 'approval' to 'prior intimation'.
- A SEZ unit may now allow all of its employees to WFH until 31 December 2023 without any upper limit. This is in contrast to the erstwhile Rule 43A which, by default, permitted up to 50% of the employees and up to 100% on furnishing bona fide reasons.
- The units intending to extend WFH facility to its employees may do so by intimating the Development Commissioner through an email on or before commencing WFH. The units that were already WFH under the erstwhile Rule 43A and intend to continue under the new Rule 43A shall be required to intimate the Development Commissioner through an email on or before 31 January 2023.

## Supreme Court holds mens rea or actus reus not relevant for payment of damages for employer's defaults in making provident fund contributions

- The Supreme Court, in the case of *Horticulture Experiment Station Gonikoppal, Coorg v The Regional Provident Fund Organisation*, held that default or delay in the payment of employees' provident fund ("EPF") contribution by the employer under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (a key social security legislation in India) is the only requirement for imposing damages under Section 14B of the EPF Act. It further held that mens rea or actus reus is not an essential element for the imposition of penalty for breach of civil obligations/liabilities.
- The Karnataka High Court had earlier held that once the default in payment of contribution is admitted, the damages are consequential, and the employer is required to pay such damages under Section 14B of the statute. The Supreme Court upheld the decision of the High Court by reiterating that a breach of statutory obligation (which attracts penalty in the nature of fine) would immediately attract the levy of penalty, irrespective of whether contravention was made by the defaulter with guilty intention or not. Given that damages under the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 are attracted as soon as there is any delay or default, employers would not be able to take a defence for such delays.

# Indonesia

## Visa on Arrival (“VOA”) for business meeting

- Effective 15 September 2022, the Director General of Immigration announced through its circular letter that foreign individuals may attend business meetings in Indonesia by using a VOA or Short Visit Pass facility (only applicable for ASEAN countries).
- The Director General of Immigration also announced the following additional countries have become subject to Visa on Arrival: Albania, Andorra, Chile, Ecuador, Iceland, Liechtenstein, Palestine, San Marino, Suriname, Uzbekistan, and the Vatican.

## Minimum wage for 2023

- Effective 1 January 2023, there is a new minimum wage which applies for both provincial and municipal/regional with a maximum increase of 10%.
- For DKI Jakarta province, an increase of 5.6% applies to the minimum wage, amounting to IDR4,901,798.
- The highest increase of provincial minimum wage in Indonesia applies to West Sumatra (9.15%) and the lowest increase of provincial minimum wage applies to West Papua (2.6%).

## National public holiday

- On 11 October 2022, Indonesian Government announced that Indonesia will have 16 days of public holiday with 8 days of Collective Leave in 2023.



# Japan

## Additional overtime payment

- Currently, companies are required to pay at least 125% of the hourly rate for work in excess of 8 hours per day or 40 hours per week (regular overtime).
- Effective as of 1 April 2023, all companies<sup>1</sup> will be required to pay at least 150% of the hourly rate as “special overtime payment” for overtime in excess of 60 hours per month (statutory days off work hours are excluded). For example, if an employee works 70 hours of overtime in a month, they will receive overtime payment of *hourly rate x 1.25 x 60 hours + hourly rate x 1.50 x 10 hours*.

## Mandatory disclosure of gender pay gap

- Under the “Act on the Promotion of Women’s Active Engagement in Professional Life” (“**Act**”), companies with more than 300 employees must (i) formulate and submit an action plan, and (ii) release information regarding female employees’ active engagement in the workplace.
- Under the new ministerial ordinance to the **Act** (effective July 2022), such companies must also disclose certain gender pay gap information in principle within 3 months from the commencement of the company’s next fiscal year.

## Mandatory disclosure of the status of childcare leave utilisation

- Effective 1 April 2023, companies with more than 1,000 employees will be required to annually disclose the status of employees taking childcare leave.
- Specifically, companies must disclose (i) the rate of male employees taking childcare leave, or (ii) the rate of male employees taking childcare leave or any day off for childcare purposes of the fiscal year that is immediately preceding to the fiscal year that includes the date of disclosure.

## Payment of salaries by electronic means

- Currently, companies are required to pay salary to employees in cash or by bank transfer. Effective 1 April 2023, companies will be permitted, with employee consent, to use certain other electronic payment technologies to pay salary.

## Protection of independent contractors

- Currently, the Subcontracting Act, which protects subcontractors from unreasonable treatment by procuring companies, applies to independent contractors only when a company with capital of more than JPY10 million enters into a contract with an independent contractor.
- The government will soon legislate broader/further protections for independent contractors, such as:
  - lowering the JPY10 million threshold;
  - requiring that contractual terms and conditions (e.g., remuneration and scope/nature of work) be presented in writing;
  - 30 days’ notice to terminate or not to renew the agreement; and
  - subjecting violations to an investigation or formal guidance.
- On a separate note, the employee/independent contractor classification will continue to be a critical issue.

<sup>1</sup> Large-size companies have been already required to do so since 2010.

# Macao

As the unemployment rate reached 4% in 2022, the highest in the last decade, it is likely that the impact of COVID-19 on employment will persist in 2023. However, the abandonment of the zero-covid policy in December 2022 and the awarding of new casino gaming concessions gives hope to recovery and may attract talent as concessionaires are committed to investing in non-gaming industries.

## Trade Union Law proposal (under consultation during 2021, likely to be enacted in 2023)

- The Macao Trade Union Law will set out the objectives and guiding principles of trade union associations, which should strive to protect labour rights and interests, considering the Principle of Freedom of Association, the Principle of Equality among unionised workers, and the Principle of Legality of the activities pursued by trade union associations.
- As the public and security functions of the state should not pursue union activities against it, restrictions on the freedom of union association were stipulated for certain sectors of activity. The proposal specifically addresses the case of public employees, including agents of public security forces.

## Residency for talents – new scheme approved in first reading likely to be effective in 2023

- After consultation in 2021, on 11 August 2022 the legislature approved a draft bill for a new legal framework to attract non-resident qualified talents. The bill reviews the previous policy of major investment immigration and technical immigration, along with its corresponding legal framework – namely, the Temporary Residency Regime for Investors, Management Personnel, and Specialised Technicians.

The scheme is divided into three programmes, corresponding to each of the following categories:

- highly qualified talents, defined as individuals with exceptional competencies or technical ability who are also internationally recognised for outstanding achievements or significant contributions in specific areas;
- talents of excellence, namely those who can facilitate the appropriate economic diversification of Macao in accordance with the region's socioeconomic development needs, especially those who have professional experience and technical ability and are recognised for their expertise or in their industry; and
- highly specialised talents, which targets individuals with professional experience and technical competence who, in line with the socioeconomic development of Macao, are able to support the growth of the prioritised industries or fill the shortage of talent needed for the development of Macao.



# Malaysia

The significant legislative change in Malaysia is due to the passing of the Employment (Amendment) Act 2022 (“**Amendment Act**”). The Amendment Act came into force on 1 January 2023.

## Significant changes to the scope of the Employment Act

- The Amendment Act introduces significant changes to the scope of the Employment Act, which previously only applied to employees earning up to RM2,000/month. However, the Employment Act now applies to all employees, save for the sections relating to overtime payments and termination benefits being carved out as not applying to employees whose wages exceed RM4,000/month.

## More employees to be entitled to overtime compensation

- As the scope of the Employment Act has been expanded, more employees are now entitled to overtime compensation (including for work on rest days, outside of normal working hours, and on public holidays).

## Increase in maternity leave, and further protection for pregnant employees

- The Amendment Act increases the paid maternity leave entitlement from 60 to 98 consecutive days and introduces new provisions which prohibit employers from dismissing an employee who “is pregnant or is suffering from an illness arising out of her pregnancy” except on the grounds of (a) wilful breach of contract; (b) misconduct; or (c) business closure.

## Paternity leave

- The Amendment Act also introduces statutory paternity leave for the first time in Malaysia, granting married male employees seven consecutive days of paid paternity leave.

## Flexible working arrangements

- Under the Amendment Act, employees can submit a written application to their employer “for a flexible working arrangement to vary the hours of work, days of work or place of work”. Employers must then approve or refuse the application within 60 days, providing reasons for a refusal.

## Employment discrimination disputes

- Malaysia notably lacks discrimination protection for employees. The Amendment Act gives the Director General the power to “inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment [and] make an order”. Non-compliance by an employer with such an order would be an offence.

## Anti-Sexual Harassment Act 2022

- The Anti-Sexual Harassment Act 2022 was gazetted on 18 October 2022, but a commencement date has not yet been fixed.
- This is Malaysia’s first sexual harassment related legislation and seeks to provide for a right of redress for any person who has been sexually harassed, the establishment of the Tribunal for Anti-Sexual Harassment, and the promotion of awareness of sexual harassment.



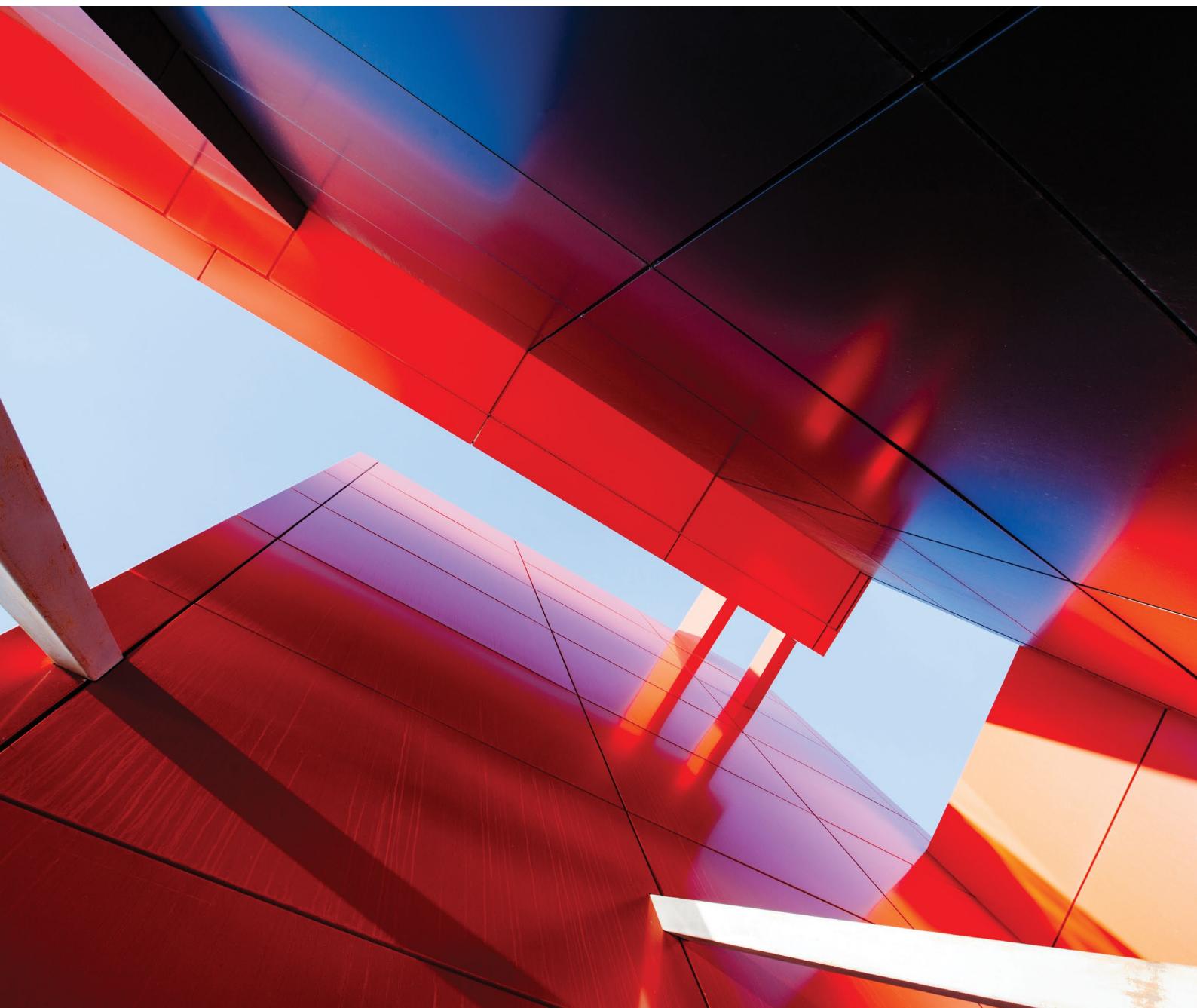
# Myanmar

There have not been fundamental changes to the labour laws in Myanmar during the year 2022. The following employment developments have been issued by the Directorate of Investment and Company Administration ("DICA").

## DICA's recommendation for visa extensions

- The DICA announced its recommendation on Foreigner Visa Extensions ("Announcement"), effective on 14 September 2022. The Announcement sets forth the requirements for companies that wish to apply to extend a foreigner's visa and such companies must have been registered in Myanmar for one year.

- If such companies were suspended or struck off for non-compliance with the Myanmar Companies Law of 2017, the DICA will only issue recommendations for visa extensions to such companies after they have complied with all requirements in line with the law for one year.
- Foreign personnel seeking to secure a recommendation for a visa extension must apply at least 90 to 120 days before their current visa expires, and their passport must be valid for a minimum of six months.



# New Zealand

## Holidays Act amendments pending

- The Minister for Workplace Relations has announced that all 22 recommendations made by the Holidays Act Taskforce Report (issued in 2021) have been accepted by the Government. The incoming amendments are intended to simplify the current legislation. An amendment bill is expected to be introduced in early to mid 2023, likely addressing discretionary bonus payments which, under current common law, may be excluded from holiday pay calculations in exceptional circumstances. We expect the amendment will require all payments, except reimbursements, to be included in holiday pay calculations.

## Fair Pay Agreements Act

- In December 2022, the Fair Pay Agreements Act 2022 came into force. Fair pay agreements are large-scale agreements covering all employees and employers within a particular sector. They broadly operate to regulate and provide a compulsory floor for basic employment standards including wages, overtime and leave. The concept is similar to Australia's modern award system. Applications to initiate bargaining are being accepted from December 2022 with many union groups intending to submit applications. We expect to see the first fair pay agreements begin bargaining in early 2023.

## Employment Relations Act amendments pending

- Restraints of trade

The Employment Relations (Restraint of Trade) Amendment Bill was introduced in late 2022. This Bill proposes to codify valid restraints by significantly limiting which employees may be subject to restraints and for how long. Under current drafting, the Bill proposes a maximum restraint period of 6 months, mandatory compensation during the restraint period,

and a threshold income of 3 times minimum wage for a restraint to be valid. While the Bill has been publicly criticised since its introduction, it has yet to reach the select committee and is thus subject to change. We expect the Bill to make its way through Parliament by mid-2023.

- Extended time for personal grievances

The Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill has gained broad bipartisan and public support. This Bill will extend the time for raising personal grievance claims involving sexual harassment from 90 days to 12 months. The Bill is in its final reading as of December 2022 and will likely be passed in early 2023.

- Dependent contractors

We are expecting draft legislation to change the definition of 'employee' to include 'dependent contractors' by early to mid-2023. This change has been anticipated since the Tri-Partite Working Group on Better Protections for Contractors made the recommendation in 2021. The definition of 'employee' is likely to be extended to include contractors who are, in practice, not able to make business decisions for themselves and are not free to contract with several parties.

# Singapore

## Immigration

- Various changes were announced in 2022 in relation to Singapore's immigration framework and some of these will take effect during 2023.
- The minimum qualifying salary for Employment Pass ("EP") and S Pass applications were increased from 1 September 2022 for new applications, and will be increased further from 1 September 2023 onwards for renewals.
- A new points-based immigration system called 'COMPASS' (Complementarity Assessment Framework) will be introduced for new EP applications from 1 September 2023, and from 1 September 2024 for renewals.
- The job advertising requirement has now been restored to pre-COVID levels from 28 days to 14 days.
- A new type of EP called the 'ONE Pass' will be available from 1 January 2023 which is designed for 'top talent' earning at least SGD30,000 per month. The ONE Pass will be granted for up to 5 years, does not tie the applicant to a single employer and gives the applicant's spouse the right to work subject to them obtaining a Letter of Consent. These conditions are more beneficial compared to a regular EP.
- Finally, from 1 September 2023, the salary threshold for being exempt from COMPASS/the job advertising requirement, as well as the minimum qualifying salary for the Personalised Employment Pass, will be increased to SGD22,500.

## Diversity & Inclusion

- The government did not provide any further details of its proposal to introduce workplace discrimination legislation and establish a workplace tribunal as expected. We are now expecting a draft bill to be published in 2023. If passed, employees will for the first time likely be able to take legal action directly against their employers for discrimination that takes place in the workplace, and we would expect to see an uptick in discrimination complaints and wrongful dismissal claims.

- Following a significant Court of Appeal decision in February 2022, the government repealed section 377A of the Penal Code under which homosexuality was a criminal offence. However, the Constitution was also amended to effectively ensure that the current definition of marriage (one man and one woman) remains unchanged and is not susceptible to challenge on constitutional grounds.

## Retirement

- From 1 July 2022, the minimum retirement age was increased to 63 and the re-employment age was increased to 68.

## Platform workers

- The Ministry of Manpower has accepted a government committee's recommendations in relation to expanding the scope of protections for gig economy platform workers. The recommendations include creating a framework where platform workers are not classified as employees, requiring companies to provide the same level of work injury compensation insurance as employees, improving housing and retirement protections, and enhancing representation through collective bargaining frameworks.
- Legislative changes will be introduced on a phased basis following consultation with stakeholders and are unlikely to take effect until the later part of 2024 at the earliest.

## Flexible work

- As companies increasingly moved to some form of remote or hybrid work, the tripartite partners issued a statement encouraging companies to sustain and promote flexible work arrangements as a permanent feature of the workplace. A new set of Tripartite Guidelines are expected to be published by 2024.

# South Korea

The following are updates on key HR/labour law amendments that companies should take note of in 2023.

## **The scope of protection under the Industrial Accident Compensation Insurance Act (“Act”) has been expanded for employees engaged in special types of employment (Effective as of 1 July 2023)**

- Currently, employees engaged in special types of employment are protected under industrial accident compensation insurance only when they undertake work “exclusively” for one business. Accordingly, where an employee works for multiple businesses through online platforms, etc., the employee has not been covered by such insurance. To protect these employees, the exclusiveness requirement has been revoked and an employee who provides work-labour to multiple businesses through online platforms, etc. will be legally covered in case of an industrial accident.

## **Related amendments to the Act on the Collection of Insurance Premiums for Employment Insurance And Industrial Accident Compensation Insurance (Effective as of 1 July 2023)**

- A business owner-employer and an employee engaged in special types of employment will each bear 50% of the premiums for industrial accident compensation insurance. In case of certain occupations prescribed by the Presidential Decree, which is determined in consideration of the subordinate relationship between an owner-employer and an employee engaged in special types of employment, the owner-employer will bear the full amount of the insurance premiums.
- Special requirements will be imposed on ‘platform operators’ as defined by the Act. Platform operators will be responsible for administrative tasks related to industrial accident compensation insurance, such as reporting monthly remuneration and withholding, opening accounts for withholding and paying out industrial accident insurance premiums.

## **A child who suffers from a health issue or dies due to the pregnant mother’s industrial accident will be protected by the Act (Effective as of 12 January 2023)**

- Where a pregnant employee’s newborn child suffers from injury, illness, or disability or dies due to an industrial accident involving the employee-mother, an accident during commuting to or from work, or handling of or exposure to harmful factors in the course of performing her duties, this will be acknowledged as an occupational accident in line with Korean case law. Such children with health issues will be covered under the Act as if the child were an employee of the business which the pregnant employee belongs to and will be entitled to medical care benefits, disability benefits, personal care benefits, a funeral subsidy and occupational rehabilitation benefits.
- The minimum hourly wage (currently at KRW9,160) has been increased by KRW460 to KRW9,620 in 2023.
- Regular bonuses exceeding 5% of and cash welfare benefits exceeding 1% of the monthly calculated sum (KRW2,010,580 based on 209 hours) of the 2023 minimum hourly wage (KRW9,620) will be included in the calculation of minimum wage (this is part of the phased expansion of the application of such payments to the minimum wage calculation from 2019 to 2024).

## **Increase of the non-taxable cap for meal allowances (Effective as of 1 January 2023)**

- With the amendment of the Income Tax Act, the non-taxable cap for a meal allowance will be increased from KRW100,000 to KRW200,000 per month.

In addition, the following are key changes to HR/Labour laws that took effect in the second half of 2022:

## Strengthening representation of employee representatives (Effective as of 11 December 2022)

- Starting from 11 December 2022, where there is no labour union in a company representing a majority of the employees, the employee representatives will be elected by said majority of the employees via direct, secret, and anonymous ballots.
- Indirect elections may be held when a direct election is infeasible/impractical due to peculiarities of the relevant business. In such case, a majority of employees will elect delegates in proportion to the number of employees by department via direct, secret, and anonymous ballots, and a majority of the delegates will in turn elect employee representatives by direct, secret, and anonymous ballots.
- Previously, an employee needed recommendations from 10 employees of the business or workplace to run for a position of employee representative. After the amendment, any employee may run for this position without such recommendation.

## Administrative fine to be imposed on business places not cooperating with the fact-finding survey on the status of workplace child care centres (Effective as of 11 December 2022)

- Under the Child Care Act, an owner-employer who runs a workplace of a certain size, as prescribed by the Presidential Decree, has an obligation to establish workplace child care centres or to provide entrusted child care services. The Ministry of Health and Welfare conducts an annual fact-finding survey as to whether the applicable owner-employer have established workplace child care centres, and unless there are special circumstances, such owner-employers not cooperating with fact-finding survey may be subject to an administrative fine not exceeding KRW100 million.

## Requirement to establish rest areas (Effective as of 18 August 2022)

- An owner-employer's obligation to establish rest areas under the Occupational Safety and Health Act has become compulsory. Accordingly, in certain types of business places, as determined by the Presidential Decree based on the type of business and the number of regular employees, rest areas must be established in accordance with guidelines provided under the decree of the Ministry of Employment and Labour ("MOEL"). In case of a violation, an administrative fine not exceeding KRW15 million may be imposed for not establishing rest areas, and an administrative fine not exceeding KRW10 million may be imposed for not complying with the standards set forth in the decree of the MOEL.
- Where employees of a subcontracting company (subcontracted workers) perform work at the business place of a principal company, an administrative fine not exceeding KRW15 million may be imposed on a principal company if a principal company does not provide places that are necessary for a subcontracting company to install the facilities, as determined by the decree of the MOEL or interferes with subcontracted workers' use of rest areas.

# Taiwan

## Increased fines for employers who bar union membership

- A large increase in companies being fined for not allowing workers to join unions during the last five years has prompted government officials to strengthen the Labour Union Act ("Act"). Under the Act, employers are forbidden from refusing to hire, dismiss, demote, reduce the wages of, or treat any employee in an unfair manner for organising or joining a labour union, assuming a position in a labour union, or participating in any union activities.
- Employers who violate the law will have their names, violations, and fines publicly distributed. Employers who fail to comply after initial fines will receive further increased penalties of between TWD200,000 to TWD1 million, and may have fines consecutively imposed if they fail to take any action.

## Three categories removed from approved lists for flexible working schemes

- Taiwan's Ministry of Labour announced the removal of three professional categories from the approved lists for flexible working schemes as per Article 84-1 of the Labour Standards Act, namely Congressional liaison staff of public institutions listed in the Legislative Yuan, professional photographers and news assignment drivers from the Taipei City Government Department of Information and

Tourism accompanying the mayor on their itinerary. A worker's removal from the approved list is often more beneficial for the worker, as employers have less room to order daily working hours.

## New labour inspection guidelines

- Taiwan's Minister of Labour ("MOL") recently announced new labour inspection guidelines. The ministry will target companies that have been widely published as having violated local labour laws and those in dangerous industries. The Occupational Safety and Health Administration will be ramping up inspections on small- and medium-sized businesses.
- Due to a high number of work site accidents this past year, the MOL has added several new sectors, such as the entertainment industry, courier companies, and businesses that require night shift workers.



# Thailand

There has been no significant and material development of the labour laws of Thailand during the year of 2022, except for:

## Amendment to Homeworkers Protection Act

- “Homework” is currently defined under the Homeworkers Protection Act as work assigned by a hirer in an industrial enterprise to a homeworker to be produced or assembled outside of the workplace of the hirer or other works specified by the ministerial regulations. The amendment intends to enhance protection for homeworkers in commercial, agricultural, service, and other business as well, not just industrial business. In addition, according to the amendment, a work product of homeworkers would also include those relating to packing, repair, recycle, design, service, and distribution, in addition to production and assembling which are currently specified in the definition of homework under the Homeworkers Protection Act.

## Draft Independent Workers Protection Act

- The Thai Labour Protection Act, the primary regulation providing fundamental protection to independent workers, is deemed to be insufficient in protecting those who provide their services in a “new normal” way of life, in particular workers who provide their service to multiple platform-based companies in transportation and logistics business, e.g., food and package delivery. Thus, the Draft Independent Workers Protection Act intends to provide greater protection to independent workers.



# Vietnam

## Contribution to social insurance and health insurance for foreign employees

- Effective from 1 January 2022, the employer must pay 17.5% of monthly wage of an eligible foreign employee for social insurance and 3% for health insurance. An eligible foreign employee also must pay 8% of their monthly wage for social insurance and 1.5% for health insurance. Note however, that the maximum amount of monthly wage on which social insurance/health insurance premiums are based will be equal to 20 months' statutory basic wage only.
- Previously, the employer was required to pay 3.5% of monthly wage of an eligible foreign employee for social insurance and 3% for health insurance; and an eligible foreign employee was required to pay 1.5% of their monthly wage for health insurance only.

## Minimum wage increase

- The minimum wage varies depending on where the employer operates and has been increased from 1 July 2022. Specifically, the minimum wage per month is now: (i) for Area I – VND4.68 million

(previously VND4.42 million); (ii) for Area II – VND4.16 million (previously VND3.92 million); for Area III – VND3.64 million (previously VND3.43 million); and (iv) for Area IV – VND3.25 million (previously VND3.07 million).

- The list of regions within Area I, Area II, Area III and Area IV to which the minimum wage applies is provided by the Government. Generally, inner-city districts of Hanoi and Ho Chi Minh City are subject to Area I.
- In addition, the requirement that a wage at least 7% higher than the regional minimum wage be paid for jobs requiring an employee to have received vocational or trade training has been abolished.

## Statutory basic wage increase

- The statutory basic wage is currently VND1.49 million and will be increased to VND1.8 million from 1 July 2023. Thus, from 1 July 2023, the maximum monthly wage on which social insurance/health insurance premiums are based will be increased from VND29.8 million to VND36 million.



# DLA Piper in Asia Pacific



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