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This issue covers the following topics:

India

EMPLOYMENT LAW UPDATE – UNIFIED CODE ON WAGES

インド政府は、国内に多数存在する労働関連法規を主要な４つの法律に統一する法改正を進めており、その一つとして 2019 年 8 月賃金法（Code of Wages）が制定された。同法では、現状様々な法律によって 12 種類の異なる定義がなされていた「賃金」の定義を一本化するとともに、適用対象労働者の範囲の拡大、新たな最低賃金の設定、賃金における性差別の禁止等の制度の現代化が図られている。本稿ではかかる賃金法の主要な改正事項について概説する。

Background

In its effort to streamline the myriad labour laws in the country, India has decided to unify its labour laws into four primary laws. One of these is the Code on Wages ("**Wages Code**") which was passed by the Parliament of India on 2 August 2019 and has received Presidential assent on 8 August 2019. It will be effective from the date notified in the Official Gazette and it may come into effect in parts on different dates.

The Wages Code attempts to bring all matters pertaining to payment of wages, bonus and prevention of discrimination within its ambit and upon coming into force will subsume and replace four extant legislations being the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976.

Key Provisions

1. **Definition of 'Wages':**

   At present, there are 12 different definitions of 'wages' in various labour laws. This has not only resulted in ambiguity in interpretation but has also generated a plethora of litigation cases. To address this, the Wages Code provides for a simplified definition of 'wages' which includes all remuneration by way of salary, allowances and other components expressed in monetary terms or which are capable of being so expressed. The definition lists down the specific items which would not constitute 'wages' – this includes bonus, overtime pay, pension or provident fund contributions or certain allowances such as conveyance and house rent allowance. The Wages Code also provides that the excluded components cannot exceed one half or such other percent as notified by the

Central Government of all the remuneration payable to the employee and if it does then the one half or such percent as specified by the Central Government shall fall within the category of 'wages'.

2. Applicability of the Wages Code:

Currently, only those persons who are employed in scheduled employments are eligible to receive minimum wages under the Minimum Wages Act, 1948. Further, the Payment of Wages Act, 1936 was only applicable to employees earning less than INR 24,000 (approx. US$ 340) per month. This resulted in about 60% of the workforce in India falling outside of the scope and protection of these laws. The Wages Code has amended this and under the Wages Code provisions relating to payment of wages would extend to all employees irrespective of their earnings and type of employment (full-time, part-time, employed in organised or un-organised sectors etc.) thereby expanding its remit to 100% of the workforce.

3. Floor Wage and Computation of Minimum Wage:

Under the Minimum Wages Act, 1948, the minimum wages are fixed based on the type of employment and many States have multiple minimum wages (there are more than 2000 rates of minimum wages currently). However, this concept has been done away with in the Code. Under the Code, the methodology has been rationalised and the Central Government is required to fix a floor wage after taking into account geographical location and the minimum living standards of workers and on that basis the State governments will fix a minimum wage which will additionally consider factors like skill and difficulty of work. The State governments cannot fix a minimum wage which is lower than the floor wage. In the event that the existing minimum wages fixed by the Central or State Governments are higher than the floor wage, such minimum wage rates cannot be reduced. The minimum rate of wages shall be reviewed and revised in 5 year intervals.

4. Prohibition of Gender Discrimination:

Similar to the Equal Remuneration Act, the Wages Code prohibits discrimination amongst employees on the ground of gender either at the time of recruitment or in relation to matters pertaining to payment of wages by the employer, in respect of the '*same work or work of a similar nature done by any employee*'. Same work or work of a similar nature has been defined to mean work in respect of which the skill, effort, experience and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort, experience and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment.

5. Bonus Payments:

Consistent with the Payment of Bonus Act, provisions relating to bonus payments under the Wages Code shall apply to only those establishments that employ 20 or more employees in an accounting year. Employees earning up to a prescribed amount, notified by the Central or State government, will be entitled to an annual bonus. The bonus shall be at least 8.33% of the wages or INR 100, whichever is higher and must be paid within 8 months of the accounting year ending. In addition, the employer will distribute a part of the gross profits amongst the employees in proportion to the annual wages of the employee up to a maximum of 20% of his/her annual wages. Further, the Wages Code also lists out the criteria for disqualification of receiving bonus. In addition to the previous disqualifications of fraud, theft and other misconduct, the Wages Code has added conviction for sexual harassment as an additional ground which would disqualify an employee from receiving his/her statutory bonus.

6. Payment in case of death of Employee:

The Wages Code provides that any undisbursed dues of the employee in case of the employee's death must be paid to the persons nominated by the employee and where there is no such nomination or for any reasons such amount cannot be paid to the person so nominated, then, the dues shall be deposited with the specified authority.

7. Records, Returns and Notices:

The Wages Code mandates the employer to maintain a register, in a prescribed manner and preferably in an electronic form, containing the details of the persons employed, muster roll, wages and such other details to be specified. It also requires the employer to display a notice at a prominent place at the establishment containing an abstract of the Wages Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages and the name and address of the Inspector cum Facilitator having jurisdiction.

8. Enforcement:

The Wages Code provides for appointment of 'Inspectors-cum-Facilitators' who will play a dual role of inspecting as well as facilitating compliance by providing information to employers and workers. The Inspector-cum-Facilitator must first give the employer an opportunity to cure the non-compliance within a stipulated period, and only on failure to do so, prosecution would be initiated. The Wages Code further provides that the appropriate government must lay down an 'inspection scheme' which may provide for web-based inspection and calling of information. The Wages Code specifies penalties for offences committed by an employer, such as (i) paying less than the due wages, or (ii) for contravening any provision of the Code. Penalties vary depending on the nature of the offence, with the maximum penalty for non-payment of dues being a fine of up to INR 50,000 (approx. US$ 700) and for non-compliance of other provisions of the Wages Code being INR 20,000 (approx. US$ 280). Repeat offence can also carry imprisonment. The Wages Code also introduces the option of compounding offences which are not punishable by imprisonment and which have not been committed a second time in 5 years.

Conclusion

The Wages Code is a key milestone achieved by the Indian government on its journey to codify, rationalize and consolidate labour laws and promote ease of doing business in India. One of the key roles that the Code serves is removal of multiplicity of definitions and authorities while at the same time retaining the basic concepts of employee welfare and benefits and in fact extending benefits to the unorganized sector which forms the major chunk of the labour force in India. It is also likely to simplify and make it easier and more cost effective for employers to comply with the provisions of the Wages Code and bring in more transparency and accountability.

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Thailand

PERSONAL INFORMATION PROTECTION ACT: TO-DO's FOR EMPLOYERS

タイでは個人情報保護法が新たに制定され、2020 年 5 月 28 日からその適用がスタートする。本稿では、新法の適用開始に備えて準備すべき事項（同意取得、プライバシーポリシーの作成・通知等）について、従業員の個人情報の取扱いを例にとり解説する。

Background

Enacted on 27 May 2019, the Personal Information Protection Act B.E. 2562 (2019) ("**PIPA**") will be fully effective from 28 May 2020. Upon the full enforcement, PIPA will protect **Personal Information** (as defined below) by imposing various duties on a **Personal Information Controller** (as defined below), where non-compliance thereof may result in administrative fines of up to Baht 5 million, civil liabilities and criminal penalties.

In this article, we will discuss on what duties an employer as a Personal Information Controller will have under PIPA and what they could do in order to prepare.

1. What is Personal Information?

Under PIPA, "**Personal Information**" means any information pertaining to a natural person, which enables the identification of such person, whether directly or indirectly but does not include the specific information of the deceased.

Within this definition, Personal Information can be bifurcated into two (2) primary groups as follows.

1.1 General Personal Information

General Personal Information which means any Personal Information such as name, addresses, telephone numbers, head shots (pictures of faces) which does not pertain to those aspects which may constitute Sensitive Personal Information (defined below).

1.2 Sensitive Personal Information

Sensitive Personal Information is Personal Information pertaining to:

(1) Ethnicity	(5) Religious belief	(9) Health record
(2) Race	(6) Philosophical belief	(10) Information about the labor union
(3) Political opinion	(7) Sexual behavior	(11) Genetic or biometric information
(4) Doctrinal belief	(8) Criminal record	(12) Any information as prescribed by the Personal Information Protection Committee ("**Committee**")

2 Duties of an employer as a Personal Information Controller

An employer who collects Personal Information from job-applicants or employees shall be deemed to be a Personal Information Controller under PIPA ("**Employer**" or "**Personal Information Controller**"), and therefore, shall have *inter alia* the following duties under PIPA:

2.1 Duties at the time of collection of Personal Information

At the time of collection of Personal Information, such as when receiving the CVs of, having application forms filled by or interviewing the job-applicants, an Employer must:

(i) collect the Personal Information only to the extent necessary to serve the lawful objective of the Employer;

(ii) obtain consent prior to or at the time of such collection from the owner of such Personal Information ("**Personal Information Owner**" or "**Employee**"); and

(iii) notify the Personal Information Owner of its rights in the manner prescribed by PIPA ("**Notification of Rights**") .

The details of which are described below:

2.1.1. Necessary extent

As indicated in (i) above, PIPA sets the limit on the Personal Information that a Personal Information Controller can collect from a Personal Information Owner. It is worthwhile noting that even if a Personal Information Controller meets the requirement in both (ii) and (iii) above, Personal Information to be collected must not exceed the necessary extent required to serve the lawful objective. Penalty for default includes an administrative fine of up to Baht three (3) million and a possible civil liability which may be claimed by the Personal Information Owner.

For example, requiring an Employee to provide his/her parents' or in laws' details may be deemed as unnecessary without lawful objective.

Thus, it is recommended that an Employer reviews its current job application forms and employment contract templates and refrains from obtaining unnecessary information such as race, religion, union membership, etc. from a job-applicant/Employee.

2.1.2. Consent

To collect Personal Information, a Personal Information Controller is required to obtain an express consent from a Personal Information Owner.

Under PIPA, there are certain exceptions to this requirement such as in the case of "necessity for the performance of agreement" or for the "legitimate benefits" –in case of General Personal Information, or for "labor protection"-in case of Sensitive Personal Information. However, since the Committee has not yet issued any guidelines to clearly define what those exceptions would cover, it is highly recommended that consent be obtained prior to or at the time of collecting Personal Information. If an Employer foresees that certain information would need to be collected in the future, the Employer may obtain consent thereto beforehand e.g. at the time of Employee's job application.

Certain other conditions need to be satisfied in relation to obtaining consent which include (i) the consent is freely given, (ii) the request for consent is made in writing or electronically (unless not possible by its nature), indicates the objectives of collections, use or disclosure, and clearly separated from other terms with the format and message which is easily accessible and understandable, etc. Moreover, in the case of Sensitive Personal Information concerning criminal record, the collection thereof must be conducted under the supervision of the competent authority or by having the necessary policies in accordance with the notification of the Committee.

2.1.3. Notification of Rights

Aside from consent, PIPA requires that every time Personal Information is collected, a Personal Information Controller must inform a Personal Information Owner of the details including (i) purpose of collection; (ii) period of time for storage; (iii) party to which the collected Personal Information will be disclosed; (iv) information on and contact information of the Personal Information Controller; and (v) rights of Personal Information Owner including right to revoke, right to access etc.

This requirement may be broadly equivalent to a 'privacy policy'. In order to fulfill the Notification of Rights requirement, an Employer may issue a privacy policy or any equivalent documents which

include all the above items and hand it over to or have it acknowledged by Employees.

It must be highlighted that unlike in the case of the consent obtainment requirement, there is almost no exception to the Notification of Rights requirement under PIPA. The only exception is where "the Personal Information Owner already knows of such details" which is very hard for a Personal Information Controller to prove unless such Personal Information Owner has previously been notified of his rights through a Notification of Rights.

2.2 Duties at the time of having Personal Information under control

On having Personal Information under its control, the duties of a Personal Information Controller include:

(1) Ensuring that Personal Information remains correct, up-to-date, complete and not misleading;
(2) Issuance of appropriate security measures as well as review and update of such security measures;
(3) Deletion of any Personal Information which has become unnecessary and/or upon the lapse of storage time period as provided at the Notification of Rights;
(4) Reporting of any incident of breach of Personal Information to the Office of Personal Information Protection Commission ("**Office**") within seventy two (72) hours; and
(5) Keeping records either in writing or electronically in the manner prescribed under PIPA in case of the inspection conducted by the Office.

For an Employer, it is essential to ensure that the personnel files of Employees be securely kept and limit the accessibility to non-related parties.

2.3 Duties at the time of use or disclosure of Personal Information

For using or disclosing the Personal Information, a Personal Information Controller must obtain consent from a Personal Information Owner, and must not use or disclose such Personal Information for any purpose other than that for which the consent was given. For example, an Employer should proceed carefully when contacting former employers or referees of the job-applicant indicated in the job application forms.

2.4 Duties at the time of transmitting Personal Information to foreign countries

In case a Personal Information Controller proposes to transmit Personal Information to foreign countries, it must ensure that the destination country has a sufficient standard for protection of Personal Information and such transmission must be made in accordance with the criteria prescribed by the Committee. The exceptions to this are (i) where the destination of transmission is a Personal Information Controller's affiliate in a foreign country which cooperates in a business operation, and (ii) the Personal Information Controller in Thailand has "security measures on transmitting the Personal Information to the foreign country" which have been examined and certified by the relevant authorities.

However, the above requirements can be exempted by obtaining consent from a Personal Information Owner for transmitting his/her Personal Information to the destination country where the standard for the Personal Information protection may not be sufficient. Thus, if an Employer intends to transmit a Personal Information of its Employee to other organization or foreign countries, it may add a sentence at the end of the job application forms to specify if the job-applicant is willing to disclose his/her Personal Information even when the destination country may have insufficient standard of Personal Information protection.

2.5 Duties concerning the appointment of Personal Information Protection Officer

A Personal Information Controller is required to appoint a Personal Information Protection Officer ("**PIPO**") if:

(1) It is a government agency as designated by the Committee;
(2) Its activities upon the collection, use and disclosure of the Personal Information requires a constant examination of the Personal Information or system due to the large quantities of the Personal Information it collects, as designated by the Committee; or

(3) Its main activity is the collection, use or disclosure of the Personal Information which have the characteristics relating to Sensitive Personal Information.

Although the notification or regulation of the Committee is yet to be issued, it is possible to assume that an Employer with a large number of Employees may be subject to the PIPO appointment requirement above.

Once a Personal Information Collector has appointed PIPO, it must support PIPO's performance of duties by providing sufficient equipment and facilitate access to the Personal Information, and must not dismiss or terminate the employment agreement of PIPO for the reason that PIPO has performed his/her duties in accordance with PIPA. PIPO can perform other duties but a Personal Information Collector must ensure that the given duties will not conflict with PIPO's performance of duties under PIPA.

2.6 Duties concerning Personal Information which has been collected before PIPA becomes fully effective

For Personal Information that has been collected by a Personal Information Collector before 28 May 2020, a Personal Information Collector may continue to use such Personal Information for the same purposes. However, such Personal Information Collector must prepare and publicize a procedure to withdraw the consent in order to enable a Personal Information Owner who does not wish to have his/her Personal Information to be collected or used anymore to easily notify his/her withdrawal of consent.

For Employers, it is recommended to (i) establish rules or procedures that enable the existing Employees to easily withdraw their consent regarding their Personal Information and (ii) notify the existing Employees of such rules or procedures. PIPA is unclear whether only the notification or announcement alone e.g. putting on publication board etc. of such rules or procedure would suffice, but in order to reduce any risk of non-compliance, Employers may directly inform of such rules or procedures to each individual Employee by sending email or have each Employee acknowledge such rules or procedures. Though, the disclosure and other acts other than the collection and use of such Personal Information must be in accordance with the provisions of PIPA.

There is no administrative fine or criminal penalty regarding the non-compliance of this matter, but civil liability claims may be filed by the Personal Information Owner.

Conclusion

As mentioned earlier, PIPA will impose various duties on an Employer who acts as a Personal Information Controller in relation to the Personal Information with serious penalties in case of non-compliance. In order to avoid such consequences, prudent Employers should, with the support of the professional legal advisors, make necessary preparations prior to the full enforcement of PIPA.

Remark: *Due to the absence of precedents and subordinated laws which set detailed criteria or guidelines for the execution of PIPA as of the date hereof (20 August 2019), this article is based only on the analysis of the texts of PIPA.*

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Singapore

SINGAPORE – NEW INTERNATIONAL CONVENTION ON MEDIATION SIGNED BY 46 STATES

去る 2019 年 8 月 7 日、米国、中国、インドを含む 46 カ国による国際商事調停条約の調印式が、条約制定に主導的な役割を果たしてきたシンガポールにおいて開催された。国際商事調停条約とは、調停に基づき当事者間で締結された和解契約を条約加盟国において相互に執行可能にすることを定めたものである。国際紛争解決の手段として調停の利用可能性が高まることが期待されており、本稿ではかかる条約導入の背景とその内容について概説する。

On 7 August 2019, the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "**Singapore Convention**") was signed by 46 States at an official ceremony held in Singapore. Present signatories to the Convention include the world's leading economies such as the US, China and India. Key economies in Asia including Singapore, Malaysia, the Philippines and South Korea have also signed the Convention.

The objective of the Singapore Convention is to establish a framework for the enforcement of international commercial settlement agreements reached through mediation, much in the similar way that its predecessor, the New York Convention, facilities the recognition and enforcement of international arbitration awards.

Background

Mediation refers to the process by which parties attempt to reach an amicable settlement of a dispute with the assistance of a neutral third person or persons (referred to as the mediator). The resolution of the dispute is dependent on the parties' voluntary acceptance of the settlement terms, and the mediator is not empowered to rule on the merits of either party's claim or impose a binding solution upon the parties.
In practice, mediation is generally used in attempts to resolve a dispute by avoiding costly and potentially protracted litigation or arbitration. Parties may also attempt mediation in parallel with ongoing litigation or arbitration proceedings.

If a mediation is successful, the settlement terms are recorded in a binding settlement agreement which typically includes a dispute resolution clause providing for court litigation or arbitration. Should one of the parties fail to perform its obligations under the settlement agreement, the other party may sue upon the agreement in accordance with the chosen dispute resolution method. This leaves room for the commencement of a fresh set of proceedings relating specifically to the settlement agreement, adding to costs and delays for the party seeking enforcement. Further complications may arise where the settlement agreement provides for court litigation in one jurisdiction and enforcement is sought in another. These enforcement concerns, among others, may discourage parties from seeking to resolve disputes through mediation.

Key features of the Singapore Convention

In designing the Singapore Convention, delegations of the United Nations Commission on International Trade Law sought to address the challenges involved in the enforcement of mediated settlement agreements outlined above. By establishing a basic, uniform framework for the direct enforcement of such settlement agreements within signatory states, the risk of multiple and protracted proceedings can be avoided.

Scope of application

The Singapore Convention applies where the settlement agreement:

(a) results from a mediation to resolve a commercial dispute;

(b) is made in writing; and

(c) is "international" in that –

at least two or more parties to the settlement agreement have their respective place of business in different states, or

the state in which the parties to the agreement have their places of business is different from either (a) the state in which a substantial part of the obligations under the agreement is performed or (b) the state with which the subject matter of the agreement is most closely connected.

Settlement agreements which are excluded from the application of the Singapore Convention include those which:

(a) relate to consumer transactions or transactions for personal, family or household purposes;

(b) relate to family, inheritance or employment law;

(c) have been approved by a court or concluded in the course of proceedings before a court and are enforceable as a judgment in the state of that court; and

(d) have been recorded and are enforceable as an arbitral award.

Formal requirements for enforcement

The Singapore Convention sets out relatively straightforward formal requirements for enforcement. A party seeking enforcement shall provide to the competent authority in the relevant state party:

(a) a copy of the settlement agreement signed by the parties; and

(b) evidence that the settlement agreement resulted from mediation, such as:

  (i) the mediator's signature on the settlement agreement;

  (ii) a document signed by the mediator indicating that the mediation was carried out;

  (iii) an attestation by the institution that administered the mediation; or

  (iv) in the absence of all of the above, other evidence as may be acceptable to the competent authority.

Limited grounds for refusal of enforcement

The Singapore Convention seeks to provide an effective means for mediated settlement agreements to be enforced. To that end, the Singapore Convention sets out limited grounds on which a state may refuse relief, which are largely based on fundamental concepts of natural justice and public policy.

Specifically, a state party to the Singapore Convention may refuse enforcement if one the following grounds can be established:

(a) a party to the settlement agreement was under some incapacity;

(b) the settlement agreement sought to be relied upon:

  (i) is null and void, inoperative or incapable of being performed;

  (ii) is not binding or is not final, according to its terms; or

  (iii) has been subsequently modified;

(c) the obligations in the settlement agreement:

  (i) have been performed; or

  (ii) are not clear or comprehensible;

(d) granting relief would be contrary to the terms of the settlement agreement;

(e) there was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement;

(f) there was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence, and such failure has a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement;

(g) granting relief would be contrary to the public policy of that state party; or

(h) the subject matter of the dispute is not capable of settlement by mediation under the law of that state party.

It is apparent that the defences to enforcement available under Singapore Convention are largely modelled on the grounds for refusing recognition or enforcement of arbitral awards under the New York Convention. The relatively strict application and narrow construction of these provisions under the New York Convention may guide a similar approach to be taken by state parties when implementing the grounds for refusal of relief under the Singapore Convention.

Conclusion

Commercial parties can often stand to benefit from more amicable forms of dispute resolution such as mediation and negotiation, in particular where the objective is to mend and preserve commercial relationships in the long term. Recent studies have observed that mediation is more frequently used in Asia, perhaps due in part to its compatibility with established business culture and practices in the region.

While arbitration remains the preferred choice for resolving international commercial disputes, the Singapore Convention marks an important step towards the growth in the use of mediation. The Convention will come into force six months after the instrument is ratified by three signatory States. In the immediate term, practitioners and potential users will likely continue to monitor developments in the actual implementation of the Singapore Convention with interest.

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