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This issue covers the following topics:

Vietnam

THE NEW LABOUR CODE

ベトナムでは新しい労働法（法律第 45/2019/QH14 号）が 2019 年 11 月 20 日付けで成立し、現行労働法に全面的に置き換わる形で 2021 年 1 月 1 日に施行される。本稿では、新しい労働法により改正される点のうち、実務的にも関心が高いと思われる点を中心にご紹介する。

Introduction

On 20 November 2019, the National Assembly of Vietnam passed the new Labour Code No.45/2019/QH14. This Labour Code will come into effect from 1 January 2021 and entirely replace the current Labour Code passed on 18 June 2012.

We discuss below some major amendments under the new Labour Code.

Scopes of application

The new Labour Code applies to, among other things, "other employees not having labour relationship", while the current Labour Code does not govern these other employees. "Other employee not having labour relationship" is defined, under the new Labour Code to mean a person working for the other not on a basis of hiring under a labour contract. This term is very broad and the meaning is unclear. The legislators may want to govern the individual entering into a "service contract" under which he/she agrees to provide "services" to a company at the company's office and he/she receives the service fees on a monthly basis. The nature of this contract is similar to a labour contract except that the parties can avoid certain obligations under the labour contract (e.g. working hours or mandatory insurance contributions). Many individuals and companies have adopted this approach.

Labour Contracts

Some major amendments to the regulations on labour contracts under the new Labour Code, are as follows:

- Under the current Labour Code, a labour contract is defined to mean an agreement between an employee and an employer on a paid job, on working conditions, and on the rights and obligations of each party to the labour relationship. The new Labour Code continues adopting this definition but it adds that "*in case where the two sides make an agreement in a title different from labour contract but having contents showing the works to be done, wage payment, management, administration and supervision of one side, such agreement shall be*

considered as labour contract." Although this definition is not clear, it appears to govern the "service contract" as discussed above.

- Other than the requirement that labour contract must be in writing similar to the current Labour Code[1], Article 14 of the new Labour Code accepts that a labour contract can be executed via electronic means in accordance with regulations on e-commerce. We note that the regulations on e-commerce must be followed in order to form an electronic economic labour contract (e.g. the e-signature must be used). An agreement agreed via email would not satisfy the condition to be an electronic written labour contract.

- Article 20 of the new Labour Code states that there are two types of contracts comprising (i) definite term labour contract (up to 36 months) and (ii) indefinite term labour contract. The definite term labour contract can only be signed two times. After the second contract, except for certain exception (e.g. labour contracts with foreign employees), an indefinite term labour contract must be signed. Under the current regulations, the "definite term labour contract" has the term of between 12 months and 36 months only. Labour contract with a term of less than 12 months is not regarded as "definite term labour contract" but a different type which is "seasonal or specific job labour contract with a duration of less than 12 months". Although the requirement that "definite term labour contract" can only be signed two times exists under the current regulations, it does not apply to seasonal or specific job labour contract with a duration of less than 12 months and the employer is not prohibited to enter into more than 2 time short-term labour contracts. However, under the new Labour Code, once the second contract, regardless of its term, is completed, an indefinite term labour contract, subject to certain exception, would be required.

- Article 22 of the new Labour Code prohibits the use of an appendix to adjust term of a labour contract. Under the current regime, as there is no such prohibition, some employers try to avoid the regulations that definite term labour contract can only be signed two times by using appendices to amend the term of the contract. This approach is now prohibited under the new Labour Code.

- With respect to probation period, in addition to the current regulations that maximum (i) 60 days for works requiring knowledge at the college level or higher, (ii) 30 days for work requiring knowledge at vocational level or higher or (iii) 6 days for other jobs is permitted, the new Labour Code provides that for enterprise managers under the Law on Enterprises, probationary period will be up to 6 months. *Manager of an enterprise* is defined to comprise, among other things, the chairman of a members' council, a member of a members' council, the chairman of a company, the chairman of a board of management, a member of a board of management, a director or general director, and an individual holding another managerial position, who is authorized to enter into transactions of the company in the name of the company as stipulated in the charter of the company.

- Unlike the current regulations which only allow employees under indefinite term labour contracts to unilaterally terminate their labour contract without any reason by providing at least 45 day advance notice, the new Labour Code allows employees under all types of labour contract to unilaterally terminate their labour contracts without any reason with the following advance notice:

  - Indefinite term labour contract: At least 45 day notice in advance

  - Definite term labour contract with term of between 12 months and 36 months: At least 30 day notice in advance

  - Definite term labour contract with term of less than 12 month: At least 3 day notice in advance.

- Unlike the employee and similar to the current regulations, the employers can only unilaterally terminate in certain circumstances specified in the new Labour Law. However, the new Labour Law also adds three new circumstances in which an employer is entitled to unilaterally terminate labour contract, namely: (i) the employee reaches his/her statutory retirement age; (ii) the employee is absent from work for 5 consecutive working days without a proper reason; and (iii) the employee provides false required information upon execution of the labour contract (e.g. his/her qualification and health status).

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1 Some contracts (i.e contracts having the term of less than 3 months under the current Labour Code or less than 1 month except for contracts with junior workers or domestic servants under the new Labour Code) are not required to be in writing.

Working hours / Holidays / Overtime

- Under the current Labour Code, a single working hours regime (i.e. maximum 8 hours per day and 48 hours per week) applies to all employees regardless of the nature of the work. The legislators now seem to understand the unreasonableness of this regulation and therefore the new Labour Code contemplates that working hours and break hours for special jobs in certain sectors (e.g. road transport, rail transport, waterways transport and aviation transport etc. requiring attendance 24 hours per day) can be different from the general provisions of the Labour Code. The relevant ministries are required to set out regulations on working hours and break hours in relevant sectors after discussion with Ministry of Labour War Invalids and Social Affairs.

- Under the current Labour Code, employees are entitled to 10 public holidays annually. The new Labour Code adds one more public holiday which is the date immediately preceding or after the National Day (i.e. 2 September).

- With respect to overtime, under the current regime the number of overtime hours of the employee cannot exceed 50% of the normal working hours in one day, 30 hours in one month, and the total overtime hours must not exceed 200 hours in one year, except in a number of special cases regulated by the Government, but in any event, the number of overtime hours in one year must not exceed 300 hours. The new Labour Code only increases the maximum number of overtime hours for a month to 40 hours. The maximum overtime hours per day and per year are unchanged. However, it adds more circumstances that the employer can request the employees to work overtime up to 300 hours per year. In particular, new circumstances under the new Labour Code includes (i) dealing with jobs requiring high qualified and professional labour which the labour market cannot provide fully and promptly and (ii) other circumstances specified by the Government.

Labour Disciplines and Internal Labour Regulations

- Under the new Labour Code, the internal labour regulations ("**ILRs**") must also have, provisions other than those dealing with working hours, rest hours, company rules, labour disciplines and so forth as currently specified under the Labour Code, (i) provisions dealing with prevention of sexual harassment at work and (ii) the circumstances in which the employer can assign employee to do work different from the labour contract.

- The wording of the current Labour Code is not clear as to whether some activities (i.e. gambling, embezzlement, thief or using drugs in working places) are subject to dismissal regardless of the seriousness of the activities. Under the new Labour Code, it is quite clear that these activities will be subject to dismissal regardless of the consequence as they are separated from other activities which will only be subject to dismissal if they cause serious damage or threaten to cause serious damage to the employer. In addition, under the new Labour Code, sexual harassment shall be subject to dismissal.

- Article 127 of the new Labour Code prohibits the application of disciplinary measures to employees having activities not governed by the ILRs, labour laws or signed labour contracts while the current regulations prohibits the application of disciplinary measures to employees for the conduct which is not stipulated in the ILRs. This provision seems to suggest that the employer may be able to impose disciplinary measures even if it does not have effective ILRs. It can rely on provision of the Labour Code to do so (e.g. employees using drug at working places may be dismissed even if the employer does not have effective ILRs). However, except for activities subject to dismissal, the new Labour Code does not set out any activities subject to other disciplinary measures (e.g. warning), therefore, it appears that without effective ILRs, the employer can only apply the dismissal to very limited activities specified in the new Labour Code but cannot apply other disciplinary measures.

Foreigners Working in Vietnam

- Under the new Labour Code, foreign employees working in Vietnam, subject to some exemption circumstances, are required to obtain work permits ("**WP**"). Some exemption circumstances are the same as those set out under the current Labour Code (e.g. foreign lawyers practicing in Vietnam, foreign employees entering into Vietnam for less than 3 months to settle technical issues that cannot be settled by Vietnamese or foreign experts in Vietnam or head of representative office of international organizations in Vietnam). The Labour Code sets out certain new situations under which foreigners working in Vietnam are exempted from WP (i.e. foreigners getting married with Vietnamese and living in Vietnam or a person mainly responsible for operation of an international organization, foreign NGO in Vietnam). In addition, the new Labour Code adds new conditions for certain current exemption circumstances. In particular, under the current regulations,

- owner, or a capital contributing member of a limited liability company and
- members of the Board of Management of a joint stock company,

are exempted from WP requirements. The new Labour Code adds the condition that these persons must have an equity portion as stated by Government. Although further guidance from the Government regarding the equity portion will follow, it is unclear on how this provision will apply to members of the board of directors as many of them are not shareholder of the company and therefore they do not own equity in the company.

- Article 155 of the new Labour Code states that the term of a WP is maximum 2 years and it can be "renewed" for one time for max 2 years. We note that the current regulations do not use the word “renew” but “re-issue”. Under the current regulations, upon application for re-issuance, the employees are not required to submit the non-criminal record and the degrees. Although the reason to allow renewal of WP for only one time is unclear, we do not think that foreign employees are only permitted to work in Vietnam under 2 labour contracts as Article 151.2 expressly allows foreign employees to enter multiple definite term labour contracts with employer. The renewal may be same as the “re-issuance” under the current law.

Retirement Ages

The new Labour Code sets out new retirement ages to be (i) 62 for male (currently 60) and (ii) 60 for female (currently 55). This age will apply to males in 2028 and to females in 2035. The new Labour Code also sets out the schedule to gradually apply this regulation. Accordingly, from 2021 the retirement age for employee working under normal condition is 60 years and 3 months for male and 55 years and 4 months for female. After that, the retirement age shall increase by 3 months for male employees and 4 months for female employees each year.

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Singapore

ESTABLISHMENT OF A NEW APPELLATE DIVISION OF THE SINGAPORE HIGH COURT

シンガポールでは、2020 年の幕開けと共に、最高裁判所の組織再編の一環として、控訴部（Appellate Division）の新設立が発表された。最高裁判所は高等法廷（High Court）と上訴法廷（Court of Appeal）から構成されているところ、近年の訴訟係属件数の増加と共に上訴法廷に上訴される事案も増加しており、その役割の一部を高等法廷のもとに新設される控訴部において処理することが想定されている。本稿では、この最高裁判所の組織再編案の概要について解説する。

At the recent opening of Singapore legal year 2020, it was announced that the Supreme Court of Singapore will be restructured to establish an appellate division of the High Court ("**Appellate Division**"). This marks the latest significant reform to the judicial system in Singapore following the establishment of the Singapore International Commercial Court ("**SICC**") in 2015.

The new Appellate Division is expected to come into operation in the second half of 2020. This article provides an overview of the core features of the new Supreme Court structure and accompanying procedural amendments. As has been stated by the Ministry of Law, these reforms are designed to enhance the efficiency and flexibility of the court process and facilitate the timely resolution of appeals.

Background

The establishment of a new Appellate Division of the High Court comes as a response to the marked increase in volume and complexity of cases reaching the Court of Appeal, which is the apex court of Singapore, in recent years. To illustrate, the following trends were reported in Parliament during the second reading of the Supreme Court of Judicature (Amendment) Bill in November 2019.

- From 2013 to 2018, the number of cases heard by the Court of Appeal increased by more than 56%. A total of 490 cases came before the Court of Appeal in 2018, compared with 314 in 2013.

- In general, the Court of Appeal sits as a bench of three judges in each case. In more complex cases involving novel or difficult issues, the Chief Justice may convene a larger panel of five judges to hear an appeal. Notably, the percentage of written decisions issued by a five-judge bench of the Court of Appeal rose from 4.3% in 2015 to almost 11.5% in 2018, reflecting the increased complexity of cases before the Court of Appeal.

To cope with these developments, appeals from decisions of the High Court will be allocated between the Appellate Division and the Court of Appeal. As explained below, the establishment of the Appellate Division is not intended to create an additional tier of appeal that must be exhausted before a case can be brought to the Court of Appeal.

Revised structure of the Supreme Court

The Supreme Court of Singapore will continue to comprise of the Court of Appeal and the High Court. As with the existing hierarchy of the judicial system, the Court of Appeal will remain the apex court of Singapore.
The High Court will be restructured into two divisions, namely, the General Division and the Appellate Division. The existing High Court, which includes the SICC and Family Division of the High Court, will be renamed the General Division of the High Court.

The General Division will have all the jurisdiction and powers of the existing High Court, and will hear matters previously allocated to the High Court. Judges appointed to the General Division will continue to be referred to as Judges of the High Court.

The Appellate Division will hear all civil appeals that are not allocated to the Court of Appeal as outlined below. The Appellate Division will not have jurisdiction to hear criminal appeals. A new class of judges will be designated to sit on the Appellate Division.

As noted above, the caseload of appeals from decisions of the High Court will be allocated between the Appellate Division and the Court of Appeal. In general, the Court of Appeal will hear all criminal appeals, appeals directed to be made to the Court of Appeal under written law, and prescribed categories of civil appeals that are allocated to the Court of Appeal in the amended Supreme Court of Judicature Act ("**SCJA**"). Among others, the prescribed categories are principally appeals that are likely to:

- have significant consequences for individuals or society;
- involve questions of law with a public interest element; or
- involve novel or important questions of law.

Distribution of cases between the Court of Appeal and Appellate Division of the High Court

The prescribed categories of civil appeals specifically allocated to the Court of Appeal will be set out in the amended Supreme Court of Judicature Act, and include cases which relate to:

- arbitration law;
- appeals against decisions of the SICC;
- constitutional or administrative law;
- criminal law; and
- insolvency and restructuring law, including the restructuring or dissolution of a corporation, limited liability partnership or sub-fund of a variable capital company.

The prescribed categories of appeals allocated to the Court of Appeal also include cases arising out of legislation such as:

- the Competition Act;
- the Patents Act;
- the Personal Data Protection Act; and
- the Protection from Online Falsehoods and Manipulation Act.

The examples outlined above are non-exhaustive. In addition, the categories of cases allocated to the Court of Appeal under the amended SCJA are not closed. The Minister for Law, may, following consultations with the Chief Justice, amend the categories as appropriate.

The Appellate Division will hear all matters that are not allocated to the Court of Appeal. Where a civil appeal has been heard by the Appellate Division, any further appeal against the decision of the Appellate Division may only be brought with leave of the Court of Appeal. In these cases, parties would already have had one round of appeal. For this reason, it is expected that the granting of leave to bring a further appeal to the Court of Appeal would be reserved for exceptional cases. Such cases may involve questions of law that are of public importance, or are such that the interests of administration of justice require consideration by the Court of Appeal.

The Court of Appeal, as the apex court, will also have the power to transfer cases between the Appellate Division and the Court of Appeal as it considers appropriate.

Other procedural amendments

A number of procedural amendments will also be introduced to afford litigants flexibility and potential savings in time and costs. For instance, both the Appellate Division and Court of Appeal will have the power to decide certain

categories of cases without an oral hearing, provided that all parties consent. This mirrors the option available under the rules of major arbitration institutions, by which parties may consent to have a dispute decided based solely on documents and written submissions. Separately, in appropriate cases and if all parties consent, cases before the Appellate Division may be heard by a smaller quorum of two Judges instead of three.

Conclusion

Singapore has maintained a strong reputation as a preferred forum for dispute resolution. The latest reforms to the judicial system in Singapore, which come at the start of a new decade, reflect the country's continuing commitment to keep pace with the evolving nature of dispute resolution and the needs of court users.

In addition, Singapore law is frequently selected as the governing law of cross-border agreements. With the establishment of the Appellate Division of the High Court, one may expect to see an increase in the number and quality of appellate decisions that will contribute to the growth of Singapore case law.

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Philippines

NEW RULE ON ADMINISTRATIVE SEARCH POWERS OF THE PHILIPPINE COMPETITION COMMISSION

フィリピンの競争当局であるフィリピン競争委員会は、2016 年の創設以降、精力的に違反事案の調査・摘発を行ってきた。昨年 10 月にはフィリピン競争法の下位規則として、競争委員会による競争法違反事案の捜査・査察権限を強化するルールが最高裁から出され、今後のフィリピン向け投資取引においては、競争法の観点からの検討がより重要になると考えられる。そこで本稿ではこの新ルールについて概観する。

On September 10, 2019, the Supreme Court of the Philippines issued Administrative Matter No. 19-08-06-SC or the Rule of Administrative Search and Inspection under the Philippine Commission Act ("**Rule on Administrative Search**") which became effective on 16 November 2019.

The Rule on Administrative Search intensifies the enforcement by the Philippine Competition Commission ("**PCC**") of the Philippine Competition Act ("**PCA**") and other competition laws, as it reinforces the ability of the PCC to detect, administratively investigate and prosecute persons and entities suspected of violating anti-competition laws by providing for guidelines on how the PCC may undertake dawn raids or inspection of business premises and other offices, land and vehicles (the "**Premises**") to obtain and prevent the removal, concealment, tampering or destruction of relevant information which relate to any matter subject of administrative investigation by the PCC.

Requirement and Nature of the Inspection Order

Before the PCC may proceed to conduct such administrative searches and inspections of the Premises, it will be required to first apply for an Inspection Order authorizing the PCC and any law enforcement agency that it may deputize to assist in the administrative search and inspection for relevant information necessary for the investigation into the violations of the PCA and other competition laws.

A verified application for Inspection Order may be filed by the PCC with the designated Special Commercial Courts having territorial jurisdiction on any of the Premises to be inspected. Information that may subject of inspection includes, but is not limited to, books, tax records, documents, papers, accounts, letters, photographs, objects, databases, and electronically stored information.

All applications for inspection order will be acted upon by the courts within 24 hours of filing and subject to responding to questions that may be posed by courts, an application for Inspection Order will be granted if there is reasonable ground to suspect that (1) the information is kept, found, stored or accessible at the Premises indicated in the application, (2) the information relates to any matter relevant to the administrative investigation, and (3) the issuance of the order is necessary to prevent the removal, concealment, tampering or destruction of the information to be inspected.

Once granted, an Inspection Order shall be effective for the period determined by the court, but not exceeding 14 days from its issuance. However, upon motion being filed, the validity period of an Inspection Order may be extended for another 14 days from the expiration of the original period.

Manner of Inspection

The Inspection Order shall be served at the Premises indicated during business hours or at any time and on any day for compelling reasons as may be determined by the court. If the PCC officers, deputies or agents ("**PCC Officers**") are refused admittance to the Premises after giving notice of their purpose and authority, PCC Officers are permitted to use reasonable force to gain entry to the Premises, enforce the Inspection Order, or liberate themselves when unlawfully detained.

The Rule on Administrative Search requires that an inspection shall be conducted in the presence of the person designated by the entity ("**Representative**"), either a compliance officer or a legal counsel, who shall be given the opportunity to read the Inspection Order before its enforcement. However, an unreasonable delay, failure or refusal to

designate such Representative will not prevent the PCC Officers from implementing the Inspection Order.

Such Representatives (or the highest ranking officer or employee present at the Premises, in case of delay, failure or refusal to designate a Representative) are required to disclose to PCC Officers the location where the information, subject of the Inspection Order, is stored and provide the PCC with reasonable facilities and assistance for the conduct of the inspection. PCC Officers may thereafter examine, copy, photograph, record or print information, including electronically stored information, described in the Inspection Order or other relevant information inadvertently discovered in plain view which is reasonably believed to be evidence of violation of competition laws. The Representative or the highest ranking officer or employee present at the Premises shall certify that the copies, photographs, recording or printouts made are faithful reproductions of their respective originals, and the same shall be admissible as evidence in administrative proceedings before the PCC for violations of competition laws.

PCC Officers may also secure or seal the area and equipment (e.g., gadgets or devices) where the information is located or stored with a tag or label, warning all persons from tampering with them until the examination, copying, photographing, recording or printing is completed but not beyond the effectivity period of Inspection Order.

Contesting an Inspection Order

Within 3 days from enforcement of the Inspection Order or expiration of the period provided in the Inspection Order, whichever comes first, the PCC Officers shall make a verified return to the court which issued the order ("**Issuing Court**") with a list of information copied photographed, recorded or printed, among others.

Before such return is filed, the person or entity whose premises were inspected may file a written motion with the Issuing Court to quash the Inspection Order on the ground that it was improperly issued or implemented. The motion shall be resolved by the Issuing Court in a summary hearing after due notice to the PCC.

It is important to note that any person or entity who fails or refuses to comply with an Inspection Order or any provision of the Rule on Administrative Search may be cited in contempt of court, and the grant or quashal of an Inspection Order does not prevent the PCC from exercising powers under existing laws, including applying for search warrants under relevant rules in case the PCC, after administrative investigation, intends to pursue criminal prosecution of such persons or entities for violation of competition laws.

Conclusion

While the PCC, having been organized only in the year 2016, is perhaps one of the youngest competition enforcement agencies in the ASEAN region, it has not been hesitant in fulfilling its role as an antitrust body and aggressively pursuing enforcement activities.

In its 2019 year-end report, the PCC has shared that aside from concluding Philippines' first landmark abuse of dominance case, it continues to investigate the rice, logistics supply chain and energy markets, in addition to other sectors already under its "enforcement radar". The PCC has also disclosed it currently has 9 administrative investigations ongoing, with the latest one announced just last December, wherein the PCC issued a notice of the conduct of full administrative investigation on the mortgage redemption insurance industry for possible anti-competitive conduct or agreements.

Considering all these developments, the Rules on Administrative Searches will therefore be an essential investigatory tool in the PCC's arsenal that will enable it to gather information which is not usually provided by entities through voluntary or compulsory means. As the PCC gains significant ground in its detection and case-building efforts against industries where anti-competitive and cartel behavior is suspected, it is expected that in the coming years there will be an increase in the number of prosecutions for anti-competitive conduct in the Philippines. Consequently, entities doing business in the Philippines are reminded to be mindful of compliance with the PCA and other competition laws.

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