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McKenzie.**

# **2023 Asia Pacific Employers' Forum**

The Future World of Work: Mitigating Risks and Responding to Change



# **5** Regional legal employment update

# Speakers



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Hong Kong  
**Moderator**



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Sydney



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Partner  
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Ho Chi Minh City

# Australia

Michael Michalandos

- Identify and Eliminate Psychosocial Risks (**Work Health & Safety Act**)
- Take reasonable and proportionate steps to eliminate, as far as possible, unlawful sex discrimination, sexual harassment, victimisation, and hostile workplace environments (**Sex Discrimination Act**)
- Review workplace flexibility requests against reasonable business grounds and be prepared to support your decision before the Fair Work Commission (**Fair Work Act**)
- Limit fixed term contract engagements to two years in total (**Fair Work Act**)
- Do not take adverse action against employees who disclose details of their pay or the method of calculation. Remove pay secrecy clauses from your contracts (**Fair Work Act**)



# SafeWork Hitlist

Common psychosocial hazards at work include:

Job demands	Low Job Control	Poor Support	Lack of Role Clarity	Poor Organisation Change Management	Inadequate Reward and Recognition	Poor Organisational Justice
Traumatic events or material	Remote or isolated work	Poor Physical Environment	Violence and aggression	Bullying	Harassment, including sexual harassment	Conflict or poor workplace relationships and interactions

# Australia

## Brigid Maher



- Expansion of laws relating to **collective bargaining** in Australia:
  - greater rights of unions to collectively bargain
  - relaxing multi-employer bargaining laws
  - greater role of the federal labour tribunal, Fair Work Commission, increased arbitration, employee/union disputation
- Greater focus on **compliance with pay and conditions**:
  - increased funding and enforcement activity of federal workplace regulator, Fair Work Ombudsman (focus on large scale corporate underpayments; last financial year recovered over AUD \$530 million)



Australian Employment Law Updates



# Australia Employment Law landscape; July – Dec '23

***Same Job, Same Pay laws*** – impacting labour hire industry, (providers and users). Exemptions for work surges, short term engagements.

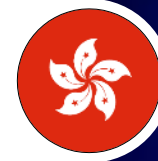
***Federal wage theft laws*** – wages underpayments and record keeping misconduct - greater focus on compliance.

***Regulating “employee-like” workers*** – providing avenues for non-employees to challenge unfair contractual terms in the Fair Work Commission – impacting gig economy workers.

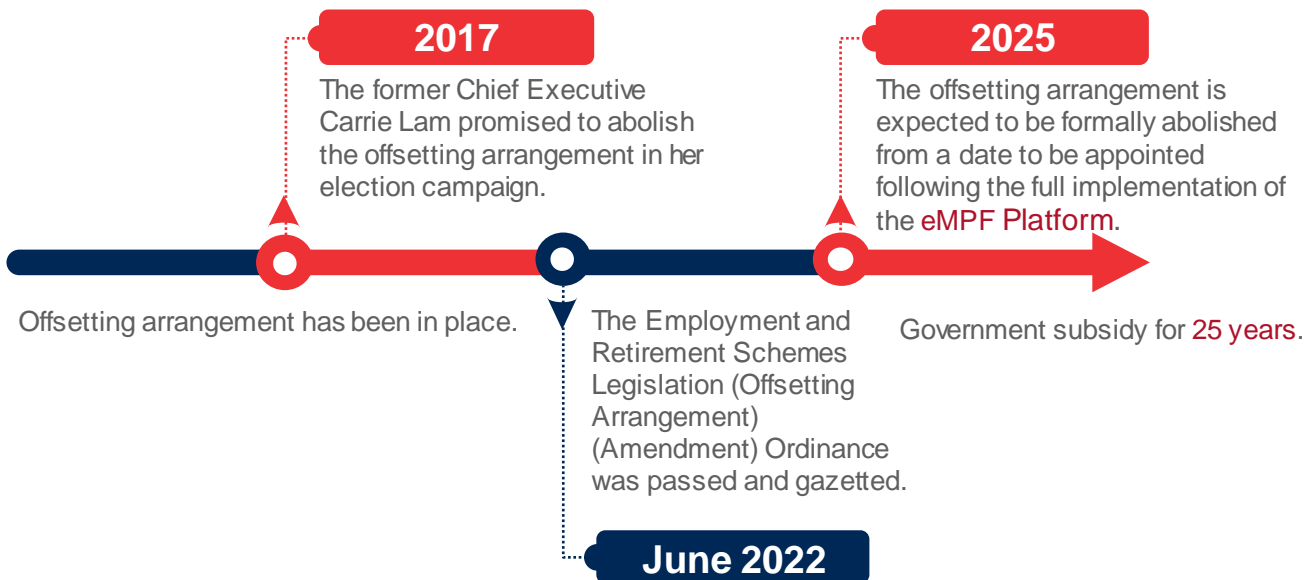


# Hong Kong

Tess Lumsdaine



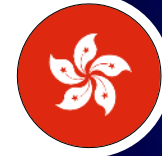
## Abolishment of MPF set-off arrangement





# Hong Kong

Tess Lumsdaine



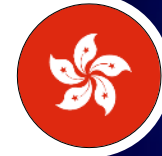
## Occupational Safety and Health legislation penalty increases

- Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Bill 2022 ("Bill") passed on 19 April 2023.
- Aim of the Bill is to enhance the deterrent effect of occupational safety and health (OSH) offenses under the legislation by increasing the maximum fines for certain offenses.
  - For example, the maximum fine for a violation of the employer's general duty to ensure safety and health of employees will be increased to **HKD10 million (approx. USD1.275m ) / 2 years imprisonment** for indictable offences and **HKD3 million (approx. USD385,000)** for summary offences.
  - Further, penalties for less serious offences have also increased.
  - Expect more inspections and infringement notices.



# Hong Kong

## Tess Lumsdaine



Beware of bias when responding to complaints

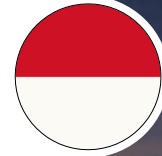
- Sexual harassment complaint by female employee against male colleague.
- Male employee denied wrongdoing and refused to apologise. Internal investigation was unable to substantiate complaint.
- Male employee given ultimatum to resign or be dismissed, employee was dismissed. Then brought a claim alleging the dismissal was unlawful sex discrimination.
- The Court:
  - held the reason for termination was the complaint, not the male employee's actual conduct (as no misconduct was substantiated by the investigation); and
  - inferred that the true reason for the dismissal was a "pro-female bias" of the employer and had the male employee been a woman, the employer would not have demanded an apology or dismissed the employee.

*Tan, Shaun Zhi Ming v. Euromoney Institutional Investor (Jersey) Ltd* [2022] HKDC 622 DCEO4/2017



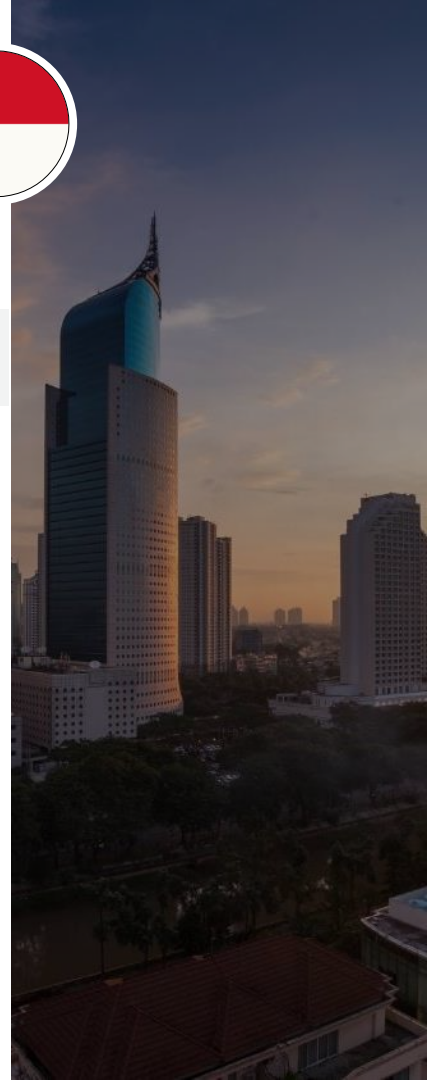
# Indonesia

Alvira Wahjosoedibjo



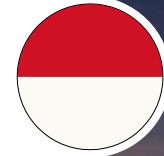
Government Regulation in Lieu of Law on Job Creation Ratified as a Law

- Outsourcing arrangements
  - Expect further implementing regulation on activities that can be outsourced expected
- Calculation of minimum wage



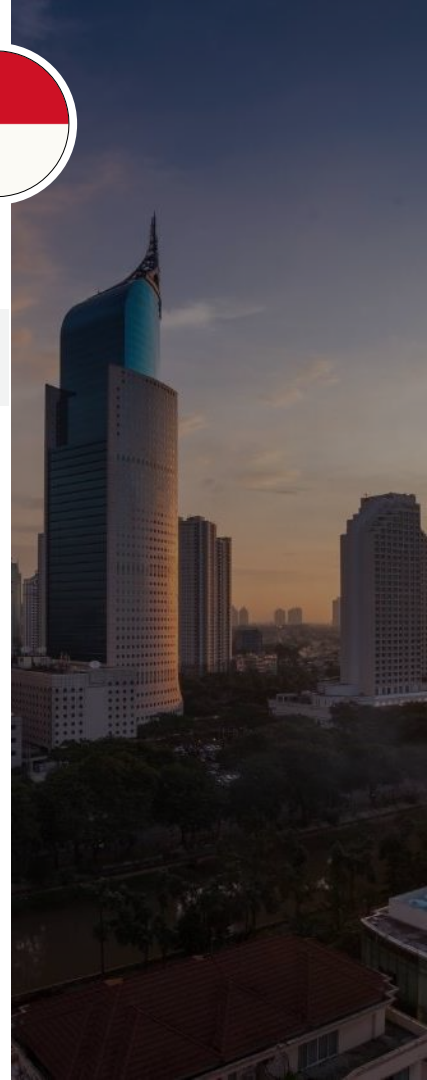
# Indonesia

Alvira Wahjosoedibjo



Minister of Employment Regulation on Adjustment of Working Hours and Wages for Certain Export-Oriented Labor-Intensive Industries

- Applicable only for certain industries, i.e., textile and ready-to-wear, footwear, leather and leatherwork, furniture and toys
- Requirements apply
  - Minimum 200 employees
  - Labor cost of at least 15% of production cost
  - Production depends on orders from USA or countries in Europe
- Consent of employees or unions required
- Reduced wages cannot be used for calculating statutory payments and contributions
- Valid until September 2023



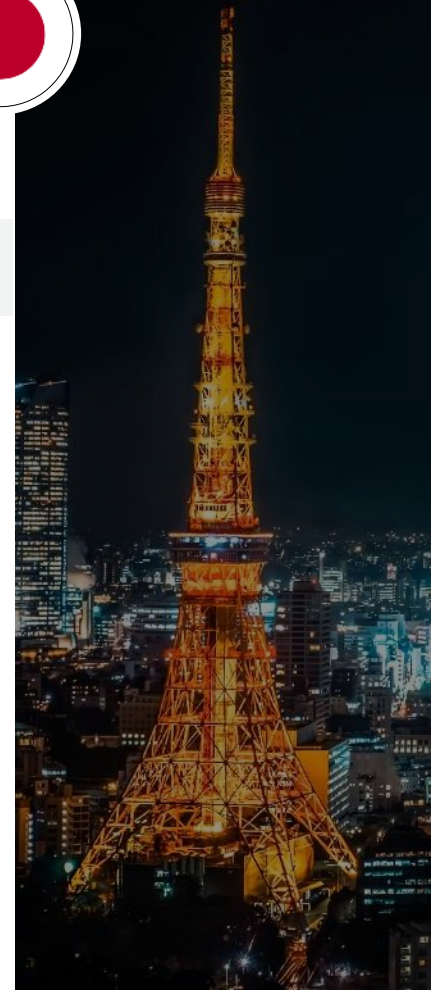
# Japan

Tomohisa Muranushi



## Amendments to Child and Family Care Leave Act

- Establishes a framework for flexible childcare leave immediately after the birth of a child to encourage male employees to take childcare leave
- Childcare leave can be taken in up to two installments
- As a final phase in the amendments of the Child and Family Care Leave Act: From 1 April 2023, employers with more than 1,000 employees will be required to disclose the annual percentage of childcare leave taken by male employees.



# Japan

Tomohisa Muranushi

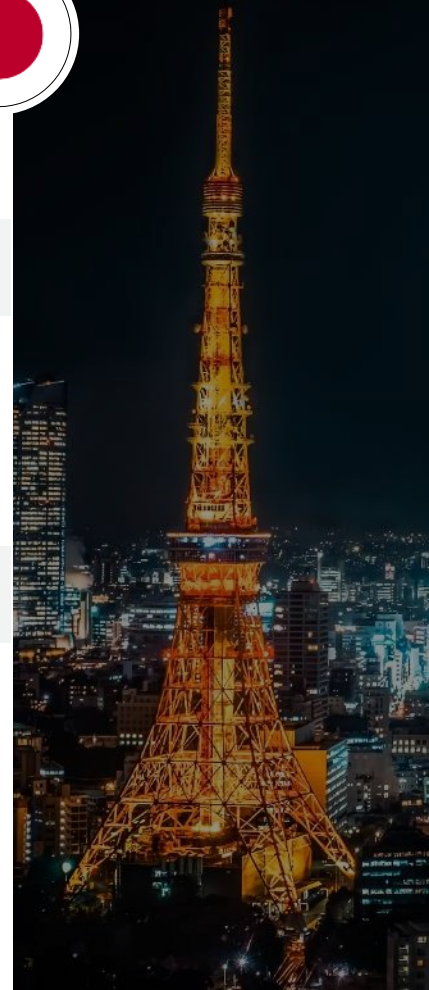


Amendment to Labour Standards Act – increase in premium pay for overtime work over 60 hours per month (effective 1 April 2023)

- Until 31 March 2023, the premium rate for overtime work in excess of 60 hours per month was 50% for large enterprises and 25% for SMEs
- From 1 April 2023, SMEs are also subject to the same 50% or more premium rate for overtime in excess of 60 hours per month

Amendment to Ordinance for Enforcement of Labour Standards Act – to allow wages to be paid into digital wallets.

- From 1 April 2023, payment of wages in digital form permitted with employee consent
- Fund transfer service providers limited to those specified by MHLW
- Maximum balance of digital wallets set to JPY 1 million
- Paying wages in cryptocurrencies not permitted





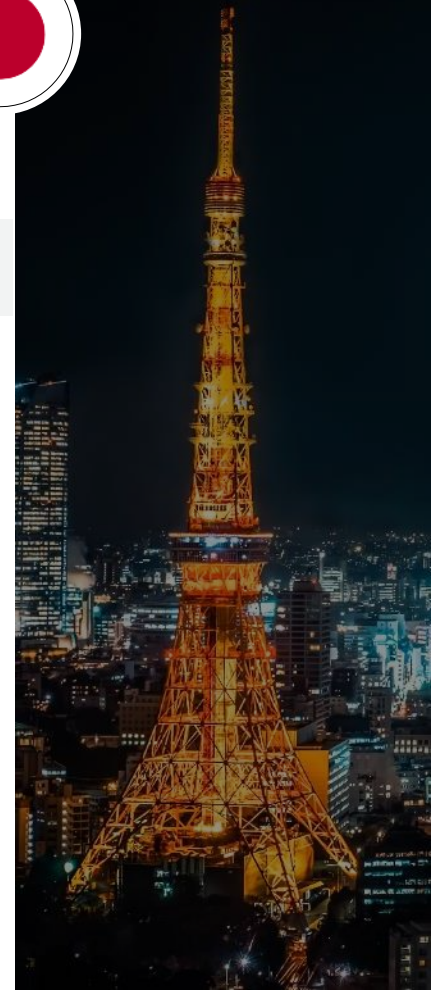
# Japan

Tomohisa Muranushi



## Expansion of social insurance eligibility for part-time employees

- Scope of part-time employees eligible for social insurance (medical insurance and employee pension insurance) was expanded from 1 October 2022.
  - From 1 October 2016, companies with 501 or more employees
  - From 1 October 2022 (i.e., now), companies with 101 or more employees.
  - From 1 October 2024 the threshold will be companies with 51 or more employees.
- Applies to part-time employees who:
  - work 20 hours or more per week;
  - are expected to work at least two months;
  - receive monthly salary of JPY88,000 or more; and
  - are not students.





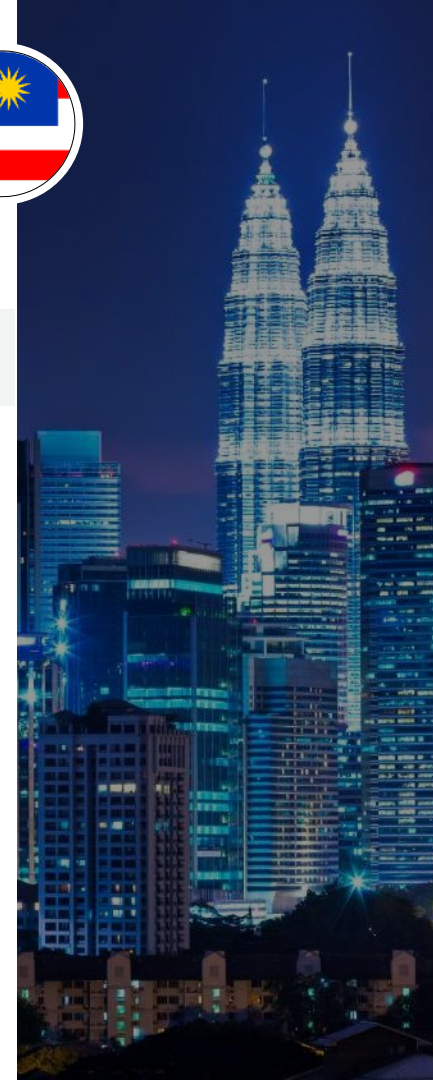
# Malaysia

Trishelea Sandosam



Recent amendments to the Malaysian Employment Act ("**EA**")

- Scope of EA's coverage expanded to **all** employees in West Malaysia and Labuan, from 1 January 2023. Previously applied to limited categories of employees.
- However, certain entitlements under the EA are reserved only for certain categories of employees; specifically, employees in West Malaysia and Labuan who ("**Identified Employees**"):
  - earn monthly wages not exceeding RM 4,000 irrespective of occupation; or
  - selected categories of blue-collar employees, specifically manual labourers, supervisors of manual laborers, and drivers of commercial vehicles, regardless of the amount of wages earned.
- White-collar employees who earn more than RM 4,000 ("**Non-Identified Employees**") are not entitled to EA-prescribed overtime pay, special rates of pay for work done on holidays and rest days, and termination benefits. The entitlements of these employees are a matter of contractual agreement.



# Key Amendments to the Employment Act



## General penalties

Increased from RM 10,000 to RM 50,000.



## Paternity leave

New entitlement of 7 days' paid paternity leave.

## Maternity leave

Extension of maternity leave entitlement from 60 days to 98 days.



## Employment of foreign employees

- New requirement to obtain prior approval of the Director General of Labour in order to hire foreign employees.
- An employer who contravenes this commits an offence and shall, on conviction, be liable to a fine not exceeding RM 100,000 and/or imprisonment for a term not exceeding 5 years.



## Hospitalization Leave

Employees are entitled to an additional 60 days of hospitalization on top of their **minimum** sickleave.



## Reduction in limit on regular working hours

The weekly limit on regular working hours has been reduced from 48 hours to 45 hours.

Overtime hours are subject to a different limit.



## Application of wage deduction rules to all employees

The wages of **all** employees can only be deducted in certain circumstances. Wage deductions for the purposes of the employee's participation in a stock purchase plan offered by an entity related to their employer requires the prior approval of the Director General of Labour.



## Enforcement

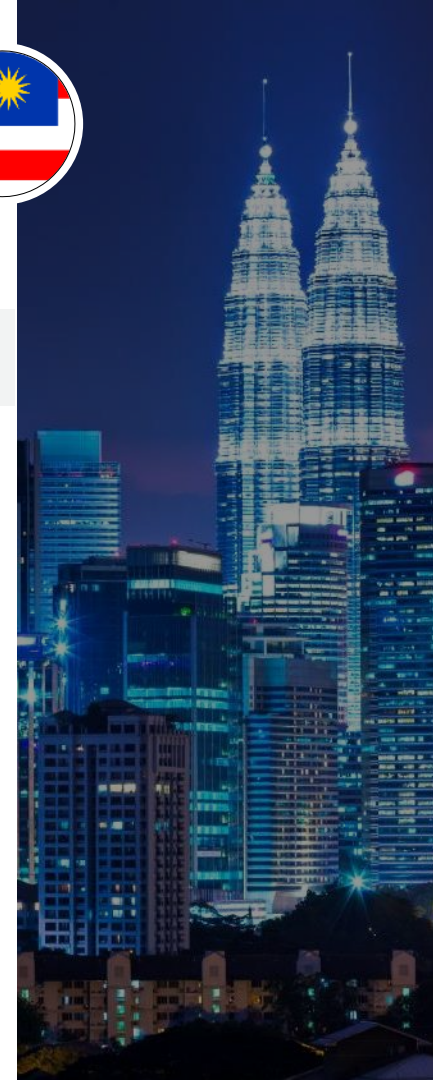
# Malaysia

Trishelea Sandosam



Anti-Sexual Harassment Act 2022 – gazetted on 18 October 2022 – partially in force

- Separate from the EA's obligation on employers to investigate internal sexual harassment complaints.
- The Anti-Sexual Harassment Act 2022 provides, among others, the establishment of a tribunal to handle public complaints of sexual harassment. Technically, therefore, a victimised employee may bring a complaint against another employee, to be determined by the tribunal under this Act.
- Any orders that may be made by the tribunal will relate only to the parties that are subject to the hearing at the tribunal.
- Nonetheless, there is added pressure on employers to take proactive measures to handle sexual harassment at workplaces due to, e.g., reputational concerns.



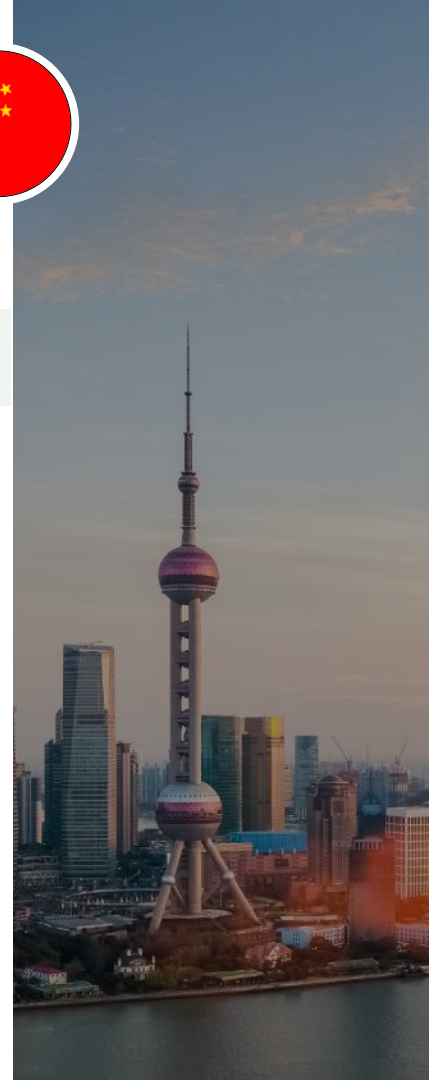
# P.R.C.

## Jonathan Isaacs



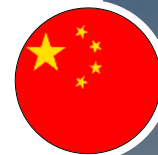
### Amendments to Law on Protection of the Rights and Interests of Women (1 Jan 2023)

- Duty to prevent and stop sexual harassment:
  - Draft company policies
  - Designate responsible person or organization
  - Provide education and training
  - Take necessary safety protective measures
  - Set up complaint hotline, mailbox or other channels
  - Establish investigation procedures, timely handle disputes, protect personal privacy and data
  - Assist victims protect their rights and provide mental health guidance
  - Other reasonable measures
- Arrange regular gynecological and breast exams, and other exams specific for women's health
- Equal opportunity in employment protections



# P.R.C.

## Jonathan Isaacs

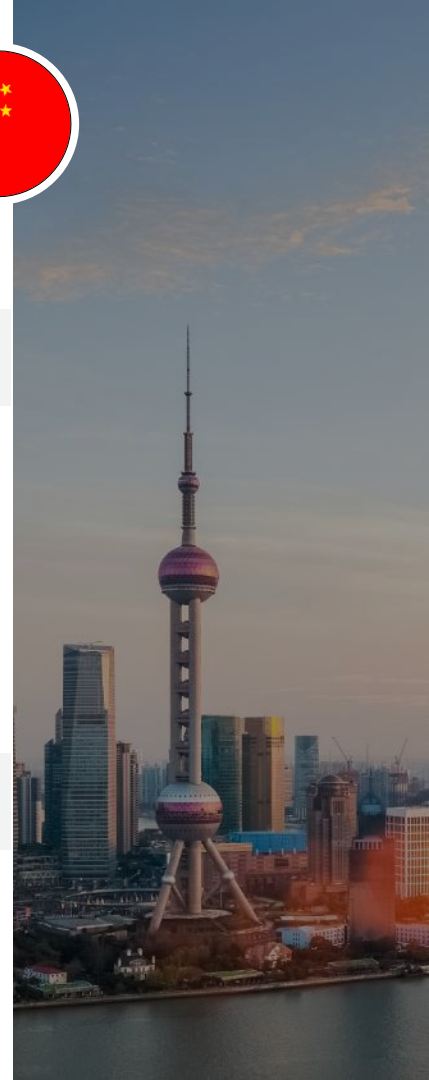


Stricter Scrutiny of Social Insurance Arrangements – continuing crackdown on cross-city contributions

- Not allowed: Beijing, Shenzhen, Hangzhou, Chongqing
- Currently allowed but some potential restrictions:
  - Guangzhou (may change in near future; may not be able to obtain work injury/maternity insurance benefits; may have problems completing retirement procedures)
  - Shanghai (trouble obtaining social insurance benefits or applying for hukou)
- Allowed: Chengdu, Tianjin, Dalian

Supreme People's Court Issues Guidance Cases involving Employment Disputes

- Discrimination based on “hometown”
- Pro-rata bonuses may be payable despite bonus policy language
- Termination for failure to deal with sexual harassment upheld due to company policies and training



# Philippines

Kenneth Chua



## Telecommuting Act (Revised IRR)

- Supersedes Department Order No. 202, Series of 2019
- Clarifies telecommuting program and parameters
- Clarifies application of labor standards to telecommuting employees
- Expressly states that work in alternative workplace is considered work performed in regular workplace
- Provides guidelines on implementation and administration, including recording and reporting.

## LA 17-22

- Suspension of work due to weather disturbances and similar occurrences
- Rules on payment of wages / extra incentives
- No employee liability for failure or refusal to work





# Philippines

Kenneth Chua

On-going Review



DO NO. 183-2017

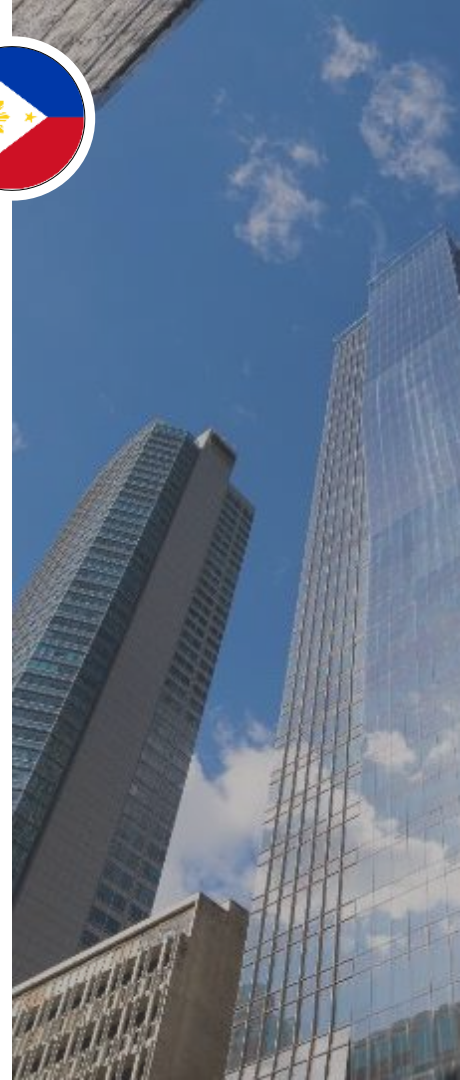
- Revised Rules on the Administration and Enforcement of Labor Laws Pursuant to Article 128 of the Labor Code, as renumbered

DO NO. 174-2017

- Rules Implementing Articles 106 to 109 of the Labor Code, as amended

DO NO. 198-2018

- Implementing Rules and Regulations of Republic Act No.11058 “An Act Strengthening Compliance with Occupational Safety and Health Standards and Providing Penalties for Violations Thereof”





# Singapore

## Pradeep Nair



Tripartite Committee on Workplace Fairness interim report (13 February 2023)

- Interim report: 20 recommendations for proposed Workplace Fairness legislation e.g.,
  - Prohibit workplace discrimination on the grounds of specified protected characteristics ((i) age, (ii) nationality, (iii) sex, marital status, pregnancy status, caregiving responsibilities, (iv) race, religion, language, (v) disability and health conditions)
  - Retain and enhance the TGFEF to work in concert with the legislation
  - All stages of employment to be covered (pre-employment to dismissal)
  - Prohibit retaliation against those who report acts of workplace discrimination or harassment.
  - Requirements on processes for resolving grievances and disputes
  - Penalties for breach
  - Certain carve-outs (genuine and reasonable job requirement; small firm exemption for period of 5 years; exemption for religious organisations in some instances)



# Singapore

## Pradeep Nair



Additional workplace sensitivity guidelines for employers planning non-work related events

- Additional workplace harmony section in TGFEP
- Support for any cause should not lead to bullying, harassment or ostracism in the workplace
- Employers should provide employees with safe environment to raise concerns, including through a proper grievance handling process
- Employees should be assessed for performance, promotion and related areas based only on work-related requirements
- Employees should not be required or pressured to participate in non-work related events. Non-support or non-participation should not affect their employment outcomes.



# Singapore

## Pradeep Nair



### New Code of Practice on Chief Executives' and Board of Directors' WSH Duties

- Code details organisational systems and culture to be implemented by directors of all companies to show full compliance with the WSH Act 2006.
- While the Code is not mandatory, MOM will consider directors who adopts its principles and measures to have taken reasonably practicable measures to uphold WSH.

**Principle 1** Ensure WSH is integrated into business decisions  
Clarity of roles and responsibilities of CE/board members in leading WSH

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**Principle 2** Continuously build a strong WSH culture, set the tone and demonstrate visible leadership in embodying and communicating highly effective WSH standards

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**Principle 3** Ensure WSH management systems are highly effective and reviewed regularly

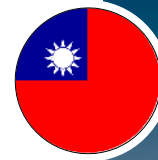
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**Principle 4** Empower workers to actively engage in WSH



# Taiwan

## Howard Shiu

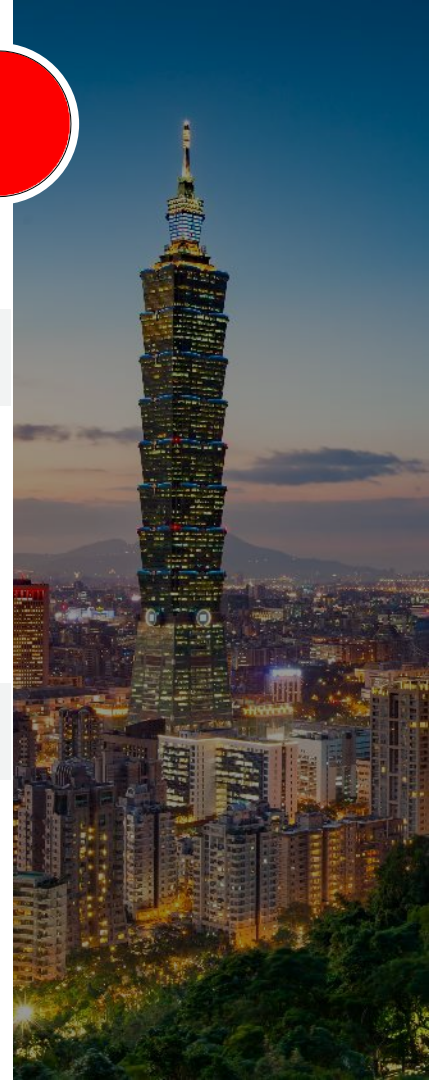


Taipei City guidance on remote working ("Guiding Principles for the Implementation of Remote Working Labour Conditions Protection in Taipei City")

- Effective 1 March 2023.
- The "right to disconnect" refers to a worker's right to disengage from work, refrain from engaging in work-related electronic communications during non-work hours, and not be treated unfavorably by their employer.
- Employers in violation might be fined NTD 20,000 to NTD 1,000,000.

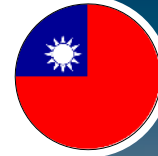
The Ministry of Labor announced the "Guideline for the Payment Day and Payment of Wages Agreed between Employer and Employees"

- Effective 9 February 2023.
- Enterprises must pay wages within 15 days after each pay period
- The stipulated payment period shall be at most one month
- Compliance is not mandatory, and there are no penalties for non-compliance



# Taiwan

Howard Shiu

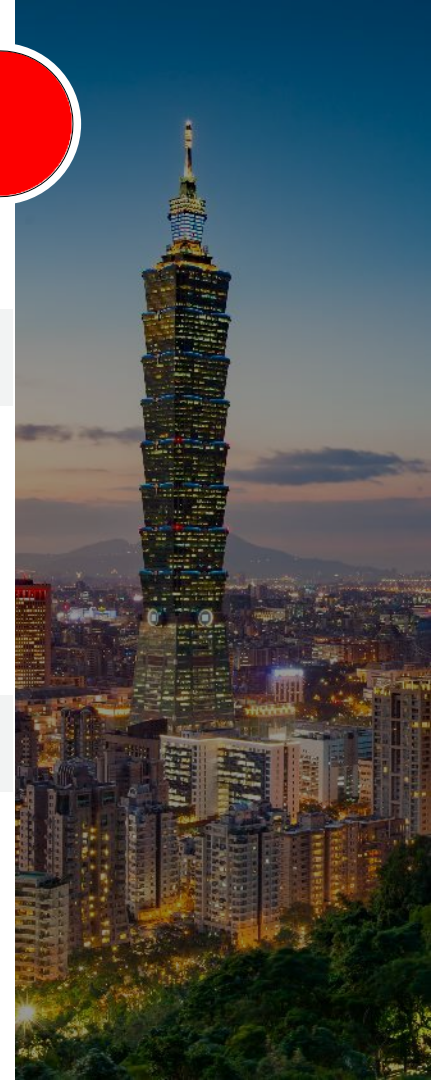


## Amendment to the Labor Union Act (LUA) to increase fines for unfair labor practices

- Effective 15 November 2022
- Employers who restrict employees' union rights (unfair labor practice) face increased fines
- Fine for unfair labor practices: NTD 100,000 - NTD 500,000 (cf. formerly NTD 30,000 – NTD 150,000)
- Fine for failure to rectify unfair labor practices: NTD 200,000 - NTD 1,000,000 (cf. former NTD 60,000 –NTD 300,000)

## Amendments to Directions on Safety and Health of Food Delivery Operations

- Effective 30 August 2022: Adopt specific protective measures and establish Delivery Operation Hazard Prevention Plan
- Effective 1 November 2022:
  - Have third-party liability insurance for delivery workers
  - Accidents resulting in death, more than three people affected, etc., require notification within 8 hours





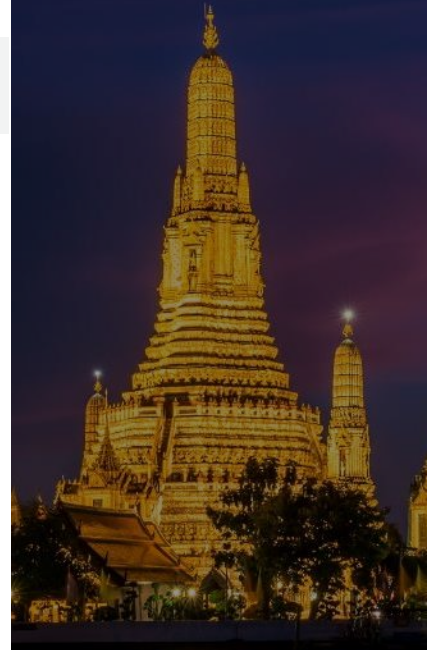
# Thailand

Theeranit Pongpanarat



New remote working arrangement provision (Section 23/1)

- Agreement on remote arrangement:
  - Employer and employee may agree to allow the employee to perform work at the employee's home or residence or anywhere remotely using information technology.
  - Employer must prepare the agreement in writing or in the form of electronic data that is accessible and reusable without altering its meaning and may include the following details:
    - Commencing and ending period.
    - Normal working days and hours, rest periods, and overtime work.
    - Rules of overtime and holiday work, and types of leave.
    - Scope of the employee's work and control and supervision by the employer.
    - Duties to procure and provide work equipment and tools as well as necessary expenses arising out of the work.



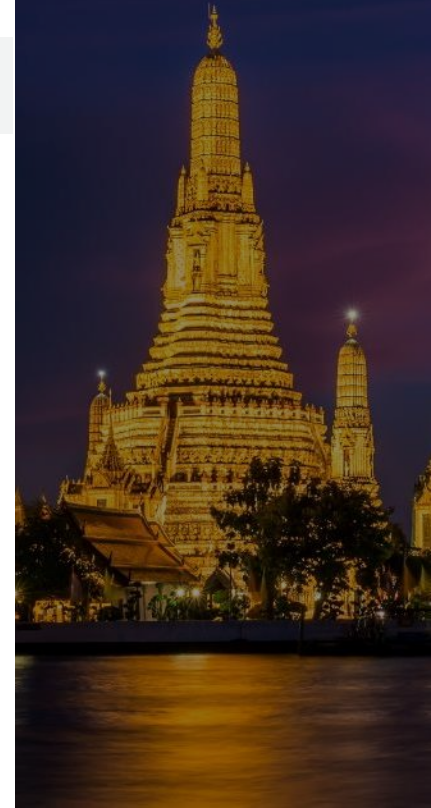
# Thailand

Theeranit Pongpanarat



New remote working arrangement provision (Section 23/1)

- Protections for remote working employees:
  - "right to disconnect" – after the end of normal working hours as agreed between the employer and employee or completion of the work assigned by the employer, the employee has the right to refuse any communications through any channel from the employer, chief, supervisor, or work inspector, unless consent in writing is given by the employee in advance.
  - "equal treatment" – employee who works from home, residence or from anywhere using information technology, must have the same rights as an employee who performs work at the workplace or office of the employer.





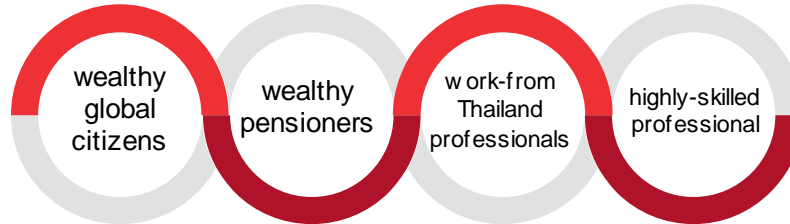
# Thailand

Theeranit Pongpanarat

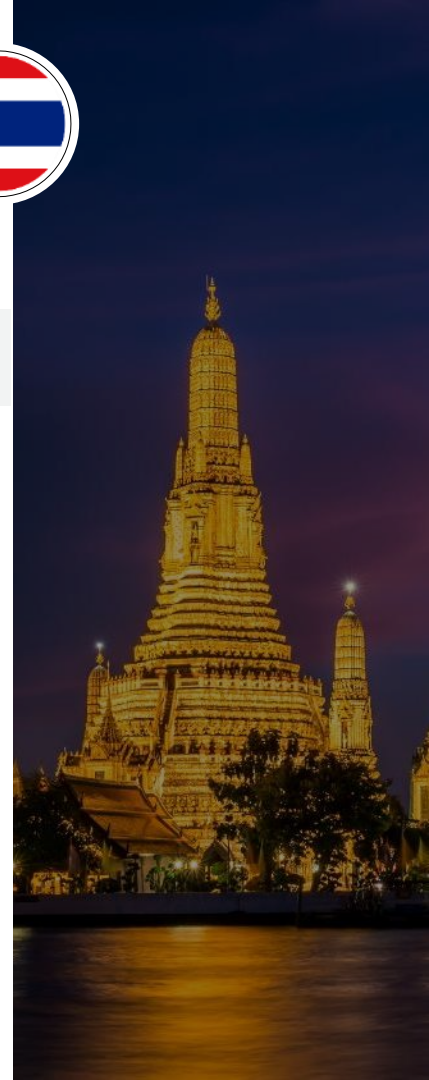


Long-term resident visas for high potential foreigners including digital nomads (LTR visa)

- New types of visa intended to attract potential foreigners to Thailand to stimulate investment and economy.
- Four categories of LTR visa:



- Apply through the Board of Investment (BOI)'s online system
- Visa holder may be granted permission to stay up to 5 years with re-entry permits exempted and may be extended for another 5 years
- Visa holder's legal spouse and children (age 20 years or younger) will also be eligible to apply for the visa (max. four persons per visa holder)
- Visa holder may be eligible to certain personal income tax reductions or exemptions, subject to the relevant legal requirements



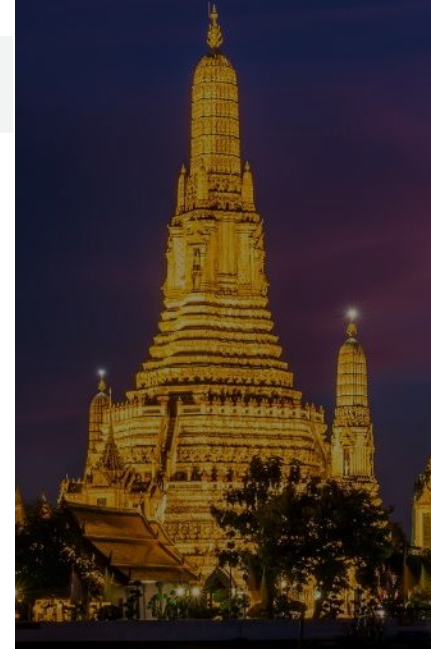
# Thailand

Theeranit Pongpanarat



Draft "Promotion and Protection of Independent Worker Act"

- A much-needed law to address the lack of protection for gig workers?
- Draft act underwent several reviews and revisions by various government agencies in the past few years. Key summary of current draft:
  - Provides broader coverage and protection to all independent workers, especially "semi-independent workers" which is defined to include platform workers
  - Sets up a new fund aimed to help independent workers e.g., providing certain accident and health assistance and loans to them
- Draft still being deliberated by the Council of State
- Some concerns raised – misclassification risk i.e., how to structure relationships with these gig workers? How to balance different interests?



# Vietnam

Thuy Hang Nguyen



## Draft of the revised Law on Social Insurance

- In March 2023, the Government issued draft of the Law on Social Insurance (revised) ("**Draft**") for public opinion until 30 April 2023
- Certain notable revisions include:
  - Imposing stricter sanctions on employers' failure to comply with regulations on social insurance
  - Introducing a new concept of social retirement benefits
  - Broadening subjects of compulsory social insurance
  - Introducing new rates used as the basis for payment of compulsory social insurance premiums
  - Shortening contribution period for pension entitlement
  - Employees not working and not receiving wages from 14 working days or more in a month are still entitled to monthly social insurance contributions in certain cases
  - "Maternity allowance" and "Occupational accidents allowance" are now supplemented to the voluntary social insurance regimes



# Vietnam

Thuy Hang Nguyen



## Decree on personal data protection ("PDPD")

- The PDPD, basically, applies the same legal framework as the European General Data Protection Regulation ("GDPR"), including a broad definition of personal data, provisions on the rights of data subjects, requirement on data protection officer, extra-territorial regulating scope.
- On 15 February 2023, the National Assembly Standing Committee ("NASC") approved the issuance of the Draft PDPD.
- It is expected that the official PDPD will be issued April 2023

## Representative organizations

- Traditional trade union – a social political organization is no longer the sole employees' representative organization in Vietnam
- New Labor Code recognizes the establishment of employee' organizations
- The traditional trade union & the newly-recognized employee associations have equal rights and responsibilities
- Guidance on establishment & operation of new employee associations is pending

# Vietnam

Thuy Hang Nguyen



Tightening of regulations on work permit - New requirements imposed by local DOLISAs and upcoming changes to Decree No. 152 on management of foreign workers

- Using a different form of the report on foreign labor demand, compared to previous practice
- During the process for reporting on foreign labor demand: more requirements and documents are required (in addition to the report on demand): companies requiring the use of foreigners must:
  - apply all measures to recruit Vietnamese and
  - prove that the enterprise indeed has applied all necessary steps but could not find a suitable Vietnamese candidate for the desired position.

=> Enterprises to further submit certain documents which are not statutorily regulated



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