

## New Draft Amendment to the Labour Protection Act

11 October 2018

### Introduction

The Labour Protection Act B.E. 2541 (1998) (the “**Act**”), since promulgation in 1998, has been amended periodically to ensure alignment with the changing social context in Thailand. Currently, issues have been raised that certain provisions under the Act do not provide employees with sufficient legal protection with respect to common employee/employer interactions. Thus, a new Draft Amendment to the Labour Protection Act (“**Draft Amendment**”) was proposed. On 21 September 2018, the Ministry of Labour announced that the Draft Amendment, in principle, had been approved by the National Legislative Assembly on 20 September 2018.

### Key Points in the Draft Amendment

The Draft Amendment aims to provide better protection for employees. Some key points in the Draft Amendment are as follows:

#### I. Employees Transfer in Amalgamation

Presently, Section 13 of the Labour Protection Act only provides that:

*“Where there has been a change of employer due to an assignment, succession, or any other means; or where the employer is a juristic entity and there is a registration of change, assignment or merger with any juristic entity, the employees shall continue to have all the rights they were entitled to from their previous employer, and the new employer shall assume the rights and duties in connection with those employees in all respects.”*

### Key Contacts

**Jutharat Anuktanakul**  
TEL +66-2-266-6485 Ext 117  
([jutharat.a@chandlermhm.com](mailto:jutharat.a@chandlermhm.com))

**Sawanee Gulthawatvichai**  
TEL +66-2-266-6485 Ext 120  
([sawanee.g@chandlermhm.com](mailto:sawanee.g@chandlermhm.com))

**Tachatorn Vedchapun**  
TEL +66-2-266-6485 Ext 115  
([tachatorn.v@chandlermhm.com](mailto:tachatorn.v@chandlermhm.com))

**Kiratika Poonsombudlert**  
TEL +66-2-266-6485 Ext 168  
([kiratika.p@chandlermhm.com](mailto:kiratika.p@chandlermhm.com))

**Noraseth Ohpanayikul**  
TEL +66-2-266-6485 Ext 112  
([noraseth.o@chandlermhm.com](mailto:noraseth.o@chandlermhm.com))

**Chandler MHM Limited**  
7th-9th, 12th, 16th Floor  
Bubhajit Building  
20 North Sathorn Road  
Bangkok 10500, Thailand  
[www.chandlermhm.com](http://www.chandlermhm.com)

This Section, based on Supreme Court precedents, has been interpreted to include the case of amalgamation (whereby company A + Company B result in the formation of Company C); all rights and duties associated with those employees will be transferred to the new employer by operation of law. In practice, Section 1243 of the Civil and Commercial Code (the “CCC”) and Section 153 of the Public Limited Company Act B.E. 2535 (1992) (the “PLC Act”), have always been taken into consideration along with Section 13 of the Labour Protection Act. Section 1243 of the CCC and Section 153 of the PLC provide that “the amalgamated company shall take all the property, obligations, rights, duties and liabilities of all the amalgamating companies.” Therefore, the rights and duties with regard to the amalgamating companies, including those relating to employees, will be automatically transferred to the new entity (the amalgamated company) by operation of law.

The Draft Amendment aims to change that, it provides that:

*“Where there has been a change of employer due to an assignment, succession, or any other means; or where the employer is a juristic entity and there is a registration of change, assignment or merger with any juristic entity that results in the employee being the employee of a new employer, such employee’s consent must be obtained. The employees shall continue to have all the rights they were entitled to from their previous employer, and the new employer shall assume the rights and duties in connection with those employees in all respects.”*

If passed, the Draft Amendment will establish a new practice whereby the consent of the employees must be obtained.

## **II. Severance Pay Rate Adjustment**

Under the Labour Protection Act, the current maximum severance pay rate is set at 300 days as of the last wage rate. This rate is applied to employees who have worked for ten consecutive years or more. Under the Draft Amendment, the maximum rate for

severance pay will be established at 400 days as of the last wage rate. This rate will be applied to employees who have worked for 20 consecutive years or more.

### **III. New Adjustment to Leave Conditions**

Presently, there are six types of leave under Section 6 of the Labour Protection Act (e.g. sick leave, maternity leave, leave to attend necessary personal business, military service leave, etc.)

Although not establishing a new type of leave, the Draft Amendment proposes to *amend the conditions* for two types of existing leave; personal business leave and Maternity Leave.

#### **i. Personal Business Leave**

Under Section 34 of the Labour Protection Act, personal business leave shall be in accordance with the work regulations of the employer. This Draft Amendment, if passed, will guarantee the employee at least three leave days per year, along with other existing leave and holidays.

#### **ii. Maternity Leave**

According to Section 41 of the Labour Protection Act, a pregnant female employee is entitled to maternity leave of not more than 90 days for each pregnancy. Under the Draft Amendment, pregnant female employees would be afforded more leave days, i.e. from 90 days to 98 days. Note further that such a 98 day period shall be inclusive of leave for maternity check-up before child delivery.

### **IV. Amendment re: Relocation of Workplace**

Section 120 of the Labour Protection Act provides that:

*“Where an employer relocates its place of business and the relocation materially affects the ordinary course of living of the employee or his/her family, the employer shall notify the employee of the relocation not less than thirty*

*days prior to the date of relocation...*"

According to Supreme Court Decision nos. 2228/2545 and 13550/2558, "relocation of workplace" under the Labour Protection Act means shutting down one work premises entirely and changing the work premises to a new location. More specifically, the court interpreted that in the case where an employer already has more than one workplace location, and orders the employees to change their place of work to an already existing location, Section 120 would not be applicable.

The authority thus views that employees are not given enough protection. The Draft Act hence proposes the revocation of Section 120 and replaces it as follows:

*"Where an employer relocates its place of business, whether to a new place or to another place of the employer, the employer shall post a notification thereof for information of the employees in advance. Such notification shall be posted at a highly-visible public place where the place of business is situated...The notification shall contain at least a statement that is clear and sufficiently understandable, as to where and when an employee will be moved..."*

*In the case where an employee deems that such relocation will materially affect the ordinary course of living, and does not wish to be relocated, he or she shall inform the employer in writing of such intention within 30 days of the date on which the notification is posted..."*

Preliminarily, this means that relocation of workplace under the new Section 120 does not necessarily refer to the shutdown of an already existing workplace entirely. Relocation of workplace by this definition can also mean changing the place of work to an already existing location. Further, it clarifies that the employee shall be vested with the discretion to determine what constitutes "materially affecting the ordinary course of living".

What has not been changed, however, is that if an employee does not wish to relocate, he or she shall be entitled to a “special severance pay” in the amount equal to the normal severance pay rate he or she is due.

According to the Ministry of Labour’s announcement, the Draft Amendment is still subject to further consideration, and the Draft is due to be finalized within 30 days of the date on which the National Legislative Assembly has approved the Draft in principle. This Draft Amendment, if passed, will affect current practices in the labour market in Thailand. CMHM will continue to monitor this important legislation, and will issue updates on further developments as they occur.

---

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed to the right.