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Guideline on the Determination of Types of Employment Contracts

There are two types of employment contracts under Cambodian Labour Law (“**Labour Law**”): the undetermined duration contract (“**UDC**”) and the fixed duration contract (“**FDC**”). Article 67 of the Labour Law provides that an FDC shall contain a specified ending date and cannot be made for a period longer than 2 years. It can be renewed many times, as long as the renewal does not surpass the maximum duration of 2 years.

The interpretation of this provision is debatable. One school of thought holds that an FDC can be renewed as many times as the parties wish as long as each or all renewal does not exceed 2 years, while another one affirms that an FDC shall become a UDC when the total duration of the contract including the renewal exceeds 2 years.

To clarify the controversial interpretation of Article 67 of the Labour Law, the Ministry of Labour and Vocational Training issued Guideline No. 050/19 LV/N.MLVT on 17 May 2019 concerning the determination of the two types of employment contracts (“**Guideline**”). According to the Guideline, an FDC is (i) a written employment contract (ii) made for a specific duration not exceeding 2 years, and (iii) shall specify commencement date and ending date. An FDC can be renewed for once or more than once, so long as such renewed period does not exceed 2 years. Therefore, the longest period of an FDC, including both the first FDC’s period and renewed period(s), is 4 years.

For further clarification on how to calculate the total maximum period of an FDC, the Guideline provide the following examples:

1. If the first FDC’s period is 6 months, the total maximum period of such FDC is 2 years and 6 months.
2. If the first FDC’s period is 1 year, the total maximum period of such FDC is 3 years.
3. If the first FDC’s period is 2 years, the total maximum period of such FDC is 4 years.

The Guideline further emphasizes that if the renewed period(s) of an FDC exceed 2 years, such FDC will automatically become a UDC.

The Labour Law is also silent on the conclusion of an FDC subsequent to another FDC (when the latter reach the maximum period allowed under the Labour Law), whether it needs a break in between those FDCs, and how long if it does, in order for the contracts to remain as FDC. The Guideline has clarified that at least one month break in between FDCs is required to maintain the FDC status of the contracts; otherwise, the subsequent FDC shall be considered as a renewal of the former FDC which, together, shall form a UDC. However, such break condition does not apply if the subsequent FDC is made as an

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employment contract (i) to substitute the work of a temporarily absent employee, (ii) for a seasonal work, and (iii) for an occasional increase of work or unusual activities of the company as stated in Article 67.3 of the Labour Law.

The Guideline has re-emphasized Article 67 of the Labour Law on the exception to the “**specified date**” requirement. Both allows an FDC to have an “**unspecified date**” if such contract is made for (i) employment to substitute a temporarily absent employee, (ii) a seasonal work, and (iii) an occasional increase of work or unusual activities of the company. However, the Guideline has clarified the extension of the “**unspecified date**” to only “**unspecified expiry date**”.

Additionally, the Guideline also re-emphasizes the purpose and duration of the probationary period. While the probationary period of an employment contract remains unchanged (which shall not exceed 3 months for an employee, 2 months for a specialized worker, and 1 month for an ordinary worker and in any case cannot be renewed or re-entered), the important clarification is made on the point that the probationary period, for its purpose, is to provide a period of time for the employer to judge the capacity, skill, talent, and the diligence of the employee, and for the employee to understand working conditions. The probationary period cannot be counted as a basis for calculation of severance pay for an FDC or seniority payment for a UDC.

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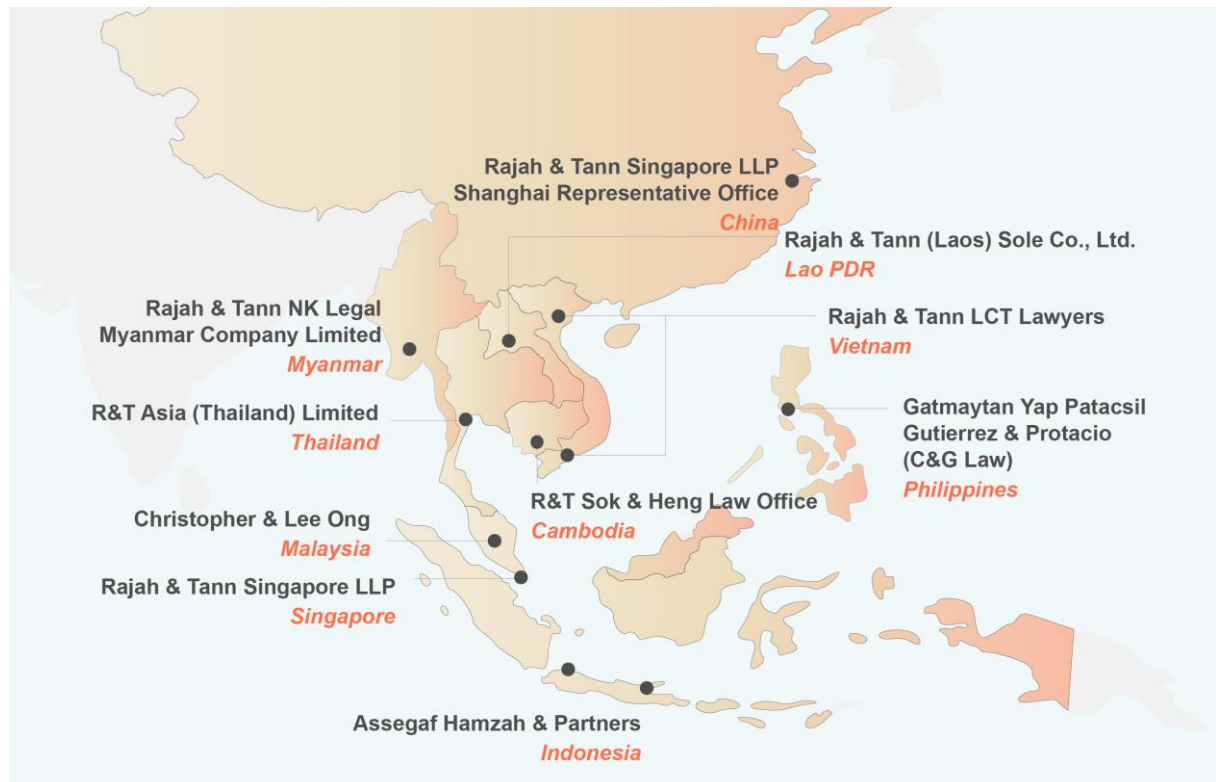
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