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Labour

## Cambodia Labour Law Developments: 1st Quarter of 2020

### Introduction

This Update provides a summary of the key labour law developments in Cambodia in the first quarter of 2020.

### Payment Schedule for Monthly Contribution to NSSF for March 2020

The National Social Security Fund (“**NSSF**”) has issued a Notification No. 0125/20 NSSF dated 31 March 2020 on the determination of monthly contribution for March 2020 (“**Notification**”).

An employer has the obligation to make monthly contribution by the 15<sup>th</sup> of each month, and submit the monthly contribution to the NSSF by the 20<sup>th</sup> of that month.

Based on the Notification, for March 2020, the schedule is set out as follows:

1. Contribution payment to the banks (Acleda, Canadia, Wing, ABA and Ly Hour Paypro) is extended until 24 April 2020; and
2. Submission of worker’s report and contribution documents to the NSSF is extended until 30 April 2020.

### Tax Exemption on Seniority Payment from 2020

The Ministry of Economy and Finance (“**MEF**”) has issued a Circular No. 002 MEF.GDT dated 24 March 2020 on the Tax Exemption on Seniority Payment from 2020 (“**Circular 002**”).

Circular 002 intends to promote the living conditions of employees through the following measures:

1. Tax exemption on back seniority payment before 2019 and seniority payment in 2019 for Cambodian employees in the garment, textile and footwear sectors following the implementation of Circular No. 003 MEF dated April 2019;
2. Tax exemption on seniority payment from 2020 in the garment, textile and footwear and other sectors shall apply as follows:
  - a. Tax exemption on salary may be availed of if the seniority payment amount is not more than KHR4,000,000 per year;

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- b. Tax exemption is not applicable if the seniority payment amount is more than KHR4,000,000 per year. In the event that the seniority payment is paid out twice in a year, the calculation of tax on salary for seniority payment shall be as follows:
    - 1<sup>st</sup> payment: take the entitled seniority payment minus KHR2,000,000, then the remaining amount shall be added to the monthly taxable salary base of the month that the seniority payment is paid.
    - 2<sup>nd</sup> payment: same as the 1<sup>st</sup> payment, take the entitled seniority payment minus KHR 2,000,000 000, then the remaining amount shall be added to the monthly taxable salary base of the month that the seniority payment is paid.
  3. Any expense on the settlement of the seniority payment may be deducted from the annual income tax of the fiscal year in which the settlement is made.

## Requirement to Update Employees' Phone Numbers

The Ministry of Labour and Vocational Training (“MLVT”) has issued a Notification No. 009/20 MLVT/NOTIF.CBN dated 23 March 2020 on the Requirement to Update Employees' Phone Numbers (“**Notification 009**”).

Notification 009 aims to ensure the provision of necessary information to employees by requiring employees and employers to submit the following:

### **For employees:**

1. Provide contactable phone numbers in writing clearly and accurately before 26 March 2020 to employers so that the latter can update their records and submit the same to the Labour Inspectors;
2. Keep using the provided phone numbers from March to May 2020. In case the provided phone numbers are changed after May, the employees shall inform employers immediately of such change; and
3. Employees will be liable for any damage caused by their failure to provide phone number to their employers before 26 March 2020.

### **For employers:**

4. Assign representatives to update the employees' phone numbers in the enterprise;
5. Prepare a name list of employees based on the monthly self-declaration of NSSF by adding a new column, “Phone Number” (see sample below);
6. Send the name list in an excel file (refer to the same sample below for reference) to: [info@nea.gov.kh](mailto:info@nea.gov.kh). The employers were to send a hard copy of the list with the company's stamp on all the pages to the Department of Labour Inspection from 24 to 26 March 2020; and
7. Any employer that fails to follow the Notification will be liable to pay fines to the labour inspectors in accordance with the Labour Law, and be subject to other punishments as provided by the applicable laws.

WORKERS' NAME LIST						
ENTERPRISE-ESTABLISHMENT REPRESENTATIVE OFFICE OF CARTER'S GLOBAL SOURCING LIMITED						
EXISTING IN PAYROLL LEDGER IN 2020						
<i>Enterprise Registration Number with NSSF:</i>						
No.	NSSF ID	NAME	SEX	DOB	NATIONALITY	PHONE NUMBER
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
The list ends by No.						
					Date 25 March 2020 Signature and stamp Director of the Company	

**Notification on Additional Reminders on Preventive Measures for COVID-19 at Factories, Enterprises, Establishments**

Following this Notification dated 19 March 2020, the MLVT wishes to remind the owners of factories, enterprises and establishments, especially in the garment, textile, footwear and travel products and bag sectors to follow Guideline No. 004/20 MLVT/GUI.CBN dated 28 January 2020 and other relevant regulations issued by the Ministry of Health.

The additional reminders mandate the owners to:

1. arrange to have two administrators or managers, or give the right to Occupational Safety and Health Committee (OSH Committee) or HIV and Drug Committee of the factories to regularly educate workers about hygiene and occupational health and safety measures which focus on the prevention of the spread of COVID-19 until the disease is terminated. It is suggested that this be carried out every Saturday or more often;
2. regularly manage, observe, note and keep proper record of the implementation of preventive and obstructive measures to prevent the spread of COVID-19, and provide relevant information to competent authorities, if necessary;
3. arrange to have alcohol or sanitizer gel or soap for the washing of hands at entry – exit gates for workers to use;
4. check the temperature of all persons before entering the factories, enterprises and establishments, especially the production building. Any worker who has symptoms of cough,

- runny nose, sore throat, difficulty in breathing and the temperature of more than 37.5°C shall be allowed to consult with medical practitioners or experts;
5. stock enough facial masks to provide to the workers as per medical treatment and based on the health status and general situation of each worker;
  6. remind the workers to cover their mouth and nose with handkerchief, scarf or elbow when coughing or sneezing, to then throw their used handkerchief and scarf into a rubbish bin, and to subsequently wash their hands with soap or alcohol;
  7. greet by saluting as per Cambodian tradition instead of handshake;
  8. inform their workers coming back from countries facing the spread of COVID-19, or those who have touched their infected relatives, to immediately report to the factories' administration for proper reporting to the OSH Department of the MLVT in order for the latter to take preventive measures, and check and treat the affected workers in time. Owners of factories, enterprises and establishments who have direct contact with COVID-19's patients must self-isolate at home for 14 days before returning to the factories, enterprises, establishments;
  9. keep the temperature and air flow in their premises normal by spraying water on the roof top of their production buildings at least two times a day, opening all doors and windows, installing air inlets, and keeping all raw materials in order;
  10. provide sufficient clean water to workers and remind them to eat well-cooked foods, have enough sleep and avoid going to the places where the COVID-19 might be present; avoid having direct contact with COVID-19 patients;
  11. report via hotline 115 or other available phone numbers provided by the Ministry of Health ("MOH") when any worker has high temperature (i.e. more than 37.5°C) and has at least one of these symptoms/history: cough, runny nose, sore throat, shortness of breath or difficulty breathing, and has travelled to infected regions, has had contact with COVID-19 patients or dead bodies of acute respiratory diseases ("ARDs") patients, or handled ill animals within 14 days before the occurrence of the symptoms; and
  12. continue and promote vocational relations with the workers, and discuss the solution of the problems or issues resulting from the COVID-19 pandemic with honesty in order to raise the confidence of the workers in the owners, and maintain the common interests of the factories, establishments and workers.

## Preventive Measures for COVID-19 and other Respiratory Diseases at the TVET's Institutions

The MLVT has issued a Guideline No. 017/20 MLVT/GUI.CBN dated 6 March 2020 on the Implementation of Preventive Measures for COVID-19 and other Respiratory Diseases at the Technical and Vocational Education Training Institution (TVET Institutions) ("**COVID-19 and other Respiratory Diseases Preventive Measures Guideline**").

Due to the spread of COVID-19 and H5N1 as well as H1N1, the COVID-19 and other Respiratory Diseases Preventive Measures Guideline mandates all TVET institutions to implement the following measures:

1. assign one person from the Board of TVET to be in charge of security and health promotion in order to respond to the pandemic situation;
2. reinforce the security at the entry and exit points of TVET institutions by prohibiting any person without duty from entering or exiting the premises without permission;
3. make available clean drinking water for staff members, civil servants, technical teachers and trainees and students, and encourage them to bring their own clean water for personal drinking.
4. arrange to have soap, alcohol or sanitizer gel for the washing of hands at the entry – exit gates, institutions, classrooms, laboratory rooms, warehouses, bathrooms and toilets;
5. regularly alert and remind staff members, civil servants, technical teachers and trainees, and students to wear facial mask where necessary or when they feel unwell such as when they have fever, flu, cough and runny nose, and to avoid spitting at workplaces, classrooms, laboratory rooms, warehouses and public places;
6. make available thermometers to check the temperature of their staff members, civil servants, technical teachers and trainees, and students at the entry – exit gates or other locations as required. In cases where an individual has temperature of 38°C or higher, such person must be allowed to take leave or transfer to the nearest health centre or hospital;
7. monitor and check the health status of their staff members, civil servants, technical teachers and trainees, and students. In cases where an individual exhibits symptoms like cough, sneeze, fever, flue, runny nose, headache, sore throat, shortness of breath or difficulty breathing, the institutions shall guide them to healthcare service in a timely manner or report such cases to hotline 115; and
8. educate staff members, civil servants, technical teachers and trainees, and students about healthcare and encourage them to observe the following measures:
  - Avoid going to livestock markets or animal farms, handling wild animals or going to places where one might be infected;
  - Drink at least two litres of water per day;
  - Cover mouth and nose with a handkerchief, scarf, tissue or elbow when coughing or sneezing;
  - Avoid touching eyes, nose or mouth with dirty hands;
  - Avoid going to crowded areas and, if necessary, wear a facial mask or cover the mouth and nose with scarf;
  - Promote greeting by saluting as per Cambodian tradition;
  - Cook meat and eggs well;
  - Avoid handling all birds and pets. Wash hands immediately with clean water, soap, alcohol or sanitizer gel after touching them;
  - Use and rely on trustworthy sources of information;
  - Continue to educate and disseminate to staff members, civil servants, technical teachers and trainees, and students information on the preventive measures and any health related messages on the prevention of the COVID-19 issued by the MOH.

## **Guideline on Employment Contract Suspension, Soft Skill Course Registration and Suspension of Monthly Contribution to NSSF for Garment, Textile, Footwear and Traveling Products and Bag Sectors Suffering from Insufficiency of Raw Materials Caused by COVID-19**

The MLVT has issued a Guideline No. 014/20 MLVT/GUI.CBN dated 28 February 2020 on the Employment Contract Suspension, Soft Skill Course Registration and Suspension of Monthly Contribution to NSSF for Garment, Textile, Footwear and Traveling Products and Bag Sectors Suffering from Insufficiency of Raw Materials Caused by COVID-19.

The guideline aims to mitigate the impact of COVID-19 on the above-mentioned sectors by implementing the following measures:

### **A. Suspension of Employment Contract**

In the event that the factory does not have sufficient materials or encounters any difficulty, the suspension of employment contracts can be made pursuant to Articles 71 and 72 of the Labour Law (“LL”), and by following these procedures:

#### ***For owners or directors of factories:***

- submit the request to suspend the employment contracts to the Department of Labour Inspection (“**DLI**”) for factories located in Phnom Penh, or the Provincial Department of Labour and Vocational Training (“**PDLVT**”) for factories located in provinces;
- arrange a discussion with the employees to explain the reason for suspension, and provide allowance of 40% of minimum wage for year 2020 during such suspension;
- arrange to have written agreement with the employees’ representative on the procedure of payment of the allowance; and
- prepare a name list of suspended employees.

#### ***For DLI or PDLVT:***

- arrange at least five special intervention groups in DLI or PDLVT, especially the PDLVT where garment, textile, footwear and traveling products and bag factories are located, to observe relevant information with respect to the suspension, and be ready to inspect the requesting factories;
- explain to and coordinate with the parties at factories on the suspension procedure within 24 working hours after receiving the request for suspension;
- issue approval on suspension within 24 hours and ensure the supporting documents are fulfilled by employers and employees; and
- copy the approval for NSSF, National Employment Agency (“**NEA**”), Ministry of Commerce, Ministry of Industry and Handicraft, Ministry of Economy and Finance, General Department of Taxation, General Department of Customs and Excise and relevant Provincial-Municipal Administrations.

#### ***For NEA:***

- Arrange at least five special intervention groups in Phnom Penh and Employment Centres, especially the Employment Centres where garment, textile, footwear and traveling products

and bag factories are located, to inspect with labour inspectors of the DLI or PDLVT in order to register the employees to soft skill courses.

**B. Registration for Soft Skill Courses**

***For owners or directors of factories:***

- cooperate and inform employees being suspended to register for soft skill courses in order to obtain additional allowance of 20% of minimum wage for year 2020 from the Government;
- coordinate and facilitate employees to register with NEA's officials; and
- provide places for conducting courses in factories.

***For employees:***

- register for soft skill courses in order to obtain additional allowance of 20% of minimum wage for year 2020 from the Government; and
- attend the courses punctually.

***For NEA:***

- coordinate with factories on conducting courses;
- inform employees on the schedule and program of the courses;
- provide courses with effectiveness and quality; and
- prepare and manage daily attendance of employees participating in the courses.

**C. Request to Suspend the Monthly Contribution to the NSSF**

- Owners or directors of factories must notify NSSF on the suspension of monthly contributions;
- While attending soft skill courses, employees continue to be entitled to the occupational risk scheme from the NSSF; and
- During the suspension of their employment contract, employees continue to be entitled to the healthcare scheme from the NSSF and allowance from the Government for the delivery of a child(KHR400,000 for a single, KHR800,000 for twins and KHR1,200,000 for triplets, and allowance of KHR 5,000,000 from the Prime Minister and First Lady).

**D. Dissemination of Working Result of ILO-BFC**

- The Secretariat of Labour Advisory Committee ("**SLAC**") must cooperate with the Project Manager and relevant parties of ILO-BFC to disseminate the positive improvement of working conditions, working rights and liberty of professional organisations in Cambodia to employees, local and international news and development partners; and
- The SLAC must cooperate with various information networks, produce pictures, video clips and posters on employees and consumers' impressions of Cambodia on the better working conditions, working rights and liberty of professional organisations in Cambodia resulting



from the Government's commitment in connecting commerce into working conditions and allow ILO-BFC to be a model in other countries.

### Inter-ministerial Inspectors for Manufacturing Sector

A Joint Prakas No. 073/20 MLVT/Br.K.CBN dated 27 February 2020 was issued by the MLVT, the Ministry of Industry and Handicraft ("**MIH**") and the Ministry of Environment ("**MOE**") on the Establishment of Inter-ministerial Inspectors for Manufacturing Sector which aims to jointly inspect the enterprises, establishments in labour, environmental, industrial and handicraft sectors at the same time.

Before conducting inspections, the inspectors shall have the Joint Order issued by the MLVT, MIH and MOE. The mission is to monitor the implementation of formalities and working conditions of the above sectors and the owners or directors of the enterprises, establishments are required to facilitate such inspection when it takes place.

### Use of Collective Infirmary and Health Base

The MLVT has issued a Notification No. 004/20 MLVT/GUI.CBN dated 21 February 2020 on the Use of Collective Infirmary and Health Base instead of Infirmary of the Enterprise ("**Notification**").

The Notification allows enterprises and establishments which are unable to organise their infirmary to use the collective infirmary or health base as follows:

1. The collective infirmary (for not more than 10,000 workers) can be used for the enterprises and establishments that are assembled within 1km or located in a special economic zone.
2. The enterprises and establishments that wish to use a health base shall apply for the following:
  - The health base shall be recognised by the MOH and located not more than 2km from the enterprises or establishments;
  - The Department of Occupational Safety and Health shall be informed of the name and address of the health base.
3. The enterprises and establishments using the collective infirmary or health base shall have a wound care room and a standby nurse at their enterprises and establishments.
4. The employers shall arrange to have appropriate means to transfer workers suffering from illness or occupational accidents to the collective infirmary or health base.

### Protection of Professional Secrecy by Labour Inspectors

The MLVT has issued a Guideline No. 009/20 MLVT/GUI.CBN dated 21 February 2020 on the Protection of Professional Secrecy by Labour Inspectors.



The guideline aims to remind all labour officials under the MLVT to protect the secrecy of business information, production processes and other confidential information obtained in the course of fulfilling their duties against third parties in order to maintain the dignity and morality of labour inspectors.

### **Implementation of the Compensation for Special Leave**

The MLVT has issued a Guideline No. 010/20 dated 21 February 2020 on the Implementation of the Compensation for Special Leave.

Following the guideline, the MLVT intends to clarify to the owners or directors of factories, enterprises, institutions, employer associations, worker unions and all employees that:

- the making up can be conducted within 90 days after special leave;
- the making up can be conducted in normal working days and must not exceed 10 hours per day or 54 hours per week, meaning that the making up can be conducted for only six hours per week and will be compensated in normal rate as normal working hours; and
- if the working hours exceed 54 hours per week, the employees shall be compensated with increased rate of the wage for those exceeded hours in accordance with the LL.

### **Determination of Labour Contractor**

Letter No. 068 MLVT/GDL/DLI dated 21 February 2020 clarifies the identification of labour contractors following the article 45-1 of LL as follows:

*The labour contractor refers to a sub-contractor who obtains works or services from an entrepreneur (principal enterprise) in which the works or services are the same as or similar to the works or services of the entrepreneur (principal enterprise).*

To support this clarification, there are two examples as follows:

1. Due to the increase of need, garment factory "A" enters into agreement with garment factory "B" to have the latter to sew clothes per buyer's order. In this case, the workers of "B" are considered as working under conditions of a labour contractor.
2. Garment factory "A" enters into a service agreement with a private security company to provide security service in the factory. In this case, the security guards are not considered as working under conditions of a labour contractor. "A" is not responsible for the working conditions and wages of those security guards but are responsible for observing the legal age for working only.

### **Seniority Payment Calculation for Official Workers**

Letter No. 069 MLVT/GDL/DLI dated 21 February 2020 aims to clarify the calculation of seniority payment for official workers. They are entitled to obtain 7.5 days of seniority payment per semester if they have worked from one month (or 21 days) to six months of each semester.

This seniority payment cannot be compensated by the employer to workers in proportion to working duration.

### **Seniority Calculation for Determination of Prior Notice for Employment Contract Termination in case Fixed Duration Contract (FDC) becomes Undetermined Duration Contract (UDC)**

Letter No. 070 MLVT/GDL/DLI dated 21 February 2020 aims to clarify the calculation of seniority for determination of prior notice to workers for employment contract termination in the event that an FDC is transformed into a UDC.

In this regard, the prior notice varies as follows:

- If employers have compensated the severance pay at each FDC's expiration, the seniority for determining prior notice shall count from the transformation to UDC; and
- If employers have not compensated the severance pay at each FDC's expiration, the seniority for determining prior notice shall count according to Article 75 of the LL by including the duration of the initial contract.

### **Calculation of Paid Annual Leave for Employees Working Less than 21 Days per Month**

Letter No. 071 MLVT/GDL/DLI dated 21 February 2020 provides that the paid annual leave for employees working less than 21 days per month shall be calculated as follows:

- Official employees who have worked from 21 days per month are entitled to obtain one and a half days off;
- Official employees who have worked 15 days or more but less than 21 days per month are entitled to obtain one day off; and
- Official employees who have worked less than 15 days per month are not entitled to obtain annual leave.

### **Transferring of Workers to Perform Work at Branches**

Letter No. 284/20 MLVT/CBN dated 21 February 2020 recommends observing the following conditions when transferring workers to perform work at branches:

1. The transfer of workers from the head office to perform work at branches shall not exceed 50% of the current workers at the target branch; and

2. Every worker of the head office must possess a mission letter with the name of the enterprise or establishment that issued the letter, the name and position of the nominated worker, the mission destination, the mission purpose and the mission duration for labour inspection purpose.

According to this letter, due to the temporary nature of the mission, the declaration of movement of personnel is not required.

### **Calculation of Damages for Transformation of FDC Exceeding Maximum Duration Determined under the Law into UDC**

Letter No. 273/20 MLVT/CBN dated 19 February 2020 confirms that the MLVT requires employers who have been employing workers under FDC and exceeding the maximum duration determined under the law to transform the FDC into UDC by the end of 2019.

As such transformation does not constitute the termination of the FDC, the employers are not liable to compensate workers with damages for the remaining duration of the contract.

### **Preventive Measures for Coronavirus at the Factories, Enterprises, Establishments**

The MLVT has issued a Guideline No. 004/20 MLVT/GUI.CBN dated 28 January 2020 on the Implementation of Preventive Measures for Coronavirus by requiring all factories, enterprises, establishments and workers to implement the following:

1. Employers and workers who are coming back from the regions facing the spread of the Coronavirus and China shall be observed and monitored for 14 days at the nearest health service or call 115 if they exhibit symptoms such as a temperature above 38°C, cough, runny nose, sore throat, shortness of breath or difficulty breathing.
2. Transfer If there is any employer or worker exhibiting some signs such as fever, cough, sneeze, flue, runny nose or sore throat, they shall be transferred to a medical service, or 115 shall be called on time.
3. Employers shall regularly alert and remind workers to wear facial mask (i.e. medical mask) both inside and outside the workplace.
4. Avoid touching people with ARDs who have fever, are coughing and sneezing or have a flu, and keep a distance of more than one meter from the people having such symptoms.
5. Avoid going to livestock markets or animal farms, or handling wild animal or going to the places which carry the risk of infection.
6. Avoid spitting in the premises of enterprises and establishments and in public.
7. Avoid touching their eyes, nose and mouth after handling animals and animal products, ill animals, disqualified meats, animal wastes and commonly used materials in the markets or other materials of ARD patients.

8. Regularly and often wash hands with soap and clean water or alcohol after touching people with fever, cough and runny nose or other objects that could be the source of the virus, after coming into contact with dirty and unclean hands, after handling animals, and after coughing, sneezing, having a runny nose or other mucus from the respiratory tract.
9. Observe hygiene, food safety by eating well-cooked foods, meats and eggs. Use different chopping boards and knives for fresh and cooked foods, and wash hands after touching them.
10. Cover mouth and nose with handkerchief, scarf, tissue or elbow when coughing or sneezing.
11. Continue to educate workers on the preventive measures and disseminate any health-related messages or guidelines in relation to the Coronavirus issued by the MOH.

## Law on Amendment to the Law on Trade Union

The Royal Kram NS/RKM/0120/001 dated 3 January 2020 has promulgated the Law on Amendment to the Law on Trade Union (“**LALTU**”), amending ten articles of the Law on Trade Union (“**LTU**”). These ten articles are Articles 3, 17, 20, 21, 27, 28, 29, 54, 55 and 59.

The LALTU covers only enterprises or establishments and all persons under the provisions of the LL.

According to the new amendment, all worker unions or employer associations are required to provide financial statements and annual activity reports (audited by an independent audit firm) to all members by March of the following year at the latest. The reports shall be audited if:

- requested by 10% or more of total members or any sponsors for local worker unions and employer associations; or
- requested by 5% or more of total members or any sponsors for federation of worker unions, confederation of worker unions and federation of employers.

The quorum also applies for the keeping of financial records.

Cambodian nationals can become leaders and persons responsible for the administration of worker unions in enterprises or establishments and of employer associations if they are at least 18 years old or minors who have been granted emancipation, and have self-declaration of clear and legal address of residence. For foreign nationals, the age condition is the same as Cambodian nationals. However, they must be able to read and write Khmer, have been working in Cambodia for at least two years, have right to reside and have permanent residence in Cambodia following the Law on Immigration for the administration of worker unions. They must also have invested or worked in the Kingdom of Cambodia for at least two consecutive years for the administration of employer associations in addition to the age condition.

The LALTU amends the LTU to provide that worker unions or employer associations are automatically dissolved when the enterprise or establishment is permanently closed and the latter has cleared the wage and other benefits to the workers.

The LALTU removes a ground for dissolution by the labour court based on the leaders and persons responsible for the administration of the worker unions or employer associations being found guilty of committing a serious offense in the capacity of their position in the worker unions or employer associations. In the meantime, it prohibits minority worker unions from representing their members in collective labour disputes resolution and claiming rights and other benefits more than those stated in the laws, orders, current collective bargaining agreements or other internal provisions.

For the most representative status of unions at enterprises or establishments, the criterion that required having a list of the most members with an official membership identification card has been amended to having a list of the most members which have made contribution payment. The requirement of having received the largest number of votes in the enterprise or establishment remains unchanged.

For the most representative status in a profession or an economic activity or a sector, the worker unions must have a list of the most members which have made the contribution payment that make up 30% or more of the total employees in the profession or economic activity or sector in which the worker union has applied for the most representative status.

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Labour

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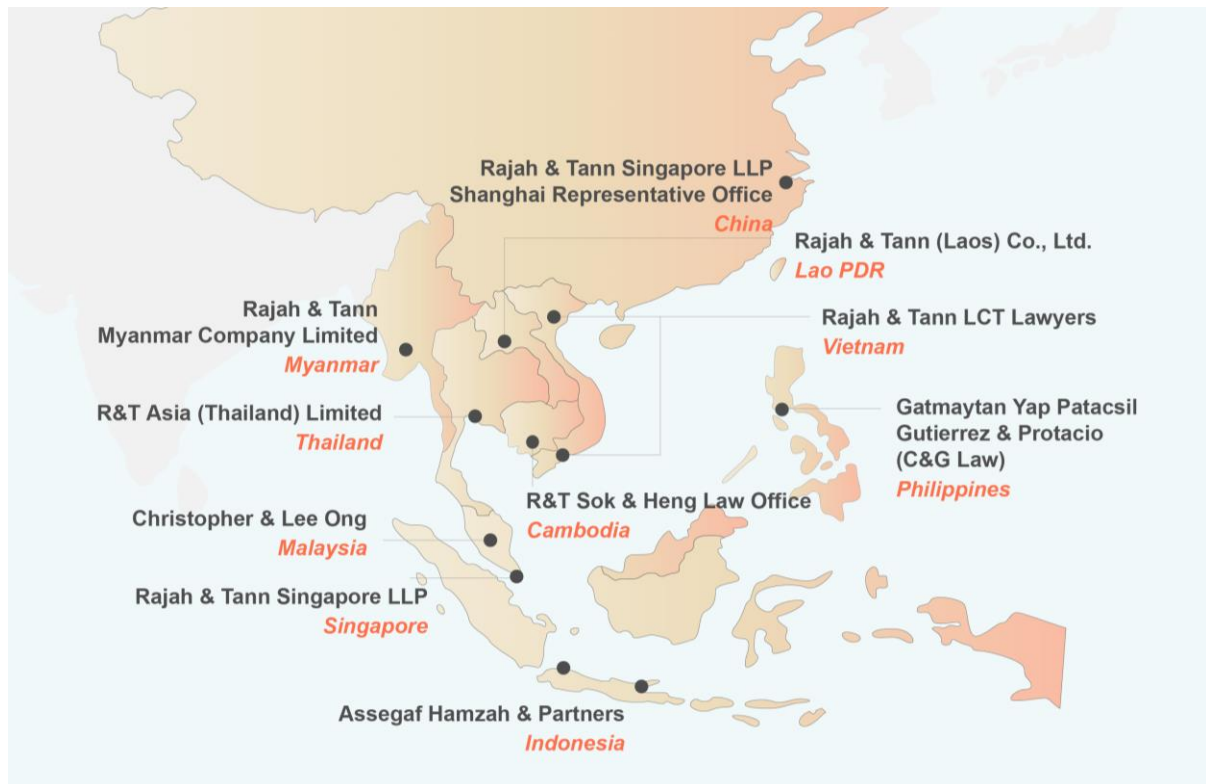
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