

WORKFORCE RESTRUCTURING IN CAMBODIA, LAO PDR, MYANMAR, THAILAND & VIETNAM



15 May 2020

AGENDA

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SPEAKERS



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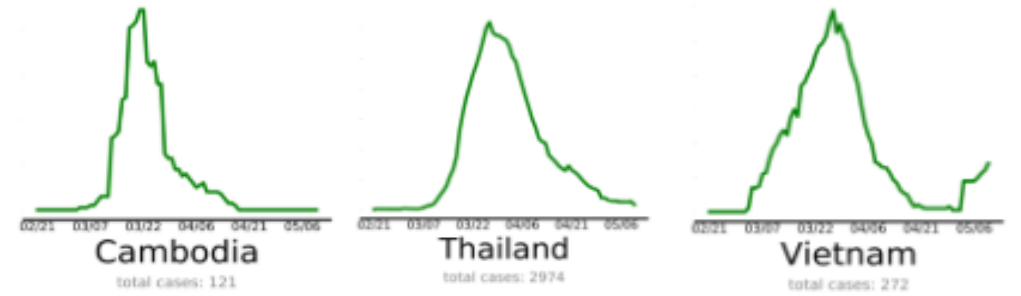
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COVID-19 OVERVIEW

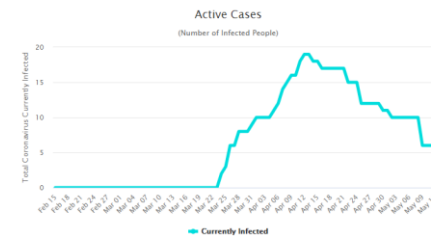
CURRENT MEASURES



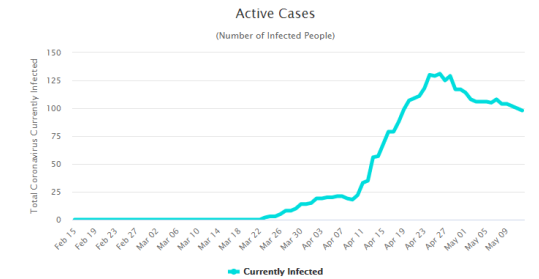
COUNTRIES BEATING COVID-19



Source: EndCoronavirus.Org



Lao PDR
Total cases = 19



Myanmar
Total cases = 180

Source: Worldometers

INTRODUCTION

- Different options (temporary and permanent) available to employers
- **Restructuring options include:**
 - voluntary unpaid leave
 - reduced working hours – part time working arrangements
 - deferred salary payments
 - re-deployment
 - Suspension of business
 - Workforce rotation
- **Downsizing options include:**
 - mutual/agreed termination
 - collective termination (for economic reasons)
 - individual termination





LEAVE ARRANGEMENTS AND CHANGES IN WORKING CONDITIONS

LEAVE ARRANGEMENTS

CAMBODIA

LEAVE

- Mutually agreed
 - No need for MLVT/DLVT approval
 - Risk of being considered as suspension
- Should inform union delegates/shop stewards

1. ANNUAL LEAVE

- Full salary/benefits
- Temporary until exhaustion of annual leave

2. VOLUNTARY UNPAID LEAVE

- No salary/benefits during leave
- Temporary

3. VOLUNTARY PAID LEAVE

- Full/ reduced salary/benefits
- Temporary

LEAVE ARRANGEMENTS

LAO PDR

AGREED ANNUAL LEAVE

- Mutually agreed
- Full salary/benefits
- Temporary until exhaustion of annual leave
- No need for LMA approval
- Should be documented

VOLUNTARY UNPAID / PAID LEAVE

- No salary/benefits during leave or full/reduced salary/benefits
- Temporary
- Mutually agreed
- No need for LMA approval
- Should be documented

FORCED LEAVE

- Full/reduced salary/benefits
- Temporary
- Must be in accordance with provision of employment contract/internal rules
- No need for LMA approval
- Should be documented

CHANGES IN WORKING CONDITONS

THAILAND

Conditions of Employment

- Leave entitlements
- Working schedule
- Wage and welfare benefits
- Place of work
- Termination of employment
- Other gains in relation to employment

Prior Consent of the Employee

1

Necessity to Obtain Prior Consent

For any change to the conditions of employment of an employee (unless favorable to the employee)

2

Written or Implied Consent

The concept of valid implied consent is drawn from Thai Court's rulings.

3

Consent should be Free

Any direct threat to obtain consent may cause such consent to be unenforceable.

REDEPLOYMENT TO OTHER OFFICES

MYANMAR



The employers may redeploy employees to other offices based on convenience if provided in the employment contract; and



In the alternative an arrangement may be entered with the employee to give effect to the redeployment plan. In such cases, the cost of travel must be borne by the employer.





WORKING TIME AND SALARY ADJUSTMENTS

WORKING TIME REDUCTION

CAMBODIA

REDUCTION SALARY/HOURS

- Mutually agreed
- No need for MLVT/DLVT approval
- Should inform union delegates/shop stewards

1. DEFERRED SALARY

- Portion of salary deferred, typically subject to conditions
- Temporary

2. REDUCED HOURS

- No change to salary/benefits
- Temporary

3. REDUCED HOURS/SALARY

- Reduced salary/benefits (on a pro-rata basis)
- Either temporary or permanent
- Often combined with mandatory leave
- Reduced (future) statutory benefits

WORKING TIME REDUCTION

MYANMAR



A four working day in a week or working half a day for five days may be arranged to reduce costs;



Consent of the employees must be obtained in case of any alteration in the remuneration due to reduction in working hours; and



Work from home arrangement may also be factored to reduce establishment costs.



WORKING TIME REDUCTION

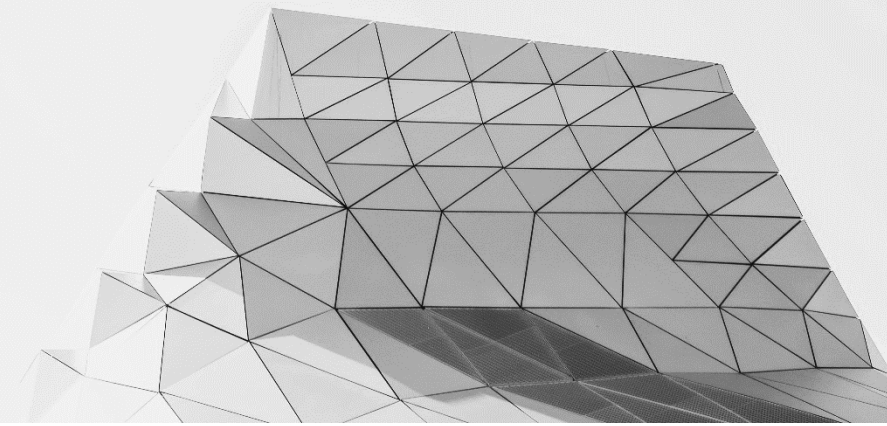
VIETNAM



Subject to mutual agreement between employers and employees



Employer can propose to adjust (i.e. reduce) the working hours, then negotiate for a reduced salary which corresponds to the reduced working hours





SUSPENSION OF BUSINESS

SUSPENSION OF BUSINESS

CAMBODIA

SUSPENSION (due to serious financial difficulty)

OTHER SECTORS

- No written guidance
- Suggested by the MLVT to follow procedures for garment and tourism sectors
- Will not be entitled to Government's subsidy

GARMENT AND TOURISM SECTORS SERIOUSLY IMPACTED

- Must be approved by the MLVT (online submission)
- Pay during suspension:
 - Government's subsidy of \$40/m
 - Garment: \$30/m
 - Tourism: based on a voluntary and capability basis
- Must agreed by employees/union delegates/shop stewards
- Period: 2M (extendable if approved by the MLVT)

SUSPENSION OF BUSINESS

LAO PDR

Labor Law and Contract and Tort Law

- **Article 111 of the Labor Law** allows an employer to temporarily suspend its business activities, production and services, provided it pays an allowance to each employee of not less than 50% of their salary or wage for the period of suspension.
- **Article 33** of the Contract and Tort Law provides for the non-liability of a contracting party in the case of a breach of contract due to a broadly defined force majeure event.

SUSPENSION OF BUSINESS

MYANMAR

In case of suspension of business (temporary or permanent) if employees remain fully employed by the employer, then employee should receive full time salary as per the Employment and Skill Development Law.

The employers may, however, enter into the following arrangement with the employee to cut down on costs:

- Leave without pay; or
- Reduced pay by reducing working hours; or
- Deferred payment structure.

The law also allows termination of employment in case cessation of business owing to a force majeure event.

The COVID-19 pandemic may be considered as a force majeure event.

For termination one month notice should be given and severance payment should be made.

SUSPENSION OF BUSINESS

THAILAND

Economic Cause

Incapacity to carry out normal activities due to the situation

Must be a necessity to keep the business afloat

No prior consent from the employees

Payment of 75% of the employees' wages

Shutdown should not last longer than strictly necessary

SUSPENSION OF BUSINESS

THAILAND

Force Majeure

- Definition of *Force Majeure* event under Ministry of Labor's Ministerial Regulation re. Benefits & Compensation for Unemployment due to Force Majeure Arising from an Epidemic of Dangerous Communicable Disease under the Communicable Disease Act B.E. 2563
- Some business operators invoke *Force Majeure* as a ground for temporary shutdown whereby they would not be responsible for paying the employees' wages.
- This is unprecedented in Thailand and it remains to be seen what position will Thai Labour Courts adopt in this regard.

WORK SUSPENSION DUE TO AN EPIDEMIC

VIETNAM



An employer is entitled to request the suspension of work due to objective reasons such as natural disasters, fire, or epidemic, etc.;



COVID-19 qualifies as an epidemic;



During work suspension, employers and employees can negotiate for reduced salaries, provided that the reduced salaries are not lower than the statutory regional minimum wage (e.g. USD200/month for Hanoi and HCMC).



REDUNDANCY SCHEMES

REDUNDANCY

LAO PDR



Under Article 82 of the Labor Law the employer may terminate an employment contract for business reasons after (i) consultation with the trade union or employees' representative or the majority of the employees and (ii) notification to the Labor Administration Agency.



If the LMA, in its discretion, does not find sufficient justification for the redundancies, the LMA may deem the termination to be “unjustified” due to an “insufficient reason for termination”.



Unjustified termination attracts a higher severance liability than justified termination.

REDUNDANCY

VIETNAM

Prior to apply permanent redundancy for two or more employees, the employer must have taken the following:

Establish a labor usage plan with the participation of the trade union

Consult with the trade union on the redundancy

Notify the provincial labor authority at least 30 days before the termination date

To be prudent, give employees advance notice the same as unilateral termination cases.



Procedures for redundancy will be time-consuming. If possible, employers should reach a mutual separation agreement with employees.

REDUNDANCY

MYANMAR

Employment laws permit employers to terminate employment contracts due to redundancy.

Redundancy due to closure, or necessary change of business, or mass layoffs.

As per SEC template under Section 15 (4) employer redundancy should be coordinated with the workplace coordination committee and the labor organization.

One month prior notice to be given to employee.

Severance payments to be made on the basis of the duration of employment.

REDUNDANCY

THAILAND

**Termination
without
cause**

**1. Advance
notice of
termination**

**2. Monetary
entitlements
including
severance pay**

**3. Risk of
potential unfair
dismissal claim**

**4. Mutual
separation
agreement**

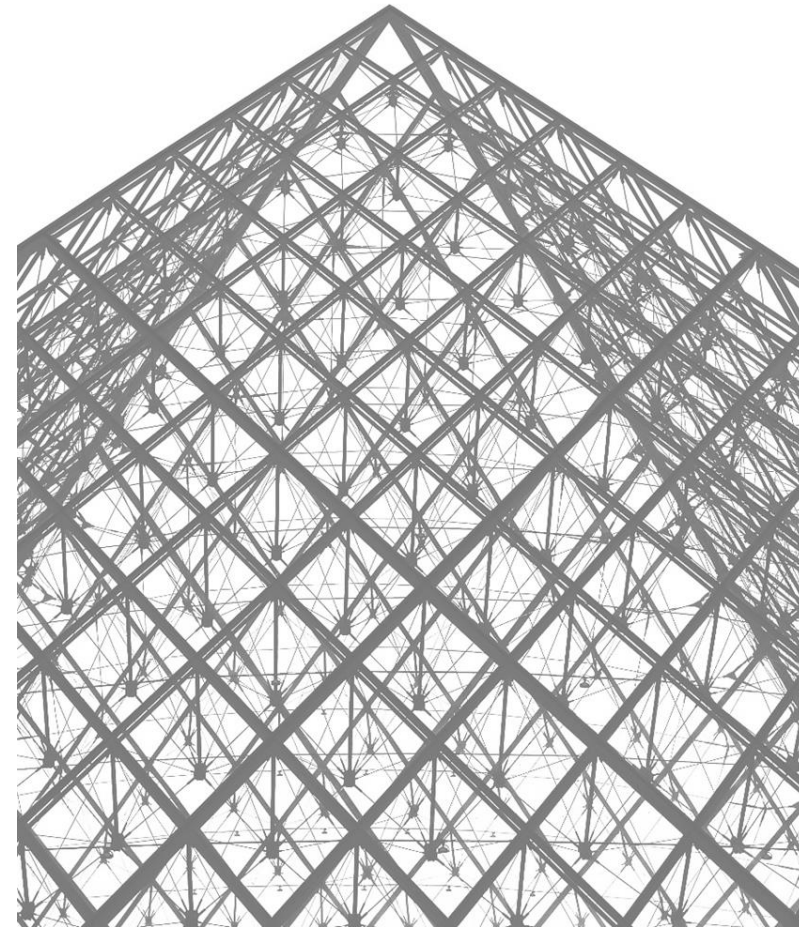


MUTUAL TERMINATION

MUTUAL TERMINATION

CAMBODIA

- Mutually agreed
- No need for MLVT/DLVT approval (other than witnessing by a labour inspector for FDCs and notification of staff movements)
- No need to inform union delegates/shop stewards (but suggest to do so)
- Lowest risk for future claim if full compensation paid



MUTUAL TERMINATION

LAO PDR



Mutual termination will equate to voluntary resignation by an employee.



It may be initiated by the employer through offering resignation to the employee.



No severance is payable under the Labor Law for voluntary resignation, but would likely have to be offered by the employer as an incentive.



Risk that the voluntary resignation offer be seen as a “constructive dismissal” with higher severance liability than in cases of justified termination.



UNILATERAL TERMINATION

UNILATERAL TERMINATION OF LABOR CONTRACTS BY EMPLOYERS DUE TO FORCE MAJEURE

VIETNAM

ARTICLE 38.1(C) OF THE LABOR CODE 2012

An employer can unilaterally terminate labor contract with employee if:

- i. there is a force majeure event (Article 156.1 of the Civil Code 2015);
- ii. the employer has taken all necessary measures to remedy the problem caused by such a force majeure event, but still needs to reduce the number of jobs; and
- iii. the employer has notified the employee in advance (45 days or 30 days in advance in the case of indefinite term labor contracts or definite term labor contracts respectively).



EXCEPTION TO THE OPTION OF UNILATERAL TERMINATION DUE TO FORCE MAJEURE EVENT

VIETNAM

An employer cannot unilaterally terminate labor contracts with an employee infected with COVID-19 during his/her sick leave unless such an employee has undergone medical treatment for:

12 consecutive months in the case where his/her employment is under an indefinite term contract;

Six consecutive months in the case where his/her employment is under a definite term contract; or

More than half the term of the contract if his/her employment is under a seasonal contract.

Q&A

Thank
You

For the full details and latest updates on
Government Initiatives in Southeast Asia,
go to **COVID-19 Resource Hub**:
<https://www.dfdl.com/resources/covid-19-hub/>

Questions?



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