BY CHESTER TOH & KALYN LIANG

EMPLOYERS' OBLIGATIONS IN MYANMAR

An important preparatory step before expanding into Myanmar is to understand the local labour laws and the consequences of falling afoul of such laws

PHOTO: REUTERS

OVER the past three years, Myanmar has seen tremendous interest from Singapore investors. In a recent survey, close to half of the respondents indicated Myanmar as a market that they were planning to expand into. For any company that is considering expanding its business into this country, an important preparatory step would be to understand one's obligations as an employer under the local labour laws and the consequences of falling afoul of such laws. In Myanmar, the laws which form the backbone of the labour administrative system are contained in several different pieces of legislation and cover areas such as minimum wage, social security and resolution of disputes. This article highlights some of the pertinent points that employers should take note of as well as recent developments in employment laws.

EMPLOYMENT CONTRACTS

The Employment and Skill Development Law 2013 requires employers to enter into employment agreements with employees within 30 days, and such agreements must be approved by the labour office of the relevant township. This law stipulates certain areas that the employment agreement must cover, and the labour office will expect certain employee rights and employer obligations to be included prior to approving the employment agreement. In general, township labour offices rely on a model employment contract issued by the Labour Department of the Ministry of Labour, Employment and Social Security and do not accept substantial deviations from the model employment contract. The approval process by the township labour office can be a long-drawn one, and companies will need experienced advisers to assist in navigating this important approval process.

REMUNERATION AND COMPENSATION

- **Minimum wage:** Under the Minimum Wage Law 2013, employers are required to pay their workers at least the prevailing minimum wage, and non-compliance is punishable by a fine, imprisonment, or both. The minimum wage will be determined by a designated committee, which is required to undertake research and consult with various stakeholders before proposing the minimum wage. In June 2015, after more than two years of deliberation, the committee provisionally set the minimum wage at 450 kyats (53 Singapore cents) per hour and 3,600 kyats per day. This was met with resistance from groups on both sides but is expected to be resolved in the near term as the stipulated deadline was end August 2015.
- **Overtime pay:** The laws regulating working hours of employees are largely contained in two statutes, the Factories Act 1951 and the Shops and Establishments Act 1951. The restrictions on working hours set out in both laws are largely similar. These two laws are intended to cover all employees apart from those in managerial positions. In general, workers are not allowed to work in excess of the specified limit. However where the need arises, they may work overtime up to the specified limit. Employers are required to pay workers double the normal rate for overtime work undertaken.

SOCIAL SECURITY SCHEME

Under the Social Security Law 2012, companies that employ a minimum prescribed number of workers are required to be registered under the country's social security scheme, unless otherwise exempted. Employers and employees are required to make monthly contributions to the social security scheme at the prescribed rate corresponding to the employee's wage class. In addition to social security payments to various insurance and benefits funds for employees, the Myanmar government can determine which companies are required to undertake general liability insurance. Companies which register under this law are exempted from the Workmen's Compensation Act 1923, which provides compensation to workers suffering from injury or death in the course of employment or contracting a disease specific to the nature of employment.

SEVERANCE BENEFITS

In July 2015, the Ministry of Labour, Employment and Social Security issued a notification mandating employers to provide increased severance benefits, which is required to be paid in respect of all cases of termination of employment. The amount payable is dependent on the employee's length of service and can range from half a month's salary for an employee who has worked for more than six months, to thirteen months' salary for an employee who has worked for more than 25 years.

Under general law, there is no exemption for employers to summarily dismiss employees without paying severance benefit. However, the Labour Department's model employment contract contains a list of "grievous offences" and "regular offences", which allow employers to do so. In practice, employers may only dismiss employees without paying severance benefit after three formal warnings have been given.

ADDITIONAL REQUIREMENTS UNDER FOREIGN INVESTMENT LAW 2012

Companies registered under the Foreign Investment Law 2012 are subject to additional requirements. Such companies are restricted to hiring only Myanmar nationals to undertake unskilled work. In addition, 25 per cent of their skilled workforce must comprise of Myanmar nationals during the first two years. This is increased to 50 per cent for the third and fourth years, and 75 per cent by the fifth and sixth years.

RESOLUTION OF LABOUR DISPUTES

Under the Settlement of Labour Dispute Law 2012, all employment disputes are required to go through the mandated negotiation, conciliation and arbitration processes before lock-outs or strikes can be resorted to. For individual disputes, the dispute must be brought before the Conciliation Body, following which if the individual is not satisfied, the dispute may be referred to a competent court. For collective disputes, the dispute must go through an escalating system of dispute resolution bodies (involving the Workplace Coordinating Committee, the Conciliation Body, the Arbitration Body, the Arbitration Council and the Tribunal).

Some criticism has been levelled against the punishment for violation of the arbitration rulings for being too weak. The Myanmar government had previously considered requests for jail terms to be imposed for such violations but decided against it on the grounds that it could negatively impact foreign investment. Instead, the maximum penalty was increased from 100,000 kyats to one million kyats.

LOOKING AHEAD

Myanmar has been working on modernising its laws at a fervent pace since opening up a few years ago, and has pushed out numerous new laws and amendment laws ahead of the elections in November 2015. It will be prudent for companies to keep track of the updates and stay on top of the changes, which would have an impact on their operations within Myanmar, including any decision to make new or further investments in the country. ■

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