
Employment & Benefits

Update on the Industrial Relations (Amendment) Act 2020

Introduction

The Industrial Relations Act 1967 (“IRA”) is a piece of social legislation aimed to promote and maintain industrial harmony and regulate the relations between employers and workmen and their trade unions.

In this Update, we highlight the amendments to the IRA which came into force on 1 January 2021 and the potential impact of these changes on the employers and their workmen.

Representations on Dismissal

Direct reference of representations on dismissal by the Director General of Industrial Relations to the Industrial Court

Before the amendment, where the Director General of Industrial Relations (“**Director General**”) is satisfied that there is no likelihood of the representation on dismissal being settled by way of conciliation at the Industrial Relations Department, he shall notify the Minister of Human Resources (“**Minister**”) of such status. Based on the facts and information placed before the Minister, the Minister will decide whether the representation raises serious questions of fact or law that ought to be referred to the Industrial Court for an award. From 1 January 2021, the filtering mechanism by the Minister has been removed as the IRA now provides that the Director General shall refer the representation to the Industrial Court if there is no settlement¹. This means that representations will be referred to the Industrial Court unless there is a settlement.

Appointment of Guardian Ad Litem for workmen with mental disability

A new provision is added to allow the next of kin of a workman with mental disability to apply to the High Court for the appointment of a Guardian Ad Litem during conciliation at the Industrial Relations Department².

¹ Section 20(3)

² Section 20(6A)

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A workman to be represented by any person duly authorised by him in writing but subject to the permission of the Director General, except an advocate and solicitor

The law remains the same in that no advocate and solicitor is allowed to represent either party during conciliation at the Industrial Relations Department³.

Industrial Court to hear representations on dismissal from workmen employed by statutory authority

Workmen employed by statutory authorities which are published in the Gazette shall be able to file representations on dismissal to the Director General in accordance with section 20 of the IRA⁴. Prior to the amendment, only workmen employed by private entities may file representations on dismissal under section 20 of the IRA.

Industrial Court

Industrial Court proceedings to continue notwithstanding the date of dismissal being disputed and/or the death of the workman

Under section 20(1A), the Director General shall not entertain any representations unless they are filed within 60 days from dismissal. In the event the date of dismissal stated in the Director General's reference is in dispute or incorrect, the Industrial Court is empowered to proceed with the hearing and determine the date of dismissal when hearing and determining the matter before it⁵.

The Industrial Court is also empowered to continue with the hearing of the matter notwithstanding the death of the workman⁶. Similarly, in making an award in respect of a deceased workman, the Industrial Court has the power to award backwages or compensation in lieu of reinstatement or both to the next of kin of the deceased workman⁷.

An Industrial Court award made for the payment of money shall carry interest

Beginning 1 January 2021, an award made by the Industrial Court for the payment of money shall carry interest at the rate of 8% per annum or such lesser rate as the Industrial Court may direct. The interest

³ Section 20(6)(a) and (b)

⁴ Section 52(3)

⁵ Section 29(da)

⁶ Section 29(ea)

⁷ Section 30(6B)

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is to be calculated on the thirty-first day from the date of the making of the award until the award is satisfied⁸.

Appeal against the award of the Industrial Court to the High Court

Anyone who is not satisfied with an award of the Industrial Court may appeal to the High Court within 14 days from the date of receipt of the award⁹. It is, however, not clear whether the party who is not satisfied with the award will still be allowed to proceed with judicial review especially when no appeal is filed within 14 days from the date of the receipt of the award. Judicial review may in this instance be treated as a backdoor to an appeal.

Strikes and Lockouts

Minister to order a strike or a lockout to stop

The Minister is now empowered to order a strike or lockout to stop if the strike or lockout lasts beyond a certain time or scope, thus endangering the life, personal safety or health of the whole or part of the population¹⁰.

Penalty for illegal strike and lockout

The penalty of imprisonment is removed for illegal strike and lockout, but the financial penalties for these have been increased from RM1,000.00 to RM5,000.00¹¹.

Summary of the Amendments to the IRA with the Date of Enforcement

A comprehensive comparison table showing the provisions of the IRA before and after the amendments, together with the date in which the provisions come into force, can be [viewed here](#).

⁸ Section 30(1A)

⁹ Section 33C

¹⁰ Section 44A

¹¹ Section 46(1) and (2)

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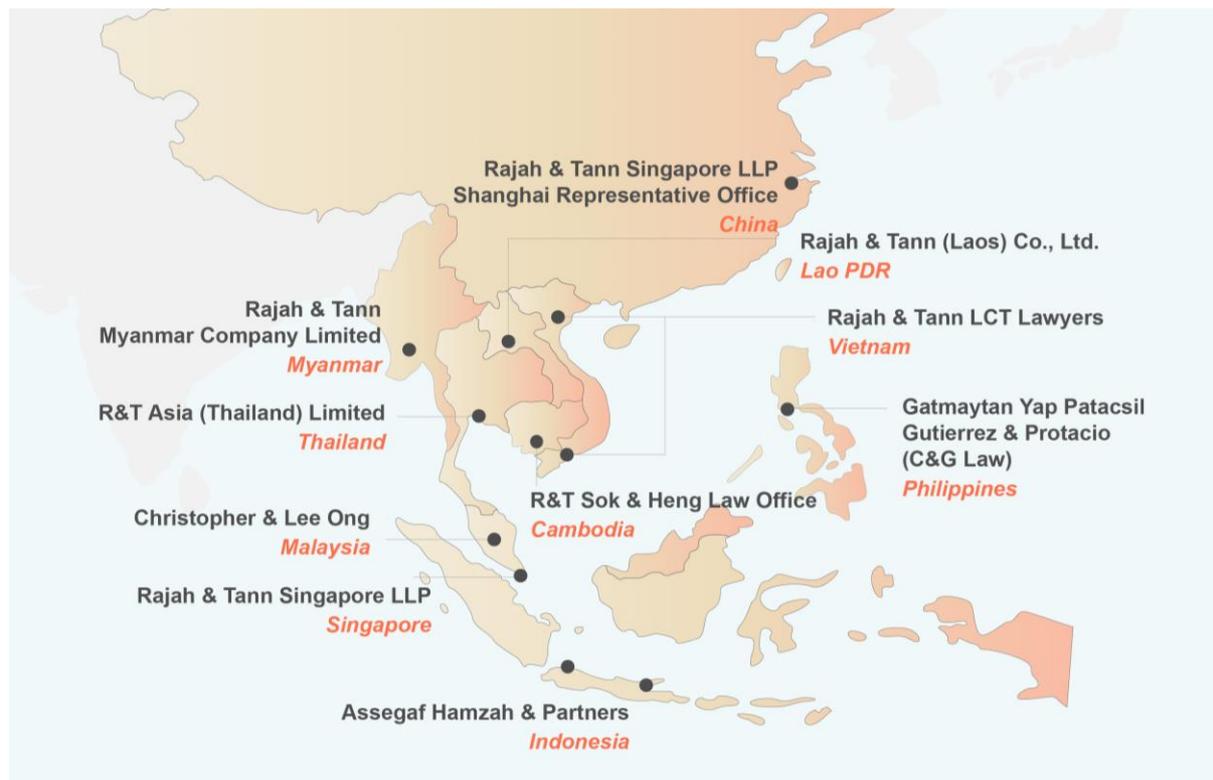
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