

Client Update: Indonesia

21 March 2024

Note on Ministry of Manpower's Statement regarding Holiday Allowances (THR) for Online Ride-Hailing Services



On 15 March 2024, the Ministry of Manpower issued Circular Letter No. M/2/HK.04/III/2024 on the implementation of THR (*tunjangan hari raya*) or religious holiday allowance for 2024 (“**Circular**”). In general, the contents of this Circular do not contain anything new or contrary to Minister of Manpower Regulation No. 6 of 2016 on Religious Holiday Allowances for Workers in Companies and other prevailing laws and regulations related to labour.

Nonetheless, shortly thereafter, on Monday 18 March 2024, the Minister of Manpower held a press conference to formally announce the Circular. During the press conference, an officer of the Ministry of Manpower stated that:

“Online ride-hailing drivers are included in those we encourage to be paid. Even though their working relationship is a partnership, they are categorised under the category of fixed-term employment agreement (*perjanjian kerja waktu tertentu* or “**PKWT**”) workers. So, they are covered by this Circular.”

The officer's statement immediately garnered widespread public response in the news and raised concerns about legal uncertainty regarding THR for online ride hailing and logistic partners.

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Unfortunately, the statement was made by the officer without a detailed reference to the provisions or points in the Circular. Therefore, based on the principle of legality (which states that any kind of government action must have a legal basis) and the Circular, **there is no mandate for partnership-based online ride-hailing application companies to provide THR**. This is also in line with previous court decisions.

Related Court Decisions

Previously, several court rulings have found that a partnership relationship cannot be considered as a PKWT or a definite-term employment agreement (*perjanjian kerja waktu tidak tertentu* or PKWTT). The judges considered that there is no employment relationship. This is due to the absence of a wage element because the driver's income is based on a percentage/commission. A judge in one of these rulings gave the following consideration:

"That between the applicant for cassation and the respondent for cassation, **there is no employment relationship requirement because there is no wage element**. The applicant's income is not fixed because it is based on a percentage/commission, ..."

In another court decision, the judges considered that in the relevant agreement, there is no continuous binding between the plaintiff and the defendant, and there is no sanction if it is not carried out. In their consideration, the judges considered the work system between the plaintiff and the defendant as a partnership, as opposed to an employment relationship based on Law No. 13 of 2003, as amended. The judges also considered that the drivers are not bound by attendance, the parties are not bound by a relationship, and the drivers (in this case as plaintiff) only work when there is an order, as opposed to working based on business hours or days.

Consistently, these previous rulings considered that the employment relationship cannot be deemed or be considered akin to an employment relationship because the "order" (*perintah*) element is absent. Furthermore, there is no element of order in a partnership relation scheme.

If you have any queries on the above, please feel free to contact our team members below who will be happy to assist.

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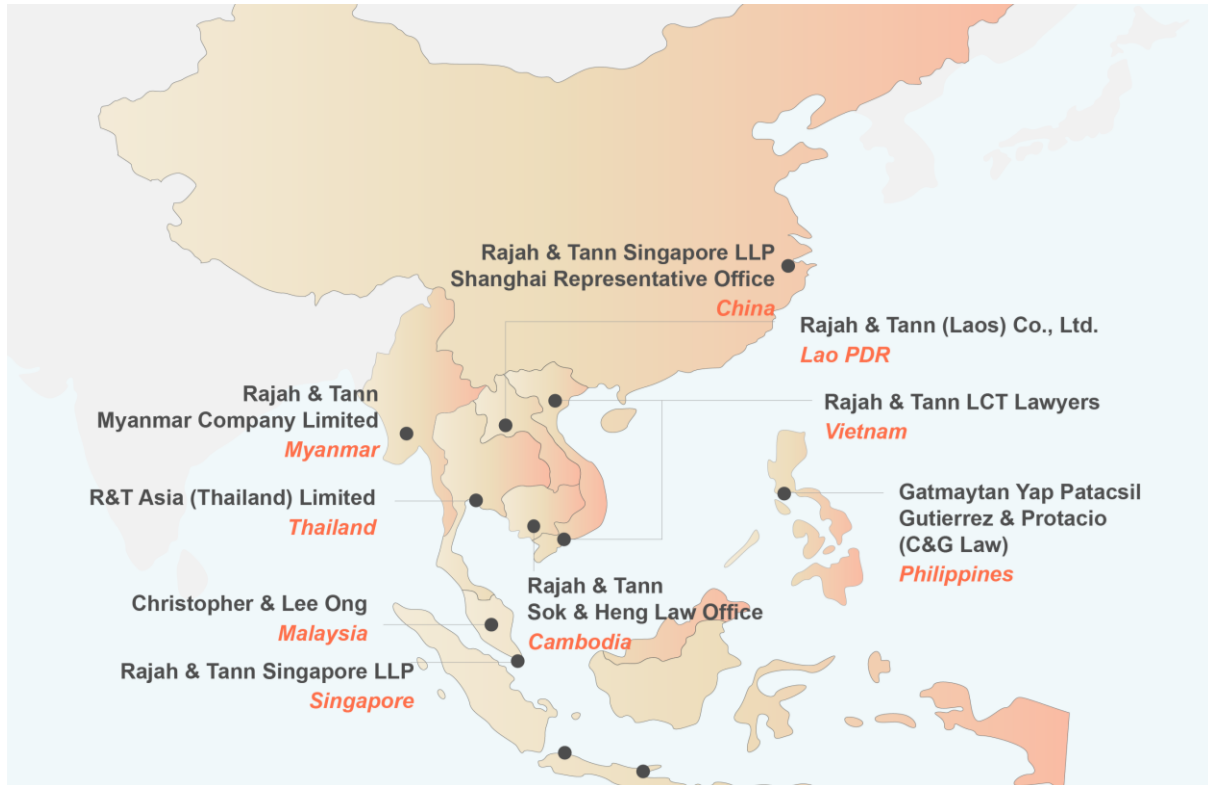
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