

Measure of Labour Law in Thailand for Supporting to AEC

Phasai Samart, Rajamangala University Of Technology Rattanakosin, Thailand

The Asian Conference on Asian Studies 2016
Official Conference Proceeding

Abstract

The research is aimed at studying ASEAN Charter and Thailand's labor commitment; studying and reviewing Thailand's current labor laws; and studying and seeking appropriate approaches for labor law improvement and amendment in accordance with ASEAN Economic Community. The research applied qualitative research methodology by analyzing legal contents, legislation and relevant legal research. Research findings were that Thailand has missions to comply with labor agreements including a free flow of skilled labor in ASEAN Economic Community. The Labor Protection Act B.E. 2541 (1998) and the amendments to the Act do not have any provisions not conforming with Thailand's labor commitment according to ASEAN Charter on labor laws, so there is still no need for labor law amendment.

Keywords: Labor protection, ASEAN Economic Community, ASEAN Charter

iafor

The International Academic Forum
www.iafor.org

Introduction

As Thailand endorsed the ASEAN CHARTER at the 13th ASEAN Summit on 20 November 2007 in Singapore, it became a part of ASEAN Economic Community which is aimed at improving ASEAN to become an effective and people-oriented organization and promoting the strong movement of its 10 member states for progress to the global community. In 2015, the member states pushed forward the establishment of the ASEAN Economic Community according to the objectives and goals of the ASEAN Charter. Through its participation in the ASEAN Economic Community, Thailand obtains both opportunities and impacts in several aspects including the implementation of ASEAN free trade agreements which lead to free flow of labor. However, free flow of labor into ASEAN still faces legal obstacles of each country because the ASEAN Charter is an international law that each member state is required to respect and comply with. Hence, if local legislation and law enforcement of any member state violate the international obligations, such state shall be liable under international laws and its domestic laws shall not be the cause of refusal to the international obligations and liability. But some member states still impede other states by their rules and regulations in a bid to protect their own products and labor. This is an obstacle for ASEAN to fully implement open trade regimes. In addition, since labor protection law is a significant law for the labor sector and Thailand is an associate member of ASEAN Economic Community, the researcher deems appropriate to study and review Thailand's labor protection law to prepare for the implementation of ASEAN Economic Community and for the benefits of Thai labors without any contradiction to the open trade regimes of ASEAN Economic Community.

Research Objectives

1. To study the ASEAN Charter and labor obligations of Thailand;
2. To study and review current labor protection laws of Thailand; and
3. To study and find appropriate approaches for amending the labor protection laws in line with the ASEAN Economic Community.

Research Methodology

This research was conducted using qualitative methods to study the ASEAN Charter, labor obligations and the labor protection laws of Thailand, i.e. Labor Protection Act B.E. 2541 and the amendment, by conducting content analysis, laws, academic articles and related legal research papers.

Research Results

Research results were divided into two parts: Part 1 ASEAN Charter and labor obligations of Thailand; and Part 2 Current labor protection laws of Thailand.

Part 1 ASEAN Charter and Labor Obligations of Thailand

The ASEAN Charter is a draft agreement mutually made by the member states of the Association of Southeast Asian Nations (ASEAN), to be a tool to map out the legal frame and the association's organizational structure, in order to enhance ASEAN effectiveness in operating according to its objectives and goals. The ASEAN Charter is like a constituent instrument of ASEAN's legal framework and organizational

structure pushing forward its development and implementation of the ASEAN Economic Community in 2015 as agreed by ASEAN leaders. The ASEAN Charter comprises a preamble and 55 articles in 13 chapters summarized as follows:

- Chapter 1: Purposes and Principles - The purposes of the ASEAN Charter are to enhance ASEAN's effectiveness as a people-oriented community and to promote more operational compliance.
- Chapter 2: Legal Personality confers a legal status for ASEAN which is an inter-governmental organization.
- Chapter 3: Membership describes member states and admission of new members.
- Chapter 4: Organs describes the organization and its structure which comprises the ASEAN Summit, ASEAN Coordinating Council, ASEAN Community Councils, ASEAN Sectoral Ministerial Bodies, Committee of Permanent Representatives to ASEAN, Secretary-General of ASEAN and the ASEAN Secretariat and ASEAN Human Rights Body.
- Chapter 5: Entities Associated with ASEAN contains a list of associated entities in Annex 2.
- Chapter 6: Immunities and Privileges of ASEAN are about ASEAN Diplomatic immunities and privileges.
- Chapter 7: Decision-making describes decision-making in ASEAN which shall be based on consultation and consensus.
- Chapter 7: Settlement of Disputes describes dispute settlement mechanisms, conciliation and mediation. The ASEAN Summit shall give its final decision on unresolved disputes.
- Chapter 8: Budget and Finance describes operational budget and finance of the ASEAN Secretariat.
- Chapter 9: Administration and Procedure describes the Chairmanship of ASEAN, diplomatic protocol and practices and working language.
- Chapter 10: Identity and Symbols describe ASEAN motto, flag, emblem, day and anthem.
- Chapter 11: External Relations describes beneficial dialogue methods and procedures with external partners.
- Chapter 12: General and Final Provisions describe the implementation of the ASEAN Charter.

It also contains four annexes as follows:

Annex 1 - ASEAN Sectoral Ministerial Bodies

Annex 2 - Entities Associated with ASEAN including parliamentarians, business organizations and think-tanks and academic institutions and accredited civil society organizations.

Annex 3 - ASEAN flag

Annex 4 - ASEAN emblem

The principles of the ASEAN Charter are in adherence to international laws, non-interference in the internal affairs of ASEAN member states, reliance on peaceful settlement of disputes and the centrality of ASEAN in external relations. These make the ASEAN Charter a key pillar of the establishment of the ASEAN Economic Community and reaffirms the legal obligations of ASEAN conventions.

Expected benefits from the implementation of the ASEAN Charter for Thailand are as follows:

1. Benefits from ASEAN cooperation because the Charter will ensure that other member states will comply with the agreed obligations; otherwise there will be mechanisms requiring the member states to comply with the conventions.
2. Ability to cope with global threats that have direct impacts on people more effectively including bird flu, epidemics, natural disaster, global warming and narcotics because the Charter will enhance mechanisms to enable Thailand and ASEAN member states to deal with these problems more promptly and effectively.
3. The ASEAN Charter will promote value of other countries in the region in line with benefits for Thailand, i.e. no use of force as a solution to problems, adherence to the principles of democracy, good governance, rule of law and human rights and upholding human security and sustainable development.
4. Increased negotiating power of Thailand on an international stage as an ASEAN member state because the Charter will help strengthen reliability and rules for ASEAN and enable Thailand to more reasonably convince countries outside the region to deal with global issues that have impacts on the livelihood of the peoples of ASEAN and Thai people.

As one of the co-founders of ASEAN, Thailand is committed to comply with conventions mutually agreed by the member states, especially in terms of labor which comprises free flow of skilled labor in the ASEAN Economic Community to seek cooperation in setting a clear standard for skilled labor and facilitate skilled labor possessing qualifications under ASEAN standards in moving to work for other member states more easily as follows:

1. ASEAN Mutual Recognition Arrangement on Engineering Services enables engineers possessing required qualifications to be registered as an ASEAN Chartered Professional Engineer. The registration will facilitate members in application for the professional engineer license in other ASEAN countries. Applicants have to comply with rules and regulations of that country. However, some countries, including Thailand, have stipulated that ASEAN engineers shall work together with local engineers and those engineers who wish to apply for the registration of professional engineer license shall pass an assessment of a Monitoring Committee in each country. In Thailand, the assessment shall be conducted by the Council of Engineers.
2. ASEAN Mutual Recognition Arrangement on Nursing Services enables nurses possessing required qualifications to be registered or apply for a professional nurse license in ASEAN countries. Applicants have to comply with rules and regulations of that country. Foreign nurses applying for the professional license in other countries shall pass an assessment and be under supervisory control of the monitoring committee of the country of admission. In Thailand, the monitoring committee is the Thailand Nursing and Midwifery Council.
3. ASEAN Mutual Recognition Arrangement on Architectural Services enables architects possessing the required qualifications to be registered as an ASEAN Architect which will facilitate them in application for the professional architect license in other ASEAN countries. Applicants have to comply with rules and regulations of that country. Some countries, including Thailand, have stipulated that ASEAN architects shall work together with local architects and those architects who wish to apply for the registration of a professional architect license shall pass an

assessment of a Monitoring Committee in each country. In Thailand, the monitoring committee is the Architect Council of Thailand.

4. ASEAN Framework Arrangement for The Mutual Recognition of Surveying Qualifications determines guidelines for negotiations on mutual recognition arrangements of future surveying qualifications of ASEAN, either bilateral or multilateral negotiations, by setting fundamental criteria for recognition comprising criteria for education, examination, recognition procedure, information and document systems, discipline and code of ethics and international standards and practices. The ASEAN Mutual Recognition Arrangement on Surveying Qualifications to be made in the future shall not diminish rights, authority and duties of each ASEAN member state in regulation and issuance of internal rules, regulations or laws and shall not bring excessive obstacles. The license issuance and registration of ASEAN surveyors shall comply with internal rules and regulations of each country. In addition, the Framework determines the operational framework and scope of responsibility of the agencies responsible for surveying. Although the Framework Arrangement for The Mutual Recognition of Surveying Qualifications has yet to form a body, it maps out the guidelines to facilitate those who will work in the field in the future. Any ASEAN member state which has readiness can join the negotiation on the mutual recognition of each other's qualifications by adhering to the framework. Meanwhile, other ASEAN member states that are not ready can study the framework arrangement and use it as a guideline for preparedness in terms of export of human resources and dealing with the flow of ASEAN human resources into Thailand.

5. ASEAN Mutual Recognition Arrangement on Medical Practitioners enables medical practitioners possessing required qualifications to be registered or apply for the professional medical practitioner license in other ASEAN countries. Applicants have to comply with internal rules and regulations of that country. Foreign medical practitioners applying for the professional license in other countries shall pass an assessment and be under supervisory control of the monitoring committee of the country of admission. In Thailand, the monitoring committees are the Medical Council of Thailand and Ministry of Public Health. ASEAN's operation under the arrangement shall be under supervisory control of the ASEAN Joint Coordinating Committee on Medical Practitioners which comprises representatives of the monitoring committees of the member states.

6. ASEAN Mutual Recognition Arrangement on Dental Practitioners enables dental practitioners possessing required qualifications to be registered or to apply for the professional dental practitioner license in other ASEAN countries. Applicants have to comply with internal rules and regulations of that country. Foreign dental practitioners applying for the professional license in other countries shall pass an assessment and be under supervisory control of the monitoring committee of the country of admission. In Thailand, the monitoring committees are the Dental Council and Ministry of Public Health.

7. ASEAN Mutual Recognition Arrangement Framework on Accountancy Services determines guidelines for negotiations on mutual recognition arrangements on accountancy services of ASEAN in the future, either bilateral or multilateral negotiations, by setting fundamental criteria for recognition comprising criteria for education, examination, recognition procedure, information and document systems, discipline and code of ethics and international standards and practices. The ASEAN Mutual Recognition Arrangement on Accountancy Services to be made in the future shall not diminish rights, authority and duties of each ASEAN member state in regulation and issuance of internal rules, regulations or laws and shall not bring

excessive obstacles. The license issuance and registration of ASEAN accountancy services shall comply with internal rules and regulations of each country.

The implementation of the mutual recognition arrangement on each professional field will enable experienced licensees in any country to apply for the professional license in other ASEAN countries more conveniently. This will also shorten the inspection process for educational degree or professional knowledge certification but the licensees have to comply with rules and regulations of that country. Operations of seven professional fields shall be under the supervisory control of the coordinating committee of each field which comprises representatives of the member states. Upon endorsement in the arrangement, the member states that are ready to implement the arrangement shall notify other member states of the effective date in writing via Secretary-General of ASEAN, while others that are not ready shall notify other member states in writing via Secretary-General of ASEAN as well.

Part 2 Current Labor Protection Law of Thailand

Labor protection law is the law in which the government stipulates minimum standards for labor practices, mostly the minimum labor practices that employers shall provide for employees. Currently, the enforced labor protection law of Thailand is the Labor Protection Act B.E. 2541 which was amended in B.E. 2551 in the following issues:

1. Amendment to the definition of “Employer” in Section 5 by repealing the statement in (3) regarding lump sum payment, but after the repeal, the statement was again found in Section 11/1 of the Amendment Vol. 2 and expressly described conditions of being an employer by having lump sum payment and violation of the Section shall result in a fine penalty of not over 100,000 baht according to Section 144/1. The separated definition is aimed at creating more clarity on enforcement and interpretation of the labor protection law.
2. Amendment to Section 10 by prohibiting an employer from demanding a security deposit and a security deposit for damage caused by working regardless of money. Formerly, under the Section, the employer shall be prohibited from demanding a security deposit and a security deposit for damage caused by working in form of money only. The Amendment Vol.2 provides a more comprehensive specification by prohibiting an employer from demanding a security deposit regardless of money, other property or suretyship by person, but the prohibition remains under Section 51 on prohibiting employer from demanding a security deposit from a young employee. The amendment also provides criteria and method of type and amount of security deposit stipulated by the cabinet for the legal conformity.
3. Added the provision of employee protection in employment agreement under Section 14/1 by stipulating that employment agreement, working regulations, rules or orders of employer shall not excessively provide employer with more advantages than employees.
4. Amendment to the provision of employee protection from sexual harassment under Section 16 which formerly protected only young and female employees only. Due to social changes, the amendment covers all employees including male employees.
5. Probation contract under Section 17 shall be deemed as an indefinite period contract of employment which shall be notified to employee in writing at least 1 wage payment period in advance.
6. Added determination of working time under Section 23 by specifying details on normal working time. Where the working hours of any day are less than eight hours,

employer and employee may agree to make up the remaining working hours in other normal working days, but not exceed nine hours per day. In case of being agreed by both parties, the Amendment Vol.2 stipulates that employer shall pay remuneration to the daily or hourly employee at a rate of not less than 1.5 times of the hourly wage rate on a working day for the number of exceeding working hours, or to employee who receives wage on a piece rate basis at a rate of not less than 1.5 times the piece rate of wage on a working day for the number of exceeding working hours.

Discussion

As one of the co-founders of ASEAN, Thailand is committed to comply with conventions mutually agreed by the member states, especially in terms of labor, which comprises free flow of skilled labor in ASEAN Economic Community. Bali Concord II stipulates preparation of the ASEAN Mutual Recognition Arrangement (MRA) on qualifications of key professional fields by 2008 to facilitate free movement of professionals, skilled labor and talents in ASEAN. Thailand endorsed the ASEAN Mutual Recognition Arrangement on Engineering Services in 2005; ASEAN Mutual Recognition Arrangement on Nursing Services in 2006; and the ASEAN Mutual Recognition Arrangement on Architectural Services and Surveying in 2007. Some countries, including Thailand, stipulate that ASEAN engineers and architects shall work together with local engineers and architects and those engineers and architects wishing to apply for registration shall pass an assessment of the Monitoring Committee in each country. In Thailand, this will be conducted by the Council of Engineers and the Architect Council of Thailand, respectively. Benefits that ASEAN member states are going to obtain from the implementation of MRA in each field will enable experienced licensees in any country to apply for the professional license in other ASEAN countries more conveniently. This will also shorten the inspection process for educational degree or professional knowledge certification, but the licensees have to comply with rules and regulations of that country.

The Labor Protection Act B.E. 2541 and the Amendment currently implemented have been improved to meet international standards by amending the definition of “Employer” and “Employee”; prohibiting employer from demanding a security deposit from employee; stipulating that employment contract or working regulations, rules or orders of employer shall not excessively provide employer with more advantages than employees; amending the provision of employee protection from sexual harassment; stipulating that probation contract shall be deemed as an indefinite period contract of employment which shall be notified to employee in writing at least 1 wage payment period in advance; determining daily working time and wage and overtime payment for employee; and no provision in any section shall discriminate labor protection between Thai and foreign labor, regardless of ASEAN or other countries.

Conclusion and Suggestion

Initially, there are no provisions in the Labor Protection Act B.E. 2541 and the Amendment contradicting Thailand’s obligations according to the ASEAN Charter regarding labor laws, so there is no necessity to amend the laws. However, as there are many volumes of labor-related laws, it is needed to thoroughly analyze other volumes of labor laws in the future.

References

Kanchana Phunkaeko. ASEAN and Labor. International Labor Standards Group Labor Standard Development Bureau. Mimeographed.

Kritchayaphak Aunseri, ASEAN Economic Community, Sor Dor Ror knowledge document. Damrong Rajanubhab Institute Office of the Permanent Secretary for Interior (2011).

Thailand Development Research Institute. (2011) Final Report on Study Project of Readiness of Manpower for Free Trade of Goods in 89 Sectors According to the AEC Framework.

Tullaya Rojtangkham and Khanathip Thongrawiwong. (2011) Legal Measure on Individual Right Protection for Persons Disturbed by Mobile Phone Communication. College of Politics and Governance Maha Sarakham University.

Tiron Phongmakhaphat Assoc. Prof. Dr., Assoc. Prof. Dr. Chutha Manasphaibun, Asst. Prof. Sathitphong Thanawiriyakul, Asst. Prof. Dr. Phaithun Kraipornsak. (2011). Research Project on Impact of Free Trade on Thai Labor Department of Labor Protection and Welfare Ministry of Labor.

Somchai Kongterm. (2012). Study on Readiness on Approaching the ASEAN Economic Community of Students of Phetchabun Rajabhat University Research and Development Institute Phetchabun Rajabhat University.

Chula Unisearch, Chulalongkorn University. Final Study Report on “Preparation Project for Labor Mobility for Implementation of ASEAN Economic Community” International Public Relations Bureau.(2011). the Government Public Relations Department May.

Labor Protection Act B.E. 2551 (Second Amendment)