

BIPO TIMES



Labour Contracts Across ASEAN – Part 1

— Brunei, Cambodia, Indonesia, Laos and Malaysia

ASEAN

- Formally known as the Association of Southeast Asian Nations, the ASEAN is an Association for Regional Cooperation among the countries of Southeast Asia and Indonesia post-colonial rule.
- Comprises 10 member states:
- Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.
- Established to lay the framework of regional dialogue and cooperation, ASEAN has since successfully entered several formal and legally-binding instruments, such as the 1976 Treaty of Amity and Cooperation in Southeast Asia and the 1995 Treaty on the Southeast Asia Nuclear Weapon-Free Zone, maintaining amiable relations amongst member states.

Nation Specific Labour Contracts

1. Brunei

- a. All contracts are to be in writing should the engagement with a worker:
 - Exceed one month or a number of working days exceeding 26;
 - The performance of a specified piece of work for an employer is unable to be completed within one month from the commencement of the work;
 - Stipulates conditions of employment which differ materially from those customary in the district of employment for similar work.
- b. The engagement shall be in writing and shall be signed by both parties:
 - If the omission to make in writing any contract is due to the wilful act or negligence of the employer, the worker is, without prejudice to any right he may have to sue for damages for breach of contract, entitled to apply to the Commissioner for cancellation of the contract.

c. Contracts are required to state:

- The name of the employer or group of employers and, where practicable, of the undertaking and the place of employment;
- The name of the worker, the place of engagement and the place of origin of the worker, and any other particulars necessary for his identification;
- Names and addresses of the next of kin of the worker;
- Nature of the employment;
- Duration of the employment and the method of calculating this duration;
- Appropriate period of notice to be given by the party wishing to terminate the contract;
- Rates of wages and method of calculation thereof, the manner and periodicity of payment of wages, advances of wages, if any, and the manner of repayment of any such advances;
- Worker benefits such as healthcare the employee is entitled to;
- Measures to be taken to provide for the welfare of the worker and any dependant who may accompany him under the terms of the contract;
- The conditions of repatriation;
- Any special conditions of the contract.

d. Social Security Program in Brunei:

The provident fund and universal old-age and disability pension system are social security programmes available in Brunei.

- Provident Fund
 - All employees up to age 55 who are citizens or permanent residents of Brunei, including government civil servants who began service on or after January 1, 1993, are covered by this fund. (Civil servants who began service before January 1, 1993, are covered by the government pension scheme.)
 - Voluntary coverage for persons aged 55 or older and self-employed persons.
 - Exclusions: Foreign workers
 - Contribution rates are as follows:
 - 5% of monthly salary by employees and 5% of monthly payroll by employers.
- Universal Old-Age and Disability Pension System: Costs funded in full by the Brunei government for all locals.

2. Cambodia

a. Cambodian labour contracts can be for either a fixed term or indefinite term:

- Fixed term contracts to be in writing. Indefinite term contracts may be concluded verbally.
- Employment contract can be written or oral, may be drawn up and signed between the two parties before commencement of employment.
- The contract must also be registered at no cost, if registration is required.
- The verbal contract is considered to be a tacit agreement between the employer and worker under the conditions laid down by the labour regulations, even if it is not expressly defined.
- Fixed term contracts cannot be for durations longer than 2 years and has a precise starting and end date. It may be renewed many times however the total duration (including renewals) cannot exceed 2 years.

b. The Civil Code provides that a labour contract must contain a description of the following:

- Wages;
- Working hours;
- Other working conditions (i.e. wage, hours or work, night work, weekly rest, paid annual leave, public holidays, and special leave).

c. Social Security Program in Cambodia:

Social Insurance is available to all Cambodian nationals.

Those entitled to this programme are able to utilize it in the event of sickness, maternity, disability, retirement, deaths and funerals, health insurance and housing loans.

d. Social Security Contribution

- Employers with at least eight employees must register itself and its employees with the National Social Security Fund (NSSF).
- Employers are required to contribute Occupational Risks Contribution (ORC) and payment for healthcare for their employees to the NSSF. The contribution rate for OCR is 0.8% of the monthly average wage of the employee. In addition to the OCR, the healthcare contribution from both employers and employees at 1.3% each of the monthly average wage of the employee is also required. Effective 1 Jan 2018, this obligation to pay the contribution of healthcare shall be the responsibility of the employer.

3. Indonesia

a. Indonesian labour contracts can be for either a fixed term or indefinite term:

- Indefinite term contracts may be in oral or writing. A fixed-term agreement must be concluded in writing in the local Bahasa Indonesia language.
- The contract may be bilingual – Bahasa Indonesia and the language of the foreign party. However, in case of any conflict, the Indonesian version prevails.
- The fixed term contract may be undertaken for a period of maximum two years and may only be extended once for a maximum period of one year.
- Fixed labour contracts can be renewed once for a period of two years after a grace period of 30 days following the expiry of the first term of the contract. An indefinite term employment contract is open-ended.
- In terms of worker rights and protection, fixed-term and part-time employees have similar entitlements as employees on an indefinite contract, including wages, overtime pay, leave, and social security.
- Certain additional benefits under the employment law may apply for employees who have indefinite-term employment agreements, such as the right to receive a severance package upon termination by the employer.

b. The rules on fixed-term contracts do not apply to expatriate employees. They are permitted to work in Indonesia for a specified term and a work permit can only be issued for a one-year term at a time, except in certain cases.

BPJS Tenaga Kerja / Employment BPJS	Paid by Employee	Paid by Employer	Total	Remarks
Jaminan Hari Tua (JHT) / Retirement Guarantee	2%	3.7%	5.7%	No cap
Jaminan Kecelakaan Kerja (JKK) / Work Accident Guarantee	0%	(appendix ¹)		No cap
Jaminan Pensiun (JP) / Pension Guarantee*	1%	2%	3%	8939700*
Jaminan Kematian (JK) / Death Guarantee	0%	0.3%	0.3%	No cap

Minimum rate multiplier is minimum wage (UMP). Eff 1 Jan 2021 for Jakarta : IDR 4,416,186

Note : Wage is consist of Basic Salary + Fix Allowance

*Cap effective 1 March 2020

Appendix ¹ (Industry Risk Category)	Rate
1. Very Low Risk	0.24%
2. Low Risk	0.54%
3. Medium Risk	0.89%
4. High Risk	1.27%
5. Very High Risk	1.74%

BPJS Kesehatan / Health Insurance	Paid by Employee	Paid by Employer	Total	Remarks
Jaminan Kesehatan / Health Insurance	1%	4%	5%	12000000*

Minimum rate multiplier is minimum wage (UMP). Eff 1 Jan 2020 for Jakarta : IDR 4,416,186

Note : Wage is consist of Basic Salary + Fix Allowance

*Cap effective 1 Jan 2020

4. Laos

a. An employment contract is required in Laos. However, the form of the employment contract may differ. Employment contracts may be verbal when the employer is an individual, while an employment contract entered between an employee and a legal entity must be written.

b. Contracts are required to state:

- Details of the employer, full name of the employee and respective addresses;
- Work to be performed (i.e., rights, obligations, duties, and responsibilities of the employee);

- Duration of the contract and the probationary period;
- Wages, including method/form of payment;
- Welfare and benefits the employee is entitled to;
- Working hours, rest days, and holidays;
- Benefits the employee may receive at the end of the contract;
- Any other matters agreed between the parties in accordance with the Labour Law.

The duration of an employment contract may indefinite or definite.

c. Social Security Program in Laos:

The social insurance system in Laos covers all employees of private-sector and state-owned enterprises, civil servants, and police and military personnel. Voluntary coverage is available for self-employed persons. Those entitled to this program are able to utilize it in the event of sickness, maternity, disability, retirement, deaths and funerals, health insurance and housing loans.

Both the employer and employee must contribute to the social security fund, with the total base amount to be calculated capped at LAK 4.5 million :

- 6% of the gross remuneration must be contributed by the employer
- 5.5% of the gross remuneration must be contributed by the employee

Expatriates who work in the country for more than 12 months are required to be registered in the social security scheme in Lao PDR.

5. Malaysia

a. A labour contract must be formalized in writing.

- The contract must include key terms of the employment relationship including:
 - location of work,
 - scope of work,
 - wage rates,
 - wage period,
 - holidays,
 - benefits,
 - matters relevant to preservation of health and safety.

b. The labour contracts are governed by the Employment Act, 1955 and can be established for either fixed term or an indefinite period.

- Employers must take note that if an employee’s fixed-term contract is renewed multiple times, the Malaysian courts may consider the said employee as a permanent employee in the event of any disputes related to dismissal.

c. Social Security Program in Malaysia :

Both employers and employees must contribute to an employee social insurance program through Malaysia’s Employees’ Provident Fund (EPF) and the Social Security Organization (SOCSO) which cover retirement, disability, survivor’s benefits, and medical payment.

- Domestic workers, foreign workers, self-employed, and the spouses of the self-employed are exempt from contributing to both the EPF and the SOCSO.
- Contribution rates are as follows:

Employment Contract in Malaysia

SOCSO / PERKESO (Pertubuhan Keselamatan Social Malaysia in BM)

SOCSO-First Category(Below 60 years old)

Category	% Contributions (Employer)	% Contributions (Employee)
Malaysian / PR & Monthly Salary less than RM 4,000	1.75%- Refer to link as below	0.5%- Refer to link as below
Malaysian/ PR & Monthly Salary ≥ RM 4,000	RM 69.05	RM 19.75

SOCSO – Second Category (Age ≥ 60 and non-Malaysian)

Category	% Contributions (Employer)	% Contributions (Employee)
Malaysian	1.25% of the monthly salary	N/A
Non-Malaysian	1.25% of the monthly salary	N/A

EPF / KWSP (Kumpulan Wang Simpanan Pekerja in BM)

EPF - Employee below 60 years old

Category	% Contributions (Employer)	% Contributions (Employee) (till Dec 2020)
Malaysian / PR & Monthly Salary of RM 5,000 or less	13% of the monthly salary	9% of the monthly salary
Malaysian/ PR & Monthly Salary > RM 5,000	12% of the monthly salary	9% of the monthly salary
Non-Malaysian	RM 5.00	9% of the monthly salary

EPF - Employee above 60 years old

Category	% Contributions (Employer)	% Contributions (Employee)
Malaysian	4% of the monthly salary	N/A
Non-Malaysian	RM 5.00	5.5% of the monthly salary

For the details SOCSO contributions table – please refer to the link enclosed:

<https://www.perkeso.gov.my/index.php/en/24-social-security-protection/employer-and-employee-eligibility/53-rate-of-contribution>

For the details EPF contributions table – please refer to the link enclosed:

https://www.kwsp.gov.my/documents/20126/273744/JADUAL+KETIGA+27032020_ENG.pdf

6. Myanmar

a. The employment contract establishes working relations between the worker and the employer, agreed upon by contracting parties:

- Employment contracts can only be written.
- Employees must be employed under a prescribed standard employment contract template.
- There is no requirement for a written employment contract during pre-employment probation or training period before commencement of employment.
- Employment probation can be no longer than 3 months
- Employment contracts may be of definite (fixed term) or indefinite period.
- All employees in Myanmar are entitled to the same set of statutory employment rights, including entitlement to paid leave, overtime pay, and severance pay.

b. Employment contracts must contain a description of the following :

- Job classifications
- Payments and salaries
- Working hours
- Other working conditions (i.e. overtime, weekly rest, paid annual leave and special leave.)

c. Social Security Program in Myanmar :

The nation's social insurance system covers all local employed persons and apprentices. It has the option of voluntary coverage for self-employed persons, employees of international organizations or foreign governments, seasonal farmers or fishermen, employees of non-profit organizations, employees of firms established for less than three months, family enterprises with no employees, street vendors, day laborers, and part-time and casual workers.

This social security system also provides a special system for civil servants; permanent employees of state boards, state corporations, and municipal authorities; and military personnel.

Those entitled to this program are able to utilize it in the event of sickness, maternity, disability, retirement, deaths and funerals, health insurance and housing loans.

Social security contribution rates :

- Contribution by employees: 2% (up to a max. of MMK6,000 – wef 1 April 2014)
- Contribution by employers: 3% (up to a max. of MMK9,000 – wef 1 April 2014)
- Contribution must be in Myanmar kyats regardless of the currency the employee is paid.

Contributions are deductible by the employee for tax purposes.

Employers are obligated to withhold the employees' contributions from their salaries.

Source: [PwC - Tax Summaries](#)

Conclusion

Labour laws, labour contract requirements, as well as social security systems, do vary greatly by country within ASEAN. While unilateral cooperation between Member States of ASEAN in their efforts to unify labour contract requirements do exist, the labour contract requirements are not uniform across nations. It is hence imperative that companies assess the individual nation's requirements when drafting legally binding contracts to avoid legal complications.

[Note]

This information is for general guidance on matters of interest only, and should not be used as a substitute for consultation with professional accounting, tax, legal or other competent advisers.

Source :

[ASEAN Labour Laws and Practices](#) | [Brunei Laws](#) | [Myanmar Labour Contracts](#) | [PwC](#)

Around the World with BIPO

Singapore | 12 January 2021

BIPO kickstarted the first of its webinar series on labour laws around the region with a session on Singapore's labour and employment regulations. The hour-long session, hosted by Felix Ji (Pre-sales Director, Enterprise Solutions) and Jason Goh (Senior Client Services Specialist), was attended by over 100 attendees and included a live Q&A session.

Malaysia | 20 January 2021

BIPO Malaysia is proud to be named **Best HR Management System (Gold)** at the annual HR Vendors of the Year 2020, organized by Human Resources Online. Now in its sixth year, the annual awards celebrate the exceptional contributions of leading HR solution providers, acknowledging their efforts in supporting the HR community and innovating business performance.

About us

At BIPO, we help businesses transform and digitalise, enabling them to thrive and realise their growth ambitions. Around the world, we support over 1,600 clients across 87 countries and regions with a new generation of HR solutions. Our comprehensive suite of service products from our award-winning cloud and mobile-based HR Management System (HRMS), multi-country payroll calculation, overseas landing services, Business Process Outsourcing (BPO) to attendance automation provide clients with a multi-regional, integrated and seamless user experience.

Our global R&D Centres are the foundation of BIPO's HRMS and Workio platforms, providing cutting-edge, agile, and innovative technology solutions to meet the needs of Industry 4.0. We are also ISO-27001 certified with multi-country compliance, providing clients with the trust and confidence to champion their international growth plans.

Founded in 2004, BIPO is a leading, one-stop global HR service provider with a vast network of offices situated in key gateway cities across Asia: Singapore, Mainland China, Hong Kong, Australia, Cambodia, India, Indonesia, Japan, Macau, Malaysia, Myanmar, Philippines, Taiwan, Thailand and Vietnam. Our APAC Headquarters in Singapore serves as our hub for the region.

✉ hello@biposervice.com

🌐 www.biposervice.com

[in](#) bipo-svc [f](#) biposvc

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