

## HUMAN RESOURCES

**Human Resources** are often claimed to be the most valuable asset and at the same time the greatest challenge to Indonesia's development. For business in Indonesia, HR issues can fall into two clusters: (1) issues arising from manpower laws and regulations, and their implementation, (2) challenges arising in the area of 'workforce management'.

### Manpower Legislation Background

The law known as Kepmen 150 was introduced after the radical changes to government in 1998. Kepmen 150 significantly increased certain rights to severance and service pay, and increased rights for unionization. Objections to Kepmen 150 led to Law No 13, ratified in 2003 and subsequent years.

The legacy of Kepmen 150 was an undisguised politicizing of Labour issues, with minimal concern for the effects on investment and productivity. Law 13 re-adjusted but retained some contentious items. Law 13 supported extensive union rights. In many cases this has not caused problems and has actually encouraged the formalization of management / labour dialogue where previously there was little or none. In some cases, however, the lack of labour education, the hijacking of union frameworks and procedures for private interest, has caused considerable distress to companies and ultimately to the employees.

In a small minority of cases compliance may have reduced productivity and damaged the enterprise. But for the most part, cases handled with proper legal advice from an early stage stand a fair chance of getting resolved equably. Specific examples include the continued difficulty to terminate for poor performance and minor misconduct. If the law is followed and there is a 'level playing field', and the local manpower officer is informed ahead of time, the result can be fair and supported by the relevant labour court. However, it is still the case that the potential costs, wasted time and lengthy procedures for a termination from cause, often make it advisable to seek a mutually agreed termination.

A further example is the recent decisions of the Constitutional Court that undermine the right of companies to terminate for suspected criminal activity or "serious misconduct" before guilt has been established in a court of law. Legal judgments can appear whimsical as the application of the dispute resolution procedure (which is now carried out by the labour courts and not by quasi-judicial manpower tribunals) is subject to decisions from under-trained judges who may be prone to corruption that is reportedly still rife.

In general the Labour Laws support a constructive approach to professional management practices such as goal-setting and performance evaluation. Legal advice on employment contracts that include clear Company 'Codes of Conduct'; will help safeguard companies from the whims of the criminal justice procedures.

### Expatriates and the Labour Law

The legal status of expatriates remains uncertain. The Manpower Minister excluded expatriates from rights provided in laws applying to permanent Indonesia employees, on the grounds the expatriates' very existence in Indonesia is temporary and therefore by nature non-permanent. On the other hand two recent cases found for expatriates who were claiming severance amounts entitled to by permanent employees, one argument used was that ILO Treaty 110 – to which Indonesia is a signatory – bans discrimination.

### Managing the Indonesian Workforce

The Indonesian management and professional workforce in urban areas is developing rapidly. Pre-employment education and in company management education is frequently influenced by western employment education and in company management education is frequently influenced by western principles and respect for employee rights. There is recognition among many younger Indonesian Managers and Professionals that a more participative and empowered workforce produces more consistent results and reduces employee turnover in the longer term. Foreign companies setting up in Indonesia are advised to recognize this trend, and provide continuing management development and education. They should structure their companies in a professional manner, managing in styles that would be acceptable in international companies anywhere in the world. Indonesians who have been educated overseas will expect equal author, expectations and a style in tune with the modern business schools of the western world. The fight for talent and for retaining talented employees is fierce, and those companies that manage these aspects effectively will sustain a distinct competitive advantage.

### **Recommendations**

BritCham takes the position that the move towards a more structured and regulated set of relationships and obligations between employer and workforce is a positive development, but advises and / or promotes and recommends:

- Laws that balance the legitimate rights and needs of the workforce, but that do not lay ever-increasing burdens on the employers. Application of laws and implementing regulations on a nationwide bases with equal treatment being provided throughout all regions.
- Clarifying the rights of companies to terminate employment for serious misconduct, based on Article 158 of Law 13, given that this right has been severely curtailed by the decision of the Constitutional Court. Negotiating terms and conditions for the labour force in return for acceptance of productivity initiatives. The continuing education of both employers (via Kadin and the business schools) and labour (via Unions that need to be better equipped to handle the demands of the 21<sup>st</sup> century)
- Clarification of the introduction of the SJSN system and recognition of the significant financial effect that, if introduced, this will have on employers.
- Further refining of the termination of employment process such that employers are not 'held to ransom' by employees in respect of termination procedures.