



# KEY FACTORS OF HR MANAGEMENT

for Japanese companies in Thailand

19 September 2018



# Presentation Agenda

01

IoT & HR 4.0

02

How to recruit “Highly-educated engineer”

03

How to develop know-how & new technology

04

Robot technology for new S-curve industry in EEC area.

05

How to keep Engineer who got scholarship

06

HR over different countries

07

Termination of Employment - Employee who cannot hit the target.

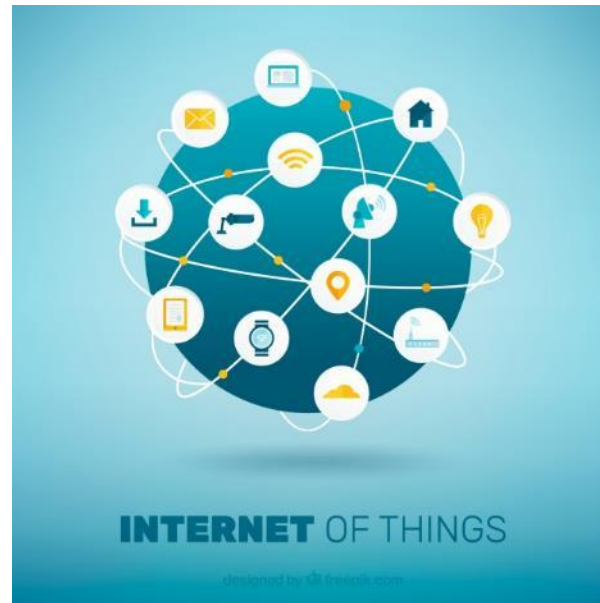
# IoT & HR 4.0

## IOT & HR 4.0+



### Internet of Things (“IoT”) affects the HR management !!

- IoT = is one global digital nervous system of devices and sensors that can connect devices with each other and with people such as **smart watch, tracking device, application, data base system (online) and etc.**
- “Everyone use smartphones & surf the internet most of times.”



# IOT & HR 4.0+

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## Function of HR in different eras.

<b>HR 1.0</b>	Administrative job, recruitment, salary payment, issue warning (day to day routine)
<b>HR 2.0</b>	Due to competition of business, HR has to change the way they work and tend to think “an employee” is essential matter to drive an organization. They carefully recruit and train employees.
<b>HR 3.0 (Current)</b>	HR is strategy planning who is able to plan and suggest about human resource management strategy to the management.
<b>HR 4.0 (Near future)</b>	IoT's will affect the HR working in various ways such as communication within the organization, recruitment, working method, working behavior, working place and etc.

# IOT & HR 4.0+

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## HR 4.0 should ....

- (1) understand and able to use new technology e.g. digital work place, mobile technology
- (2) understand and know how to deal with **Gen X** and **Gen Y** employees.
  - These days, the baby boomer employees are soon to retire. Gen X is becoming senior and Gen Y is soon to be essential factor to drive a company.
  - Different generation has its own working style and attitudes.
- (3) Able to plan the strategy to improve employees' abilities



# How to **recruit** “Highly-educated engineer”

# RECRUIT “HIGHLY EDUCATED ENGINEER” .....

## Recruitment 4.0

- Besides **jobseekers**, there are other person who are welcome good opportunity.
- Attractive job advertisement is important. (It attracts a jobseeker’s attention)
  - Good presentation, good organization.
- Attractive remuneration & welfare: salary, OT, annual leave & etc.



# RECRUIT “HIGHLY EDUCATED ENGINEER” .....

## Recruitment 4.0

- Using “**Mobile Platform**” to recruit
  - Most people use smart phone all times.
  - From the research, Gen Y use the internet 53.2 hours/week
  - These days, jobseekers search for job by mobile phone more than using notebooks.
- Advertise the Job Ad. Online. (70% of jobseekers search for job by using the internet.)
- Sometimes, recruiting via digital platform or social media could filter applicants [ability to use technology]

# RECRUIT “HIGHLY EDUCATED ENGINEER’



## Way to recruit “Highly Educated Engineer”

1. Attend job application seminars in different universities.
2. Use creative job advertisement
3. Post the Job ad. on various platforms e.g. the internet, mobile platform, newspaper, recruitment websites.
4. Use the recruitment website or recruitment service.
5. Search in “Link ID”



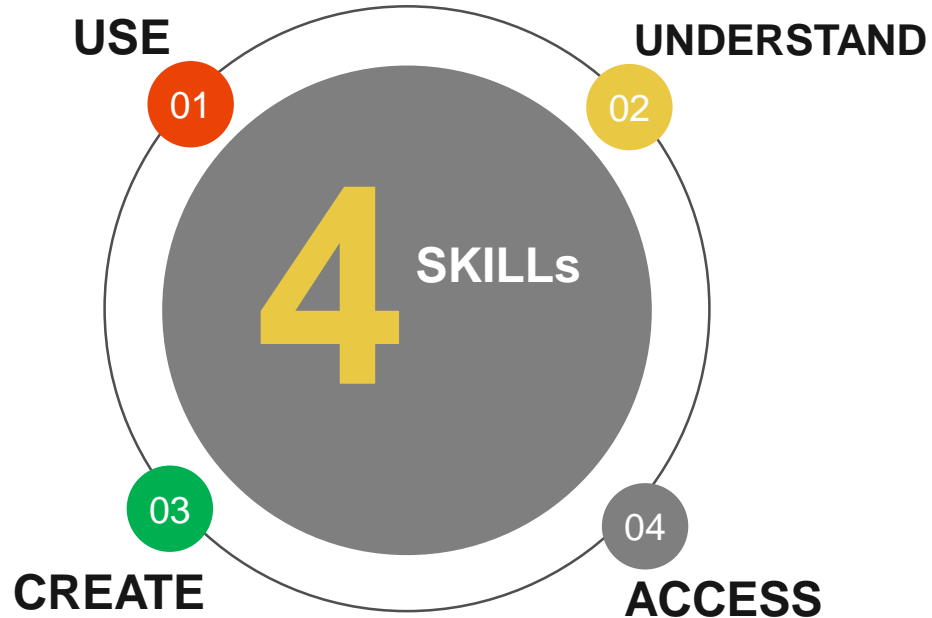
# How to **develop** know-how & new technology

# DEVELOP KNOW HOW & TECHNOLOGY

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## DIGITAL LITERACY

To develop the employees' basis skill in using existent technology to make use of technology for the maximum benefit.



# DEVELOP KNOW HOW & TECHNOLOGY

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## DIGITAL LITERACY

### (1) Use

For using basic computer and internet smoothly.

### (2) Understand

For searching, evaluating, communicating, proper using.

### (3) Create

For communicating via digital technology including creating creative content.

### (4) Access

Software, Hardware including a new technology.

# DEVELOP KNOW HOW & TECHNOLOGY

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## What is **know how**?

- means knowledge of method or techniques of doing something including technical and scientific information, commercial and financial information.
- receive protection as “**trade secrets**”

### **For example :**

formula, manufacturing methods, specifications, customer list, supplier arrangement and the like.

# DEVELOP KNOW HOW & TECHNOLOGY



## What is “Trade Secret”?

- Trade information not yet publicly known or not yet accessible by persons who are normally not connected with the information.
- The commercial values of which derive from its secrecy
- The data that the controller of the trade secrets has taken appropriate measures to maintain the secrecy.
- Example: formula, pattern, program, process, technique, business management plan, details of customers, marketing strategy and lists of company’s customers

**DEVELOP** KNOW HOW & TECHNOLOGY  
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## How to protect the trade secrets?



# DEVELOP KNOW HOW & TECHNOLOGY



## NON-COMPETITION

- “**Non-Competition**” clause is a clause to prohibit either an existing employee or former employee to engage in businesses in competition with his/her current/former employer.
- This clause is enforceable so long as the non-competition is **fair and reasonable**.
- A restriction period of **24 months** since the end of employment.
- If an employee violates such clause, **an employer reserves the right to take legal action to claim for the damages**.

# DEVELOP KNOW HOW & TECHNOLOGY



## NON-DISCLOSURE

- **“Non-Disclosure Clause”** is a clause to prohibit an employer to disclose any important data which an employee acknowledges from working with an employer such as the lists of customer, commercial documents and data specified by an employer.
- specified in the employment agreement or another separated agreement, depending how the parties agree.
- An employer reserves the rights to take on civil legal action for compensation against an employee who breaches such clause.

# DEVELOP KNOW HOW & TECHNOLOGY

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## Interesting points to note!

Although there is no agreement on the non-competition clause or the non-disclosure clause between an employer and an employee.

An employee engage in similar business or disclose the company's data which causes damages to his/her employer.

His/her action may be considered as performing dishonest duty or serious breach of work rules. As a result, an employer may terminate his/her employment immediately without paying severance pay.

# Robot Technology

# ROBOT TECHNOLOGY FOR S-CURVE



## What is Internet of things (IOT)?

- billions of physical devices around the world that are now connected to the internet, collecting and sharing data.

## What is S-Curve industry?

- An industry that has potential to experience a rapid growth, and will be a dominant position in the market

## 5 new S-Curve industries in eec market:

1. Digital industry
2. Robotics industry
3. Aviation and logistics industry
4. Comprehensive healthcare industry
5. Biofuel and biochemical industries

# ROBOT TECHNOLOGY FOR S-CURVE



## How to replace human with robot/machinery? (under the labour protection laws)

- **If the employer consider termination of employment** as a result of...
  - the reorganization of an undertaking, production line, sale or service due to the adoption of machinery
  - the change of machinery or machinery which cause a reduction of the number of Employee
- The employer must inform (i) the Labour Inspector & (ii) the employees in advance **not less than 60 days** before the expected date of termination.

# ROBOT TECHNOLOGY S-CURVE



## How to replace human with robot/machinery? (under the labour protection laws)

- In addition, if the employee whose employment is terminated **has worked more than 6 years**, the employer must pay “special severance pay (15 days for each years of employment).”
- **Fail to inform in advance (never inform / less than 60 days)** =>The employer has to pay....
  - (i) Severance pay (30 days – 300 days of wages)
  - (ii) Special Severance Pay (60 days of latest wages)

# ROBOT TECHNOLOGY FOR S-CURVE



How to replace human with robot/machinery?  
(under the labour protection laws)

- **Another option** => An employer could do as follows:
  - (1) Convince an employee to sign “Mutual separation agreement” (which contain the release clause).
  - (2) Pay the package (cover severance pay)
- Pros => If the employees signs in the agreement, they could not claim for further compensation from termination (except unfair termination).



# How to keep **Engineer** who got scholarship

## KEEP ENGINEER WHO GOT SCHOLARSHIP



- Scholarship agreement = in writing / term & conditions.
- **Conditions:**
  - (1) After finishing the scholarship, employee has to come back and work with the employer 2 or 5 years.
  - (2) If employee does not work as agreed, the employee has to compensate the employer with money in the amount of “2 times of expenses.”

## KEEP ENGINEER WHO GOT SCHOLARSHIP



- If the employee does not comply with the agreement, the employer is entitled to file a lawsuit to claim for compensation.
- However, in practice, the Court tend to order the employee to compensate as long as the terms in the agreement are fair.

# If the condition seems unfair, the Court is able to adjust the compensation amount.

A photograph of three business professionals in an office setting. A man in a dark suit is seated on the left, looking at a laptop. A woman in a dark blazer is leaning over him from the right, pointing at a document on the desk. Another person is partially visible in the background. The scene is brightly lit, suggesting a modern office environment.

# HR Management over different countries

# HR OVER DIFFERENT COUNTRIES

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## Overview of Labour Laws in ASEAN.

- Different countries, different laws.
- ASEAN member like Cambodia Indonesia Lao PDR, Philippines, Myanmar and Thailand >> are obliged to eliminate all form of discrimination against “persons with disabilities.”
- Quota scheme on employment of persons with disabilities  
**1 disability: 100 regular employees** in both public and private sector.

# HR OVER DIFFERENT COUNTRIES



## Minimum age of child labour in ASEAN

Country	Minimum Age
Brunei Darussalam / Lao PDR/ Singapore	14 years old
Cambodia/ Philippines/ Thailand / Vietnam	15 years old
Malaysia /	16 years old
Myanmar	Not specified.

Thailand: Hiring an employee under 15 years old >>

Penalty (imprisonment 2 years or a fine 400k-800k per employee.)

# HR OVER DIFFERENT COUNTRIES



## Suggestion

- Use “Recruitment agency” in such countries >> to avoid risk of violation of laws.
- Under Thai laws, the employer is considered as “co-employer” with the recruitment agency, therefore, the employer has to be jointly liable to the compensation (if the dispute arises).

# HR OVER DIFFERENT COUNTRIES: **THAILAND**



## Thai labour laws

- Strictly protect labour.
- The Labour Protection Act >> stipulates minimum standard of the employment conditions in various matter:
  - working time & rest time
  - traditional holiday, annual holiday
  - remuneration: wages, holiday pay, overtime pay.

# Failure to comply with the standard >> Fine & Criminal penalty



# HR OVER DIFFERENT COUNTRIES : **THAILAND**



## Interesting points to note!

Minimum Wages (Effective since 1 April 2018)	
Provinces	Minimum wages (THB)
Rayong Chonburi Phuket	330 per day.

# HR OVER DIFFERENT COUNTRIES : THAILAND



## Interesting points to note!

- The employer prohibits from demanding “a security deposit for damages to work” from employees >> except such employee is responsible for money + which may cause damage to the employer.
- Male and female should be treated equally.
- Overtime work & Holiday work are required the employee’s consent from time to time.

# HR OVER DIFFERENT COUNTRIES : THAILAND



## Interesting points to note!

### Probationary period

- No mandatory minimum. In practice, not more than 119 days.
- Need to give advance notice in writing before any due date of wage payment >> otherwise, pay the payment in lieu of notice.

# HR OVER DIFFERENT COUNTRIES : **THAILAND**



## Interesting points to note!

Change of employment condition:

- Reduce salary / position / benefit/ welfare
- Transfer employee's working location
- Edit the work regulation which decrease employee's welfare

**>> consent of employee is required !!!**

# INSERT HEADING

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## Latest amendment Labour Protection Law in 2017

(since 1 Sep 2017)

1

**Filing requirement for work rules has been cancelled.** (Just keep it at the place of business)

2

**60 becomes the default retirement age.**  
(employer & employee could agree differently)

3

**Retirement = a dismissal**  
(Entitling employees statutory severance pay)

# INSERT HEADING



## Key proposed developments In 2018

(Still being discussed & the new time line is not yet known.)

1

**Increase of statutory severance payment of employees with 20 years of service.**  
(400 days' wages)

2

**Improved employee' rights.**

- Up to 3 days' additional paid leave days;
- A clear provision allowing the existing 90 day-maternity leave to include days for medical check-ups prior to labour.

# Termination of Employment

# TERMINATION OF EMPLOYMENT



Expiration 期間の満了	Resignation 辞職	Termination 解雇
Expiration of the employment agreement 労働契約の期間の満了	<ul style="list-style-type: none"><li>• Employee's will 労働者の意思</li><li>• Waive letter 合意書面(請求の放棄)</li></ul>	<ul style="list-style-type: none"><li>• Without Cause 従業員に責任がない解雇</li><li>• With Cause 従業員に責任がある解雇</li></ul>



# TERMINATION OF EMPLOYMENT



## Termination with Cause

- **Causes provided by law:** worked dishonestly, intentionally caused damage to the employer, seriously violate work rules, etc.
- The employer must notify the employee of the reason of termination at that time. => **if not**, the employer could not claim that the termination was for “cause” and it will be treated as without cause.
- No need to pay: (1) Severance pay (2) Payment in lieu of notice and (3) Unused annual leave (pro rata basis in the termination year)

# TERMINATION OF EMPLOYMENT

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## Termination because of performance = “Without Cause”

- **(1) Resignation** : convince employee to sign in the separation agreement.  
(Pay package + Release clause); or
- **(2) Temination:** The employer has to do as following:
  1. Give notice in advance (or pay the payment in lieu of notice)
  2. Pay severance pay (depend on years of service – 30 days – 300 day)
  3. Pay wages, overtime pay, holiday pay (calculated until the last day of working)
  4. Pay unused annual leave & accumulated annual leave from the previous year.

# TERMINATION OF EMPLOYMENT



## Termination because of performance = “Without Cause”

- Even the employer pays all statutory payment, the employee is still entitled to claim for compensation (by filing unfair dismissal claim to the labour court).
- If the Court views that the termination is unfair, it has authority to order as follows:
  - Instruct the employer to rehire the employee (rare)
  - Instruct the employer to pay compensation (often)

Q & A

Thank you for your attention

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Ittichai has an active practice in Thai civil and criminal litigation including construction, trade, trade competition, joint venture and shareholders' dispute and customers' cases. Ittichai's other area of strength is employment litigation, including disputes involving labour unions, and matters involving the revocation of orders of the Ministry of Labour, Labour Protection Officer and Labour Relations Committee.