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International Guide To Employment Law

contents

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- Discrimination and equal opportunities issues
- Appointment and termination of senior executives
- Redundancies and collective dismissals
- Employment aspects of mergers and acquisitions
- Outsourcing of services, both domestically and internationally
- European Works Councils, domestic works councils and workers consultation
- Trade unions, collective disputes and industrial action
- Business Transfers
- Protecting confidential information
- Health and safety
- Whistleblowing
- European legislation and its implications for employers
- Work permits and other immigration issues
- Preparation and negotiation of social plans

The Brussels office has direct access to the Commission Directorate responsible and can enter into dialogue with the Commission on behalf of clients.

Introduction

The purpose of this guide

This guide is designed to provide an overview of employment law in a number of key jurisdictions: Australia, China, Dubai International Finance Centre (DIFC), Hong Kong, India, Japan, Russia, Singapore, Turkey, the United Arab Emirates ("UAE") the Ukraine, and the US. It has been limited to a general description of the areas of employment law in each jurisdiction that are of most interest:

- How employees are engaged and dismissed;
- The costs associated with employment; and
- The rights of employees at the end of the period of employment.

Modern employment law is complex, extremely varied across jurisdictions and rarely static. As the pace of development of domestic employment law continues unabated this publication cannot serve as a substitute for current and necessarily detailed advice on particular employment law problems that may arise, but it is hoped that it will provide a valuable and informative outline of the relevant law in the countries covered for our clients.

Unless the context otherwise requires, references in this publication to the masculine include the feminine.

This publication is designed to provide a general summary of the key jurisdictions approaches to employment-related law as at 1 January 2013 (unless otherwise stated). It does not purport to be comprehensive or to render legal advice and consequently no responsibility can be accepted for loss occasioned to any person acting or refraining from acting as a result of any statement in this publication.

Further information

We also have the following additional guides: a Guide to Employment in the European Union, Employment Law in the United Kingdom, Employee Share Plans in the United Kingdom and Employee Share Plans in Europe and the United States.

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Our regular newsletters are designed to keep you up-to-date with new developments in the world of employment law. If you would like to join our distribution list please contact Tania Stevenson (Tania.Stevenson@cliffordchance.com) or your usual Clifford Chance contact.

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Australia

1. Introduction

Australian employment law is comprised of common law and legislation at both Federal and State level. The most significant development in recent years has been the introduction in 2009 of the federal Fair Work Act which has overhauled Australia's workplace relations system. Central to this system is Fair Work Australia which is an independent workplace relations tribunal, and the Fair Work Ombudsman which has the role of enforcing compliance with workplace laws.

2. Categories of Employees

2.1 General

There is no simple definition of "employee" in Australia. The term has a multitude of meanings and applications. At common law, the critical distinction is between an employee and a self-employed independent contractor performing work on their own account but for another party. The difference is relevant to what rights and obligations the person is entitled to under Australian law. The difference may not always be clear. It is to be determined by the common law test which examines the 'totality of the relationship' between the purported employer and employee. Key considerations include the level of control exercised by the putative employer over the manner in which work is performed, the method of payment, whether income tax is deducted, whether a right to delegate exists, and so on.

If a person is an employee, they are entitled to certain statutory protections. An employee's rights under awards and legislation, such as the Commonwealth Fair Work legislation, may be affected by whether they satisfy certain criteria. For example, employees who earn more than a specified income threshold or those who are employed under a contract for a specified period of time are not eligible to make unfair dismissal applications.

2.2 Directors

A director is an 'officer' of a company under the *Corporations Act*. The director may also be an employee of that company depending on whether they have a service contract with the company and receive a salary. A managing director will typically qualify as an employee as well as an officer. Although the *Corporations Act* regulates the position of directors, including their appointment and removal, a director who is also an employee may be entitled to a redundancy payment or compensation if dismissed in breach of his or her employment contract.

2.3 Other

A part-time employee is entitled to receive the same benefits as a full-time employee. A part-time employee's entitlements, however, are calculated by reference to the number of hours worked.

A casual employee does not receive all the benefits of a part-time or full-time employee, such as paid annual leave or sick leave. They are, however, entitled to a higher rate of pay ("casual loading").

3. Hiring

3.1 Recruitment

The recruitment process may be handled by the employer itself or by engaging the services of external agencies to advertise and conduct preliminary interviews.

The employer may choose to recruit internally or externally. If recruitment is external, an employer or agency may headhunt a potential candidate if appropriate. When headhunting, an employer or agency should be careful to make sure that any potential candidate is not subject to a restraint of trade or other similar contractual obligations.

Employers and external agencies must be cautious not to make misleading or deceptive statements in their advertisements or to discriminate against candidates. Otherwise they may find themselves in breach of statutory prohibitions on false and misleading conduct or applicable anti-discrimination and equal opportunity legislation.

3.2 Work Permits

Regardless of the type of employment, an individual who is not a citizen or permanent resident of Australia must hold a valid work visa. Working visas available to foreign employees include:

(a) *Business Development Visa* – the purpose of this visa is to allow business people to establish a business, or manage a new or existing business, or to invest in Australia. These may be both provisional and permanent.

(b) *Business Visa* – permits a business person to make a short-term visit in order to conduct business with Australian-based organisations.

(c) *Temporary Work Visa* – enables persons in Australia for sporting, religious work or exchange activities to work, or, alternatively, persons in particular professions, such as the entertainment industry, to enter for a short period of time for work reasons.

(d) *Specialist Entry Visa* – applicable to persons invited to participate in special programs, such as a community benefit, cultural enrichment or youth exchange program, or nominated individuals on the basis of recognized achievements.

(e) *Skilled Workers Permanent Visa* – these can be obtained by persons with recognized skills seeking to work in Australia through sponsorship by an Australian employer.

(f) *General Skilled Migration Program* – professionals and other skilled migrants who are not sponsored by an employee may be eligible for a Skilled Visa if they are trained in occupations prescribed by the Australian government. They may be sponsored by a relative.

(g) *Seasonal Workers Program* – employers may sponsor citizens of

certain Pacific nations to enter Australia for short-term work typically in the agricultural industry.

4. Discrimination

Australia's anti-discrimination laws are contained within a number of statutes at both Federal and State level. This legislation applies independently of and in conjunction with the *Fair Work Act 2009* (Cth) (FWA).

Under section 351 of the FWA, an employer must not take adverse action against a person who is an employee, or prospective employee because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. Adverse action refers to:

(a) dismissing an employee;

(b) injuring an employee in their employment;

(c) altering an employee's position to their detriment;

(d) discriminating between one employee and other employees;

(e) refusing to employ a prospective employee;

(f) discriminating against a prospective employee on the terms and conditions in the offer of employment;

(g) if the action is taken for a discriminatory reason.

The Fair Work Ombudsman deals with complaints in relation to workplace discrimination. An application may also be made to Fair Work Australia, particularly in instances where an employee's contract has been terminated for potentially discriminatory reasons.

Bullying and/or harassment, as well as differential treatment, do not necessarily constitute discrimination for the purposes of the FWA. An apparent adverse action may not be considered discriminatory in circumstances where the action:

(a) is permitted under State or Territory anti-discrimination laws;

(b) is necessary for the particular position;

(c) is taken against a staff member of an institution run in accordance with religious beliefs, and the action is taken in good faith and to avoid injury to those religious beliefs.

5. Contracts of Employment

5.1 Freedom of Contract

There is little restriction on what the terms of an employment contract may contain provided that the statutory minimum requirements are incorporated. These minimum requirements are known as the National Employment Standards (NES) and include:

(a) *Maximum weekly hours of work* – 38 hours per week, plus reasonable additional hours;

(b) *Request for flexible working arrangements* – parents or carers of a young child or a disabled child under 18 years old are entitled to request changes to working arrangements in order to care for the child.

(c) *Parental leave and related entitlements* – Up to 12 months' unpaid leave per employee, plus a right to request an additional 12 months' unpaid leave, plus other forms of maternity, paternity and adoption-related leave;

(d) *Annual Leave* - four weeks' paid leave per year, plus an additional week for certain shift workers;

(e) *Personal/Carer's leave and compassionate leave* – 10 days' paid personal/carer's leave, two days' unpaid carer's leave as required, and two days' compassionate leave (unpaid for casuals) as required;

(f) *Community service leave* – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid up to 10 days for jury services;

(g) *Long service leave* – a transitional entitlement for employees as outlined in an applicable pre-modernised award, pending the development of a uniform national long service leave standard;

(h) *Public holidays* – a paid day off on a public holiday, except where reasonably requested to work;

(i) *Notice of termination and redundancy pay* – up to five weeks' notice of termination and up to 16 weeks' severance pay on redundancy, both based on length of service;

(j) *Provision of a Fair Work information statement* – must be provided by employers to all new employees. It contains information about the NES, modern awards, agreement-making, the right to freedom of association (such as to political parties), termination of employment, individual flexibility arrangements, union rights of entry, transfer of business, and the respective roles of Fair Work Australia and the Fair Work Ombudsmen.

Contracts of employment may also be subject to any applicable modern awards, which establish one set of minimum conditions for employers and employees across Australia on the basis of industries and occupations.

5.2 Form

There is generally no legal requirement governing the form of a contract of employment. Consequently, a contract of employment may be written, oral or a combination of both.

Where applicable, an employer may be required under applicable state or federal law to have the relevant award(s) either clearly posted in the workplace or readily available for inspection by employees.

5.3 Trial Periods

Trial or probationary periods vary in length from one to two weeks up to six months or more. It will depend upon the nature of the employment and any agreement between the parties.

5.4 Confidentiality and Non-Competition

Provided that there are no valid restraints of trade provisions in their contract an employee is free to set up a competing business following termination of their employment. An employee may make use of skill and knowledge obtained in the service of their former employee. An employee is not, however, permitted to use any confidential information obtained in the course of their previous employment.

A restraint of trade is enforceable only to the extent that it is found to be reasonable to protect the legitimate interests of the employer. The onus of establishing the reasonableness of the restraint clauses will lie with the employer.

Whether a restraint of trade is reasonable will depend on whether the employer has a legitimate protectable interest and whether the restraint is no more than reasonable for the legitimate protection of that interest.

The courts will only enforce restraints of trade to protect a proprietary right of an employer, and not if the restraint is merely to prevent competition or against the use of personal skill and knowledge acquired by the employee in his employer's business.

Conventionally, the interests that may be the subject of such protection include proprietary information, and goodwill or customer connection. Staff connection has also been recognised as an interest which may support a restraint on recruitment of staff.

5.5 Intellectual Property

The *Patent Act* (Cth) does not contain any provisions expressly dealing with the ownership of patents for inventions by employees. However, section 15(1)(b) of the Act refers to a person who "would, on the grant of a patent for the invention, be entitled to have the patent assigned to the person". This has been interpreted to include a person such as an employer over an invention by an employee in the course of employment. Whether the employee is entitled to have the patent assigned will be determined on the facts of the case and will be affected by any express provisions in the contract of employment. Notwithstanding that there is no express term, the employee may still be required to hold any invention on trust for the employer by virtue of an implied term in the contract. This will be the case if the invention was created by the employee while undertaking the work he or she is required to perform.

The *Copyright Act* (Cth) provides that an author of a literary, dramatic, musical or artistic work will be the owner of any copyright in the work. Unless there is an agreement to the contrary, however, if the work is authored by an employee in the course of employment under a contract of service or apprenticeship, the employer will generally be the owner of any copyright.

In certain situations the author will retain ownership of the copyright to a limited extent. Specifically, if the author is employed by the proprietor of a newspaper, magazine or similar periodical, and the work is authored for the purpose of inclusion in that publication, the author will be the owner of the copyright to the extent it relates to the work's reproduction in a book or in the form of a hard copy facsimile. For all other intents and purposes, the proprietor owns the copyright. Subject to the above, if the work is a photograph taken for a private purpose or a portrait of another and made by agreement for valuable consideration, the author will be owner of the copyright in so far as he or she may prevent the work being used for other than the express or impliedly stated purpose.

6. Pay and Benefits

6.1 Basic Pay

An employee's right to receive remuneration for work performed will usually arise under their contract of employment. The quantum of entitlement may be affected by statute and awards and industrial agreements. The national minimum wage in Australia is prescribed by the Minimum Wage Panel of Fair Work Australia. As at July 2012, the minimum rate is $15.96 per hour or $606.40 per week. No employer may pay less than this amount, even if there is an express agreement with the employee. Casual employees may be entitled to receive at least a 23% casual loading. For award and agreement-free junior employees, the sliding percentage scale set out in the *Miscellaneous Award 2010* is applied to the federal minimum wage.

6.2 Pensions

An employer must pay at least a 9% superannuation contribution to all eligible employees. An employee will be eligible to receive these super contributions if they are both (i) between 18 and 69 years old; and (ii) paid $450 or more (before tax) per month. It does not matter whether the employee is employed on a full time, part time or casual basis.

6.3 Incentive Schemes

Employee incentive schemes or plans are offered by some employers in Australia to compensate and attract valued employees but are not mandatory.

6.4 Fringe Benefits

Fringe benefits are any right, privilege, service or facility received by employees by virtue of their employment. The benefit is not, however, necessarily limited to use relating to the individual's employment. It may, for example, be for private use by

the employee and his or her family, such as the provision of a company car by the employer.

The *Fringe Benefits Tax Assessment Act 1986* makes an employer liable to pay tax on the value of the fringe benefits provided to a given employee.

6.5 Deductions

An employer may take a deduction from an employee's pay in a limited number of circumstances. A deduction is permitted if:

(a) The deduction is authorised by legislation or the Courts, such as income tax deductions, superannuation contributions and garnishee orders of debts;

(b) The deduction is authorised by an award or Fair Work Australia order;

(c) The employee consented in writing to the deduction and it is predominantly for the benefit of the employee; or

(d) The employee authorised the deduction pursuant to an enterprise agreement.

Deductions will not be permitted if it is either for the benefit of the employer and unreasonable in the circumstances, or if the employee is less than 18 years of age and their parent or guardian has not approved the deduction.

7. Social Security

7.1 Coverage

In Australia there is a system of social welfare payments which is administered by the Commonwealth Government through the Department of Human Services.

There are a number of different benefits available via Centrelink, a division of the Department of Human services. The primary benefits related to employment include:

(a) *Newstart Allowance* – financial assistance for the unemployed. A claimant must be actively looking for work and satisfy certain requirements, such as attending training courses, to continue to receive payments.

(b) *Youth Allowance* – financial help for persons aged 16-21 years old and looking for full-time work. Full-time students and apprentices aged between 18-24 years old are also eligible to receive the payment.

(c) *Austudy* – financial help to full-time students or apprentices who are over 25 years old.

(d) *ABSTUDY* – financial assistance for Aboriginal and Torres Strait Islander Australians who are full-time students or apprentices.

(e) *Parenting Payment* – financial support for the main carer of a child. The amount received will differ depending upon the parent's income.

(f) *Jobs, Education and Training Child Care Fee Assistance* (JETCCFA) – assistance with the cost of child care if the parent is either seeking employment, employed, or studying.

(g) *Disability Support Pension* – financial aid for persons with a physical, intellectual, or psychiatric condition who earn a low income.

(h) *Assessment Subsidy for Overseas Trained Professionals program (ASDOT)* – financial support for overseas-trained professionals to re-qualify in Australia.

Eligibility to receive these benefits will be subject to a number of requirements, such as means testing.

7.2 Contributions

There are no employer/employee social security contributions in Australia. Social security benefits are financed from Government general revenues.

8. Hours of Work

The National Employment Standards (NES) which are mandatory provide that full-time employees in Australia are to work a maximum of 38 hours per week or such additional hours as are required by their employer so long as those additional hours are reasonable. A part-time or casual employee's hours of work must not exceed the lesser of 38 hours or the employee's ordinary hours of work in a week. Whether or not the additional hours are unreasonable will depend on the particular circumstances. Relevant factors may include whether notice was given to the employee, whether the employee is entitled to overtime payments or other compensation for the extra work, and whether there is any risk to health and safety.

Pursuant to an award or an agreement with the employer, an employee may average their ordinary hours of work across a period no longer than 26 weeks. The average weekly hours must not surpass the employee's maximum weekly hours for that same period.

9. Holidays and Time Off

9.1 Holidays

A minimum of four weeks' paid annual leave is guaranteed for full time workers by the NES. Annual leave entitlement is based on an employee's hours of work and, if not taken, accumulates yearly. Certain shift-workers are entitled to a minimum of five weeks' paid annual leave. Casual employees are not eligible for paid annual leave.

9.2 Family Leave

The NES ensures that all Australian employees are entitled to unpaid parental leave when a new child is born or adopted. Both parents are eligible to take unpaid parental leave for separate periods of up to 12 months. If only one parent chooses to take parental leave or if one parent desires to extend his or her

period of leave, that employee may request a further 12 month period of leave from the employer.

Employees may also be eligible for paid parental leave by virtue of an award, agreement, company policy or legislation.

9.3 Illness

The NES entitles full time employees to a minimum of 10 days' paid personal or carer's leave. Personal leave includes sick leave. In addition, an employee is entitled to two further days of unpaid carer's leave in order to take care of an immediate family or household member who is ill or has an emergency situation.

Part-time employees are entitled to sick leave based on a *pro rata* calculation of the number of hours worked.

Paid personal leave, if not taken, accrues yearly.

9.4 Other Time Off

Other recognised forms of leave in Australia include:

(a) *Long Service Leave* – long-term employees, including casual employees, are entitled to a period of paid leave. The period of leave varies depending upon the relevant State or Territory law or applicable award or agreement. The entitlement generally arises after 7-15 years of continuous employment.

(b) *Community Service Leave* – all employees are permitted leave by the NES in order to engage in prescribed community service activities, such as jury duty or volunteer emergency services.

(c) *Public Holiday Leave* – employees are entitled to a paid day off on a public holiday subject to reasonable requests to work.

(d) *Compassionate Leave* – full time and part-time employees are entitled to two days' paid compassionate leave if an immediate family or household member has a life-threatening illness or dies. A casual employee is entitled to two days' unpaid leave in the same circumstances.

10. Health and Safety

Workplace health and safety is governed by the laws of each State and Territory.

10.1 Accidents

The statutory duty to prevent injury in the workplace is wide-reaching. NSW legislation imposes a primary duty of care on persons conducting a business or undertaking, including employers, not to expose workers to health and safety risks in the workplace in so far as it is reasonably practicable. A person with management or control of a workplace is also subject to a similar duty to ensure the health and safety of workers. An officer of a company must exercise due diligence to ensure the relevant duties are complied with. Notwithstanding the duties owed to him or her, a worker must take reasonable care for their own health and safety and those around them. A worker may be, amongst others, an employee, an independent contractor or a volunteer. Any of the above duties will be breached by a failure to comply or reckless conduct.

In the event of an accident in the workplace, the injured worker may be entitled to workers compensation. The nature of the compensation will vary depending on the situation but can include weekly payments, a lump sum payment if the injury is permanent, payment of medical bills and legal expenses.

10.2 Health and Safety Consultation

The *Work Health and Safety Act 2011* (NSW) requires consultation between the persons conducting a business or undertaking and workers. It is an important opportunity for employees to genuinely participate in decision-making about all aspects and issues concerning workplace health and safety in their workplace.

Consultation involves:

(a) Sharing relevant work health and safety information with workers;

(b) Giving reasonable opportunity for workers to express their views and to raise health and safety issues;

(c) Giving reasonable opportunity for workers to contribute to the decision-making process relation to any health and safety matter;

(d) Taking the views of workers into account; and

(e) Advising workers of the outcome of any consultation in a timely manner.

11. Industrial Relations

11.1 Trade Unions

All Australian employees are entitled to choose whether or not to join a trade union. An employer may not discriminate against or terminate the employment of an employee who is a member of a trade union.

11.2 Collective Agreements

Since January 2010, collective agreements no longer exist in Australia. Existing agreements will continue to apply until they are terminated or are replaced by an enterprise agreement. The *Fair Work Act* instead permits three new types of enterprise agreements which set out the terms and conditions of employment:

(a) *Single-enterprise agreements* are between one employer and a group of employees. In certain situations more than one employer may be involved, such as when there are two or more employers by virtue of a joint venture.

(b) *Multi-enterprise agreements* are made by two or more employers and groups of their respective employees.

(c) *Greenfields agreements* can exist only where there is a genuine new enterprise which is yet to employ workers. It is made by one or more employers with one or more unions.

A union official may be involved in the negotiations between employer and employees as a bargaining representative.

Enterprise agreements may canvass a broad range of matters including rates of pay, employment conditions, the consultation process, and dispute resolution procedures. The agreement must be approved by Fair Work Australia. Approval is contingent upon Fair Work Australia being satisfied that the parties to the agreement have genuinely agreed to it and that the better off overall test is satisfied.

11.3 Trade Disputes

Trade disputes or "industrial action" as they are described in Australia may arise from employees going on strike or refusing to perform their normal duties, or from employers refusing to pay or allow employees to work (lock out). Industrial action will be lawful if it is considered to be protected industrial action. That is, if it is taken:

(a) After an existing agreement has passed its expiry date; or

(b) In support of a new enterprise agreement; or

(c) In response to industrial action by the other side; and

(d) Where both sides are making a genuine attempt to reach an agreement; and

(e) After the requisite notice has been given to the other party.

If, however, action is taken while bargaining has been suspended or purports to be in support of a multi-enterprise or greenfields agreement or advocates the inclusion of unlawful terms or contravenes a Fair Work Australia order, the industrial action will not be protected.

Fair Work Australia may order the suspension or termination of protected industrial action. A Fair Work Australia order can prevent or stop unprotected industrial action. If an order is made, it is enforceable by the Courts.

11.4 Information, Consultation and Participation

Employees or employers are not prohibited from taking part in lawful or protected industrial action.

Written notice must be provided to the other party prior to industrial action. If employees are taking industrial action which is not in response to the employer's industrial action, three days notice must be given. If an employer intends to take industrial action, it must give notice to the bargaining representative (trade union official) of the employees covered by the agreement in question. The employer is also required to take all reasonable steps to notify any affected employees.

12. Acquisitions and Mergers

12.1 General

Employees are protected to a limited extent under the *Fair Work Act* if a sale or merger of the business can be considered a transfer of business.

A transfer of business will have taken place if the following requirements are met:

(a) Employment with the old employee has been terminated;

(b) Within three months of termination, the employee has been employed by the new employer;

(c) The work performed by the employee is substantially the same; and

(d) There is a connection between the two employers, for example, that the new employer owns or uses relevant assets of the old employer or work is outsourced from the old to the new employer.

Awards, enterprise agreements, and other agreements negotiated with the old employer will cover the transferring employee until terminated or replaced. In addition, the transferable award or agreement may cover any new employees if there is no suitable alternative available. Fair Work Australia may make an order on the applicability of the award or agreement to the new employer.

If an employee is classified as a high income employee, he or she is not covered by any award or enterprise agreement. The employee will, however, have a guarantee of annual earnings from the old employer which will continue to have effect under the new employer.

If the new employer is not an associated entity of the old employer, it may choose not to recognise the employee's accrued entitlements under the NES, such as accumulated annual leave. If that is the case, the old employer may have an obligation to pay out the employee's entitlements.

12.2 Information and Consultation Requirements

No obligation is imposed by the Fair Work Act on employers to notify their employees about either a transfer of business or which agreement or award will be transferred. Nevertheless, given that it is the employees' situation which will be most affected by these changes, employers should consult with their employees with respect to any proposed transfer of business.

Furthermore, particular awards may require an employer to inform employees and their representatives of circumstances where a decision has been made to fundamentally change any of the production, program, organisation, structure or technology of the workplace. These likely changes are to be discussed with employees as early as practically possible. Relevant information must be provided in writing to all employees concerned. If no consultation takes place,

an employer may be liable for breach of the terms of the award.

12.3 Notification of Authorities

There is no obligation to notify the authorities of an acquisition or merger from an employment perspective.

13. Termination

13.1 Individual Termination

A contract of employment may be terminated by mutual agreement of both the employee and employer, or by either of the parties, generally by giving notice unless the requisite grounds for summary dismissal or repudiation exist.

13.2 Notice

The NES mandate a minimum period of notice employers must give in order to terminate an employee's contract, or, in the alternative, the minimum payment in lieu of notice. Notice must be in writing.

The period of notice required will differ from one to four weeks, depending on the length of time the employee has been in continuous service. If the employee is over the age of 45 years old and has been continuously employed for at least two years, he or she is entitled to one extra week of notice. An award or agreement may specify a longer period of notice.

An employer will not be required to give any notice of termination to, amongst others, casual employees, most employees hired on a short-term basis or those who have engaged in serious misconduct,

If the employer opts to pay the employee in lieu of notice, the employee is entitled to the full rate of pay he or she would have received if employment had continued until the end of the minimum period of notice. This figure must include any loading, overtime or penalty rates, and/or incentive-based payments the employee would otherwise have been entitled to.

Subject to certain exceptions and eligibility requirements, employees may be entitled to redundancy pay ranging from four weeks to 16 weeks of pay at the employee's base rate of pay depending on their length of service.

Some employees, such as employees of Small Employers (15 persons or less) and casual employees are not entitled to redundancy pay.

13.3 Reasons for dismissal

Redundancy: an employee may be made redundant when the employer either no longer requires anyone to perform that particular job or becomes bankrupt or insolvent. Redundancy is common in situations where a company undergoes a significant change, such as restructuring or a takeover, or as a result of broader economic conditions or technological change. The NES guarantee redundancy pay for employees calculated on the basis of an employee's base rate of pay for a specified redundancy pay period. The length of the redundancy pay period will vary according to the individual employee's continuous years in service. Redundancy pay is not available for a casual employee, an employee of less than 12 months, or who is covered by a redundancy scheme in a specific award or enterprise agreement. Small business employers are also not required to provide redundancy pay.

Summary Dismissal: in exceptional circumstances, an employer will have the right to dismiss an employee without giving notice. This right is subject to any express agreement, contractual or award term which explicitly excludes this right or requires notice to be given. Summary dismissal will usually occur where there has been misconduct, negligent behaviour or neglect on the part of the employee.

13.4 Special Protection

While an employer is entitled to dismiss an employee, the dismissal must not be harsh, unjust or unreasonable. Moreover, if the employer is a small-business employer (employs less than 15 workers), the dismissal must be consistent with the provisions of the Small Business Fair Dismissal Code. Only employees covered by an award or enterprise agreement are eligible; a high income employee is not protected by the unfair dismissal provisions of the Fair Work Act.

A dismissal will be unfair if it is predicated on any of the following reasons:

(a) If it is made on grounds contrary to anti-discrimination legislation;

(b) If it is because of any absence from work which is permitted by the NES such as illness or injury, parental leave, or to participate in community service;

(c) If it is due to membership or non-membership of a trade union or acting as a representative of other employees;

(d) If it is in response to participation in proceedings against the employer or filing a complaint; or

(e) A genuine redundancy will not give rise to any unfair dismissal claim.

An employee may, within 14 days of the dismissal, make an application to Fair Work Australia. If, in the circumstances, it is an unfair dismissal, Fair Work Australia may order that employee's reinstatement or the payment of compensation up to the lesser of 26 weeks' pay or half the high income threshold (as determined in accordance with the Fair Work Regulations).

If an employer is in liquidation or bankrupt it may not have the funds to remunerate employees entitled to redundancy pay. In these circumstances, the Federal Government's General Employee Entitlements and Redundancy Scheme (GEERS) may subsidise employees' termination or redundancy entitlements.

13.5 Closures and Collective Dismissals

Closures: If a company is wound up, the court's compulsory winding up order will act as notice to the employee.

Collective Dismissals: If an employer intends to dismiss 15 or more employees, the Fair Work Act requires written notice to be given to the Chief Executive Officer of the Commonwealth Services Delivery Agency (Centrelink) prior to any dismissals taking place. The dismissals must be related to changes of an economic, technological, structural or similar nature. If no notice is provided, the court may make an order requiring the employer not to dismiss the employees unless certain procedures are followed.

14. Data Protection

14.1 Employment Records

An employee record contains personal information about the employee such as the terms and conditions of employment, salary, performance and conduct, membership of any trade union, and health information. Employee records must be made, and kept for seven years, by all employers.

The *Privacy Act 1988* distinguishes between public sector and private sector employee records. Federal privacy laws do not apply to employee records held by private sector businesses, and other acts and practices of an employer if directly related to a current or former employment relationship. Private businesses with an annual turnover of less than $3 million are also exempt from the provisions of the Act. Government agencies, however, are required to follow the National Privacy Principles (NPP).

State legislation requires employers to maintain and provide basic employment records.

14.2 Employee Access to Data

While there is no obligation for a private sector employer to grant an employee access to their employee records, the Fair Work Ombudsman recommends that access be provided as best practice. Public sector employees are entitled to access records unless the information is confidential or access would be unlawful.

14.3 Monitoring

The monitoring of employees is governed by State legislation. In NSW workplace surveillance is prohibited unless written notice is given to the employees or, if covert, a court order permits it.

If records are kept, these may be subject to both Federal and State privacy laws.

14.4 Transmission of Data to Third Parties

Employers should, as a matter of best practice, follow the NPP when disclosing information about employees to third parties. Acts or practices of the employer outside the scope of the employment relationship, such as disclosing information for marketing purposes, are not exempt from the provisions of the Privacy Act. Government agencies are able to request information from employers.

Amendments to the Privacy Act, scheduled to take effect in March 2014, will mean that if personal information is disclosed by an employer to an overseas recipient who acts contrary to the provisions of the Act, the Australian employer will be liable for any breach.

Contributed by Clifford Chance, Australia

China

1. Introduction

The current labour law regime of China mainly comprises the PRC Labour Contract Law (2008) and its implementation rules and the PRC Labour Law (1995), supplemented by numerous national, provincial and municipal regulations and rules issued by the Ministry of Human Resources and Social Security ("MHRSS") (previously known as the Ministry of Labour and Social Security), and various interpretations and opinions relating to employment issued by the Supreme People's Court.

In general, Chinese labour laws and regulations are employee-friendly and it is not possible to contract out of statutory employee protection.

Collective bargaining and collective agreements are encouraged but are currently still uncommon. Once a collective agreement is signed between the employer and the trade union/employee representatives and approved by the relevant local labour authority, it will be binding on the employer and all the employees. The terms and conditions of individual contracts with employees must not be less favourable than those set out in the collective agreement.

In the event of any dispute, the parties to an employment contract may apply to the labour dispute mediation organisation established within the employer or by the relevant village, township or community for mediation. If the mediation fails or the parties to the labour dispute are not willing to mediate, the labour dispute has to be resolved first through a form of mandatory "labour arbitration", followed by, on appeal, court litigation. The parties to a labour dispute have no access to the general commercial arbitration procedures available to commercial parties entering into a contract together.

2. Categories of Employees

2.1 General

Chinese labour legislation does not distinguish between white-collar and blue-collar employees, and applies equally to employees at all levels.

2.2 Directors

While directors are generally not deemed to be employees, senior management personnel (such as general managers, deputy general managers and chief finance officers) usually conclude employment contracts with the company and are therefore employees of the company. Accordingly, senior management personnel are regulated by Company Law and by labour legislation.

2.3 Other

Part-time employment is permitted. Part-time employees refer to employees who generally work for one employer for a period of no more than four hours per day on average and 24 hours in total per week, and whose salary is calculated on an hourly basis. Part-time employment is less regulated than full-time employment. The corresponding employment agreement for part-time employees may be concluded orally and either the employer or the employee may terminate the employment at any time.

3. Hiring

3.1 Recruitment

In general, any enterprise (whether domestic or foreign-invested), individual economic organisation or private non-enterprise unit within China may recruit its employees directly via a variety of sources, including:

(a) Recruitment agencies, recruitment specialists or "head-hunters" (the latter are mainly used in the recruitment of senior-level and highly remunerated positions);

(b) Job fairs;

(c) Advertisements in newspapers, radio, television, internet websites and other mass media; and

(d) Advertisements posted internally at the company or on its website.

When hiring an employee, the employer is required to inform the employee, amongst other things, of the scope of work, working conditions, workplace, occupational hazards, work safety conditions and remuneration.

The employer must not employ a person who has not terminated his employment relationship with his previous employer. Otherwise the new employer may acquire joint and several liability with the employee for any loss incurred by the previous employer as a consequence. It is therefore advisable for the employer to require a new employee to produce evidence of their release from their previous employer.

As an exception, the representative office of a foreign company cannot employ local Chinese staff directly. However, it can employ staff through one of the designated local employment agencies, such as the Foreign Enterprise Service Corporation (known as FESCO) or the China International Intellectech Corporation (known as CIIC). In such cases, three agreements are usually concluded by the representative office as follows:

(a) A labour services agreement between the representative office and the labour agency regarding the supply of local Chinese employees;

(b) An employment contract between the labour agency and the Chinese employee, according to which the labour agency acts as the employer of the Chinese employee; and

(c) If the representative office wishes, it may enter into a supplementary agreement with the Chinese employee to set out additional rights

and obligations between the representative office and the Chinese employee, for example in relation to holidays, training, confidentiality and non-compete obligations.

3.2 Work Permits

Work permits (*jiu ye zheng*) are generally required for foreigners to work in China. A pre-condition for hiring a foreigner is that the job for which the foreigner is hired requires special expertise and could not be performed by a domestic employee. So far the requirements for proving this condition in China have not been onerous. In general, it is easier to recruit a foreigner to a more senior position than to a junior position.

(a) Four steps are involved in completing all the requisite approvals and formalities for a foreigner to take up employment in China:

(b) The employer must obtain a Foreigner Employment Licence from the local labour bureau for the foreigner before it may hire him;

(c) The foreigner may then apply to the Chinese embassy or consulate in his country of residence for a "Z (work) visa";

(d) Within 15 days of the foreigner's entry into China, the employer should visit the local labour bureau to obtain a Work Permit for the foreigner; and

(e) Within 30 days of the foreigner's entry into China, the foreigner should visit the local public security bureau to obtain a Residence Permit.

The above procedures may vary from locality to locality and may change from time to time. For instance, currently both in Shanghai and Beijing, if a foreigner is the legal representative of a company and has entered China with a visa but not a Z (work) visa, provided that the visa in question is still effective, the local employer may apply for both the Foreigner Employment Licence and the Work Permit for such foreign employee at the same time.

4. Discrimination

The PRC Labour Law provides that employees are entitled to enjoy the right of equal employment and equal pay for equal work. Discrimination on the grounds of ethnicity, race, gender or religion is prohibited.

The PRC Employment Promotion Law (2008) and its implementing rules reiterate these provisions and expand anti-discrimination protection to cover additional groups of individuals. According to PRC Employment Promotion Law, an employer may not refuse a candidate employment because he is a carrier of an infectious disease. However, if the employee is diagnosed as not having been cured, or there are doubts as to whether the individual is infectious, he shall not engage in work that legislation or rules of the Ministry of Health prohibit from being performed by such individuals. Furthermore, there are rules that specifically prohibit an employer from taking the serological indicator of hepatitis B virus as the standard for physical fitness, unless the work cannot be carried out by hepatitis B pathogen carriers as specified by legislation or rules of the Ministry of Health. The legislation and rules of the Ministry of Health provisions aim to prevent discrimination against employees who, despite being disease carriers, are not so affected in terms of their ability to work. In the past, this has been a key issue since a large proportion of the Chinese population were hepatitis B carriers.

The rules also confirm that migrant workers are entitled to equal labour rights, and that the establishment of discriminatory restrictions on the employment of migrant workers is prohibited.

Nevertheless, anti-discrimination law in China is still at a relatively early stage of development, and many important issues have not been addressed under current laws. Although anti-discrimination law gives individuals who suffer illegal discrimination the right to bring a claim in front of a court, it does not specify what form of remedy the court may grant to those individuals.

5. Contracts of Employment

5.1 Freedom of Contract

An employment contract is required to contain certain mandatory provisions and any terms and conditions in an employment contract that are less favourable for the employee than statutory mandatory provisions, will be null and void.

Chinese law requires, amongst other matters, the following provisions to be included in all employment contracts:

(a) The name, domicile and legal representative or person in charge of the employer;

(b) The name, domicile and number of the resident ID card or other valid identity document of the employee;

(c) The term of the employment contract;

(d) The scope and the place of work;

(e) Working hours, rest and leave;

(f) Labour remuneration;

(g) Social insurance; and

(h) Labour protection, working conditions and protection against occupational hazards.

Employment contracts may exist in one of three formats: (i) fixed-term contracts; (ii) "open-ended" contracts (i.e. permanent contracts); and (iii) task-based contracts (i.e. contracts that expire upon the completion of a certain task).

As it is not easy to terminate an employment contract under Chinese labour laws and regulations, fixed-term contracts are commonly used. There is

no restriction on the length of a fixed-term contract. In practice, it is often fixed at three to five years.

However, in any of the following circumstances, if the employee proposes or agrees to renew or conclude an employment contract, the employer must sign an open-ended contract with the employee, unless the employee requests the conclusion of a fixed-term contract:

(a) The employee has been working for the employer for a consecutive period of no less than 10 years; or

(b) A fixed-term contract was concluded on two consecutive occasions prior to the renewal.

Employees on fixed-term and open-ended contracts enjoy the same kind of statutory protection under Chinese labour legislation. As for the employer, a fixed-term contract offers an advantage in that, where there is no legitimate ground for termination or where the related procedures are difficult to follow or it is difficult for the employer to obtain the required evidence, the employer only has to wait until the fixed-term contract expires in order to terminate the employment relationship with the employee.

5.2 Form

In order to establish an employment relationship in China, a written employment contract is generally required. An exception is part-time employment where the conclusion of an oral (rather than a written) agreement is acceptable. If the employer fails to sign a written contract with the employee within one month of the date on which the employee started work, the employer is required to pay twice the employee's salary. This "double salary" is payable from the first day of the second month following the date when the employment started to the date when a written employment contract is entered into, but not beyond the one year anniversary of the commencement of employment. If the employer still fails to sign a written contract within one year of the commencement of the employment, an "open-ended" contract will be deemed to have been concluded between the employee and the employer; the employer however remains obliged to sign a written employment contract with the employee.

5.3 Trial Periods

An employment contract may generally include a probationary period provision subject to certain restrictions:

(a) No probationary period is allowed in a contract with a term of less than three months, or in a task-based or part-time employment contract; and

(b) The maximum length of the probationary period is linked to the length of the term of the employment contract. For an employment contract with a term of between three months and one year, the probation period would be no more than one month, while that of an employment contract with a term of between one and three years will be no more than two months, and that of an employment contract with a term of three years or more or that of an open-ended contract would be no more than six months.

During the probationary period, the employer may only terminate the contract if one of the reasons as stipulated by law exists (e.g. it is proven during the probationary period that the employee does not satisfy any recruitment condition for the position required by the employer), while the employee may terminate the contract by giving the employer three days' prior notice.

5.4 Confidentiality and Non-Competition

An employee does not owe a statutory duty of confidentiality to the employer. However, an employer may, through the employment contract or separate agreement, impose such a duty on the senior management, technical personnel and other key personnel. The employer may also require the relevant employee to provide a non-compete undertaking. The scope, geographical area and period that the non-compete undertaking is to cover may be agreed between the employer and the employee. Where a post-termination non-compete undertaking is agreed, the maximum period allowed is two years and the employer must pay the employee a monthly economic compensation during the non-compete period, failing which the undertaking may be unenforceable. National Chinese laws and regulations do not specify the amount of the compensation, and local rules and practice also vary on the amount.

Chinese law is silent on post-termination non-solicitation of client or key staff covenants which are common in some other jurisdictions. The prevailing view is, however, that such covenants are possible.

5.5 Intellectual Property

Inventions created by an employee in the course of performing his duties or by mainly using material and technical reresources or facilities of the employer are automatically deemed by law to be "occupational inventions". The employer has the right to apply for the patent of an occupational invention, and it will be the patent-holder after the application is approved. Once a patent is granted to the employer, it must provide a lump sum award to the employee inventor upon the grant of the patent, as well as a percentage of profits derived from exploitation, assignment or licensing of the patent, for example, the employer is required to pay the employee inventor a percentage of all profits derived from exploiting the patent made by the employee equal to 2% for invention or utility model patents and 0.2% for design patents, unless otherwise agreed between the parties. With regard to an invention created by an employee by mainly using materials and technical resources or facilities of the employer, the employer and the employee may agree on who owns the right of the application and the ownership of the patent thereof.

Works produced by an employee for the purpose of completing his assignments are deemed to be "occupational works". With regard to occupational works, the copyright (except for the author's right) must vest with the employer if the works are produced by mainly using the materials and technical set-up of the employer, or the employer and the employee agree that the copyright vests with the employer.

As a result, it is often agreed in an employment contract that the employee must irrevocably and exclusively assign the intellectual property rights to the employer, if such rights do not already vest with the employer in accordance with law.

6. Pay and Benefits

6.1 Basic Pay

China implements a system of guaranteed minimum wages and salaries. Local governments formulate their respective standards of minimum wages, which may vary from locality to locality, and are generally adjusted on an annual basis. The current minimum wages is, for example, RMB 1,450/month in Shanghai (with effect from April 2012) and RMB 1,260/month in Beijing (with effect from January 2012).

The PRC Labour Law provides that the wages and salaries are to be paid on a monthly basis. Generally, wages and salaries are paid to Chinese staff in Renminbi (RMB), China's legal currency. It is quite usual to pay employees' wages and salaries directly into a bank account opened in the name of the relevant employee, rather than in cash.

6.2 Pensions

Except for pension insurance under the social security system, the employer has no obligation to make contributions to other pension schemes for its employees. However, some employers, especially large successful companies, voluntarily provide additional pension to their employees. The establishment of any additional pension plan will be jointly determined by the employer and the trade union or employee representatives through collective consultation. The plan is then submitted to the competent labour authority for review. The annuity plan will become effective unless any objection is raised within 15 days from the receipt of such plan by the competent labour bureau. Both the employer and the employees must contribute to the annuity, and the contribution by the employer must not exceed one-twelfth of the total salaries of all employees in the previous year.

6.3 Incentive Schemes

Chinese law does not require an employer to provide any incentive schemes to its employees. However, the employer may at its discretion implement such schemes and provide performance and/or profit-related bonuses to the senior management personnel.

Another popular incentive option is to offer employees the shares or share options of a foreign party or those of their listed parent companies. Due to Chinese law restrictions on foreign exchange remittance out of China and restrictions on repatriating sale proceeds into China, such plans used to be implemented in a cashless form. It should be noted, however, that subject to the approval of the State Administration of Foreign Exchange or its local counterparts, overseas listed companies may now issue or award shares or share options to the employees of their subsidiaries in China.

6.4 Fringe Benefits

The Company Law that came into effect on 1 January 2006 repealed a provision of its 1994 predecessor that required companies to allocate a certain percentage of after-tax profits to a statutory welfare fund. Such funds were used to provide certain fringe benefits to employees, individually or collectively, in addition to salaries and social security benefits. In fact, companies have the discretion to decide whether or not to grant any fringe benefits to employees. It is not uncommon for companies to provide employees with fringe benefits such as company cars (usually for senior management staff), life and/or accident insurance, lunch vouchers and housing allowance.

6.5 Deductions

Employers are required to withhold individual income tax payable by their employees. The tax withheld should be paid to the local tax bureau by the fifteenth day of the following month. Employers are also obliged to withhold employees' social security insurance contributions.

7. Social Security

7.1 Coverage

China has established a mandatory, non-profit social security system, which consists of five types of social security insurance. They are: (i) basic pension insurance; (ii) basic medical insurance; (iii) unemployment insurance; (iv) work-related injury insurance; and (v) maternity insurance. It is also mandatory for both the employer and employee to contribute to a provident housing fund.

The "Interim Measures of Social Insurance for the Foreign Employee Working in China", with effect from 15 October 2011, requires foreign employees to participate in Chinese mandatory social insurance schemes, unless the foreigner is exempted in accordance with a bilateral social security agreement between China and a country where the foreign employee is already covered by social security.

7.2 Contributions

An employer is required to make contributions on a monthly basis for all types of social security insurance and the provident housing fund. In addition to the employer's contributions, the employee is also required to make monthly personal contributions towards the basic pension insurance, basic medical insurance,

unemployment insurance and the provident housing fund. The employer is obliged to withhold the employee's personal contributions from the employee's monthly salary. The rates for each particular type of social security insurance payable by the employer and the employee are decided by local governments and may vary from locality to locality.

Social security contributions are calculated on the basis of the average monthly salary of the employee in the previous year. In general, where an employee's actual monthly average salary of the previous year is lower than 60% of the local average monthly salary of the previous year promulgated by the local government in the city where the employer is located, the contributions should be made on the basis of 60% of the local average monthly salary of the previous year; where an employee's actual monthly average salary of the previous year is higher than three times the local average monthly salary of the previous year, the contributions should be made on the basis of three times the local average monthly salary of the previous year.

8. Hours of Work

Under Chinese labour laws, the standard working hours are an eight hour working day and a 40 hour working week. Any work in excess of this is considered overtime. Overtime is generally paid, however time off in lieu of payment for overtime worked on rest days (i.e. Saturdays and Sundays) should be given where possible. The maximum overtime allowed is one hour per day (extendible to three hours) and 36 hours a month. Overtime is paid at 150% of salary for work performed on an ordinary working day, 200% of salary for work performed on a rest day (i.e. Saturdays and Sundays), and 300% of salary for work performed on a statutory holiday (currently there are 11 annual statutory holidays in China, see below).

If a company genuinely cannot implement the above standard working hours due to the particular characteristics of its production and operations, it may implement what is known as a "flexible calculation" or "consolidated calculation" of working hours once it obtains the approval of the relevant labour authority. The "flexible calculation" system generally applies to employees who cannot work the standard hours due to the characteristics and/or duties of their work, e.g. senior management personnel, sales personnel and long-distance transportation personnel.

The "consolidated calculation" system applies to employees whose job requires continuous work in industries such as transportation, the postal service, aviation, or whose work is restricted by the weather or natural conditions such as construction, salt/sugar production and tourism. Under this system, the aggregate working hours will be calculated on a weekly, monthly, quarterly or yearly basis, and the average daily and weekly working hours should be consistent with the standard hours of work stipulated by law (as set out above).

9. Holidays and Time Off

9.1 Holidays

With effect from 1 January 2008, there are 11 statutory holidays in China:

(a) One day: New Year's Day (1 January)

(b) Three days: Spring Festival (Lunar New Year's Eve, first and second day of the first lunar month)

(c) One day: Tomb-Sweeping Day (*Qing Ming Jie)*

(d) One day: Labour Day (1 May)

(e) One day: Dragon-Boat Festival (*Duan Wu Jie*)

(f) One day: Mid-Autumn Festival (*Zhong Qiu Jie*)

(g) Three days: National Day Holiday (1, 2 and 3 October)

Employees, whose cumulative period of service with their current employer and previous employer(s) is one year or more, are entitled to paid annual leave. Annual leave must be granted to employees on a progressive basis depending on the length of their cumulative period of service: employees are eligible for five days' leave after one year of service, 10 days' leave after 10 years, and 15 days' leave after 20 years. Annual leave generally should be used within the year and should not be carried over to the following year. In certain circumstances, however, if production or work so requires, employees may carry over unused leave to the following year. Where annual leave cannot be granted to an employee due to work requirements, upon obtaining the consent of the employee, the employer must compensate the employee in an amount equal to twice the employee's daily wage in lieu of each day of untaken leave.

9.2 Family Leave

Female employees are entitled to 98 days' paid maternity leave, commencing from the fifteenth day before the expected date of childbirth. Additional leave days must be granted to those who have dystocia (a further 15 days), multiple babies (15 days for each additional baby), or late maternity (a further 30 days) in accordance with the national and local regulations. In the case of miscarriage, the employer must grant a certain period of maternity leave based on the certificate issued by the relevant hospital. If an employee who has been pregnant for four months or more miscarries, she is entitled to 42 days' maternity leave. If an employee who has been pregnant for less than four months miscarries, she is entitled to 15 days' maternity leave.

The legal principle regarding maternity pay is that the female employee shall not be put in a worse position in terms of salary payment during her maternity leave. Maternity pay may vary slightly from place to place. In Shanghai, during maternity leave, a maternity subsidy is paid instead of salary by the statutory

maternity insurance fund. The maternity payment is made each month in an amount equal to the average monthly salary of the employer of the previous year but shall not be less than the minimum maternity subsidy promulgated by Shanghai Municipal Government from time to time (which has been RMB 2,892 since 31 March 2009). Where the employer's average monthly salary of the previous year is higher than three times the local average monthly salary of the preceding year, the monthly maternity subsidy is capped at three times the local average monthly salary, and the difference must be made up by the employer. That said, if the female's actual monthly salary is higher than her employer's average monthly salary of the previous year, it is possible that a female employee may get less pay during the maternity leave under this regime. Paternity leave entitlement varies from city to city but is generally between three and 30 days. There is no entitlement to adoption leave under PRC law.

9.3 Illness

If the employee needs to take rest or receive medical treatment due to illness or other non-work-related injuries, the employee has the right to enjoy the maximum period of sick leave ranging from three months to two years generally depending on his length of service with the current employer as well as his length of service with any previous employer, but this mechanism may also vary from city to city. During the statutory period of sick leave, an employee's employment cannot be terminated by the employer, unless he is at fault (see section 13.3 below). If the employee is still not able to return to his original post or an alternative post arranged by the employer after having taken the entire period of prescribed sick leave, the employer may terminate the employment contract by giving 30 days' written notice in advance.

During the period of sick leave, the employer must pay sick leave salary to the employee which, depending on locality, may be a certain percentage of the employee's salary, sometimes linked to the length of service of the employee. Generally, the sick-leave salary must not be lower than 80% of the minimum salary stipulated by local government for that year.

9.4 Other Time Off

Employees whose household registration (place of officially-registered residence) is in another province or who are living separately from their spouses may be entitled to home leave. This entitlement is provided in local regulations. Typically, the regulations stipulate that an employee will be entitled to home leave of between 20 to 30 days a year (with pay and travel expenses included). Married workers are also entitled to leave of 20 days once every four years to visit their parents.

In addition, employees may be entitled to other paid leave under national and local regulations, which may include (i) marriage leave (3-10 days); (ii) funeral leave (1-3 days); and (iii) paternity leave (3-10 days).

10. Health and Safety

10.1 Accidents

The provisions on health and safety are contained in a large number of laws and regulations, including the Labour Law, the Safe Production Law and the Law on the Prevention and Treatment of Occupational Diseases. The PRC Labour Law contains some general principles in this regard, including the following:

(a) Employers are required to establish a system of work health and safety and to take specific measures to guard against workplace accidents;

(b) Labour safety and health facilities for a construction project must be designed, built, introduced and operated simultaneously with the principal parts of the construction project;

(c) Employees must be given the necessary working conditions and protective equipment. For employees working in dangerous occupations or with hazardous substances, the employer is required to provide regular health examinations at its own expense;

(d) Employees have the right to refuse to perform dangerous operations; and

(e) Employers are required to compile accident statistics and report industrial accidents to a local labour bureau.

Employers must contribute to a work-related injury insurance fund for its employees. In the case of a work-related injury being sustained, payment out of the work-related injury insurance fund must cover the following expenses in connection with the work-related injury: (i) medical costs incurred during the treatment of the injury; (ii) nursing costs as confirmed by certain appraisal committee; (iii) food allowance for hospitalization; (iv) travel and accommodation expenses where medical treatment is undertaken in a location other than the place where the employer paid the work-related injury insurance; (v) the cost of obtaining and installing equipment for disabled employee; (vi) a lump sum injury or disability subsidy (i.e. a one-off compensation, payment depending on the nature of the injury sustained) and injury or disability allowance; and (vii) costs incurred for the injury appraisal. If the employee dies from the work-related injury, the fund must be used to pay for funeral subsidies, subsistence money for the direct relatives of the deceased and a lump sum death subsidy. In addition to the above expenses which can be covered by the insurance, the employer is also required to pay for other costs in relation to its employee's work-related injury, including salaries during the medical treatment period (in general up to 12 months), monthly allowance for the employee whose degree of disability is level five or six and a lump sum employment subsidy for the injured and disabled upon the ending or termination of the employment contracts.

10.2 Health and Safety Consultation

The Labour Contract Law provides that the formulation of or amendment to corporate rules relating to employee health and safety must be subject to consultation between the management and the trade union or the employees' representatives. Further, the trade union has the right to opine on and supervise the design, building, introduction and use of safety facilities. It also has the right to participate in the investigation of accidents, make suggestions to the relevant authorities about the handling of such accidents, and propose the relevant penalty to be imposed upon the personnel responsible for the accidents. Entities in the mining and construction industry, and entities that produce, trade and store dangerous items and entities with more than 300 employees, must establish a full-time safe production management committee or post.

11. Industrial Relations

11.1 Trade Unions

The employees may voluntarily set up a trade union within their company. The Trade Union Law provides that an employee whose salary is his main source of income has the right to organise and join a trade union and, if an employer has at least 25 employees who are union members, a grass roots trade union must be established. This right may not be restricted or denied by any enterprise. While employees are granted the unrestricted right to establish a trade union and participate in union activities, their choice of union organisations is limited to the government sponsored All-China Federation of Trade Unions ("ACFTU"). No other independent labour union organisations are permitted to exist in China. ACFTU functions as a national federation of unions, where grass root trade unions are established at a local enterprise level, they must defer to the leadership of a branch headed by ACFTU.

Although enterprises are not legally obliged to set up trade unions, they often (particularly recently) face pressure from the local branches of ACFTU to set up grass root trade unions. Where an enterprise refuses to do so and the employees do not take further steps to set up a trade union, ACFTU or its local counterparts may dispatch personnel to help and guide the employees of the enterprise to establish a trade union.

11.2 Collective Agreements

Collective agreements (collective contracts) may be concluded through collective consultation between an enterprise and its trade union or the elected employee representatives covering matters such as labour remuneration, working hours, rest and holidays, work safety and hygiene, insurance and benefits, etc.

Specialised collective contracts may be concluded to address the protection of rights of female employees or salary adjustment mechanisms. Industry-wide collective contracts may be concluded in industries such as construction, mining and catering services. A Regional collective contract is another kind of collective contract, which may be concluded in certain regions, and applicable to all enterprises in that region.

After a collective contract has been concluded, it should be submitted to the local labour bureau for review. The collective labour contract will become effective 15 days after the date of receipt by the local labour bureau, unless the bureau raises any objection to the contract.

Once the collective contract takes effect, it will be binding on the employer and all of its employees. Industry-wide and regional collective contracts are binding on the employers and their employees in the respective industry and regions. Accordingly, the terms in an individual employment contract must not be less favourable than those contained in the collective contract.

11.3 Trade Disputes

China has removed the right to strike from its 1982 Constitution. Under the current law, strikes are neither expressly permitted nor forbidden. Employees in China are generally encouraged to seek remedies through mediation, arbitration or litigation proceedings rather than strikes. Trade unions are not supportive of industrial action either. According to the Trade Union Law, the trade union has the responsibility of assisting the enterprise and employees in resuming work and restoring work order as soon as possible when there is a "work stoppage or a slow down".

According to the Labour Contract Law, where the employer violates the collective contract and infringes the employees' labour rights and interests, the trade union may require the employer to assume liability. In the event that a labour dispute arising from the performance of a collective contract cannot be resolved through negotiation, the trade union may, on behalf of the employees, institute an arbitration or lawsuit against the employer.

11.4 Information, Consultation and Participation

Under the Trade Union Law and other applicable laws, trade unions represent the interests of employees and are responsible for protecting their legal rights. Some of the major areas in which trade unions are involved include:

(a) Corporate rules and the taking of major decisions. The trade union has to be consulted in relation to major decisions on the operation, management and development of the company. When formulating or amending the employer's corporate rules relating to the vital interests of the employees such as remuneration, working hours, rest and leave, labour safety and health, insurance and benefits, training and labour discipline and work quota management, a process of "equal consultation" between the employer

and the trade union or employee representatives is required;

(b) Collective contracts and collective wage bargaining. Trade unions are entitled to represent the employees in negotiating and executing collective contracts with the employers where the employers breach any provision under the collective contract, and to initiate relevant legal procedures if necessary;

(c) Dismissal of employees and labour disputes. The trade union must be informed in advance if the employer intends to unilaterally terminate an employment contract. Where the trade union is of the view that the employer has breached laws and regulations or the contract in terminating an employment contract, and therefore requests the employer to review the termination, the employer must study the opinion of the trade union and inform it of its final decision; and

(d) Assistance and acting as the authorised agent for employees in labour disputes. If the dismissal of an employee or any other labour dispute cannot be settled between the parties, the trade union can at the employee's request assist or act as the authorised agent for the employee in respect of the dispute.

12. Acquisitions and Mergers

12.1 General

The legal position of the employees differs in different structures for acquisitions and mergers. In a business undertaking (i.e. an asset deal), there is generally no legal mechanism for the automatic transfer of employees under Chinese legislation. Typically, the transfer is effected by terminating the existing employment contracts of the employees with the seller and entering into new employment contracts with the new entity. In a share deal (where there is a change in the employer's shareholder(s)), or in the case where an employer is merged (with another entity) or split up, the existing employment contracts will continue to be performed by the same employer or the entity which succeeded the employer's rights and obligations.

12.2 Information and Consultation Requirements

Chinese law only provides, generally, that employees' opinions and suggestions must be heard (by way of convening an employees' representative congress, or by trade union representatives attending meetings, etc.) when important issues relating to the restructuring and operation of the company are to be decided. The law does not specify any timetable for such consultation. However, such employee representative bodies do not have any right to veto.

In a merger or acquisition, if the target is a state-owned enterprise ("SOE"), additional steps will be required to protect the employees. In particular, the employee representative congress of the seller must be consulted. The law does not specify any timetable for such consultation about the transaction and a proper resettlement plan prepared for the employees. The plan should be discussed and approved by the employee representative congress, and then examined and verified by the local labour administrative authorities before the final approval. The Law does not prescribe a specific penalty if such discussion does not occur. In theory, the relevant approval authority will not approve the deal itself if no evidence is shown that such discussion/approval has occurred.

12.3 Notification of Authorities

When a foreign company buys shares or assets of a Chinese company, an approval from the Ministry of Commerce ("MOFCOM") or its local counterparts will be required. An employment resettlement plan must be submitted when applying for the approval. If redundancies are necessary as part of the deal, a redundancy plan should be included in the resettlement plan. Such resettlement plan may be challenged if MOFCOM or any other relevant authority deems the resettlement of employees improper.

13. Termination

13.1 Individual Termination

An employer wishing to unilaterally terminate an employee's employment must ensure that one of the termination reasons stipulated by law exists and follow the relevant procedural requirements strictly.

13.2 Notice

An employee can be dismissed where he is not at fault (such as incompetence or illness). An employer wishing to dismiss an employee must give 30 days' written notice to the employee or pay the employee one month's salary in lieu of notice. The notice period applies to all employees regardless of the length of service and the category of employee concerned. An employer is not required to give prior notice of dismissal if the employee is dismissed due to the employee's fault (such as misconduct).

13.3 Reasons for Dismissal

An employer may dismiss an employee only in the circumstances specified by law. An employer may dismiss an employee if the employee is at fault. An employee is considered to be "at fault" in the following circumstances:

(a) It is proven during the probationary period that the employee does not fulfil the recruitment criteria;

(b) The employee seriously violates the employer's internal rules and regulations;

(c) The employee is guilty of gross negligence or wilfully causes material damage to the employer;

(d) The employee is concurrently employed by another employer, and either this concurrent employment materially affects the employee's performance of his duties or the employee refuses to rectify the situation at the request of the employer;

(e) The employment contract is void because the employee entered into the contract by means of fraud, coercion or by taking advantage of the employer's vulnerability; or

(f) The employee has committed a criminal offence.

An employer may unilaterally terminate an employment contract where the employee is not at fault in any of the following circumstances:

(a) The employee suffers illness or a non-work-related injury and after the statutory medical treatment period has lapsed, the employee still fails to engage in his original work or alternative work assigned by the employer;

(b) The employee is incompetent and remains so after training or re-assignment; or

(c) Performance of the employment contract becomes impossible due to a major change in the circumstances at the time when the employment contract was entered into, and the employee and the employer fail to agree on an amendment to the employment contract.

If an employer unilaterally terminates an employment where the employee is not at fault, the employer must make a severance payment to the employee. For each full year of service completed (also for a service period longer than six months but shorter than one year), the employer must pay one month's salary. For a service period shorter than six months, the employer must pay a half-month's salary. For any contract entered into before 1 January 2008, the entitlement to a severance payment is determined in accordance with the regulations applicable at the time which may vary from city to city.

However, for the severance pay payable in respect of the period of service accumulated after 1 January 2008, if the employee's monthly salary is higher than three times the local average monthly salary of the previous year (as notified and updated by the local municipal government), the severance pay is calculated on the basis of three times the local average salary, and the number of years of service is limited to 12. However, severance pay payable in respect of the period of service accumulated prior to 1 January 2008 or where the employee's monthly salary is less than three times the local average monthly salary is not subject to such limitations.

Before an employer unilaterally terminates an employment contract, the employer must inform the trade union of the reasons for termination in advance. The trade union is entitled to demand rectification if it finds that the termination contravenes the laws, regulations or the relevant employment contract. The employer must consider the trade union's demand and inform the trade union of its final decision.

If an employer wrongfully dismisses an employee, the employee will be entitled to demand reinstatement or damages. The damages are twice as much as the severance payment outlined above.

13.4 Special Protection

Several categories of employees enjoy special protection from dismissal, i.e. they cannot be dismissed if they have committed no fault. These employees include, for instance: (i) employees who have been exposed to risks of suffering occupational diseases in their work and have not undergone pre-termination of employment occupational health checks, or employees who are suspected of having contracted an occupational illness or are under medical observation for a suspected occupational illness; (ii) employees who suffer work-related illness or injury and are fully or partly incapacitated; (iii) employees who suffer illness or non-work-related injury and the statutory medical treatment period has not expired; (iv) employees who are pregnant, on maternity leave or are breast-feeding; (v) employees who have completed 15 years of continuous service and will reach their statutory age for retirement within five years; and (vi) an employee who is the chairman of the trade union of the employer.

13.5 Closures and Collective Dismissals

Business closures will result in the termination of an employment contract between the employer and the employee, and the employees are entitled to receive severance pay from the employer.

Collective dismissals of more than 20 employees or more than 10% of the total number of employees is only possible in the following circumstances:

(a) Where the employer is subject to reorganisation proceedings under bankruptcy laws;

(b) Where the employer's operation is in serious difficulty;

(c) Where the employer undergoes changes in its production, major technological renovation or an adjustment in its operating model and redundancy is required even after the relevant employment contracts have been amended; or

(d) Where there are other major changes in the objective economic circumstances that the parties relied on when they entered into the employment contract, which make the performance of the employment contract impossible.

In the case of a collective dismissal, the employer must, 30 days in advance, explain the situation to the trade union or

all employees and consult with the trade union or the employees, and then report to the labour authority on its redundancy plan before the implementation of the plan.

The employer must give priority to retaining the following employees over other employees when carrying out a collective dismissal:

(a) Employees with a longer term of employment;

(b) Employees having open-ended employment contracts; and

(c) Employees who have dependants (e.g. aged persons or children) and who have no other relatives in the family who are in employment.

The employer must make severance payments to the collectively dismissed employees. In addition, if the employer recruits within six months, it must inform the employees who were previously dismissed and recruit them in priority if other conditions are equal among the candidates.

14. Data Protection

14.1 Employment Records

To date, China has still not issued any specific data protection law, despite the fact that the drafting of such laws began a long time ago. In the employment context, the current law only provides, generally, that an employer must keep the personal data of its employees confidential. The publication of any personal data of an employee must be subject to the written consent of the employee.

During the recruitment process, a candidate must provide the employer, at its request, with the basic information which is directly related to the labour contract, such as age, main family members, residential address, academic and occupational qualifications, working experience, etc.

14.2 Employee Access to Data

Although not explicitly provided for by law, an employee must generally have the right to access his personal data maintained by the employer.

14.3 Monitoring

Under the PRC Constitution and the PRC Telecommunication Regulations, the "freedom of telecommunication" and "privacy of telecommunication" of a citizen is protected by law. The content of the telecommunication of a citizen may, for reasons of criminal investigation or national security only, be inspected by the police, public prosecutors or the national security authority. PRC law is silent on the scope of "freedom of telecommunication" and "privacy of telecommunication". There is therefore no explicit guidance under PRC law as to whether employers are entitled to monitor employees' email, internet and telephone usage in the workplace. It would therefore be prudent and good practice for an employer to provide prior information to or obtain consent from its employees before carrying out any such monitoring activities.

14.4 Transmission of Data to Third Parties

Under PRC law, an employer must keep the personal data of its employees confidential, and the publication of any personal data of an employee must be subject to the written consent of the employee. An employer who wishes to provide employee data to third parties must have first obtained the prior written consent of the relevant employees.

Contributed by Clifford Chance, Shanghai & Beijing

Dubai International Financial Centre

1. Introduction

Labour affairs in the Dubai International Financial Centre ("DIFC") are governed by the DIFC Employment Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "Employment Law"). The Employment Law regulates contracts and wages, working hours, leave and the termination of employment, termination gratuity and other issues relating to conditions of employment. The Employment Law applies to all employees based within, or ordinarily working within or from, the DIFC. The Employment Law empowers the DIFC Authority to make Regulations. However, to date, no such substantive Regulations have been issued.

The 2012 amendment to the Employment Law does away with the role of Director of Employment Standards (the officer of the DIFC Authority previously responsible for the administration of the Employment Law), and the position now is that the DIFC Courts will have jurisdiction over disputes between employer and employee, as well as matters relating to the interpretation of the Employment Law. The parties may file a claim in the DIFC Small Claims Tribunal or the DIFC Court of First Instance. The Small Claims Tribunal has jurisdiction to hear employment claims where the value of the claim does not exceed AED200,000, or where all parties to the employment claim elect in writing that it be heard by the Small Claims Tribunal.

The DIFC Court of First Instance may adjudicate appeals to any rulings made by the Director of Employment Standards (prior to the 2012 amendments to the Employment Law) or the DIFC Small Claims Tribunal.

2. Categories of Employees

2.1 General

No distinction is drawn between white-collar and blue-collar employees.

2.2 Directors

The Employment Law does not deal specifically with employees who are also directors. The position of directors of companies incorporated in the DIFC is regulated by the DIFC Companies Law No. 3 of 2006.

2.3 Other

The Employment Law does not distinguish any other categories of employees.

3. Hiring

3.1 Recruitment

Employers recruit through a variety of sources, including via the internet and by advertising in newspapers or journals. Recruitment agencies are commonly used for the recruitment of professionals. A state run agency assists in the recruitment of UAE nationals.

3.2 Work Permits

A UAE residence visa is required for all nationals who are not from the UAE or any of the other Gulf-Cooperation Council States ("GCC States") (The GCC States comprise the United Arab Emirates, Saudi Arabia, Bahrain, Kuwait, Qatar and Oman). The residence visa is issued under the sponsorship of the DIFC Authority and there is no need to obtain a separate work permit from the Ministry of Labour.

4. Discrimination

The Employment Law provides protection against discrimination and empowers the DIFC Authority to prosecute any employer who it decides is discriminating against employees on matters relating to gender, marital status, race, nationality, religion, mental or physical disabilities. The 2012 amendment to the Employment Law enhances the definition of discrimination, and sets out actions which would amount to discrimination, and which provisions, criteria or practices would be considered discriminatory within the meaning of the Employment Law. An employer shall not treat an employee less favourably than others would be treated in the same circumstances, or put an employee at a disadvantage not faced by others who are not of the same sex, marital status, race, nationality or religion, or suffering from a mental or physical disability, nor shall an employee be subject to unwanted treatment which has the effect of "creating an intimidating, hostile, degrading, humiliating or offensive workplace", unless there is a bona fide occupational requirement. For the purposes of the Employment Law, a bona fide occupational requirement is "a requirement reasonably necessary for the normal performance of a particular role or occupation".

5. Contracts of Employment

5.1 Freedom of Contract

It is a basic principle that the parties are free to contract on whatever terms they choose provided always that the minimum standards set out in the Employment Law are not breached.

5.2 Form

Upon commencement of employment, the employer must provide the employee with a written contract of employment (i.e. no longer a statement of particulars), including the following:

(a) the names of the employer and employee;

(b) the date on which the employment begun;

(c) the employee's remuneration;

(d) the intervals at which remuneration is paid (e.g. weekly, monthly);

(e) the terms and conditions relating to hours or days of work;

(f) any terms and conditions relating to holiday leave and holiday pay, public holidays and public holiday pay;

(g) any terms and conditions relating to sick leave and sick pay;

(h) the length of notice in the event of termination either by the employee or employer;

(i) the title of the employee's job or a brief job description;

(j) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date on which it is to end;

(k) the place of work;

(l) any disciplinary rules and/or grievance procedures applicable to the employee;

(m) any other matter that may be prescribed in the Regulations.

Under the amended Employment Law, the employer shall expressly state in writing which terms and conditions of the employment contract shall be subject to the employer's policies and may be changed at the employer's discretion from time to time by way of written notice to the employee.

The employee is entitled to an itemised pay statement, which may be in writing or provided in electronic format to the employee in a format which the employee may print.

Since the 2012 amendment to the Employment Law, the employer must pay the employee's final settlement within 14 days of termination of employment (previously this had to be done within seven days). The Employment Law now provides for the employer to pay a penalty to the employee where the employer fails to pay the settlement sum on time. The penalty is calculated as one day's pay for each day that the employer is in arrears.

5.3 Trial Periods

It is common to include trial periods in employment contracts, and these usually vary from between three and six months. The Employment Law does not regulate trial periods, so the parties are free to decide in the employment contract what notice, if any, should be given for termination during the trial period.

5.4 Confidentiality and Non-Competition

The Employment Law does not deal with post-termination and non-solicitation obligations on an individual. Based on informal discussions with the DIFC Authority, indications are that a DIFC Court would look to English Law for guidance as to what is reasonable in this regard.

The UAE Federal Penal Code (Law No. 3 of 1987), which also has application in the DIFC, imposes criminal liability on anyone who, by reason of his profession or employment is entrusted with confidential information, and who discloses it in circumstances other than those permitted by law, or who uses it for his own advantage without the consent of the person to whom the confidential information relates.

5.5 Intellectual Property

Generally, if intellectual property is created by an employee during the course of employment, it will belong to the employer and compensation is only payable to the employee in limited circumstances.

6. Pay and Benefits

6.1 Basic Pay

There is no statutory minimum basic pay in the DIFC.

On or before each payday, the employee is entitled to a written itemised payslip, which should include the amount of wages or salary payable, the amounts of any deductions made and the purpose for which the deductions are made.

Salaries must be paid at least monthly and within seven days of the end of the pay period. Employers must keep payroll records and must retain such records for two years after the employment terminates.

6.2 Pensions

The statutory end of service gratuity is usually given to employees in lieu of benefits under a pension scheme. The end of service gratuity is calculated on the basis of 21 days' basic pay per year of service for each of the first five years, and 30 days' basic pay for each additional year. Where an employer provides a pension scheme for employees, it is possible for the employee to choose in writing between the pension scheme and the statutory end of service gratuity. International companies that have a pension scheme in place, and that set up in the DIFC, typically offer benefits under the pension scheme in lieu of the statutory end of service gratuity.

Since the 2012 amendments to the Employment Law, it is now mandatory for employers to enrol employees who are UAE nationals or nationals of any of the other GCC States in the UAE pension scheme for such nationals. Such employees will not be entitled to the end of service gratuity.

6.3 Incentive Schemes

Share incentive schemes are not mandatory in the DIFC, but are fairly common in the case of very senior executives.

6.4 Fringe Benefits

Common benefits typically include private medical insurance, accommodation allowance, and an annual air ticket allowance. In some cases, an education allowance or company car will also be provided. The Employment Law requires employers to provide employees with health insurance. (Prior to the 2012 amendments to the Employment Law, the employer also had the obligation to provide employees with disability income insurance).

6.5 Deductions

There is no personal income tax levied in the DIFC. Generally deductions from salary are prohibited, unless authorised by the employee or ordered by the DIFC

Court. There is an exception to the requirement for consent if the deduction is a reimbursement for overpayment of wages or expenses.

7. Social Security

7.1 Coverage

There is no state-administered social security scheme for non-UAE nationals.

7.2 Contributions

For UAE national employees who participate in the state-administered General Pensions and Social Securities fund, there is a 5% contribution by the employee (by way of salary deduction), and a contribution by the employer equivalent to 15% of salary. (See section 6.2 above regarding the obligation on the employer to register UAE and GCC national employees in the state-administered pension scheme.)

8. Hours of Work

The Employment Law states that employees must not work more than 48 hours in a seven-day period, unless the employee has given his prior written consent. During the holy month of Ramadan, Muslim employees who observe the fast are not required to work for more than six hours a day.

Every employee must be granted not less than 11 consecutive hours of rest in each 24-hour period, and at least 24 hours of rest in each seven day period. Where an employee is required to work more than six hours a day, he is entitled to a break of at least one hour. In practice, a number of organisations have changed over to a five-day working week, with Friday and Saturday as the weekend.

9. Holidays and Time Off

9.1 Holidays

The Employment Law entitles each employee to an annual vacation of at least 20 working days, which is accrued *pro rata* for employees who have been employed for at least 90 days. Since the 2012 amendments to the Employment Law, an employee may carry over to the next calendar year any accrued but untaken leave up to a maximum of 20 working days for a maximum period of 12 months, after which the unused leave shall automatically expire.

Employees are entitled to the national holidays that are announced in the United Arab Emirates for the public sector (if the employer is a public sector entity), or the private sector (if the employer is a private sector entity). Employees are paid for such national holidays. Alternatively, entitlement to a national holiday may be replaced by a day off in lieu or payment in lieu where both the employer and employee so agree in writing. Employers may require employees to take vacation leave on specified days.

9.2 Family Leave

Since the 2012 amendment, the Employment Law now provides for minimum paid maternity leave of 65 working days. An employee is entitled to a minimum of 65 working days' maternity leave, provided that she:

(a) has been continuously employed for at least 12 months preceding the expected or actual week of childbirth;

(b) notifies her employer in writing that she is pregnant at least 6 weeks before the expected week of childbirth, if requested by the employer;

(c) provides a medical certificate confirming the expected or actual date of delivery, if requested by the employer; and

(d) gives her employer written notice at least 21 days before the day she proposes to commence her maternity leave.

Maternity pay is payable by the employer as follows:

(a) at the employee's normal weekly rate for the first 33 working days of maternity leave; and

(b) at 50% of the employee's normal weekly rate for the next 32 working days of maternity leave.

If a public holiday falls within the period of maternity leave, it shall have the effect of extending the maternity leave by the period of the public holiday. Annual leave shall continue to accrue during the maternity leave period and may be taken separately.

An employee has the right to return to work at the end of her maternity leave on the same terms and conditions, and with the same seniority rights she would have had, had she not taken maternity leave. Maternity rights also apply to a female employee who is adopting a child of less than three months old.

An employee who is pregnant is also entitled to take paid time off during working hours to receive ante-natal care. There is no provision for paternity leave, or any other category of family leave.

9.3 Illness

Since the 2012 amendments to the Employment Law, the maximum paid annual sick leave, whether the absence is continuous or intermittent, is 60 working days and sick leave entitlement cannot be carried forward to the next year.

Employers are entitled to dismiss employees who take more than 60 working days' sick leave in any 12-month period without written notice. Employees must notify their employer of their absence at least once every seven days during a period of sick leave.

9.4 Other Time Off

Muslim employees are entitled to take up to 30 days' unpaid leave to go on the Haj (pilgrimage) to Mecca (Haj leave), once during the period of employment.

10. Health and Safety

10.1 Accidents

Every employer has a duty under the Employment Law, as far as is reasonably practicable, to ensure the health, safety,

and welfare of all its employees and to provide and maintain a workplace that is free of harassment.

The amended Employment Law sets out the levels of compensation due to employees who sustain injury as a result of a workplace accident, or where an employee dies as a result of a workplace accident or illness.

10.2 Health and Safety Consultation

Whilst employers are not obliged to consult with employees on health and safety issues, they are obliged to provide information, instruction, training and supervision to employees to ensure their health and safety at work.

An employer is obliged to inform each employee in writing at the time of recruitment of any dangers connected with the employment and of the protective measures the employee should take.

11. Industrial Relations

11.1 Trade Unions

The Employment Law does not recognise trade unions.

11.2 Collective Agreements

The Employment Law does not recognise collective agreements.

11.3 Trade Disputes

The Employment Law does not recognise the right to strike.

11.4 Information, Consultation and Participation

There are no formalised requirements for employee participation in the DIFC, nor are there any works councils.

12. Acquisitions and Mergers

12.1 General

There is no specific legislation that addresses the obligation to inform and consult with employees in the event of any business or share sale.

12.2 Information and Consultation Requirements

There are no information and consultation requirements in the event of a business or share sale.

12.3 Notification of Authorities

The DIFC Authority, as sponsor of the employees, should be notified where the business or share sale is to have an effect on employees (e.g. if the employer entity is changing or if the employees are to be transferred to a new employer), as this may affect the employees' residence visas.

13. Termination

13.1 Individual Termination

Upon termination of employment, an employee is entitled to a gratuity payment, provided the employee has completed a minimum of one year's service. The gratuity payable is calculated on the basis of:

(a) 21 days' salary for each year of completed service for the first five years; and

(b) 30 days' salary for every year of service thereafter.

The total gratuity, however, cannot exceed two years' pay. The gratuity is based on the basic salary, excluding allowances and overtime pay, of the employee immediately prior to termination. The gratuity is not payable where an employee is dismissed for cause. (Termination for cause by the employer occurs where the employee's conduct warrants termination and where a reasonable employer would have terminated the employment in the same circumstances).

Where an end of service gratuity is payable, it is in addition to any compensation for notice, redundancy or dismissal to which an employee may be entitled as a matter of contract.

The gratuity provisions are not applied where an employer has established a pension scheme for the employees, and provides (in writing, to the employee, prior to commencing work) the option of choosing between participation in the pension scheme or receiving the statutory end of service gratuity payment, provided that the benefits under the pension scheme are more favourable to the employee than the statutory gratuity, and provided that the employee has stated his choice in writing to the employer.

Unlike the position under the UAE Federal Labour Law, the gratuity payment does not get reduced where the employee resigns before completing five years of continuous service.

Since the 2012 amendments to the Employment Law, it is now mandatory for employers to enrol employees who are UAE nationals or nationals of any of the other GCC States in the UAE pension scheme for such nationals. Such employees will not be entitled to the end of service gratuity. Upon termination of employment, the employer must pay all sums owing to the employee within 14 days of the termination date.

The Employment Law does not have any provisions dealing with the procedures for termination, and it remains to be seen whether this will be dealt with in the Regulations to the Employment Law when such Regulations are issued.

13.2 Notice

The Employment Law provides for a minimum notice period for both an employer and an employee, as follows:

(a) seven days, if the period of continuous employment is less than three months;

(b) 30 days, if the period of continuous employment is between three months and five years; or

(c) 90 days, if the period of continuous employment is five years or more.

Notwithstanding the above, the Employment Law does not prevent an

employer or employee from agreeing to a longer or shorter period of notice, nor does it prevent either party from waiving notice or from accepting a payment in lieu of notice.

Payment in lieu of notice does not affect the right of either party to terminate employment without notice where the employment has been terminated for cause. The 2012 amendment to the Employment Law introduces the concept of termination "for cause", and permits either party to terminate the employment where the conduct of the other party merits termination and where a reasonable employer or employee would have terminated the employment in the same circumstances.

13.3 Reasons for dismissal

In *Rasmala Investments Limited v R Banat and Others (CF1001-006/2009),* the DIFC Court confirmed that the Employment Law does not currently provide a right to compensation for unfair dismissal. It remains to be seen whether such a right will be introduced in the Regulations to the Employment Law when such Regulations are issued, or in any new or amended Employment Law, and what substantive and procedural grounds will constitute unfair dismissal.

Upon the request of the employee, the employer is obliged to provide a written statement setting out the reasons for the dismissal.

13.4 Special Protection

An employee may not be dismissed because she is pregnant or on maternity leave, nor may an employer change the position or conditions of employment of such an employee without her prior written consent.

13.5 Closures and Collective Dismissals

The Employment Law does not address the procedure for and/or gratuity or other compensation payments applicable in the context of an individual or collective redundancy exercise, and it remains to be seen whether this will be dealt with in the Regulations to the Employment Law when such Regulations are issued.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees is regulated by the DIFC Data Protection Law No. 1 of 2007 (the "DPL").

Essentially employers, as data controllers, are obliged to ensure that they process personal data about their employees fairly, securely and lawfully, and in accordance with specified principles.

Employers are obliged to obtain their employee's consent prior to providing the DIFC Authority with any personal information relating to the employee. This includes authorisation for the DIFC Authority to disclose personal information to responsible DIFC Authority employees, the immigration authorities and other government departments as required by law (usually in relation to processing the UAE residence visa). This consent is usually given in the form of a provision in the employment contract.

14.2 Employee Access to Data

Employees, as data subjects, have the right to request and obtain information concerning the personal information that may be held or processed concerning the employee.

14.3 Monitoring

Although there are no express provisions in the DPL or Employment Law dealing with the monitoring of employee e-mail, internet and telephone usage, or the use of CCTV within the workplace, the DPL does allow the processing of personal data (in the absence of the data subject's written consent) where the processing is necessary for the purposes of the legitimate interests pursued by the employer (as data controller), except where such interests are overridden by compelling legitimate interests of the employee (as data subject).

The DPL allows the processing of sensitive personal data (in the absence of the data subject's written consent) where such processing is necessary to uphold the legitimate interests of the employer (as data controller) recognised in international financial markets, "provided that such is pursued in accordance with international financial standards and except where such interests are overridden by compelling legitimate interests of the Data Subject".

It is common for employment contracts to provide that employee emails may be monitored from time to time, and that personal use of employer email or internet should be limited.

14.4 Transmission of Data to Third Parties

An employer who wishes to provide employee data to third parties must do so in accordance with the DPL principles and processing conditions. Transfer of personal data to a third party outside the DIFC is only permitted if an adequate level of protection for that personal data is ensured by the laws that are applicable to the recipient, or where one of a series of specified limited exceptions applies.

Contributed by Hayley Howard, Floyd & Howard FZC

Hong Kong

1. Introduction

On 1 July 1997 Hong Kong, formerly a British colony, became a Special Administrative Region of the People's Republic of China. However, China agreed that it would retain its capitalist system and its English-inspired legal system for at least 50 years. Consequently, Hong Kong employment law is wholly different from that of Mainland China. Its foundation is the English common law of contract and employment, some of which has been codified by the Employment Ordinance, Hong Kong's main employment law statute. Grafted onto that foundation is an increasing amount of statutory employment law unique to Hong Kong.

Among the world's developed economies, Hong Kong remains one of the most employer-friendly jurisdictions, with correspondingly limited protection for employees. There is no trade union or collective bargaining law in Hong Kong (except for certain protections against anti-union discrimination).

Most employment-related disputes fall within the compulsory jurisdiction of the Labour Tribunal. Parties are not permitted to be represented by external counsel at Tribunal hearings. The Tribunal's decision can be appealed to the higher courts of Hong Kong.

2. Categories of Employees

2.1 General

The fundamental principles of employment law apply equally to all employees, but many statutory rights and protections, such as the right to severance pay, paid annual leave, maternity leave and paid sick leave, only apply to those who have worked (in some cases for a qualifying period) under a "continuous contract", which is a contract under which an employee has been employed for four weeks or more with at least 18 hours of work per week. In this Chapter, reference to "continuous contract" shall have the same meaning.

Part-time workers working less than 18 hours a week have few express rights beyond those in their contracts, although if the reason they are working part-time is because of illness or family commitments they do have the right not to be unfairly discriminated against on account of those factors (see section 4 below).

2.2 Directors

A director of a company may or may not also be an employee of that company. The position of directors is further regulated by company law.

2.3 Other

Occasionally there is uncertainty as to whether a particular relationship is an employment contract between employee and employer, or a contract for the purchase of services between an independent contractor and his customer. The employment relationship carries with it various consequences for an employer such as vicarious liability, possible liability for severance or long service payments, and tax and provident fund obligations, which may provide an incentive to structure a relationship as that of contractor-customer. However, the test is an objective one depending on the degree of control or independence rather than on the terminology used: does the person providing the work control or have the right to control what the worker does and how he does it? Significant indicators include how the worker is paid, whether expenses are reimbursed, who provides tools and materials, and whether employee-type benefits such as pension, insurance and holiday pay are provided.

3. Hiring

3.1 Recruitment

Since Hong Kong is a free economy, an employer in Hong Kong can, subject to immigration and regulatory rules (if the employees are performing any regulatory activities), recruit any local or expatriate employees. If an employer recruits through an employment agency, the agency must be operated under a licence granted under Part XII of the Employment Ordinance.

3.2 Work Permits

Foreigners who do not have a permanent Hong Kong identity card and wish to work and live in Hong Kong must obtain employment visas before coming to work in Hong Kong.

The application can be submitted directly to the Hong Kong Immigration Department by the employer or sponsor in Hong Kong. The processing time normally takes four to six weeks.

When the Immigration Department processes the application, it will normally take the following factors into account:

(a) whether the business which will employ the applicant is beneficial to the economy, industry and trade of Hong Kong;

(b) whether the employment of the applicant is essential to the business; and

(c) whether that position may be easily filled by a local person.

The spouse and dependent children accompanying an applicant into Hong Kong may apply for dependent visas. The duration of dependent visas granted will match that of the applicant's employment visa. Holders of dependent visas are allowed to work and study in Hong Kong.

4. Discrimination

There are currently four pieces of anti-discrimination legislation in Hong Kong: the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance, the Sex Discrimination Ordinance and the Race Discrimination Ordinance. Under this legislation, it is unlawful to discriminate in a number of fields, including employment, on the grounds of a person's sex, marital status, pregnancy, disability, family status or race. This legislation also provides protection against victimisation, sexual

harassment, disability harassment, racial harassment and vilification.

The anti-discrimination legislation recognises two forms of discrimination. Direct discrimination occurs when a person is treated less favourably than another person on the ground of sex, marital status, pregnancy, disability, family status or race. Indirect discrimination occurs when a condition or requirement, that is not justifiable, is applied to everyone but in practice adversely affects persons of a particular sex, marital status, family status or race, or those who are pregnant or disabled, as the case may be.

Sexual harassment, disability harassment and racial harassment are specifically outlawed.

Sexual harassment occurs where the harasser makes an unwelcome sexual advance, or an unwelcome request for sexual favours, or engages in other unwelcome conduct of a sexual nature in circumstances where, a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended or humiliated, or where the harasser engages in conduct of a sexual nature which creates a sexually hostile or intimidating work environment for the other person.

Disability harassment occurs when a person engages in unwelcome conduct on account of a person's disability or disability of an associate, where it can be reasonably anticipated that the person would be offended, humiliated or intimidated.

Racial harassment occurs when a person engages in unwelcome conduct towards another person on account of his or her race or his or her near relative's race, where a reasonable person would have anticipated that he or she would be offended, humiliated or intimidated. Racial harassment also occurs where a person alone, or together with other persons, engages in conduct that creates a hostile environment for another person on account of his or her race or his or her near relative's race. "Race" means race, colour, descent or national or ethnic origin and does not include nationality, citizenship or resident status.

Victimisation occurs where a person is treated less favourably because that person or some other third party had filed a complaint or brought an action or given evidence in relation to a violation of the anti-discriminatory legislation, or had the intention of doing so.

Vilification is an activity in public which incites hatred towards, serious contempt for, or severe ridicule of people with a disability or on the ground of race.

An employer is liable for the unlawful discriminatory acts of its employees, done in the course of their employment, even if the conduct was committed without the knowledge or consent of the employer. This is so unless the employer can prove that he took such steps as were reasonably practicable to prevent the employee from doing the act in question, or from doing acts of that description in the course of his employment.

The anti-discrimination legislation recognises limited exceptions. For example, an employer is not required to employ a disabled person who is not able to carry out the inherent requirements of the job; an employer is not considered to have committed unlawful discrimination if certain genuine occupational qualifications require the recruitment of a particular racial group or an act is done for the benefit of a person recruited or transferred from outside Hong Kong to work in Hong Kong where the work requires special skills, knowledge or experience not readily available in Hong Kong.

The Equal Opportunities Commission ("EOC") is a statutory body set up to implement the anti-discriminatory legislation. Persons who feel aggrieved by unlawful discriminatory acts may seek the assistance of the EOC, which administers a complaints system that aims to resolve disputes through conciliation. Alternatively, aggrieved persons can institute civil proceedings in the District Court without going through the EOC.

The EOC has published four Codes of Practice of Employment relating to the anti-discriminatory legislation. The Codes of Practice do not have the force of law, but if a person is accused of violating the anti-discriminatory legislation, failure to implement the recommendations outlined in the Codes could be used as evidence in court.

5. Contracts of Employment

5.1 Freedom of Contract

Broadly, parties are free to contract on whatever terms they choose. Employment contracts may be for a fixed term or open-ended and determinable on notice. The Employment Ordinance will supply some basic terms, such as the required notice period for termination, if these are not specified by the parties. The Ordinance also provides employees with a statutory right to "buy out" their termination notice period, by paying the employer payment in lieu of notice calculated on the basis of the employee's daily or monthly average wages in the preceding 12 months.

Domestic helpers recruited from abroad are entitled to minimum allowable wage prescribed by the government from time to time. In addition, the Minimum Wage Ordinance came into effect on 1 May 2011. The statutory minimum wage will apply to all employees in Hong Kong except for a few specified excluded categories such as certain student interns and live-in domestic workers. Persons with disability are subject to separate requirements.

For those working under a continuous contract the Employment Ordinance imposes minimum regimes for maternity leave, holiday entitlement and paid sick

leave entitlement. It is not possible for Hong Kong-law-governed employment agreements to contract out of these regimes, although frequently the arrangements put in place by employers improve on them.

There is no duty on an employee to relocate from a work location specified in the employment contract. The geographical flexibility required of the employee is purely that specified in the employment contract or agreed subsequently with the employee.

5.2 Form

There are no requirements as to form of employment contracts. They can be written, oral or a mixture of the two.

5.3 Trial Periods

Where it has been expressly agreed orally or in writing that a particular employment contract is probationary, during the first month, that employment may, irrespective of what the contract says, be terminated by either party without notice or payment in lieu of notice. During the remainder of the probationary period it may be terminated by either party on the agreed notice (not being less than seven days) or, if no notice period has been agreed, on seven days' notice.

5.4 Confidentiality and Non-Competition

Post-termination restrictions on competing or working for other employers will not be enforced in Hong Kong unless they meet the test of "reasonableness". To meet that test, the restrictions must be no more onerous than strictly necessary to protect the employer's confidential information, client connection, supplier connection or workforce stability. They must also strike a reasonable balance between the parties' interests and the public interest in free competition and a mobile labour market. Restrictions which purport to go wider than that are likely to be wholly unenforceable. Each case turns on its facts, but non-competition covenants in particular have to be specifically justifiable, and covenants lasting more than a year will only rarely be enforceable. Non-solicitation covenants are somewhat more readily enforced.

Absent written contractual restrictions, the only employee's duty which survives the termination of the employment contract is a limited duty of confidentiality.

5.5 Intellectual Property

An invention made by an employee in the course of his normal duties or duties specifically assigned to him belongs to the employer. Likewise, if the employee has a special obligation (because of the nature of his duties) to further the employer's interest, the invention created will belong to the employer. All other inventions made by the employee will belong to the employee.

Where an employee's invention has resulted in a patent of outstanding benefit to the employer (and the patent either belongs to the employer or has been assigned or exclusively licensed to him), the court can award compensation to the employee where it is just. The award of compensation is assessed on the basis of a fair share of the benefit which the employer has derived from the invention. Any term in an employment contract which diminishes the employee's rights in an invention will be unenforceable.

For works made by an employee in the course of his employment, the employer is the first copyright owner and has all rights to the works unless there is a contrary agreement. However, the Copyright Ordinance specifically states that if such copyright work is exploited by the employer in a way that could not reasonably have been contemplated by the employer and the employee at the time of making the work, the employer will have to pay an award to the employee at such amount to be agreed between the parties. To avoid arguments, an employment contract may have a specific clause stating that the employee assigns all rights in any copyright work created by him in the course of his employment to the employer and the employer can exploit such work in any way and any media without further reference or payment to the employee.

The author of a literary, dramatic, musical or artistic work, and the director of a film, has the moral right to be identified as the author or director of the work, and the moral right not to have his work subjected to derogatory treatment. Moral rights are not assignable. However, such moral rights can be waived by an instrument in writing. Hence, it is usually advisable for employment contracts to include a clause that the employee waives such moral rights.

6. Pay and Benefits

6.1 Basic Pay

Currently there is minimum allowable wage in Hong Kong for domestic helpers recruited from abroad. For standard employment contracts concluded on or after 20 September 2012, the applicable minimum allowable wage for foreign domestic helpers is HK$3,920 per month.

After the Minimum Wage Ordinance takes effect, employees (except for those excluded categories) will be entitled to statutory minimum wage. The amount of statutory minimum wage will be calculated on the basis of a prescribed hourly rate multiplied by the total number of hours worked during the relevant wage period. The Chief Executive-in-Council has adopted the recommendation of the Provisional Minimum Wage Commission to set the initial prescribed hourly rate at HK$28 (subject to endorsement by the Legislative Council). The prescribed hourly rate is subject to subsequent review by the Hong Kong government at least once every two years. An employer is obliged to keep records of total number of hours worked by an employee in a wage period for any employee whose wages are HK$11,500 or less per month.

Wages are defined in the Employment Ordinance as any remuneration or allowance that is payable in respect of work performed under the terms of the employment contract. The term 'wages' is capable of covering a wide variety of employment-related awards such as commission, travel allowances, attendance bonus, tips and service charges and overtime payments. Certain payments (e.g. value of accommodation provided by the employer, employer's contributions to retirement schemes, discretionary bonus and annual bonus) are expressly excluded from the definition of wages. Statutory awards such as severance payments, long service awards and maternity allowances are all calculated by reference to an employee's wages. Although overtime payments come within the definition of wages, some overtime payments are not to be included for the purpose of calculating statutory awards.

The Employment Ordinance allows a wage period to be of any duration. However in the absence of any proof to the contrary, the wage period is taken to be one month. Wages are payable at the end of the wage period and should be paid as soon as practicable and no later than seven days after they become payable. Interest should be paid on outstanding wages.

Where an annual bonus is payable under the terms of an employment contract, unless the employment contract provides otherwise, an annual bonus is to be equivalent to a full month's earnings. An employee who has been employed for not less than three months is entitled to receive a *pro rata* annual bonus. If an employee has a contractual right to an annual bonus, the *pro rata* annual bonus payment cannot be avoided even by an express term of the employment contract. The Employment Ordinance states that the amount of such a bonus must be stated in the employee's employment contract.

There is no statutory entitlement to an end of year payment thus the employment contract must expressly provide for this. The payment of an end of year payment is determined by reference to the period specified in the contract or if no such period is specified then the payment will be made at Chinese New Year. The amount payable is either specified in the contract or where no such amount is specified will be equivalent to a full month's wages.

6.2 Pensions

There are two retirement schemes in Hong Kong. The first is the Mandatory Provident Fund Scheme ("MPF"), which is governed by the Mandatory Provident Fund Schemes Ordinance ("MPFSO"). It is the responsibility of every employer to enrol an employee into an MPF scheme within the timeframe required by the MPF rules. An MPF scheme is a defined contribution scheme where each employer of a relevant employee and each relevant employee must each contribute a prescribed percentage of the employee's relevant income to an MPF scheme. A relevant employee in respect of whom an employer must make MPF contributions is any employee who is at least 18 years old and who is less than 65 years old, if the employee is in employment for at least 60 days. There are exemptions to this which are set out in more detail in the MPFSO. Every employer must contribute a mandatory amount to an MPF scheme from the employer's own fund and deduct a mandatory amount from a relevant employee's relevant income for that period as a contribution by that employee to an MPF scheme. The amount required to be contributed to an MPF scheme by an employer of an eligible employee and by an eligible employee is the prescribed percentage (currently 5%) of the employee's relevant income. Effective from 1 June 2012, the relevant income of an employee is capped at HK$25,000 per month.

The second scheme open to employers is an Occupational Retirement Scheme. This is a voluntary employer-sponsored retirement scheme governed by the Occupational Retirement Scheme Ordinance ("ORSO"). No employer may operate one unless the scheme is registered under the ORSO; the scheme has obtained an exemption certificate under ORSO; an application in respect of the scheme has been registered; or the scheme is established by an Ordinance.

6.3 Incentive Schemes

Share schemes are offered in Hong Kong. There is however a reluctance to offer these to employees as the low level of personal taxation in Hong Kong means that employees will not obtain the taxation benefit associated with such plans in other countries such as the United Kingdom.

6.4 Fringe Benefits

Fringe benefits such as medical benefits are frequently provided, but are not a statutory requirement.

6.5 Deductions

The Employment Ordinance allows an employer to make nine types of deductions from an employee's wages. These are: absence from work (no limit), loss or damage to equipment due to employee's negligence (capped at HKD$300), meals provided by employer, accommodation provided by employer, recovery of any advance or over-payment of wages, recovery of any loan, contributions to approved schemes, payments authorised by statute and any other deduction made with the approval of the Commissioner for Labour.

The total of all deductions in any wage period must not exceed 50% of an employee's wages.

7. Social Security

There is no social security regime applicable to employees in Hong Kong.

8. Hours of Work

Hours of work are unregulated in Hong Kong.

9. Holidays and Time Off

9.1 Holidays

Leave entitlement depends on an employee's length of service. Employees under a continuous contract are entitled to a minimum of between 7-14 days' paid annual leave. An employment contract may grant an employee more than the statutory minimum, but it cannot grant the employee less, even if the employee agrees to it. An employer who grants an employee less than the minimum statutory leave commits an offence. The Employment Ordinance prohibits statutory annual leave to be used for giving notice of termination. It is permissible for an employer to allow an employee to use up statutory annual leave during the notice period if so requested by the employee but the employer cannot require the employee to do so.

9.2 Family Leave

An employee employed under a continuous contract for a period of 40 weeks or more is entitled to 10 weeks' paid maternity leave payable at the rate of four-fifths of her normal wage. If the employer agrees, an employee is entitled to commence maternity leave at any time between two and four weeks before the expected date of birth. Even where an employee gives birth prematurely she is still entitled to 10 weeks' paid leave. If the birth is overdue, the employee is entitled to take unpaid leave for the period between the expected date of birth and the date on which she actually gives birth.

Where an employee is entitled to take maternity leave between the time that notice of pregnancy is given and the time the employee returns, an employer cannot terminate the employee's employment by notice or by making a payment in lieu of notice.

Any employer who contravenes the maternity protection commits a serious offence and will be liable to a fine.

9.3 Illness

In the first year of employment, an employee under a continuous contract accumulates sickness day credit at the rate of two days for each month of service. After 12 months' service, sickness day credits accumulate at an enhanced rate of four days for each month of service. A maximum of 120 days' sickness credits can be accumulated. An employee who has accumulated sickness day credits is entitled to take paid sick leave.

9.4 Other Time Off

An employee under a continuous contract is entitled to not less than one rest day in every period of seven days.

Flexible working arrangements are not common.

10. Health and Safety

10.1 Accidents

Every employer is required to reasonably ensure the health and safety of all the employees at the workplace. An employer who fails to ensure the health and safety of employees at work commits an offence and is liable on conviction to a fine. An employer has legal liability under a number of statutes including the Employment Ordinance, Occupational Safety and Health Ordinance, Factories and Industrial Undertakings Ordinance and common law. The common law imposes a duty on every employer to take reasonable care for the safety of his employees. This duty is not absolute and as long as the employer exercises due care and skill he will not be liable for the damage or injury suffered by his employees in the course of their employment.

An employee has the right to claim damages from the employer for injury suffered from a work-related incident.

Where the injury is caused by the negligence or breach of a statutory duty, payment of compensation may be available under the Employees' Compensation Ordinance. This will not however affect the employee's right to seek common law damages by way of civil proceedings. However any common law damages awarded will be reduced by the amount of any statutory compensation paid or payable in respect of the negligence or breach of statutory duty.

If an accident occurs at a workplace that leads to a person's admission to a hospital or clinic for medical treatment, the person responsible for the workplace must notify an occupational safety officer appointed by the Commissioner for Labour.

10.2 Health and Safety Consultation

Employers generally consult employees so that each employee's role and responsibilities are understood.

11. Industrial Relations

11.1 Trade Unions

Trade unions in Hong Kong are regulated by the Trade Unions Ordinance ("TUO") and the Trade Unions Registration Regulations. A trade union is any association the principal objects of which are to regulate relations between employers and employees, between employees and employees or employers and employers. Every trade union in Hong Kong must be registered in accordance with the statutory provisions of the TUO. It is an offence for any person to act as an officer or take part in the administration of a trade union that is not registered. A trade union that is registered is given certain rights, privileges and immunities that encourage responsible trade unionism. For example, registered trade unions are immune from civil action in respect of trade disputes.

11.2 Collective Agreements

A collective bargaining agreement is an agreement made between employee organisations, for example trade unions,

and employers. The agreements are intended to regulate certain aspects of the terms and conditions of employment afforded to employees of the relevant company. In Hong Kong, it is unlikely that collective agreements will give rise to legally enforceable rights in the absence of express terms. The enforceability of such agreements relies on common law as there is no statutory recognition of collective agreements in Hong Kong. The most likely way to make a collective agreement enforceable is to incorporate it into the employee's employment contract.

11.3 Trade Disputes

In Hong Kong, trade disputes are resolved either by direct negotiation between the parties or by conciliation/arbitration under the Labour Relations Ordinance. The Labour Relations Service of the Labour Department will offer necessary assistance and advice.

11.4 Information, Consultation and Participation

There are at present no formalised requirements for employee participation in Hong Kong.

12. Acquisitions and Mergers

12.1 General

In a business sale (i.e. an asset deal), there is generally no mechanism for the automatic transfer of employees under Hong Kong law. Typically, the transfer is effected by terminating the existing employment contracts of the employees with the seller and entering into new employment contracts with the new entity. In a share transaction (where there is a change in the employer's shareholder(s)), the existing employment contracts will continue to be performed by the same employee for the same employer despite the change in the share ownership.

Under a business sale, where the seller and buyer agree and where certain requirements are met, the payment of severance payments/long service payments by the seller can be deferred. The seller must give notice of termination to the employees and the new employer must offer employment to the employees on the same or no less favourable terms, with the renewal taking place on or before the date on which the employment would otherwise be terminated. If the employees accept the offer of re-employment, their accrued statutory rights will be carried forward to the new employer (i.e. the buyer).

12.2 Information and Consultation Requirements

There is no legal requirement for the provision of information to and consultation process with the affected employees in the context of either a share or asset sale.

12.3 Notification of Authorities

There are no employment law obligations to notify the authorities in the event of a share or asset sale.

12.4 Liabilities

The Transfer of Businesses (Protection of Creditors) Ordinance (Cap. 49 of the Laws of Hong Kong) has been enacted to give protection to creditors in a business sale. The Ordinance is relevant since ex-employees are also creditors in a business sale. The Ordinance provides that while the primary liability for termination payments falls on the previous employer (i.e. the seller), the buyer will become jointly and severally liable for all the debts and liabilities incurred by or arising out of the business carried on by the original owner (i.e. the seller) up to a limit equal to the value of business acquired by the buyer. This Ordinance also imposes a statutory indemnity on the seller in favour of the buyer.

In order for the buyer to avoid liability under the said provisions, a notice in the form prescribed under the Ordinance can be published in the Government Gazette and certain Hong Kong newspapers jointly by the buyer and seller.

13. Termination

13.1 Individual Termination

An employment contract may be terminated:

(a) by one party – for example, where either party gives notice of termination or makes a payment in lieu of notice, or where an employer summarily dismisses an employee (i.e. without notice or payment in lieu of notice) for a serious breach of the employment contract;

(b) by agreement; or

(c) by operation of law – for example, in the event of the change of ownership of the employer's business, the liquidation of the employer, or the death of the employee.

An employer may without notice or payment in lieu of notice suspend an employee:

(a) as a disciplinary measure for any reason for which the employer could have summarily dismissed the employee;

(b) pending a decision by the employer as to whether to summarily dismiss the employee; or

(c) pending the outcome of any criminal proceedings against the employee arising out of, or connected with, the employment.

The period of suspension must not exceed 14 days, except where the employee is the subject of criminal proceedings, in which case the period may be extended. During the period of suspension, an employee is entitled to terminate his employment without notice or payment in lieu thereof.

The categories of termination payments to which an employee is entitled depend on the facts of each individual case. Typically, they include:

(a) accrued wages up to the date of termination;

(b) payment in lieu of notice (if appropriate);

(c) payment in lieu of accrued but untaken annual leave for the previous leave year and any *pro rata* annual leave pay for the current leave year;

(d) outstanding statutory or public holiday pay;

(e) outstanding sick leave pay;

(f) outstanding end-of-year payment and a proportional end-of-year payment for the current payment period;

(g) severance payment or long service payment (if appropriate); and

(h) any other payments under the employment contract.

With the exception of severance payment, which is payable within two months from the receipt of a notice from the employee claiming severance payment, termination payments should be made within seven days of the date of termination. Failure to do so constitutes an offence.

13.2 Notice

Either party to an employment contract is entitled to terminate by giving notice to the other party. Statute imposes a number of restrictions on notice periods. In summary:

(a) Where the contract is a continuous contract, is deemed to be a contract for one month renewable from month to month (every contract of employment which is a continuous contract is so deemed absent any express agreement to the contrary), and is silent as to the length of notice, the contract can be terminated by giving not less than one month's notice;

(b) Where the contract is a continuous contract, is deemed to be a contract for one month renewable from month to month, and makes provision for notice, the contract can be terminated by giving the agreed period of notice, provided that such period is not less than seven days; and

(c) In all other cases, where a contract makes provision for notice, the contract can be terminated by giving the agreed period of notice.

In the case of a fixed term contract that makes no provision for termination by notice prior to the expiry of the term, the contract is nonetheless terminable by giving reasonable notice at common law.

As an alternative to terminating an employment contract by giving notice, either party may also terminate by making a payment in lieu of notice. This refers to the amount of the average daily or monthly wages (i.e. not just base salary) of the employee during the preceding 12 months. "Wages" are widely defined in the Employment Ordinance to mean all remuneration, earnings, allowances (including travelling allowances and attendance allowances), attendance bonus, commission, overtime pay, tips and service charges, however designated or calculated, which (a) are capable of being expressed in terms of money, and (b) are payable to an employee in respect of work done or to be done under his contract of employment. It is also possible to terminate partly by notice and partly by making a payment in lieu of the balance of the notice period.

In the event of a wrongful termination, the employer will be liable to pay the employee an award equal to the payment in lieu of notice. A wrongful termination does not prejudice the statutory entitlement of an employee, i.e. statutory benefits such as severance payment, long service payment, holiday pay, annual leave pay, sickness allowance, maternity leave pay and outstanding wages will remain payable by the employer.

13.3 Reasons for dismissal

Where an employer dismisses an employee who has been employed under a continuous contract for not less than 24 months with the intention of depriving the employee of statutory benefits, notwithstanding that sufficient notice or payment in lieu of notice has been given, the dismissal will constitute an unreasonable termination and confer upon the employee an entitlement to one of three remedies: an order for re-instatement, re-engagement (subject to the employer's consent), or terminal payments (i.e. statutory entitlements that the employee was entitled to but has not been paid upon the termination of employment, or to which he might reasonably be expected to be entitled upon the termination of employment had he been allowed to continue with his original employment to attain the minimum qualifying length of service required for the entitlements).

For these purposes, an employer is rebuttably presumed to have the intention of depriving the employee of statutory benefits unless a valid reason for dismissal is shown. Statute recognises five valid reasons for dismissal: an employee's conduct, an employee's capabilities or qualifications, redundancy or other genuine operational requirements of the business, statutory requirements and other substantial reasons.

13.4 Special Protection

An employer is prohibited from terminating the employment of an employee in a number of circumstances. An employer shall not terminate the employment contract of an employee:

(a) who has served a notice of pregnancy;

(b) by reason of his membership of or participation in trade union activities;

(c) who is on sick leave in respect of which statutory sickness allowance is payable;

(d) who is giving evidence or information against the employer in respect of any enforcement under the Employment Ordinance or in

respect of accidents or breaches of statutory duty;

(e) who is entitled to receive compensation under the Employees' Compensation Ordinance unless a certificate of assessment has been issued or the employer has entered into an agreement with the employee to pay compensation; or

(f) who is serving as a juror.

An employer dismissing an employee in these circumstances is liable to prosecution. However, these restrictions do not affect an employer's right to dismiss an employee summarily. An employee dismissed under these circumstances other than for a valid reason (see section 13.3 above) will be entitled to one of the three remedies described in section 13.3 above, and may also be entitled to an award of compensation of up to HK$150,000.

13.5 Closures and Collective Dismissals

There is no legislation specifically addressing collective dismissals.

14. Data Protection

14.1 Employment Records

The collection, processing and handling of personal data pertaining to job applicants, current and past employees are regulated by the Personal Data (Privacy) Ordinance (PDPO). For these purposes personal data is defined in the PDPO to mean any data: (i) relating directly or indirectly to a living individual; (ii) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and (iii) in a form in which access to or processing of the data is practicable. The Privacy Commissioner for Personal Data (the Commissioner) has issued a Code of Practice on Human Resource Management (the Code) which provides employers with practical guidance in respect of requirements under the PDPO.

The Code does not have the force of law, however, failure to abide by the mandatory provisions of the Code will weigh unfavourably against the data user in any case that comes before the Commissioner. Further, where any data user fails to observe any of the mandatory provisions of the Code, a Court, or the Administrative Appeals Board is entitled to take that fact into account when deciding whether there has been a breach of the PDPO.

Key requirements include:

(a) When an employer collects personal data from a job applicant or employee, the employer should inform (and as a matter of prudence, obtain written consent from) the individual of (i) the purpose for which such data are to be used; (ii) the classes of persons to whom the data may be transferred; and (iii) whether it is obligatory or voluntary for the individual to supply the data. Express consent must be obtained from the employee if such personal data is to be used for a different purpose or transferred to a different class of persons.

(b) An employer should take all practicable steps to ensure that the employment-related data it holds are accurate.

(c) An employer should implement a data retention policy that specifies a period of: (i) no longer than two years in respect of recruitment-related data held about a job applicant from the date of rejecting the applicant; and (ii) no longer than seven years in respect of data held about an employee from the date the employee leaves employment.

(d) An employer should take all practicable steps to ensure the security of the employment-related data it holds.

14.2 Employee Access to Data

An individual whose personal data are held by his employer is entitled to request a copy of such data. Subject to certain exemptions specified in the PDPO, the employee is required to provide a copy of the requested personal data within 40 days of receiving the data access request. If the employer is unable to provide a copy of the requested data within 40 days, the employer must communicate that fact in writing to the employee before the expiry of the 40-day period and must provide the copy as soon as practicable thereafter.

14.3 Monitoring

Where employee monitoring is undertaken resulting in the collection of personal data of employees, the employer shall ensure that such act or practice complies with the Data Protection Principles of the PDPO. The PDPO does not contain specific provisions that regulate employee monitoring per se, but the Commissioner has published the Privacy Guidelines: Monitoring and Personal Data Privacy at Work (the "Guidelines") to provide practical guidance on the steps that should be taken by employers when they monitor employees by telephone monitoring, email monitoring, internet monitoring or video monitoring.

The Guidelines offer guidance to employers in evaluating the appropriateness of employee monitoring, and in developing employee monitoring policies and related personal data management practices.

14.4 Transmission of Data to Third Parties

On or before collecting personal data from a job applicant or employee, the employer must explicitly inform the individual of the classes of third parties to which any of their personal data may be transferred. An employer should not use or disclose personal data of an employee other than for a purpose directly related to the employment of the employee

unless: (i) the employee has consented to such use or disclosure; (ii) the purpose is directly related to a purpose for which the data were collected; (iii) the disclosure is required by law; or (iv) an exemption under the PDPO applies.

Where personal data pertaining to its employees are disclosed by an employer in the course of seeking the professional services of third parties, the employer should ensure that the data to be provided are restricted to those required for the specific services sought. The PDPO imposes liability on an employer for wrongful acts done by a third party where the third party acts as agent for the employer, therefore, where an employer out-sources its human resources management functions to an external agency, the employer should take all practicable steps to ensure that the agency protects the employment-related data from unauthorised or accidental disclosure.

The PDPO prohibits the transfer of personal data to places outside Hong Kong unless one of a number of conditions is met, however, the relevant section of the PDPO has yet to come into operation.

Contributed by Clifford Chance, Hong Kong

India

1. Introduction

After India attained independence in 1947, it was largely felt that its labour policy should emphasise employees' self-reliance, and as a consequence, until 1954, all official policies adopted this approach. However, an equally prevalent view was that looking after the welfare of the employees should be the government's responsibility. This cross-current of views gave rise to a government labour policy approach (previously adopted by the International Labour Organisation) known as "Tripartism". Thus, labour policy has proceeded on the basis that the community as a whole, as well as individual employers are under an obligation to protect the welfare of employees and to secure for them their due share in the gains of economic development.

To summarise, the essential tenets of India's labour policy are as follows:

(a) Recognition of the state as the custodian of community interests as catalyst for change and welfare programmes;

(b) Recognition of the right of employees to peaceful direct action if justice is denied to them;

(c) Encouragement of mutual settlement, collective bargaining and voluntary arbitration;

(d) Intervention by the state in favour of the weaker party to ensure fair treatment to all concerned;

(e) The maintenance of industrial peace;

(f) Promoting a constructive partnership between the employer and employees to achieve the economic needs of the community;

(g) Ensuring fair wage standards and the provision of social security;

(h) Achieving cooperation with a view to increasing productivity;

(i) Adequate enforcement of legislation;

(j) Enhancing the status of the employee in industry; and

(k) Tripartite consultation between government and employee and employer representatives.

Both the federal government as well as various state governments have legislation governing various aspects of employment. The most relevant federal legislation is the Industrial Disputes Act, 1947 ("IDA"), which contains provisions in relation to the investigation and settlement of industrial disputes and certain other employment-related issues. Most Indian states have relevant statutes governing the employment relationships in shops and commercial establishments.

2. Categories of Employee

2.1 General

Indian legislation typically recognise two categories of employees: "workmen" and "non-workmen". The IDA defines a "workman" as a person employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward. Those employed in a supervisory capacity drawing wages over a prescribed threshold (which is currently Rs. 10,000 per month) or in a managerial or administrative capacity are excluded from its scope. In addition, except in the State of West Bengal, sales employees are not treated as "workmen" within the scope of the IDA if their main and substantial work consists of canvassing for customers, building up sales and promoting business. However, although sales promotion employees are excluded from labour protection, medical/pharmaceutical representatives are currently extended the protection of the IDA by virtue of the Sales Promotion Employees (Conditions of Service) Act, 1976.

The legislation grants "workmen" certain benefits, including job security and protection from unilateral changes in terms of service. Such benefits are not accorded to non-workmen unless specified in their contracts of employment.

"Workmen" are further categorised as full-timers or seasonal. Full timers under the IDA are those who have completed 240 days of continuous service in an establishment in a year. They are entitled to all legislative benefits such as notice prior to retrenchment, bonus and overtime allowance, whereas seasonal workmen do not enjoy similar protection from termination. Workmen are, in addition, entitled to all benefits prescribed under their contract of employment.

2.2 Directors

Senior executives, directors and other managerial employees are usually classified as non-workmen and are generally not entitled to the benefits conferred by employment legislation, unless such benefits are enshrined in their contract of employment.

2.3 Other

India has progressively sought to eliminate child labour by enacting prohibitory provisions in most labour legislation and by enacting the Child Labour (Prohibition and Regulation) Act, 1986. Children below the age of 14 are prohibited from working in factories and in occupations that are deemed hazardous in nature which include the handling of toxic substances, foundries, automobiles etc.

3. Hiring

3.1 Recruitment

A number of Employment Exchanges have been set up under the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 ("Employment Exchanges Act") and typically, both public and private enterprises are required to notify such exchanges of any vacancy before filling a vacancy. The Union cabinet has, by a Press Information Bureau release dated 04 October, 2012 approved the introduction of the Employment Exchanges (Compulsory

Notification of Vacancies) Amendment Bill, 2012 with a view to bringing more establishments, especially those in the private sector within the scope of the legislation. The new bill seeks to cover even those private sector establishments which employ between 10 to 24 persons within its ambit for the purpose of submission of returns. Note that currently the Employment Exchanges Act covers only those private sector establishments which employ 25 or more persons. In addition, the definitions of 'employer' and 'employee' are to be extended to cover contract labour employed for more than 240 days in a year. This bill is yet to come into force.

Recruitment may also be conducted through recruitment agencies, labour contractors, advertisements in newspapers and trade journals and on-site recruitment at the establishment.

3.2 Work Permits

The applicant employee would generally apply to the Indian Embassy/High Commission in his country of residence for an Indian work permit/employment visa. Indian work permits or employment visas are issued to skilled and qualified professionals. An employment visa would not be granted for jobs for which qualified Indians are available or for routine, ordinary or secretarial/clerical jobs. In this respect the Ministry of Labour and Employment has, by a Press Information Bureau release dated 16 December 2009 ("PIB") provided greater clarification in that employment visas for foreign nationals coming into India for the execution of projects and contracts in India may be granted to the highly skilled and professionals. However, the MHA has clarified that an employment visa will be granted to a foreign national only if his salary is in excess of USD 25,000 per annum. It may be noted that the said salary limit is not applicable to foreign nationals falling under the following three categories:

(a) Ethnic cooks;

(b) Language (other than English) teachers/translators; and

(c) Staff working for the high commission/consulate in India.

Although it seems that there are no limits on the number of foreign nationals that may be employed by an Indian company, in practice it appears that certain Indian embassies apply limits on the number of employment visas that they will issue for each company at their discretion.

Applicants seeking an employment visa are required to submit proof of employment with the company or organisation.

All foreign employees, including those of Indian origin, who travel to India on a visa which is valid for more than six months are required to register with the Foreigners Registration Office ("FRO")/ Foreigners Regional Registration Office ("FRRO") within 14 days of arrival in India. This would have to be accompanied by an undertaking from an Indian national.

A foreign employee or an Indian citizen who is an employee of a foreign company outside India and is on deputation to the office, branch, subsidiary or joint venture in India of a foreign company can open and hold an offshore account and receive up to 100% of his salary directly into such offshore account from the Indian entity or the parent company (Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations 2000 (as amended by Notification No. 34/2001). Income tax chargeable under the Income Tax Act, 1961 should, however, be paid on the entire salary as accrued in India. Further if the individual has been in India during the previous year for an aggregate period of 182 days or more then he would be considered to be a person resident but not ordinarily resident and in such a case income which accrues or arises or is deemed to accrue or arise in India or which accrues or arises to him outside India in relation to a business controlled, or a profession set up, in India, would be taxable in India. A citizen of a foreign country working for an Indian company can open and hold an offshore account and remit his/her entire salary received in India to such account after paying the necessary tax in India on his/her entire salary accrued in India

4. Discrimination

The right to equality is a fundamental right granted under the Indian Constitution. The Preamble to the Constitution ensures *inter alia*, equality of status and opportunity. Articles 14 and 15 of the Indian Constitution pronounce not only the rights of men and women to equality under law but prohibit discrimination by the State on the basis of sex, caste, religion, race, place of birth etc. Further, Article 16 guarantees equality of opportunity in matters relating to employment in State services. In addition to these Articles, the Directive Principles of State Policy (a set of guidelines contained in Part IV of the Constitution of India, issued to both the Federal and State Governments in India which must be borne in mind when enacting any legislation) envisage equal pay for equal work.

In the private sector, the Equal Remuneration Act, 1976 guarantees equal pay to employees performing the same work, or work of a similar nature regardless of gender. It also prohibits discrimination against women in the context of recruitment, promotion, training and transfer.

While there is no specific legislation dealing with sexual harassment in the workplace, the Supreme Court of India, in the landmark decision of *Vishaka and Others* v. *State of Rajasthan*, has laid down guidelines for its prevention and appropriate redress where it arises. The guidelines make it mandatory for an employer to create an appropriate complaint procedure in every organisation to address complaints by victims of sexual

harassment. The complaint procedure should address complaints promptly and provide, where necessary, a complaints committee, a special counsellor or other support service. The complaints committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, the complaints committee should involve a third party, either a non-governmental organisation or other body which is familiar with the issue of sexual harassment.

On 3 September 2012 the lower house of the Indian Parliament approved the Protection of Women against Sexual Harassment at Workplace Bill 2010 ("SHB"). This bill seeks to codify these guidelines on sexual harassment with the legislative aim being to provide maximum support and guidance to victims of sexual harassment. The bill makes it mandatory for all offices, hospitals, institutions and other workplaces to have an internal mechanism for addressing complaints related to sexual harassment including providing for settlement by way of conciliation. It requires internal complaints committees and local complaints committees to be established by organizations where internal complaints committees have not been established due to having less than 10 workers or where the complaint is made against the employer. The SHB requires an annual report to be submitted by the internal complaints committee and the local complaints committee to the employer and relevant district officer which must then be sent to the respective state governments.

5. Contracts of Employment

5.1 Freedom of Contract

Any person in India who is over 18 years of age, acting of his own accord and is of sound mind has the freedom to enter into a contract with the employer of his/her choice. However, the Industrial Employment (Standing Orders) Act, 1946 applies in relation to workman in industrial establishments which employ prescribed numbers of workmen (ranging between 50 to 100 depending on the Indian State where the establishment is located), regulates the terms of the contract to ensure uniformity and protection for the workmen.

5.2 Form

It is not mandatory to enter into any formal employment contract except in some Indian States where the local Shops and Establishment Act requires contracts to be in a particular form. If such a contract is entered into, it would be binding except in respect of any provision that is void or voidable under the provisions of the Indian Contract Act, 1872 or inconsistent with any other statutory requirements.

While the Shops and Establishments Acts of most Indian States prescribe a loose form of employment agreement, the normal practice in India is to present the employee with a detailed offer letter/employment agreement. Some of the general terms covered in such offer letter/employment agreement are designation and place of work, compensation, other monetary benefits, holidays, sick leave, standard working hours, termination provisions etc.

In the event an employer wishes to change the terms of service of his employees who are classified as workmen, the employer would be required to provide the employee with at least 21 days' notice of such change (in some states the period of notice would be longer), prior to effecting the change. Notice of change is required only where the change in the terms of service is to the detriment of the workman. In the case of non-workmen, unless the contract gives the employer the unilateral right to vary the terms of the contract, their consent would be required.

5.3 Trial Periods

The duration of any trial or probationary period is determined by the contract of employment or by the standing orders of the establishment or the model standing orders, if the establishment's own standing orders have not been approved. The standing orders of an establishment are the general rules of discipline and order that apply to all employees of an establishment and that are required to be followed by an employee. Typically a trial or probation period will be for a six-month period but may be further extended by an employer if it is not satisfied with the progress of an employee. It is usually easier to terminate the services of a probationer as compared to an employee as a probationer does not enjoy all the statutory protection from retrenchment accorded to an employee. However, if an employer wishes to terminate the services of a probationer prior to the completion of the trial period or in conflict with the provisions of such probationer's contract, it would be advisable for the employer to consider granting severance compensation to the probationer.

5.4 Confidentiality and Non-Competition

There is no legislation regulating the inclusion of confidentiality and non-competition clauses in employment contracts. However, the employer may (and often does), by contract, impose obligations on the employee to refrain from disclosing any business secrets and any other secrets of a confidential nature during the subsistence of the contract or after its expiry. Post-termination restrictions which seek to protect the confidential information of an employer are generally enforceable in a court of law.

Non-compete restraints during the course of employment are enforceable, except where the nature of the restraint is excessively harsh or unconscionable. However, Indian courts have generally held that non-compete clauses are unenforceable as against the employee beyond the term of the employment of the employee. This is because such a clause would be in restraint of the

employee's freedom to trade and would consequently be in contravention of Section 27 of the Indian Contract Act, 1872 which deems all agreements in restraint of trade, void. The only exception to Section 27 of the Indian Contract Act, 1872 is where there is a transfer of a business along with the goodwill and in such a case a non-compete provision may be upheld if it is reasonable. However, this would not be relevant in the context of an employer-employee relationship.

For senior management and employees who are handling sensitive information of the employer, it is typical to include non-solicitation of clients and/or key employee clauses. Whether such a clause would be upheld in a court of law depends on the facts of the case in question. It could be argued that the restriction on solicitation of customers, depending on the specific facts of the case, would be a covenant which is in restraint of trade if by so doing the employee is prejudicially affected from carrying out any trade. There is a fine line between non-solicitation being in restraint of trade or a simple contractual understanding which does not stop the employee from carrying on a trade, unlike a non-compete provision. However, it should be noted that non-solicit provisions, even if they are upheld, would generally only entitle the employer to damages and it is very unlikely for an Indian court to grant an injunction preventing the customer from taking its business elsewhere. At best, a claim for damages may be maintained against the employee for breach of his contractual agreement if the employer can show that the enforcement of the provision *inter alia* would not prejudice the employee's ability to carry on a business or trade and therefore would not be in restraint of trade. The main focus of the courts is whether or not the provision is in restraint of trade.

5.5 Intellectual Property

The general rule under the Indian Copyright Act of 1957 is that the author is the first owner of the copyright. However, in the case of an artistic or literary work produced in the course of an author's employment, under a contract of service or apprenticeship, the employer is, in the absence of any agreement to the contrary, the first owner of the copyright. It should however, be noted that the moral and equitable rights in relation to such work would still vest with the author of the work. Therefore the employee should be required to waive any rights that he may have, including moral rights or any other equitable rights in relation to the creation of any such work during the course of his employment.

Under the Patent Act of 1970, the situation is slightly different. The right to patent inventions made by employees during the course of their employment is determined by the terms of the contract between the employer and employee although in the first instance, the ownership of the patent would vest in the employee. An employer can obtain a declaration from the employee to the effect that all the intellectual property generated by him during the course of employment shall be held in trust for the employer or that all patentable inventions made will be assigned to the employer. After an invention is made, the employee must then enter into a contract of assignment, transferring his rights of ownership in the invention to the employer.

6. Pay and Benefits

6.1 Basic Pay

With respect to the payment of wages to employees, India follows the standard of a "Minimum Wage" as opposed to a "Living Wage". This is because, at the current level of national income, India cannot afford to prescribe compulsory payment of a living wage which ensures the achievement of a specific standard of living by the workman. Thus, legislation prescribes the payment of a minimum wage, in cash, as a bare subsistence wage. The Minimum Wages Act of 1948 grants the State governments the power to fix a minimum rate of wages for time work, piece work and overtime work. The minimum rate of wages so fixed consists of: (i) a basic rate of wages and a special allowance; (ii) a basic rate of wages with or without a cost of living allowance; or (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of any benefits provided. The minimum wage to which an employee is entitled will be dictated by a variety of factors, including the (i) nature of employment; (ii) the industry in which the employee works; (iii) the geographic location where the employee works; and (iv) the State where the employment is located.

India also follows the practice of paying a "Dearness Allowance", an allowance to offset the rise in prices, which is added to the basic wages of the employee.

The Payment of Wages Act of 1936 provided that wages should be paid at intervals of no longer than a month. Consequently, it is the duty of every employer to ensure that wages are paid to its employees on a monthly basis, the prescribed registers are maintained and that the prescribed notices are displayed on the premises. The Act also contains provisions relating to the deduction of wages due to damage to property, absence from duty etc. The Payment of Wages Act, 1936 however is not applicable to employees whose monthly wages exceed Rs. 18,000.

6.2 Pensions

Formal sector pensions in India may be divided into three categories; *viz* those schemes governed by legislation, Government pensions and voluntary pensions. The two main Acts defining provisions for pensions in India are the Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act") and the Payment of Gratuity Act, 1972 ("Gratuity Act"). The Employees Pension Scheme has been created under the EPF Act which provides pension for life to an employee-member, on retirement and to his family members upon his

death. Under the EPF Act and the schemes thereunder, both the employer and an employee make contributions towards the employee's Provident Fund on a monthly basis. The statutory rate of such contribution is currently 12% of an employee's basic wages, dearness allowance and retaining allowance (the latter is an allowance during any period in which the establishment is not working to retain the employee's services), if any.

The Gratuity Act prescribes that a lump sum is required to be paid by the employer to an employee when the employee retires or resigns from an organisation and in the event of death or disablement due to accident. Except in the case of termination due to death or disability this Act provides for the payment of gratuity to employees who have worked with an establishment for a continuous period of five years. The rate of gratuity payable is calculated at the rate of 15 days' wages for every completed year of service or part thereof in excess of six months. The maximum gratuity payable to a departing employee is currently Rs. 1,000,000.

6.3 Incentive Schemes

The Payment of Bonus Act, 1965 was enacted in order to implement a profit-based bonus system in the country. It prescribes a minimum bonus of 8.33% of the wages or salary earned by an employee during a financial year usually commencing 1 April or Rs. 100, whichever is higher, whether or not the employer has any allocable surplus in that year. The Act also prescribes a maximum bonus payable by the employer to his employees at the rate of 20% of the salary or wages provided in that year when the prescribed surplus in that year exceeds the amount of minimum bonus payable. The statute however applies only to employees who earn up to Rs. 10,000 per month. Employees earning above this would only be eligible to earn a bonus if their employment agreements provides for the same.

Generally all employees are entitled to overtime pay of double the ordinary rate of wages where "ordinary rate of wages" means the sum of the basic wage plus allowances to which an employee is entitled. The same rate is also applicable to work during State holidays. In some Indian States employees cannot be asked to work on days off and holidays.

6.4 Fringe Benefits

While the law does not provide for the payment of fringe benefits, numerous benefits conferred by the employer under the employment contract may be considered as benefits for income tax calculation purposes; for example, 'rent allowance', 'compensatory allowance' which is meant to compensate for the hardship of service in certain areas, 'travel allowance', 'lunch allowance', 'car allowance', etc. These benefits are liable to be taxed by the government as part of the employee's "salary" subject to specific exemptions.

6.5 Deductions

The default rule is that the wages of an employee must be paid to him without any deduction of any kind, however, the Payment of Wages Act 1936 provides that the following deductions, amongst others, may be made from an employee's salary:

(a) Income tax;

(b) Fines that do not exceed 3% of wages payable in any wage period;

(c) Deductions for absence of duty proportionate to the period of absence;

(d) Housing accommodation if supplied by the employer;

(e) Payments to co-operative societies;

(f) Recovery of loans and advances (not more than two calendar months) or overpayments. Monthly instalments for deductions may not exceed one quarter of the wages earned in that month;

(g) Contribution towards Provident Fund (social security) – 12%;

(h) Payment of a Life Insurance Policy, purchase of government securities, or any post office savings account's deposits with the written authorisation of the employee

(i) Overpayments to the employee made in error, provided permission for the deduction has been received from the employee or labour inspector;

(j) Any deductions made with the written authorisation of the employee for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Federal Government may, by notification in the Official Gazette, specify; and

(k) Any deductions for such amenities and services supplied by the employer as the State Government or any officer specified by it may by general or special order authorise. (The term 'services' does not include the supply of tools and raw materials required for the purpose of employment).

Also, certain shops and establishments of the various States provide for similar deductions.

7. Social Security

7.1 Coverage

Unlike developed countries, India does not have a universal system of social security. Currently only about 35 million out of a workforce of 400 million have access to formal social security. In India, there is a huge informal sector that is excluded from the protection of the social security legislations. They, however, are benefited by social security schemes run by ministries for different target groups (such as the self-employment schemes run by the Ministry for Rural Development and the Ministry for Women and Child

Development), indirect funding through subsidies, the public distribution system, social assistance programmes, food-for-work programmes, tax concessions, employment guarantee schemes etc.

The principle legislation addressing the social security of workmen is as follows:

(a) The Employees' State Insurance Act, 1948 which covers factories and establishments with 10 or more employees, provides for comprehensive medical care to employees and their families as well as cash benefits during sickness and maternity and monthly payments in case of death or disablement. The Act also covers shops, hotels, restaurants, cinemas including preview theatre, road motor transport undertakings and newspaper establishments employing 20 or more persons and by judicial precedent has been extended to any establishments carrying on commercial activity provided 20 or more employees are employed by such an establishment. The benefits provided under the Act are applicable to those employees who earn up to Rs. 15,000 per month. The law relating to employment injury has recently been extended. It now provides that an accident occurring to an employee while commuting from his residence to the place of employment for work or from the place of employment to his residence after work, shall be deemed to have arisen out of and in the course of employment if a nexus between the circumstances, time and place in which the accident occurred and the employment is established;

(b) The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 applies to specified factories and establishments employing 20 or more employees and requires the provision of a superannuation pension and family pension in case of death during service. It takes care of the following needs of the employee: (i) retirement; (ii) medical care; (iii) housing; (iv) family obligation, including the long term protection, security and upkeep of family members (family generally refers to the employee's spouse and children below 25 years of age); (v) education of children; and (vi) financing of insurance policies. However, if a company is able to provide for a benefit scheme of its own that provides more generous benefits, it can seek exemption from contributing to the schemes operated under this statute. The provisions of the provident fund scheme under this Act do not apply to an employee whose salary exceeds Rs. 6,500 – per month unless the employee is an existing member. However, from October 2008, the provident fund scheme was extended to all international workers, irrespective of their monthly salary, except for those expatriates who are contributing to a social security programme of their country of origin being a country with which India has entered into a social security agreement on a reciprocal basis or with whom India has entered into a bilateral comprehensive economic agreement prior to October, 2008. Thus all expatriate employees who satisfy the three conditions of: (i) being an employee other than an Indian employee; (ii) holding a passport other than an Indian passport; and (iii) working in an establishment to which the Act applies, would qualify as international workers. Similar legislation governs the benefits of employees in coal mines and tea plantations.

Recent legislative amendments provide that an expatriate employee is now only permitted to withdraw their accumulated credit balance in the provident fund: (i) if they retire from service after attaining the age of 58; (ii) on ill-health retirement; or (iii) on any grounds specified in the relevant social security agreement ("SSA"). This accumulated balance will be paid to the expatriate employee either on the terms of the SSA or will be credited to his bank account in India.

In addition the Government will no longer contribute to the expatriate employee's pension fund. An expatriate employee, who is covered under the SSA, and leaves service before being eligible for a monthly pension, is entitled to a totalisation benefit i.e. benefit for the period of coverage under any social security programme in the country of origin in the past and for the period of actual service rendered in India, if provided for in the SSA. Even after including the totalisation benefit, if the expatriate employee has not rendered the eligible service before he leaves employment in India or reaches 58 years of age, whichever is earlier, he still is entitled to withdraw his benefits in terms of the Employees' Pension Scheme, 1995. Note however that the right to withdraw is not available to expatriate employees from countries with which India has not signed an SSA. Withdrawal benefits must be granted to such employees on a reciprocal basis, as are made available to Indian nationals employed in their country of origin;

(c) The Employee's Compensation Act, 1923 provides for the payment of compensation to the workman or his family in cases of employment related injuries, death and temporary or permanent disability;

(d) The Maternity Benefit Act, 1961 which provides for 12 weeks' leave with wages during maternity as well

as paid leave in certain other related contingencies; and

(e) The Payment of Gratuity Act, 1972 which provides for certain payments upon retirement or resignation (see Section 6.2 above).

7.2 Contributions

In India, the rate of contribution towards the Provident Fund system is determined by the Employee Provident Fund Organisation ("EPFO").

8. Hours of Work

Each State has its own legislation prescribing opening and closing hours, daily and weekly work hours and intervals for rest and holidays and consequently requirements differ from State to State. For instance in Karnataka, no employee, working in a commercial establishment is permitted to work in excess of nine hours a day or 48 hours a week. Under the Industrial Employment (Standing Orders) Act, 1946, the employer is obliged to set out conditions for working hours, holidays, pay-days, shift work, attendance, closing and re-opening of sections or of the entire industrial establishment, etc.

The Factories Act, 1948 is a much broader Act covering a larger number of employees who work in the industrial sector. This provides that no adult employee is required to put in more than nine hours a day or 48 hours of work a week. In cases where there is an occasional change in shift patterns the hours of work may exceed the specified hours. In such instances the Chief Inspector is required to approve the increase in the employee's working hours.

In cases where employees are required to work night shifts they are entitled to one holiday a week which is 24 hours after the end of their shift. Employers are prohibited from overlapping the employee's shifts. In other words only one group of employees may carry out work of the same kind at the same time. Initially, women in India were not permitted to work night shifts. However, many States in India have amended their laws to allow night shift working by women employees in certain establishments like IT/ITES subject to the satisfaction of certain conditions. Typically, an establishment seeking to employ women to work a night shift would need to obtain permission from the State authorities.

Contribution to the Employees Provident Fund is as follows:

Contributor	Rate of Contribution
Employer	12% of the basic wages, dearness allowance and retaining allowance, if any, payable to employees per month ("total wages")*
Employee	12% of the total wages*
Government	None

* Statutorily the contribution by the employer and employee on total wages is capped at Rs. 6,500 unless they voluntarily wish to contribute beyond this cap. However, in relation to international workers the contribution would be compulsorily calculated on the actual salary earned by them.

Contribution to the Employee Pension Scheme is as follows:

Contributor	Rate of Contribution
Employer	A portion of the employer's contribution under the Employees Provident Fund Scheme calculated at 8.33% of the wages (capped at Rs. 6,500) is paid into this fund. This cap of Rs. 6,500 is not applicable to international workers covered under the employees' pension scheme.
Employee	None
Government	1.16% of the total wages

Contribution to the Employees Deposit Linked Insurance Scheme is as follows:

Contributor	Rate of Contribution
Employer	0.5% of total wages subject to an upper limit of Rs 6,500 a month.
Employee	None
Government	None

Contribution to the Employee State Insurance Scheme is as follows:

Contributor	Rate of Contribution
Employee	1.75% of the wages paid/payable in respect of the employees in every wage period
Employer	4.75% of the wages paid/payable in respect of the employees in every wage period
State Government	1/8th share of the total expenditure of the establishment in relation to medical benefits.

9. Holidays and Time Off

9.1 Holidays

Leave and holidays are usually governed by the provision of the Factories Act, 1948, the various Shops and Establishments Acts and the Industrial Establishments (National and Festival Holidays) Acts of various States. The Factories Act applies across India, while the other two statutes have local variations in most Indian States. Both the Factories Act and the Shops and Establishments Acts, require every factory and establishment to remain closed for one day each week. This day is decided by the employer and may be altered every three months with the written permission of the Chief Inspector. Every employee who has worked for a period of 240 days or more in a factory is entitled to take paid leave for a number of days calculated at the rate of one day for every 20 days of work performed by him in the previous year. During such paid leave the employee is entitled to receive wages equal to his daily earnings for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime and inclusive of dearness allowance.

Different States in India prescribe different levels of leave that are granted to their employees. For example, as per the Karnataka Shops and Commercial Establishments Act, an employee is entitled to receive one paid day of leave for every 20 days of work done. The employee is further entitled to receive sick-cum-casual casual leave not exceeding 12 days. By contrast, under the Bombay Shops and Establishments Act, 1948, an employee is entitled to receive 21 days' leave in total if the employee has worked for 240 days in a year.

Further by way illustration, under the Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963 ("KIE") an employee is also entitled to paid holiday on 26 January, 1 May, 15 August, 2 October, 1 November and five other holidays which the employer has to fix in consultation with the trade union or in the absence of a trade union in consultation with the employees or authorised representatives of the employees in the manner prescribed by KIE.

If an employee is deprived of any of his weekly holidays he is allowed to take additional holiday in lieu depending on the number of extra days he has worked. In some Indian States the employer is prohibited from asking an employee to work during any weekly time off.

9.2 Family Leave

The Maternity Benefit Act, 1961 regulates the employment of women in certain establishments for certain periods before and after childbirth and provides for maternity and certain other benefits. The rate of maternity pay is the average daily wage calculated as the average of the wages that were paid during the three month period immediately preceding the commencement of maternity leave. It provides that a pregnant employee may take up to 12 weeks of leave before and/or after her pregnancy. Further, no employer can knowingly employ a woman in its establishment during the six weeks immediately following the delivery. An employer cannot make a pregnant woman do any work which is arduous in nature or which requires her to stand for long hours. A woman on maternity leave cannot be discharged or dismissed during such absence. Further, the Maternity Benefit Act, 1961 provides for payment of a medical bonus of Rs. 3,500 to the employee where the employer does not provide for pre-natal confinement and post-natal care.

9.3 Illness

Sick leave is also governed by the provisions of most of the State Shops and Establishments Acts enacted by each State and these vary from State to State. Certain States (like Maharashtra and Gujarat), however, do not grant a separate entitlement to sick leave.

In the event that a pregnant employee has a miscarriage or medical termination of pregnancy, the employer is obliged to grant leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or as the case may be, her medical termination of pregnancy. When a woman suffers from ill-health connected to the pregnancy, birth or termination, she is entitled to leave with wages for a maximum period of one month in addition to the said six weeks.

10. Health and Safety

10.1 Accidents

The Factories Act stipulates parameters for employers to address issues of health, safety and welfare of employees. Under the Factories Act, for the safety of the employees, machinery is to be fenced and employment of young persons on machinery is prohibited. Certain other precautionary measures with respect to moving machinery and safety have also been stipulated. Each State's Shops and Establishments Act also provides for provisions relating to health and safety of employees. By virtue of the Workmen's Compensation Act, the employer becomes liable to pay adequate compensation, in the case of injury, death or disablement of the workman. The amount of compensation for the death of an employee is an amount equivalent to the greater of 50% of the monthly wages of the deceased workman multiplied by the relevant factor or Rs. 120,000. The amount of compensation for the permanent disablement of the workman is an amount equivalent to the greater of 60% of the monthly wages of the workman multiplied by the relevant factor or Rs. 140,000.

10.2 Health and Safety Consultation

The Ministry of Labour has set up two field organisations, namely, the Director General of Mines Safety and the Director General of Factory Advice Service and Labour Institutes with the aim of achieving occupational health and safety in mines, factories and ports. Some of

the activities of these organisations include training programmes in the field of industrial safety with the joint participation of management personnel and Trade Union leaders.

11. Industrial Relations

11.1 Trade Unions

In India, the right to form a trade union flows out of the fundamental right to freedom of association guaranteed in the Constitution and the right of the union to receive recognition from its employer is a corollary to that right. The Trade Unions Act of 1926 provides for the registration of trade unions in order to enable collective bargaining by the employees. Under the Trade Unions Act, seven or more persons may form a union and apply to have the union registered. Indian trade unions are conferred the same status as a body corporate, that is, they enjoy perpetual succession and have a common seal; further, they may sue and be sued in their name.

The IDA renders employers liable to punishment of up to six months' imprisonment or a fine of up to Rs. 1,000 or both in the event they engage in unfair labour practices. The act of interfering in trade union activities, threatening workmen to refrain from trade union activities and discrimination against employees who are union mentors, are all unfair labour practices.

11.2 Collective Agreements

A collective agreement is an understanding between trade unions and employers, usually found in industrial establishments. According to the Fifth Schedule of the IDA, 1947 it is unfair for a recognised trade union to refuse to bargain collectively in good faith with the employer. In other words, the members of Trade Unions are required to bargain collectively and not as individuals.

11.3 Trade Disputes

In matters of strikes and lockouts, Indian law makes a distinction between public utility services and other establishments. The IDA differentiates between a legal strike and an illegal strike. Similarly, the Act also distinguishes a legal lock-out from an illegal lock-out. An advance notice of six weeks is a condition precedent to declaring a strike or a lockout in a public utility service. No strike or lockout may be resorted to if conciliation proceedings are underway between the employer and the employees. Industries other than those engaging in public utility services, may go on strike without issuing a notice to the employer provided no conciliation or arbitration proceedings are underway. Further, employees are precluded from launching a strike while proceedings are pending before a labour court, tribunal or national tribunal. If strikes and lockouts do not satisfy these requirements, they are liable to be declared illegal and the management may dismiss employees who obstructed loyal employees or engaged in violent demonstrations during the strike.

In addition to the above, an industrial dispute, which is any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person, is dealt with under the IDA. Currently, the appropriate government can refer such industrial disputes to a board for settlement, or to a court for enquiry, or to a Labour Court for adjudication or refer the matter to a Tribunal for adjudication. By a recent amendment a workman may make an application directly to the Labour Court/Tribunal on the expiry of three months from the date an application was made to the Labour Commissioner for conciliation of the dispute. The Labour Court/Tribunal thereupon would then proceed to adjudicate upon the dispute in accordance with the provisions of the IDA as if it were an industrial dispute referred to it by the appropriate government. Any such application to the Labour Court/Tribunal shall be made within three years from the date of discharge, dismissal, retrenchment or other termination of service.

11.4 Information, Consultation and Participation

The IDA and rules made thereunder, which extend to the whole of India, establish the parameters for the establishment of a Works Committee upon being directed by the appropriate Government by general or special order. The total number of representatives on the Works Committee, including those of the employer cannot exceed 20, and the number of employee representatives may not be less than that of the employer. The Indian Labour Conference in its 17th session held in 1959 summed up the main functions of the Works Committee as follows: (i) dealing with conditions of work such as ventilation, lighting, and sanitation; (ii) amenities such as drinking water, canteens, medical and health services; and (iii) safety and accident prevention, occupational diseases and protective equipment. The remit of the Works Committee does not extend to reaching agreement on the significant issue of the alteration of conditions of service by rationalisation. Hence, their decisions in this regard are merely suggestive and not conclusive or binding. Laws enacted by various Indian States like the Bombay Industrial Relations Act and the MP Industrial Relations Act also provide for the setting up of joint committees on similar lines.

By a recent amendment all industrial establishments that employ at least 20 workmen are required to set up a Grievance Redressal Committee. The committee should have equal representation of the employer and employees and the maximum membership is capped at six. The committee is required to complete its proceedings in respect of such disputes within 45 days. The workmen have a right of appeal to their

employer against the committee's decision. The existence of this committee does not however, affect the right of the workman to raise an industrial dispute under the IDA.

12. Acquisitions and mergers

12.1 General

Section 25FF of the IDA provides that in the case of a transfer of an undertaking, whether by agreement or by operation of law, each employee (who is not being retained in employment by the new employer) who has been in continuous service for not less than one year in that undertaking immediately before such transfer is entitled to notice and compensation (see further Section 13.1 below). If the new employer wishes to retain the services of an employee, such employee would need to be granted the following: (i) continuity of service; (ii) terms and conditions of service that are no less favourable than those that were applicable to him previously; and (iii) in the event of subsequent termination, compensation on the basis that service has been continuous and has not been interrupted by the transfer.

12.2 Information and Consultation Requirements

Unless the terms of employment of the employee are changing, there is no requirement prescribed under statute for consultation with the employee prior to a 'M&A' transaction. In practice, however, most employers do engage with their employees and share information about the sale process subject to confidentiality and PR restraints.

If, however, changes to terms and conditions will be made, the employer must give the workmen at least 21 days' to 42 days' notice of the nature of the change proposed to be made.

12.3 Notification of Authorities

From an employment perspective there is no obligation to notify any authorities in relation to a business or share sale.

12.4 Liabilities

In the event that an employer fails to notify the workmen about a change to their terms and conditions the employer can incur a financial penalty of Rs. 100 (the legislation does not stipulate whether this is per employee or in total). More significantly non-compliance can allow an employee to raise an industrial dispute which could be extremely disruptive for the employing organisation both in terms of loss of work output and litigation.

13. Termination

13.1 Individual Termination

Employment laws with regard to termination of employment relationships in India favour the employee or the 'workman.' Employees are entitled to certain rights and some compensation depending on the circumstances of their termination. In the event that an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference that arises between that individual workman and his employer connected with such action, is deemed to be an Industrial Dispute, notwithstanding that no other workman or any Union of workmen is a party to the dispute.

In order to terminate the services of a workman, it is necessary to comply with the procedures set out in the IDA. The few situations in which employees may be dismissed include an act of misconduct, so long as the procedure prescribed under the IDA is followed to investigate the misconduct, and on grounds of a partial closure of the employer's business.

Retrenchment refers to the termination of the services of workmen by the employer for any reason whatsoever, other than by way of punishment or by way of disciplinary action. Voluntary retirement, superannuation, termination based on ill-health, and termination as a consequence of not renewing an expired contract are not considered retrenchment. In the case of retrenchment, if the workman has served the establishment for more than a period of 12 months (i.e. 240 days) he has to be given one month's notice or paid wages in lieu of the notice period. The workman must also receive compensation equal to 15 days' average pay for every completed year of continuous service or part thereof in excess of six months. The "last in first out" principle must be followed for retrenchment of workmen who are citizens of India. For this purpose a "seniority list" of workmen has to be put up on the notice board at least one week before the retrenchment and the junior-most employee in each category is to be retrenched unless there are strong reasons for deviation. If the order of seniority is not followed the reasons must be recorded. There must be justifiable/legally tenable grounds for selecting a workman for termination.

In the event that an employer undertakes any recruitment in areas in which employees have been retrenched then the retrenched employees, being citizens of India, must first be given an opportunity for re-employment in preference over other persons

13.2 Notice

Notice of at least one month or salary in lieu of notice is required to be provided to the employee in accordance with the IDA as well as the Shops and Establishments Acts in most States, for any termination of employment.

13.3 Reasons for Dismissal

In some Indian States employment laws require that an employee who has been working with an employer for a continuous period of more than six months cannot be terminated unless the termination is for reasonable cause. There is no statutory definition of "reasonable cause", and the courts tend to determine it on a case-by-case basis. In the event an employer seeks to terminate an employee for misconduct, the employer is required to conduct an enquiry into the misconduct prior to firing the employee.

13.4 Special Protection

No workman (other than a casual workman) who is employed in an industrial establishment (employing 100 or more workmen) may be laid-off by his employer, except with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, where the lay-off is due to fire, flood, excess of inflammable gas or explosion.

In the event that workmen (other than casual workmen) belonging to an industrial establishment (e.g. a mine), have been laid-off for reasons of fire, flood or excess of inflammable gas or explosion, the employer is required to consult the appropriate Government or the specified authority within a period of 30 days from the date of commencement of such lay-off for permission to continue the lay-off.

The employer is required to prepare a document clearly stating the reasons for lay-off/termination. This document must be given to the workman whose employment is being terminated.

The Industrial Dispute Act provides for protection of those persons who refuse to participate or continue to participate in any illegal strike or lock-out which takes place in the establishment. By reason of such refusal the employee(s) in question cannot be subjected to 'expulsion from any trade union or society, or to any fine or penalty, or be deprived of any right or benefit to which he or his legal representatives would otherwise be entitled, or be subjected to detriment in any respect, either directly or indirectly, as compared with other members of the union or society, anything to the contrary in the rules of a trade union or society notwithstanding.

13.5 Closures and Collective Dismissals

An employer who intends to close down an undertaking is required to seek permission of the appropriate government at least 90 days before the date of intended closure. A copy of the permission must be served on the representatives of the employees. An undertaking includes a factory, mine and a plantation. These provisions apply to industrial establishments in which 100 or more workmen are employed. This excludes undertakings set up for the construction of buildings, bridges, roads, canals, dams or other construction work undertakings.

Undertakings which are not captured above and which employ 50 or more workmen are required to give at least 60 days' prior notice to the appropriate Government authority (which can be a Federal or State authority, depending on the nature of the undertaking), in a prescribed format, specifying reasons for the intended closure.

In cases where undertakings are closed down for any reason every employee who has worked for a period of one year or more is entitled to be notified of the closure and receive compensation. The compensation and notice period varies from one Indian State to the other.

If the undertaking is closed down due to unavoidable circumstances beyond the control of the employer, the compensation received by the employee may not exceed his average pay for three months. Liquidation on account of financial difficulties (including financial losses), accumulation of undisposed stock, and expiry of the establishment's license cannot be viewed as unavoidable circumstances.

In undertakings engaged in mining operations, where materials in the location of work are exhausted, the employer is not required to notify or provide compensation to his employees if he can provide alternative employment at the same remuneration. In the event that the employer is not able to provide alternative employment he would be legally liable to pay the workmen compensation, in the event of their retrenchment.

14. Data Protection

14.1 Employment Records

The Supreme Court has held that the right to privacy falls within the ambit of Article 21 of the Indian Constitution which confers the fundamental right to life and liberty upon all persons within the territory of India. However cases of fundamental rights violation may only be filed against the State. Accordingly, only an employee of the government could rely on this decision.

Although there is no law mandating that the personal information of an employee be protected, most companies in India have their own protection guidelines to which they adhere in order to be in conformance with international best practice.

Thus individual industry practices will have to be relied on to assess what information of the employee is generally protected in private companies.

The Information Technology (Reasonable security practices and procedures, and sensitive personal data and information) Rules, 2011 ("Sensitive Information Rules") require every employer to comply with the procedures and security practices provided therein in respect of 'sensitive personal information' of the employee retained by the employer in electronic form. Sensitive personal data or information is defined under the Sensitive Information Rules as: (i) passwords; (ii) financial information such as bank account or credit card details; (iii) physical, psychological and mental health conditions; (iv) sexual orientation; (v) medical records and history; (vi) biometric information; (vii) any detail relating to the above as provided to a body corporate for the purposes of providing a service; (viii) any of the information received under each of the heads by a body corporate for processing, or to be stored or processed under a lawful contract. Sensitive personal data does not include information available or accessible in public domain.

The Sensitive Information Rules require employers to obtain consent before using the data received and after receiving consent, the employee must be made aware of the purpose for collecting the information, the intended recipients of the information and the agency collecting the information. Further, the employer must keep such information secure and must not disclose it to any third parties without the consent of the employee unless (i) such disclosure is in accordance with an agreement between the employer and employee; or (ii) the disclosure is to a government agency for the purpose of verification or identification, or prevention/prosecution of offences; or (iii) the disclosure is required by an order passed under any law. Where there is transfer of such sensitive personal information, the transferee is under an obligation to adhere to the same level of data protection.

14.2 Employee Access to Data

With the growth of the outsourcing sector in India, a number of data protection offences involving employees of Business Process Outsourcing units have come to light. At present, India does not have a specific law dealing with data protection. One solution to the problem of data security is to adequately cover the issue under contract. According to the Indian Contract Act, 1872, when a party commits a breach of contract, the other party is entitled to receive compensation for any loss or damage suffered by it. The Information Technology Act, 2000 ("IT Act") safeguards against certain breaches in relation to data from computer systems. Section 43 of the IT Act prevents the unauthorised use of computers and creates liability up to the amount of damage suffered in the event of unauthorised access, downloading, extraction and copying of data from a computer system/network.

Section 72 of the IT Act stipulates the penalty for breach of confidentiality and privacy. This Section provided that any person who in pursuance of any of the powers conferred under the IT Act, has secured access to any electronic record, correspondence, information, document or other material without the consent of the concerned person, and subsequently discloses such material to any other person, shall be subject to a penalty of a term of imprisonment of up to two years, or be liable to a fine of up to Rs. 100,000, or both. At present, this prohibition is confined to the acts and omissions of those persons who have been conferred powers under the IT Act or rules or regulations made thereunder. In addition any person who, while providing services under the terms of a lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain, discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term of up to three years, or by a fine of up to Rs. 500,000, or both.

The National Association of Software and Service Companies ("NASSCOM") – the premier trade body and the chamber of commerce of the IT software and services industry in India – has also, from time to time, set out regulations prescribing privacy and confidentiality norms to be followed by IT and ITES companies. However, these regulations are not legally binding.

The Credit Information Companies (Regulation) Act of 2005 introduces security measures in matters relating to the collection of, processing, collating, recording, preservation of, maintenance of secrecy, sharing and usage of credit information such as the amount of loan or advance granted and the security furnished, the credit worthiness of the borrower etc.

14.3 Monitoring

As stated earlier, Indian courts have interpreted the right to life, guaranteed in the Constitution, to include the right to privacy. This right, being a fundamental right, is enforceable only against the State. Thus employees of State-run establishments may claim the right to privacy against their employers. There is a dearth of case law with respect to the implications of monitoring employee telephone calls, emails and internet use by employers in the private sector.

14.4 Transmission of Data to Third Parties

Due to a lack of specific laws on the subject, reliance would need to be placed on a company's internal policies and procedures, dealing with transmission of data to third parties and the duty of care attached thereto. The privacy policy of a company may be considered a standard form contract, and be enforced in a court of law. It is always advisable to seek specific consent from the individual concerned prior to transmitting such data to third parties.

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Japan

1. Introduction

The most important sources of law regulating the employment relationship are the Labour Standards Law ("LSL") and the Employment Contract Law. Also relevant are (amongst other things) the Civil Code, the Child Care Leave and Family Care Leave Law, the Labour Safety and Health Law, the Law concerning the Stability of Employment of the Elderly, the Law on Securing Equal Opportunity and Treatment between Men and Women in Employment ("Equal Employment Opportunities Law"), the Part-Time Workers Employment Improvement Law, the Workers Dispatch Law, the Labour Tribunal Dispute Resolution Law, the Labour Union Law and laws governing labour insurance and social insurance. In general, it is not possible to contract out of statutory employee protection and case law intervenes to protect employees (most notably in the field of dismissal). Traditionally, collective agreements in the form of work rules ("s*shugyo kisoku*") have been accorded much importance in Japan.

To resolve disputes between an employer and employee, procedures, including mediation and arbitration or special "labour courts" under the Labour Tribunal System, have been established with a view to providing a specialised, quicker and more cost efficient approach than is normally possible using the ordinary Courts. However, many disputes are settled outside of such procedures or sometimes before the ordinary Courts.

2. Categories of Employees

2.1 General

In principle, the relevant employment legislation applies equally to employees at every level. Some of the more recent employment legislation seeks to achieve equal treatment between all "workers", a term which covers full-time/regular employees and contract staff (see below).

2.2 Directors

The position of directors and executive officers of private and public limited companies, who may or may not also be employees of the company, is further regulated by the Company Law. In principle, the representative director of a corporation ("k*kabushiki kaisha"*) may not be an employee of that corporation.

A representative director is a director with statutory authority to represent and bind the company vis-à-vis third parties and perform all acts relating to the business of the company, except for those reserved to the board of directors and shareholders; where a company has appointed one or more representative directors, a mere director cannot act for or bind the company vis-à-vis third parties unless that director is specifically authorised to do so by a representative director or the board of directors.

2.3 Other

Part-time employees have rights which, broadly speaking, entitle the employee to be treated no less favourably in respect of their terms and conditions of employment than a comparable full-time employee. However, in practice, the treatment afforded to part-time contract employees is often less favourable.

3. Hiring

3.1 Recruitment

Employers recruit through a variety of sources, including via the internet and by advertising in newspapers or journals. Private, fee-charging recruitment agencies are commonly used for some types of employees, for example, executive search-type agencies for senior and professional staff. Japan has a government-run agency known as "Hello Work" with offices throughout Japan. Hello Work offers free support for individuals looking for work and employers looking for employees.

The principle of freedom of contract applies to the hiring of employees. There are, however, some restrictions. For instance, under the Equal Employment Opportunities Law, employers must afford the same opportunity for employment to women as to men when recruiting and hiring employees. Additionally, under the Law Promoting the Employment of People with Disabilities, there is a requirement that a certain percentage of employees are people with disabilities.

3.2 Work Permits

The visa requirement does not apply to entry by nationals of countries with which Japan has reciprocal exemption arrangements. Foreign nationals entering and residing in Japan must select their status of residence in Japan depending on their own circumstances and qualifications. Status of residence constitutes the basis on which a foreign national is permitted to stay and carry out activities stipulated in the Immigration Control and Refugee Recognition Act. The main statuses of residence are: investor/business manager, legal/accounting services; engineer; specialist in humanities/international services; intra-company transferee and skilled labour. Permission to stay may be granted for up to a maximum of one to three years. The maximum length of a Permission to stay is five years. Any employer must inform "Hello Work" when a foreign employee is hired or leaves the employer. It is a criminal offence for an employer to employ someone who is subject to immigration control who does not have the appropriate permission to work in Japan.

4. Discrimination

Discrimination on the grounds of nationality and ethnic or national origins, social status, religion or political belief in connection with treatment during the course of employment and in respect of termination is unlawful under the LSL and the Constitution of Japan. Discrimination on the ground of gender in connection with recruitment, treatment during the course of employment and termination is unlawful under the Equal Employment Opportunities Law and the Constitution of Japan. The Employment Measures Law prohibits discrimination on the ground of

age in connection with recruitment except in certain cases. It is also illegal to discriminate against an employee on the grounds of trade union membership. Discrimination based on sexual orientation is not expressly prohibited by law.

5. Contracts of Employment

5.1 Freedom of Contract

It is a basic principle that parties are free to contract on whatever terms they choose. However, certain provisions, for example those concerned with preventing competition by a former employee, are not enforced by the Courts if they are considered to be in restraint of trade. In addition, pursuant to the LSL, attempts to contract out of employment protection rules are void. Contracts may be for a fixed or an indefinite period (i.e. terminable on notice), as the parties think most appropriate. Regular employees are usually hired pursuant to a contract without a definite term. Fixed-term contracts are used mostly for "non-regular" employees such as part-timers and temporary workers but can also be used for long-term employees. They are common in certain industries. Unlike certain European jurisdictions, there is no requirement that the employer should have a specific reason for hiring an employee under a fixed-term contract. Where an employer enters into a fixed-term employment contract, the term may not exceed three or five years (depending on the circumstances. When a fixed-term contract exceeds one year the employee can terminate the contract at any time after one year. The employer is free not to renew the contract. However, where a fixed-term contract has been renewed on many successive occasions and the employee can reasonably expect it to be renewed again, the Courts require the employer to justify its refusal to renew the contract. The recently amended Employment Contract Law now provides that unless the refusal is justified by objective and socially acceptable reasons, an employer cannot refuse to renew a fixed-term employment contract if the contract has been repeatedly renewed so that refusal may reasonably be deemed to be termination of an employment contract for an indefinite term (i.e. dismissal) or if an employee can reasonably expect his contract to be renewed. Further, the employer must give 30 days' prior notice of non-renewal if the fixed-term contract has been renewed three times or more or the employee has been employed continuously for more than one year, unless non-renewal has been expressly notified to the employee. With effect from 1 April 2013, a fixed-term employment contract can be converted into an indefinite term contract at the request of an employee if the contract has been renewed for a period exceeding five years. The terms and conditions of the indefinite term contract are the same as those in force during the last term unless otherwise agreed between the employer and the employee. When there is an interval period (in principle, six months or more) between two fixed-term contracts, previous fixed-term contract periods are not taken into account for the calculation of the five-year period. Also, with effect from 1 April 2013, the difference in treatment between fixed-term and non-fixed-term employees must not be unreasonable having regard to the nature of their job and associated responsibilities, potential change of work type and responsibility and other circumstances.

5.2 Form

There are no particular requirements as to the form of an employment contract, which may be oral or written. A formal written contract is clearly advisable. The contract can be very short if the employer has adopted work rules (see below). Japanese law does not prescribe the use of the Japanese language for an employment contract and using another language is fine so long as it is well understood by the employee.

There is a statutory requirement that all employees be provided with the written particulars of certain details of their contract of employment (including, details of their salary, place of work and work hours) at the time of the contract's execution and those particulars can be set out in a written contract or, more conveniently, in the work rules applicable to all employees.

Work rules are a very important feature of Japanese employment law. They are specific rules for the workplace containing working conditions such as working hours and wages, as well as rules that employees must comply with, including discipline. Employers with ten or more employees must adopt work rules and file them with the local Labour Standards Inspection Office. Employers with fewer than ten workers are encouraged to adopt work rules.

The place of employment is notified to the employee and is generally an office of the employer. Japanese companies frequently redeploy employees through internal re-assignment and secondments. Generally, employers have considerable discretion when it comes to changing an employee's duties or temporarily assigning him or her to another company if this is reasonably necessary to meet business purposes and the employer's authority to do so is set out in the employment contract or the work rules.

5.3 Trial Periods

It is permissible and customary for parties to agree a probation period but there are no specific legal requirements governing such periods. It should however be reasonable in view of the duration of the employment contract and the position of the employee. Employers are allowed to set a limited period of probation prior to employing somebody permanently, in order to ascertain whether the probationary employee is able and suitable for the job. Probationary periods generally last for about three months. If the employer decides not to employ somebody on probation, in order for such a termination to be lawful, valid reasons

(which were not evident at the time of hiring) must have come to light during the probation period, and it must be objectively reasonable for the employer to refuse to employ that person. At least 30 days' notice or payment in lieu of notice is required where the employee has been employed for more than 14 days.

5.4 Confidentiality and Non-Competition

Although there are no statutory rules governing confidential information, other than in the Unfair Competition Prevention Law, an employee is bound by a general duty of good faith and a duty not to disclose the employer's confidential information. The extent of these general duties is not in all cases well defined and a prudent employer should, depending on the nature of the business, consider including an express confidentiality provision in the contract of employment or the work rules.

Although express provisions in a contract may be used to stop an employee from competing with his employer both during and after his employment, it should be noted that since provisions which restrict competition after termination of the employment are generally regarded as infringing an individual's freedom to work, they will generally only be enforceable if: (i) they have been expressly agreed upon; (ii) they are reasonable in terms of duration and territorial scope; and (iii) the employer has a legitimate interest to protect (i.e. confidential information or trade connections). Some practitioners consider financial compensation to be a necessary element to secure the enforceability of such provisions but this is still a moot point and a number of court judgments have upheld the validity of non-competition covenants without compensation.

5.5 Intellectual Property

Broadly speaking, if intellectual property is created by an employee during the course of employment, depending on the nature of the intellectual property right, it will belong to the employer or be assignable by the employee to the employer. In the case of patents, where the right to register belongs to the employee and can be assigned to the employer, reasonable compensation is payable to the employee. The amount payable (often nominal compared to the profits derived from the invention) has become a source of disputes and to prevent disputes, the amount of remuneration should be decided on the basis of in-house regulations to be established by employers in consultation with employee inventors.

6. Pay and Benefits

6.1 Basic Pay

The Minimum Wage Law provides for a minimum wage. The level of minimum wage is, however, determined according to region and industry. Employers must pay wages in cash, directly to the employee, not less than once a month, and on a specified date. However, employers are allowed to remit wages into a bank account specified by the employee where the employee agrees to that method. The employer has to deduct labour and social insurance premiums and taxes from wages.

Japanese companies usually pay wages on a monthly basis and often pay employees summer and winter bonuses. Wages are normally paid between the 20th and 25th day of the month. Monthly wages usually include a basic wage and a range of allowances, which may include accommodation, family and transportation allowances. Another characteristic is that the amount paid in bonuses makes up a relatively high proportion of total wages. One effect of the high proportion of wages made up of various allowances and bonuses is to lower the calculation basis of overtime pay for work outside normal working hours. The typical wage system in Japan has traditionally been based on length of service. However, an increasing number of employers are introducing performance-based pay systems. As a result, more and more businesses are adopting a yearly (i.e. over 12 months) wage system. In contrast, lower-grade workers in Japan (including the so-called "a*arubeito*") are generally paid a daily or weekly wage, often determined by reference to an hourly time rate. It is not common for pay to be index-linked and, subject to minimum wage regulations, there is no legal obligation on employers to increase wages.

Overtime is generally paid in respect of additional hours worked. The financial burden became more onerous for large enterprises in 2010, when the rate of additional pay was increased from 25% to 50% in respect of overtime worked in excess of 60 hours a month (with an option for employers to grant paid holidays in lieu of such increase, provided that a labour-management agreement allows for such an option). Small and medium sized companies are exempt from this increase. Certain schemes are available that can help reduce the financial impact of overtime work. Senior employees in a managerial position (narrowly interpreted) are generally not paid for overtime work. In order to make an employee work in excess of regular working hours or on statutory holidays, the employer has to comply with certain procedures prescribed by the LSL. For work done in excess of regular working hours and for work on statutory holidays, various enhanced rates apply. In addition, extra pay is paid for "midnight" work (between 10pm and 5am).

6.2 Pensions

Although state pensions are provided under the social security system, private pension schemes are important. Private pension provision is currently not compulsory. A large majority of Japanese companies offer retirement packages to their employees. A retirement package can be a one-time lump-sum retirement allowance, a pension, or both. The

traditional style of lump-sum allowance is still the main scheme. Pension schemes available include defined benefit (DB) plans and defined contribution (DC) plans. There are two types of DC plans: the employer-sponsored type and the individual type which is similar to the US 401(k) plans. Pension plans can be managed by employers or outsourced. Tax Qualified Pension Plans, which were a popular option disappeared in 2012.

6.3 Incentive Schemes

Share schemes are not mandatory in Japan but are getting more common in large groups and are increasing in popularity in foreign group subsidiaries because of the clearer legal framework applicable to stock options or stock acquisition rights. Although not strictly speaking an incentive scheme employee investment societies ("m*mochikabukai*") help promote employee share ownership in the employer's capital or that of its group these are partly funded by the employer.

6.4 Fringe Benefits

Common fringe benefits may typically include cars (for very senior employees particularly) and company dormitory/accommodation depending on the size and type of employer. Specific benefits are offered to expatriates (private medical insurance, housing, moving allowance, language courses, children's education allowance, home leave allowance etc).

6.5 Deductions

Although generally employers are prohibited from making deductions from pay, they are obliged to deduct income tax and employees' labour and social security insurance contributions at source.

7. Social Security

7.1 Coverage

The State-administered social security system provides benefits by way of pensions, unemployment benefits and family-based benefits. Japan has four kinds of insurance system in which employers must take part:

(a) Workers' Accident Compensation Insurance covers work-related illness or injury;

(b) Unemployment Insurance ("Employment Insurance" in Japanese) covers those who become unemployed;

(c) Health Insurance and Nursing Care Insurance cover medical and nursing care expenses; and

(d) Pension Insurance provides pension benefits to workers in their old age, or in the case of death or disability.

Workers' Accident Compensation Insurance and Unemployment Insurance are collectively known as "labour insurance," while Health and Nursing Care Insurance and Pension Insurance are referred to as "social insurance". All workers who meet certain criteria are covered by the insurances.

Companies must register with, or make certain notifications to, the relevant authorities upon incorporation or when hiring staff. Employers usually pay insurance premiums by deducting the portion of the premiums payable by employees from their wages, and paying these together with the portion of the premiums payable by them to the relevant authorities. Japan has entered into social security agreements with a number of countries including Germany, the United Kingdom, the United States, Belgium, France, Canada, Australia, Brazil, and the Netherlands. Subject to the satisfaction of certain conditions, persons insured in the pension system of one of these countries may be exempt from enrolling in the Japanese pension system and paying social security insurance premiums.

7.2 Contributions

Employers must deduct from their employees' pay the employees' insurance contributions and make employer contributions in respect of each employee. Workers' Accident Compensation Insurance premiums are paid by the employers and generally calculated as a percentage of each employee's total wage. The rate depends on the business activity and currently ranges between 0.25% and 8.9%. 0.005% is added to fund benefits for asbestos-induced diseases. For Unemployment Insurance, except for specific industries, the rate is 1.35% with the employer paying 0.85% and the employee paying 0.5%. For Health Insurance, the rate in Tokyo is 9.97% of the insured's standard monthly remuneration (a higher rate applies to employees aged 40 and above), subject to caps. For Nursing Care Insurance, the rate varies depending on the health insurance programs the employees are enrolled in (e.g. 1.55%). The rate for Pension Insurance is 16.766% subject to a cap. In the last three cases, the insured and the employer share premiums equally (a 0.15% child benefits contribution is solely borne by the employer). Rates are subject to change.

8. Hours of Work

The usual working week is in principle up to 40 hours or eight hours per day excluding breaks ("statutory working hours") subject to a number of business-related exceptions where 44 hours a week is acceptable. An employee working six hours is entitled to a rest break of not less than 45 minutes and the break is one hour where working hours exceed eight hours. In most cases, the rest (lunch) break is one hour.

Employers must give employees at least one day off per week or four days off in any four-week period ("statutory days off"). Sundays or national holidays need not be days off but this is most often the case.

Should the employer require employees to work in excess of statutory working hours or on statutory days off, a specific

labour-management agreement (the so-called "LSL Article 36 Agreement") needs to be made and filed with the Labour Standards Inspection Office. Employers must pay an increased rate of wages to employees who work in excess of statutory working hours, work on statutory days off or work late at night ("midnight" work between 10pm and 5am). Persons in genuine positions of management are not subject to the regulations on working hours, breaks and days off (with the exception of regulations on "midnight" work) but the definition of a true manager in this context is narrowly construed by both the labour authorities and the courts.

Certain schemes can be used to minimise the burden of overtime payments. These include the "irregular working hours system" for employers whose business is seasonal and fluctuates; "deemed working hours" for employees who work away from the employer's place of business; and "discretionary work" where the employer gives broad directions and the employee has significant discretion as to how to perform his or her work. Under the discretionary work system, an employee is deemed to have worked for a certain number of hours either agreed upon in advance under a labour-management agreement or subject to a decision of a committee including the employer and employees, depending on the activity of the employees concerned.

Employers can enter into a collective agreement with employees allowing employers to offer time off in lieu of part of the additional wages due for overtime work in excess of 60 hours a month. However, employees will have a right to choose whether they want time off or additional wages. This scheme is not yet available to small and medium sized enterprises.

Flex-time schemes are also available under which employees are free, within certain limits (e.g. subject to core working hours), to determine at what time they start and finish work each day provided that they meet the total number of working hours required.

9. Holidays and Time Off

9.1 Holidays

Annual leave with pay of 10 days is to be given to employees who have been employed continuously for six months and have worked for 80% or more of all working days. The number of days of paid leave granted to employees increases in proportion to their length of service. After a year and a half the employees are entitled to 11 days, after two and a half years the employees are entitled to 12 days and so forth. After six and a half years, and thereafter, the employees are entitled to 20 days, their maximum entitlement unless the employer is more generous than required by law. Provided they comply with the minimum statutory entitlement, employers can alter the structure of paid leave (e.g. grant a more generous paid leave entitlement that can be used from the commencement of employment). Untaken statutory paid leave from one year may be carried over to the following year. Money may not be paid in lieu of untaken statutory entitlement except on termination of employment at the request or with the consent of the employee. Most Japanese companies grant additional paid leave to employees for marriage, death of close relatives, and childbirth by the employee's spouse. Certain changes to the calculation method were introduced in 2010, to allow employees to take paid holidays up to five days by the hour (subject to certain conditions).

9.2 Family Leave

Female employees are entitled to six weeks' unpaid maternity leave prior to the expected date of delivery (14 weeks in the case of twins/triplets). In principle, employers may not require a female employee to work for a period of eight weeks following delivery. Female employees are entitled to such leave, regardless of their length of service.

An employee with a family member in need of full-time nursing care is entitled to an unpaid leave of absence of up to 93 days to provide nursing care. Employers may deem employees employed for less than one year, certain part-timers and those whose employment will terminate within 93 days to be ineligible, provided such limitations are set out in a labour-management agreement.

An employee with a child under the age of one is entitled to unpaid leave of absence until the child's first birthday (or until it is 18 months old if certain conditions are met). Provided those limitations are set out in a labour-management agreement, employers may require that the employee must have worked for at least one year in order for the employee to be eligible for such leave. Furthermore employers may treat certain part-time employees and employees whose employment will terminate within one year (or six months where an additional six months' leave is applied for) as ineligible for such leave. These requirements and limitations are only valid when set out in a labour-management agreement.

9.3 Illness

Employees (and employers who have to compensate) are generally covered by Workers' Accident Compensation Insurance in case of injury, illness, disability or death resulting from employment (or commuting). Insurance benefits in the case of work-related accidents include medical compensation benefits/labour welfare services, temporary disability compensation benefits (60% of the employee's average wage is paid after three days of absence from work), permanent disability compensation, bereaved family compensation paid to dependants, funeral assistance, injury and illness compensation, pension and assistance

regarding care costs. An employer may not dismiss an employee during the period during which the employee is unable to work because of the treatment of work-related injury or illness and for thirty days thereafter.

In principle, employees absent from work by reason of non work-related sickness or injury have no right to receive pay from their employer. Under the Health Insurance coverage, the employee is entitled to two-thirds of the applicable standardised wage (calculated according to a specific formula) as illness/injury allowance after three days of absence for the next eighteen months, provided that if any wage is paid by the employer for such period, the allowance will be reduced by the amount received. In many Japanese companies, dismissal is seldom an immediate option and work rules often include a period of suspension of duties (e.g. from three to six months) during which the employee does not have to perform duties while still maintaining a contractual relationship with the employer. If the employee recovers during this period and is able to work, the employee will be reinstated. By contrast, if there has been no recovery by the time the suspension has expired, the employer will have the right to give notice of termination. Various rules can be adopted in this respect with variations on duration or purpose of the suspension.

9.4 Other Time Off

An employee with a pre-school age child is entitled to unpaid leave of absence of up to five days (or 10 days if there are two or more pre-school age children) a year to nurse a sick or injured child. An employee with a family member in need of full-time nursing care is entitled to unpaid leave of absence of up to five days (or 10 days if there are two or more such family members) a year to nurse such a family member. An employee may work reduced hours in order to take care of any child of the employee under the age of three.

10. Health and Safety

10.1 Accidents

In order to secure the health and safety of the employees, the Labour Safety and Health Law promotes the prevention of risks of health impairment to workers. That Law also provides for the conduct of health examinations by a medical doctor upon hiring and at least once a year.

Employers are under a duty to have regard for the health and safety of their employees while at work and to educate them in this respect, and are obliged to maintain insurance against liability for injury and disease arising out of employment.

10.2 Health and Safety Consultation

The Labour Safety and Health Law lays down certain obligations to be complied with by an employer depending on the scale and kind of business: for example, an obligation to appoint health and safety supervisors, safety promoters or an industrial doctor or to set up safety committees. Criminal and civil liability may result from a failure to comply with its provisions. There are in addition numerous specific laws and regulations governing certain types of work place and certain types of work activity.

11. Labour Relations

11.1 Trade Unions

The purpose of the Labour Union Law is to promote collective bargaining based on the concept of equality between employers and workers and to protect worker organisations set up to achieve this purpose. The importance of labour unions has declined over the last 20 years. However, in some industries unions are still relatively strong. Union shop contracts (where an employee must become a member of a union to be retained) exist in certain Japanese companies. The relationship is often peaceful and cooperation between unions and employers is unusually close. In general, labour unions are sensitive to the economic circumstances of the employer.

No specific procedure is required to set up a labour union and therefore setting up a union is simple provided that (i) the union mainly consists of employees; (ii) it is voluntarily organised by workers; and (iii) it is aimed at improving the working conditions and economic circumstances of workers. Regulations dealing with union organisation and operation must be established. As a matter of strategy, employees being dismissed by their employer may try to join a union to involve representatives of the union in the negotiation process with the employer.

11.2 Collective Agreements

Enterprise-based (i.e. company specific or local establishment specific as opposed to industry-based) bargaining prevails as enterprise unions predominate in Japan. In most cases, enterprise unions rather than the large federations conduct the collective bargaining.

Collective agreements between employers and unions generally regulate matters such as working conditions, pay, bonuses, fringe benefits, working hours, holidays, health and safety, dispute procedures, procedures to deal with redundancy and secondment, and mandatory retirement. Collective agreements also regulate the relationship between the employer and the union, for example: requiring labour-management consultation or prior consent before certain decisions are taken, such as redundancies or a closure or transfer of business. These agreements are legally enforceable between the employer and the union and may become incorporated (either expressly or by implication) into individual employees' terms of employment.

11.3 Trade Disputes

A labour union has the right to engage in "dispute acts". In this context, individuals and unions are granted certain limited statutory protection from liability, which they would otherwise incur under criminal or civil law, when taking industrial action pursuant to a labour dispute. Legal protection is limited to "proper acts", for example, picketing, walkouts, or work to

rule without the use of physical violence. Occupation of the workplace and intentional damage to property may be beyond the scope of a fair labour dispute. An employee who takes dispute-driven industrial action loses the right to pay during that period if he fails to provide his services to the employer.

11.4 Information, Consultation and Participation

There are at present no formalised requirements for employee participation in Japan (subject to exceptions such as the adoption of, and changes to, the work rules). However, certain obligations may arise with respect to consultation and the provision of information to appropriate representatives pursuant to the terms of a collective agreement. The obligations of employers may be:

(a) To disclose certain information to assist in a particular transaction.

(b) To consult with appropriate representatives in the context of a collective redundancy.

(c) To provide certain information to appropriate representatives upon a business transfer.

12. Acquisitions and Mergers

12.1 General

Upon the transfer of a business ("*jigyo joto*"), employees are not provided with protection similar to that available under the laws of other jurisdictions in that their contract does not automatically transfer from the transferor to the transferee and employees can object to a transfer. Transferees may also "cherry-pick" which employees they hire. However, case law tends to protect the rights of employees in the context of intra-group business transfers and a transferee may be forced to employ and pay salary to the employees regardless of whether or not the transferee requires the employees to attend work. Furthermore, there are exceptions to this rule in the case of a merger or company division/spin-off ("*kaisha bunkatsu*"). In principle, a share deal has no impact on the employment contracts.

12.2 Information and Consultation Requirements

In the event of a transfer of a business and in the absence of collective agreement providing for information or consultation with employee representatives, the employer has no obligation to inform the employees of the proposed transfer except to the extent any transfer of employees or redundancies are contemplated. Even if the employer has consultation obligations under a collective agreement, there is generally no obligation to reach agreement.

12.3 Notification of Authorities

There is no obligation from an employment perspective to notify the authorities in the event of an acquisition or merger.

13. Termination

13.1 Individual Termination

Generally speaking, employees in Japan have a significant degree of legal protection and the standards for individual termination and redundancy are very stringent from an employer's perspective.

An employer wishing to terminate the employment relationship must be very careful to comply with both the legal and contractual requirements with regard to reasons for dismissal.

13.2 Notice

Generally, the employment contract or the work rules contain provisions on resignation. They often refer to 30 days' notice. However, the Civil Code (Article 627), in the case of a contract for an indefinite term of employment, provides that the contract may be terminated on a minimum two weeks' notice (depending on the timing of the notice in a given month but there is no unified interpretation of the Article by legal scholars). Any contractual notice provision for resignation in excess of the legal minimum may not be enforced against the employee.

The LSL lays down a minimum period of notice to be given by the employer which will apply where the contract of employment does not make any provision for notice or the contractual notice period is less than the legal minimum. In order to dismiss an employee, the employer must give the employee at least 30 days' prior notice.

If an employer does not wish the employee to work his notice period, and the employee is not being summarily dismissed for gross misconduct, the practice is for employers to pay salary in lieu of the notice period. The notice or payment in lieu does not apply, for instance, where the employer summarily dismisses the employee for gross misconduct. However the authorisation of the local Labour Standards Inspection Office is required to summarily dismiss an employee. It may take some time (at least a week even when the employer has a strong case) to get this authorisation and the outcome of an application may be uncertain. Accordingly, prior consultation with the Labour Inspection Office is needed in practice.

If an employee is dismissed without good cause, the employee may ask the District Court to issue a summary judgment to confirm that the dismissal is unfair, unlawful and void and to order the employer to pay salary until the case is finally settled by a judgment on the merits or until an amicable settlement can be reached during the course of the lawsuit. The District Courts tend to entertain the employee's petition unless the employer can promptly demonstrate good cause. The winning employee will receive his wages until the end of the dispute/litigation, which may take one year or more (subject to the Court's discretion to limit the amount and/or period). This process is called "summary

proceedings" but the judge hears both parties and hearings can be held several times over a period of three to six months. The parties often attempt to make a settlement at this stage before an order is rendered. The judge also recommends such settlement. This is clearly a good incentive for the employer to settle amicably and quickly.

If an official lawsuit is filed, it may take a year or even more at District Court level. Even if the employer wins the case, a lot of time and legal fees will be incurred. If the employee wins, he can receive payment of past salary and/or be reinstated, and sometimes may receive a small award for mental distress.

If a motion is filed before the Employment Tribunal, the Tribunal will urge the parties to settle the case. In many cases, it will propose that the employment relationship be severed even in clear wrongful dismissal cases but will also ask the employer to pay compensation (12 months of remuneration being viewed as an unwritten cap). The main purpose of this system is to provide for quick solutions to employment disputes by limiting the number of hearings to three within a four-month period. The Tribunal will try to mediate the dispute and if one party fails to amicably settle the case, the panel renders a judgment which will become binding if no objection is filed by either party within 14 days. If any objection is raised, the matter will need to be brought as an official lawsuit before the District Court.

Specific rules apply to fixed term contracts.

13.3 Reasons for Dismissal

The employer may only terminate the contract of employment for just cause. The dismissed employee may have the right to claim reinstatement and salary based on the invalidity of the dismissal or compensation for unfair dismissal unless the employer can show there was a serious and objective reason for dismissal; these are misconduct, incapacity, illegality, redundancy, retirement or some other substantial reason. In practice the circumstances or breaches of law, the employment contract or work rules must be serious in order to constitute just cause.

The employer must show that one of these reasons existed and that it acted fairly and reasonably in deciding to dismiss the employee. The employer must therefore be careful to ensure that the reason is serious enough for dismissing the employee and also that sufficient evidence can be submitted.

13.4 Special Protection

Special rules apply to dismissals connected with pregnancy or maternity, work accident leave, parental leave, family care leave, an employee's labour union membership or activities, and to those making a public interest disclosure ("whistle-blowing").

13.5 Closures and Collective Dismissals

Given the difficulty in terminating employment for cause, employers normally adopt alternative approaches to streamlining their workforce. The following are the main approaches that range from voluntary to compulsory termination:

(a) Early retirement plan ("*souki taishoku yuuguu seido*"): The employer offers a financial package to employees to encourage them to leave and find another job. Normally this is a long-term programme to gradually reduce the number of employees;

(b) Voluntary retirement plan ("*kibo taishoku seido*"): The employer offers a financial package to a range of employees with the aim of reducing the number of employees within a short time-frame (e.g. a few weeks). The key to success is to determine the appropriate financial package, targets and period. There is no "market standard"; the package varies depending on the industry, rank, age and length of service;

(c) Recommendation for resignation at the request of the employer ("*taishoku kankoku*")"): This is a more individual approach. The employee has no obligation to accept and the employer should not exert excessive pressure. A financial package is usually offered to encourage the employee to accept the recommendation; and

(d) Termination by notice due to the employer's need to reduce its personnel ("*seiri kaiko*", i.e. dismissal): The employer can terminate employment contracts due to compelling reasons affecting the employer, when the employer is facing a "high level of economic necessity" or "reasonable operational necessity" and reducing the number of employees is unavoidable. A number of requirements have been established by the Supreme Court that the employer must satisfy before terminating employment contracts under *seiri kaiko.* These include (in summary) the financial condition of the employer and the need to take action; the prior obligation to cut costs and expenses and to try to reassign the employees to other positions; employee selection criteria; and proper explanations to the affected employees. Where a company is liquidated, the courts consider that the conditions for *seiri kaiko* do not have to be met (although some of the requirements set by case law would still apply) and there is much more flexibility to terminate employment contracts in this context.

Where 30 or more redundancies are proposed at one work place within a period of one month, a termination plan must be prepared listing the employees and detailing the measures taken or to be taken by the employer to facilitate the affected employees' employment search and any comment on the plan from a

labour union or, if there is no union, an appropriate representative of the employees, under the Employment Measures Law. The employer must notify Hello Work of such proposed redundancies, submit the plan and have it validated by Hello Work before implementing the redundancies.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees is regulated by the Personal Information Protection Law ("PIPL") which came into force in 2003. In addition a considerable amount of guidelines have also been issued on a sector and industry basis. The Ministry of Health, Labour and Welfare issued guidelines (amended in 2012) specifically regarding the handling of employees' personal data. Infringement of data protection law can lead to fines, compensation claims from affected employees or regulatory action.

Essentially, employers, as data controllers, are under an obligation to ensure that they process personal data about their employees (whether held on manual files or on computer) in accordance with specified principles including the following: a requirement to ensure that data is accurate and up to date, and that it is stored securely to avoid unlawful access or accidental destruction or damage to it.

Employers are generally advised to ensure they have a document retention policy in place and to ensure that employees are aware of their data protection obligations.

14.2 Employee Access to Data

Employees, as data subjects, have the right to make subject access requests. This entitles them, subject to certain limited exceptions, to be told what data is held about them and to request correction if the data is wrong.

14.3 Monitoring

The monitoring of employee email, Internet and telephone usage and closed circuit TV monitoring is permissible provided that it is carried out in accordance with the PIPL principles and processing conditions (and where appropriate in accordance with any other applicable legislation). Any adverse impact of monitoring on employees must be justified by its benefit to the employer and/or others. Express employee consent to monitoring is not usually required, however, the guidelines of the Ministry of Economy, Trade and Industry in respect of the PIPL provide that employees should be made aware that monitoring is being carried out, the purpose for which it is being conducted and who the data will be supplied to. The guidelines also encourage employers to consult with employees when the employer intends to start monitoring. Where disciplinary action is a possible consequence of anything discovered this too should be made clear to employees.

14.4 Transmission of Data to Third Parties

An employer who wishes to provide employee data to third parties must do so in accordance with the PIPL principles and processing conditions. In many cases, it may be necessary to obtain the employees' express consent to such disclosure depending on the nature of the information and context.

Contributed by Clifford Chance, Tokyo

Russia

1. Introduction

From a Russian law perspective an employment relationship is a contractual relationship based on the agreement between a legal entity or individual entrepreneur (the "employer") and an individual (the "employee") under which the employee undertakes to personally perform the work in the relevant professional or hierarchical capacity and observe the employer's internal policies and procedures regarding organisation of labour and the employer undertakes to provide the appropriate working conditions for the employee and remunerate the employee for the work performed.

Russian employment law consists mainly of the relevant provisions of the Constitution of the Russian Federation of 12 December 1993 (the "Constitution") and the Labour Code of the Russian Federation of 30 December 2001 (the "Labour Code"). The Constitution sets out the fundamental principles governing employment relations in Russia. The Labour Code contains the detailed provisions governing all aspects of employment relations in Russia including among other things collective bargaining, requirements applicable to the form and substance of an employment contract, employee remuneration, working time and holidays, general principles of occupational safety rules etc.

2. Categories of Employees

2.1 General

The Labour Code does not categorise employees and applies to any employees working in the territory of Russia including expatriate employees.

Despite the lack of categorisation of employees the Labour Code does apply a number of rules to selected categories of employees only. Such categories include, among others, pregnant employees, employees with certain family commitments, employees below the age of 18, chief executive officers and members of management boards, employees working for more than one employer, employees working under short-term employment contracts, seasonal workers, employees with rotating jobs, employees employed by individual entrepreneurs, home workers, employees working in the Extreme North and similar areas and transport workers.

2.2 Directors

Under the Labour Code the employment status of a Chief Executive Officer/General Director ("CEO"), Deputy CEO ("Deputy"), Member of Management Board and Chief Accountant ("CA") differs to that of other employees to a certain extent (see further below).

From a Russian law perspective the CEO acts in two capacities, namely as a corporate governance appointment of a company whose status is governed by Russian corporate law and as an employee.

Since the CEO is the governing body, the CEO may only be appointed and terminated by the appropriate corporate body (such as a general shareholders' meeting or a board of directors, as the case may be). As a corporate governance appointment the CEO owes a fiduciary duty to the company.

In addition, as the relationship between the CEO and the company usually meets the criteria for an employment relationship, as described above, the company is obliged to enter into an employment contract with the CEO. From the Labour Code perspective the CEO's status differs from that of other categories of employee in a number of respects: (i) the CEO can be obliged to serve a six month probationary period instead of the standard three month probationary period applicable to other categories of employees; (ii) the CEO can be terminated on a wider range of grounds than the statutory grounds applicable to other categories of employee (the CEO and the employer are free to agree to termination on grounds that are not listed in the Labour Code); (iii) the CEO can be required to serve one month's notice as opposed to the standard 14 calendar days' notice applicable to other categories of employees; (iv) the CEO can be dismissed without cause; and (v) the CEO can be prohibited from working for another employer during the currency of his employment with the company.

2.3 Other

Unlike the CEO, the Deputy is an employee and not a corporate governance appointment. The status of the Deputy is governed by the Labour Code. Unlike the CEO, the Deputy may not be dismissed without cause and may not be placed under an obligation to serve a period of notice longer than the standard 14 calendar days' notice period applicable to other categories of employee.

The Deputy, in addition to the CEO and CA, may be required to serve a probationary period of up to six months as opposed to the three months applicable to other categories of employee.

The Labour Code provides that the Member of the Management Board ("MMB") may be treated in a similar fashion to the CEO if the company charter explicitly provides so. Otherwise the MMB will be treated as an ordinary employee.

In terms of employment status the CA differs to a certain extent from ordinary employees. In particular, the CA may be required to serve a probationary period of up to six months as opposed to the three months applicable to other categories of employees. Moreover, the CA may be terminated without cause in the event of a change in ownership of the company. (For more detail on the termination grounds applicable to CA please refer to Section 13 below).

3. Hiring

3.1 Recruitment

There is no particular legal regulation of recruitment practices and policies in Russia except for the general provisions of the Labour Code regarding pre-employment discrimination and documents that may be required for the conclusion of an employment contract.

However, recruitment through state employment agencies is closely regulated. State employment centres provide free recruitment services to employers and job seekers, but in practice neither employers nor job seekers use them extensively. It should be noted that employers are not legally obliged to apply to employment centres.

Private recruitment agencies are more popular among employees and employers. Private agencies are not obliged to obtain a specific licence (except for agencies that act as intermediaries between employers based outside Russia and job seekers who consider working for such employers abroad).

The general principle of recruitment through both public and private employment agencies is that the employer does not have the right to request from the job applicant any documents other than those that are expressly listed in the Labour Code and other legislation. In particular, the Labour Code provides that the employee must produce the following documents:

(a) Passport or other ID card;

(b) Employment history (except when the employee enters into the employment contract for the first time);

(c) Compulsory pension insurance certificate;

(d) Documents evidencing military registration of the employee who is obliged to do military service; and

(e) Diploma and other qualification documents.

3.2 Work Permits

As a general rule, a foreign national is obliged to have a work permit (and the employer is obliged to have a hiring permit) to work in Russia. Russian immigration legislation provides for a limited number of exceptions to this rule (professors, diplomats etc.).

To obtain a work permit for an expatriate employee, the employer must first apply for a work permits quota to hire foreign employees. After the quota has been approved, the employer must then apply to the local employment centre for approval of the number and positions of the expatriate employees that it intends to employ. The process within the employment centre takes about a month. After the application has been approved the employer should submit the required documents for the expatriate employee's work permit and its own hiring permit to the Federal Migration Service ("FMS"). FMS grants work and hiring permits within a month.

In addition to the work permit, an expatriate employee is obliged to have a work visa. To procure a work visa for the expatriate employee, the employer must first obtain an invitation from the FMS. To apply for an invitation the employer must provide the above mentioned permits (or a copy of the application made for such permits). When an application for invitation is filed, the employer is also registered with the relevant FMS subdivision. FMS grants invitations within a month.

A relatively new category of foreign employees is the highly qualified specialist ("specialist"). The decisive criterion determining whether or not a foreign employee is treated as a specialist is that his/her annual salary must be at least RUB 2,000,000 (approximately USD 67,000). Lower thresholds apply in certain exceptional cases (e.g. where certain areas of specialism are required).

For the purpose of obtaining work permits for specialists, employers do not need to:

(a) obtain quotas for work permits;

(b) apply to the local employment centre for approval of the number and positions of the expatriate employees that it intends to employ; and

(c) obtain a hiring permit.

The above exemptions do not however apply to highly qualified specialists who are employed by (among others):

(a) representative offices of foreign legal entities; or

(b) employers that were subject to administrative fines for illegally hiring foreign employees in the two years period prior to filing.

A specialist's work permit will be issued within 14 days of an application being filed with FMS.

A 13% personal income tax rate is applicable to a specialist's income earned in that capacity irrespective of whether or not the specialist is a Russian tax resident (the current rate of income tax for any employees who are not tax residents in Russia is 30%).

4. Discrimination

The Labour Code prohibits any direct or indirect employment discrimination on the grounds of gender, race, skin colour, nationality, language, origin, property, family, social and official status, age, place of residence, religious and political beliefs, affiliation with non-governmental organisations and on other grounds that do not relate to the employee's professional qualities (such as qualifications, work experience etc.)

The Labour Code prohibits an employer from refusing to employ a job seeker

without cause. The job seeker has the right to ask the employer to provide a written explanation of the reasons for refusing to employ him and the employer is obliged to respond to such a request. Employment may only be denied on the grounds of the job seeker's inappropriate professional qualities and not on any other grounds.

Refusing to employ a woman on the grounds of her pregnancy or family commitments is prohibited. The unjustified refusal to employ a pregnant woman or a woman with children below the age of three constitutes a crime and is punishable by fines of up to RUB 200,000 (approx. USD 6,700) or community service of up to 360 hours.

The Labour Code does not contain any provisions prohibiting sexual and mental harassment at work. However, sexual and mental harassment in the workplace may be construed as a crime punishable in accordance with the Criminal Code of the Russian Federation.

5. Contracts of Employment

5.1 Freedom of Contract

The form and substance of an employment contract are closely regulated in accordance with the Labour Code. However, the parties are free to include in the employment contract any provisions that are not detrimental to the employee. Any provisions of an employment contract that are detrimental to the employee or not compliant with the Labour Code and other applicable legislation are null and void.

The Labour Code applies in the territory of the Russian Federation to any individuals and entities regardless of their citizenship or legal status. Therefore the parties to the employment contract cannot choose foreign law as the law applicable to the employment contract where the employment duties will be performed in the territory of the Russian Federation.

As a general rule employment contracts must be open-ended. Fixed-term contracts may be entered into in a limited number of cases listed in the Labour Code. In particular, a fixed-term employment contract may be concluded where no open-ended employment relationship is possible (e.g. substitution for a temporarily absent employee, seasonal work, internship etc) or by agreement of the parties (e.g. employment contracts with CEO, Deputy or CA).

5.2 Form

The Labour Code provides that an employment contract must be in writing. Any amendments to the employment contract must also be in writing. However, if the employee has actually started to work at the instruction of the employer, the employment contract will be deemed to have been entered into between the parties. In this case the employer is obliged to enter into a written employment contract with the employee no later than three days after the employee has actually started to work.

5.3 Trial Periods

A probationary period cannot exceed six months for the CEO, Deputy, CA, Deputy CA and the head of a representative or branch office and three months for other employees. Selected categories of employee, such as pregnant women or women with a child under the age of one and a half years old, minors and graduates starting their first job in the field in which they received their education, may not be required to serve a probationary period. In the event that an employment contract does not contain an express probationary period provision, then no probationary period will apply.

5.4 Confidentiality and Non-Competition

To place the employee under an obligation to keep the employer's business secrets confidential, the employer is obliged: (i) to define the information that comprises its business secrets (either in the relevant internal written policy or directly in the employment contract); (ii) restrict access to such information; (iii) keep a record of employees which have access to such information; and (iv) have documents that contain such information marked as "Business Secret" with a reference to the owner of such information.

Certain data including among other things: (i) data contained in a company's incorporation documents; (ii) data on environmental pollution or on other factors adversely affecting the safety of production facilities and/or society as a whole; (iii) data on violations of law and sanctions imposed; and (iv) data on the number of employees, compensation packages, working conditions, vacancies, indicators of occupational injuries and death rates cannot be defined as business secrets.

Under Russian law after termination of employment a person is obliged to keep an employer's business secrets confidential until the relevant information enters the public domain and/or ceases to have commercial value for the employer.

A covenant not to compete with the employer after termination of employment or a covenant to abstain from poaching the ex-employer's employees, clients or directors appears to be unenforceable under Russian law. Russian law applies the principle that no obligation survives the termination of employment other than the duty to keep confidential the employer's business secrets, the bank secrets and personal data of other employees.

6. Pay and benefits

6.1 Basic pay

The Federal Law "On Minimum Wage" provides for minimum pay rates (MROT) that change on an annual basis. The minimum pay rate effective from 1 June 2011 is equal to RUB 4,611 (approx. USD 154) per month. It is expected that the MROT will be increased to

RUB 5,205 with effect from 1 January 2013.

Employee remuneration consists of: (i) a fixed monthly salary; (ii) compensation payments (e.g. business trip allowance or relocation allowance); (iii) incentives (e.g. performance bonus); and (iv) social benefits (e.g. sickness benefit).

6.2 Pensions

Russian pension legislation provides that age labour pensions may consist of two parts: insurance and cumulative. The insurance and cumulative parts of the age labour pension are paid out of the pension fund.

Employees have a legal opportunity to pay (personally or through the employer) additional insurance contributions in relation to the cumulative part of their pensions. In such cases employers may also decide to voluntarily pay additional pension insurance contributions for the benefit of their employees. Such a decision is executed by means of a separate order of a CEO (but not by the resolution of any other corporate body of the company). Alternatively the provisions of a collective bargaining agreement or the employment contract may provide for such additional contributions.

There is no minimum/maximum limit on the amount of voluntary contributions that employers and employees may choose to pay.

Private pension schemes are governed by the Federal Law "On Private Pension Funds" dated 7 May 1998 and subordinate legislation.

The main types of private pension schemes are: (i) schemes with fixed amounts of pension premiums; and (ii) schemes with fixed payments which may be either life-long or for a fixed number of years.

It should be noted that the Government is currently considering changes to the Russian pension system. However it has not yet published its proposals in this regard.

6.3 Incentive Schemes

Employers do not usually operate structured bonus schemes and instead operate discretionary bonus schemes. However, a number of companies do implement structured bonus plans with transparent rules regarding eligibility for cash bonuses (key performance indicators and methods for measuring such indicators, timeframe for meeting the targets etc).

Employee share plans are not explicitly regulated under Russian law and, therefore, general rules apply in relation to the provision of foreign securities apply. However, there are certain exemptions from the general rules that, may, in certain cases, facilitate the implementation of employee share plans in Russia. However, these exemptions have only very recently been introduced and have not been tested in practice.

Generally, shares in foreign companies may only be offered in Russia to qualified investors, unless:

(a) the shares are assigned with both an International Securities Identification Number (ISIN) and a Classification of Financial Instruments Code (CFI);

(b) the shares are classified as "securities" in accordance with the procedure established by the Federal Service for Financial Markets ("FSFM") (in the absence of such a qualification, foreign securities are regarded as "foreign financial instruments"); and

(c) such shares are admitted to public placement and/or public circulation in Russia.

If the shares fail to satisfy any of the above criteria, they may only be offered to employees who are qualified investors.

An individual can be recognised as a qualified investor if any two of the following requirements are satisfied:

(a) the individual owns securities and/or other financial instruments with an aggregate value in excess of RUB 3 million; or

(b) the individual has work experience in a Russian or foreign company which deals in securities or other financial instruments, provided that the work experience is at least: (i) one year in a company, which is a qualified investor by operation of law (rather than a company that obtained that status), if he or she has already ceased working with that company; (ii) three months in a company, that is a qualified investor by operation of law, if he or she is still an employee of that company; or (iii) two years in any other case; or

(c) the individual: (i) has been a party to at least 10 transactions with securities and other financial instruments during the last four quarters provided that the aggregate value of such deals is at least RUB300,000; or (ii) has been a party to at least five transactions with securities and other financial instruments in the last three years provided that the aggregate value of such deals is at least RUB 3 million.

The necessary transactions with the shares should be undertaken through a Russian broker. In addition, a prospectus should be registered with the FSFM if the shares in a foreign company transferred to the employees are newly issued shares (issued to the employees for the first time).

However, the FSFM is entitled to provide exemptions from the general rules in respect of the circulation of shares in foreign companies which are not admitted to public placement and/or public circulation in Russia. Pursuant to an Order of the FSFM dated 5 April 2011 (the "FSFM Order"), foreign shares not

admitted to public placement and/or public circulation in Russia may be acquired by certain categories of Russian citizens who are not recognised as qualified investors and without engaging a broker. These categories include, amongst others, individuals acquiring foreign shares: (i) under the terms of their employment contract; or (ii) in connection with the performance of their employment; or (iii) in connection with their membership of the board of directors (supervisory board) ("employee acquisition").

Options relating to shares in a foreign company may in certain circumstances be treated as "foreign financial instruments" which do not fall under the exemption referred to above and as such may only be offered in Russia to qualified investors.

There is a considerable degree of ambiguity in the new rules governing the offering of foreign financial instruments and securities in Russia. The application of these provisions will depend in particular on their interpretation by the Federal Service for Financial Markets. So far the Federal Service for Financial Markets has not issued any clarification. Once clarifications have been provided, the interpretation and implementation of the securities market legislation may change. Therefore, advice in relation to the proposed launch of an employee share plan in Russia should always be sought on a case-by-case basis

Securities market legislation allows the offer of shares in a Russian company to employees subject to compliance with certain regulatory and corporate requirements.

Depending on how an employee share option plan is structured, options relating to shares in a Russian company may fall under the category of "mass-issued securities" under Russian law. In this case their offer in Russia will be subject to the general requirements and restrictions of the Russian securities market legislation.

In general, due to the ambiguity of current regulation of employee share option plans in Russia, legal advice should always be sought on a case-by-case basis.

6.4 Fringe Benefits

Under Russian Law the employer, as a general rule, is not obliged to provide any fringe benefits to employees. However, in practice employers often grant certain fringe benefits that vary depending on practical area and categories of employees. The most typical fringe benefits provided by Russian subsidiaries of international companies to their employees include voluntary health insurance, reimbursement of mobile phone services, reimbursement of business lunches, etc.

6.5 Deductions

Russian law obliges the employer to withhold and to pay the employee's income tax to the competent authorities.

Russian law provides for an exhaustive list of grounds on which deductions from the salary and other amounts due to employees may be made (including payment of alimony, return of mistakenly overpaid salary etc.). However, the Labour Code does not expressly prohibit the employer from making any deductions at the request of the employee (e.g. for the purposes of loan repayment, voluntary pension contributions etc).

The amount of any deductions made (excluding applicable taxes) cannot usually exceed 20% of the salary payment.

In cases where an employee has inflicted damage to the employer's property, business or other interests a deduction in an amount not exceeding one month's average salary is permitted. An employee's liability for damage is unlimited in a number of situations (deliberately inflicted damage, damage caused when intoxicated etc).

7. Social security

7.1 Coverage

The employer is required to register with the Pension Fund, the Social Insurance Fund and the Federal Fund of Compulsory Medical Insurance. Social security benefits are funded through the obligatory social security contributions that the employer regularly pays to the above mentioned funds.

7.2 Contributions

The employer is obliged to pay contributions to the Pension Fund, the Social Insurance Fund and the Federal Fund of Compulsory Medical Insurance. Tax rates vary depending on the category of employers and other factors; the aggregate rate is generally 30% applied up to a specific capped amount set annually by the Government (in 2012 - RUB 512,000 (approx. USD 17,067); in 2013 - RUB 567,000 (approx. USD 18,325), while a 10% rate applies for salary amounts exceeding the specified amount.

8. Hours of Work

Under the Labour Code 40 hours a week is the maximum normal working time. Any work performed in excess of 40 hours is classified as overtime.

Some categories of employees must work on a reduced working time basis only. In particular, workers working in hazardous conditions may work a maximum of 36 hours a week and minors between 16 to 18 years are subject to a maximum working week of 35 hours.

The employer is obliged to keep records of the working time actually worked by the employee.

The Labour Code provides for a wide range of flexible working arrangements. They include:

(a) Part-time jobs;

(b) Divided working hours (e.g. for bus drivers working in the morning and in the evening);

(c) Flexible working hours;

(d) Work at home; and

(e) Unmeasured working time.

The Labour Code does not confine the list of flexible working arrangements to those set out above and does not provide for an exhaustive list of scenarios when flexible working can be agreed to. The regulatory framework for flexible working arrangements is accordingly quite liberal.

Except for some cases referred to below, the Labour Code does not prescribe any special procedure to be followed by a party to an employment contract when requesting flexible working arrangements from the other party. As a general rule the employer is not under an obligation to grant an employee's request for flexible working.

If the organisation of labour, technology or structure within an enterprise or office changes to the extent that there is a possibility of mass redundancies, the employer may introduce part-time working for all categories of staff. What constitutes a "mass" redundancy differs depending on the industry and other factors. A redundancy of more than 50 employees in the course of 30 days is normally regarded as mass redundancy.

To introduce the part-time employment regime the employer must consider the non-binding opinion of the trade union (if any). The part-time employment regime may not exceed six months. If the employer decides to lift the part-time employment regime before the expiry of its term, the employer must consider the non-binding opinion of the trade union (if any).

The Labour Code provides that overtime work may not exceed four hours in two consecutive days and 120 hours a year. To require an employee to work overtime, the employer is obliged to obtain the employee's written consent. Such consent is not required in a number of extraordinary cases such as accidents and other life or health threatening situations. The employer is obliged to make the relevant overtime payment for the overtime work performed by the employee in the amount of at least 150% of the employee hourly rate for the first two hours and at least 200% for the subsequent hours of overtime worked.

9. Holiday and time off

9.1 Holidays

According to the Labour Code, any day of New Year holidays, namely 1 - 6 and 8 January, 7 January - Christmas day, 23 February - Defender of the Motherland Day, 8 March - International Women Day, 1 May - Spring and Labor Day, 9 May - Victory Day, 12 June - Day of Russia and 4 November - National Unity Day are public holidays in Russia and non-working days. If a public holiday falls on a Saturday or Sunday, the subsequent working day is a non-working day. If any part of the New Year and Christmas holidays falls on weekend days, up to two non-working days may be introduced at a later time within the same year pursuant to a decision by the Russian Government.

The Labour Code provides that each employee is entitled to 28 calendar days' annual paid holiday. Particular categories of employees are entitled to extended paid holiday, being in particular, employees working on an unmeasured working time basis who are entitled to 31 calendar days' annual paid holiday.

Holiday may be taken at different times provided one period of holiday is not less than 14 consecutive days.

An employer is prohibited from refusing annual paid holiday to an employee during two consecutive years, which means that the paid holiday theoretically may be withheld during one year by mutual agreement of the parties. Payment in lieu of untaken annual paid holiday is possible in the case of termination of employment only. However, the employee may request that any holiday entitlement exceeding the 28 calendar days be replaced with the relevant cash payment.

9.2 Family Leave

Female employees are entitled to 70-84 days' paid maternity leave before the birth of the child and 70-110 days' paid maternity leave after it, depending on the number of children and other factors. However, where the employee uses less than 70-84 days before the birth, the post-birth part of maternity leave is extended by the number of unused days. Maternity pay is paid at a rate equal to the employee's average daily salary for two years subject to a cap on annual salary amounts established by the Government on an annual basis (see section 7.2 above) and other factors. Unpaid family leave of up to five days on the occasion of a child's birth may be available to fathers. Employees are entitled to paid adoption leave of between 70-110 days depending on the circumstances. This is payable at the same rate as maternity leave.

Employees (both parents, both grandparents and other relatives or custodians of the child) are entitled to paid parental leave until the child is three years old. Until the child is 18 months' old, parental leave is paid by the social fund at the rate of 40% of the employee's average salary. Parental leave is paid by the social fund at different regional rates for leave taken in the period that the child is between 18 months and three years of age.

9.3 Illness

As long as the employee is able to produce a valid medical certificate for his absence, the employee may be absent from work. Employees absent from work due to ill-health are entitled to receive compensation in the amount of:

(a) 100% of the average salary, if they have more than eight years of working experience;

(b) 80% of the average salary, if they have more than five years, but less than eight years of working experience; or

(c) 60% of the average salary, if they have less than five years of working experience.

For these purposes working experience refers to the number of years the employee has been working generally (regardless of whether that is with a single or multiple employers).

The above compensation shall be paid by the employer only for the first three days of illness. From the fourth day of illness the compensation is paid out of the funds of the social insurance fund. However, the maximum amount of compensation payable by the social insurance fund may not exceed the statutory maximum (approximately RUB 1,336 per day). In practice, when the statutory maximum is reached employers often pay the employee the excess amount.

10. Health and Safety

10.1 Accidents

The employee is covered by the mandatory social insurance against work-related accidents and occupational diseases. In the event of an accident or occupational disease, the employee receives the relevant benefits from the Mandatory Social Insurance Fund. Provision of the social benefits to the employee does not limit the employee's right to file a lawsuit against the employer that was at fault for the work-related accident or occupational disease.

10.2 Health and Safety Consultation

The employer must take relevant measures to prevent accidents at work, including extensive training and consultation of personnel, introducing the relevant internal policies regarding occupational safety etc.

11. Industrial relations

11.1 Trade Unions

The Constitution provides that everyone has the right of association, including the right to create or become members of trade unions. Thus, employees may be represented by a trade union or any other employee representation body (such as a personnel assembly) in any circumstances. The activities of trade unions are primarily governed by the Labour Code and the federal law "On Trade Unions, their Rights and Guarantees in respect of these Activities".

In certain cases provided for by law or in the relevant collective bargaining agreement, trade unions may have the right to veto employer decisions (including, in particular, in relation to dismissal of a trade union member). In such cases an employer will be obliged to seek the opinion of the trade union on the relevant matters.

11.2 Collective Agreements

The Labour Code provides that employees directly, or acting through their authorised representatives, have the right to initiate a collective bargaining exercise with a view to concluding a collective bargaining agreement with the employer. It should be noted that the employer is legally obliged to participate in the collective bargaining exercise once the employees concerned have given them the relevant written notice. The Labour Code also provides for a three month deadline for the collective agreement to be signed, which may be followed by further collective bargaining in relation to issues not settled within the three months term.

In practice, collective agreements mostly reproduce provisions of the Labour Code. They also usually provide for certain additional benefits for employees, set out dispute resolution procedures, establish the structure and status of trade unions etc. Collective agreements are quite common in large traditional industrial companies (both privatised and non-privatised) operating in mining, metal production, timber production etc. However, according to the statistical information, less than 5% of organizations in the Russian Federation have entered into collective agreements.

11.3 Trade Disputes

Employees have the right to strike as the main type of industrial action. A strike may be called provided preliminary conciliation and mediation between the employer and employees has failed. A strike must be approved by no less than a half of the number the employees present provided that not less than half of the total number of employees participate in the employees' meeting. During the strike personnel must perform the minimum volume of work required for the employer to operate. If the volume of work performed is below the minimum, the strike may be ruled illegal.

A strike may be ruled illegal by the relevant court, if it is launched in a company involved in the supply of power, heating, communications, medical care and in other "vital" sectors.

The employer whose personnel is on strike has the right to suspend payment of salaries to those employees who are on strike. The employer is entitled to take disciplinary measures (including dismissal) against the employees only if such employees continue the strike after a judicial decision ruling the strike illegal. In addition, if the employee representation body fails to declare a stop to the strike once the strike has been ruled illegal it may be held liable for the damage caused to the employer by the illegal strike, such amount to be determined by the court.

11.4 Information, Consultation and Participation

See section 11.1 above.

12. Acquisitions and Mergers

12.1 General

Employment contracts do not terminate in the event of a re-organisation of the employer, a change in the owner of the employer's assets or a change in the employer's shareholder(s).

However, in the event of a change in the ownership of the employer's assets (e.g. asset sale, privatisation of state or municipal property, nationalisation) the new owner has the right to terminate the CEO, Deputy and CA subject to making the relevant severance payments to them.

Where a share sale results in a change in the employer's shareholder(s), this does not affect current employment contracts in any way.

12.2 Information and Consultation Requirements

The Labour Code provides that employee representatives have the right to obtain from the employer information on the re-organisation of the employer and make relevant proposals to the employer's management bodies. There is no statutory timeframe or exact procedure for responding to such request. The relevant procedure may, however, be provided in the collective bargaining agreements. Applicable law is silent on any obligation of the employer to provide information on other corporate issues such as the disposal of a controlling stake in the company and there is no market practice in this regard.

As regards consultation, the employer is not obliged to consult its personnel unless there is an employee representation body/trade union. Under the Labour Code in the event there is an employee representation body, the employer is obliged to consider its opinion on: (i) the internal documents that may affect employees and that the employer intends to approve (including regulations on remuneration package, etc); (ii) planned mass redundancies; (iii) the overtime work that the employee is required to perform in the relevant cases, and (iv) the approval of job titles to which an unmeasured working time regime applies etc.

12.3 Notification of Authorities

There are no requirements to notify the authorities in the event of a business or share sale from employment law perspective.

12.4 Liabilities

In the event the employer fails to comply with its consultation obligations (see section 12.2 above), it may be punished by administrative fines. However, the payment of any fines does not release the employer from the duty to negate the consequences of its failure to co-operate (e.g. the labour inspectorate may compel the employer to revoke internal documents that were adopted without prior consultation with the employee representation body in the event of a claim by the latter).

13. Termination

13.1 Individual Termination

The Labour Codes contains an exhaustive list of the grounds on which the employer may terminate an employment contract. Dismissal without cause is prohibited by the Labour Code except in relation to CEOs.

The employee has the right to terminate the employment contract at any time for any reason subject to the relevant notice requirements.

13.2 Notice

If the employer decides to terminate an employment contract with:

(a) an employee who has failed a probation, the employer must give at least three calendar days' prior notice to the employee;

(b) an employee working under a fixed-term employment contract the employer must give at least three calendar days' notice;

(c) an employee who will be made redundant the employer must give at least two months' notice.

In other cases, as a general rule, no prior notice on behalf of the employer is required, unless otherwise provided in the employment contract.

13.3 Reasons for Dismissal

General grounds for dismissal include:

(a) Winding-up of the employer;

(b) Redundancy;

(c) Professional incompetence of the employee certified by performance appraisal results;

(d) The employee's repeated failure to discharge their duties without good cause if the employee has been disciplined more than once;

(e) Absence from work without good cause during the entire work day or for more than four consecutive hours;

(f) Appearance in the workplace or other territory or premises of the employer in a state of alcoholic, narcotic or other states of intoxication;

(g) The disclosure of the employer's confidential information or other employees' personal data;

(h) Theft, destruction of or damage to property in the workplace if these offences are certified by a relevant court decision or administrative act;

(i) The violation of occupational safety requirements which has resulted in or posed a danger of work-related accidents or catastrophe (such as a fire or explosion at the plant, etc.); and

(j) The provision of false documents to the employer at the time of conclusion of an employment contract.

Specific grounds for dismissal include:

(a) Misconduct by an employee who handles money and merchandise if this misconduct causes the employer to lose their trust and confidence in the employee (cashier, etc.);

(b) The implementation of an ungrounded decision by the CEO, Deputy and CA that had an adverse effect on the safety of the employer's property, led to the unlawful use of such property or caused any other damage to the employer;

(c) A single material breach by the CEO or the Deputy of their duties; and

(d) Any grounds provided for in the employment contracts of the CEO and MMB.

13.4 Special Protection

It is important to make sure that dismissal is properly formalised (to negate the risk of employee lawsuits alleging wrongful dismissal). To dismiss an employee, the employer must pass the relevant resolution on the employee's dismissal and make an entry in the employee's employment history.

In cases where the employer dismisses an employee due to the employee's misconduct (such as absence from work without good cause), the employer must adopt a written resolution on taking disciplinary measure against the employee (it will serve as evidence in the event of a dispute).

The employee cannot waive his/her statutory rights, including the right to file a claim against the employer for violation of his/her employment rights. Thus, any compromise or settlement agreement entered into between the parties to prevent the employee from filing a claim against the employer appear to be unenforceable under Russian law.

In the event that members of a trade union are to be made redundant, the employer must notify the local trade union immediately after the decision on redundancy is taken and provide a number of supporting documents. The representative body of the local trade union must consider this and issue to the employer its reasoned opinion in writing not later than seven days after receipt of the relevant documents. If such an opinion is not sent or sent outside the specified term, the employer is not obliged to take it into consideration. In case the representative body of the local trade union objects to the dismissal of the relevant employees, within three days of issuing a reasoned opinion it must initiate negotiations with the representatives of the employer. Results of such negotiations must be recorded in minutes. In the event that the representatives of the employer and the representative body of the local trade union do not agree on the terms and conditions of redundancy within ten days of commencement of the negotiations, the employer may take a final decision on dismissal of the relevant employees at its sole discretion. However, this employer's decision may be challenged by an employee and/or the representative body of the local trade union in the labour inspectorate or in the court.

Compensation for unlawful dismissal (including in the course of redundancy procedure), as a general rule, amounts to the average salary of an unfairly dismissed employee for the period of unemployment until the employee gets another job or is re-instated in his position by the court.

It is not necessary to follow any individual consultation process prior to dismissing an employee on the grounds of redundancy. When dismissed by reason of redundancy employees are entitled to a statutory redundancy payment equal up to five times the average salary of the relevant employee, depending on the circumstances. Higher amounts of severance compensation may be payable to certain categories of employees (e.g. employees working in difficult climatic conditions, etc).

When making employees redundant, an employer must give priority in respect of jobs to certain categories of staff such as employees with good performance, employees with two or more than two dependants, employees who suffered from a work-related accident or occupational disease when working for the employer, etc.

Collective bargaining agreements and employment contracts may provide for enhanced rates of redundancy payments, but this appears to be relatively uncommon in practice.

13.5 Closures and Collective Dismissals

In the case of a collective dismissal such as redundancy or the lay-off of the staff in anticipation of closure of an enterprise, an employer must give at least two months' notice to each of the employees to be made redundant, consult the trade union, if any (please see section 13.4) and notify the relevant unemployment centre.

14. Data Protection

14.1 Employment Records

The Labour Code contains a number of requirements regarding the protection, use and transfer of employee personal data. Notwithstanding the provisions of the Labour Code operations with employee personal data must comply with the general requirements set out in the Federal Law "On Personal Data" of 27 July 2006.

The Labour Code defines personal data of an employee as information which the employer needs in connection with the employment relationship and which relates to a particular employee.

The Labour Code imposes certain restrictions on the processing of employee personal data including restrictions on the transfer of information

and nature of information to be processed (e.g. the employer may not collect and process information on the employee's political and religious beliefs or the employee's participation in public associations and trade unions).

The employer is under an obligation to protect employee personal data against unauthorised access and loss.

As regards employee personal data processing, the employer is obliged to approve internal documents establishing the procedure for employee personal data processing and internal (i.e. within one organisation) transfer of such data.

As a general rule, the employer may collect the employee's personal data only from the employee and not from elsewhere. In the event that the employer receives such data from third parties, the employer must notify the employee about this in advance and receive the employee's consent to the collection of his personal data from third parties.

14.2 Employee Access to Data

Employees have the right to obtain full information about the data held by the employer about them and how such data is processed. The employer is obliged to grant the employee free access to his personal data, including the right to obtain a copy of any record containing personal data of the employee, except where it is expressly prohibited by the law (e.g. if the processing of personal data is exercised for the state defence and security purposes).

14.3 Monitoring

Under the Constitution every citizen has the right to privacy of correspondence, telephone conversations and other communications. This right may be restricted by a relevant judicial decision only. Thus, monitoring of the employee's email, telephone and other communications appears to be illegal.

14.4 Transmission of Data to Third Parties

As a general rule, the employee's personal data may be transferred to third parties (including group companies) with the prior written consent of the employee, but such consent is revocable at the discretion of the employee. The consent must be obtained from each individual employee. In exceptional cases the employer may transfer the personal data of the employee without his prior consent (e.g. when it is required for the purposes of preventing any threats to the life and health of the employee).

Contributed by Clifford Chance, Moscow

Singapore

1. Introduction

Employment law in Singapore is governed by both statute and common law. An example of some of these statutes are the Employment Act, Employment of Foreign Manpower Act, the Industrial Relations Act, the Trade Unions Act, Central Provident Fund Act, Work Injury Compensation Act, Workplace Health and Safety Act and the Retirement and Re-Employment Act.

English cases are relevant because the law of England was imported into Singapore in 1826 by the Second Charter of Justice and the Application of English Law Act states that the common law of England that was part of the law of Singapore immediately before 12 November 1993 continues to form part of the law of Singapore so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as the circumstances require. Although appeals to the Privy Council have been abolished and English cases are no longer binding on the Singapore courts, they remain persuasive authority.

The Singapore Ministry of Manpower is currently carrying out a review of the Employment Act, and it is anticipated that significant amendments to it will be made upon completion of that review.

2. Categories of Employee

2.1 General

Before identifying categories of employees, it would be helpful to first define who an employee is. This is because the employment relationship attracts unique statutory and common law obligations and rights.

It is important to note that the classification of a worker as an employee for one purpose, for example, to determine employment rights under the Employment Act does not necessitate the same classification for other purposes, for example, determining whether an employer is obliged to make contributions under the Central Provident Fund Act.

Where statutory definitions of "employee" are not precise or exhaustive, recourse may be made to the common law test, which requires a consideration of all relevant circumstances. Under that test, the concept of control is an integral but not conclusive factor. Other relevant factors include:

(a) Whether the method of payment used is salary or commission;

(b) Whether there is an obligation to work exclusively for that employer;

(c) Whether the contract specifies that the worker must work certain hours of the day or a certain number of hours and whether there is overtime pay;

(d) Whether the employer pays Central Provident Fund contributions;

(e) Whether the employee is entitled to holidays and medical leave;

(f) Whether the employee is an integral part of the employer's organisation;

(g) Whether the employer has a right to dismiss the employee;

(h) Whether the employer had a right to choose his employee;

(i) Whether there is mutuality of obligation between the employer and the employee;

(j) Whether the employee can delegate work;

(k) Which party provides the tools and equipment to be used; and

(l) Who ultimately bears the risk of loss or the chance of profit.

It should be noted that although any express provision in a contract or document that the relationship is one of employment is a relevant factor, it is not always conclusive.

Not all persons employed in Singapore are covered under the Employment Act. The Employment Act applies to a workman, employees holding confidential positions who do not hold managerial or executive positions (e.g. accounts assistants, HR and secretaries) and officers or employees of the government included in a category declared by the President to be employees for the purpose of the Act. It does not apply to any seaman, domestic workers, persons employed in managerial or executive roles or persons declared by the Minister not to be employees for the purposes of the Act.

It is important to distinguish between employees who are covered under the Employment Act and those that are not because the Employment Act invalidates any term in the employment contract that is less favourable than the conditions provided under the Act itself.

Even with respect to employees who are covered under the Employment Act, common law principles govern aspects of employment not provided for under the Act itself.

2.2 Directors

Generally, a director of a company is an office holder and is not an employee. However, a director may be an employee and factors that would be relevant in ascertaining whether he is an employee include:

(a) Whether his remuneration is by way of salary or director's fees;

(b) Whether the amount of remuneration is fixed in advance or on an ad-hoc basis;

(c) Whether the remuneration is gratuitous or by way of entitlement; and

(d) Whether the director was acting in a directorial capacity or was under the control of the board of directors.

An office holder is a permanent position which has an independent existence

regardless of the person who fills it. Generally, office holders are not employees although they may in some respects be in a position similar to that of employees i.e. their salary may be lawfully deducted if they refuse to work in accordance with the duties of their office. However, it is possible for some office holders such as directors of companies to also be employees.

Usually, a person occupying an office that was created and is governed by statute is unlikely to be an employee. Some examples of such offices are that of the President of Singapore and Judges of the Supreme Court. A public officer can normally be dismissed only for cause.

However, ordinary civil servants whose terms of engagement are set out in a contract are likely to be employees even if they are also office holders.

2.3 Other

Casual, temporary or part-time workers: Whether there is a continuous contract of employment is an important factor in determining whether a casual, temporary or part-time worker is an employee. Nevertheless, such a worker may be an employee in the absence of a continuous contract of employment if in practice he is required to provide good reasons for not reporting to work. A person is regarded as a part-time employee under the Employment Act only if he is required to work for less than 35 hours a week.

Partners: A person's receipt of the share of the profits of a business does not necessarily make him a partner in the business, although it is an indication that he is a partner. Where a person receives both a salary and a share of the profits of the business, he may be an employee instead of a partner.

3. Hiring

3.1 Recruitment

Employers recruit through different sources such as the internet, newspapers and private recruitment agencies. Private recruitment agencies require a licence before they can operate.

Although employers are generally free to choose who to employ, the Constitution of the Republic of Singapore prohibits any discrimination against Singaporean citizens on the ground of religion, race, descent, or place of birth with regards to employment. The Ministry of Manpower's Tripartite Guidelines on Fair Employment Practices encourage employers to recruit and select employees on the basis of merit by applying relevant and objective selection criteria relating only to job requirements. The Tripartite Guidelines on Fair Employment Practices also emphasise that Singaporeans should remain the core of the workforce and employers are called upon to "make reasonable efforts to attract and consider Singaporeans for job positions on merit and to train and develop their potential careers". Selection criteria and job advertisements should relate principally to qualifications, skills, knowledge and experience, and should not carry words or phrases that exclude Singaporeans or indicate preference for non-Singaporeans.

The statutory retirement age is 62 but employers are now required to offer re-employment to employees who turn 62, up to the age of 65, subject to the employee meeting certain criteria in relation to medical fitness and satisfactory work performance. The Tripartite Committee on Employability of Older Workers has recommended that employers voluntarily restructure work policies so that more older employees are employed.

3.2 Work Permits

It is an offence to employ a foreign employee without a valid work pass, and this includes all foreign employees who are sent to Singapore for training.

The Employment of Foreign Manpower Act ("EFMA") was amended with effect from 9 November 2012. One aim of these amendments is to tighten the policy on hiring and retention of foreign manpower, including the integrity of Singapore's foreign work pass framework. The amendments seek to deter errant employers, foreign workers and syndicates by setting up a penalty regime to combat administrative infringements of the EFMA, and also to enhance deterrence by introducing new contravention provisions and increasing penalties for parties seeking to circumvent the work pass framework.

The Controller of Work Passes may refuse to grant a work pass or grant it with or without conditions.

Employers may be required to pay a foreign worker levy, and in some cases a security bond, in respect of each foreign worker they employ. If the employer employs more foreigners than that fixed under the prescribed limit ("the Dependency Ceiling"), a higher levy applies in respect of each foreign worker above that limit. The Dependency Ceiling varies depending on the industry and is expressed as a ratio of local versus foreign workers.

The type of work pass required will depend on the foreign employee's level of skill.

Work Permit: The Work Permit is for skilled, semi-skilled and unskilled foreign employees. The minimum age of a Work Permit holder is 16 years. Employers have to pay a levy imposed in relation to the Work Permit and are subject to certain responsibilities. In practice, the employer will also have to provide a security bond and a quota as to the number of Work Permit employees a company can employ is imposed. The Work Permit is usually valid for two years and may be renewed.

S Pass: The S Pass is for mid-level skilled foreign employees whose basic monthly salary is at least S$2,000. Employers have to pay a levy imposed in relation to the S Pass and there is a quota as to the

number of S Pass holders a company can employ. The S Pass is usually valid for two to three years and may be renewed.

Employment Pass: The Employment Pass ("EP") is for foreign professionals and executives whose monthly basic salary is at least S$3,000 and who possess acceptable degrees, professional qualifications or specialist skills. There are no levies imposed and no quota restrictions with regards to the number of EP holders a company can employ. The EP is usually valid for two to three years and may be renewed.

S Pass and Employment Pass holders who wish to sponsor their spouses' and children's stay in Singapore must earn a minimum fixed monthly salary of S$4,000.

Personalised Employment Pass: The Personalised Employment Pass ("PEP") is a scheme created in 2007 in line with the Government's efforts to attract foreign professional talent into the nation. From 1 December 2012, in order to qualify for a PEP, an applicant must earn an annual fixed salary of at least S$144,000, an increase from the previous minimum annual fixed salary requirement of S$34,000. This new pass is not tied to any employer and is granted on the strength of the individual's merits. The PEP holder is able to remain in Singapore for up to six months in between jobs to evaluate new employment opportunities. A PEP is valid for three years and may not be renewed.

Training Employment Pass: The Training Employment Pass ("TEP") is for foreigners undergoing practical training attachments for professional, managerial, executive or specialist jobs, with a view to returning to work in their own countries. The individual must draw a monthly basic salary of at least S$3,000 and possess an acceptable tertiary or professional qualification.

Training Work Permit: The Training Work Permit ("TWP") is for unskilled or semi-skilled foreigners undergoing training in Singapore. Employers have to pay a levy. A TWP is valid for six months and may not be renewed.

4. Discrimination

Although Singapore does not have any general comprehensive anti-discrimination law, there are various statutes which have the effect of prohibiting discrimination in certain workplace situations.

Singapore has also ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979) and the International Labour Organisation's C100 Equal Remuneration Convention (1951), although it has yet to incorporate these into local law.

In addition the Singapore National Employers Federation, the Singapore Business Federation and the National Trade Union Congress have jointly issued a non-binding Code of Responsible Employment Practices which discourages certain forms of discrimination.

Except as expressly authorised by the Constitution itself, the Constitution prohibits discrimination against Singapore citizens solely on the ground of religion, race, descent or place of birth in three areas:

(a) In any law (the Constitutional definition of "law" includes the common law, custom and practice having the force of law as well as legislation);

(b) In the appointment to any office or employment under a public authority; or

(c) In the administration of any law relating to the establishing or carrying on of any trade, business, profession, vocation or employment.

It is an offence for an employer to discriminate against a person in recruitment on the ground that the latter:

(a) Is or proposes to become an officer or member of a trade union or an association that has applied to be registered as a trade union;

(b) Will be entitled to the benefit of a collective agreement or award if he is engaged; or

(c) Has appeared as a witness in any proceedings under the Industrial Relations Act.

If the employer is found guilty of the offence, he will be liable on conviction to a fine not exceeding S$2,000 or to imprisonment for a term not exceeding 12 months or to both.

An employer is, however, allowed to appoint or promote an employee to an executive or managerial position on the condition that he gives up his membership or office in a trade union.

The Employment Act provides that it is unlawful for an employer to give any pregnant employee (covered by the Act) notice of dismissal whilst on statutory maternity leave.

The Retirement and Re-Employment Act, enacted on 1 January 2012, makes it an offence for an employer to dismiss an employee who is below the age of 62 years on the ground of age. Requiring an employee to retire is regarded as a dismissal.

Written representations for reinstatement may be made to the Minister within one month of the dismissal. The Minister may direct the investigating officer to produce a report on the matter. After considering the report, the Minister may direct the employer to reinstate the employee and pay him the wages he would have earned if he had not been unlawfully dismissed or pay the employee compensation. The Minister's determination cannot be appealed against and operates as a bar to the employee bringing a court action. However, it should be noted that some categories of employee are excluded from the application of the Act.

Notably, the Retirement and Re-Employment Act also provides that employers may reduce the salary of employees above the age of 60 with reasonable prior notice in writing, and giving the employee a reasonable opportunity to be heard. If the employee does not agree with the proposed reduction, he may retire or be retired by his employer on or after reaching the age of 60.

5. Contracts of Employment

5.1 Freedom of Contract

The general requirements of contract formation apply to contracts of employment. These include the existence of an offer, acceptance, consideration, intention to create legal relations and capacity to contract.

The terms of the contract may be express or implied. Although collective agreements are not intended to create legal relations unless they fall within a statutory framework, when provisions of collective agreements have been incorporated into a contract of employment these will be enforceable. Other sources of terms that may be implied into a contract include employers' guidelines, handbooks, rules, etc. The general rules of construction apply to the interpretation of employment contracts e.g. the document should be read as a whole and any ambiguity should be resolved against the party who drafted the contract, etc.

Generally, the court will enforce the terms agreed upon by the parties provided that it is not illegal or against public policy. Note, however, that the Employment Act invalidates any term in the employment contract of an employee covered by the Act that is less favourable than the conditions provided under the Act itself.

5.2 Form

In general, both at common law and under the Employment Act, employment contracts need not be in writing and no particular form is required to constitute a valid and enforceable employment contract.

5.3 Trial Periods

The parties may contract for an initial probation period. Any advantage to the employer depends on the contract terms, for example, it is possible, provided that any applicable statute including the Employment Act is not contravened, to provide for a shorter notice period, lower wages, etc. during the probation period. The employer is nevertheless still required to make Central Provident Fund payments during the probation period.

5.4 Confidentiality and Non-Competition

Particular care should be taken in drafting restraint of trade clauses as these are prima facie void and enforceable only if they are reasonable in the interests of the parties and in the public interest. Factors which are relevant in determining reasonableness include the scope of the activities restrained, the geographical scope and duration of the restraint, the existence of other clauses which already provide sufficient protection for the employer's legitimate interests and whether the employee received consideration in return for agreeing to the restrictive covenants. The fact that the employee had expressly agreed that the restraint was reasonable is not conclusive.

Usually, the employee is the covenantor and the employer is the covenantee. The covenantee bears the burden of proving that the covenant is reasonable between the parties while the covenantor bears the burden of proving that it is against the public interest.

The court will ascertain what the covenantee's legitimate interests are before deciding whether the covenant is no wider than that necessary to protect those interests. Some examples of legitimate proprietary interests include trade secrets, customer connections and maintaining a stable and trained workforce. In contrast, the skill and knowledge acquired by an employee in the course of his employment becomes his property on leaving his employment.

The employer's legitimate interests will then be balanced against the public policy in favour of competition and the employee's right to advance in his chosen trade or profession.

It is important to note that if the employer dismisses the employee without notice and thereby repudiates the contract of employment, he cannot seek to enforce the restraint of trade clause against the employee even it is an express term of the contract of employment that the clause will be enforceable in the event of wrongful dismissal.

6. Pay and Benefits

6.1 Basic Pay

There is no statutory minimum wage policy in Singapore. The Government prefers to allow market forces to determine wages in order to ensure the most efficient allocation of labour.

With regards to foreign domestic helpers, certain foreign embassies may, as a matter of administrative practice, stipulate a minimum amount of salary to be paid. This, however, is not a legal obligation.

Under the Employment Act, employees who earn a salary not exceeding S$2,000 a month or workmen who earn a salary not exceeding S$4,500 a month who work overtime at the employer's request are entitled to overtime pay at the rate of not less than one and a half times their hourly basic rate of pay irrespective of the basis on which the rate of pay is fixed. Further, an employee is entitled to additional pay if the employee works on a rest day. The rates applicable depend on the number of hours worked on the rest day and whether work on the rest day is requested by the employer or the employee himself. For the remaining

categories of employees their pay structure will depend on the individual contract of employment.

6.2 Pensions

Generally speaking, most contracts of employment in Singapore do not make provision for a private pension scheme due to the nation's Central Provident Fund (CPF) Scheme. Under the Scheme, a proportion of an employee's monthly salary is paid into the employee's CPF Account and the money cannot be withdrawn, save for certain approved purposes, until the employee reaches the age of 55. Once the employee turns 55, he will be required to set aside a minimum sum before any withdrawal is allowed. The minimum sum will be used to make monthly payments to the employee once he turns 62 (current draw-down age), until the amount is exhausted.

The Employment Act also provides that a workman whose monthly salary does not exceed S$4,500 or an employee whose monthly salary does not exceed S$2,000 a month and who has been in continuous service with an employer for less than five years is not entitled to any retirement benefit other than sums payable under the CPF Scheme. There is no general practice of providing an employee with private pension in Singapore. As such, while those who earn less than S$2,000 are statutorily barred from receiving any retirement benefit, those earning more than S$2,000 do not generally receive any retirement benefits in the form of private pensions from their employer either.

6.3 Incentive Schemes

Share schemes and profit sharing schemes exist but are not mandatory.

6.4 Fringe Benefits

Subsidised medical and hospitalisation bills, canteen vouchers, tie-ups with retail and entertainment outlets and bonuses may be offered to employees. Senior executives may also be entitled to car and phone allowances.

6.5 Deductions

For employees covered by the Employment Act, no deductions other than deductions authorised under the Act (e.g. income tax, employee CPF contributions) may be made by an employer from the salary of an employee unless the employer is required to do so by an order of a court or any competent authority.

For employees not covered by the Employment Act, deductions may be made if prescribed by statute, expressly stated under the employment contract or impliedly allowed by law.

All Singapore citizens, permanent residents and foreigners who have stayed or worked in Singapore for 183 days or more are subject to taxation at resident rates. Taxation rates vary annually. For the 2009 year of assessment, income tax was capped at 20%. For non-resident employees, income is taxed at 15% or at resident rate, whichever is higher.

7. Social Security

7.1 Coverage

Singapore has no social security scheme as such. Instead, the Central Provident Fund scheme was set up to enforce personal savings. Other funds to which employers and in effect employees are required to contribute include the Skills Development Fund and specific ethnic or Muslim funds.

7.2 Contributions

Central Provident Fund: Under the Central Provident Fund Act, the employer usually has to make monthly contributions of money in respect of each employee who earns more than S$50 a month at specified rates. If the employee earns more than a certain amount, the employer is entitled to recover a certain proportion of his contribution from the employee. In effect, an employee who earns above that specified amount also has to contribute a certain proportion of his salary into the Central Provident Fund ("CPF").

If the employer sets up a scheme for the payment of pensions, gratuities or other pecuniary or welfare benefits to its employees which has been approved by the Minister and this has been certified by the Board, the employer's rates of contribution to the CPF in respect of its employees are reduced. The employer must pay the monies due to the employee under the approved employee scheme to the CPF upon the death of the employee or the termination of his employment with that employer.

Employees, as members of the CPF, may make withdrawals only in certain circumstances and for particular purposes such as to purchase a home, pay for insurance, medical expenses and local tertiary education, participate in approved investments, etc.

For the purposes of the CPF Act, 'employee' refers, amongst other things, to any Singapore citizen engaged under a contract of service or other agreement entered into in Singapore but excludes certain categories of workers who might otherwise be considered employees.

For the purposes of the CPF Act, an employer includes any person, company or association of persons that employs workers and any manager, agent or person responsible for the payment of wages on behalf of an employer.

It is an offence for an employer to fail to pay on time any amount that is due and payable and employers are liable to pay interest on late contributions, which is calculated at the rate of 1.5% each month or S$5, whichever is greater.

Skills Development Fund: Under the Skills Development Levy Act, a skills development fund levy will be imposed on both local and foreign employers in respect of each employee whose remuneration does not exceed S$4500 each month at the rate of 0.25% of the employee's monthly remuneration or S$2,

whichever is greater. This levy is collected by the Central Provident Fund Board.

The objects of the Skills Development Fund are to promote, develop and upgrade the skills and expertise of people preparing to join or rejoin the workforce, people in the workforce, the retraining of retrenched persons and the provision of grants and loans for the above objects.

Ethnic or Muslim Development Fund: Employers are required to automatically deduct an amount specified by the Minister from the salary of each Chinese, Indian or Muslim employee and pay this sum into the respective development assistance fund of the group to which the employee belongs, unless the employee has opted out. By contrast, employers only need to make such deductions for Eurasian employees who opt in.

These development assistance funds are used for approved educational, social and economic advancements of that community.

8. Hours of Work

Employees and workmen covered by the Employment Act who earn a salary not exceeding S$2,000 or S$4,500 a month respectively may not be required to work for more than eight hours a day or 44 hours a week. This statutory prescribed period may be exceeded with the employee's written consent as long as the employee's statutory rights have been explained to him and he is informed of the expected working hours. However, the average numbers of hours worked over any continuous period of three weeks cannot exceed 44 hours per week. Subject to certain exceptions such as urgent machinery repairs or an unforeseeable interruption of work, such employees cannot be required to work for more than 12 hours a day or work overtime for more than 72 hours a month. Employees in this category are also entitled to one rest day a week.

As for the remaining categories of employees, there is generally no limitation as to the hours of work. Contracts of employment stipulate standard working hours but employees are usually expected to work beyond the stipulated hours if required by the exigencies of work.

9. Holidays and Time Off

9.1 Holidays

There are 11 public holidays per annum in Singapore. All employees covered by the Employment Act will be entitled to be paid on a public holiday at his gross rate of pay.

Under the Employment Act, employees and workmen who earn a salary not exceeding S$2,000 or S$4,500 a month respectively and who have been in three months' continuous service with their employer are entitled to paid annual leave of seven days in respect of the first year of continuous service and one additional day for every subsequent 12 months of continuous service with the same employer subject to a maximum of 14 days.

While there is no corresponding statutory provision for the remaining categories of employees, the general practice is in favour of paid holidays, payable at the gross rate of pay. For all other categories of employees, annual leave entitlement as provided under the contract of employment generally ranges from 14 to 21 days excluding public holidays.

9.2 Family Leave

Maternity leave: In line with the Government's efforts to increase birth rates, the Prime Minister recently announced an enhanced Marriage and Parenthood Package. Under the Children Development Co-Savings Act, maternity leave has now been extended from 12 weeks to 16 weeks for all female employees with Singaporean children born on or after 17 August 2008. All female employees are eligible for the extended maternity leave as long as they are lawfully married and have worked with their employer for a continuous period of at least 90 days before the birth of the child.

Maternity leave may begin from the four weeks immediately preceding confinement, and the last eight weeks may be taken flexibly over 12 months from the birth of the child subject to mutual agreement between the employer and employee.

Under the enhanced Marriage and Parenthood Package, the first eight weeks of maternity leave for the first two confinements will continue to be paid by the employer at the gross rate of pay while the last eight weeks of maternity leave will be funded by the Government (capped at S$20,000 per confinement, inclusive of CPF contributions). For the third and subsequent confinements, the full 16 weeks of maternity leave (at the gross rate of pay) will be funded by the Government (capped at S$40,000 per confinement, inclusive of CPF contributions).

For female employees who are not covered under the Children Development Co-Savings Act but are covered under the Employment Act (for example, if their children were non-Singapore citizens), they are statutorily entitled to 12 weeks of maternity leave in accordance with the previous maternity leave regime. This 12 weeks may be taken:

(a) during the period of four weeks immediately before her confinement and for the period of eight weeks immediately after her confinement;

(b) during a period of 12 weeks, as agreed to by the employee and her employer, commencing not earlier than 28 days immediately preceding the day of her confinement and not later than the day of her confinement; or

(c) during a period of eight weeks, as agreed to by the employee and her employer, commencing not earlier

than 28 days immediately preceding the day of her confinement and not later than the day of her confinement; and one or more further periods, not exceeding 24 days in aggregate, as agreed to by the employee and her employer, which shall be taken within the period of 12 months commencing on the day of her confinement.

Under the Employment Act, the employer is required to pay the employee at the gross rate of pay for a period of eight weeks in respect of the first and second confinements. This is not subject to a prescribed maximum amount.

Female employees who are neither covered by the Children Development Co-Savings Act nor the Employment Act are not statutorily entitled to maternity leave although the general practice tends to follow the position as stipulated by statute.

An employer who gives an employee who is on maternity leave notice of dismissal commits a criminal offence.

Childcare leave: The Employment Act currently entitles employees who have served an employer for at least three months and has any child below the age of seven years to two days of paid childcare leave in each 12 month period up to the child's seventh birthday. The first three days of childcare leave are paid by the employer at the gross rate of pay whilst the last three days are paid by the Government (capped at $500 per day, inclusive of CPF contributions).

The Children Development Co-Savings Act entitles employees who have served an employer for at least three months and has any child (who is a Singapore citizen) below the age of seven years to six days' paid childcare leave in each 12 month period. The total childcare leave entitlement for each parent is six days per year regardless of the number of children.

Currently, the entitlement to childcare leave for employees who are not covered by the Employment Act depends on the terms of the individual employee's contract of employment. Employers generally give this group of employees the same childcare leave entitlement as those who are covered by the Employment Act.

Infant care leave: Employees covered by the Children Development Co-Savings Act are entitled to unpaid infant care leave of six days per year subject to meeting the following conditions: (i) the child is Singaporean and below the age of two; and (ii) the employee has at least three months' employment with the employer.

9.3 Illness

The position with regards to paid sick leave for all employees who are covered under the Employment Act is as follows:

For any employee who has served an employer for a period of not less than six months:

(a) if no hospitalisation is necessary, 14 days in each year; or

(b) if hospitalisation is necessary, the lesser of 60 days in each year or the aggregate of 14 days plus the number of days during which he is hospitalised.

Where the employee has served the employer for a period of at least three months but less than four months:

(a) if no hospitalisation is necessary, five days in each year; or

(b) if hospitalisation is necessary, the lesser of 15 days in each year or the aggregate of five days plus the number of days during which he is hospitalised;

Where the employee has served the employer for a period of at least four months but less than five months:

(a) if no hospitalisation is necessary, eight days in each year; or

(b) if no hospitalisation is necessary, eight days in each year; or

(c) if hospitalisation is necessary, the lesser of 30 days in each year or the aggregate of 8 days plus the number of days during which he is hospitalised; or

Where the employee has served the employer for a period of at least five months but less than six months:

(a) if no hospitalisation is necessary, 11 days in each year; or

(b) if hospitalisation is necessary, the lesser of 45 days in each year or the aggregate of 11 days plus the number of days during which he is hospitalised.

The employee must be examined at the expense of the employer by a medical practitioner appointed by the employer or a medical officer and be certified by the medical practitioner or medical officer in order for his entitlement under the Act to arise.

Employees who are absent without a certification by a medical practitioner, or who are so certified but have failed to inform their employers of the same within 48 hours will be deemed to be absent from work without the permission of the employer and without reasonable excuse.

For all other groups of employees, entitlement to medical leave depends on the individual terms of contract although the general position for such employees is similar to that in the Employment Act.

9.4 Other Time Off

National service: employers are obliged by statute to grant leave of absence to employees who are required to report for national service. A failure to do so amounts to the commission of an offence.

10. Health and Safety

10.1 Accidents

Under the common law, employers are under a duty to take reasonable care with regards to the safety of their employees so as not to expose them to unnecessary risk. This duty encompasses an employer's common law duty to provide a safe workplace, competent and qualified staff, adequate or suitable equipment and proper supervision.

The Workplace Safety and Health Act widens the classes of persons who are subject to health and safety duties at the workplace to include occupiers, principals, self-employed persons, persons at work and others such as manufacturers and suppliers of materials. It also broadens the classes of employee who can receive such statutory protection. A breach of the Workplace Safety and Health Act is a criminal offence but it does not give rise to civil liabilities.

The Work Injury Compensation Act safeguards an injured employee's right to obtain prompt payment of compensation without the need to commence common law action against the employer. This Act applies to all employees save for a few minor exceptions, and it makes an employer liable to pay compensation for any personal injury caused by accident to an employee arising out of and in the course of the employment. In addition, the Act makes it compulsory for employers to insure and maintain approved insurance policies against all liabilities which the employers may incur under the Act.

11. Industrial Relations

11.1 Trade unions

Employees cannot be prevented or dissuaded from participating in or setting up a trade union. Any employer who discriminates against an employee by reason of the employee's membership or role in a trade union commits an offence under the Industrial Relations Act.

Under the Trade Unions Act, no civil suit can be maintained against a registered trade union, its officers or members in respect of any act done in furtherance of a trade dispute on the sole ground that the act induces some other person to breach a contract of employment or that it interferes with the trade, business or employment of some other person or the right of some other person to dispose of his capital or labour as he wills.

11.2 Collective Agreements

Under the Industrial Relations Act, all collective agreements must be certified by the Industrial Arbitration Court "IAC" before it may be deemed to be an award. The IAC may refuse to certify a collective agreement if it is against public interest or the terms of the agreement have not been satisfactorily or adequately set out. Once certified, the collective agreement will be binding on the parties to the collective agreement together with the successors of the employer and the employees' trade union.

It should be noted all collective agreements have to make provisions for the settlement of disputes arising out of the operation of the collective agreement, including provision for the reference of such disputes to a referee.

11.3 Trade Disputes

Applications may be made by parties to a trade dispute for it to be settled by the IAC as long as the court has cognizance of the trade dispute.

In practice, the IAC will generally try to resolve the dispute through mediation before formally arriving at a determination. In determining the trade dispute, the IAC may have regard not only to the interests of the persons immediately concerned, but also to the interests of the community as a whole and in particular the state of Singapore's economy. Further, the IAC also has to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. Legal representations may not be made to the IAC.

11.4 Information, Consultation and Participation

There are no formalised requirements for employee participation in Singapore. Ad hoc tripartite committees consisting of representatives from the Government, employers (e.g. Singapore National Employers' Federation "SNEF" and Singapore Business Federation "SBF") and trade unions (e.g. The National Trades Union Congress "NTUC") are formed whenever consultation on various issues is required.

12. Acquisitions and Mergers

12.1 General

Employees not covered by the Employment Act: A company merger, amalgamation and sale of business may involve a sale of shares or a sale of assets. The former does not affect any employment contract although the latter may. Where there is a complete sale of the business of the company including the goodwill of the company so that the vendor company ceases to trade, the original contracts of employment are terminated and it is up to the employee and the purchaser company whether they want to enter into a new employment contract and, if so, on what terms.

Employees covered by the Employment Act: Under the Employment Act, the employee's period of service is deemed to continue if the employer's trade or business is transferred to another person or company. All the transferor's rights and liabilities (apart from criminal liability) with respect to its employees are transferred to the transferee. However, the same does not apply in the case of a mere transfer of assets.

In addition, a trade union that was recognised by the transferor is deemed to be recognised by the transferee in certain

situations. For example, if after the transfer the majority of the transferee's employees are members of that trade union. Otherwise the trade union is deemed to be recognised by the transferee only for the purpose of representing the employee on any dispute arising from the transfer of employment from the transferor to the transferee or any collective agreement entered into between the transferor and the trade union while the collective agreement remains in force.

If either the employee or the transferee does not want to continue with the employment relationship, he may terminate the contract by giving notice or (in the case of the transferee business) salary in lieu of notice. In Singapore, there is no equivalent to the UK Transfer of Undertakings (Protection of Employment) Regulations 2006. Thus, it is unclear whether the transferee's act of termination on notice or payment of salary in lieu of notice constitutes a wrongful dismissal. However, if the employee is able to prove that he was in fact dismissed on the grounds of redundancy, he would be entitled to claim any retrenchment payment to which he is entitled under his contract or any applicable Collective Agreement. If there is in place a Collective Agreement or Award which provides for retirement benefits but does not provide for benefits in the event of the employer ceasing to carry on business for any reason whatsoever or the employer transferring his undertaking or property in whole or in part (a "Transfer"), and the employer has not set up a scheme which safeguards the retirement benefits in the event of a Transfer, the Employment Act provides that those benefits will be payable in the event of a Transfer.

12.2 Information and Consultation Requirements

In the absence of the parties to the transaction contracting to do so there is no legal obligation to consult with employees not covered by the Employment Act in the event of a merger, business or share sale.

Employees covered by the Employment Act are entitled to be notified in relation to a business transfer (the definition of which under the Employment Act includes a share sale). The transferor is under a duty to inform the employees and their trade union, if any, of the transfer, its approximate date and its implications, amongst other things, as soon as is reasonable before the transfer takes place.

Disputes between the transferor or transferee and an employee arising from the transfer may be referred to the Commissioner of Labour regardless of whether it occurs before or after the transfer. The Commissioner of Labour has the powers to delay or prohibit the transfer of employment and to order that the transfer of employment be subject to certain terms. A similar mechanism exits under the Industrial Relations Act for trade disputes that relate to a transfer of employment.

Under the Banking Act, all employees of a bank (regardless of whether they are covered by the Employment Act) will become employees of the new bank automatically upon the merger, with no change in their terms of employment.

13. Termination

13.1 Individual Termination

A contract of employment may be terminated in a variety of ways. These include the expiry of a fixed term or the completion of a task, by agreement, by giving notice, by repudiation of the contract or by operation of law.

Where the contract specifies a retirement age, the contract will terminate automatically upon the employee reaching that age. The present position is that a retirement age cannot be less than 62 years for employees covered under the Retirement and Re-Employment Act (enacted on 1 January 2012) if it is to be valid.

The Retirement and Re-Employment Act further provides that companies must offer re-employment opportunities beyond the statutory retirement age of 62, up to the age of 65, if the employee in question is medically fit and can deliver satisfactory job performance.

13.2 Notice

For employees covered by the Employment Act, statutorily fixed minimum notice periods apply by default when the contracts of employment do not provide otherwise.

Minimum Default Notice Period	Period of Employment
1 day	Less than 26 weeks
1 week	26 weeks or more but less than 2 years
2 weeks	2 years or more but less than 5 years
4 weeks	5 years or more

Although the parties can agree in the contract to a shorter notice period, the period of notice must be the same for both the employer and the employee.

For employees who are not covered by the Employment Act, if the contract does not specify the applicable notice period and even if the contract of employment does not provide for termination upon the giving of notice, generally at common law it can be terminated by either party giving reasonable notice of termination. What constitutes reasonable notice in the circumstances depends on a variety of factors including: custom and practice, the nature of the employment, the

period for which the employee was engaged and the length of service of the employee.

The primary object of a reasonable notice period is to enable the employee to find similar employment elsewhere or for the employer to recruit another employee.

At common law, the two exceptions to the implied right to terminate by notice are in respect of a fixed term contract and a contract which comprehensively sets out the grounds upon which the employee may be dismissed.

Whether a contract is for a fixed-term depends on the parties' intention. A contract is not a fixed-term contract merely because the employee's salary is expressed on an annual basis.

Formal requirements of notice: Where the Employment Act applies, notice of an intention to terminate must be written. Such notice may be given at any time and the day on which it is given is included in the period of notice. However, either party may waive his right to notice.

At common law, notice of termination need not be in writing but it must be given by the correct party to be valid. If the employer is giving the employee notice of the termination, it must do so itself or through its duly authorised agent. If the employer is a particular company, notice of termination given by a related company is valid only if that company is a duly authorised agent of the first company. In the absence of contractual provision or custom, notice of termination can be given at any time.

Salary in lieu of notice: The contract may provide for the payment of salary in lieu of notice. If it does not, at common law, the employer but not the employee is entitled to terminate the employment by payment of salary in lieu of notice.

Where the Employment Act applies and notice of termination has been given, the employment may be terminated by either party before the expiry of the notice period by paying salary in lieu of notice.

Shorter notice: The parties may mutually agree to a shorter notice period or one party may waive his right to the correct period where the other party gives shorter notice or no notice at all.

13.3 Reasons for Dismissal

Repudiation: It is unclear whether in the context of employment contracts repudiation automatically ends the contract or merely gives the innocent party a choice to accept or reject the repudiatory breach, however the better view appears to be the latter. A repudiatory breach by either the employer or employee must be a breach of a sufficiently serious character i.e. one which goes to the root of the employment contract or which shows an intention not to be bound by an essential term of the contract.

Examples of what amounts to a repudiatory breach on the part of the employer include the employer unilaterally reducing the employee's salary to cut costs and serious sexual harassment by the employer.

Examples of what amounts to repudiation by an employee include employee misconduct that relates to the employee's duties or the employer's business such as habitual drunkenness, assault of other employees and misappropriation of monies payable to the employer.

Case law interpreting the Employment Act states that an employee (to whom the Act applies) is deemed to have repudiated the contract if he is continuously absent from work for more than two days without the employer's consent or reasonable excuse or where he failed to inform and did not attempt to inform the employer of the reasonable excuse.

Summary dismissal: An employee's repudiation of the employment contract would justify his summary dismissal without notice or salary in lieu of notice but the employer bears the burden of justifying the summary dismissal. The employer need not be aware of the grounds at the time of the dismissal, provided such grounds are adequate.

Where the contract does not provide for a procedure to be used in a summary dismissal and the Employment Act does not apply, the employee has no right to a warning or a hearing.

Under the Employment Act, employees may be summarily dismissed for wilful breach or misconduct inconsistent with the express or implied conditions of his service. In the case of such misconduct, the employee has a right to a 'due inquiry'.

Suspension: In the absence of a contractual provision on suspension, the employer does not have a right to suspend an employee without salary for breach of duty.

Under the Employment Act, an employer may after due inquiry instantly downgrade the employee or suspend him without salary for not more than one week on the grounds of misconduct inconsistent with the conditions of his service. The employer may suspend an employee for the purpose of such an inquiry for not more than one week but must pay him at least half his salary for that period. If the inquiry does not disclose any misconduct of the employee, the employer must restore to the employee the withheld salary.

Frustration: Frustration of the contract arises on the occurrence of an unforeseen event that is beyond the parties' control and which makes further performance impossible or a thing radically different from that undertaken in the contract as opposed to merely more onerous than that contemplated. In such a situation, the contract is automatically terminated by operation of law, independent of the volition of the parties.

Examples of what may amount to frustration include the employee's incapacity due to illness and destruction of the place of employment.

Retrenchment (Redundancy): At common law, the employer does not have an implied right to retrench an employee without notice. Unless the contract expressly provides otherwise, the employer must give notice of termination or pay salary in lieu of notice. In addition to such notice or salary in lieu of notice, the employee may also be entitled to retrenchment benefits.

It should be noted that regardless of whether an employee is covered under the Employment Act, his entitlement to retrenchment benefits depends on the employment contract and, if the employee is a member of a union, any applicable collective agreement currently in force.

The Employment Act states that employees who were employed by their employers for less than three years are not entitled to retrenchment benefits. The local court has also held that the Employment Act does not imply that employers are legally obliged to pay retrenchment benefits to employees who have been in their employment for more than three years.

13.4 Special Protection

Wrongful Dismissal: The employee can bring an action against the employer for wrongful dismissal if:

(a) he was summarily dismissed without justification or without observance of the procedural requirements stipulated in the contract; and the Employment Act (where applicable). (For the latter, please see above);

(b) the employer failed to comply with notice requirements or payment of salary in lieu of notice;

(c) there was premature termination of a fixed term or task-based employment without basis; or

(d) his resignation was extracted by force.

Damages: An employee is entitled to claim damages for wrongful dismissal but he is required to mitigate his loss e.g. accepting alternative employment. The employee is entitled to a reasonable amount of time to find a comparable job but upon the expiry of that period he may be expected to compromise by accepting other jobs. The employer bears the burden of proving that the employee failed to mitigate his loss. The employee's claim for damages is reduced by the amount he earns in any alternative employment he secures. If he gets the same salary as in his previous job, he will only be entitled to nominal damages.

The quantum of damages for wrongful dismissal is calculated based on the amount that the employee would have earned under the employment contract until its lawful termination, which is usually the employee's salary for the applicable notice period. Where the claim concerns summary dismissal without complying with the applicable procedure, the amount of damages will also include the amount the employee would have earned during the period that the applicable procedure would have taken. In calculating the amount of damages, all forms of remuneration payable under the contract such as commission, tips and bonuses and non-monetary benefits e.g. club memberships and accommodation are included. However, it does not include compensation for untaken annual leave unless there is a contractual right to it nor does it take into account the manner of dismissal, injured feelings or the loss of reputation.

Under the Employment Act, subject to the contract of service the party in breach of the contract has to pay the innocent party a sum equivalent to that which he would have to pay if he had tried to terminate the contract by paying salary in lieu of notice. It is unclear whether this payment is subject to mitigation.

Differences in calculating payment of salary in lieu of notice and damages: At common law, payment of salary in lieu of notice cannot be categorised as damages where it is provided for under the contract of employment. This categorisation is significant because it means that there is no need to mitigate. However, the amount of the payment in lieu of notice must be confined to the amount of the salary.

Where the contract does not provide for salary in lieu of notice, the payment arguably constitutes damages for breach of the employment contract and the amount paid includes other contractual rights such as commission, allowances and benefits in kind.

Under the Employment Act, payment in lieu of notice includes allowances but excludes additional overtime, bonus or wage supplement payments, productivity incentive payments and expenses incurred in the course of employment.

Specific Performance: The court is unlikely to order specific performance of a contract of employment. However, where damages would not be an adequate remedy, the employer may be able to obtain an injunction to compel the employee to "serve out" his notice period and refrain from working for other employers.

Other remedies: Where the Employment Act applies, the employee who has been dismissed without just cause or excuse may make representations to the Minister within one month of his dismissal to be reinstated to his former employment. The Minister may direct the Commissioner of Labour to inquire into the dismissal and make a report. If the Minister is satisfied that the employee was dismissed without just

cause or excuse, he may direct the employer to:

(a) reinstate the employee and pay him an amount equivalent to the salary he would have earned if he had not been dismissed; or

(b) pay such amount of salary as compensation as determined by the Minister.

The Minister's decision is final and cannot be challenged in any court and his direction operates as a bar to any court action by the employee. It would be an offence for the employer to fail to comply with the Minister's direction. The position is similar under the Industrial Relations Act.

In addition to damages, a wrongfully dismissed employee may also claim for the services rendered by him before the dismissal. This is an exception to the rule that complete performance is required before salary is payable.

14. Data Protection

Singapore, at present, does not have any general comprehensive data protection law. The Personal Data Protection Bill is presently before the Singapore Parliament, and will be enacted in 2013 as the Personal Data Protection Act ("PDPA"). The primary aim of the PDPA is to govern the collection, use and disclosure of personal data by organisations, including employees' personal data by employers, and prevents employers from collecting, using, or disclosing employees' personal data unless the employee has given or is deemed to have given his/her consent, and only for reasonable purposes. Exceptions apply where the personal data is included in a document produced in the course of the employee's employment, business, or profession, where the use of the personal data is necessary for evaluative purposes, and where the disclosure of the personal data is necessary for any investigation or proceedings.

A Personal Data Protection Commission will also be set up to *inter alia* administer and enforce the PDPA.

Varying degrees of protection are afforded by the common law, various statutes and self-regulatory codes. The Central Provident Fund Act, Statistics Act, Electronic Transactions Act, Banking Act and Telecommunications Act are among some of the statutes that offer some measure of data protection. One of the exceptions under the Statistics Act allowing disclosure of personal information obtained under the Act without the subject's written consent is where the information is general in nature and can be obtained from other sources, such as the number of employees and their addresses.

The common law remedies that are likely to be relevant with regards to data protection in the employment context are those for breach of confidence and breach of contract in the area of disclosure of confidential information or trade secrets and customer lists.

Contributed by Clifford Chance, Singapore

Turkey

1. Introduction

In the Republic of Turkey ("Turkey") employment relationships are regulated by the Turkish Labour Code (Law No. 4857) (the "Labour Code") and its relevant regulations.

2. Categories of Employees

2.1 General

The Labour Code does not draw any specific distinction between blue-collar employees and white-collar employees or between senior management employees or other employees.

2.2 Directors

When a general manager or other managers of a company are employed and registered with the social security authority and added to the company's payroll, they also become employees regulated by the Labour Code. However, a member of the board of directors (a board member/director) is not an employee for the purposes of the Labour Code.

A member of the board of directors is subject to the Turkish Commercial Code. In the event that a board member is also appointed as the general manager of a company, then he will also be subject to the Labour Code by virtue of his general manager role.

2.3 Other

Part-time employees cannot be treated in a less favourable manner than comparable full-time employees and enjoy the same rights and obligations arising from the employment relationship as full-time employees. Similarly, employees engaged under a fixed-term contract may not be treated less favourably than a comparable employee engaged under a contract of indefinite duration.

3. Hiring

3.1 Recruitment

The Labour Code requires the Turkish Labour Organisation and authorised private recruitment agencies to mediate between employers and employees in order to avoid or reduce unemployment. However, employers are free to hire employees through advertisements in newspapers, internet sites or through other similar sources. Employers are free to choose who they hire as employees.

In workplaces where there are 50 or more employees the Labour Code requires private sector employers to ensure that 3% of the workforce is composed of disabled employees in full-time roles that are suitable in respect of their professional qualifications and physical and psychological status.

The number of disabled persons that must be employed by an employing entity that has more than one establishment within a single province is calculated on the basis of the aggregate number of employees employed in the various establishments. In addition, when assessing the number of disabled persons employed, no differentiation is made between those employees working under an open-ended employment contract and those working under a fixed-term contract.

Having regard to an employer's statutory obligation to employ disabled persons, employees who become disabled during the currency of their employment receive priority over other disabled persons.

Employers are supplied with the disabled employees that they are obliged to employ through the Turkish Labour Organisation. Private sector employers are obliged to employ disabled employees and publicly-owned companies (governmental companies) are also obliged to employ former convicts and terror victims.

3.2 Work Permits

Law No. 4817 on Work Permits for Foreigners the "Work Permit Law" requires foreigners to obtain a permit before they start to work either independently or for an organisation in Turkey, unless otherwise provided in any bilateral or multi-lateral agreements to which Turkey is a party. A work permit is valid only when the required work visa and residence permit are obtained.

Accordingly, a foreigner who wishes to work in Turkey must obtain the following:

(a) Work Permit (to be obtained from the Ministry of Labour and Social Security);

(b) Work Visa (to be obtained from the diplomatic representatives of Turkey); and

(c) Residence Permit (to be obtained from the Foreign Affairs Department of the Police Headquarters in the city where the head office of the employer is located).

Foreigners, who have been issued with a work permit, must request a visa to enter the country no later than 90 days after the date of receipt of the work permit. In addition they must apply to the Ministry of Internal Affairs for a residence permit no later than 30 days after the date they enter the country.

Foreign nationals residing outside Turkey may make their work permit applications through Turkish consular representatives in their respective countries. Foreign nationals holding residence permits and their employers may file their applications directly with the Ministry of Labour and Social Security.

Work permits will be granted by the Ministry of Labour and Social Security after consultation with the relevant bodies such as trade associations or relevant governmental bodies and regulatory agencies, if necessary. The work permit does not give the right of employment to spouses.

There are a number of different categories of work permit specified in the Work Permit Law: (i) work permits for a

fixed period of time; (ii) work permits for an indefinite period of time; and (iii) independent work permits which are required by the self-employed. There are a number of exemptions from the obligation to obtain a work permit arising from bilateral or multi-lateral agreements to which Turkey is a party,

Work permit for a fixed period of time: The Work Permit Law stipulates the conditions for the granting of work permits for a fixed period of time. Accordingly, unless otherwise provided in any bilateral or multi-lateral agreements to which Turkey is a party, a work permit for a fixed period of time will not exceed one year in duration. Relevant factors that will be taken into consideration are: the state of the economy, developments in the labour market and rates of employment, the duration of the foreigner's residence permit, the duration of the service contract or the project, the identity and location of the enterprise and the type of job.

Upon the expiry of the initial work permit, the duration of the work permit may be extended by up to three years, conditional upon the foreigner working in the same workplace or enterprise and in the same job.

Upon the expiry of an extended work permit after three years, the work permit may be extended by up to six years, conditional upon the foreigner working in the same profession.

Work permit for an indefinite period of time: Unless otherwise provided in any bilateral or multilateral agreements to which Turkey is a contracting party, a work permit for an indefinite period of time may be granted to foreigners that have legally resided continuously in Turkey for at least eight years or who have legally worked for six years without regard to the state of the economy etc.

Independent work permit: An independent work permit may be granted by the Ministry of Labour and Social Security to foreigners, who will work independently, on the condition that they have legally resided continuously in Turkey for at least five years.

4. Discrimination

The Labour Code prohibits discrimination in employment relations on the grounds of language, race, gender, political opinion, religion and sect, or similar reasons which may cause discrimination and which will be evaluated according to the facts of each specific case. Employees working in the same or equivalent jobs may not be discriminated against on the grounds of gender when being remunerated. In addition, employees working under fixed-term or part-time contracts may not be discriminated against. In the event of such discrimination the employee is entitled to claim compensation of up to four months' salary and the rights or interests she/he was deprived of.

5. Contracts of Employment

5.1 Freedom of Contract

An employment contract is formed when one party undertakes (the employee) to perform a job for the other party (the employer) who undertakes to pay him a wage. The employment contract is not subject to a specific format, unless otherwise specified in the Labour Code (see further below).

Provided that the rights and obligations imposed by the Labour Code are adhered to, the parties may tailor the employment contract to meet their needs.

An employment contract may be for a fixed or indefinite term, may be full-time or part-time and may include a trial period.

Fixed-Term and Open-Ended Employment Contracts: A fixed-term employment contract covers a specified period or concludes upon the completion of a specific task or project.

Fixed-term employment contracts may not be concluded consecutively in the absence of justification. For example, if a specific task or project cannot be completed within the term of the employment contract, then a consecutive fixed-term contract can be concluded until completion of the task or project. If fixed-term contracts are concluded consecutively without justification the initial fixed-term contract is deemed to be a contract of indefinite duration.

Employees engaged under contracts of indefinite duration may not be treated differently than comparable employees engaged under fixed-term contracts in the absence of justifiable grounds.

Severable benefits such as bonuses or similar monetary benefits must be paid pro-rata to employees working under fixed-term contracts in proportion with the time period that they work. Where a qualifying period of service is required in order to benefit from a particular work condition, employees engaged under a fixed-term contract must be treated no less favourably than a comparable employee engaged under an open-ended contract unless the application of a different length of service requirement can be justified.

5.2 Form

Open-ended employment contracts with a duration of one year or more should be executed in writing.

Employment contracts should be executed in Turkish where such contracts are concluded between employees who are Turkish citizens and legal entities incorporated under the laws of Turkey, failing which the contract will be invalid.

If there is no written contract, the employer must within two months of commencement of employment give the employee a document outlining the general and specific working conditions, daily or weekly work periods, the term of the employment contract, if specified, the

amount of salary and any additional payments such as allowances, bonuses, premiums etc, the intervals at which salary is paid and the conditions of termination.

The Labour Code imposes strict obligations on employers seeking to materially change employees' working conditions. Material amendments may only be made to employment contracts or personnel regulation (such as internal policies and procedures) by informing the employees in writing. The employee must then accept the amendment in writing within six business days.

Any amendments which are not made in accordance with these requirements are not binding upon the employees.

If the employee does not accept the proposed amendment within this six day period, the employer may terminate the employment contract, provided that it complies with the notice period and explains in writing that the amendment is based on a justified ground or that there is another justified ground for termination. In the event of such termination, the employee in question is entitled to file a lawsuit in accordance with the relevant provisions of the Labour Code.

However, the parties may at any time amend the working conditions by mutual agreement. Any amendment to the working conditions may not be enforced retrospectively.

5.3 Trial Periods

In the event that the employment contract includes a trial period, this may only be for a period of up to two months. The trial period may be extended to four months in collective bargaining agreements. Within the trial period, parties may terminate the agreement without notice or compensation for termination.

5.4 Confidentiality and Non-Competition

The Labour Code does not impose any non-compete obligations on employees. Nevertheless during the currency of the employment contract, an obligation of fidelity (*"obligation de fidelite-Treuepflicht"*) *can be contractually imposed on the* can be contractually imposed on the employee requiring him to act in good faith and in the legal interests of the employer.

Any post-termination prevention of competition by the employee is regulated by the employment contract, through a non-competition clause or by executing a separate "non-competition agreement", having regard to the general provisions of the Code of Obligations and the established principles of the Turkish Competition Board, a governmental body that ensures the formation and development of markets for goods and services in a free and sound competitive environment.

The Code of Obligations imposes a number of conditions that must be satisfied for a non-competition clause to be valid. First there must be a common understanding between the parties that the employee knows the employer's customers and confidential information and that accordingly there is a risk that the employee may cause considerable loss to the employer by using such information.

In addition, non-competition clauses must be reasonable with respect to their term, geographical application and the nature of work to which the prohibition applies.

It should be noted that what is considered a reasonable duration for a non-compete provision will differ according to the practices in the relevant market; however, the common practice of the Turkish Competition Board is to allow a non-compete provision to be inserted into the employment contracts for a maximum period of two years provided that the market conditions allow such a period. It should be noted that in practice market conditions in certain sectors such as banking and finance can result in much shorter restriction periods of two to six months.

The Code of Obligations also stipulates that in order to be valid a prohibition on competition must be in writing.

5.5 Intellectual Property

In the case of an employment invention, the employee should give immediate written notice of the invention to his employer. The employer may assert a partial or full right over the invention. The employer should notify the employee in writing of his assertion of right over the invention within four months of receipt of employee's notice regarding the invention. All rights related to such invention are transferred to the employer automatically at the time the employee receives his employer's notification regarding the assertion of full rights over the invention. In the case of an assertion of partial rights over the invention, the employer may use the invention based on his partial rights. However, if such usage makes it difficult for the employee to access his invention to a large extent, the employee may request that the employer either acquires full rights over the invention or that it abandons all rights. Any transfer of rights over the invention by the employee prior to the assertion of a right by the employer is invalid to the extent that such a transfer violates the employer's rights.

In the event that the employer asserts a right over the invention the employee is entitled to a payment from the employer. In determining the amount of the payment, exploitability of the invention, the duty and position of the employee within the enterprise and the contribution of the enterprise to the realisation of the invention are taken into consideration.

In the case of an invention developed outside the workplace but during the currency of employment the employee must give his employer immediate notice of the invention. If the employer wishes to assert that such an invention is an employment invention it must do so within three months of the employee's notice. The employee does not have to

give notice to his employer if it is evident that the invention cannot be exploited within the employer's field of activity. If the invention is capable of use within the employer's field of activity the employee should set out proposals for the use of the invention without granting full rights to the employer. If the employer does not respond within three months of receipt of such a proposal, he loses his right of first option over the invention.

6. Pay and Benefits

6.1 Basic Pay

The Labour Code requires salary to be paid at intervals of no longer than once a month; however, employment contracts or collective bargaining agreements can provide for weekly payments.

The Ministry of Labour and Social Security establishes the monthly national minimum wage twice a year. The net minimum wage to be paid between 1 June 2012 and 31 December 2012 is net TRY 740 (approximately €321).

6.2 Pensions

Private pensions are not mandatory. They are normally regulated by the individual employment contracts and provided to employees. Some international and multinational companies provide their employees, or at least their directors and managers, with private pensions and they set up a private pension plan in this respect as an additional benefit of the employees on top of the statutory pension by the applicable social security regime.

6.3 Incentive Schemes

Incentive Schemes such as bonuses and share option plans are normally regulated under individual employment contracts and provided to employees.

6.4 Fringe Benefits

Fringe Benefits such as company cars and cell phones, are normally regulated under individual employment contracts and provided to employees.

6.5 Deductions

All employees subject to the Labour Code are required to be registered at the Social Security Institution. Accordingly, deductions are made from employees' salaries in respect of the employees' Social Security premiums. Income tax, stamp tax and social security premium are deducted from gross salary.

7. Social Security

7.1 Coverage

All employees subject to the Labour Code are required to be registered at the Social Security Institution. Therefore, all employees must be registered by the Turkish Social Security Administration. The mandatory social security system provides, amongst other benefits, unemployment pay, work accident pay, maternity pay, death pay, pension pay, sick pay and disability pay.

7.2 Contributions

Employers are required to deduct the mandatory social security premiums from their employees' gross salaries on their behalf.

8. Hours of Work

The average working week is 45 hours.

Towards the middle of the working day and in accordance with local custom and working requirements, employees must be given a break as follows:

Total Working Hours	Duration of Break (minutes)
4 or less	15
4-7.5 (inclusive)	30
7.5 +	60

Employees may be required to work in excess of the weekly 45 hour limit (overtime) on the grounds of national benefit, characteristics of employment or increasing productivity. Employees are paid at a rate of 150% of the normal hourly rate of pay for any overtime worked.

Where an agreement has been reached that the duration of the average working week should be less than 45 hours then if the employee's weekly working week exceeds the agreed average, the additional hours are classified as overtime even though the hours worked by the employee do not exceed 45 hours. Employees are paid at a rate of 125% of the normal hourly pay for such overtime.

An employee may opt to take time off in lieu of receiving overtime pay by taking one and a half or one and a quarter hours off for each hour of overtime worked depending on the nature of the overtime worked (see above).

The employee must take such time off in lieu within six months of earning it and is entitled not to suffer any reduction in work hours or pay as a consequence.

Certain categories of employees are not allowed to work overtime for health reasons or because they are engaged in night work.

Employees must consent to working overtime and overtime work cannot exceed 270 hours in a year.

9. Holidays and Time Off

9.1 Holidays

The Labour Code provides that the duration of the annual paid leave cannot be less than:

(a) 14 days for employees with between one year and five years' service;

(b) 20 days for employees who have between five and 15 years' service; or

(c) 26 days for employees who have 15 years' or more service.

However, annual paid leave cannot be less than 20 days for employees who are 18 years old or younger and employees who are 50 years old or older.

The parties to an employment contract are free to agree to longer periods of holiday entitlement. As a general rule, an employee takes his annual paid leave entitlement in one instalment. However, it is open to the parties to agree to annual paid leave being taken in a number of instalments (subject to a maximum of three) provided that one instalment is not less than ten days.

The employer is obliged to grant unpaid leave of up to four days, where the employees wish to spend their paid leave in a location other than the one in which the workplace is situated, in order to compensate the employee for the time spent travelling to and from their chosen destination provided that the employees can produce documentary evidence of the proposed journey.

An employee must use paid leave during the course of the employment year following the employment year in relation to which the holiday accrues (e.g. an employee with 14 years' service will be entitled to 20 days' holiday. That holiday must be taken during the 15th year of service).

Any other paid or unpaid leave or sick leave granted to the employee cannot be deducted from the annual paid leave. Any national holiday, weekly rest breaks and general holiday cannot be included in the annual paid leave entitlement. In addition, an employer cannot oblige an employee to take a holiday during the notice period or to take a holiday instead of granting the employee leave to look for new employment to which he is entitled as a matter of law.

Where employees are granted holiday rights in excess of the statutory minimum in the employment contract or by custom and practice, then such holiday entitlement is considered an acquired right and must be adhered to by the employer.

Employees are entitled to receive their normal rate of pay on any day recognised by law as a national or a general holiday. If an employee works on such holidays, they are entitled to be paid at a rate of 200% of the daily rate of pay.

9.2 Family Leave

Maternity leave is 16 weeks in total, eight of which must be taken before and eight of which must be taken after giving birth. Where the mother is pregnant with more than one child, a further two weeks is added to the eight week antenatal maternity leave period. However, if the employee so wishes and her health allows her to carry on working, an employee may, with the approval of her doctor, continue to work until three weeks before giving birth. In such cases, the unused portion of the eight week antenatal maternity leave is added to the eight-week post-natal maternity leave period.

The period of maternity leave specified above may be increased before and after the birth in accordance with the employee's state of health and the characteristics of the employment. Any extension to the period of ante and post-natal maternity leave must be determined in light of a doctor's report.

Pregnant employees are entitled to take paid leave for the purpose of periodical medical examinations.

If a medical report deems it necessary, a pregnant employee must be given lighter duties suitable to the employee's medical condition. The employee's pay may not be reduced in these circumstances.

If the employee so wishes, she may take unpaid maternity leave of up to six months after the completion of the 16 weeks (or 18 weeks as the case may be) of paid maternity leave. Any period of unpaid maternity leave is not taken into consideration when calculating annual paid leave entitlement.

Employees are entitled to one and a half hours' paid time off to breastfeed their babies who are less than one year old. The employee herself determines when to take such time off. Such time off is considered to be part of the daily work hours.

9.3 Illness

Employees are entitled to take paid sick leave of up to one week upon the production of a medical report. Following such period, if the absence of the employee due to illness is extended, the leave is on an unpaid basis. In the event of such absences the employee must provide the employer with a medical report setting out the duration of the ill health absence.

9.4 Other Time Off

In addition to annual paid leave, the Labour Code entitles employees to take up to three days leave for their own marriage. Employees are further entitled to take up to three days leave in the event of the death of a parent, spouse, sibling or child.

Any employee who is called for military service or for manoeuvres or who leaves his/her job for any other form of compulsory service is considered to be dismissed with effect from the date falling two months after the date on which he actually left his job (extended dismissal date).

In order for an employee to benefit from the right to an extended dismissal date, he must have been employed in the job in question for at least one year. For an employment exceeding a period of one year, the extended dismissal date is extended by an additional two days for each additional year of service up to a maximum of 90 days.

Although the wages of the employee are not paid during the period between departure and the extended dismissal date, the provisions of special laws (such as military regulations), are however preserved during this period. Even if notice of termination is given by the employer or by the employee for another legal reason, the period provided for by law for the extended dismissal date starts to run after the expiry of the notice. However, this extended dismissal date protection does not apply to a fixed-term employment contract that expires automatically in the period between departure and the extended dismissal date.

Where an employee who has left employment due to any military or legal service wishes to be reemployed within two months after the termination of the said service, the employer is obliged to employ them immediately in their former job or in a similar job if there is a vacancy, or otherwise employ them in preference to other applicants as soon as there is a vacancy, under the terms and conditions prevailing at the time. If the employer fails to comply with its obligation to conclude an employment contract with a suitably qualified ex-employee who has requested reemployment, it is obliged to pay the employee compensation equal to three months' wages.

10. Health and Safety

10.1 Accidents

Legislation in relation to health and safety at work requires an employer to implement the decisions of the health and safety at work committee.

10.2 Health and Safety Consultation

An employer that permanently employs at least 50 employees is required to employ one or more in-house physicians depending on the number of employees in the work place and the degree of risk that the work carries with it. Such employers must also form an occupational health unit in order to look after the health of those employees who require health-care services while performing their duties, and offer first aid and urgent treatment and preventive medicine services.

The Ministry of Labour and Social Security regulates qualifications, numbers, recruitment, duties and working conditions of in-house physicians and occupational health units.

11. Industrial Relations

11.1 Trade Unions

Trade unions are regulated by the Trade Unions and Collective Bargaining Agreement Law (Law No. 6356). Trade unions are organisations with legal entity that have been formed by either employees or employers to protect and improve the common economic and social rights and benefits in employment relations. Employee trade unions must be established in relation to a specific branch of business and will be active throughout Turkey in respect of the employees working in that specific business branch. There can be more than one trade union operating in respect of a particular business branch. A trade union cannot engage in any activities other than its specified field of activity.

11.2 Collective Agreements

Collective bargaining agreements are regulated by the Trade Unions and Collective Bargaining Agreement Law (Law No. 6356). Collective bargaining agreements are agreements that are executed between the employee trade unions and employer trade unions or employers that are not members of employer trade unions. There cannot be more than one collective bargaining agreement covering a work place at any one time. Unless otherwise agreed in the collective bargaining agreement, the provisions of the individual employment agreements cannot contradict the provisions of the collective bargaining agreement.

11.3 Trade Disputes

The Collective Agreement Law defines a strike as the decision of the employees to stop working by agreement amongst themselves or as a consequence of the decision of an employee trade union to stop the activities of the work place. A strike will be lawful if the employees decide to stop work due to a dispute during the negotiations of a collective bargaining agreement.

A lockout will be lawful if the employer decides to lock out the employees due to a dispute during the negotiations of a collective bargaining agreement and/or after the employees decide to strike.

11.4 Information, Consultation and Participation

The employee trade union with authority to enter into a collective bargaining agreement for the relevant work place may appoint trade union representatives to the work place among those employees working in that particular work place. The number of the representatives is dictated by the number of employees working in that workplace.

12. Acquisitions and Mergers

12.1 General

The Labour Code provides that when the workplace or a department thereof is transferred to another legal body on the basis of a legal transaction such as a business sale agreement, the employment contracts that exist at the work place or a part thereof at the date of transfer are transferred to the new employer along with all their rights and obligations.

The employee's continuity of service with his former employer (transferor) must be taken into account by the new employer (transferee) in respect of all rights and benefits for which the employee's length of service is taken into consideration.

Neither the transferor nor the transferee may terminate the employment contract by reason of the transfer; this is not a justified ground for dismissal, any such dismissal will be ineffective. A transferring employee's contract may however be

terminated for economic, technical or organisational reasons arising in connection with the transfer.

12.2 Information and Consultation Requirements

In the event of a transfer of all or part of a business, there is no need to obtain the prior written consent of the employees.

12.3 Notification of Authorities

In the event of a transfer the new employer is required to inform the Social Security Institution as soon as possible by filing a "workplace declaration". The applicable legislation does not determine the specific timeframe within which such notification should take place other than to state that such notification should be made as soon as the transaction transferring the employees is concluded.

12.4 Liabilities

In the event of a business transfer, the former employer and the new employer are jointly liable for the employment debts that were incurred prior to the transfer and that are due at the date of transfer. However, the former employer's liability for these obligations is limited to a two year period from the date of transfer.

Such joint liability may not arise in the event of the dissolution of the legal entity by merger, participation or change of status.

13. Termination

13.1 Individual Termination

The Labour Code requires a written termination notice to be served on the employee and signed for by the employee. In this regard, the notice must be served through a notary public or by hand delivery or registered postage-paid mail. In the event that the employee refuses to accept delivery of a notice served by hand delivery, an attendance record of the refusal to accept delivery must be drawn up in the place of delivery. In the event that the notifications served through a notary public or the Post Office (via registered postage-paid mail) are not accepted by the employee, the reason for such notification failure must be set out on the notification envelope by the notifying party, the employer. The employer is obliged to draw up a record of a returned notification.

A termination notice may terminate an employment contract upon the expiry of a stipulated notice period or with immediate effect for good cause.

13.2 Notice

The employee or the employer is obliged to send notice to the other party before the termination of an open-ended employment contract.

The minimum notice periods (from employer and employee) stipulated by the Labour Code are as follows:

Length of Employment	Notice Period
less than 6 months	2 weeks
6-18 months	4 weeks
18-36 months	6 weeks
more than 3 years	8 weeks

The minimum notice periods stipulated by the Labour Code may be increased by collective agreement or by the employment contract. Where increased notice obligations are agreed the employer may terminate the employment contract only by complying with the increased notice obligation; however, even if the employee contractually accepts an increased notice obligation, such a provision is not legally binding on the employee and, accordingly, the employee can terminate the employment agreement by giving the shorter notice prescribed by the Labour Code.

The rights and liabilities of the parties continue during the notice period. If during the notice period circumstances arise that allow one of the parties to terminate summarily for good cause, the contract may be terminated summarily and the consequences of immediate termination will apply.

The Labour Code allows an employer to terminate the employment contract immediately upon payment to the employee of a sum equal to the net salary and other benefits that the employee would have received during the notice period.

The Labour Code sets out certain circumstances (see section 13.3 below) where the parties may terminate the employment contract summarily without notice or notice pay irrespective of whether the contract is open ended or fixed-term ("summary termination for good cause").

In such cases the termination notice must be in writing and clearly identify the cause of termination.

13.3 Reasons for Dismissal

The Labour Code stipulates which categories of employee are entitled to job security and also sets out the grounds on which an employment contract can be terminated. Where such grounds do not or cannot be proved to exist by the employer, the employee must be reinstated at work, if possible or, if not, must be paid a special indemnity. The indemnity is determined by the court and can range between four and eight months' salary.

The Labour Code provides that an employer may only terminate the employment contract of an employee who is protected by the Labour Code's job security provisions for good cause such as incapacity, attitude of the employee or the requirements of the enterprise, workplace or the business.

To come within the scope of the Labour Code's job security protection, the following conditions must be met:

(a) The employee must be working at a workplace employing 30 or more employees;

(b) The employee must be working under an open-ended employment contract, and such contract has to be terminated by the employer;

(c) The employee must have at least six months continuous employment at the work place; and

(d) The employee must not have the status of an employer representative managing the entire workplace with the authority to recruit and dismiss employees.

To assess whether the employee has six months' continuous employment the employee's period of service worked in one or more workplaces of the same employer are taken into account.

Employees working under a fixed-term employment contract or who quit their jobs voluntarily fall outside the scope of the Labour Code's "job security" provisions.

The number of employees employed at all the workplaces operated by the same employer in the same field of business at the date of the termination are taken into consideration when assessing how many employees are employed in the workplace.

The Labour Code sets out the situations which are not considered as termination for "good cause" rather than defining "good cause".

The Labour Code sets out the following exhaustive circumstances in which the employer may summarily terminate for good cause the employment contract without waiting for the notification period or paying any notice pay.

An employee may be dismissed on health grounds in a number of situations:

(a) If the absence exceeds three consecutive days or five days in a month, where ill health or disability arises, owing to the employee's own deliberate act, loose living, drunkenness, his disordered life or his addiction to alcohol; or

(b) If a Medical Board determines that the employer has a health condition which is incurable and creates an unhealthy work environment.

An employer is entitled to terminate the employment contract summarily for ill health reasons other than those set out above such as sickness, accident, birth and pregnancy, after a six week "waiting period" that commences at the end of the employee's notice period. In cases of birth and pregnancy the "waiting period" starts with the expiration of the relevant antenatal period applicable to the employee (see section 9 above). However, salary is not paid during the period that the employee does not attend work, as the employment contract is deemed suspended during that period.

Employees may be dismissed for acts of misconduct that breach ethical rules or goodwill as follows:

(a) The employee has mislead the employer by giving false information about the qualifications or experience he/she possesses at the date of execution of the employment contract;

(b) The employee has insulted or acted in a way that is harmful to the employer's or one of his/her family members' honour or integrity, or has provided incorrect information or made allegations about the employer that are degrading and offensive;

(c) The employee sexually assaults another employee;

(d) The employee has harassed the employer or one of his/her family members or any other employee or breached the ban on the use of alcoholic drinks and drugs;

(e) The employee has not acted in good faith or honestly e.g. by committing theft or disclosing the professional secrets of the employer;

(f) The employee has committed a criminal offence in the workplace that has resulted in a custodial sentence of not less than seven days and the punishment cannot be postponed;

(g) The employee has been absent without the employer's permission or without a peremptory reason for two consecutive days, or twice within a month, on the first business day following a holiday, or three business days in the course of one month;

(h) The employee has not performed the duties which he/she is under an obligation to perform and has been reminded to perform; or

(i) The employee has deliberately or negligently caused damage to the employer's machinery or equipment, goods or products or has caused a reduction in production that exceeds an amount equal to ten days of the employee's salary.

The employee can also be dismissed where an event occurs that prevents the employee from working in the work place for more than one week or where the employee is absent due to his arrest and detention for a period exceeding his notice entitlement.

An employer can only exercise the right to terminate the employment contract on the grounds of immoral behaviour and breach of goodwill within six days of the date on which the employer learns of the employee's behaviour and in any event within one year of the occurrence of the

conduct. However, the one year limitation period does not apply in any case where the employee has enjoyed a material advantage as a result of his conduct.

The party that terminates a contract on the grounds of misconduct, immoral behaviour or breach of goodwill within the requisite timeframe can claim pecuniary and non-pecuniary compensation.

13.4 Special Protection

Open-ended employment contracts may be terminated in accordance with the terms and conditions provided by law (see above). However, if the right of termination is used as a means of subjecting the employee to a detriment, the termination is deemed to be an "abuse of the employer's right of termination". The employment contracts of employees who do not come within the scope of the Labour Code's "job security" protection provisions (see above), may be terminated by complying with the relevant notice obligations, but without stating any cause. Where, however, an employment contract is terminated in circumstances that amount to an abuse of the right of termination (e.g. in response to the employee filing a lawsuit against the employer, or acting as a witness against the employer or filing complaints before competent authorities against the employer), then the employer must pay an indemnity to the employee equal to three times the salary payable during the notice periods.

Dismissal on any of the following grounds are not considered to be for "good cause":

(a) Trade Union Membership;

(b) Joining in trade union activities out of work hours;

(c) Joining in trade union activities during work hours with the prior consent of the employer;

(d) Being a workplace trade union representative;

(e) Filing complaints to the administrative or legal authorities in respect of the employer;

(f) Participating in legal proceedings against the employer in order to defend or protect his/her contractual or legal rights;

(g) Race, creed, gender, marital status, familial obligations, pregnancy, birth, religion, political views and similar grounds of discrimination against employee;

(h) Absence from work during the period in which female employees are legally allowed not to attend work; or

(i) The temporary absence of an employee from work due to illness or accident during the six-week period following the expiry of the notice period that the employee would otherwise be entitled to (see section 13.3 above).

13.5 Closures and Collective Dismissals

If the employer is contemplating collective dismissals for economic, technological, structural or similar reasons or such other reasons as are necessitated by the requirements of the enterprise, the workplace or the business, he shall provide: (i) the work place trade union representatives; (ii) the relevant regional directorate; and (iii) the Turkish Labour Organisation with written information at least 30 days prior to the intended dismissal.

A collective dismissal occurs where:

(a) 10 employees are dismissed in a work place employing between 20 and 100 employees;

(b) 10% of the employees are dismissed in a work place employing between 101 and 300 employees; or

(c) at least 30 employees are dismissed in a workplace employing more than 300 employees;

on the same date or on different dates within one month.

In line with the foregoing, collective dismissal provisions shall apply to all work places employing more than 20 employees.

The notice that must be submitted to the union representatives, the relevant regional directorate and the Turkey Labour Organisation must contain information on the grounds of dismissal, the number and categories of employees to be affected by the dismissal and the time period within which the dismissal is anticipated to take place.

After the notice has been served the employer must consult with the union representatives about measures that can be taken to avert or to reduce the number of terminations as well as measures to mitigate or minimise their adverse effects on the employees concerned. A document recording that the consultation has taken place must be drawn up at the end of the meeting.

Termination notices take effect 30 days after the notification of the relevant regional directorate. In the event of a total closure of the workplace and permanent discontinuance of operations, the employer must notify, at least 30 days prior to the intended closure, the regional directorate and the Turkish Labour Organisation and must post the relevant announcement at the workplace.

Where collective dismissals are carried out at the end of seasonal work (e.g. harvest collection) or a specific work project (e.g. advertising merchandise for a specific period) then the provisions on collective dismissals do not apply.

An employer may not use the collective dismissal process to circumvent the Labour Code's job security provisions (see above).

If within six months of the finalisation of the collective dismissal, the employer wishes to employ employees for a job of the same kind, he may first offer the position to former employees with the relevant qualifications but is not obliged to do so.

The Labour Code provides that if an employer or the employer's representative breaches any applicable collective redundancy information and consultation obligations it will be subject to a fine of TRY 487 for each employee dismissed. The amount of the fine is increased annually. TRY 487 is the rate applicable for 2012.

The redundancy termination notice served on the employees must be in writing and state clearly the reason for dismissal and must be signed for by the employee.

14. Data Protection

14.1 Employment Records

There is no specific data protection law in Turkey forbidding the retention of employee data by the employer.

However, the Labour Code provides that "Employers may keep a personnel file for each of their employees, in which they shall include, in addition to the identification details of the employee, all the documents and records that the employers are obliged to keep by law and present them to the authorised officials and offices as and when requested." It also provides that "Employers are obliged to use the information they gain access to regarding employees with integrity in line with the law and not to disclose any information, the confidentiality of which would be to the rightful benefit of the employee".

The Turkish Constitution also provides for the protection of privacy of persons.

In light of the above, although no specific prohibition has been imposed on the type of data and/or documents that employers may keep in respect of their employees, it is recommended that the prior written consent of the employee to the retention and use of the employee's data for employment purposes is obtained and that steps are taken to ensure that such data is not disclosed to third parties.

14.2 Employee Access to Data

There is no specific legislation granting employees the right to access any personal data held about them. The only circumstances where employees may access such data is where an express agreement to that effect has been reached with the employer or where the nature of the employee's job is such that he needs to know the nature of the information held about him or where he must be informed of the nature of the data as a matter of law.

14.3 Monitoring

There is no specific legislation regarding the monitoring of employee communications such as emails, letters etc. An employee's emails can be monitored and reviewed by the employer in the event of the employee's absence (for example in case of a sick leave) if the right to monitor is expressly referred to in the employment contract or in the personnel handbook. In practice it is recommended that the monitoring of employee communications is limited to the date, the parties, and other business-related content avoiding the personal, non-business related data of the employee.

14.4 Transmission of Data to Third Parties

Although there is no specific legislation restricting an employer from transferring its employees' data to third parties, it is important to be aware that under the Turkish Labour Code employers are bound by an obligation of confidentiality in respect of information provided by the employee for holding on his personnel file. Transferring such information to a third party could constitute a violation of that duty of confidentiality. In practice it is therefore recommended that the employee's written consent be obtained for the transfer of information from his personnel file to third parties.

Contributed by Yegin Legal Consultancy

Ukraine

1. Introduction

Employment law is probably the most outdated area of Ukrainian law. The Employment relationship is still primarily governed by the Labour Code adopted in 1972 ("Labour Code"), which, in spite of a number of changes introduced over the last 40 years, still contains many outdated concepts. A new Draft Labour Code passed the first reading before the Ukrainian Parliament in 2009 however, it is still unclear when it will come into force.

In addition to the Labour Code, Ukrainian employment law consists of certain fundamental labour rights established by the Constitution of Ukraine dated 28 June 1996 ("Constitution") and additional legislation governing specific aspects of employment, such as the Law of Ukraine "On Wages" dated 24 March 1995, the Law of Ukraine "On Vacations" dated 15 November 1996, the Law of Ukraine "On Employment" dated 1 March 1991 (as amended by a new Law of Ukraine "On Employment" which comes into force on 1 January 2013), the Law of Ukraine "On Collective Contracts and Agreements" dated 1 July 1993, the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Their Activity" dated 15 September 1999, etc. Health and safety rules are governed by the Law of Ukraine "On Labour Safety" dated 14 October 1992, as well as by a number of regulations adopted by the Ministry of Health, the Emergency Ministry (e.g. rules of fire safety) and the ministries responsible for labour safety in certain industries (transport, mining, energy sector). Finally, the Code of Administrative Offences, dated 7 December 1984, and the Criminal Code of Ukraine dated 5 April 2001 contain rules on professional liability.

The new Employment Law which comes into effect on 1 January 2013 introduces, among other things, the following provisions:

(a) the requirement to have a minimum quota of 5% of the workforce made up of people who have a legal guarantee of employment (this group includes graduates being employed for the first time and parents with children under six years old). This applies to companies with more than 20 employees;

(b) payment of subsidies to employers for creating new jobs and employing individuals who are directed to the company by the employment authorities;

(c) allowing unpaid internships for graduates/students; and

(d) imposing additional financial penalties for violations of employment law (including, in some cases, fines of up to 20 times the statutory minimum monthly wage).

The most distinct feature of Ukrainian employment law is the legal distinction between an "employment agreement" and "employment contract". Under the Labour Code an employment contract is a special form of employment agreement and may be used only where expressly permitted by law. The law permits the use of employment contracts only with certain employees, including, *inter alia*, the managing director of a company (but not other board directors), employees of a commodity exchange, associate attorneys, employees of educational institutions, and some other categories of employees. For all other employees, the use of employment contracts is prohibited.

An employment contract allows the parties more discretion in determining their respective rights and duties, including those relating to working conditions, termination, compensation, and benefits. In other words, the parties to an employment contract may include provisions that differ from those prescribed by the Labour Code. However, neither an employment contract nor an employment agreement may reduce the minimum employment guarantees provided by the Constitution, the Labour Code and other employment legislation or applicable collective agreements.

One of the most important provisions that can be included in an employment contract are the additional grounds for termination of employment. For example, it is possible to provide that the employment contract with the managing director of a company terminates immediately upon the adoption of a decision by the General Meeting of Shareholders on his dismissal from the position of managing director. In the absence of such a provision, even if a resolution to remove him from office was adopted by the shareholders he would have to be dismissed in accordance with the general rules applicable to termination of employment; by giving two months' prior notice and an explanation of the grounds for termination.

2. Categories of Employee

2.1 General

The rules and principles of Ukrainian employment law apply equally to all categories of employees, including foreign employees.

However, the Labour Code and other legislation contain a number of rules applicable only to specific categories of employees including persons under 18 years of age, student employees, pregnant women, disabled employees, seasonal workers, etc. In addition, employees working in certain industries may have additional rights and obligations. For example, coal miners are entitled to additional holiday and teachers may be dismissed for moral misconduct.

2.2 Directors

The employment status of directors is not specifically defined in the Labour Code. The Commercial Code does however expressly permit conclusion of an employment contract with the company's directors. Such a contract can deviate from the provisions of the Labour Code, including the terms upon which the

employment can be terminated. Such a contract may provide for immediate termination of employment upon a resolution of the General Meeting of Shareholders to terminate or in the event the company fails to achieve set targets.

Ukrainian employment law has detailed rules on liability (both financial and disciplinary) of directors and other company officers (i.e. persons who, acting in the ordinary course of their employment, have authority to bind the company in respect of third parties). In addition, directors and other company officials may be subject to administrative penalties and even criminal charges for non-compliance with employment laws and regulations.

2.3 Other

Deputy directors, members of management and supervisory boards are not included in the list of employees with whom an employment contract can be concluded. Therefore, strictly speaking, their employment, including its termination, is regulated by the Labour Code. However the Labour Code provisions in this respect do not reflect the realities of corporate governance and the inability to use an employment contract is widely criticised by business and legal communities.

3. Hiring

3.1 Recruitment

Except in a limited number of cases, recruitment is not expressly regulated by Ukrainian employment law. Both employees and employers may use different forms of either direct or indirect recruitment. The latter includes the State Employment Centres and private recruitment/HR agencies. There is no obligation to use the services of the State Employment Centres. However, an unemployed person registered at the State Employment Centre, which is a pre-requisite for getting unemployment insurance benefits, must attend interviews with potential employers arranged by the State Employment Centre.

3.2 Work permits

As a rule, a foreign national is required to have a work permit to be legally employed in the Ukraine. Work permits are issued by the State Employment Centres for a period of one to three years (in the case of "internal corporate assignees" and "persons who provide services without a commercial presence in Ukraine") upon the application of the Ukrainian employer. The application must be accompanied by documents substantiating the need for employing a foreigner and confirming his fitness for the prospective job.

A new procedure for issuing employment permits for foreign employees came into effect on 8 April 2009. This procedure contains more elaborate rules aimed at the protection of the domestic labour market during the financial crisis. In particular, the new procedure introduces:

(a) a more extensive list of documents to be submitted in support of the employment permit application. This list includes, *inter alia*, a criminal record certificate for the foreign employee; this could be problematic as many countries do not issue such certificates when there is no criminal record;

(b) an extended list of grounds for the refusal of employment permits. E.g. an employment permit will not be issued if the previous permit was annulled or a business visa was rejected within the preceding year; and

(c) a provision allowing a foreigner to be deported from the Ukraine if he fails to start performing his employment duties in time without "reasonable excuse".

In addition to a work permit, a foreign employee needs the relevant working visa (IM-1 type visa). Foreign employees of Ukrainian companies must also register with the local offices of the Ministry of Internal Affairs (i.e. "OVIR") within 90 days of their arrival in Ukraine in order to receive a temporary residency certificate.

4. Discrimination

The Constitution of Ukraine prohibits any discrimination (including in the context of the employment relationship) based on race, political or religious affiliation, gender, ethnical or social origin, financial status, place of residence, language, or other factors.

The Labour Code guarantees equal employment opportunities to all Ukrainian citizens and forbids any unjustified refusal of employment. Any direct or indirect discrimination in respect of the term of employment on the grounds specified above is unacceptable.

Certain aspects of gender discrimination are specifically addressed in the Law of Ukraine "On Providing Equal Rights and Opportunities for Females and Males" dated 8 September 2005, which prohibits employers from advertising job vacancies exclusively to men or women or from requesting, while concluding an employment agreement/contract, any data regarding the private life or family planning of the prospective employee.

5. Contracts of Employment

5.1 Freedom of Contract

Freedom of contract is one of the key principles of Ukrainian labour law and has two principle implications.

First, it means that no person may be forced to enter into an employment relationship. The Constitution expressly prohibits any forced labour, excluding alternative military service or public work, performed pursuant to a court decision.

Secondly, it means that the parties are free to agree on the terms and conditions of their employment agreement, subject to the requirement that an employment

agreement/contract may not set lower standards than those established by mandatory provisions of Ukrainian employment law. If an employment agreement/contract contains terms which are inferior to the terms established by law, then such terms of the agreement/contract are deemed to be null and void. The parties are, however, free to agree on more beneficial employment standards.

5.2 Form

An employment agreement may be written or oral, except in the following cases where it must be in writing:

(a) if the employee was hired as a result of an organised public recruitment process for a specific position or project;

(b) if the employee is working in regions with extreme climate conditions or with hazardous health conditions;

(c) if the parties enter into an employment contract;

(d) at the employee's request;

(e) if the employee is a minor; or

(f) if the employer is an individual.

Unlike an employment agreement, an employment contract must be in writing.

An employment agreement or contract must be executed in Ukrainian. In addition, the parties may decide to supplement the Ukrainian-language version with a translation into another language.

5.3 Trial Periods

An employer and employee may agree to have a trial period to ascertain whether the new employee is fit for the job. As a general rule, the trial period may not exceed three months. However, in specific cases, with the approval of the trade union committee (if there is one), the law permits a trial period of up to six months. The trial period for physical labourers (as defined in the applicable regulations) may not exceed one month. Ukraine's employment laws apply equally to trial employees.

If, in the course of the trial period, the employer finds the employee to be unfit for the job, the employment may be terminated by the employer solely on the basis of the employee being unfit for the job at the discretion of the employer. If the trial period ends and the employee continues to work, the employee is considered to have passed the trial test. From that period on, the employment agreement may only be terminated on the grounds provided in the Labour Code.

Trial periods may not be established for:

(a) persons under 18 years of age;

(b) young employees who have graduated from technical educational institutions;

(c) young specialists who have graduated from higher educational institutions;

(d) persons discharged from military or alternative (non-military) service; or

(e) disabled persons who were referred to work by the medical and social authorities.

In addition, employers may not impose a probationary period on employees who agree to move to a different employment location or those employees who have been transferred to another company pursuant to an arrangement between those two companies.

5.4 Confidentiality and Non-Competition

Although the prevailing majority of employment agreements/contracts concluded in Ukraine contain a confidentiality clause, this issue is not specifically addressed by Ukrainian employment law. Therefore, employers try to protect their confidential information from unauthorised use by (current and former) employees through the provisions of the civil law.

However, Ukrainian civil law protects only information, which may be regarded as a "trade/commercial secret". Under the Civil Code information may be regarded as a trade/commercial secret, if it is not known to or normally accessible by third persons, has commercial value, and access to such information is reasonably restricted. Therefore, in order to render a confidentiality clause in an employment agreement/contract binding, an employer should clearly define which information is regarded as a commercial secret and implement a system of limited and secure access to such information by a limited number of the authorised employees. In these circumstances, the employee may be bound by the relevant confidentiality clause and be liable to the employer for unauthorised use of the employer's commercial secret if such use causes damage (including loss of profit) to the employer.

Non-compete clauses are unenforceable under Ukrainian law, as a private agreement may not restrict the constitutional right to freely choose the place of employment. In any event, a non-compete clause terminates along with the relevant employment agreement/contract. Non-compete clauses are however, commonly included in employment agreements/contracts as the majority of employees are unaware of their lack of enforceability and consider themselves legally bound and because the clause does not render the rest of the contract unenforceable.

6. Pay and Benefits

6.1 Basic Pay

Wages may not be lower than the officially established minimum monthly or hourly salary.

Minimum monthly/hourly wage levels are established annually. The 2012 Budget Law, provides that from 1 January 2012 the minimum monthly wage was set at UAH 1073 (approximately US$134) per month, and increasing to: UAH 1094

(US$137) from 1 April 2012, UAH 1102 (US$138) from 1 July 2012, UAH 1118 (US$140) from 1 October 2012 and UAH 1134 (US$142) from 1 December 2012. The minimum monthly wage for 2013 will be established as soon as the 2013 Budget Law is adopted.

These levels may be further increased pursuant to corporate, sectoral or general collective agreements.

Ukrainian accounting regulations require that the employee's salary is paid monthly in two instalments with the second instalment being paid not later than 16 calendar days after the first instalment. Ukrainian legislation does not stipulate the proportion in which the two instalments must be paid.

Wages and other payments to Ukrainian employees should be paid in local currency (hryvnia). Wages and other payments to foreign employees may be paid in foreign currency.

6.2 Pensions

Ukraine adopted the law on private pension funds in 2003. However, as payments into private pension funds are made in addition to quite significant mandatory contributions to the State Pension Fund, private pension funds remain a private initiative of a limited number of Ukrainian companies which can afford additional contributions for the benefit of their employees. Sometimes the relevant collective agreement may provide for a private pension fund to be established and will stipulate the level of contributions to the fund.

6.3 Incentive Schemes

Incentive schemes are not expressly regulated under Ukrainian law. In general, Ukrainian tax law does not make bonus and other incentive schemes attractive for employers, since the bonus/incentive payments may be paid only from the company's profits and are not tax deductible. Therefore, only a limited number of Ukrainian companies have regular bonus/incentive plans, while most companies provide bonuses to their employees on a year-by-year basis. Normally annual cash bonuses range between one to three months' average salary for mid-level employees, and between two to six months' average salary for executives. All cash bonuses are subject to 15% Personal Income Tax. The amount of a bonus in excess of 10 months of the monthly statutory minimum wage rate applicable on 1 January of the tax reporting year will be taxed at 17%.

Employee share plans are not popular in Ukraine for the following reasons:

(a) there is a limited period of one year for the distribution of treasury shares; and

(b) unfavourable tax treatment – beneficiaries must pay 15% or 17% Personal Income Tax on the market value of shares received, and their subsequent sale is also subject to withholding tax of another 15% or 17%, etc.

6.4 Fringe Benefits

Fringe benefits are not specifically regulated by Ukrainian law and employers are not obliged to provide employees with fringe benefits. However, in order to be competitive in the job market, many companies provide their employees with medical insurance, free mobile phone services, free passes for public transport, free or partially paid meal plans, free or discounted access to recreational facilities (gym, swimming pool), etc.

6.5 Deductions

Under Ukrainian law an employer may not make any deductions from the employee's salary, except for withholding the mandatory unified social contribution to the State Pension Fund, and deductions made pursuant to a court decision (e.g. alimony deductions) or express agreement between the parties (e.g. deductions of the payments under a loan agreement concluded between company and its employee).

7. Social Security

7.1 Coverage

The social security system in Ukraine covers pensioners, employees and their dependants for work-related accidents, illness, retirement and death. It also provides disability, sickness and maternity benefits, basic medical care, severance benefits and child and family allowances.

7.2 Contributions

The major contributors to the social security system are employers. With effect from 1 January 2011 the procedure for the incorporation of a company in Ukraine requires mandatory registration with the State Pension Fund as a payer of the unified social contribution. The unified social contribution is a consolidated social contribution to the Pension Fund of Ukraine that includes several contributions to the mandatory state pension insurance and social insurance funds, i.e. (i) insurance against temporary disability; (ii) against industrial accidents and occupational diseases; and (iii) against unemployment.

Employers must make mandatory unified social contributions at general rates between 36.76% and 49.7% of the employees' salary depending on the professional risk level assigned to the employer's activity (which is a rating of between 1 and 67). Professional risk level is the level of job-related injuries and professional diseases that may be caused by the economic activity of the employer. For example, an employer will be assigned a level one professional risk if its activity is unlikely to cause any injuries. If the employer's activity is extremely dangerous, the employer will be assigned the highest level of professional risk which is 67. Lower contribution rates apply for certain categories of employees.

In addition, the employer is required to withhold the unified social contribution from the employee's salary at the rate of

3.6% (with lower rates for certain categories of employees).

The taxable base for the above contributions is capped at 17 times the statutory established "cost of living for a labour-capable person", which for 2012 was as follows:

(a) UAH 18,241 (approx. USD 2,284) – from January to April;

(b) UAH 18,598 (approx. USD 2,327) – from May to June;

(c) UAH 18,734 (approx. USD 2,344) – from July to September;

(d) UAH 19,006 (approx. USD 2,378) – from October to November; and

(e) UAH 19,278 (approx. USD 2,412) – in December.

8. Hours of Work

Under the Labour Code, the working hours of an employee may not exceed 40 hours per week. The working week is reduced to 36 hours for employees between the ages of 16 and 18 and for some other categories of employees, for example, those working in hazardous occupations.

The Labour Code requires employers to allow a reduced working day or a reduced working week at the request of a pregnant woman, a woman with a child who is under the age of 14 or disabled, or a woman who takes care of a family member who is ill. The law also permits an employee and employer to agree to a reduced working day or a reduced working week. Wages in these cases are paid for the hours actually worked.

The Labour Code requires a period of continuous rest from work of not less than 42 hours every week and the law generally prohibits work on days off. An employer may assign employees to work on days off only with the consent of the trade union committee, if any, and then only to perform urgent, unforeseen work that affects regular operations, to avert a natural disaster, or to respond to an operational accident or other emergency. An employer assigns employees to work on days off through a written order. Having worked on a day off, an employee is granted either another day off or double pay, as agreed between the parties.

Night work is defined as work performed between 10 pm and 6 am. Generally, normal working hours for night shifts are one hour less than normal daytime working hours. Night work is paid at an increased rate established by the industry (regional) bargaining and collective agreement, with a provision that such a rate is not less than 120% of an employee's normal hourly rate.

9. Holiday and Time Off

9.1 Holidays

The Labour Code establishes the following public holidays: New Year's Day (1 January); Orthodox Christmas (7 January); International Women's Day (8 March); Days of International Workers' Solidarity (1 and 2 May); Victory Day (9 May); Constitution Day (28 June); and Ukrainian Independence Day (24 August). Easter and Trinity also are holidays of one Sunday each. If any of the public holidays falls on Saturday or Sunday, the following week day automatically becomes a day off.

Ukrainian labour law provides for a basic annual vacation of at least 24 calendar days. Of these 24 calendar days, a minimum of 14 are consecutive calendar days to be used for the employee's main annual vacation. The employee may use the remaining 10 days of vacation in any combination.

Certain categories of employees are entitled to longer basic vacation and/or additional annual vacation days, including the following:

(a) disabled employees – 26 or 30 calendar days, depending on the level of disability;

(b) employees under age 18 – 31 calendar days;

(c) employees working in hazardous occupations and in "special working conditions" – up to 35 calendar days (depending on the particular work) in addition to the basic 24 days; and

(d) employees working in an "unlimited working day" regime – up to 7 calendar days in addition to the basic 24 days.

Certain vacations are available, over and above the general limits, for special purposes. These include vacation periods from 10 days to four months for educational purposes. Under special regulations, longer vacation also may be allowed for certain creative activities such as completing a thesis or writing a book.

An employee is entitled to take annual vacation for the first year of employment only after six months at work, unless the employer agrees otherwise. If vacation is granted during the first six months of work, its duration is pro-rated. Annual vacation for the second and subsequent years may be taken at any time during the relevant year.

In addition, an employee may be eligible to take unpaid vacation of no longer than 15 days per year and by agreement with the employer. Ukrainian legislation also provides that the employee is entitled to unpaid vacation, ranging from three to 60 days, depending on the specific legal reason, i.e. if an employee is studying, or getting married or is handicapped, etc.

9.2 Family Leave

Ukrainian labour law grants female employees a right to leave, known as "social vacation", for the purposes of pregnancy, childbirth and child-care. These social vacation allowances are as follows:

(a) prior to giving birth – 70 days;

(b) after giving birth – 56 days (70 days if there is more than one child or pregnancy-related complications);

(c) for child-care – until the child reaches three years of age; and

(d) for child-care, where there is more than one child under 15 years of age or a disabled child – five days annually (in addition to conventional annual vacation).

Unpaid or partially paid vacation for child-care, until the child reaches three years of age, may be granted to the father or grandparents of the child. Parents or a parent (male or female) who has adopted a child are entitled to 56 calendar days of one-time social vacation, and 10 calendar days annually.

After exhausting paid child-care leave, a woman may be entitled to additional unpaid leave until a child reaches the age of six, if the child, according to a medical certificate, requires special care at home.

Payments for maternity and child-care leave are made from the Social Insurance Fund operated by the state. Under Ukrainian law, employed women are entitled to the average wage payment during their maternity leave and the livelihood minimum during child-care leave.

9.3 Illness

The employer must provide time off with pay to employees who are absent from work due to illness if the absence is confirmed by a medical certificate. If an employee does not have a medical certificate, such absence will be treated as unjustified absence from work or as unpaid vacation. Sick pay is paid from the Governmental Social Insurance Fund Against Temporary Disability. The amount of sick pay depends on the amount of the employee's previous social contributions and duration of the employment.

The length of sick leave is not limited. However, the employer can terminate the employment agreement if an employee does not report to work for more than four consecutive months as a result of a temporary disability (except for maternity leave). In other circumstances, the employment agreement cannot be terminated while an employee is on sick leave.

10. Health and Safety

10.1 Accidents

Under Ukrainian law, employees are covered by the mandatory insurance provided from the Fund for Insurance Against Industrial Accidents and Occupational Diseases. Employees can also file a lawsuit against their employers if the latter's conduct wilfully or negligently gave rise to the accident. In addition, the officials of the employer responsible for the adoption and implementation of safety policies and regulations may face administrative penalties or even criminal charges if their failure to properly implement the relevant policies and regulations results in industrial accidents.

10.2 Health and Safety Consultation

Each company must have a person responsible for developing and introducing internal health and safety policies and providing the relevant consultation and training to employees. After such consultation and training the employees are normally asked to sign documents confirming that they are aware of all applicable health and safety regulations and policies and that they agree to be bound by these regulations and policies.

11. Industrial Relations

11.1 Trade Unions

Trade unions in Ukraine are public, non-profit organisations that unite citizens based on their profession or occupation. All trade unions in Ukraine have equal rights. Employees are free to join any trade union if they meet the membership requirements established by the union's charter. An employee may not be forced to join a trade union, and employment discrimination based on membership of a trade union is prohibited.

Trade unions are entitled to engage, *inter alia*, in the following activities:

(a) representing employees in collective bargaining;

(b) making legislative proposals and participating in the drafting of labour laws;

(c) providing employees with advice and protection with respect to their individual; and

(d) monitoring employers' compliance with labour laws and regulations.

A trade union, when properly authorised, may represent employees in collective bargaining irrespective of their union membership. In most cases, a trade union member may not be dismissed at the employer's initiative without the union's consent. An employer is required to consult with the trade union committee when establishing internal work regulations and vacation schedules. A trade union's consent is also required for overtime work, work under a system of aggregate working hours, and work assignments on days off.

Trade union officers may not be disciplined or their employment agreements modified without the consent of the trade union committee. The consent of the administratively superior trade union committee (that is, the committee for the district, city, or region, as the case may be) is required for the dismissal of trade union officers and for disciplining or dismissal of the union committee head.

11.2 Collective Agreements

Under Ukrainian law, collective agreements may contain provisions relating to production, labour conditions and employees' social and economic benefits which are superior to those provided by the labour laws. An employee may be covered both by a collective agreement and an employment agreement. Generally, employment conditions under employment

agreements may not be inferior to those granted under collective agreements.

In terms of subject and scope, a collective agreement under Ukrainian law may be one of four types:

(a) corporate collective agreements, which are those between the employer and one or more trade union committees (or other employee representatives elected by the collective of employees). To enter into a corporate collective agreement, the employer must be a legal entity;

(b) regional collective agreements which are those between local state executive bodies or authorised regional unions of entrepreneurs and regional trade union associations (or other representatives of collectives of employees within a specific territory or region);

(c) sectoral collective agreements, which are those between employers and employees (or their authorised representatives) authorised to conduct collective bargaining and to enter into collective agreements that will bind companies and employees within a specific industry (e.g. aviation, mining, chemical and other industries); and

(d) general collective agreements are those between united trade unions and united employers, employing the majority of Ukrainian employees. A general collective agreement is valid only if it purports to bind a majority of Ukrainian companies. There is currently an effective General Collective Agreement that was signed on 9 November 2010. It applies to all private and public companies. All corporate, regional and sectoral collective agreements should comply with this General Collective Agreement.

The provisions of a corporate collective agreement are applicable to all employees irrespective of their membership of the trade union(s) that signed the collective agreement. The provisions of other collective agreements are binding on all employers and employees within the authority of the respective signatories of the particular agreement.

Unless otherwise provided by the terms of the agreement, a collective agreement becomes effective on its date of execution and remains effective, even after its term has expired, until the parties either revise it or enter into a new agreement. When an employer reorganises, its corporate collective agreement remains in effect until the end of its initial term unless revised by the parties. When a new employer acquires a company, the old employer's corporate collective agreement remains in effect for a period not exceeding one year. During this one year period, a new collective agreement must be negotiated by the employees and the new employer.

Sectoral and regional collective agreements are subject to registration with the Ministry of Labour and Social Policy. Corporate collective agreements are registered with the local state executive bodies.

Employees must receive personal notice of corporate collective agreements. Notice of regional, sectoral, and general collective agreements is given via the mass media.

Under the Labour Code, a collective agreement should be concluded within three months of the registration of a company. However, this requirement is not always complied with in practice.

11.3 Trade Disputes

As a rule, all trade disputes between employers and employees, or trade unions representing their interests, must be settled by way of negotiations between the parties. However, where such negotiations fail, the employees have the right to strike under the Constitution, the Labour Code and other laws of Ukraine.

However, in order to enjoy the right to strike employees must comply with a number of strict requirements. First, a legitimate strike can only be organised if two-thirds of the employees in the company vote for it. Secondly, public servants may not strike, nor may members of the judiciary, armed forces, security services, law enforcement agencies and some other "prohibited sectors". Thirdly, federations and confederations of trade unions may not call a strike either. Finally, workers who strike in prohibited sectors may receive prison terms of up to three years.

If the employees have managed to organise a legitimate strike, the employer is not entitled to terminate the relevant employment contracts or take disciplinary measures against those employees who are on strike. However, the employer may suspend payment of salaries to such employees.

11.4 Information, Consultation and Participation

See section 11.1 above.

12. Acquisitions and Mergers

12.1 General

Article 36 of the Labour Code expressly provides that the "change of a company's ownership or reorganisation (including merger, acquisition, spin-off, etc.) of the employer does not terminate the employment agreements of the employees." However, the employment agreements may be unilaterally terminated by the employer if the change of ownership or the company's reorganisation results in a staff reduction.

It should also be noted that an employment contract concluded between the employer and the company's

director(s) may include additional grounds for termination, including the change of control or reorganisation of the company.

12.2 Information and Consultation Requirements

Reorganisation of the employer per se does not impose any obligations on the employer to notify the employees, trade unions or state authorities, or conduct any consultations. However, if the reorganisation of employer leads to a staff reduction, then the employer is bound by the notification requirements set out in section 13.3 below.

12.3 Notification of Authorities

If reorganisation results in a staff reduction, then the employer must notify the local State Employment Centre not later than two months before the planned staff reduction.

12.4 Liabilities

In the event of a failure to notify the local State Employment Centre about prospective layoffs the employer may be subject to a fine of up to the annual salary of each of the dismissed employees.

13. Termination

13.1 Individual Termination

The process of terminating employment in Ukraine is highly structured and, although perhaps not quite as protective as some Western European jurisdictions, does not allow for a simple "hire and fire" policy.

Article 36 of the Labour Code provides a comprehensive list of the legal reasons for termination of employment. These reasons may be divided into three groups, as follows:

(a) termination of employment as a result of the occurrence of certain circumstances (e.g. expiration of an employment agreement, death of the employee, entry of the employee into military or alternative non-military service) or mutual agreement of the parties;

(b) termination of employment at the request of an employee; and

(c) termination of employment at the request of an employer.

13.2 Notice

The following notice periods apply to the termination of employment relations:

(a) an employee has the right to terminate his or her permanent employment agreement without reason on two weeks' notice or with less than two weeks' notice in specific circumstances, as set out below in section 13.3; and

(b) an employer must provide two-months' prior notice to an employee whose employment is to be terminated for reasons of liquidation, staff reduction, or reorganisation. There appear to be no other notice requirements for an employer terminating an employment agreement in permitted circumstances.

13.3 Reasons for Dismissal

Employment may be terminated in the following circumstances:

(a) upon the agreement of the parties;

(b) upon the expiry of the term of the employment agreement (if concluded for a fixed term);

(c) if the employee commences military or alternative non-military service;

(d) at the request of the employee, the employer or an authorised representative thereof, or at the request of a trade union if the employer violates Ukrainian employment law (if such a trade union exists);

(e) on the transfer of the employee, with his or her consent, to another company or to an elected position (e.g. a political office);

(f) where the employee refuses to move to another location if the company where he/she works is moving to another location;

(g) where the employee refuses to continue working because of a change in "principal labour conditions" (including system and amount of remuneration, working schedule, etc) in the circumstances where the previous "principal labour conditions" cannot be maintained due to fundamental changes in the organisation of work or production at the entire enterprise;

(h) a court has sentenced the employee to correctional work away from the workplace or imposing some other punishment that makes further employment impossible;

(i) if the employee was held liable for corruption pursuant to a valid court decision; or

(j) for any other reason specified in the employment contract.

An employment agreement concluded for an indefinite term may be terminated by the employee without giving any explanation to the employer by means of serving the employer with a two week termination notice. If the employee continues to work beyond the termination date set out in the termination notice and does not insist on termination, the employer may not dismiss the employee on the basis of the expired termination notice except where a new employee has been hired to fill the position.

A two week termination notice will not be required, and the employment may be terminated by the employee even sooner if he proves that the termination of employment is for any of the following reasons:

(a) the employee moving to a different location;

(b) the employee's spouse transferring to a different work location;

(c) the employee commencing studies at an educational institution;

(d) the employee moving for medical reasons;

(e) the employee's pregnancy;

(f) the employee caring for a child who is under the age of 14 or disabled;

(g) the employee caring for a sick family member or a disabled person classified as having a group I disability (i.e. an individual who is completely dependent on other persons, e.g. he/she is incapable of walking, controlling his/her behaviour etc.);

(h) the employee's retirement;

(i) the employee was selected among other candidates for a vacancy in another company, organisation, enterprise etc.;

(j) the failure of the employer to comply with labour protection laws; or

(k) any other "important reason" that prevents the employee from working.

If, however, the employment agreement was entered into for a definite term, then the employee is not allowed to terminate the employment agreement by means of a two week termination notice, and may only terminate such employment agreement in a very limited number of circumstances, as follows:

(a) if an illness or disability impedes his or her work;

(b) if the employer violates labour laws, the employment agreement, or the collective agreement; or

(c) in circumstances listed in the previous paragraph.

Since employment contracts may only be of limited duration, the rules for terminating definite term employment agreements also applies to the termination of employment contracts, with the exception that an employment contract itself may include additional grounds for termination.

Employment may also be terminated by the employer.

An employer may terminate an employment contract based on the general provisions set out in Ukrainian law, as well as based on any specific reason for termination set out in the employment contract itself. As already noted, it is always in the best interests of the employer to enter into an employment contract if permitted by law.

In contrast to an employment contract, an employment agreement (permanent or temporary) may only be terminated upon specific grounds set out in the Labour Code. It is not permitted to specify any additional grounds for termination in employment agreements. The grounds for termination permitted by law are as follows:

(a) liquidation, reorganisation, bankruptcy, or restructuring of the company, including staff reductions;

(b) unsuitable employment qualifications or physical condition of the employee;

(c) systematic and inexcusable failure of the employee to observe the requirements of the employment agreement or the employer's internal rules and regulations following prior disciplinary action;

(d) unjustified absence from work (including absence for more than three hours during the working day);

(e) failure to report to work for more than four months as a result of a temporary disability (not including maternity leave), where the law does not provide for an extended period of absence for the particular illness;

(f) reinstatement of an individual who formerly carried out the employee's work as a result of a court decision on such reinstatement;

(g) drunkenness at work or public intoxication caused by drugs or other intoxicants;

(h) conviction for theft by a court of competent jurisdiction;

(i) where the employee is a general manager, chief accountant, or the deputy of such person, or an officer of a state customs or tax authority, a single severe violation of labour commitments established under labour laws and regulations or an employment agreement;

(j) where the employee is a general manager of the company, and his actions have given rise to delays in the payment of salary to the employees; and

(k) where the employee is responsible for money or other material assets or carries out supervisory functions, and has acted dishonestly causing the employer to lose confidence in the employee;

(l) an employee responsible for educational work has conducted an offence that is incompatible with his/her work; and

(m) an employee is directly controlled (supervised) by a person who is his/her relative in violation of the Law of Ukraine "On Prevention and Combating Corruption".

An employer is obliged to return the employee's labour book to a dismissed employee. When a dismissal occurs at the employer's initiative, the employer also must provide the employee with a copy of the dismissal order, in which the reason for dismissal should be specified. In all other cases, a copy of the dismissal order must be issued at the employee's request. At the request of the employee, the employer must prepare a certificate containing information on the employee's profession, position, term of employment and salary.

13.4 Special Protection

Ukrainian labour law prohibits the dismissal of pregnant women, women who have children below the age of three (or, in special circumstances supported by medical evidence, below the age of six), and single mothers who have disabled children or children below the age of 14. This rule, however, does not apply in the event of the company's liquidation, or if the woman was on a fixed-term contract which expired. But in these cases the employer is obliged to find alternative employment for such employees.

Under the Labour Code, the dismissal of an employee, who is a trade union member, requires, in certain circumstances, the prior consent of the relevant trade union.

In the event of unlawful dismissal an employee is entitled to be reinstated to his previous position and to be paid the salary and benefits he would have received but for the unlawful dismissal.

13.5 Closures and Collective Dismissals

In the case of collective dismissals due to the company's liquidation, the employer must give two months' termination notice to each of the employees to be made redundant, the relevant trade union (if there is one) and the local office of the State Employment Centre.

14. Data Protection

14.1 Employment Records

On 1 June 2010 the Ukrainian Parliament adopted the Law "On Protection of Personal Data" ("Data Protection Law"), which came into effect on 1 January 2011.

The Data Protection Law defines personal data as "any information about an identified or identifiable individual or a summary of such information". Although the Data Protection Law does not specifically regulate such issues as collection of employment-related personal data, the creation of an employment records database and access to such database by employees, the general provisions of the Law do apply to the data protection aspects of the employment relationship.

Therefore, the processing, use and/or distribution of personal data (including employment records) is permitted only upon receiving the prior consent of the individual concerned, subject to the usual exceptions relating to: (i) the use of personal data in the interests of public security, economic well-being and human rights; or (ii) the use of personal data for the protection of vital interests of the individual only until his/her consent can be obtained.

In addition, in order to collect and process employment-related information in the relevant database the employer must give the relevant employee written notification within 10 business days of the personal data being included in the database. The notification must inform the employee about his rights under the Data Protection Law, the purpose of collecting the information and the persons who will be using the information.

As a rule, the processing of personal data about racial or ethnic origin, political, religious or ideological views, membership in political parties or trade unions, physical or sexual life, is prohibited. However, Article 7.2(2) of the Data Protection Law contains an exception in relation to the processing of such personal data for the fulfilment of rights and obligations arising out of employment relationship.

14.2 Employee Access to Data

The Data Protection Law guarantees an employee free access to his personal data. An employee also has the right to review his personal data and request that the information is deleted or modified, however it is currently unclear what would be regarded as reasonable grounds for requesting such a modification or deletion. The right to request that data is modified or deleted is subject to some exceptions.

14.3 Monitoring

The issue of monitoring of the employee's correspondence, phone calls and other communications by the employer is not expressly addressed by Ukrainian law. On one hand, the employees are protected by the right to privacy guaranteed by the Constitution. On the other hand, if some form of communication takes place during working hours, using employer's technical facilities, and is not expressly classified as "private" by the employee, the employer may claim that such communication occurred as part of the performance of employment duties and accordingly is susceptible to monitoring by the employer.

14.4 Transmission of Data to Third Parties

As a rule, the transmission of personal data to third parties requires the prior consent of the employee. However, Article 14(2) of the Data Protection Law contains an exception permitting the transmission of data without consent, if the transmission is made in the interests of national security, economic well-being or the protection of human rights.

Contributed by Clifford Chance, Kyiv

United Arab Emirates

1. Introduction

Employment contracts in the United Arab Emirates ("UAE") are governed by Federal Law 8 of 1980 regulating Labour Relations, as amended, together with various supplementary Ministerial Decrees and Resolutions (the "Labour Law"). In addition to the employee's own contract, the Labour Law in the UAE requires an employer to register a contract of employment in respect of every employee with the Labour Department. The employer must fulfil this requirement by using the simple standard form employment contract issued by the Labour Department (the "Standard Form Contract").

In the event of a dispute, it should be noted that the Labour Department is likely to consider (at first instance) both contracts (if there are two) regardless of the different entities concerned and regardless of whether only one contract is registered, and are likely to uphold the provisions out of both contracts that are most beneficial to the employee. It is not possible to enforce an employment contract in the UAE where it does not comply with the provisions of the Labour Law (except to the extent that it is more beneficial to the employee).

2. Categories of Employees

2.1 General

No distinction is drawn between white-collar and blue-collar employees in terms of the rights conferred by the Labour Law.

2.2 Directors

The Labour Law does not deal specifically with employees who are also directors. The position of directors (or managers) of companies incorporated in the UAE is regulated to a certain extent by the UAE Commercial Companies Law No. 8 of 1984.

2.3 Other

The Labour Law does not distinguish any other categories of employees.

3. Hiring

3.1 Recruitment

Employers recruit through a variety of sources, including via the internet and by advertising in newspapers or journals. Recruitment agencies are commonly used for the recruitment of professionals. A state run agency assists in the recruitment of UAE nationals.

3.2 Work Permits

In order to live and work legally in the UAE, work permits and residence visas are required for all nationals who are not from the UAE or any of the other Gulf-Cooperation Council States ("GCC") (i.e. the United Arab Emirates, Saudi Arabia, Bahrain, Kuwait, Qatar and Oman). The residence visa is issued under the sponsorship of the employer (except in cases where a married woman is sponsored by her husband, or a child by its father).

A labour card is usually issued for one year at a time, whilst a residence visa is usually valid for two years.

4. Discrimination

The Labour Law does not expressly outlaw discrimination. UAE nationals, followed by other Arab nationals, have a right to employment over the right of people of other nationalities. The UAE government is pursuing a policy of "emiratisation", in terms of which certain professions have quotas of UAE nationals that must be employed. Generally, for every establishment that employs over 50 employees, at least 2% should be UAE nationals. (The quota is much higher in the financial and insurance sectors.)

5. Contracts of Employment

5.1 Freedom of Contract

The parties to the employment contract are free to contract on whatever terms they choose provided always that they are not less favourable than the provisions of the Labour Law. Under the Labour Law, only two types of contract are recognised. These are "Fixed Term Contracts" or "Indefinite Term Contracts". Fixed term contracts have a specified commencement and termination date and must not exceed four years, but are thereafter renewable by mutual consent of the parties. Indefinite term contracts have a commencement date, but do not specify a termination date and can be terminated by either party by giving at least 30 days' prior written notice.

5.2 Form

The employment contract must be in writing. In order to obtain a labour card, the standard form contract must be filed with the Ministry of Labour. Whilst the standard form may suffice for unskilled labourers, it is usually not sufficient for other categories of employees, and employers often make use of their own contracts which are usually far more detailed than the standard form contract.

5.3 Trial Periods

Trial periods are common in the UAE. The Labour Law provides that the maximum trial period shall be six months, and that a person may only be placed on probation once during the course of employment with the same employer. During the trial period the employee may be dismissed without notice, except where the employment contract provides for a longer notice period to be given.

5.4 Confidentiality and Non-Competition

Under the Labour Law, it is possible for an employee to agree that, after termination of his employment, he shall refrain from competing with the employer or participating in any enterprise which competes with the employer. Such agreement will only be valid if it is limited as to the time, place and nature of business, to the extent necessary to protect the employer's lawful interests.

The UAE Civil Code imposes an obligation on the employee to keep the

industrial secrets of the employer, including on termination of the contract as required by agreement or custom, and to preserve the things entrusted to him (whether tangible, such as company property, or intangible, such as intellectual property or confidential information) for the performance of his work.

The UAE Federal Penal Code (Law No. 3 of 1987) imposes criminal liability on anyone who, by reason of his profession or employment is entrusted with confidential information, and who discloses it in circumstances other than those permitted by law, or who uses it for his own advantage without the consent of the person to whom the confidential information relates.

5.5 Intellectual Property

Generally, if intellectual property is created by an employee during the course of employment, it will belong to the employer and compensation is only payable to the employee in limited circumstances.

6. Pay and Benefits

6.1 Basic Pay

There is no minimum salary under the Labour Law.

With effect from 1 September 2009, a "Wages Protection System" was implemented in the UAE, which applies to all employers that are registered with the Ministry of Labour. (The Wages Protection System currently does not apply to entities registered within any of the UAE free zones, although this position is likely to change in the future. The Jebel Ali Free Zone, for instance, has given companies licensed within its zone until 31 December 2012 to comply with the Wages Protection System). Employers are now required to pay their employees' salaries into accounts held at banks or other institutions that have been approved by the Ministry of Labour, and which appear on its "Agents List".

The Ministry of Labour will maintain a database of all salary payments in the private sector, to ensure that the full salaries are paid on time.

Employers are required to complete and submit a prescribed form declaration within two weeks of the salary payment becoming due. For most employers, this will mean submitting the declarations on a monthly basis.

Companies who fail to comply with the provisions of the Wages Protection System will be denied the right to obtain new work permits for employees. The authorised signatory of the company will be held responsible for the information contained in the declarations, and may be subject to civil and criminal liability for any violations.

Each company will need to have a bank account at one of the Ministry-approved banks, and will need to enter into a contract with such bank to provide the required service.

Each employee will need to open an account at one of the approved banks, into which the salary will be paid. (Some banks have a higher minimum balance/salary requirement than other banks, so, depending on the salary levels of employees, different banks may need to be used). The employer is responsible for all costs involved in joining the Wages Protection System, including bank charges, service provider fees and all other costs, and employers may not deduct any such charges from their employees' salaries, whether directly or indirectly.

As part of the administration of the Wages Protection System, information will be shared between the banks, UAE Central Bank and the Ministry of Labour to ensure that the salaries paid match with the details registered at the Ministry of Labour. (There would be no problem if the actual salary paid exceeded the amount reflected on the contract filed with the Ministry of Labour – such as in the case of a salary increase – but the amount paid should not be less than that registered at the Ministry of Labour).

Up until now, in the case of expatriate employees, a portion of salary was frequently paid in the home country to meet the employee's ongoing financial commitments in the home country. In the past, the full salary would be reflected in the Ministry of Labour official contract, but there was no requirement for the full sum to be paid in the UAE.

With the introduction of the Wages Protection System, the full salary as reflected on the contract filed with the Ministry of Labour will need to be paid in the UAE, so any transfer to the employee's home country bank account would need to take place after the full salary has been paid locally.

Although the Decree implementing the Wages Protection System is not clear, it is likely that the definition of "wages", as used in the UAE Federal Labour Law will apply. This includes all the employee's contractual entitlements, such as basic salary, commission, and allowances. Discretionary bonuses that are not contractual entitlements would be excluded, which means that discretionary bonuses do not need to be paid in accordance with the Wages Protection System, and could, in theory, be paid outside the UAE, in cash, or into any other bank account.

The Wages Protection System is aimed at salary and benefits that are paid as "cash" to employees. Where the employer pays a benefit other than in cash or to another party (e.g. pension contributions directly to the pension fund, life assurance premiums paid directly to the assurance provider, etc), because the employee would never have received the cash amount (or payment into a bank account) anyway, there is no need for these amounts to be paid under the Wages Protection Scheme.

As the Wages Protection System legislation does not specifically address the issue of discretionary bonuses and non-cash benefits such as pension contributions the position will need to be monitored in case any policy or guidance notes are issued.

6.2 Pensions

The statutory end of service gratuity is usually given to employees in lieu of benefits under a pension scheme. The end of service gratuity is calculated on the basis of 21 days' basic pay per year of service for each of the first five years, and 30 days' basic pay for each additional year. Where an employer provides a pension or similar scheme for employees, it is possible for the employee to choose in writing between the pension scheme and the statutory end of service gratuity. International companies who have a pension scheme in place, and who set up in the UAE, typically offer benefits under the pension scheme in lieu of the statutory end of service gratuity.

6.3 Incentive Schemes

Share incentive schemes are not mandatory in the UAE, but are fairly common in the case of very senior executives.

6.4 Fringe Benefits

Common fringe benefits typically include private medical insurance, accommodation allowance, and an annual air ticket allowance. In some cases, an education allowance or company car will also be provided. There are indications that mandatory private health insurance to be provided by employers in respect of all employees will be introduced throughout the UAE within the next couple of years. (It is already mandatory within the Emirate of Abu Dhabi for employers to provide private health insurance for employees).

6.5 Deductions

There is no personal income tax levied in the UAE. Generally deductions from salary are prohibited, except in certain limited circumstances provided in the Labour Law (e.g. for the recovery of advances made by the employer, or employee's contributions to a savings fund). The deductions generally must not exceed one quarter of the employee's remuneration.

7. Social Security

7.1 Coverage

There is no state-administered social security scheme for non-UAE nationals. UAE national employees are obliged to participate in the state-administered General Pensions and Social Securities Scheme under Federal Law No. 7 of 1999 (the "Pensions Law").

7.2 Contributions

UAE national employees are obliged to contribute to the General Pensions and Social Securities Scheme 5% of their salary (by way of salary deduction), whilst employers are obliged to contribute an amount equivalent to 15% of the UAE national employee's salary.

8. Hours of Work

The maximum normal working hours are 48 per week, and no employee should work for more than five consecutive hours without breaks for rest, meals and prayer, amounting in aggregate to at least one hour. The one-hour break is not counted as part of the working hours. The maximum normal daily working hours are eight, but may be increased to nine in commercial establishments, hotels, restaurants, guard duties, and other operations where the Ministry of Labour so authorises.

During the Holy Month of Ramadan, the normal working hours are reduced by two per day. This applies to all employees, irrespective of whether they are Muslim or observing the fast.

9. Holidays and Time Off

9.1 Holidays

In addition to published official holidays (with full pay) that are declared by the Ministry of Labour and Social Affairs for the Private Sector, an employee is entitled to minimum annual leave with full pay in each year of service as follows:

(a) two days for every month, if service is more than six months but less than one year;

(b) 30 days if service exceeds one year; and

(c) *pro rata* for any fraction of the final year of service.

The Labour Law does not use the term "working days". However, 30 days' holiday entitlement after the first year of service is treated by the Labour Department as referring to "calendar days".

The employer can fix the date of commencement of an employee's annual leave and may divide his entitlement into not more than two parts.

If an employee is required to work during all or part of his annual leave and the leave is not carried forward into the next year, he must be paid a leave allowance in addition to his ordinary pay and at the same rate.

Before taking annual leave an employee must be paid any remuneration that is due to him at that date, plus the full remuneration for the leave days that have accrued.

No employee may be required to work during his annual leave more than once in two successive years.

Holidays specified by law (Fridays or public holidays declared for the Private Sector) or by agreement that fall within the leave period count towards the 30-day annual leave entitlement. In addition, any days of sickness that occur during the leave period are also calculated as part of the 30 days' holiday entitlement.

An employer may not terminate an employee's contract during annual leave. Any such notice will be considered invalid.

9.2 Family Leave

After one year of continuous service, a working woman is entitled to a total of 45 days' maternity leave with full pay. (This would be "calendar" days, rather than "working days"). This leave includes the period before and after delivery.

If the woman has not completed one year's service, the maternity leave above will be granted with half pay.

In either of the above cases, maternity leave may not be deducted from any other leave to which a working woman is entitled.

At the end of the maternity leave, a woman has the right to extend the leave for a maximum period of 100 days without pay if this absence is caused by illness. This illness can be continuous or interrupted, but in either case the employee must provide a medical certificate that she is unable to work. The illness must have been caused by the nature of the employee's work or prior confinement.

During the 18 months following delivery, a working woman who is nursing her child has a right to two daily breaks not exceeding half an hour each for this purpose. These two intervals are classified as part of the working hours and no deduction in wages may be made in this respect.

9.3 Illness

An employee who is absent through illness (other than an injury caused by his employment) must report it to his employer within two days. After two days, the employer may have the employee medically examined to verify the cause of illness.

An employee is not entitled to any paid sick leave during his probationary period.

Where an employee has completed more than three months' continuous service following the end of his probationary period (if any is stipulated in the contract of employment) he is entitled to a maximum period of 90 days' sick leave, which may be either continuous or cumulative in respect of every year of service.

Payment during any sick leave taken by the employee is calculated as follows:

(a) the first 15 days with full pay;

(b) the following 30 days with half pay; and

(c) any subsequent periods, without pay.

No remuneration is payable during sick leave if the employee's illness is the direct result of the employee's misconduct, for example, illness that is attributable to the consumption of alcohol or narcotic drugs.

An employer may not terminate an employee's contract during sick leave. Any such notice will be considered invalid.

9.4 Other Time Off

A Muslim employee is entitled once during his contract of services to leave without pay for up to 30 days for performing the Hajj pilgrimage (pilgrimage leave). Such period does not count as part of annual leave or any other leave to which the employee is entitled.

10. Health and Safety

10.1 Accidents

An employer is obliged to provide adequate preventive equipment to protect employees against the danger of employment accidents and occupational diseases that may occur during employment, as well as against fire and other hazards that may result from the use of machines and other machinery. Although employers are not obliged by law to provide any form of insurance in this regard, as a matter of practice, many of the larger employers, especially the international companies, do so.

10.2 Health and Safety Consultation

An employer is obliged to inform each employee at the time of recruitment of any dangers connected with the employment and of the protective measures the employee must take. Whilst employers are not obliged to consult with employees on health and safety issues, they are obliged to display detailed instructions in a conspicuous position at the workplace indicating the measures to be taken to prevent fire and to protect the employees against hazards to which they may be exposed while performing their work.

11. Industrial Relations

11.1 Trade Unions

Trade unions are not recognised nor are they permissible in the UAE.

11.2 Collective Agreements

The Labour Law does not recognise collective agreements.

11.3 Trade Disputes

There is no right to strike under UAE law.

11.4 Information, Consultation and Participation

There are no formalised requirements for employee participation in the UAE, nor are there any works councils.

12. Acquisitions and Mergers

12.1 General

There is no specific legislation that addresses the obligation to inform and consult with employees in the event of any business or share sale.

The Ministry of Labour and the Immigration authorities should be notified where the business or share sale is to have an effect on the employee's residence visa (e.g. if the employer entity is changing, thereby

resulting in a change of sponsor for immigration purposes).

12.2 Information and Consultation Requirements

There are no information or consultation requirements under UAE law.

12.3 Notification of Authorities

If the business or share sale results in a change of employer (whether by transfer of employment, or as a result of merger), the Labour and Immigration authorities should be notified, as it would be necessary to transfer the sponsorship of the employee to the new employer.

13. Termination

13.1 Individual Termination

A contract under the Labour Law may be terminated:

(a) by mutual consent, providing the employee consents in writing;

(b) where a contract is for a fixed-term, upon its expiry, unless it is expressly or impliedly renewed; or

(c) where a contract is for an unlimited period, by at least 30 days' notice of either party given for a valid reason in accordance with the Labour Law.

Providing that certain conditions apply, the Labour Law provides for a one-off payment to be made to an employee on the expiry or termination of an employment contract. An employee completing one year or more of continuous service is entitled to end of service benefits to be calculated as follows:

(a) 21 days' wages for each year completed for the first five years of service;

(b) 30 days' wages for each year thereafter;

provided that the total end of service benefits shall not exceed a total of two years wages. This gratuity payment is calculated by reference to the last basic wage earned (basic wage for these purposes does not include any allowances or discretionary bonuses). The Labour Law provides that the remuneration used as a basis for the purpose of calculating the severance pay shall not include what is given to the employee in kind, including housing allowance, transport, travel allowance etc. Further, the employer is entitled to deduct any amounts owed to him by the employee from the latter's severance pay.

The prevailing opinion is that any amount payable to an employee as wages, including wages paid by commission or payment by percentage, may fall within the definition of wages and be taken into consideration in calculating gratuity payable.

Where an employee under a fixed-term contract resigns before the end of his contract, he will not be entitled to the full amount of gratuity unless his continuous service has exceeded five years.

An employee under an indefinite term contract who resigns after continuous service of:

(a) between one and three years, is entitled to one third of the gratuity provided for in the Labour Law;

(b) between three and five years, is entitled to two thirds of the stipulated gratuity; and

(c) more than five years, is entitled to the full gratuity.

However, where an employer terminates an employee's indefinite term contract, the full gratuity will generally be payable.

The Labour Law states that where the employer has provided accommodation to the employee, the employee is obliged to vacate the premises within 30 days of the date of termination of employment. Where the employee disputes the amount of his end of service entitlements, these shall be determined by the Labour Department, and in this case, the 30 day period for vacating the accommodation shall commence from the date that the employer deposits the value of the expenses and entitlements as determined by the Labour Department concerned (such as the requisite gratuity).

13.2 Notice

The Labour Law requires the employer to give a minimum of 30 days' notice for terminating an employment contract, although it is open to the employer to extend this period, and the court will uphold the notice period most beneficial to the employee. Payment in lieu of notice is permissible and should be calculated on the basis of the last remuneration received.

In addition, where the contract provides for a longer notice period, that longer period of notice should be given to the employee.

An employer may dismiss an employee without notice, and with forfeiture of the statutory end of service gratuity for one of the reasons set out in Article 120 of the Labour Law, namely:

(a) if the employee adopts a false identity or nationality or submits forged certificates or documents;

(b) if the employee is engaged on probation and is dismissed during the probationary period or on its expiry;

(c) if the employee makes a mistake resulting in substantial material loss for the employer, provided that the employer notifies the Labour Department of the incident within 48 hours of his becoming aware of its occurrence;

(d) if the employee disobeys instructions regarding industrial safety or the safety of the workplace, provided that such instructions are in writing and have been posted in a conspicuous place and, in the case of illiterate

employees, such instructions have been explained to them verbally;

(e) if the employee does not perform his basic duties under the employment contract and persists in violating them despite the fact that he has been the subject of a written investigation for this reason and that he has been warned that he will be dismissed if such behaviour continues;

(f) if the employee reveals any secret of the establishment in which he is employed;

(g) if the employee is finally sentenced by a competent court for an offence involving honour, honesty or public morals;

(h) if the employee is found in a state of drunkenness or under the influence of a drug during working hours;

(i) if, while working, the employee assaults the employer, the responsible manager or any of his colleagues; or

(j) if the employee is absent from work without a valid reason for more than 20 non-consecutive days, or for more than seven consecutive days.

13.3 Reasons for Dismissal

In the event that the employee's contract cannot be severed by mutual agreement, the Labour Law provides that an employee's contract may only be cancelled for a "valid reason". In essence, dismissal of an employee for reasons relating to his work performance will generally constitute a valid reason. In the case of redundancy, where the underlying reason has nothing to do with the employee's performance, it is unlikely to be considered a valid reason for termination. Where, however, the employee is dismissed for reasons other than his work performance, he is deemed to be "arbitrarily dismissed". In this regard, Article 123 of the Labour Law provides that the employer may be ordered by the court to pay compensation to the employee. In assessing the relevant quantum of compensation, the court is likely to look at the nature of the employee's job, what damage has been caused to him, the duration of his service and the reason for termination of his employment. Such compensation is subject to a maximum of three months' remuneration. Accordingly, employers are advised to make the reasons for dismissal clear in any letter of termination, and to ensure that they comply with the concept of "valid reason" under UAE law.

In a 2012 Dubai Court of Cassation case, the court recognised that where an employer changes the terms and conditions of employment to the detriment of the employee, such that the employee is forced to resign, this may amount to arbitrary dismissal. Although the concept of "constructive dismissal" is not expressly recognised in UAE law, this case brings under the scope of "arbitrary dismissal" circumstances which may be akin to constructive dismissal in other jurisdictions.

If the employer terminates a fixed term contract for reasons other than those specified in Article 120 of the Labour Law, he will be liable to pay compensation to the employee. The compensation shall be determined on the basis of the wages due for a period of three months or for the remaining period of the contract, whichever is less.

If an employee under a fixed term contract resigns before the end of his contract, he will be required to pay compensation to his employer for any prejudice that the employer suffers as a result of the early termination. The maximum amount of such compensation is limited to the lesser of one and a half months' remuneration or the remuneration for the rest of the contract period.

As a starting point, in order to ensure that the Standard Form Contract in the UAE is terminated officially in the eyes of the Labour Department, the standard Arabic release form should be signed. In addition, a compromise agreement may be a good idea for additional protection in relation to confidentiality etc. From a UAE law perspective, the compromise agreement should be drafted in such a way that the employee acknowledges that the amount he receives under the agreement is in full and final settlement of all amounts having arisen or accrued by virtue of the Standard Form Contract. Such acknowledgement should expressly include all of his employment rights in the form of salary, benefits, annual vacation, settlement of account, expenses and end of service gratuity due to him under the laws of the UAE and the terms of his contracts.

13.4 Special Protection

An employer cannot terminate an employee's contract during annual leave. The Labour Law does not expressly include any protection against dismissing employees on maternity leave.

In the event of an employment dispute, the aggrieved party should file a complaint with the Labour Department. The Labour Department will summon both parties to a hearing, and shall endeavour to ensure that the dispute is resolved amicably. Neither party is permitted to have legal representation at this hearing.

If the parties are not able to reach an amicable settlement, the Labour Department shall refer the dispute to the Court.

No claim based on an employment dispute may be heard if brought to court after one year from the date on which the entitlement became due.

There are no provisions in the Labour Law addressing redundancy dismissals.

13.5 Closures and Collective Dismissals

The Labour Law does not address the procedure for and/or gratuity payments

applicable in the context of an individual or collective redundancy exercise.

14. Data Protection

14.1 Employment Records

There are no comprehensive data protection laws in the UAE, although it is anticipated that a Federal law on data protection will be issued in the near future.

The Labour Law obliges an employer, who employs five or more employees, to collect and maintain certain personal information in respect of each employee. This information includes the employee's name, address, marital status, nationality, remuneration, date of recruitment, any penalties imposed on him, any employment injuries or occupational diseases, and the date of and reasons for the termination of employment.

The Penal Code prohibits the publication of a person's private affairs. In Dubai only, the Transactions and Electronic Trade Law (Dubai Law No. 2 of 2002) makes it a criminal offence for any person "enabled by powers granted to him by this law" to access information contained in electronic registers or documents or correspondence to deliberately or negligently disclose such information. It seems that this provision is primarily aimed at persons who provide electronic authentication certificates or other verification services, but there is the possibility that it might be construed more widely to include other persons who are entrusted with electronic data, such as employers.

14.2 Employee Access to Data

There are no specific provisions in UAE law entitling an employee to request copies of or access to data held about them.

14.3 Monitoring

There are no specific provisions in UAE law entitling an employer to monitor employee email, internet and telephone usage and use CCTV within the workplace.

14.4 Transmission of Data to Third Parties

There are no specific provisions in UAE law dealing with the transmission of personal data to third parties either within the UAE or elsewhere.

Contributed by Floyd and Howard FZC

United States

1. Introduction

As a general matter, employment in the U.S. is considered "at-will," meaning that it is not guaranteed and can be terminated at any time by either the employer or the employee, for any reason that is not unlawful (i.e. a discriminatory reason, such as those identified in section 4 below) or for no reason. Similarly, in most states employment is presumed to be at-will unless otherwise agreed.

While there are generally no laws in the U.S. providing employees with an entitlement to employee benefits, such as participation in U.S. tax-qualified retirement plans and certain insurance benefits (i.e. medical insurance), it is not uncommon for larger employers to provide these types of benefits to their employees. However, once certain types of benefits are offered to employees, U.S. laws and regulations governing such benefits, such as the U.S. Internal Revenue Code of 1986 (the "Code") and the U.S. Employee Retirement Income Security Act of 1974 ("ERISA") with respect to tax-qualified plans, may be implicated and the employer will become subject to, and must abide by and administer such plans in accordance with, such laws and regulations.

2. Categories of Employees

2.1 General

Employees are generally categorized as either "exempt" or "non-exempt" in the U.S., which relates to the exemption of certain job classifications from overtime pay and minimum wage requirements under the Fair Labor Standards Act of 1938 (the "FLSA"). The FLSA requires all "non-exempt" employees to be paid at least a minimum wage and receive overtime for work performed in excess of 40 hours per week (as described in section 8). However, under federal law, "exempt" employees are not entitled to these protections.

The FLSA applies to all private employers and employees who in any work week are either: (i) engaged in interstate commerce or in the production of goods for commerce; or (ii) employed by an enterprise engaged in commerce or the production of goods for commerce. Workers who are not "employees" are not subject to the FLSA. The FLSA defines an employee as any individual employed by an employer, and does not include independent contractors, volunteers, interns and trainees.

Categories of employees that are exempt from the FLSA minimum wage and overtime pay requirements include, among others: (i) administrative employees; (ii) executive employees; (iii) professional employees; (iv) computer professionals; (v) outside sales employees; and (vi) highly compensated employees. Each of the federal employee exemption categories has specific requirements that must be satisfied (e.g. specific duties that qualify for exempt status and salary basis requirements) in order to fall within the exemption from making minimum wage and overtime payments.

In addition, many states have their own minimum wage and overtime pay requirements. Accordingly, employers should check applicable state law before making a determination on whether an employee is properly categorized as exempt or non-exempt.

2.2 Other

Independent contractors are not considered to be employees; as such, employers who engage independent contractors to provide services can avoid certain obligations that would otherwise be required in the employment relationship context (i.e. payroll taxes and withholdings, compliance with certain safety and health, wage and hour and employment discrimination laws, and the provision of certain employee benefits, including participation in retirement and health and welfare plans).

The analysis of whether an individual is an employee or an independent contractor, however, is highly factual, and the costs and penalties imposed by improperly making an independent contractor classification can be serious. To assist the employer in making this determination, the U.S. Internal Revenue Service set out three categories of facts to help guide the analysis, namely (i) behavioural facts (i.e. focusing on whether the company has the right to direct and control the worker); (ii) financial facts (i.e. focusing on whether the company has the right to control the economic aspects of the worker's job); and (iii) facts concerning the type of relationship (i.e. focusing on how the relationship is perceived by both the worker and the company). Employers should be mindful of this, and other, tests (including at the state level), that may be used to determine whether a worker is more properly classified as an independent contractor or employee.

3. Hiring

3.1 Recruitment

Both federal and state laws prohibit an employer from discriminating against certain protected classes of individuals (see further section 4 below), both during the hiring process and thereafter, with certain limited exceptions. In this regard, robust hiring practices and compliance processes at the beginning of the employment relationship can help to minimize exposure to discrimination claims by appropriately handling candidate background checks, job interviews, and employment applications.

All employers must report specific information regarding newly hired employees to a designated agency in their state, who transmits the collected information to the National Directory of New Hires. If an employer has employees in more than one state, the employer may either: (i) report new hires to the state in which they work; or (ii) (a) select one of the states in which it has employees and report all employees to that state and

(b) notify the U.S. Department of Health and Human Services.

Federal law prohibits the use of job advertisements that limit or prefer applicants based upon race, color, religion, sex, national origin or age. There is a narrow exception under Title VII of the 1964 Civil Rights Act ("Title VII") and the Age Discrimination in Employment Act of 1967 (the "ADEA") if the employer's preference based upon religion, sex, national origin or age relates to a "bona fide occupational qualification". Employment-related advertisements may also be regulated by state law.

Employers generally use employment applications and interviews as a starting point for gathering information about prospective employees. Many employment application forms contain language asserting that the employer is an equal employment opportunity employer and does not discriminate (some employers may be required to include a statement of nondiscrimination, such as federal contractors). Since employment discrimination laws vary from state to state and new laws are frequently enacted to include additional categories of discrimination, employment applications should be reviewed on a frequent basis to ensure that any nondiscrimination statement refers to all prohibited forms of discrimination, on both the federal and applicable state(s) level.

Background checks may be conducted on prospective employees to better ascertain whether a job applicant is suitable for a position and was truthful during the application process, and to further avoid a claim for negligent hiring (a negligent hiring claim may arise where an employer fails to conduct a reasonable investigation prior to hiring an employee and the employee subsequently harms a third party). In addition, a number of states may require background checks for certain employment positions (for example, where the employee would be working with children, the elderly or people with disabilities).

Employers must use background checks appropriately; otherwise they can be exposed to substantial legal and financial risks. In this regard, there are federal (e.g. Fair Credit Reporting Act) and state laws that regulate certain types of investigations and/or require disclosure of such investigations.

3.2 Work Permits

U.S. employers must check to make sure all employees, regardless of citizenship or national origin, are allowed to work in the U.S.. If an individual is not a citizen or Green Card holder then, depending on an individual's nationality and the nature of the role he will perform in the Company that he is to work for, one of a number of different U.S. work permits (visas (formerly called Employment Authorization Documents)) must be obtained from U.S. immigration.

4. Discrimination

Employers must generally treat employees fairly and equally at all stages of their employment as it relates to certain protected classes of individuals. In furtherance of this purpose, under federal law, the classes of individuals that are protected against employment discrimination include race, color, religion, gender (including pregnancy), national origin and citizenship, age (40 and over), disability (including perceived disability), genetic information, and veterans, active-duty or application to the uniformed services.

Some of the principal federal laws regarding discrimination include, in general:

(a) *Title VII*, which generally prohibits employment discrimination based on race, color, religion, sex (including pregnancy) or national origin, and applies to private, state and local government employers that employ 15 or more employees as well as labor organizations, joint labor-management committees on training or apprenticeship and employment agencies;

(b) *Americans with Disabilities Act of 1990 (the "ADA")*, which generally prohibits employment discrimination against qualified individuals on the basis of disability and those regarded as having a disability in the private sector, and in state and local governments, and applies to private, state and local government employers that employ 15 or more employees as well as labor organizations, joint labor-management committees on training or apprenticeship and employment agencies;

(c) *ADEA*, which generally prohibits discrimination on the basis of age against employees age 40 or older, and applies to private, state and local government employers that employ 20 or more employees as well as labor organizations, joint labor-management committees on training or apprenticeship and employment agencies;

(d) *The Equal Pay Act of 1963*, which generally prohibits sex-based wage discrimination against men or women performing substantially equal work in the same establishment, and applies to all employers covered by the FLSA;

(e) *Genetic Information Nondiscrimination Act of 2008 (the "GINA")*, which generally prohibits discrimination in employment and health insurance on the basis of genetic information, and applies to private, state and local government employers that employ 15 or more employees as well as labor organizations, joint labor-management committees on training or apprenticeship and employment agencies; and

(f) *Uniformed Services Employment Reemployment Rights Act of 1994*

(the "USERRA"), which generally prohibits discrimination against past and current members of the uniformed services, as well as applicants to the uniformed services, and applies to all employers.

As a general matter, in order to establish a claim for employment discrimination, the employee must be able to demonstrate a connection between the employment condition or decision, and a prohibited basis (protected class), such as race, religion, sex or national origin. A connection between the employment condition or decision and a prohibited basis can be established by identifying, among other things, disparate treatment, disparate or adverse impact or retaliation.

In addition, the federal anti-discrimination statutes generally prohibit harassment of individuals on the basis of their protected class, and includes both economic and environmental harassment claims. Economic harassment generally involves a monetary loss for the employee, or a significant change in the employee's workload or assignment. Environmental harassment generally involves conduct that is: (i) unwelcome; (ii) related to a protected class; (iii) offensive both to the recipient and to a reasonable person; and (iv) severe or pervasive.

Employers should also consult the laws of the states in which they have operations to learn what, if any, additional laws have been enacted with respect to employment discrimination.

5. Contracts of Employment

5.1 Freedom of Contract

In the United States, employers are generally not required to enter into employment agreements with employees. As mentioned above, the employment relationship between an employer and an employee is generally considered to be "at will", which generally entitles either party to terminate the employment relationship at any time for any reason (other than for the prohibited reasons – such as in contravention of certain antidiscrimination laws). As a result, other than with respect to officer-level employees, it is unusual for employers to enter into employment agreements with employees.

In certain industries, however, it is common for employees to join certain employee organizations (e.g. unions) which represent the interests of a group of employees in negotiating the terms and conditions of employment. In such instances, the parties will generally enter into a collective bargaining agreement which will set out the applicable terms and conditions of employment. The negotiation and terms of the collective bargaining agreement are generally subject to extensive federal labor laws (see further section 11 below).

It is important to note that even where an employment agreement is not entered into between the parties, an employer may nevertheless be bound to an employee by the terms set out in the terms of an employee benefit plan (for example, a severance plan), employee manual or handbook or other employee communication.

5.2 Form

The terms of an employment agreement are generally governed by state law, which is not necessarily the state in which the employee performs services. The terms of an employment agreement will specifically set out the applicable state law under which the terms of the agreement will be interpreted.

The provisions of a standard employment agreement will include the term of the agreement, which often includes an "evergreen" provision under which the term will continue in effect until either party provides notice of non-renewal. In addition, the terms of an employment agreement will generally provide for a contractual right to a minimum amount of notice of termination (or payment in lieu thereof), as well as the rights and obligations of the parties upon termination (often depending on the circumstances under which the employment relationship is terminated).

Where the employer has entered into an employment agreement with an employee, the employer generally may terminate the agreement at any time "for cause" or "without cause" (see section 13 below). The terms of an employment agreement will generally permit the employer to terminate the employment of an employee for "cause" without advance notice, and will generally require the employer to provide a minimum amount of notice (or payment in lieu thereof) in the event of a termination without "cause". In addition, the terms of an employment agreement may provide for severance payment in the event of a "constructive termination" (see section 13 below).

5.3 Trial Periods

As noted above, in most states employees are hired on an "at-will" basis, which generally entitles either party to terminate the employment relationship at any time for any reason (other than prohibited reasons). Accordingly, an employer generally may establish a probationary or "initial period" of employment during which employment may be terminated at any time, with or without cause or notice.

5.4 Confidentiality and Non-Competition

Where an employer and an employee enter into an employment agreement, it is not uncommon for the agreement to contain provisions which limit the disclosure of confidential information and prohibit the employee from competing with the employer both during and after the employment period. Employers may also enter into stand-alone agreements which contain similar provisions, for example, in consideration of participation in certain incentive arrangement, such as share schemes.

The enforceability of non-compete arrangements is generally determined under state law. State laws vary considerably with respect to the enforceability of non-compete restrictions, and in certain states, such as California, the use of non-competes are prohibited.

As an initial matter, for a non-compete to be enforceable, most states require that the employer have a "protectable interest". State courts differ on the definition of a "protectable interest", but generally the employer's interest in preventing the release of confidential information or trade secrets, protecting certain client relationships or, in limited situations, protecting services which are unique or extraordinary, will be sufficient to support the use of a non-compete provision.

Once a "protectable interest" has been established, a non-compete generally must be reasonable as to the length of time and geographic scope of the restriction, and must be narrowly tailored to protect the employer's interests. Ultimately, the enforcement of a non-compete is particularly fact specific, and courts are generally not in favour of enforcing non-competes as a restraint of trade and otherwise inhibiting the mobility of employees in the workforce.

A trade secret generally is information that derives its value from generally not being known to the general public or to others who may gain economic value from its disclosure, and is subject to reasonable efforts by the employer to maintain its secrecy. In order for an employer to demonstrate an effort to protect trade secrets, employer's often enter into agreements with employees prohibiting the disclosure of such trade secrets and other confidential information. Enforcement of trade secrets varying from state to state, with many states enacting legislation protecting the misappropriation of trade secrets.

Where an agreement has not been entered into between an employer and an employee, many states impose a common law duty on employees not to disclose trade secrets and confidential information where such disclosure would result in unfair competition or would otherwise violate a fiduciary duty owed by the employee to the employer.

6. Pay and Benefits

6.1 Basic Pay

Employees covered by the Fair Labor Standards Act (generally referred to as "non-exempt" employees) are entitled to minimum wages and overtime pay (see sections 2 and 8). Federal minimum wage currently is $7.25 per hour, and covered employees who work in excess of 40 hours per week are entitled to one and a half times their regular rate of pay. Covered employees paid on a salary or commission basis remain entitled to protection under the FLSA whereby total wages must be in excess of the minimum wage when converted to pay on an hourly basis. The minimum wage and overtime provisions of the FLSA may not be waived.

6.2 Pensions

Other than making required social security contributions on behalf of employees, employers are not required to offer or provide retirement benefits to employees. Most large employers, however, offer employees the right to participate in some form of retirement plan. The mostly widely offered retirement plan is commonly referred to as a "401(k) plan", in which employees may generally defer a portion of their compensation on a periodic basis into an individual account, and employers may make certain discretionary contributions to such account on behalf of the employees (which are often subject to vesting).

Retirement plans are generally referred to as either tax-qualified or non-qualified plans. Tax-qualified provide certain tax benefits to both the employer and the employee, and generally must be broadly offered to all full time employees. Broad-based retirement plans generally must also satisfy certain technical rules under both the Code and ERISA. These rules are complex and highly technical, and set out the requirements relating to eligibility, vesting, funding, distributions, reporting and disclosure, and generally require that all plan assets be held in trust.

Non-qualified retirement plans are subject to fewer regulations and generally allow employers to provide retirement benefits in excess of the amounts permitted to be provided under tax-qualified retirement plans. Non-qualified plans are generally only offered to executive-level employees. The assets of a non-qualified retirement plan generally are not required to be held in trust and are often paid out of the general assets of the employer (whereby the employee is treated as a creditor of the employer).

6.3 Incentive Schemes

Employers commonly establish bonus and incentive plans to reward or encourage the performance of its employees. Often, these plans provide assets or cash for distribution depending upon an individual's or the company's performance, or provide for specified rewards upon the achievement of certain goals.

Bonus and incentive plans are generally characterized as being either short-term or long-term in nature (depending on the nature of the goals for which the employer seeks to incentivize its employees). Typically, a short-term incentive plan will involve a quarterly or annual bonus based upon the performance of the individual and the employer (or the applicable division or subsidiary of the employer) during the applicable performance period.

Long-term incentive plans often include some form of equity-based compensation, intended to incentivize the employee with respect to the long-term success of the company. Equity-based plans are subject to an assortment of securities, tax, employment and accounting rules.

Both long-term and short-term incentive plans may be subject to recently implemented rules governing deferred compensation. Section 409A was added to the Code in October of 2004, and for the first time, codified in a comprehensive manner the tax rules governing non-qualified deferred compensation. The technical rules of Section 409A generally cover any plan or arrangement that provides an employee (or other service provider) with a legally binding right to compensation in one year, which is paid or payable in a subsequent year. While there are many exceptions to the applicability of Section 409A, the requirements under Section 409A may apply to both short-term and long-term incentive arrangements depending on the manner in which the applicable payments and obligations are structured. Plans covered by Section 409A are subject to detailed rules, including rules governing the timing and manner in which payments may be made, as well as the ability to modify such terms.

6.4 Fringe Benefits

A fringe benefit in the U.S. refers to a form of pay (including property, services, cash or cash equivalents) in addition to stated pay for the performance of services. Some forms of additional compensation are specifically designated as "fringe benefits" in the Code; others, such as moving expenses or awards, have statutory provisions providing for special tax treatment but are not designated as fringe benefits by the Code.

Fringe benefits for employees generally are taxable wages unless specifically excluded by a specific section of the Code. Examples of non-taxable fringe benefits include de minimis fringe benefits (such as the provision of meals and beverages, use of company telephone and copy machines, etc.); no-additional cost fringe benefits (where a benefit is generally provided to customers of the company and can be provided to employees for no substantial additional cost); and working condition fringe benefits (whereby the property or service provided to the employee would generally otherwise be deductible by the employee as a business expense). In addition, the value of meals and lodging provided during the course of business and travel may also be non-taxable to employee subject to the satisfaction of certain technical requirements.

6.5 Deductions

Generally employers are required to withhold income taxes from an employee's wages. The term "wages" generally includes all remuneration, whether paid in cash or a medium other than cash, for services performed by the employee for the employer. Individual tax rates in the U.S. range from 10% of income up to 39.6% (beginning in 2013).

In addition to income tax withholding, an employer is generally required to withhold Social Security and Medicare taxes from wages paid to an employee, and must match the amount withheld. The Social Security tax rate is equal to 12.4% (borne equally by the employer and employee) and applies to wage income up to $113,700 (in 2013) (see further section 7 below). The Medicare tax rate is equal to 2.9% on all wages (borne equally by the employer and the employee), and 3.8% for certain higher income employees.

Additional withholding rules apply at both the state and local level.

7. Social Security

7.1 Coverage

The U.S. Social Security Old-Age, Survivors, and Disability Insurance program and Medicare's Hospital Insurance program are primarily funded through payroll taxes under the Federal Insurance Contributions Act ("FICA"). In general, Social Security and Medicare taxes apply to payments of wages for services performed by an employee in the United States, regardless of the citizenship or residence of either the employee or the employer. In limited situations, these taxes apply to wages for services performed outside the United States.

The Social Security tax is currently 12.4% on salary up to $113,700 (in 2013). Social Security taxes are borne equally by the employer and the employee, and paid entirely by self-employed workers.

The Medicare tax is currently 2.9% for wages of employees and self-employed individuals who are not higher income individuals, and 3.8% for wage income and investment income of employees and self-employed higher income individuals. The thresholds applicable to determine whether a worker is a higher income individual are: $250,000 for married couples filing taxes jointly, $200,000 for single and head of household filers, and $125,000 for married individuals filing taxes separately. Medicare taxes are borne equally by the employer and the employee, and paid entirely by self-employed workers.

The employer must also pay a tax to fund the federal unemployment insurance program under the Federal Unemployment Tax Act ("FUTA"). Only the employer (and not the employee) is responsible for this tax. Currently, the FUTA tax rate is 6% on salary up to $7,000. However, employers typically only pay a relatively small amount given offsets for state-level unemployment insurance contributions.

8. Hours of Work

The FLSA sets minimum obligations for covered employees (see section 2.1 above) regarding minimum wages to be paid and payment of overtime compensation for hours in excess of 40 hours worked by nonexempt employees per week. States may impose requirements in addition to the FLSA.

The federal minimum wage rate is $7.25 per hour. Generally, the FLSA applies an overtime rate of one and a half times

the regular rate of pay for overtime hours worked.

Employers have recordkeeping obligations regarding compliance with the FLSA, including identifying the beginning of the work week, the number of hours worked by each nonexempt employee per day and workweek, the regular rate of pay, overtime earned, and the compensation paid.

9. Holidays and Time Off

9.1 Holidays

U.S. employers are generally not required to compensate employees for time not worked, such as vacations, sick leave or federal or other holidays. Paid time off benefits are agreed upon by the employer and the employee. Employers that choose to offer paid time off can generally structure and modify the policy for unearned time off, provided they do not run afoul of anti-discrimination laws. However, employees who are exempt from the FLSA (see section 2.1 above) must be paid their full weekly salary if they work any hours during the week in which the holiday falls.

Individual states may regulate paid time off, including whether employees have to be compensated for accrued and unused time off on a termination of employment. In addition, government contractors may be required to provide payment to their employees for vacation and holidays in accordance with the labor standards of the McNamara O'Hara Service Contract Act.

9.2 Family Leave

The Family and Medical Leave Act (the "FMLA") requires the majority of private sector employers to grant up to 12 weeks' unpaid time off during any 12-month period to eligible employees to care for themselves or family members due to: (i) pregnancy complications, or the birth, adoption or placement of a child; (ii) the employee's serious health condition; (iii) a serious health condition of the employee's spouse, child, or parent; or (iv) a "qualifying exigency" arising from a family member's call-up to active military duty. In addition, the FMLA requires employers to grant up to 26 weeks unpaid time off during any 12-month period to eligible employees to care for a family member suffering from a serious injury or illness incurred on active military duty. To be eligible for leave under the FMLA, the employee must have provided services to the employer for at least 12 months.

9.3 Other Time Off

Employers generally have no obligation to provide unpaid time off. However, there are exceptions.

Employers are required to make reasonable accommodation for the religious practices of employees, unless the accommodation would result in undue hardship. Unpaid time off is generally considered a reasonable accommodation.

State laws and other federal laws may also require employers to provide additional time off, including time off to vote or serve on a jury or in connection with disabilities, domestic violence or public service.

Under USERRA, all employers are required to provide unpaid leave of absence to employees called for military duty or training. Employees can take up to five years of cumulative unpaid leave under USERRA.

10. Health and Safety

10.1 Accidents

In the U.S., workers' compensation insurance provides compensation for lost wages and medical benefits to employees injured on the job in exchange for the employee waiving the right to sue the employer. Workers' compensation is regulated on a state-by-state basis. In addition, certain industries are regulated federally, such as railroad and maritime employees, and miners suffering specific illnesses. In most states, private insurance companies cover employers' workers' compensation liability.

10.2 Health and Safety Consultation

In the U.S. occupational health and safety requirements in the private sector are mainly governed by the Occupational Safety and Health Act ("OSHA"). OSHA imposes various requirements, including limits on chemical exposure, use of protective equipment, and safety procedures. Employers are required to: (i) have conditions and practices to protect workers on the job; (ii) comply with standards applicable to their establishments; (iii) ensure that employees have and use personal protective equipment; and (iv) furnish a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm.

The Occupational Safety and Health Administration conducts inspections and oversees employer training, recordkeeping and reporting requirements. Inspections are triggered by random selection by the administration, or by employee complaints or reports of accidents. The administration may issue a citation and penalty to the employer for any violations of OSHA.

11. Industrial Relations

11.1 Trade Unions

Labor law in the U.S. is generally governed by the National Labor Relations Act ("NLRA") and enforced by the National Labor Relations Board (the "NLRB"). Railroad and airline workers are protected by the Railway Labor Act.

Under the NLRA, employers cannot interfere with the employees' right to engage in protected concerted activities, such as union organizing campaigns and other acts done by employees collectively with the intent of impacting compensation or working conditions. Employees' concerted activities are

protected by the NLRA even if there is no union involved. Unions are also restricted from coercing employees to join the union. Once there is a duty to engage in collective bargaining, both the employer and the union are required to do so.

Unions can request that the employer recognize the bargaining unit if they have signatures from a majority of the target employees. In such case, the employer may agree to the union's request or enforce its right to have a secret-vote election by the employees. Alternatively, unions can petition the NLRB to order an election regarding unionization of a workforce if they obtain consenting signatures from at least 30% of the target employees. In addition, some unfair labor practices by the employer may lead the NLRB to order the employer to bargain with the union. Union representation of a workforce is presumed to continue, but the employer can withdraw by proving that the union no longer has the support of the majority of its employees.

11.2 Collective Agreements

Under the NLRA, employers and unions have a duty to negotiate in good faith regarding the terms and conditions of employment for the bargaining unit in order to reach a collective bargaining agreement. Several items are considered mandatory in the negotiations, including wages, pension and welfare benefits, time off entitlements, severance, promotions, and rules regarding strikes.

The employer must notify the union in the event it wishes to modify the terms of employment, unless the agreement gives the employer discretion to make the desired change. If the union does not respond to the notice, it is deemed to have consented. When a collective bargaining agreement expires, the "core" terms of employment bargained for in the expired collective bargaining agreement remain in effect until a new agreement is reached by the employer and the union or "impasse" permits unilateral implementation of new terms.

11.3 Trade Disputes

Employees may engage in strikes in connection with unfair labor practices of the employer (such as refusal to bargain with the union), or to seek changes in their compensation or terms of employment, known as economic strikes. The employer may hire replacement employees during a strike. In the case of a strike due to unfair labor practices, the replacement workers can only be hired temporarily and may not permanently replace the striking employees. However, the employer may permanently replace employees in an economic strike. In addition, the employer may lockout the bargaining unit in whole or in part in certain circumstances in connection with a strike.

11.4 Information, Consultation and Participation

Unions must be considered in certain corporate transactions.

Generally, the buyer of the employer in a stock purchase transaction is required to honor any existing collective bargaining agreement and continue to bargain with the union in due course. A buyer of the assets or business of the employer will be required to bargain with the union only if there is "substantial continuity in the employing enterprise", and generally is not required to assume the existing collective bargaining agreement.

In addition, collective bargaining agreements may impose an obligation on the employer to inform, consult or obtain consent from the union in connection with a corporate transaction. Such obligation, if it exists, will be governed by the terms of the applicable collective bargaining agreement.

12. Acquisitions and Mergers

12.1 General

Employee-related liabilities and obligations can be a critical component of any merger and acquisition transaction.

With regard to U.S. target entities, the most significant liabilities can be: the cost of compensating target management for their existing cash and equity arrangements, the target's compliance with the terms, and costs, of its existing employee benefit plans and the target's compliance with applicable law, such as compliance with employment laws, for example, relating to worker classification, workplace conditions and governmental filings. Integration of a target's workforce into the acquiror's is often a critical human resource function.

As described above, target management often have employment arrangements that provide enhanced benefits in the event of a change in control ("CIC"). Certain benefits could become payable solely as a result of the closing (a "Single Trigger") and others where the employee is terminated following the CIC (so-called "Double Triggers"). Most commonly, cash severance entitlements increase, deferred compensation arrangements become payable and the vesting and cash-out of equity awards gets accelerated.

More broad-based plans are also impacted by CICs. Most notably, where the target sponsors an underfunded defined benefit plan, the Pension Benefits Guaranty Corporation (a U.S. governmental authority) may intervene to cause the acquiror to provide credit enhancements to the plan in the form, for example, of enhanced annual or periodic contributions, letters of credit or guarantees. PBGC intervention is most common in deals involving financial buyers because the capital structure of the target may become more highly leveraged post-closing.

The vast employment law regimes at both the federal and state levels could be a source of significant target liability and should be carefully diligenced. Other than the more obvious legal violations involving workplace torts, focus should be made on the potential that large number of current and/or former employees should

be or should have been participating in the target's benefit plans. Similarly, the target may have been required to withhold taxes on payments to service providers that it characterized as independent contractors.

12.2 Information and Consultation Requirements

Where a target has unionized employees, the collective bargaining agreement should be reviewed carefully for notification, consultation and bargaining obligations triggered by the potential CIC. Depending on the structure of the CIC, so-called "effects bargaining" may be require (see further section 11.4 above).

12.3 Notification of Authorities

In general, U.S. governmental authorities overseeing employment issues are not required to be notified of a potential CIC transaction. A significant exception is advance notification of the PBGC where the target's pension plan is significantly underfunded.

13. Termination

In general, non-unionized employees in the U.S. are employed "at will" (see section 5 above). This means that, absent special circumstances, they may quit or be terminated at any time and without notice without legal ramification. However, many senior-level executives in the U.S. are parties to employment agreements with their employer which governs the rights and obligations of the parties both during employment and in connection with a termination. These agreements typically provide severance and benefits continuation following a termination by the employer without "cause" or (less frequently) by the employee with "good reason". The amount of severance may vary dramatically, but is typically with the range of one-half to three times the employee's base salary (and sometimes annual bonus). Often, the employee is required to sign a release of claims in favour of the employer as a condition to receiving severance.

Employment agreements typically contain covenants prohibiting the employee following termination from competing, soliciting customers and/or employees and disclosing confidential information.

If an employee is terminated for "cause," he is typically not entitled to severance. "Cause" is typically defined to require some level of intent by the employee to harm the employer, gross negligence or commission of a crime (rather, than, by contrast, poor performance). The definition of "cause" generally includes willful misconduct and negligence, failure to follow directions of a superior, breach of the terms of the employment agreement, and other behaviour that is detrimental to the business of the employer.

If an employee quits with "good reason" (also referred to as a "constructive termination"), he is typically entitled to severance. "Good reason" typically requires that the employee's title, duties and/or responsibilities are materially diminished.

Notwithstanding that U.S. employees are generally "at will," there are legal regimes at both the federal and state levels prohibiting employers from terminating employees for certain reasons. The most obvious are discrimination and retribution for enforcing legally protected rights.

There are statutes at both the federal and state levels protecting employees who are terminated collectively. Typically, these statutes, such as the Worker Adjustment and Retraining Notification Act, require either a "mass layoff" or "plant closure" of some kind, which would obligate the employer to provide requisite notice of dismissal or severance and/or notification of governmental authorities.

Contributed by Clifford Chance, New York

Appendix Country by Country Comparisons

	Australia	China	Dubai International Financial Centre
Minimum Wage	■ The National Minimum Wage Order 2012 sets a generally applicable national minimum wage of $606.40 per week, calculated on the basis of a week of 38 ordinary hours, or $15.96 per hour. ■ Different national minimum wage rates apply to specific classes of employees such as apprentices, junior employees and trainees.	■ Varies locally - RMB 1,450 / month Shanghai and RMB 1,260 / month Beijing.	■ There is no statutory minimum wage under the DIFC Employment Law.
Maximum Weekly Hours	■ 38 hours per week or reasonable additional hours as required by the employer. ■ Employees may agree to average their ordinary hours of work to a maximum averaging period of 26 weeks.	■ 40 hours per week (excluding overtime for employees under standard working hour system). ■ Maximum overtime working hours: Three hours a day, 36 hours within a month.	■ 48 hours per week, unless the employer has obtained the employee's written consent to additional hours. ■ Maximum of six hours per day during the Holy Month of Ramadan for employees who are observing the Fast.
Holiday Entitlement**	■ Four weeks' paid annual leave per year. ■ Employees classified as "shiftworkers" are entitled to five weeks' paid annual leave per year. ■ Employees usually working on a day falling on a public holiday entitled to a day off with pay (subject to reasonable requests to work).	■ Five days after one year of service with current and previous employer(s). ■ 10 days after 10 years' service with current and previous employer(s). ■ 15 days after 20 years' service with current and previous employer(s).	■ 20 working days.
Maternity and Family Leave Entitlement	■ 12 months' unpaid parental leave provided employee has at least 12 months' continuous service immediately before the date of birth or placement for adoption. ■ Employee may request an extension of unpaid parental leave for a further period of up to 12 months. ■ If both members of an employee couple take leave – no more than 24 months leave can be taken between them. ■ Primary carers of newborns or recently adopted children meeting eligibility requirements may be entitled to receive up to 18 weeks of government-funded Parental Leave Pay at the rate of the National Minimum Wage. ■ 10 days' paid (and two days' unpaid) personal/ carers leave per year to provide care or support to a member of the employee's household.	■ Minimum of 98 days' paid maternity leave (in certain circumstances the female can have extra maternity leave). ■ Maternity pay - varies regionally (e.g. in Shanghai, it is equal to last year's average monthly salary of the company where the female employee serves. In any event no less than RMB 2,892 per month.) Payable out of statutory maternity insurance fund, and generally the balance between the maternity subsidy and the employee's actual salary is paid by the employer. ■ Paternity leave (generally 3-30 days). This may vary from city to city. ■ No adoption leave.	■ Minimum of 65 working days provided the employee has been employed for at least one year prior to the expected or actual week of childbirth. ■ Full pay for the first 33 working days. ■ Half pay for the next 32 working days. ■ Maternity rights in DIFC Employment Law apply equally to adoption of a child under three months old. ■ No paternity leave. ■ No statutory maternity pay.

	Australia (continued)	**China** (continued)	**Dubai International Financial Centre** (continued)
Minimum Notice by Employer and Termination Payments	■ One week to four weeks' notice depending on length of service. ■ Employees over 45 years old who have completed at least two years' continuous service are entitled to an extra week of notice. ■ Subject to certain exceptions and eligibility requirements, redundancy pay ranges from 4 to 16 weeks' pay at the employee's base rate of pay depending on length of service. ■ Some employees, such as employees of Small Employers (15 persons or less) and casual employees are not entitled to redundancy pay.	■ 30 days' notice where employee not at fault. ■ No notice if employee at fault. ■ Statutory severance pay equals one month's salary for each year of service (salary capped at 300% local city average for employment period). ■ Compensation for unlawful dismissal is twice as much as the statutory severance pay.	■ 7 to 90 days' notice, depending on length of service, although parties have the right to agree to a longer or shorter period of notice. No notice required if employment terminated for cause. ■ No statutory redundancy pay. ■ DIFC Employment Law does not provide for compensation for unfair dismissal. ■ End of service gratuity payment provided the employee has been employed for at least one year and did not participate in the employer's pension scheme . ■ End of service gratuity calculated as: • 21 days' basic wage for each year of the first five years of service. • 30 days' basic wage for each additional year of service. provided the maximum gratuity payable does not exceed the aggregate of two years' remuneration. ■ UAE and GCC national employees must be enrolled in the state-administered pension scheme, and thus will not be entitled to an end of service gratuity. ■ No end of service gratuity payable where the employment has been terminated for cause.

** Exclusive of public or religious holidays

	Hong Kong	India	Japan
Minimum Wage	■ Effective from 20 September 2012, minimum allowable wage for domestic helpers recruited from abroad is HK$3,920 per month. ■ Prescribed minimum hourly rate under the Minimum Wages Ordinance came into effect on 1 May 2011. The Chief Executive-in-Council has adopted the recommendation of the Provisional Minimum Wage Commission to set the initial prescribed hourly rate at HK$28 (subject to review by the Hong Kong government at least once every two years).	■ Varies from area to area (within a state), state to state and varies for different types of professions/employment. For example, the minimum wage for a hospital in Karnataka ranges between Rs. 3,751 and Rs. 4,633 per month. In Maharashtra this ranges between Rs. 4,900 and Rs. 6,200 per month.	■ Varies according to region/industry.
Maximum Weekly Hours	■ Hours of work are unregulated.	■ Varies from state to state and ranges anywhere between 45 hours to 55 hours per week.	■ 40 hours per week. ■ 44 hours per week for certain businesses.
Holiday Entitlement**	■ 7 – 14 days.	■ Varies from state to state and ranges from 21 days to 30 days. ■ In addition, holidays are also granted on certain identified national days and in some States for sickness or for other emergency purposes.	■ 10 days after six months' employment. ■ 11 days after 18 months' employment. ■ 20 days (max) after 6½ years' employment.
Maternity and Family Leave Entitlement	■ 10 weeks' paid maternity leave. ■ Maternity pay 4/5th's of normal wages. ■ No paternity leave. ■ No adoption leave.	■ 12 weeks' paid maternity leave. ■ Maternity pay is the average daily wage being earned by the employee calculated as the average of the employee's wages payable to her for days on which she worked during the period of three calendar months immediately preceding the date from which she absents herself for maternity. ■ Female employees entitled to six weeks' paid leave for miscarriage or medical termination of pregnancy. ■ Female employees entitled to paid leave of two weeks following the date of a tubectomy. ■ Female employees are eligible for one month's paid leave on account of any illness occurring after pregnancy, delivery, miscarriage, medical termination of pregnancy or a tubectomy. No statutory entitlement to paternity or parental leave.	■ 14 weeks' unpaid maternity leave. ■ Unpaid childcare leave up to child's first birthday. ■ 93 days' unpaid family care leave.

	Hong Kong (continued)	**India** (continued)	**Japan** (continued)
Minimum Notice by Employer and Termination Payments	■ Zero during first month of probation notwithstanding terms of contract and seven days during remainder of probation period for continuous contract without notice clause. ■ One month for continuous contract without notice clause. ■ Seven days minimum if continuous contract contains notice clause. ■ Agreed notice in all other cases (which should not be less than seven days).	■ One month's notice with full pay during notice. ■ 15 days' average pay for each year of service in excess of six months in the case of employees who fall within the definition of a "workman" as defined under the Industrial Disputes Act, 1947. ■ Pay in lieu of accrued but untaken leave. ■ If the employee has completed five years of continuous service prior to termination a gratuity is payable at the rate of 15 days' wages for every year of service or part thereof in excess of six months subject to a maximum of Rs. 1,000,000.	■ 30 days' notice.

** Exclusive of public or religious holidays

	The Russian Federation	Singapore	Turkey
Minimum Wage	■ Statutory minimum wage at the federal level: RUB 5,205 per month (from 1 January 2013). ■ Higher minimum wages may be established at the regional level by trilateral agreements between regional authorities, trade unions and employers` associations (e.g. RUB 11,700 in Moscow).	■ No statutory minimum wage. ■ Employment Act stipulates entitlement to overtime at one and a half times the hours rate of pay if employee's monthly salary does not exceed S$2,000 per month.	■ Statutory minimum wage for employees older than 18 year old: net TL 740 (approximately €321) 1 July 2012 - 31 December 2012.
Maximum Weekly Hours	■ 40 hours per week for adults. ■ 36 hours for employees working under hazardous and harmful conditions. ■ 35 hours per week for young people aged 16 to 18 and disabled persons in the first two categories. ■ 24 hours per week for young people aged under 16.	■ 44 hours a week (for employees covered by the Employment Act whose monthly salary does not exceed S$2,000). ■ No statutory prescribed limit for other employees.	■ 45 hours per week.
Holiday Entitlement**	■ 28 days' paid leave for adults. ■ 31 days' paid leave for employees working on an unmeasured working time basis. ■ 31 days' paid leave for young people under 18.	■ Employees covered by the Employment Act whose monthly salary does not exceed S$2,000: • First year of service - seven days; • Each additional 12 months - one additional day up to a maximum of 14 days. ■ Other employees - holiday ranges from 14-21 days.	■ Upon completion of the first year of employment: • 1-5 years of service 14 days; • 5-15 years of service 20 days; • More than 15 years service 26 days . ■ Employees who are older than 50 and younger than 18, annual paid leave cannot be less than 20 days.
Maternity and Family Leave Entitlement	■ 140-194 days' paid maternity leave (depending on the number of children and other factors). ■ Maternity pay equal to average salary. ■ Unpaid family leave available for fathers. ■ 70-110 days' paid adoption leave (depending on the number of children adopted). ■ Adoption pay is equal to maternity pay. ■ Paid parental leave until child is three years old. ■ Pay during parental leave is equal to 40% of average salary until child is one and a half years old. ■ Payable at different regional rates for leave taken when child is between one and a half and three years old.	■ 16 weeks' paid maternity leave at gross rate of pay. ■ Two days' paid childcare leave for employees who have served for at least three months whose child is under seven. ■ Six days per year unpaid infant care leave for every parent of a Singaporean child under two.	■ 16 weeks' maternity paid leave (18 weeks in case of multiple births) at normal rate of salary. ■ Six months' unpaid maternity leave upon request. ■ No paternity leave entitlement.

	The Russian Federation (continued)	**Singapore** (continued)	**Turkey** (continued)
Minimum Notice by Employer and Termination Payments	■ As a general rule, no notice by an employer is required subject to certain exceptions: • 2 months` notice to employees who are being made redundant; • 3 days' notice to employees who have failed probation; • 3 days' notice to employees working under a fixed-term employment contract. ■ Statutory redundancy payment up to five times the average salary of the employee (higher amounts may be payable to certain categories of employees, e.g. employees working in difficult climatic conditions). ■ Compensation for unlawful dismissal, as a general rule, amounts to the employee's average salary employee for the period of unemployment until the employee gets another job.	■ Under the Employment Act if the contract is silent on the notice period the following minimum notice entitlement apply: • < 26 weeks' service: one day's notice • 26 weeks' service < two years' service: one week's notice • Two years' service < five years' service: two weeks' notice • Five years' service: four weeks' notice ■ Employees not covered by the Employment Act must be given "reasonable notice". ■ Damages for wrongful dismissal are usually the employee's salary (including all forms of remuneration payable under the contract e.g. bonuses and non-monetary benefits) for the notice period.	■ 2 to 8 weeks' notice depending on length of service. ■ Statutory redundancy payment; severance pay (up to a maximum of approx. TL 3,034 for each completed year), notice pay (corresponding to the salary, no statutory maximum limit) and accrued but unused annual leave. ■ Compensation for unfair dismissal (in the worst case to be decided by the court) 12 months' salary.

** Exclusive of public or religious holidays

	Ukraine	United Arab Emirates	United States
Minimum Wage	■ UAH 1134 (US $142) from 1 December 2012. ■ Established annually.	■ There is no statutory minimum wage under the Federal UAE Labour Law.	■ $7.25/hour federal minimum wage for employees covered by the Fair Labour Standards Act (FLSA).
Maximum Weekly Hours	■ 40 hours per week. ■ 36 hours per week for some categories of employee.	■ 48 hours per week (normal maximum working hours) on the basis of eight hours per day in a six-day working week. ■ 54 hours per week on the basis of 9 hours per day in a six-day working week (where authorised by the Ministry of Labour - usually for commercial establishments, hotels, restaurants, guard duties). ■ Normal hours of work are reduced by two hours per day during the Holy Month of Ramadan (irrespective of whether the employee is observing the Fast or not).	■ FLSA overtime rate of 1.5 x hourly rate for hours in excess of 40 per week. ■ No statutory prescribed limit for other employees.
Holiday Entitlement**	■ 24 days basic entitlement. ■ Greater entitlement for certain categories of employee.	■ Minimum of 30 calendar days (weekends, public holidays and periods of illness that fall within the leave period are deemed to be included as part of the leave).	■ Regulated by state law
Maternity and Family Leave Entitlement	■ 70 days' leave prior to birth (paid by State). ■ 56 days' leave after birth (paid by State). ■ Childcare leave until child reaches three years (paid by State). ■ Childcare leave for father/grandparents until child reaches three years (unpaid/partially paid by State).	■ 45 calendar days on full pay, provided that the person has been employed with the employer for at least one year. ■ 45 calendar days on half pay where period of employment with the employer is less than one year. ■ Entitled to an additional 100 days unpaid leave if such absence from work is due to an illness caused by the pregnancy or delivery. ■ For a period of 18 months following delivery, a nursing mother is entitled to two additional breaks (totalling one hour) each day for the purposes of nursing her child. ■ No statutory maternity pay. ■ No paternity leave. ■ No adoption leave.	■ 12 weeks' unpaid leave for pregnancy complications/birth/adoption.

	Ukraine (continued)	**United Arab Emirates** (continued)	**United States** (continued)
Minimum Notice by Employer and Termination Payments	■ Two months' notice in the event of liquidation, staff, reduction or reorganisation. ■ No notice obligations in other termination scenarios. ■ Compensation in the amount of one month average salary is paid by employer in case employment terminates as a result of liquidation, staff reduction or reorganisation.	■ At least 30 days' written notice in the case of indefinite term employment contracts. ■ A fixed period contract terminates upon expiry of its fixed-term, unless renewed by the parties. ■ No notice is required in the case of termination under Article 120 of the Labour Law (which sets out reasons constituting the equivalent of gross misconduct). ■ Maximum compensation for unfair dismissal is fixed at three months' remuneration. ■ Where an employee has been employed continuously for at least one year, and provided termination of employment is not under Article 120, the employee is entitled to an end of service gratuity of: ■ 21 days' basic wage for each year of the first 5 years of service; ■ 30 days' basic wage for each additional year of service; ■ provided that the maximum gratuity payable does not exceed the aggregate of two years' remuneration ■ Where an employee resigns after completing between one and three years of continuous service, the end of service gratuity is reduced by two thirds; ■ Where an employee resigns after completing between 3 and 5 years of continuous service, the end of service gratuity is reduced by one third. ■ Where an employee resigns after completing five years of continuous service, full gratuity is payable.	■ Employment "at will" in absence of contractual provisions to contrary.

** Exclusive of public or religious holidays

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