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Employment and Benefits in the European Union

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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
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- The application of TUPE and the Acquired Rights Directive
- 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

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[1] Includes an associated office in Romania.

Introduction

This guide is designed to provide an overview of employment law in each of the 27 member states of the European Union ("EU"). It has been limited to a general description of the areas of employment law in each Member State which are of most interest:

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

Despite the complexity of modern employment law, there are some general principles common to Member States arising from the impact of EU Directives on the domestic law of each of the countries. A good illustration of this is the Acquired Rights Directive, which protects employees in the event of the acquisition of businesses and economic entities, and the legislation this has given rise to in Member States. Harmonisation is increased by the fact that, in the interpretation and application of law based on EU Directives, the decisions of the Court of Justice of the European Union guide domestic Courts and Tribunals in each state.

However, whilst common principles are evident, so too is a surprising degree of diversity. This is perhaps most noticeable in the cases of the United Kingdom and Ireland but is also apparent in the other EU Member States.

The pace of development both in terms of EU and domestic employment law continues unabated. For these reasons this publication cannot serve as a substitute for current and necessarily detailed advice on particular employment law problems which 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, and references to "European Union" and "EU", where the context requires, include references to "European Community" and "EC". References to the "European Economic Area" and the "EEA" are references to the European Union and Iceland, Norway and Liechtenstein.

This publication is designed to provide a general summary of countries approaches to employment related law as at 1 May 2007. 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.

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Austria

1. Introduction

Whilst there is no single statute governing all aspects of individual and collective employment law, the most important areas of Austrian labour law are codified in a wealth of detailed statutes and regulations. These provisions seek primarily to protect the rights of employees. There are four main sources of Austrian labour law: legislation, collective agreements, work agreements and individual employment contracts. Statutory provisions are normally for the benefit of the employee and therefore collective agreements, works agreements or individual employment contracts must not contain terms less advantageous to employees. However, the "favourableness principle" (*Günstigkeitsprinzip*) allows amendments to be made to agreements at a lower level, provided that they are beneficial to the employee. The primary piece of legislation in this area is the Arbeitsverfassungsgesetz 1974 (ArbVG) (Labour Constitution Act).

The low incidence of industrial disputes in Austria is the direct result of harmonious relations between Government, employers and trade unions, built on a social partnership between employers' and employees' representative organisations. The frequent use of collective bargaining as a method of resolving disputes has played a fundamental role in ensuring a history of industrial peace. Strikes are rare even where a new agreement is being negotiated and are often considered to be illegal during the effective period of an existing agreement.

Austria has two organisations that represent employees' interests at supra-enterprise national level; these are the Trade Unions Federation (*ÖGB - Österreichischer Gewerkschaftsbund*), based on voluntary association, and the statutorily created Labour Chambers (*Arbeiterkammern*). The majority of employees in the private sector are compulsory members of the Arbeiterkammern. The statutory organisation for employers is the Chamber of Commerce (*Österreichische Wirtschaftskammer*), membership of which is also compulsory.

There is a well-developed system of "co-determination" which ensures employee participation in the workplace, and Works Councils protect the interests of employees on issues affecting work practices.

Both collective and individual disputes are handled by special labour Courts.

2. Categories of Employees

2.1 General

Austrian employment legislation has traditionally drawn a distinction between blue collar (*Arbeiter*) and white collar (*Angestellte*) workers. Legislation has traditionally been used to regulate conditions affecting white collar workers, whilst most of the provisions for blue collar workers have developed within collective agreements. However, relatively recent changes in Austrian labour law are aimed at treating blue collar and white collar workers more equally in the future.

2.2 Directors

Senior executives and directors have a special position in labour law. Certain protective laws (particularly the Hours of Work Act (*Arbeitszeitgesetz-AZG*)) do not apply to managing directors (*Vorstandsmitglied of an Aktiengesellschaft and Geschäftsführer of a GmbH*) and only partly to senior executives. Senior executives are not represented by the Works Council.

The Employees' Act (*Angestelltengesetz-AngG*) also applies to the Geschäftsführer of a GmbH if he is not a controlling shareholder, but never applies to Vorstandsmitglieder of a stock corporation unless explicitly agreed between the parties. The Vorstandsmitglieder only have a service contract (*freier Dienstvertrag*).

3. Hiring

3.1 Recruitment

There are no provisions regulating employee recruitment. However, according to the Labour Constitution Act (*Arbeitsverfassungsgesetz*) employers must consult the Works Council, if any, in connection with general personnel planning. The employer must also inform the Works Council whenever an employee is recruited.

Employers with 25 or more employees are obliged by law to employ one disabled person for every 25 employees or to pay a monthly compensation tax.

3.2 Work Permits

Non-EEA nationals need a work permit for all types of employment, which can only be applied for in Austria by the prospective employer. A residence permit is also required for non-EEA nationals staying for a period exceeding six months. Once a work permit is granted, generally, an application for a residence permit must be made from abroad to the local representative authority (Austrian embassy or consulate general).

EEA-nationals or Swiss nationals making use of their right of free movement and staying longer than three months within the federal territory, have to apply for a confirmation of registration (*Anmeldebescheinigung*). In general EEA nationals do not need any kind of work permit, but there are various temporary provisions for the new EU-accession countries still limiting free access to the employment market.

4. Discrimination

Discrimination on the grounds of gender, ethnic affiliation, religion or philosophical belief, age or sexual orientation is expressly forbidden by the Gleichbehandlungsgesetz 2004 (Equal Treatment Act). This Act also requires equal pay for equal work. A commission and an attorneyship for equal treatment has been established to ensure compliance with the principle of equal treatment. Moreover, discrimination on the ground of a disability is prohibited by the Disabled Persons Employment Act (*Behinderteneinstellungsgesetz*).

Protection also exists for those involved in trade union activities. The ArbVG expressly forbids discrimination against personnel who exercise their statutory works representation powers. Special protection also exists against unwarranted dismissal.

5. Contracts Of Employment

5.1 Freedom of Contract

Employment relationships are regulated through individual employment contracts, which are subject to common law. However, the freedom to contract is, in practice, limited. The ArbVG specifies that collective agreements concluded between statutory employer associations and trade unions also apply to employees who do not belong to one of the bodies concluding them. As a result, Austrian collective agreements cover the majority of employees and employers. Contracts of employment between employers and white collar workers are governed by the Employees' Act (AngG).

5.2 Form

In general, there is no special form required for an Austrian employment contract, which can be concluded orally or in writing. In practice, legislation and collective agreements cover the most important conditions of employment.

Individual contracts are often used for those employed at management level, specifying particular terms and conditions of employment.

As a result of Austria's accession to the EU, the Act on the Adjustment of Employment Contracts (*AVRAG – Arbeitsvertragsrechts-Anpassungsgesetz*) has been enacted and provides that every employee is entitled to an employment document (*Dienstzettel*) which must contain the essentials of the terms of employment, such as name and address of employer, date of start of employment, notice periods, starting salary and holidays.

5.3 Trial Periods

A probationary period must not exceed one month. During this period, either party may terminate the employment with immediate effect without cause.

5.4 Confidentiality and Non-Competition

During employment, employees are subject to a general duty of loyalty. An employee is therefore not allowed to compete with the employer during the employment or to disclose business secrets. Post-termination restrictions on competitive activities must not exceed one year and may only limit activities relating to the previous employer's business. The restrictions must not unreasonably restrict the employee.

5.5 Intellectual Property

The patent right to inventions made by employees during the term of their employment will belong to the employee. Employers may enter into written agreements with employees conferring a right on the employers to future inventions or a right of use of future inventions. In such cases the employee must receive adequate remuneration.

6. Pay And Benefits

6.1 Basic Pay

Whilst there is no national statutory minimum wage, minimum rates of pay are fixed by collective agreements covering virtually all employees. Through these legally binding agreements, employees are entitled to a 13th-month (holiday) bonus and a 14th-month (Christmas) bonus. In practice, the pay given by many employers is higher than the agreed rates.

Works Councils and employers can only determine incentive pay, whilst other payments can only be regulated by a workers' agreement to the extent allowed for by the collective agreement in force.

Regular benefits paid every year will become part of salary unless provided on a voluntary basis and stated to be subject to unilateral withdrawal.

6.2 Private Pensions

The majority of higher paid employees are covered by company plans. The pension target, inclusive of social security, is usually around 60 to 75 per cent of final average earnings over a full career. Other benefits normally provided are disability pensions and spouses' pensions with child supplements. Statutory vesting of accrued benefits applies after five years' membership or ten years' service, if earlier.

Private pensions for employees are governed by the Company Pension Act (*Betriebspensionsgesetz*).

6.3 Incentive Schemes

Most agreements with executives contain provision for profit-related payments.

6.4 Fringe Benefits

Senior executives are often entitled to a company car and various insurances as fringe benefits.

6.5 Deductions

Employers are under a statutory obligation to deduct income tax and social security contributions from the earnings of their employees and to account to the tax authorities with these deductions.

7. Social Security

7.1 Coverage

The state social security system provides benefits in the case of retirement, disability, death, sickness, industrial injury and unemployment, as well as covering health insurance and family allowances.

7.2 Contributions

Both employees and employers contribute to the financing of the social security system. Contributions are payable up to a maximum assessment basis of EUR 3,840 per month. There are different rates of contribution depending upon whether the employee is a white or blue collar worker.

The rates for white collar workers and their employers as a percentage of pay are as follows:

Insurance	Employee	Employer	Total
Health	3.4	3.4	6.8
Accidents at work	none	1.4	1.4
Pensions	10.25	12.55	22.8
Unemployment	3.0	3.0	6.0

The rates for blue collar workers and their employers as a percentage of pay are as follows:

Insurance	Employee	Employer	Total
Health	3.6	3.3	6.9
Accidents at work	none	1.4	1.4
Pensions	10.25	12.55	22.8
Unemployment	3.0	3.0	6.0

In addition to his or her social security contributions, both white and blue collar employees pay Chambers Labour fees

(*Arbeiterkammerumlage*) at a rate of 0.5 per cent, and an employer has to bear an additional charge under the Insolvency Compensation Act (*Insolvenz-Entgeltsicherungsgesetz-Zuschlag*) at the rate of 0.7 per cent. There are other contributions for particular categories of work.

8. Hours Of Work

The number of working hours is regulated either by statute or by collective agreement. Under the Arbeitszeitgesetz 1969 (AZG) (Working Hours Act) statutory working hours are limited to eight per day and 40 per week, although more may be possible in certain industries, (for example, where drivers or shift workers are employed), provided that the average weekly working hours over a specified period do not exceed 40 hours. Longer working hours can be provided for by collective agreements, to the extent permitted by the AZG.

Under collective agreements the average working week is about 38.5 hours. Overtime is permissible, provided it is structured so that no more than ten hours are worked on any one day and no more than ten hours overtime during any week (subject to a maximum of 60 hours annually).

The AZG also makes provision for work breaks and rest periods. However, the AZG does not apply to senior executives or Geschäftsführer of a GmbH, unless otherwise provided in the collective agreement.

The working hours of young persons are governed by the Children and Young Persons Work Act (*Kinder-und Jugendlichenbeschäftigungsgesetz*).

Hours in excess of normal working time constitute overtime. An employee working overtime receives payment at a higher rate than for normal working time or time off. The AZG provides for a 50 per cent increase in pay for normal overtime and collective agreements frequently provide for a 100 per cent increase for work on public holidays and Sundays.

9. Holidays And Time Off

9.1 Holidays

Employees are entitled to paid absence from work on any public holiday, unless the public holiday falls on a Sunday in respect of which the employer has no obligation to provide regular pay.
All employees are statutorily entitled to a minimum of 30 working days holiday a year (36 working days after 25 years' service). Saturdays are counted as working days for this purpose.

9.2 Family Leave

Pregnant women are entitled to take maternity leave starting eight weeks prior to confinement, and are entitled to a further period of eight weeks after having given birth. Throughout the maternity leave period they receive full pay. Either parent also has the right to take unpaid parental leave for a period of up to two years.

There are various statutory provisions regulating the type of work and length of working hours that can be undertaken by pregnant women.

9.3 Illness

Employers are liable to pay full salary to white collar workers as well as blue collar workers for the first six weeks of sickness, with a further period of four weeks on half pay when the full pay period ends. The period of full pay increases with the length of the employment relationship up to twelve weeks' pay.

10. Health And Safety

10.1 Accidents

Employers are responsible for equipping and running places of work so that employees are protected from avoidable work-associated accidents and illness. The Arbeitsinspektorat (Work Inspection Office) has the authority to ensure that health and safety regulations are complied with.

10.2 Health and Safety Consultation

Works Councils set up by statutory authority in all companies employing five or more permanent employees, have a right to co-determination on matters of health and safety.

11. Industrial Relations

11.1 Trade Unions

Employees have a right of freedom of association and the right to engage in union activity. Since the establishment of the Austrian Trade Union Confederation (*Österreichischer Gewerkschaftsbund – ÖGB*) all political viewpoints and groups of employees have been represented within it.

However, there is no direct trade union representation in the workplace. Instead, employees are represented by statutorily elected Works Councils. The ArbVG requires the creation of Works Councils in all establishments employing at least five employees if employees or a trade union request the establishment of a Works Council.

The number of members of the Works Council depends on the number of employees it represents.

11.2 Collective Agreements

The ArbVG gives legal authority for the conclusion of collective agreements. This authority is restricted to the statutory representatives of employees (such as Chambers of Labour) and employers (Economic Chambers). However, agreements concluded between voluntary organisations are effective if they receive recognition from the Federal Conciliation Office (*Bundeseinigungsamt*), which often requires proof that the organisation's activities extend over a significant geographical and occupational area.

Single employer agreements are uncommon, as it is extremely rare for individual employers to be given the authority to conclude collective agreements.

Agreements must be registered with the Ministry for Economics and Labour and be published in the official journal before they are valid. Their content is limited by the ArbVG to covering issues essential to pay and working conditions, rights and obligations. The vast majority of employment relationships are regulated by collective agreements.

Collective agreements are usually put in place for particular industries or branches of industries.

11.3 Trade Disputes

The negligible level of industrial conflict and the relative neutrality of the state in industrial conflict have led to a notable absence of specific statutory regulation of the conduct or resolution of industrial disputes. The general law does not explicitly recognise a right to strike, although Austria has ratified various international conventions which guarantee the right to strike. However, strikes aimed directly at the state are considered unlawful, and some public sector workers are banned from striking.

The "social partnership" based on co-operation between Government, employers and unions, is the main method by which strikes and industrial conflict are regulated.

11.4 Information, Consultation and Participation

The concept of "co-determination" allows employees significant input in the decision making process and should exist when staff have an equal status to management in respect of establishment issues. However, in reality co-determination is limited to what are seen as social issues, in particular dismissals, and does not exist in relation to commercial or economic matters.

Employee rights are enhanced by Works Councils, which have rights of co-determination in respect of fundamental organisational changes and changes in working practices. A Works Council has the right of access to information regarding the financial position of the company, and is entitled to one-third of the seats on its company's supervisory board. The Works Council can meet with management at least four times a year.

12. Acquisitions and mergers

12.1 General

The employer must inform the works council of any proposed changes to the business. A merger with other companies will qualify as such a change. Although no strict time limit applies, the employer must notify the works council as soon as possible and sufficiently in advance for the proposed change to be thoroughly discussed. The works council may request that a representative of the competent trade union joins the consultations. The extent of the information to be given to the works council is not governed by law, however, the information must be detailed enough to allow for a thorough consultation with the works council.

Notice of termination given by a selling entity on account of a business transfer is null and void, as is notice of termination given by the purchasing entity after the transfer on account of the transfer. Transferring employees can be dismissed if the dismissal is not motivated by the business transfer (e.g. for misconduct). However, the employer has to provide clear evidence that the only reason for the dismissal was not the transfer.

12.2 Information and Consultation Requirements

During the consultation process, the works council may propose measures to minimize any adverse consequences for the employees arising from the change to the business. If the business has more than 20 employees and the change is detrimental for all or a substantial number of them, the employer and the works council may agree on a social plan in order to minimize such detrimental consequences for the respective employees. If the employer and the works council cannot agree on a social plan, the works council may address a special conciliation body (*Schlichtungsstelle*) at the competent labour court. The Schlichtungsstelle is entitled to decide the terms of a social plan after hearing the employer and the works council on the matter.

If no works council exists, the employer has to inform all transferring employees in writing about the proposed transfer of business. There is no specific time limit for such information. The information has to be given in writing and no consultation is required.

12.3 Notification of Authorities

From an employment perspective there is no need to notify the authorities of an acquisition or merger.

12.4 Liabilities

A sale and purchase agreement can be signed before the information or consultation is completed. Non-compliance with the information and consultation obligation would not affect the validity of a sale and purchase agreement, thus, the works council cannot delay or prevent a merger or acquisition. In the case of collective dismissals which qualify as a change to the business non compliance with information obligations may trigger administrative penalty fees in the amount of EUR 2,180.

13. Termination

13.1 Individual Termination

A white or blue collar employee whose employment is terminated by the employer giving notice or by the employee for good cause is entitled to severance pay (*Abfertigung*), provided he or she has completed three years' service.

The amount of the payment depends on the length of service and ranges from two to 12 months' salary.

The Statutory Corporate Employee Retirement Schemes Act (*Betriebliches Mitarbeitervorsorgegesetz – BMVG*) imposes a new severance pay regime in relation to all employees whose employment commences after 31 December 2002. This replaces the old severance pay regime described above. In principle, the employer is obliged to make contributions of 1.53 per cent of the monthly remuneration (plus special payments) for each employee to a fund (*Mitarbeitervorsorgekasse*) and the employees are entitled to receive the balance of these contributions upon termination of their employment contracts, provided that certain conditions are satisfied.

For employment contracts entered into on or before 31 December 2002, the old severance pay scheme will continue to apply unless employer and employee

agree that the new BMVG shall apply instead. They may also agree to transfer accrued entitlements to severance pay into the new scheme.

13.2 Notice

There are different notice periods for blue collar and white collar workers. The notice period in respect of blue collar workers is generally 14 days. Collective agreements provide for different notice periods. In respect of white collar workers, employers may terminate an employment on six weeks' notice, expiring at the end of a quarter. Depending on length of service, this period increases to five months after 25 years' service. White collar employees may terminate their employment on one month's notice expiring at the end of a month. Employees' notice obligations of up to six months may be agreed subject to the overall requirement that it cannot be shorter than the notice required to be given by the employer.

Notice of dismissal will only be effective if the relevant Works Council has been notified in advance. The Works Council has five working days in which to consult about the intended dismissal and comment on it. Thereafter the employer can give notice to the employee, although the Works Council must again be notified. Should the Works Council agree, the notice is final, otherwise the notice can be appealed against by either the Works Council or the employee concerned. Such an appeal will be heard by a Labour Court, but will only succeed if it can be shown that the motives for dismissal are socially unjustifiable.

An employment contract may be terminated without notice only for good cause. A good cause justifying the immediate dismissal of an employee exists, for instance, if the employee has caused serious harm to the employer's interests and it is, therefore, unreasonable for the employer to employ the employee until the end of the applicable notice period.

13.3 Reasons for Dismissal

Generally, both parties have the right to terminate an employment for any reason. Restrictions on the employer derive from public policy aimed at the protection of employees from unwarranted dismissal.

If an employer's motives for dismissal are socially justifiable, then the dismissal is likely to be lawful. Dismissal will be unlawful, for instance, where the contract is terminated because of the employee's involvement in a Works Council, or involvement as an employee representative for health and safety, or due to an employee's call-up for national service.

As a matter of general principle, only the Works Council is allowed to contest dismissals but, if there is no Works Council or the Works Council does not react, the employee may contest his dismissal.

13.4 Special Protection

It is recognised that certain groups of employees are vulnerable to unwarranted notice of dismissal. Legislation therefore gives special protection to e.g., Works Council members, pregnant employees, apprentices, disabled persons and employees on military service.

13.5 Closures and Collective Dismissals

Special rules apply to collective dismissals, but the classification of collective dismissals depends on the number of employees in the company and the number of employees to be dismissed. For example, the dismissal of five or more employees of a company with more than 20 and less than 100 employees will qualify as a collective dismissal for the purposes of employment protection legislation.

An employer must give 30 days' prior notice to the competent regional labour office if collective dismissals within a period of another 30 days are planned. At the same time, the employer has to submit evidence to the authorities that consultations have been held with the Works Council in accordance with the Labour Constitution Act. Failure to comply with these obligations may render the dismissals invalid.

A social plan may be required in respect of companies employing 20 or more employees in order to avoid, remove or alleviate the consequences resulting from collective dismissals. The social plan has to be negotiated with the Works Council and put into effect as a works, or shop, agreement.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their (prospective, current and past) employees and workers are governed by the Austrian Data Protection Act 2000 (*Datenschutzgesetz 2000 - DSG*). Employee data may only be processed as far as the purpose and content of the data is justified by the statutory requirements imposed on the employer and provided the employee's confidentiality is safeguarded.

Generally, the processing of employee data is permissible to the extent necessary to operate an ordinary employer-employee relationship.

14.2 Employee Access to Data

Employees, as data subjects, have the right to make a subject access request either in writing or, in agreement with the employer, orally. This entitles them to be advised of what data is held about them, to whom it is disclosed to and to be given a copy of their personal data. The employer may resist a subject access request if justified interests of the employer or a third person would otherwise be endangered. Requests must be answered within eight weeks. Generally, the employer has to comply with such a request without charging the employee. Legally, a charge of €18,89 may, however, be levied if a request does not concern the current data of the employee or the employee has previously requested access to data during the current year.

14.3 Monitoring

The monitoring of employee e-mail, internet and telephone use and Closed Circuit TV monitoring is governed by the Labour Constitution Act (*Arbeitsverfassungsgesetz*) and the DSG. Monitoring is permissible unless it affects a person's dignity. Control measures introduced to protect the dignity of data subjects require an

agreement between the Works Council and the employing company before any monitoring can take place. If no works agreement can be concluded with the Works Council, the employer must not take the proposed measures.

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 DSG principles and processing conditions. Data may be transmitted only if the confidentiality of the data subject concerned is safeguarded. If the data subject concerned has consented to the transmission of data, the confidentiality requirement is deemed to be satisfied. Such consent may be revoked at any time. Where the third party is based within the European Union, a permission to transfer data is not required in general. The transmission of data to third parties not based in the European Union requires the permission of the Data Protection Commission unless certain exceptions apply.

Belgium

1. Introduction

The legal relationship between employees and employers is mainly governed by the 1978 Law on Employment Contracts (*Loi du 3 juillet 1978 relative aux contrats de travail - Wet van 3 juli 1978 betreffende de arbeidsovereenkomsten*) and other legislation. Collective labour agreements, individual contracts of employment, working rules and normal practice are other important sources of employment law are classified as such by a 1968 Law.

Collective labour agreements are agreements negotiated between employers' and employee representatives at national, industrial sector or individual undertaking level. They are automatically legally binding in respect of all employers and their employees in, for example, a particular industrial sector. Some of the terms of the collective labour agreement create individual rights for the employees and form part of the individual contracts of employment.

The employer must have and provide each employee with a copy of working rules (*arbeidsreglement - règlement de travail*) which set out the basic common terms and conditions of employment (such as hours of work, methods of payment and disciplinary procedures), independently from the employment contract.

Belgium is officially trilingual (Dutch, French and German). There are strict rules on the use of Dutch, French or German in employment documents and in connection with working relations. These vary according to the geographical area where the employment takes place; the language is French in Wallonia, Dutch in Flanders and German in the relatively small German speaking area. Brussels is officially a bilingual city (Dutch and French) and the language to be used will normally depend on the mother tongue of the individual employee.

Labour disputes are settled by local labour Tribunals and by the labour Courts, at appeal level. These Courts are presided over by a professional judge and two lay members; one representing employers, and the other employees.

There are a number of Government agencies that are responsible for enforcing the various health and safety, employment and social security laws.

2. Categories of Employees

2.1 General

Belgian employment law distinguishes between the blue-collar worker (carrying out principally manual work) and the white-collar worker (carrying out principally intellectual work). A number of the regulations applicable to blue-collar employees differ substantially from those relating to white-collar employees. Management and senior supervisory personnel are distinguished from other white-collar workers for the purpose of certain labour law provisions. The law also contains special provisions in respect of other categories, for example, sales representatives, domestic servants, employees working from home and students.

2.2 Directors

Depending on the function they perform, directors of limited companies may be treated for employment law and social security purposes as both office holders and employees. Normally separate rules apply to each capacity. A director for instance may be dismissed as a director with immediate effect and without compensation; if the director is also an employee, the stricter rules for terminating an employment contract have to be complied with to terminate the employment relationship.

Directors, who are remunerated through directors' fees, need to register and pay social security contributions as self-employed persons. In addition, if they are non-EU nationals, they need to obtain a "professional card" to do business in Belgium as a self-employed person, except in specific circumstances.

Non-remunerated directors also have to pay social security contributions but may benefit from an exemption if they are EU nationals or nationals from another country with which Belgium has concluded a social security treaty and if they already subscribe to another social security system.

Managing directors of small or medium-sized companies which do not form part of a larger group of companies will also need to obtain and submit a certificate which proves that they have sufficient knowledge and/or professional experience to run the company ("*bekwaamheidsattest - attestation connaissances de gestion de base*").

2.3 Other

Employers may employ temporary staff either to replace an employee, or in order to respond to an extraordinary increase of work, or to carry out exceptional work. Temporary employees must be paid a wage which pro rata is not less than what they would be entitled to if they were a permanent employee. Temporary (or interim) staff supplied through an employment agency may be employed in the same circumstances; they are employed by the agency but are entitled to the same employment rights as if they were a normal employee of the company.

A part-time employment contract must be made in writing before the employee starts work. Part-time employees must normally work a minimum of one third of the usual full-time hours per week and a minimum of three hours each working period. Part-time employees have priority in applying for similar full-time positions that become available and for which they have the required qualifications. Their salary must be proportionately equivalent to that paid to full-time employees. This also applies to other employment rights.

Secondment in Belgium is only allowed in exceptional circumstances and provided certain procedures have been followed. For example, intragroup secondments or secondment aimed at a short-term execution of specialised tasks which require specific professional qualifications, are allowed provided advance notification is given to the Social Inspection. Other secondments

require the prior consent of the Social Inspection. In both cases a prior written agreement between the employer, the seconded employee and the recipient of the employee's services must set out the terms of the secondment. The secondment rules do not apply however when an employer seconds one or more employees to another company to perform services contracted under a commercial services agreement provided the employer's authority remains with the employer and the company benefiting from the services may only give instructions in connection with the coordination and implementation of the services, the health and safety rules applicable at the place of work and the working hours.

Civil and criminal sanctions may be imposed in the event of unauthorised secondment. In the event that an employee is seconded in breach of the mandatory rules, the company who uses the service of the seconded employee is considered to have an employment contract of indefinite duration with the seconded employee and the employer and the user are jointly liable vis-à-vis the employee.

3. Hiring

3.1 Recruitment

Employers are free to select personnel as they wish (see however section 4 "Discrimination"). Nevertheless, there are some obligations imposed upon employers when recruiting and selecting (such as paying the job candidate's expenses, giving proper information to the candidate etc). Companies with at least 50 employees must hire a certain percentage of trainees and young employed persons ("Rosetta" jobs). There are also special rules concerning disabled people.

3.2 Work Permits

Work permits are required for non-European Economic Area (EEA) nationals and should be applied for at the Ministry of Employment before the employee enters Belgium. They are usually only granted to persons in middle or senior management for a period of one year, but are renewable. In addition, residence permits are required both for the employee and his or her family and should be applied for as soon as the work permit has been granted.

4. Discrimination

Discrimination on 15 listed grounds (i.e. sex, race, colour, ancestry, nationality, ethnic origin, age, sexual orientation, religion, handicap, civil status, birth, wealth, health and physical characteristics) is expressly prohibited by the law of 25 February 2003. It should be noted that the Belgian Constitutional Court (*Cour d'arbitrage - Arbitragehof*) has in the meantime ruled that any discrimination on grounds other than those expressly set out in the law of 25 February 2003, should also be considered a violation of this law.

If an employee can provide evidence from which an inference can be drawn that the employer acted in a discriminatory manner, it will be up to the employer to prove that he had objective and justifiable reasons for not treating the employee in the same way as other employees. If the employer fails to demonstrate this, he could be forced to pay an additional indemnity of six months' remuneration, or more if the employee can show that he has been put at a substantial disadvantage.

The scope of this law is extremely broad: it applies to all aspects of the employment relationship, including hiring, payment of remuneration, promotion and dismissal. In addition, in 2002 a law on sexual and moral harassment was passed requiring employers to take all the necessary measures to avoid sexual and moral harassment in the work place and to designate persons responsible for giving assistance to victim. This law provides that an employer may not dismiss the victims of and/or the witnesses to a sexual or moral harassment for reasons directly or indirectly related to the harassment. Dismissal in breach of this prohibition can result in an additional indemnity of six months' remuneration, or more if the employee can show that he has been put at a substantial disadvantage.

5. Contracts of Employment

5.1 Freedom of Contract

There are certain restrictions on freedom of contract. No contractual term may be less favourable to the employee than any mandatory legislative provision or any applicable collective agreement. Indeed most of the provisions protecting employees are deemed to be mandatory ("*imperative*"- "*dwingerd*"). Additionally, provisions in the individual contract that allow the employer to unilaterally vary the contract, or to automatically terminate the contract (for instance, in the case of an employee reaching the standard retirement age) are void.

5.2 Form

A contract for an indefinite term need not be in writing. However, a provision purporting to contract out of a legislative provision or a collective labour agreement (where this is allowed) must be in writing, as must certain specific clauses such as a non-competition provision, a clause providing for a trial period or a clause capping the termination entitlement of a higher-paid employee. Some of these provisions must be agreed in writing prior to the commencement of employment.

Several types of contracts such as fixed-term contracts or contracts for a specific assignment must be in writing.
Such contracts may be renewed but not for several successive periods, except in justified circumstances. They are closely regulated to ensure that they are not used to evade the application of legal rules on indefinite contracts, for example, those on termination of employment.

However, a certain degree of flexibility exists to conclude successive fixed-term contracts. The parties may agree to conclude a sequence of a maximum of four fixed-term contracts, each contract having a minimum term of three months (not exceeding in aggregate a period of two years; in some circumstances and provided consent is obtained from the Social Inspection, a period of three years is permitted provided each contract has a minimum term of six months).

5.3 Trial Periods

The parties can agree (before the commencement of employment and in writing only) to a trial period. The law provides trial periods which are different for blue-collar workers (seven to 14 days), white-collar workers (one to six months) and employees earning above a pay threshold (one to 12 months). During the trial period, the contract can be terminated on short notice which varies according to the category of employee.

Special rules apply when the contract is suspended (due to sickness, for instance) and different periods apply for students and servants.

5.4 Confidentiality and Non-Competition

The law provides that an employee has a duty to refrain from disclosing business secrets and any other secrets of a confidential nature during the contract or after its expiry; nor may an employee engage in unfair competition. The terms of an employment contract can reaffirm these employee obligations but may not contain more restrictive obligations than those imposed by law.

Restrictions on competition applicable after the employment has ended are only valid if certain conditions are met (for example, a maximum duration of one year) and if these conditions have been expressly set out in the non-competition provision. The provision will not be effective if the employer dismisses other than in circumstances involving serious fault on the part of the employee. A non-competition provision is not valid in the case of a lower-paid employee. Where a non-competition provision is enforced the employer must make a payment to the employee equal to at least half the remuneration which would have been earned during the non-competition period had the employment continued. International companies and companies with a research and development unit benefit from more flexibility as regards the conditions of application of non-compete clauses and may also increase the time and geographical limitations applicable to such clauses.

5.5 Intellectual Property

In general, the employee is owner of his inventions. It is however possible to contractually provide otherwise in respect of inventions made by an employee during his/her working hours, in the course of his/her work and with materials provided by the employer. Other than in these circumstances, there is some legal debate as to whether an employer can contractually provide that patents will belong to it instead of to the employee.

Works protected by copyright also belong to the employee and may only be transferred to the employer by express agreement. In contrast, the patrimonial rights to software programmes and databases protected by copyright developed by employees automatically belong to the employer.

6. Pay and Benefits

6.1 Basic Pay

The National Labour Council negotiates annually a national collective labour agreement on minimum wages which is binding on all employers. As at October 2006, the standard minimum monthly gross wage amounts to €1,258.91. For full-time employees of 21½ years of age with more than six months' service this minimum wage amounts to €1,293.61. For employees of 22 or over with more than twelve months' service this minimum wage amounts to €1,309.03. In some sectors the collective labour agreements provide for remuneration scales.

Pay, including that of managers and executives, is usually index-linked as a result of compulsory collective labour agreements. The system is not uniform and different rules for the index-linking of salaries apply depending on the relevant collective agreement.

"Wage moderation" measures have been introduced, reducing substantially an employer's flexibility to determine salaries. For the period 2007-2008, the total salary cost of employers cannot increase by more than five per cent. The four and a half per cent margin includes increases resulting from the automatic indexation of salaries and scale increases set by collective labour agreements. In certain sectors of industry, the threshold may be reduced by decision of the union and employer representatives on a national level. For the period 2005-2006, the margin was four and a half per cent.

6.2 Private Pensions

There is no obligation on employers generally to provide private pension arrangements. However, legislation introduced in March 2003, was intended to facilitate a larger number of employees accessing private pensions by encouraging the establishment of industry sector level pension regimes. It considerably restricts the ability of an employer to make individual pension arrangements.

Typically, a company plan will aim to provide 1.25 per cent - two per cent of final earning for each year of service, less the state pensions earned during those years.

6.3 Incentive Schemes

A Law of 26 March 1999 introduced a favourable tax regime for stock options generally applicable to Belgian resident individuals. This law provides that the grant of stock options constitutes a taxable benefit, calculated on the basis of a percentage of the value of the underlying shares. The grant of stock options will be deemed to have been refused on the sixtieth day following the date of the offer of such stock options, in the absence of an express acceptance of the offer by the employee. For listed options, the taxable benefit is determined on the basis of the stock market price preceding the grant. For non-listed options, the taxable benefit is equal to 15 per cent of the value of the underlying shares, such percentage being increased by one per cent per year or fraction of a year for the duration of the life of the option exceeding five years from the date of the offer. If certain conditions are met, the taxable benefit can be reduced to half. Any positive difference between the value of the underlying shares and the exercise price is also subject to tax.

The benefit derived from the grant of the stock options is not subject to social security taxes except in special circumstances.

6.4 Fringe Benefits

There is a comprehensive state health system, but private medical plans that provide insurance for medical expenses not covered by the social security programme are not uncommon for salaried employees.

Other fringe benefits such as cars, meal vouchers and life insurance cover are common and once granted cannot be withdrawn. The procedure for agreeing them can sometimes be cumbersome and require a number of formalities to be complied with.

6.5 Deductions

Tax on employees' earnings is deducted by employers at source. The tax year is from 1 January to 31 December. Employees' social security contributions must also be deducted at source. There are concessions and deductions allowed for non-resident executives.

6.6 Miscellaneous

Collective labour agreements in many industry sectors require that on top of the monthly basic salary, employers pay an additional year-end bonus in the form of a thirteenth month, or in some rare instances, even a fourteenth month salary. During his/her holiday, a white-collar employee is entitled to his/her normal remuneration (simple holiday pay) and an additional 92 per cent of his/her monthly gross salary (double holiday pay). A white-collar employee's holiday entitlement and holiday pay is calculated by reference to the work carried out the previous year. Upon termination of a white-collar employee's employment contract, the employer is legally compelled to pay to the employee an end of service holiday payment for (i) accrued but untaken holiday in the year of termination (*i.e.* 15.34 per cent of the gross remuneration earned by the employee during the year preceding the termination) and (ii) the holidays to which he/she is entitled in the year following the year of termination, based on his/her employment with the employer in the year of termination (i.e. 15.34 per cent of the gross remuneration earned by the employee during the year of termination).

Blue-collar employees are entitled to a holiday allowance paid by the National Office of Annual Holiday ("*office National des Vacances Annuelles*" "*Rijksdienst voor Jaarlijkse Vakantie*"). In order to finance this, the employer must pay a monthly contribution broadly equal to six per cent of the salaries paid during the previous year and, must pay, an annual contribution equal to 10.27 per cent of the salaries paid during the same period.

7. Social Security

7.1 Coverage

The Belgian social security system provides for retirement, disability and survivors' pensions, sickness and maternity pay, occupational diseases and unemployment benefits, and family allowances.

7.2 Contributions

Every employer should be registered with the *Office National de Sécurité Sociale* and is liable to pay social security contributions. The scheme is funded by employers deducting social security contributions from employees' pay at source and by employers' own contributions. Both employees' and employers' contributions are based on a percentage of total earnings. Contributions are due in respect of all persons employed in Belgium. Exceptions may apply to European Union nationals who are working only temporarily in Belgium and are continuing to contribute to their home country scheme, or to nationals from countries that have reciprocal agreements with Belgium that provide for such exemptions.

Employee social security contributions amount to 13.07 per cent of salary. Employer contributions vary depending on whether they are for blue-collar (approximately 50 per cent) or white-collar employees (approximately 35 per cent). However, in certain sectors, these percentages can be much higher. This difference is mainly due to the fact that for blue-collar employees holiday pay is paid by the employer indirectly through social security contributions but for white-collar employees holiday pay is paid directly by the employer to the employee.

8. Hours of Work

Subject to exceptions, the maximum permissible hours of work are eight hours per day or 38 hours per week. Collective agreements usually provide for less than the maximum. Overtime is allowed in certain circumstances within specific limits. In addition to compensatory rest periods, overtime will in certain circumstances be paid at a premium of 50 per cent of hourly pay, increased to 100 per cent for Sundays and public holidays.

In principle, work at night (i.e. between 8pm and 6am) is prohibited. Under certain circumstances, however, and in certain professions work at night may be allowed.

9. Holidays and Time Off

9.1 Holidays

Employees are entitled to a minimum of 20 days per year, although collective labour agreements often increase such holiday entitlement. A holiday allowance is paid annually to blue-collar workers by a special fund. Employers pay a holiday bonus to white-collar employees in addition to the normal remuneration during the period of absence; the bonus amounts to 92 per cent of monthly gross salary.

There are ten public holidays in respect of which an employee is entitled to pay but cannot be obliged to work.

There is a system of paid educational leave that allows employees to attend recognised courses and take a specified number of hours off work for this purpose while maintaining their salary. During the educational leave the employee is entitled to his/her regular wages, subject to a maximum ceiling provided by law. The employer receives a limited reimbursement from the state.

9.2 Family Leave

Women are entitled to 15 weeks' maternity leave. Maternity pay is provided by the social security fund; it amounts to 82 per cent of the daily gross salary (uncapped) for the first 30 days and 75 per cent of the daily gross salary (up to €82.17) for the remaining period. The father is also entitled to ten days' paid paternity leave after the birth.

The first three days of paternity leave are paid by the employer. The seven remaining days are paid by the medical cost insurance to which the employer is affiliated. Paternity pay for this period amounts to 82 per cent of the daily gross salary (up to €89.84).

Women are also entitled during their working hours to take one or two breast-feeding breaks of 30 minutes during a seven-month period after the birth. Both the mother and the father are entitled to parental leave up to a child's sixth birthday. The parents have a number of options: (i) they can choose to entirely suspend their employment for a maximum period of three months. This period may be split up into three separate monthly periods; (ii) the parents may prefer to work part-time during an uninterrupted period of six months; (iii) the parents may opt to reduce their working time from 100 per cent to 80 per cent during a period of 15 months. This period may be split up into periods of a minimum five months. Each parent is entitled to parental leave regardless of which parental leave option (if any) the other parent chooses.

If the employer terminates the employment contract for a reason related to parental leave, it will be compelled to pay an indemnity of six months' remuneration in addition to the ordinary termination package.

9.3 Illness

Employees are entitled to guaranteed wages in the event of sickness. The arrangement depends on the classification of the employee (white-collar workers or blue-collar workers), seniority and on whether the employee is in his trial period or not. White-collar workers engaged under an indefinite contract who are sick after the end of their trial period are entitled to guaranteed wages during the first 30 days of their absence. After the period covered by the guaranteed wages, the employee is entitled to benefits from the social security fund.

10. Health and Safety

10.1 Accidents

Employers are liable for their employees' work related accidents including those occurring on the way to or from work or during and as a result of the employment. Insurance covering such liability is compulsory. Also, every employer must organise or subscribe to a company medical service responsible for the health and safety of workers.

10.2 Health and Safety Consultation

Any undertaking with 50 or more employees must establish a Health and Safety Committee (*Comité pour la Prévention et Protection au Travail*) with employer and employee representatives. The committee is entitled to receive a monthly report on health and safety conditions, information on potential risks and reports on the activities of the safety officer and medical service from the employer. It must be consulted on health and safety policy, the purchase of protective equipment and changes in the working environment. It does not have power to stop the work of the undertaking on health and safety grounds.

All companies - irrespective of the size of workforce must create an internal or external safety and security service in the work place, which must collaborate with the Health and Safety Committee, if any.

11. Industrial Relations

11.1 Trade Unions

There is a legally guaranteed right to form, belong to or not to belong to a trade union. About 80 per cent of the national workforce is represented by trade unions. Unions are not incorporated, have no liability at law and cannot be sued. However, a union recognised by the Ministry of Labour has locus stand in the labour Court to sue for enforcement of legal rights granted to its members. The three major union confederations, which are closely linked with the three major political parties, are as follows:

- *ACV-CSC* (Confederation of Christian Trade Union) - linked to the Christian Democrats;
- *ABVV-FGTB* (Belgian General Federation of Labour) - linked to the Socialists; and
- *ACLVB-CGSLB* (Federation of Liberal Unions of Belgium) - linked to the Belgian Liberal Party.

Unions tend to be industry based. They usually have separate sections for white and blue-collar workers and for French and Dutch speakers. Local groups are co-ordinated at national level where the most important negotiation and decision-making occur, although there has been a trend to more company-based agreements to supplement national agreements, particularly in more prosperous, strongly unionised undertakings.

11.2 Collective Agreements

Collective agreements are concluded;

- at national level by the National Labour Council which has a general jurisdiction in matters such as minimum wages, recruitment, hours of work, etc;
- at industry sector level in Joint Committees with representatives of both employers and employees in different types of trades and industries and cover matters such as minimum wages, index linking of remuneration, hours of work, annual holidays, restriction on the employers' rights of dismissal, annual bonus etc; and
- at the individual undertaking level by agreement between the employer and the relevant unions.

11.3 Trade Disputes

Belgium has no comprehensive strike law, but, in the case of "official" strike action, participation is neither a crime nor a breach of contract. The contracts of the employees who are striking and of those who are prevented from working are suspended for the duration of the strike; the employees are not entitled to their wages. Employees who participate in the strike will normally receive a daily payment from their respective union organisations. Employees who do not participate in the strike but cannot work as a result of the strike are entitled to salary from the employer or to unemployment benefits subject to the approval of the unemployment

authorities. Lock-outs, although possible, are virtually never initiated by employers in Belgium.

11.4 Information, Consultation and Participation

Trade unions, via their representatives in the National Labour Council, have the right to be consulted by the Government on proposed regulations in certain fields of labour law. Also, unions participate in the management of, for example, the National Social Security Office, the National Employment Office and the Work Accident Fund.

At plant or undertaking level, information is provided to and consultation/ negotiation can be conducted with or through:

- Labour Union Delegations - these represent union members and deal with plant or undertaking level negotiations and disputes; collective labour agreements in each sector of industry determine the terms upon which a union delegation may be established in an undertaking;

- Works Councils - undertakings with at least 100 employees must establish a Works Council. The Council is made up of employee and employer representatives and has a right to certain information about the business and a right to be consulted before certain management decisions are taken - there is a limited right of co-decision making (principally on "social matters" like annual holiday dates). Consultation is required in respect of collective redundancies and take-overs. The Works Council must meet at least once a month and upon the request of at least half the employees. Time spent on Council activities is treated as normal working time; and

- Health and Safety Committees - undertakings with 50 or more employees must have such a committee.

12. Acquisition and Mergers

12.1 General

The Acquired Rights Directive has been implemented in Belgium under Collective Labour Agreement Nr. 32 bis. According to this Collective Labour Agreement, in the event of a take-over or acquisition of a business, the transferee takes over all rights and obligations with regard to the employees. In principle the sale or transfer of the business cannot be used as a reason for dismissal. Likewise, unless there has been a change in the terms and conditions of employment, an employee cannot treat the sale as breach of contract.

Special rules apply when the undertaking transferred is that of an insolvent company.

12.2 Information and consultation requirements

With the exception of article 15 bis, the Collective Labour Agreement Nr. 32 bis does not contain any provisions imposing special information and/or consultation requirements in the event of a transfer of an undertaking or a part of an undertaking. Therefore, the general rules on information and consultation set out in the collective labour agreement n° 9 of 9 March 1972 apply. This provides that in the case of a merger or acquisition, closure or other significant structural changes in respect of which the undertaking is conducting negotiations, the work's council needs to be informed at an appropriate time and before any announcement is made. It must be consulted in advance on the impact of the transaction on the employment prospects, the organisation of the work and the employment policy in general.

If the company does not have a works' council, the information and consultation must take place with the union representatives. In the absence of a works' council or trade union the company must inform its employees directly.

The employer must inform the employees' representatives of the economic, financial or technical reasons for the contemplated transaction as well as of the possible economic, financial and social consequences of the transaction. In addition, the employees' representatives must also be effectively consulted on such measures, in particular on employment forecasts, on work organisation and on the company's employment policy.

It should be noted that Collective labour Agreement Nr. 9 does not set out how the procedure of information and consultation should be conducted. One meeting should be sufficient for the information procedure; although the *information* could be provided verbally, it is however advisable to have written proof (*e.g.* a statement in the minutes of the council's or union's meeting). The *consultation*, on the other hand, should be interactive: the employer will have to give its employees' representatives the opportunity to ask questions in relation to the contemplated transaction, to formulate arguments and make counter propositions, and, will have to examine and answer the questions, arguments and counter propositions. Several meetings will therefore need to be held. It is important to note that, although there is a duty to effectively consult (*i.e.* to *try* to reach a consensus), the employer will not need to obtain an actual agreement with its employees' representatives; they have no power of veto. Accordingly, the employees' representatives will not have the ability to delay or to prevent the contemplated transaction.

Article 11 of the CLA n° 9, provides that the information must take place "*in due course and before any announcement is made*", and consultation must "*effectively*" take place "*in advance*". Article 3 of the CLA n° 9, provides that the information and consultation must take place "*prior to the decision being taken*. (…) *This must enable the works council to expertly conduct discussions during which the members will be able to advise, make suggestions or objections.*"

Accordingly, the information and consultation process must thus take place prior to the decision on the planned change in structure.
The employees' representatives cannot be presented with a "*fait accompli*" and the employer may not reduce the information and consultation to a mere formality. In addition, the works council

must be informed before any public statement is made.

Even if a company does not have to inform and consult with the employees' representatives according to article 11 of CLA n° 9, it may nevertheless have an obligation to inform on the basis of article 25 of the Royal Decree of 27 November 1973, when (i) it has a works council, (ii) the contemplated transaction is known to it and (iii) the contemplated transaction could have a significant impact on the social, financial and economic situation of the company, irrespective of whether the company is conducting negotiations.

Unlike article 11 of CLA n° 9, the employees' representatives need only be informed of the consequences of the events or the decisions for the development of the company's activities and for the employees' situation. The Royal Decree does not require consultation as such. The information must be provided "*if possible, before the decision is implemented*". The information may therefore be given after signing but before closing. The words "*if possible*" mean that these decisions have to be communicated before they are implemented, unless it is practically impossible for the employer to convene the work's council, or the employer has an obligation of confidentiality based on other regulations.

Finally, if redundancies are contemplated, the employer will be obliged to follow an additional information and consultation procedure if he is facing a collective dismissal. However, the rules that must be applied in such situation are different (and stricter) than those described above.

12.3 Notification of Authorities

The Federal Ministers of Finance and of Economic Affairs and the regional Minister of Economic Affairs must be notified in advance of a transfer of one-third or more of the equity of a company conducting its business in Belgium if that company's net assets are €2,500,000 or more, but no government consent or response is required and the law does not provide for any penalty in case of a failure to notify. This notification obligation does not apply in relation to the Walloon region.

12.4 Liabilities

Failure to comply with the information and consultation obligations of CLA n° 9 does not affect the validity of a transaction. However, it can result in criminal sanctions, if the works' council or union delegation had to be informed and consulted, subject to a maximum of EUR 550,000. If the employer is not subject to criminal sanctions, it may still be subject to administrative fines of EUR 50 to EUR 1,250 per employee subject to a maximum of EUR 20,000. In addition, employees could also claim damages for non-compliance with Collective Labour Agreement No. 9 by the company.

Failure to comply with the information obligations of the Royal Decree can also result in criminal sanctions.

In the event of a collective dismissal, failure to comply with the information and consultation obligations may give rise to criminal sanctions, including fines and imprisonment against the undertaking itself as well as against the managers. In addition, the employees may challenge the validity of the information procedure. If the challenge is found to be justified, the employees can ask to be reinstated, and failure to reinstate them will result in an additional indemnity.

An undertaking that takes over another must respect the terms of any previously agreed collective labour agreement until the expiry of that agreement. In addition, the terms of such collective labour agreement which are deemed to form part of the individual employment contracts, cannot be withdrawn or modified unilaterally by the employer.

13. Termination

13.1 Individual Termination

An employment contract entered into for a fixed-term or for a specific assignment expires automatically when the agreed period has elapsed or when the agreed assignment is completed.

An employment contract entered into for an indefinite period of time can be terminated by giving notice or by paying compensation in lieu of notice.

13.2 Notice

A contract concluded for an indefinite period of time may be terminated by the employer or the employee by giving notice. Notification of the start date and the duration of the notice period must be in writing (if by the employer, in the mother tongue of the employee) and sent by registered mail to the other party. The notice is deemed to have been received three working days after the date of the dispatch of the notice and takes effect on the first day of the following week in the case of blue-collar employees, and on the first day of the following month in the case of white-collar employees. In urgent cases, this process can be speeded up, using a bailiff notification. Notice periods are:

	Notice by Employer	Notice by Employee
Blue-collar		
- between 6 months' and 5 years' service	35 days	14 days
- between 5 years' and 10 years' service	42 days	14 days
- between 10 years' and 15 years' service	56 days	14 days
- between 15 years' and 20 years' service	84 days	14 days
- 20 years' service or more	112 days	28 days
White-collar earning €28,093 per annum or less		
- up to 5 years' service	not less than 3 months	1½ month
- for every further 5 years' service	a further 3 months	max 3 months
Highly paid white-collar	"reasonable notice"	max 6 months

For blue-collar employees, collective agreements regularly provide for longer notice periods and for white-collar employees, collective labour agreements can provide for certain special procedures or can impose restrictions on dismissals which may entitle the dismissed employees to additional indemnities.

Highly paid white-collar employees are defined as those earning above a pay threshold which is adjusted annually (€28,093 per annum for the year 2007). The notice period for these employees has to be agreed at the time of the dismissal failing which it has to be fixed

by the labour Court. In fixing a reasonable period of notice, the Court will take into account factors such as the age of the employee, his or her period of service with the employer, the position held and the remuneration. Several formulae based on statistical analysis of relevant cases are used for calculating notice periods, but Courts are not bound by any of them.

A period of notice fixed in advance will not bind the parties, except in the case of higher paid employees (i) earning salaries above a threshold level (in 2007, €56,187 per annum), (ii) employed after 1 April 1994 and (iii) with whom a notice period was agreed before the commencement of the employment. Such previously agreed notice periods may not be less than three months for each period of five years' service commenced.

The employer can also terminate the contract by paying compensation in lieu of notice. In this case, there are no particular formalities and the termination can take effect immediately. The compensation is equal to the remuneration that would have been earned during the notice period.

13.3 Reasons for Dismissal

There is, in principle, no obligation to justify a decision to give notice but the right to give notice must not be exercised "abusively", otherwise the other party may be entitled to claim compensation. However, according to the law of 25 February 2003 against discrimination, it is unlawful to select employees for redundancy on discriminatory grounds. Breach of this legislation entitles an employee to an indemnity of a minimum of six months' remuneration. With regard to blue-collar employees, the law considers a termination to be "abusive" if the employee can show that he or she was not dismissed for reasons connected with his or her conduct or competence or some bona fide economic reason connected with the running of the business.

The employer can terminate the contract immediately for gross misconduct (*motif grave - dringende reden*), i.e. any culpable act or omission immediately rendering the continued working relationship impossible. The termination must be notified in writing but is operative instantly. If the employer does not act within three working days of discovering an employee's gross misconduct, it cannot be used to justify instant dismissal without notice or payment in lieu of notice.

Until 30 June 1997, the normal retirement age was 60 years for women and 65 years for men. As of that date, however, the retirement age for women is progressively being increased so that by the year 2009, the normal retirement age will be 65 years both for men and women. With effect from 1 January 2006, the retirement age for women is 64 years.

Termination is not automatic and notice has to be given by the employer but reduced notice periods apply from age 60 (in the event of a resignation by the employee) and from the age of 65 (in the event of dismissal by the employer).

Pre-pension arrangements are available in certain circumstances. These schemes are normally available to persons over 60 years of age with at least 20 years' service unless a lower age threshold is agreed by collective labour agreement at the level of the relevant joint committee or at the level of the undertaking. If an employee under an early retirement scheme is dismissed, then the employer may be liable to pay half the difference between the net salary (calculated by reference to the monthly gross salary up to a ceiling) and unemployment benefits during such period that the employee is unemployed and receives unemployment benefits. This pre-pension payment is in addition to notice (or the payment of compensation in lieu of notice) but is only due after the expiry of the notice period (or the period covered by the compensation in lieu of notice). Where a pre-pension agreement is agreed between the employer and the employee, it is relatively common to reduce by mutual agreement the notice (or compensation in lieu of notice) to the minimum legal entitlement.

13.4 Special Protection

The law provides special protection for several categories of employees who are considered particularly vulnerable such as pregnant women, candidates and delegates to Works Councils and Health and Safety Committees, safety advisers, employees holding political office and those called up for service with the armed forces, etc.

Such protection generally includes a prohibition against dismissal and an obligation to pay a variable sum by way of compensation if the prohibition is infringed. For instance, a delegate to the Works Council at the beginning of his or her mandate and with more than 20 years' service could claim a special payment of up to eight years' salary.

13.5 Closures and Collective Dismissals

Special rules apply to undertakings which have more than 20 employees.

In the event of the closure of an undertaking with an average of at least 20 employees in the previous calendar year, or in the event of a large reduction in its workforce (i.e. to below one quarter of the average number of persons employed in the preceding year), an additional redundancy payment must be paid to employees with more than one year's service whose employment has been terminated during a stipulated period before or after the closure of the undertaking or reduction in its workforce.

There are other procedures and payments in the event of collective dismissals by an undertaking which had an average of at least 20 employees in the previous calendar year. How the rules on collective dismissals will apply depend upon the size of the undertaking and the number of dismissed employees. In addition to the notice or payment in lieu of notice, a payment must be made to employees who, following their redundancy, are either unemployed or have found new employment but at lower pay. An employee is not entitled to receive both collective dismissal and closure payments.

In the event of either closure or collective dismissals, there is an obligation to inform and consult with employees. The employer must inform the Works Council or, if there is no Council, the union delegation (or the employees directly if none of these bodies exist) of the proposed redundancies or closure. In addition, various Governmental agents must be informed such as the Ministry of Labour and the Regional Office of Employment. Specific procedures, formalities and waiting periods apply in both circumstances. Failure to comply with the information and consultation procedure may give rise to civil and criminal and/or administrative sanctions.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the law of 8 December 1992 on the protection of privacy in relation to the processing of personal data (the "Privacy Law"). The Privacy Law was amended with effect from 1 September 2001 by the law of 11 December 1998 implementing the EU Data Protection Directive. Infringement of the Privacy 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, up to date, and is not kept longer than is necessary and a requirement that it is stored securely to avoid unlawful access or accidental destruction or damage to it.

Employers are generally advised to ensure they have some sort of document retention policy in place and to ensure that staff are aware of their data protection obligations. Employers will also need to provide certain information to the employees in respect of the data processing. A notification to the Privacy Commission (the Belgian data protection regulator) will often be required. The notification is essentially a registration of what data is processed and the purposes of the processing.

The processing of sensitive personal data, (meaning data which reveals racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership and data concerning sex life as well as judicial data) can only be processed if the employer can rely on one of the statutory justifications for such processing.

14.2 Employee Access to Data

Employees, as data subjects, have the right to make an access request. This entitles them, subject to certain limited exceptions, to be told what data is held about them, how it has been obtained and to whom it has been disclosed to and to be provided with a copy of their personal data. There is a 45-day time limit for responding to such a request. Subject access requests cover personal data held in manual and electronic records such as e-mail. Subject access requests are uncommon and there is no standard approach in respect of whether fees are levied for the provision of this information.

14.3 Monitoring

The monitoring of employee e-mail, Internet and telephone usage and Closed Circuit TV monitoring is regulated by the Privacy Law, among other pieces of legislation. On 26 April 2002, the National Labour Council approved a collective labour agreement which deals specifically with the protection of employee privacy in the context of the monitoring of electronic communications data. This agreement is binding on all employers.

Monitoring is permissible provided that it is carried out in accordance with the Privacy Law principles and processing conditions. In addition, the collective labour agreement specifies that monitoring is only permitted for certain purposes and that the infringement of the privacy of employees should be minimised; so for example, data should be collected about the duration of Internet connections rather than data about individual sites visited. Express employee consent to monitoring will usually be required. In addition, both the works council and the individual employees should be made aware of the purpose for which the monitoring is being conducted. Where disciplinary action is a possible consequence of anything discovered, this too should be made clear to employees. The collective labour agreement sets out specific procedural requirements where the monitoring gives rise to a need to link the data to a specific employee.

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 Privacy Law principles and processing conditions. In many cases it may be necessary to obtain express consent to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information in question and the location of the third party. Where the third party is based outside the EEA it should be noted that the Privacy Law prohibits the transfer of data to a country outside the EEA unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply. In the context of commercial transactions where employee data is requested, care must be taken to comply with the Privacy Law. Where possible anonymised data should be provided.

Bulgaria

1. Introduction

A fundamental principle of the Bulgarian Constitution is that labour is guaranteed and protected by the law. The right to work is recognized as a fundamental right of citizens and the Bulgarian State is obliged to facilitate the exercise of that right by all persons (including those with physical or mental impairments). The Constitution expressly prohibits forced labour and sets out the following basic rights for employees: (i) freedom to choose employment; (ii) healthy and safe working conditions; (iii) a minimum salary; (iv) a remuneration corresponding to the work performed; (v) a right to rest and leave. Each of these rights is to be exercised in accordance with the relevant legislative provisions.

The Labour Code is the principle source of law regulating the legal relationship between an employer and an employee including the following: addressing trade unions and employers' organizations, collective agreements, employment contracts, information and consultation rules, working time, leave, work discipline, disciplinary liability and other employer's and employee's liabilities, remuneration, health and safety and termination of the employment relationship. The Labour Code has been amended with a view to implementing the relevant EU Directives applicable to labour issues.

It is a fundamental principle of the Labour Code that the State must consult with employees, employers and their representative organisations before labour legislation is implemented. This concept is referred to as "the social dialogue". Social dialogue is achieved by means of trilateral collaboration (the "tripartite principle"). Trilateral collaboration is performed by the National Council for Tripartite Co-operation (the NCTC) which is comprised of representatives of the Council of Ministers and the employees' and the employers' representative organizations.

State control over the implementation of labour legislation is executed by the special executive agency "General Labour Inspectorate".

It is not possible to contract out of the statutory protection conferred on employees, and contracts of employment or clauses of such contracts that are contrary to mandatory statutory provisions or to collective agreements are null and void.

Some specific areas of employment law (e.g. health and safety at work, employment promotion, collective labour disputes etc.) are governed by specific legislation (for example Health and Safety at Work Act, Employment Promotion Act, Settlement of Collective Legal Disputes Act). The Labour Code provides that the legislative provisions of such specific legislation prevail over the more general provisions of the Labour Code. In addition, certain labour issues are regulated in more detail by secondary legislation. It should also be noted that other legislation also contains specific provisions regulating employment relationships, e.g. Higher Education Act, Republic of Bulgaria Defence and Armed Forces Act.

Bulgaria has been a member of the International Labour Organization since 1920 and it has ratified numerous international treaties governing labour matters such as forced labour, trade-union freedom, discrimination, minimum age for employment etc. Bulgaria ratified the European Social Charter in 2000. Such international treaties take priority over any conflicting provisions of domestic legislation.

Collective agreements are regulated by the Labour Code and have a dual nature: on one hand they have contractual effect and on the other hand they are a source of law in the sense that they establish minimum rights and obligations in respect of certain employee categories which are more favourable for the relevant employees than the minimum terms and conditions prescribed by the Labour Code.

The civil departments of the relevant District Court settle labour disputes between employees and employers. Collective labour disputes between employees' organizations and employers are settled under the procedures regulated by the Collective Labour Disputes Settlement Act, i.e. through negotiations, mediation and/or arbitration, where the arbitration is performed by the National Institute for Conciliation and Arbitration.

2. Categories of Employees

2.1 General

The terms "factory workers" (for blue collar employees, who are directly involved in production or other activities principally requiring manual work) and "office workers" (for white collar employees, performing mainly intellectual work) are used in the Labour Code to differentiate these two categories from a purely linguistic point of view. Bulgarian labour legislation does not include specific regulations providing for differential treatment of blue and white-collar staff.

There are currently three labour categories in Bulgaria: first, second and third. These categories are significant for the purposes of the right to retire. Employees who come within the first or second labour categories are entitled to retire earlier than employees in the third category.

2.2 Directors

Directors who manage and represent companies perform their duties pursuant to management agreements. By their legal nature, those agreements are not contracts of employment but "special mandate" agreements, which are regulated by Bulgarian commercial and civil law. For social insurance purposes (see further below) company directors are treated as compulsory insured persons against all social insurance risks.

2.3 Other

Statutory working time in Bulgaria is eight hours a day for a five-day working week. An employer and an employee may agree on part-time employment provided that the part-time employee is not treated less favourably than a comparable full-time employee who performs the same or similar work at the enterprise. Part-time employees enjoy the same rights and have the same duties as employees working on a full-time basis, except where the law makes the enjoyment of

certain rights contingent on the duration of the time worked, length of service, qualifications possessed etc.

Part-time employment must be distinguished from "reduced working time". Reduced working time is established in relation to employees, performing their duties under specific conditions, where the risks to their life and health cannot be eliminated or reduced regardless of the measures taken, but a reduction in the duration of working time can contain the risks to health. Secondary legislation prescribes those areas of work subject to reduced working time. Where there is a reduction in working time, the employee's remuneration and other entitlements may not be reduced.

Fixed-term contracts of employment may be entered into: (i) for a period not exceeding three years, unless otherwise provided for by legislation; (ii) for the duration of a specific project; (iii) for the temporary replacement of an employee who is absent from work; (iv) for a temporary period until the position is filled on a permanent basis following a competitive examination; or (v) for a fixed term of office. Employees under fixed term contracts of employment have the same rights and obligations as employees under contracts of indefinite duration. Fixed-term employees may not be treated in a less favourable manner than comparable permanent employees performing the same or similar work at the enterprise solely because of the fixed-term nature of the employment relationship except where certain rights are contingent on the possession of qualifications or the acquisition of skills as a matter of law. Fixed-term employment contracts are normally entered into for casual, seasonal or short-term work, as well as with newly employed persons in enterprises that have been pronounced bankrupt or put into liquidation. As an exception, a fixed-term employment contract may be concluded for a period of more than one year for work that is not of a casual, seasonal or short-term nature.
Any fixed-term employment contract concluded in violation of those regulations will be treated as a contact of indefinite duration.

The Labour Code defines secondment as the performance of labour duties outside the place of the employee's permanent work. The maximum permissible period of secondment is 30 calendar days. Secondment for a period in excess of 30 days requires the express written consent of the employee. Pregnant women may not be seconded. Mothers of children who are under the age of three may only be seconded with their written consent.

During a period of secondment the employee is entitled to receive his/her gross salary plus a travelling allowance for the secondment period.

The Civil Servants Act (the "CSA") defines civil servants as persons holding salaried tenured positions in the state administration and assisting a body of state power in the exercise of its powers.

The CSA regulates the requirements that must be met by a person in order to be appointed as a civil servant. One of the key requirements is that such a person must be a Bulgarian citizen. Civil servants do not work under an employment relationship regulated by the Labour Code, but under a civil-service relationship that is governed by the CSA. The establishment of a civil-service relationship is always preceded by an open competition procedure.

The competent authority with an administrative act of employment appoints the person taking the position of a civil servant and the civil-service relationship commences on the date on which the appointed person assumes his/her duties. The civil-service relationship may be terminated in accordance with, and for the reasons specified under, the procedures set out in the CSA.

3. Hiring

3.1 Recruitment

Employers are free to select and employ personnel corresponding to their particular requirements provided that the selection and employment procedures are not discriminatory.

Employers recruit via a variety of sources (internet or media advertising, personnel recruitment agencies etc). Since 1 January 2002 the State policy on employment has been governed by the Employment Promotion Act. This established the National Employment Agency for the execution of the State policy on employment promotion, protection of the labour market, training of unemployed persons, recruitment, mediation etc. Employers may at their discretion inform the National Employment Agency of vacant positions and are further obliged to inform the Agency when such positions are filled or where a notified vacancy is withdrawn without being filled. In addition the Agency must be notified of any unemployed persons who have refused to accept a vacant position.

3.2 Work Permits

Non-Bulgarian citizens ("foreigners") may work in Bulgaria as employees or secondees after obtaining a work permit. A work permit must be issued by the Employment Agency at the request of a local employer or of the local person appointing the seconded foreigner. A work permit is not required by foreigners who have been granted permanent residence in the Republic of Bulgaria or by foreigners who have been granted asylum, refugee or humanitarian status.

Work permits will be issued to foreigners in relation to positions where the occupation does not require Bulgarian citizenship to be held and the following conditions are satisfied: (i) the state, development and public interests of the national labour market are satisfied; (ii) the total number of foreigners working for the local employer does not exceed 10 per cent of the average annual number of Bulgarian citizens and foreigners with granted right of asylum or with recognized refugee status hired under an employment relationship within the last preceding twelve months; (iii) the conditions of work and pay offered are not less favourable than the conditions available to Bulgarian citizens for the relevant work category; and (iv) the remuneration meets national minimum wage requirements.

Condition (ii) above does not apply to any European Union Member State

citizens or citizens of other Contracting States to the Agreement on the European Economic Area. Bulgaria strictly applies the EU regulations pertaining to the free movement of people.

Work permits are not required for EU citizens to work in Bulgaria. They are allowed to enter freely into an employment relationship with a local employer; however, they will have to apply for a long-term residence permit.

4. Discrimination

The Labour Code prohibits direct or indirect discrimination on grounds of ethnicity, origin, gender, sexual orientation, race, skin colour, age, political and religious convictions, affiliation to trade union and other public organisations and movements, family and property status, existence of mental or physical disabilities, as well as differences in the contract term and the duration of working time.

The special Protection Against Discrimination Act (the "PADA") also prohibits direct or indirect discrimination on the grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status and property status.

Direct discrimination is legally defined as any less favourable treatment of a person, on one of the prohibited grounds specified in PADA, than the treatment another person is receiving, received, or would receive in comparable circumstances. Indirect discrimination arises where a person is placed in a less favourable position compared to other persons through an apparently neutral provision, criterion or practice, as an indirect consequence of falling within one of the protected categories specified in PADA unless that provision, criterion or practice is objectively justified in view of a legal aim and the means of achieving this aim are appropriate and necessary.

Discrimination during a recruitment process is expressly prohibited.

Employers are also obliged to ensure equal working conditions for all employees, including equal pay for like work or work of equivalent value, equal opportunities for training with a view to improving skills and qualifications, equal criteria for terminating employment contracts and for disciplinary sanctions. One of the most significant obligations on an employer is the requirement to adapt the workplace to meet the particular needs of disabled employees unless the costs of such changes are unreasonably high.

Employers are not permitted to refuse to employ a person on the grounds of pregnancy, maternity or parental responsibility.

Harassment and sexual harassment are expressly outlawed. Harassment is any unwanted physical, verbal or other conduct on one of the prohibited grounds aimed at, or resulting in, a violation of a person's dignity and the creation of a hostile, offensive or intimidating environment. Sexual harassment is any unwanted physical, verbal or other conduct of a sexual nature, which violates dignity or honour and creates a hostile, offensive, degrading or intimidating environment.

An employer who receives a complaint from an employee who believes that he/she is subject to harassment, including sexual harassment, in the workplace, is obliged to immediately hold an inquiry, take measures to stop the harassment, and to discipline any employee if he/she is found to have caused the harassment.

PADA specifies limited situations in which different treatment will not amount to discrimination e.g. when the nature of a particular activity or occupation demands different treatment of persons on the grounds of their gender or when different treatment of persons on the grounds of their religion is necessary with regard to occupations in religious institutions etc.

The Commission for Protection Against Discrimination is established as an independent institution for preventing discrimination ensuring equal opportunities and ensuring compliance with PADA and other legislative provisions regulating equal treatment. Every individual, legal entity or institution may bring a case to the Commission. The Commission may also initiate a case in circumstances where it becomes aware of discriminatory practices.

In the course of exercising its powers, the Commission (i) assesses whether there have been violations of equal treatment legislation; (ii) can order the cessation of discriminatory treatment and require the status quo to be re-established; (iii) can impose administrative sanctions and enforcement measures; and (iv) can issue mandatory directions for compliance with equal treatment legislation. In certain cases the Commission can impose fines on individuals and employing entities ranging from BGN 250 to BGN 2,500 depending on the nature of the violation. More severe sanctions may be available in serious cases.

The decisions of the Commission are subject to appeal to the Supreme Administrative Court.

5. Contracts of Employment

5.1 Freedom of Contract

The Labour Code regulates freedom of contract. Contracts of employment establishing terms and conditions, which are less favourable for employees than mandatory provisions of law or collective agreements, are null and void. Generally, neither the employer nor the employee may unilaterally modify the employment relationship, although there are some exceptions provided for by law. If an employee is transferred to another job within the same enterprise, without changing the specified place of work, the position or the amount of the basic wage this is not treated as a modification of the employment relationship. The employer may unilaterally increase an employee's pay.

5.2 Form

The Labour Code requires contracts of employment to be in writing. The employer is obliged to notify the respective territorial directorate of the

National Revenue Agency within three days of concluding or amending the employment contract and within seven days of its termination.

5.3 Trial Periods

The Labour Code expressly regulates contracts of employment with a trial period. Where the work requires the abilities of the employee to be assessed, his or her permanent appointment may be preceded by a contract of employment with a trial period of up to six months. Such a contract may also be concluded where the employee wants to verify whether the work is suitable for him/her. Such a trial period contract must expressly state for whose benefit the trial period is being established. Where the contract does not include such a statement the trial period is presumed to be for the benefit of both parties. During the trial period, the parties have the same rights and obligations as under a permanent contract of employment. After the expiry of the trial period no other trial period contract may be concluded between the same employer and employee for the same type of work at the same establishment. The party for whose benefit the contract is concluded may terminate it without notice at any time prior to the expiry of the trial period. If the contract is not terminated until the expiry of the trial period it is then treated as a permanent contract of employment.

5.4 Confidentiality and Non-Competition

Under the provisions of the Labour Code an employee is obliged to be loyal to the employer, not to abuse the employer's trust, not to disclose any confidential data and to protect the reputation and goodwill of the enterprise.

An express non-competition clause may be included in a contract of employment. It should be noted, however, that a non-compete clause is generally construed as contrary to public policy and will therefore only be enforceable if the employer demonstrates that the clause is a reasonable means of protecting an identified legitimate interest.

5.5 Intellectual Property

The general rule under the Copyright and Neighbouring Rights Act is that intellectual property created by an employee during the course of an employment relationship belongs to the author. The employer is, however, granted the exclusive right to use such intellectual property for its own purposes, without permission from the author and without paying compensation, unless the contract of employment provides otherwise. The employer is allowed to exercise that right in a manner that is consistent with the usual business activity of the enterprise.

6. Pay and Benefits

6.1 Basic Pay

The national minimum wage is determined by the Council of Ministers annually at the beginning of the relevant year and the minimum wage applies with effect from 1 January of that year. The minimum monthly wage for 2007 is BGN 180 and the minimum hourly wage BGN 1.07 (for an eight hour working day, five day working week).

Collective agreements in some industrial and business sectors also establish more generous minimum remuneration levels for the relevant industry sectors.

Employers are not obliged to index link. The employer and the employee may agree on index linking when concluding an individual contract of employment or index linking may be agreed in a collective labour agreement.

Normally the salaries in the so-called "budget sphere" (i.e. institutions and establishments financed by the State Budget) are indexed on an annual basis pursuant to the respective State Budget Act.

6.2 Private Pensions

Supplementary social insurance in Bulgaria is implemented through participation in universal and/or occupational pension funds, supplementary voluntary retirement insurance funds and/or funds for supplementary voluntary retirement insurance under occupational schemes, and in supplementary voluntary unemployment or vocational-training insurance funds, which are incorporated and managed by insurance companies licensed according to the procedure established by the Social Insurance Code. The Bulgarian State regulates the activity of supplementary social insurance companies and funds for the purpose of protecting the interests of the insured persons and the pensioners. The Financial Supervision Commission regulates the activity of supplementary social insurance companies and funds.

Current Bulgarian legislation gives employers the opportunity to pay social insurance contributions for their employees to supplementary social insurance companies and funds and many employers do so. Employers are not, however, legally obliged to pay such contributions for the supplementary social insurance of their employees.

6.3 Incentive Schemes

Bulgarian law does not specifically regulate share schemes and they are not mandatory. However, such schemes may be operated as a means of incentivising employees or may be covered by collective agreements.

6.4 Fringe Benefits

Fringe benefits (e.g. company car, company mobile phone etc.) are not mandatory. Such benefits are normally provided to managerial staff. Individual contracts of employment will regulate the nature of any such benefits to be provided.

6.5 Deductions

Employers are obliged to deduct on a monthly basis income tax, the employees' social security contributions (these are paid together with the employer's social security contributions) and mandatory health insurance contributions. The employer may also be obliged to make deductions from the employee's remuneration in cases where there is a valid court order in respect of such deductions.

7. Social security

7.1 Coverage

The social security system in Bulgaria is administered by the State. The Social Insurance Code requires Bulgarian

employees to be compulsorily insured against all social risks where they are employed for more than five working days or 40 hours within one calendar month, irrespective of the nature and duration of their work and the method of calculating and paying their remuneration. Civil servants also have to be insured against all social insurance risks.

The Public social insurance system in Bulgaria provides benefits, allowances and pensions for: (i) temporary disability; (ii) temporarily reduced working capacity; (iii) disablement; (iv) maternity; (v) unemployment; (vi) old age; and (vii) death.

These benefits are funded through the social security payments of the employer and the employee, the amounts of which are regulated on an annual basis.

The mandatory health insurance in Bulgaria guarantees insured persons access to medical assistance and a right to choose a general practitioner and dentist. The amount of the health insurance contribution is determined on an annual basis.

Employees may also subscribe to voluntary health insurance. Such insurance is provided by joint-stock companies, registered and licensed under the Commerce Act.

7.2 Contributions

Contribution rates for public social insurance funds are determined by the Social Insurance Code and range from between 32.5 per cent and 23 per cent of remuneration depending on what work category (one, two or three) the employee is in and whether the insurance is against all risks or provides more limited cover.

In addition to this, a further contribution is made in relation to employment injury and occupational disease that varies from 0.4 to 1.1 per cent of remuneration. The Public Social Insurance Budget Act determines this for the relevant year, according to the area of economic activity.

Social insurance contributions are calculated on the amount of the gross monthly remuneration received and the contribution must not be less than the national minimum wage. Social insurance contributions are split between the social insurance contributors (i.e. the employers) and the insured persons (i.e. the employees) in the following ratio:

- For 2007: 65 to 35
- For 2008: 60 to 40
- For 2009: 55 to 45
- For 2010 and thereafter: 50 to 50

The rate of the mandatory health insurance contribution for 2007 is six per cent and the payment of health insurance contributions are shared between the employer and the employee in the following ratio:

- For 2007: 65 to 35
- For 2008: 60 to 40
- For 2009: 55 to 45
- For 2010 and thereafter: 50 to 50

8. Hours of Work

The normal working week in Bulgaria consists of five days with a maximum daily working time of eight hours and a maximum weekly working time of 40 hours. The Labour Code sets out the circumstances when these daily and weekly maximum limits can be extended. Such extensions are permissible for a period of not more than 60 working days in one calendar year and not more than 20 successive working days.

Lower maximum reduced working time limits exist in relation to certain jobs where the risks to the employee's life and health cannot be completely eliminated but a reduction in the working time leads to containment of those risks.

Working hours are established by the internal activity rules of each enterprise. Flexible working time may be established where the organization of work so allows. An employer, after consulting with trade union representatives and employers' representatives, may establish open-ended working hours for certain positions where the nature of the work so requires. Employees to whom open-ended working time applies are obliged to continue performing their duties beyond normal working hours.

Work between 10.00 p.m. and 6.00 a.m. (between 8.00 p.m. and 6.00 a.m. for employees under 18) is legally defined as night work. The maximum daily limit for night work is seven hours and the maximum weekly limit is 35 hours. Night work is prohibited for employees under the age of 18, pregnant women, mothers of children under the age of six and mothers of disabled children (except with their written consent).

Shift work is also permissible if the nature of the production process so requires, however, assigning work during two successive work shifts is prohibited.

The general rule is that overtime (i.e. working hours in excess of normal working hours) is prohibited and is permissible only as an exception in the following cases strictly prescribed by the Labour Code: (i) in the case of work related to national defence; (ii) to prevent, manage and mitigate the effects of crises and disasters; (iii) for the urgent reparation of public utilities and transport infrastructure; (iv) for the performance of emergency repair work to premises, machinery or equipment; (v) in cases where work which if interrupted would endanger health, human life or lead to the damage of machines and materials. The maximum permissible duration of overtime work performed by an employee may not exceed 150 hours within one calendar year, 30 hours of day work or 20 hours of night work within one calendar month, six hours of day work or four hours of night work during one calendar week, three hours of day work and two hours of night work during two successive working days. These limits may be exceeded only in the circumstances specified in the Labour Code. Overtime is prohibited for certain categories of

employee e.g. persons under the age of 18, pregnant women etc.

The rate of pay for overtime work is agreed between employer and employee but may not be less than (i) 50 per cent of the normal rate of pay for work on working days; (ii) 75 per cent of the normal rate of pay for work on weekends; or (iii) 100 per cent of the normal rate of pay for work on public holidays.

9. Holidays and Time Off

9.1 Holidays

The public holidays in Bulgaria are: 1 January; 3 March - National Day; 1 May; 6 May; 24 May; 6 September; 22 September; 1 November (non-study day for all educational establishments); 24 December - Christmas Eve; 25 and 26 December - Christmas; and Easter - two days (Sunday and Monday) depending on when Easter is celebrated in the respective year.

The basic annual paid leave to which every employee is entitled by virtue of the Labour Code is not less than 20 working days. Longer basic annual paid leave may be agreed by collective agreement. In the first year of employment, an employee may only take paid annual leave after acquiring at least eight months' service. Certain categories of employee are entitled to extended paid annual leave, in addition to the basic annual entitlement, i.e. an additional five days paid leave.

Payment in lieu of untaken annual leave may only be made upon termination of employment.

9.2 Family Leave

Female employees are entitled to pregnancy and childbirth leave of 315 days for each child. 45 days of this leave must be used before the confinement. In addition, an employee may take childcare leave until the child attains the age of two. This leave is available in respect of the first, second and third child. For subsequent children, childcare leave of six months is available for each additional child.

Benefit payment will be made during pregnancy and childbirth leave provided that the employee has made the requisite social insurance contributions for at least six months. The daily cash benefit for pregnancy and childbirth leave is 90 per cent of the average daily remuneration or of the contributory income as determined under Article 41 of the Social Insurance Code and may not exceed the average daily net remuneration for the period for which the benefit is calculated. The qualifying conditions for childcare benefit are the same conditions as those for the pregnancy and childbirth benefit. Childcare benefit is paid monthly and the amount is fixed by the Public Social Insurance Budget Act. Childcare leave may be used by the father of the child or by one of the child's grandparents; however, in these cases the child's mother must consent to leave being used by such persons.

Pregnancy childbirth and childcare payments are paid by the relevant regional office of the National Social Security Institute, i.e. by the State Budget.

9.3 Illness

Persons insured against all social insurance risks are entitled to the following benefits (amongst others):

- cash compensation for, amongst other things, temporary disability through general sickness and occupational disease, urgent medical examinations, preventive care and rehabilitation;
- cash allowances for disability as a result of general sickness, preventive care and rehabilitation and technical aids related to the impairment; and
- pensions for disability arising from workplace injury, occupational disease or general sickness.

These Social Insurance Code payments act as an income substitute where employment income is lost or reduced.

10. Health and Safety

10.1 Accidents

The Health and Safety at Work Act regulates health and safety at work.

Employers are obliged to ensure health and safety at work so that any risks to the employees' health and safety are eliminated, restricted or mitigated. Every employer must establish health and safety rules and these must comply with the legislative provisions. Employers are also obliged to provide medical services for the employees and free protective clothing and equipment for employees who work in conditions where there is risk to their health and safety. Employees also have to be instructed and trained on safe methods of work.

10.2 Health and Safety Consultation

Working Conditions Committees have to be established in any enterprise whose workforce exceeds 50. Such committees may not have more than 10 members, half of them being employees' representatives and the other half - representatives of the employer. In large companies such committees may be established not only for the enterprise but also for its constituent departments.

The purpose of the Working Conditions Committee is to provide a forum for the regular discussion of health and safety issues, to consider recommendations for improving health and safety and to check that health and safety obligations are being complied with.

11. Industrial Relations

11.1 Trade Unions

Employees are free to form trade unions and to join and leave them at will subject only to the terms of the trade union's statutes. Trade unions protect and promote employees' interests through collective bargaining, participation in trilateral collaboration, strikes and other lawful action. Every organisation formed as a result of employees exercising their right to association under the Labour Code is defined as a trade union, even in cases where it is the only trade union operating in a particular enterprise. Such a trade union must be recognised by the employer and there is no minimum membership requirement in order for a trade union to be qualified to represent the employees' rights and interests for the purposes of concluding a collective agreement with the relevant employer.

In order to be recognized as a representative organization of employees

at a national level, a trade union must have: (i) at least 50,000 members; (ii) at least 50 organisations with not fewer than five members each in more than half of the industries designated by the Council of Ministers in accordance with the National Classification of Economic Activities; (iii) local bodies in more than half of the municipalities in the country and a national governing body; and (iv) legal capacity. National recognition is a pre-requisite for a trade union to participate in the trilateral cooperation and the social dialogue as regulated by the Labour Code. Thus, trade unions have an opportunity to influence the social and economic development of the country.

11.2 Collective Agreements

The subject matter and contents of collective agreements are regulated generally by the Labour Code.

Bulgarian labour legislation establishes mandatory minimum standards for protecting employees' rights and interests. More beneficial rights and standards can, however, be agreed under collective agreement. The main purpose of collective agreements is to regulate in more detail the specific relationship between the employer and employees in the context of the working conditions in any particular industrial sector.

The parties to a collective agreement are the employer and the trade union. In order to be valid, a collective agreement must be in writing. It must be registered at the labour inspectorate in the area where the employer's registered office is located.

The procedure for drafting, negotiating and executing a collective agreement is regulated by the Labour Code.
A collective agreement will have effect in relation to the employees who are members of the trade union which is party to the agreement. Those employees who are not members of the trade union may accede to the collective agreement concluded by the trade union by written application to the employer or the leadership in accordance with the pre-determined procedure set out in the collective agreement.

An employer is obliged to notify its employees of all collective agreements, applicable to the enterprise or a branch or industrial sector level and to have copies of the full texts of those agreements at the employees' disposal.

Only one collective agreement may be concluded at an enterprise, branch or industry level.

11.3 Trade Disputes

There is no legal definition of "trade disputes" (also referred to as a collective labour disputes).

Generally, such disputes arise in the context of the implementation, variation or termination of a collective agreement, but disputes may also arise in relation to other issues including issues relating to the employment. There are two types of trade dispute: (i) disputes relating to rights arising from legislation or collective agreements; and (ii) disputes relating to interests. An "interest" dispute arises from a difference of opinion between the parties in relation to the expediency of certain decisions affecting the interests of the parties. A competent court can resolve "Rights" disputes, whereas disputes relating to interests cannot be brought to a court for resolution.

The Settlement of Collective Labour Disputes Act (the "SCLDA") regulates the means by which a trade dispute can be resolved. It provides that resolution can be achieved via the following means: (i) negotiation; (ii) mediation and/or voluntary arbitration (by National Conciliation and Arbitration Institute); and (iii) strike action.

In order for a strike to be lawful it must be conducted in strict conformity with the procedures prescribed by the SCLDA which apply to both parties to the dispute. Both the employer and the interested employees are entitled to seek a declaration from the Court that the strike is illegal.

The SCLDA prohibits an employer from dismissing employees for the purpose of preventing or ending a strike. The employer is also prohibited from employing new workers in place of those on strike, except in limited prescribed circumstances.

11.4 Information, Consultation and Participation

An employer is obliged to provide the information required by the law (e.g. information on the collective agreements which are applicable to the enterprise, current financial and business status of the enterprise which may affect the execution of a collective agreement, proposed collective agreement, intended mergers resulting in change of employer etc.) to the trade unions and to the employees' representatives at the enterprise, as well as to consult them (e.g. in cases of collective dismissals, mergers etc.).

The trade unions and the employees' representatives are obliged to make the employees aware of information received from the employer, and take into account employees' opinions on the relevant issues when conducting consultations.

Employees are also entitled to prompt, reliable and intelligible information about the economic and financial situation of the employer, which is relevant to their labour rights and duties.

Employees also have the right to be provided with information in the context of collective dismissals and the right to be informed and consulted in the context of a business transfer (see further below).

12. Acquisitions and Mergers

12.1 General

The employment relationship with an employee is not terminated in the event of a change of employer in any of the following situations: (i) as a result of the creation of a new enterprise following a merger of enterprises; (ii) a merger following the acquisition of one enterprise by another; (iii) the distribution of the operations of one enterprise among two or more enterprises; (iv) the transfer of part of a business to another; (v) a change of the legal status of a business organisation; (vi) a change of ownership of all or part of a business; (vii) the cession or transfer of activity from one business to another (including a transfer of tangible assets); and (viii) in the context of the grant or transfer of a

lease or franchise. The two employers are jointly liable to the employee in respect of any employment obligations that arose prior to the change of the employer. The terms and conditions of the employment relationship remain unchanged following such a transfer to a new employer.

12.2 Information and Consultation Requirements

Prior to a transfer to a new employer, the Labour Code requires the transferor employer and the transferee employer to inform the trade unions' representatives and the employees' representatives at the enterprises of: (i) the proposed change and the date of the transfer; (ii) the reasons for the transfer; (iii) the possible legal, economic and social implications of the transfer for the employees; and (iv) the measures envisaged in relation to the employees in relation to the transfer.

The transferor employer is obliged to provide the above information no later than two months before the transfer takes place. The transferee employer is equally obliged to provide the information in good time and in any event no later than two months prior to the transfer.

If either transferor or transferee employer envisages that measures will be taken in relation to their respective employees in connection with the transfer, it is obliged to consult the trade unions' representatives and employees' representatives in good time in relation to the measures and to make efforts to reach an agreement in respect of such measures. In practice it is recommended that the consultation process be completed prior to completion of the transaction. If an employer fails to fulfil its information and consultation obligations, the trade unions' representatives and the employees' representatives or the employees themselves can notify the General Labour Inspectorate. A fine may be imposed by the General Labour Inspectorate from BGN 1500 to BGN 5000. The General Labour Inspectorate may also issue mandatory prescriptions to the employer to end the infringement of the consultation obligations, for example, a requirement to provide the employees with the information required or to conclude an agreement with the employees in respect of the measures that will be taken in connection with the transfer.

13. Termination

13.1 Individual Termination

A contract of employment may be terminated in accordance with one of the following scenarios:

- By written agreement between the employer and the employee;
- By prior written notice;
- Summarily without prior written notice (summary termination is strictly regulated);
- Upon expiry of a fixed term contract; or
- Upon written notice during a trial period (by the party in whose favour the trial period is agreed).

A fixed term contract will terminate automatically upon expiry of the agreed term or the completion of a specified assignment, as the case may be. No prior notice is required.

An employer wishing to terminate an employment contract must ensure it complies with applicable statutory requirements as well as the contractual requirements and ensure that any applicable procedures are strictly followed.

13.2 Notice

The Bulgarian Labour Code differentiates the legal grounds on which an employee may terminate his/her employment contract with written notice and the grounds on which the employer is entitled to do so. The general rule is that the notice period is the same for employer and employee. Contracts of employment for an indefinite term may be terminated with 30 days' written notice. However, the parties may agree on a longer notice period, not in excess of three months. Fixed term contracts may be terminated with up to three months' written notice but the notice cannot be longer than the unexpired part of the fixed term. Notice starts to run on the day after the notice is received.

An employee may give notice for any reason he/she wishes. However, an employer may only terminate the contract of employment in the circumstances set out in the Labour Code.

Both the employee and the employer may summarily terminate the contract of employment without notice in the circumstances listed in the Labour Code.

13.3 Reasons for Dismissal

An employee may give notice of termination without being obliged to tell the employer the reason for doing so. An employer, however, may only give notice of termination in the circumstances listed in the Labour Code as follows:

- Upon closure of the enterprise;
- Upon closure of part of the enterprise or a reduction in workforce;
- Where there is a reduction in the volume of work;
- When work is suspended for more than 15 working days;
- Where the employee lacks the capacity to perform the work;
- Where the employee does not possess the necessary qualifications to perform the role;
- Where an employee refuses to relocate when the enterprise or division in which he/she works relocates;
- Where the employee's post must be vacated in order to reinstate a wrongfully dismissed employee, who previously occupied that position;
- Where the employee's post must be vacated in order to allow the return of an employee who previously occupied the post where he has been discharged from military

service early or where conscription has been deferred;

- Where an employee becomes entitled to contributory-service and retirement-age pensions upon attainment of the age of 65 years;
- Where the requirements of a role change and the employee does not satisfy those requirements; and/or
- If the performance of the employment contract is objectively impossible.

In addition to the above cases, employees can be dismissed with notice if they are to enter into a management agreement because they are assuming the role of a director within the enterprise. Such a dismissal may only be effected within nine months of the commencement of the management agreement.

An employer may summarily terminate the contract of employment in a number of circumstances including the following cases:

- Where the employee has been disqualified from practising the profession or from occupying the position to which that worker has been appointed;
- If an employee is divested of an academic qualification where the contract was concluded with regard to qualification; or
- The employee is dismissed for misconduct.

An employer must prove the existence of one of the lawful grounds for dismissal and that the dismissal has been effected following the legally prescribed procedure. The compensations which are payable in case of dismissal are also strictly regulated by the Labour Code.

An employee may object to the dismissal claiming that it is unjust either through filing a petition with the employer, or by lodging a claim of unjust dismissal at Court. There is no term within which the employee must file the petition with the employer and there is no term within which the employer must respond to the petition. In practice it is normal for this procedure to be initiated and finalised shortly after the dismissal. An employee must file a claim at Court within two months of the date of the alleged unjust dismissal.

13.4 Special Protection

Special rules apply to the dismissals of certain categories of employee - including mothers of children under the age of three; employees who have commenced statutory leave etc. The prior written approval of the relevant Labour Inspectorate must be obtained before dismissing an employee who falls within one of the protected categories.

An employee who holds a trade union post at an enterprise sector or national level may only be dismissed during the term of the post and for a period of six months thereafter with the prior consent of the central leadership of the trade union concerned.

13.5 Closures and Collective Dismissals

"Collective dismissals" are statutorily defined as dismissals effected by the employer for one or more reasons unrelated to the individual employee, where the number of dismissals is: (i) at least 10 in an enterprise employing between 20 and 99 employees during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days; (ii) at least 10 per cent of the number of employees in an enterprise employing between 100 and 299 employees during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days; (iii) at least 30 in an enterprise employing 300 employees or more during the month preceding the collective dismissals and the dismissals are carried out over a period of 30 days; or (iv) at least 20 in an enterprise, irrespective of the number of employees and the dismissals are carried out over a period of 90 days. If an employer has dismissed at least five employees within the periods specified at (i) to (iii) above, each subsequent termination of employment which is for a reason unrelated to the individual employee has to be aggregated with the preceding dismissals for the purposes of establishing whether is a "collective redundancy situation".

The Labour Code and Employment Promotion Act regulate the collective dismissal notification procedures.

The employer must start consultations with the trade union representatives and with the employees' representatives not later than 45 days before the said dismissals are to take effect, with a view to reaching agreement with the representatives on how to avoid or reduce the number of dismissals and to mitigate the consequences of these dismissals. Prior to the consultation, the employer has to provide the trade union representatives and the employees' representatives with written information setting out the reasons for the proposed dismissals, the number and categories of employee to be dismissed, and the redundancy selection. The employer must also forward a copy of the information to the competent division of the National Employment Agency within three days of providing this information. The proposed redundancies cannot take effect earlier than 30 days after the National Employment Agency is notified, without prejudice to the notice periods. The National Employment Agency must be notified of the planned redundancies not later than 30 days prior to notice of the redundancies being given. In cases where there are longer notice periods in the individual employment agreements, those notice periods should be observed (or compensation paid), irrespective of the obligation of the employer to notify the National Employment Agency.

An employee is entitled to compensation if his/her dismissal is as a consequence of any of the following: closure of all or part of the enterprise, reduction in workforce or in the volume of work and suspension of work for more than 15 working days. The compensation is equal to the employee's gross remuneration for the period of unemployment subject to a maximum of one month of remuneration. Compensation for a longer period may be available where provided for by

statute, collective agreement or by the individual employment contract.

14. Data Protection

14.1 Employment Records

An employer's collection, retention and processing of information and data about its employees, is regulated by the Personnel Data Protection Act (the "PDPA") which implements the Data Protection Directive 95/46/EC.

The PDPA defines "personal data processing" as collecting, recording, organizing, keeping, adapting or amending, restoring, consulting, using, disclosing, updating, combining, blocking, deleting or destroying personal data. All employers are regarded as personal data administrators. Employers must ensure that personal data processing is performed strictly in accordance with the principles and for the purposes prescribed by statute.

14.2 Employee Access to Data

Employees have a right to access their personal data, which is being processed by the public data administrator provided that third party rights or other interests pertaining to national security and public order would not be harmed by such access.

14.3 Monitoring

The Constitution provides that the freedom and confidentiality of correspondence is inviolable. The only exception to this rule is where monitoring occurs with express judicial consent in circumstances where it is necessary for the purposes of detecting or preventing crime. It is also possible to incorporate monitoring clauses into individual employment contracts, stipulating that computer systems are provided exclusively for work purposes and accordingly the employer has the right to access the employee's communications that are not marked as personal. By executing the contract of employment the employee grants his/her explicit consent to such monitoring.

The Constitution provides that no one may be followed, photographed, filmed, recorded, or subjected to similar actions without their knowledge or where they have expressed their disapproval except as provided by legislation. Video monitoring systems may be installed in the workplace with the express consent of the employees who will be filmed. Video monitoring may be also installed if it is for the purpose of protection of human life and safeguarding assets and the persons who will be filmed are duly notified.

14.4 Transmission of Data to Third Parties

The transmission of personal data by the employer (as data administrators) to any third party is permitted in the circumstances set out in the Personal Data Protection Act. Generally, these are the same circumstances in which personal data may be processed.

The transfer of personal data to any European Union Member State or any European Economic Area member country is permitted subject to compliance with the requirements of the PDPA. The transfer of personal data to a third country is permitted only in cases where the destination country ensures an adequate level of personal data protection within its territory. The adequacy of the level of protection of personal data afforded by non-EEC/EEA countries is assessed by the Commission for Personal Data Protection having regard to all the circumstances including the nature of data, the purpose and duration of their processing and the legal basis for and security measures provided in that country. That assessment should not apply where the European Commission assessment on the adequacy of personal data protection is respected.

Personal data may also be transferred to non-EEC/EEA countries in the following cases: (i) the individual to whom such data relates has given his or her explicit consent; (ii) the transfer is necessary for the performance of a contract executed between the individual and the data administrator or is being performed at such person's request; (iii) the transfer is necessary for the performance of a contract executed in the interest of the individual between the data administrator and a third party; (iv) the transfer is for the exercising of any function required by law, or is necessary for the purposes of establishing, exercising, or defending legal rights; (v) the transfer is necessary in order to protect the life and health of the data subject; or (vi) the transfer concerns data which is openly accessible to the public.

Cyprus

1. Introduction

Labour law in Cyprus is an amalgam of common law and statute law. Employment relationships are primarily governed by ordinary contract law principles and supplemented where appropriate by statutory rights and obligations. Industrial relations in Cyprus are regulated by a number of statutes, the main one being the Termination of Employment Law and the Annual Holiday with Payment Law. Cyprus has, in addition, ratified a great number of ILO Conventions.

Trade unions and employers' organizations have generally adopted a responsible attitude. Successive government's policies have adopted the approach of keeping out of disputes and promoting the idea that labour-management relations are first and foremost the business of the parties themselves; and seeking the active participation of workers and employers in the formulation and implementation of social and economic policies, through tripartite bodies. Effecting procedural agreements for the settlement of disputes has contributed immensely to Industrial relations stability on the Island. The Industrial Relations Service of the Ministry of Labour has also played an instrumental role in maintaining industrial peace through the development and preservation of sound industrial relations.

Although mediation has become practically the only way of providing help for the resolution of disputes, the two sides may still resort to arbitration, directly or after mediation.

2. Categories of Employees

2.1 General

The law does not draw any distinction between blue and white collar employees.

3. Hiring

3.1 Recruitment

Employees are typically recruited via advertising in newspapers and journals. To a lesser extent employees may be recruited through recruitment agencies and internal advertising.

3.2 Work Permits

It is very difficult for a non-Cypriot, other than a E.U. citizen, to obtain a work permit to work in Cyprus for a local employer. In order for a work permit to be granted, it must be shown that, because of qualifications and know-how, no Cypriots are readily available for that particular post. The process is supervised by the Ministry of Labour through the local Labour Office. Work permits are usually given for six months, and they are renewable. EU citizens are freely able to work and do not need to obtain any work permits.

In the case of non-Cypriots (excluding E.U. citizens) employed by international business companies, obtaining a work permit for the first six months is a simple procedure. Renewals are given annually thereafter, provided that the employee and employer comply with the regulations imposed by the Central Bank and Immigration authorities.

Foreign workers are divided into two classes, "executive" staff and "non-executive" staff. The term "executive" includes expatriates registered as directors or partners with the Registrar of Companies and Official Receiver. It also includes general managers of subsidiaries and branches of publicly quoted overseas companies, as well as departmental managers of international business companies operating from Cyprus for at least two years in accordance with the conditions and requirements of the Central Bank of Cyprus. International business companies are allowed to employ a maximum of three executives, unless they persuade the Central Bank that a greater number is justified. An expatriate who wishes to be employed in an executive position must:

- Be at least 24 years old;
- Have the necessary qualifications; and
- Receive appropriate remuneration (the minimum acceptable annual salary for newly appointed executives is CY£24,000). This amount may be adjusted annually by the authorities according to fluctuations in the salaries' index.

Expatriates employed in professional, administrative, managerial, technical, or clerical positions are classified as "non-executive" personnel. "Non-executive" staff must be recruited from within Cyprus. If all formal procedures are followed, such as announcing a position in the local press, and no suitable Cypriot candidates can be found, international business companies are allowed to employ expatriates for the position.

The Migration Officer at the Ministry of Interior is responsible for the initial grant and subsequent renewals of Temporary Residence and Employment (TRE) permits granted to all expatriates employed by international business companies in Cyprus. Any TRE permits can be revoked by the Minister of the Interior if he deems it to be in the public interest; and will be considered automatically cancelled, if the conditions under which it was granted cease to exist.

The application for an executive's First Temporary Residence Permit is made to the Civil Registry and Migration Department. The Civil Registry and Migration Department issues to the applicant executive his first Temporary Residence Permit within one month, unless his case warrants further consideration.

For the renewal of the Temporary Residence and Work Permit of aliens, it is necessary to submit an application on Form M.61 through the District Aliens and Immigration Branch of the Police and to pay a fee of CY£20.

International business companies should inform the Central Bank, the Migration officer, and the Department of Customs as soon as any of their expatriate staff resign or are no longer in their employment.

4. Discrimination

All forms of discrimination are prohibited by Article 28 of the Constitution including discrimination on the grounds of sexual orientation, age and religion. In addition to Article 28, a number of other laws have been implemented aimed at the elimination of sex discrimination in

respect of equal pay and equal treatment. The source of these laws has been certain international conventions, most notably the ILO Conventions, which the Republic of Cyprus has ratified. In addition, case law has offered some assistance towards the development of the law, albeit of limited impact.

The Cyprus Government has also accepted Article 19 of the Revised European Social Charter, which provides, inter alia, for no less favourable treatment of migrant workers than that of nationals.

A number of additional measures aimed at removing discrimination have also been implemented:

- Discrimination in social insurance legislation had been abolished almost completely.
- Maternity protection legislation has been improved.
- The health and safety of pregnant women and nursing mothers at the work place are better protected.
- A pioneering scheme for parental leave and for leave for reasons of force majeure has been introduced.
- Equal treatment in employment pensions has been secured.
- Equality in pay, not only for the same or similar work, but also for work of equal value has been secured.

If the employer breaches the obligation of equal pay for equal work, he is guilty of a criminal offence and he could face a fine of up to CY£2,000. Legislation also suspends the effect of any contractual terms discriminating against women.

Dismissal of and/or discrimination against an employee who has complained, or given evidence, of a breach of the equal pay legislation by the employer is unlawful.

Although the ILO Convention on discrimination in employment and occupation has been incorporated in Cypriot legislation, unfortunately, no measures have, to date, been taken to implement these provisions. In relation to pre-employment discrimination matters again due to lack of implementing legislation, there is, in essence, no protection and, consequently, no remedy.

Equal Pay claims may be brought before the Industrial Disputes Court. If successful, the Court may make a declaratory judgment; give directions for the termination of the discrimination; or award compensation to cover damages and order the employer to make up the shortfall from the date that the discriminatory practice arose.

The Equal Pay and Pregnancy Laws do create criminal offences. This is however of no value to the victim in financial terms. It appears that the criminal sanctions were introduced to show the willingness of the state to enforce the law but, unfortunately, no prosecution has been initiated.

5. Contracts of Employment

5.1 Freedom of Contract

Parties are free to contract on whatever terms they may choose. There are however restrictions on the successive use of fixed term contracts.

5.2 Form

In order to have legal effect contracts must be in writing. The contract must include amongst other things details of commencement date, duration (if it is for a fixed term), the wage payable, place of work, and holiday entitlement.

5.3 Trial Periods

It is common to include an initial trial period in a contract and the typical duration is six months.

5.4 Confidentiality and Non-Competition

A contract may contain terms preventing competition and/or the disclosure of confidential information after the termination of employment but such terms are not commonly used. Such clauses will only be upheld if they are considered reasonable.

5.5 Intellectual Property

Intellectual property created during the course of employment belongs to the employer without compensation being payable to the employee.

6. Pay and Benefits

6.1 Basic Pay

The government has the power to fix minimum wages by ministerial Orders. Thus far, the Orders issued cover the minimum wages of office clerks and shop assistants, which presently are CY£320 per month on engagement rising to CY£340 after six months' employment.

Obligations to increase wages exist if a party to the contract is a trade union or a member of a trade union is a party to the contract and wages will be reviewed at intervals in accordance with the provision of applicable collective agreements.

Wages are subject to increase twice a year by means of the review of the automatic cost-of-living adjustment.

6.2 Private Pensions

Private pension arrangements are provided by employers.

Workers who reach the pensionable age of 65 are entitled to a pension from the Social Insurance Fund based on their contributions, regardless of whether they stop or carry on working. In certain circumstances, the pension can be taken at the age of 63. Many enterprises provide additional retirement benefits either by making a lump sum payment or by paying a pension of their own. The pension scheme used may be based on contributions from both the employer and the employee, or from the employer only.

6.3 Incentive Schemes

Share schemes arrangements are administered by employers in Cyprus.

6.4 Fringe Benefits

Fringe benefits such as cars, houses, phones, etc are made available by employers to employees in managerial positions.

6.5 Deductions

Employers are obliged to deduct income tax and social security contributions from employees' salaries.

7. Social Security

7.1 Coverage

In October 1980, a new social Insurance scheme (the Scheme) was put into operation. With some minor exceptions, the Scheme covers all employed and self-employed persons in the island. Non-employed persons may, under certain conditions, join the Scheme on a voluntary basis. The Scheme provides benefits by way of maternity allowance; sickness benefit; unemployment benefit; old-age pension, invalidity pension, widow's pension; orphan's benefit; missing person's allowance; marriage grant; maternity grant; funeral grant; and benefits for employment accidents and occupational diseases, i.e. injury benefit, disablement benefit, and death benefit.

7.2 Contributions

The contribution to the Scheme in the case of employees is 16.6 per cent of their earnings up to a maximum of CY£479 per week or CY£2,076 per month (for 2006). Of the 16.6 per cent, 6.3 per cent is paid by the employee himself, 6.3 per cent by the employer, and four per cent from the general revenues of the Republic. The contribution in respect of self-employed persons is 15.6 per cent of their income, 11.6 per cent paid by themselves, and four per cent from the general revenue of the Republic. In respect of voluntary contributors, the contribution is 13.5 per cent of their insurable income, 10 per cent paid by the voluntary contributor, and 3.5 per cent from the general revenues of the Republic.

For the purpose of assessing employees' contributions, gross earnings from work are taken into consideration. In the case of the self-employed, however, the law prescribes notional incomes which vary according to the occupational category. If, however, the self-employed person proves that his income is lower than the amount of the notional income prescribed, his contribution is assessed on that income.

8. Hours of Work

Most offices observe a 40-hour week from Monday to Friday. Office hours are from 8 am to 5:30 pm, with a 90-minute lunch break during the winter, and 8 am to 7 pm, with a three-hour break during the summer. Government offices operate from 7:30 am to 2:30 pm from Monday to Friday. They also are open on Thursday afternoons from 3 pm to 6 pm. There is a maximum working week of 48 hours including overtime.

The working time of young people and children is regulated by legislation. Persons of 15 to 18 years of age are not allowed to work more than 38 hours a week and must not work between 23.00 and 7.00.

9. Holidays and Time Off

9.1 Holidays

Under the Annual holidays with Payment Law, the provision of annual holidays for all persons employed under a contract of service is mandatory. Presently, the minimum period of annual leave provided under the legislation is four weeks, 20 working days for employees working a five-day week, and 24 working days for employees working a six-day week. Payments in lieu of any unused entitlement may be made or alternatively can be carried forward for a maximum of two years (employers contribute to the Central Holiday Fund at the rate of six per cent of their employees' wages up to a wages ceiling of CY£1.577 per month). To be entitled to an annual holiday payment from the Fund, employees must have worked at least 13 weeks during the previous leave year.

Employers whose arrangements regarding holidays with pay are more favourable than the provisions of the Law may be exempted from contributing to the Fund. In such cases, annual leave is granted directly by the employers to their employees. Where an employed person is, by virtue of any Law, collective agreement, custom or otherwise, entitled to a longer period of holiday than three weeks, this right is guarantee by the Annual Holidays with Pay legislation.

With respect to public holidays, there are no statutory provisions to indicate which days in the year are public holidays, except for Sunday. The public holidays given in the private sector are governed by collective agreements between employers and trade unions, and they usually follow the public holidays given in the public sector. In cases where the employer is not bound by a collective agreement, it is at his discretion to offer any of the public holidays given in the public sector.

9.2 Family Leave

Pregnant workers have the right to 16 weeks' paid maternity leave. Nine of the 16 weeks must be taken during the period beginning at the second week before the week in which birth is expected. The 16 weeks' period may, in certain circumstances, be extended in cases where there is a delay in delivery of the child. Women who undertake the care of a child under five years old for adoption are entitled to 14 weeks' maternity leave. Maternity pay is paid by the Department of Social Security at a rate of 75 per cent of the employee's average salary of the preceding year.

Female employees also have the right to one hour off (paid) per working day for a period of six months after delivery for child care and breast-feeding. There is no right to paternity or parental leave. Every employed parent (father and mother) who has worked for one employer for at least six months is entitled to parental leave totalling 13 weeks subsequent to a birth or adoption, in order to attend to the care and upbringing of the child. This leave is unpaid but during it the employee is credited with insurable earnings. Parental leave can be taken between the end of maternity leave and the child's sixth birthday for a minimum of one week and a maximum of four weeks in any year. Parents are also entitled to up to seven days' unpaid leave a year for urgent family reasons.

9.3 Illness

If an employee's doctor recommends leave on ill-health grounds then the employer may require the employee to be seen by its doctor if it is not willing to grant leave. In cases where leave of

absence on ill-health grounds is granted, 70 per cent of an employees wage is paid by the Ministry of Labour and 30 per cent by the employer. The period over which payment will continue to be made will depend on the length of the employee's employment and the reason why leave is granted.

10. Health and Safety

10.1 Accidents

The workers' right to safe and healthy working conditions is safeguarded by appropriate legislation. The core legislation is the Safety and Health at Work Law, which is in line with the provisions of ILO Convention 155 of 1981 on Occupational Safety and Health, as well as with the principles and most of the provisions of EU Framework Directive.

The Law covers all branches of economic activity and imposes duties on employers, self-employed persons, and employees, as well as on designers, manufacturers, importers, and suppliers of articles and substances for use at work. Enforcement of the legislation is imposed through inspections by qualified inspectors who make regular visits to workplaces to ensure continued compliance.

Additional health and safety legislation is gradually being implemented; the following have all recently come into effect: The Safety and Health at Work (Protection from Noise) Regulations of 2006 (P.I. 317/2006), The Safety and Health at Work (Protection from Asbestos) Regulations of 2006 (P.I. 316/2006) and The Asbestos (Safety and Health of Persons at Work) (Revoked) Law of 2006, Law 111(I)/2006.

10.2 Health and Safety Consultation

The Cypriot government promotes the active involvement of both employers and workers in securing a safe and healthy working environment by introducing and implementing legislation on the establishment and operation of Safety Committees in the place of work. With respect to health and safety there is an obligation to consult with employees. Employers are also required to obtain employer's liability insurance.

11. Industrial Relations

11.1 Trade Unions

The business community of Cyprus is represented by the employers and Industrialist Federation (OEB), a Pancyprian independent organization comprising 40 professional associations and 400 major individual enterprises in the manufacturing, services, construction, and agricultural sectors of the economy. The OEB is the acknowledged spokesman for the business community and is consulted as such by the government.

The principle unions in Cyprus are the Pancyprian Federation of Labour (PEO) and the Cyprus Workers' Confederation (SEK), however there are numerous other trade unions and occupational organizations such as PASYDY, POED, OELMEK, OLTEK, ETYK, POAS, and DEOK. Conflict between trade unions in Cyprus is rare and joint action among the leadership of the PEO and the SEK and the other occupational organizations is common.

11.2 Collective Agreements

There are collective agreements between employers and trade unions in many industry sectors and they are the main means by which term and conditions of employment are determined. Collective agreements usually have a two or three year duration.

11.3 Trade Disputes

Article 27 of the Constitution safeguards the right to strike of every employee subject to some exceptions in relation to the army and police.

The Trade Unions Law provides that no one can be sued for conspiracy if he was acting with another in the furtherance of a trade dispute. In addition inducement to breach a contract in the furtherance of a trade dispute is not actionable.

Strikes in Cyprus are generally rare as industrial relations partners almost always find a way to agree on all issues relating to employment. The settlement of labour disputes is governed by the provisions of the Industrial Relations Code.

11.4 Information, Consultation and Participation

Employers are under a duty to consult with their employees, if their employees belong to a Trade Union.

12. Acquisitions and Mergers

12.1 General

The provisions of the Acquired Rights Directive have been implemented in Cyprus. If the employer changes due to the legal transfer of a business, the contractual and other rights and obligations arising from the employment relationship existing on the date of the transfer, automatically transfer to the transferee subject to a number of exceptions in relation to pensions. The transferee is obliged to continue to observe the agreed terms and conditions of any applicable collective agreement until the date of termination or expiry.

If an employee is dismissed in connection with a transfer other than for financial, technical or organisational reasons, the dismissal is illegal and the employee is entitled to damages which are calculated according to length of service.

12.2 Information and Consultation Requirements

In the context of acquisitions and mergers there is an obligation to supply information and/or consult or negotiate with, employee representatives, employees, works councils and trade unions.

The obligation to inform and consult is triggered when the vital interests of employees of the trade unions are affected. The employees or workers' representatives must be informed of the date, reasons for, and legal, financial and social implications of the transfer and of any anticipated measures. This information must be provided in good time, and in any event before the employees are directly affected by the transfer.

A sale and purchase agreement cannot be signed before the information and consultation is completed, if the vital interests of trade union members will be affected.

There is no statutory minimum period over which the information/consultation process must take place; it is simply a question of fact and degree according to the circumstances of a given merger.

12.3 Notification of Authorities

There is a governmental body which regulates mergers and acquisitions. This must be consulted in the context of a merger of acquisition when the vital interests of trade union members are going to be affected.

The minimum period over which this consultation process can be completed will depend on the facts of each case.

Failure to comply with these consultation obligations may lead to the imposition of large fines and possibly injunctions.

12.4 Liabilities

Failure to comply with the employee information and consultation obligations can give rise to large fines and compensation may also be payable to the employees.

In addition the courts may also grant an injunction until the information/ consultation obligations are satisfied.

13. Termination

13.1 Individual Termination

An employer wishing to terminate the employment relationship must be careful to comply with the statutory reasons for dismissal.

13.2 Notice

Except where summary dismissal is allowed, employers are required by law to give a minimum notice period of:

- 1 week's notice for 6 months to 1 year of service,
- 2 weeks' notice for 1 to 2 years of service,
- 4 weeks' notice for 3 years of service,
- 5 weeks' notice for 3 to 4 years of service,
- 6 weeks' notice for 4 to 5 years of service,
- 7 weeks' notice for 5 to 6 years of service, and
- 8 weeks' notice for more than 6 years of service.

An employer may terminate summarily in the circumstances listed in section 13.3 below. In addition, an employee may be summarily dismissed in other circumstances, e.g. where he/she has lied to the employer, has committed an act of gross misconduct or a criminal offence.

Notice provisions apply to redundancy cases as well. Employees are paid during the notice period but the employer can require the employee to accept payment in lieu of notice. An employee who receives pay in lieu of notice and finds another job keeps the pay but, if he leaves for another job while serving out his notice with the old employer, he loses the rest of the pay for the period of notice.

An employee who has been continuously employed for 26 weeks or more is required to give to his employer a minimum notice of one week. However, on notice from his employer, an employee who wishes to seek other employment may have time off of up to five hours a week during working hours without loss of pay.

13.3 Reasons for Dismissal

The basic rule is that a dismissal is unfair if the employer terminates the employment for any reason other than the exceptions provided by statute.

Before any employee can qualify for unfair dismissal compensation, he must be less that 65 years of age and must have been continuously employed by the employer for not less that 26 weeks, unless there is a written agreement that may extend the qualifying period of continuous employment up to 104 weeks.

In cases where a dismissal is declared unfair, compensation is payable to the employee. The minimum amount payable is two weeks' pay up to a maximum of two years' wages. Factors to be considered in the award are wages, length of service, loss of career prospects, circumstances of the dismissal, and the employee's age. The maximum period of continuous employment with one employer that can be taken into account is 25 years (75.5 weeks' compensation). Moreover, the amount of compensation is decided by the Industrial Disputes Court after an application by the employee.

Termination will be considered fair and will not give rise to compensation in the following circumstances:

- The employee fails to carry out his work in a reasonably efficient manner;
- The employee is redundant;
- The termination is due to an act of God or *force majeure*;
- The contract is for a fixed term and has expired;
- The employee renders himself liable to dismissal without notice; or
- The contract of the employee is such that it is clear that the employer – employee relationship cannot reasonably be expected to continue.

13.4 Special Protection

Pregnant employees and maternity leavers may not be dismissed unless guilty of a serious offence or conduct which justifies termination.

Trade union officials are also protected from dismissal without cause.

13.5 Closure and Collective Dismissals

As stated above, redundancy is a valid reason for dismissal. Redundancy is defined by statute.

Employees are entitled to receive a statutory redundancy payment if they have been employed for a period of six months or more. Redundancy payments are not made by the employer but by the Government Redundancy Fund into which employers pay monthly contributions.

The Protection of Employees' Rights in the Event of Insolvency of the Employer

Law provides for employees to be paid wages and annual leave pay due from their employer from a special fund if the employer becomes insolvent.

There are prescribed information and consultation procedures in the event of collective redundancies, i.e. where at least 10 employees in an undertaking employing between 21 and 100 employees or 10 per cent of employees in an undertaking of between 100 and 300 employees are dismissed within 30 days.

An employer who proposes to make collective redundancies must consult the representatives of the employees in a timely manner with the aim of getting an agreement. The representatives must be notified in writing of the reasons for the dismissals, the criteria to be used, the period in which they will take place, the number and categories of employees who are to lose their jobs and the method of calculating any payment relating to dismissals. In addition, written notice of the collective dismissals must be given to the Ministry of Labour and Social Insurance and copy of this notice provided to the employee representatives.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information by employers is regulated by the Data Protection Law which effectively implements the EU Data Protection Directive.

14.2 Employee Access to Data

Employees do have the right to request access to their data that is being held by their employer.

14.3 Monitoring

Employers can monitor their employees' email, internet and telephone usage to the extent that such usage is not work related if monitoring is reasonable in all the circumstances.

14.4 Transmission of Data to Third Parties

The Data Protection Act does not permit employers to provide their employees' data to third parties. However, if such data is required by state authorities as regards the public interest and national security then such provision is not contrary to the law provided that the principle of proportionality is observed.

The Czech Republic

1. Introduction

The institutional framework for and the functioning of the labour market in the Czech Republic are regulated by the Employment Act (N° 435/2004), which covers, for example, the prohibition of discrimination in hiring employees, the operation of the state-run Labour Offices (i.e. job centres) and private labour agencies, the qualification criteria for unemployment benefits, employment of foreigners and special provisions of employment relating to disabled persons.

The principal source of law regulating the employment relationship is the Labour Code which covers all areas of the individual employment relationship between an employer and an employee, including for example equal treatment and prohibition of discrimination, access to information, agency employment, working conditions, safety and health at work, liability for damages and dismissal. In general, the Labour Code allows for contractual freedom of parties within the limits set by the regulatory framework; it is not therefore possible to contract out of statutory employee protection.

Although the Labour Code contains basic provisions concerning the freedom of employees to form trade unions, collective labour law rules (in particular the collective bargaining procedure) are contained in the Collective Bargaining Act (N° 2/1991). Individual employee entitlements arising from collective agreements are legally enforceable in the same manner as other rights arising from an individual employment contract.

The state carries out its supervisory function through recently established Work Inspectorates that control and monitor compliance with the obligations arising from a great variety of labour law regulations regarding, amongst other things, wages, salaries, hours of work, work safety, employment of minors and female workers.

Disputes between an employer and employee are settled in ordinary District courts where there are specialised Labour Law senates of judges and layman jurors.

2. Categories of Employee

2.1 General

Czech employment legislation applies equally to employees at every level i.e. employees, agency workers and contract staff. The position of directors of private and public limited companies, who may or may not also be employees of the company, is further regulated by corporate law. Special provisions regulating the position of managers have yet to be introduced in the Czech Republic.

Part-time employees and employees on fixed term contracts have a statutory right, which, broadly speaking, entitles those employees to be treated no less favourably in respect of their terms and conditions of employment than a comparable full-time indefinite employee.

The Labour Code stipulates that, outside a traditional employment relationship, an employer and a worker can conclude two other types of agreement relating to work which are of a similar nature to the employment contract: an agreement for the performance of a work assignment, or an agreement on working activity.

An employer and a worker may conclude an agreement for the performance of a single work assignment if the expected duration of the assigned project is no longer than 150 hours in a calendar year.

An employer and a worker can conclude an agreement on working activity regarding work that does not exceed on average half of the prescribed weekly working hours (i.e. 20 hours per week).

3. Hiring

3.1 Recruitment

Employers recruit through a variety of sources, including via the Internet and by advertising in newspapers and/or journals. Recruitment agencies are also commonly used. State-run Labour Offices function inter alia as "Job Centres" and provide a free recruitment service. Employers are obliged to notify the Labour Office of all vacant positions (the Labour Office keeps a database of all vacant positions and of all job applicants) and of when these vacancies have been filled. Other than this statutory duty, there is, however, no obligation on employers to use the Labour Office.

3.2 Work Permits

Employers may hire non-EEA nationals only if there are no EEA national job applicants who are available at the relevant time. In addition, the employer itself needs a permit, issued by the Labour Office, to enable it to hire a foreign work force. Work permits are required for employees who are non-EEA nationals, and may be granted for up to a maximum of one year with the possibility of prolonging them after this period. Swiss nationals are treated in the same way as EEA nationals.
The application must be made and the Labour Office must issue the work permit before the employee arrives in the Czech Republic (the work permit is also a qualification for a residence permit). It is an administrative offence for an employer to employ a non-EEA national without an appropriate work permit in the Czech Republic or to employ such employees in contravention of the terms of the issued work permit. In the event of breach, the Labour Office may impose a fine of up to CZK 2,000,000, (around EUR 71,000).

4. Discrimination

Any direct or indirect discrimination perpetrated in the workplace on certain selected grounds (primarily gender, sexual orientation, religion, marital status, racial or ethnic origin, age, social origin or political association) is unlawful. Such discrimination in connection with recruitment is prohibited by the Employment Act and by the Labour Code in connection with treatment during the course of employment and with respect to termination of employment. The Employment Act and the Labour Code also guarantee equal treatment to all employees. The provisions of the Labour Code only contain a general prohibition of

discrimination. It is anticipated that in due course specific non discrimination provisions will be contained in the new Anti-Discrimination Act. However, until this piece of legislation is in place, the protection against discrimination is not that extensive.

5. Contracts of Employment

5.1 Freedom of Contract

The basic principle that parties are free to contract on whatever terms they choose is modified by Czech Labour Law which allows for contractual freedom of parties only within the limits set by the regulatory framework. As stated above, it is not therefore possible to contract out of statutory employee protection or the mandatory provisions of the Labour Code.

Generally, employers are free to choose their employees. However, employment of persons under the age of 15 years and/or of those persons who have not completed their compulsory education is prohibited except for various artistic, cultural, advertising and sports activities as specified in the Employment Act.

Contracts may be for a fixed or an indefinite period of time (i.e. terminable by notice), as the parties think most appropriate. For the purposes of statutory protection, there is little distinction between the position of employees on fixed-term and indefinite contracts, as employers will not be able to treat employees on fixed-term contracts less favourably than similar permanent employees. However, the use of successive fixed-term contracts is restricted. A fixed term contract between the same parties may be concluded (or extended) for a maximum period of two years. If, contrary to the law, an employee has been engaged under one or several fixed term contracts, for a period of two years or more (this applies to fixed-term contracts concluded between the same parties, if the new employment commences within six months after the termination of the former employment), the employee may make a written request to the employer that the employment continue for an indefinite period, unless the employer has an objective reason for the use of revolving fixed-term contracts, i.e. when:

(a) the use of a fixed-term contract is required by specific legislation (e.g. the Act on Pension Insurance with respect to working old-age pensioners);

(b) the employee is employed on the basis of a fixed-term contract as a replacement for another employee who is temporarily absent due to reasons listed in the Labour Code (service in the public interest, maternity leave, military service, education/training, sickness and/or important private reasons); or

(c) the employee is employed on the basis of a fixed-term contract due to major operational reasons on the part of the employer or due to the special nature of the work to be conducted by the employee (e.g. seasonal jobs in agriculture; such reasons must be agreed in advance with trade unions or stated in an internal regulation of the employer issued if there are no trade unions recognised by the employer).

Either the employer or the employee may seek a court decision regarding the fulfilment of the above statutory conditions for a fixed-term contract within two months of the termination date of the original fixed-term contract.

5.2 Form

An employer is obliged to conclude an employment contract in writing. However, failure to reduce the contract to writing does not invalidate the employment.

An employment contract must specify the type of work, the place of work and the date of commencement of the employment. If an employment contract does not specifically stipulate particulars of the employee's rights and duties arising out of the employment (e.g. the holiday entitlement, the length of termination period, the level of wages and the mode of payment, the schedule of weekly working hours etc.) an employer is obliged to provide the employee with a single separate document containing such details within a month of commencement of the employment.

5.3 Trial Periods

An employer and employee may agree on a trial (probationary) period of up to three months. The agreement must be in writing before the commencement of the employment (or at the latest on the same day) and once agreed upon, the trial period cannot be subsequently extended. During the trial period, the employment can be terminated immediately by either the employer or the employee for any reason or without stating the reason.

5.4 Confidentiality and Non-Competition

Although there are generally no applicable statutory rules governing confidential information in employment, there are particular statutory rules governing treatment of confidential information which apply to specified categories of employees. In general, employees of State administrative authorities and local authorities are obliged to keep confidential all facts and information which they learn whilst carrying out their duties and which, in the employer's interest, should not be communicated to another person.
An employer may conclude an express confidentiality provision in the contract of employment. All other employees are 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 may, depending on the nature of the business, consider including an express confidentiality provision in the contract of employment.

An employer is obliged to issue all employees whose employment has terminated a confirmation of the former employment and a reference. Without the employee's consent, an employer may not communicate any other information concerning the employee.

An employer and an employee may conclude an agreement whereby the employee may not, for a certain period not exceeding one year after the

termination of the employment, engage in the same activity as the current employer, or any other activity which would compete with the business activities of the current employer.
The non-compete undertaking may only be assumed by the employee if such an obligation is justifiably required from the employee given the nature of the knowledge and information the employee will have gained during the employment. The non-compete clause may be included in the employment contract in a case where no trial period was agreed, otherwise it may be entered into separately after the expiry of the trial period. The employer must pay the former employee compensation in the amount of at least his/her average income for the whole period of the restrictive undertaking. The agreement may also include a penalty that the former employee must pay to the employer in the event that he breaches his/her obligation not to compete.
The employer may terminate this agreement only during the course of the employment. Provisions concerned with preventing competition by a former employee are likely not to be enforced by the courts if the courts consider that it would be unjustified and in restraint of trade having regard, amongst other things, to the position of the former employee and the nature of the information/knowledge acquired during the course of employment.

5.5 Intellectual Property

Broadly speaking, unless the employment contract stipulates otherwise, if intellectual property is created by an employee during the course of employment, it will belong to the employer. Additional compensation will only be payable to the employee if his ordinary salary is in substantial disproportion to the employer's profits derived from the intellectual property created. However, this rule applies only to a limited extent in relation to computer programs, databases and cartographic works.

6. Pay and Benefits

6.1 Basic Pay

A wage may not be lower than the national minimum wage, which is determined by a Government Decree and is currently CZK 8,000 per month or CZK 48.10 per hour.

Lower-grade workers in the Czech Republic are generally paid a monthly wage, often determined by reference to an hourly rate, although in some industries it is customary for workers to be paid "piece-rates" according to the amount of work done. Overtime at a premium rate must be paid in respect of additional hours worked and work performed on bank holidays and/or weekends. Senior employees (managers) are normally paid monthly in arrears.

It is not common for pay to be index-linked and, subject to the national minimum wage, there are no legal obligations on employers to increase wages.

6.2 Private Pensions

In the Czech Republic employees must take part in the mandatory public social security system including a public retirement and old-age pension scheme. However, anyone may choose to take part in a private pension plan in addition to the mandatory scheme by entering into a contractual relationship with any of the licensed private pension funds. The employee, however, receives state contributions to his insurance premiums.

Although private pension plans may be agreed as employer-sponsored occupational pension schemes, they are absolutely independent of the particular employment of the person taking part in such pension plans. Therefore, an employer bears no responsibility towards its employee or her/his contractual private pension funds, except for paying the agreed contributions. The employer's contributions are classified as tax-deductible costs.

6.3 Incentive Schemes

Share schemes are not specifically provided for under Czech law and are implemented mostly in foreign owned companies as a part of their global incentive schemes.

6.4 Fringe Benefits

More senior employees' employment contracts may include fringe benefits; typically free use of a mobile telephone, a computer and a car for the duration of the employment. As benefits are usually contractual, the agreement should resolve the mode and timing of return if the employer proposes to withdraw the benefit.

6.5 Deductions

Although generally employers are prohibited from making deductions from pay, they are obliged to deduct income tax and employees' social security contributions (which are paid monthly by the employer both for itself and on behalf of the employee). They are also obliged to deduct employees' contributions to the mandatory health insurance system. Otherwise, the employer may be obliged to make deductions pursuant to a valid court resolution on deductions from employees' salaries. The list of these deductions and their order is given in the Czech Code of Civil Proceedings Rules.

7. Social Security

7.1 Coverage

The single state-administered social security system provides benefits by way of pensions, unemployment benefits, family-based benefits and support for individuals with a low income. Employers should be aware of the administrative burden (i.e. paperwork) connected with the contributions to some of these state benefits (for example, statutory sick pay). The contributions for these benefits are included in the social security contributions of the employer and the employee (see below in point 7.2).
The employer, therefore, does not have to pay these benefits as they are provided by the respective state authority.

Mandatory health insurance is provided by specially licensed health insurers, the major one being the state owned VZP (*Všobecná zdravotní pojišt'ovna*). It is the employer's obligation to deduct an employee's compulsory contribution from his/her gross salary and send it to the health insurer of that employee's choice. However, anyone may choose to take part in a private health insurance plan in addition to the mandatory

scheme by entering into a contractual relationship with any of the licensed health insurers and pay additional contributions for extra services.

7.2 Contributions

Employers must deduct from their employees' gross salaries social security and health insurance contributions payable by employees and make an employer's contributions in respect of each employee. Employers and employees must contribute the following percentages of the employee's income to social security and health insurance:

Type of Insurance	Paid by Employer (%)	Paid by Employee (%)	Total (%)
Social Security	26.0	8.0	34.0
Health Insurance	9.0	4.5	13.5
Total	35.0	12.5	47.5

8. Hours of Work

Hours of work must not exceed 40 hours per week (30 hours per week and six hours a day for employees under the age of 18). Specific limitations are imposed by the Labour Code on the hours worked each day and each week by persons working underground in mining professions and persons in the three-shift and non-stop working regime, whose working hours must not exceed 37.5 hours per week, and in the two-shift working regime, whose working hours must not exceed 38.75 hours per week. Further reduction of hours of work without an attendant reduction in wages may be provided for in a collective agreement and/or an internal instruction.

The employer decides on the scheduling of weekly hours of work and starting times for work after discussion with the trade union. Hours of work are generally scheduled into a five-day working week; however, flexible working hours may be introduced after discussions with the trade union, if applicable.

An employee is entitled to a break (for food and rest) of at least 30 minutes for every six hours of continuous work (and for every 4.5 hours of continuous work in the case of employees under the age of 18). Breaks for food and rest are not counted as part of the hours of work.

The employer is obliged to schedule hours of work so that employees will have:

(a) an uninterrupted period of daily rest of at least 12 consecutive hours between the end of one shift and the beginning of the following shift within a 24 hour period; and

(b) an uninterrupted period of at least 35 consecutive hours (or of at least 48 hours for employees under the age of 18) in any seven day period.

The Labour Code contains exceptions where the uninterrupted period of rest may be reduced below the hours set out above.

Generally, overtime work prescribed by the employer must not exceed eight hours per week and 150 hours per calendar year. Overtime work exceeding these limits may be performed only exceptionally and with the employee's consent. However, the average number of overtime working hours must not be on average more than eight hours per week during a reference period of 26 weeks or 52 weeks if agreed in a collective agreement.

Night workers (i.e. where daily hours of work are worked between 10 p.m. and 6 a.m.) must not work in excess of eight hours in each period of 24 hours.

An employer is obliged to keep records, in respect of each employee, of hours of work, overtime work, standby duties for operating emergencies and work at night.

The Labour Code provides for several types of flexible employment arrangements:

(a) Uneven Spread of Working Hours

If the nature of work requires an uneven schedule in individual weeks, then the employer may, after a discussion with the Unions, decide on an uneven spread of working hours throughout a period of 26 weeks or 52 weeks, the latter only if agreed in the collective agreement. In this period, the average weekly working hours may not exceed the standard weekly limit of working hours (i.e. 40) and the length of one shift may not be more than 12 hours.

(b) Flexible Working Hours

Flexible hours may be agreed to meet the interests of employees' personal needs, after discussion with the Unions, if applicable. An employee chooses the start and/or the end of his working day while the employer can stipulate specific times of the day during which an employee must perform his duties. The total length of an individual shift may not exceed 12 hours.

(c) Reduced Working Hours

This option requires an agreement between the employee and the employer. The agreement can allow for an employee to work for fewer hours each day or only on certain weekdays.

(d) Account of Working Hours

This is a specific type of arrangement for employers who have fluctuating needs for a work force (e.g. in relation to unstable sales) and therefore employees have an uneven spread of working hours. The employer must keep an account of the working hours and an account of the salary for each employee, showing the weekly difference between the standard working hours and hours actually worked. There is a balancing period of 25 or 52 weeks (the latter only if approved in the collective agreement). This type of arrangement can only be introduced under the auspices of a collective agreement or an internal regulation; subject always to the consent of the individual employee to whom this arrangement is to be applied.

9. Holidays and Time Off

9.1 Holidays

There are 12 statutory public holidays per annum in the Czech Republic. However, if they fall on a weekend they are not replaced, so the number of public holidays varies each year. In addition, all employees are entitled to a minimum of four weeks' (five weeks at state administrative bodies) paid annual holiday per year, which accrues on a pro rata basis from the first day of

employment. Money may not be paid in lieu of untaken statutory holiday entitlement except on termination of employment and in exceptional circumstances when the holiday could not be taken for urgent operational reasons of the employer.

The employer may determine the period in which employees can take their holiday in accordance with a schedule of holidays and with the prior consent of the trade unions (if applicable), so that the employee will, as a rule, be able to take the holiday at once and before the end of the calendar year in which the entitlement has been generated. If an employee is granted holiday in several instalments, at least one of the instalments must be not less than two weeks long, unless the employer and employee have agreed otherwise.

If the employer does not specify to the employee when the holiday should be taken (or does not approve the requested holiday) by 31 October of the calendar year following the year in which the entitlement has been accrued, the holiday period commences, by virtue of law, on the first working day immediately following 31 October. These provisions only apply in relation to the four weeks of statutory holiday not in respect of any additional contractual holiday.

9.2 Family Leave

The Labour Code stipulates that a woman is entitled to 28 weeks' maternity leave (37 weeks if the mother gave birth to more than one child). In addition, if either the mother and/or the father so requests, the employer is after the initial period of 28 (or 37) weeks obliged to grant her/him additional parental leave until the child reaches the age of three years. For the initial period of 28 or 37 weeks the employer is obliged to retain for the employee an identical position (at the same place of work). However, during the additional parental leave the employer is only obliged to retain a vacant position in accordance with the employee's qualifications.

During maternity/parental leave an employee is not entitled to his wages but receives a statutory maternity pay or a parental allowance. The parental allowance may be provided even after the termination of the additional parental leave, but until the child reaches four years of age at a maximum. However, the employer is not obliged to retain the job for the parent during the fourth year.

Adoptive parents are entitled to take paid maternity leave for a period of 22 weeks (31 weeks if the adoptive parent has adopted more than one child) up until the child(ren) reaches the age of one year and parental leave is available until the child reaches the age of three years.

9.3 Illness

Employees who are absent from work by reason of sickness or injury have a right to receive statutory sick pay from the Czech Social Security Authority. Changes to the social security and healthcare systems are anticipated to come into effect on 1 January 2008, so the position may change.

In this respect, some employers agree to pay employees an amount greater than statutory sick pay for a limited period, the length of which will vary depending upon the custom of the industry and the status of the employee.

10. Health and Safety

10.1 Accidents

The Labour Code lays down the general principles to be followed by an employer in relation to health and safety. Employers are under a duty to have regard for the health and safety of their employees while at work (but not travelling to or from work), and are obliged by law to maintain insurance against liability for injury and disease arising out of employment. A failure to comply with the provisions of the Labour Code may result in liability. An employer is obliged to investigate the cause of any accident, report any accident to the State Safety at Work Authority and keep records of all accidents in the work place. In addition to the general principles laid down by the Labour Code, there are numerous specific Acts and regulations governing certain types of workplace and certain types of work activity (e.g. Act on Protection of Public Health No. 20/1966 Coll., Act on Accident Insurance No. 266/2006 Coll. etc.).

10.2 Health and Safety Consultation

Employers in the Czech Republic are under an obligation to consult with their employees on health and safety matters. Consultation must be carried out through: (i) a representative nominated by a trade union; or (ii) an elected representative responsible for safety and protection of health at work; or (iii) directly with employees, if neither of the elected bodies at (i) or (ii) exists. Specified information must be made available by the employer.
A representative responsible for safety and protection of health at work may be elected, but such election is optional. Should a representative be elected, the employer must then inform and consult this representative in matters relating to safety and protection of health at work. The employer can, if it so wishes, have both a representative responsible for safety and protection of health at work and a works council. Depending on the employees' resolution to establish such representative bodies, the employer may have an obligation to consult in relation to health and safety issues with a representative responsible for safety and protection of health at work and to consult with the works council in relation to other matters.

Where there is neither a trade union, works council nor representative responsible for safety and protection of health at work, the employer is obliged to inform and consult with the employees directly.

11. Industrial Relations

11.1 Trade Unions

The Collective Bargaining Act is a legislative scheme providing for recognition of a trade union by an employer. In principal, an employer must recognise any trade union legally established in the business. In order to establish a trade union, three employees of the relevant workforce suffice (there is no requirement for the workforce to be of a specific size). If a union is established, it becomes an authorised representative of the employer's employees. Once established, the union must try and conclude an agreement

with the employer regulating their relationship and determining the matters which should be the subject of negotiation. In the absence of agreement, a procedure based on a standard model will be imposed.

Where there is no trade union, employees can elect a works council and/or a representative responsible for safety and protection of health at work.

In the absence of a trade union, a works council may be elected. If a trade union is subsequently established, the works council ceases to exist once the collective agreement is concluded.

11.2 Collective Agreements

Collective agreements between employers and trade unions are most usually found in the industrial sector or in the health services and often regulate matters such as pay, working hours, holidays, dispute procedures and procedures to deal with redundancy. Such collective agreements may have direct legal consequences for the employer, since certain terms in such agreements may become incorporated (either expressly or by implication) into individual employee's contracts of employment and where this happens such terms become directly enforceable in court (for example collectively agreed wage rates). Furthermore, in some industries unionisation remains sufficiently strong for industrial pressure to prove an effective means of securing observance of otherwise legally unenforceable provisions contained in collective agreements. Basically, collective agreements can be negotiated on two levels; either as house collective agreements (binding on a single employer and the trade union operating with that employer), or as sectoral collective agreements (binding on all employers and trade unions operating with those employers in a whole economic sector).

11.3 Trade Disputes

In general, trade disputes usually concern: the conclusion of a collective agreement and the fulfilment of obligations arising from a collective agreement (except those obligations relating to the claims of an individual employee).

Contracting parties may agree to appoint a mediator to act in the settlement of their dispute. If the parties fail to agree on the mediator, he/she shall be appointed by the Ministry of Labour and Social Affairs, acting on the basis of an application made by either of the contracting parties.

If the proceedings before the mediator are unsuccessful, the contracting parties, if they so agree, may apply in writing to an arbitrator to decide their dispute. The proceedings before the arbitrator commence on his/her receipt of such application.

The Czech Republic does not have a comprehensive "strike/lockout law". Rather, businesses, individuals and unions are granted certain limited statutory protection from liability, which they would otherwise incur, when taking industrial action pursuant to a trade dispute. The Collective Bargaining Act deals with employees' rights to strike only with the aim of concluding a collective agreement, provided that the collective bargaining procedure and subsequent mediation and/or arbitration processes have been exhausted without success. It follows that if a collective agreement is not concluded even after proceedings before a mediator and/or arbitrator, or the contracting parties do not apply for an arbitrator's award regarding their dispute, a strike (partial or full interruption of work by employees) or lock-out (partial or total cessation of work by the employer) may be used as the last resort, unless the industrial action is declared illegal by the court at the request of the other party. An employee who takes industrial action loses the right to pay during that period and is not entitled to receive unemployment benefits and/or sick pay. It is unfair to dismiss an employee who is taking "protected" industrial action.

11.4 Information, Consultation and Participation

Employers have obligations with respect to consultation and the provision of information to employees either directly or to their appropriate representatives (these are usually either a trade union or a works council). There are some differences as to the scope of the employer's obligation with respect to consultation and the provision of information vis-à-vis a trade union and a works council. In general, a trade union has a privileged position and must be informed and/or consulted in all matters like a works council, and also in matters related to health and safety at work, which would otherwise be discussed with a representative responsible for safety and protection of health at work, if elected (see above).

An employer's obligations with respect to the provision of information to a trade union include:

(a) wages, salaries, an average wage and its individual elements (including information about the average wage of the various occupational categories within the employer);

(b) the employer's economic and financial situation, impact of the employer's activity on the environment and ecological measures taken by the employer;

(c) the employer's legal status and changes in such status, its internal organisational structure, the person authorised to act on behalf and in the name of the employer in labour relations and any current and future changes in the employer's business plans and activities;

(d) the fundamental issues concerning working conditions and their safety and the protection of health at work;

(e) measures taken to secure equal treatment of employees and the prevention of discrimination;

(f) lists of vacant indefinite period positions available with the employer which would be suitable for employees working for a fixed term; and

(g) matters where the employer has consultation obligations.

An employer's obligations with respect to the consultation of a trade union include:

(a) the employer's economic situation;

(b) work output norms;

(c) changes in work organisation;

(d) the system of appraisal and remuneration of employees;

(e) the system of employee training and vocational training;

(f) measures designed to facilitate employment of disadvantaged individuals, especially adolescents, person taking care of a child under 15 years of age and disabled persons, including substantial issues relating to the care for employees, measures aimed at improving hygiene at work and the working environment, and organisation of social, cultural and physical training services; and

(g) other measures which relate to a large number of employees and matters where the employer has consultation obligations.

An employer's obligations with respect to the participation of a trade union include safety and working conditions and contributions to the employees' social fund.

The European Works Council Directive has been implemented in the Czech Republic, and while the initial establishment of the employee negotiating body is quite clearly regulated, subsequent negotiations are generally up to the parties to regulate.

12. Acquisitions and Mergers

12.1 General

Upon the transfer of an undertaking, employees are provided with protection in that their entire contract automatically transfers from the transferor to the transferee. Employees have no right to object to this automatic transfer and its legal consequence (and may not insist on for example, the continuation of employment with the transferor). Dismissals based solely on the transfer, or changes to existing terms and conditions of employment (i.e. contract of employment or collective agreements), by reason of the transfer are void, even if agreed to by employees.

Termination of employment is possible in the context of envisaged restructuring, as there are no specific rules prohibiting dismissal of employees prior to, during, or after the transfer (however it is not advisable to dismiss employees during the transfer of the undertaking because of a higher risk of the dismissals being challenged). The transfer of business itself, however, can never serve as a reason for dismissal and all of the general rules mentioned below, which are applicable to termination of employment, must be complied with, i.e. termination of employment must be based on the grounds explicitly determined in the Labour Code.

12.2 Information and Consultation Requirements

Regardless of the numbers of employees involved employers have information and consultation obligations to a trade union or a works council, (if established), or to employees directly where there is no form of established employee representation in the company.
The transferor and the transferee are obliged to inform the employees of and to discuss the following:

(i) the fact that the relevant transfer is to take place; when it is to take place (approximately) and the reasons for it;

(ii) the legal, economic and social implications of the transfer for the affected employees; and

(iii) the measures (if any) which the transferor and the transferee envisage in connection with the transfer and in relation to the employees affected by the transfer.

There are no statutory rules prescribing a minimum period of time for the information/consultation of employees' representatives before completion of the transaction. However, the consultation and provision of information should happen "before" the transfer and therefore the transfer agreement should be signed only after the information and consultation process has been completed. In this respect, the information and consultation process does not have to lead to a mutual agreement between the parties. The absence of any such agreement cannot affect the validity of the transfer.

12.3 Notification of Authorities

There is no obligation on an employer to supply information and/or consult or negotiate with any governmental or regulatory body.

12.4 Liabilities

In the event of a failure to comply with the consultation and information obligations, the Work Inspectorate may impose a fine of up to CZK 200,000 (approx. EUR 7,000), however, the validity of the transfer cannot be affected. No compensation is payable to employees. It is not, however, possible to obtain an injunction or other judicial remedies.

13. Termination

13.1 Individual Termination

An employer wishing to terminate the employment relationship must be careful to ensure compliance with both the statutory and any contractual requirements with regard to reasons for and procedures leading to dismissal.

An employment relationship may only be terminated by one of the following:

(a) an agreement between the employer and the employee;

(b) a notice of termination (given by the employer or by the employee);

(c) an immediate cancellation (effected by the employer or by the employee); or

(d) a cancellation during the trial period (by the employer or by the employee).

Although Czech Labour law does not recognize certain categories of managerial employment contracts it is possible, and common, to have special arrangements with respect to the termination of employees in managerial positions.

If agreed in the employment contract the employer may remove the manager from the position at any time and for any reason or without stating a reason. The manager's current position terminates the day following receipt of written notice of termination, unless the employer agrees with her/him on a later termination date. The manager may resign from the position at any time. In such event the manager's current position terminates the day following the delivery of her/his written notice of resignation to the employer, unless the manager agrees with the employer on a later termination date.

The Labour Code provides, however, that the employment relationship between the manager and the employer does not terminate upon the manager's removal/resignation from the position. As soon as the manager is removed from the position or resigns, the employer agrees with the manager on her/his reassignment to another position within the employer's company. The employment with the employer will be terminated only if the employer is unable to offer the manager another suitable position or the manager refuses the offered position; such a situation would allow the manager's employment to be terminated on the grounds of redundancy.

13.2 Notice

To be valid, any notice given by either the employer or the employee must be in writing and delivered to the counterparty. The delivery of the notice must also comply with the procedural rules set out in the Labour Code. The minimum notice period is two months. A longer period can be agreed, however, it must always be the same for both parties. The notice period begins to run on the first day of the month following the month in which the termination notice was given.

13.3 Reasons for Dismissal

An employee may at any time serve a notice of termination upon his employer to terminate the employment for any reason, or without stating a reason. An employer, on the other hand, may serve a notice of termination on an employee only for a good cause expressly listed in Section 52 of the Labour Code, as follows:

(a) closure or relocation of the employer or its branch;

(b) the employee's redundancy as a result of the employer's decision to change the goals of the enterprise or to reduce the number of employees in order to increase work efficiency;

(c) if a relevant medical expert considers that the employee must cease to perform the current work due to a work-related injury or ill-health or the relevant public health authorities consider that the employee has attained the maximum permissible limits of exposure (e.g. to dangerous substances, underground work etc) in the workplace;

(d) if the employee has been certified as incapable of performing his work for a prolonged period as a consequence of a medical condition;

(e) if the employee does not fulfil the legal or regulatory prerequisites for the performance of the work;

(f) if the employee fails to meet the standards required by the employer and has failed to improve his performance within a stipulated time frame after a written warning from the employer to do so;

(g) grounds for summary termination or if the employee has committed serious breaches of his/her obligations arising from the legal rules and regulations related to the work performed. In the event of a continuous, less serious breach of an obligation arising from the legal rules and regulations related to the work performed it is possible to give the employee notice of termination, if within the preceding six months the employee was warned of the possibility of dismissal in relation to such a breach.

The employer must prove that one of the above reasons existed at the time of the dismissal and that it acted fairly and reasonably in deciding to dismiss the employee. The employer must, therefore, be careful to ensure, not only that there is a permissible statutory reason for dismissing the employee, but that a fair and reasonable procedure has been followed in implementing the dismissal.

If the employer terminates the employment for grounds (a) or (b) above, the employer has an obligation to pay the employee compensation (severance pay) of an amount equal to the employee's average salary for a period of three months. For these purposes the average salary is calculated on the basis of total remuneration paid to the employee during the previous calendar quarter. Severance pay where the reason for termination is ground (c) above will be a minimum of twelve months' salary. Such compensation must be paid by the employer not only in the event of a notice served by the employer, but also in cases where the employer and the employee have concluded an agreement on termination of employment for grounds (a) or (b) above and the ground is expressly specified in the termination agreement. The employee has a right to require that the agreement on termination specifies the reason for such termination.

If an employee is dismissed without good cause and the employee insists on being further employed, the employment continues to exist and the employee is entitled to a wage compensation, provided that the employee has successfully filed an action at court. The employee may file an action for unjust dismissal within two months from the alleged unjust termination of the employment. If the employee's action is successful he may receive compensation in the amount of his salary and benefits which the employee would have received if the employment had continued or during the notice period which would have been triggered by a lawful termination.

13.4 Special Protection

Special rules apply to dismissals connected for example with pregnancy or maternity/family leave, the duties of employee representatives, asserting a statutory right, trade union membership

or activities, transfers of undertakings and public interest activities. The Labour Code sets out in detail the situations in which the employer is not allowed to serve a termination notice on the employee at all (pregnancy, maternity leave, sick leave etc). It also contains a number of complex exceptions under which these restrictions do not apply.

13.5 Closures and Collective Dismissals

Redundancy constitutes a good statutory reason for dismissal and, although it may be applicable to individual termination (for example, if one employee's specific job disappears), it is commonly associated with the partial or total closure of a business.

A collective dismissal arises if a specified number of employees are dismissed for specified reasons within a specified period of time. The specified period is 30 calendar days; the specified reasons for dismissal are closure or relocation of the employer or his branch and employee's redundancy; and the specified number of dismissed employees varies according to the size of the employer and is as follows:

(a) 10 employees if the employer employs from 20 to 100 employees;

(b) 10 per cent of employees if the employer employs from 101 to 300 employees;

(c) 30 employees if the employer employs more than 300 employees.

If an employer dismisses five employees or more for the above reasons, any additional termination of employment by agreement for the same reasons and in the same period will be deemed terminations pursuant to the collective dismissals definition. This statutory rule is to prevent employers from circumventing their statutory duties with respect to the collective dismissal situation by dismissing their employees on the basis of "formal" termination agreements instead of dismissal.

The employer must no later than 30 days before serving the notices:

(a) Inform the trade union or the works council (or the affected employees if there are no employee representatives) in writing of the intention to carry out a collective dismissal.

(b) Inform the trade union or the works council of:

  (i) the reasons leading to the collective dismissals;

  (ii) the total number of employees employed by the employer and the roles involved;

  (iii) the number of those employees to be dismissed and the structure of roles of those employers

  (iv) the period within which collective dismissals are planned to take place;

  (v) the criteria proposed for selecting employees to be made redundant; and

  (vi) the redundancy payment and, if relevant, other rights of the employees being made redundant.

(c) Discuss the intended action with the trade union or the works council. During such discussions the following issues should be addressed:

  (i) measures that could prevent or limit the collective dismissal; and

  (ii) measures that could mitigate the adverse consequences for the dismissed employees, in particular the possibility of their relocation to other positions within the employer's business.

(d) Provide the trade union or the work council with information and data to allow them to be prepared for the discussions. The content and the amount of such information is not specified by the Labour Code and will depend on the actual situation and on the reasons leading to the proposed collective dismissals.

(e) Notify the Labour Office of the intended dismissals in writing, and in a notice containing the following information:

  (i) the reasons leading to the collective dismissals;

  (ii) the total number of employees to be dismissed;

  (iii) the number and list of occupations of those employees to be dismissed;

  (iv) the period of time during which the collective dismissals will take place;

  (v) the criteria for selection of the employees to be dismissed; and

  (vi) the date of commencement of discussions with the trade union or the works council.

The employer is obliged to deliver to the Labour Office a written notice containing its decision to carry out a collective dismissal and inform the Labour Office about the results of negotiations with the trade union and deliver a copy of the notice to the trade union for its comments. The employment will not end until 30 days after the above notice is delivered to the Labour Office, unless the dismissed employee does not insist on this extension of the notice period. In this respect, the fact that the employer and the trade union do not reach a consensual agreement during their discussions does not have an impact on the validity of the termination notices.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the Data Protection Act (as amended), which implements the EU Data Protection Directive.

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, up to date, and is not kept longer than is necessary, a prohibition of pooling of personal data collected for different purposes and a requirement that information is stored securely to avoid unlawful access or accidental destruction or damage to it.

Under the Data Protection Act, disclosure of personal data is considered a form of data processing, and is therefore subject to the general principles under the Act. Data controllers must protect personal data and the entire database system against accidental or illegal access, destruction of data, changes to or loss of data, illegal disclosure or processing of data, and other forms of misuse of data. Employers are obliged to ensure and evidence that they have a document retention policy in place (including technical and organisational measures) and to ensure that staff are aware of their data protection obligations. Employers must also define conditions under which, and the extent to which, personal data will be processed by employees or by other persons under an agreement with the employer. In general, employees and other individuals who process data under an agreement with the employer or who come into contact with personal data when exercising a statutory right or duty are under a duty of confidentiality and are prohibited from disclosing the personal data to third parties.

14.2 Employee Access to Data

Employees, as data subjects, have the right to make a subject access request. The employer as a data controller must, without undue delay, provide to any individuals who request it information concerning the processing of their personal data. The information that must be provided includes the personal data or categories of personal data processed, the purpose of the processing, the source of the data and the recipients or categories of recipients of the data. The data controller is permitted to require a reasonable fee for the provision of this information, however this should not exceed the necessary costs incurred in providing it.

14.3 Monitoring

There are no specific rules under Czech Employment Law, nor any other specific legislation, relating to the monitoring of employee email, Internet use, or telephone calls. However, it is not automatically lawful. Under article 13 of the Human Rights Charter of the Czech Constitution, citizens' rights to confidentiality of messages sent by post or other means of communication is guaranteed and under the Czech Penal Code, it is a criminal offence to breach the confidentiality of private communications. Pursuant to the opinion of the Czech Office for the Protection of Personal Data, it seems that an employer would only be able to monitor an employee's email, Internet use, or telephone calls if either the employment contract or the employer's internal rules stipulated that these facilities be used by the employee solely for work purposes, and that the employer will have access to all employee communications which are not marked as personal or confidential.

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 Data Protection Act principles and processing conditions. In many cases it may be necessary to obtain the express consent of the employees concerned to such disclosure in the absence of a statutory or legitimate business purpose for the disclosure and depending on the nature of the information in question and the location of the third party. Transfers of personal data from the Czech Republic to other EU Member States are not restricted. However, where the third party is based outside of the EU it should be noted that the Data Protection Act prohibits the transfer of data to a country outside of the EU unless that country ensures an adequate level of protection for personal data (by adducing adequate safeguards for the protection of the transferred personal data) or if one of a series of limited exceptions apply. These exceptions include, for example, transfers made in accordance with international treaties binding on the Czech Republic or in accordance with a relevant resolution of the European Union Commission, transfers made with the employee's consent and transfers necessary for the purposes of a significant public interest. Even if one of these exceptions arises, authorisation by the Office for the Protection of Personal Data is required for international data transfers other than to other EU Member States.

Denmark

1. Introduction

The Constitution, legislation, collective agreements, individual contracts of employment and customary practices are the main sources of employment law in Denmark.

Collective agreements are by far the most important source of labour law. There is a strong tradition whereby the rules regulating employment contracts are formulated in the first instance by the parties to collective agreements. These agreements are then interpreted by labour Courts and arbitration boards which formulate customary practice rules. Most collective agreements regulate working conditions and industrial relations.

Individual labour law is made up of general rules of contract law and provisions of legislation which protect employees. Legislation on this subject can be divided into two categories: the first category includes laws which regulate particular types of employees like salaried employees, apprentices, agricultural workers, civil servants etc. The second category of laws regulate certain employee rights like holidays, leave of absence, wage protection in case of insolvency etc without targeting specific classes of employees.

Labour disputes are resolved through the ordinary Courts on the one hand and labour Courts and arbitration boards established by trade union organisations on the other hand. Ordinary Courts have jurisdiction over the interpretation of legislation and individual contracts, while labour Courts and arbitration boards deal with cases relating to individual and collective labour rights derived from collective agreements as well as certain disputes over legislation which give jurisdiction to the labour Courts.

2. Categories of Employees

2.1 General

Employees can be divided into two broad categories: salaried employees and workers. Salaried employees (*funktionaerer*) are employees carrying out mainly non-manual work. Their employment status is governed by labour law and principally by the 1938 Act – last amended in 2006 – on Employers and Salaried Employees (*Funktionaerloven*). Workers carrying out principally manual work have no particular legislation applying to them and their employment relationship is mainly governed by collective agreements and customary practice.

Unless specific reference is made to one category, the word “employee” is used in this section to cover both types of employment.

2.2 Directors

Senior employees or directors belong to a special category. Their working conditions are governed exclusively by individual contracts and no specific rules apply to them.

3. Hiring

3.1 Recruitment

Employers are free to recruit as they wish provided they do so on a non-discriminatory basis.

3.2 Work Permits

Non-EU and non-Nordic employees cannot be employed without a work permit and a residence permit. In order to obtain a work permit, the proposed employee must have specific skills that no other Dane, EU national or Nordic person can match.

With respect to employees from the new Eastern European countries there is a special interim arrangement aimed at ensuring a gradual transition to the free movement on labour. Employees from these countries are eligible to receive Danish work permits if they are offered fulltime employment in Denmark with conditions corresponding to the relevant collective bargaining agreements.

4. Discrimination

Comprehensive legislation operates to prohibit discrimination on grounds of sex, age, race, marital status, military status, disability, sexual orientation, religion, political belief etc. Discrimination legislation is allowed to protect certain categories of people such as pregnant women or disabled persons.

According to the Law on Equal Wages (*Lov om Ligeloen*), men and women must receive equal pay for equal work. This right cannot be contracted out of and it is for the employer to demonstrate that the pay system is not discriminatory.

The Act on Equal Treatment of Men and Women (*Lov om Ligebehanding*) aims at preventing discrimination in areas such as hiring, firing, training, and employment terms and conditions. Compensation for dismissal on discriminatory grounds is uncapped notwithstanding this compensation can be the same as that for unfair dismissal (see below) unless the dismissed employee is pregnant or on maternity leave in which case the compensation can be considerably higher. The Equality Council is the body charged with enforcing the legislation on discrimination, but disputes arising from an infringement of the Law will be resolved in the ordinary Courts.

5. Contracts of Employment

5.1 Freedom of Contract

Freedom of contract is a fundamental feature of Danish law. However, because of the detailed regulation provided by legislation and collective agreements, contracts of employment for employees are generally brief. An individual contract cannot provide terms less favourable than those provided by legislation or collective agreements.

5.2 Form

Legislation relating to the form of the employment contract and its content has been passed implementing with effect from 1 July 1993 the EU Directive dealing with the information applicable to contracts of employment. In many cases contracts are modelled on standard contracts agreed between employers’ organisations and trade unions. However, as the above-mentioned legislation requires the principal terms of employment to be set out in the employment contract, many employment contracts will also often include individual terms.

Contracts are assumed to be for an indefinite period unless specifically

stated to be otherwise. There are specific regulations relating to fixed-term contracts. If an employment relationship continues after the expiry of a fixed-term, the contract is assumed to have been converted into a contract for an indefinite period.

5.3 Trial Periods

Any probationary period must be specified in writing and may not be more than three months for salaried employees. There is no general rule on trial periods for workers; however, most collective agreements provide that a contract of employment can be terminated without notice in an initial period that can sometimes be as long as nine months.

5.4 Confidentiality and Non-Competition

The Marketing Practices Act (*Markedsforingsloven*) prohibits employees from disclosing business secrets during employment and for three years after its termination. Employers can claim damages when the confidentiality duty has been breached and an injunction may be awarded by a Court preventing violation of the law.

Post termination restrictions, such as further limitations on the exploitation of knowledge gained during the employment or the prohibiting of solicitation of a former employer's customers or clients, are fairly common. Non-competition and non-solicitation clauses can be imposed on salaried employees and compensation equal to 50 per cent of the employee's salary is due to the salaried employee during the term of the non-competition and/or non-solicitation clause. Non-competition clauses, however, can only be imposed on salaried employees holding a post of responsibility.

5.5 Intellectual Property

An employer is entitled to ownership of any invention made by an employee during the course of employment, provided compensation is given to the employee. The compensation requirement does not apply when the employee is engaged in research.

6. Pay and Benefits

6.1 Basic Pay

There is no statutory minimum wage, but collective agreements set a minimum wage for a large percentage of the Danish workforce. Those not covered by these agreements are entitled to a reasonable wage or to a customary wage fixed by reference to the trade and industry in which they work.

The automatic adjustment of pay rates in line with the cost of living has been abolished and accordingly there is no rule requiring indexation of salaries.

6.2 Private Pensions

On top of the mandatory supplementary pension scheme for qualifying employees (the Labour Market Supplementary Plan – *ATP*), there are an increasing number of private pension schemes. It is customary for both salaried employees and workers to be covered by a pension scheme with the schemes often providing retirement, survivors' and disability benefits. Funding is obligatory and schemes are arranged in the form of individual or collective accounts based on defined contributions.

6.3 Incentive Schemes

There are favourable tax provisions which are aimed at promoting individual ownership of shares. A distinction is drawn between profit sharing schemes (where employees may receive shares from their employer tax free up to a certain value) and stock option schemes (where employees are granted a right to subscribe for shares from their employing company at a discount.)

Pursuant to the Danish Stock Option Act (enacted 1 July 2004) where an employer terminates an employee's employment prior to the employee's exercise of the share purchase or subscription rights granted to him, the employee is entitled to retain such rights pursuant to the exercise terms of the scheme or agreement as if the employee had continued his employment. In addition, the employee is also entitled to receive a share, proportionate to the length of his employment in the accounting year, of the grants to which he would have been entitled according to agreement or custom, had he still been employed at the end of the accounting year or at the date of grant.

Where an employee terminates his employment before exercising the share purchase or subscription rights granted to him, he will forfeit such rights, unless otherwise provided in the terms of the scheme or agreement. Also, the right to receive further grants after termination of the employment will be forfeited.

The Stock Option Act applies only to grants made after 1 July 2004. Employees who were granted stock options prior to 1 July 2004 are entitled to retain all rights to these, regardless of whether the termination of employment was voluntary, involuntary for cause or not.

6.4 Fringe Benefits

It is common for company cars and supplementary pension benefits to be provided for senior employees and a staff canteen with subsidised meals for all the workforce.

7. Social Security

7.1 Coverage

The state social security system provides a comprehensive range of benefits: retirement pensions, survivors' pensions, medical care, sickness and maternity benefits, disability benefits, family allowances and housing allowances.

On top of the basic flat rate pension, the *ATP* covers all employees over the age of 16 and provides a supplementary pension based on the contribution period.

Various unemployment insurance funds have been set up under the control of the Minister of Labour. They cover a large percentage of the workforce, mostly trade union members. Membership of these funds is not compulsory and anyone who claims benefits from these funds must have been a member of these funds for a minimum period of one year in aggregate within the past three years and paid contributions equal to one

year's contributions, must demonstrate membership of a fund during that time and willingness to take new employment. Benefits payable under such schemes are equal to a maximum of 90 per cent of monthly salary up to a ceiling whilst employed. Both the employee and the state contribute towards the funds.

In case of industrial injuries and occupational diseases, benefits are provided by insurance companies under the supervision of the National Social Security Office and funded by employers' contributions.

7.2 Contributions

Contributions to the social security system are levied through the tax system except in respect of *ATP*, education and industrial injury.

Both employers and employees contribute to *ATP*. Employers' contributions equal DKK 1,951 (in 2007) per year per full-time employee and full-time employees contribute DKK 976 (in 2007) annually. The employer's premium to the industrial injury scheme (AES) varies annually from approximately DKK 3740 for salaried employees and up to DKK 10,500 for workers. The size of the premium is dependent on the number of employees in the company and the sector in which the company operates.

Since 1 January 1994, a tax on gross wages at the rate of five per cent which rose by one per cent each year to nine per cent in 1998 has been levied to provide revenue for allowances paid to the unemployed and for education, training and sickness (*AM-bidrag*). During 2007 the tax on gross wages is eight per cent.

Further, an employee must pay one per cent in to the special pension fund (*SP-bidrag*) from the age of 17 until retirement. Payment to the special pension fund is suspended in 2007.

8. Hours of Work

There is no general legislation on normal working hours. However, the Danish Act on Implementation of the Working Time Directive provides that the average working hours per week, including overtime, may not exceed 48 hours. Furthermore, the Working Environment Law provides for most employees to have an 11-hour break in any 24-hour period and at least one day off in every seven day period.

Hours of work are usually regulated by collective agreement or the individual contract of employment. Most private sector employees work 37 hours a week. In the case of night work, the maximum average working hours may not exceed eight hours during any 24-hour period. There is no ban on Sunday work, but work on Sundays and public holidays is regarded as overtime if there is no other stipulation in the collective agreement.

Young people under the age of 18 cannot work more than the agreed hours for the industrial sector subject to a maximum limit of eight hours a day and 40 hours a week.

Most collective agreements contain provisions relating to overtime pay and Courts have interpreted them as giving employers the right to require employees to work overtime. If there is no collective agreement, by customary practice there is an obligation on the employee to work overtime provided this right is not misused by the employer. However, an employee may refuse to work overtime if the obligation to work overtime is not stipulated in the employment contract or for personal reasons which must be communicated to the employer. A collective refusal by employees may be treated as a breach of contract.

9. Holidays and Time Off

9.1 Holidays

The Holiday Act (*Ferieloven*) provides a statutory right to 2.08 days' paid holiday per calendar month or five weeks' holiday after one year's work.

Salaried employees receive normal salary during the vacation period, together with a holiday supplement equal to one per cent of annual salary. When a salaried employee leaves the employer, the employer has to make a payment in lieu of holiday known as "holiday allowance" equal to 12.5 per cent of the salary. Workers receive holiday pay in place of their salary, which equals 12.5 per cent of the previous year's salary.

An employee and employer may agree that the employee take educational leave for a period determined according to the type of education. During a period of such educational leave, the employee may be entitled to an allowance payable by the Government.

9.2 Family Leave

Pregnancy leave can be taken four weeks before the expected date of birth. The mother has 14 weeks of maternity leave after the birth. In addition, the father is entitled to two weeks' leave to be taken during the first 14 weeks after the birth. After the 14th week after birth, each parent is entitled to an additional 32 weeks' leave which may be taken by the parents consecutively or concurrently. This parental leave may be increased by an additional 14 weeks. The employee is entitled to postpone either the parental leave or the additional parental leave by between eight and 13 weeks.

During the pregnancy and maternity leave from four weeks before the expected birth date and until 14 weeks after birth, a female salaried employee is entitled to 50 per cent of her salary to be paid by her employer but many employers pay full salary during the said period. A number of collective agreements provide for the payment of partial or full salary during the pregnancy leave for up to four weeks before the expected time of birth, during maternity leave for up to 14 weeks and during paternity leave for up to two weeks. Finally a number of collective agreements provide for the payment of full salary for up to six weeks following the maternity/paternity leave. If the employee is not entitled to salary during the pregnancy, maternity and two weeks' paternity leave, the parents are entitled to a fixed weekly allowance to be paid by the Municipality. During the parental leave after the 14th week from birth, the parents are entitled to a fixed weekly allowance to be paid by the Municipality for a period of up to 32 weeks. A number of collective

agreements grant leave for various other family reasons.

9.3 Illness

Salaried employees are entitled to full pay during absence because of illness. The employer is responsible for the payment but, after the first 15 days of sick pay, the employer is entitled to a refund of a fixed allowance for up to 52 weeks of absence in an 18 calendar month period.

Workers are entitled to a fixed weekly allowance paid by the Municipality. However, a number of collective agreements provide for full salary during any period of absence due to illness, but after two weeks of sick pay, the employer is entitled to a refund of a fixed allowance for up to 52 weeks of ill-health absence in an 18 calendar month period.

For both types of employee, the cost of absence due to illness or family leave is borne by the tax system.

10. Health and Safety

10.1 Accidents

Employers must be insured against accidents at work with an insurance company recognised by the state. Employers may also be held liable for negligence.

10.2 Health and Safety Consultation

The Working Environment Act (*Arbejdsmiljoeloven*) aims to ensure safe and healthy working conditions in the workplace. To this end, the Act provides that in workplaces with up to nine employees safety issues shall be dealt with between employer and employees. In undertakings employing more than ten but less than 20 employees, a safety group has to be elected consisting of employer and employee representatives.

In undertakings employing more than 20 employees, a safety committee (*sikkerhedsudvalg*) must be elected. Safety committee representatives have a legal right to be consulted on safety matters and to take time off to perform their functions. They may order the suspension of production activities in dangerous circumstances. Breach of the Law is punishable by fine or imprisonment. A National Committee on the Working Environment (*Arbejdsmiljoeraadet*) acts as a co-ordinating body.

11. Industrial Relations

11.1 Trade Unions

A large percentage of Danish employees are members of a trade union, most of which are affiliated to the *Landsorganisationen* ("LO") (by tradition linked to the Social Democratic Party). A congress is held every four years to determine LO policy.

There is little legislation on collective labour relations. The General Agreement (*Hovedaftalen*), last amended in 1993, between the *LO* and the biggest employers' association ("*DA*") regulates the right to join a trade union and to take part in its activities. Local trade unions which are co-ordinated at sectorial level have legal personality. These local unions are organised at national level and most of their statutes do not allow local unions to conclude collective agreements without the consent of the national union.

Closed shop agreements have recently been prohibited by law.

11.2 Collective Agreements

Collective agreements are legally binding on both parties and their members, and are also applicable to employees who are not members of one of the signatory unions provided the employer was a party to the agreement. Collective agreements can cover all aspects of the employment relationship including wages, working hours, holidays and termination and are automatically transferred on the sale of a business. Collective agreements are usually signed for a period of four years. They cannot be extended by administrative decree to employers and their organisations or their members who were not parties to the agreement.

11.3 Trade Disputes

Industrial action tends to be more infrequent than in other jurisdictions as Danish law has developed an efficient system to resolve disputes.

There is a right to strike if there is a conflict of interest (*interesse-konflikter*), i.e. where parties disagree about wages or the working conditions applicable to a particular job and where no collective agreement is applicable. Such a conflict may arise, for example, when a collective agreement falls due for renewal, or when the contract of employment provides for an opportunity to renegotiate pay. It is unlawful, on the other hand, to strike if there is a conflict of right (*rets-konflikter*) i.e. during the period of validity of a collective agreement when there is a breach of a collective agreement or a dispute over the interpretation of such agreement. In this case, strike action is unlawful and there is an obligation to refer the dispute to an industrial arbitrator or, if this fails, to the industrial Court. The Courts have power to fine both parties to an agreement and their members if there is a breach of it. No sanction can be imposed on an employee who refuses to do the work usually done by persons taking part in industrial action.

Where a conflict of interest arises, the matter may be referred to the Conciliation Board (*Forligsinstitutionen*) at the request of either party in accordance with the Law on Mediation Procedures. The Public Conciliator will lead negotiations, put forward proposals for a settlement and may also order the postponement of strike action for up to two weeks if there is a chance of a settlement.

In cases where there is no alternative to a strike and such action is on the face of it legal, 14 days' notice of any strike should normally be given to the employer.

11.4 Information, Consultation and Participation

Information, consultation and participation is required at various levels:

- The Companies Act allows employees to elect representatives to the board of directors of companies with at least 35 employees. The number of employee representatives on the board is up to half the number of board members elected in general meeting subject to a minimum of

two. These representatives have the same rights, duties and liabilities as the other members elected in general meeting.

- Undertakings with more than 20 employees must establish a safety committee with employee representatives. The committee must be informed and consulted on all matters relating to health and safety.

- The Agreement on Co-operation Committees between LO and DA (*samarbejdsudvalg*) requires companies to be managed in a way that ensures maximum co-operation between employer and employees. To this end, companies with more than 35 employees must set up a Work Council consisting of equal numbers of employee and employer representatives. The Council has a role in the decision-making and the planning processes in relation to working conditions and day-to-day production. It may intervene in other areas such as training methods, wage systems, introduction of new technology etc. Employee representatives are elected for two years and the time spent on Council matters is treated as normal working time.

- The Act on Information and Consultation of Employees (*lov om information og hoering*) implements the Employee Information and Consultation Directive. Pursuant to the Act, any company employing more than 35 employees, and which is not part of any collective agreement that provides for equal rules on information and consultation, is obliged to inform and consult the employee representatives or the employees with any relevant information regarding the employees' working conditions. The employee representatives must be informed and consulted with as early as possible to allow the employees' opinions, views and proposals to be taken into consideration when the company makes its final decisions.

- Employees in a European company are covered by the rules in the Act on Information and Consultation of Employees in European Companies (*lov om medarbejderindflydelse i SE-selskaber*). The Act implements the Workers Participation Directive in respect of employee involvement in the affairs of European companies. The rules on employee representation in SE-companies are very complicated. Basically, when a Danish SE-company is established, a special negotiation body of employee representatives must either 1) commence negotiations and draw up a plan for employee involvement, 2) decide not to open negations, or 3) terminate negotiations already commenced. If the special negotiation body draws up a plan for employee involvement, this plan will set the guidelines for employee representation. If the special negotiation body decides not to open negotiations, the act on employee representation contains a set of standard rules, which will apply. If the special negotiation body terminates negotiations already opened, they will have to rely on the Danish rules on employee representation. Regardless of whichever set of rules apply, the employee representatives are entitled to information and consultation before important decisions concerning the employees' working conditions are made.

12. Acquisitions and Mergers

12.1 General

On the sale of a business, all the transferor's rights and liabilities connected with the transferor's employees are assigned to the transferee in accordance with the Employees' Rights on Transfers of Undertakings Act (*Lov om Loenmodtageres retsstilling ved virksomhedsoverdragelse*). The transferee is not entitled to dismiss employees unless the dismissal is for economic, technical or organisational reasons.

12.2 Information and Consultation Requirements

A transferor is obliged to inform employees of any intention to sell the business and if the transferor or the transferee envisages measures in relation to his employees, he must negotiate ways of safeguarding their position with a view to seeking an agreement. The transferor must inform and negotiate/consult with the company's employee representatives. If there are no employee representatives in the company, the information must be supplied to all employees. In addition the transferor is obliged to inform and consult the employee representatives from the co-operation committee if the company is party to a co-operation agreement. This will apply to companies with more than 35 employees, which are party to collective bargaining agreements. In addition, companies who are not party to any collective agreement are bound by the Act on Information and Consultation of Employees (see above). Thus, there are three sets of rules governing the information and consultation procedure when a business is sold.

The information must be given to the employees within a reasonable time before the transfer of the business. There is no definitive case law on the meaning of "within a reasonable time". In some situations, information pursuant to the Act can be given after the signing of an agreement, but before the actual transfer of a business, provided that the employees are given reasonable time to consider the consequences of the sale. This will, however, in most situations be too late. If the transferor is afraid that the information given to the employee representatives will have an adverse impact on his ability to reach an agreement on the sale of his business, the transferor is entitled to impose a duty of confidentiality on the employee representatives.

The Danish Employees' Rights on Transfer of Undertakings Act does not contain any minimum requirements regarding the length of the information/consultation period. Normally, the duration of such a period depends on the speed in which the parties reach results in their negotiations.

The transferor and the transferee are

entitled to complete an agreement on the sale of a business regardless of whether the employees have been informed or consulted. Thus, an infringement of the rules of information and consultation does not affect the validity of such an agreement.

None of the obligations outlined above are affected if redundancies are contemplated prior to or after the business transfer. The obligation to inform and consult the employee representatives exists regardless of whether the business transfer involves redundancies or not. However, other sets of rules may delay the process if the business transfer involves redundancies of more than 10 employees, (see below).

12.3 Notification of Authorities

There is no obligation under Danish law to inform, consult or negotiate with any governmental body, but some collective agreements contain rules saying that the negotiations must take place with the trade unions before the transfer of a business. If a transferor fails to comply with this obligation he may be fined for breaching the collective agreement.

12.4 Liabilities

If the transferor fails to comply with the information and consultation rules it will face criminal sanctions. Thus, any failure to comply with the rules may, in theory be sanctioned with a fine, however, there are not yet any reported cases of a fine having been imposed.

13. Termination

13.1 Individual Termination

The right of employers to terminate contracts of employment is limited by legislation and collective agreements. Different rules apply for terminating the employment contracts of salaried employees and workers.

13.2 Notice

The termination of employment of workers is regulated by the applicable collective agreement. Most agreements link the length of notice with seniority and age. In general, employers must give notice of between 14 and 120 days.

The law provides minimum notice periods to be given to salaried employees. These vary according to length of service. They amount to one month for employees with one to six months' service and three months for those with six months' to three years' service. An extra month's notice has to be given for each third year of service starting from the fourth year of employment up to a maximum of six months.

Regardless of the reason for dismissal, salaried employees with 12, 15 and 18 years' service are entitled to severance pay of one, two or three months' salary respectively. There is no equivalent for workers.

When the contract of a salaried employee has been wrongfully terminated without notice, the employee is entitled to a payment equal to the notice period. However, if the notice period exceeds three months, payment in excess of the three months is only due if the employee's loss exceeds three months' salary. Workers whose contracts have been terminated without notice are entitled to damages equal to salary in lieu of notice.

If the contract of employment is not covered by legislation or a collective agreement and there is no express provision in the contract dealing with termination, Courts will apply the customary practice for the industry sector.

13.3 Reasons for Dismissal

Where the employee is in serious breach of contract, the agreement can be terminated without notice or compensation.

Workers with more than nine months' service are entitled to know the reasons for the dismissal if they request it. The same rule applies to salaried employees regardless of their length of service.

When the dismissal of a salaried employee with at least one year's service is considered unfair and where no collective agreement is applicable, compensation can be granted. The following compensation limits apply:

Age	*Length of Service*	*Compensation*
Under 30	1 year	Maximum of half the salary for the relevant notice period.
Over 30	1 to 10 years	Maximum of 3 months' pay
	10 years	Maximum of 4 months' pay
	15 years	Maximum of 6 months' pay

For workers with at least nine months of service, compensation for unfair dismissal is regulated by the General Agreement between DA and LO. This Agreement provides a procedure of negotiation when the dismissal is considered unfair by the worker. The maximum compensation for unfair dismissal is fixed at 52 weeks' pay. A permanent Tribunal on Dismissals deals with dismissal claims.

In case of dismissal for economic reasons, the law does not lay down any specific selection criteria. However, good industrial relations may dictate that an employer formulates a redundancy policy.

13.4 Special Protection

Several categories of employees are specially protected against dismissal. An employer cannot terminate the contracts of pregnant women or employees on leave in connection with birth because of their physical condition or because of the employees' pregnancy, maternity, paternity and/or parental leave. If the employer cannot prove that the contract has been terminated for reasons other than pregnancy or leave in connection with birth, compensation can be awarded. The maximum limit on such compensation used to be 78 weeks' salary, however, this compensation limit has recently been removed.

An employer is not allowed to discriminate against employees or applicants in respect of recruitment, dismissal, transfer, promotion, salary or working conditions because of age, disability, race, religion, political or sexual orientation, national, social or ethnical origin.

Persons who are discriminated against are entitled to compensation. The employer has the burden of proof in discrimination cases if the employee can

establish facts that may give rise to the presumption that discrimination has taken place.

Employee representatives on Health and Safety Committees, shop stewards and on boards of directors are protected in accordance with the applicable collective agreement. Employees elected to Works Councils are entitled to six weeks' notice on top of the notice provided by the relevant collective agreement up to a maximum. Employee representatives who are elected to participate in a co-operation committee pursuant to the Act on Information and Consultation of Employees and employee representatives who are elected to participate in the special negotiation body pursuant to the Act on Information and Consultation of Employees in European Companies are entitled to the same protection as shop stewards.

If a salaried employee has been ill for a total of 120 days within a year, he or she may be dismissed on one month's notice provided there is a provision to that effect in the contract. Some collective agreements provide that workers with more than nine months' service cannot be dismissed during the first four months of illness.

Under the General Agreement, trade union members who claim unfair dismissal can first require negotiation at company level between employee representatives and employer. If the parties do not reach any agreement, the case may be brought to the Dismissals Board.

13.5 Closures and Collective Dismissals

The rules on collective dismissals will apply if, within 30 days, the following changes are planned in relation to the workforce:

Size of workforce	*Minimum number of employees to be dismissed*
More than 20 and les than 100 employees	10 employees
More than 100 and les than 300 employees	10 per cent of the workforce
More than 300 employees	30 employees

In those circumstances, employers are obliged to consult the employees or their representatives and a special procedure shall be followed.

The purpose of the relevant regulations is to ensure that negotiations take place with employee representatives in order to limit the number of dismissals or the consequences of them. In case of infringement of the applicable law, fines may be imposed and compensation of 30 days' salary is due to each employee; any payment in lieu of notice may be set off against this compensation.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the Danish Act on Processing of Personal Data (*Lov om behandling af personoplysninger*) (the Act), which implements the EU Data Protection Directive. Infringement of data protection law can lead to fines and the employer may be obliged to indemnify any damage caused by any processing contrary to the Act.

Broadly speaking the Act requires the processing of personal data to be reasonable and lawful, that data collection takes place for specified explicit and legitimate purposes and that data shall not be further processed in a manner incompatible with these purposes. Accordingly the employer may only handle personnel information that is necessary for the employer to maintain a proper employment relationship.

In addition, the employer may, in general, only process personal data if the employees have given their consent. The employees' consent must take the form of an express consent to the employer's processing of data contained in the personnel file, and consent may be withdrawn at any time. The employer is obliged to specify to the employees what the data will be used for.

The Act does not prevent employers from maintaining ordinary personnel files to the extent necessary for the employer to maintain a proper employment relationship or where the employer's interests outweigh the employees' interests. Accordingly, ordinary personnel files may only include basic information such as name, address, next of kin information, tax information, bank account details, the education details, career details, normal curriculum vitae information and references. The employer may also process information that arises out of the employment relationship such as details of duties, salary, pension arrangements, sickness absence, warnings and appraisals, unless it is sensitive personal data.

In order to process other information, including the employee's social security numbers and sensitive personal data, the employer must obtain express employee consent. Sensitive personal data includes information relating to an employee's health, alcohol and tobacco abuse, trade union membership, criminal offences, dismissal without notice, personality tests and the employee's race or ethnic background, political, religious or philosophical belief, sexual orientation or material social problems.

If an employer processes any kind of sensitive personal data, it must notify the Danish Data Protection Agency (Datatilsynet) and obtain the Agency's permission before such processing is carried out.

14.2 Employee Access to Data

Employees, as data subjects, have the right to make a subject access request. This entitles them to be informed about the data held about them, the purpose of the registration, whom it is disclosed to and from where the information is obtained.

If the employee does make a subject access request and has requested written information, the employer may charge DKK 10 per page. However, the total amount is limited to a maximum of DKK 200.

14.3 Monitoring

The monitoring of employee e-mail, Internet, telephone usage and Closed Circuit TV monitoring is regarded as

data processing for the purposes of the Act and, therefore, any monitoring must comply with the provisions of the Act.

An employer may not however, monitor conversations and the like as part of any Closed Circuit TV monitoring.
In addition, an employer may not make any automatic monitoring of the phone numbers called by its employees.

The employee's express consent to monitoring is not usually required, however, the employees should be expressly informed about the fact that monitoring is being carried out and the purpose for which it is being conducted.

14.4 Transmission of Data to Third Parties

An employer who wishes to provide employee data to third parties may do so in accordance with the principles and processing conditions of the Act. The transfer of personnel files from an employer to a third party is covered by the Act. Accordingly, such transfers either require the consent of the employee or must be authorised under the Act.

Where the third party is based outside the EEA, it should be noted that the Act prohibits the transfer of data to a country outside the EEA unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply.

In the context of commercial transactions, where employee data is requested, care must be taken to comply with the Act. Where possible, anonymous data should be provided, and where this is not possible, the recipient should be required to undertake in writing that it will only use it in respect of the transaction in question, will keep it secure and will return or destroy it at the end of the exercise.

Estonia

1. Introduction

Employment relations are regulated by a number of statutes, including the Employment Contracts Act ("ECA"). In contrast to much employment legislation of other member states Estonian employment law is not unfavourable to the employer. However, as the formal legislative requirements are extraordinarily strict an employer must adhere meticulously to the prescribed rules regarding the establishment and termination of employment relations.

The ECA deals with the formation, suspension, modification, termination and invalidity of employment contracts as well as with respective rights and obligations, and sets out the rules of settlement of employment disputes. Government regulations regulate a number of areas including the issue of work permits to foreign employees, the employment of minors under 15 years of age, outlawing the performance of hazardous labour by minors and women, the regulation of employment relations in bankruptcy cases, the provision of guidance regarding the calculation of the average salary.

Employment contract terms that are less favourable to employees than those prescribed by law, administrative legislation or a collective agreement are invalid. Trade unions do not have a significant influence in Estonia. Therefore, collective agreements do not generally have a significant impact on employment relations and are considered voluntary and have been concluded in a limited number of economic sectors and companies only.

2. Categories of Employees

2.1 General

A full-time employee works for eight hours per day and forty hours per week. This is the general national standard.

Part-time employees cannot be treated in a less favourable manner than full-time employees, unless different treatment is justified on objective grounds (as prescribed by law or collective agreement). Part-time employees have the same rights and obligations arising from the employment relationship as full-time employees.

2.2 Directors

The ECA does not apply to the relationship between management board members and a company. Therefore, it is essential to draw up a comprehensive agreement between the company and a management board member clearly identifying the tasks and duties of the management board member, as well as the remuneration and benefits, holiday entitlement, liability of the management board member for breach of duties and grounds and means of terminating the contract.

3. Hiring

3.1 Recruitment

Employers are free to recruit at their discretion. However, an employer is required to re-employ an employee who has been released due to a lay-off within six months of the lay-off if the employee so desires and the employer has vacant positions.

3.2 Work Permits

In order to work in Estonia, a non-EU national must obtain a work and residence permit from the Citizenship and Migration Board of Estonia. The procedure for non EU citizens takes up to six months and the state fees are as follows:

- on applying for a work permit or extending it - 750 EEK (approx c48/£33);
- on applying for a residence permit for employment or extending it - 1500 EEK (approx €96/£65).

Upon recruitment the employer must check that the individual has the relevant permit. The employer is not allowed to conclude an employment contract with a person who does not hold a valid permit and must terminate the employment contract with an employee who does not hold a permit for employment in Estonia.

4. Discrimination

Employers may not, at any stage of the employment relationship, discriminate against persons applying for employment on grounds of sex, racial origin, age, ethnic origin, level of language proficiency, disability, sexual orientation, duty to serve in defence forces, marital or family status, family-related duties, social status, representation of the interests of employees or membership of workers' associations, political opinions or membership of a political party or religious or other beliefs.

5. Employment Contracts

5.1 Freedom of Contract

Employment contracts may be entered into for an indefinite or fixed term. However, fixed-term employment contracts may be concluded only in certain cases specified by the ECA.

Fixed-term employment contracts may be concluded for example with employees who are employed for seasonal work, in order to replace an employee on maternity leave, or to replace an employee who has been granted some specific benefit such as free training.

5.2 Form

Employment contracts can be concluded either orally or in writing. Employment contracts concerning work periods in excess of two weeks must be concluded in writing.

If the terms of an individual employment contract fall short of the requirements of any applicable collective agreement, the terms of the collective agreement will apply.

5.3 Trial Period

Trial periods may not exceed four months. Use of a trial period is common, but is not compulsory.

An employer can terminate the employment contract up to the very last day of the trial period. An employer should, however, be prepared to evaluate the employee's performance as termination of an employment contract for no valid reason may be challenged in court even if the contract was terminated within the trial period.

5.4 Confidentiality and Non-competition

According to the ECA an employee is obliged to maintain the business and production secrets of the employer and must not compete with the employer, without the employer's permission if there are provisions to that effect in the employment contract. An employee can also be subject to such confidentiality and non-competition restrictions following the termination of employment if an agreement to that effect is concluded with the employer and pursuant to which the employee receives compensation for the undertakings.

5.5 Intellectual Property

Intellectual property rights are regulated by the Estonian Copyright Act. The moral rights of an author are inseparable from the author's person and non-transferable. The economic rights of an author are transferable as single rights or a set of rights for a charge or free of charge. It is not unusual for an employment contract to provide that the employee will transfer his/her intellectual property rights to the employer either for a charge or free of charge.

6. Pay and Benefits

6.1 Basic Pay

An employee's salary may not be less than the minimum pay limit established by the Estonian government. With effect from 1 January 2007 the monthly minimum salary for full-time employment is EEK 3600 (approx €239/£156) and the minimum hourly salary is EEK 21,50 (approx €1.37/£0.93). Salaries are paid by bank transfer or in cash.

There is no obligation to index link pay.

6.2 Private Pensions

There is a "three-pillar" pension system in place in Estonia. The first pillar is the obligatory state pension; the second pillar is the mandatory funded pension system implemented in 2002 and the third pillar is a voluntary supplementary pension system.

6.3 Incentive Schemes

There is no legislative requirement for employers to operate share option or profit related pay schemes, and in practice such schemes are not widely used.

6.4 Fringe Benefits

Fringe benefits are common and typically comprise the use of mobile phones, company car, laptop etc.

7. Social Security

7.1 Coverage

Social tax is a state tax, which is payable by employers and private entrepreneurs operating in Estonia, i.e., by legal entities registered in Estonia and branches of foreign companies and sole proprietors (private entrepreneurs). As the employer must pay the social tax, the place of residence of the employee is not taken into consideration.

7.2 Contributions

Social tax is a mandatory monthly tax from which public pensions, social security benefits and health insurance services are financed, in accordance with the Social Tax Act. The social tax rate is 33 per cent of the gross taxable salary, made up of 20 per cent social security payments and 13 per cent health insurance contributions.

Sole proprietors are personally liable for paying the social tax on the business profits less deductions, while the tax per annum is capped at 33 per cent of 15 times the yearly minimum salary set by the government.

Another monetary instrument for helping guarantee social security is unemployment insurance. The premium payments are made each payday. The obligation is shared between the employee and the employer. The employer must withhold the premium at the current rate of 0.6 per cent of the employee's gross pay and pay an additional 0.3 per cent of the employee's gross pay.

8. Hours of Work

As a general rule, a full-time employee's working hours must not exceed eight hours per day or forty hours per week. The working week is five days - Monday to Friday. The maximum weekly working time for minors is shorter and varies from 20 to 35 hours per week depending on the age of the minor. The maximum weekly working time for school and kindergarten teachers and other educators is also shorter.

Any work performed outside the contractually stipulated hours is considered overtime work. As a rule, the employer must obtain the employee's consent before the employee is made to work overtime. Exceptionally, the employer may require an employee to work overtime in cases such as force majeure, in order to deal with the consequences of a natural disaster or a production accident etc.

Regardless of whether overtime work is performed on a voluntary basis or on account of a compulsory request by the employer, overtime work must be compensated by additional payment or time off in lieu. Additional remuneration for overtime must not be less than 50 per cent higher than the employee's hourly rate of pay.

9. Holidays and Time Off

9.1 Holiday

There are four basic types of leave: primary and additional leave, parental leave, unpaid leave and study leave. The length of primary annual leave is 28 calendar days per working year. The working year is the period beginning on the first day of employment and ending on the day preceding the same day of the next year. Primary annual leave is paid according to a formula based on the employee's average salary.

Part-time employees are entitled to holiday according to the same rules as full-time employees. If there is a state holiday during the vacation, the vacation is extended by the equivalent number of days.

Additional leave is granted to the employees who are engaged in underground work, work which poses a health hazard or work of a special nature.

Employees are also entitled to be granted study leave in order to participate in education and training.

9.2 Family Leave

Parental leave includes pregnancy and

maternity leave, child nursing leave and additional child-related leave.

Pregnancy and maternity leave of 140 calendar days is granted to a woman on production of a certificate for maternity leave. Such leave starts at least 70 days prior to the expected birth date. A benefit equal to the average daily income is payable by the Health Insurance Fund (*Haigekassa*).

After the pregnancy and maternity leave, one of the parents is entitled to parental benefit. The amount of the benefit per calendar month will be 100 per cent of the average income of the applicant per calendar month in the preceding calendar year subject to social tax. The parental benefit payment period starts after the pregnancy and maternity leave has ended and continues until 455 days have passed as of the first day of the pregnancy and maternity leave.

In addition, after the period of parental benefit, a mother or a father may be granted parental leave at his or her request for raising a child of up to three years of age. For the duration of parental leave the employment contract is suspended and the employee receives a childcare allowance from the local pensions board pursuant to the State Family Benefits Act. A father has the right to be granted an additional child care leave of fourteen calendar days during the pregnancy leave or maternity leave of the mother or within two months of the birth of the child. An employee taking such leave receives a nominal amount from the state budget.

The employer and the employee may also agree upon unpaid leave of absence.

In certain cases the employer is obliged to grant unpaid leave of absence (of up to 14 days) at the employee's request (e.g. in the event of an employee raising a child under 14 years of age).

9.3 Illness

Health care coverage applies in respect of people insured under the social security system either due to contributions being paid by their employer, by themselves, as self-employed or by the state. Benefits of varying percentages of the employee's salary will be paid by the Health Insurance Fund in the event of absence due to ill-health for up to 250 days per calendar year.

10. Health and Safety

10.1 Accidents

The Occupational Health and Safety Act provides that the employer has a duty to provide a safe working environment, and healthy working conditions. The Act also describes how occupational health and safety should be organized in enterprises and at the state level and sets out the liability for non-compliance with its requirements. The Act does not impose an obligation on employers to provide insurance for accidents at work.

10.2 Health and Safety Consultation

The Act requires, among other things, that there are health and safety managers in every company and elected health and safety delegates in all companies with more than ten employees. Companies with at least 50 employees must have a health and safety council with whom to consult on all health and safety matters.

11. Industrial Relations

11.1 Trade Unions

Trade union membership is generally low in Estonia and the negotiating power of the unions is rather limited. There are two main trade unions:

- The Association of Estonian Trade Unions (EAKL) established in 1990 being the largest and predominately blue-collar oriented;
- The Estonian Employees' Unions' Confederation (TALO) established in 1992, which represents white-collar employees.

The legal status of trade unions is regulated by the Trade Unions Act (2000). A trade union is considered to be a type of non-profit making organization. The legal personality of a trade union begins when it has been registered in the register of the trade unions and it ends when the trade union is removed from the register.

The law also regulates the rights of employees to establish a trade union and act as its representatives.

11.2 Collective Agreements

Collective bargaining at various levels is still quite weak, as the social partners organizations are still quite young and only a small number of agreements have been concluded. Collective agreements tend to predominate in specific sectors of the economy, such as transport, engineering, food, wood, textiles and clothing and chemicals.

Collective agreements may cover any topic or workplace issue. In practise these deal with pay and other terms of employment, such as working time, severance payments, retirement age, plus issues to do with the trade union's facilities. The terms and conditions of a collective agreement, which are less favourable to employees than those prescribed by a Collective Bargaining Agreements Act or other relevant legislation, are invalid. In the event of a conflict between the provisions of different collective agreements applicable to employees, the provisions that are more favourable to the employees apply.

As a rule the collective agreements do not apply to non-parties to the collective agreement.

11.3 Trade Disputes

The Trade Unions Act defines whom the trade unions must represent in a dispute and sets out the legal powers of their representatives. It grants unions the right to protect the interests of their members in collective disputes.

The parties are required to comply with the terms and conditions of a collective agreement during the term of the collective agreement and refrain from calling a strike or lockout in order to amend the terms and conditions provided for in the collective agreement.

The federation of employees and federation of employers may deal with labour disputes that arise from collective agreements. In the event that a dispute cannot be resolved by the federation, the parties may refer the dispute to the Public Conciliator.

11.4 Information, Consultation and Participation

In order to represent, exercise and protect the rights and interests of employees, trade unions have a right of participation in employee information and consultation processes, and, to a certain extent in decision-making processes as provided by the Trade Union's Act, and other applicable legislation and agreements.

There is not an established history of works councils. However, legislation giving effect to the Employee Information and Consultation Directive was enacted in February 2005, so the position may change.

12. Mergers and Acquisitions

12.1 General

The effect of mergers and acquisitions on employment contracts is regulated by the ECA. The rights and obligations arising from an employment contract transfer to the new employer in the following cases: (i) in the case of merger, division or transformation of employing entities; (ii) if the functions of a body administered by an administrative agency are fully or partially transferred to another person, if after the transfer the same or similar activities are continued; (iii) in the event a business entity operating in commerce or for other purposes, or an organisationally independent part thereof, is transferred from one person to another on any legal basis, if after the transfer the same or similar activities are continued.

The ECA provides that reorganization, or change in ownership of a business does not terminate an employment contract nor serve as grounds for termination. Employees have the right to continue working at the business formed as a result of reorganization or following a transfer to a new owner.

12.2 Information and Consultation Requirements

The ECA sets out the procedure for informing and consulting the employees' representatives (e.g. trade union) in relation to the transfer of employment contracts or if there are no such representatives, the employees of the company.

There is no threshold number of employees triggering this obligation. The information and consultation obligation is triggered whenever one of the above-mentioned merger and acquisition events occur.
The consultation obligation is triggered in the event that the former or new employer envisages taking 'measures' in relation to his employees in connection with the transfer of employment contracts; the employer is obliged to consult the representatives of the employees on such measures with a view to reaching an agreement.

The former and the new employer must provide the representatives of the employees with all relevant information in writing, or in the absence of representatives directly to the employees, in good time, but not later than one month prior to the transfer of the employment contracts.

During the consultation process, the representatives of the employees have the right to meet with the representatives of the employer and the members of the directing bodies of the employer and submit, within fifteen days of receipt of the written information, their written proposals with regard to the proposed measures in relation to the employees, unless a longer period is agreed upon. Employers are required to give reasons for refusal to consider such proposals.

12.3 Notification of Authorities

There is no general obligation to inform governmental or regulatory bodies about the transfer of employment contracts. However, the notification and consultations may be triggered by collective lay-offs etc.

12.4 Liabilities

An employer who violates the information or consultation requirement may be punished by a fine.

A sale and purchase agreement can be signed before the information and consultation process is started however closing cannot occur before completion of information and consultation; i.e. the employment contracts cannot transfer prior to the process being completed.

13. Termination

13.1 Individual Termination

Employers must ensure that there are suitable grounds for dismissal and that the appropriate notice requirements are adhered to.

If the court finds that dismissal was unlawful, the normal remedy is to order the employer to reinstate the employee. Upon reinstatement of an employee to employment, a labour dispute resolution body will also order the employer to pay the employee his/her average wages for the period of compelled absence from work, except in special cases prescribed by law. If reinstatement is not an appropriate remedy, compensation of up to six times the employee's monthly average salary can be awarded instead. The court or individual labour dispute committee determines the specific amount of compensation.

13.2 Notice

An employer is required to give an employee prior written notice of termination of the employment contract. Different notification periods apply depending on the statutory grounds invoked for terminating the contract. Notice periods vary from two weeks (if an employee is being terminated for long-term incapacity) to four months (in the event an employee who has been with the company for more than ten years is laid off).

An employer who has decided to terminate an employment contract may release an employee from his posts immediately. However, the employer is obliged to pay salary during the entire notice period. Employers who do not adhere to the notice requirements described above are liable for additional payments. If an employer fails to comply with its notice obligations, it is required to pay the employee compensation equal to a day's average wage for each day of notice not given.

Summary termination without notice or compensation is permissible only in extreme circumstances, such as in the event of a severe violation of work duties by the employee which has aggravating results e.g. endangering the employer's property, other employees or third

parties. In the event of a loss of trust in the employee, there is also no obligation to give notice or pay compensation.

13.3 Reasons for dismissal

Grounds for dismissal are the unsuitability of the employee for his/her position or work due to the employee's poor vocational skills or the employee's protracted incapacity for work due to ill health.

13.4 Special Protection

Termination of an employment contract is prohibited if the employee is on holiday, parental leave and unpaid leave or temporary leave of work due to a temporary reduction in work.
An employer is also prohibited from dismissing pregnant women or an employee raising a child under three, except in limited circumstances such as the liquidation of the employer or loss of trust.

13.5 Closures and Collective Dismissals

The law defines dismissals as "collective" when a specific number of employees are collectively laid off within a 30 day period for reasons which are not related to the behaviour or the abilities of the employees, e.g. closure of the employer's business. A collective dismissal will arise when:

- An employer who employs up to 19 employees terminates the employment contracts of at least five employees; or
- An employer of 20 to 99 employees terminates the employment of at least 10 employees; or
- An employer of 100 to 299 employees terminates the employment of at least 10 per cent of employees; or
- An employer of 300+ employees terminates the employment of at least 30 employees.

Prior to a collective redundancy an employer must consult with the employees' representatives with the aim of reaching an agreement in relation to the following issues: the possibility of avoiding or reducing the number of redundancies, possible measures to alleviate the consequences of the terminations and ways of supporting the dismissed employees in their search for work, re-training or in-service training. During the consultation process the employees' representatives have the right to meet with the representatives of the employer and submit their representations within a period of fifteen days after the receipt of the employer's consultation notice.

14. Data Protection

14.1 Employment records

The Personal Data Protection Act regulates the collection, storage and use of the information held by the employers about their employees.

14.2 Employee Access to Data

An employee has the right to receive copies of personal data relating to him or her from the employer.

Finland

1. Introduction

The most important concept in labour law in Finland is the employment relationship.

Employment is based on statute, collective bargaining agreements and on the principle of freedom of contract. Freedom of contract is limited both by collective bargaining agreements, when applicable and by mandatory stipulations enacted to protect the employee.

Traditionally central collective bargaining has been the most important factor, and today collective agreements have input from trade unions, employers and the Government. Such agreements are generally at sector or industry level. Agreements at company level have, however, during recent years become an essential part of the collective bargaining process. Even employers who do not recognise trade unions ("non-organised employers") have to some extent the right to observe the same terms of generally binding collective agreements which previously only employers who recognised trade unions ("organised employers") were entitled to apply.

2. Categories of Employees

2.1 General

All employees other than a managing director are subject to statutory labour law.

2.2 Directors

The managing director of a company is not subject to statutory labour law. The terms of employment of a managing director are exclusively governed by the individual contract. The employment of senior executives and directors is subject to statutory labour law. Senior executives working directly under the managing director are, however, exempted from the application of the Working Hours Act.

2.3 Other

Under the provisions of the Employment Contracts Act a part-time employee must be given priority when applying for a similar full-time position. There are no additional special provisions relating to part-time employees. However, collective bargaining agreements normally include provisions on part-time employees.

3. Hiring

3.1 Recruitment

An employer who in the previous nine months has dismissed employees by reason of redundancy must enquire at the local labour office whether any of those former employees are registered as seeking work via an employment office. If so, employment has to be offered in the first instance to such former employees. Employers are otherwise free to recruit as they wish on a non-discriminatory basis.

Executives are often recruited by head-hunting firms.

3.2 Work Permits

For a non-EU national to work in Finland, he or she must obtain a worker's residence permit from a Finnish Embassy abroad. Depending on the duration and nature of the work a residence permit may be sufficient and for specific categories of short term assignments no permit may be necessary.

EU nationals and citizens of Iceland, Liechtenstein, Norway and Switzerland can freely work in Finland, provided the work lasts a maximum of three months. Where the duration exceeds three months they must register their right to reside in Finland, but they do not need a special residence permit.

4. Discrimination

According to the Employment Contracts Act an employer must treat employees impartially without any unwarranted discrimination on the basis of ethnic origin, religion, age, health, political or labour union activity, or any comparable reason. The Act on Equality Between Women and Men prohibits discrimination on the basis of gender. An employer violating these rules may be liable for damages, compensation, fines or imprisonment.

5. Contracts of Employment

5.1 Freedom of contract

Individual employment contracts are regulated by the Employment Contracts Act (26.1.2001/55). The provisions are partly optional and partly mandatory. Optional provisions will apply unless the parties have agreed otherwise, or an applicable collective bargaining agreement provides otherwise.

If the terms of an individual employment contract fall short of the requirements of any applicable collective agreement, the terms of the collective agreement apply.

5.2 Form

A contract may be agreed orally or in writing. However, an employer must inform an employee of the basic terms of the employment relationship in writing, if the contract is oral or if these terms are not included in a written contract. The provisions of the Employment Contracts Act (implementing the provisions of Directive 91/533/EEC) deal with an employer's obligation to inform employees of the conditions applicable to the contract of employment.

A fixed-term contract can only be entered into in special circumstances, e.g. the temporary nature of the post, training or similar. If the contract is made for a fixed-term exceeding five years, after five years it may be terminated as if it was made for an unspecified period.

5.3 Trial Periods

Trial periods cannot normally exceed four months or, with regard to fixed-term employments half of the duration of the fixed term. They are usual but not compulsory.

5.4 Intellectual Property

Statute provides that the title to inventions created by employees during employment vests in the employer. The employee is, however, entitled to a reasonable compensation.

Copyright issues are not dealt with under statute and thus the terms of the employment contract must regulate the question of ownership of copyright material. There is, however, a customary

rule stating that should the employment contract lack provisions dealing with copyright ownership, employer ownership is presumed if it is in the nature of the employment relationship to create copyright material. In addition, there are special rules in relation to computer programs. These rules, which are incorporated into the Copyright Act and which are the result of implementation of the Directive 91/250/EEC, state that the copyright belongs automatically to the employer if not otherwise agreed in the employment contract.

6. Pay and Benefits

6.1 Basic Pay

There is no defined statutory minimum wage, but most collective agreements set a minimum wage, which is normally negotiated yearly or every two years. The employee is, however, entitled to a reasonable and normal remuneration for the work performed.

Unless otherwise agreed, salary must be paid in cash at or near the place of work. In practice, the salary is usually paid to the bank account of the employee.

6.2 Private Pensions

It is a legal requirement that all employers provide a minimum level employment pension plan. All pensions are reviewed annually and adjusted according to an index taking into account prices and wages. During 2006, 4.3 per cent of the gross salary of employees under 53 years of age and 5.4 per cent of the gross salary of employees aged 53 years or over is contributed by employees towards the cost of the plan. Employers meet the balance of the cost. Some companies provide additional pension coverage for their employees especially in management positions.

7. Social Security

7.1 Coverage

The state social security system provides a comprehensive range of benefits: retirement pensions, unemployment benefits, survivors' benefits, disability pensions, industrial injury benefits, cash sickness benefits, health insurance, maternity benefits and family allowances.

7.2 Contributions

The employer's basic contribution varies currently between 2.958 and 6.058 per cent of the wages.

It is a legal requirement that all employees shall be covered by an unemployment insurance. During 2006 0.58 per cent of the employee's gross salary is contributed to the insurance by the employee. The employer's contribution is 0.75 per cent of the gross salary up to EUR 840,940.00 and thereafter 2.95 per cent. The contribution rate varies annually.

8. Hours of work

Detailed laws exist on hours of work; the normal maximum is 40 hours a week, eight hours per day. However, based on collective bargaining agreements the length of a working week is usually between 37 and 39 hours.

There are specific provisions relating to overtime. The Working Hours Act, the principal statute relating to working hours, provides that daily overtime must be compensated at a rate equal to an increase of 50 per cent on normal pay for the first two hours of overtime and 100 per cent on normal pay for any extra hours. Work performed on Sundays or on public holidays must also be compensated with double pay. The parties can agree that overtime work is compensated by time off. The length of the time off is calculated as described above.

9. Holidays and Time Off

9.1 Holidays

Statutory holiday is four to five weeks per year, depending on the length of service of the employee (two working days per month, if the length of service is less than one year at the end of the holiday accrual year; otherwise 2.5 working days per month, Saturdays being considered as working days). There are also several public holidays. Collective bargaining agreements provide for a bonus of 50 per cent of holiday pay for statutory holiday.

9.2 Family Leave

The Social Insurance Institution provides allowances in the event of sickness and for maternity, paternity and parental leave. There are specific statutory provisions concerning employees' rights to take time off to pursue education, union activities or to take care of children. Female employees are entitled to 105 days' maternity leave and male employees are entitled to 18 days' paternity leave which may in certain circumstances be prolonged by 12 days. In addition, the mother or the father may take parental leave after the maternity leave. The parental leave ends 263 days after the first day of the maternity leave. An average of 65 per cent of gross salary is paid by Social Security during maternity and/or parental leave. Many collective bargaining agreements include an obligation on the employer to pay salary during the first weeks or months of the maternity leave.

Statute prevents the termination of employment because of compulsory or voluntary military service. Termination of employment during (or because of) pregnancy or during maternity, paternity, parental or child care leave is with certain minor exceptions prohibited.

10. Health and Safety

10.1 Accidents

Health and safety in the workplace is governed by strict rules, to ensure that the working environment is suitable for the nature of the work to be carried out. All employers are obliged to take out insurance to cover personal injury and disease suffered by their employees during, or because of, their employment.

10.2 Health and Safety Consultation

The law requires, among other things, that there are health and safety managers in every company and elected health and safety delegates in all companies with more than ten employees. Companies with 20 or more employees must have a health and safety council (75 per cent of the members of which must be employee delegates) to be consulted on all health and safety matters.

11. Industrial Relations

11.1 Trade Unions

About 80 per cent of Finnish employees are members of a trade union.

The main employees' unions are:

(i) *SAK*, the Central Organisation of Finnish Trade Unions, representing mainly blue collar and low grade salaried workers;

(ii) *STTK*, the Confederation of Technically Skilled Employees, representing technically skilled employees and mainly professional supervisors; and

(iii) *AKAVA*, the Confederation of Unions for Academic Professionals representing highly educated and academically skilled employees.

The Act on Co-operation within Undertakings (1978) and the Representation of Personnel within the Management of Undertakings Act (1990) give employees the right to be consulted on decisions which affect their employment. These regulations also enable employees to influence decision making to some extent. According to the Act on Co-operation Within Undertakings employers with 30 or more employees must consult the employees or their representatives prior to making decisions on matters such as enlargement, redundancy, working time organisation, changes to job specification, employee transfers and change of location. In companies with 150 or more employees the employer must arrange employee representation on the supervisory board, on the board of directors or in a corresponding organ, if the employees so request.

According to the Act on Co-operation Within Undertakings employees' representatives also have the right of access to full statements of accounts and to information about the company's financial situation.

11.2 Collective Agreements

Collective bargaining agreements are made between employers and trade unions generally at industry or sector level but also at company level. The agreements usually have effect for one or two years, and cover a wide range of issues, including minimum pay, employee and employer co-operation and health and safety matters.

Collective agreements bind not only the parties to the agreement, but also any association of employers and employees that are, directly or indirectly, members of either signatory parties.

Generally binding collective bargaining agreements also bind "non organised" employers. A collective bargaining agreement is declared generally binding when the number of employees working in companies bound by the collective bargaining agreement is approximately 50 per cent of all the employees in that sector of business.

11.3 Trade Disputes

Collective bargaining agreements impose an obligation to refrain from industrial action, such as strikes, go-slows or lock-outs. Such action is, however, forbidden only if the purpose of the industrial action is to induce change in collective bargaining agreements or the Collective Bargaining Agreement Act. However, this obligation does not apply to individual employees.

11.4 Regulatory Bodies

Procedures and bodies exist in Finland to deal with disputes which arise between employers and unions.

The National Conciliators' office deals with disputes which arise during collective bargaining. The two parties are free either to reject or accept the proposals of the conciliator.

If a dispute arises from the interpretation of a collective bargaining agreement, it is dealt with by the Labour Court whose decisions are final. The Labour Court has the power to impose penalties for breach of a collective bargaining agreement.

11.5 Information, Consultation and Participation

The Co-operation Within Undertakings Act includes provisions on the employer's obligation to inform or consult with the employees or their representatives prior to taking final decisions on different matters covered by the Act.

12. Acquisitions and Mergers

12.1 General

The effect of acquisitions and mergers on employment contracts is regulated by the Employment Contracts Act implementing the relevant directives of the European Union.

The transfer of shares of a limited liability company does not have any effect on employment contracts and does not generate any consultation or information obligations on the part of the employing entity.

The Employment Contracts Act provides that when a business is transferred, all the employees within that business are transferred with it. The transferor's rights and obligations are automatically assigned to the transferee. The transfer per se does not give the new employer the right to dismiss employees, the employer must have a valid ground for dismissals, for example, financial and production related reasons and organisational restructuring of the business due to the transfer. The employer has to justify the dismissal.

In the context of a business transfer the employees of the business are entitled to terminate their employment relationships with effect from the date of transfer regardless of their notice obligation or the duration of employment, if they have been informed of the transfer not less than one month before the date of transfer. If the employees are informed of the transfer later than that, they are entitled to terminate their employment relationship with effect from the date of transfer, or, on a later date provided it is within one month of having been informed of the transfer.

The information, consultation, negotiation and notification obligations outlined below are equally applicable in the context of mergers, the merging company assuming the transferor's obligation and the receiving company assuming those of the transferee.

12.2 Information and Consultation Requirements

Companies employing at least

30 employees, (on a regular basis) are obliged to supply information and/or consult or negotiate with the employees affected by the transfer of a business or a merger, or their representatives by virtue of the Act on Co-operation within Undertakings (22.9.1978/725 as amended).

The transferor and the transferee are obliged to provide the employee representatives with specific information in relation to the business transfer.
The transferor has to inform the employee representatives in good time before the transfer is executed.
In practise the transferor has no obligation to inform the employee representatives prior to the signing of the transfer documentation, but should inform them without delay after the signing. There is no established time limit as to when the information ought to be provided by the transferee, but normally the parties inform the employees jointly.

Following a business transfer a co-operation procedure is commenced, in order to determine whether the transferee is proposing to take measures (e.g. reducing hours or making lay-offs lasting at least 90 days or terminating employment) that will trigger an obligation on it to negotiate.

A proposal for these negotiations has to be submitted by the transferee *within seven days of the business transfer* (i.e. from the date of the completion of the transaction). The negotiations can be started after three days from the submission of the proposal.
The duration of the negotiation is not regulated. If the transferee has, due to the transfer, planned measures that fall within the scope of the co-operation procedure (such as reducing hours, making lay-offs lasting at least 90 days or terminating employment) a separate notification and co-operation procedure must be carried out prior to any final decision being taken in relation to the measures.

The co-operation procedure usually takes place after the transfer is executed. However, it is possible to start the co-operation procedure earlier. Where a co-operation procedure is started before the transfer is executed, the transferee will usually participate in the process in order to benefit from the negotiations conducted.

The co-operation procedure itself (including the proposal for negotiations, conducting of negotiations and notification of the manpower authorities) must comply with the detailed stipulations set out in the Act on Co-operation within Undertakings. If a measure subject to negotiation is likely to result in full-time employment contracts being reduced to part-time contracts, in lay-offs lasting at least 90 days or the termination of employment contracts of fewer than ten employees, the minimum duration of the negotiations is seven days. If the measure is likely to result in contracts being reduced to part-time status, lay-offs lasting at least 90 days and/or the termination of employment of ten or more employees, the negotiations must last at least six weeks. The parties may however agree on a shorter time period for the negotiations.

12.3 Notification of Authorities

If the measures subject to negotiations include a proposal to reduce personnel, the manpower authorities have to be informed about certain specified facts concerning the planned measures.
The information has to be delivered to the manpower authorities no later than the commencement of the negotiation process.

12.4 Liabilities

A person belonging to the group management, the employing entity, employer or a representative of either, who intentionally or through carelessness fails to observe the information, consultation or negotiation obligations will be liable to a fine.

In certain circumstances an employee may be entitled to compensation from the employer of up to 20 months' salary if the appropriate negotiation process is not completed, whether deliberately or by negligent omission.

There are no specific penalties for failing to notify the manpower authorities, however it may impact on the level of compensation payable to the employee(s) and may lead to a remark from the supervising authority, the Ministry of Labour, although in practice this is quite rare.

13. Termination

13.1 Individual Termination

An employment contract for an indefinite period can only be terminated with immediate effect during a trial period or because one party has committed a "serious offence". In addition, an employer may be entitled to rescind the contract if the employee is permanently disabled or persistently fails to fulfil his obligation to work, and an employee may be entitled to rescind the contract if the employer fails to pay remuneration or provide sufficient work. If the employer has terminated or wishes to terminate the employment contract with immediate effect, he has to show that there are or were sufficient grounds justifying the dismissal. The burden of proof as to whether there are or were grounds justifying a summary dismissal is on the employer.

An employment contract made for a specific period is terminated without notice when the period expires.

An employer failing to comply with the rules concerning termination of employment is liable to the dismissed employee for damages and/or compensation. The amount of compensation varies between 3-24 months' salary of the employee. The amount is determined on a case by case basis taking into account all the relevant circumstances.

13.2 Notice

If no "serious offence" has been committed, an employment contract can only be terminated on the giving of notice. Under the Employment Contracts Act, employer's notice periods are as follows:

Employee Service	Period of Notice
Less than 1 year	14 days
1-4 years	1 month
4-8 years	2 months
8-12 years	4 months
More than 12 years	6 months

unless (a) otherwise agreed by the parties or (b) the applicable collective agreement stipulates otherwise.

If the employee wishes to terminate the contract the period of notice is (a) two weeks if the employment has lasted less than five years; (b) one month if the employment has lasted over five years, unless otherwise agreed by the parties.

Unless otherwise provided for in the applicable collective bargaining agreement, the parties can agree on notice periods not exceeding six months and may provide that the notice to be given by the employee may never be longer than that to be given by the employer.

13.3 Reasons for Dismissal

Even with notice an employment contract for an indefinite period cannot be terminated by an employer unless there is an "especially weighty reason". Such reasons are specified in the Employment Contracts Act but in a negative manner only, that is, the Act states grounds that cannot be regarded as especially weighty. The listed grounds are the following: illness (if it has not caused a substantial and permanent reduction of working capacity in the employee); participation in a strike or other industrial action; political, religious or other views and activities in public or in any association; exercising a statutory or other legal right. It is for the employer to justify a dismissal.

13.4 Collective Dismissals

An employment contract for an indefinite period can be terminated on the grounds that there has been a major reduction in the amount of work for economic or related reasons, provided the reduction is not just temporary. However, dismissal is deemed to be unjustified in the following circumstances: if prior to or after the dismissal a new employee has been recruited to perform the same or corresponding duties to those performed by the former employee; any reorganisation of duties which does not in reality reduce the amount of work to be done. The employer has to be able to show sufficient grounds for a dismissal.

If the Act on Co-operation within Undertakings is applicable, the employer must consult the employees or their representatives prior to the dismissals. The notice of these consultations must be given in writing. The period of notice is five days. The minimum duration of the negotiations depends on how many employees are going to be made redundant. If the termination of contracts involves less than ten employees the negotiation period is a minimum of seven days. If it involves ten or more employees the negotiation period is six weeks. The parties to the negotiation have the right to agree on other and even shorter negotiation periods.

14. Data Protection

14.1 Employment Records

The principle piece of legislation governing data protection in Finland is the Personal Data Act 1999 ("FDPA"), which implements the Data Protection Directive. The Act on Protection of Privacy in Working Life 2004 ("WLA") and the Act on Co-operation within Undertakings 1978 also regulate data protection. The FDPA regulates the collection, storage and use of information held by employers about their employees. The Data Protection Ombudsman and the Data Protection Board, among others, supervise the interpretation of the law.

An employer, as the data controller, is under an obligation to ensure that it processes all personal data in accordance with the provisions of the FDPA. The collected data must be: required for a specific purpose, accurate, up to date, and not stored longer than necessary. In addition, the personal data must be stored securely to avoid unlawful access or accidental destruction or damage. Sensitive data may only be processed in accordance with the specific provisions of the FDPA. The WLA includes separate provisions concerning processing of data on the use of drugs. In certain circumstances an employer is entitled to process data entered in certificates on drug tests.

The data controller must keep a record with details on the nature of the data held and the purpose for which it is processed. The record must be held available for the employees.

14.2 Employee Access to Data

Employees have the right to make an access request concerning the data stored about them by the employer. The right to access includes also a right to be given details of who the data has been disclosed to. The information requested by the employee shall be provided without needless delay. If the information has not been provided within three months of the request, it is classified as a refusal of the subject access request. The matter may then be brought to the Data Protection Ombudsman. A reasonable fee may be charged if employees make requests more often than once a year. The fee cannot exceed the actual expenses incurred by the employer.

14.3 Monitoring

Technical monitoring of email (i.e. where the contents of emails are not monitored) by the employer must be discussed with the employee representatives in accordance with the Act on Co-operation within Undertakings prior to the introduction of such monitoring. E-mails belonging to the employer can be opened and read by another person with the employee's consent according to the rules agreed on at the working place. If the employee does not give his/her consent, the WLA includes provisions setting out the procedure to be followed in order to retrieve and open e-mail messages belonging to the employer. This procedure is detailed and multi-phased and is aimed at ensuring and protecting privacy. Prior to embarking on such a procedure an employer must have offered the employee an alternative option to be used in case of absence.

The WLA also regulates the use of camera surveillance in the work place.

14.4 Transmission of Data to Third Parties

An employer who wishes to provide personal data to third parties must do so in accordance with the FDPA principles and processing conditions. Transmission within the EEA is allowed. The transfer of data to a third party

based in a country outside the EEA is permissible only if the country ensures an adequate level of data protection or one of a number of other specific provisions are satisfied. Such transfers are permissible, however, where the employee gives his express consent to the transfer of personal data to third parties outside the EEA.

France

1. Introduction

Employment relationships in France are principally regulated by the Labour Code (*Code du travail*), collective-bargaining agreements, internal regulations and practices. In the event of conflict between the terms of the various sources, and subject only to legal requirements which are matters of public policy, the terms which are most favourable to employees will prevail.

The Labour Code is intended to grant individual and collective rights at work. It is not possible to contract out of most of its provisions. The system is intended to allow trade unions to supplement and build upon the Code through legally enforceable collective-bargaining agreements (*conventions collectives*) negotiated for each sector of industry and for each region.

Collective-bargaining agreements are legally binding between the employers and unions in the relevant industrial sector. Successive Governments have "extended" the provisions of collective-bargaining agreements to all employers in a particular sector, even if they were not signatories to a collective-bargaining agreement in that sector, therefore, virtually all sectors of the economy are covered by these agreements. The terms of such agreements are deemed to form part of the employment contract.

Industrial Relations Courts (*Conseils de prud'hommes*) have exclusive first instance jurisdiction in employment disputes. These Courts are made up of employer and employee representatives. Appeals (in so far as they are possible) are made to the labour sections of the local Court of Appeal and then to the Supreme Court (*Cour de Cassation*). Professional judges sit in these two higher Courts.

Professional judges have exclusive jurisdiction in relation to collective litigation involving representatives, trade unions and staff.

Labour Inspectors (*Inspecteurs du Travail*) have various responsibilities with regard to enforcing employment regulations. Although they concentrate most of their activities on industrial undertakings, an employer can expect a prompt visit in the event of, for example, an accident at work, or a lengthy and detailed investigation when an employer wishes to dismiss employees because of economic pressure or organisational changes.

2. Categories of Employees

2.1 General

Laws and collective regulations make a distinction between executives and other categories of employees. Broadly speaking, most white-collar employees as well as senior executives are considered "cadres".

This status is of significance in the context of the working time regulations (see further below)

2.2 Directors

Office holders such as Chairmen, Board Members, Managing Directors and Managers (*Gérants*) of limited companies (*Société Anonyme – SA or Société à Responsabilité Limitée – SARL*) are normally considered to be company officers and not employees. Their relationship with the company is covered by company law and not employment law. Board Directors may not, in that capacity, receive remuneration other than for attending board meetings or for special assignments. Generally, except on the incorporation of a company, a director may not become an employee (whilst remaining a director) but an employee may become a director (and remain employed) provided he or she has already been employed by the company, continues to use a technical skill (as a financial director, for instance), receives remuneration and exercises a salaried function under the control of another person. When an employee becomes a director, he or she may continue the salaried functions. If those, however, are not separate from the office of director, the contract of employment is normally considered suspended and is then revived when the directorship ceases.

3. Hiring

3.1 Recruitment

Employers can recruit from a variety of sources. The employment service run by the state (ANPE) provides a free recruitment service for employers and job seekers but this is not extensively used by employers. Executive recruitment agencies may be used for senior or specialist staff. The local and national press are used by employers for direct recruitment. Advertisements for staff must usually be in French even when an employer is looking to recruit senior staff with foreign-language ability.

In the event that specific techniques are used in the framework of the recruitment process, there is a legal requirement that the candidate is informed of the use of such techniques. The results of the possible recruiting tests must be kept confidential and communicated to the candidate.

There is a requirement for companies employing at least 20 employees that a percentage of positions be reserved for disabled persons (at present six per cent). Failing to comply with this requirement obliges the employer to contribute to a specific fund dedicated to the development of employment for disabled persons (AGEFIPH).

3.2 Work Permits

Non-EU nationals cannot usually be employed without a work permit (autorisation de travail). A work permit should be obtained outside France by submission of the appropriate documents, including the proposed employment contract, to the Ministry of Labour via the local French consulate. Work permits are usually only issued for senior management positions.

If residence exceeds three months, a residence permit (*carte de séjour*) is required. This is obtained from the local representatives of the French Home Secretary (*Préfectures, in Paris Préfecture de Police*).

4. Discrimination

The Labour Code prohibits discrimination on grounds such as sex, lifestyle, race, age, physical appearance, religion, political opinions and union activities.

When sexual discrimination is alleged, the employer has to prove that he has not acted in a discriminatory manner. Failure to prove this will lead to an award of damages by the Industrial Tribunal (*Conseil de prud'hommes*). In addition, the Penal Code imposes penalties for infringement.

There is a general principle of equal pay for the same work; men and women must receive equal pay for the same work and be treated equally.

Where at least 50 persons are employed, the employer must prepare an annual report on its equal opportunities policies for the employee representatives (Works Council or, in its absence, staff representatives). The report reviews the measures taken to achieve equality at work for both men and women and sets objectives for the following year.

Enforcement of the anti-discrimination rules is carried out through the work of Labour Inspectors who may report infringements to the Public Prosecutor.

Civil action may be taken by aggrieved employees before the Industrial Relations Courts. Direct criminal action may also be taken by employees before a Police Court.

Sexual harassment and mental harassment at work is forbidden and the Penal Code imposes penalties for infringement:

The French Labour Code provides that mental harassment is a criminal offence in France. This criminal offence is sanctioned by a fine of up to EUR. 15,000 and/or a maximum one-year prison sentence, further to any disciplinary measures taken by the employer.

The law defines moral harassment as: "Repeated actions of harassment which have the aim or the consequence of degrading the employee's conditions of work in a way that his rights or dignity, his physical or mental health could be altered, or his professional perspectives damaged."

Sexual harassment is a criminal offence sanctioned by a fine of up to EUR. 3,750 and/or a maximum one-year prison sentence, further to any disciplinary measures taken by the employer.

Damages can also be obtained in Court from the harasser and, possibly, from the employer as the latter is now subject to the obligation to ensure that there is no harassment in his company.

5. Contracts of Employment

5.1 Freedom of Contract

French employment law is extensively regulated but, where it is not, employers and employees are free to agree the terms they wish. An employee cannot, in advance, contract out of or waive his or her statutory rights.

The parties to the employment relationship are theoretically free to choose the law which will be applicable to the contract of employment.

However, as a result of Article 6 & 7 of the 1980 Rome Agreement (ratified in France), a contract of employment cannot seek to avoid the application of local mandatory regulations which are more favourable to the employee (local provisions of the place where the work is performed). These mandatory regulations are listed as follows (this list results from an interpretation of the current case-law, however they are not listed by the French Labour Code):

- Regulations regarding the Minimum Wage ("SMIC"),
- Working Time regulations (notably work at night and on Sunday),
- Health and Safety at Work regulations, Occupational medicine,
- Public Holidays,
- Paid Holidays,
- Rules regarding the termination of the contract of employment. For instance, on termination of the employment contract, each employee is entitled to: a notice period (except in the case of gross or serious misconduct), accrued paid holiday rights not yet taken, and a severance indemnity ("*indemnité de licenciement*"). Moreover, a specific termination procedure must be complied with (notably a preliminary meeting, and a written notice of termination sent by registered mail after a compulsory cooling-off period).

5.2 Form

Since 1 July 1993, as a result of the EU Directive dealing with information to be given about the contract of employment, employers have to deliver written terms and conditions of employment (description of work, workplace, salary, etc) within the first two months of employment. Most sectors of the French economy are covered by collective-bargaining agreements which usually require a letter or a contract of employment setting out the basic terms of employment. Written contracts are also required for certain categories of employment (for example, fixed-term or part-time employment).

Employers with 20 or more staff must display a copy of the internal regulations relating to disciplinary rules, (mental and sexual) harassment prevention and health and safety requirements.

Fixed-term contracts are strictly regulated and only permitted in limited circumstances such as for the carrying out of specific tasks or to cover for the absence of a permanent employee. In most instances, they may not exceed 18 months. If they do, they will automatically be re-characterised as contracts for an indefinite period. Except in limited cases, termination gives rise to a liability to make a payment of 10 per cent of the total salary paid during the period of employment.

A new form of contract of employment has been created since 2 August 2005: the employment incentive contract ("CNE"). Its conditions of termination are made easier to encourage small enterprises, (i.e. employers with less than 20 employees) to hire employees. A CNE allows the employer, during the first two years of employment, to

terminate the contract of employment simply by sending a registered letter with acknowledgment of receipt. This letter need only give a minimum of notice (one month for employees with over six months' service) and there is no need to provide a reason for dismissal. After two years, the CNE is re-characterised as an indefinite term contract. However, the validity of the CNE is currently subject to challenge by the French courts which consider it contrary to ILO Convention n°158 which provides that no worker can be dismissed without the existence of a legitimate ground for dismissal.

5.3 Trial Periods

It is common practice to include a probationary-period provision in the contract. Trial periods are usually of three months' duration for executives (cadres) and one or two months for other employees. The duration, renewal or non-renewal of the trial period is generally controlled by collective-bargaining agreements. During this period, the contract may be terminated without notice or reason by either party subject to more favourable provisions in the relevant collective-bargaining agreement.

5.4 Confidentiality and Non-Competition

An employee owes a duty of confidentiality to the employer both during and after employment. During employment, there is also a duty not to engage in competing activities.

Undertakings not to compete after the end of the employment are permitted and enforceable if they are restricted in scope, term and geographical area, do not act to prevent an employee from continuing to earn a living or practice his or her profession. Non-competition covenants must provide for financial compensation, failing which they are null and void. If the employee complied with such an unlawful clause, he would nevertheless be entitled to receive a compensation before the court. Non-competition clauses are fairly common for certain types of employees such as salesmen and executives. Excessive non-competition covenants may be null and void, but judges can revise such covenants in order to enforce them on the basis of reasonable terms only.

5.5 Intellectual Property

Inventions made by an employee at the employer's request in the course of his or her duties belong to the employer (*invention de mission*). In certain circumstances employees are entitled to additional remuneration for such inventions. It is very common, especially in certain sectors (software, chemicals, etc), to include provisions relating to intellectual property rights in the employment contract.

6. Pay and Benefits

6.1 Basic Pay

There is a national minimum salary (SMIC) which is reviewed on 1st July each year by reference to certain indices. With effect from July 2006, the hourly rate is €8.27, i.e. €1,254.28 per month (for 35 hours per week). Next change of rate should occur on July 2007.

However, most collective-bargaining agreements further regulate salaries in the particular sector to which they relate. In practice, the nationally agreed rates usually act as starting points for negotiators at the lower bargaining levels.

The index linking of salaries is prohibited.

6.2 Private Pensions

The French pensions system is fairly complex. Ordinary employees benefit from two mandatory pension schemes (the social security pension scheme and a mandatory pension scheme called ARRCO) whilst Executives (*cadres*) benefit from the same pension schemes as ordinary employees in addition to other specific pension scheme (called AGIRC). All compulsory schemes are "par répartition" ("pay as you go" pension funds).

The use of private pension schemes is becoming more widespread as the value of the above compulsory schemes is increasingly eroded, especially for cadres. Most schemes are insured and based on defined contributions.

6.3 Incentive Schemes

A mandatory profit-sharing scheme ("*accord de participation*") must be concluded in companies and economical and social units ("*unités économiques et sociales*") employing at least 50 employees during a six-month period (successive or not) and where the turnover permits the establishment of a special profit-sharing reserve ("*reserve spéciale de participation*").

Discretionary bonus schemes ("*accord d'intéressement*") and savings schemes ("*plan d'épargne d'entreprise*") are optional. These schemes have rapidly grown in importance in recent years.

The amounts paid to employees through these schemes are free of social-security contributions within certain limits. Furthermore, the profit-sharing reserve (of a profit-sharing scheme) is free of income tax in certain circumstances.

Despite the existence of a political consensus that greater employee involvement should be encouraged, interest in equity participation has been a fairly recent phenomenon, boosted partly by the privatisation programme of the late 1980's.

6.4 Fringe Benefits

It is common practice to provide senior executives with cars and other benefits in kind. Such fringe benefits are considered as normal salary and subject, as such, to social security contributions.

6.5 Deductions

Employees are responsible for declaring and paying their own income tax. The employer is not required to deduct tax at source unless a Court declares otherwise (usually to recover unpaid tax) or a bilateral tax agreement requires it. The tax year runs from 1 January to 31 December.

7. Social Security

7.1 Coverage

A basic level of benefits is provided by the state system: old age and survivor's pensions, disability and sickness benefits, and family allowances. In addition, complementary mandatory private schemes provide for additional pension, disability and survivors' benefits. These schemes are funded by

both employee and employer contributions. Unemployment benefits are funded by employers and employees (the ASSEDIC scheme). Those who do not qualify for assistance under one of these schemes are covered by the national solidarity scheme, financed by the state.

7.2 Contributions

Both employers and employees are required to make contributions to the social security system and employers must deduct employees' contributions from their pay. Contributions to the basic social security system amount to approximately 28 per cent for the employer and 16 per cent for the employee. The percentage is based on gross salary with various ceilings depending on the type of benefit insured.

Further contributions to the complementary pensions system must be paid to the AGIRC fund for executives ("*cadres*") and to the ARRCO fund for other employees. Minimum contributions payable vary on the basis of employee category and the level of salary: employees' contributions range from three per cent to eight per cent on average; employers' contributions from four per cent to 13 per cent on average. Because there is a fear that the value of state pension funds and the AGIRC/ARRCO funds will be unable to maintain the current level of payments without significantly increasing contributions, employers tend to pay the minimum payments into state and AGIRC/ARRCO funds and to rely more on private-sector insurance company pension schemes.

The total amount of contributions to be paid by the employer is approximately 45/50 per cent of gross salary, 20/25 per cent for the employees.

8. Hours of Work

With effect from 1 January 2002, the duration of the working week was reduced to 35 hours per week for all companies. Legal provisions were recently amended in 2004 in order to increase the flexibility for employers.

In practice, many companies already reverted to a 39-hour week mechanism, through lump sum agreements which take into account the statutory increase of overtime (indeed, each hour performed by an employee over 35 hours per week is still classified as overtime and paid at an increased hourly rate).

New provisions regarding overtime increased the legal ceiling of overtime to 220 hours per year per person, to accommodate this new flexibility.

In practice, it means that, work in excess of 220 hours overtime, requires the written consent of the labour authorities.

Overtime rates of pay are an additional 25 per cent premium for the first eight hours per week and a 50 per cent premium thereafter.

For companies with up to 20 employees, overtime rates of pay are an additional 10 per cent premium for the first four hours per week, a 25 per cent premium for the following four hours, and a 50 per cent premium thereafter (these rates should be maintained until 31 December 2008).

Employers must comply with legal limits and ensure that employees do not work in excess of 10 hours per day or 48 hours per week or an average of 44 hours per week in a period of 12 consecutive weeks (although these restrictions do not apply to employees subject to lump sum agreements with a reference to a specified number of days of work per year). Authorisation to exceed these limits can in some cases be obtained from the labour authorities.

Only senior management employees ("*Cadres Dirigeants*") are exempt from these rules. The definition of this category of employee by French case-law is very narrow (deliberately since these employees are excluded from most of the 35 week provisions): according to the latest case-law, Cadres Dirigeants are executives who must have the highest responsibilities within the company (i.e. they must benefit from wide powers of attorney from the management board), a large degree of independence in the organisation of their work schedule, and the highest compensation packages in the company.

9. Holidays and Time Off

9.1 Holidays

There is a basic entitlement to five weeks' paid holiday per year. Collective-bargaining agreements or individual employment contracts may confer rights to additional holiday.

In addition, there are 10 public holidays for which almost all employees get paid by virtue of collective-bargaining agreements.

9.2 Family Leave

A pregnant woman is entitled to up to a total of 16 weeks' maternity leave, although this period is extended to 26 weeks for the birth of a third child. The absent employee gets up to 80.32 per cent of her salary up to a ceiling paid by a social security institution. In many cases, collective-bargaining agreements require the employer to top this up to full normal pay.

Three days' birth paternity leave is granted and includes entitlement to full pay.

Eleven days' paternity leave is granted (18 days in case of multiple births). The employee is not entitled to full pay, unless provided for by a collective-bargaining agreement or this is a common practice in the company. During this leave, the employee is entitled to social security benefits.

Employees are entitled to three years unpaid parental leave.

9.3 Illness

Sickness normally has the effect of suspending the employment contract and relieves the employer of the obligation to pay the employee. From the eleventh day of absence by reason of sickness, an employee is eligible to receive 90 per cent of his or her normal salary for 30 days and two-thirds of it for another 30 days. These periods increase with length of service. The cost is borne by the

social-security fund. However, most collective agreements provide that the employer is obliged to continue to pay the whole or part of the employee's remuneration during some of the sickness period. The period varies with the seniority of the employee.

10. Health and Safety

10.1 Accidents

Employers are obliged to contribute towards a social security fund to maintain insurance against any liability which might arise as a result of industrial accidents and which are not due to the negligence or gross misconduct of the employer.

The cost of insurance varies according to the size of the company and the history of industrial accidents in that particular undertaking.

10.2 Health and Safety Consultation

A Health and Safety Committee ("*Comité d'Hygiène, de Sécurité et des Conditions de Travail*") must be set up in all companies employing 50 or more employees. This committee is responsible for ensuring that the employer complies with health and safety regulations.

11. Industrial Relations

11.1 Trade Unions

- The Labour Code and collective-bargaining agreements grant the right to negotiate, the right to be represented by and organised into a trade union and the freedom not to join a union. The French trade union movement is divided into five main federations: Confédération Générale du Travail (CGT);
- Force Ouvrière (FO);
- Confédération Française Démocratique du Travail (CFDT);
- Confédération Française de Travailleurs Chrétiens (CFTC); and
- Confédération Française de l'Encadrement-Confédération Française des Cadres (CFE-CGC) – mainly cadres unions.

Almost all federations are represented in some form at a national level in negotiations with the employers' federation (formerly CNPF but recently named "*Medef*") and the Government.

11.2 Collective Agreements

Although less than ten per cent of the workforce are members of a trade union, around 95 per cent of employees are covered by some form of collective bargaining agreement (for the reasons explained in the Introduction).

Employers must bargain every year over rates of pay and working hours in companies where there is at least one trade union representative ("*délégué syndical*").

11.3 Trade Disputes

The French constitution recognises the right to strike, whereas lock-outs are only legal in exceptional cases. Picketing is prohibited if non-striking employees are prevented or deterred from working. Short strikes in industry at factory level are quite common but statistics show that the number and length of strikes is diminishing.

11.4 Information, Consultation and Participation

Whenever 11 or more employees are employed in a company or establishment, the employer must organise elections for staff delegates ("*délégués du personnel*").

In any company employing 50 people or more, the employer must organise elections for a Works Council ("*comité d'entreprise*").

The unions may appoint a representative in the company and also to the Works Council.

In the event there are no candidates to the election, the works council or the staff delegates institution cannot be set up. However, elections must still be organised every four years.

Where a Works Council exists, the employer is required to pay a subsidy equal to 0.2 per cent of the payroll bill for the functioning of the Works Council, in addition to one for the organisation of social and cultural activities for employees.

In the case of companies employing 50 employees or more, the Works Council has the right to appoint representatives to their management or supervisory boards and to the shareholders meeting. The number of representatives will depend on the size of the company: they cannot be less than two or exceed more than one-third of the board membership. Company law allows for articles of association to provide employees on the boards of companies with full voting powers.

Companies or groups of companies with at least 1,000 employees in the EU and with employees in France and at least one other EU Member State may be required to establish a European Works Council or a procedure for informing and consulting employees at European level.

Staff delegates ("*délégués du personnel*") must be consulted on a range of matters and the employer must meet with these representatives at least once a month. The principal function of the staff delegates is to present individual and collective complaints to management.

The Works Council ("*comité d'entreprise*") is a consultative body and must meet every two months (once a month in companies with at least 150 employees). It must be consulted on both employment and certain economic matters. Information on relevant matters must be supplied to the Council.

The Works Council must be informed and consulted in particular on:

"Questions relating to the organisation, the management and the general running of the company and in particular on the measures which may affect the volume or the structure of the staff, the duration of work, the conditions of engagement and employment and the training of the staff. The works council is informed and consulted on the modifications in the economic or legal organisation of the company, in particular in the event of merger, sale, important modification of the production structures, as well as on acquiring or selling subsidiaries (meaning held as to at least 50 per cent). The employer must

also consult the works council when it takes a share in a company and inform it when it has knowledge of a new shareholding in its company" (Article L.432-1 of the Labour Code).

The Works Council must be consulted in many different situations including acquisitions, mergers and collective redundancy situations (see further below).

12. Acquisitions and Mergers

12.1 General

The Works Council should be consulted in the event of a merger, sale, restructuring of the business or the company, or when the company buys or sells a majority shareholding in another company.

French law complies with the EU Acquired Rights Directive: upon a business sale, the employment contracts are automatically transferred to the transferee on the same terms and conditions. Dismissal is normally only allowed in limited circumstances and redundancies are forbidden before transfer.

12.2 Information and Consultation Requirements

The consultation must take place before any decision on the transaction is taken (i.e. sufficiently in advance and, in any event, before signing/closing). Both the seller and the buyer of the business must inform and consult their respective works councils.

A detailed memorandum of information on the operation itself and on its consequences for the company and the transferred employees must be prepared and disclosed sufficiently in advance to the works council, so that is can be in a position to express a view.

One meeting may be sufficient, but in practice the works council will be tempted to ask for more details and further meetings. Therefore, this consultation process can take from two weeks to two months or more and really depends on the type of relationship that has been established between management and the works council members/trade-unions and the risks which the employees envisage they may sustain as a consequence of the proposed operation.

Specific works council information provisions must also be complied with where a company is involved in a "concentration" transaction, with regard to French competition law.

In all these situations the Works Council must be consulted in all instances prior to the decision being made, which means that the Works Council must deliver a formal vote on the basis of detailed (written) information provided by the employer sufficiently in advance.

12.3 Notification of authorities

There is an obligation to notify and obtain the prior authorisation of the Labour Inspection in the event of a partial transfer of a business.

12.4 Liabilities

Failing to obtain the formal opinion of the Works Council when legally required to do so is a criminal offence punishable by a fine of up to EUR 3,750 and/or a prison sentence of a maximum of one year (the prison sentence is in principle, not applied for a lack of consultation). Liability for the criminal offence falls on the manager personally (the president of the company or his duly appointed representative) and will appear on his criminal records in France. It should be noted that criminal liability will arise not only for failing to consult the works council, but also for going ahead with the proposals under consultation after meeting with the works council if the latter has not given its view on the proposals. In addition with effect from 1st January 2006, the legal entity itself also incurs criminal liability for such conduct.

13. Termination

13.1 Individual Termination

The rules on termination of employment in France are complex and weighted against the employer dismissing an employee save in exceptional circumstances.

Employees must give notice of termination to their employer in accordance with the relevant legislation, collective-bargaining agreement or individual contract.

13.2 Notice

If the reason for the dismissal (whether economic or personal) is not classified as relating to gross misconduct ("*faute grave*" or "*faute lourde*") on the part of the employee, the employer must give notice to the employee before the dismissal takes effect or must pay the employee compensation in lieu of notice.

The notice which must be given will depend upon the length of service and the category of employee concerned.

Unless more favourable terms are provided in the collective-bargaining agreement or in the individual's contract of employment (which is often the case), the minimum notice is equal to one month for an employee with six months' to two years' service in the same company and two months for an employee with at least two years' service. It is three months for executives.

Additionally, compensation for dismissal or redundancy will be payable to an employee with more than two years' service unless he or she is being dismissed for gross misconduct. The legal provisions provide for 1/10th of the monthly salary for each year of service, plus 1/15th of the same salary for each year of service beyond ten years (these amounts are doubled in the case of a redundancy). Collective-bargaining agreements or individual contracts often provide for a higher amount of compensation.

13.3 Reasons for Dismissal

The dismissal of an employee must be based on real and serious grounds, whether of a personal or economic nature.

The existence of personal reasons for dismissal is a matter of fact to be decided by the Courts. A strict procedure must be followed by the employer, whereby the employee must be summoned in writing to discuss the reason for the proposed dismissal.

The law lays down detailed rules in relation to the content of the letter summoning the employee to interview, the procedure for sending it and when the meeting can take place.
The employee may be accompanied by a fellow employee, an employee representative or, in the absence of representative institutions in the company, by a person from outside the business chosen from a list to be obtained at the town hall or the Labour Inspectorate. Dismissals must be notified in a letter sent by recorded delivery not earlier than the third day following the day of the meeting (different waiting periods apply in the case of redundancy).

Dismissals on economic grounds are strictly defined by law and include the reorganisation or restructuring of the employer's business or a change in the geographical location of the business etc. The law does not lay down any particular method of selection, but provides that the employer must define the criteria for selection after having consulted the staff representatives.
The criteria must however take account of the number of family dependants, seniority, the personal difficulties of the employee (any physical handicap, for instance) and the professional abilities of each category, subject to any specific provisions in the applicable collective agreement.

Where the dismissal results from serious or gross misconduct ("faute grave or faute lourde"), the employer is not required to give notice or to pay any compensation.

Damages are awarded in addition by the Courts in cases where the employer has failed to observe the procedural requirements or is unable to show that there were real and serious grounds (whether of a personal or economic nature) for the termination, or that there was no serious or fundamental breach.
In those circumstances, the Court may consider the dismissal to be wrongful ("abusive"). If the company has at least 11 employees, the judge must award damages to the employee of not less than six months' pay provided the employee has more than two years' continuous service. In other instances, the damages will be in accordance with the employee's actual loss. It is unusual for the Courts to grant damages in excess of 18 months' salary. The Court will also order repayment by the employer to ASSEDIC (see above) of up to six months' unemployment benefit received by the employee. The Courts do not normally order reinstatement of the employee save in exceptional circumstances. French Industrial Relations Courts have a Conciliation Office to promote settlement of disputes.

Any termination of the employment of an employee who is 50 or older and who becomes unemployed will entail a payment to the unemployment insurance fund by the employer of an amount ranging from one month's to 12 months' salary.

13.4 Special Protection

Several categories of employees, such as employees incapacitated by reason of sickness, employees on parental leave, union delegates, employee representatives on various bodies and Works Council members, enjoy special protection against dismissal.
Dismissals of staff representatives will only be allowed after following a special procedure which includes obtaining an official authorisation from the Labour Inspectorate.

13.5 Closures and Collective Dismissals

Business closures and collective dismissals are included in the scope of dismissals for economic reasons. If more than one employee is to be dismissed for "economic reasons", the rules relating to collective dismissals will apply. These rules include consultation with the Works Council or, in the absence of such a Council, the staff representatives.

When collective dismissals affect ten or more employees, over a 30-day period, in an undertaking with more than 50 employees, the employer has an obligation to prepare a job protection plan ("*Plan de Sauvegarde de l'Emploi*") (formerly called a "Social Plan") in consultation with the Works Council which may cover issues such as voluntary part-time work, professional appraisal, guidance in seeking employment and early retirement. If the labour authorities consider the plan unsatisfactory, they may require the employer to start the procedure again, including consultation and the drafting of a new plan. In addition, if Industrial Court judges consider the plan unsatisfactory, they may declare all the dismissals null and void, (which is the toughest sanction available in French labour law, except for criminal charges, which may be laid for example for failure to respect staff representatives prerogatives or health and safety requirements).

In companies or groups with less than 1,000 employees, all employees made redundant are entitled, to participate in a "Re-employment programme" ("*Plan d'Aide au Retour à l'Emploi par anticipation*") during the notice period.

A law dated 18 January 2005 created an additional mechanism called "Convention de reclassement personnalisée" (individualised retraining agreement) for companies and groups with less than 1,000 employees.
This law has not yet been implemented.

In companies and groups with more than 1,000 employees, all employees made redundant are entitled to leave of absence in order to participate in a "Redeployment programme" ("*Congé de reclassement*"); if an employee refuses such leave, his employer has to offer him a Re-employment program.
In certain cases, the employer is also obliged to consider with local authorities the effects of a collective redundancy on local employment, and find an agreement with the local representative of the State in order to compensate the effects of the collective closure or redundancy.

14. Data Protection

14.1 Employment Records

The French law n°78-17 dated 6 January 1978 known as "Informatique et Libertés" (the 1978 law) governs the collection, storing, processing and use of personal data in France as well as the international transfer of personal data collected in France. The 1978 Law was recently modified by a law dated 6 August 2004.

Under the 1978 Law, data controllers such as employers, must comply with a number of formalities and declarations of the "Commission Nationale de l'Informatique et des Libertés" ("CNIL"), an independent governmental agency, prior to collecting data for an automated personal data processing operation. The CNIL then delivers a written acknowledgement of receipt.

The new law dated 6 August 2004 develops the means of control of the CNIL and particularly the access of its agents to the premises of companies (refusing the access of the company's premises to the CNIL agents is a criminal offence sanctioned by an imprisonment of up to one year or a fine of up to 15,000 euros).

14.2 Employee Access to Data

Employees, as data subjects, have the right to make an access request. The data subject has to prove his identity in order to be communicated the requested information. No charge may be levied and the data must be communicated in clear and intelligible language and the data subject is entitled to a copy of the requested information.

The data subject may require the employer to modify, complete, clarify, update or erase the information as appropriate. If the access request is refused, the data subject has a right to challenge the employer's decision before the Courts.

14.3 Monitoring

In general, French law does not prohibit or limit the monitoring of employees' level of activity at work, but merely requires prior notice to be given to employees and a prior consultation with the Works Council. Although an employer may, as a general principle, monitor the employees' use of Internet and emails, it must at all times, comply with the general principle of proportionality (article L.120-2 of the French Labour Code).

Every monitoring measure must be justified by the nature of the business activity of the employer's entity and be respectful of the employees' rights and liberties, including the right to a private life and privacy of correspondence.

French case law indicates (on the basis of the right to a privacy of correspondence) that an employer cannot systematically access the content of all emails and attached documents of either employees generally or specifically targeted employees. In any case, the employer cannot access emails which appear to be private.

14.4 Transmission of Data to Third Parties

The notice filed at the CNIL must specify all destinations for international transfers, and all international transfers require the prior authorisation of the CNIL. Under the 1978 Law, the CNIL may oppose any international transfer to a country which does not afford adequate data protection to its subjects.

The European Commission Decisions regarding "adequacy" have full effect in France, and are recognised by the CNIL.

Infringements of the 1978 Law may constitute criminal offences and be sanctioned by a fine of to up to 300,000 euros and up to five years imprisonment.

Under Article 226-24 of the French Criminal Code, organisations may be liable for such breaches. Fines are five times higher for organisations, and specific sanctions may apply, such as a prohibition from carrying out professional activities.

In addition, email correspondence is protected under certain conditions by additional provisions of the French Criminal Code. Infringements of these provisions may lead to punishment by imprisonment of up to one year or a fine of up to 45,000 euros. Individual data subjects can also claim damages in respect of any infringement of his or her of privacy.

Germany

1. Introduction

Although there is no single statute governing the individual and collective aspects of employment, labour law in Germany is highly regulated and codified. In practice, terms and conditions of employment as well as the nature of labour/management relations are moulded primarily by collective bargaining between trade unions and employers or collective agreements between works councils and employers and to some extent by custom and tradition. However, employment contracts must be negotiated within the strict confines of labour legislation, regulations and case law. Side by side with statutory regulation, a number of ancillary principles have been developed, such as the employee's duty of loyalty and the employer's duty of care.

Employee participation in the workplace is well developed. There are "co-determination" rights conferred on works councils, the latter being a significant factor in areas such as hiring and dismissing employees, health and safety and HR planning. Collective agreements are legally binding and a high percentage of the workforce have some terms and conditions of employment provided by collective agreements. Disputes, both collective and individual, are handled by special labour courts.

The Federal Government was and is still determined to work on legal projects within the field of labour law. In 2006, the Anti-Discrimination Act (*Allgemeines Gleichbehandlungsgesetz*, see below 4.) has been implemented. Currently, the introduction of minimum wages for specific industries or even for employment relationships in general is under discussion. To date there has been no statutory minimum wage, only minimum wages established by collective bargaining agreements which were declared binding on the entire industry sector (*allgemeinverbindlich*), irrespective of whether the affected employers are members of the relevant employers associations or unions. Such agreements currently apply in the construction and construction related services industry sectors, the temporary employment sector and in the building cleaning sector.

Industrial relations themselves continue to be generally good. In some business areas the practical co-operation between the social partners is quite close.

2. Categories of Employees

2.1 General

The German system of labour law recognises various categories of employees and has traditionally drawn a distinction between white collar workers (*Angestellte*) and blue collar workers (*Arbeiter*). After this general distinction was declared unconstitutional several years ago, only a few provisions differentiating between the two categories continue to exist, most of which are in collective bargaining agreements, for example with regard to notice periods.

2.2 Directors

Certain protective laws do not apply to board members or managing directors (*Vorstandsmitglied in an AG and Geschäftsführer in a GmbH*) and only partly to senior executives (*Leitende Angestellte*). The distinction between senior executives and salaried employees is in practice often not an easy one to draw. Senior executives are not represented by a works council (*Betriebsrat*), they have a statutory right to form their own committees (*Sprecherausschüsse*). These committees have broadly similar powers to works councils in relation to dismissals and redundancies.

2.3 Other

German statutory law includes the principle that part-time employees should receive the same protection as full-time employees. There must be justifiable reasons for an employer to treat part-time and full-time employees differently. On engaging a part-time employee, the number of working hours per week should be agreed between employer and employee. If this is not expressly agreed, ten hours a week will be implied. In the case of part-time contracts without general agreement on the working days and work hours, the employer must give four days' notice of the work he requires to be done. Furthermore, if the contract does not contain any provisions with regard to the number of working hours per day then the employer is obliged to provide at least three consecutive hours of work a day.

After six months of employment, employees generally have a right to demand a reduction in their working time. The employer is obliged to comply with this request unless he can prove the existence of business or operational reasons justifying an objection to such a reduction. Employees are, however, only entitled to part-time employment, if the total number of employees in the company exceeds 15. If part-time employees wish to increase their working time, employers are obliged to offer vacant full time posts to these part-time employees first.

Similar provisions apply to employees on parental leave. A parent is entitled to part-time employment (15 to 30 hours per week) during his/her parental leave, provided that the employment relationship has been in existence for more than six months and the total number of employees exceeds 15. The employer may only refuse such a request, if urgent operational reasons justify the refusal.

Marginal employment is deemed to exist whenever the employee earns no more than €400 per month (regardless of the number of hours worked) or whenever the duration of the work is characteristically limited to two months or fifty days per calendar year, unless the nature of the work is professional and the total payment exceeds €400 per month (i.e. €4,800 per year). For the purpose of assessing whether an individual is engaged in marginal employment, the payment and duration of several periods of employment must generally be aggregated. Whenever an employment relationship is classified as marginal employment, the employer is only required to make a lump sum contribution of a total of 30 per cent of salary to the social security system

(15 per cent for pension, 13 per cent for health insurance and further two per cent for income tax). Marginal employment relationships must be notified to the social security authorities in the same manner as full-time employment relationships.

3. Hiring

3.1 Recruitment

Employers must consult with the works council (where there is one) about general personnel planning.
In companies with more than 20 employees, the employer must, inter alia, consult with and obtain the consent of the works council before hiring.
Employers with 20 or more employees must reserve five per cent of jobs for disabled employees or pay the authorities a compensation tax (*Ausgleichsabgabe*) of between €105 and €260 a month for each disabled person he is obliged to employ. In addition to the compensation tax, the employer may be fined up to €10,000 for not fulfilling the quota.

3.2 Work Permits

As a general rule, all non-EEA nationals who wish to work in Germany must apply for a visa before entering Germany for the first time. However, there are exceptions, for example the rule is not applicable to US nationals and nationals of some other countries. The visa will be issued by German embassies based overseas. Once in Germany, all non-EEA nationals have to apply for a residency and work permit (*Aufenthaltstitel*) with the locally competent public offices for aliens (*Ausländerbehörden*). After obtaining the approval of the competent Federal Employment Office (*Bundesagentur für Arbeit*), the public office for aliens will convert the visa and issue the residency permit.
The residency permit amounts in essence to a work permit, as the authority to work is explicitly stated in the residency permit.

The residency permit may only be issued if a concrete job offer exists, the employment does not result in any adverse consequences for the labour market, no German workers are available for the type of employment and filling the vacancies with foreign applicants is justifiable in terms of labour market policy and integration issues. The employer is required to furnish the locally competent employment office (which will in turn pass this information to the public office for aliens) with information on pay, working hours and other terms and conditions of employment.

EEA nationals, as a rule, benefit from the rules granting freedom of movement and labour mobility. They no longer need to apply for a residency and work permit with the public office for aliens but need only obtain a confirmation of registration from the local public and administration office (*Meldebehörde*).

Under the provisions of the so-called 2+3+2-regulation, employees from the 12 new member states of the European Union who joined the European Union on 1 May 2004 and on 1 January 2007 respectively, except Malta and Cyprus, still need a residency and work permit in order to work in Germany. Originally imposed for a transitional period of two years (until 30 April 2006), these restrictions have recently been extended for three further years (until 30 April 2009). If necessary Germany can extend this period by a further two years, until 30 April 2011.

4. Discrimination

The Anti-Discrimination Act (*Allgemeines Gleichbehandlungsgesetz*) transposed into German national law several EU directives dealing with anti-discrimination regulations on 18 August 2006. It considerably expands employees' protection against discrimination.

The Anti-Discrimination Act protects employees, job applicants and former employees, including pensioners, against discrimination by the employer, other employees and third parties, such as customers or service providers of the employer. It expressly prohibits discrimination on the grounds of race, ethnic origin, gender, religion or belief, disability, age or sexual identity. The Anti-Discrimination Act contains provisions specifying which activities constitute a violation of the law, what criteria might be applied in determining a violation and the obligations pertaining to the employer in this context. The employer is obliged to take appropriate measures to protect his employees against discrimination and harassment, for example by informing his staff of the new anti-discrimination legislation, by appointing competent persons within his organisation where complaints can be filed, by undertaking precautionary measures where necessary and carefully documenting potential discrimination cases, but also by admonishing or even dismissing employees who discriminate against others. The most significant change from the previous legal situation is the introduction of significant and uncapped sanctions, together with a reversal of the burden of proof, which puts the onus on the employer to demonstrate that the act complained of was not motivated by discriminatory reasons. As the Anti-Discrimination Act does not clarify what intensity certain acts must have in order to constitute discrimination or harassment under the law, it is to be expected that in the years to come, the interpretation of the law will be the object of disputes and in their wake, court decisions will provide more concrete criteria to help interpret the law.

The Anti-Discrimination Act also contains a number of exceptions justifying differentiations made on the basis of criteria normally constituting discrimination. For example, discrimination on the grounds of gender can be justified if the gender is an indispensable prerequisite for the activity to be performed, or, discrimination on the basis of age might be permitted if there are objective reasons for it and a legitimate purpose such as an underlying aim of integration of young persons, older persons and persons with obligations towards dependents into the job market.

In the event of alleged discriminatory activities, the employee will in the future only have to substantiate circumstances, which raise a presumption of discrimination. Thereafter, the employer bears the burden of proof of demonstrating that either there existed no discriminatory treatment or it was justified in accordance with the Anti-Discrimination Act. Discriminatory

measures will be void and might additionally lead to a claim for damages. The new Anti-Discrimination Act distinguishes between compensation for financial loss and for non-material damages; liability for non-material damages being independent of the existence of fault or even negligence on the part of the employer. It has become a controversial subject of discussion in Germany whether a significant new risk of liability will be introduced into the German legal system by virtue of the fact that for the first time the concept of punitive damages without financial limits might be applied by German courts.

According to the Anti-Discrimination Act, not only discrimination by the employer and representatives of the employer may trigger the employer's liability, but also the activities of third parties, namely customers or service providers of the employer.

Any claim for compensation for damage must be asserted in writing within two months of the claim coming into existence and, unless acknowledged by the employer, court proceedings must be instituted within three months of making the written assertion.

Employers are well advised to carefully review their existing internal procedures, model employment agreements as well as applicable collective agreements for compliance with the new Anti-Discrimination Act. It is also very important to ensure that managers with personnel responsibilities receive comprehensive training in relation to the new legal requirements as well as being made aware of the consequences of violating them. Where the employer can demonstrate that it provided managers with appropriate training this will help the employer defend any claim brought under the Anti-Discrimination Act.

5. Contracts of Employment

5.1 Freedom of Contract

Although employer and employee are, in principle, free to set the terms of their relationship, this freedom is, in practice, limited by mandatory minimum statutory standards. In addition, industry-wide collective bargaining agreements between unions and employers associations or directly with the employing companies are common. In addition such agreements are sometimes declared generally binding in relation to certain industries or trades (*allgemeinverbindlich*) and can therefore be legally binding on employers who are not even directly party to the agreements and thus risk being unaware of the agreement's provisions.

5.2 Form

Employment contracts should be in writing and an employer is obliged to notify an employee in writing of the essential conditions of his or her employment within one month of the start of the employment in order to guarantee legal clarity and make it possible for the employee to know his or her rights. Non-fulfilment of this obligation does not render the employment contract invalid. However, if conditions of the employment relationship are subject to litigation and the employer has not documented the contractual rights and duties in the above stated way, the burden of proof for disputed facts favourable to the employer may lie on the employer.

Fixed-term contracts are subject to the Part-Time and Fixed-Term Employment Act (*Gesetz über Teilzeitarbeit und befristete Arbeitsverträge*). This Act substantially restricts the options of the employer to enter into fixed-term contracts. Generally, fixed-term contracts can be concluded without justification only for a term of up to two years and provided only that no employment relationship had existed with the same employer (whether under a fixed-term or indefinite contract) at any time in the past. Within this two year period, employers are allowed to extend fixed-term employment contracts up to three times. As an exception to this rule, during the first four years after the establishment of a new company (but not in the case of a merger or transformation of pre-existing companies), it is possible to conclude fixed-term employment contracts for a period of up to four years. In all other cases, there must be a valid reason to justify the agreement being for a fixed term. Justification for a fixed-term contract includes, for example, the replacement of an employee on maternity leave. Recently, the European Court of Justice ruled that German legislation that allows fixed-term contracts in excess of two years to be concluded with employees who are older than 52 without specific justification contravenes European law. There are plans to amend the legislation in order to make it compliant with European law, but it is not yet clear in which way this will be achieved. Fixed-term contracts must be in writing and be signed by both parties before the beginning of the employment. Fixed-term contracts that do not fulfil the legal requirements outlined above will not be rendered invalid but will instead be classified as contracts for an indefinite period.

The law provides that an employee is obliged to register with an employment agency and to seek new employment no later than three months prior to the termination of the fixed-term contract and requires an employer to inform the employee of this obligation. Accordingly a fixed-term contract should refer to the employee's obligation to present himself personally to the employment agencies in due time.

5.3 Trial Periods

Probationary periods are common and maximum periods are often regulated by collective bargaining agreements; they are usually up to four weeks for blue collar workers and three to six months for white collar workers. Probationary periods cannot, in principle, exceed six months and must, in any event, be reasonable.

The minimum notice period during such probationary period is shorter than usual, i.e. two weeks (or even less under applicable collective bargaining agreements). This notice period can, under very limited circumstances, be prolonged by agreement and therefore lead to a de facto extension of the probationary period.

5.4 Confidentiality and Non-Competition

In principle, employees are subject to a statutory duty not to compete during the

course of employment. Employees who are not covered by this statutory provision are subject to a general duty of loyalty.

Post-termination restrictions on competing activities, on the other hand, must be agreed in writing, must provide for certain minimum payments to be made (essentially 50 per cent of the remuneration formerly received throughout the period of the restriction) and must be for a reasonable period (not exceeding two years). However, it is worth noting that the non-competition rules in respect of a managing director or a member of a board of directors (*Geschäftsführer and Vorstände*) are to some extent different and less restrictive.

The employees' general duty of loyalty extends to the prevention of disclosure of trade and business secrets during their employment. Disclosure of such information after termination can also be prevented provided this is expressly agreed with the employee. It is possible that disclosure or use of certain trade or business secrets may constitute a criminal offence under unfair competition laws.

5.5 Intellectual Property

Inventions made by an employee during the course of employment and in fulfilment of the employee's contractual duties are governed by the Act on Employee Inventions (*Arbeitnehmererfindungsgesetz*) and can be acquired by the employer by way of declaration, subject to the employer paying statutory compensation. Once acquired, the employer can in principle use it without further remuneration being required. There is no specific legislation addressing the issue of copyright and design patents in the employment context.

The German Copyright Act (*Urheberrechtsgesetz*) is based on the general principle that the employee automatically grants all user rights to the employer whenever the work has been created in fulfilment of contractual duties. With regard to the creation of software as part of the contractual obligation, the employer is entitled to use the copyright exclusively, unless otherwise agreed. The use of the copyright is in these cases covered by the employee's wages. Where employers expect employees to make inventions or to create intellectual property it is nevertheless advisable to conclude appropriate agreements covering these matters.

6. Pay and Benefits

6.1 Basic Pay

There is currently no statutory minimum wage, but the introduction of a minimum wage for specific industry sectors or even in general is under discussion. In any event, collective agreements currently include minimum wage provisions for various categories of employees. These are legally enforceable if the collective agreement is applicable, either because:

- employer and employee are members of the parties to the collective agreement (i.e. the employer's association and the trade union respectively); or
- the collective agreement in question has been declared generally binding (allgemeinverbindlich) by the Federal Minister of Economics and Labour; or
- the employer and the employee agree individually that the collective agreement or parts thereof are applicable.

Therefore, even where a company is not covered by a collective agreement, its wage rates are often influenced by collectively agreed rates.

Annual salary is usually divided into 12 monthly instalments. In addition, a 13th (and sometimes 14th) month's salary is often paid as a Christmas or holiday bonus.

There is no obligation to index link pay. However, a similar effect is often achieved by the annual re-negotiation of wages within the framework of collective bargaining agreements.

6.2 Private Pensions

Many employers, especially large companies, provide company pension arrangements. Pensions legislation provides that employees are entitled to demand a company pension from their employer by way of conversion of their remuneration (currently up to an amount of €2,520 per year in the old FRG states and €2,184 per year in the states of the former GDR) into pension contributions. The amount equals four per cent of the income threshold for social security contributions and changes annually. The employee has a right to demand a company pension in the form of a direct insurance policy that will mature and pay out upon retirement, unless the employer wants to execute the company pension by way of a pension fund. In addition employers are in practice often obliged to provide company pension plans because of the terms of a collective agreement or simply to attract sufficient labour. Most schemes are non-contributory for employees and their qualifying periods of service to get vested rights can be fairly long (if the pension promise was made prior to 31 December 2000, as a rule, 10 years; if the pension promise was made after 1 January 2001, five years).

Pension promises made on or after 1 January 2005 by way of a direct insurance or pension fund must be transferred to a new employer at the (former) employee's request (introducing a so-called principle of portability, Portabilität). This requires the former employer to pay to the new employer a sum equal to the actuarial value of the pension at the date of termination of employment (up to a maximum amount of €63,000 in 2007) thus resulting in a drain of liquidity at the former employer's pension or insurance fund.

6.3 Incentive Schemes

Profit-related pay is often paid to managerial and increasingly also to non-managerial staff. Employers are in certain circumstances legally obliged to set up a savings plan for employees and collective agreements often also require the employer to make a contribution. Equity Award Plans are often applied, usually in international group companies. It is worth noting that their introduction as well as operation might be subject to German laws and should be aligned with them.

6.4 Fringe Benefits

Fringe benefits vary according to the size of the business and may include bonuses, company cars (for more senior or frequently travelling employees), life and/or accident insurance, subsidised canteen or luncheon vouchers.
If benefits such as Christmas bonuses, vacation pay or company cars are provided under a collective bargaining agreement or individual contracts, employees are likely to have a right to them as part of their remuneration package unless expressly stated otherwise.

6.5 Deductions

Employee's income tax (*Lohnsteuer*) is deducted by the employer at source and then accounted for to the tax authorities. The top income tax rate has in recent years been reduced to 42 per cent and applies to an annual income of €52,152 or more for single employees and €104,304 or more for married couples. The basic tax rate is 15 per cent and applies to income exceeding €7,664 for single employees/€15,328 for married couples. In 2007 a top income tax rate of 45 per cent has been introduced for an annual income of €250,000 or more for single employees and €500,000 for married couples (the so called "rich people deduction"). Another deduction, introduced in 1992 to pay for the re-unification programme, is the "solidarity surcharge". Since 1998 it has been set at five and a half per cent of the income tax rate. Church tax will also be deducted by the employer if the employee is a member of a tax raising church.

7. Social Security

7.1 Coverage

The State social security system provides benefits in the case of old age, disability, death, sickness, maternity, industrial injury, unemployment and where there is a need for nursing care.

7.2 Contributions

The social security system is financed by employee and employer contributions, which are based on the employee's salary up to various ceilings. As a rule, employers and employees share the contributions equally.

Employees without children pay an increased percentage for the nursing care insurance (of 1.1 per cent rather than 0.85 per cent) and all employees pay in to the health insurance fund an additional amount of 0.9 per cent of their salary up to the ceiling amount.

A reform of the health insurance system was introduced in 2007 and will bring some significant changes. From 1 January 2009, respectively 1 April 2007 for all persons who fall under the scope of the public health insurance system, every citizen of Germany will be obliged to contract for health insurance cover. In the past, only employees earning above a specific threshold amount were able to opt out of the public health insurance system and take out private health insurance. From 1 January 2009 on, private health insurance will be available to all citizens (i.e. including all employees irrespective of their income). Private health insurance companies will be legally obliged to offer insurance for a basic premium not exceeding the premiums of the public health insurance system. Private health insurance companies will also be required to provide cover for any citizen who wants it; without the ability to exclude high risk individuals or to charge higher premiums in relation to higher risk individuals.

Self-employed persons are as a rule not members of the social security system (comprising unemployment insurance, public health insurance, retirement insurance, nursing care insurance), but the qualifying requirements for self-employed status are very strict. Furthermore, certain groups of self-employed persons are subject to mandatory membership of the social security system for old age pension insurance.

For the year 2007, the rates are:

	Percentage of the Aggregate Amount	Limit for Basis of Assessment per month	
		West-Germany	East-Germany
Retirement Benefit Charge	19.9%	€5,250	€4,550
Unemployment Insurance (Employment Promotion) Charge	4.2%	€5,250	€4,550
Public Health Insurance Charge	approx 14.25% (depending on offers of respective funds)	€3,562.50	
Nursing Care	1.7%	€3,562.50	

Employers (alone) must also contribute to the insurance for accidents at work, the contribution varies according to the specific risk of the business concerned; the average contribution amounts to 1.31 per cent of the total gross remuneration, but may be significantly higher in accident prone industries (e.g. construction industry etc.).

8. Hours of Work

The number of working hours per week is usually regulated in a collective bargaining agreement or, if there is no collective bargaining agreement, will be regulated in the individual contract of employment.

Working time is restricted by statute to a maximum of eight hours per day on average, including Saturdays, which can, in certain circumstances, be increased to 10 hours per day. There is a general ban on Sunday and bank holiday working, except in certain trades like hotels or restaurants or for certain public businesses, like hospitals. Extensions of normal working hours exceeding these limits may be provided for in collective agreements, that is the 10 hour per day limit can be increased, provided the working time comprises significant periods of standby-time. Otherwise, extensions may only be carried out in exceptional circumstances with the approval of the appropriate labour authority. Shop opening hours used to be strictly regulated, but have been significantly extended and in some regions completely abolished.

Under most collective bargaining agreements the average working week is about 37.7 hours over a five day week. The trend towards a 35 hour week in the 1990s has started to reverse particularly in the past year. In many industries and companies

employees now can work 40 hour weeks again.

Hours worked in excess of the contractually agreed hours of work are considered overtime. Overtime will frequently be covered by collective agreements and often has to be paid at a premium rate. Where this is not the case, and even though this is not legally required, the payment of premium rates is also often stipulated in individual employment contracts. In line with the trend towards longer working hours, many collective agreements provide for flexible working time with the possibility of periods of time off as compensation for accumulated overtime in order to reduce the necessity to pay premium rates for overtime hours worked.

9. Holidays and Time Off

9.1 Holidays

There are between nine and 13 public holidays per year depending on the State (Land) in question. Statute provides for a minimum of four weeks' paid holiday per year (24 days counting Saturdays as working days), but frequently collective agreements will increase this to five or even six weeks . For senior workers and salaried employees, 25-30 days' (not counting Saturdays as working days) holiday per year is regarded as standard.

9.2 Family Leave

Pregnant women are entitled to take maternity leave from six weeks prior to confinement. They are entitled to a further eight weeks after the birth (in some cases 12 weeks). Throughout the maternity leave they will receive payment of up to a maximum €13/day from the health insurance fund while the employer has to pay the difference between the woman's regular net pay and the daily health insurance fund benefit. The amount received from the health insurance fund will be dictated by the employee's former income. Under the Act for compensation of employer's expenses (*Gesetz über den Ausgleich von Arbeitgeberaufwendungen*) introduced in 2006, all employers can now apply for reimbursement of the maternity pay the employer has paid to the pregnant employee and of the employer's share of the contributions paid to the social security system.

After the end of the maternity leave period, either parent has a right to claim additional parental leave for a period up to three years after the child's birth for the purpose of rearing the child. During this absence no payments have to be made by the employer (unless otherwise agreed in any applicable individual or collective agreements), however, he has to make the employee's position available for the employee upon her or his return to work or to allow them to return to a suitable new position.

In order to encourage parents to take advantage of this provision, the Act on payment during parental leave (*Bundeselterngeldgesetz*), which applies to all children born on or after 1 January 2007, entitles either parent to a monthly payment of 67 per cent of the former regular net pay, up to a maximum of €1,800 per month, if the child is reared by the parent and the parent does not work more than 30 hours a week. This amount will be paid monthly for a maximum period of 14 months. The parents are free to choose how to split this time between themselves subject to a maximum of 12 months being taken by one parent. The other two months being reserved for the other parent.

There are in addition various statutory provisions protecting pregnant women and new mothers/fathers in their daily work and from dismissal.

9.3 Illness

Employers must pay 100 per cent of the employee's normal salary for six weeks during any single period of ill-health absence. If the employee returns to work and has a subsequent period of ill-health absence the employee is again entitled to receive up to six weeks' full pay. Separate periods of ill-health payments are not aggregated. In businesses with not more than 30 employees the health insurance fund will reimburse the employer, in general, 80 per cent of the employee's insured earnings for this period. After that period, a reduced benefit is provided by the local social security fund.

10. Health and Safety

10.1 Accidents

Employers must provide insurance for accidents at work (see 7.2 above). The amount that can be claimed in the case of accident will depend on the level of cover actually provided. There are detailed requirements as to health and safety at work and the State Business Supervisory Authority (*Gewerbeaufsichtsamt*) may impose additional requirements if the undertaking is changed or expanded significantly.

10.2 Health and Safety Consultation

Works councils have rights of inspection, co-determination and to receive information concerning health and safety in the workplace. In addition, certain workplaces are obliged by statute to set up Health and Safety Committees, which must meet every three months to consider health and safety matters. Employers may also be obliged to employ (either full time or part-time) a "safety specialist", depending on the nature and size of the business.

11. Industrial Relations

11.1 Trade Unions

The right to freedom of association and the right to engage in union activity on an employer's premises are constitutionally guaranteed. An employer must permit union officials to disseminate information and recruit new members on company premises during non-working hours if the union already represents members of the workforce.

Under the Constitution, employees cannot be compelled to join a trade union and closed shop agreements are prohibited. Trade unions must meet certain criteria of independence and be sufficiently representative in order to be able to conclude collective agreements.

Most trade unions belong to one of the national federations:

- DGB (*Deutscher Gewerkschaftsbund*) – the largest with the most affiliates
- DBB (*Deutscher Beamtenbund*) – for public sector unions

Employers are generally affiliated to the national employers' associations, the

Federal Organisation of Employers' Associations (*BDA or Bundesvereinigung der deutschen Arbeitgeberverbände*).

11.2 Collective Agreements

Collective agreements may be concluded between unions on one side and individual employers or employers' associations on the other side. They are usually entered into for particular industries or branches of industries (for example the chemical industry). They may be at local, regional, State or Federal level. They must be in writing and are usually negotiated annually or semi-annually with regard to salary but are applicable for a longer period if they deal with matters such as, for example, health and safety, working hours and holidays.

The agreements are generally legally enforceable between the parties, provided they are in writing and signed by the authorised representatives. There is a central register of collective agreements and the parties to a collective agreement are obliged to notify the Federal Minister of Labour and Social Welfare (*Bundesministerium für Arbeit und Soziales*) of the entry into force of such an agreement and any amendment made to it.

11.3 Trade Disputes

The freedom to strike is a basic right granted to trade unions and such action will be lawful provided it is supported by a union, has work-related objectives (as opposed to political ones) and is the result of a serious breakdown in the negotiation process. During a strike, striking employees are not entitled to receive pay. Provided the strike is not illegal, the employer cannot dismiss striking employees but may in limited circumstances lock-out and suspend striking as well as non-striking employees from working.

11.4 Information, Consultation and Participation

One of the most important principles in German industrial relations law is that of "co-determination". This concept can give employees the right to be involved in decision making at various levels and to various degrees. Thus co-determination can occur at board level or at shop floor level.

Depending on the circumstances, employees and their representatives may be entitled, in connection with particular matters, to:

- receive information from the employer;
- put forward ideas of their own and be consulted; and
- approve or review decisions.

Where a company is required to form a supervisory board – Aufsichtsrat (broadly speaking, if the company is either an AG or a GmbH and employs more than 500 people) – to oversee management decisions, employees have the right to elect a third of the members to this board (or half, if the company or in certain cases group of companies, has more than 2,000 employees).

In establishments with more than five regular employees, a works council can be elected at the free discretion of the work force. Works councils have extensive rights to information, consultation and/or even mandatory co-determination in respect of most organisational matters. In particular, in companies with more than 20 employees in Germany, works councils have a mandatory co-determination right with regard to any measures which might cause redundancies or other significant changes to the company's structure or its operations and might trigger significant (potential) disadvantages for the workforce in Germany. In companies with more than 20 employees in Germany, works councils also have the right to be consulted on decisions regarding individual personnel matters (such as the transfer or recruitment of an employee, dismissals and redundancies) and some general personnel matters (such as selection criteria or evaluation principles). The works council should meet at least once a month with the employer.

Actions taken by the employer violating the works council's rights may be legally invalid and can be punished by imposing fines on the employer for each incident of violation.

Where the works council and the employer are in dispute on a matter on which the works council has a right of co-determination, both parties can require a conciliation committee (*Einigungsstelle*) to be established in order to resolve the issue.

An Economic Committee is created on a company wide level in companies regularly employing more than 100 employees and is elected by the works council(s). Its function is to regularly discuss the economic affairs of the business with the employer.

12. Acquisitions and Mergers

12.1 General

The rights of employees and employee representative bodies in the context of acquisition and merger situations differ depending on whether the transaction is done by way of a share purchase or an asset purchase (share deal – asset deal) respectively.

A share deal raises only limited legal issues since the legal identity of the target company as employer does not change upon the acquisition of shares and the purchaser acquires the entity as is. In particular, a share deal is not subject to the provisions regulating the transfer of an undertaking.

In general, a share deal does not, as such, directly affect existing employee representative bodies such as works councils nor the constitution of the supervisory board, if any. Nevertheless, co-determination laws are dictated by the number of regular employees with the consequence that following an acquisition or merger, different rules may apply and changes to the co-determination arrangements may become necessary. This consequence must be borne in mind where the transaction could lead to the overall number of employees being increased beyond the threshold number triggering the obligation to form a supervisory board for the first time or to create additional representation rights and

consequently transaction structures are often influenced by employment law related considerations.

Upon the sale of the business, or part of the business, all existing employment relationships, including those with executives but excluding service contracts with organs of the company (e.g. board members), are automatically transferred to the new owner and all the rights and liabilities of the employment relationship continue to exist unchanged vis-à-vis the new employer.
The purchaser is also liable for pension commitments made to the employee.

12.2 Information and Consultation Requirements

In the context of a share deal there is no legal obligation to inform employees of the transfer of shares of their employer before or after the transfer, although this is usually advisable for practical reasons. However, the economic committee must be informed in a timely and comprehensive manner of the resulting effects of the share transfer on the personnel provided no trade or business secrets would be jeopardised by doing so.

It is a somewhat grey area as to when the information must be provided. The economic committee has to be informed at a time when it is still possible for it to examine the matter and pass on the information to the works councils.
It should also be in a position to hold meaningful discussions with the company's management before final decisions are taken. The information must be comprehensive, and at its request, the economic committee must have the same information placed at its disposal as the employer has.
The information must be provided in an understandable form, and context and unknown terms should be explained. In addition, the economic committee must be allowed to inspect the existing files (except documents containing business secrets). The information is deemed to have been given late if decisions by the competent management bodies have already been finalised, e.g. after the shares have been transferred.
The economic committee is not however entitled to block the share deal even if the information has been provided late. Failing to involve the economic committee on time is an administrative offence. In the event of a serious offence (for example failing to inform, in spite of being requested to do so), legal proceedings may be instituted against the employer for breach of its statutory duties, as a result of which the employer can be ordered to refrain from committing illegal acts (such as not informing as and when due) or be required to perform specific acts and the court may order administrative fines in the event of repeated violations.
The maximum level of fine is €10,000 per 'case' however there is some legal debate as to whether each individual employee is a separate case or whether all the affected employees together constitute a single case.

It is a matter of debate whether or not the works council(s) of the target company must be informed at all before a share deal is carried out. If an economic committee exists, it will inform the works council after having been informed itself. Even if no economic committee exists, the company should, if possible, inform its works council, at least for practical reasons.

There is no legal obligation to inform trade unions prior to or after a share sale. In many larger companies trade union representatives hold one or more seats on the supervisory board as representatives of the employees, and they will thus be fully informed through this office.

Whenever a transaction (share deal or asset deal alike) will lead to a significant change in the organisation of the business, including any split or merger of businesses, the works council must be informed by the seller or buyer depending on the specific circumstances, comprehensively and in good time, of any intended changes with regard to the company's structure or its operations and of any potential significant disadvantages for the company's workforce as a whole or in part. Depending on the circumstances, the employer may be obliged to negotiate with the works council a reconciliation of interests plan (*Interessenausgleich*) and set up a social plan (*Sozialplan*). (See further below).

In the event that a business is sold by a transfer of all or the essential tangible and/or intangible economic assets, the sale of the business is subject to section 613a German Civil Code, which transposes the Acquired Rights Directive.

The transferor (i.e. the former employer) or the transferee (i.e. the new employer) must inform all employees affected by the transfer, in advance, of the date or proposed date of the transfer, of the reason for the transfer, the legal, economic and social implications of the transfer for the employees, and of any measures envisaged in relation to the employees. Every employee may object in writing to the transfer of the employment relationship within one month of receipt of the information.
The objection may be declared vis-à-vis the old employer or the new employer.

In recent decisions, the Federal Labour Court (BAG) has clarified the scope of an employer's information obligations and the consequences of supplying insufficient information. The court has ruled that the employer is to provide the employees with the factual information they need to decide whether to object to the transfer or not. Although the court accepted that the information may be provided by way of a standard letter, it has also held that employees must be informed of any particular issues relating to their employment relationships (e.g. where the consequences of the transfer differ to those generally applicable because an employee or group of employees has different contractual provisions following a previous transfer). In addition, the information must not only be sufficiently detailed and legally correct, but, at the same time, comprehensible for a person who has no legal education.

If an employer fails to provide information which meets these requirements the one month period during which the employee is legally permitted to object to the transfer of his or her employment contract to the new employer does not begin until the

employee is sufficiently informed. Consequently, employees may object to a transfer months (the courts recently ruled on a situation where an objection had been declared by a group of employees more than nine months after the transfer had taken place) or even years after a transfer has taken place. An employee can therefore object to his or her transfer retrospectively with the consequence that the employment relationship between the former employer and the employee is deemed to have continued notwithstanding the fact that the undertaking has transferred. The potential risks for the transferor are significant and not to be underestimated. In particular in scenarios where the new owner of a business is in an insolvency situation, even contractually agreed warranties or guarantees will not constitute adequate means of safeguarding the transferor against claims being raised by former employees who have retrospectively objected to the transfer (including claims for remuneration, continued employment, pensions etc.).

The obligation to inform employees exists irrespective of whether or not employee representatives, (i.e. an economic committee or works council(s)) exist who are also informed about the transfer and related details. In practice, employers therefore face cumulative information obligations vis-à-vis employees on the one hand and employee representatives on the other hand.

In the context of an asset deal the Economic Committee must also be given the same information as it is entitled to receive in the context of a share deal (see above).

12.3 Notification of Authorities

There is generally no obligation to notify the authorities of a business transfer.

12.4 Liabilities

Although the works council has no veto right regarding the acquisition or the disposal itself, its procedural right of consultation in relation to redundancies and other significant changes can lead to injunction proceedings in Court instituted by the works council and can thus delay a transfer in Germany until the legal obligations have been complied with if an agreement is not reached.

Violations of the co-determination rights of the works council represent an administrative offence. In the event of a serious offence, legal proceedings may be instituted against the employer for breach of statutory duties. In these proceedings the employer can be ordered to refrain from committing illegal acts or be ordered to perform specific acts and the court may order that in the event of repeated violations administrative fines of up to €10,000 may be imposed per case.

13. Termination

13.1 Individual Termination

The rules in relation to termination are complex and an employer must ensure it complies with applicable contractual, legislative and/or collective agreement provisions in relation to termination.

13.2 Notice

Except where there is gross misconduct, the employer must comply with the applicable notice requirements. These may be found in a collective bargaining agreement, contract of employment and in applicable legislation. Minimum notice periods provided by law (which may be varied by collective bargaining agreements) are as follows:

- in the first two years of employment, four weeks (to the 15th of the month or end of the calendar month);
- for employment between two and 20 years, notice is on a sliding scale from one to seven months (to the end of the calendar month).

Termination is not hindered by the employee being ill or absent from work.

Notice of termination has to be given in written form to be effective. The written form prescribed is only satisfied if the documents are personally signed by the parties, which means that notices transmitted by fax or e-mail do not satisfy this legal requirement.

The termination letter must be signed by the legal representative (e.g. the Geschäftsführer of a GmbH or a member of the board of directors of an AG) of the employing entity (either alone or if he or she is not authorised to represent the company alone, together with another legal representative) or by the formally appointed head of personnel. If any other person is to give the termination notice, this person must submit at the same time and together with the termination letter a written power of attorney in the original, signed by a legal representative of the employing entity duly authorising him or her to give the termination notice. The termination letter does not have to, and should as a rule not, refer to the reason(s) for the termination.

An employee is obliged to register as a work seeker with the competent local employment agency as early as possible after termination, failing which he or she risks loosing some entitlement to unemployment benefits. Accordingly the notice of termination should refer to the employee's obligation to present himself personally to the employment agencies immediately after receiving the notice.

Each potential dismissal, whether with or without notice, must be notified to the works council (if any exists) before it can be implemented. The notification must identify the employee concerned and describe the reason(s) for the dismissal. The works council then has one week within which it can notify the employer if it wishes to challenge the dismissal. Even if the works council does not agree with the dismissal, the employer can proceed to give the employee notice.

The employee may file a claim with the labour Court within three weeks of receipt of the termination notice if he or she believes the dismissal was unjustified. Where the Court finds that the dismissal was not valid, the employee will as a rule be reinstated in his former position. For the period between the invalid termination of the employment and reinstatement of the employee, the employer will be obliged to pay salary in arrears (default salary) if the employee has not secured an alternative employment income during this period. Only in exceptional cases

may the Court terminate the contract on the ground that the terminated employee or the employer does not find it acceptable to continue the employment relationship. In these circumstances the Court will award compensation of up to 18 months' pay (depending on the length of service, the age and social circumstances of the employee) to the employee.

One notable feature of the German system for dealing with disputes over dismissal is the employee's ability in certain cases to insist on remaining actively employed throughout the period during which the claim is being heard, notwithstanding the eventual outcome of the claim.

13.3 Reasons for Dismissal

If the Protection Against Unfair Dismissal Act (*Kündigungsschutzgesetz*) is not applicable, there need not be a reason for termination. The dismissal must nevertheless comply with the provisions of the Anti-Discrimination Act (*Allgemeines Gleichbehandlungsgesetz*).

If the Protection Against Unfair Dismissal Act is applicable, which is broadly the case when the business has more than five employees, (or if the employment relationship in question started on or after 1 January 2004, if the business has more than ten employees) and the employee in question has been with the business for more than six months at the date of termination, a contract of employment can only be terminated if there is either:

- gross misconduct, e.g. theft from the employer or colleagues, or a material breach of a non-competition covenant, in which case the employer can dismiss the employee without notice (*fristlose Kündigung aus wichtigem Grund*); or
- one of the following justifying reasons ("social justification"): misconduct, character/personality reasons (such as drug addiction, illness) or genuine economic business reasons (so-called "dismissal for operational reasons").

In the case of dismissal for misconduct, the employer must have previously given a final warning (*Abmahnung*) to the employee. In cases of termination for genuine economic business reasons, if there were several comparable individuals who could have been dismissed for this particular reason, the employer must show that it selected the employee in accordance with the mandatory legal requirements, taking into account the social criteria i.e. length of service, age, obligations towards dependants and disability (so-called "social choice").

The burden of proof for establishing that the dismissal was socially justified is, if challenged by the employee, on the employer. In practical terms, this is often difficult to establish and the labour Courts are known for generally favouring the employee.

To date the relationship between the Protection Against Unfair Dismissal Act and the Anti-Discrimination Act is rather unclear. However, having regard to the fact that the Act is intended to implement European law it seems likely that the Anti-Discrimination Act will be taken into account by the labour courts when interpreting the Protection Against Unfair Dismissal Act.

13.4 Special Protection

Certain employees are offered special protection from dismissal. For example, the consent of the appropriate labour authority must be obtained before a severely disabled individual, a pregnant woman or a parent on parental leave can be dismissed. Works council members are protected from dismissal throughout their period of membership and for one year thereafter (except in the case of gross misconduct).

13.5 Closures and Collective Dismissals

Under the Works Constitution Act, in companies employing more than 20 employees in Germany, the employer is obliged to inform the works council of any planned closures, collective dismissals or any other business or operational changes (including splits and mergers of businesses) which may result in material adverse effects for the workforce in Germany. Case law provides that a collective dismissal is defined by reference to a clause in the Protection Against Unfair Dismissal Act and based on the total number of employees in the undertaking and the number of employees affected. For example, the dismissal of six or more employees in an undertaking with more than 20 and less than 60 employees, or a dismissal of 10 per cent or 25 employees in an undertaking with more than 60 and less than 500 employees would be deemed a collective dismissal in this context. The employer also has to negotiate with the works council and attempt to agree measures for a reconciliation of interests plan (*Interessenausgleich*) and conclude a social plan (*Sozialplan*) specifying compensation measures (for example in the case of collective dismissals by determining severance payments to be made to dismissed employees, usually based on a formula taking into account length of service and salary). If the parties fail to agree upon such a social plan it will be determined by the conciliation committee at the request of either party.

Operative changes undertaken by the employer without prior attempt to agree on a reconciliation of interests plan are illegal and may entitle employees to seek damages from the employer for financial prejudices sustained for a period of up to 12 months and severance payments. Dismissals effected in breach of these rules are, however, still valid in relation to the individual employee. Also, the works council may apply to the labour Court for a preliminary injunction forbidding the employer to proceed with the implementation of its plans in Germany until the co-determination obligations vis-à-vis the works council have been complied with.

In cases of collective dismissals, the employer must also comply with special provisions of the Protection Against Unfair Dismissal Act. The planned collective dismissals must be notified to the Labour Authority before a termination notice is served on the employee and at least 30 days before the end of the employment relationship. At least two weeks prior to this notification, the works council must be

informed in writing of the planned collective dismissals. Failure to comply with these obligations may render the dismissals invalid.

14. Data Protection

14.1 Employment Records

The Data Protection Act regulates the collection, processing and use of personal data. Generally the Data Protection Act allows private persons to process and use personal data when this is permitted or required by statute or when the affected person consents. There is so far no specific legislation governing data protection in the employment context although the German Parliament has announced its intention to draft an Employment Data Protection Act in the future.

The Data Protection Act permits the recording, processing and use of personal data within a contractual or quasi-contractual relationship without requiring the person's individual consent, if this is covered by the legitimate purpose of the contract. Whether or not this prerequisite is fulfilled must be determined in each case taking into account the concrete facts and circumstances.

During recruitment the candidate enters into a quasi-contractual relationship with the potential employer entitling it to collect information provided by the candidate or by third parties, for instance by former employers, but only if there is a connection with the targeted employment. Once it has been established that the application of a candidate has not been successful the employer is obliged to delete any personal data collected, unless the candidate has agreed to the future storage and use of such data. Since the Anti-Discrimination Act shifts the burden of proof onto the employer in the event discrimination claims are brought against it (see above), it is likely that keeping personal data on file will in future be deemed justified at least until the three month period for lodging claims at court has expired.

During employment the employer is allowed to record, process and use personal data which are covered by the purpose of the specific employment agreement, such as gender, marital status, education and periods of absence, etc. without requiring the express consent of the employee. Upon termination of the employment the employer is generally obliged to delete the personal data except to the extent that it is legally required to store specific personal data for specified purposes. However, with regard to such personal data whilst the employer is not obliged to delete it, it is no longer permitted to use or process it.

The employer has to ensure that he keeps personal data accurate and confidential although this is not expressly stipulated in the Data Protection Act.

The works council has a right of co-determination, which includes all matters related to the employer's storage, use and processing of personal data as well as monitoring of email and Internet usage. For instance, the registration of telephone connections as well as the processing of work reports is not permitted without the consent of the works council. The Data Protection Act does not constrain information and access rights of the works council covered by the Works Constitution Act.

In businesses employing more than five employees, in the context of automated data processing, the employer is obliged to appoint a data protection officer who is in charge of ensuring compliance with the Data Protection Act. The employer must support the data protection official in his functions. The data protection officer can only be dismissed at the direction of the competent supervisory authority or for reasons of gross misconduct, which justify a termination without notice.

14.2 Employee Access to Data

The German Works Constitution Act (*Betriebsverfassungsgesetz*) gives each employee the unfettered right to access his employment records during working hours. After termination of employment, the former employee has to demonstrate a specific interest before being allowed to access his employment records.

14.3 Monitoring

The monitoring of telephone usage is as a rule limited to the registration of the telephone connections. The employer is generally not allowed to listen in and record employees' telephone conversations, unless expressly sanctioned by individual consents, regardless of whether they are private or business-related. If such measures are necessary for the prevention of criminal offences committed by the employee or significant damage to the employer, such monitoring may as an exception to the rule be permissible even if no prior consent was obtained.

The legal position as regards the monitoring of employees' e-mail and internet use is uncertain as only limited precedent case law exists. In all cases where employees are allowed (expressly or tacitly) to use the existing e-mail and internet infrastructure at work for private purposes in addition to business-related purposes, whether this is during or outside the employee's working time, it must be assumed that virtually no monitoring of e-mail and internet may be carried out by the employer unless express written consent is obtained from each employee. As recent legislation has expanded the applicability of telecommunications law to employer-employee relationships, any violation of the legislative provisions risks being classified as a criminal act. It is therefore advisable to address the subject of how the e-mail and internet infrastructure may be used and to what extent the use will be monitored in appropriate company policies, or works agreements concluded with the works council (if any exists) and to obtain individual consent from the employees as well.

14.4 Transmission of Data to Third Parties

Transfer of employee data to third parties is generally prohibited unless the affected person consents. This prohibition also extends to oral submission of personal data and will also prevail after the termination of the employment contract. The transfer of personal data in the context of outsourcing of certain functions, such as payroll, is only permitted if the following preconditions are fulfilled:

- The employer and the third party contractually agree in writing terms of the processing of data (processing order (*Auftragsdatenverarbeitung*)).
- The order has to contain provisions addressing the modalities of processing and use of the data and data protection measures.
- The employer remains responsible for compliance with the Data Protection Act.

If the outsourcing does not meet the requirements of a data processing order, the express written consent of each individually affected employee is required before outsourcing the function. When the third party is based outside the EEA or if the data in question does not fall within the ambit of EC Law the transfer to third parties is only permitted by the Data Protection Act if the recipient country provides an adequate level of protection for personal data or one of a series of limited exceptions apply.

Greece

1. Introduction

The standards which apply to employment relationships and the terms and conditions under which an employee works are laid down within a framework of rules created by the Constitution, laws, collective agreements, internal regulations and custom.

In broad terms, labour law regulates matters such as pay, benefits, allowances and other working conditions. Collective agreements and other internal regulations provide regulation on other issues such as annual wage increases, cost of living adjustments, allowances and benefits increases, equal access to promotion opportunities and promotion at work etc.

There is a hierarchy of legal sources of law so that, in general, provisions from a lower source, (e.g. a contract), should not conflict with those from a higher source, (e.g. a legislative rule), except where the provisions of the lower source are more favourable to the employee. Legislation is a higher source of law than collective agreements, but the provisions of an employment contract cannot contravene an applicable collective agreement, unless that contract is more favourable to the employee.

The Greek Code of Civil Procedure provides a special procedure in relation to employment disputes, whereby the Courts are obliged to attempt to reconcile both parties during the first hearing. In addition, the Code also gives trade unions and professional organisations the right to participate in pending litigation involving one of their members and the right to be party to litigation which concerns the interpretation and application of a collective agreement, with the aim of protecting the common interests of those whom they represent.

2. Categories of Employee

2.1 General

A distinction used to be drawn between blue collar employees (carrying out manual work) and white collar employees (carrying out office work) in relation to notice periods, redundancy pay, annual holidays, payment of salary etc. This distinction has now been eliminated with regard to most labour issues, except in relation to termination of employment (see below).

Generally, legal provisions protecting employees are equally applicable to the employment of senior executives and directors. However, certain provisions such as those relating to overtime, night work and holiday bonuses are not applicable to senior executives.

Employees may be engaged on a part-time basis. Full-time vacancies must first be offered to part-time employees. Salary and benefits are calculated pro rata to those for full-time employees, and a specific social security regime is applicable to part-time employees.

3. Hiring

3.1 Recruitment

All recruitment by private sector employers must be done through the State Employment Agency (*OAED*), except if they announce the relevant employment to *OAED*.

There are quotas for the employment of special categories of protected individuals (e.g. veterans of the Greek Resistance). Greek or foreign undertakings which operate in Greece with more than 50 employees must employ at least eight per cent of protected personnel, whether or not there is a vacancy.

3.2 Work Permits

A work permit issued by the local Prefecture (of the place of the employer's place of business) is required for the employment of non-EEA nationals. Application for a permit must be accompanied by certain documents and certificates. If the Prefecture grants a work permit, it is then forwarded to the Consulate of the foreign national's place of residence which then issues the visa for entry into Greece. A residence permit must also be obtained from the local Municipality.

Less stringent provisions apply in relation to certain categories of senior employee, including management level employees, Board Members of multinationals, high-ranking executives of subsidiary companies and branch offices of foreign companies. Such employees are permitted to enter Greece after obtaining a special entry permit from the Greek Consulate in the applicant's country of residence. The application for such an entry permit must be accompanied by a number of specified documents.
Upon arrival in Greece, the Prefecture will issue a work permit upon production of the entry visa and the employment contract. A residence permit will also have to be obtained from the local Municipality.

4. Discrimination

The Greek Constitution, EU legislation, ratified international agreements and various other laws and decrees prohibit discrimination on grounds of sex, nationality, union membership, family status, political belief, disability etc and provide for equal treatment of men and women.

5. Contracts of Employment

5.1 Freedom of Contract

Contracts of employment may neither derogate from the rules of public policy nor from the provisions of any relevant collective agreement, labour regulation or arbitration decision, except if the provisions of the contract are more favourable to the employee. In practice, the contract of employment creates a framework for the employment relationship, while its content is determined by overriding legislation and collective agreements.

5.2 Form

There are no particular legal requirements in relation to the form and the content of an employment contract. Contracts may be oral or written, except in respect of part-time employment where the contract must be evidenced in writing. Legislation does however impose restrictions on the successive use of fixed term contracts.

By virtue of Presidential Decree 156/1994, which has implemented EU Directive 91/533/EEC, the employer is obliged to inform the employee of the substantial terms of the employment

contract. The information in question must include at least the following:

- the identities of the contracting parties;
- the place of performance of work and the residence address of the employer;
- the post or specialisation of the employee, his rank, the category of his employment and the object of his work;
- the date of commencement of the employment contract or the work relationship and its duration, if concluded for a fixed-term;
- the duration of paid leave to which the employee is entitled, as well as the manner and time of its payment;
- the amount of compensation due and the time limits the employer and employee must comply with in case of termination of the contract or of the work relationship with notice;
- the wages of any kind to which the employee is entitled and the frequency of payment thereof;
- the duration of the normal daily and weekly employment of the employee; and
- reference to any applicable collective agreement which defines the minimum terms of remuneration and work of the employee.

An employer will satisfy his obligations if the written employment contract includes the information outlined above.

5.3 Trial Periods

Trial periods must not exceed the time needed by the employer to assess the capabilities of the employee concerned. Such trial periods are taken into account for the calculation of severance payments, retirement indemnities, holiday entitlement etc.

5.4 Confidentiality and Non-Competition

There is a general duty on employees to keep the employer's secrets confidential. Provisions that prevent employees from working for a competitor for a period after termination may be included in contracts of employment, so long as they are reasonable and do not harm the employment prospects of the individual concerned.

5.5 Intellectual Property

If an employee creates intellectual property in the course of his employment, the creator remains the initial beneficiary of the real and moral rights to such property. In the absence of an agreement to the contrary, those rights, deriving from the real rights, which are necessary for the fulfilment of the purpose of the contract are automatically transferred to the employer.

Inventions made by an employee belong to that employee except in two circumstances. Firstly, when an invention is the result of an employment contract, the object of which is research and development, it will belong exclusively to the employer. Secondly, when the invention is made during the term of a contract using equipment and information which belong to the employer, 40 per cent of the invention will belong to the employer and 60 per cent to the employee. The employer has priority in the use and exploitation of the invention, but is obliged to compensate the employee according to the value of the invention and the benefits accrued from its exploitation.

6. Pay and Benefits

6.1 Basic Pay

Minimum pay levels are set for most employees by collective agreements negotiated annually by the Federation of Greek Industries (*SEB*) and the General Confederation of Greek Labour (*GSEE*). With effect from 5th May 2007, unskilled and unmarried adult employees with less than three years' service are entitled to a minimum monthly salary of €657.89 or a minimum daily wage of €29.39.

Employees are entitled to the following bonuses:

- Christmas bonus – one month's salary or 25 days' wages for employees paid on a daily basis;
- Easter bonus – half of a month's salary or 15 days' wages for employees paid on a daily basis; and
- holiday bonus – half of a month's salary or 13 days' wages for employees paid on a daily basis.

The automatic salary increase system is no longer applicable. Basic pay increases are regulated by collective agreements and are generally granted twice a year.

6.2 Private Pensions

Private pension schemes are uncommon, and those that do exist are provided by subsidiaries of multinational companies or by large employers such as banks. The basic rules governing private pension schemes have not yet been systematically dealt with and there is currently no specific legislative provision.

6.3 Incentive Schemes

Share participation schemes were introduced by law in 1987. Under these schemes, undertakings can distribute profits to their employees each year in the form of shares.

6.4 Fringe Benefits

Cars, enhanced health coverage and housing facilities are benefits most commonly provided to senior executives.

6.5 Deductions

Employers are obliged to deduct income tax at source according to a scale provided by the tax authorities.

7. Social Security

7.1 Coverage

The majority of Greek employees are covered for basic social security benefits by the Social Insurance Institute (*IKA*), which covers industrial and commercial workers, and *OGA*, which covers agricultural workers. Fairly generous cover is given in respect of retirement, survivors and disability benefits as well as health care and sickness benefits. The Manpower Employment Organisation (*OAED*) provides family allowances and unemployment benefits. In addition, there are a large number of compulsory schemes which provide

additional benefits, normally for particular categories of employees within certain industries.

7.2 Contributions

Social security contributions are compulsory and payments are collected by *IKA* from both employers and employees. Contributions are calculated by reference to actual earnings.

Benefits	*Employers' contributions %*	*Employees' contributions %*	*Total*
IKA benefits			
(a) Pension	13.33	6.67	
(b) Health Benefits	5.10	2.55	
IKA Team	3.00	3.00	
OAED benefits	5.53	2.43	
Other benefits	1.10	1.35	
Total	*28.06*	*16.00*	*44.06*

8. Hours of Work

The law lays down the maximum number of hours that may be worked: eight hours per day and 40 hours per week (although there are further limits on the working hours of employees who have recently given birth etc). These limits may be varied in certain industries by collective agreement.

Legislation provides for special authorised overtime work of up to three hours a week, paid at a premium of 50 per cent (over the hourly rate).

Authorised overtime is paid at a premium (over the hourly rate) of 50 per cent for overtime worked up to 120 hours annually, and 75 per cent for overtime worked in excess of 120 hours annually. Employees who work on a Sunday or a public holiday are entitled to an additional premium of 75 per cent of their daily wage.

Despite the fact that unauthorised overtime is subject to severe penalties (a premium of 250 per cent of the hourly rate), non observance of the law is widespread.

Depending on their age and the nature of employment, young people are not allowed to work at night.

9. Holidays and Time Off

9.1 Holidays

Each employee from the commencement of his employment until the completion of 12 months' service, is entitled to pro-rated annual paid holiday on the basis of 24 working days (in the case of a six day working week) or 20 working days (in the case of a five day working week). During the first calendar year the employee is entitled to a pro-rated holiday entitlement.

During the second calendar year the employee is entitled to annual paid holiday proportionate to the duration of his employment. For each subsequent calendar year, as from the 1st of January, the employee is entitled to annual paid holiday which is calculated as set out above.

Annual holiday is increased by one working day for each year of service after the first year (up to 26 working days for a six day working week or 22 working days for a five day working week).

After 10 years' service with the same employer or 12 years' service with various employers, there is an entitlement to 25 days' paid holiday (in the case of a five day working week) and 30 days' paid holiday (in the case of a six day working week).

Some collective agreements give paid holiday entitlement above the statutory minimum.

There are also five public holidays recognised each year (25 March, Easter Monday, 1 May, 15 August and Christmas). An optional public holiday for the private sector is 28 October while it is a compulsory one for the public sector. Many collective agreements increase the number of public holidays.

9.2 Family Leave

The 2000-2001 National Collective Labour Law Agreement provides that female employees are entitled to 17 weeks' maternity leave, eight of which must be taken before the birth. The maternity allowance paid by IKA during the leave is 50 per cent of a notional salary (which depends on the classification of the employee and is increased by the number of dependants, however it cannot be lower than two thirds of the actual net wages of the employee). The employer is obliged to pay the difference between social security benefits and the employee's normal salary for half of one month or the whole of one month depending on the seniority of the employee, and for the remaining period the employee is paid the difference by OAED.

Fathers are entitled to two days' paid family leave upon the birth of a child.

Parents are entitled for thirty months after the end of maternity leave, either to commence or leave work one hour earlier, every day. In agreement with the employer, the parent is entitled to take paid leave in lieu of this right reduced daily working hours.

Unpaid parental leave of up to three and a half months may be claimed in certain circumstances by both parents after the end of the mother's maternity leave until the child reaches the age of three and a half. Up to four days each year may also be taken on a day by day basis as paid parental leave to enable either parent to make arrangements for the child's education. The parents of disabled children are entitled to extra days special leave each year.

9.3 Illness

In the event of illness, the employee is covered by both the employer and *IKA*. Depending on the length of service of the employee, the employer is liable in cases of sickness to pay on an annual basis up to half a month's salary (13 days' wages) or one month's salary (26 days' wages) from which IKA allowances are deducted. *IKA* provides sickness allowances from the fourth day of absence.

10. Health and Safety

10.1 Accidents

In most cases employees are covered by *IKA* in the event of accidents at work. Employers are personally liable with regard to employees who are not covered by *IKA* insurance or for compensation for moral harm. Whether

the employee is covered by *IKA* or not, the employer is nevertheless liable to compensate the aggrieved employee in the event of an accident at work due to the employer's fraud.

10.2 Health and Safety Consultation

In undertakings with 50 or more employees, employees have the right to elect safety committees and/or representatives who are entitled to receive certain information and to be consulted. In extreme cases of danger, safety committee members and representatives have the right to suspend production.

11. Industrial Relations

11.1 Trade Unions

The 1975 Constitution guarantees trade union freedom. The constituent documents of a trade union must be signed by at least 20 people.

Labour Centres, which group together labour unions of a particular local district, supervise the enforcement of labour laws in that district and resolve organisational problems encountered by local unions. Federations represent industry on a sector by sector basis and sign collective agreements. Labour Centres and Federations are organised into national confederations. The most important confederation is the General Confederation of Greek Labour (*GSEE*). The *GSEE* negotiates the annual national collective wage agreement with the Federation of Greek Industries (*SEB*) which is the main employers' association.

11.2 Collective Agreements

Only organisations which are representative have the right to conclude valid collective agreements. The law defines five categories of collective agreements: national collective agreements, sectorial agreements, national and local vocational agreements and special agreements. The first four are concluded by the appropriate trade unions and employers' associations and are applicable at different levels, while the latter is concluded by the employer representing a workforce of at least 50 employees and the trade unions representing the employees in the undertaking.

Collective agreements are binding on the parties which have concluded them. The Ministry of Labour can also decide to extend their application to all employees or employers in an industry sector or a particular trade. Collective agreements have precedence over private contracts, but may not contain provisions less favourable than those provided by law.

11.3 Trade Disputes

There is a right to strike under the Greek Constitution. In order to be lawful, industrial action must only be used as a means of protecting the interests of workers in relation to pay, insurance, union rights and working conditions. A decision to strike must be notified to the employer at least 24 hours before the strike by a recognised trade union, and an authorisation to strike must be provided by the relevant body within the union. If these rules are not observed, the strike is illegal and the employment contracts of the striking employees can be terminated.

In the event of disputes in relation to employment matters, including those relating to collective agreements, employers and trade unions can request the intervention of a "conciliator" from the Ministry of Labour or the Labour Office of the Prefecture. In the case of a collective dispute not resolved through this Ministry official, parties can use the service of an official mediator who will hear the case and make the necessary inquiries. At any stage of the negotiations, the parties can by agreement or unilaterally in specific circumstances submit the dispute to arbitration. Both mediators and arbitrators must be independent in the exercise of their duty; some of them are appointed by the "Organisation of Mediation and Arbitration" for a period of three years.

11.4 Information, Consultation and Participation

Undertakings with 20 or more employees are entitled to set up a works council in cases where there is no trade union represented in the undertaking. Undertakings with 50 or more staff are entitled by law to set up a works council made up of employees only.

The law stipulates that the works council represents all the employees in an undertaking whether or not they are trade union members. However, the existence of a works council does not prejudice the role of trade unions, which have the right to press for better conditions than those agreed between the works council and the employer.

Works council members are elected for two-year terms and their number varies according to the size of the undertaking. The employer and the works council must meet in the first ten days of every second month, or whenever one of the parties so requests. The works council is entitled to take decisions together with the employer on such matters as health and safety, annual leave, training, disciplinary procedures, and cultural and social activities at the work place. The employer is obliged to provide the works council with information on a wide range of issues.

Employee participation in the managerial decision-making process is currently being pioneered in both the private and public sectors.

12. Acquisitions and Mergers

12.1 General

A 1988 Presidential Decree implemented the EU Acquired Rights Directive. It more or less follows the wording of the Directive which gives protection to employees in the event of a business transfer and which gives employees' representatives information and, sometimes, consultation rights.

12.2 Information and Consultation Requirements

In the event of a transfer of an undertaking the transferor and transferee must inform representatives of employees who will be affected by the transfer of: (i) date of the transfer; (ii) the reasons for the transfer; (iii) the legal, financial and social consequences for the employees and (iv) the measures that will be taken in relation to the employees. This information must be provided in good time prior to the transfer. If measures are envisaged by the transferor or transferee that will affect the status of the employees they

must consult with the representatives in sufficient time to allow an agreement to be reached. The results of the consultation are embodied in minutes.

The employee representatives will be the works council, or in the case of a workforce of less than 50, the tripartite committee provided for by the relevant regulations. In the absence of either of these the individual employees must be provided with the information outlined above.

12.3 Notification of Authorities

There is no specific obligation on either transferee or transferor to notify the authorities of any business transfer.

12.4 Liabilities

Failure to comply with the information and consultation obligation in respect of employee representatives or employees can give rise to a fine ranging from €147 to €8,804. This can be imposed on both transferor and transferee.

In addition the Court can grant an injunction until the information/consultation obligations are complied suspending the transaction provisionally.

There are no criminal sanctions for failing to comply with the information and consultation obligations.

13. Termination

13.1 Individual Termination

The right to work is protected under the Greek Constitution and any provision that limits that right is narrowly interpreted by the Courts. This is relevant, for instance, to fixed-term contracts which provide less protection than contracts for an indefinite term. If an employer ends a fixed-term contract prematurely, except for serious cause, he or she is obliged to pay the employee's full salary until the agreed term of the contract has elapsed.

13.2 Notice

The law provides different rules for terminating the contracts of blue collar and white collar employees. Dismissals of both types of employees with contracts for an indefinite term must be notified in writing and handed to the employee in person, whether the contract is terminated with or without notice.

For white collar workers, the basic notice period depends on the employee's length of service. The basic notice periods are:

Length	*Notice*
Two months to one year	One month
One to four years	Two months
Four to six years	Three months
Six to eight years	Four months
Eight to 10 years	Five months
Over 10 years	Six months plus one month for each additional year of employment up to a maximum of 24 months (for 28 years of employment and above).

If a white collar employee is dismissed without notice, he or she is entitled to a payment in lieu according to the above table. If, on the other hand, adequate notice is given to a white collar employee, severance pay equal to 50 per cent of the salary during the period, referred to in the above table, will also be due.

For blue collar workers, the situation is more straightforward. Whether adequate written notice is given or not, the blue collar worker is always entitled to a severance payment as set out in the table below:

Length of service	*Severance pay*
Less than two months	Nil
Two months to one year	Five days' wages
One to two years	Seven days' wages
Two to five years	15 days' wages
Five to 10 years	30 days' wages
10 to 15 years	60 days' wages
15 to 20 years	100 days' wages
20 to 25 years	120 days' wages
25 to 30 years	145 days' wages
30 years and above	165 days' wages

In theory, an employee is obliged to give advance notice to the employer in the case of resignation. The notice period or payment in lieu to be given by white collar employees is equal to one half of that imposed on employers in cases of dismissal with a maximum of three months. The notice period to be served by blue collar workers is equal to the number of days for which they would have been compensated for had the employer terminated the contract. Payment in lieu of notice on the part of the employee amounts to half the wage that would have been paid during the notice period. In practice, this law is not usually enforced and the employee is allowed to leave freely without giving notice or paying in lieu.

13.3 Reasons for Dismissals

A dismissal may be challenged in Court because of a lack of legal grounds, discrimination or failure to observe the proper procedures (for example the non-payment of severance pay). If the dismissal is declared void, the Court may also order the employer to compensate the employee for the entire period since the dismissal.

Provided the termination is notified in writing and subject to the principle of good faith, employers are, in general, not obliged to give the reasons for dismissal. The dismissal will be considered as "abusive" and, consequently, void if the employer has acted in bad faith or with malicious intent. Lawful reasons include those related to the employee himself (inability, inefficiency, breach of contract, lack of trust etc) or reasons related to the interests of the company (economic, financial or technical). In cases of dismissals on financial or technical grounds, Courts may examine whether the changes are needed in the real interests of the company or whether the employee could be kept on part-time or given alternative employment with the company.

Employers are also required to pay an indemnity:

- to those employees who voluntarily with the consent of the employer terminate their contracts after at least 15 years' service; or if they have reached the retirement age set by the relevant insurance fund or if no retirement age is set, the age of 65;
- to those white collar employees who end employment having satisfied the pre-requisites for receiving a complete pension;

- to those blue collar employees who voluntarily terminate their contracts, having met the prerequisites for receiving a complete pension.

The amount of compensation is equivalent to 50 per cent of severance pay or 40 per cent of severance for employees who are insured by an auxiliary pension scheme.

13.4 Special Protection

Several categories of employees are given special protection against dismissal. Trade union representatives, for instance, cannot be dismissed during their time in office and for a year afterwards, unless there are specific reasons which are not linked with their union duties. Employees on military service or those who have distinguished themselves in time of war as well as female employees during pregnancy and for a period afterwards enjoy similar protection.

13.5 Closures and Collective Dismissals

In the event of the closure of a workplace, the employer must terminate the contracts lawfully and comply with the rules regarding the termination of employment.

Collective dismissals are defined by law as dismissals which affect more than a certain percentage of employees in any undertaking with more than 20 employees. Before dismissing, employers must inform employee representatives in writing of the intention to dismiss part of the workforce and consult with these representatives. Relevant information must be sent to various authorities, such as the Head of the Employment Office and the Head of the Prefecture or Minster of Labour and the Employment Office depending on the case. If no agreement is reached between the parties, the Head of the Prefecture or the Minister of Labour can extend the consultation period for another 20 days or even refuse to approve the application to allow the proposed dismissals.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the Data Protection Act 1997 (DPA), which implements the EU Data Protection Directive. Infringement of data protection law can lead to fines, administrative and penal, 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 principals including the following: a requirement to ensure that data is accurate, up to date, and is not kept longer than is necessary and a requirement that it is stored securely to avoid unlawful access or accidental destruction or damage to it.

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

14.2 Employee Access to data

Employees, as data subjects, have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be told what data is held about them, who it is disclosed to and to be provided with a copy of their personal data. There is a 15-day time limit for responding to such a request. Subject access requests cover personal data held in manual and electronic records such as e-mail.

14.3 Monitoring

The monitoring of employee e-mail, Internet and telephone usage and Closed Circuit TV monitoring is regulated by the DPA amongst other pieces of legislation. Monitoring is permissible provided that it is carried out in accordance with the DPA 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, 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, unless covert monitoring is justified. 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 DPA principles and processing conditions. Where the third party is based outside the EEA it should be noted that the DPA prohibits the transfer of data to a country outside the EEA unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply.

Hungary

1. Introduction

The basic rules of employment are regulated by Hungary's Labour Code, which at present implement the majority of EU employment law directives. Collective agreements and employment contracts may only regulate employee's rights and obligations as far as these are not dealt with in the Labour Code, or, if they are more favourable to the employees. In addition, employment contracts cannot cover rights and obligations dealt with in applicable collective agreements, except to the extent that they are more favourable to the employee.

Given the Hungarian labour courts' extremely pro-employee approach Hungarian employment law should be carefully complied with and if there is any doubt regarding the interpretation of employment law provisions, the employee's interests should be respected.

2. Categories of Employees

2.1 General

The Labour Code applies to all employees. However, Hungarian labour law categorises employees on the basis of their role within the employer's operations and distinguishes between executive employees and other employees. This distinction is reflected in the regulation of employees' rights and obligations.

2.2 Directors

Individuals who hold the most senior post within an employer's organisation, his/her deputy and employees in a position which the employer's supreme decision making body (i.e. the shareholders'/members' meeting) have designated as a key position from the point of view of the employer's operations are all executives as a matter of Hungarian law.

Executives are exempt from certain protective provisions of the Labour Code relating to working time or termination for example and have greater liability for damages caused in connection with their employment.

2.3 Others

Except as otherwise provided for in the employment contract employees are full-time. Part-time employees are entitled to the same protection as full-time employees. Any differences in treatment of part-time employees must be on justified grounds connected to the characteristics of part-time employment (e.g. pro rata salary).

3. Hiring

3.1 Recruitment

The employer's recruitment process is not regulated under Hungarian labour law.

However, the employer must consult the representative Trade Union and the Works Council on major personnel planning.

Employers with 20 or more employees must pay a yearly rehabilitation tax unless at least five per cent of their staff consists of disabled persons.

3.2 Work Permits

The new member states' citizens as well as the citizens of the United Kingdom, Ireland, Finland, Greece, Portugal, Spain, Italy and Sweden do not need to obtain a work permit for employment in Hungary. Non-EEA nationals and citizens of the remaining EU member states must obtain a work permit prior to the commencement of employment in Hungary. An individual work permit, which must be applied for by the employer, may be granted for a maximum of one year and may be renewed.

EEA nationals may freely enter and stay in Hungary for a period not exceeding 90 days. If the term of their stay exceeds 90 days, they must obtain an EEA residence permit. An EEA residence permit is valid for a maximum of five years and is renewable. This general rule is applicable to the stay of non-EEA nationals but may vary depending on the citizenship.

4. Discrimination

Discrimination on grounds of gender, race, colour, nationality, age, state of health and other characteristics not related to the employment is prohibited. This principle is also applicable during the recruitment process.

In the event of a dispute on the grounds of discrimination, it is the employer who must prove that its conduct was not discriminatory.

5. Contracts of Employment

5.1 Freedom of Contract

Although employer and employee are free to agree on the terms of employment, the terms of the employment contract, if they are different from the rights and obligations provided for by law, must be more favourable for the employee than the statutory minimum standards. Industry-wide collective agreements may also apply in certain sectors and collective agreements may apply to employers. The employment contract may only contain terms different from those set out in the collective agreement if they are more favourable for the employee.

5.2 Form

In general terms, employment contracts must be in writing. However, oral employment contracts may be valid if the employee fails to challenge the validity of the oral employment contract within 30 days of its conclusion.

In order to be valid an employment contract must at least contain details of the parties, the employee's position, the place of work and the salary.
The employer must, within 30 days of the start of employment, notify the employee in writing of certain essential conditions of his/her employment, however, non-fulfilment of this obligation does not render the employment contract invalid.

Fixed term contracts may be entered into for a maximum term of five years. This rule is also applicable to the aggregate of consecutive renewals. If a fixed-term employment contract is renewed for reasons that are considered unjustified the contract may qualify as a contract of indefinite duration.
These rules, however, are not applicable to senior executives.

With certain exceptions, a fixed term contract automatically transforms into a contract of indefinite duration if the employee performs work following the expiry of his/her employment contract and his/her direct superior does not object to it.

5.3 Trial Periods

Employer and employee are free to agree on a trial period but this cannot exceed three months.

The minimum notice entitlement rules do not apply when terminating employment during a trial period.

5.4 Confidentiality and Non-Competition

Employees are subject to statutory non-competition provisions during the term of their employment. Executives must comply with stricter non-competition requirements.

Non-compete agreements restricting competitive activities following the termination of employment must provide for a minimum level of compensation to be paid to the employee. In practice this is generally 50 per cent of the employee's previous remuneration for the period of restriction and the restriction cannot exceed three years.

Employees have a general duty during their employment to refrain from any conduct that interferes with the employer's lawful economic interests. If expressly agreed between the parties, this obligation on the part of the employee may be maintained following the termination of employment in line with the rules on non-compete agreements. Employees are prohibited from disclosing business secrets both during employment and following termination. Disclosure of business secrets may, in certain circumstances, constitute a criminal offence.

5.5 Intellectual Property

In general terms, the economic rights to intellectual property created by the employee as part of his/her job description belongs to the employer. In respect of certain types of intellectual property, the employee may be entitled to compensation for these rights.

6. Pay and Benefits

6.1 Basic pay

Each year, the Hungarian Government establishes the level of minimum pay. The monthly minimum wage in 2007 is HUF 65,500 (approx. €250). Collective agreements may also establish a minimum pay rate for employees of certain categories.

Wages are paid either on a time or performance basis or a combination of the two. Time wages are paid on an hourly (common among blue collar workers) or monthly basis.

Pay in Hungary is not index linked. However, where employers come within the scope of a collective agreement, the wages are usually re-negotiated annually with the Trade Union.

6.2 Private Pensions

The provision of private pension plans is not mandatory. However, large employers often provide private pension arrangements as a benefit by contributing to a pension fund for the employee.

6.3 Incentive Schemes

Share schemes are not mandatory in Hungary. Large foreign parent companies of Hungarian employers often offer share schemes to the employees of Hungarian subsidiaries, however, this form of benefit is not yet widespread in Hungary.

6.4 Fringe benefits

Fringe benefits vary according to the size of the business and the influence of Trade Unions. These may include bonuses, company car, insurance, subsidised holiday and meal. These may be provided either unilaterally by the employer or on the basis of an employment contract or collective agreement. In the latter case the employer may not withdraw these benefits without the Trade Union's or employee's consent.

6.5 Deductions

Employers deduct the employee's income tax and social security contributions at source and account for it to the tax authorities.

7. Social Security

7.1 Coverage

The basic level of social security benefits covering old age, disability, industrial injury, sickness, death and unemployment, is provided by the state social security system.

7.2 Contributions

Social security contributions are paid by both the employer and the employee. An employee's social security contributions must be deducted at source by the employer from the employee's salary. Employer contributions are 29 per cent, and employee contributions are 12.5 per cent. The percentage is based on salary with a ceiling applicable to the contribution to the pension fund.

8. Hours of Work

The statutory number of working hours per week is 40 hours and cannot exceed 48 hours. In general, daily working time is limited to eight hours. The employer and employee may agree on 60 working hours per week and 12 hours per day in certain exceptional circumstances. Hungarian labour law prohibits working on Sundays and public holidays except where the nature of work requires continuous operation (e.g. hotels, public utilities and other public businesses).

Working in excess of normal hours of work qualifies as overtime. Executives are not, however, entitled to overtime pay.

9. Holidays and Time Off

9.1 Holidays

There are 10 public holidays in Hungary. The number of statutory paid holidays, depends on the employee's age and varies from a minimum of 20 days to 30 days. Collective agreements and employment contracts may provide for more paid holidays or extra holidays in certain circumstances (e.g. executives are often granted extra holidays).

9.2 Family Leave

Pregnant women are entitled to 24 weeks' maternity leave, which they may take, if possible, from four weeks before confinement. After the 24-week maternity leave, in certain circumstance

either parent is entitled to additional leave of up to three years from the child's birth. During this leave no payments have to be made by the employer. Fathers are entitled to a five-day paid holiday following the birth of their child.

Pregnant women and new mothers have greater protection in terms of dismissal and their performance at work. The position of employees on maternity leave must be kept vacant and increases in salary by the employer must be reflected in the salary of the employee returning from maternity leave.

9.3 Illness

Employees are entitled to 15 days' sick leave per year during which, broadly speaking, they are entitled to 80 per cent of their base salary (including regular supplements to their salary) to be paid by the employer. Following the expiry of this 15 day sick leave period, the employee is entitled to 70 per cent (or, in case of a service of a shorter term 60 per cent) of his/her average salary. Two-thirds of this amount is paid by the social security system and one-third by the employer.

10. Health and Safety

10.1 Accidents

Accidents at work, if not attributable to the employer, are covered by the social security system. Detailed regulations exist regarding safety measures at work. Non-compliance with these regulations triggers fines imposed by the labour authority.

10.2 Health and Safety Consultation

Trade Unions and Works Councils must be kept informed in relation to health and safety measures. Employees are entitled to elect Health and Safety Representatives, where the number of employees is at least 50. A Health and Safety Committee may be formed where there are three or more Health and Safety Representatives elected. These bodies have consultation rights and rights to information regarding health and safety measures.

11. Industrial Relations

11.1 Trade Unions

All associations under Hungarian law the purpose of which is the representation of employees' interests in connection with their employment qualify as Trade Unions. Trade Union representatives, provided that the Trade Union has members employed by the employer, are free to enter the employer's premises in order to perform their tasks relating to the employees' representation. Employees cannot be forced to join a Trade Union and discrimination against employees on the basis of their Trade Union membership is prohibited.

Only Trade Unions are entitled to conclude a collective agreement on behalf of employees provided that they are independent from the employer and sufficiently representative. Trade Unions have consultation rights on all measures proposed by the employer affecting a significant number (at least 10 per cent) of employees and a right to receive information on all matters affecting the employees' economic and social interests connected to their employment.

11.2 Trade Disputes

Employees and Trade Unions have the right to initiate strikes, provided that the strike has work-related objectives (other than the amendment of the Collective Agreement and matters falling within the court's competence) and that previous negotiations between the parties have failed. Works Councils are excluded from this right. Although striking employees are not entitled to remuneration during a strike, participation in a strike, provided that it is lawful, may not serve as a basis for discriminating against a striking employee.

11.3 Collective Agreements

Collective agreements may be concluded by Trade Union(s) on one side and an employer or employers' association on the other. An employer may fall under the scope of no more than one collective agreement. If a Trade Union (that qualifies as an employees' representative) initiates negotiations with a view to concluding a collective agreement the other party (i.e. the employer) cannot refuse to negotiate. There is a statutory obligation on employers to initiate the re-negotiation of salaries on an annual basis.

A collective agreement must be declared to the Ministry of Labour Affairs for registration. The parties are jointly obliged to notify the Ministry of Labour Affairs of any amendments to and termination of the collective agreement.

Unless otherwise agreed between the parties, the notice period for terminating the collective agreement is three months. However, the parties are prohibited from exercising their right to termination during a six month period following the conclusion of the collective agreement.

11.4 Information, Consultation and Participation

Employees and their representative bodies, in relation to certain matters, have the right to information, consultation and joint decision-making.

In order to ensure employees' participation in supervising the employer's management, where an employer has more than 200 employees, employees have the right to elect one third of the members of the employer's Supervisory Board.

Although the election of a Works Council where the number of employees exceeds 50 is compulsory, unless the election is hindered by the employer, there are no legal consequences in the event no Works Council is elected.

In general terms, the employer must request the Works Council's opinion on each matter affecting a significant number of employees. The Works Council's opinion does not bind the employer to any extent. However, employers must pass decisions jointly with the Works Council in matters relating to the utilisation of welfare funds listed in the collective agreement and to certain assets of a similar nature. Violation of these rights may result in the employer's action being ruled invalid by the Labour Authority and the imposition of fines.

12. Acquisitions and Mergers

12.1 General

The acquisition of a company through a share purchase in itself does not trigger any specific employment law obligations on the part of the employer, as the employing entity does not change as a result of the transaction.

Where an acquisition is in the form of a business sale various employment law obligations will be triggered. The transfer of a business (or part of a business), irrespective of the number of employees affected by the transfer, results in the automatic transfer of employment contracts related to that business (or part of that business) to the buyer proposing to operate the business.

Transferred employees have no right to object to the transfer. Termination of employment on the basis of the transfer of undertaking is invalid. However, the new employer (the transferee) can terminate employment on the grounds of re-structuring or staff rationalisation following the transfer.

In principle, unless the terms of the transferee's collective agreement are more favourable for the transferred employees, the transferee is bound by the collective agreement applicable to the previous employer (transferor) in respect of the employees affected by the transfer. This rule is applicable until the collective agreement is terminated by the transferor or the expiration of the collective agreement, or until another collective agreement is concluded with the transferee. If none of these events occur the transferee must maintain the working conditions ensured by the collective agreement of the transferor for at least one year following the date of transfer.

12.2 Information and Consultation Requirements

Neither the Trade Union nor the Works Council has the right to veto the transaction. At least 15 days prior to the effective date of the transfer the transferor and transferee must jointly inform the Trade Union (or the Works Council in the absence of a Trade Union or, where there is no Works Council in place, the employees' representatives) of the projected date of transfer, the reasons for the change in employer and the potential legal, economic and social consequences of the transfer.
These bodies must also be consulted in connection with other proposed measures affecting the employees.
The information and consultation process must take a minimum of 15 days.

Failure to complete the information and consultation process prior to the transfer does not prevent a transfer completing before the end of the consultation process.

12.3 Notification of authorities

There are no obligations to notify the authorities about a transfer.

12.4 Liabilities

The transferor and the transferee are jointly and severally liable for liabilities incurred prior to legal succession if such claims of the employee are enforced within one year of the transfer.

In general terms, if the transferor and the transferee are not undertakings independent from each other, the transferor is liable, as surety, for the payments due to an employee if his/her employment relationship is terminated by regular notice in connection with the employer's operations or his/her fixed term employment is terminated by the employer.

If an employer fails to comply with its information and consultation obligations, Trade Unions and Works Councils may apply to court for a declaration that the employer has breached its obligations. However, this does not affect the validity of the transfer agreement.

Infringing the rights of the Trade Unions and Works Councils qualifies as a minor offence and may be punished by a fine amounting to HUF 100,000 (approx. €400). Infringing the rights protecting the representatives of the Trade Unions and Works Councils may be punished by a fine amounting to HUF 8,000,000 (approx €31,000).

13. Termination

13.1 Individual termination

An employer must comply with strict rules in relation to the termination of employment. Non-compliance with these rules may result in the invalidity of the notice of termination, re-instatement and serious compensation obligations. However, the rules on termination vary depending on whether the employment is of an indefinite duration, for a fixed term or whether the employment is still in the trial period phase. In every case, the termination notice must be in writing.

Employment may be terminated:

- by mutual consent of the employee and the employer;
- by regular notice;
- by extraordinary notice with immediate effect;
- with immediate effect during the probationary period; or
- in the case of fixed-term employment, by the employer paying the employee, in advance, the average wage due for the un-expired part of the contract, up to a maximum of one year's average salary.

13.2 Notice

Only in the cases of termination of a contract of indefinite duration by regular notice are the statutory notice provisions relevant. The statutory minimum notice period is 30 days and, depending on the length of service with the employer, can increase to 90 days. Employer and employee may agree on a longer notice period with the proviso that the notice period cannot be longer than one year. Statutory notice entitlements are not applicable to senior executives. Collective agreements often provide for longer notice periods.

The employer must exempt the employee from the duty to work for at least half the notice period and must continue to pay the employee's salary while he/she performs work and his/her average salary while he/she is exempted from work.

13.3 Reasons for dismissal

In the case of dismissal by regular (except for the dismissal of senior executives and employees reaching retirement age) and extraordinary notice, the employer must provide reasons in writing. As far as regular notice is concerned valid reasons may be the employee's misconduct, his/her abilities or economic business reasons. Extraordinary notice may only be based on gross misconduct. As a result of the labour courts generally being pro-employee and the fact that the burden of proof is on the employer to prove its reasons for the dismissal, employers tend to "dismiss" employees by mutual agreement.

13.4 Special Protection

No regular notice of termination may be served in certain circumstances such as for example during an employee's pregnancy, maternity leave, sick leave or military service. Trade Union and Works Council must give their prior consent to the dismissal of their members by regular notice and be consulted in the event of an extraordinary dismissal. Employees close to retirement age may be dismissed by regular notice only on specifically justified grounds. This means for example that termination by regular notice must be based on a greater level of misconduct compared to other employees. Non-compliance with these rules renders the notice of termination invalid.

13.5 Closures and Collective Dismissals

Collective dismissal triggers a broad obligation on an employer to inform and consult with the representative Trade Union, the Works Council, the local labour authority and the individual employees.

The Labour Code defines collective dismissal by reference to the number of employees employed and the number of employees to be dismissed. In principle, the rules on collective dismissals apply if the employer has at least 20 employees and the redundancy affects at least 10 per cent of the employees. When calculating the number of employees affected, it is not only dismissals by regular notice that must be taken into consideration, but also termination of fixed term employment relationships and terminations by mutual agreement.

Due to the statutory consultation process prior to the implementation of the collective dismissal, the employer may make its decision on the collective agreement approximately four weeks after the initiation of the consultation process. The first termination notices may only be served approximately two months after the start of the consultation process.

The Trade Union and the Works Council are entitled to bring court proceedings in the event the employer fails to fulfil any of its obligations in connection with the collective dismissal. Notices of termination that do not comply with the proposed collective dismissal schedule or the agreement reached with the employees' representatives are invalid.

14. Data Protection

14.1 Employment Records

The collection, use and storage of employee data in Hungary is regulated by the Data Protection Act (DPA) and the Labour Code. The DPA is supported by the guidelines of the Data Protection Commissioner. Although these guidelines are not legally binding regulations the Data Protection Commissioner has the right to request that the employer and other persons handling the employee's data comply with the data protection rules, to order the deletion of the certain data, to inform the public of any violations of the DPA, and ultimately may turn to the police to enforce the DPA.

An employer may require data from the employee to the extent that this does not infringe his/her personal rights (e.g. privacy) and that the data provides the employer with substantial information concerning the employment relationship. In these cases the employee's implied consent (in practical terms, signing the employment contract) is sufficient. The employee's express consent is necessary for the collection, use and storage of personal data for other purposes. Consent in writing must be obtained for certain sensitive data such as state of health, criminal records or Trade Union membership.

Although there is no requirement to obtain an employee's consent to data handling in writing, since the burden of proof in data protection matters is generally on the employer, it is advisable to record the employee's consent.

Data collection, use, storage or processing for purposes other than the proper exercise of rights and obligations under the employment contract must comply with the general rules of data protection set out in the DPA. In these cases an employer may collect, use and store the employee's personal data with his/her consent or if it is authorised by law to do so. Personal data may only be collected, used, stored and processed for a defined purpose and in order to exercise rights and perform obligations.

Only personal data which is indispensable for the purpose of the data collection, use, storage and processing may be used, and only to the extent and for the period of time required for the accomplishment of such purpose.

Non-compliance with the data protection rules may result in a claim by the employee for damages and an obligation to delete the employee's data that has been collected, used, stored or processed unlawfully. In certain circumstances data handling contrary to the DPA constitutes a criminal offence.

Financial institutions, telecommunication service providers and public utilities must appoint an internal data protection "commissioner", who is responsible for compliance with the data protection rules, and establishing internal data protection rules within the organisation.

14.2 Employee Access to Data

Employees have the general right to receive information on the collection, use, storage or processing of their data. They are also entitled to request the correction or, in certain circumstances, the deletion of their data.

14.3 Monitoring

The employer has the right to monitor the content of the hardware of the employee's computer if the computer is for work-related use explicitly. As far as

e-mails are concerned, the employer must distinguish between e-mail addresses for private purposes containing the employee's name and work-related e-mail addresses not referring to the employee. E-mails from e-mail addresses accessible by the employee (and the system administrator) exclusively may only be monitored in compliance with the general rules of data protection.

The distinction between e-mail addresses for work-related and private purposes applies to the use of the internet. If the employer explicitly limits internet use for purposes connected to the employee's work, it may monitor the use of internet provided that this was notified to the employees before the monitoring occurs.

The use of cameras for controlling employees' activities at work is subject to the employees' consent. The employer may use cameras in the absence of the employees' consent provided that the individual employees are not recognisable in the picture transmitted by the cameras. In any event, employees must be notified of the existence of cameras and advised on whether the pictures are recorded or stored and for what purposes.

Monitoring private telephone usage, i.e. listing the numbers called by the employee, irrespective of the employee's consent, is usually contrary to the DPA as the telephone number of the other party to the telephone conversation qualifies as a personal data and it is impossible to obtain the other party's consent to list his/her telephone number.

14.4 Transmission of Data to Third Parties

Data transmission to third parties by the employer is subject to the general requirements on handling the employee's personal data. Transfer of data to a country outside the EEA is prohibited unless that country ensures an adequate level of protection of personal data. These rules apply to the transmission of the employee's data to the parent company.

Ireland

1. Introduction

Employment law in the Republic of Ireland is governed by common law, statutory provisions and a range of fundamental rights enshrined in the Irish constitution. In addition, European Community Directives and European Court of Justice decisions apply to the employment relationship.

There are two separate systems of labour-related Tribunals; the Labour Court whose principal function is to provide conciliation facilities in connection with trade union disputes but also has jurisdiction under a number of statutory provisions, and the Employment Appeals Tribunal appointed by the Minister for Enterprise, Trade & Employment, which hears grievances under specific legislation such as that relating to unfair dismissal, minimum notice, redundancy etc.

In addition, employees have access directly to the Courts. The Courts have, in a series of employment related cases, granted injunctions restraining purported termination of contracts of employment and also restraining internal disciplinary procedures on the basis that principles of constitutional and natural justice are not being observed. Such principles are further expanded by the European Convention on Human Rights Act, 2003.

2. Categories of Employees

2.1 General

Irish labour law does not in general distinguish between different categories of employee within the private sector. Part-time employees are entitled to be treated no less favourably than full-time employees. Similarly, fixed-term employees are entitled to be treated no less favourably than permanent employees. Certain statutory protections do not apply to employees in the public sector.

2.2 Directors

Directors who are office holders and employees have exactly the same entitlements as ordinary employees. Their rights and obligations as office holders are governed by the provisions of the Companies Acts.

3. Hiring

3.1 Recruitment

The Employment Equality Acts, 1998 and 2004 (the "**Equality Acts**") specifically prohibit discrimination in the areas of access to and conditions of employment, training, promotion and advertising. Employers are advised to review recruitment procedures, including advertising and interviewing techniques, to ensure that discrimination does not occur.

Employers are not required to use state unemployment offices and there are no recruitment quotas requiring employers to recruit from any particular groups. State employment offices and training centres are run by *An Foras Aiseanna Saothair* (*FAS*). They provide formal sources of recruitment for manual or semi-skilled workers, but *FAS* claims to deal with only ten per cent of the vacancies arising annually. Private recruitment consultants are commonly used for more senior positions.

3.2 Work Permits

An employment permit is required for foreign nationals who are working in the Republic of Ireland. An employment permit is issued by the Minister of Enterprise, Trade and Employment following an application by the employing company, or the foreign national in prescribed circumstances. A foreign national may not make an application in respect of their employment in Ireland unless an offer of employment has been made in writing to them.

Employment permits are available for occupations with an annual salary of €30,000 or more and for a restricted number of occupations with salaries below €30,000. Certain jobs are strictly ineligible for work permits, regardless of the salary paid. Employment permits are initially granted for a two year period.

When the application to the Minister of Enterprise, Trade and Employment is made by the relevant employer (as opposed to the foreign national), such employer must demonstrate that they have taken all steps as were reasonably open to them to offer the employment in question to an Irish or other EEA citizen. In addition, the employer must prove that, at the time of the application, more than 50 per cent of their employees were EEA citizens, or nationals of the Swiss Confederation. Refugees who come within the criteria laid down in the Refugee Act, 1996 as amended are entitled to all employment rights available to Irish citizens.

As an alternative to an employment permit, an employee may apply for a Green Card, Spousal/Dependant Work Permit or an Intra-Company Transfer.

4. Discrimination

The Equality Acts prohibit discrimination on nine grounds, namely gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community. Discrimination on grounds of gender and marital status has been prohibited by statute since 1977 but the remaining grounds are new.

The principle of equal treatment of men and women requires that they receive equal pay for "like work" unless the difference in pay is based on grounds unrelated to the employees' gender. The Equality Acts extend this principle to the new discriminatory grounds so that different rates of pay for like work must be justified on grounds other than these grounds.

The Equality Acts outlaw sexual harassment in the workplace. It is defined as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature carried out by fellow employees, customers or business contacts, being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. Unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

The Equality Acts also outlaw non-sexual harassment in the workplace. It is defined as any form of unwanted conduct related to any of the discriminatory grounds carried out by fellow employees, customers or

business contacts, being conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person. As with sexual harassment, unwanted conduct may consist of acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures or other material.

Employers are liable for acts of sexual and non-sexual harassment by their employees unless they can establish that they took reasonable steps to ensure that harassment did not occur. Complaints concerning discrimination will be handled by the Director of the Equality Tribunal whose decisions may be appealed to the Labour Court. Complainants may also refer claims directly to the Circuit Court in certain circumstances.

5. Contracts of Employment

5.1 Freedom of Contract

In Ireland there is extensive freedom of contract between employer and employee, with statute intervening only in limited circumstances. However, the contract of employment must not contain any provision which might be contrary to the Constitution, for example, in certain circumstances, a term purporting to prevent an individual from withdrawing labour may be contrary to the Constitution and consequently void.

5.2 Form

There is no requirement for a contract of employment to be in writing, although under the Terms of Employment (Information) Acts, 1994 and 2001 (which implement Directive 91/533/EEC) employers are obliged to furnish employees with a statement of the main terms and conditions of their employment within two months of commencement. The required information includes the place of work, the duration of any temporary or fixed-term contract, the rate or method of calculation of remuneration, the frequency of remuneration, any terms or conditions regarding hours of work including overtime, paid leave (other than sick leave), incapacity to work due to sickness or injury and paid sick leave. The statement should also specify the period of notice which the employee must give and is entitled to receive to terminate the employment.

Contracts may be for a fixed or indefinite term, or for a specific purpose, e.g. the completion of a project where it is not possible to predict the length of time required. Fixed-term or specified purpose contracts may be drafted to exclude an employee's right to bring an unfair dismissal claim on the expiry of the fixed-term or on the completion of the specified purpose. To avail of such an exclusion, the contract should be in writing, signed by both parties, and should state that the Unfair Dismissals Acts 1977 to 2001 shall not apply to a dismissal which is due only to the expiry of the fixed-term or the cessor of the specific purpose. Employers may not, however, use a series of fixed-term or specified purpose contracts to deprive employees of the protections available under the Unfair Dismissals Acts. Further limitations on the use of fixed-term contracts and further protections for fixed-term workers were introduced by the Protection of Employees (Fixed-Term) Work Act, 2003 (which implements Directive 1999/70/EC).

5.3 Trial Periods

Trial periods of up to 12 months from the commencement of the employment may be agreed between the parties, although in practice trial periods may be very much shorter. Although it is not a legal requirement that they are agreed in writing, in practice they are.

5.4 Confidentiality and Non-Competition

All employees are under an implied duty not to enter into any business activities in competition with their employer, either during or outside working hours. In addition, restrictive covenants prohibiting employees from competing with the business of their employer after termination of their employment are included in the contracts of many senior employees. These will only be enforced by a Court where they are to protect the legitimate business interests of the employer and are limited in time and geographical area. A duty of confidentiality applies during the employment relationship and after it has terminated in relation to the employer's business.

5.5 Intellectual Property

Contractual provisions concerning property rights in inventions made by employees are common, but in the absence of an express provision the Courts will usually decide that an invention made by an employee during the course of employment belongs to the employer.

6. Pay and Benefits

6.1 Basic Pay

The National Minimum Wage Act, 2000 introduced a statutory minimum wage which is currently €8.30 per hour. Certain industries have established minimum pay levels and employers in such industries must give details of the pay level to employees. An employer who pays less than the established minimum may be ordered to pay up to three years' arrears of wages due to the employee. An employee may sue his or her employer if that employer fails to pay his or her basic salary and, if the payment is governed by an Employment Regulation Order, the employer will be guilty of an offence under the Industrial Relations Acts 1946-2004.

Legally binding agreements relating to pay may be reached by one or more trade unions and one or more employers through voluntary bodies known as Joint Industrial Councils (JICs). Such agreements apply to all individual employees covered by JICs regardless of whether or not those employees are union members.

There is no obligation on employers to index link the salary they pay to employees. However, it is common practice for employers to link salary to inflation. National wage agreements based on a partnership approach between Government, unions, employers and other interested groups apply to many sectors and provide for agreed pay increases for the period of the wage agreement.

6.2 Private Pensions

The state pension scheme provides a pension of 65 per cent of the national average earnings to individuals over 65 who have made sufficient compulsory contributions to the Social Insurance Fund. In addition, private pension schemes are becoming more common with contributions made to an independent employer-sponsored fund by both employers and employees. If a private scheme is approved under the relevant legislation, it may benefit from various tax concessions, subject to certain limits. Employers must offer access to a Personal Retirement Savings Account (PRSA) to "excluded employees" such as those whose employer does not operate a private pension scheme or where there is a waiting period of over six months to join the scheme.

6.3 Incentive Schemes

In the last ten years, the Irish Government has introduced tax legislation to encourage employees to participate in the ownership of their employer company. There are no tax incentives to encourage employers to operate commission or bonus schemes.

6.4 Fringe Benefits

In many employment contracts, fringe benefits include payment of the employee's contributions to a voluntary health insurance (VHI or other health insurance providers) scheme for the employee and his or her dependants. For more senior positions the use of a car is frequently provided, but this is subject to income tax as a benefit in kind. (See also sickness benefits below).

6.5 Deductions

Deductions must be made from all employee salaries and wages for income tax under the Pay As You Earn (PAYE) scheme, in respect of social insurance contributions and to cover amounts payable under Court Orders. Other deductions can only be made after obtaining the written consent of the employee.

7. Social Security

7.1 Coverage

With very few exceptions, the Irish social security system covers all employees in the private sector who are over age 16 and who earn €38 or more per week (a worker who earns less than €38 per week is only covered for occupational injuries). The social security system provides for benefits to cover retirement, disability and survivors' pensions, sickness, maternity, industrial injury, unemployment, disability, social assistance and family allowances.

7.2 Contributions

Contributions are generally made by both employers and employees. Contributions are made as follows:

Employers PRSI

Salary less than €18,512 per annum	8.50 per cent
Salary greater than €18,512 per annum	10.75 per cent

Employees

The employees' contributions are made up of Pay Related Social Insurance ("PRSI") and levies

PRSI	Four per cent payable on salary up to €44,180 per annum. The first €127 per week (non-cumulative) is disregarded
Levies	Two per cent on all earnings excluding certain share related benefits.

There is an Employer's PRSI Exemption Scheme that exempts employers from the obligation of making contributions for the first two years in respect of certain additional full-time employees taken on.

8. Hours of Work

Under the Organisation of Working Time Act, 1997 the maximum average working week is 48 hours, subject to a phase-in period. Hours may be averaged over a period of two, four, six or six to twelve months, depending on the circumstances. The Act also requires employers to provide rest breaks to employees. Employees have an entitlement to a 15 minute rest break where up to four and a half hours have been worked and 30 minutes where up to six hours have been worked. These breaks may be varied either by collective agreement (which must be approved by the Labour Court) between the employees' representatives and the employer or by Regulations made applicable to a particular sector. In such cases, compensatory rest must be provided.

Special provisions apply to night workers, i.e. those who work for at least three hours between midnight and 7am and at least half of whose annual working time is night work. Employers must not permit night workers to work for more than an average of eight hours in any 24 hour period. The averaging period for night workers is two months (although longer periods are permitted in certain circumstances).

9. Holidays and Time Off

9.1 Holidays

There are nine public holidays, in respect of which employees are permitted at the option of the employer to (a) a paid day off on that day, (b) a paid day off within a month of that day, (c) an additional day of annual leave, or (d) an additional day's pay. In addition, employees are entitled to a minimum of 20 days' holiday per year, although an employee must have worked for a particular employer for the full holiday year in question to be entitled to the full 20 days. Otherwise, holidays are granted on a pro rata basis.

9.2 Family Leave

The most important rights under the Maternity Protection Acts, 1994 and 2004 are the right to return to work after maternity leave and the right to additional maternity leave. Female employees are entitled to attend ante-natal appointments during their working hours and to take maternity leave of up to 42 weeks, provided the employer is given at least four weeks' notice of the commencement of such leave.
The maternity leave must include at least two weeks' absence before the date of the birth and at least four weeks after. The State provides a maternity allowance of 80 per cent of the employee's gross earnings during the first 26 weeks' leave, subject to a maximum level determined from time to time by the Government. The employee is also entitled to take up to 16 weeks' additional maternity leave entirely at her own expense.

The Parental Leave Acts, 1998 and 2006 give parents of children the right to 14 weeks' unpaid leave in respect of each such child. The leave must be taken before the child is eight years old (subject to modifications in the case of an adopted child) and may be taken as

a continuous period, in portions or by working reduced hours. While the leave is unpaid, it is reckonable for the purposes of employment rights.

Female employees, and in certain limited circumstances male employees, are entitled to take up to 40 weeks' adoptive leave. Adoptive benefit is payable for the first 24 weeks. An employee may take an additional 16 weeks' leave during which no benefit is payable.

Employees may in limited circumstances take up to 104 weeks' unpaid leave of absence to care for an incapacitated dependent.

9.3 Illness

In the absence of any express term in a contract of employment concerning a company sick pay scheme or any term implied as a result of custom and practice, an employee has no entitlement to receive money from the employer during any period of absence due to sickness or injury. Thus, during such periods of absence, the employee must rely wholly upon social welfare benefits.

Large undertakings usually provide for payment of full wages for a limited period (usually three or six months) of absence due to illness or injury, subject to a refund to employers in respect of the state benefits received.

10. Health and Safety

10.1 Accidents

All employers are required to take steps to ensure that their employees are working in as safe an environment as is reasonably practicable. That standard "so far as is reasonably practicable" is a high threshold pursuant to the Safety, Health & Welfare at Work Act, 2005 (the "2005 Act"). Employees can bring civil claims against their employers for any loss suffered as a result of accidents at work or industrial illnesses and also claim compensation from the State Occupational Injuries Benefit Scheme.

More recently, emphasis has been placed on protecting employees from incurring non-physical illness at work. Liability arising from stress-induced illness has been established and employers are expected to take appropriate steps to prevent any forms of harassment and bullying in the workplace or any other forms of practice which may give rise to injury and damage to an employee. There is no statutory obligation on employers to be insured against civil liability, although most large undertakings are covered by such insurance.

A criminal offence is committed where the duties imposed by the various sections of the 2005 Act are breached. Those offences can be divided into two separate sets, less serious offences for which the guilty person is liable on summary conviction to a fine not exceeding €3,000, and the more serious offences for which, on summary conviction, one can be liable to a fine not exceeding €3,000 and/or imprisonment for a term of up to six months. For the more serious offences upon conviction on indictment a person can be liable to a fine of up to €3,000,000 and/or imprisonment for a term of up to two years. The "more serious offences" which attract the more severe penalty include such straightforward duties as providing information to employees regarding health and safety pursuant to Section 9 of the 2005 Act or providing instruction training and supervision to employees pursuant to Section 10 of the 2005 Act (i.e. it is not just contravention of the more obviously important duties which can attract the higher penalty).

Where an offence has been authorised or consented to by a manager, or a person who purports to act in such a capacity, then that person, as well as the undertaking, shall be guilty of an offence and shall be liable to be prosecuted.

10.2 Health and Safety Consultation

An employer must provide information in relation to Health and Safety to employees and the Safety Representative (if any) in a form, manner and language that is understood by employees.

An employer must consult with employees, and take account of any representations made by the employees, for the purpose of giving effect to the employer's statutory duties in respect of safety, health and welfare. As this is mandatory, some form of consultation mechanism must be provided (although safety committees are not mandatory). The Health and Safety Authority has issued guidelines on the effectiveness of consultation arrangements including advice on the selection of safety committees (where one is put in place).

The employees may, if they so wish, select a Safety Representative (or, by agreement with the employer, more than one) from "amongst their number". The Safety Representative may consult with, and make representations to, the employer on safety, health and welfare matters relating to the employees in the place of work. The Safety Representative has a number of statutory rights and powers including:

(a) the right to information from the employer in connection with the safety, health and welfare of employees;

(b) the right to make representations to the employer as to safety, health and welfare. The employer is required to consider these and, where necessary, act on them. The requirement to act on representations from the Safety Representative is more demanding than would apply to representations from other employees;

(c) the power to carry out general inspections or investigate potential hazards on notice to the employer. The employer cannot unreasonably withhold permission for these;

(d) the Safety Representative must be informed by the employer that a HSA Inspector has arrived at the place of work and also has a right to accompany the Inspector, unless the Inspector is investigating a specific incident. The Safety Representative may make oral or written representations to an Inspector and is also entitled to receive advice and information from an Inspector;

(e) the Safety Representative is entitled to time off "as may be reasonable", without loss of remuneration:

(i) acquire knowledge to carry out his/her functions; and

(ii) to carry out his/her functions, e.g. conducting investigations and inspections.

(f) the Safety Representative is to suffer "no disadvantage arising out of the performance of his or her duties";

(g) the right to investigate accidents and dangerous occurrences (provided that it will not interfere with the performance of another's statutory obligation).

The Health and Safety Guidelines state that in most organisations a single Safety Representative will be adequate to meet safety and health requirements but that, if an employer has different locations, a Safety Representative can be appointed at each place of work.

Every employer must have a Safety Statement in relation to every place of work. This is a statement based upon a risk assessment specifying how health and safety should be managed.
An exemption exists for employers who have less than three employees if an approved code of practice exists, and in those situations compliance with that approved code of practice is sufficient.

10.3 Miscellaneous

Smoking is banned in enclosed workplaces by virtue of the Public Health (Tobacco) Act, 2002 as amended (the "2002 Act"). Any employer who allows a contravention of the prohibitions or restrictions contained in the 2002 Act will be guilty of an offence unless they can show that they made all reasonable efforts to ensure compliance with the provisions of the 2002 Act.

11. Industrial Relations

11.1 Trade Unions

All Irish workers have a right to join together and form trade unions.
However, only those trade unions with 1,000 or more members and on behalf of whom money has been deposited in Court, are licensed to take part in collective bargaining. It is an offence for a union to enter into any sort of negotiations without such a licence, although groups of workers are legally entitled to negotiate with their own employer. There is no legal obligation on an employer to recognise a trade union, and the post-entry closed shop has been declared unconstitutional.
The Labour Court has under the Industrial Relations (Amendment) Act, 2001 as amended been given power to adjudicate in industrial disputes and in limited circumstances to issue binding determinations where the normal voluntary procedures have not resolved the issue in dispute. Trade unions may be affiliated to the Irish Congress of Trade Unions (ICTU).

The largest employers' association is the Irish Business and Employers' Confederation (IBEC), which acts as a central adviser to its members on matters concerned with employer/union relations, but in general it will only take part in collective negotiations when requested to do so by one of its members.

Over the last decade, there has been increased co-operation and negotiation between the Government, trade unions, employers' organisations and farming organisations. Together they have agreed on the "Ten Year Framework Social Partnership Agreement 2006-2015" called "Towards 2016".
The Programme includes a strategy of sustaining economic growth and maintaining high levels of employment.

11.2 Collective Agreements

Collective agreements are generally not legally enforceable by the parties to them. However, the terms of such an agreement may become incorporated in a contract of employment and hence, be enforceable by the employer against the employee or vice versa. Collective agreements in the more traditional industries tend to be negotiated on an industry-wide basis but more recently the trend with established industries is towards collective bargaining at plant level.

11.3 Trade Disputes

Irish workers have no statutory right to strike or to take industrial action. However, the Supreme Court has held that there is an implied term to be read into every contract of employment to the effect that serving a strike notice not shorter than the contractual notice period and taking action pursuant to such a notice is not a breach of contract. Prior to the introduction of the Industrial Relations Act, 1990 there was some debate as to whether a right to strike should be included in it, but ultimately that Act preserved the position whereby striking employees are granted certain immunities from liability which they might otherwise incur for action in contemplation of or in furtherance of a trade dispute. However, no immunity is given to employees acting in defiance of a strike ballot or to an individual employee who has failed to follow the proper procedures. In a measure designed to improve industrial relations and to facilitate the resolution of disputes between unions and employers, a code of practice was introduced. This recognises that the primary responsibility for the resolution of disputes lies with the parties involved, and it lays down an appropriate dispute resolution procedure.

There are also certain limitations to the circumstances in which a Court will grant an injunction to an employer to prevent a strike.

11.4 Information, Consultation and Participation

The Transnational Information and Consultation of Employees Act, 1996 requires businesses with over one thousand employees in the European Economic Area (which includes all EU states, together with Norway, Iceland and Liechtenstein) and at least 150 employees in each of two EEA states, to establish procedures to inform and consult employees in relation to transnational matters affecting the business at EEA level. Employers are required, either on their own initiative or at the request of at least 100 employees in at least two EEA states, to establish a Special Negotiating Body for the purposes of negotiating agreed information and consultation

arrangements. Whilst the role of the Works Council is limited, it does involve a new consultative process with worker representation and is a new concept for employers in non-unionised workplaces.

EU Directive 2002/14/EC (the Information and Consultation Directive), which imposes further consultation obligations on businesses in Ireland with over 150 employees (100 by 2007 and 50 by 2008), has been implemented in Irish law by the Employees (Provision of Information and Consultation) Act, 2006.

Where collective redundancies are proposed, the employer is obliged to consult with the employee representatives and notify the Minister for Enterprise, Trade and Employment; failure to do so may result in the employer being fined after prosecution by the Minister. There is a maximum fine of €1,904.61 on conviction for failure to either consult employees or notify the Minister, or keep or produce appropriate records. However, fines can be up to €12,500.00 for failure to postpone implementation of redundancies until after the expiry of at least 30 days after notification to the Minister. Employees or their representatives may also refer the issue of non-consultation to a Rights Commissioner who may award up to four weeks' remuneration as compensation.

Consultation obligations may also arise under existing Collective agreements or the 2003 Regulations referred to in section 12 below.

12. Acquisitions and Mergers

12.1 General

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 (the "**2003 Regulations**") implemented the 2001 EU Acquired Rights Directive (directive 2001/23/EC.) Upon a transfer of a business or undertaking falling within the 2003 Regulations, all rights and obligations arising from contracts of employment as well as any rights under collective agreements are automatically transferred to the transferee.
The dismissal of employees by reason of the transfer is prohibited unless this is done for "economic, technical or organisational reasons entailing changes in the workforce". The status and functions of existing employee representatives are also preserved.

12.2 Information and Consultation Requirements

The transferor and transferee must inform, and in certain circumstances consult with, the representatives of their employees that are affected by the transfer. They should be informed of when the transfer will take place, the reasons for the transfer, the implications the transfer will have for the workforce and of any 'measures' envisaged in relation to the employees. This information must be given to the employees or their representatives, where reasonably practicable, not later than 30 days before the transfer occurs and in any event in 'good time' before the transfer (which could be a period greater than 30 days).

Where there are no employee representatives the relevant employer(s) must put in place a procedure whereby representatives can be appointed. Time to appoint representatives needs to be factored into the timing of any transaction.

These information and consultation obligations apply to all transfers to which the 2003 Regulations apply regardless of the number of employees involved. Where the transferor or the transferee envisage any 'measures' in relation to the employees (e.g. a change to the employees' work practices, work location, redundancies) the employees' representatives must be consulted with a view to reaching an agreement. Provided that there has been meaningful consultation there is no obligation to actually reach an agreement. Although a transaction to which the 2003 Regulations apply should not be completed unless the information and consultation process has been initiated and completed beforehand, the transaction documents can be signed.

12.3 Notification of Authorities

There is no general obligation to notify the authorities about a transfer or its consequences; however certain regulated industries (i.e. financial services) may be required to notify the relevant regulatory authorities (i.e. the Irish Financial Services Regulatory Authority).

12.4 Liabilities

A complaint of a contravention of the information and consultation provisions under the 2003 Regulations may be referred to a Rights Commissioner at first instance. If he upholds any complaint, the Rights Commissioner may require the employer to pay to each employee compensation not exceeding four weeks' remuneration for a breach of the notification and consultation obligations and not exceeding two years' remuneration for a breach of any other provisions of the 2003 Regulations.

A Rights Commissioner is also able to grant relief analogous to injunctive relief and in addition, it is possible to obtain an injunction from the courts, particularly in cases where time is of the essence. The decision of a Rights Commissioner may be appealed to the Employment Appeals Tribunal. If the employer fails to carry out a decision, an application can be made to the Circuit Court to seek an order directing the employer to comply.

13. Termination

13.1 Individual Termination

Under the Unfair Dismissals Acts, 1977 to 2005 (the "**Unfair Dismissals Acts**") an employee who has worked for more than one year is entitled to rely on the legislation to challenge a dismissal. Under the Unfair Dismissals Acts, a dismissal is deemed to be unfair and the onus is on the employer to establish otherwise.

13.2 Notice

In cases other than gross misconduct, (when the employer is entitled to terminate without notice), an indefinite contract may be terminated by notice. The following minimum statutory notice periods apply to all employees who have completed 13 weeks of continuous service with the employer:

Period of Employment	*Notice*
13 weeks – 2 years	1 week
2 years – 5 years	2 weeks
5 years – 10 years	4 weeks
10 years – 15 years	6 weeks
15 years or more	8 weeks

Individual contracts may provide for longer notice periods and often do so in the case of senior executives.
Notice may be oral, although collective agreements may stipulate that it be in writing. Any dismissed employee is entitled to require the employer to supply a written statement of the reasons for dismissal within 14 days. After the initial 13 weeks of employment, an employee must give one week's notice of his or her intention to resign.

A former employee who has been dismissed without proper notice being given can claim salary (and loss of other benefits) in lieu of notice.

Claims of unfair dismissal are normally heard by the Employment Appeals Tribunal (EAT) and must be made within six months of the date of dismissal; this deadline may be extended by the Tribunal to a maximum of 12 months in certain circumstances. If both parties agree, the claim can be heard more informally by a Rights Commissioner whose Recommendation may be appealed to the EAT. The remedy which may be sought or awarded in the case of unfair dismissal is reinstatement, re-engagement or compensation of up to a maximum of two years' remuneration. Determinations of the EAT are subject to appeal to the Circuit Court whose decision may be further appealed to the High Court; appeals in both Circuit and High Courts are by way of full re-hearings. Failure by the employer to implement a Determination of the EAT within six weeks may result in proceedings by the Minister for Enterprise, Trade and Employment in the Circuit Court to enforce the remedy awarded by the Court.

Employees may also apply to the Courts directly claiming wrongful termination of their contract of employment and apply to the Courts for injunctions restraining the purported termination.

13.3 Reasons for dismissal

Dismissals may be justified on one of a number of grounds, including the employee's competence, capability, conduct or redundancy. In addition to demonstrating that there were substantial grounds justifying the dismissal, the employer must show that he or she acted reasonably in effecting the dismissal. Therefore, an employer considering dismissal for poor performance should apply fair procedures such as notifying the employee of the dissatisfaction and affording an opportunity to improve before effecting the dismissal. In a redundancy situation, the employer must show not only that a genuine redundancy situation existed, but also that the employee was fairly selected for redundancy.

Employees must be informed about the disciplinary procedures in force at their workplace and should be notified of any changes. In the event that no such procedure exists, the employer must nevertheless properly investigate any alleged breaches of working practices and the employer may suspend an employee on full pay during such an investigation. The procedures followed by an employer may be important when deciding whether a particular dismissal was fair or not.

13.4 Special Protection

Dismissals which are connected with pregnancy, religion, politics, race, colour, sexual orientation, age, membership of the travelling community or trade union membership are automatically unfair. Selective dismissals of employees on strike are also unfair.

13.5 Closures and Collective Dismissals

As mentioned above, redundancy is a permissible reason for individual termination. However, it is frequently associated with plant closure and collective dismissals.

Where an employer closes a workplace or work of a particular kind is no longer needed, the affected employees who have worked for that employer for a minimum of two years and who are under 66 years of age are entitled to statutory redundancy payments calculated according to their age, length of service, and rate of pay. Entitlement to such a payment may be lost if the employee refuses an offer of suitable alternative employment. The employer can generally claim a rebate from the Irish Government of 60 per cent of any statutory redundancy payment.
Disputes arising as to entitlement to a redundancy payment are referred to the Employment Appeals Tribunal.
An employee who is to be made redundant is entitled to reasonable paid time off during the last two weeks of the notice period in order to look for alternative work or attend training sessions.

Depending on the numbers of redundancies involved (in relation to the total workforce of the undertaking), employers may be under a duty to inform the Minister for Enterprise, Trade and Employment before making collective redundancies and to notify and consult any employee representatives. (See section 11.4 on Information, Consultation and Participation).

14. Data Protection

14.1 Employment Records

Employers' data protection obligations are set out in the Data Protection Acts, 1988 and 2003 ("**the Acts**"); The Data Protection (Amendment) Act, 2003 implements the European Data Protection Directive 95/46/EC. The Acts regulate how employers collect, store and use personal data held by them about their employees (past, prospective and current). More onerous obligations are imposed in respect of sensitive personal data. Infringement of the Acts can lead to investigation by the Data Protection Commissioner, fines of up to €100,000 or compensation claims from affected employees.

Employers, as data controllers, must ensure that personal data about their employees is collected and processed fairly, is kept accurate and up-to-date and is not kept for longer than necessary. Appropriate security measures must be taken by employers against unauthorised access to, or alteration, disclosure or destruction of, personal data.

Employers should have a data protection policy in place including a data protection notice, a defined policy on retention periods for all items of personal data and provide appropriate staff training in data protection.

14.2 Employee Access to Data

Employees, as data subjects, have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be informed what personal data is held about them and to whom it is disclosed, to obtain a copy of their personal data and have personal data amended or deleted where it is incorrect. Employers should respond to subject access requests as soon as possible or within 40 days from receipt of the written request. Subject access requests cover personal data held in electronic form and in manual form (provided it is held in a "relevant filing system" as defined by the Acts). Employers may charge up to €6.35 for supplying employees with a copy of their personal data.

14.3 Monitoring

As a result of the electronic workplace organisations commonly have a general communications policy which in certain instances confers a right on the employer to monitor employee communications. Such policies apply to all employees including those who travel on business with PCs, laptops and e-workers who work from home.

All monitoring of employee e-mail, internet and telephone use and close circuit TV monitoring is subject to compliance with the Acts. Certain types of monitoring may also be caught by the Postal and Telecommunications Services Act, 1983 (as amended by the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993) (the "1983 Act") and the EC (Electronic Communications networks and Services) (Data Protection and Privacy) Regulations, 2003 (the "2003 Regulations"). Section 98 of the 1983 Act makes it an offence to intercept (i.e. listen to or record) any telecoms message in the course of transmission unless either the sender or recipient has consented to such listening or recording.

On the other hand, if an employer wishes to monitor *stored* information such as voicemails and e-mails, the Acts and the 2003 Regulations will apply. Express employee consent is not required provided the employee is notified that this form of monitoring may be carried out as well as the purpose for which it may be carried out and the parties to whom the stored information may be disclosed. The Data Protection Commissioner has issued guidelines in relation to employee monitoring, the guiding principle being that any limitation of the employee's right to privacy should be proportionate to the likely damage to the employer's legitimate interests.

14.4 Transmission of Data to Third Parties

Employers should not provide employee data to third parties otherwise than in accordance with the principles and processing conditions set out in the Data Protection Acts, 1988 and 2003. It may be necessary to obtain express consent from the employee to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information and the location of the third party. Where the data is being transferred to a third party within the EEA a written contract should be entered into whereby the recipient agrees to process the data in accordance with the instructions of the transferor and comply with the security obligations set out in the Acts. Where the third party is based outside the EEA the Acts prohibit the transfer of data unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply. Where employee data is requested in the context of a commercial transaction anonymised data should be provided where possible. If this is not possible the recipient should be required to undertake in writing that it will only use the information in respect of the transaction in question, will keep it secure and will return or destroy it at the end of the transaction.

Italy

1. Introduction

Employment relationships are regulated by the Constitution, the Civil Code, the Workers' Bill of Rights (Law No. 300/1970, namely *Statuto dei Lavoratori*) and other Acts of Parliament and Decrees. The Constitution provides for the general rights of employees whereas the Civil Code and other laws set out a detailed body of rules governing employment relationships.

In addition to statutory provisions, terms and conditions of employment are fixed by the national collective labour agreements (*contratti collettivi nazionali di lavoro*) applicable to employees in particular industries. In principle, such agreements are private contracts and, as such, bind only employers that are member of employers' associations and employees who are union members. In practice, however, case law indicates they will apply to almost all employers and employees (whether union members or not), since Italian Courts have in several instances ruled that such agreements provide a minimum level of wages and other benefits. Some collective labour agreements have in the past been codified into legislation and therefore made applicable to all employees concerned. An important multi-industry agreement was signed in July 1993 between the Government, *Confindustria* (see below) and the main unions; it provides a new framework for industrial relations and wage bargaining.

Contratti integrativi aziendali are agreements which supplement at undertaking level national collective labour agreements and which are concluded between employer and employee representatives.

No proceedings can be issued in a labour Court until an application has been made for a conciliation procedure, to be held in the district of the place of work. Only after the conciliation attempt or sixty days after such application, may either party issue legal proceedings.

Individual labour disputes are heard at first instance by the local *Tribunale* (and the trial is before a one-man labour Court). Hearings are usually held within a short period of time after the filing of the claim. Compliance with an order of the *Tribunale* cannot be delayed by the employer lodging an appeal. Appeals are brought to the *Corte d'Appello* and, in the last instance, to the Supreme Court (*Corte di Cassazione*) which rules on points of law only. Alternatively, disputes can be brought before Arbitration Tribunals as provided in the national collective labour agreements.

Legislative Decree No. 276/2003 (amended by recent Legislative Decree No. 251/2004) provides for an extensive reform of Italian Labour Law. The reform applies to private sector businesses, and provides new regulations aimed at increasing modernisation and flexibility in various areas of Italian labour law, such as recruitment, part-time work, and transfers of businesses. Amongst the changes introduced are, for the first time, the definition and regulation of secondees and a requirement that, in the event of a change to a worker's duties, the worker's prior consent is necessary.

The reform also introduces new categories of employment relationships, e.g.: "job-on-call", "job sharing", "occasional jobs", and self-employment contracts for special projects. Job-on-call is a work contract, which allows an employer to have a worker available for non-continuous or intermittent work, within the limits and terms set out in collective labour agreements. Job sharing is a special employment contract by which two employees jointly undertake responsibility for one single work obligation. An "occasional job" is defined as work performed for an "employer" where the aggregate remuneration from the employer does not exceed Euro 5,000 per calendar year.

These reforms have also introduced a system of certification for employment contracts, aimed at reducing disputes in relation to the nature of the actual employment relationships. The certification procedure is invoked by the parties to the contract on a voluntary basis. The certification commission will then ascertain the nature of the employment relationship.

In addition open-term staff leasing is now allowed, rendering it permissible to borrow from *ad hoc* authorised entities such employees as are necessary to run a department or a branch of the borrowing company where there are technical and organisational needs for doing so.

2. Categories of Employees

2.1 General

Both Italian law and collective agreements separate employees into various categories. The three basic categories are:

- blue collar employees (*operai*);
- white collar employees (two grades: *impiegati and quadri*); and
- executive employees (*dirigenti*).

The categorisations are important not only as legal concepts but in a practical sense too; promotion from one category to another is seen as a major event in an employee's career.

2.2 Directors

Directors of companies with delegated powers are traditionally considered self-employed. However, the general reform of pension legislation introduced in the latter part of 1995 resulted in a social security contribution charge on directors' fees, expressed as a percentage of income, and recent legislation has amended the fiscal treatment of directors' fees.

2.3 Other

Part-time employees have full employment protection, priority application for full-time posts and collective bargaining rights over hours of work. Other specific provisions apply to seasonal employees in certain industries and in relation to fixed-term contracts. The recent legislative reforms aim to encourage part-time working and to this end a greater flexibility in part-time working hours and overtime is now allowed.

3. Hiring

3.1 Recruitment

Compulsory recruitment through

Government employment offices has been abolished and recruitment through authorised private companies is now allowed for all types of employees. The recruitment system has been reformed by giving private bodies a more extended role and by providing for an IT database, which will be continuously updated with data on the supply and demand of manpower. Companies are now allowed to engage employees provided by another entity for fixed or indefinite periods. However, undertakings with more than 15 employees are required to recruit fixed quotas of their labour force from special lists of "protected categories" like refugees and disabled persons and, in some cases, widows and orphans.

Some social security contribution advantages (including lower rates of social security contributions) are available to employers that hire workers from special lists of unemployed people (such as people who have been dismissed following collective dismissal procedures).

Employers are prohibited from investigating or asking any questions about an applicant's political beliefs or labour union membership or activities. These rules are in addition to those relating to discrimination (see further below).

Recent legislation permits companies to take on temporary employees through agencies. National collective labour agreements impose limits on what proportion of the firm's workforce may be temporary. The Ministry of Employment authorises the agencies, which must also be registered. Companies that apply for authorisation will be examined under several criteria: they must, for example, have a minimum paid-up capital and hold adequate deposits with a credit institution. The employment relationship is with the agency which pays the employee's salary and social security contributions and retains disciplinary power. The company using the agency employee remains nonetheless liable for any unpaid salary and social security contributions and for workplace safety and health.

3.2 Work Permits

Work permits are required for non-EEA nationals and must be obtained before the employee enters Italy by applying to the appropriate Provincial Labour Office. Work permits are issued subject to a numerical cap established each year by Government Decree. All foreign nationals must obtain a residence permit from the police authorities within eight days of arrival.

Employers are liable if they employ workers who have not complied with residence permit regulations.

4. Discrimination

Direct and indirect discrimination on the grounds of gender, race, disability, age, language, religious belief, political or trade union affiliation, sexual orientation and personal beliefs is prohibited. The dismissal of a woman (and in certain cases a man) within one year of marriage is void, unless the employer proves that it was for lawful cause (unconnected with the marriage).

There is a right to freely express any opinion at the workplace.

All contracts of employment must provide for equal pay for men and women for work of equal value.

The definitions of direct and indirect discrimination correspond with those set out in Directives No. 2000/43/EC and 2000/78/EC, as follows:

- "direct discrimination" shall be taken to occur when one person is treated less favourably than another or has been or would be treated in a comparable situation on the grounds of his/her religion, belief, disability, age, sexual orientation, race, ethic origin;
- "indirect discrimination" shall be taken to occur when an apparently neutral provision, criterion or practice would put persons having a particular religion, belief, disability, age, sexual orientation, race, ethnic origin at a disadvantage.

The discrimination laws are, in principle, monitored and enforced by the National Commission for Equal Treatment and Equal Opportunities. Regional Equality Counsellors may bring discrimination cases against employers.

5. Contracts of Employment

5.1 Freedom of Contract

Individual contracts of employment (*contratti individuali*) and supplemental agreements at company level (*contratti integrativi aziendali*) cannot derogate from the provisions of the law and collective agreements (*contratti collettivi nazionali di lavoro*) to the detriment of the employee. Because of detailed labour laws and collective agreements, often very little is left for individual contracts to cover other than improvements in basic economic terms.

5.2 Form

There is no general requirement that a contract of employment be in writing. However, most collective agreements require the contracts of employment to which they apply to be in writing. All employers must display a copy of the disciplinary rules and sanctions applying to all employees at the workplace. Part-time, fixed-term contracts and probationary period covenants must all be in writing.

Legislation implementing EU directive 91/533 imposes a duty on the employer to provide a notice to all new employees within thirty days of appointment, setting out the parties to the employment contract, the place of work, the start date, the duration of the contract and of any trial period, the employee's grade, salary, holiday entitlement, hours of work, and notice periods. Subsequent changes, whether arising out of legislation or changes to the applicable collective agreement must be notified to the employee within a month of their becoming applicable to the employee. Otherwise, the employee may submit an application to the local labour office requesting that the employer provide details of the changes within fifteen days; and if the employer still does not, it may be fined.

Written contracts are required for fixed-term and part-time employment. Fixed-term contracts can only be concluded if

there is an objective reason for doing so derived from technical, production or organisational needs, or to temporarily replace workers. Fixed-term contracts are prohibited in some cases (e.g. to substitute workers on strike). Such contracts must be for set periods only (for instance, 18 months for training). In some circumstances, the contract may be renewed once, for a maximum cumulative term (including the original term) not in excess of three years.

5.3 Trial Period

Any agreement for a probationary period must be in writing. During this period, either party may terminate the agreement without giving notice (on the basis that the trial was not satisfactory); a termination payment will, however, still be due. Collective agreements lay down maximum probationary periods, which range from one to six months.

5.4 Confidentiality and Non-Competition

An employee may not carry on business in competition with his or her employer or work for a competitor, divulge confidential or secret information concerning the undertaking or the production methods of the employer, or utilise such information so as to cause prejudice to the employer.

The non-competition obligation is limited to the carrying out of activities in the same field of business in which the employer operates. It applies only during the employment contract and does not survive thereafter unless a specific non-competition agreement is entered into between the parties. Such non-competition agreement is only enforceable under the following conditions:

- if it is agreed in writing;
- if compensation for the employee is provided for; and
- if the limitation on the former employee's activities is reasonable as to activity, duration (in any case, the duration cannot be more than five years for *dirigenti* and three years for all other employees) and geographical limit.

5.5 Intellectual Property

Inventions made by an employee in the course of employment belong to the employer where their creation is anticipated by the employment contract and special provision has been made. If not, and the invention is made while performing the contract, the employee is entitled to a bonus in proportion to the importance of the invention. In the event that the invention is made outside the scope of the employment and relates to the activities of the employer, the employer has a preferential right over the invention. In all cases the employee retains a moral right to be regarded as the inventor.

6. Pay and Benefits

6.1 Basic Pay

There is no minimum wage as such, but the Italian Constitution guarantees the right to fair pay. Collective agreements provide minimum levels of wages and benefits. A Court can order an increase where pay is insufficient and generally the standard reference is the national collective labour agreement.

Wages are normally paid in 12 monthly instalments with a 13th instalment paid in December. Some collective agreements provide for a 14th instalment at other times, usually to coincide with holidays.

The multi-industry agreement of 1993 provides that the parties shall negotiate salary increases every two years, taking the rate of inflation into account. Salaries can no longer be automatically index-linked to the cost of living.

6.2 Private Pensions

Because of extensive and compulsory state benefits, private pensions have been rare. They are sometimes provided by the financial services sector and Italian subsidiaries of international companies (usually only for executives). The general reform of pensions has resulted in the introduction of private pension schemes which are complementary to the state scheme. Further reforms are anticipated.

6.3 Incentive Schemes

No official measures have been taken to encourage share participation apart from a specific tax relief on share options in certain areas: the revenue is subject to tax as capital gains and not as employment compensation.

6.4 Fringe Benefits

Italian managers enjoy relatively high remuneration as well as, in certain cases, fringe benefits such as company cars, low interest loans, mobile telephones, etc.

Other employees enjoy fringe benefits such as cafeteria or restaurant tickets, private supplementary insurance, etc.

6.5 Deductions

The employer is required to withhold income tax on behalf of the employee and to pay such tax to the authorities on a monthly basis.

7. Social Security

7.1 Coverage

The Italian social security system is compulsory and provides a comprehensive set of benefits for all employees. The general programmes are administered by the National Social Security Institute (*Instituto Nazionale di Previdenza Sociale – INPS*) as set out in the relevant collective agreements.

7.2 Contributions

The system is financed by employee and employer contributions which vary according to the category of employee and are calculated on gross earnings. Employee contributions are deducted from earnings at source by the employer, who then passes them to the relevant authorities. The amount of the contributions vary but are around eight-nine per cent for employees and seven per cent for managers. The cost for employers is high, ranging from 30 per cent to 36 per cent of the salary in most cases.

8. Hours of Work

Normal working hours are generally fixed at 40 hours a week. Collective labour agreements may establish a shorter working week. There is no maximum limit on daily working hours, however, average working hours cannot exceed 48 hours, including overtime, in any seven-day period. The average working time must be calculated using a

maximum reference period of four months (NCLAs may increase the reference period to six or 12 months where there are objective, technical or organisational reasons for doing so).

Generally, the overtime limit allowed by law is eight hours a week. In the absence of limits being established by collective labour agreements, it is necessary for individual agreement between the employer and each employee. In any event overtime cannot exceed 250 hours per year.

The rate of pay for overtime, night work and holiday work must be higher than for work during normal hours. Overtime rates range from an additional 20-30 per cent for night work to an additional 50-70 per cent for work performed on a public holiday. The rates are set by collective agreement. Managerial employees are not entitled to extra pay for overtime.

9. Holidays and Time Off

9.1 Holidays

Each town has a holiday on the day of its patron Saint and, in addition, there are ten religious and national holidays.

The Constitution establishes a right to one day of rest a week (usually taken on Sunday) and a right to annual holiday.

The law provides for a minimum annual holiday entitlement of four weeks with full pay. Having regard to this four week entitlement the employer may not make payments in lieu of accrued but untaken holidays except on termination of the employment relationship.

More generous arrangements can be agreed by collective labour agreements; in such cases it is possible to agree that the employer may make payments in lieu of accrued but untaken holiday.

9.2 Family Leave

An employee is entitled to 15 days' leave at normal pay on marriage as well as occasional days off for family responsibilities (such as the death of a relative or child's sickness).

Legislation provides that a woman must take maternity leave in the two months before delivery and three months thereafter (or, if she prefers and her health situation is good, in the one month before delivery and four months thereafter). During this period she is entitled to maternity pay equal to 80 per cent of normal pay which is paid by the social security system. In some circumstances, the father is also entitled to take three months' leave from the child's date of birth.

A woman or her husband may elect to take a further ten months' leave, partly paid. During the parental leave period, the rate of pay is 30 per cent of normal pay for a period of six months in aggregate up to the child's third birthday. Thereafter, until the child's eighth birthday, pay during parental leave is 30 per cent of normal pay if the individual's revenue is below a specific threshold. Exercising this leave entitlement does not affect the worker's right to resume her/his employment. In the first year following the birth of the child, the mother (or, in some cases, the father) is entitled to break from work for two hours each day in order to nurse the child (if more than one child was born, four hours break may be taken).

9.3 Illness

An employee who is sick has a right to retain his or her position, seniority and, generally, regular pay for a period up to six months or more, depending on the provisions of the applicable collective agreement. The social security system covers part of the salary.

If employers require employees to undergo medical examinations to test their aptitude for the job or their fitness following sickness or accident, such medical check-ups must be carried out by the national health service.

10. Health and Safety

10.1 Accidents

Employers have a duty to ensure safety at work, and may incur penal sanctions in the event of negligence. Insurance against accidents at work is compulsory and is managed by a state agency.

10.2 Health and Safety Consultation

The law gives employees and their representatives the right to control the implementation of health and safety standards. In practice, this often means that union organisations at undertaking level (*RSUs* – see below) will exercise their right to consultation on the promotion of health and safety at work. Formal inspection rights are only granted to the National Health Service.

11. Industrial Relations

11.1 Trade Unions

Employees have the right to join and be active in trade unions. Around 40-50 per cent of the Italian workforce is unionised. The general right to associate is contained in the Constitution with legislation giving specific rights, such as paid and unpaid time off work for officials to carry out union duties. Union officials have the right to post notices, collect funds and, in large undertakings, to use the undertaking's premises for union activities. There are strict regulations preventing employers from dismissing or transferring union officials. Employers cannot, financially or otherwise, support any trade union.

Employers not complying with an order to cease anti-union activity may be liable to penal sanction.

Unions are often organised on political lines but form alliances for the purpose of collective bargaining at various levels. The national confederations reflect political orientation as well. The largest organisations are:

- CGIL (Confederazione Generale Italiana Lavoratori);
- CISL (Confederazione Italiana Sindacati Lavoratori);
- UIL (Unione Italiana del Lavoro).
- Dirigenti are represented by the FNDAI Union in the industrial sector and by FENDAC in the commercial sector.

The main industrial employer's confederation is *Confindustria*. The commercial equivalent is *Confcommercio*.

11.2 Collective Agreements

The most important level of collective bargaining is that which sets national industry-wide agreements.
Such agreements are negotiated by the trade unions representing the employees concerned on one side and the association of the employers in the particular industry on the other.

11.3 Trade Disputes

The right to strike is enshrined in the Constitution, although restricted in some public services and essential supply industries. Industrial action short of a strike is prohibited. There is no law which governs the right to strike in general, with the exception of a statute regulating strikes in public and other "essential" services.

11.4 Information, Consultation and Participation

Italian unions generally believe in collective bargaining as the preferred method for regulating industrial relations and, for that reason, tend to disapprove of other methods for consultation and participation. Employees are also represented by committees organised at company level. The most important form of employee representation is the *rappresentanze sindacali unitarie* (*RSU*). This is a works council which may be elected to represent the interests of the national trade union with which the employer has concluded a collective agreement. The number of works council members will depend on the number of employees at the establishment. Where they exist, they have the power to conclude collective labour agreements at company level as well as having various information and consultation rights. Members of such committees have the right to time off for the performance of their duties.
There are also procedures for creating joint committees where the employer operates from more than one establishment. Employees are entitled to consult the representatives of recognised unions whenever they disagree with their employer's decisions.

12. Acquisitions and Mergers

12.1 General

In the event of a transfer of an undertaking, or of a part of undertaking, the employment contracts are automatically transferred to the transferee and the employees maintain their respective seniority and the position that they have acquired during their employment with the transferor.

Employees whose employment conditions undergo significant changes during the three month period following a transfer of an undertaking may resign and claim notice compensation. Under the terms of their national collective agreement *Dirigenti* in various commercial sectors have the right to resign within 180 days of a change in ownership and to claim an indemnity. The level of indemnity is set out in the relevant national collective agreement and will typically amount to a sum equal to part or all of their notice entitlement.

Following the transfer, the transferee must continue to observe the terms and conditions under any collective agreement applied by the transferor at the date of the transfer and on the same terms, until the date of expiry of such collective agreement or the entry into force or application of another collective agreement of the same level.

12.2 Information and Consultation Requirements

If the transferor employs, in total (i.e. irrespective of the number of employees who are actually transferred) more than 15 employees, both transferor and transferee of the undertaking must carry out an information procedure at a local level prior to the execution of any binding agreement. This must take place at least 25 days before the deed effecting the transfer is executed or, if earlier, before a binding agreement between the parties is reached. Both the transferor and the transferee must inform the representatives of workers in the undertaking, and the relevant trade unions of (a) the reasons for the transfer; (b) the legal, economic and social implications of the transfer as they affect the employees; (c) the measures envisaged in relation to the employees (if redundancies are contemplated, this information must be disclosed, and a collective dismissal procedure could be required); and (d) the date of the envisaged transfer.

If there is a European Works Councils, information must be provided in accordance with established procedures.

Within seven days of receiving the information outlined above, the workers' representatives and trade unions are entitled to request a consultation meeting. Consultation must commence within seven days of receipt of such a request. The procedure is deemed complete 10 days after the commencement of the consultations regardless of whether the parties reached agreement on the transfer.

12.3 Notification of authorities

There is no obligation to supply information and/or consult or negotiate with any public authorities in relation to the transfer of an undertaking.

12.4 Liabilities

Failure by the transferor and the transferee to comply with the information and consultation obligations constitutes an unfair union practice, in breach of the Workers' Bill of Rights. In the case of such a breach the trade union can seek a court injunction ordering the employer to cease such breaches.

An employer that fails to comply with an injunction (or subsequent appeal decision) will be liable to criminal sanctions (i.e. imprisonment for up to three months or a fine of up to Euro 206). It is generally very rare for imprisonment to arise.

According to recent case law the validity of a transfer agreement will not be affected by a failure to comply with information and consultation obligations. This contrasts with earlier court decisions to the effect that a failure to inform and consult renders a transfer agreement either null and void or without legal effect in relation to the employees until the information/consultation procedure is completed. There is no obligation to obtain consent to a transfer from trade unions and/or workers' representatives, and they have no right of veto.

The seller and the buyer are jointly liable for all the employees' rights at the date of the transfer. The Italian Civil Code, as amended by recent Legislative Decree No. 251/2004, states that if a transfer of an undertaking is followed by a supply contract between the seller (as principal) and the buyer (as contractor) to be performed using the undertakings (or part of an undertaking) transferred, for a period of one year following the transfer a claim may be brought against the seller as well as the buyer, by the employees for payment of salary allowances and social security contributions owed to them (unless this liability is expressly excluded in the relevant national collective agreement).

In addition to the minimum legal obligations set out above, more favourable provisions may be contained in any applicable collective agreements.

13. Termination

13.1 Notice

Both parties can terminate a contract (other than a fixed-term contract) by giving due notice, but termination by the employer is generally possible only if it is for just cause or justified reasons (see 13.2).

Notice periods are regulated by collective agreements (and to a lesser extent by individual contracts) by reference to service and grade. They tend to range from approximately two weeks for blue collar workers to three months for senior managers or up to 12 months for executives.

Failure of either employer or employee to give proper notice will make the defaulting party liable to pay compensation to the other party of a sum equal to the pay due to the employee for the notice period.

13.2 Reasons for Dismissal

Dismissal by the employer generally has to be for just cause (*giusta causa*), or there must be justified reasons (*giustificato motivo*).

In the case of justified reasons (whether objective ones relating to the undertaking or subjective ones relating to the employee), full notice and a termination payment must be given.

For there to be just cause, there must be grave misconduct, so that the employment relationship is deemed to be unable to continue, even provisionally. In this case, no notice need be given, although the employee is still entitled to the termination payment.

Disciplinary sanctions against an employee are regulated by statute, collective agreements and disciplinary codes laid down by the employer. Failure by the employer to post a copy of the disciplinary procedures in each production unit renders the disciplinary sanction void. An employee may challenge any disciplinary procedure by requesting that an independent conciliation and arbitration board investigate the matter. If disciplinary procedures are not complied with, the employer's failure to comply can be challenged in Court.

Dismissal must be promptly notified to the employee in writing. The notice must state in detail the reasons for the dismissal (just cause or justified reason). Failure to observe these requirements renders the dismissal ineffective.

A termination payment is defined by law as a deferred compensation which an employee is entitled to receive upon termination of employment, whether in the case of resignation or dismissal, and regardless of the reasons.

The amount of a termination payment is calculated according to a complex formula, which approximately represents the annual salary (including payments in kind) paid each year divided by 13.5. Employers set aside such termination payments annually as reserves in the balance sheet throughout the employment. The law provides that employees with at least eight years' service are entitled to ask the employer for an advance payment equal to 70 per cent of the accrued termination payment; requests must be satisfied annually in respect of up to ten per cent of the employees entitled to such advance payments or, in any case, in respect of up to four per cent of the total number of employees.

An employee who has been dismissed without just cause or justified reasons can make a complaint to the local *Tribunale*. Reinstatement orders can be made only in respect of undertakings with more than 15 employees.
An employee who obtains a reinstatement order is in a strong position. The employer must pay full salary and benefits until the order is complied with (minimum payment is equal to five months' salary). The employee can decide whether to accept an employer's offer of reinstatement. As an alternative to reinstatement, the employee may ask for a payment equal to 15 months' salary. Employees in undertakings with less than 15 employees are entitled to a payment which varies between two and a half and six months' salary depending upon seniority.

13.3 Special Protection

Certain types of employees, such as pregnant women, employees who have a child up to one year of age or employees on military service enjoy some indirect protection against dismissal. In these cases, it is for the employer to prove that there is just cause for dismissal which is not related to the person's condition or status. Trade union members and employee representatives benefit from more specific protection in relation to their duties.

13.4 Closures and Collective Dismissals

The law regulates collective dismissals and provides that employers in undertakings with more than 15 employees who intend to dismiss more than five employees (within a period of 120 days) for the purpose of restructuring operations, are required to carry out a complex consultation and negotiation procedure with trade unions, which may have a duration of 75 days. If this procedure is not complied with, the Courts can declare any subsequent dismissal void.

14. Data Protection

14.1 Employment Records

Legislative Decree No. 196/2003 regulates the processing of personal data, including the collection, storage and use of information regarding employees (the "**Consolidated Act**").

The Consolidated Act, consolidates pre-existing legislation rather than introducing major changes and it sets out very precise requirements to be followed for the lawful processing of personal data. Workers' Bill of Rights also regulates the processing of data.

As a general rule, employers, as do all other data controllers, have to comply with the specific principles of the Consolidated Act when processing sensitive personal data, i.e. any data which identifies the employee's religious, sexual, or political orientation, or membership of or affiliation to any other group or union. An employee's prior written consent and authorisation from the Italian data protection authority are generally necessary to process sensitive data, subject to a limited number of exceptions. The Italian data protection authority grants an authorisation to employers to process sensitive data for employment purposes annually. This authorisation describes the permitted purposes of the processing, the data subjects covered, the processing arrangements, data categories and the methods for data maintenance, communication and dissemination.

An employee's prior consent is required for the processing of personal data. Such consent is valid only if freely given, documented in writing, and the employee has been informed of the following:

(i) the purposes and methods of the processing of the data being requested;

(ii) whether compliance with the request for the data is mandatory or voluntary;

(iii) the consequences of a refusal or failure to reply;

(iv) the categories of person to whom the data may be communicated and the geographic area within which the data may be disseminated;

(v) the right to access his/her personal data, and of the right to have his/her personal data updated, erased, blocked or rendered anonymous if it is incorrect or has been obtained unlawfully. For these purposes, personal data which is not necessary for the purposes for which it was collected or processed is considered unlawfully obtained and may not be retained;

(vi) who the person responsible for the processing will be.

As a general principle, consent is not required if the processing of personal data meets at least one of a series of justifying conditions, specified in the Consolidated Act. Consent is not necessary if (i) the processing is necessary for compliance with a legal obligation; (ii) the processing is necessary for the performance of a contract to which the data subject is a party; (iii) the processing concerns data taken from public registers, lists, documents or records that are publicly available; (iv) the processing concerns data relating to economic activities that are processed in compliance with the legislation in force as applying to business and industrial secrecy; (v) the processing is necessary to protect life or bodily integrity of a person; (vi) the processing is necessary for carrying out investigations or defend a legal claim; (viii) the processing is necessary for the purposes of legitimate interests of either the data controller or a third party recipient in the cases specified by the Italian data protection authority, in circumstances where those interests are not overridden by the interests or fundamental rights and freedoms of the data subjects; (ix) the processing is carried out by no-profit associations; and (x) the processing is necessary exclusively for scientific or statistical purposes. The condition relating to the performance of a contract to which the data subject is a party of relatively broad application. This condition may be applicable in the context of an employment relationship to the extent that the processing of the employees' personal data is necessary for the employer in order to perform its obligations in the relationship.

Employers are prohibited from investigating and collecting data regarding religious and political opinions, including opinions relating to trade unions. Any act or decision taken by an employer on the basis of the political opinion, ethnic origin, language or gender of any employee may also be discriminatory and therefore void, and the presence of such data on a personnel file could be used in court as evidence of discrimination.

As a general rule, the employer cannot control, for instance, the contents of its employees' e-mail, unless a series of conditions are met. Any breach by the employer of the relevant data protection rules can lead to an administrative fine ranging from € 3,000 to € 90,000. In addition, an additional administrative sanction in the form of the publication of an injunctive order may also be applied. Finally, if the employer causes damage to his/her employees as a consequence of the processing of their personal data it may be liable to pay civil damages pursuant to Article 2050 of the Italian Civil Code. Criminal sanctions only apply if (i) personal data are unlawfully processed with a view to making a profit or to causing harm to another; (ii) the relevant minimum security measures required by the law are not adopted; or (iii) the provisions issued by the Italian data protection authority are not complied with.

14.2 Employee Access to Data

Employees are entitled to obtain, upon simple oral request, confirmation that personal data about their job exists, even if the data is not yet recorded, and to be clearly informed about the nature of the data, the origin of their personal data, the aim and terms of the data processing, the identity of the person responsible for the data processing and the people to whom the data can be disclosed. The processing of employees' data by means of automated calling systems, email, facsimile, MMS or SMS or other electronic communications means for advertising purposes is only permitted with the prior employee consent (on an "opt-in" basis). In any event, direct marketing must not disguise the identity of the data controller and must provide a means by which the employee can exercise his or her right to object without being penalised as a consequence of doing so.

14.3 Monitoring

The Consolidated Act does not contain specific provisions governing the monitoring of employee communications, whether e-mail, Internet use, telephone, fax or voicemail, therefore this activity must be considered subject to the general principles and conditions governing the processing of personal data. The Consolidated Act does, however, prohibit any kind of remote audio-visual systems such as CCTV in the work place aimed at monitoring the activity of workers, unless the requirements of the Workers' Bill of Rights are met. There is a risk that monitoring e-mails sent or stored by employees, internet access or telephone calls during working hours could be classified as an indirect means of remotely controlling employees' working activities. An employer may set up audio-visual systems or similar systems monitoring the activities of employees, if:

(vii) they are necessary because of specific and defined organisational and technical needs (e.g. in order to ensure safety in the work place or due to the particular business carried out by the employer); and

(viii) the works council has given its prior consent. In the absence of a works council or in the event that an agreement with the works council cannot be reached, the employer is entitled to file a request with the Labour Office in order to obtain the relevant authorisation from the Labour Authority. In the absence of such agreement or authorisation, the audio visual system or similar technical device should not be set up and the employees' awareness of the introduction of remote control devices into the workplace or the individual employee's acceptance is not deemed valid consent for this purpose.

14.4 Transmission of Data to Third Party

Employers may transfer personal and sensitive data to third parties provided that: (i) employees have been previously informed of the entities to which their data may be transferred and have consented to the transfer; and (ii) the transfer is for a legitimate purpose.

The Consolidated Act generally prohibits the transfer of personal data outside the European Union if the laws of the destination countries do not guarantee a level of protection equal to the protection offered by Italian and European law. Non-EU transfers will nevertheless be permitted if the employee consents to the transfer in writing, or for example if the transfer is necessary (i) to perform obligations arising from a contract to which the employee is a party, (ii) to gather information at the employee's request prior to the conclusion of a contract, or (iii) for the conclusion or performance of a contract in the interests of the employee.

Latvia

1. Introduction

The basic legislative act that regulates employment relationships in Latvia is the Labour Law, *Darba likums* (LL), which came into force on 1 June 2002. It regulates the major aspects of employment ranging from job advertisements to claims against unjustified dismissals. The LL establishes a minimum bench mark for employment rights and obligations, accordingly any provisions in employment contracts, collective agreements, internal work regulations etc which reduce these minimum employment rights are void.

2. Categories of Employees

2.1 General

Any person, who performs work under an employment contract, is deemed to be an employee (*darbinieks*), and the other party to an employment contract is always the employer (*darba devējs*). The LL applies to the legal relations between any employee and his or her employer.

The law specifically provides that part-time employees and employees with a fixed-term contract are entitled to the same conditions as full-time and indefinite term employees. Moreover, the law provides that employment contracts must generally be for an indefinite duration, and only in certain specified cases is a fixed-term contract justified.

2.2 Directors

Under the provisions of the LL members of the management boards (*valdes loceklis*) and supervisory boards (*padomes loceklis*) of companies can be employed under contracts other than employment contracts. In such cases the mandatory provisions of the LL do not apply, giving a company greater flexibility. Employment contracts concluded with a board member must be of a fixed duration.

3. Hiring

3.1 Recruitment

The State Employment Agency, *Nodarbinātības Valsts aģentūra* (SEA) offers personnel services to employers, which can be useful, in particular for finding lower level employees. Private recruitment agencies must have a licence from the SEA. Internet-based placement firms are becoming increasingly popular among younger persons looking for work.

The LL regulates several other issues in relation to the recruitment of employees, including the right of the employer to request that a candidate undergo a medical prior to recruitment. There are also restrictions on what may be included in a job advertisement and on the type of question that may be asked during a job interview, e.g. regarding a candidate's marital status, pregnancy, religious beliefs, national or ethnic origin.

3.2 Work Permits

A non-EEA national will in most cases have to obtain a work permit from the Office of Citizenship and Migration Affairs, *Pilsonības un migrācijas lietu pārvalde* (OCMA). First, the employer must submit a "work summons" to the State Employment Agency, *Nodarbinātī bas valsts aģentūra* (SEA) with supplemental documents in relation to the proposed employment, including the draft employment contract. A "work summons" can, however, only be submitted to the SEA after the vacant job has been registered at the SEA for at least one month and has remained vacant. The resident employer in Latvia will, in addition, have to affirm an official offer at the OCMA which in practice means than an employer recruiting a foreign employee will have to have the offer approved by the OCMA.

After the work summons is approved, the employee must submit it together with other required documents to an embassy or other representative office of Latvia abroad in order to obtain a residence permit from the OCMA.

4. Discrimination

All employees have a right to equal work, just remuneration and just, safe and non-hazardous working conditions. Direct or indirect discrimination at any stage of employment (including recruitment) on the grounds of a person's race, colour, gender, age, disability, religious, political or other conviction, national or social origin, wealth or family status, sexual orientation is unlawful.

It is unlawful to discriminate against an employee on the grounds of his/her membership of an organisation for the protection of employees' social, economic and professional interests (mainly trade unions). In addition, it is unlawful to subject an employee to detrimental treatment because he or she has exercised his employment rights legitimately and in the event of a dispute the employer bears the burden of proving that the detrimental treatment did not result from the employee's exercise of his or her rights.

The LL also imposes a general obligation on employers to take reasonably adequate measures in order to adapt the working environment for disabled persons, to facilitate their recruitment, promotion and training.

5. Contracts of Employment

5.1 Freedom of Contract

The LL provides that those provisions of employment contracts, collective agreements, internal work regulations and the employer's instructions, which fall below the mandatory minimum rights and obligations stipulated by the LL, are void and are unenforceable against an employee.

5.2 Form

Employment contracts have to be concluded in writing in duplicate, one copy must be given to the employee, and certain minimum information required by the LL has to be set out in the contract. If an employment contract is not set out in writing, an employee can make a written assertion that it has been concluded, using any means of proof of the existence of employment. In the meantime, an oral employment contract has the same consequences as a written one if at least one party has begun to perform it.

Employment contracts have to be concluded for an indefinite period of time, subject to a number of limited exceptions, such as seasonal work,

providing cover for an employee temporarily absent, incidental work not characteristic for the undertaking, etc. The maximum aggregate term for a single fixed-term employment contract or consecutive fixed-term contracts between the same parties is three years. However, although a seasonal work contract cannot exceed 10 months, an employment contract with an employee who is providing cover for a temporarily absent employee can exceed three years. If, upon the expiry of the fixed term, neither party requests the termination of employment and it continues de facto, the employment contract is deemed to be for an indefinite term.

5.3 Trial Periods

It is common for employers to require a trial period and this must be expressly agreed in the employment contract. The maximum probation term is three months, excluding temporary employee incapacity and other justified absence. During this term either party may give the other party three days' prior notice of termination, without having to state the reason for termination. If an employee considers that he or she has been dismissed during a probationary period in breach of the principle of equal treatment, that employee may bring a claim before the court within one month of receiving the termination notice.

5.4 Confidentiality and Non-Competition

An employee has a statutory obligation not to disclose information that is regarded to be the employer's commercial secret, and to take care so that commercial secrets do not become directly or indirectly available to a third party. The employer must therefore indicate to the employee which information qualifies as a commercial secret. The Commercial Law (*Komerclikums*) sets out additional conditions, which must be fulfilled before an employer can classify information as a commercial secret, e.g. the information must not be generally available to third parties, and the employer must have taken reasonable measures for the preservation of the confidentiality of the information. It is advisable for employers to prescribe in detail in the employment contract the categories of information regarded as commercial secrets, and to specify that the confidentiality clause will continue to apply following the termination of employment.

During the employment relationship the employer may restrict the employee's right to take up work with other employers (by-work), insofar as the restriction is justified to protect legitimate interests of the employer, in particular if the by-work may adversely affect the employee's performance of his/her obligations.

The employee and the employer may also conclude post-termination restrictive covenants in relation to the employee's professional activity. The maximum term of a non-compete provision is two years, and an adequate monthly compensation is paid to the employee for the duration of the restriction.

5.5 Intellectual Property

Generally, if an employee creates work that is the subject of copyright, the economic rights to the work can be transferred to the employer, if the employment contract or other agreement so provides. In relation to software created under the employer's instructions, the law presumes that all economic rights belong to the employer, unless the contract provides otherwise. An employer is entitled to an employee's invention, if it is produced while performing work under an the employment contract that involves inventive activity, or as a result of carrying out duties at the employer's request that involve research, construction, or specific projects, etc. However, in practice it is advisable that the rights and obligations of the employer and the employee are defined in greater detail in the employment contract or collective agreement.

6. Pay and Benefits

6.1 Basic Pay

The statutory minimum wage at present equals LVL 120 (approx. €171) per month or LVL 0,713 (approx. €1) per hour (this is slightly higher for some categories of employee, whose weekly working time is 35 hours instead of 40). The employer is obliged to ensure equal pay for equal work, or, work of equivalent value to employees without discrimination. If the amount of remuneration that an employee receives is contrary to the principle of equal treatment, the employee may within a certain term bring a claim before the court for adequate remuneration.

Subject to the minimum wage, there are no other statutory conditions regulating the amount of remuneration, and employment contracts do not generally provide for a regular increase of salary.

6.2 Private Pensions

Pension funds have now existed in Latvia for more than seven years. Closed pension funds are those established by employers, and only employers may be shareholders of closed funds; these funds are only open to the employees of the founders and shareholders of the respective fund. Open pension funds are, by contrast, those whose founders and shareholders are banks with a license to accept deposits from natural persons in Latvia or Latvian-registered life assurance companies. The latter are gradually becoming popular, especially with younger generation employees. Participation is purely voluntary, and can occur either via individual or collective participation. In the latter case, an employer must conclude a collective participation agreement. There are strict legal requirements as to the content of participation agreements for the protection of the interests of the participants.

6.3 Incentive Schemes

There is no statutory obligation to introduce such schemes, although they are becoming more common in contracts with senior management of companies; these can include annual bonuses and share options in the company.

6.4 Fringe Benefits

It is increasingly common for employers in both the public and private sector to procure medical insurance for their staff. Other common fringe benefits include reimbursement of mobile phone expenses and the provision of company cars for senior employees.

6.5 Deductions

An employer is obliged to withhold the employee's obligatory social insurance payments and income tax before paying the salary to the employee. Additional deductions from the employee's net salary deriving from the employer's claims (e.g. for damage to or loss of the employer's property) against the employee can be made within the limits prescribed by the law (generally up to 20 per cent). If the deductions are intended to cover damages caused by the employee to the employer, the employee's written consent must first be obtained.

7. Social Security

7.1 Coverage

The State social security system covers state pensions (old age, disability, survivor's pension), allowances and benefits (maternity, paternity, sickness, unemployment, temporary disability, death grant, child care, child adoption, family benefit, etc). Since the reform of the State pension scheme, a part of the social insurance payments for younger generation employees (below the age of 30 on 1 July 2001) are included in the funded pension scheme, which is executed by the Exchequer or licensed investment management companies. Older employees can join the funded pension scheme voluntarily.

7.2 Contributions

The total amount of contribution equals 33.09 per cent of the taxable base (broadly speaking, all income gained in employment), and the employer covers a 24.09 per cent share of it, whereas the employee pays a nine per cent share. The minimum taxable base for social insurance contributions is LVL 1800 (approx. €2571) per year, whereas the maximum base is LVL 23,800 (approx. € 34,000) per year.

8. Hours of Work

The LL includes detailed regulations on working and rest time and sets the normal working time at 40 hours per week and eight hours per day. A normal five day working week can be changed to six days of work every week, if necessitated by the nature of the work, and employees' representatives have been consulted. Overtime is allowed only if the employer and the employee have agreed in writing, and may not exceed 144 hours in four months. Aggregated work can be provided, if normal working time is impossible to maintain, and may not exceed 56 hours per week and 160 hours in four weeks. Shift work can be introduced if it is necessary to ensure continuous work at an undertaking.

The LL sets the normal daily rest time at a minimum of 12 hours, and the minimum weekly rest amounts to a period of 42 hours without interruption, except in the event of aggregated work. Sunday is a general holiday, however working is permitted on that day if continuous work must be ensured and a different rest day is granted.

9. Holidays and Time Off

9.1 Holidays

There are 14 statutory holidays in Latvia (some of them on Sundays, e.g. Easter Sunday). Employees are entitled to a minimum of four weeks of annual paid leave. It is allocated on a pro rata basis depending on the time the employee has spent working, and can be claimed after the employee has worked at least six months for the employer.
Annual paid leave may, in exceptional circumstances, be postponed to the following year, but may not be compensated by money, except on termination of employment.

9.2 Family Leave

Pregnancy leave and birth leave are calculated together and amount to 112 days, which are granted as a single leave period. In some cases additional pregnancy leave will be granted. Pay during this leave is provided by the State social security system. It is 100 per cent of the average monthly salary calculated according to a set formula. Paid paternity leave and leave for one of the adoptive parents of a child of no more than three years of age is ten days. Any employee has the right to paid child care leave of up to one and a half years of age, in relation to the birth or adoption, of a child. Childcare leave is paid from the Social Security System. Upon returning from any of these periods of leave, the employee is entitled to return to the same position, or, if that is not possible, to a similar or equivalent position with equally beneficial conditions of employment.

9.3 Illness

If an employee is temporarily incapacitated due to illness and obtains a physician's note (*darba nespējas lapa*) certifying that he or she is unable to work, the employer will have to pay an illness allowance to the employee (75 per cent of the average remuneration for the second and third day of illness, and 80 per cent starting from the fourth day) up to the fourteenth day of illness. From the 15th day of illness, the allowance is paid by the State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*) from the social insurance budget.

9.4 Other time off

Regular study leave can be prescribed in the employment contract or collective agreements, however an employee can claim 20 business days of paid leave per year in order to sit state exams or to write a diploma thesis at the end of his studies.

10. Health and Safety

10.1 Accidents

The Labour Safety Law (*Darba aizsardzī bas likums*) sets out an employer's general obligations in this area e.g. an obligation to assess labour safety risk factors in the undertaking, mandatory health inspections for certain categories of employees, etc. In addition, numerous Governmental regulations set out detailed labour safety requirements for particular kinds of work. Compliance with all these requirements is supervised by the State Labour Inspection (*Valsts darba inspekcija*). There is no particular obligation for an employer to provide health insurance for employees, since social assistance in the event of an accident at work is provided under the compulsory social security (social insurance) system.

10.2 Health and Safety Consultation

An employer is required to consult employees or labour safety representatives (shop stewards), which should be elected by employees if the undertaking or unit thereof has five or more employees. In addition, the employer must appoint one or several

labour safety experts in the undertaking depending on the number of employees.

11. Industrial Relations

11.1 Trade Unions

The right to unite in trade unions is a fundamental right of employees, protected under the Constitution (*Satversme*). The role of trade unions changed fundamentally after the reestablishment of independence from the Soviet Union, where trade union membership had been high and unions were used to help in the achievement of the political goals of the communist regime. Union membership has generally been constant over the last five years, at slightly below 20 per cent of the national workforce. Unions are usually related to a particular sector of the industry, and most of them are united under one federation (*Latvijas Brīvo arodbiedrību savienība*).

Trade unions are one form of employees' representatives, therefore they have the basic rights attached to representation, including access to the undertaking and the right to hold meetings there. Trade unions have a priority right to conclude collective agreements and their consent must be obtained in some cases before a member can be dismissed.

11.2 Collective Agreements

Collective agreements (*darba koplīgums*) must be in writing and are usually concluded at the undertaking level, i.e. between a particular employer and a trade union; general agreements at industry level (*ģenerālvienošanās*) are less common. Trade unions have priority over authorised employees' representatives (elected individuals from amongst the employees) in concluding a collective agreement. A collective agreement will cover all the employees in an undertaking unless the collective agreement itself provides otherwise, and will be enforceable.

The LL establishes a basic procedure for the conclusion of a collective agreement, and the employer (or association of employers) cannot refuse to negotiate. A collective agreement must be for a particular assignment or for a fixed term. However, after the term has expired, the provisions of the collective agreement remain applicable until the conclusion of a new one.

11.3 Trade Disputes

Strikes are permitted in the case of collective disputes of interests, although the preliminary procedure for the resolution of such disputes, established by the Labour Dispute Law (*Darba strīdu likums*) has to be observed.
The decision to strike must be taken by a trade union at a general meeting attended by more than 50 per cent of the members (or their representatives). The decision to strike must be taken by employees at a general meeting attended by at least 50 per cent of the employees of the undertaking. A strike must be notified to the employer at least seven days in advance. Employees taking part in the strike may not be dismissed, and are entitled to return to their previous position afterwards.

The right to strike is restricted in a number of cases, including the prohibition to strike in support of political demands, or during the term of a concluded collective agreement with the aim of amending it. Solidarity strikes are uncommon and are only permitted in connection with the failure to conclude or observe a general agreement (on tariffs or social/labour guarantees at industry level). Employers are entitled to lock-outs in the event of a strike, although the number of employees subject to a lock-out may not exceed the number of employees on strike.

11.4 Information, Consultation and Participation

Employers are obligated to provide information to employees' representatives and to consult them before taking decisions, which can affect the interests of the employees. Consulting is defined as a dialogue and exchange of opinions with a view to achieving a consensus. Employees' representatives are entitled to require information on the social and economic status of the undertaking, and information necessary for the conclusion of a collective agreement.

Employees' representatives are entitled to be consulted prior to decisions being taken in relation to the following issues: determination of work norms, internal work regulations, the establishment of a six-day working week, shift work, aggregated work, breaks and vacation schedule. There are also more detailed consultation obligations in relation to collective redundancies and transfers of undertakings.

The European Works Councils' Directive has been transposed into national law.

12. Acquisitions and Mergers

12.1 General

The Acquired Rights Directive has been implemented in Latvia. The transfer of an undertaking or an independent part of it, as well as mergers and acquisitions of companies, are subject to the regulation in the LL relating to the transfer of an undertaking. In general, the obligations arising from the employment relationships existing at the time of the transfer, will pass from the transferor employer to the transferee employer; this also includes any collective agreement in force at the time of the transfer, the provisions of which cannot be amended to the detriment of the employees for a one year period following the transfer. An exception to this rule is the transfer of an undertaking within the context of bankruptcy proceedings. The transfer itself is not a valid reason for termination, it is however possible to terminate for general reasons e.g. dismissals justified by the implementation of economic, organisational, technological measures, or, measures of a similar nature in the undertaking.

12.2 Information and Consultation Requirements

The transferor and transferee must inform the representatives of their employees or if such representatives are not elected - the employees about: (i) the date or proposed date of the transfer; (ii) the reasons for the transfer; (iii) the legal, social and economic implications of the transfer of employees; and (iv) any measures or activities envisaged in relation to the employees.

The transferor must provide this information to his employees not later than one month before the transfer. The transferee must provide this information to the employees not later than one month before the transfer starts directly affecting the working conditions and employment terms of his employees.

Where the transferor or transferee has planned to take certain organisational, technological or social measures in relation to his employees in connection with the envisaged transfer, it is under an obligation to start consultations with the representatives of the employees not later than three weeks before the transfer with an aim of reaching an agreement on such measures and their implementation. The obligation to start consultation, however, does not create any obligation on the employer to actually reach agreement.

There are no thresholds in terms of number of employees triggering the information obligation. The obligation of information and consultation must be performed before the transfer. In principle the documentation giving effect to the transaction (e.g. sale and purchase agreement) underlying the transfer can be signed before the information and consultation takes place, provided the transfer takes place after the information and consultation is performed in time as described above.

The LL does not prescribe any time frame as to the length of the information and consultation process.
The information process in practice should not be a time consuming process as it merely involves the provision of information. The consultation might take more time. However, given the fact that the consultation does not create any obligation on the employer with regard to the outcome of the consultation, the employer may be in a position to control the time frame of the consultation process.

12.3 Notification of Authorities

There is no obligation to supply information or consult with state or regulatory bodies in relation to the transfer of an undertaking.

12.4 Liabilities

Failure to comply with information and consultation obligations in relation to the transfer of undertakings may give rise to an administrative fine up to €700.
The fine would be imposed on the management of the transferor or transferee, if they were legal entities.
In addition, the employee(s) adversely affected by the transfer could claim appropriate compensation. For example, if an employee is unjustifiably dismissed as a result of the transfer of undertaking, the employee could claim the annulment of the dismissal and payment of average earnings for the whole duration of the dismissal. The possibility that a violation of the procedural requirements associated with the transfer of an undertaking could lead to the annulment of the actual transfer cannot be ruled out.

13. Termination

13.1 Individual Termination

An employer wishing to bring an employment contract to an end must be careful to ensure that the provisions of the LL in relation to the reasons for and procedure leading to dismissal are satisfied.

Exceptionally, the employer may apply to the court for permission to dismiss an employee when he has a relevant reason, but none of the explicit clauses of the LL are applicable to the particular circumstances.

13.2 Notice

Dismissal during a probationary period requires a three day notice period.
In other cases, the minimum notice period, established by the LL, is either none, 10 days or one month, depending on the particular clause of the LL, which is used as grounds for the dismissal. The employment contract or collective agreement may provide for longer periods of notice.

The employer must give the dismissal notice in writing. In the event of dismissal due to the employee's behaviour, he must first require the employee's written explanation, and when deciding whether to dismiss, or not, the gravity of the breach, the employee's previous work, etc. must be considered. The dismissal may only take place within one month of the discovery of the violation, and in any event no later than six months after the violation was committed.

13.3 Reasons for Dismissal

During the probationary period, an employee may be dismissed without the need to give reasons. Aside from that, the LL sets out an exhaustive list of grounds on which an employee may be dismissed. These must be related either to the employee's behaviour (e.g. appearing intoxicated at work, grave violation of the employment contract, breach of work safety rules leading to endangerment of the safety and health of other persons), his capabilities (the employee lacks professional skills for performing the work or is medically certified as incapable of performing the work due to his health status), or economic, organisational, technological measures, or, measures of a similar nature in the undertaking (liquidation of the employer, reinstatement of the previous employee to the same work, or reduction in the number of employees).
In any event, the employer must notify the employee in writing of the reasons underlying the dismissal (this can be included in the dismissal notice). The employee is entitled to full pay during the notice period.

A dismissal on grounds related to the employee's capabilities or economic, organisational, technological measures, or, measures of a similar nature in the undertaking (except the liquidation of the employer) can only be implemented if it is impossible to transfer the employee to another position in the undertaking, where the employee can work, with the employee's consent.

The employer and the employees' representatives can agree on the establishment of a labour dispute commission (*darba strīdu komisija*) in the undertaking. However, these institutions are not common in private sector undertakings.

Once the employer gives notice to the employee, the latter can challenge it by filing a claim in court within one month (unless a labour dispute commission

procedure is applicable). Generally, if the court finds the dismissal unjustified, the employee will be reinstated (unless he or she requests otherwise) and his average remuneration for the period of forced absence from work (i.e. period of unjustified dismissal) will have to be paid.

It is the employer's obligation to prove that the dismissal occurred in accordance with the law, and was justified.

13.4 Special Protection

An employee may not give notice of dismissal to an employee during absence due to sickness or other justified reasons. In addition, the law restricts the right to dismiss a pregnant employee or for one year following childbirth (or through-out the breastfeeding period) or a disabled employee (although dismissal on the basis of the employee's behaviour is still allowed).

A member of a trade union can in most cases only be dismissed with the consent of the trade union, therefore, before giving notice of dismissal, the employer must find out whether the employee belongs to a union. A work safety shop steward (elected by the employees) can only be dismissed with the permission of the State Labour Inspection.

13.5 Closures and Collective Dismissals

If the number of employees, dismissed from an undertaking due to a "reduction in the number of employees" (*darbinieku skaita samazināšana*) within 30 days exceeds a certain threshold (from five to 30 employees, depending on the total number of employees in the undertaking) the dismissals are classified as a collective dismissal. This imposes an obligation on the employer to carry out a collective dismissal, to provide employees' representatives with detailed information on the dismissal and commence consultations with them in good time, in order to agree on the number of employees subject to dismissal and their social guarantees (i.e. dismissal benefits, pensions schemes in addition to the State Social insurance schemes and other issues arising from the Collective agreement or employment contract), as well as the dismissal procedure itself. In addition, the employer must notify the Employment State Agency (*Nodarbinātī bas valsts aģentūra*) and the local municipality of the undertaking at least 60 days in advance.

It should be emphasised that a collective dismissal includes only those employees, who are subject to dismissal due to a "reduction in the number of employees". This is defined by the law as a dismissal for reasons, which are not related to the employee's behaviour or capabilities, but is sufficiently justified by the implementation of urgent economic, organisational, technological measures, or, measures of a similar nature in the undertaking.

14. Data Protection

14.1 Employment Records

Under the LL an employer may transfer the information acquired from, and, the documents submitted by a job applicant in applying for work only to the persons who take the decision about the recruitment of that applicant. The information and documents may be disclosed to third parties only with the consent of the job applicant. Moreover, information about the employee's health status and professional qualifications, which the employer has obtained upon the employee's application for work, may be used by the employer only in order to carry out organisational, technical or social measures in the undertaking, and the employer is liable to ensure that such information is only available to persons who use them for carrying out the respective measures.

The Natural Persons Data Protection Law (*Fizisko personu datu aizsardzības likums; hereinafter - NPDPL*), which implements the EU Data Protection Directive, is applicable to employers as system controllers. Therefore, a local employee will normally have to register its employment records filing system with the Data State Inspection (*Datu valsts inspekcija*).

14.2 Employee Access to Data

Under the NPDPL an employee has the rights of any personal data subject, namely, to obtain all information about him or herself, which is held in a personal data filing system.

14.3 Monitoring

Although the fundamental right to privacy is constitutionally recognised, most of the legislation in force deals with the rights and obligations of the State in this context (e.g. the right of investigation authorities to monitor telephone communication), and at present there is little regulation that applies to other private individuals. Therefore, it is recommended that, at the very least, the employer should inform the employees about any form or surveillance or monitoring that the employer carries out, and include a reference to that in the employment contracts and internal work regulations.

14.4 Transmission of Data to Third Parties

As indicated earlier, the employer may only transfer information acquired from and the documents submitted by a job applicant in applying for work to the persons who prepare the decision about the hiring of that applicant, and that information may not be disclosed to third parties without the consent of the job applicant.

Lithuania

1. Introduction

Employment relations in Lithuania are basically regulated by the Labour Code (2002). This regulates the formation, amendments to and termination of employment contracts, salaries, vacation, liability, dispute settlement, etc., and in practice is applied to almost all employment relations.

Employment relations with civil servants, persons working in certain services, such as the police, the prosecutor's office and certain other employees, are regulated by the Law on Public Service as well as specific legislation and government resolutions. Relations with trade unions are regulated by the Law on Trade Unions and the Labour Code.

Employment contracts must be drawn up in accordance with legislative requirements and it is unlawful to seek to contract out of the minimum employment rights established by legislation. In certain cases, however, collective agreements may establish conditions deviating from the legislative provisions provided it is expressly sanctioned by the relevant legislation.

Trade unions and work councils can be established in enterprises, however, collective representation of employees is not very well developed. Therefore, in general, the influence of collective agreements on employment relations is not significant. Labour disputes are usually handled by the courts.

2. Categories of Employees

2.1 General

Lithuanian legislation does not distinguish between blue collar and white collar employees. There are no specific regulations in relation to the employment of directors, other than in relation to working time and termination.

2.2 Directors

The Labour Code provides that the work of administrative (management) officials of a company which exceeds the contractual working time is not deemed overtime work. In addition general managers and members of the Management Board of companies are not as a matter of law entitled to termination notice and severance pay, unless such guarantees are established in the employment contract.

2.3 Other

Part-time work is permissible by mutual agreement. The part-time contract must arise at the request of the employee due to his/her medically certified state of health, at the request of a pregnant woman, a woman who has recently given birth, or who is breast-feeding, an employee raising a child under three years of age, an employee who is a single parent of a child under fourteen or a disabled child under eighteen years of age, an employee under 18 years of age, an employee medically certified as disabled, employees nursing a sick family member. The employment contract must expressly address the part-time working conditions and if a full-time contract is varied it must be amended to reflect the new part-time arrangements.

The salary for the part-time employees must be proportionally equivalent to the salary paid to equivalent full-time employees. The number of part-time employees is subject to limitations and in certain cases it has to be reported to the State Labour Inspectorate.

Fixed-term employment contracts may not exceed five years. Under the provisions of the Labour Code, employment contracts are normally of an indefinite duration; fixed-term employment contracts are accordingly unlawful if the employment is of a permanent nature, unless there is an applicable exception as a matter of law or collective bargaining agreement.

If another fixed term employment contract for the same role is concluded with the same employee within one month of the expiry of a previous fixed term contract, such a contract can be classified as a contract of indefinite duration, at the request of the employee.

Employees working under a fixed-term contract are subject to the same social guarantees as employees working under an employment contract of an indefinite duration.

Temporary employment contracts are concluded where necessary for urgent or short-term work, or to provide cover for employees temporarily absent (due to illness, vacation etc.). Fixed term contracts of up to two months may also be concluded with students, during their vacations.

Employees working under temporary employment contracts are subject to the same rules in relation to working time, they are not subject to a trial period, or granted vacations. They do receive severance pay if the temporary contract is terminated. If the fixed term of a temporary employment contract has expired but the employment relationship actually continues and neither party has served notice of termination prior to the expiration of the term, the contract will be deemed extended for an indefinite term.

In certain circumstances, an employee has the option of agreeing to perform additional work (not specified in the contract) at the same workplace, or to undertake secondary duties. An employee wishing to undertake secondary duties must, prior to the conclusion of an employment contract, provide the employer proposing to hire him for the performance of the secondary duties with a certificate from the principal employer specifying the time when the daily work starts and ends in the principal working place.

Home workers perform their work at home by agreement with the employer. The working time of a home worker may not exceed 40 hours a week. A home worker is not subject to the internal rules of the employer.

3. Hiring

3.1 Recruitment

Employers are free to select personnel as they wish subject to compliance with the rules that outlaw discrimination.

3.2 Work Permits

The Law on Legal Status of Foreigners, provides that a foreigner must obtain a temporary residence permit if he or she plans to stay in Lithuania for more than three months per six month period or if he or she plans to work or to be

engaged into any other legal activities in Lithuania.

Work permits are required for the employment of foreigners in Lithuania (there are certain exemptions, e.g. government workers, diplomats, etc). The work permit is issued by the Labour Exchange under the Ministry of Social Security and Labour, which, by doing so, takes into consideration internal labour market demand and applies an annual quota for the employment of foreigners as approved by the Government.

It should be noted that general managers of enterprises are not required to obtain a work permit.

The Law on Legal Status of Foreigners stipulates that nationals of European Union member states, who are employed or self-employed in Lithuania and who intend to stay in Lithuania for more than three months in any six month period, have to declare their place of residence according to the procedures established by the Law on Declaration of Place of Residence. They do not need to obtain any residence or work permits.

4. Discrimination

Discrimination on the grounds of race, colour, national or social origins, personal status, age, disability, private life, religious activities and union activities is prohibited by the Law on Equal Opportunities (2003). The scope of the law is broad and it is applied to all aspects of the employment relationship, including recruitment, remuneration, promotion and dismissal. The equal opportunities controller, investigates complaints of discrimination and can adopt a binding decision (e.g. transfer the investigation to the prosecutor, in the event a crime may have been committed; warn the employer, etc). A victim of discrimination has a right to claim damages under the rules of civil liability. There are no limits on the level of damages that can be awarded.

5. Contracts of Employment

5.1 Freedom of Contract

Although, an employer and an employee are, in principle, free to settle the terms of their relationship, this freedom is, in practice, limited. The contractual terms of the employment agreement may not be less favourable than mandatory provisions of laws. In certain cases, conditions that are more beneficial for the employer may be established by the collective agreements, provided it is expressly permitted as a matter of law.

5.2 Form

Any employment contract must be concluded in writing and in accordance with the sample form approved by the Government. The employment contract has to be concluded in at least two originals – one for the employee, the other for the employer. On the day of conclusion of an employment contract it should be registered with the Registration Journal of Employment Contract (.e. the formal register maintained by the employer). Such registration is not mandatory where an employer is a natural person employing three or less employees. An employee may commence his/her work only after having received from the employer an identification card, one original of the employment contract, and after being familiarised with the working conditions, collective agreement, if any, internal work regulations and other regulations applicable to the work place.

The following terms must be specified in the employment contract:

- The place of work;
- The employee's duties;
- The terms applicable to remuneration.

The parties may also agree other terms and conditions of employment, such as a probation period, unlimited liability of the employee to the employer for damage caused to the employer, work regime, fringe benefits, etc.

5.3 Trial Periods

An employment contract may include a trial period. As a general rule the trial period may not exceed three months. A trial period may be established to assess whether:

- The employee is suitable for the work he/she is employed; or
- The work is suitable for the employee.

If an employment contract incorporates a trial period for the purpose of testing whether the employee is suitable for the work, the employer may terminate the employment contract by the end of the trial period on three days' written notice without paying the employee any severance payment. If the trial period is established for the purpose of assessing whether the work is suitable for the employee, the employee may terminate the contract during the trial period on three days' written notice. If an employee continues working after the expiry of the trial period, the employment contract may only be terminated in accordance with the general rules on termination (see section 13 below).

5.4 Confidentiality and Non-Competition

The parties to an employment contract can agree terms and conditions, which are not directly prohibited by relevant legislation, however, the employment contract must comply with the general principles of justice, reasonableness and fairness.

When recruiting an employee, a company may include non-compete provisions in the employment contract or conclude a separate non-compete agreement prohibiting the employee from competing with the former employer after termination of employment. The non-compete prohibition must be reasonable and remunerative. However, in practice enforcement of such non-compete clauses may be complicated.

Employees must keep the business secrets of the employer. If an employee violates this obligation, the employer is entitled to compensation for any loss incurred. The Competition Law provides that an individual may reveal commercial secrets learned as a result of employment or other contractual relations with an enterprise no earlier than one year after the date of the

termination of the employment or other contractual relations, subject to any provisions to the contrary in the relevant contract. In practice it is recommended that employers incorporate this statutory provision into the employment contract and the internal rules of the company. In addition it is advisable to require employees to sign a document setting out the categories of information classified as commercial secrets by the management body of the employer and give a written undertaking not to disclose such information, failing which the employee will be liable in damages.

5.5 Intellectual Property

Employee inventions are defined and regulated by the Law on Patents. If something is deemed to be an invention, the employee is obliged to promptly inform his employer in writing to that effect. Until a patent application is prepared, both the employer and the employee must keep the details of the invention secret. An employee will not be entitled to royalties for his inventions if his contract of employment explicitly specifies that his duties involve creating inventions and the level of remuneration takes this into account.

Similar to those of patent invention are the rights to design which can also be registered in order to entitle the designer to royalties. The design rights of designs created by an employee during his employment and in accordance with his employment contract will be owned by the employer, unless the employment contract specifies otherwise.

The Law on Copyright and Related Rights provides that the property rights to copyrighted material created by an employee during his employment and in accordance with his employment contract will be owned by the employer for a period of five years, unless the employment contract specifies otherwise. One exception exists in relation to the title to software, which will be owned by the employer indefinitely, unless the contract stipulates otherwise.

6. Pay and Benefits

6.1 Basic Pay

The minimum pay tariffs (hourly and monthly) to be paid to each employee are established by the Government. The hourly minimum pay is currently LTL 3.65 (€1.06). The monthly minimum pay is currently LTL 600 (€173.77). Minimum pay rates are revised from time to time, however, there are no fixed dates for the minimum pay rates to be increased. Employees must be paid at least twice per month. At the written request of the employee, pay may be paid monthly only. Parties have to agree on the dates when the salary is paid. The Labour Code obliges the employer to present each employee with payroll details setting out the net and gross salary and details of deductions made.

Indexation is left to be negotiated by the contracting parties or by the relevant collective agreement.

If an employee's salary equals the minimum monthly salary, it has to be increased in line with any increase to the minimum monthly salary. In addition if the salary of an employee is tied to the minimum monthly salary (e.g. the employment contract stipulates that the salary payable amounts to three times the minimum monthly salary) then such salary must also increase in line with any changes to the minimum monthly salary.

6.2 Private Pensions

Social guarantees are ensured by the state social security system. There is no obligation on employers generally to provide private pension arrangements. Private schemes are either insured with pension insurers or through a pension fund enterprise.

6.3 Incentive Schemes

Profit-related pay may be paid to some managerial staff. There are no legal or fiscal measures encouraging employee share participation.

6.4 Fringe Benefits

Fringe benefits vary according to the internal policy rules and may include bonuses, company cars (for more senior or frequently travelling employees), mobile phone, etc. If the fringe benefits are provided for personal use as well, they may be subject to taxation.

6.5 Deductions

Employee's income tax is deducted by the employer at source and then accounted for to the tax authorities. The income tax rate is 27 per cent.

The basic tax deduction (tax exempt minimum) is LTL 290 per month (€84). Certain groups of persons, such as disabled, persons having three or more children, are granted a larger tax free band.

7. Social Security

7.1 Coverage

The State social security system provides benefits in the case of old age, disability, death, sickness, maternity and industrial injury.

7.2 Contributions

The social security system is financed by employee and employer contributions which are based on the employee's salary. A three per cent social insurance payment is withheld from the income of the employee and is deducted from the gross salary of the employee; a 31 per cent social insurance payment is paid by the employer on top of the gross pay to the employee.

Currently, there are no upper limits for taxation or social insurance payments and the fixed tax rate is applied.

8. Hours of Work

Ordinary weekly working time may not exceed 40 hours per week and eight hours per day. Exceptions may be established by legislation, governmental resolutions and collective agreements. The maximum length of a workday or shift, including overtime, as well as the work under two or more employment contracts may not exceed twelve hours per day.

The working hours of the employees of certain categories prescribed by Government, such as medical personnel, child carers, childrens' education institutions, energy sector, special communication agencies, etc, as well as security services watchmen may not exceed twenty-four hours per shift. However, the average weekly working time (in any seven day period) of such employees may not exceed forty-eight

hours, and the rest time in between the working days must not be less than twenty-four hours.

9. Holidays and Time Off

9.1 Holidays

There are 12 public holidays per year. Where a day off coincides with a public holiday, the day off is taken on the following working day. The basic right is to four weeks (28 calendar days) paid annual leave each year after six months continuous employment. This is increased to five weeks (35 calendar days) for minors under 18, disabled employees, single parents who are raising a child under 14 years or disabled child under 18 years and other employees specified by law. Specific groups of employees (e.g. employees of the teaching, medical, aviation, or maritime professions or those working in hazardous conditions) have an extended annual leave entitlement. The total annual leave entitlement conferred by law may never exceed 58 calendar days. Public holidays falling within a period of leave do not count as part of the leave, nor does a period of sickness.

9.2 Family Leave

Women are granted pregnancy and childbirth leave for the period of 70 calendar days before childbirth and 56 calendar days after it (in the event of a complicated childbirth or the birth of two or more children - 70 calendar days maternity leave is granted after the birth), provided she was covered by social sickness and maternity insurance for at least three months during the 12 months preceding the pregnancy and childbirth leave, or, covered for six months during the preceding 24 months. Pregnancy and childbirth leave is granted to the woman as a single period (126 days in total), regardless of the number of the days actually used before childbirth.

A man is granted one month's paid paternity leave from the child's birth until the child is one month old, provided he was covered by the social sickness and maternity insurance for at least seven months during the preceding 24 months, and is married to the mother of the child. A man who is married to a woman who has given birth is considered to be a father to that child pursuant to Lithuanian law. Paternity leave is paid by the social insurance authority and paternity pay is equal to the average salary of the employee. On request, a mother (adoptive mother) or a father (adoptive father) or a grandmother or a grandfather or other relatives who are bringing up the child may be granted child care leave until the child reaches three years of age. Alternatively, the family may decide to share the leave between the father, grandmother, grandfather or relatives of the child who are actually bringing up the child. Leave may be taken either in full or in part, and persons entitled to this leave may alternate turns. A maternity (paternity) allowance is granted until a child is one year's old, it is paid by the social insurance authority and is equal to 85 per cent of the average salary of the employee.

At the request of a parent bringing up children of less than 14 years of age, unpaid leave of up to 14 calendar days per year must be granted. Parents bringing up disabled children of less than 18 years of age are entitled to annual unpaid leave for up to 30 calendar days.

9.3 Illness

An employee is entitled to sickness benefit if sickness occurs during the term of employment, including any probation period, provided he was covered by the social sickness or maternity insurance for at least three months during the last 12 months, or six months during the last 24 months before the sickness.

Employees must obtain an authorised medical certificate of incapacity to work in order to receive this benefit. Sickness benefit is paid from the third day of incapacity until a person is able to work or sickness is replaced by disability. The sickness benefit during the first two days of employee's incapacity is paid by the employer.

9.4 Other Leave

Employees who are studying, taking entrance examinations to colleges and higher educational institutions under study contracts with their employer, are entitled to paid educational leave, with the pay at the rate of at least the average salary. If an employee is taking examinations or are studying at his own initiative then his rate of pay for any study leave will be determined in any applicable collective bargaining agreements or by express agreement with the employer.

Employees who study in educational institutions are granted study leave to prepare and take regular examinations - three days for each examination; to prepare and take tests - two days for each test; to perform laboratory work and consultations - as many days as stipulated in educational projects and schedules; to finish and defend graduation theses - 30 calendar days; to prepare and take state examinations (including the examination for general education secondary school leaving certificates) - six days for each examination.

10. Health and Safety

10.1 Accidents

Employers are liable for their employees' work related accidents including those occurring on the way to or from work or during and as result of the employment. The employers must have appropriate insurance.

10.2 Health and Safety Consultation

The employer has a general duty to ensure that employees are provided with a safe system of work and a safe working environment. This duty is subject to control by the State Labour Inspection. Labour inspectors have the right to enter an enterprise at any time of the day to inspect whether the regulations are observed and, amongst other things, to demand that the employer stops the works in case the working environment becomes hazardous to the health or the life of the employees.

When starting a new business, the premises in general, as well as the particular work places, need to be certified as safe and compliant with applicable hygiene and safe work environment standards.

A health and safety committee must be set up in any business which employs more than 50 people. Where there are 50 or fewer employees, such a committee may also be set up by agreement. The committee consists of equal numbers of employer representatives and the trade union or other employees' representatives.
In case the employer is willing to terminate the employment of a member of a labour safety committee cannot be dismissed by an employer without consent from the trade union or the employees.

11. Industrial Relations

11.1 Trade Unions

A trade union may be formed by at least 30 founders or if in an enterprise, agency or organisation there are at least 30 founders or the founders in the enterprise, agency or organisation account for no less than one fifth of all employees but not less that three employees.

A trade union is considered to be a legal entity when the following criteria are fulfilled: it has the requisite number of founders, the statutes of the trade union are approved in general meeting and the managing body is elected. A trade union must lodge documents, testifying its compliance with the above requirements with the Register of Legal Persons.

11.2 Collective Agreements

Collective agreements are not popular in private enterprises. As a rule, one finds "old" enterprises keeping the tradition of the past and in those business established after market liberalisation there are few collective agreements. Although legislation promotes the conclusion of collective agreements, the number of collective agreements has not increased.

Agreements are legally binding on the parties. The employer has a duty to inform new employees of the contents of relevant collective agreements.

A collective agreement can include the terms of payment for work, salary rates, benefits and compensatory allowances, conditions of employment, management, labour protection, organisation of work, safety in the workplace, work and rest time, and other social and economic factors or guarantees that are not regulated by legislation.

The collective agreement comes into force upon signing unless the agreement provides otherwise and remains valid until the deadline set in the agreement or until the signing of a new collective agreement. If a fixed term collective bargaining agreement has been concluded, the parties should begin negotiations for its renewal two months before the expiry date.

11.3 Trade Disputes

A strike is permitted by law in the event of a collective dispute not being settled or a decision adopted by the Reconciliation Commission, Labour Arbitration or Third Party Court, which is acceptable to the employees, is not executed. The right to adopt the decision to announce the strike is vested in the trade union.

During a strike, labour contracts of those employees taking part in the strike are suspended. They maintain continuity of employment, length of service, their entitlement to the state social insurance and the assurance of safety at work. Employees taking part in strikes do not receive pay and are exempt from obligations to carry out their work functions.

Lithuanian laws ban lockouts. The employer is forbidden to hire new employees to replace those on strike.

11.4 Information, Consultation and Participation

Employees have the right to receive information from the employer. This includes information about the present and future activity of the employer and its economic and financial status, information about the structure of labour relations, current and any planned future developments, and information about the intended measures to be taken in the event of possible reductions in the number of employees and other information connected with labour relations and activities of the employer, unless this information is considered to be a state, official or commercial secret. The conditions and procedure for providing information and consultations should be established in the collective agreement.

Employees are not entitled to have representatives in the management or supervisory bodies of the employer.

If there is no trade union in an enterprise and the employees' meeting has not transferred the function of employee representation to the trade union of the appropriate sector of economic activity, the employees may be represented by the Labour Council. The Labour Council has the same competence as the trade unions, except in relation to those powers exclusively conferred upon trade unions by law (e.g. to organise strikes).

12. Acquisitions and Mergers

12.1 General

The requirements of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertaking, businesses or parts of undertakings or businesses are not completely implemented. Therefore, there is no legislative requirement to transfer the employees from the transferring enterprise to the new employer, however, a transfer of undertaking, business or a part of it may not be a legitimate reason to terminate the employment relationship.

In order to transfer the employees, the former employer and the new employer agree on the conditions of the transfer. Furthermore, each individual employee has to consent to the transfer.

13. Termination

13.1 Individual Termination

An employer wishing to terminate must ensure he has a valid reason for dismissal and complies with the relevant notice requirements.

13.2 Notice

As a rule, the employer is required to provide the employee with written notice of dismissal two months prior to the

dismissal, except in the following cases when notice of four months should be given to:

- A person who is within five years of being entitled to a full pension;
- A person under 18 years of age;
- A disabled person;
- An employee bringing up children under the age of 14 years.

The Labour Code prescribes certain cases when an employment contract must be terminated summarily:

- When a court judgement sentencing the employee to a criminal penalty, as a result of which he can not continue working, becomes effective;
- When the employee is deprived of a special right to carry out certain types of work;
- At the request of a state body or official authorised by the law;
- When a medical or Disability and Working Capacity Defining Office concludes that the employee is not allowed to perform his employment functions or work;
- At the request of one of the parents, a statutory representative, doctor, or school to terminate an employment contract of a minor aged between 14 and 16 years;
- Upon liquidation of the employer if its employment obligations are not transferred to another entity.

The employer also has a right to terminate an employment contract summarily if:

- The employee carries out work duties carelessly or has otherwise violated work discipline, or if he has had a disciplinary sanction imposed at least once within the previous 12 months;
- The employee has committed one major violation of work discipline.

Notice of termination has to be given in written form to be effective. The Labour Code, provides that after serving notice of termination, the employer must provide the employee with time off work, during the notice period, the duration of which should be at least 10 per cent of the employee's working time to look for a new job. During this time off the employee is entitled to his or her average monthly salary.

During the entire notice period the employer has to offer the employee any available positions.

13.3 Reasons for Dismissal

The main grounds for terminating an employment contract are:

- Agreement between the parties;
- Expiry of the employment contract;
- Request by the employee;
- Reasons outside the employee's control e.g. the employee may give notice if the employee is not provided with any work during his contractual working hours for over 30 successive days, or over 60 days in aggregate in the last twelve months, as well as if the employee is not paid his full work pay (monthly wage) for over two successive months through no fault on the part of the employee;
- At the initiative of the employer (in the absence of employee fault), if there are serious grounds for terminating the contract, provided the employee receives a termination notice within the established terms (two or four months notice). According to the Labour Code, serious grounds may be related to the qualification of the employee, his professional capabilities, his conduct at work or economical, or technological reasons, structural changes in the work place, etc.;
- At the initiative of the employer when the employee is at fault, e.g. theft from the employer or material breach of work regulations such as misbehaviour with the customers, etc.

13.4 Special Protection

The Labour Code limits an employer's right to terminate the employment contracts of pregnant women and employees bringing up children. An employee may not be dismissed from the date of submitting to the employer a medical certificate on pregnancy, up to the month after the end of the pregnancy and childbirth leave (subject to certain exceptions). The employer may not terminate an employment contract of an employee who is bringing up a child of up to three years old, if there is no fault on the part of the employee.

In the case of an employee to be dismissed who is a member of an elective body of the trade union or the Labour Council, the employer has to obtain the permission of the trade union or the labour council to dismiss the employee.

13.5 Closures and Collective Dismissals

In the event of dismissal of employees on economic or technological grounds, or due to the restructuring of the workplace, the employer must, prior to giving notice of termination, consult with employee representatives with a view to avoiding or mitigating the negative effects of the proposed restructuring.

When an employer proposes to make redundant within 30 calendar days:

- 10 or more employees where an enterprise employs up to 99 employees;
- over 10 per cent of employees where an enterprise employs from 100 to 299 employees;
- 30 or more employees where an enterprise employs 300 and more employees, it must give written notice to the territorial labour exchange, the municipal institution and the employees' representatives.

14. Data Protection

14.1 Employment Records

The principal piece of legislation regulating data protection issues in Lithuania is the Law on Legal Protection of Personal Data ("LLPPD"). The LLPPD

regulates the collection, storage and use of personal data and allows private persons to process and use personal data when this is permitted or required by statute or when the affected person consents. The LLPPD permits the recording, processing and use of personal data within a contractual relationship, if this is covered by the legitimate purpose of the contract. There is no specific legislation governing data protection in the employment context.

The employer, as the data controller, is allowed to process the collected data for specified and legitimate purposes in a way compatible with those purposes. When processing the personal data the employer should ensure that data is processed accurately, fairly and lawfully, is accurate, and, where necessary for the processing of personal data, kept up to date, consistent, adequate and not excessive in relation to the purposes for which they are collected and processed, and kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected and processed.

14.2 Employee Access to Data

The employee as data subject is entitled to obtain information on the source and type of his personal data that has been collected, the purposes of processing, and the recipient to whom the data are disclosed. Upon receiving an enquiry, the employer, as the data controller, must make a reply and provide the employee with the requested data. On request, such information must be provided in writing.

14.3 Monitoring

The Law on Electronic Communications (2004), prohibits the disclosure of the content of information transmitted over electronic communications networks and/or related traffic data without the consent of the users of the electronic communications services. The legislation does not explicitly establish to what extent, and in which cases, the communications of the employees may be monitored by the employer.

14.4 Transmission of Data to Third Parties

Transfer of employee data to third parties is generally prohibited, unless the affected person consents. An employer who wishes to provide personal data to third parties must follow mandatory provisions concerning data processing. Transmission within the EU is allowed. The transfer of data to a third party based in a country outside the EU is permissible only if the country ensures an adequate level of data protection.

Luxembourg

1. Introduction

The employment relationship in Luxembourg is governed mainly by individual contracts of employment, legislation and collective bargaining agreements. Freedom of contract is limited by various mandatory legal provisions and particularly by those provisions which have recently been incorporated into the Labour Code (*Code du Travail*) (LC). The LC is the most important source of employment law in Luxembourg. Collective bargaining agreements are another important source of law and are concluded in respect of most undertakings.

In addition, contracts must comply with custom (Article 1135 of the Civil Code) and internal working regulations.

Disputes are usually resolved in Labour Courts (*Tribunal du Travail*) from which appeals lie to the Court of Appeal (*Cour d'Appel*). A special Court deals with issues relating to social security.

Employment contracts are usually written in French, German or English. There is no legal requirement in connection with the language to be used, as long as the employee can understand the content of the employment contract. In certain circumstances, in order to admit employment contracts in evidence before a Luxembourg Court or public authority, a complete or partial translation into French or German may also be required.

2. Categories of Employees

2.1 General

Luxembourg labour law used to distinguish between the employment contracts of blue collar, or manual workers, and white collar, or intellectual workers. However, this distinction has largely disappeared, and the status of both blue and white collar workers is now largely indistinguishable as far as employment rights are concerned.

2.2 Directors

Under Luxembourg law, members of the board of directors are not considered to be employees as directorship is considered to be a corporate mandate function.

However, it is possible to hold a directorship at the same time as having an employment relationship with the same company if the director, in addition to his legally defined director's mandate, holds a specific and technical function which is distinct from the office of director and if for the purposes of carrying out the employment function the individual is in a subordinate relationship ("*lien de subordination*") with the company.

2.3 Other

Part-time employees enjoy the same legal protection as full-time employees.

3. Hiring

3.1 Recruitment

The Constitution guarantees the right to work and the freedom of all citizens to exercise that right. Employers must report any job vacancy to the National Labour Office and must not recruit on a discriminatory basis. Reference to the sex of potential employees in job advertisements is forbidden.

The employment of disabled people is compulsory both in the public and the private sectors. In the private sector, undertakings with at least 25 employees must employ at least one disabled employee. Undertakings with at least 50 employees must employ at least two per cent of the workforce from those people registered as disabled. For undertakings with at least 300 employees, the percentage rises to four per cent. In any case, this requirement is subject to the Labour Office being presented with a job demand from a disabled person. If the undertaking fails to employ the required number of disabled employees, a special compensation tax of an amount equal to half the minimum monthly wage is payable in respect of each disabled employee who has not been employed in breach of these minimum requirements.

The law forbids the employment of people under 15 years of age but exceptions to this rule exist in the area of public entertainment. Young people between 15 and 18 years cannot be employed to do certain types of work, for example, assembly line work and piecework.

3.2 Work Permits

No foreign worker can be employed on the territory of the Grand-Duchy of Luxembourg without a valid work permit, which has to be issued by the minister of foreign affairs and immigration. EU nationals and nationals of member states of the Agreement on the European Economic Area and their spouses whether or not EU-nationals (although the latter are subject to certain conditions) are exempt from this requirement.

4. Discrimination

Luxembourg law affirms the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, vocational guidance, advanced training and retraining, access to an independent occupation or profession, terms and conditions of employment and termination of employment.

In accordance with a Grand-Ducal Regulation of 10 July 1974 employers are required to observe the principle of equal pay for men and women for the same work or for work of equal value.

All collective bargaining agreements must provide for the application of this principle of equal treatment.

Employers are required to take preventive measures against sexual harassment in the work place.

All direct or indirect discrimination based on religion or belief, disability, age, sexual orientation, race or ethnicity is prohibited. This prohibition applies, among other things, to access to employment, promotion, professional orientation and training, work conditions, including conditions of remuneration and termination, affiliation to a workers' organisation, social coverage, social benefits, etc.

5. Contracts of Employment

5.1 Freedom of Contract

Freedom of contract is limited by legislation. The terms of the employment contract cannot be less favourable to the employee than the provisions of the LC or the provisions of the collective bargaining agreement.

The modification of an essential clause to the disadvantage of the employee requires the employee's express consent or has to be notified in accordance with the notice and other obligations that would apply to the employer in the event of the termination of the employment contract by the employer. Luxembourg law does not define "essential clause" and this is a matter to be determined by the courts, on a case-by-case basis.

After having been notified of the proposed modification of a fundamental clause of the existing employment contract, the employee is entitled to request the reasons for the proposed changes. The employer will then have to communicate these reasons.

In the event the employee does not accept the changes, he will have to resign and his resignation will be treated as a termination by the employer of the employment contract. In the event that the court considers that the amendment was not justified, the employee will be entitled to damages

Mandatory provisions of Luxembourg labour law (such as, working time, holidays, part-time work, weekly rest period, minimum salary and collective bargaining agreements) must be applied to all employees performing their employment duties in Luxembourg. This includes employees seconded to Luxembourg for a limited period of time, regardless of the duration or the nature of the secondment.

5.2 Form

A contract of employment must be in writing and signed in two counterparts, one of which is given to the employee at the latest at the time he or she starts working.

The contract must, as a minimum, state the identity of the parties, the commencement date, the place of work, the nature of the employment, the normal daily or weekly working schedule, the normal working hours, the basic salary and benefits, the length of paid holiday, the length of the notice period to be observed by the employer and the employee in case of termination of the agreement, the length of the trial period if any, a reference to any applicable collective labour agreement, any derogation from the general law (where permitted), the existence and nature of a complementary pension scheme, if applicable, as well as any additional terms that the parties have agreed upon.

Fixed-term employment contracts are permitted in certain circumstances only. They may only be entered into for the performance of a specific and temporary task such as, for instance, the replacement of a sick employee, for seasonal jobs, for specific tasks which do not form part of the normal activities of the undertaking or when there is a temporary increase in activity in the undertaking. Fixed-term contracts can also be concluded in a sector of the economy where it is customary to conclude contracts of a limited duration (e.g. actors, sport coaches…). Fixed-term employment contracts can be renewed twice (if the option of renewal is provided for in the contract or in a subsequent document), but the duration of the contract, including any subsequent renewals, cannot exceed 24 months in aggregate. Such contracts must specify an expiry date and, if this is not possible (for example, in the case of replacement of people absent due to illness), they must specify a minimum length and conditions for expiry. Fixed-term contracts that violate these rules are deemed to be contracts for an indefinite duration.

5.3 Trial Periods

Trial periods function as a mechanism for both parties to terminate the contract on short notice and without providing a reason. Trial periods must be provided for in writing in the employment contract. As a general rule, a trial period cannot be less than two weeks and cannot exceed six months. In certain cases, however, the trial period can last up to 12 months, depending on the employee's education and salary. The trial period is not renewable.

5.4 Confidentiality and Non-Competition

Employees have a general duty of confidentiality with regard to the business of the employer. In the banking sector this duty is more specific. In addition to criminal penalties applicable to employees in breach of rules on banking secrecy, most employment contracts in the banking sector provide that any breach of the confidentiality obligation is a ground for immediate dismissal without notice. However, Luxembourg Courts still retain the power to determine whether the breach was sufficient to justify an immediate dismissal.

Restrictive covenants are regulated by the LC. A non-compete clause may only prohibit a former employee from undertaking a competitive activity as an independent worker within the Grand-Duchy of Luxembourg in the same industrial sector in which the individual had been previously employed and for a maximum period of 12 months only. A non-compete clause may not prohibit the employee from taking up new employment. In addition, a non-compete clause will only be valid if on the day the employee leaves the company the employee's annual gross salary is equal to or exceeds EUR 6,817, at the base index 100 of the mobile salary scale (a government published index, which determines the index applicable to salaries - see further paragraph 6.1 below) (i.e. EUR 45,568.92 as of 1st December 2006, the index standing at 668.46).

5.5 Intellectual Property

Intellectual Property is comprised of several aspects, such as design patterns, copyrights, patents, trademarks and industrial property.

The applicable legislation mainly consists of:

- the law of 13 July 1973 implementing the Benelux

Convention relating to design patterns of 25 October 1966, (the "*Law of 1973*")

- the law of 20 July 1992 modifying the rules on patent rights, (the "*Law of 1992*")
- the law of 18 April 2001 on copyrights, ancillary rights and data bases as amended by the law of 18 April 2004. (the "*Law of 2001*")

If a design pattern has been created by a manual worker or an employee in the discharge of his duties relating to the employment contract, the employer is considered as its creator, unless otherwise agreed.

If a computer programme is created by an employee in the discharge of his duties or under the instructions of his employer, the employer exclusively is authorized to exercise property rights relating to the programme, unless contractually agreed otherwise.

The property rights of data bases belong to the "producer". The producer is legally considered to be the physical person or legal entity, which takes the initiative and principally takes the risk to undertake the necessary investments for the creation of a data base. Thus, in practice the employer will nearly always be considered the producer of a data-base and will be entitled to the property in it.

Generally speaking inventions made by a person bound by an employment contract will belong to the employer if the invention is made:

- during the performance of a contract of employment which encompasses a requirement to make inventions;
- during a period of study or research that the employee is explicitly entrusted with;
- during the performance of his or her duties;
- in the undertaking's field of activities,
- as a consequence of the knowledge or use of techniques or means specific to the undertaking or as a result of data provided by the undertaking.

The employer and employee have to disclose to each other any useful information relating to the invention and have to abstain from making any disclosures that could compromise the exercise of the rights granted by the law.

Any agreement between the employer and the employee relating to an invention of the employee must be in writing, failing which it may be deemed null and void.

Pursuant to article 13 of the Law of 1992, if an employer realises "notable profits" as a consequence of an employee's invention he has to grant the employee a reasonable portion of the profits. Failure to do so will allow the employee to bring an action against the employer for a share of the profits.

6. Pay and Benefits

6.1 Basic Pay

Wages and salaries are determined by the individual employment contract. They are subject to a minimum salary (*salaire social minimum*). The minimum depends on the age and qualifications of the employee. As at 1st January 2007, the statutory minimum wage payable to non-qualified employees over 18 years of age is €1,570.28 per month.
The statutory minimum wage for qualified workers as at 1st January 2007 is €1,884.34 per month.

Employees are normally paid monthly.

In some sectors, collective bargaining agreements provide for remuneration scales, and, in some sectors, require employers to pay an additional bonus equivalent to between half a month's and two month's salary on top of the monthly basic salary.

Employers may also provide for a performance bonus, which is normally linked to the business results.

The minimum wage is regularly adjusted by the Government to take account of economic developments and the cost of living. Also, all salaries have to be automatically increased by the employer in line with any rise in the mobile salary scale index (often referred to as the "price index", or simply, "the index") where this index increases by more than two and a half per cent.

6.2 Private Pensions

The state social security system is generally considered to be adequate. Additional pension and sickness benefits are therefore rarely provided.

If a private pension is provided, generally by multinational or large local undertakings, it is usually financed through book reserves, pension funds or insurance, and in some cases through informal ad hoc arrangements.

6.3 Incentive Schemes

The promotion of employee share participation has never been encouraged through legal or fiscal measures. However, resident companies have sought to encourage employee involvement, primarily through annual bonuses related to profits and by offering shares to employees at preferential prices.

6.4 Fringe Benefits

Fringe benefits vary according to the industrial sector and the function of the employee.

6.5 Deductions

Employers are required to withhold income tax and social security charges at source from the salary of the employee.

7. Social Security

7.1 Coverage

The social security system provides a high level of benefits, most of which are automatically linked to the price index. Some of the benefits are earnings-related. The following benefits are provided: retirement pensions, survivors' benefits, medical care, sickness, disability, unemployment and maternity benefits, industrial injuries and occupational disease insurance and family allowances.

The state pension after a full career currently averages between 65 and

70 per cent of final earnings for employees with earnings below a contribution ceiling defined as five times the minimum wage, (i.e. € 7,851.40 as at 1st January 2007). (the "Contribution Ceiling")

The LC sets out rules governing the payment of unemployment benefits. Workers domiciled in Luxembourg, who have been employed for at least 26 weeks over the last 12 months are entitled, if certain other conditions are met, to receive unemployment benefits of roughly 80 per cent of their former gross salary (with an initial cap at two and a half times the minimum wage. The cap then gets progressively lower over time for a maximum period equal to the period worked over a reference period of 24 months.)

7.2 Contributions

Both employer and employee have to bear the cost of social security contributions that are calculated as a percentage of salary up to the Contribution Ceiling. The employer deducts the employee's share from his salary on behalf of the tax authorities. The key contributions can be summarised as follows:

	Employer Per cent	*Employee Per cent*
Pensions	8	8
Sickness Insurance	2.8	
(5.05 for manual workers)	2.8	
(5.05 for manual workers)		
Dependency Insurance*	1.4	1.4
Family allowances	1.7	Nil

* Special rules of calculation apply. The 1.4 per cent rate is not levied on the whole amount of the gross salary. There is a special allowance of currently 392.57 €.

Unemployment benefits are financed mainly through a solidarity tax payable by both employer and employee.

8. Hours of Work

The LC defines hours of work as the period of time during which the employee is at the disposal of the employer. The normal working hours of an employee cannot exceed eight hours per day and 40 hours per week. Collective bargaining agreements can establish different limits as long as they are lower than the LC thresholds.

If the weekly working hours are spread over five business days or less, the employee can be asked to work nine hours per day, provided that weekly working hours do not exceed 40 hours.

For reasons of flexibility the LC provides that employees may work in excess of eight hours per day or 40 hours per week or other contractually defined limits provided that the average weekly hours over a reference period of four consecutive weeks do not exceed 40 hours or the maximum specified in the contract. The reference period can be extended to 12 months by a collective bargaining agreement.

In that case, a work organisation plan ("*plan d'organisation du travail*") ("POT") covering the entire reference period will be drawn up by the employer. For any particular week during the agreed reference period average hours may not exceed 48 hours a week and 10 hours a day. Work performed beyond the limits set out in the POT is remunerated as overtime work.

Undertakings can also opt for a mobile timetable ("*horaire mobile*") instead of a POT. It allows the option of carrying over to the next reference period a specified number of "hours worked in excess" of applicable limits. Again, working hours may not exceed 10 hours per day and 48 hours per week.

The LC working time provisions do not apply to managers ("*personnes occupant un poste de direction effective*") or senior executives ("*cadres supérieurs*") of a company if their presence is necessary to ensure the running and the supervision of the company.

Overtime is defined as work performed beyond the normal daily and weekly working hours, i.e. beyond the legal or contractual limits.

However, if a POT or a mobile timetable is in place in the company, overtime is defined as any work done beyond the thresholds provided in an applicable POT or mobile timetable.

Before any overtime work is carried out prior notification to or authorisation by the Minister of Labour is required. Overtime work will only be sanctioned in the following exceptional circumstances:

- to prevent loss of perishable goods or to avoid compromising the technical result of the work;
- to complete special tasks such as inventories and accounts;
- in exceptional circumstances affecting the public interest, or in circumstances of national danger;

The procedure is as follows: the employer notifies the Labour Inspectorate, outlining the exceptional circumstances for the overtime request. The request must also contain the opinion of the staff delegation or, in the absence thereof, of the staff. Where the opinion is favourable authorisation of the overtime is automatic. In the event of a negative opinion, the Minister of Labour takes a decision based on the reports of the Labour Inspectorate and the employment administration.

The daily overtime limit is normally two hours but may be more if the work is urgent. Overtime is compensated at rates which depend on the category of employee involved: base wage augmented by 25 per cent for blue-collar workers and base wage augmented by 50 per cent for white-collar workers. However, overtime hours may be compensated by (paid) time off, at an invariable rate of one and a half hours off for each hour of overtime worked.

Nightwork is generally permitted, except in the case of adolescents (i.e. workers between 15 and 18 years of age). The remuneration for every hour worked between 1am and 6am is augmented by 25 per cent, either in pay or in time off.

Article L.333-1 LC exempts pregnant or breast-feeding women from working between 10pm and 6am at their request and after consultation with the labour doctor.

In principle work on Sundays is prohibited, but there are a number of exceptions linked either to the status of the employee or the nature of the work. Employees working on Sundays are entitled to their base wage augmented by 70 percent. Hours worked on Sundays may also be compensated by time off in lieu. Where this option is taken, the employee will only be paid the 70 percent augmentation but not the base wage.

There are currently 10 public holidays per year. In this respect the law distinguishes between blue-collar and white-collar workers. If white-collar workers are required to work on a public holiday the overtime notification/authorisation procedure outlined above must be followed.

If a public holiday falls on a Sunday, a Saturday or on a day the employee would not have to work, a further day off must be granted in lieu. Many collective agreements provide for customary holidays (*jours fériés d'usage*).

Employees working on public holidays are entitled to their normal salary plus the remuneration for the hours effectively worked, augmented by 100 per cent. (i.e. The public holiday is paid whether it is worked or not. If it is worked, the worker receives in addition twice his base wage for the work performed).

9. Holidays and Time Off

9.1 Holidays

Employees in the private sector are entitled to a minimum of 25 days paid holiday per year (Article L.233-4 LC). The right to days off comes into existence after three months of uninterrupted work although holiday will actually accrue during the three-month period.

Collective bargaining agreements usually provide for more than 25 days holiday.

9.2 Family leave

Employees are entitled to special paid leave days for a variety of reasons, such as the death of a relative, birth of a child, to move, for a wedding etc.

An employee who has a dependant child under 15 years of age can also be granted family leave in case of serious illness, accident or the critical illness of the child that necessitates the presence of one of the child's parents. Family leave cannot exceed two days per child per year.

Subject to certain conditions each parent is also entitled to parental leave. Parental leave can take two forms:

- six months full leave (i.e. no professional activity is allowed)
- 12 months part time employment within the company (in agreement with the company).

Such leave is indemnified by the National Family Allowances Fund ("*Caisse Nationale des Prestations Familiales*"). The amount of the parental leave indemnity amounts to 1,778.31.- Euros per month (as at 1st December 2006) for full time parental leave. This indemnity is financed jointly by the Employment Funds ("*Fonds pour l'Emploi*") and through the State budget.

Female employees are entitled to 16 weeks' maternity leave, eight weeks of which must be taken before the expected date of birth.

If the child is born earlier than anticipated, the maternity leave is extended to ensure that the total maternity leave period is not less than 16 weeks.

If the birth occurs after the expected date of birth, employees are still entitled to eight weeks' maternity leave after the date of birth.

Maternity leave may be extended by an additional four weeks in case of breastfeeding, multiple births or premature births.

During maternity leave, employees who have been affiliated with the Social Security for at least six months continue to be paid benefits by the Caisse de Maladie regardless of the employee's qualification. This benefit is equal to the sickness benefits (see below).

9.3 Illness

Employees are entitled to sickness benefits ("*indemnité pécuniaire de maladie*") from the first day of absence up to a maximum of 52 weeks over a reference period of 104 weeks.

For blue collar workers, sickness benefits are paid by the Social Security from the first day of sickness. For the first three months the employer advances the payments on behalf of the Social Security, which then reimburses the employer.

For white collar workers, the employer has to pay the employee 100 per cent of his salary for the month in which the sickness arises and for the three following months. In the case of successive periods of incapacity, interrupted by intervals when the employee shows up for work, the employer has to maintain the remuneration for at least thirteen weeks over a period of 12 months.
Social Security only starts to pay sickness benefits after the employer's obligation ends, subject to a cap of five times the minimum wage.

10. Health and Safety

10.1 Accidents

Employers are required to insure employees in respect of accidents at work. The cost of insurance varies between 0.52 per cent and six per cent of the salary of the employee up to various ceilings.

10.2 Health and Safety Consultation

The LC provides measures (Articles L.311-1 LC and L.321-1 LC) to ensure the health and safety of workers on industrial premises and deal with the health services in the work place.

Any undertaking employing over 5,000 employees (or over 3,000 employees in the case where at least 100 of them are exposed to the risk of occupational illnesses or safety risks) is required to set up a company medical service of its own ("*service de santé au travail*").

All other employers have three options:

- to organise their own company medical service,

- to join an inter-company medical service catering jointly for a number undertakings, or
- to use the National Occupation Health Service ("*service national de santé au travail*").

All potential employees must undergo a medical examination with a medical labour service, to ensure that they are fit for the position under consideration.

The examination must take place either prior to the commencement of the employment in the case of an "at risk" position ("*poste à risque*") or in the two months following the recruitment for other positions. In the latter case, should the employee be declared medically unfit, the employment contract ends automatically by operation of law.

The Labour and Mines Inspectorate ("*Inspection du Travail et des Mines*"), the Ministry of Health, the Industrial Injuries Insurance Association and the Customs and Excise Administration are responsible for ensuring compliance with health and safety obligations.

Every undertaking with a staff delegation ("*délégation du personnel*") (i.e. any undertaking with at least 15 employees), must appoint, among its members or among the other employees of the undertaking, a safety delegate.

The safety delegate carries out inspections of the workplace with the employer. Fines can be imposed for infringement of safety regulations.

11. Industrial Relations

11.1 Trade Unions

Luxembourg enjoys a very good labour/management working environment based on a cooperative arrangement scheme involving the government, labour unions and companies. As a consequence, labour unrest and strikes are very rare.

The main trade unions are organised along ideological lines. The socialist trade union (*OGBL – Onofhängege Gewerkschaftsbond Lëtzebuerg*) and the Christian trade union (*LCGB – Lëtzebuerger Chrëschtleche Gewerkschaftsbond*) are the largest unions in Luxembourg and enjoy national representation. Among the unaffiliated unions, the ALEBA is particularly strong in the banking sector.

The notion of 'trade union' as well as the circumstances in which a trade union is considered to be representative at a national level or in a major sector of the economy are defined under articles 161-1 LC and following.

Most employers in the industrial sector are members of the Luxembourg Federation of Industries (*Fédération des Industriels Luxembourgeois, FEDIL*), whereas for example, the interests of the banking and financial sector are represented by the Bankers' Association (*Association des Banques et Banquiers, ABBL*).

11.2 Collective Agreements

If an employer is requested to enter into negotiations with a view to concluding a collective bargaining agreement, he is legally obliged to do so. Upon execution, collective agreements must be lodged with the Labour and Mines Inspectorate. Collective agreements come into force from the date on which they are registered and remain in force for a period of between six months and three years but are deemed to be renewed by tacit agreement. Notice of termination must be given at the latest three months before expiry. If no termination has been notified parties may decide to renegotiate. In that case the parties are required to start negotiations for a new agreement six weeks before the old agreement is due to expire.

Collective bargaining agreements can be declared generally binding, by means of a Grand Ducal regulation, in respect of all employees and employers of the trade or profession in relation to which they are concluded.

Each collective agreement must contain certain mandatory provisions (for example, a bonus for night work, additional compensation for dangerous work and guarantees of equal pay for both sexes).

Where an employer refuses to enter negotiations to renew or conclude a collective agreement, the matter is referred to the National Conciliation Office (*Office National de Conciliation*). The National Conciliation Office is presided by the Minister of Labour. It is composed of a joint commission (*Commission paritaire*) and an administrative service.

If the conciliation before the National Conciliation Office fails, the conflict may be referred to an Arbitration Committee.

In that case, the arbitral decision is assimilated to a collective agreement.

11.3 Trade Disputes

The right to strike is enshrined in the Constitution, although the right is not legally defined. Before a strike can be implemented lawfully, the conflict must be referred to the National Conciliation Office. If no agreement is reached, the case may be heard by arbitrators. Any strike which is started without compliance with the preliminary procedure is deemed to be illegal. No strike of any significance has taken place in recent years.

11.4 Information, Consultation and Participation

A staff delegation (*délégation du personnel*) must be set up in all private sector undertakings which employ at least 15 people. The size of the delegation depends upon the number of employees: from one delegate for workplaces with 15 to 25 employees up to 25 delegates in large workplaces. The members of the delegation are elected by secret ballot on a proportional representation basis. The role of the personnel delegation is to protect the interests of the workforce in matters relating to working conditions and job security.

In those undertakings run by incorporated companies, the employer must inform staff delegates at least once a year of the economic and financial changes affecting the undertaking and must communicate periodically any other useful information in relation to the activities of the undertaking.

When the number of employees represented by the delegation exceeds 500, the law grants a certain number of delegates time off to perform their duties on full salary.

Where there are 150 or more employees in an undertaking, there is a duty to establish a Works Council (*Comité mixte d'entreprise*) with an equal number of employer and employee representatives who serve for five years. The law lays down the procedures and rights of the Works Council. The employer must inform and consult the Works Council at least twice a year on the economic and financial changes affecting the undertaking. The Works Council must be consulted specifically on decisions that have an impact on the structure of the employer or the level of employment, such as changes in manufacturing processes or proposals for collective dismissals. It decides with the employer on the establishment or modification of general criteria in relation to staff selection, promotion, rewards, dismissal etc.
The Works Council must meet at least quarterly, or when requested to do so in writing by 25 per cent of the members.

The European Works Council Directive 94/45/EC on the establishment of European Works Councils ("*comité d'entreprise européen*") has been implemented in Luxembourg.
The purpose of a European Works Council is to keep employees informed about and consult with them on strategic economic and social matters of a trans-national nature regarding the company. European Works Councils are restricted to large companies employing at least 1,000 people within the EU and EEA and at least 150 people in two or more EU countries.

The European Company Statute (comprised of the Workers Participation Directive and the Company Law Regulation) has been implemented in Luxembourg to provide a framework for negotiations of the rights of information, consultation and participation of the employees in the European Company (SE).

In public limited liability companies ("*sociétés anonymes*") in which the state has a financial participation of at least 25 per cent or which have had more than 1,000 employees over the last three years, Employee Board Representatives must be elected from amongst the employees of the company. These employee representatives are elected by the personnel delegates and have full voting rights. The Employee Board Representatives' contracts of employment cannot be terminated while holding Board office or for six months afterwards, without the approval of the relevant Tribunal. Once elected, they are liable for any management errors they commit in the same way as other Board Members.

12. Acquisitions and Mergers

12.1 General

The LC (Articles 127-1) provides that in the event of a transfer of undertaking, existing employment agreements and all rights and obligations arising from the employment agreement or employment relationship are transferred from the transferor to the transferee by operation of law. A change in the shareholding is not considered to be a transfer of undertaking.

Neither the transferor, nor the transferee, nor the affected employees can contract out of this principle, which is a mandatory rule ("*disposition d'ordre public*") of Luxembourg law. In order to qualify as a transfer coming within the scope of the legislation the transfer must involve an economic entity that retains its identity and comprises an organised grouping of people and assets that facilitate the exercise of an economic activity.

After the transfer, the transferee has to maintain the same or at least equivalent terms and conditions of employment. If the transferee fails to do so the employees are entitled to resign and their resignation would be treated as a constructive dismissal that would entitle them to claim damages in court against the transferee.

The transfer of undertaking does not of itself constitute a valid reason for the termination of the employee's employment agreement either by the transferor or by the transferee.

12.2 Information and Consultation Requirements

Transferor and transferee have to inform in due time ("*en temps utile*") their respective staff delegations on (i) the date the transfer will take place, (ii) the reasons for the transfer, (iii) the legal, economic and social consequences of the transfer for the employees, (iv) the measures that will be taken in relation to the employees.

If no staff delegation exists within either the transferor or transferee company, the information has to be provided to the individual employees of the company in question.

This information has to be provided before the transfer of undertaking becomes effective and in writing.

The transferor is also obliged to inform the transferee of all rights and obligations that will be transferred as a result of the transfer of undertaking.

12.3 Notification of Authorities

A copy of the staff notification letter has to be sent to the "*Inspection du Travail et des Mines*".

12.4 Liabilities

The transferor and the transferee are, after the transfer, jointly and severally liable (*obligation solidaire*) for the payment of all amounts that are payable to the affected employees which became due before the date of transfer. The transferor must therefore reimburse the amounts paid by the transferee pursuant to this obligation, unless a commercial agreement has been reached in relation to the apportionment of such liabilities.

13. Termination

13.1 Individual Termination

Employment contracts of an indefinite duration may be terminated by either party with notice, or with immediate effect for serious reasons.

13.2 Notice

In undertakings with at least 150 employees, an employer wishing to dismiss an employee must have a preliminary discussion with the employee before terminating the

employment contract. At the meeting, the employer must explain the reasons for the proposed dismissal. Formal notice, if it is to be served, must be given between one and eight days after this preliminary meeting.

The termination of the employment contract must be notified in writing to the employee (or the resignation to the employer) by registered letter (or by way of a countersignature by the employee/the employer of a copy of the termination letter/resignation letter).

Notice periods are as follows:

Length of Service	*Dismissal*	*Resignation*
Under 5 years	2 months	1 month
5 years or over	4 months	2 months
10 years or over	6 months	3 months

The notice period starts to run on the 15th of the month if the notice of termination has been served before that date, or on the first day of the following month, if the notice of termination has been served on the 15th of the previous month or later.

During the notice period, all the rights and obligations arising from the employment contract subsist.
The employee will consequently have to work and will be entitled to his remuneration. The employer may nevertheless free the employee from the obligation to work. The employee must however continue to be remunerated.
The employee is also entitled to start working for a new employer. In this case, the former employer only needs to pay the difference between the former and the new salary of the employee.

An employer who dismisses without complying with its notice obligations must pay compensation equal to the remuneration for the duration of the notice period, or the remaining part of the period.

Senior executives often negotiate more favourable notice provisions with the individual outcome varying according to a number of factors such as age, security, function, the situation of the job market and contractual provisions.

In addition to the notice period, dismissed employees may also be entitled to a departure allowance (*indemnité de depart*) depending on their length of service within the company.
To qualify for a departure allowance an employee must have at least five years continuous employment. If a white-collar employee has at least five years' service, he will be entitled to a departure allowance equal to one month's salary increasing to a sum equal to 12 months' salary if the employee has had at least 30 years' continuous service. For blue-collar workers, these departure allowances vary from one month to three months' pay, depending on length of service.

13.3 Reasons for dismissal

The reasons for the dismissal must be related to the abilities or the behaviour of the employee or to the needs of the company.

Where an employment contract is terminated with notice, an employer does not have to state the reasons for the dismissal in the termination letter.

After having received the termination letter, the employee has a period of one month to request the reasons for the termination of his employment contract. Where requested the employer will, again within one month, have to notify the employee by registered letter of the reasons for dismissal. The reasons have to be indicated with precision and must be substantial.

Failure to supply written reasons for the dismissal renders the termination unfair resulting in an obligation to pay damages.

Should the employee not accept the reasons that have been notified, he may commence a court action. The employer must then prove the existence and seriousness of the notified reasons.

In the event of Court proceedings it will not be possible to rely on any reasons for termination other than those notified in writing to the employee.

The employment contract can be terminated with immediate effect by either party for "a serious reason" ("*motif grave*"). The law defines "serious reason" as any fact or fault that immediately and definitively renders the continuation of the employment relationship impossible. This usually involves gross misconduct on the part of the employee.

The rules on notice period and departure allowance do not apply in the event of the employment ending because of gross misconduct.

The termination must be notified in writing by registered mail (or by way of a countersignature on the termination letter). The preliminary discussion, if required, must take place prior to the termination of the employment contract for serious misconduct.

The termination letter must indicate the precise reasons for the dismissal.

If the employer summarily terminates the contract on the grounds of "motif grave", which is not subsequently demonstrated or which is not considered serious enough to amount to "motif grave" by the labour court, the termination is considered to be unfair (see below).

There can be a claim for unfair dismissal where the dismissal is contrary to the law or where the dismissal is not based on reasons connected with the aptitude or conduct of the individual or with the operating needs of the undertaking. Any claim for unfair dismissal must be lodged within three months of notification of termination or of the moment when reasons are given, whichever is later. However, if the employee submits a written protest to the employer, he then has a period of one year within which to lodge the claim starting from the date of the protest.

The labour court can award damages for the loss suffered because of the unfair dismissal and can recommend reinstatement.

13.4 Special Protection

Certain employees have special protection against dismissal.
For instance, members of the personnel

delegation may not be dismissed unless there is a serious fault recognised as such by the labour court.

The employer's right to dismiss is also suspended in circumstances such as the absence of an employee due to illness or maternity leave. The employer may dismiss a white-collar employee or a blue-collar worker only after 26 weeks have elapsed from the first day of sickness, by following the ordinary termination procedure.

13.5 Closures and Collective Dismissals

The LC defines dismissals as "collective" if a number of employees exceeding a specific threshold are collectively laid off in a certain period for reasons which are not related to the behaviour or the abilities of the employees.

An employer who contemplates carrying out collective dismissals must consult with employee representatives and inform them in writing of the reasons for the dismissals, the affected categories of employee, the number and timing of the dismissals.

The consultation must aim at avoiding, or at least reducing, the number of dismissals by drawing up a "*plan social*". The LC provides for a detailed procedure and imposes various deadlines for the notification of the collective dismissals as well as for the timeframe of the negotiations between the employers and the employees' representatives. If the social plan cannot be agreed a conciliation procedure applies.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the law dated 2 August 2002 on the Protection of Persons with regard to the Processing of Personal Data ("the Data Protection Law"), which implements the Data Protection Directive 95/46/EC ("the EU Directive").

The Data Protection Law applies to all forms of capturing, processing and dissemination of sound and image.

Employers, as data controllers, have to ensure that personal data are:

(i) processed fairly and lawfully;

(ii) collected for specified, expressly indicated and legitimate purposes and not further processed in a way incompatible with those purposes;

(iii) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;

(iv) accurate and, where necessary, kept up-to-date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which are further processed, are deleted or rectified;

(v) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

Breach of the requirement to process fairly and lawfully is punished by a term of imprisonment of eight days to one year and/or a fine of €251 to €125,000.

In addition, the National Data Protection Commission can, amongst other sanctions, order the destruction and deletion of any data, and prohibit the processing of personal data for a limited duration.

Breach of the Data Protection Law requirements may also give rise to civil sanctions ordered by the judge of the district where the processing was carried out (e.g. discontinuance of the processing, temporary closure of the business of the data controller)

14.2 Employee Access to Data

Except in certain specific cases, employees, as data subjects, have the right to access personal data relating to them and to obtain a copy of such information and the right to correct it where inaccurate.

In addition the LC provides that every employee has the right to access twice a year, during working hours, the files containing data relating to him/her.

Data subjects will in certain circumstances have a right to object to the processing of personal data for amongst other things direct marketing purposes. Data subjects may also object to the disclosure of personal data to third parties and must be informed of this right.

14.3 Monitoring

There are specific provisions addressing the processing of personal data for the purpose of monitoring employment activities. The provisions cover all means of monitoring and are equally applicable to public and private sector employers. Data processing for the purposes of monitoring activities is only allowed:

(i) if it is required for the health and safety of the employees; or

(ii) if it is necessary for the purpose of protecting the company's assets (e.g. CCTV monitoring for safety reasons, monitoring of emails, Internet or telephone in the financial sector); or

(iii) if it is required to control the mechanical production process; or

(iv) on a temporary basis, in order to control or measure the productivity or performances of an employee with a view to establishing his or her salary, if such processing is the only means of determining the exact salary of the employee; or

(v) if it is carried out in the context of a flexible working hours organisation in accordance with the law.

In case (i), (iv) and (v), no monitoring may take place without the approval of the works council ("*comité mixte d'enterprise*"). The consent of the employee is ineffective.

Furthermore, the employer must inform the affected employees as well as the works council, or failing that the staff delegation ("*délégation du personnel*"),

or failing that again the Labour Authorities ("*Inspection du Travail et des Mines*") of the following:

(i) the purposes of the processing;

(ii) the period(s) of time during which the monitoring is to be carried out;

(iii) the duration and the conditions in which the data will be stored.

The processing and monitoring of employees' activities requires the prior authorisation of the National Data Protection Commission.

Beyond the scope of data protection or employment law, there are further general rules, relating to the secrecy of communication, and the right to privacy.

14.4 Transmission of data to Third Parties

Under the Data Protection Law transfers of data within the EU are not restricted.

The transfer to a country other than an EU Member State ("Third Country") of personal data that are subject to processing, or that will be subject to processing after their transfer, may only take place if the recipient country ensures an adequate level of protection and complies with the provisions of the Data Protection Law and its implementing regulations. The transfer of data to a Third Country, which is not assessed by the data controller as offering an adequate level of protection may however take place in certain conditions, e.g. with the consent of the data subject.

Malta

1. Introduction

Maltese Employment Law is essentially based on the contractual relationship between the employer and employee, with certain controls being imposed by statutory intervention. Whereas certain conditions of employment are governed by statute, other conditions such as restraint of trade are unregulated and parties can therefore agree on whatever terms and conditions are acceptable to them and are reasonable in the eyes of the judicature.

The legal system is a mixed one where elements of French and Italian Law are amalgamated to form the basis of Maltese contract law. The legal theories applied by Maltese courts when examining cases concerning the variation of the employment contract, for example, are heavily influenced by Continental doctrine. For historical reasons however, the legal system applied in modern employment matters such as disciplinary action or constructive dismissal is strongly influenced by Common law practices.

The Employment and Industrial Relations Act of 2002 (EIRA) (Chapter 452 of the Laws of Malta), which regulates some conditions of employment and contracts of service, currently governs Maltese labour law. The Employment and Industrial Relations Act has in fact amended the pre-2002 legislative position and introduced the necessary legal framework for Malta to come in line with other European jurisdictions.

Traditionally, collective agreements are considered to be binding private agreements and are enforceable between the parties. Many disputes between employers and employees are settled in the Industrial Tribunal which has exclusive jurisdiction to hear cases relating to dismissal, trade disputes and other employment law disputes such as those related to harassment, discrimination and the observation of the working time requirements, most of which have originated from Malta's membership of the European Union.

2. Categories of Employees

2.1 General

Generally speaking, employment legislation in Malta is equally applicable to employees at every level of the workplace. As with English legislation, some recent legislation refers to the term 'workers' which broadly speaking is a term encompassing employees, agency workers, contract staff and self employed persons who are 'dependant' on one particular employer.

A Maltese employee is usually categorised as a full timer, a whole timer or a part timer. A full timer is a person who works an average of 40 hours per week; whereas a whole timer is a person who works a number of hours specified in an applicable Wage Regulation Order. A Wage Regulation Order (also known as a Sectoral Order) specifies a number of employment parameters and rights which are applicable only to a particular sector of the employment market (e.g. the Food Manufacturing Wage Regulation Order of 1991). One of the specified parameters is the whole timer weekly hours rate (usually ranging between 20 and 35 hours per week).
An employee working in that sector who reaches that number of hours is entitled to be given the maximum leave and benefits entitlement as a full timer.

A part-timer under Maltese Employment Law is an employee who works less than the full time or the whole time weekly hours of work. Broadly speaking, part-timers are to not to be treated less favourably than full or whole timers in so far as remuneration and benefits are concerned. Pro rata calculations and payments as compared to whole-timers or full-timers are usually applicable to part-timers. Also, under the Part Time Employees Regulations of 2002 only those employees who work over an average of 20 hours a week in employment with the same employer are entitled to pro rata benefits, leave etc.

A similar right not to be treated less favourably also applies to fixed term contract employees as compared to those comparable employees employed on an indefinite term contract.

The Companies Act of 1995 regulates the position of directors of private and public limited liability companies, who may or may not also be employees of the company.

3. Hiring

3.1 Recruitment

Maltese Employers recruit through a variety of sources, the most popular being advertising in newspapers and fee-charging employment agencies. The Employment and Training Corporation (ETC) is a government run agency which provides a free recruitment service, normally used by employers to recruit the less senior employees. Private employment agencies require a licence to operate. The latter is issued by the Department of Employment and Industrial Relations after the prospective applicants go through an ad hoc application process.

3.2 Work Permits

As Malta is an island of 390 sq. Km in size, it is necessary to impose certain immigration regulations to control the influx of labour within acceptable limits. Accordingly, those who intend to set up shop in Malta, or private individuals who wish to work in Malta, should make reference to the local laws, principally the Immigration Act of 1970 (Chapter 217 of the Laws of Malta) and the Immigration Regulations of 2004 (LN 205 of 2004). Although the freedom of movement principles in relation to citizens of the European Union are respected, the latter will still require a work permit until the year 2010. However, the Maltese government cannot refuse work permits for EU Citizens until 2010 unless there is a strain on the local market caused by persons wishing to come to Malta for work. As far as non-EU citizens are concerned, an entry visa may be required from some countries that do not have a free movement agreement with Malta (please visit **www.foreign.gov.mt** for a list of countries which have a free movement agreement with Malta).

The permit for Citizens of the European Union can be obtained within ten days and costs from EUR60 for a permit for one year up to EUR180 for a permit

valid for an indefinite term. A Residence permit for a period of six months is always given to those Citizens of the European Union who are genuinely seeking employment or have a genuine prospect of securing employment within the six month term. When a Citizen of the European Union has obtained a work permit, his dependants (namely his/her spouse and children below the age of 21) are given the right of residence and also the right to work in Malta upon application for and issue of a valid work permit as described above.

Non-EU citizens always require a work permit in order to work in Malta. A work permit can be obtained within three months and costs from 60 Euros for a permit for one year up to 132 Euros for a permit valid for three years. If a Non-EU citizen wishes to be employed in Malta, he/she must have a genuine prospect of securing employment before entering Malta to work. Once a prospective employer has been identified, the applicant will be issued with a residence permit that is valid for a fixed period (from three to six months as determined by the Immigration Police) until the work permit is issued.

Once a work permit has been obtained by a Non-EU citizen, his dependants (namely his/her spouse and children below the age of 21) are also given the right of residence and the right to work in Malta upon application for and issue of a valid work permit as described above.

4. Discrimination

The Constitution of Malta and other Maltese Employment statutes protect employees from discrimination on the grounds of sex, religion, race, disability, age and sexual orientation. Discrimination against part-timers and persons employed on fixed term contracts is also regulated.

Discrimination in the work place is today unlawful as far as recruitment, treatment during the course of employment and termination is concerned. Chapter four of the Maltese Constitution protects persons from being discriminated against on a number of grounds in every aspect of life, including work. With the advent of European Union membership, a number of anti-discrimination provisions with direct relevance to the workplace were included in the new Employment and Industrial Relations Act of 2002 and a number of statutory instruments were introduced in order expand upon the general principles found in EIRA.

Such instruments include the Equality for Men and Women Act 2003 which focuses on sexual discrimination; the Employment and Industrial Relations Interpretation Order of 2003 which instructs the Industrial Tribunal to refer to the European Directives on discrimination and the Equal Treatment in Employment Regulations 2004 which focuses on the principle of equal treatment in relation to religion and religious belief; racial or ethnic origin; disability; age and sexual orientation.

5. Contracts of Employment

5.1 Freedom of Contract

It is a basic principle of Maltese Civil law that parties are free to contract on whatever terms they choose. Freedom to contract is however limited by statutory intervention in that no parties may agree to terms that are below the minimum rights granted by statute. The Employment and Industrial Relations Act 2002 in fact specifies that if a contract of employment specifies conditions that are less favourable to the employee than those specified in the Act or in regulations issued under it; the statutory conditions shall prevail.

Contracts of employment can be entered into for a fixed term or for an indefinite term. Fixed term contracts or those entered into for a specified task can be entered into as long as the employee is not continuously employed with the same employer on a fixed term contract for more than four years. As soon as the four years are up, the employee's contract of employment becomes an indefinite one unless the employer has objective reasons to justify the renewal of the fixed term contract. Casual employment is also possible.

5.2 Form

Under Maltese Law, every employee must have a written contract of employment or a Minimum Statement of Conditions. Such a contract of employment may be written or verbal. However, if the contract entered into is verbal, the employer then has eight working days to give the employee either a contract of employment or a written statement of minimum conditions according to the Information to Employees Regulations of 2002. Such information includes normal rates of pay, overtime rates, hours of work, place of work, and a reference to all the leave that an employee is entitled to.

5.3 Trial periods

The probationary period within which the employer may terminate the employment of the employee without assigning any reason is set at a maximum of six months for lower grade employees. However if the employee's employment is of a technical, executive, administrative or managerial nature and the employee's wages are at least double the minimum wage during that year, the probationary period is usually set at one year.

5.4 Confidentiality and Non Competition

Although there are no statutory rules governing confidential information, Maltese Courts have adopted the English doctrine that an employee is bound by a general duty of good faith and a duty not to disclose the employer's confidential information.

Although express provisions in a contract may be used to stop an employee from competing with his employer both during and after the employment, it should be noted that provisions which purport to restrict competition after termination of the employment will only be enforceable if they are reasonable and the employer has a legitimate interest to protect (i.e. confidential information or trade connections). A restraint can only be justified if it is in the interests of the contracting parties. Maltese courts have emphasised that the limitations of time and market have to be reasonable within a small area such as the Maltese islands. An ex-employee cannot be forced to leave his country in order to pursue his vocation. Also during the

term during which a person could be forced not to compete, adequate compensation must be given to the ex-employee in order for him to observe the terms of the contract. Such compensation should be equitable with the sacrifice made.

A recent decision of the Maltese Court of Appeal also stated that if any financial penalty is specified in the contract of employment with the intention of creating a deterrent or a prohibition on the freedom of the individual, the penalty in question will be considered to be null unless it arises from a specific provision of the law.

5.5 Intellectual Property

Broadly speaking according to the Copyright Act, if intellectual property is created or discovered by an employee during the course of his employment, it will belong to the employer.

6. Pay and Benefits

6.1 Basic Pay

There is a national minimum wage of LM 59.63 per week (LM 56.72 per week in the case of young people and trainees aged 17 and LM 55.50 per week in the case of young people and trainees aged 16 and younger).

Lower-grade workers in Malta are generally paid monthly on the basis of a weekly wage, although in some industries it is customary for workers to be paid "piece-rates" according to the amount of work done. Overtime at x 1.5 the normal rate is generally paid in respect of additional hours worked in excess of 40 hours a week.

More senior employees are normally paid monthly in arrears and are not generally paid for overtime worked since their remuneration package is deemed to compensate them for any overtime worked.

Although it is not common for pay to be index-linked, subject to the national minimum wage, there is a legal obligation on employers to increase wages according to a cost of living index that is published by the Maltese Government annually. This year's cost of living increase was LM 1.75 a week.

6.2 Private Pensions

Although state pensions are provided under the social security system, private pension schemes are increasing in popularity. Private pension provision may be by way of an employer-sponsored occupational pension scheme, or by an individual employee's own personal pension scheme.

The Maltese state pension scheme is currently under review and there are plans to incentivise workers (especially those below the age of 35) to participate in private pension schemes in order to lessen the burden on the state. Tax incentives for employers wishing to set up occupational pension schemes are also in the pipeline.

6.3 Incentive Schemes

Share schemes are not mandatory in Malta but are increasing in popularity within the financial services sector because of the popularity that such schemes enjoy within similar sectors in other European countries.

6.4 Fringe Benefits

Common fringe benefits may typically include private health insurance and cars (for more senior employees particularly). Such fringe benefits are usually contractual and employers may not unilaterally withdraw them.

6.5 Deductions

Although generally, according to EIRA employers are prohibited from making deductions from pay, they are obliged to deduct income tax at source through the "Final Settlement System" (FSS) scheme. They are also obliged to deduct employees' National Insurance contributions (social security contributions). Further deductions such as trade union membership fees or occupational pension scheme contributions may only be deducted with the written consent of the employee.

7. Social Security System

7.1 Coverage

The single state administered social security system provides benefits by way of pensions, unemployment benefits, family-based benefits, medical benefits, sickness and injury benefits. Employers should be aware both of the costs involved, and of the administrative burden of some state guaranteed benefits (for example, sick leave pay and statutory maternity pay) responsibility for which has been devolved to employers.

Health care has, traditionally, been provided by the state. However, there has been an increased use of private medical insurance and private medical insurance has become an increasingly common employee benefit.

7.2 Contributions

According to the Social Security Act (Chapter 213 of the Laws of Malta) Employers must deduct from employees' pay National Insurance contributions payable by employees and make an employer's contributions in respect of each employee.
National Insurance contributions are payable by employees at a rate of 10 per cent of earnings between the lower and upper earnings limit which are fixed each year, (for the year 2006/07 are LM 57.39 and LM 133.80 per week respectively). Employer's contributions are the equivalent of the employee's.

8. Hours of Work

The usual working week is 40 hours in most sectors of employment. Specific limitations on the hours of work are imposed by the Working Time Regulations of 2003 on the hours worked each day and each week by "workers" (this includes employees and agency workers). Generally working time must not average more than 48 hours per week over a reference period of 17 weeks. Manufacturing and tourism industries have a reference period of 52 weeks and Collective Agreements may also extend the reference period from 17 weeks up to a maximum of 52 weeks. Under the Working Time Regulations however, a Maltese worker may opt out of the regulations in order to work more than the 48-hour average stipulated by law.

Workers are also entitled to a daily rest of at least 11 consecutive hours in each 24-hour period and a weekly rest period of not less than 24 hours in any seven-day period. Night workers (i.e. where at least three hours of daily working time is worked at night as a matter of course)

must not work in excess of eight hours in each period of 24 hours if the type of work carried out is particularly strenuous.

9. Holidays and Time Off

9.1 Holidays

The Working Time Regulations of 2003 give the employee a right to four working weeks and four working days of paid vacation leave. Any leave taken beyond that period is taken at the option of the employer and is usually unpaid. Annual leave accrues on a pro rata basis from the first day of employment. Money may not be paid in lieu of untaken statutory holiday entitlement except on termination of employment. According to the National Holidays and other Public Holidays Act (Chapter 252 of the Laws of Malta) there are established 14 national and public paid holidays per annum. These are to be given over and above the statutory annual vacation leave.

9.2 Family Leave

Subject to satisfying the necessary statutory criteria, a woman is entitled to 13 weeks' ordinary maternity leave on full pay and one week maternity leave without pay. If sickness or other complications related to the pregnancy and/or birth arise, the employee may ask for up to eight weeks special leave during which an entitlement equal to the minimum wage is payable. Any further special leave is unpaid.

Men and women with one year's continuous service are entitled to three months' unpaid parental leave in respect of children under eight years of age. Employees are also allowed 15 hours of paid time off to deal with emergencies arising in relation to persons related to them up to the first degree.

9.3 Illness

Employees absent from work by reason of sickness for more than three days have a right to receive sick pay from their employer. The number of days that may be taken as sick leave varies according to sector. Part of the cost may be recouped from the Social Security Department in that employers may deduct the benefits that are received by the employee from the wages due.

In addition, employees are also entitled to injury leave of up to one year on full pay. Such benefit is payable by the employer and may be reduced by the injury benefit which the employee receives from the state.

10. Health and Safety

10.1 Accidents

Employers are obliged by the Occupational Health and Safety Authority Act of 2000 to safeguard the physical and psychological well being of their employees at any place of work. Breach of the Occupational Health and Safety statutes is a criminal offence which may be coupled with a civil suit for damages. The statutes are coherent with the European directives in place and are therefore both general and work specific.

There are no compulsory employer's liability insurance rules in Malta, although most employers are insured under such policies.

10.2 Health and Safety Consultation

Employers in Malta are under an obligation to consult and inform their employees on all health and safety matters. There is no obligation to have a health and safety company policy but risk assessments must be carried out on all types of work. Consultation must be carried out through an elected Workers' Health and Safety Representative or with a Health and Safety Committee.

11. Industrial Relations

11.1 Trade Unions

Although union membership is stronger in some industries than in others, it can easily be said that the Maltese working population is still highly unionised. Major unions include the General Workers Union (GWU) and the UHM (Union Haddiema Maqghudin) (these are general unions covering various sectors) and the sector specific unions such as the MUBE (Malta Union of Bank Employees) and the MUT (Malta Union of Teachers). Employer's Unions such as the MEA (Malta Employer's Association) are also popular.

Although statute regulates the functions and proceedings of a trade union in certain instances, there is no statute to regulate recognition. In cases of recognition, a majority of member workers within a given bargaining unit is usually recognised due to a long-standing custom. Although method of bargaining is left up to the parties, industrial action and its consequences is regulated by statute.

11.2 Collective Agreements

Collective Agreements are popular in the traditional sectors of employment such as manufacturing and tourism and these agreements usually regulate matters such as pay, working hours, holidays, dispute procedures and procedures to deal with redundancy. Collective agreements are considered to be private agreements that are binding on the parties.

11.3 Trade Disputes

Maltese Law does not have a comprehensive "strike law" or any enshrined right to strike. Rather, unions are granted statutory protection from liability, which they would otherwise incur under the tort law, when taking industrial action pursuant to a trade dispute. It is debatable whether an employee who takes industrial action loses the right to pay during that period. It is however unfair to dismiss an employee who is taking part in "official" industrial action.

11.4 Information, Consultation and Participation

There are at present no formalised requirements for employee participation in Malta, although some employers operate share schemes as an additional remuneration incentive. However, obligations do arise with respect to consultation and the provision of information to appropriate representatives (these are usually either elected employee representatives or representatives of a recognised trade union).

The obligations are:

Where a collective redundancy (as defined in the Collective Redundancies (Protection of Employment) Regulations 2002) is proposed to take place within a period of 30 days, consultation with appropriate representatives must take

place at the earliest possible opportunity. Minimum time limits for consultation are laid down and failure to consult or comply with the time limits gives the Director of Employment and Industrial relations the right to issue a fine which is equal to 500 Maltese Liri per employee declared redundant.

Employers are required to provide certain information to appropriate representatives upon the transfer of an undertaking as defined in the Transfer of Business (Protection of Employment) Regulations 2002.

Employers must consult with employees on health and safety matters. Consultation has to be with the Worker's Health and Safety Representatives as elected by the workforce or with employees directly.

Under the European Works Council Directive, any undertaking or group of undertakings with at least 1,000 employees in the EU and 150 employees in more than one EU state may have to set up a Works Council or a procedure for informing and consulting employees at European level. The Directive has now been implemented in Malta, and while the initial establishment of the employee negotiating body is quite clearly regulated, subsequent negotiations are generally up to the parties to regulate.

Following the European Parliament's approval of the Workers Participation Directive, Malta has implemented legislation in 2004 in respect of worker involvement in the affairs of European Companies. This will lead to the regular consultation of, and provision of information to, a body representing the employees of the companies that have formed the European Company, in respect of current and future business plans, production levels, management changes, collective redundancies, closures, transfers, mergers and so on.

The Maltese government has also implemented the Employee Information and Consultation Regulations of 2006 (which are being phased in over a period and will be fully implemented in 2008) that will oblige employers who employ 50 employees and above to have a system of information and consultation with the employee's representatives on matters which are likely to lead to substantial changes in the work organisation or contractual relations.

12. Acquisitions and Mergers

12.1 General

Upon the transfer of an undertaking, the contracts of employment of the transferor's employees automatically transfer from the transferor to the transferee, unless those employees can genuinely be made redundant.
Any dismissal connected with the transfer will, in principle, be unfair and give rise to an entitlement to claim compensation. Changes to terms and conditions of employment by reason of the transfer are voidable, even if agreed to by the employees.

12.2 Information and Consultation Requirements

When the transfer of the undertaking involves 20 or more employees, Section 38 (2) of EIRA requires both the transferor and the transferee to give the employees' representatives the following information:

- The date or proposed date of the transfer;
- The reasons for the transfer;
- The legal, economic and social implications of the transfer for the employees; and
- The measures envisaged in relation to the employees.

The employees' representatives are the officials of a recognised trade union or a number of employees elected specifically for the purpose of negotiation in relation to the business transfer.

The requisite information must be provided by means of a written statement given to the employee representatives at least 15 working days before the transfer is carried out or before the changes in conditions of employment of the employees come into effect, whichever is the earlier.

If the employment conditions of the affected employees will change as a consequence of the transfer, consultation on the impact of the changes has to begin with the employees' representatives seven working days after the information statement is received by the representatives. Although statute does not stipulate whether a sale and purchase agreement can be signed before the information/consultation obligations are fulfilled, employers are discouraged from doing so.

12.3 Notification of authorities

On the same day that the statement is sent to the employees' representatives, a copy of the statement must be sent to the Director of Employment and Industrial Relations.

12.4 Liabilities

Contravention of any of the regulatory provisions is a criminal offence punishable with a fine of LM 500 per employee affected by the transfer.

13. Termination

13.1 Individual Termination

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

13.2 Notice

Statute lays down a minimum period of notice that will apply where the contract of employment does not make any provision for notice. Where the contract of employment stipulates a notice period such a notice period will only stand if the notice is more favourable to the employee. Notice periods only apply in cases of redundancy or resignation. There are no notice periods for termination for good and sufficient cause (e.g. gross misconduct).

The statutory minimum period of notice depends on the length of time the employee has been in employment with a particular employer. The notice cannot however exceed a maximum of 12 weeks. These notice periods apply to

all categories of employees irrespective of rank.

If an employer prefers that an employee does not work his or her notice period, the general practice is for employers to pay salary in lieu of the notice period. There are no special formalities for making such payments (except as to the deduction of tax where required).

13.3 Reasons for Dismissal

Although the employer is always free to terminate the employment, the employer may only do so for a good and sufficient cause or in cases of redundancy. Even so, the employee may always contest the redundancy or the actual termination in the Industrial Tribunal. In cases where the employee is engaged on a fixed term contract, the law stipulates that if either party wishes to terminate the employment before the time stipulated at law, the defaulting party has to pay to the other an amount which is equal to half the wages that the employee would have earned in the period remaining. Also, according to statute fixed term contracts may not be terminated on the basis of redundancy. A fixed term contract employee who has been dismissed and wishes to contest the dismissal may only do so in if he files a suit in the civil courts as the Industrial Tribunal only has jurisdiction over indefinite term contracts.

Generally, it is accepted that theft, misconduct and a genuine redundancy are a good and sufficient cause for termination. As with most common law jurisdictions, the employer must show that he has a good reason for the dismissal and that a fair and reasonable procedure must be followed when implementing the dismissal.

There is no minimum qualifying period for an employee to refer the case to the industrial tribunal and there is no minimum or maximum cap on the award that the tribunals may give. The most common type of tribunal award is financial compensation although if the employee was not in a position of trust, he may ask for, and be granted, reinstatement.

13.4 Special Protection

The same rules apply to dismissals connected with pregnancy or maternity, parental leave, health and safety, trade union membership or activities, transfers of undertakings, breach of the Organisation of Working Time Regulations and making a disclosure to the proper public authority ("whistle-blowing") although if the termination is found to be made for reasons connected with the employee wanting to exercise his statutory rights in relation to the above mentioned topics, the dismissal is statutorily one which is unfair.

13.5 Redundancy and Collective Dismissals

As stated above, redundancy constitutes a good and sufficient cause for dismissal and, although it may be applicable to individual termination, it is commonly associated with the partial or total closure of a business.

Redundancy is not a statutorily defined term and Tribunals tend to rely on the definition as found in the ILO Recommendation no. 119 on the Termination of Employment. The redundancy must therefore be based on a re-organisation of the company or on financial difficulties. Statute also defines which employees must be made redundant as the EIRA dictates that in cases of redundancy, an employer shall terminate the employment of the last person to be engaged in the pool of employees affected by the redundancy.

There is no eligibility criterion for redundancy and the law establishes that the notice period that is applicable to resignations, also applies in the cases of redundancy. In some industries there may be enhanced contractual redundancy packages available but these usually depend upon the collective agreements in place. Employers should take care to comply with applicable consultation and information requirements that are found in the Collective Redundancies Regulations as described under 11.4 above.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the Data Protection Act 2001(DPA), which implements the EU Data Protection Directive.

There is currently no Data Protection Guidance Note or Code of Practice that focuses on employment issues although such a Code is in the pipeline. Infringement of data protection law can lead to fines and 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 principals including the principles of proportionality and transparency. It is also recommended that the workforce is informed of any procedure being implemented due to the provisions of the DPA.

14.2 Employee Access to Data

Employees, as data subjects, have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be told what data is held about them, who it is disclosed to and to be provided with a copy of their personal data. Subject access requests cover personal data held in manual and electronic records such as email. There is no regulation on charges levied on employees although the authorities tend to look down upon such initiatives.

14.3 Monitoring

Although there is no direct legislation on this topic, the monitoring of employee email, Internet and telephone usage and Closed Circuit TV monitoring is regulated by the general principles founding the DPA. Although there have been no decisions on the subject as yet, monitoring is so far permissible provided that it is carried out in accordance with the DPA principles in that it should be adequate, relevant and not excessive and it should be carried out in the least intrusive way possible. 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, 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. 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 DPA principles and processing conditions. Where the third party is based outside the EEA it should be noted that the DPA prohibits the transfer of data to a country outside the EEA unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply.

The Netherlands

1. Introduction

Employment relations in The Netherlands are regulated by the Dutch Civil Code and a large number of specific rules and regulations.
In addition, collective labour agreements may apply for certain branches of industry or at company level.
The employment provisions of the Civil Code and the associated rules and regulations lay down various mandatory rules, which are mainly designed to protect employees.

2. Categories of Employees

2.1 General

Many companies use temporary workers supplied through special employment agencies. Such agency workers are employed by the agencies and are therefore not considered to be employees of the company using them. Agency workers do not necessarily have the same employment conditions as the regular employees. As a general rule, agencies are liable to pay temporary workers salaries equal to the salaries paid by the hiring company to its own employees. Depending on the applicable collective labour agreement, exceptions to this rule may apply.

Regulations regarding the position of on-call workers include a minimum level of pay per call and criteria pursuant to which the on-call worker is deemed to have entered into employment with the company using his services.

Most provisions of the Civil Code and other employment legislation apply equally to part-time employees. As a general rule, employees that work part-time are entitled to be treated on an equal basis with full-time employees, unless objective reasons justify different treatment.

2.2 Directors

The company's shareholders' meeting or the supervisory board appoints a managing director (*statutair directeur*). Managing directors are usually also employed by the company and as such, they are generally protected by the same rules that are applicable to regular employees, except in connection with the termination of the managing director's employment (see further below).

The activities and obligations of managing directors are regulated by law, the company's articles of association and the Dutch Corporate Governance Code (issued in December 2003).
The Corporate Governance Code, among other things, deals with issues such as remuneration, golden handshakes and the position of managing directors under employment law. Listed Dutch companies are in principle obliged to comply with the Code or, if they do not, explain in their annual accounts why they deviate from the Code.

The annual accounts of all listed Dutch companies should include individual details regarding salary, compensation, bonuses, termination fees, share options and shareholdings of the managing directors, past and present.

3. Hiring

3.1 Recruitment

State recruitment agencies are not extensively used, and employers are not obliged to inform these agencies of any vacancies (except for certain work permit procedures).

Certain collective labour agreements require employers to ensure that a certain percentage of the employer's workforce consists of disabled persons.

3.2 Work Permits

Employers who want to hire non-EEA nationals need to obtain a work permit from the Dutch Centre for Work and Income before these employees are allowed to start working in The Netherlands. Work permits will in principle only be granted if the employer proves that he is not able to fill the vacancy with an equally suitable national from one of the EEA-countries.
There are certain exemptions to this procedure, for example in the case of intra-group transfers. Work permits have a maximum duration of three years.

As at 1 January 2007 employees from the Mid and Eastern European countries that joined the EU on 1 May 2004 (Poland, Hungary, Czech Republic, Slovakia, Estonia, Latvia, Lithuania and Slovenia) require work permits in order to work in The Netherlands. It is however anticipated that this requirement will be shortly removed.
In the meantime, the work permit procedure for this group of employees has been simplified in respect of employment in industries where it has been established that insufficient Dutch employees are available.

Dutch employees that wish to hire employees originating from Bulgaria and Romania have to obtain a work permit under the regular procedure.

3.3 Other

Residence permits must be obtained by foreign nationals for a stay in The Netherlands of three months or more. Foreign nationals from a number of countries also need a temporary residence permit in order to be allowed to enter The Netherlands. Residence permits are, in principle, granted for one-year periods (during the first five years of a foreign national's stay in The Netherlands, the residence permit usually needs to be renewed each year).

With effect from 1 May 2006, EU citizens that intend to stay more than three months in The Netherlands need to register with the Immigration Authorities.

3.4 Knowledge Workers Procedure

A separate admission procedure exists for so-called knowledge migrants. Knowledge migrants are people who come to The Netherlands from outside the EEA for the purpose of paid employment with a Dutch employer and who will earn a gross annual income of at least EUR 46,541 (EUR 34,130 for knowledge migrants of 30 or younger). This new procedure arranges for (temporary) residence permits to be granted in a relatively short timeframe. A separate work permit is no longer required. The new procedure can only be used if the Dutch employer has concluded a so-called covenant with the Immigration Authorities.

4. Discrimination

Employers should, based on their statutory obligation to act as a good employer, treat employees equally. Employment law, as well as specific legislation, prohibits discrimination and provides for equal treatment.

An employer may not discriminate on the grounds of sex, religion, life principles, political persuasion, nationality, sexual disposition, race, marital status, physical fitness, age or employment status, either directly or indirectly and in general not at any stage of employment (from recruitment, negotiation of the employment agreement, promotion or training, to the termination of employment). In some cases discrimination is permitted, provided it can be justified (on objective grounds). If for example the gender of an employee is essential for the position, deviation from the prohibition to discriminate between men and women may be allowed.

An employee may claim damages in the event of discrimination by the employer. Persons who are discriminated against and/or parties concerned may bring a claim before the Equal Treatment Committee ("the Committee"). The Committee can also act on its own initiative. The decisions of the Committee are not legally binding. However, the Committee can petition the Court for a declaration that the discriminatory act is tortious or for an injunction to be issued and, in general, Courts tend to follow the decisions of the Committee. It is common for individuals to approach the Court if the Committee has concluded that there has been a breach of equal treatment legislation.

5. Employment

5.1 Freedom of Contract

Parties are free to negotiate individual employment agreements within the limits of mandatory employment legislation and applicable collective labour agreements (if any).

5.2 Form

According to the Dutch Civil Code, an employment agreement exists where an employee personally undertakes work during a given period in the service and under the supervision of an employer in return for remuneration. The agreement need not be in writing to be legally binding. However, certain provisions, such as those relating to non-competition and a trial period, must be in writing. Furthermore, an employer must inform an employee in writing of the essential aspects of the employment within one month of the start of the employment.

Employment agreements can be entered into for a fixed or indefinite period of time. Fixed-term agreements, in principle, automatically terminate at the end of the agreed term. Parties may enter into a maximum of three consecutive fixed-term agreements, which together should not last longer than three years. If the parties enter into more than one agreement and three years have passed, or more than three fixed-term agreements have been entered into consecutively, the last employment agreement will be deemed to be for an indefinite period of time. Consequently, the employment agreement will not end automatically upon the expiry of the extended period, and the applicable regulations in relation to termination (see further below) will have to be complied with. If the fixed-term agreement provides for interim termination, this right can only be exercised if the termination regulations are complied with.

Employment agreements are deemed to be consecutive if entered into within a three-month period after termination of the previous agreement and concluded by the same parties or parties that appear to be their successors.

5.3 Trial Periods

Parties may agree a trial period, provided that it is agreed in writing. The maximum trial period is two months, except in the case of a fixed term employment agreement for a shorter period than two years (in which case the maximum trial period is one month). During the trial period, either party can terminate the employment agreement at any time without notice or the need for financial compensation. Upon the employee's request, the employer must announce the reasons for the dismissal to the employee. Reasons of a discriminatory nature are, of course, prohibited.

5.4 Confidentiality and Non-Competition

Employees are subject to an implied duty of confidentiality in relation to their employer's business and an employer may claim damages if an employee breaches this duty. In practice, many employers include a provision in the employment agreement in order to protect their interests. In order for a non-competition clause to be valid, it should be set out in writing between the employer and the employee.

Restrictions on post-employment competition must be reasonable in time, area and scope and can be set aside or amended by a Court. Non-competition provisions are subject to the principle of reasonableness and fairness and they will have to be reviewed (and, where necessary, renewed) when the employee's position within the company changes, if as a consequence the impact of the non-competition undertaking on the employee changes (unless this change of position could be anticipated at the time of accepting the original non-compete undertaking).

It is common to impose a penalty on breach of the confidentiality and/or non-competition provisions. An employee will not be bound by the non-competition provisions if the employer is liable for damages arising from the termination of the employment agreement.

5.5 Intellectual Property

Intellectual property created by an employee in the course of his employment generally belongs to the employer. Patentable inventions and copyright normally belong to the employee, unless agreed otherwise. In limited circumstances an employer can be held liable to pay compensation for patentable inventions and copyrights. Provisions in the employment agreement relating to the protection of intellectual property rights are common in certain industrial sectors, such as the information technology industry.

6. Pay and Benefits

6.1 Basic Pay

The law provides for a minimum wage, which varies according to the employee's age. The government determines the statutory minimum wage bi annually. With effect from January 2007 the minimum monthly gross wage for a full-time employee aged 23 or over amounts to EUR 1,300.80 (excluding holiday allowance). If an industry or trade-wide collective labour agreement applies, it will usually contain a remuneration scheme, determining the minimum remuneration. In addition, an employer is obliged to provide a minimum holiday allowance amounting to eight per cent of the employee's gross annual salary. Employment agreements can provide that the holiday allowance is considered to be included in the agreed salary provided that the agreed salary is at least equal to or higher than the statutory minimum wage increased by eight per cent.

It is common practice for wages to be index-linked. Wages agreed in collective labour agreements, and sometimes those in employment agreements as well, are linked to the cost of living index.

6.2 Private Pensions

In addition to the obligatory state pension scheme ("old age pension"), many employers grant pension benefits to their employees. There is no legal obligation for employers to make pensions arrangements unless one of the approximately 80 mandatory industry or trade-wide pensions schemes applies. The Pensions Act (a new act introduced on 1 January 2007) requires that the pension obligations are funded through a separate legal entity. This can be a pension insurance company, an industry-wide pension fund, a company pension fund or a pension institution seated in another Member State. In addition, the Pension Act confers rights on employees in specified circumstances (e.g. termination of employment, divorce).

6.3 Incentive Schemes

Share option schemes and share purchase schemes are a popular incentive instrument, particularly for key employees. Employees can derive tax benefits from such schemes, provided that certain conditions are met. Clauses that provide that option rights shall automatically lapse upon termination of employment may not always appear fully enforceable or may result in compensation being payable to employees upon termination of employment. Many employers operate voluntary profit-sharing plans, which entitle employees to a bonus related to profits. Such a bonus is often calculated as a percentage of the employee's earnings.

In addition, there are tax efficient saving schemes, such as salary saving schemes.

6.4 Fringe Benefits

Company cars, telephones and laptop computers, cost allowances, gifts on special occasions (such as anniversaries and jubilees), childcare arrangements and private health insurance coverage are frequently provided for various categories of employees.

With effect from 1 January 2006, employees in The Netherlands are entitled to participate to a life course saving scheme (*levensloopregeling*). Employees who participate in this scheme, save money from their gross salary, which can be used exclusively to finance unpaid leave or early retirement. Employees can save up to a maximum of 12 per cent of their gross salary per year in a tax-free manner.

6.5 Deductions

Wage tax is deducted from pay at source in accordance with published rates. The tax year runs from 1 January to 31 December. The employment income tax rates for 2007 are as follows:

EURO	Tax rate
0 to 17,046	34.15%
17,047 to 30,631	41.45%
30,632 to 52,228	42%
over 52,229 or more	52%

Depending on the personal circumstances of the employee (for example, marital status), income below a fixed threshold may be tax exempt. Foreign employees who are assigned to The Netherlands on a temporary basis may benefit from a tax exemption of 30 per cent of their gross salary as a tax-free cost allowance, on the assumption that 30 per cent of their income will be expressly classified as extraterritorial expenses.

7. Social Security

7.1 Coverage

The social security system is split into a national insurance scheme covering all residents of The Netherlands (*volksverzekeringen*) and an insurance scheme for employees only (*werknemersverzekeringen*). Old age pension (*AOW*), dependent's pension (*ANW*), exceptional medical expenses (*AWBZ*) and child benefits (*Kinderbijslag, AKW*) are provided by the state within the national insurance scheme.
The employees' insurance scheme provides for benefits in the event of illness (*ZW*), disability (*WAO*) or unemployment (*WW*).

7.2 Contributions

On 1 January 2006, a new health care system came into effect in The Netherlands, replacing a national insurance scheme under the Social Health Insurance Act (*Ziekenfondswet*) as opposed to private health insurance. Under the new health insurance scheme, each Dutch citizen pays a nominal premium, which depends on the health insurer of his or her choice. In addition, an income dependent contribution of 6.5 per cent of the employee's yearly income is due (up to a maximum income amount of EUR 30,015). Employers are obliged to reimburse this income dependant contribution to their employees.

8. Hours of Work

According to the Working Hours Act (*Arbeidstijdenwet*), a working week generally consists of 36 to 40 hours, which is equivalent to seven-and-a-half to eight hours a day in a five-day working week. The employer may, within reasonable limits, require employees to work overtime. In general, overtime is either paid for or compensated in another way (for example, by allowing the employee time off in lieu). In order to be able to oblige employees to work on Sundays, an express agreement must

be reached in advance.
Various collective labour agreements include provisions on the reduction of working hours. With effect from 1 April 2007, a 'new' simplified Working Hours Act came into force. This introduced rules giving employers greater flexibility to adjust working hours to the circumstances within the company or sector.

Employees can request an adjustment to their working hours after one year of employment. Such a request may only be refused by an employer on the grounds of significant business interests.

9. Holidays and Time Off

9.1 Holidays

Full-time employees are entitled to a minimum of 20 days' paid holiday per year. Collective labour agreements or individual employment agreements usually provide for a more generous annual holiday entitlement per year.
In addition, there are nine public holidays in The Netherlands.
Accrued but untaken holidays lapse five years after the last day of the year in which they were accrued.

9.2 Family Leave

Under the Employment and Care Act (*Wet Arbeid en Zorg*), employees are entitled to a number of different forms of temporary leave; either paid or unpaid.

Pregnant women are entitled to 16 weeks' maternity leave, which must start no later than four weeks before the expected date of childbirth. Maternity benefits paid by social security are equal to 100 per cent of the employee's salary, provided that the salary does not exceed the maximum daily wage. In practice, the employee's salary is often continued during the maternity leave.

The mother's partner is entitled to two days' paid paternity leave, to be taken within four weeks of the child's birth. Paternity benefits are equal to 100 per cent of the employee's salary. However, these rules may be deviated from by collective labour agreement or an agreement with the employee representation body.

For each child up to the age of eight, each parent is entitled to unpaid parental leave. The basic statutory arrangement is that the leave will be taken during a six-month period, during which the employee only works 50 per cent of his contractual hours per week. A deviating arrangement is possible, unless important business reasons dictate otherwise. By collective labour agreement, the statutory arrangement can be further extended.

In the case of adoption or foster care of a child, the future/foster parents are entitled to four weeks' parental leave, which should be taken in the period commencing two weeks prior to the adoption and ending 16 weeks after the adoption. During this leave, the salary payments are continued by the Social Security Authorities, up to the maximum daily wage.

In the event of an emergency, employees are entitled to temporary paid leave for a few days or hours, depending on to the nature of the emergency.

Employees are entitled to a short period of leave of no more than ten days a year to take care of a seriously ill close relative, during which period the employee is entitled to 70 per cent of his normal wage. However, the employer is not obliged to grant such leave if it has significant reasons for refusing it. These rules may be deviated from by collective labour agreement or an agreement with the employee representation body.

With effect from mid-2005, the Employment and Care Act has also conferred an entitlement to long-term care leave. This type of leave entitles the employee to take care of a partner, child or parent, who suffers from a life-threatening illness. The leave is comprised of a maximum of six times the employee's weekly agreed working hours during a period of 12 months.
In principle such leave should be taken in one continuous period and should not amount to more than half the employee's agreed working hours per week.

9.3 Illness

The employer is in principle obliged to pay employees absent due to illness during 104 consecutive weeks of illness. During the first 52 weeks of an employee's illness, the employer will have to pay the employee at least 70 per cent of his salary up to a maximum of 70 per cent of the maximum daily wage of €172,48 per day for with effect from 1 January 2007. If this 70 per cent payment is less than the minimum wage, the employer will have to supplement the payment in order to bring it up to the minimum wage. During the second 52 week period of illness, the employer will also have to continue to pay at least 70 per cent of the employee's salary. The employee is however no longer entitled to receive at least the minimum wage from his employer.

Collective labour agreements and individual employment agreements may provide that employers will pay the employee a percentage of his usual salary greater than 70 per cent and the percentage of salary payable may also vary during the 104 week period.

There is a legal obligation on both employer and employee to actively seek to reintegrate the employee into the workplace. Failure to do so by the employer may lead to an extension of the period during which the employer is obliged to pay the employee's salary. Failure to do so by the employee may cause the employee to lose his entitlement to continued salary payments. Generally, the employment agreement cannot be terminated during the first two consecutive years of illness, except in the case of redundancy.

The risks of payment during illness can be privately insured.

After two consecutive years of illness, the employee may be entitled to social security benefits, the amount and duration of which mainly depends on the degree of incapacity for work of the relevant employee and his or her labour history. No entitlement to social security benefits exists if the employee after the first two years of illness is capable of earning at least 65 per cent of his or her

last earned salary. If, however, the employee's earning capacity is between 20 per cent and 65 per cent of his last earned salary, it will be beneficial for the employee to try to generate income with their own or another employer, as this generally increases the social security benefit payable to the employee.

For employees with little or no remaining earning capacity and little or no prospect of recovery, permanent social security benefit is available.

10. Health and Safety

10.1 Accidents

Employers have a duty of care in relation to the health and safety of their employees while they are at work. Health and safety rules and regulations need to be observed by an employer when organising work and by employees whilst performing work. The Labour Inspectorate is responsible for enforcing the law in relation to health and safety (*Arbeidsomstandighedenwet*), and is entitled to make binding orders and/or impose fines on an employer in the event of violation of the regulations. Employees have the right to cease all work-related activities and call in the Labour Inspectorate in the event of serious risk to health and safety.

With effect from 1 January 2007, the Working Conditions Act was amended. The amendments were intended to lead to a simplification of existing rules and regulations, better compliance with European regulations and a reduction of the administrative burdens on the employer. The government will in principle limit itself to creating target regulations, i.e. regulations that require the employer to reach a level of protection for its employees that enables them to work in a safe and healthy manner. Employers and employees (and their representative bodies) will become responsible for drawing up so-called working conditions catalogues, wherein they describe how they intend to implement the government's target regulations. The Ministry of Social Affairs and Employment will perform a check on these working conditions catalogues, which will determine the reference framework for control by the Labour Inspectorate. The Working Conditions Act and regulations also contain additional standards with respect to working conditions that cause serious risk to the health and safety of employees.

An employee has a statutory right to work in an environment that is free of carcinogenic substances (such as tobacco smoke). Non-compliance by the employer with the health and safety regulations may constitute an economic offence and theoretically, the employer may even be liable for damages suffered by the employee due to non-compliance. Employers usually take out insurance against liability for breach of health and safety obligations.

10.2 Health and Safety Consultation

The company's works council (see below) has a right to receive information and to be consulted on matters relating to health and safety in the workplace.

11. Industrial Relations

11.1 Trade Unions

Some 25 per cent of the Dutch workforce are members of a trade union. Approximately 18 per cent are members of a trade union affiliated to the Federation of Dutch Trade Unions (*Federatie Nederlandse Vakbeweging – FNV*) and a further five per cent to the Christian Trade Union Federation (*Christelijk Nationaal Vakverbond – CNV*). A small number of employees belong to unions that are members of smaller federations.

Unions are well organised in the manufacturing industry sector and the semi-public sector or privatised sectors, but less organised in the service sector and new technology industries.

The main employers' association is called the VNO-NCW.

11.2 Collective Agreements

Trade unions and employers' organisations may negotiate minimum wages and basic employment rights at a national level for certain branches of industry or trade. The agreements that are reached are used as standards for similar bargaining at sector level. In principle, employers may choose the trade unions that they wish to negotiate a collective labour agreement with. However, for the purposes of maintaining good industrial relations, employers tend to recognise those trade unions that are strongly represented in the relevant sector of industry or trade.

The Minister of Social Affairs can declare a particular collective labour agreement to be generally binding on an entire sector of industry or trade. Consequently, the collective labour agreement is applicable to all employees in that sector, even the employees that are not a member of a trade union.

11.3 Trade Disputes

The Dutch Civil Code does not recognise the right to strike. However, in accordance with international treaties, the right is recognised in certain circumstances. In general, courts allow strikes organised by trade unions if the aim of the strike is considered reasonable and if other means to achieve that aim have been exhausted. Strike action is not common in The Netherlands.

Picketing is usually unlawful because it is generally considered an unreasonable form of industrial action.

11.4 Information, Consultation and Participation

The extent of employee influence in the management of a company depends on the size of the company. In companies with 50 or more employees a works council must be established. The works council consists of and is elected by the company's employees.

The company's management will have to meet with its works council at least twice a year to discuss the general affairs of the company. If either the company's management or the works council requests a meeting in relation to a social, financial, economic or organisational matter concerning the company, both parties are obliged to comply with that request.

In addition, the works council must be informed of and consulted on certain decisions such as change of control, take-over, closure or reorganisation. The works council will also have to be

consulted by the company's management on various intended financial decisions, for example significant financial investments, capital investments and substantial loans to the company. The company's management is furthermore obliged to consult the works council on decisions regarding technology facilities and important decisions on environmental issues. The management of the company will require the approval of the works council for certain matters relating to working conditions, health and safety and job evaluation. The length of the entire consultation procedure will be dependent on the circumstances (i.e. complexity of the case, time pressure and what is reasonable).

A management decision may not be implemented for a period of one month if it was subject to works council consultation and the decision was opposed by the works council, or if the requirements to consult the works council have been neglected. During this one-month period, the works council may appeal to the special Enterprise Chamber of the Amsterdam Court of Appeal (the "Chamber"). If the Chamber finds the decision unreasonable, it can require the employer to withdraw the decision, in whole or in part, or to refrain from taking any further action pursuant to it. In practice, the Chamber is reluctant to conclude that a management decision was unreasonable. Intervention by the Chamber is most likely when there have been procedural irregularities. If a management decision is subject to approval by the works council and such approval is not granted, the management may petition the Chamber for approval.

In addition, a works council is entitled to give its opinion on the proposed appointment or dismissal of the highest authority (usually a director) who has responsibility, alone or with others, for the organisation of employment within a company.

Works councils of companies that are subject to the large company regime, i.e. companies with an issued capital of at least Euro 16 million, at least 100 employees and for which a works council has been established, have the right to nominate one third of the candidates for the supervisory board of the company.

The works council has the right to be informed at least once a year of the wages allocated to the various employee positions within the company.

The management of a company with a workforce of between 10 and 50 employees is required to meet with the employees at least twice a year as well as upon the request of at least 25 per cent of the workforce. The general course of business must be discussed at least once a year and the company's management must consult the employees on certain proposed decisions that may affect at least a quarter of the company's workforce.

12. Acquisitions and Mergers

12.1 General

Dutch law has implemented the EU Acquired Rights Directive. Upon a transfer of a business, the employees dedicated to this business are in principle automatically transferred to the employment of the transferee on the same terms and conditions as provided in their employment agreement with the transferor. In the case of a business transfer, employees, or the works council if established, will need to be consulted on the intended transfer of a business.

12.2 Information and Consultation Requirements

Companies are generally required to consult the works council on acquisitions. Collective labour agreements may also impose a duty on a company's management to consult with the trade unions and the works council in cases of an intended merger or acquisition. A works council will have to be involved at a point in time where they can still influence the intended decision (i.e. before the signing of - for example - a sale and purchase agreement or even a letter of intent).

The Dutch Merger Code (SER Fusiegedragsregels 2000) also requires notification of and consultation with the trade unions at an early stage of negotiations between the parties to a transaction, involving the acquisition of direct or indirect control over the activities of a company (or part thereof) that has a business in The Netherlands and where one of the parties is a company (or part of a group of companies) employing more than 50 employees in The Netherlands. The relevant trade unions must be notified when negotiations get to a stage where parties expect that agreement will be reached.

12.3 Notification of Authorities

The Merger Committee has to be informed that the trade unions have been notified of a contemplated acquisition. Failure to inform the Merger Committee may result in a public reprimand.

12.4 Liabilities

The sanctions for failing to comply with the Merger Code are twofold: the Merger Committee can either issue a public statement concerning non-observance of the Merger Code or a public statement of censure. In addition, an infringement of the Merger Code may give rise to tortious claims for injunctive relief and/or compensatory damages, although to date there has been no case law on this.

13. Termination

13.1 Individual Termination

Dutch law provides extensive employee protection. Failure on the part of the employer to observe the rules relating to termination may result in a liability to pay (substantial) damages to the employee. An employment agreement for an indefinite period cannot be terminated unilaterally except: (i) during the trial period; (ii) in case of mutual consent; or (iii) in circumstances allowing the employer to dismiss the employee summarily for important reasons, such as theft.

13.2 Notice

Once the permission of the Centre for Work and Income has been obtained, the employment agreement may be terminated by giving the minimum statutory notice, or if a different notice

period is agreed, the contractual notice period. The statutory notice period for an employer depends on the length of service of the employee. The employer shall observe a statutory notice period of one month for employees with less than five years of service and an additional month for every period of five years' service. The maximum statutory notice period of four months applies if the employee has been employed for 15 years or more. The statutory notice period for the employee is one month.

In order to be valid, a notice period differing from the statutory notice period has to have been agreed in writing and the employer's notice period must be at least twice as long as the notice period that the employee is required to observe. The maximum contractual notice period that can be agreed is 12 months for the employer and six months for the employee. Notice of termination should be given in such a manner that the employment agreement terminates at the end of a calendar month. No notice has to be given if the Court terminates the employment agreement. In such cases the employment automatically terminates on the date stipulated by the Court. If the employment is terminated through the Centre for Work and Income the notice period can be reduced by one month, subject to a minimum notice period of one month.

13.3 Reasons for Dismissal

Except where the case involves one of the three exceptions outlined above, an employer who wishes to terminate an individual employment agreement needs to obtain the permission of the Centre for Work and Income before notice of termination can be validly given.
The request for permission must state the reasons for the intended termination. Various guidelines issued by the Centre for Work and Income determine the circumstances in which permission can be expected to be given. In practice, the reasonableness of the grounds for termination is the main criterion. Permission will usually be given if the employer is forced to reduce its workforce, when the working relationship has deteriorated or when the employee has proven to be incompetent. The procedure for obtaining permission generally takes two to four months. The Centre for Work and Income has no authority to order the employer to pay compensation, however in practice approval may be withheld if appropriate compensation is not offered. After any dismissal, whether legally valid or not, an employee may initiate Court proceedings in order to obtain compensation, or higher compensation, from the employer on the basis that the termination was 'apparently unreasonable'.

Alternatively, each party to an employment agreement is at all times entitled to petition the Court to terminate the agreement. The Court will examine the reasons given for termination, the fairness of the proposed termination and the consequences of continuation or termination of the employment agreement for the employee. The Court may award compensation to the employee. Such a Court decision is not subject to appeal unless the Court misjudged the applicability of the procedure or violated fundamental rules of law in its judgement. In the case of termination of an employment agreement by the Court, an employee will be subject to a cut in his state unemployment benefits, up to an amount equal to the salary over the applicable notice period.

Corporate managing directors (*statutair directeuren*) have less protection in the event of termination of their employment. Once their corporate relationship has been validly terminated, notice can be served without a dismissal permit from the Centre for Work and Income or Court interference. Case law illustrates that termination of the corporate relationship cannot be distinguished from the termination of the employment relationship. Directors are entitled to the same level of compensation as that payable to regular employees.

In order to determine the amount of compensation upon termination of the employment (other than for fundamental breach or as a result of expiry of the term), the Cantonal Court formula is generally applied. According to this formula, the amount of compensation is determined by the employee's age and years of service. For each year of service until the age of 40, an employee is entitled to one month's salary.
For each year of service between the age of 40 and 50, an employee is entitled to one and a half month's salary and an employee is entitled to two months' salary per year of service from the age of 50. In principle, this calculation method applies when the reasons for the dismissal are neutral, meaning that none of the parties in particular can be blamed for the dismissal. The neutral formula applies, among other situations, in case of dismissal for economic reasons. In some circumstances payment in accordance with the neutral formula may be deemed insufficient. In such cases the sum payable under the neutral formula could be doubled or even tripled.
Occasionally, circumstances lead to no payment of compensation or payment equal to 0.5 times the neutral formula. This is possible if the employee is largely to blame for the dismissal or when the employer has insufficient funds to pay compensation.

The Civil Code provides examples of circumstances justifying a summary dismissal without compensation. If an employee disputes the summary dismissal, it is a matter for the Court to decide whether there is sufficient reason for the employer to summarily dismiss the employee without compensation. The employer cannot validly pre-determine in the employment agreement what conduct it considers gross misconduct. The reasons for the dismissal must be communicated to the employee immediately after they have become known to the employer and a summary dismissal should be effected as soon as reasonably practical after the relevant event, although the employer is entitled to take time to investigate the specific circumstances.

13.4 Special Protection

Certain categories of employees are specially protected against dismissal, such as pregnant women, members and former members of the works council and employees absent by reason of illness.

13.5 Closures and Collective Dismissals

An employer contemplating a dismissal of 20 or more employees within the same region in any three-month period must notify the Centre for Work and Income and the relevant trade unions of this proposal. Furthermore, the employer shall provide the Centre for Work and Income and the relevant trade unions with a list of the employees that will be dismissed. In order to give the trade unions and the works council the opportunity to discuss the social consequences of the redundancies, the employer must not take any action to effect any individual dismissal during a period of one month after notification, unless the trade unions declare that they have been consulted already. In practice this means that parties try to agree to a social plan, although the law does not require an employer to draw up a social plan, nor does the law require that the contents of a social plan are agreed with the relevant trade unions or the works council.

If the reasons given for the dismissal are accepted, the Centre for Work and Income usually grants its approval to terminate the individual employment agreements within four to eight weeks (after the end of the one-month consultation period). The Centre for Work and Income can grant approval within approximately two weeks if economic grounds are the reason for the collective dismissal and the employees only formally object to their dismissal but do not put up a defence on the merits of the application for the approval to terminate.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the Data Protection Act 2001 ("DPA"), which implements the EU Data Protection Directive.

The term 'personal data' means any data relating to an identifiable natural person. The term 'processing' covers virtually all actions performed on personal data, from collection until deletion of the data.

Relevant matters for employers that are covered by the DPA vary from, for example, the processing of personal data for salary administration to the monitoring of the employees' use of the telephone, Internet and e-mail facilities.

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

Under the DPA, the processing of personal data is permitted only if the processing is based on one or more of the limited grounds listed in the DPA. For commercial organisations the relevant grounds are likely to be that:

- the employee has unambiguously consented to the processing of its personal data;
- the processing is necessary to perform an agreement to which the employee is party, or in order to take steps at the request of the employee prior to entering into an agreement;
- the processing is necessary for compliance with a legal obligation;
- the processing is necessary for the purposes of legitimate interests pursued by the employer or by the third party to whom the data is disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the employee. In other words, the employer is allowed to process personal data of the employee, unless the employee would be unduly prejudiced.

The processing of sensitive personal data (i.e. data relating to a person's religious or philosophical beliefs, race, political opinions, health and sexual life, trade union membership or criminal behaviour) is subject to stricter rules. The general rule is that such data may not be processed. There are, however, several specific and some general exemptions to this rule.

In principle, all processing of personal data must be notified to the Dutch Data Protection Committee (which is the Dutch data protection supervisory authority), prior to the collection of the personal data. Depending on what personal data will be processed and for what purposes, the data processing may be exempt from notification under the Dutch Decree on Standardised Exemptions.

The employer is required to implement appropriate technical and organisational measures to guarantee that its employees' personal data is kept securely. Specific protection should be put in place to prevent the unauthorised disclosure of and access to personal data. For example, employers must ensure that access to personal data within the organisation is restricted to employees whose job description objectively requires them to have access.

14.2 Employee Access to Data

Prior to the collection of personal data, the employer must inform its employees of (i) the contact details for queries and requests and (ii) of the purposes of the intended data processing. Depending on factors such as the sensitivity of the data in question and whether personal data will be internationally transferred, the employer is required to provide more detailed information in order to ensure that the processing is carried out in an appropriate and careful manner. Under the provisions of the DPA, employees have the right to periodically ask the employer to be informed whether his or her personal data are being processed and to receive an overview of the data processed.

The employer could, for example, provide the necessary information by attaching a data protection policy to the employment agreement (ideally, the employment agreement would contain a data protection clause referring to this policy). For the sake of clarity, it can sometimes be advisable to use different privacy policies, for example a general privacy policy explaining the organisation's general approach towards privacy and a separate privacy policy specifically aimed at the monitoring of employees.

14.3 Monitoring

Monitoring employee's telephone calls, electronic communications and internet access by an employer is only allowed if certain conditions are met (including the obligation to inform the employee that his activities are monitored). Electronic communications of the works council regarding their activities may not be monitored. Guidelines have been issued by the Dutch Data Protection Committee regarding the monitoring of employee email and internet use, which, although not legally binding, are intended to provide "assistance for employers and employees in formulating a company policy with respect to the monitoring of the use by employees of email and the Internet in accordance with privacy law".

The employer should request the prior consent of the works council, if any, before any policy regarding the monitoring of telephone calls, email and internet use can be introduced.

14.4 International Transfers of Personal Data

There are additional requirements that need to be observed if personal data is to be transferred from EU countries to countries outside the EU. In principle, such transfers may only take place if the country of destination offers an adequate level of protection for the transferred data. (e.g. the US is not deemed to provide an adequate level of protection and transfers of personal data to the US are, consequently, not allowed). There are, however, ways to legitimise international transfers, even if an adequate level of protection is not in place in the country of destination. Transfers within the EU are not restricted.

Poland

1. Introduction

The principal source of law regulating employment relationships in Poland is the Polish Labour Code of 26 June 1974 (the "Code"). It should be stated, however, that specific employment law provisions in other legislation prevail over the provisions of the Code. The Polish government has substantially amended the Code in order to implement numerous EC directives.

Poland is also a member of the International Law Organisation and it has ratified various international agreements regarding labour law, e.g. regarding unemployment, work of women and juveniles, freedom of trade unions and accidents at work.

Collective agreements are legally enforceable and are of some importance. Collective agreements or internal rules of employment may provide for different, more favourable, working conditions for employees than the provisions of the Code.

Disputes between an employer and an employee are settled in specialist divisions of the regular courts. The court of first instance is called Sąd Rejonowy Wydział Pracy (District Court Labour Division), the appeal court is referred to as Sąd Okręgowy Wydział Pracy (Circuit Court Labour Division). Sometimes the Labour Division is combined with the Social Security Division. There are special provisions in the Polish Code of Civil Procedure governing the resolution of disputes under employment contracts which are designed to provide protection for the employee and enable the employees to receive help quicker and in the most cost-efficient manner.

In general, under Polish law, it is not possible to contract out statutory employee protection. What is more, the Code states expressly that if the contractual provisions of the employment contract are less beneficial to the employee than the Code's provisions, the contractual provisions will be considered void and in this respect more beneficial provisions of the Code will replace them.

2. Categories of Employees

2.1 General

Employment contracts may be executed for an indefinite period of time, for a fixed term and for the period of performing specified work. All of the above can be preceded by a trial period employment contract, which cannot exceed three months.

Polish law does not differentiate between blue-collar and white-collar employees.

3. Hiring

3.1 Recruitment

Employers recruit through a variety of sources, including through the Internet and by advertising in newspapers or journals.

Private recruitment agencies and temping agencies are used for some types of employees, for example, secretarial staff. Private recruitment agencies do not require any licences before they can operate, but they have to be recorded in the register maintained by the Labour Minister.

3.2 Work Permits

The Polish law in relation to work permits is highly complex, accordingly only a high level overview of the legal position is set out below.

Citizens of all the European Economic Area countries have free access to the Polish labour market.

The employment of foreigners, with the exception of EEA countries, in Poland is regulated by the Act on Promotion of Employment and Labour Market Institutions of 20 April 2004.

Under the provisions of this Act, a foreigner is allowed to carry out work in Poland only if the employer obtains a conditional permit (the "Conditional Permit"). This is a document guaranteeing the foreigner a work permit on the condition that the foreigner obtains an appropriate visa or a residence permit for a specified period of time. Both permits are issued by the Voivodship Governor *(maszałek województwa)* appropriate to the place of the employer's registered place of business.

The Conditional Permit constitutes the basis for the foreigner to apply to a Polish embassy or consulate for a visa for the right to reside in Poland with the right to work or to the Voivode for a residence permit for a specified period of time. After the visa or the residence permit is obtained, the Voivodship Governor issues the Work Permit. A number of documents must be attached to the applications for Conditional Permit and for the Work Permit (the relevant list can be obtained in the Voivodeship Employment Office).

A Work Permit is issued for the period of time specified in the Conditional Permit, but for no longer than the duration of the appropriate visa or temporary residence permit.

The employment agreement (or any similar agreement) may only be entered into for the period specified in the Work Permit. The Work Permit may be revoked by the Voivodship Governor if, for example, the conditions of the permit are breached or if the employee loses the qualifications necessary to carry out the specific type of employment (e.g. driver's licence). In such cases, the relevant agreement must be terminated as soon as possible.

Foreigners who have permanent residence or refugee status in Poland (or a permit for a so-called "tolerated stay" in Poland or for providing temporary protection) or in certain circumstances are relatives of a Polish citizen do not have to obtain a Work Permit. There are a number of additional exceptions including a key exception for foreigners who are permanently resident abroad who are members of the management board of a legal entity (including limited liability companies and joint stock companies), if they work in Poland no more then 30 days in a calendar year.

The nationals of countries with which the EU has signed Free Movement of Persons Agreements do not have to obtain work permits. Also, employees employed by foreign employers who are seconded to work in Poland do not

need a work permit provided that all the conditions of secondment described in Directive 96/71/EC.

An employer is obliged to pay a work permit fee the equivalent of one month's guaranteed minimum salary into a special fund. The guaranteed monthly salary is approximately PLN 936 (with some exceptions). When a permit is extended, this fee is halved. Illegal employment (i.e. without a Work Permit or in breach of its conditions) is penalised by fines of at least PLN 3,000 for the employer and at least 1,000 PLN for the employee. Moreover, the employee may be deported from Poland (the deportation costs are borne by the employer).

4. Discrimination

Direct or indirect discrimination on the grounds of sex, gender, age, disability, race, religion, nationality, sexual orientation, ethnic origin, political views, membership of any kind, is forbidden when hiring employees, whether for employment for a fixed or indefinite term, full time or part time.

The employer is expressly obliged to actively prevent such discrimination as well as any harassment or intimidation.

Under Polish law harassment and intimidation means action or behaviour towards an employee or directed against an employee, that involves persistent and long-lasting badgering of an employee or threats to an employee causing him/her to have a lower sense of professional worth, ridiculing an employee or humiliating him/her, ostracizing or eliminating him/her from the team of his/her colleagues.

5. Contracts of Employment

5.1 Freedom of Contract

Generally, parties are free to contract on whatever terms they choose and agree on. However, there are some provisions that have to be included in every employment contract as a matter of law (e.g. place of work, working hours, remuneration, scope of work obligations). The requirements cannot be contracted out of by the parties.

5.2 Form

Employment contracts have to be concluded in writing. If they are not, the employer is obliged to inform an employee in writing of the basic terms and conditions of employment within seven days of the date the employment contract is concluded. However, a failure to comply with this requirement does not render the contract invalid or void.

If the employer does not confirm an employment contract in writing, it may be fined up to 5,000 PLN.

5.3 Trial Periods

Usually the parties decide on the length of a trial period which cannot exceed three months.

5.4 Confidentiality and Non-Competition

An employee is obliged to perform the work conscientiously and carefully, and to abide by the instructions given by the employer. He is also obliged to look after the interests of the employer, protect his property and to keep confidential any information the disclosure of which could result in damage to the employer.

The employer may, and often does, conclude a separate non-compete contract for the duration of the employment contract. The general framework for non-compete provisions is set out in the Code. There are in addition other legislative provisions, for example in the Unfair Competition Act, which regulate the content of non-compete provisions. In general, an employee can neither directly undertake competitive activities himself nor provide, indirectly by any means whatsoever, services for the benefit of any institution or entity that competes with his employer.

When an employee has access to vitally important information the disclosure of which could result in damage to the employer, the parties to the employment contract can conclude a non-competition contract that will also be binding after the termination or expiry of the employment contract. The non-competition contract should set out the duration of the obligation and provide for compensation to be payable to the employee. Regardless of its duration, a non-competition contract will cease to be binding once the reasons for its conclusion cease to exist or if the employer fails to pay compensation to the former employee.

The amount of compensation cannot be less than 25 per cent of the remuneration received by the employee under the employment contract during the currency of which the non-competition clause is deemed to be in effect.

5.5 Intellectual Property

Under Polish law, unless the employment contract provides otherwise, the employer is entitled to any intellectual property rights that the employee creates as result of performing his employment contract.

6. Pay and Benefits

6.1 Basic Pay

There is a national minimum wage of PLN 936 per month (this is approximately €234). It is renewed on an annual basis.

There are no legal obligations on employers to increase wages. However, collective agreements or work rules applicable may provide otherwise.

Public administration employees have their wages increased annually according to the annual inflation rate.

6.2 Private Pensions

Private pensions schemes are of some importance, but for the time being the most common are state provisions.

Submitting contributions to the State Social Security Fund is compulsory for every employer, regardless of its legal status. An employee is entitled to receive a state pension from the pension fund. The amount of the pension depends on various factors (e.g. the duration of contribution and non-contribution periods, the amount of contributions paid by the employer).

The contribution that is paid by the employer is split into two parts - one of them is transferred to the Social Security Fund and the other to a private open pension fund chosen by the employee.

Apart from the pensions from the Social Security Fund, the employee may receive a pension from private pension funds if he has paid premiums into the relevant private pension fund himself.

6.3 Incentive Schemes

There are different types of incentive schemes in Poland. They may operate on a quarterly or annual basis be linked to market share, revenue increase, PTI (pre-tax income) results and so on. Each employer devises the terms of its incentive schemes, if any, according to its requirements.

6.4 Fringe Benefits

Common fringe benefits typically include private medical insurance for treatment outside the national health service and company cars. Generally, such fringe benefits are *ex gratia*.

6.5 Deductions

Employers are obliged to deduct income tax at source. They are also obliged to deduct insurance contributions (social security contributions).

7. Social Security

7.1 Coverage

The state-administered social security system provides benefits by way of pensions, family benefits and compensation benefits.

There are the following social security benefits:

- pensions; and
- sick pay, accident at work, rehabilitation, maternity and compensation benefits.

Employers and employees are obliged to pay certain contributions with respect to social security benefits. These contributions are paid to the Social Security Fund (or an accident fund that is a part of the Social Security Fund).

7.2 Contributions

The level of an employer's contributions depends on the amount of an employee's remuneration.

Employers must deduct from an employee's remuneration the employee's own insurance contributions and in addition, must pay the employer's contributions in respect of the employee, i.e. the contributions are divided equally by employers and employees.

Employers' social security contributions are as follows:

- 9.76 per cent of the remuneration is paid in relation to the pensions benefits;
- 6.5 per cent of the remuneration is paid in relation to disability pensions benefits; and
- 2.45 per cent of the remuneration is paid in relation to sickness benefits.

8. Hours of Work

The normal working week is 40 hours (eight hours per day in a five day working week). This can be increased to up to 48 hours a week.

9. Holidays and Time Off

9.1 Holidays

In Poland, there are ten public holidays. These include New Year's Day, Easter Monday and Christmas. All workers are entitled to a minimum of 20 days' paid annual leave, which accrues on a pro rata basis from the first day of employment up to 10 years' employment. Employees with more than 10 years' service are entitled to 26 days' paid annual leave.

9.2 Family Leave

Subject to satisfying the necessary statutory criteria, a woman is entitled to 18 weeks' maternity leave for the birth of her first child, 20 weeks' leave for any further children and 28 weeks' leave for a multiple birth.

A woman is entitled to maternity pay of 100 per cent of her remuneration during the period of maternity leave. Maternity and paternity pay is funded by the State.

A man is entitled to paternity leave (eight or 16 weeks) if he assumes responsibility for bringing up somebody else's child and wants to adopt it. He is entitled to paternity pay of to 100 per cent of his remuneration during the paternity leave period.

Both parents are entitled to three years' unpaid childcare leave until the child's fourth birthday.

9.3 Illness

Employees absent from work by reason of ill-health or injury are entitled to sick pay. Sick pay amounts to 80 per cent of the employee's remuneration. The employer pays sick pay for an aggregate of 33 days' illness during the year. After this, sick pay is paid by social security.

10. Health and Safety

10.1 Accidents

Employers are under a duty to have regard for the health and safety of their employees while at work (and travelling to or from work), and are obliged by statute to take out insurance against liability for occupational injuries and diseases.

Generally, employers are obliged to prevent accidents at work. In the case of an accident at work, an employer is obliged to provide first aid and eliminate the source of danger. Employers must maintain an accident register.

In the case of serious, lethal or group accidents, the employer should inform the Labour Inspector and the prosecutor of them.

10.2 Health and Safety Consultation

The employer should provide the employees with healthy and safe work conditions and should inform the employees about the health and safety work place rules.

Before an employee commences work, the employer gives him training in relation to the health and safety rules.

An employer is obliged to provide employees with free personal equipment to protect them against factors in the work place that are hazardous and harmful to health and to instruct the employees in the use of such equipment. In certain situations, it is also obliged to provide employees with free working clothes and shoes and should not permit the employees to work without personal protection equipment, work clothes and shoes.

An employer who employs more than 100 employees is obliged to set up an advisory and supervisory board body on work and safety issues. If the employer employs fewer than 100 employees, it may assign the performance of work and safety service tasks to an employee carrying out other work.

An employer with more than 250 employees is obliged to set up a work and safety committee as an advisory and opinion-giving body.

11. Industrial Relations

11.1 Trade Unions

Under Polish law, there is freedom of trade union establishment. To establish a trade union there should be ten founders. Trade unions have various rights as far as employment relationships are concerned. Employers are obliged to consult with them, for example on redundancies, transfer of business, termination of the employment contract of an employee represented by trade unions. Employers cannot dismiss employees who are members of the managing body of a trade union.

11.2 Collective Agreements

Collective agreements between employers and trade unions are most usually found in the industrial sector and often regulate matters such as pay, working hours, holidays, dispute procedures and redundancy procedures.

Collective agreements are one source of labour law. They are fully binding on an employer party to the agreement. They regulate work conditions, rights and obligations of the employer and the employees. Typically, work conditions provided for in collective agreements are more beneficial to the employees than those stipulated in employment legislation.

11.3 Trade Disputes

Trade disputes may relate to work and remuneration conditions. The first step to resolving a trade dispute is a negotiation exercise between the trade unions and the employer. If the parties do not come to an agreement, the next step is mediation conducted by the representatives chosen by trade unions and the employer. If the parties do not reach an agreement as a result of mediation, trade unions have the right to go on strike. The right to strike is guaranteed by the Polish Constitution.

11.4 Information, Consultation and Participation

The Workers Information and Consultation Directive has been implemented by means of the Act on Informing and Consulting Employees of 7 April 2006. This introduces a new employee representative body called the "Employee Council". The Act applies to employers who employ more than 100 employees during the initial transition period which ends on 23 March 2008 thereafter it applies to employers who employ at least 50 employees. The employer is obliged to inform the employees about their right to establish the Works Council but is only obliged to create a Works Council when a request is made by the employees.

An Employee Council only has a consultative remit. In particular, Councils are not entitled to enter into collective disputes with the employer or call any strikes.

Employers must keep the Employee Council informed about the following:

(i) the activities and economic situation of the employer and any planned changes in this field;

(ii) the situation, structure and probable development of employment within the undertaking; and any activities which are aimed at maintaining employment levels; and

(iii) those activities which may cause any material change in the organisation of work or basis of employment.

The employer is also obliged to consult with the Employee Council on the matters outlined at (ii) and (iii) above.

The Employee Council is entitled to issue an opinion on the matters that it has been informed about. However, the Employer is not required to take any action in response to this opinion. The consultation should be carried out in good faith and with due regard to the other party's interests. However, this is very general wording, which does not oblige the employer to share the Employee Council's view or to reach any agreement.

An employer may have additional information and consultation obligations in the context of mergers and acquisitions and redundancy exercises (see sections 12.2 and 13.1 below).

12. Acquisitions and Mergers

12.1 General

Generally, under Polish law, when a company sells its business or a part thereof to another entity, the employees are transferred together with the business. From the date of the transfer, the seller's employees become the employees of the buyer.

Employees who are transferred may terminate their employment contracts on seven days' notice at any time in the two-month period following the transfer.

12.2 Information and Consultation Requirements

If trade unions are recognised, the seller and the buyer have to inform the trade unions 30 days before the date of the transfer.

If there are no recognised trade unions the seller and the buyer have to inform the employees about the transfer 30 days prior to the date of the transfer.

This obligation exists, regardless of the number of employees involved, every time the employees are transferred with the business.

A sale and purchase agreement can be signed before the information and consultation process is completed. However, if the consultation process has not been completed before the sale and purchase agreement is signed, there may be fines (of up to 5,000 PLN) imposed on employers for failing to comply with the obligation. The courts cannot, however, object to the transfer. There is no specified minimum period over which the information and consultation must take place.

12.3 Notification of Authorities

There is generally no obligation to supply information to any governmental or regulatory bodies. There are, however, limited exceptions in relation to State-owned or municipal enterprises.
Every action regarding the transfer of the business of a State-owned enterprise is initiated by the State founder or, if not, the State founder has to consent to it.

In certain situations (e.g. if the transfer could impact on market competition), the buyer must obtain the consent of the President of the Office for Competition and Consumer Protection ("OCCP") before the transfer is completed. A fine may be levied if a transfer is completed before such consent is obtained.

12.4 Liabilities

A failure to comply with the information and consultation obligations or a requirement to secure the consent of the President of the OCCP can lead to fines of up to 10 per cent of the business' turnover achieved in the preceding year.

13. Termination

13.1 Individual Termination

The notice period varies according to the type of employment contract and on the length of employment with a given employer.

The employer should inform, in writing, the trade unions representing an employee of any intention to terminate an employment contract of indefinite duration and it should state the reasons for the dismissal.

If a trade union decides that such a notice is unjustified, it may present the employer with written substantiated objections within five days of receiving the information.

The minimum guaranteed notice period for an employment contract with a trial period provision is as follows:

- three working days if the trial period does not exceed two weeks;
- one week if the trial period is longer than two weeks;
- two weeks if the trial period is three months.

A fixed-term contract can be terminated by the parties with two weeks' notice if the term of the contract is longer than six months.

The minimum guaranteed notice period for an employment contract of indefinite duration is:

- two weeks if the employee has been employed no for more than six months;
- one month if the employee has been employed for at least six months;
- three months if the employee has been employed for at least three years.

The employee receives remuneration during the entire notice period.

13.2 Notice

The termination notice must be in writing and must be delivered to the employee.

13.3 Reasons for Dismissal

The employer may terminate an employment contract at any time. However, he has to state the reasons for the dismissal. Under Polish law, the reasons have to be justified. This means that they have to be related to the employee's work (e.g. low standard of work). If an employee proves that the reasons for dismissal are not justified, he has the right to claim compensation, or, if the employment contract has been terminated in the meantime, the employee can claim reinstatement to his previous position. The maximum amount of compensation that can be awarded is three months' remuneration.

13.4 Special Protection

There are special rules regarding dismissal as far as pregnant women, trade union representatives or employees nearing retirement age are concerned. Generally, employers cannot terminate the employment contracts of such protected employees. There are, however, exceptions to these protection rules. If an employer is declared bankrupt or is in the process of liquidation, pregnant women and employees reaching retirement age will not be protected from dismissal.

13.5 Closures and Collective Dismissals

There are special rules in relation to redundancies. The rules will apply if the employer employs at least
20 employees and within the period of 30 days he makes redundant:

- 10 employees where the total workforce is less than 100 employees;
- 10 per cent of employees if the total workforce is between 100 and 300 employees;
- 30 employees if the total workforce exceeds 300 employees.

An employer is obliged to consult recognised trade unions about any proposed redundancies. The employer and trade union should execute an agreement regarding the terms of the redundancy exercise. An employer is also obliged to notify the poviat employment office of the redundancy terms (in particular of the number of employees who will be made redundant and the reasons for the redundancy).

Generally, in the case of redundancy employment protection rules do not apply.

An employee who is made redundant is entitled to a redundancy payment of:

- one month's remuneration if he has been employed for less than two years;
- two months' remuneration if he has been employed for more than two years and less than eight years;
- three months' remuneration if he has been employed for more than eight years.

The total amount of a redundancy payment may not exceed 15 times the minimum wage.

If the employer subsequently recruits to the same positions that were previously made redundant, it is obliged to re-hire

an employee made redundant from this position if he applies for a position within a year of the date his employment contract was terminated.

14. Data Protection

14.1 Employment Records

The Personal Data Protection Act (the "Act") regulates the processing of personal date in relation to individuals only. Under the Act, personal data means any information relating to a natural person from which it is possible to identify that person.

Data processed in connection with employment in its broadest sense (e.g. administrative purposes, civil law purposes) comes within the scope of the Act.

An employer, as data administrator, is permitted to process employee data for "justified" purposes of the employer. This covers processing for the purposes of fulfilling business objectives and the fulfilment of statutory and contractual obligations towards employees.

An employer is obliged to take appropriate security measures to prevent unauthorised access to the personal data of its employees.

14.2 Employee Access to Data

Employees have the right to demand that their personal data is supplemented, updated, rectified, temporarily or permanently withheld from processing or deleted, if they are incomplete, out of date, incorrect or if they have been collected in breach of Personal Data Protection Act or have become superfluous to realisation of the purpose for which they were collected.

Under the Personal Data Protection Act an employee has the right to control the processing of his/her personal data by the employer. In particular an employee has the right:

- to be informed about the manner in which access is given to the data, and in particular about the recipients or categories of recipients to whom the data is made available;
- to demand that his/her personal data be supplemented, updated, amended, that its processing be discontinued temporarily or permanently, or that the data is removed, where the data is incomplete, out of date, inaccurate or was collated in breach of the Act, or is no longer necessary for the purpose, for which it was originally gathered.

The Personal Data Protection Act does not specify the method by which providing an employee with information concerning his/her personal data. This is left to the employer to decide provided that the employee has an effective means of acquainting himself with the information and the information is given in writing if the employee so requests.

14.3 Monitoring

The monitoring of employee emails is not automatically lawful. There is at present some doubt as to whether it would be lawful if a notice is given to employees prior to monitoring. It does however seem likely that monitoring will be lawful if an employee consented to it, prior to the monitoring taking place. Consent can be given in the employment agreement, or provided separately at a later date.

Portugal

1. Introduction

The primary source of employee rights is the Constitution which enshrines rights such as the employee's right to strike.

Employment relationships in Portugal are highly regulated, and in the past there has been criticism that the extent of regulation has led to a certain amount of inflexibility in the labour market.

A new Labour Code came into force on 1 December 2003. This simplified and consolidated the pre-existing rules, as well as implemented significant changes in the following areas:

- the negotiation of collective agreements;
- the use of term employment contracts;
- termination of employment contracts;
- flexible working conditions.

In August 2004, Law 35/2004, July 29, came into force complementing and regulating the Labour Code.

Collective bargaining is well established with some 70 per cent of Portuguese employees being covered by some form of collective agreement. Collective agreements are legally binding and, it should be noted that, there is a high degree of Government intervention in the conduct of collective negotiations.

Disputes are resolved by a highly developed system of Labour Courts (*Tribunais de Trabalho*) but the system is extremely cumbersome, and it can take one to two years between an aggrieved individual making an application and a final decision being given at first instance and four to five years if the case goes on appeal.

2. Categories of Employees

2.1 General

There are three categories of employees: general, rural and domestic. In this publication, attention is focused exclusively on "general" employees covering non-domestic and non-agricultural employees including senior staff and directors.

2.2 Directors

There are specific provisions relating to "special confidence" employment relationships, namely, those with directors, managers and their personal secretaries.

2.3 Other

There are specific provisions relating to part-time employment. The salary of part-time employees must be calculated pro-rata to the salary of full-time employees carrying out similar work.

3. Hiring

3.1 Recruitment

Employers are encouraged to recruit employees between the ages of 16 and 30 who have never had regular employment. Employers who employ such employees are exempt from making 50 to 100 per cent of the social security contributions they might otherwise have to make for a period of three years.

Women must be allowed access to all jobs, professions and posts. As a basic rule, job offers and advertisements must not specify any restrictions or qualifications based on sex.

Although there is a recommendation in the law on contracts of employment that employment shall be made available to individuals notwithstanding age, illness or disability, undertakings are not legally obliged to hire any minimum percentage of disabled workers. However, employers benefit from reduced social security contributions in respect of disabled employees.

3.2 Work Permits

A work permit is required in respect of non-EEA nationals of countries which do not apply a principle of equal treatment to foreign nationals intending to work for a short period. However, such nationals intending to work for more than two years, must obtain a residence permit. All contracts of employment of this type must be registered by the employer with the Ministry of Labour. The contract will be considered for registration if the employer provides evidence of the reasons for wishing to employ a foreign national, evidence that that employee has a clean police record and a copy of the signed employment contract.

Foreign employees may not be offered pay and other benefits differing from those offered to Portuguese nationals doing equivalent work.

There are no restrictions regarding the number of foreign employees that a Portuguese employer is allowed to hire. However, an annual Government report establishes the total maximum number of foreign employees that may be admitted for each sector of activity.

4. Discrimination

The Portuguese Constitution enshrines the basic right to be treated equally regardless of sex, race or nationality. The Labour Code guarantees equal pay, equal opportunities, equal conditions at work and equal treatment for both men and women and outlaws discrimination on the grounds of parentage, age, sex, sexual orientation, marital status, genetic heritage, disability, chronic illness, nationality, ethnic origin, religion, political or ideological convictions and trade unions membership.

5. Contracts of Employment

5.1 Freedom of Contract

Although the principle of freedom of contract is recognised, in practice such freedom is limited in the employment field by the requirements of legislative provisions and collective agreements. A collective agreement will take precedence over an individual contract where the provisions of the former are more favourable to the employee.

5.2 Form

There is no requirement for contracts of employment to be evidenced in writing. However, home based work contracts, term contracts (where permissible), part-time contracts, contracts with non-EEA nationals of countries who do not apply a principle of equal treatment to foreign nationals (see above) and non-competition provisions must be in

writing. In addition, as Portugal has implemented the EU Directive dealing with the information to be given about the contract of employment, it is necessary to have the "essential aspects" of the contract, as defined in the Directive, communicated to the employee in writing.

Contracts may be for fixed or indefinite periods and, if not specified to be for a fixed period, will be deemed to be for an indefinite one. Term contracts may be entered into for periods of six months to three years, and can be renewed twice provided that it does not in aggregate exceed three years, except in specific circumstances provided by law. If a term contract "overruns", then it will be deemed to have become a contract for an indefinite period. Term contracts may also be entered into for non defined periods of time in certain legally defined situations (e.g. for the duration of a specific project, as a temporary replacement of an absent employee). In these situations the contract's duration is limited to the duration of the "event" giving rise to the contract.

5.3 Trial Periods

The maximum trial period for an indefinite contract is 90 days. Longer periods apply for senior management contracts (240 days) and contracts which require special skills or experience (180 days). During the trial period the contract may be terminated by either party without notice or compensation.

In the case of fixed-term contracts, the maximum trial period is 30 days for contracts of six months or more and 15 days for contracts of less than six months.

These periods can be reduced by collective agreement or by written agreement between the parties.

5.4 Confidentiality and Non-Competition

Employees are under a general duty to protect confidential information and not to reveal information concerning production methods or other business secrets to third parties. Unlawful competition by an employee is a reason which may justify dismissal.

To be effective, non-competition provisions must be contained in a written contract of employment and cover only activities which may reasonably be said to damage the employer's business. They can be for a maximum period of two years and the employee is entitled to compensation for the period during which alternative employment is restricted. However, in situations where the employee's role involves a significant degree of confidentiality or access to sensitive information, the non-compete period may be extended to three years.

5.5 Intellectual Property

If an invention is made by an employee during the course of his or her employment, it belongs to the employer, provided the activity giving rise to the invention is required by the contract and the employee is remunerated for the invention. If such remuneration is not provided for, the employee is, nevertheless, entitled to be remunerated according to the value of the invention. If the invention, however, is connected with the employer's activity but is not related to a task defined in the contract, the employer has a preferential right over the acquisition and exploitation of the invention; appropriate compensation must however be paid to the employee.

6. Pay and Benefits

6.1 Basic Pay

A statutory minimum national wage is normally fixed each year ((€ 403 for 2007).

The employer cannot reduce the contractual wage, unless expressly permitted to do so by law, or where such a reduction has been accepted in a collective agreement.

An extra one month's basic wage must be paid to all employees as holiday allowance at Christmas by law.

There is no obligation to index link pay.

6.2 Private Pensions

In spite of the relatively generous provisions for state pensions, in some areas there are supplemental private pension plans. These tend to be more common in the case of larger and multi-national companies. All private pension schemes established on or after 1 January 1987 must be funded and managed on a segregated basis, either through an insurance company or a management society approved under the law.

Most private pension schemes have been collectively bargained and offer benefits related to final pay, targeting a final pension (inclusive of the state pension) of between 80 and 100 per cent of final pay.

6.3 Incentive Schemes

There is no legislative requirement for employers to operate share option or profit related pay schemes, and in practice such schemes are not widely used.

6.4 Fringe Benefits

Common fringe benefits include subsidised meals for employees, cars for directors, mobile telephone and health insurance.

6.5 Deductions

Employers are obliged to deduct tax and social security contributions at source.

7. Social Security System

7.1 Coverage

Although the majority of employees are covered by the national insurance plan (*Caixa Geral de Previdencia e Segurança Social*), there are other social security plans providing benefits to various categories of employees. Benefits provided include retirement pensions, unemployment payments, family allowances, sickness and maternity pay. Extensive medical care is provided under a national health system funded by the social security system.

7.2 Contributions

Because of the extensive benefits provided, contribution rates are high, employers' contributions are 23.75 per cent of salary and employees' contributions are 11 per cent of salary. In addition, all employees must be provided with a minimum level of industrial injury benefits; employers may provide these benefits by way of insurance.

Depending on the duration of a term contract, an employer's contribution rate may be increased by up to an additional one per cent if at least 15 per cent of its workforce are engaged on term contracts.

8. Hours of Work

The legal limit on the maximum hours of work is eight hours a day (up to a maximum of 40 hours per week). However, collective agreements may establish different maximum hours of work provided that they do not exceed the legal maximum hours of work provided for by general law.
Special flexible working hours regimes may also be established in certain circumstances.

The Labour Inspectorate must be informed twice a year of the number of hours worked in excess of the legal maximum. Overtime must be paid at a premium of 50 per cent for the first hour and at 75 per cent of normal rates for subsequent hours or fractions.
The premium is 100 per cent if overtime is performed on a day off.

9. Holidays and Time Off

9.1 Holidays

There are 13 national public holidays and various local and municipal holidays. Permanent employees are entitled by law to 22 working days holiday per annum and, unless the contrary is agreed with an employee, the employer is obliged to permit an annual vacation in the period between May and October.

The number of days of holidays is increased according to the employee's attendance record as follows:

- Three days if the employee has had a maximum of one absence or two half days;
- Two days if the employee has had a maximum of two absences or four half days;
- One day if the employee has had a maximum of three absences or six half days.

9.2 Family Leave

Pregnant women are allowed 120 days paid maternity leave, 90 of which must be taken after birth. The duration of maternity leave can be increased by a further 25 per cent, if the mother so desires. Maternity allowance is 100 per cent of the woman's average wage for 120 days or 80 per cent for 150 days (if the maternity leave is increased by 25 per cent) and the cost is met by the social security system. All rights regarding job security and seniority are protected during maternity leave. In the event of multiple births the 120 days of maternity leave will be increased by an additional 30 days leave for each additional child.

Either the mother or the father may take unpaid leave of up to three months, extendible to up to two years, after the birth of a child to look after that child until the child is six years old. Employees have the right to return to their previous job on expiry of parental leave.

In the case of the birth of a third child or more, leave may be extended for up to three years.

Either the mother or the father will also be entitled to take unpaid leave of up to four years to take care of their children in cases where they are handicapped or have a chronic disease until the child is twelve years old.

9.3 Illness

During the first three days of absence due to illness or injury, the employee does not receive his or her full wage. After this period, the employee is entitled to receive pay for up to 1095 days. These costs are met by the social security system as follows:

- 55 per cent of full wage for periods of illness of 30 days or less;
- 60 per cent of full wage for periods of illness of more than 30 days and up to 90 days;
- 70 per cent of full wage for periods of illness of more than 90 days and up to 365 days;
- 75 per cent of full wage for periods of illness of more than 365 days.

The employment contract will be considered suspended if an employee is unable to work for longer than 30 days.

Sickness and disability payments are made under the social security system, although in some industries, collective agreements may provide for a supplemental payment. Employers are liable for the payment of salary if the employee is not covered by the social security system.

10. Health and Safety

10.1 Accidents

All employees must be covered for a minimum level of industrial injury benefit in addition to benefits payable under the social security system. This is most commonly provided by way of insurance (with premiums in the range of three quarters of one per cent to three per cent of payroll depending on the nature of the work), but can be covered by employers on a case by case basis.

10.2 Health and Safety Consultation

The law gives employees the right to have health and safety representatives and health and safety committees may have to be set up under the terms of collective agreements. Special rules govern the running of employers' health and safety departments. Employees and Works Councils have rights to information and consultation in respect of health and safety matters.

11. Industrial Relations

11.1 Trade Unions

Trade unions are given extensive rights under the law to organise themselves which, together with the relatively few legal restrictions on the formation of trade unions in Portugal, has led to a large number of trade unions. However, it is difficult to accurately assess the percentage of the Portuguese workforce involved in unions, but estimates suggest that it is about 24 per cent.

Although unions are protected from political interference by law, they are themselves highly political.
The Portuguese Communist Party is extremely influential, particularly in the blue collar unions, although the Socialist and the Social Democrats have recently increased their influence. The majority of

Portuguese unions belong to one of two national organisations:

- the CGTP - Intersindical (*Confederação Geral dos Trabalhadores Portugueses*); or
- the UGT (*União Geral dos Trabalhadores*).

There are regional or sectoral employers' associations, for example, the Confederation of Portuguese Industries (*CIP*), which negotiate collective agreements.

11.2 Collective Agreements

There are three different types of collective agreements recognised under Portuguese law:

- *contrato colectivo*, which is the collective contract negotiated between employers' associations and unions;
- *acordo colectivo*, an agreement negotiated between unions and more than one employer (although not an employers' association); and
- *acordo de empresa*, an agreement between unions and an individual employer.

The first two are more commonly found in small and medium businesses, whilst large employers tend to negotiate an *acordo de empresa*.

Collective agreements are governed by a special section of the New Labour Code and most private sector employees are covered by one of these agreements.

Provided that a collective agreement does not attempt to impose upon employees worse economic and social conditions than those provided by law or attempt to regulate the economic activities of the undertaking, the parties are free to include any matters which they feel are appropriate. In practice, collective agreements tend to cover matters such as working hours, career development, health and safety and minimum wages.

The procedure by which collective agreements are negotiated is governed in some detail by law, and the final form of any agreement must be lodged with the Ministry of Labour.

The Labour Code contains provisions on the duration and renewal of collective agreements. Generally speaking, under this regime a collective agreement may not remain in force for longer than two years without being renegotiated. The underlying purpose of these provisions is to promote the periodical renegotiation of the collective agreements (which, in the past, had remained unaltered for long periods of time).

The Government has powers to intervene in the collective bargaining process, and may by order (*regulamento de extensão*) extend a collective agreement to bind parties other than the original signatories.

11.3 Trade Disputes

The right to strike is enshrined in the Portuguese Constitution. The procedures laid down in the Labour Code must be followed.

It is also worth noting that lock-out action by an employer is a criminal offence punishable by up to two years' imprisonment.

11.4 Information, Consultation and Participation

There is a constitutionally guaranteed right to form a Works Council (the size of which will depend on the number of employees) in any undertaking whatever its size. Its members are elected on an annual or twice yearly basis by the workforce frequently, although not always, from lists put forward by the dominant union. The role of a Works Council is advisory, aiming to safeguard employees' interests by becoming involved in consultation on matters such as changes in location, plant closure and production changes.

In addition to Works Council delegates, time off must be given to elected union delegates, whose role is to ensure that collective agreements are adhered to and to defend employees' rights.

12. Acquisitions and Mergers

12.1 General

The Labour Code implements the revised Acquired Rights Directive that regulates employees' acquired rights in the event of a transfer of a business. As a general rule, a transferee will take over the contracts of employment on the transfer of a business and assume the position of the transferor, unless the employee was transferred elsewhere (e.g. to a different location or department) before the transfer of the business occurred.

12.2 Information and Consultation Requirements

Before the transfer takes place, the transferor and transferee must provide written information to the employees, or their representatives, stating the date and reasons of the transfer, its legal, economic and social consequences as well as any specific employment measures to be implemented as a result of the transfer. This obligation arises regardless of the number of employees involved.

Ten days after compliance with the information obligation, the transferor and transferee must consult the employees, or their representatives, in order to obtain their agreement on specific measures to be implemented as a result of the transfer.

12.3 Liabilities

Failure to comply with the information and consultation obligations is classified as a light labour law infraction punishable with fines, however such failure will not invalidate a transaction.

For a period of one year after the transfer, the transferee is jointly liable with the transferor for any obligations vis-à-vis the employees that arose prior to the date of the transfer.

To reduce its joint liability, the transferee may display a notice at the workplace stating that the employees must claim any outstanding sums owed to them within a three month period of the transfer otherwise the transferee will cease to be liable for such sums.

Any dismissals or redundancies prior to or after the transfer that are made in connection with the transfer itself are unlawful. Failure to comply with the obligation in relation to the automatic transfer of employees is classified as a very serious labour law infraction. This is punishable with fines and will entitle the employees to bring proceedings to be reinstated or to receive compensation for unlawful dismissal.

13. Termination

13.1 Individual Termination

Fixed-term contracts may terminate with the expiry of the term if notice is given in writing by the employer or by the employee, respectively, fifteen or eight days before the end of the term. Any contract may terminate by mutual agreement (which must be recorded in writing) or by the employee's unilateral decision. Otherwise (except during a trial period or when there are collective dismissals), an individual's contract of employment may only be terminated if there is gross misconduct (*justa causa*), e.g. if the individual is no longer suitable for the job, or if the job itself has effectively disappeared for technological or economic reasons. In particular, it should be noted that although the retirement age is legally fixed at age 65, the employee may not be forced to retire and, any enforced retirement will be construed as an unjust dismissal. However, once an employee reaches 70, the employment contract will be deemed to become a fixed-term contract for six months, terminable at the end of this period.

Where an employer terminates an employment contract in breach of the applicable rules a labour court can classify it as an illegal dismissal. This will entitle the employee to choose between being reinstated or receiving compensation of between 15 and 45 days of base salary per year of seniority (in any event the compensation cannot be less than three months of salary). The employee will also be entitled to all unpaid salary from the date of dismissal until the date of the court decision.

13.2 Notice

An employee may terminate an employment contract on 30 or 60 days' notice depending on the duration of the employment contract.

An employer cannot terminate an indefinite employment contract by giving notice except in cases of redundancy but in that case there are other complex procedural requirements.

13.3 Reasons for Dismissal

There are three reasons for which an individual's contract may be terminated:

- misconduct;
- redundancy; or
- the employee's lack of adaptability to new working conditions.

In connection with dismissals for misconduct, the law lays down a non-exhaustive list of reasons each of which would be sufficient justification.

Termination due to elimination of an individual's post (which is equivalent to individual redundancy) must be distinguished from collective redundancy (see below).

Finally, an employer may terminate the contract of employment if an employee is unable to adapt to changing circumstances. There are certain specific circumstances which must exist before dismissal on such grounds can occur (including the introduction of new technology in the preceeding six months).

13.4 Procedure for Dismissal

The procedure applicable to dismissals arising for each of the reasons set out above is laid down in considerable detail by law. In connection with dismissals for misconduct, the Works Council must be informed and the employer must await the opinion of the Works Council before implementing the dismissal (failure to do so will lead to the dismissal being considered void). Where dismissal is due to the disappearance of the job, or the employee's lack of adaptability, the employer must notify the Works Council which may call upon the Labour Inspectorate to examine the grounds of the dismissal. There are detailed consultation requirements.

13.5 Special Protection

Trade union members, union delegates and Works Council members are offered enhanced protection against dismissal. Dismissal of these types of employees is always presumed to have been made without just cause. In these situations, if the employer is unable to demonstrate that there is just cause for a dismissal, the employee can choose either to be reinstated or to receive a payment equal to twice the value of the compensation that an employee in an equivalent position would be entitled to by law, contract or collective agreement.

Prior to dismissing an employee who is pregnant or breast-feeding, a prior favourable opinion must be issued by the Employment Department. Dismissal of pregnant or breast-feeding employees is always presumed to have been without just cause.

13.6 Closures and Collective Dismissals

There will be a collective dismissal if two or more employees are dismissed from a micro company (i.e. a company with a maximum of ten employees) or a small company (i.e. a company with 10 to 50 employees), or if five or more employees are dismissed from a medium or larger undertaking. The employer must demonstrate that the reasons for making collective dismissals are sufficiently grave to justify priority being given to the undertaking's interests over the constitutionally protected rights of the employees. The employer must notify the Works Council and the Labour Inspectorate, giving details of each employee involved and the reasons for the proposes dismissals. The employer and unions are obliged to negotiate ways of minimising the numbers of affected employees. The services of the Ministry of Labour will intervene in negotiations to ensure that the appropriate formalities are complied with and to act as mediator. Once the negotiations are completed, the employer must give all affected employees at least 60 days' notice before the dismissals can take effect, and inform them, in writing, of the reason for the dismissal, the date on which it takes effect and the amount of the compensation payable.
The employer must pay compensation of one month's salary for each year of

service subject to a minimum of three months' pay.

14. Data Protection

14.1 Employment Records

The collection, storage and use of personal data held by employers about their employees are regulated by the Personal Data Protection Law, approved by Decree-Law 67/98, dated October 26 (PDPL), which implements the EU Data Protection Directive. Violation of the PDPL can lead to criminal convictions, fines, compensation claims from affected employees or regulatory action. The Labour Code also establishes specific data protection rules based on the principle of preservation of the right to privacy/private life.

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 principals including the following: ensuring that data is accurate, up to date, and is not kept longer than is necessary and that it is stored securely to avoid unlawful access or accidental destruction or damage.

Employers, and all persons that have access to personal data in the scope of their job function are obliged to keep such data confidential.

In the absence of the application of any of the exemptions specified by the Data Protection National Commission (CNPD) employers must notify the CNPD of their processing of their employees' personal data. This notification is made on a standard form setting out details of the processing, the data controller's identity, the purposes of the processing, the categories of data to be processed, security measures adopted to protect the data, details relating to the transfers of data to third parties and international data flows.

In some specific cases identified by the PDPL (including cases where sensitive data and criminal records are processed), an employer must obtain the prior authorisation of the CNPD in order to initiate the processing of their employees' personal data.

In addition, in the absence of a relevant exception, personal data may only be processed if employees have unambiguously given their consent. In some cases express consent is required, for example in order to process sensitive data where no relevant exceptions apply.

14.2 Employee Access to Data

Employees, as data subjects, have the right to access their personal data. The right of access entitles them, subject to certain limited exceptions, to be told, among others, what data are held about them, the purposes of the processing, to whom it is disclosed and to be provided with a copy of their personal data. Data subjects may also request the rectification, deletion or blocking of their personal data, where the processing of their data does not comply with the provisions of the PDPL, and that any such rectification, deletion or blocking should be notified to any third party to whom their personal data had been communicated except where the employer demonstrates that it is impossible to do so. The exercise of these rights of access is subject to certain conditions in particular case of data processing, as provided by the PDPL.

Employees also have the right to object to the processing of their data in the circumstances specified by the PDPL, namely in the case of processing for direct marketing purposes or for any other form of advertising.

14.3 Monitoring

The monitoring of employee e-mail, Internet and telephone usage and closed circuit TV monitoring is regulated by the Labour Code. Monitoring is permissible provided that it is carried out in accordance with the principles and processing conditions prescribed by the Labour Code. All files and systems used by the employer to process employees' data must satisfy the PDPL's provisions. Express employee consent to monitoring is not usually required, however, employees shall be made aware that monitoring is being carried out, the purpose for which it is being conducted and to whom the data will be supplied.

The recording of communications is expressly prohibited, except if made for the exclusive purpose of proving a commercial transaction or if made in the context of a contractual relationship, as established by the Law related to Personal Data Processing and Privacy Protection in Electronic Communications. In the case of legally authorized recordings, employees involved in such communications must be made aware of the recording and they must give their express consent to the recording in addition to any other data subject involved in the communication. The CNPD must grant prior authorization for the recordings.

The employer is entitled to establish rules for the use of the company's communication systems (e.g. email). These rules must be made clear to the 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 PDPL principles and processing conditions. In many cases it may be necessary to obtain express consent to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information in question and the location of the third party. Personal data can be transferred within the EU subject to general compliance with the PDPL.

Where the third party is based outside the EEA it should be noted that the PDPL prohibits the transfer of data to a country outside the EEA, unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply.

Romania

1. Introduction

Romanian employment relationships are governed principally by the Labour Code (*Codul Muncii*), collective bargaining agreements and the employer's internal regulations.

The Labour Code, is the main enactment governing employment relations. It came into force in 2003 and sets out the minimum rights to be afforded to employees, as well as collective rights at work. In its attempt to comply with European Union legislation, the Labour Code introduced many new principles and concepts of labour law and the related secondary legislation has not been entirely modified in line with these legislative changes. Similarly a certain degree of uncertainty and lack of clarity exist in the practice and the approach of different Romanian authorities dealing with labour issues.

Collective bargaining agreements exist at national level, industry level and company level. Collective bargaining agreements, irrespective of the level at which they have been concluded, must not breach the requirements of the Labour Code. Moreover, collective bargaining agreements must not establish rights for employees that are inferior to those established by the Labour Code.

According to the same principle collective bargaining agreements must not establish rights for employees that are inferior to those established by any collective bargaining agreements concluded at a higher level and must not breach the minimum requirements of the Labour Code.

2. Categories of Employees

2.1 General

Romanian legislation makes a distinction between employees engaged for an indefinite period, employees engaged for a fixed period, full-time employees and part-time employees, temporary employees supplied by an agent and home employees. However, each of these categories of employees have a legal right to be treated no less favourably than a comparable full-time employee engaged for an unlimited duration.

2.2 Directors

Under Romanian corporate legislation, joint stock companies' directors and managers cannot be employees of the same company for the duration of their mandates. If employees are designated as directors of the company their employment contracts with the company are suspended.

2.3 Other

Public officers are subject to a special law establishing their status, rights and obligations, in accordance with the relevant EU legislation.

3. Hiring

3.1 Recruitment

There are a number of sources of recruitment, such as the state agencies for employment and private recruitment agencies. Also, in order to recruit, employers usually advertise in local or national newspapers or journals. The services of private recruitment agencies are often used by employers for all categories of employees.

Romanian legislation provides for incentives to be granted by the state to employers which hire unemployed and newly graduated persons.

3.2 Work Permits

Work permits are required for foreign citizens to work in Romania. There are many types of work permits. The most important is the type A work permit which allows a foreign person to enter into a Romanian employment agreement and grants the foreign person the same rights as a Romanian employee would have. Type B work permits are issued to seconded foreign employees for a maximum duration of one year.

EU nationals should as a matter of principle be allowed to work without a work permit. However, for a transitory period of up to seven years after Romania's accession to the EU (i.e. 2007-2014), EU nationals are subject to the requirement of obtaining a work permit to the extent that the respective EU member state of origin has also imposed a similar requirement on Romanian nationals. According to governmental sources, as at February 2007, the nationals of the following countries have free access to employment in Romania: Bulgaria, Czech Republic, Cyprus, Estonia, Finland, Lithuania, Poland, Slovakia, Slovenia, and Sweden; whereas nationals from: Belgium, Denmark, Germany, Ireland, Greece, Spain, France, Italia, Luxemburg, Hungary, Malta, Holland, Austria, Portugal, the United Kingdom and Northern Ireland, Norway, Ireland and Liechtenstein are required to obtain a work permit.

The family of a work permit holder may enter Romania provided they are residents who do not need a visa or that they have obtained a visa for family reunion.

4. Discrimination

The Labour Code recognises the principle of equality in work relationships between all employees and all employers. In this respect, the Labour Code prohibits any form of direct or indirect discrimination against employees on grounds such as gender, sexual orientation, genetic parameters, age, nationality, race, colour, ethnic origin, political views, social origin, disability, marital status, family responsibility, union membership or union activities. The Labour Code requires employers to address discrimination issues in their internal regulations and breach of an employer's discrimination rules will trigger the liability of the employer.

Specific rules on discrimination are also contained in special enactments, such as the Governmental Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination which transposes Council Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/CE, which establishes a general framework for equal treatment in employment and occupation. Also, Law No. 202/2002 regulates the principle of equal opportunity between women and men and imposes specific obligations on

employers in order to ensure this is achieved. This legislation provides that employees claiming discrimination at work on grounds of gender may commence civil claims against employers in special employment courts. Both pieces of legislation provide for the principle of equal pay for equal work.

Sexual harassment is a criminal offence under Romanian law and may be sanctioned with a term of imprisonment of a maximum period of one year.

5. Contracts of Employment

5.1 Freedom of Contract

As a general principle, employers and employees are free to negotiate and enter into an employment contract. Nevertheless, certain mandatory provisions need to be taken into consideration when entering into an employment agreement. For instance, although contracts may be for a fixed or indefinite period, fixed-term contracts may only be used in very limited situations as provided by law. No more than three successive fixed-term contracts may be concluded for the same job, and their total duration may not exceed 24 months.

Before entering into any kind of employment agreement, the employer is legally required to inform the employee about the most important clauses.

Irrespective of the term of the contract, the employees receive the benefit of the same mandatory rights as provided by law and the applicable collective bargaining agreements.

5.2 Form

The employment contract must be concluded in the Romanian language in the standard written form prescribed by law. After signing, the employment contract is registered with the territorial competent labour inspectorate by the employer.

5.3 Trial Periods

Trial periods may be included in the employment contract. During such periods, either of the parties may terminate the employment contract without prior notice.

The following maximum terms are prescribed for the trial period for employment contracts concluded for an indefinite term:

(a) 90 calendar days for management positions;

(b) 30 calendar days for execution positions;

(c) five business days for unqualified workers;

(d) six months for graduates who are employed first time; and

(e) 30 calendar days for persons with disabilities.

For employment contracts concluded for a fixed term, the trial periods vary between five business days for employment contracts concluded for less than three months to 45 business days for employment contracts concluded for more than six months and for a management position.

5.4 Confidentiality and Non-Competition

The employment contract may contain a confidentiality clause whereby the parties agree that throughout the duration of the employment contract and after its termination they will not transmit data or information they have acquired during the contract. Failure by either of the parties to comply with such a clause obliges the party at fault to pay damages.

A non-competition clause may also be included in the employment contract. This clause may be effective only after termination of the employment contract and for a period not exceeding two years. Under the non-competition clause, the employee undertakes not to perform, for his or her own interests or that of a third party, any activity which competes with the activity performed for his or her former employer, in exchange for a monthly non-competition bonus which the former employer undertakes to pay during the entire non-competition period. The non-competition clause takes effect only if it clearly stipulates the activities the employee is prohibited from performing, the amount of the monthly non-competition bonus, the time period for which the non-competition clause is effective, the third parties on behalf of whom the performance of activity is being prohibited, and the geographical area in which the employee might be in actual competition with his or her former employer.

The monthly non-competition bonus is not part of the employee's salary, because it is to be paid after termination of the employment contract. It must represent at least 50 per cent of the employee's average gross salary paid for the six months prior to the date of contract termination.

The non-competition clause may not have the effect of the employee being absolutely prohibited from exercising his or her profession or specialisation.

If the employee wilfully violates the non-competition clause, he or she may be obliged to return the bonus and, if applicable, to pay damages corresponding to the prejudice caused to the employer.

5.5 Intellectual Property

As a general principle, copyright and inventions created by an employee in the course of his or her employment belong to the employee, unless otherwise agreed with the employer and upon payment of due compensation. However, there is an exception for computer programmes created by employees during their employment, which belong to the employer.

6. Pay and Benefits

6.1 Basic Pay

A national minimum salary is established annually by Government Decision. In 2007 it amounts to RON 390 per month (approximately EUR 110) for 170 working hours per month (the hourly rate being RON 2.294).

The National Collective Bargaining Agreement for the years 2007-2010 (the "National CBA") also establishes a national minimum salary of RON 440 (approx. EUR 130). The official position of the Labour Ministry is that the minimum salary established by

Government Decision is applicable to public sector employees and that established by National CBA applies to the employees in the private sector.

Index Linking is established periodically by Government Decision and is related to the inflation rate. Index Linking is compulsory only for public institutions. However, there is no provision prohibiting index linking in collective agreements or employment contracts in the private sector.

Salaries in Romania are often linked to a certain currency exchange ratio, most frequently EUR or USD.

The growth of the national minimum salary does not trigger a corresponding indexation of salaries.

6.2 Private Pensions

The Private Pensions System in Romania is governed by Law No. 411/2004 that came into force on 1 July 2006. According to official predictions of the Labour Ministry, the Private Pensions System should become operational by 1 January 2008.

6.3 Incentive Schemes

There is no legislative requirement for employers to grant share options or profit related pay schemes and these are not commonly used by employers. The granting of these incentives may be negotiated by the parties in the relevant collective bargain agreements.

6.4 Fringe Benefits

A very common fringe benefit in Romania is meal tickets. These are tickets that can only be exchanged for food products and employees from both the public and the private sector may receive them, according to their individual or collective bargaining agreement. The value of the meal tickets is deductible from the employers' taxable incomes and from the employees' income tax.

Private medical insurance, the use of the employers' vehicles or telephones for personal purposes are also common fringe benefits. They may be contractual or given ex-gratia by the employers.

6.5 Deductions

Deductions from pay by the employer are prohibited, except where such deductions are established by means of a definitive and irrevocable court decision. In addition, the deductions cannot, in any circumstances, exceed 50 per cent of the net salary.

7. Social Security

7.1 Coverage

Romanian law establishes a mandatory basic social security system provided by the state. The state system of benefits covers retirement as a result of age, early retirement, disability and survivors' pensions. In addition, the public system provides for benefits for temporary incapacity to work due to sickness, maternity benefits and child care allowances. These schemes are funded by contributions from both employees and employers. In addition to the public scheme, there is also a regulated private complementary pension scheme which, although in force, has not yet been implemented and is not currently functional.

7.2 Contributions

Employers must calculate and pay on a monthly basis to the social insurance budget both the employer's contributions and individual employees' contributions.

The rates of social security contributions are established by the law on a yearly basis, depending on work conditions, in the social insurance budget, and are distributed between the employee and the employer.

The employer must deduct a total of 17 per cent. from the gross monthly salary of each employee, representing an individual employee's contributions for unemployment, pensions and health funds.

Employers' contributions are 28.6 per cent. of gross monthly salary but may be higher depending on working conditions (i.e. normal or hard and dangerous conditions) and the business objective of the employer.

8. Hours of Work

The legal working time for full-time employees is eight hours per day, 40 hours per week and cannot exceed 48 hours per week (including overtime). However, working time may exceed 48 hours per week on the condition that average working hours calculated for a reference period of three months does not exceed 48 hours per week. In addition, reference periods between three and twelve months can be negotiated in collective bargaining agreements concluded at branch level, for certain industries.

Each 12 hours worked must be followed by 24 consecutive hours of rest.

The working time for part-time employees, calculated weekly or as a monthly average, is shorter than the working program of comparable full-time employees.

Overtime may not be performed without the employee's consent, except in case of force majeure or absolute necessity.

In general, overtime entitles the employee to be granted time off in lieu equal to the additional working hours, to be taken within the following 30 days. If time off in lieu is not granted, the employee must be paid a bonus of 100 per cent.

9. Holidays and Time Off

9.1 Holidays

Full-time employees are entitled to a minimum of 21 business days of holiday per year. In addition, there are eight public holidays in Romania. It is not permitted to pay in lieu of untaken holiday entitlement except on termination of employment. Also, untaken holiday entitlement may not be taken in the following year except in some very limited circumstances. Collective bargaining agreements or individual agreements may grant additional holiday rights.

9.2 Family Leave

Women are entitled to maternity leave of 126 calendar days. Normally, leave of 63 days before the child's birth and 63 days after the child's birth is granted. In any case, the new mother may not return to work earlier than 42 days after the child's birth. During maternity leave,

the employee is entitled to 85 per cent. of her salary which is paid out of the social security fund. Employers are required to top this up to full normal pay for a period of six weeks but in practice, collective bargaining agreements or the practice of the employers require employers to top this up for the entire duration of the maternity leave.

Both male and female employees are entitled to additional paid holiday for special family events, such as five days for the birth of a child (or 10 days if the employee has attended childcare classes), five days for the marriage of the employee and two days for the marriage of a child.

Employees are entitled to childcare leave until the child is two years old (or three years old in the case of a disabled child). During this leave, employees do not receive full pay but are entitled to social benefits amounting to a monthly statutory pay of approximately EUR 180. During childcare leave, the employer may not terminate the individual labour agreement of the employee.

9.3 Illness

Illness has the effect of suspending the labour agreement. Employees absent from work by reason of illness are entitled to 75 per cent of their average salary, which is paid by the employer during the first five days and by Social Security for the rest of the period, up to a total of 183 days per year.

10. Health and Safety

10.1 Accidents

Under Romanian law, employers are obliged to ensure the health and safety of their employees and to maintain insurance against liability for accidents of employees at work. They are also required to maintain insurance for professional disease. The cost of the insurance varies according to generic classes of risk which are established by law based on specific formulae for each area of activity. Romanian legislation also contains specific regulations and norms governing certain types of workplace and activities in terms of health and safety.

10.2 Health and Safety Consultation

Employers have the legal obligation to consult with their employees on health and safety matters and the employees, through their representatives, have the right to make suggestions on such matters. For this purpose, a health and safety committee must be established for companies with more than 50 employees. Also, for employees working under difficult, harmful or dangerous conditions, the labour inspector may require such committees to be established even for companies with fewer than 50 employees. For companies not required by law to establish a health and safety committee, consultation with employers on health and safety matters is carried out by a representative of the employees nominated by the employer.

11. Industrial Relations

11.1 Trade Unions

Employees have the freedom of association according to law. A union may be set up by at least 15 members working in the same field or profession for one or more employers.
An employee may be a member of one union only.

The union members must pay subscriptions. They have the right to elect the union's representatives and to organise their activity. Unions function in accordance with statutes that have been adopted by their members.

In companies with more than 20 employees in which no employee is a union member, the employees may elect and empower representatives to promote and defend their interests. Such representatives must be elected at a general meeting of employees, by at least half of the total number of existing employees. The employer and the employees must agree on the number of employees' representatives to be elected, which varies according to the total number of employees. The term of office of such representatives may not exceed two years.

According to the Labour Code, employees' representatives may not act on matters that are reserved by law for unions. However, they have certain rights which can be exercised by them as well as by unions. Such rights include the right to consult on all matters that may affect the employment relationship, and the collective negotiation right.

Employees' representatives may participate in collective negotiations and as the case may be, enter into a collective bargaining agreement at the level of the company for which they work.

However, unions may participate in collective negotiations and enter into a collective bargaining agreement at the level of the company where they are present only if they are represented within that company. According to the Collective Agreement Law, a legally established union qualifies as represented at a company level if at least one third of the total number of employees of the relevant company are members, or if it is affiliated to a representative unions' organisation.

Union representatives benefit from special rights including the right: (i) to be invited by the Board of Directors to participate at its meetings as observers, i.e. they have the right to attend and voice their opinion, but not the right to vote; (ii) to up to five days off per month for union related activities, without a reduction in the salary that they would normally be entitled to receive; (iii) of union representatives elected to the union's management bodies not to be dismissed for the duration of their terms and for a two year period thereafter, for reasons relating to the carrying out their obligations as an officer of the union.

Employees' representatives also benefit from special rights such as the right: (i) for the duration of their term not be dismissed for reasons not pertaining to them, for being professionally unfit, or for reasons relating to the carrying out of their duties; (ii) to 20 hours off work each month, in order to carry out their duties, without a reduction in the salary rights that they would normally be entitled to receive.

11.2 Collective Agreements

Collective agreements may be negotiated at national level, at industry level, at group of companies level (generally in the same industry) and/or at

individual company level. Under the law, these agreements apply automatically to all of the employees from the relevant industry, group of companies or company, irrespective of whether the employee is a member of the union which took part in the collective negotiations. In other words, the relevant collective agreement sets the minimum rights to be granted to every employee within the relevant industry, group of companies or company.

The National CBA is applicable by law to all employees working in the private sector.

Each employer with more than 20 employees must initiate collective negotiations every year. If the employer fails to observe this obligation, and if there is a union or employees' representatives within the company, they may request the employer to start collective negotiations. The collective negotiations must cover at least the following subjects: (i) salaries; (ii) working hours; (iii) work programme; and (iv) working conditions.

Collective negotiations may not necessarily culminate in the conclusion of a collective agreement.

11.3 Trade Disputes

According to Romanian law, labour conflicts may arise (i) with respect to rights provided by employment contracts, bargaining agreements or the law (conflicts of rights); or (ii) in relation to the negotiation of rights (conflicts of interests).

Strikes may be organised only in the case of conflicts of interests and only after prior settlement procedures have been exhausted. During strikes, employment contracts may not be terminated by the employer; however, employment contracts are suspended and employees do not receive their salaries for the period of the strike.

11.4 Information, Consultation and Participation

Under the National CBA, employees may be granted premiums of at least 1.5 per cent of the monthly salary fund, participation in the profit of up to 10 per cent, meal tickets, as well as any other benefits as negotiated with the employer.

Under the law, employers have information and consultation obligations with the union or the employees' representative in certain circumstances, such as:

(a) in the event of any reorganisation of activity resulting in collective redundancies;

(b) in the event of the transfer of the undertaking, the business or parts of the undertaking or business;

(c) on the introduction of internal regulations of the employer;

(d) on the introduction of health and safety rules and procedures within the employer;

(e) on the introduction of a professional training plan within the company;

(f) on scheduling the annual leave of employees; and

(g) on any matters that might substantially affect the working conditions, the contractual relations, labour relations and generally the employees' rights and interests.

The European Works Council Law implemented in Romania the European Works Council Directive 94/45/EC on the establishment of a European Works Council Law came into force on 1 January 2007, i.e. the date of Romania's accession to the European Union, and applies to the following:

(a) a Community-scale undertaking whose central management is located in Romania or in another Member State of the European Union or of the European Economic Area ("Member State");

(b) a Community-scale undertaking whose central management is not located in a Member State, but where the central management has appointed a representative in Romania for the purpose of initiating the establishment of a European Works Council or a procedure for informing and consulting with employees; and

(c) a Community-scale undertaking whose central management is not located in a Member State, and it did not appoint a representative in a Member State, and the subsidiary, branch or any other secondary office of such undertaking or, as the case may be, the undertaking member of a group, which employs the largest number of employees in a Member State is located in Romania.

A Community–scale undertaking must have at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States in order to be subject to the legal obligation to establish a European Works Council or a procedure for informing and consulting with employees.

12. Acquisitions and Mergers

12.1 General

Employees are protected in the case of transfers of undertakings, businesses or parts of undertakings or businesses, as Law no. 67/2006 has implemented the Acquired Rights Directive 2001/23/EC. In such circumstances, employees retain all their rights as provided in their employment contracts and bargaining agreements at the date of the transfer. Employment contracts may not be terminated by the employer.

12.2 Information and Consultation Requirements

Thirty days before the transfer is scheduled to take place both transferor and transferee must inform their respective employees in writing of the following:

(a) the date of the transfer;

(b) the grounds for the transfer;

(c) the legal, economical and social consequences of the transfer;

(d) the measures to be taken in relation to the employees; and

(e) the working conditions.

Also, both the transferor and the transferee must consult with their respective employees 30 days before the transfer is scheduled to take place if certain measures are planned, in order to reach an agreement with the employees.

In addition, employers have a general obligation to inform and consult with employees on every occasion on which decisions are made which have a significant impact on working conditions, contractual relations with employees or labour relations.

12.3 Notification of Authorities

There is no obligation to notify authorities in the case of a transfer of undertaking. This obligation exists only when collective redundancies are involved.

12.4 Liabilities

Failure to observe the information and consultation obligations by the transferor or the transferee in the case of a transfer of an undertaking is deemed a minor offence and is sanctioned with a fine of between RON 1,500 and 3,000 (approximately EUR 450 and 900). Moreover, employees affected by the transfer may make a complaint to a court.

If it is not within a transfer of undertaking situation, the failure to inform and consult with employees about major decisions affecting their interests and rights is deemed a minor offence and is sanctioned with a fine of between RON 1,000 and 20,000 (approximately EUR 300 and 6,000).

13. Termination

13.1 Individual Termination

The individual labour contract may cease pursuant to the parties' mutual consent or at one party's initiative, under the terms and conditions expressly provided by the law.

The labour contract may also cease automatically in cases expressly provided by the law.

13.2 Notice

The National CBA gives employees the right to receive a termination notice, which must be sent no less than 20 working days prior to dismissal, if termination occurs in one of the following circumstances:

- based on a decision by the competent medical examination authorities that the employee is suffering from physical and/or mental incapacity which prevents him or her from accomplishing his or her current workplace duties, or
- the employee is not professionally fit for his or her current position, or
- in the case of dismissal for reasons not pertaining to the employee.

If, during the notice period, the employment contract is suspended, the notice term is also suspended.

The Labour Code provides for specific procedures to be observed by employers in the case of dismissal in specific circumstances.

In the case of resignation, the termination notice may not exceed 15 calendar days for employees in executive positions, or 30 calendar days for employees in management positions. Throughout the notice period, the individual labour agreement shall continue to take full effect and if, during the notice period, the employment contract is suspended, the notice term shall be suspended accordingly.

An employee may resign without notice if his or her employer has not met his or her obligations under the employment contract.

13.3 Reasons for Dismissal

An employee may be dismissed for reasons pertaining to the employee, in the following cases:

- if that employee is guilty of serious or repeated misconduct as regards the work discipline regulations or those established by the employment contract, the applicable collective bargaining agreement, or the internal regulations;
- if the employee has been placed under police custody for a period exceeding 30 days, under the terms of the Criminal Procedure Code;
- if the competent medical examination authorities determine that the physical and/or mental incapacity of that employee prevents him/her from accomplishing the duties related to his/her current work place;
- if that employee is not professionally fit for his or her current position;
- if an employee meets the standard age limit terms for retirement and has made his or her social security payments in full, and has not applied for retirement under the law.

Dismissal for reasons not pertaining to the employee is a redundancy termination.

The redundancy of a position must be genuine and must have a genuine cause.

The dismissal for reasons not pertaining to the employee's person may be individual or collective.

13.4 Special Protection

Employee dismissal may not be ordered:

- for the duration of a temporary labour disability, as established in a medical certificate;
- for the duration of quarantine leave;
- while an employee is pregnant, provided the employer has been informed about the pregnancy before the dismissal decision;
- for the duration of maternity leave;
- for the duration of leave for taking care of a child up to the age of two, or, in the case of a disabled child, up to the age of three;
- for the duration of leave for looking after a sick child aged up to seven years, or, in the case of a disabled child until he or she turns 18 years of age;

- for the duration of military service;
- for the duration of the exercise of an elective position in a trade union body, and for the two years following expiry of their mandate, except when the dismissal is ordered for committing serious disciplinary misconduct or for repeated misconduct;
- for the duration of annual leave.

13.5 Closures and Collective Dismissals

Collective dismissal involves dismissing, for reasons not pertaining to employees, within a 30 day period, at least 10 employees (for companies with 21-99 employees), 10 per cent of employees (for companies with 100-299 employees), or 30 employees (for companies with at least 300 employees).

Collective dismissal requires 30 days' prior notice to the trade unions/employees' representatives, the territorial labour inspectorate and the territorial agency for professional occupation and training. The notice must state the intent to engage in collective dismissal and detail the social protection measures taken. If the problems relating to the collective dismissal cannot be solved within 30 days, the territorial labour inspectorate may, at the request of a party, extend the period by a maximum of 10 days. The dismissal decision is individual and the serving of termination notices is mandatory.

Employers who have made collective dismissals may not recruit into the positions previously held by the dismissed employees for a nine-month period from their dismissal, unless the dismissed employees were previously informed and refused to be reintegrated.

Employees hired for indefinite periods who are laid off through collective dismissals during company restructuring or reorganisation processes, during partial or total cessation of the activity or during privatisation or liquidation, may benefit from social protection measures such as compensatory payments, collective pre-dismissal services (e.g. outplacement counselling) and active measures intended to limit unemployment.

14. Data Protection

14.1 Employment Records

Under the Labour Code, an employer has a general obligation to ensure the confidentiality of its employees' personal data.

The Data Protection Law implemented the Data Protection Directive 95/46/EC.

As a general principle, the processing of personal data must be notified to the Romanian Personal Data Processing Supervisory Authority (the "Authority"). However, the processing by the employer of the personal data of its employees in order to fulfil its legal obligations related to employment is not required to be notified to the Authority.

An employer need not obtain the express consent of the employee with respect to the processing of personal data when entering into the employment contract. Any further registration, organisation, storage, amendment, use, disclosure to third parties or transfer overseas of an employee's personal data must be made with the employee's express consent, except where the employer acts in order to fulfil its legal obligations related to employment.

In accordance with the principles set out in the Directive, the employer must ensure that the data is:

(a) processed fairly and lawfully;

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;

(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;

(d) accurate and, where necessary, kept up to date;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed.

14.2 Employee Access to Data

The Employee has the following rights:

(a) the right to access the data: the right to obtain from the controller upon request and at no expense for one application a year, confirmation as to whether his or her personal data are or have been processed by the employer;

(b) the right of intervention: the right to amend, update, block, delete and anonymise data the processing of which does not comply with the law, especially incomplete or inaccurate data;

(c) the right to object, for serious and legitimate reasons related to his or her personal situation, to the processing of his or her personal data, except as otherwise provided by the law;

(d) the right not to be subject to automated decision making: the right not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc;

(e) the right of access to justice: the right to make a complaint to a court of law for any breach of the rights provided by the Data Protection Law.

14.3 Monitoring

The monitoring of employee email, Internet and telephone usage is not expressly contemplated by the labour legislation. Nevertheless, employers may have internal rules or policies that may regulate these aspects.

As a general principle, employers have the right to supervise the way the employees fulfil their duties at work.

14.4 Transmission of Data to Third Parties

Unless it is performed in relation to the legal obligations of the employer, the transfer of data to third parties may be performed only with the employee's express consent. Furthermore, the employer must authorise such transfer with the Authority. However, if the transfer is to an EEA state or a non-EEA state but where there is an adequate level of protection of personal data, the employer need not obtain authorisation from the Authority, but only notify such transfer to the Authority.

Slovakia

1. Introduction

The principles of Slovak labour and employment law are based upon remainders of labour regulations applicable prior to 1989. In 2002 the new Labour Code Act No. 311/2001 Coll. as amended (the "Labour Code") replaced the previous Labour Code No. 65/1965 Coll that had applied since 1965, nevertheless the new Labour Code still follows some of the traditional principles implemented in the past such as equal protection of blue collar workers, white collar workers and managers, restricted rights of the employer to terminate employment and very limited contractual freedom of the parties in the employment relations.
The court practice concerning employment relations is also affected by the previous regime and it tends to protect the employees' rights over those of the employers' in court disputes.
Although in the past the government was inclined to increase the level of flexibility in labour law relations and balance the position of employer and employee, the current government, headed by social democrats, has proposed an amendment to the Labour Code, increasing the protection of employees and strengthening the position of the trade unions. The draft amendment is currently subject to heated discussions as it is opposed by employers' associations.

2. Categories of Employees

2.1 General

The Labour Code does not distinguish between blue collar workers, white collar workers, managers or directors.
All employees, regardless of their position, benefit from the same level of protection, and they are all subject to conditions negotiated with the trade union and agreed in the Collective Agreement. The Labour Code recognizes the managers as a specific category of employees only in respect of some working conditions, such as additional working duties. In other respects, including termination of employment, the position of managers is the same as the position of regular employees. An exception exists in relation to top management; revocation of their appointment is a ground for termination of their employment. Termination of their employment is therefore slightly more flexible than for regular employees.

3. Hiring

3.1 Recruitment

The recruitment process known as "pre-contractual relations" are specifically governed by the Labour Code.
The employer is obliged to inform the recruit of salary and other working conditions. If there are any specific requirements on the employee such as a health requirement or special legal requirements the employer may enter into a labour relationship only with a person who meets such requirements.
The employer may require references and a previous job description with the exception of school graduates seeking first time employment. It is unlawful to request information on pregnancy, family status, trade union or political party membership or trustworthiness (existence of criminal records) from potential employees. Review of criminal records is only allowed when it is essential in respect of the particular working position. There are no legal guidelines, but it is reasonable to determine the position by referring to the employer's internal regulations and relevant collective agreements.
Antidiscrimination laws and the obligation of equal treatment of the employee applies also to the recruitment process. The potential employee may claim financial compensation from the employer if obligations relating to the recruitment process are breached. The potential employee is obliged to inform the potential employer about all circumstances that could prevent him from performing the role or cause any harm to the employer.

3.2 Work Permits

EU nationals have a position equal to Slovak citizens in respect of employment in the Slovak Republic. A work permit is necessary for non-EU nationals in order to be employed in the Slovak Republic, except for cases determined by Act No. 5/2004 Coll. on Employment (foreign Slovaks as defined, refugees or persons under asylum laws, humanitarian organization members, accredited journalists, etc.)

Slovak employers could be liable to a fine if they employ a foreigner without a valid work permit. The work permit is issued by the regional labour office upon joint application of the future employee and future employer following a review of the labour market in the respective region. In some cases the work permit is issued automatically. Work permits may be issued for a maximum period of one year following which a further application must be made and re-considered. In addition to the work permit, the non-EU national intending to be employed in the Slovak Republic needs to secure permission from the regional police offices for temporary residency in the Slovak Republic.

4. Discrimination

The prohibition of discrimination and obligation of equal treatment of employees is one of the basic principles of the Labour Code. Section 13 of the Labour Code expressly prohibits discrimination of employees and imposes an obligation on the employer to treat all employees equally. The Anti-discrimination Act No. 365/2004 Coll. became effective on July 1 2004, and expressly prohibits discrimination in employment relations based on gender, religion, race, nationality, health, disability, age or sexual orientation.
The obligation of equal treatment applies to access to employment, working conditions, remuneration etc. Different treatment is permitted only if there are reasonable grounds due to the nature of the work and only if the extent of this different treatment is necessary for such activities or circumstances in which they are performed.

Any person who claims discrimination, may apply to court and seek financial compensation, amongst other remedies.

5. Contracts of Employment

5.1 Freedom of Contract

Freedom of contract within Slovak labour law is very limited. All provisions of the Labour Code are mandatory and binding for the employer. The Labour

Inspection may impose a penalty on the employer for each breach of the Labour Code; of up to SKK 1,000,000 (approx. €2600). Working conditions can only differ from provisions of the Labour Code if they are more beneficial for the employee than those provided for by the Labour Code.

5.2 Form

The labour relations in the Slovak Republic are very formal. The labour contract must be agreed and amended in writing. The termination of employment is only valid if it is made in a prescribed form. The Labour Code recognizes four types of labour contracts (regular labour contracts, part time labour contracts (for working time not exceeding 20 hours per week), agreements on performance of work for limited working tasks (not exceeding 300 hours per year) and agreements on working activity of students), and sets out the essential requirements in respect of each of them. There are four unavoidable essentials of labour contracts: job descriptions, place of work, start date and salary. The form is particularly important in respect of termination documents, particularly with regard to notices from the employer. Summary terminations and lack of form often cause the termination of employment to be declared void by the courts.

5.3 Trial Periods

The trial period may be agreed only before the start date, in writing, for a maximum period of three months. The trial period may not be repeated. During the trial period either party may terminate the employment immediately, without explanation.

5.4 Confidentiality and Non-Competition

The employee has a duty of confidentiality under the Labour Code. It applies during the employment, but it may be extended under the contract for an unlimited period after the termination of the employment. The remedy for the breach of confidentiality after termination of employment is, however, only theoretical as the Labour Code does not stipulate any fines or sanctions applicable after termination of the employment therefore the remedy must be sought under other legislation (such as the Commercial Code in respect of the protection of business secrecy and fair competition).

The Labour Code contains an explicit non-competition clause applicable during the employment, according to which the employee may perform other gainful activity similar to the business of the employer only with prior written consent of the employer that may be revoked at any time, except for scientific, pedagogical, publishing or artistic activity. A non-competition clause applicable after termination of employment is contrary to the constitutional principle of the freedom of profession and would be null and void.

5.5 Intellectual Property

According to the Act No. 618/2003 Coll. on Authors' Law (the "Authors Act") the right to execute the proprietary rights of an author (copyright) of literature, sound recording, movies, pictures and similar pieces of work belong to the employer if the particular piece of work was created by the employee within the scope of the author's working duties. The personal rights attached to the piece of work (right to state the name of author, as an example) remain with the author. The equivalent rights apply in relation to computer software governed by the Authors Act and patents and inventions upon the Patent Act 435/2001 Coll.

6. Pay and Benefits

6.1 Basic Pay

The minimum salary in the Slovak Republic is stipulated by law and it corresponds to SKK 7,600 per month (approx €225) and SKK 43,70 per hour (approx €1,30). The Labour Code determines six levels of work (from untrained workers to scientific professions) stipulating for each level a coefficient by which the minimum salary must be multiplied. For the professions at the sixth level the minimum salary is double the minimum wage determined by law.

Collective Agreements commonly agree higher rates of pay. Extra pay for overtime, work during holidays, work during resting days (usually Saturday and Sunday), night shifts and on call is obligatory.

The law does not provide for index linking of salaries. Such provisions are usually contained in the applicable Collective Agreements.

6.2 Private Pensions

The concept of private pensions is not developed in the Slovak Republic. Apart from obligatory retirement pension insurance under the social insurance laws there exists only so called "supplementary pension savings" governed by the specific Act on Supplementary Pension. The employee may choose one of the private pension savings companies and would regularly contribute certain amounts to the private pension savings fund. The pension savings company will pay him a supplementary pension after he/she reached the statutory retirement age. The law enables the employer to enter an "employers' agreement" with one or more supplementary pension savings companies, upon which the employer undertakes to provide the contribution for supplementary pension savings to those employees who enter into the agreement with such pension savings company. The contribution of the employer may not be less than two per cent of the salary of the employee and is a tax deductible expense for the employer. In some cases the individual Collective Agreements impose an obligation on the employer to enter into such an employers' agreement. An obligation to contribute to the additional pension savings of the employees is imposed by law on employers employing employees in jobs determined as risky by the public health authority (for example, jobs involving exposure to life-threatening substances).

6.3 Incentive Schemes

It is not common for Slovak employers to operate share options schemes. Bonuses and profit-sharing arrangements are usually agreed, either in the labour contract or in the Collective Agreements.

6.4 Fringe Benefits

Slovak tax laws consider the private use by an employee of a company car to be a taxable benefit. Therefore it is more usual to provide a company car to an employee exclusively for work purposes. Use of a company car, mobile phone or personal computer are generally regarded as the provision of equipment necessary for the performance of the work by the employee rather than as a benefit and are therefore provided on this basis.

6.5 Deductions

The employer is obliged by law to deduct the income tax (of 19 per cent) and social contributions from the salary of the employee. The employers are also obliged to deduct part of the salaries of the employees where an order of an executor or court applies.

7. Social Security

7.1 Coverage

The public social security system includes retirement pension insurance, disability pension insurance, illness insurance, injury through work and unemployment insurance and health insurance.

7.2 Contributions

Both employees and employer contribute into the social security system. The rates are broadly as follows:

	Illness	Pension insurance		Guarantee	Unemployment insurance	Health Insurance	Working Injury Insurance	Solidarity Fund
		Retirement Insurance	Disability Insurance					
Employee	1.4%	4%	3%	–	1%	4%	-	
Employer	1.4%	14%	3%	0.25%	1%	10%	0.3 - 2.1%	4.75%
Total	2.8%	18%	6%	0.25%	2%	14%	0.3 - 2.1%	

These rates are applied to salary equal to the national minimum wage up to three times the average national salary determined by the Statistics Office, with the exception of illness insurance and guarantee, where the rates are applied up to a 1.5 multiple of the average national salary and health insurance, has no upper limit.

8. Hours of Work

The maximum number of working hours according to the Labour Code is 40 hours per week exclusive of breaks. For employees working in shift operations it is 38.75 hours per week and employees in three shift nonstop operations - 37.5 hours per week. For employees up to 16 years of age the maximum working hours are 30 hours per week, for employees between 16 and 18 years of age the maximum working hours are 37.5 hours per week including overtime.

Collective Agreements may provide for shorter but not longer working hours.

A break has to be provided if the working shift of the employee would last for six hours or more, with a minimum duration of half an hour. The break between two shifts, except for certain professions and situations, cannot be less than 12 hours or 14 hours for young employees. Each week the employee should have two resting days that should be Saturday and Sunday or Sunday and Monday, except for special professions and operations (e.g. shops).

Work performed in excess of the usual working hours, upon order of the employer or agreement, constitutes overtime. The number of overtime hours is limited; working hours including overtime cannot exceed 48 hours per week, overtime cannot be ordered for more than 150 hours per year unless there exists a specific written agreement between the employee and the employer by which the number of overtime hours may be increased to 250 hours per year. The employee is entitled to receive the extra payment for overtime amounting to 25 per cent increase in pay, unless it has been agreed in the labour contracts that overtime is included in his/her basic salary (such agreement is permitted only in relation to 150 hours of overtime a year, except for managers where there is no limit). The employee and the employer may agree that instead of payment for overtime the employee will be entitled to additional time off.

9. Holidays and Time Off

9.1 Holidays

The employees are entitled to salary compensation for absence from work on public holidays, if the holiday falls on a day that would otherwise be a regular working day for the employee. Such compensation is calculated on the average earnings inclusive of the basic salary and all benefits provided within the previous calendar quarter.

All employees are entitled to four weeks of regular holiday a year. An employee working for 15 plus years is entitled to five weeks a year. A week for this purpose means five working days (not Saturdays and Sundays).

9.2 Family Leave

Pregnant women are entitled to paid maternity leave for a period of 28 weeks. If she gave birth to two or more children or if she is a sole parent, the maternity leave is extended to 37 weeks. If the father takes paternity leave to care for the child he is also entitled to the same leave, but only one parent can take such leave. Maternity payments are provided by the Social Insurance Company from the funds of the illness insurance. The maternity leave usually starts six weeks before the expected date of birth.

The employer is also obliged to provide to the employee upon her/his request parental leave until their child is three years of age. If the health of the child

requires additional care, parental leave should be provided until the child is six years old. During parental leave the employee is entitled only to the parental contribution paid by the state.

9.3 Illness

Employers pay an illness contribution to the employees for the first 10 days of absence (including Sundays and Saturdays) the amount of which is stipulated by social insurance regulations. After the initial 10 days the illness allowance is paid by the state Social Insurance Company.

10. Health and Safety

10.1 Accidents

The Labour Code and specific laws impose obligations on the employer to provide safe working conditions and health protection and to protect employees from accidents at work. State governed bodies such as the Labour Inspection or Health and the Safety of Work Inspection regularly check compliance with these conditions.

10.2 Health and Safety Consultation

The employer appoints a "safety commission" from the employees that participate on internal reviews of working safety. This reaches joint decisions with the employer in relation to safe working conditions.

11. Industrial Relations

11.1 Trade Unions

Trade Unions in the Slovak Republic have the position of civic associations registered with the Ministry of Interior Affairs. There is no nation-wide trade union and the employees in each workplace may create their own association. There are trade union associations for specific industries or trades (e.g. trade union association of food stuff workers, trade unions for metal processing industry) that communicate with the employers trade associations with the intention of negotiating the Collective Agreements of Superior Level. Such trade unions usually succeed in establishing their presence in the workplaces of major employers.

If there is no trade union unit at the workplace the employees may elect a works council (if there are more than 20 employees) or a works representative. The employer is not obliged to order an election of the works council or works representatives unless requested to do so by the employees.

11.2 Collective Agreements

According to the specific Act on Collective Bargaining each trade union unit has the authority to negotiate, with the employer, the individual Collective Agreement applicable for all employees including managers and directors. The individual Collective Agreements may only provide for more beneficial working conditions of employees than those provided by the Labour Code. The provisions of the Collective Agreement are binding on the employer and they take precedence over provisions of particular labour contracts. To the extent that the labour contract provides a lower level of benefits than the Collective Agreement, the provision of the labour contract is null and void. The Collective Agreement of Superior Level is agreed between the trade unions' associations and employers' association and take precedence over any applicable individual Collective Agreements to the extent that such Collective Agreement of Superior Level provides for a higher level of employee benefits. The Collective Agreements of Superior Level are stored by the Ministry of Interior Affairs and are publicly accessible.

11.3 Trade Disputes

The Act on Collective Bargaining governs the resolution of the trade disputes. Each dispute should be submitted to the mediator and later to the arbitrator and only if they are not resolved in such proceedings is a strike lawfully permitted.

11.4 Information, Consultation and Participation

The role of the trade unions and other employee representatives is governed by the Labour Code which imposes an obligation on the employer to inform the trade unions, consult with them and jointly decide particular issues. Joint decision with the trade unions is required in respect of the approval of the internal working order of working hours schedules. Consultations are required in respect of termination of employment by notice or summary termination by the employer or in respect of collective dismissals.

12. Mergers and Acquisition

12.1 General

Slovak law provides that a merger may occur by way of merger of two companies to form a new entity or when one company absorbs another.

The term 'acquisition' can mean either the acquisition of the shares of a company or the acquisition of a company's assets. A share acquisition will have no impact on employment relations as there is no change in the identity of the employer. In the event of an asset acquisition the acquirer of the assets acquires all the rights and liabilities attached to the assets including those related to employment relations.

12.2 Information and Consultation Requirements

The employer is obliged, in general, to consult the employee representatives in relation to material issues relating to its existence and profit. In particular, the employer must inform the employee representatives/or employees directly (if there is no representative) in writing of the:

(a) date or intended date of transfer;

(b) reasons for transfer;

(c) working, economical and social impacts for employees;

(d) measures related to transfer affecting the employees.

This information must be provided one month prior to the transfer, whether that occurs by reason of merger, takeover or sale and purchase.

In addition, no later than one month before the transfer the employer has to consult with the employees' representatives.

Should the transfer of the employees include redundancy terminations, the provisions on collective dismissal would apply (see below 13.5).

12.3 Notification of Authorities

In respect of all types of mergers and acquisitions there are certain obligations to notify and/or to seek the approval of the authorities, however there are no such specific obligations in relation to employment relations and/or the transfer of employees.

12.4 Liabilities

The Inspection of Work may impose a penalty of up to SKK1,000,000 on an employer that has breached its information or consultation duties. The validity of a particular merger or acquisition and related transfer of the employees is not however affected by such a breach or by the sanction.

13. Termination

13.1 Individual Termination

An employer wishing to terminate the employment relationship may only do so in accordance with the provisions of the Labour Code.

Until 2002 the Labour Court stipulated that severance pay had to be provided to any employee whose employment was terminated due to organisational reasons. Although this provision has been revoked, it is quite usual for individual Collective Agreements to provide for such severance pay, usually in the region of two to three months' salary. The employer is obliged to pay an employee compensation equal to the salary that would otherwise be paid during the notice period if the grounds for termination on notice is the organisational change, but the employee agreed to terminate the employment earlier.

A draft amendment to the Labour Code currently in the legislative process intends to re-introduce the obligation to provide a severance payment to an employee in the case of termination of their employment due to organisational reasons. It is proposed that the amount of such severance payment should be twice the average monthly earnings, or three times the average monthly earnings if the employee worked for five or more years for the employer.

If the reason for terminating the employment is due to a work accident or occupational disease, or a threat thereof, or by reason that the employee exceeded the maximum permitted level of exposure to a dangerous environment, the proposed severance pay should be an amount ten times the average monthly earnings of the employee.

13.2 Notice Periods

The notice obligation in case of the employer is two months if the employee's service has not exceeded five years, otherwise it is three months. The notice obligation in the case of the employee is two months. The notice period starts on the first day of the calendar month following the month in which the notice was delivered to the counter party.

13.3 Reasons for Dismissal

The employee may terminate the employment by notice at anytime without cause. The employer may only terminate employment for one of the reasons determined by the Labour Code. Such reasons are few, and include redundancy of the employee as a result of organizational changes, lack of capability due to the employee's health, failure by the employee to fulfill specific requirements of the law or employer for performance of the work, breach of working discipline and also insufficient performance by the employee provided that several conditions are met (e.g. prior written warnings). The termination of employment by the employer requires many preconditions to be satisfied. The employer is very limited in respect of termination of labour relations with its employees. In the past the excuse of "organizational changes" was often used by employers to justify the termination of the employment. However, the law now restricts an employer who has made a position redundant to recruit to that position within the subsequent three months.

Notice of dismissal is valid only if consultation has been carried out in advance with the employee representatives. The notice must be given in writing, state the cause of the notice by reference to the provision of the Labour Code and also describe the circumstances or facts that are the cause of such notice. The notice must be delivered to the employee at the work place or, if not possible, at his home. Notice that does not fulfil the formal requirements is likely to be determined as void by the courts. If the notice is given on the grounds of breach of discipline, the employer has to allow the employee to state his/her case on alleged breach prior to giving notice to the employee in question.

Summary termination of employment is possible only where the employee or the employer has serious cause.
The employer may summarily dismiss an employee who has been found guilty of a malicious crime or who is guilty of an extraordinary beach of work discipline. Although the Labour Code does not define such a breach, it is sufficiently defined by court practice. Determination of whether a particular breach was grounds for summary termination is one of the most frequent subjects of labour law disputes in the Slovak Republic.
The employee may immediately terminate the employment if the employer is in default with payment of all or part of his salary or if his health and safety is threatened.

An employee may bring court proceedings on the grounds that the act by which his or her employment was terminated was invalid. Such claim must be brought within two months of the alleged termination of employment. If the claim succeeds the court may award the employee salary compensation for the entire duration of the court proceedings. Such salary compensation may be reduced by the court at the sole discretion of the judge, at the request of the employer, if the period for which the compensation is provided should exceed nine months.

13.4 Special Protection

The Labour Code specifies certain protection periods during which the employment may not be terminated by notice, such as pregnancy, illness or military service.

13.5 Collective Dismissals

Termination of the employment by notice or agreement due to organisational

reasons is considered a collective dismissal if it affects more than 20 employees in a period of 90 days or less. The Labour Code requires specific consultation with the trade unions and regional labour office in the case of the collective dismissals. At least one month prior to the start of the collective dismissals the employer has to inform the trade unions of the collective dismissal and discuss with them potential options to minimise the negative effect of the collective dismissal. Information on such discussion must be delivered to the regional labour office which also participates in the consultations.

14. Data Protection

14.1 Employment Records

The collection, storage and use of personal data held by employers about their (prospective, current and past) employees and workers are regulated by the Act No. 428/2002 Coll. on Personal Data Protection as amended, which implements the EU Data Protection Directive. As it does not contain any special provisions in respect of employment records, the general principles set down therein for data processing apply. The general rule applying to the processing of personal data is that unless a specific law provides otherwise, the prior consent of the data subject is required for the processing. The data controller must be able to prove that the consent is valid. The consent may be revoked at any time.

Employers, as data controllers, are obliged to ensure that only the personal data that corresponds to the purpose of processing by the extent and content are processed. In addition, employers are obliged to process only accurate, complete and up-to-date personal data in relation to the purpose of processing; inaccurate and incomplete personal data must be blocked and corrected or updated without undue delay, otherwise the data controller must erase such data.

Employers are responsible for the security of personal data and must protect the data from accidental or illegal damage, destruction and loss, unauthorised access or modification as well as any other inadmissible form of processing by adopting appropriate technical, organisational, and personnel measures corresponding to the manner of processing.

Any person who has access to processed personal data is obliged to keep the data confidential.

The draft amendment to the Labour Code propose to restrict the processing of personal data by the employers to such employee personal data that is inevitable for the employment relationship, or that relate to the qualification and working experience of the employee.

14.2 Employee Access to Data

Employees, as data subjects, have the right to request from the data controller in writing: information about the status of processing of their personal data, detailed information on the source of personal data, a copy of his/her personal data being processed, correction of inaccurate or out of date personal data, erasure of personal data if the purpose of processing has been completed or if the processing has involved a breach of the law.

Requests of the data subject must be complied with by the data controller and the applicant notified of the outcome in written form, within 30 days from the receipt of the request. The data controller must provide the information without charge, apart from the information on the source of personal data and copy of the personal data being processed, in which case it is entitled to levy a fee not exceeding the costs of the copies, materials and posting of the information to the data subject, unless the specific law stipulates otherwise.

14.3 Monitoring

The monitoring of employee e-mail, Internet and telephone usage and TV monitoring is governed by the Civil Code, according to which documents of personal nature, video and audio records concerning an individual can be made and used only with his/her consent.

The Data Protection Act, permits the audio or video monitoring of publicly accessible premises for the purposes of public order and security, and provided that clear warning is given that the monitoring is taking place (except as specified by the criminal law). If the record is not used for the purposes of prosecuting an offence or criminal act, it must be deleted within seven days from its creation.

The draft amendment to the Labour Code intends to expressly prohibit employers from monitoring their employees and monitoring or recording their mail, e-mail or telephone calls. Monitoring would only be permitted if required, by the specific character of the employer's operation, and in such cases, only after providing complete information on the monitoring to the employee.

14.4 Transmission of Data to Third Parties

An employer who wishes to provide the data of employees to third parties must do so in accordance with the principles and processing conditions set down in the Data Protection Act. The personal data may be transmitted from the information system to a third person, including abroad – regardless of whether the third person is based within or outside the European Union, only with the consent of the data subject.

Slovenia

1. Introduction

The Employment Relationships Act (*Zakon o delovnih razmerjih*) is the principal law regulating labour issues in Slovenia. It took effect on 1 January 2003, and basically regulates all employment relationships in both the private and public sector. Collective agreements, individual employment contracts, the employer's general actions, works agreements and individual employment contracts also regulate the employment relationship.

All Slovenian employees have to possess an employment booklet, in which certain data is recorded. This employment booklet is issued by the competent administrative authority and is kept by the employer during the employment relationship.

Numerous trade unions are active in Slovenia. Due to obligatory bargaining conditions, most business sectors use collective agreements, however, individual employment contracts may contain provisions that are more beneficial to the employee than those in the Employment Relationships Act or other collective agreements.

Employees' participation rights are governed by the Law on Worker Participation in Management which provides for various forms of employee participation.

Labour disputes, whether individual or collective, are settled by special labour courts. An appeal from the labour court is heard by the Higher Labour and Social Court (*Višje delovno in socialno sodišče*).

2. Categories of Employees

2.1 General

Slovenian law does not differentiate between blue collar employees and white collar employees. However, the law differentiates between "normal" employees and managerial staff, as well as between full-time employees and part-time employees.

3. Hiring

3.1 Recruitment

Generally, an employer has to advertise vacancies in the public areas of the employment service office. In addition, the advertisement has to set out the requirements of the job and may not specify a particular gender unless gender is an essential condition for carrying out the work. A deadline for the submission of applications must be established although there are some exceptions to this obligation.

An employer who employs part-time employees or employees with a fixed-term employment contract has to inform such employees of any available full-time positions of a fixed term or indefinite nature.

Employers with more than 20 employees are obliged to employ a certain percentage of disabled people depending on the type of business. If the employer does not meet this obligation, it has to pay 70 per cent of the minimum salary to the competent social security authorities for each disabled person it has not employed below 20.

3.2 Work Permits

The Slovenian Act on Employment and Work of Aliens (*Zakon o zaposlovanju in delu tujcev*) refers to three different kinds of work permits: i) personal work permits, ii) permits for employment, and iii) permits for work. Every work permit is subject to different requirements. Permits for employment and permits for work are issued by observing a quota determined by the Slovenian government. Whereas a personal work permit allows general access to the Slovenian labour market, a permit for employment and a permit for work are linked to a specific workplace and have to be applied for by the employer.

A foreigner or a person without Slovenian citizenship may only enter into an employment contract if he or she fulfils the conditions set out in the Slovenian Act on Employment and Work of Aliens.

Citizens of EU countries are exempt from the obligation to obtain a permit before commencing work; however, there is still a notification obligation.

4. Discrimination

Discrimination by the employer on various grounds (e.g. sex, race, disability, sexual orientation, religion, age), even if only indirect, is prohibited. The shifting of the burden of proof helps the employee in proving any discrimination.

5. Contracts of Employment

5.1 Freedom of contract

In general, an employment contract is subject to the general rules of civil law. However, the Employment Relationships Act imposes restrictions on the freedom to contract. Provisions in an employment contract may only depart from applicable legal requirements and collective agreements if doing so is beneficial to the employee.

The conclusion of a fixed-term employment contract is only permissible in the circumstances prescribed in the Employment Relationships Act. A fixed-term employment contract or subsequent, successive fixed-term employment contracts concluded with the same employee in relation to the same job may not exceed a period of two years (in aggregate).

5.2 Form

Employment contracts have to be executed in writing. The employer has to forward to the employee a written draft of the employment contract three days before the anticipated execution. After the execution of the employment contract, the employer has to hand over to the employee a written executed copy of the employment contract. However, violation of this formal requirement does not lead to the nullification of the employment contract.

In addition, the Employment Relationships Act stipulates a minimum content for the employment contract. If the employment contract does not contain all required elements, the law provides for the automatic application of the relevant legal provisions and collective agreements.

5.3 Trial Periods

Generally, a trial period is permissible. A probationary period must be agreed

upon in the employment contract. A trial period does not, however provide the employer with the right to rescind the contract - only the employee may terminate the employment contract for any reason by adhering to a notice period of seven days.

The employer may exceptionally, terminate the employment relationship after the expiry of the trial period if the employee performed his or her duties unsatisfactorily during the trial period.

5.4 Confidentiality and Non-Competition

The employee may not disclose business secrets to a third person or exploit such secrets for his or her private use. Generally, the employee is liable in damages for any violation of this obligation.

During the employment relationship, the employee may not render services or conclude a transaction on his own behalf in competition with the employer. In certain cases, the parties to the employment contract may agree upon a prohibition of competition for a specified period after the termination of employment. However, a non-competition clause may not exceed a term of two years after the termination of employment. It is only enforceable if the employment relationship has been terminated by the employee or as a result of his or her actions. Under certain circumstances the employer has to pay compensation for enforcing the non-compete provision.

5.5 Intellectual Property

Basically, the mandatory provisions of the Law on Intellectual Property Rights in Connection with Employment differentiate between employment-related inventions and so-called free inventions. Employment inventions are further divided into direct and indirect inventions. Direct inventions are those generated within the contractually required employment tasks or expressly required by the employer, while indirect inventions are those generated beyond the scope of employment, but the employment experience and employer's facilities contributed considerably to such inventions. The employer is entitled to assume rights to inventions related to employment and may register the invention as a patent with the IP authority on the employer's behalf. Inventions may be taken over for certain consideration, either exclusively or non-exclusively.

6. Pay and benefits

6.1 Basic Pay

In Slovenia, the minimum wage amounts to a monthly salary of EUR 522. Basically, the Slovenian wage has three principal components: (i) basic wage, (ii) wage for job performance, and (iii) extra payments.

Employees are entitled to extra payments related to extraordinary working times, e.g. night shift, overtime work, and Sunday working, holidays and work-free days. The amount of such extra payments is regularly stipulated by collective agreements. The law also provides for an extra payment based on the employee's years of service, which amounts to an automatic pay increase based on years of service.

Moreover, there are certain voluntary wage components that may be fixed in the employment contract: remuneration for business performance, profit-sharing, and payments in kind.

There is no obligation to index link pay.

6.2 Private Pensions

In Slovenia, employers are not obliged to include or pay for employees' private pensions.

In practice, a considerable number of well established employers provide for their employees' participation in additional collective pension schemes. In addition, some employees enter into additional pension insurance plans on an individual basis. Altogether, about 60 per cent of Slovenian employees have additional private pension insurance.

6.3 Incentive Schemes

Shares schemes are not mandatory in Slovenia, however share schemes and profit sharing have been increasingly focused on by trade unions and employers' representatives.

6.4 Fringe benefits

In practice, it is uncommon for employers to grant fringe benefits such as a company car or additional personal injury insurance to their employees, unless certain benefits are crucial to a specific type of job performance. Sales agents are often granted a company car and phone. Tax legislation does not encourage the granting of such benefits.

Apart from work-related needs, it is rather common for employers to grant certain benefits such as the use of a company car, phone, additional personal injury insurance and the like to managerial staff.

6.5 Deductions

Employers are obliged to deduct income tax advances and social security contributions from the salary of their employees.

7. Social security

7.1 Coverage

An employer has to register the employee for obligatory pension, disability, health, parental and unemployment insurance on the day the employee's work commences. The social security system provides benefits in the case of retirement, disability, death, sickness, injuries (regardless of whether employment-related or not), occupational disease, pregnancy, maternity and unemployment.

7.2 Contributions

Employees' social security contributions amount to 22.10 per cent of an employee's salary, while employers' social security contributions amount to 16.10 per cent of an employee's salary.

8. Hours of work

In Slovenia, the normal working week is 40 hours. The employer's general actions or a collective agreement may decrease the normal working time, although it may never amount to less than 36 hours, except in relation to employees who are exposed to a greater risk of injury or damage to health.

Working hours comprise an employee's effective working time plus breaks. Hence, a daily break of half an hour is counted as part of the working hours.

There are certain limits to rendering overtime: overtime may not exceed eight hours per week, 20 hours per month, and 180 hours per year. The Employment Relationships Act and some collective agreements stipulate certain cases in which overtime may not be ordered.

9. Holidays and Time Off

9.1 Holidays

An employee has the right to paid absence from work on public holidays recognized in the Republic of Slovenia, specified as work-free days, and on other work-free days as specified by law.

An employee is entitled to at least four weeks of holiday per calendar year. Under the Employment Relationships Act, certain employees are entitled to a longer annual leave period.

9.2 Family Leave

A female employee may take paid maternity leave for a period of 42 days before the child's expected due date and is obliged to go on maternity leave for a period of 28 days before the expected due date. Female employees are entitled to paid maternity leave for a period of 105 days altogether, i.e. including the leave before the child's birth. Payments during maternity leave are borne by social security.

In addition, the father is entitled to 15 days' additional leave to be taken during the first six months after childbirth and an additional 75 days leave to be taken before the child's third birthday.

After the maternity leave has expired, either the mother or the father of the child is entitled to 260 days of parental leave, which may be used as full-time absence from work, or alternatively, as part-time absence from work, in which case the period of absence is longer. Payments during paternal leave are borne by social security.

Parental leave may be extended under certain circumstances.

9.3 Illness

In the case of temporary incapacity due to injury or disease, an employee is entitled to be absent from work. The employer has to pay wage compensation out of its own funds in the case of such absence from work due to health reasons for a period of up to 30 days for each individual absence. In relation to injury or disease not connected to work, there is a limit of 120 working days per calendar year. In the event of a longer absence from work, the employer will be refunded by health insurance. If the absence from work does not result from an occupational disease or an injury related to work, the wage compensation amounts to 80 per cent of the employee's wage.

10. Health and Safety

10.1 Accidents

The employer has to ensure that working conditions meet the regulations applicable to health and safety in the workplace. This is verified occasionally through a labour inspection.

10.2 Health and safety consultation

According to the Act on Occupational Health and Safety, the employer may ensure health and safety by appointing an expert employee who fulfils certain tasks related to safety at work, as well as an authorised physician for the purpose of ensuring health at work.

The expert employee in charge of safety at work has to pass a special exam. However, the employer may also hire an external expert employee or external expert bodies to conduct such tasks. Certain restrictions apply.

11. Industrial Relations

11.1 Trade Unions

A trade union that has members working for a particular employer may appoint or elect a trade union representative to represent the trade union at the employer's place of business. The employer has to be informed of the appointment or election of such trade union representative. Furthermore, the trade union representative has the right to protect the rights and interests of the employees at the employer's place of business.

11.2 Collective Agreements

Slovenian law recognizes general collective agreements, branch collective agreements, and company collective agreements. Now general collective agreements are only recognised for the non-economic public sector of the Republic of Slovenia (previously, general collective agreements were also recognised for the commercial sector).

The parties to collective bargaining comprise: (i) the associations of employers using general and branch collective agreements, or the employer itself in the case of company collective agreements, and (ii) the associations of trade unions or trade unions at the employer's place of business in the case of company collective agreements.

11.3 Trade Disputes

Employees have the right to strike, which is exercised collectively. The right to strike is enshrined both in the Constitution and in the Strike Act.

Generally, disputes between employers and trade unions should be resolved in compliance with applicable collective agreements.

11.4 Information, Consultation and Participation

Employees have the right to participate in the management of the employer. Such participation may either be performed by a workers' representative or a works council, depending on the size of the employer's company. There are three forms of participation: (i) the right to information, (ii) the right to consultation, and (iii) the right to participation in decision-making. If certain participation rights are neglected by the employer, the works council may stay a decision by the employer.

Moreover, employees may have certain participation rights in management bodies. Workers' participation in management bodies is implemented through representatives acting on a company supervisory board, the supervisory committee of a cooperative, or through an employee representative within the company's management.

Participation rights may also be extended or their exercise regulated in more detail by a works agreement.

12. Acquisitions and Mergers

12.1 General

If the employer changes due to the legal transfer of a business in whole or in part, the contractual and other rights and obligations arising from the employment relationship that the employees had on the day of the transfer are automatically transferred to the transferee. Any rights and obligations under the collective agreement that bound the transferor must be guaranteed by the transferee for at least one year, unless the collective agreement expires earlier or unless a new collective agreement is concluded during this period. In addition, certain information and consultation obligations of the transferor and the transferee apply in the event of the transfer of a business.

If the employee refuses to transfer, this gives the employer (ie the transferor) a reason to terminate the employment relationship.

The rules in Slovenia in relation to mergers and acquisitions are extremely recent and accordingly there is relatively little information available in relation to their application in practice.

12.2 Information and Consultation Requirements

The transferor and the transferee must *inform* trade unions of the reasons for transfer, the legal, social and economic implications of the transfer for the employees and the measures contemplated in respect of the employees at least 30 days prior to the transfer of the business. In addition, the transferor and the transferee need to *consult* with these trade unions on the legal, social and economic implications of the transfer for the employees and the measures considered in relation to the employees at least 15 days before the transfer. The purpose of the consultation is to reach an agreement on these topics. If a trade union has not been established at the employer, the transferor and the transferee have to inform the employees directly. Additional consultation obligations may arise in the event of any organisational changes in the business operation.

13. Termination

13.1 Individual Termination

An employer wishing to terminate the employment relationship must be careful to comply with the statutory requirements as regards reasons and procedure.

Employees with service of more than one year and whose employment contract was terminated by the employer through ordinary termination due to business reasons or for reasons of incapacity, are entitled to a severance payment. The amount of such severance payment is dependent on the employee's years of service (ranging from one fifth of a monthly salary to 10 months' salary).

Also, if the employee retires and the employment relationship is terminated, he or she is entitled to severance pay.

13.2 Notice

The minimum notice entitlement is dictated by the reason for termination and the duration of service.

If termination is based on business reasons, the minimum notice period amounts to 30 days and increases with the length of service to up to 150 days. If the reason for termination is related to the incapacity of the employee, the minimum notice period also amounts to 30 days and increases with the years of service to up to 120 days. If the employer terminates the employment relationship due to the employee's capability or conduct, the minimum notice period is always 30 days. Specific notice periods apply in some circumstances (e.g. bankruptcy or liquidation proceedings).

The parties to the employment contract may agree, in writing, on compensation instead of observance of the notice period.

Prior to an ordinary termination of employment, the employer has to meet information obligations and is subject to the duty to warn. Except in the case of a termination due to business reasons, the employer has to provide the employee with an opportunity to defend himself.

Upon the request of the employee, the employer has to inform the trade union, if any, in writing about the intended termination. If the trade union has opposed the termination, the employee may request that the termination not become effective until the commencement of arbitration and/ or judicial protection has begun.
The employee may also seek a temporary injunction within the course of the judicial proceedings, which has the effect of further postponing the termination date.

Any notice of termination has to be in writing. The employer has to cite the reasons for termination and has to inform the employee of the available legal remedies and the employee's rights to unemployment insurance.

Dismissal without notice is only permissible if the employer's reason for doing so is acceptable for the purposes of the Employment Relationship Act. The law sets a high standard. In addition to having a legitimate reason for the purposes of the Employment Relationships Act, the continuation of the employment relationship until the expiry of the notice period or a fixed term must also be unreasonable for the employer.

The employer has to inform the employee of the dismissal without notice within 15 days of becoming aware of its reason and not later than six months from the occurrence of the action that gave rise to such reason.

Also, the employee may terminate the employment relationship without notice, again for a reason stipulated by law (e.g. material breach of contract). Eight days before the employee may extraordinarily terminate his employment, such employee has to call on the employer and advise the employer to fulfil its obligations. Simultaneously, it has to inform the labour inspectorate of the employer's violations in writing. If the employee has adhered to this procedure, he may

terminate the employment for the reasons stipulated by law.

Mutual termination of the employment contract requires a written contract between the employer and the employee. If the parties do not adhere to this formal requirement, the mutual termination is invalid.

13.3 Reasons for Dismissal

In Slovenia, the employer may never terminate the employment relationship without reason. Consequently, the employer may base the ordinary termination on three different reasons: (i) business reasons, (ii) the incapacity of the employee, and (iii) reasons of fault. In any case, the reason for termination has to be substantiated and has to render continuation of the employment relationship impossible.

In the case of termination on the grounds of the incapacity of the employee or for business reasons, the employer is obliged to examine whether it is possible to employ the employee under different conditions or to transfer him to another post, and/or whether it is possible to retrain the worker.

Additionally, the Employment Relationships Act sets out certain reasons where termination is considered to be unfounded.

The employee does not need to cite a reason for his resignation on notice.

The employee may assert the illegality of termination within 30 days of the violation of his rights (i.e. from the notice of termination) before the competent labour court.

If the labour court finds that the employer's termination was illegal and that the employee does not intend to continue the employment relationship, it shall - at the employee's request - establish the existence of an employment relationship, but not beyond the first instance judgement. The court will also determine the employee's length of service and other rights arising from the employment relationship, as well as the employee's compensation in light of the applicable civil law.

13.4 Special Protection

Certain categories of employee enjoy special protection against termination: members of the works council, workers' representatives, females during pregnancy, parents, disabled persons, and persons absent from work because of disease.

13.5 Closures and Collective dismissals

A specific procedure has to be adhered to if the employer intends to dismiss a larger number of employees due to business reasons. For example, the dismissal of at least 10 employees by an employer employing more than 20 but less than 100 employees qualifies as a collective dismissal.

In these circumstances the employer is obliged to draft a dismissal program. The Employment Relationships Law stipulates the material content of such dismissal program. In addition, the employer has to inform the trade union and the employment service of its intention. The employer may not terminate any employment relationship for a period of 30 days from notification of the employment service ("blocking period"). The employment service may even extend this blocking period to 60 days.

14. Data Protection

14.1 Employment Records

The employer is obliged to protect the personal data of employees. Hence, data on employees may only be collected, processed, used and provided to third parties if the Employment Relationships Act or another law so stipulates, or if this is required in order to exercise the rights and obligations arising as a result of the employment relationship.

14.2 Employees' Access to Data

Employees' access to data is usually regulated in the employer's internal documents, e.g. the employer's general act (*pravilnik*).

14.3 Monitoring

The Employment Relationships Act and the Act on Data Protection do not include provisions regarding the monitoring of employee communications. However, provisions regarding monitoring are usually included in the employer's internal documents, e.g. the employer's general act (*pravilnik*).

The Act on Data Protection permits an employer to use video monitoring on the business premises in extraordinary cases. Video monitoring can be carried out if necessary to preserve the safety of people or assets or for the protection of secret information and business secrets provided that there are no less intrusive means by which these aims can be achieved. The employees have to be notified in advance of the video monitoring. In any event, video monitoring is prohibited in locker rooms, lifts and sanitation areas.

14.4 Transmission of Data to Third Parties

Data may only be transmitted to data managers, contractual employees or users of data who have a registered seat or are registered in non-EU countries or non-EEA countries, if the supervisory body of the Republic of Slovenia issues a decision that the receiving state guarantees a sufficient level of data protection. Such decision is not required for transmission to a state contained on the list of countries recognized as having sufficient levels of data protection. If a sufficient level of protection in relation to the data transmitted and the purpose of transmission is established, data may be transmitted to countries that only partially assure a sufficient level of protection without first obtaining a decision by the supervisory body of the Republic of Slovenia.

Spain

1. Introduction

The Spanish Constitution recognises certain basic labour-related rights, such as the right to work, the right to strike and the right to join a Trade Union. More detailed regulation is contained in the Workers Statute, which establishes a number of mandatory and minimum terms and conditions of employment. The employment relationship may be further regulated at a number of levels. Collective Bargaining Agreements ("CBAs") mandatorily regulate specific employment terms and conditions of those employees that come within the scope of each specific CBA. CBAs may be drawn up at different levels by means of collective negotiation (by sector – such as metal, offices, chemicals etc – or by company) and with different territorial scopes of application (national, Autonomous Community, provincial). CBAs are temporary agreements, the duration of which is agreed between the parties. In addition, individual contracts may contain specific terms and conditions agreed with a particular employee.

2. Categories of Employees

2.1 General

Spanish law draws a distinction between "Senior Executive" staff and ordinary or standard staff.

2.2 Directors

The employment relationship of Senior Executive employees is governed by the specific rules of Royal Decree 1382/1985. Their contracts of employment are subject to fewer constraints than standard employees whose employment relationship is largely governed by the Workers' Statute.

The concept of "Senior Executive" is narrowly defined and includes only: "those employees who genuinely exercise broad powers inherent to the company's legal ownership and related to the company's general objectives, limited only by the direct instructions issued by the company's managing body".

When determining whether an employment relationship should be classified as "standard" or that of a "Senior Executive" in the context of a multinational group of companies, if the individual does not receive direct instructions from the Board of the Spanish company but from a person who is responsible at an international level for the group or board of directors within the group (without the employee having significant autonomy in the performance of his services), the employee may be classified as a standard employee rather than a Senior Executive.

In some cases, case law has stated that individuals who render their services as Senior Executives and are simultaneously active members of the company's Board have a mercantile, and not an employment, relationship with the company.

3. Hiring

3.1 Recruitment

In principle, the employer may recruit employees freely. For this purpose, the employer may resort to public employment services, recruitment agencies, placement agencies and temporary employment agencies. When an employer recruits via a temporary agency, the relationship is governed by specific rules contained in Law 14/1994 and Royal Decree 4/1995.

Generally speaking, employers are legally required to register the content of any employment contracts, and any amendments thereto or extensions, with the relevant Employment Office ("Servicio Público de Empleo") within ten working days of the execution date. In addition, employers must register employees with the Social Security system before their employment contracts can commence.

Companies with more than 50 employees must recruit two per cent of their workforce from those persons registered as disabled. Employers may receive social security or tax benefits for recruiting disabled employees.

Employers may benefit from rebates of social security contributions if they hire, for an indefinite period, employees from specific groups (for example, unemployed women in specific jobs or professions, unemployed people over 45 years of age, etc.).

3.2 Work Permits

As a general rule, non-EEA nationals must obtain a work permit before commencing employment. Various types of work permits may be granted depending on the nature and duration of the work involved. Whether or not a work permit will be issued may depend, among other things, on the current national employment situation.

Pursuant to Royal Decree 178/2003 nationals of the European Union or of EEA Member States, either employees or self-employed, may reside and work in Spain without a residence or work permit, as may the members of their family. In order to carry out activities as employees or in a self-employed capacity, the interested parties are subject to the same regulations as Spanish citizens.

The Government has approved a moratorium of two years (with effect from 1 January 2007) during which the nationals of Romanía and Bulgaria will still be required to obtain a work permit prior to commencing employment.

4. Discrimination

The Workers' Statute prohibits discrimination on the grounds of sex, marital status, age, race, social status, religious/political ideology, sexual orientation, trade union membership, kinship with other employees or language, in relation to recruitment and employment conditions. It also prohibits discrimination on the grounds of physical or mental handicap and provides special protection in maternity cases.

New legislation on discrimination (Organic Law 3/2007 of Equality between Men and Women) has recently been passed, which may have a significant impact on Spanish companies. This legislation requires every company to adopt measures in order to avoid discrimination between men and women. Furthermore, an

"Equality Plan" including (i) specific equality objectives, (ii) specific strategies and policies to achieve these objectives, and (iii) evaluation and monitoring systems must be developed in certain circumstances (i.e. in companies with more than 250 employees, when stipulated by the applicable collective bargaining agreement, etc.).

5. Contracts of Employment

5.1 Freedom of Contract

The parties are free to agree on any terms to the extent permitted by law.

5.2 Form of Contract

Certain types of employment contracts must be executed in writing in a prescribed format (e.g. internship contracts, fixed-term contracts with a term of over four weeks, part-time contracts etc). The main classifications of contracts are set out below:

(a) Indefinite employment contracts, which may generally be agreed either verbally or in writing.

(b) Fixed-term employment contracts, these can be:

- Contingent contracts – based on production needs or market demands, these contracts must set out in detail the circumstances in which they operate. They must be agreed in writing if the term exceeds four weeks.
- Interim contracts – to provide temporary cover for another employee. These contracts must be agreed in writing.
- Contracts for a specific work or service – These must be agreed in writing.
- Internship contracts – These must be agreed in writing.

There are other specific categories of employment contracts such as part-time contracts (either of fixed or indefinite duration), relief contracts (an employee substitutes another employee who has partially retired), or temporary contracts for disabled persons (from one to three years' duration). These must all be agreed in writing.

The employment of Senior Executive staff is governed by Royal Decree 1382/1985; this contains more flexible provisions than general Labour Law, particularly in relation to termination and severance arrangements. Senior Executives are not generally governed by CBAs unless express agreement is reached with the employer.

The parties are accordingly free to agree specific severance terms. If no prior agreement on severance terms has been reached, dismissal packages of twenty days' salary per year of service (up to a maximum of twelve months' salary) are payable. An employer can also terminate the contract "at will" and waive the contract on the grounds of "loss of trust" upon giving notice of three to six months (or making a payment in lieu), and compensation of seven days' salary per year of service (up to a maximum of six months' salary) is payable, unless a different amount is agreed by the parties. In practice, contracts for Senior Executives often include "golden parachute clauses" which provide detailed and substantial severance packages, as well as other related terms.

5.3 Trial Periods

If a trial period is agreed, it must be recorded in writing before the employment starts. During the trial period, either party may unilaterally terminate the contract without having to justify the grounds. In these circumstances, the employee is not entitled to receive a notice or a severance payment upon the termination of the employment relationship.

Trial periods may not exceed the term established in the applicable CBA (the Workers' Statute provides for a general term of six months for qualified technicians or two months for other employees). Employment contracts for Senior Executives may incorporate a trial period not exceeding nine months.

5.4 Confidentiality and Restrictive Covenants

Any information related to the employer's business must be kept confidential, both during and after employment. This duty of confidentiality is inherent to the legal nature of the employment relationship for both standard employees and Senior Executives, and there is no need for the employer to provide any compensation for it.

An employee may not provide services to several employers during the term of the contract if this would give rise to unfair competition, or if an exclusivity covenant has been given by the employee. The exclusivity covenant must be in writing, and the employee is entitled to be specifically remunerated for the covenant, except in the case of Senior Executives. The exclusivity covenant may be terminated at any time at the employee's discretion, by serving the employer with 30 days' written notice, thereby disentitling the employee to any further compensation for exclusivity.

Post-termination non-competition covenants may also be agreed at any given time, provided that:

- The employer has an effective industrial or commercial interest in relation to its enforcement, and,
- The employee is paid adequate economic compensation.

In any event, such post-termination non-competition covenants may not exceed two years for technicians and six months for other employees.

When the employee has attended professional specialisation courses or received training at the employer's expense, a "retention" covenant may be agreed in writing, by virtue of which the employee shall remain with the company for a specific term not exceeding two years. If the employee leaves the company before the end of the term, the employer will be entitled to claim damages. The damages are normally at a level equal to the value of the courses taken in order to acquire the specialisation in question.

5.5 Intellectual Property

The transfer to the employer of intellectual property rights in works created by virtue of an employment relationship are governed by the contract. In the absence of any express provision, it is assumed that the intellectual property rights have been exclusively assigned to the extent required by the employer to carry out its usual activities.

6. Pay and Benefits

6.1 Basic Pay

The structure of the salary is usually established by the CBA or detailed in the employment contract, with a distinction being drawn between the base salary and any additional allowances. Additional supplements are payable in certain circumstances specified by the relevant CBA or in the employment contract (for example hazardous work, night shifts etc).

Employees are also entitled to at least two extraordinary payments per year; one payment to be made at Christmas and the other generally paid before the summer holidays. The CBA may, however, provide that the extraordinary payments be paid on a pro rata basis over 12 months.

The Government annually adjusts the minimum wage, taking into account, amongst other criteria, the Consumer Price Index. The amounts established are a minimum wage and may be increased by CBAs or in individual employment contracts between the worker and the employer.

The CBAs establish the minimum salary reviews to be made on an annual basis and which are usually linked to the increase in the Official Consumer Price Index, although the employer may apply higher increases.

6.2 Private Pensions

The promoter of an "employment system" pension plan will be any entity, company or business whose employees are participants in the pension plan. These plans are financed by contributions from the promoters and, where applicable, by contributions from the participants. These pension schemes are funded through a vehicle which is separate from the promoter.

6.3 Incentive Schemes

Many companies have incentives schemes. Usually these incentives schemes comprise variable remuneration linked to performance or sales; or share option schemes. Generally only managers and/or qualified employees (i.e. sales representatives) benefit from these kinds of schemes.

Stock option plans may be used as an incentive for productivity and the retention of employees or Senior Executives within the company. In principle, and as a general rule, the benefits provided to employees under a stock option plan will be classified as remuneration in kind for tax and Social Security purposes (there may, however, be tax exemptions in certain circumstances and subject to specific limits).

Case law has established that, in certain circumstances, the benefits provided to employees under a stock option plan will be classified as salary for the purposes of calculating severance payments.

6.4 Fringe Benefits

Fringe benefits can be voluntarily granted by companies or stipulated in the applicable Collective Bargaining Agreement.

Each company has a completely different policy as regards fringe benefits (i.e. some companies have no fringe benefits or have them only for managers and other companies have a series of different fringe benefits offered to all of their employees). Generally fringe benefits are provided to managers. However, under some Collective Bargaining Agreements fringe benefits (i.e. insurance policies, meal/ transportation allowances, etc.) are provided to all the employees.

7. Social Security

7.1 Coverage

Provided that specific requirements are met, the Spanish Social Security System offers a wide range of benefits, including medical care, benefits for dependent children, death and survivors, unemployment allowances, retirement pensions, temporary or permanent disability grants and maternity/paternity benefits.

The Spanish Social Security System is made up of a General Regime, a Regime for employees assimilated to the General Regime (applicable to Directors that also perform management tasks while paid by the Company) and several special regimes applicable to, for example, the self-employed or household workers.

7.2 Contributions

Under the General Regime, both the employer and employee are required to make contributions.

The standard contribution rates are 30.15 percent for employees with an indefinite contract, plus the contribution for occupational accidents and illnesses (which ranges from one percent to 8.50 per cent depending on the type of activity carried out) for the employer, and 6.35 percent for the employee.
The contribution rates are applied over the corresponding contribution base. The contribution base for 2007 has been set at a maximum monthly amount of Euro 2,996.10 that serves as a cap. The employee's Social Security must be directly deducted by the employer from the employee's salary. In addition, the employer must make monthly payments to the Social Security Treasury for the corresponding employees' and employer's contributions.

8. Hours of Work

The duration of the annual working time is agreed in the CBA or employment contracts. The maximum duration of the ordinary annual working time will be an average of 40 hours per week over the course of a year. Through a CBA or an agreement between the company and the employees' legal representatives, the working time may be irregularly distributed over the year, provided that the legal minimum rest periods are still complied with.

In this respect, there must be a minimum of 12 hours between the end of a working day and the following one. In addition, employees are entitled to

enjoy a minimum weekly uninterrupted rest period of one and a half days, which can be accumulated over 14 days, so it is possible for an employee to work for 11 days and then rest for three days.

Hours worked in excess of the ordinary annual working time are classified as overtime, which may not exceed 80 hours per year. Overtime shall be remunerated according to the rates agreed in the applicable CBA or the employment contract (and this may not be lower than the established hourly rate) or offset with equivalent rest periods within the four months following the performance of overtime.

9. Holidays and Time Off

9.1 Holidays

The annual holiday period is agreed in the applicable CBA or employment agreement and may not be less than 30 calendar days. It is not permissible to pay employees in lieu of their holiday entitlement, except on the termination of the contract. Unused holidays may not be carried forward to the next year. In addition, the employees are entitled to 14 public holidays annually.

9.2 Family Leave

Paid leave must be allowed in certain family-related circumstances (e.g. 15 days for marriage or two days for the death of a close relative). The parents or legal guardians of children under eight, handicapped/dependant relatives have the right to a reduction of up to half of the working day, with a pro-rata salary reduction. Workers are entitled to a one hour absence in their daily working time (without loss of salary) for nursing a child of under nine months (or this may be accumulated and taken as rest days after the end of the maternity leave).

During maternity leave, the contract is suspended for 16 weeks (plus two extra weeks per each child if more than one child is born). This right to maternity leave may be enjoyed by the child's mother or father, although during the six weeks following the birth leave may only be taken by the child's mother and, thereafter, both parents may take maternity leave either simultaneously or successively, provided that no more than 16 weeks' leave is taken in total between the parents.

During paternity leave, the contract is suspended for 13 days (plus two extra days per each child if more than one child is born). This period will be increased up to four weeks in the next six years.

Social Security benefits are not indexed to an employee's actual salary but to specified contribution bases (subject to minimum and maximum amounts). The Social Security System pays 100 per cent of the employee's Social Security reference contribution base while the employee is enjoying maternity leave.

9.3 Illness

General legislation states that in the case of temporary incapacity caused by common illness or non-occupational accidents, employees are not entitled to receive their salary for the first three days following the temporary incapacity. Between days four and 20, employees are entitled to receive 60 per cent of the reference contribution base (from the 4th to the 15th day sick pay is paid by the employer and from the 16th to the 20th day by the Social Security System). Finally, from day 21 onwards, they are entitled to receive 75 per cent of their reference contribution base (paid by the Social Security System).

In the event of occupational illness and accidents, employees are entitled to receive 75 per cent of the reference contribution base from the date on which the temporary incapacity begins (paid by the Social Security System).

CBAs often improve these percentages, for example by requiring the employer to pay the difference between the Social Security allowance and the real salary or imposing an obligation on the employer to assume payment during the first three days of incapacity.

Social Security benefits resulting from temporary incapacity are paid for a maximum of 18 months.

10. Health and Safety

10.1 Accidents

Regulations on the prevention of occupational hazards are extremely detailed in Spain, requiring multiple measures to be taken and obligations to be implemented by the companies.

In the event of a breach of health and safety duties, employers are subject to different administrative sanctions depending on the seriousness of the breach. In addition, infringing employers bear a surcharge of between 30-50 per cent of the corresponding Social Security allowance granted to the employee that has suffered an occupational illness or accident at work, depending on the nature and the extent of the breach. This surcharge cannot be insured against, and any agreement or contract which is executed in order to cover, compensate or transfer this surcharge is legally null and void.

10.2 Health and Safety Consultation

The monitoring of health and safety regulations is carried out both externally and internally. Externally, the Labour Inspection and other public bodies are in charge of these matters. Internally, employers, Prevention Services, the Health and Safety service provider or the Health and Safety Committees are involved with the prevention of occupational risks (notwithstanding the employing company's ultimate responsibility).

The Health and Safety Committees are joint membership bodies in charge of regularly and periodically advising the company on matters related to risk prevention. They are set up in companies or workplaces which have at least 50 employees and consist of an equal number of employee and employer representatives.

11. Industrial Relations

11.1 Trade Unions

Law 11/1985 on Trade Union Freedom governs the right of all workers to freely join a Trade Union and gives broad powers to Trade Unions to exercise their rights. Indeed, large Trade Unions in Spain such as the Workers' Commission ("Comisiones Obreras" or "CCOO") and the General Workers' Union ("Unión General de Trabajadores" or "UGT") have considerable political power. There are also employer associations, which

seek to develop labour relations in conjunction with the Trade Unions and the labour authorities by means of collective agreements, lobbying and so on.

11.2 Trade Disputes

The right to strike is protected by the Spanish Constitution. Any strike action must be expressly adopted by a majority of employees in each Company and must be notified to the employer and to the Labour Authorities by the employees' legal representatives. This notice must be given at least five working days prior to the commencement of the strike, or 10 working days if the strike affects public service companies.

While an employee is exercising the right to strike, the employment contract is suspended. This relieves both employer and employee of their obligation to provide remuneration and services respectively. The dismissal of an individual whose employment contract is suspended as a result of exercising the right to strike will be void, unless the strike is declared illegal or the employee does not comply with the minimum service requirements provided in the law or relevant CBA.

11.3 Information, Consultation and Participation

As well as participation through union recognition, information, consultation and participation of employees at a company level is provided through the employees' legal representatives (staff delegates in workplaces with less than 50 employees or Works Councils in workplaces with at least 50 employees). The number of employees on a Works Council will depend on the size of the workplace. Work Councils and staff representatives are entitled to receive information (e.g. details of serious disciplinary actions against employees etc), to publish leaflets in relation to employment or social matters and may collectively negotiate in certain circumstances.

Employers must consult the Work Council before adopting certain important decisions, such as those relating to the reorganisation of the workforce, the closure of a plant or training programmes.

A Spanish company must establish a European Works Council, or a similar vehicle which provides information and consultation to/with employees, if:

- it employs a total of more than 1,000 people in all European Member States, of whom 150 work in one particular Member State and another 150 in a different Member State; and,
- this is requested by at least 100 workers or their representatives, belonging to two workplaces or companies located in different Member States.

Prior to the establishment of a European Company in Spain, specific procedures must be followed and rights to information, consultation and/or participation agreed between the company representatives and the employees' legal representatives.

12. Acquisition and Mergers

12.1 General

Article 44 of the Workers' Statute implements the "Acquired Rights Directive" in Spain. In the event of a transfer of an undertaking, the affected employees are entitled and obliged to transfer, under their existing employment terms and conditions, to the transferee who automatically becomes their new employer.

The transferor and transferee are jointly and severally liable for a three-year period for any employment obligations outstanding at the time of the transfer and for a four-year period in relation to social security obligations arising prior to the transfer.

If there are no labour or social security obligations outstanding at the time of the transfer, any future obligations are assumed exclusively by the new employer (unless the transfer is classified as a fraud, in which case the former employer would also be liable).

12.2 Information and Consultation requirements

The transferor and transferee should serve notice of the transfer to the legal representatives of the affected employees. In the absence of any legal representatives, each affected employee should be individually informed.
The information to be provided is: (a) the proposed date of the transfer, (b) the reasons for the transfer, (c) the legal, economic and employment consequences of the transfer for the employees, and (d) details of the proposed measures in relation to the employees.

The information must be provided in advance of the transfer and before the employees' employment conditions are affected by the transfer. In the event of company mergers and demergers, the information must be provided no later than the date that the notice convening the general meeting of the company to adopt the relevant resolutions is served.

Where specific employment measures are contemplated as a consequence of a transfer, the employer(s) of the affected employees must commence a consultation process with the employees' legal representatives in relation to the proposed measures and their consequences for the employees. In the absence of any legal representatives, the consultation should be carried out with affected individuals. This consultation must take place sufficiently in advance of the implementation of the measures for a genuine consultation to take place.

Where any measures relate to a substantial modification of terms and conditions of employment, relocation or collective dismissals, detailed information and consultation rights and procedures will apply.

In the event of a merger or change in the employer's legal status that may affect the level of employment, the legal representatives of the employees are entitled to issue a report, prior to the merger provided they do so within 15 days of being informed of the merger/change in status.

12.3 Notification of Authorities

There is no obligation from an employment law perspective to notify the authorities in the event of the transfer of an undertaking. However the social security authorities must be notified of the transfer and the affected employees.

12.4 Liabilities

In strict legal terms, in relation to the transfer of an undertaking, if the employer does not comply with its information and consultation obligations, it will not affect the validity of the transfer, however, it could give rise to a fine of up to Euro 3,006 from the Labour Authorities.

13. Termination

13.1 Individual Termination

Employment contracts may only be lawfully terminated on a number of grounds expressly stipulated by law and in accordance with the appropriate procedures for each case.

Contracts may be terminated at the request of the employee or employer by mutual consent, upon the expiry of an agreed term or the conclusion of the job or service covered by a temporary contract, or due to the retirement of the employee.

Upon the termination of a temporary contract, employees are entitled to a compensation equivalent to eight days' salary per year of service.

13.2 Notice/Reasons for Dismissal

The employment contract may be terminated by the employer by means of a disciplinary dismissal based on a serious and wrongful breach of the contract by the employee, without the latter having any right to compensation. Legislation and CBAs list the contractual breaches which may be considered for such purposes (lack of discipline or disobedience, offences, breach of contractual good faith etc).
The employee must be served with written notice of the dismissal, indicating the events on which it is based and the date it is to take effect.

The employee is entitled to oppose the dismissal by means of filing a claim within 20 working days of the dismissal date before a special administrative body where a preliminary conciliation meeting is required. This stage can be avoided if, within 48 hours of the dismissal the employer offers legal compensation to the employee for unfair dismissal and this is accepted by the employee. If the employee fails to accept, the employer may file a writ before the Labour Court acknowledging the dismissal as unfair and deposit the proposed compensation at the Labour Court. This deposit procedure avoids the employer having to pay "processing salaries" (i.e. salaries corresponding to the period between the date of the dismissal and the date of the conciliation or notification of the Court's decision). In practice, the deposit can also be made after the 48-hour period up to the date of the conciliation meeting, in which case the processing salaries payable would be limited to the period between the dismissal date and the date of deposit.

However, if the employer does not follow the deposit procedure, or if despite doing so, the employee still claims that the severance payment deposited is incorrectly calculated, or that the dismissal is null and void, he/she can request a conciliation meeting. If no agreement can be reached at this meeting, then the employee may file a claim before the Labour Courts (within 20 days of the dismissal date), which would resolve the dispute by classifying the dismissal as fair, unfair or void. The relevant legal procedures can take around three to four months and an appeal is possible before a Higher Court.

If the dismissal is considered unfair, the employer may, in most cases, choose either to reinstate the employee or to terminate the contract with a severance payment of 45 days of salary per year of service with a maximum of 42 monthly payments (plus the "processing salaries", unless the severance payment was correctly deposited in due form and amount as outlined above).

In addition, an employment contract may be terminated on "objective grounds" such as the employee's ineptitude, employee absenteeism (when it reaches certain levels as established by law), or when there are economic, technological, organisational or production-related grounds affecting a number of jobs below the "collective dismissal" threshold number.
The objective dismissal is subject to a number of legal requirements; first, written notice must be served to the employee explaining in detail the grounds for the decision; secondly, the employer must make a simultaneous offer to pay the minimum severance compensation equal to 20 days' pay per year of service (up to a maximum of 12 months' pay); and thirdly, the employee is entitled to 30 days' notice or a payment in lieu of notice.

The employee may appeal the decision to dismiss as if it were a disciplinary dismissal and, likewise, the decision may be classified by the Judge as fair, unfair or void with similar consequences.

13.3 Special Protection

The dismissal will be considered void if it was discriminatory or if it violated the employee's fundamental rights or public freedom. In such circumstances, the employer must reinstate the employee and pay all salary accrued during the dismissal period.

13.4 Closures and Collective Dismissals

The Collective Dismissal procedure is a special administrative procedure that should be followed when a company expects to terminate a minimum number of contracts in a 90-day period in accordance with the following thresholds:

- 10 employees in a company which has less than 100 employees;
- 10 per cent of the total workforce in a company with between 100 and 300 employees; and
- 30 employees in a company with 300 or more employees.

Dismissals which affect the entire staff are classified as collective dismissals if the headcount is more than five employees.

Under this procedure, the employing entity must obtain approval from the relevant Labour Authorities prior to implementation of the dismissals. It requires evidence of "economic, technological, organisational or production-related" grounds for such dismissal, which should be discussed with the employees' representatives during a mandatory consultation period of at least 30 days (or 15 days in the case of companies with less than 50 employees).

If the employer's proposal is approved, the employees are legally entitled to a minimum severance payment of 20 days' salary per year of service (up to a maximum of 12 months' pay), although, in practice, this severance payment is significantly increased as a result of the negotiations with the employees' representatives, in order to obtain an agreement with them.

If no agreement can be reached with the affected employees, the Labour Authorities will analyse the company's situation. If approval is not forthcoming, the employer cannot dismiss its employees.

14. Data Protection

14.1 Employment Records

The processing of personal data in Spain, including the collection, storage and use of information held by employers about their employees and workers (prospective, current and past) is governed mainly by the Organic Law 15/1999 dated 13 December 1999 ("the LPDCP"), which implements the EU Data Protection Directive.

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 principals including the following: a requirement to ensure that data is accurate, up to date, and is not kept longer than is necessary; and a requirement that it is stored securely to avoid unlawful access or accidental destruction or damage to it.

Under the LPDCP, prior to the creation of a personal data file, employers (as data controllers) must notify the Data Protection Agency of the creation of every file, by filing a standard form. The notification must contain details of the data controller's (corporate) identity, the purpose of the file, its location, security measures taken, the data intended for inclusion in the file, and details of foreseeable disclosures and international data flows.

In addition, personal data may only be processed if the employee has unambiguously given his or her consent, unless there is an applicable lawful exception. Finally, employers must comply with certain duties to provide the employees with specified information about the data processing. This information must be provided before the personal data is collected and before the consent of the employee has been granted.

Infringement of the data protection law can lead to fines of between €601.01 and €601,012.10.

14.2 Employee Access to Data

Data subjects have the right to access their personal data, to rectify such data, to delete their personal data contained in a data file, and to object to the data processing of their personal data.

Employees, as data subjects, are entitled to request and obtain information from a data controller about their personal data included in files. Within one month of such a request, the data controller must decide whether the data subject has a right of access, and if no response is provided within one month, the request is deemed to have been refused. If the request is granted, the data subject should exercise the right within ten days. This may involve merely consulting the files by visual examination, or the provision of relevant data in writing, by fax or photocopy in a legible and understandable form. The data subject may select the means by which the right of access is exercised, subject only to the limitation that the means chosen must be in accordance with the data controller's method of storage.

The information provided must include not only the data, but also the results of any decisions or processing made with the data, the source of the data, third parties to whom the data have been disclosed, and a statement of the uses and purposes for which the data were stored.

The only statutory grounds on which access may be refused are that the request for access was made by someone other than the data subject, or that the data subject has exercised the right of access within the previous 12 months and there are no reasonable grounds for exercising it again. In such cases, the data subject has the burden of proving the reasonableness of his request.

Data subjects are also entitled to request from the Data Protection Registry information relating to the existence of personal data processing, the processing purposes, and the identity of the data controller. The Registry is available for public consultation, without charge.

14.3 Monitoring

No specific legislation has been enacted to regulate the monitoring of employee communications such as e-mail, Internet and telephone usage. However, the Labour Courts have considered the conflict between the employer's rights to effective management control and the right of employees to personal privacy and secrecy of communications.

From case law, it can be inferred that employers may monitor employee communications in the circumstances set out below. Note that these guidelines are a matter of interpretation of the relevant case law, and have not been promulgated by any regulatory authority:

(a) The monitoring must be justified, suitable to achieve the company's aim, necessary (i.e. a more moderate alternative of achieving the same objective does not exist) and balanced.

(b) The company should communicate to its employees that access to

e-mail or the Internet has been granted exclusively for professional purposes, and that the company has in place a procedure for monitoring e-mails sent and records of Internet access. Employees can be advised of such practices via internal codes setting out professional standards or internal guides to the company, to be signed by each employee, or by inclusion of a statement in the terms of the employment contract, or by drafting a specific document to be signed by every employee of the company in which they express their agreement with the policy and consent to the monitoring activity.

(c) Employees should be required to advise third parties of the monitoring activity carried out by the employer in connection with e-mails received. A reference to such monitoring activity should also be automatically included in e-mails sent by 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 LPDCP principles and processing conditions. In many cases it may be necessary to obtain express consent to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information in question and the location of the third party.

Under the LPDCP, disclosures of employees' personal data for the purpose of requiring them to fulfil their obligations, or to allow employers to fulfil theirs, are in principle permitted without the separate consent of the employees. Note, however, that because data relating to an employee's Trade Union membership is sensitive data, the disclosure of such data always requires the prior consent of the employee.

Where the third party is based outside the EEA it should be noted that the LPDCP prohibits the transfer of data to a country outside the EEA unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply.

In the context of commercial transactions where employee data is requested, care must be taken to comply with the LPDCP. Where possible anonymised data should be provided, where this is not possible the recipient should be required to undertake in writing that it will only use it in respect of the transaction in question, will keep it secure and will return or destroy it at the end of the exercise.

Sweden

1. Introduction

Whilst statutory regulation of the Swedish labour market has increased, labour law in Sweden has for some time been highly regulated under a system of collective bargaining. In practice, terms and conditions of employment as well as the nature of labour/management relations are to a large extent moulded by collective bargaining.

A high percentage of employees belong to trade unions. There are three central trade union confederations: the first represents blue-collar workers; the second represents white-collar workers; and the third represents professional (graduate) employees. In addition, membership of employers' organisations by employers is common. The Swedish employers' federation exercises considerable influence over its members. Collective bargaining is focused nationally with agreements being negotiated centrally by trade unions. Labour law in Sweden protects this bargaining process by providing certain "positive rights" including the right to strike, the right to be a member of a trade union and the right of a trade union to consultations.

Collective agreements are legally enforceable. An employee's relationship with his employer is regulated by a combination of statutory provisions, collective agreement (if any) and individual contract. Indeed, employers who are not represented by an employers' body still tend to follow the industry-standard agreements.

Disputes are handled by the District Courts and the Labour Court. Decisions of the District Courts can be appealed to the Labour Court. The Labour Court comprises representatives of the judiciary, employers' organisations and trade unions. Decisions of the Labour Court are final and binding. In some cases disputes are handled directly by the Labour Court, from which there is no right of appeal.

2. Categories of Employees

2.1 General

The Swedish system of collective bargaining recognises various categories of employees. Generally, the employees can be divided into two main categories; white-collar employees and blue-collar employees. As stated above, such categories are traditionally represented by different trade unions and are, thus, covered by different collective agreements.

2.2 Senior Executives and Directors

Executives and employees with comparable positions comprise a separate specific category, as they are exempted from the application of the principal piece of employment legislation, the Employment Protection Act (Sw: *lagen om anställningsskydd*). As a general rule, the managing director of a limited liability company is covered by this exemption, as well as senior management in larger companies. However, the actual duties and terms of employment have to be considered in each specific case in order to determine the scope of this exception. The managing director and the senior management are normally also excluded from the scope of collective agreements. Instead, the employment of senior executives is normally regulated by contract and disputes between employer and senior executives are often resolved through arbitration. However, senior executives and directors can be represented by trade unions.

2.3 Other

Generally, there are no special rules applying to the employment of part-time employees. However, a part-time employee may under certain circumstances have a right to increase his or her working hours. Discrimination against part-time workers is also prohibited (see section 4 below).

3. Hiring

3.1 Recruitment

As a general principle, an employer is free to choose who to employ. There are, however, some limitations of which the most important is the prohibition to discriminate on the grounds of gender, race, colour, national or ethnic origin, religious faith, sexual preferences, disability or trade union activities. Such discrimination is generally prohibited in the Swedish labour market.

Employees previously made redundant enjoy a preferential right to re-employment in the business where they were employed if their length of service totals more than twelve months over the preceding three years. This preferential right applies from the time notice is given up to nine months after the actual termination of the employment. This means that an employer may not engage new employees within nine months of making employees redundant without observing the redundant employees' preferential right. The preferential right to re-employment will only apply if the redundant employee requests re-employment and he possesses the necessary skills for the vacancy.

It should also be noted that the authorities, as a labour market measure, can indirectly influence who is employed (normally elderly and disabled employees or an under-represented gender group) by making specific quotas a condition of the grant of regional aid or other subsidies.

An employer is also normally obliged to initiate consultations with the trade union(s) to which he is bound by collective agreement before employing a manager.

3.2 Work Permits

Nordic and other EEA nationals are entitled to stay and work in Sweden without restriction. Should the stay exceed three months, however, such persons must register with the Migration Board.

Non-EEA nationals must, before coming to Sweden to work, obtain a residence permit and a work permit. Permits are issued for specified periods and extensions can be applied for. Applications for such permits are made at a Swedish embassy or consulate. The permit must have been granted before arrival in Sweden. In addition, nationals in the majority of countries outside the EU need a visa to enter Sweden.

Swedish citizens, aliens already living in Sweden and citizens of EU and EEA member states have a priority over

others in obtaining work in Sweden. Non-EU/non-EEA citizens may, however, be eligible for a work permit if there is a temporary shortage of labour or if the employment has been obtained as part of an international exchange programme. It is also possible to obtain a work permit for the purposes of permanent residence in Sweden, if, for example, the applicant will hold a key position within trade and industry or if there is a demand for a certain educational or professional experience.

Work permits are normally granted for one year at a time, or, if the employment lasts for less than one year, for the period for which the employment is offered. Work permits are granted for a maximum of 18 months (in total) if the employment is due to a temporary labour shortage. If the work is part of an international exchange programme or similar, the permit may be extended up to a total of four years. A work permit is, as a rule, restricted to the trade or profession envisaged in the offer and to the employer who made the offer.

Specialists, who are employed by international groups and who are travelling to and from Sweden in that capacity in order to work on a temporary basis in Sweden, do not require a work permit. However, this only applies if the total duration of the stay in Sweden does not exceed 12 months. If the duration of the stay is longer than three months at a time, a residence permit will be required and must be granted prior to the arrival in Sweden.

An employer employing someone without a permit or keeping in his service someone who has had his permit withdrawn or not extended can be fined.

4. Discrimination

Discrimination on grounds of gender, race, colour, national or ethnic origin, religious faith, sexual preferences, disability, part-time employment and trade union activities is generally prohibited. This protection also applies to applicants for work (see above). It should be noted, however, that Sweden has not yet implemented the EU directive 2000/78/EC in relation to discrimination based on age.

If an employee is discriminated against by an employer, the employer may be held liable to pay damages to the employee and acts of discrimination can be declared invalid. The time limits for bringing claims vary depending upon whether damages or a declaration is requested.

It is a criminal offence under the Criminal Code to discriminate on grounds of race, colour, nationality, sexual orientation or ethnic origin.

There are special, so called, ombudsmen whose functions are to ensure compliance with the above.

5. Contracts of Employment

5.1 Freedom of Contract

The negotiation of contractual terms at a local level is relatively uncommon in Swedish labour practice, although it is increasing. Typically, the terms of employment are governed by collective agreements signed at industry level. The employment of senior executives and employees with specific functions is, however, normally governed by individually negotiated contracts. It should be noted that statutory intervention provides a set of mandatory requirements relating to, for example, employment protection, parental leave, educational leave, health and safety issues, hours of work and holidays.

5.2 Form

There is no legal requirement that employment contracts must be in writing. It is customary, however, for collective agreements to require the employment contract to be in writing and to contain particular terms. Furthermore, in compliance with EU Directive 91/533, an employer must inform a new employee in writing of the conditions applicable to the contract.

There are several collective agreements containing employment conditions which cannot be reduced or exceeded. The purpose, amongst others, is to ensure that the parties retain control of pay rates. For example, if an employer pays wages which are too high he may be liable to pay damages to the union for breach of the applicable collective agreement.

5.3 Trial Periods

Contracts of employment in Sweden are regarded as being for an indefinite period unless otherwise agreed. In certain specifically defined circumstances, employment contracts may be limited in time. Currently, Swedish law recognises approximately ten different types of fixed-term employment contract, these include fixed term contracts: for a specific project or season, to provide temporary cover, to meet a temporary increase in workload and for fixed-term employment of up to 12 months (subject to a limit of five employees on such fixed term contracts at the same workplace). In addition, an employee may (in certain circumstances) be placed on probation, provided that this does not last more than six months. The employer must give notice to terminate the relationship before the end of the probationary period. In default, the contract will become one for an indefinite period. Many collective agreements include adjustments and supplements to these rules.

The new Swedish government, elected in September 2006, has however proposed new rules with regard to fixed term employments, that are intended to take effect from 1 July 2007. These rules contain a new concept of so called “free fixed term employment” (Sw: *fri visstidsanställning*), which replaces the majority of the current categories of fixed term employments. However, the ability to include a six month probationary period at the beginning of a permanent contract of employment will remain unchanged.

The new “free fixed term employment” is intended to be limited in time, in the sense that when the aggregate duration of an employee’s service during a five-year-period exceeds 24 months, the contract will automatically transform into an employment contract of indefinite duration. There will be no limits on the number of employees that may be engaged on “agreed fixed-term employment” contracts in the same workplace.

5.4 Confidentiality and Non-Competition

Under Swedish law, employees are bound by a general duty of loyalty during the term of the employment (including the notice period). This duty of loyalty precludes an employee from taking any actions that may be detrimental to the employer. In particular, the duty of loyalty imposes a duty not to compete with the employer, as well as a duty of confidentiality in relation to information that could harm the employer, should it become known publicly or by a third party.
These obligations apply even though no non-compete or confidentiality undertakings have been included in the individual employment contract.
A clarification of the duty of loyalty during the term of the employment is often included in collective agreements. A breach of the duty of loyalty could, in serious cases, constitute grounds for dismissal and could give rise to an obligation on the employee to pay damages to the employer.

Upon termination of employment, the duty of loyalty ceases. Thus, the former employee may engage in a business that is competitive with the employer and make use of knowledge acquired during the employment (with the exception of company secrets which are protected under the Swedish Protection of Trade Secrets Act). In order to prevent an employee from competing or disclosing confidential information, express post termination contractual restrictions are required. Such restrictions must, however, be carefully considered in the context of each individual case, as their validity is subject to significant restrictions.

Pursuant to Section 38 of the Swedish Contracts Act (Sw: *avtalslagen*), a non-compete clause is not enforceable to the extent it is more far-reaching than is reasonable in the circumstances. Accordingly, a court of law could modify the scope of the non-compete provision or declare such a clause completely unenforceable. In addition, if the non-compete clause is sanctioned by penalty, such a sanction could be adjusted or declared invalid pursuant to Section 36 of the Swedish Contracts Act. It should be noted that any penalty imposed on the former employee for breach of the non-compete obligation must be proportionate to his former salary from the employer. Liquidated damages, in relation to a breach of a non-compete clause, may normally not to be in excess of a sum equivalent to six months salary. However, this naturally presupposes that the non-compete clause in itself is valid.

In order to determine whether a non-compete clause is reasonable, a balance must be struck between the employer's need for protection and the employee's freedom to work. The validity of a non-compete clause is subject to further regulation by a collective agreement entered into in December 1969 between the principal players in the labour market. The principles of this collective agreement (the "Collective Agreement of 1969") now guide the general legal considerations relating to non-compete clauses even in relation to employment relationships which are not formally covered by the Collective Agreement of 1969.

Specific provisions concerning loyalty, unfair competition and confidentiality are often found in the contracts of senior executives or employees with specific functions. However, it should be noted that the Swedish courts apply a restrictive approach towards post-contractual non-competition clauses.

5.5 Intellectual Property

The starting point is that intellectual property created by an employee during the course of his or her employment belongs to the employee. However, as regards patentable inventions, the employer has under certain circumstances a statutory right to take over such inventions and the employee is entitled to "reasonable compensation". Disputes are tried in the ordinary Courts, with issues concerning compensation being tried by a special board.

With regard to intellectual property other than patentable inventions, the employer also often, by way of agreement (express or implied), has a right to intellectual property created by the employee. In addition, in compliance with the European Directive 91/250/EEC, where a computer program is created by an employee in the execution of his duties, the employer is exclusively entitled to exercise all rights in the program so created unless otherwise provided by contract.

6. Pay and Benefits

6.1 Basic Pay

There is no statutory minimum pay, but collective agreements usually lay down rates of pay for the groups of employees to which they apply. As already noted, collective agreements are legally enforceable against an employer. Typically, companies not bound by collective agreements nevertheless follow wage rates set by an appropriate collective agreement.

The prohibition against discrimination can in some circumstances lead to governmental control in respect of wages.

Further, under the Contracts Act, any term of an agreement, including a wage clause, may in certain circumstances be set aside or modified by the courts if deemed unreasonable.

The method by which wages and salaries are paid is not regulated by statute, but again, collective agreements usually provide for the timing and method of payment.

Pay is not usually index linked.

6.2 Private Pensions

Most contracts of employment make provision for pension complementary to the state pension scheme either through a collective agreement or by individual provision in the contract itself. Pensions are usually index linked.

6.3 Incentive Schemes

Profit related pay schemes, profit sharing arrangements or bonus schemes exist, but usually only for senior executives within the private sector.

6.4 Fringe Benefits

Benefits such as a car, bonus, life/accident insurance and subsidised

canteen/luncheon vouchers may be provided to employees.

6.5 Deductions

Employers are obliged under Swedish tax law to make income tax deductions before wages or salaries are paid. In addition, they must provide certain details in an itemised pay statement setting out what deductions have been made. Other deductions can only be made in specified circumstances or with the consent of the employee.

Tax rates are approximately 31 per cent on income up to SEK 316,700 (2007), 51 per cent on income ranging from SEK 316,700 to SEK 476,700 (2007) and 56 per cent on income over SEK 476,700 (2007).

7. Social Security

7.1 Coverage

Social security provision is made for *inter alia* sickness benefit, childcare, unemployment insurance, pensions, disability and industrial injury.

7.2 Contributions

Employers are obliged by law to make contributions in respect of their employees to the social security fund. Contributions at the rate of 32.42 percent (2007) of an employee's gross wage or salary and taxable benefits are payable by the employer but are tax deductible by the employer. Employees are also required to make a minor contribution, which is tax deductible by the employee.

8. Hours of Work

The General Hours of Work Act 1982 regulates the hours of all employees. The working week is set at a maximum of 40 hours, but is flexible in respect of when those hours are worked. Therefore, the number of hours worked over a period of four weeks can be taken together and averaged. The Act does not lay down any right for the employee to overtime compensation. However, collective agreements and/or individual employment contracts often contain provisions in this respect. Moreover, the total compensation to the employee may not be unreasonably low.

There are three different categories of working hours: "normal hours", "on-call hours" (where the employee is required to stay at work to be able to work if the need arises) and "duty hours" (where the employee does not have to wait at the work place but must be available to work). Normal working hours and on-call hours are regulated by law, whilst duty hours are regulated by collective agreement. Working weeks of less than 40 hours are not unusual.

In addition, there are two categories of overtime work – general and special. Employees are permitted to work a maximum of 48 hours general overtime per four week period or 50 hours per calendar month, with an annual limit of 200 hours general overtime per year, and any overtime in excess of this (referred to as special overtime) can only be worked if authorised under the provisions of a collective agreement or by a permit obtained from the authorities subject, always, to the limits in the European Directive 93/104. There are certain exceptions in case of natural disasters and major accidents.

There is also provision for regulating overtime worked by part-time employees, the hours of work of young persons and rest and interval periods.

Finally, as a general limitation, the average working time for each seven-day period may not exceed 48 hours during a period of four months.

9. Holidays and Time Off

9.1 Holidays

Employees are entitled by law to 25 working days holiday per year. Saturdays are not counted as a working day. The holiday year runs from 1 April to 31 March the following year. Employees are permitted to accumulate holidays and to carry these over at the rate of five days per holiday year, but they must be used within a five year period.

9.2 Family Leave

Both parents are entitled to parental benefit. A female employee can start drawing such benefit 60 days before the expected birth of her child. After the birth of the child, the parents can draw parental benefits for 480 days (the parental benefits period is reduced by the number of days' benefits drawn by the mother prior to the birth of the child). This right also applies to adoptive parents. The days for which parental benefit is payable are divided equally between the parents, and, with the exception of 60 days, may be transferred from one parent to the other. Sole custodians are entitled to all 480 days themselves. The benefit may be drawn at any time until the child reaches the age of eight or completes the first class of school. The parents can choose to draw full, three-quarters, one-half, one-quarter or one-eighth parental benefit.

Irrespective of whether parental benefits are paid or not, a parent has the right to full leave of absence for custody of its child until the child is 18 months old. Thereafter, parental leave can only be taken together with parental benefit (see above).

In addition, parents are also generally entitled to leave in order to care for a sick child under the age of 13, as well as children between 13 and 16 who are in special need of care and supervision. In such cases the parent is entitled to temporary parental benefits, paid by the Social Insurance Office, amounting to 80 per cent of the salary, capped at SEK 655 (in 2007) per day.

The employer is not required to make any additional maternity or parental payments, and parents are, unless otherwise agreed, solely compensated through the social security system. However, to some extent the employees earn vacation pay during their leave. (For each child, the employee is entitled to count up to 120 days of parental leave, or 180 days for single parents, as leave of absence that qualifies for paid vacation days. For each day of such absence, the basis for calculating the vacation pay is increased by a sum corresponding to the employee's average daily salary in the employment over the remaining qualifying year of service.) Pregnant employees who have a physically demanding job are entitled to be transferred to other duties. If, in such a case, the employer cannot offer the employee some other form of work,

the employee is entitled to pregnancy benefit.

9.3 Illness

The employer must pay sick pay to its employees in respect of the first 14 days of sickness, with the exception of the very first day of sickness (qualifying day). Such compensation amounts to 80 per cent of the salary, unless a higher amount is stipulated in a relevant collective agreement or agreed with the employee. Thereafter sick employees must be registered with their local Social Insurance Office. This office will provide for sickness benefit consisting of daily compensation. As a general rule, the employer is obliged to pay 15 per cent of such compensation as long as the employee is on fulltime sick leave. (The new government has, however, indicated that this obligation shall be abolished.) There is no maximum period of sickness absence, and daily compensation will be paid throughout the period of absence. Sickness benefit is paid at the rate of approximately 80 per cent of normal salary subject to a maximum daily amount, which is capped at SEK 655 (2007). Sick pay and sickness benefit are taxable.

9.4 Other Time Off

Employees are entitled to paid or unpaid leave for, amongst other things, trade union activities, public work, education, non-competing business activity, language classes (in the case of immigrants) and compulsory or voluntary military or civil defence service.

10. Health and Safety

10.1 Accidents

The Health and Safety at Work Regulations cover almost every type of employment, and there are also specific rules relating to particular forms of hazard. Generally, an employer is obliged to ensure that the work place is safe and to make such safety arrangements as are necessary to ensure that proper care is taken of employees employed in them. Liability is also imposed upon manufacturers of equipment or dangerous materials, which are used by employees in the course of their employment.

If an employer does not take sufficient care or otherwise fails to comply with health and safety requirements, criminal liability may arise, as well as civil liability (i.e. damages) and a liability to pay a company fine (Sw: *företagsbot*). (A company fine is a specific legal consequence (Sw: *särskild rättsverkan*) that a court under certain circumstances can impose directly on a company or other legal entites conducting business for infringements committed in the business activities. The amount is subject to an upper limit of SEK 10,000,000.). Furthermore, the employer has a general legal duty to rehabilitate injured or sick employees. Compensation for injuries at work is paid out of the work injury insurance scheme.

11. Industrial Relations

11.1 Trade Unions

Under Swedish labour law an employer and an employee have the right to belong to an organisation and to be active in it. In addition, employees' organisations have the right to ask for consultations in relation to all matters relating to the relationship between employer and employees.

Sweden does not have a formal system for recognising unions. However, unions which have entered into collective agreements have more extensive legal rights than other unions concerning, for example, information and consultation. There are collective provisions providing for the right to distribute information during work hours, but not to recruit new members during work hours. Besides organisations such as the Swedish Federation of Trade Unions (LO), the Swedish Federation of White-Collar Workers (TCO) and the Swedish Federation of Professional Associations (SACO) and the Private Sector White-Collar Workers' Cartel (PTK, which is a bargaining cartel that unites a number of sectoral unions belonging to SACO or TCO), there are a large number of national unions for different categories of employees. Private employers are affiliated to national organisations and national employers' federations. State and local government employers have their own organisations.

11.2 Trade Disputes

Subject to what is stated below, trade unions are entitled to take industrial action, for example a strike. Employees cannot be dismissed for taking such action, unless the employee has participated in an extended illegal strike. However, an employee can be dismissed on account of the effects of a strike, for example, the liquidation of a company following a strike.

The general rule is that where a collective agreement governs the issues in question both employers and employees are bound not to take industrial action during the term of the agreement. Only if an issue within applicable co-determination provisions is at issue and negotiations have failed, industrial action may follow. Damages can be awarded for failure to comply with the co-determination rules.

11.3 Collective Agreements

Collective agreements are an important feature of the Swedish labour system. They are usually entered into by the national federations of unions and employers' organisations. Significant parts of labour legislation can be changed or adjusted through collective agreements.

Collective agreements can be negotiated at a local or national level although at present the trend is towards local level agreements. All categories of employees can be covered.

Agreements must be in writing and are legally enforceable both in respect of the employer and the members of the relevant organisations after signing.

Collective agreements often contain rules on what is called "prolongation". The law, however, only stipulates that a notice procedure must be included. There are no registration requirements for such agreements.

11.4 Information, Consultation and Participation

The most important collective labour law principle in Sweden provides for co-determination at work. More detailed provisions in relation to co-determination at work are contained in collective

agreements. In short, trade unions always have the right to consult an employer on matters, which concern the relations between the employer and the members of the union. In certain circumstances, the employer must initiate consultations with trade union(s) before it issues or reaches a decision. Trade union rights to consultations are complemented by certain rights to information.

12. Acquisitions and Mergers

12.1 General

Sweden has implemented the Acquired Rights Directive. The effect of this is that the employees who are working in a business, which is transferred, will themselves be transferred with the business on the same terms and conditions of employment they had before the transfer. However, accrued rights to old-age, invalidity and survivors benefits are not taken over by the new employer. The employee may object to being transferred, in which case the employee remains employed by the transferor.

The transfer will not, as such, constitute "an objective ground" for dismissal. Thus, the transferor may not dismiss employees due to a prospective purchaser's wish to acquire a business with a reduced workforce.

If the transferor of a business is bound by a collective agreement, the purchaser will automatically be bound by such agreement provided that the purchaser is not already a party to another collective agreement that may be applied to the transferred employees. The transferor may, however, terminate the collective agreement prior to the transfer. If notice of termination is given less than sixty days before the transfer, the purchaser will however be bound by the collective agreement until sixty days' notice has expired.

Where the purchaser is bound to another collective agreement, it must still apply the terms of employment stipulated in the transferor's collective agreement in relation to the transferred personnel for one year or until the term of the transferor's collective agreement has expired (if shorter). As a result, a purchaser already bound by a collective agreement may have to apply different terms (e g salaries, working hours and the like) to incoming employees than it applies to its own employees falling within the same categories.

A share transaction does not normally raise any specific employment law related issues except for the information and consultation requirements (see below).

12.2 Information and consultation requirements

Under the Swedish Co-determination Act, an employer, bound by a collective agreement(s), is obliged to initiate consultations with the local trade union(s) before a decision is made, which involves a significant change in its business. A transfer of business is always classified as a significant change. There is no threshold number of employees triggering this obligation. Further, the sale of a major subsidiary is also likely to trigger the obligation to consult.

If the employer is bound by one or several collective agreements, the consultations must take place with the trade union(s) party to the agreement(s). A trade union with a collective agreement is deemed to represent all the employees, not just the members of that union. As a consequence, it is sufficient to perform the consultations with such union(s). If the employer is not bound by any collective agreement it is nevertheless obliged to consult with all trade unions that have at least one member affected by the transfer of business.

There is no fixed minimum or maximum time period during which the consultations must take place. The consultations must be carried out and finalised before the employer makes a final decision and should be initiated at a sufficiently early stage of the employer's decision-making process so that the consultations form a natural and effective part of the process. The rationale being that the trade union should have a realistic opportunity of influencing the decision.

If an agreement is not reached with the local trade union, the employer must – if so requested by the union – also consult such union at a central (national) level. However, once the consultation process is completed, the employer is entitled to make its own decision regardless of whether the trade approves or not.

The length of a consultation process with the trade union(s) will be dictated by the trade union's attitude towards the issues in question and whether or not they escalate the consultation up to a national level. Typically, the consultation process will be longer if redundancies are involved.

There is no other obligation to inform and consult any employee representatives, employees or works councils in connection with a transfer of business unless there are supplemental provisions in any applicable collective agreement or applicable European Works Councils agreement.

12.3 Notification of Authorities

Apart from notice to the County Employment Board (Sw: *länsarbetsnämnd*) in the event of termination due to redundancy of more than five employees (see section 13.5 below), the employer has no obligation to inform any governmental body of a merger or transaction.

12.4 Liabilities

Sanctions and remedies for breach of the Co-determination Act and/or collective agreements are mainly damages, both financial and punitive. A court injunction cannot be obtained to prevent or reverse a transaction nor can any criminal sanctions be enforced due to a failure to consult.

13. Termination

13.1 Individual Termination

A dismissal must be given in writing by the employer to the employee, and the employee must be informed of the procedures by which he or she can appeal against a dismissal. The formal procedure is to notify the employee, as well as his/her trade union, of the proposed dismissal and for either the employee or such trade union to be able to ask for consultation in relation to the

matter. If no agreement is reached, the employee may be given notice. If the employer fails to follow the formal procedure, the dismissal will not be invalid but the employer may be liable to pay damages in consequence.

13.2 Notice

Different notice periods apply to employees employed before 1 January 1997 and those employed thereafter. For employees employed before the beginning of 1997, the period of notice of termination to be given depends on the employee's period of service and age. The shortest period of notice is one month. An employee, who at the time notice is given has been employed by the employer for the last six months, or for a total of twelve months during the last two years, is entitled to a period of notice of:

- 2 months if he/she has reached the age of 25;
- 3 months if he/she has reached the age of 30;
- 4 months if he/she has reached the age of 35;
- 5 months if he/she has reached the age of 40; and
- 6 months if he/she has reached the age of 45.

For employees employed on 1 January 1997 and thereafter, the period of notice of termination depends only on the employee's period of service with the employer. Such employees are entitled to a period of notice of:

- 1 month if service is less than 2 years;
- 2 months if service is at least 2 years;
- 3 months if service is at least 4 years;
- 4 months if service is at least 6 years;
- 5 months if service is at least 8 years; and
- 6 months if service is at least 10 years.

Collective agreements and individual employment contracts may contain other rules, which provide for a longer notice period. If agreed between the parties, an employee can be paid in lieu of notice.

13.3 Reasons for Dismissal

It is for an employer to justify dismissal on objective grounds. Amongst the grounds which can be relied upon are: lack of work, severe incompetence or failure to co-operate and neglect of duty. However, the practice of the labour Court is to require strict proof from the employer. Swedish law distinguishes between dismissal with or without notice. In cases of gross misconduct, dismissal without notice is permissible. In the examples referred to above, notice will usually be required.
Before notice of dismissal is given, the employer must ascertain whether it is possible to assign the employee to another vacant position at the company. Only if the employer is unable to find other duties for which the employee has the necessary skills are there objective grounds for termination. In the event of termination due to lack of work, the employer has to apply the "last in-first out" principle.

A dismissal can be held to be invalid and an employee may be able to remain at work whilst any litigation concerning his or her employment is resolved.

13.4 Special Protection

Generally, there is no special protection against dismissing, for example, disabled employees. However, any such dismissal must be objectively justified as with other dismissals.

It should however be noted that union representatives enjoy extensive protection under the Swedish Trade Union Representatives Act (Sw: *lag om facklig förtroendemans ställning på arbetsplatsen*). Such representatives are protected against dismissals on the grounds of their union activities. Further, in the event of redundancies, union representatives are entitled to be given priority to continue in employment, provided continued employment is of particular importance for the purposes of the general union activity at the work place concerned (and not only in relation to the redundancy situation). The onus is on the trade union to determine whether continued employment is of "particular importance" and not the employer, nor the individual representative. Such issues can, however, finally be settled by court.) If the employer contravenes this rule, the dismissal can be declared void by the court upon application by the representative.

13.5 Closures and Collective Dismissals

In the event of termination due to redundancy of more than five employees, the employer has to notify the County Employment Board. (The Government has proposed in a bill that the relevant authority will be the Placement Agency (Sw: *Arbetsförmedlingen*) with effect from 1 January 2008.) In addition, the employer must also initiate co-determination consultations with the affected unions.

The employer may not decide at its own discretion which employees are to be made redundant. Instead, as a general rule, the principle "last in – first out" applies. This mandatory rule means that the employer must prepare a priority list for each production unit and for each collective bargaining sector (if there are more than one). The employee's position on the priority list depends on his length of service with the employer or other group companies and, to some extent, age. Where two employees have equal length of service, the older will be given priority. An employee will, however, not have priority over other employees unless he has the necessary skills for the job. There are, however, certain exceptions to these rules with regard to smaller companies (ten employees or less). Finally, it should be noted that it is possible to depart from the priority rules by collective agreement.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are

regulated by the Personal Data Act (PDA) (Sw: *personuppgiftslagen* (1998:204)), which implements the EU Data Protection Directive. In addition such processing of personal data is also regulated by principles of labour law as well as criminal legislation. Infringement of the PDA may under normal circumstances lead to fines and compensation claims from affected employees.

As a basic rule, processing of personal data is only permitted with the express consent from the registered person. However, the processing of personal data is permitted without consent under specific circumstances, inter alia if it is necessary for the performance of the employment contract. 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 but not limited to the following: a requirement to ensure that data is only processed when necessary, that the data is accurate, up to date, and is not kept longer than necessary and a requirement that it is stored securely to avoid unlawful access or accidental destruction or damage to it. Further specific restrictions apply when processing sensitive information, including but not limited to health and membership in trade unions.

Employers always have to inform the employees about the purposes of the processing of personal data. Employers are generally advised to ensure they have some sort of document retention policy in place and to ensure that the staff are aware of their data protection obligations.

14.2 Employee Access to data

Employees, as data subjects, have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be told what data is held about them and who it is disclosed to. Employers are liable to provide, on a written request, once per annum free of charge information to the employees regarding the personal data that the employer is processing about them. There is normally a time limit of one month for responding to such a request. Subject access requests cover personal data held in manual and electronic records, such as e-mail.

14.3 Monitoring

The monitoring of employee e-mail, Internet and telephone usage and Closed Circuit TV monitoring is regulated by the PDA amongst other pieces of legislation. From a PDA perspective monitoring is permissible provided that it is carried out in accordance with the PDA principles and processing conditions. A basic requirement is always that the monitoring has to be necessary and 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, 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, unless covert monitoring is justified. Reading the contents of private e-mails is not permitted, unless there is serious suspicion of disloyalty or criminal activity. It should be noted that telephone monitoring and Closed Circuit TV monitoring are, in addition to the PDA, regulated by specific restrictive laws.

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 PDA principles and processing conditions. In many cases it may be necessary to obtain express consent to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information in question and the geographic location of the third party. Where the third party is based outside the EEA it should be noted that the PDA prohibits the transfer of data to a country outside the EEA unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply. The EU Commission has set out standard contractual clauses regarding processing of personal data that may be used in order to enable a company in a third country, which does not assure an adequate level of personal data protection, to process such data in a lawful manner. In the context of commercial transactions where employee data is requested care must be taken to comply with the PDA. Where possible anonymised data should be provided, where this is not possible the recipient should be required to undertake in writing that it will only use it in respect of the transaction in question, will keep it secure and will return or destroy it at the end of the exercise.

United Kingdom

1. Introduction

This section describes the provisions which are generally applicable throughout the United Kingdom, but with particular emphasis on England and Wales. Both Scotland and Northern Ireland have legal systems separate from that of England and Wales (although in the field of employment law, the law in all three jurisdictions is similar).

The most important source of law regulating the employment relationship is the common law but statute nevertheless intervenes to protect employees (most notably in the fields of discrimination and dismissal and to govern certain areas of collective labour law) and to impose duties on employers (for example, in relation to pensions and share schemes). In general, it is not possible to contract-out of statutory employee protection. Traditionally, collective agreements have not been accorded as much importance in the UK as in other parts of the EU and are not normally legally enforceable, however legislation does provide for compulsory trade union recognition by an employer where the majority of the workforce wish it.

Many disputes between an employer and employee are settled in special labour Courts (Employment Tribunals and the Employment Appeal Tribunal) with a view, in theory at least, to providing a specialised, quicker and more cost efficient approach to resolving disputes than is normally possible using the ordinary Courts.

2. Categories of Employees

2.1 General

The common law and relevant employment legislation apply equally to employees at every level. Some of the more recent employment legislation covers "workers", a term which covers employees, agency workers and contract staff.

2.2 Directors

The position of directors of private and public limited companies, who may or may not also be employees of the company, is further regulated by company law.

2.3 Other

Part-time employees have a statutory right which, broadly speaking, entitles the employee to be treated no less favourably in respect of their terms and conditions of employment than a comparable full-time employee. A similar protection exists for employees on fixed term contracts who also have the right to be treated no less favourably in respect of terms and conditions of employment than a comparable permanent employee performing similar work. Generally speaking executive directors are engaged under service agreements and are regarded as employees as well as officers of the employing company.

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, secretarial staff and senior and professional staff. State run "Job Centres" provide a free recruitment service which is used by employers to recruit less senior employees. There is, however, no obligation on employers to use the state Job Centres. Private recruitment agencies no longer require a licence before they can operate but are nevertheless subject to regulation.

3.2 Work Permits

Work permits are required for most non-EEA nationals, and may be granted for up to a maximum of five years. (Swiss nationals are treated in the same way as EEA nationals.) Application must be made to the Border and Immigration Agency, an executive agency of the Home Office (or, in Northern Ireland, the Training and Employment Agency), before the employee comes to the UK. British overseas territories citizens and citizens of Commonwealth countries generally do not require a work permit provided they have a British citizen passport or a right of abode. It is normally necessary to demonstrate by advertising that a local person cannot be recruited for the position before a work permit is issued, but this requirement is waived for intra group transfers and recognised skill shortages (including certain types of engineering positions). An innovator category has been introduced, aimed at entrepreneurs seeking to exploit the economic opportunities of technology and e-commerce. Particularly highly skilled individuals may apply under the Highly Skilled Migrant Programme which is restricted to a specific post or employer. The family of a work permit holder of Highly Skilled Migrant must obtain entry clearance from the appropriate British diplomatic mission in their country before they seek to join the work permit holder in the UK. EU nationals from Poland, Lithuania, Estonia, Latvia, Slovenia, Slovakia, Hungary and the Czech Republic are required to register with the Home Office (under the Worker Registration Scheme) if they plan to work for one month or more. Once such workers have been working legally in the UK for 12 months without a break they have full rights of free movement and can apply for a residence permit confirming their rights.

Access for nationals from the new EU accession countries of Romania and Bulgaria will depend on whether they are classified as skilled or unskilled workers:

- Skilled Romanian and Bulgarian workers with appropriate qualifications and experience are allowed to come to the UK on work permits to take up a specific post where no suitable UK applicants can be found. Once they have worked legally in the UK for 12 months without a break they are exempt from any further requirements to obtain permission to work.
- Particularly highly skilled Romanian and Bulgarian workers may be admitted under the Highly Skilled Migrants Programme.
- Low-skilled migration from Bulgaria and Romania is restricted to those sectors of the economy (agricultural and food processing) where the UK already has low-skilled schemes is

subject to a strict quota which will not exceed 20,000 workers per year. Workers on these schemes will have rights to work limited to six months that will not give them access to benefits and public housing.

All of these arrangements are expected to be reviewed by the end of 2007.

It is a criminal offence for an employer to employ someone who is subject to immigration control (most non British and EU citizens) who does not have appropriate permission to work in the UK. Illegal workers could face on the spot fines of £1000 and companies employing such individuals can face fines of up to £5,000.

In March 2006 the Government released a command paper for a five tier system for migration into the UK where applicants will score points based on attributes which predict their success in the labour market and the likelihood of them complying with their conditions of leave in the UK. This would replace the existing work permits system. However, details of the new scheme have not been announced and it is not yet clear when this scheme will be implemented (although the Highly Skilled Migrant programme has recently been amended to align it with the government's proposals regarding the points system).

4. Discrimination

Discrimination in the work place, whether it be in connection with recruitment, treatment during the course of employment, in respect of termination and in certain circumstances following the end of the employment relationship, is rendered unlawful under a number of statutes and statutory instruments: the Equal Pay Act, the Sex Discrimination Act (which, together, prohibit sex discrimination and includes discrimination on the grounds of gender reassignment and marital status), the Race Relations Act (which prohibits discrimination on grounds of colour, race, nationality and ethnic or national origins), the Disability Discrimination Act (which prohibits discrimination on the grounds of a person's disability), the Employment Equality (Sexual Orientation) Regulations, the Employment Equality (Religion or Belief) Regulations and the Employment Equality (Age) Regulations (which prohibit discrimination on the grounds of sexual orientation, religion or belief and age respectively). In Northern Ireland, it is additionally unlawful to discriminate on political grounds.

It is also illegal to discriminate against an employee on grounds of his or her membership or otherwise of a trade union.

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 in restraint of trade. In addition, subject to certain exceptions, attempts to contract out of statutory employment protection are void. Contracts may be for a fixed or an indefinite period (i.e. terminable on notice), as the parties think most appropriate. However, the use of successive fixed-term contracts is restricted.

An employee engaged under a fixed term contract will be classified as a permanent employee if all of the following conditions are satisfied:

- The employee is currently employed under a fixed term contract; and
- That fixed term contract has previously been renewed or the employee was previously employed under another fixed term contract before the start of the current contract; and
- The employee has been continuously employed under fixed term contracts for a period of four years or more (ignoring any service before 10 July 2002); and
- At the time the contract was renewed (or entered into) the employer could not objectively justify the use of a fixed term contract (e.g. where funding is only available for a limited period).

There is, however, no restriction on the length of a first fixed-term contract.

For the purposes of statutory protection, there is little distinction between the position of employees on fixed-term and indefinite contracts, since the accrual of certain of the more significant rights depends on the period the employee has worked irrespective of whether this is under a fixed-term or indefinite contract. Broadly speaking, an employee will enjoy significant statutory rights after one year's continuous employment, although some rights, especially those associated with anti-discrimination legislation, are exercisable irrespective of length of service.
In addition, employers will not be able to treat employees on fixed-term contracts less favourably than similar permanent employees.

5.2 Form

There are no particular requirements as to the form of contracts of employment, which may be oral or written (except in Scotland where a contract for a term of more than 12 months should be in writing). In the case of senior employees (for example, managing directors), the contract is more likely to be contained in a formal written service agreement.

However, there is a statutory requirement that all employees be provided with a single document containing written particulars of certain details of their contract of employment within two months of commencement of employment.

5.3 Trial Periods

It is not uncommon for parties to agree a trial period but there are no specific legal requirements governing such periods and, since (with certain exceptions) an employee does not qualify for statutory protection against unfair dismissal until employed for one year, this allows the employer a reasonable period to assess the employee's suitability.

5.4 Confidentiality and Non-Competition

Although there are no statutory rules governing confidential information, 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 may, depending on the nature of the business, consider including an express confidentiality provision in the contract of employment.

Although express provisions in a contract may be used to stop an employee from competing with his employer both during and after the employment, it should be noted that since provisions which purport to restrict competition after termination of the employment are generally regarded as contrary to public policy, they will only be enforceable if they are reasonable and the employer has a legitimate interest to protect (i.e. confidential information or trade connections).

5.5 Intellectual Property

Broadly speaking, 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 a national minimum wage of £5.35 per hour. It is £4.45 per hour in the case of young people aged 18 to 21 and those aged over 22 and doing accredited training. For 16 to 17 year olds the rate is £3.30 an hour. These rates are generally increased annually in October of each year. From 1 October 2007, the national minimum wage will rise to £5.52 per hour for adults, £4.60 per hour for young people aged 18 to 21 and those aged over 22 and doing accredited training, and £3.40 per hour for 16 to 17 year olds.

Lower-grade workers in the UK are generally paid a weekly wage, often determined by reference to an hourly time rate, although in some industries it is customary for workers to be paid "piece-rates" according to the amount of work done. Overtime at a premium rate is generally paid in respect of additional hours worked. More senior employees are normally paid monthly in arrears and are not generally paid for overtime worked.

It is not common for pay to be index linked and, subject to the national minimum wage, there are no legal obligations on employers to increase wages.

6.2 Private Pensions

Although state pensions are provided under the social security system (comprising a basic state pension and an additional proportion currently related to an individual's earnings), private pension schemes are of importance. Private pension provision may be by way of an employer-sponsored occupational pension scheme, or by an individual employee's own personal pension scheme.

The cost of such provision, to both the individual employee and the employer, may vary enormously depending on the type of benefits provided and the individuals involved. There is no longer any statutory limit on the level of contributions which can be made to a "registered pension scheme". Instead of limits on contributions there is now an "annual allowance" available to the individual. If the individual's total "pension input amounts" (essentially the value of the contributions from both the individual and the employer to a pension scheme) in any particular tax year exceeds the annual allowance for that year then a tax charge will be levied on the excess. This charge is payable by the individual.

Private pension provision is currently not compulsory but, since 8 October 2001, employers with more than five employees, broadly speaking, have had to offer access to a stakeholder pension scheme to those employees for whom they make no other pension provision. The rules are however more complex than this and employers should seek advice as to whether they are affected by the requirements.

A stakeholder pension scheme is a defined contribution (money purchase) scheme with low charges which is subject to strict regulation and is registered as a stakeholder pension scheme with the Occupational Pensions Regulatory Authority. These schemes have been available since 6 April 2001. Employers are not obliged to establish stakeholder pension schemes themselves but they must, following consultation with the relevant employees and their representatives, designate a scheme and administer a payroll deduction facility for those employees who wish to make contributions to the designated scheme. (The deductions will be made from an employee's net pay rather than gross pay.) Representatives of the scheme must also be given reasonable access to the relevant employees in order to provide them with information about the scheme. The employer is not obliged (as yet) to contribute to the scheme itself.

6.3 Incentive Schemes

Share schemes are not mandatory in the UK but are increasing in popularity because of the favourable tax treatment they receive and there is a well developed legislative framework in place to govern such schemes.

6.4 Fringe Benefits

Common fringe benefits may typically include private medical insurance for treatment taken outside the National Health Service and cars (for more senior employees particularly). Such fringe benefits may be either contractual or ex-gratia. If benefits are contractual, care must be taken if the employer proposes to withdraw them.

6.5 Deductions

Although generally employers are prohibited from making deductions from pay, they are obliged to deduct income tax at source through the "Pay As You Earn" (PAYE) scheme. They are also obliged to deduct employees' National Insurance contributions (social security contributions).

7. Social Security

7.1 Coverage

The single state administered social security system provides benefits by

way of pensions, unemployment benefits, family-based benefits and support for individuals on low income. Employers should be aware both of the costs involved, and of the administrative burden of some state guaranteed benefits (for example, statutory sick pay and statutory maternity pay) responsibility for which has been devolved to employers.

Health care has, traditionally, been provided by the state-run National Health Service. However, recent reforms have been aimed at encouraging increased use of private medical insurance and private medical insurance has become an increasingly common employee benefit.

7.2 Contributions

Employers must deduct from employees' pay National Insurance contributions payable by employees and make an employer's contributions in respect of each employee. National Insurance contributions are payable by employees at a rate of 11 per cent of earnings between the lower and upper earnings limit which are fixed each year, (for the year 2007/08 these are £100 and £670 per week) and a further one per cent on earnings over £670 a week. Employer's contributions are 12.8 per cent above £100 per week for the year 2007/08 and uncapped. Lower rates are payable if the employees are in "contracted-out" employment (that is if, in return for paying the lower rate of contributions, the employer and/or the employee make separate arrangements to cover part of what would, otherwise, have been the additional state pension).

8. Hours of Work

The usual working week is 40 hours in industry and 35 hours in offices. Specific limitations are imposed by the Working Time Regulations on the hours worked each day and each week by "workers" (this includes employees and agency workers). Generally working time must not average more than 48 hours per week over a reference period of 17 weeks. Workers are also entitled to a daily rest of at least 11 consecutive hours in each 24-hour period and a weekly rest period of not less than 24 hours in any seven day period. Night workers (i.e. where at least three hours of daily working time is worked at night as a matter of course) must not work in excess of eight hours in each period of 24 hours.

9. Holidays and Time Off

9.1 Holidays

In England and Wales, there are normally eight public holidays per annum. All workers are entitled to a minimum of four weeks' paid annual leave which accrues on a pro rata basis from the first day of employment. Currently, this four week entitlement can include public holidays. Money may not be paid in lieu of untaken statutory holiday entitlement except on termination of employment.
The Government has recently announced firm proposals allowing employees additional paid leave to reflect the eight Bank Holidays in addition to the minimum four weeks' paid leave, to provide for a maximum statutory holiday entitlement of 28 days for someone working a five day week. Under the proposals statutory annual leave entitlement will increase in two stages, rising to 4.8 weeks (24 days) on 1 October 2007 and to 5.6 weeks (28 days) on 1 October 2008. Employees will not, however, necessarily be entitled to take this additional paid holiday when the Bank Holiday actually falls, but may be required to take it at some other time if that suits the employer's business better.

9.2 Family Leave

Female employees with babies due on or after 1 April 2007 are entitled to 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave (there is no longer a length of service requirement). Statutory Maternity Pay (SMP) is payable for 39 weeks. SMP is payable for six weeks at 90 per cent of average weekly earnings and 33 weeks at a flat rate (£112.75 (from April 2007)) or the 90 per cent rate if this is lower. The flat rate of SMP is revised in April each year.

Men and women with one year's continuous service are entitled to 13 weeks' unpaid parental leave in respect of children under five. Employees of disabled children under 18 are entitled to unpaid parental leave of 18 weeks. Employees are also allowed unpaid time off to deal with emergencies arising in relation to dependants.

Fathers (and one adoptive parent) are entitled to elect to take one or two weeks' paid paternity leave, payable at the same rate as SMP. The Government proposes to introduce paid additional paternity leave of up to six months. It is anticipated that additional paternity leave rights will not be introduced before 2008 at the earliest.

9.3 Illness

Employees absent from work by reason of sickness or injury have a right to receive statutory sick pay (SSP) from their employer. Part of the cost may be recouped from the employer's National Insurance contributions once payments of SSP exceed a certain level. The rate of SSP in April 2007 is £72.55. SSP is revised in April each year.

In addition, it is not unusual for employers to agree to pay employees an amount greater than statutory sick pay for a limited period, the length of which will vary, depending upon the custom of the industry and the status of the employee.

9.4 Other time off

Certain employees have the right to request flexible working arrangements, namely those employees who are parents of children under six, or 18 if the child is disabled. Since 6 April 2007, this right has been extended to carers of certain adults. In order to be eligible to make such a request, the employee must have worked for their employer continuously for 26 weeks.

10. Health and Safety

10.1 Accidents

Employers are under a duty to have regard for the health and safety of their employees while at work (but not travelling to or from work), and are obliged by statute to maintain insurance against liability for injury and disease arising out of employment. These duties arise under both statute and the common law. The Health and Safety at Work etc Act 1974 lays down the general principles to be followed by an

employer in relation to health and safety, and criminal as well as civil liability may result from a failure to comply with the provisions of that Act. In addition to the general principles laid down by that Act, there are numerous specific Acts and regulations governing certain types of work place and certain types of work activity.

10.2 Health and Safety Consultation

Employers in the United Kingdom are under an obligation to consult with their employees on health and safety matters and are obliged to have a written statement on their general health and safety policy which must be available to employees. Consultation must be carried out through a safety representative nominated by a recognised trade union (or a Health and Safety Committee, if required by the union), elected employee representatives or directly with employees. Certain information must be made available by the employer.

11. Industrial Relations

11.1 Trade Unions

The importance of trade unions has declined over the last twenty years, although this position may now be changing. However, in some industries unionisation is still relatively strong. Major unions include the GMB, Unison and the new super union that will be formed from the merger of the TGWU and Amicus (all three being general unions covering many industry sectors) and sector specific unions, e.g. Unifi (banking insurance and financial services employees).

There is now a legislative scheme which provides for compulsory recognition of a trade union by an employer where a majority of the relevant workforce support the union in businesses which employ at least 21 employees. If a union becomes recognised the employer and union must try and conclude a procedure agreement to regulate their relationship and to determine the matters to be the subject of negotiation. In the absence of agreement, a procedure based on a standard model will be imposed. Closed shops are illegal.

11.2 Collective Agreements

Collective agreements between employers and trade unions are most usually found in the industrial sector and often regulate matters such as pay, working hours, holidays, dispute procedures and procedures to deal with redundancy. However, whilst normally not legally enforceable between the employer and the union at present, such collective agreements may have legal consequences for the employer, since certain terms in such agreements may become incorporated (either expressly or by implication) into individual employees' contracts of employment and where this happens become enforceable (collectively agreed wage rates, for example). Furthermore, in some industries unionisation remains sufficiently strong for industrial pressure to prove an effective means of securing observance of otherwise legally unenforceable collective agreements. Employers who have had to recognise a union as a consequence of compulsory recognition imposed on them (or have agreed to) will have to negotiate with the union concerning pay, hours, holidays and training.

11.3 Trade Disputes

The United Kingdom does not have a comprehensive "strike law" or any enshrined right to strike. Rather, individuals and unions are granted certain limited statutory protection from liability, which they would otherwise incur under the common law, when taking industrial action pursuant to a trade dispute. To enjoy such immunity, trade unions are required to hold ballots which conform to statutory requirements. An employee who takes industrial action loses the right to pay during that period and is not entitled to receive unemployment benefit (although the employee's family may in certain circumstances receive other social security benefits). It is unfair to dismiss an employee who is taking "protected" industrial action unless it lasts more than twelve weeks and the employer has complied with certain procedural requirements.

11.4 Information, Consultation and Participation

There are at present no formalised requirements for employee participation in the UK, although some employers operate share schemes as an additional remuneration incentive. However, obligations do arise with respect to consultation and the provision of information to appropriate representatives (these are usually either elected employee representatives or representatives of a recognised trade union). The obligations are:

- Where a union is recognised for the purposes of collective bargaining, certain information must be disclosed to that union to assist in that process.
- To consult with appropriate representatives in the context of a collective redundancy (see further below).
- Employers are required to provide certain information to appropriate representatives upon a business transfer regardless of the number of employees affected (see further below).
- Employers must consult with employees on health and safety matters. Consultation has to be with representatives nominated by a recognised trade union, elected employee representative or employees directly.
- Employers with 100 or more employees are required to consult with prospective and active members of occupational and personal pension schemes and their representatives before making certain specified changes to the amendments.

Under the Transnational Information and Consultation etc Regulations 1999 (which implement the European Works Council Directive), any undertaking or group of undertakings with at least 1,000 employees in the EU and 150 employees in more than one EU state may have to set up a works council or a procedure for informing and consulting employees at European level. While the Regulations clearly regulate the initial establishment of the employee

negotiating, subsequent negotiations are generally up to the parties to regulate.

The European Public Limited Liability Company Regulations (which implement the Workers Participation Directive) provide for the regular consultation of, and provision of information to, a body representing the employees of the companies that have formed a European Company, in respect of current and future business plans, production levels, management changes, collective redundancies, closures, transfers, mergers and so on. Management of the participating companies and representatives of the employees will be required to try to reach a voluntary agreement on the employee involvement arrangements or to agree to rely on national information and consultation requirements. Failure to reach agreement will result in default rules applying.

The Information and Consultation of Employees Regulations 2004 (which implement the Workers Information and Consultation Directive) apply to undertakings with 100 or more employees (and from 6 April 2008 to undertakings with 50 or more employees). The legislation does not oblige employers to set up a domestic works council, or similar information and consultation forum, in the absence of the legislative procedure being triggered. A request by 10 per cent of the undertaking's employees will trigger the procedure giving the employer an opportunity to negotiate a voluntary information and consultation process. The nature, subject matter or timing of information and consultation can be tailored to the structure and ethos of the undertaking. If no agreement can be reached a default information and consultation procedure will apply under which employers will be obliged to inform and consult employee representatives in relation to a number of matters, including the recent and probable development of the undertaking's activities, its economic situation and business decisions likely to lead to substantial changes in the undertaking.

12. Acquisitions and Mergers

12.1 General

Upon the transfer of an undertaking, employees are provided with protection in that their contract automatically transfers from the transferor to the transferee. Any dismissal connected with the transfer will, in principle, be unfair and give rise to an entitlement to claim statutory compensation. Changes to terms and conditions of employment by reason of the transfer are void, even if agreed to by employees except in limited exceptional circumstances involving insolvent employers. Employees can object to the transfer, should they do so their employment is treated as at and end; no compensation is payable.

12.2 Information and Consultation Requirements

In the event of a transfer of an undertaking the employer of any affected employees must inform appropriate representatives of the proposed transfer long enough before the transfer to enable consultation about any proposed measures to take place. There is no statutory timetable over which the process must occur.
Affected employees can include any of the workforce of either transferor or transferee affected by the transfer, even if they are not transferring. Appropriate representatives are representatives of a Trade Union recognised by the employer or, in any other case, appointed or elected employee representatives.
The object of the information exercise is to inform the representatives of the fact that a transfer has to take place, including when and why it is to take place, and its legal, economic and social implications for the employee.
The employer must also consult with a view to reaching agreement about any proposed "measures" which will affect the employees. There is however no obligation to reach agreement.

12.3 Notification of Authorities

In the absence of any collective redundancies, there is no obligation, from an employment perspective, to notify the authorities of an acquisition or merger. Competition issues may in some cases require prior notification and/or approval.

12.4 Liabilities

In the event that a transferor or transferee fails to comply with its information and consultation requirements a complaint may be made to an Employment Tribunal and if the complaint is upheld, the Tribunal may award each affected employee compensation of up to 13 weeks' pay, with no limit on the amount of a week's pay. The transferor and transferee are jointly and severally liable for such compensation. Failure to inform and consult will not prevent a transaction from completing and injunctive relief is not available from the Courts to prevent a transaction going ahead without the information and consultation obligations being met.

13. Termination

13.1 Individual Termination

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

13.2 Notice

Statute lays down a minimum period of notice which will apply where the contract of employment does not make any provision for notice or the contractual notice period is less than the statutory minimum.

The statutory minimum period of notice is one week for employees with service of more than one month but less than two years, and one week for each complete year's service for those who have worked more than two years subject to a ceiling of 12 weeks' notice after 12 years' employment.

In practice, employees who are senior executives will generally enjoy longer notice periods under their contracts of employment (typically three to six months) and very senior employees (for example, executive directors of large companies) may have much longer notice periods (although the Combined Code and institutional investor guidelines do not favour a period of more than twelve months) and the new Companies Act 2006 requires shareholder approval for terms of two

years or more (from 1 October 2007). Where a contract of employment does not state the notice period, whilst the statutory minimum period of notice will generally be applicable to most employees, the common law will imply into the contracts of more senior employees a right to receive "reasonable notice" in excess of the statutory minimum period. The employee's seniority, length of service and the size of the business in which the senior employee works will be factors in determining the length of notice where the contract contains no express provision.

If an employee is dismissed without, or with insufficient, statutory or contractual notice without good cause, the employee may sue the employer for damages for breach of contract (i.e. "wrongful dismissal"). The basic measure of damages will be the salary and benefits which the employee would have received during the relevant notice period, but this may be subject to adjustment to take account of the remuneration the employee can be expected to receive from new employment during what would have been the notice period, tax and accelerated payment.

If an employer prefers that an employee does not work his or her notice period, and the employee is not being summarily dismissed for gross misconduct, the general practice is for employers to pay salary in lieu of the contractual notice period. There are no special formalities for making such payments (except as to the deduction of tax where required).

13.3 Reasons for Dismissal

Although the employer is free to terminate the contract of employment, the dismissed employee may have the right to claim compensation for unfair dismissal (even though the employee has received notice or payment in lieu and has no contractual claim) unless the employer can show there was a reason for dismissal falling within the categories set out in the relevant statute; these are misconduct, incapacity, illegality, redundancy, retirement or some other substantial reason.

The employer must show that one of these reasons existed and that it acted fairly and reasonably in deciding to dismiss. The employer must therefore be careful to ensure, not only that there is a permissible statutory reason for dismissing the employee, but that a fair and reasonable procedure has been followed in implementing the dismissal; this procedure must also comply with the statutory dismissal procedure or statutory retirement procedure in the case of retirement.

The compensation payable if the employer unfairly dismisses an employee is distinct from the compensation payable if the employer fails to comply with the notice period described above.

To qualify for statutory protection from dismissal an employee must normally have at least one year's continuous employment.

The maximum compensation that may be awarded for most (non-discrimination) unfair dismissal claims is £69,900 as at 1 February 2007 and this figure is revised annually in February. Failure to comply with the statutory dismissal and disciplinary procedure can lead to a 10-50 per cent increase to or reduction in any compensation awarded depending on whether employer or employee is at fault. It should be noted that the vast majority of claims brought before an Employment Tribunal are settled before a hearing is reached.

Employment Tribunals in unfair dismissal cases have the power to order reinstatement or re-engagement, but historically have tended to do so only occasionally. If such an order is not complied with additional compensation will be payable and the limits referred to above do not apply to compensation awarded to an employee to cover the period from his or her dismissal until any re-engagement/reinstatement order is supposed to be complied with.

13.4 Special Protection

Special rules apply to dismissals connected with pregnancy or maternity, parental leave, health and safety, Sunday working, the duties of pension trustees or employee representatives, exercising the right to take time off to study, asserting a statutory right, trade union membership or activities, transfers of undertakings, "spent" criminal convictions, breach of the Working Time Regulations, making a public interest disclosure ("whistle-blowing") and the National Minimum Wage Act and selection for redundancy taking account of any of these matters.

13.5 Closures and Collective Dismissals

As mentioned above, redundancy constitutes a good statutory reason for dismissal and, although it may be applicable to individual termination (for example, if one employee's specific job disappears), it is commonly associated with the partial or total closure of a business.

Redundancy is a statutorily defined term and, subject to satisfying the eligibility criteria (broadly speaking two years' continuous employment), an employee will be entitled to a statutory redundancy payment. The statutory redundancy payment is calculated by reference to age and length of service and the maximum payment was £9,300 for dismissals taking effect on or after 1 February 2007. The maximum payment is revised on 1 February each year. In some industries there may be enhanced contractual redundancy packages available. Employers should take care to comply with applicable consultation requirements (see Information, Consultation and Participation above) and to select individuals for redundancy in a fair manner, since, although redundancy is a permissible statutory reason for dismissing an employee (see "Reasons for Dismissal" above) the employer must still prove that he acted in a fair and reasonable manner in selecting any particular individual for redundancy. In the case of an individual redundancy (as opposed to a collective redundancy) situation the employer must follow the statutory dismissal procedure to avoid the dismissal automatically being classified as unfair.

An employer must comply with the contractual notice period when employees are made redundant or make a payment in lieu of such notice.

Where 20 or more redundancies are proposed at one establishment within a period of 90 days, consultation with appropriate representatives must take place at the earliest possible opportunity. Minimum time limits for consultation are laid down and failure to consult or comply with the time limits gives the appropriate representatives the right to complain to an Employment Tribunal, which may make an award of compensation to employees of up to 90 days' pay per employee.
In practice unless there are exceptional circumstances the maximum 90 days will usually be awarded. There is no cap on the amount that might be awarded. If the employer is proposing to dismiss 100 or more employees the consultation process must start at least 90 days' before the first dismissal takes effect. Otherwise consultation must start at least 30 days' before the first dismissal takes effect. There is also an obligation to notify the Department of Trade of such proposed redundancies prior to giving notice and at least 30 or 90 days' prior to the first dismissal depending on the numbers involved. Failure to do so could give rise to a £5,000 fine. Injunctions cannot generally be granted to prevent the redundancies taking effect.

14. Data Protection

14.1 Employment Records

The collection, storage and use of information held by employers about their employees and workers (prospective, current and past) are regulated by the Data Protection Act 1998 (DPA), which implements the EU Data Protection Directive. In addition a considerable amount of guidance has also been issued including the Employment Practices Data Protection Code. The Code is intended to assist employers in the understanding and implementation of the DPA. It is not legally binding however failure to adhere to the Code will be a factor taken into account when potential breaches of the Code are being considered by the Information Commissioner. 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 principals including the following: a requirement to ensure that data is accurate, up to date, and is not kept longer than is necessary and a requirement that it is stored securely to avoid unlawful access or accidental destruction or damage to it.

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

14.2 Employee Access to Data

Employees, as data subjects, have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be told what data is held about them, who it is disclosed to and to be provided with a copy of their personal data. There is a 40-day time limit for responding to such a request. Subject access requests cover personal data held in manual and electronic records such as e-mail. Legally a charge of £10 may be levied if a request is made, regardless of the volume of information sought.

14.3 Monitoring

The monitoring of employee e-mail, Internet and telephone usage and Closed Circuit TV monitoring is regulated by the DPA amongst other pieces of legislation. Monitoring is permissible provided that it is carried out in accordance with the DPA 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, 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, unless covert monitoring is justified. 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 DPA principles and processing conditions. In many cases it may be necessary to obtain express consent to such disclosure in the absence of a legitimate business purpose for the disclosure and depending on the nature of the information in question and the location of the third party. Where the third party is based outside the EEA it should be noted that the DPA prohibits the transfer of data to a country outside the EEA unless that country ensures an adequate level of protection for personal data or one of a series of limited exceptions apply. In the context of commercial transactions where employee data is requested care must be taken to comply with the DPA. Where possible anonymised data should be provided, where this is not possible the recipient should be required to undertake in writing that it will only use it in respect of the transaction in question, will keep it secure and will return or destroy it at the end of the exercise.

European Union Law

1. Introduction

The EU has the right to legislate in the employment field in pursuit of social policy and the principle of free movement.

EU legislation can take a number of forms. Articles of the Treaty Establishing the European Community (and subsequent amending Treaties) and Regulations are directly applicable in Member States. Directives require Member States to legislate through domestic laws or other measures to achieve the purposes directed. In the employment field, Directives are the most usual form of legislation so that on a day-to-day basis it is still domestic legislation and practice which determines what form EU law takes in each Member State. However, a steady stream of cases passing through the European Court of Justice (ECJ) has made it clear that domestic Courts must interpret domestic legislation, which implements EU law, in accordance with the intent of EU law.

The principle of free movement is recognised by all Member States as a core concern of the EU; accordingly, the EU has been very active in legislating to implement it. The scope for legislation in pursuance of social policy is wide, but political factors have, in the past, limited the extent of legislative activity. The UK, in particular, opposed much legislation, but the current Labour Government moved away from its predecessor's position so that all Member States have now "signed up" to the "Social Chapter" of the Treaty on European Union.

When 12 new Member States concluded the Treaties of Accession and joined the EU on 1 May 2004 and 1 January 2007 they all agreed to implement existing EU employment legislation; however it appears that in practice correct implementation may not have been achieved in all cases, or undertaken at all.

2. Social Chapter

The Social Chapter is incorporated into the Treaty of Amsterdam (which consolidated previous Treaty mechanisms and policy) and it sets out the objectives of the European Community and Member States' joint social policy. These objectives are:

- The promotion of employment;
- The improvement of living and working conditions;
- Social protection;
- The promotion of dialogue between management and labour;
- The development of human resources with a view to lasting high employment; and
- The combating of social exclusion.

The European Commission, which has responsibility for initiating the legislative process and suggesting proposals for legal measures to implement those rights within the EU's area of competency, has pursued this responsibility with some vigour and many of the rights have now been implemented through laws, collective agreements or practices.
The Commission's new Social Agenda was published in February 2005. This agenda established a five-year plan of action covering the period up to 2010. The Agenda focuses on providing jobs and equal opportunities. One of the main instruments for implementing the Social Agenda is the European Employment Strategy (EES). In July 2005, a new process for the EES came into practice. It introduced guidelines intended to remain in place for three year cycles. The 2005-2008 guidelines focus on three priorities: (i) attracting and retaining more people in employment, increasing labour supply and modernising social protection; (ii) improving adaptability of workers and enterprises; and (iii) increasing investments in human capital through better education and skills.

3. Social Dialogue

For many years, the president of the Commission has held meetings with UNICE (Union of Industrial and Employers' Confederations of Europe), CEEP (representing public sector employers) and ETUC (the European Trade Union Confederation) in a process known as the "social dialogue". "Joint opinions" have been concluded on a number of issues, although they are vague and have no binding effect. However, the Treaty Establishing the European Community subscribed to by all Member States gives "social dialogue" a legal status under which collective agreements can become binding at a European level.

4. Legal Measures

This section summarises the main measures that are already part of EU law in the employment field and those legal measures which are proposed but are now lying dormant.

4.1 Freedom of Movement

There is a large body of EU legislation implementing the principle of free movement. The most important effects of the legislation are to:

- Enable EU nationals to work in any Member State without the need for a work permit;
- Co-ordinate certain aspects of national social security schemes;
- Facilitate the recognition of certain qualifications between Member States; and
- Ensure that employees sent from any Member State to another to work do so on terms no less favourable than those applicable in the host country.

4.2 Discrimination

4.2.1 Sex

The Treaty Establishing the European Community and the 1975 Equal Pay Directive require Member States to maintain the principle that men and women should receive equal pay for equal work. Decisions of the ECJ have given "pay" a very wide meaning.

Other Directives require the principle of equal treatment to be observed in relation to:

(a) access to employment, vocational training and promotion, and working conditions; and

(b) pension schemes.

The Burden of Proof Directive is aimed at ensuring that where a complainant establishes facts on which a claim of sex discrimination may be presumed, the burden of proof is then placed on the employer to demonstrate that there has been no breach of the principle of equal treatment.

The European Commission published a Code on The Dignity of Men And Women At Work aimed at combating sexual harassment at work. The Equal Treatment Amendment Directive formally outlaws harassment on the grounds of sex and incorporates the definition of harassment used in the Code. Member States should have implemented national legislation to give effect to it by 2005.

4.2.2 Race, Age, Religion or Belief, Disability or Sexual Orientation

The Equal Treatment Directives (also referred to as the Race and Framework Directives) require Member States to put in place measures that will ensure the equal treatment of individuals in the European Union regardless of race or ethnic origin, religion or belief, disability, age or sexual orientation in respect of access to employment or occupation and membership of certain organisations. The Directives should now have been implemented by Member States, however, it appears that this may not have been achieved by all Member States.

Both Directives also address harassment as a specific offence and the continuing right to claim victimisation after termination.

In 2005 the European Commission proposed the establishment of a European Institute for Gender Equality to assist the EU institutions and the Member States in promoting gender equality in all Community policies and fighting discrimination based on sex. It should be established in 2007.

On 1 January 2007, the EU introduced a Community programme for employment and social solidarity for 2007-2013, known as PROGRESS. This programme is intended to fund (i) analysis; (ii) mutual learning, awareness-raising and dissemination activities; and (iii) support for the main players (e.g. operating costs of EU networks; working groups, training seminars; and the creation of specialist bodies at EU level) in the fields of employment, social inclusion and protection, working conditions, gender equality and anti-discrimination.

4.3 Employment Protection

4.3.1 Transfer of Undertakings

The 1977 Acquired Rights Directive requires Member States to approximate their laws so that the rights of employees are safeguarded in the event of transfers of undertakings or businesses. National laws under the Directive should invalidate a transfer of a business as a good reason for a dismissal and automatically transfer employees with the undertaking or business. The Directive gave rise to interpretation problems (there have been numerous judgments of the ECJ concerning it), so an Amending Directive was adopted in June 1998 but this, although it now defines a "transfer", has not resolved all interpretation difficulties. The original Directive and the Amending Directive were consolidated into a single Directive (2001/23/EC) which took effect in April 2001.

4.3.2 Insolvency

A 1980 Directive imposes on Member States a duty to ensure that in the event of an employer's insolvency, "guarantee institutions" meet employee claims where necessary. This was amended by another Directive (2002/74/EC) which took should have been implemented by Member States by 7 October 2005. This extends the protection afforded to employees in the event of their employer's insolvency by expanding the definition of "insolvency" to include situations other than liquidations and ensuring that atypical workers are also covered.

4.3.3 Atypical Employment

Part-time, fixed-term and temporary employment are classed by the Commission as "atypical". Directives have been adopted in relation to this, including the Part-Time Workers Directive which had to be transposed into national legislation by 15 December 1999 (7 April 2000 in the case of the UK). This ensures that part-time workers are entitled to equal or pro-rata treatment with regard to all terms and conditions of employment relative to a "comparable full-time worker".

A Directive on fixed-term work was subsequently adopted to provide protection for those employees working under fixed-term contracts. It provides that employers must ensure that fixed-term employees are treated no less favourably than comparable permanent employees. A limit on the number of consecutive fixed-term contracts and the maximum duration of successive contracts is imposed in order to prevent abuse of successive fixed-term contracts. The Directive had to be implemented in Member States by July 2001.

No progress has been made on the proposals for a Temporary Workers Directive, providing temporary agency workers, after six weeks' work, with the right to the same remuneration and to be treated no less favourably than long-term employees doing comparable jobs in the user undertaking. Discussions may however be revived by incoming presidencies.

4.3.4 Proof of Employment

A Directive on written proof of employment relationships requires employers to inform employees of the terms and conditions applicable to their employment. Member States should now have implemented this Directive.

4.3.5 Pregnant Women and Parental Leave

In October 1992, a Directive was adopted to give 14 weeks' paid maternity leave, protection against dismissal on grounds of pregnancy and to impose strict duties in respect of the health and safety of pregnant women, women who have given birth or who are breastfeeding. Member States were required to comply with the Directive by October 1994.

The Parental Leave Directive grants three months' parental leave to men and women. This should also now have been implemented by all Member States.

4.3.6 Working Time
The Working Time Directive of 2003 consolidates earlier directives and regulates working time including the average working week which it fixes at a maximum of 48 hours. This Directive made special provisions for certain economic sectors e.g. mobile workers, and there are also a number of additional Directives which deal with these economic sectors. This Directive was effective as of 2 August 2004 and should have been implemented in Member States except in relation to provisions covering doctors in training. A transitional period of five years from 1 August 2004 was allowed for the implementation of provisions relating to doctors in training.

In September 2004, the Commission announced its proposals for the modification of the Working Time Directive provisions to make opt-outs from the maximum weekly working time of 48 hrs subject to collective agreements; to insert definitions relating to on-call time; and allow an extension by the Member States of the reference period for calculating the maximum working week from four months to one year. A number of attempts have been made to reach agreement at a European level on these proposed modifications without any success to date.

4.3.7 Equitable Wage
The Commission has adopted an Opinion on the introduction of an equitable wage by Member States, but this has no binding legal effect.

4.3.8 Protection of Young People at Work
A Directive on the protection of young people at work includes restrictions on working time and provides for special health and safety protection for workers under the age of 18.

4.4 Information and Consultation

4.4.1 Collective Redundancies
The Collective Redundancies Directive requires employers who are contemplating collective redundancies to inform and consult employee representatives and to notify the public authorities.

4.4.2 Transfers of Undertakings
The Acquired Rights Directive (already referred to above) also requires employers to give employee representatives information about proposed transfers and, in certain situations, to consult them as well.

4.4.3 Health and Safety
The Health and Safety Framework Directive gives those employee representatives with specific responsibility for health and safety matters information rights on risk and consultation rights on all health and safety issues.

4.4.4 European Company Statute and Worker Involvement Directive
In October 2001, the Council of Ministers of the European Union formally adopted legislation in relation to the establishment of a European Company, to be known by its Latin name of "*Societas Europeae*" ("SE"). The European Company Statute is established by two pieces of legislation; a Regulation directly applicable in Member States establishing the company law rules and a Directive on Worker Involvement. This should have been implemented by Member States by 8 October 2004.

The legislation gives companies the option of forming a SE which will be able to operate on a European-wide basis and be governed by community law directly applicable in all Member States. The SE will be able to operate throughout the EU with one set of rules and a unified management and reporting system rather than having to comply with the various national laws of each Member State where it has subsidiaries.

The Directive on Worker Involvement stipulates that upon the creation of a European Company, negotiations must be initiated with a special negotiating body representing the employees with a view to reaching agreement on the involvement of all employees of the SE's constituent companies in a representative body. If a mutually satisfactory arrangement cannot be negotiated, the Directive contains a set of "standard rules" in its annex that would apply instead. These measures essentially oblige managers of the SE to provide regular reports on the basis of which there must be regular consultation of, and information to, a body representing the companies' employees. Employees also have Board participation rights in certain circumstances. The companies' current and future business plans, production and sales levels, implications of these for the workforce, management changes, mergers, divestments, potential closures and lay-offs must be included in such reports.

Employment contracts and pensions are not covered by the European Company Statute; they are subject to the national law of each Member State within which the headquarters and branches are operated.

4.4.5 European Works Councils
A European Works Councils Directive was adopted in 1994. This should now have been implemented by Member States. This Directive concerns the establishment of a European Works Council or a procedure in Community-scale undertakings, and Community-scale groups of undertakings, for the purpose of informing and consulting employees regarding business decisions made in one country covered by the Directive which affect the employees and impact on their interests in another country covered by the Directive. The Directive defines a community scale undertaking as an undertaking with at least 1,000 employees within Member States, and, at least 150 employees in two or more Member States. Companies in those countries that are not covered by the Directive, for example American companies, will be bound by it in their divisions located in countries that have adopted the provisions of the Directive if they meet the threshold number of employees. The Directive provides that the nature, composition, competence and functioning of the Council must normally be agreed between central management and a special negotiating body drawn

from employee representatives. In case no agreement can be reached, the Directive lays down minimum requirements to be complied with.

The European Economic and Social Committee on European Works Council issued an opinion (2006/C318/25) in late 2006 proposing that following a reasonable period of integration for the new Member States that the European Works Council Directive should be reviewed to take into account a number of legal and practical problems including: an adjustment to the number of workers representatives to take into account EU enlargement and a recognition of national and European trade unions to belong to European Works Councils, the adjustment of existing agreements to reflect changes to the groups of companies, the provision of deterrents for companies for non-compliance with the Directive.

4.4.6 National Information and Consultation

The Employee Information and Consultation Directive aims to ensure that workers are adequately informed and consulted before serious decisions affecting them are taken. Employees have a right to be informed and consulted beyond consultation about redundancies and transfers of undertakings on more general issues such as the undertaking's activities and economic situation. The Directive allows Member States to limit the information and consultation obligations of undertakings with fewer then 50 or 20 employees. The deadline for implementation of the Directive was 23 March 2005 for some Member States and 23 March 2007 for others; although the UK and Ireland have been allowed to restrict the initial application of the Directive to businesses with 150 or more employees, with full implementation being delayed until March 2008.

4.4.7 Takeover Bids

A Directive on Takeover Bids was adopted on 21 April 2004. The main thrust of the Directive is to give employees information and consultation rights in company takeover bid situations. When an offer document is made public, the Boards of the offeree Company and offeror must communicate it to the representatives of their respective employees or, where there are no such representatives, to the employees themselves. Member States should have implemented the Directive by 20 May 2006.

4.4.8 Teleworking

A framework agreement on telework was formally signed in July 2002 and should have been implemented by member states by July 2005. It lays down a general framework of rights and protections for teleworkers (homeworkers) including provision for workers' representatives to be informed and consulted on the introduction of teleworking.

4.5 Health and Safety

Workplace health and safety has been an important area of EU legislative activity. National variations in workplace health and safety rules have been generally recognised as possible obstacles to the proper development of a free market. This has encouraged the Commission to make proposals, and there are a substantial number of Directives in this area. These range from Directives laying down general health and safety management principles (the "Framework Directive") to Directives aimed at specific industries or activities. The Working Time Directive is a health and safety Directive.

Appendix Country by Country Comparisons

	Austria	Belgium	Bulgaria
Minimum Wage	• No statutory minimum wage • Fixed by collective agreement	• Minimum wage set by national collective labour agreement binding on all employers	• BGN 180 per month (5 day week) • BGN 0.95 per hour
Maximum Weekly Hours	• 40 hours • Often reduced by collective agreement to 38.5 hours	• 38 hours • Usually reduced by collective agreement	• 40 hours
Holiday Entitlement**	• Minimum 30 days (6 day week)	• Minimum 20 days (five day week) and holiday bonus	• Minimum 20 days
Maternity and Family Leave Entitlement	• 16 weeks' maternity leave • Pay 100% ordinary (last 13 weeks) net daily pay payable by social security • Two years' unpaid parental leave • Child Care Benefit ("*Kinderbetreuungsgeld*") for a maximum of up to 3 years payable to mother or father	• 15 weeks' maternity leave • Pay*: 82% of gross salary (uncapped) for the first 30 days and 75% of daily gross salary (up to a ceiling of €82.17) for remaining period • Three months' parental leave	• 315 days pregnancy and childbirth leave • Pay: 90% of average remuneration • 6 months' paid childcare leave in respect of fourth child onwards
Minimum Notice by Employer and Termination Payments	• White collar employees: six weeks' to five months' notice (depending on length of service) at the end of a quarter or on 15th or last day of the month by agreement • Blue collar employees: 14 days' notice. Collective agreements provide for different notices. • Severance pay of two to 12 months' pay depending on length of service for all employees • Entitlement only arises after three years' service • New severance scheme applies if employment contract concluded after 31.12.02 (Contributions of 1.53 per cent of monthly remuneration paid to a fund and the employee may receive the balance on termination)	• White collar employees: minimum three months' notice per five years' service • Employees earning more than €28,093 pa notice is dependent on age, service and salary • Blue collar employees: 35 to 112 days' notice depending on length of service (sectoral collective agreement may increase notice) • Compensation payable if employer opts to give no/short notice	• Minimum 30 days' notice • Longer notice up to 3 months by mutual consent

* Provided by the State and by the employer by law and/or collective agreement

** Exclusive of public or religious holidays

Note: the contents of this table provide a broad overview only, for greater detail please see the relevant section of the Guide.

	The Czech Republic	Cyprus	Denmark
Minimum Wage	• Statutory minimum wage: CZK 8,000 (approx. €280) per month or CZK 48.10 (approx. €1.70) per hour, based on a 40-hour week	• CY £320 per month for office clerks and shop assistants – rising to CY £340 after 6 months' employment	• No statutory minimum wage, but minimum wage set by collective agreement for a large percentage of the workforce; other employees receive customary wage for industry sector
Maximum Weekly Hours	• 48 hours per week (40 hours of standard weekly hours + eight hours of overtime) averaged over a reference period of 26 or 52 weeks if agreed in a collective agreement (up to one year) • Often reduced by collective agreements	• 48 hours	• 48 hours on average • Generally reduced by collective agreement to 37 hours
Holiday Entitlement**	• Minimum four weeks, five weeks for employees of state bodies (seven day week)	• 20 or 24 days depending on length of working week	• Five weeks and holiday supplement
Maternity and Family Leave Entitlement	• 28 weeks' maternity leave, 37 weeks if the mother gave birth to more than one child • Statutory Maternity Pay and other benefits payable by social security • Unpaid parental leave until the child reaches three years of age	• 16 weeks' paid maternity leave payable by the Department of Social Security at a rate of 75% of the employee's average salary of the preceding year • 13 weeks' unpaid parental leave for each parent • 7 days' unpaid emergency leave per annum	• 4 weeks' pregnancy leave before birth • Up to 14 weeks' maternity leave after birth • Two weeks' paternity leave after birth • 32-46 weeks' parental leave for each parent • Pay*: 50% of salary during pregnancy and maternity leave for salaried employees • Full or partial salary for up to 14 weeks for blue collar employees • Remaining leave is unpaid
Minimum Notice by Employer and Termination Payments	• All employees: at least two months' notice, depending on the reasons for dismissal • All employees: statutory entitlement to redundancy payment in an amount equal to the employee's average salary for a period of three months, also payable by mutual agreement concluded on termination of employment based on selected statutory termination reasons • Compensation for unfair dismissal: compensation for wages and benefits which the employee would have received if the employment had continued or during the relevant notice period in the case of lawful termination	• One to eight weeks' paid notice depending on length of service • Two weeks' to two years' wages depending on a number of factors	• Usually 14 to 120 days' notice for workers • One month's notice for salaried employee with one to six months' service • Six months' notice after nine years' service • One, two and three months' salary for salaried employees with 12, 15, and 18 years' service respectively

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	Estonia	Finland	France
Minimum Wage	• EEK 21.50 per hour (2007)	• No statutory minimum wage • Minimum wages set or influenced by sectoral collective agreement	• Statutory minimum wage (SMIC) • 1 July 2006: €8.27 per hour, i.e. €1,254.28 per month based on a 35 hour per week • Due to change July 2007
Maximum Weekly Hours	• 40 hours per week	• Usually 40 hours • Generally reduced by collective agreement	• 10 hours per day, or 48 hours per week or an average 44 hours per week in a 12 week period
Holiday Entitlement**	• 28 calendar days	• Four to five weeks • Holiday bonus usual but not statutory	• Five weeks
Maternity and Family Leave Entitlement	• 140 days' maternity leave • Maternity pay equal to the average daily income • Parental benefit paid after maternity leave • 14 calendar days' unpaid paternity leave • Maternity leave and parental benefit up to a maximum of 455 days	• 105 days' maternity leave (including Saturdays) • 158 days' parental leave (including Saturdays) • Pay: average 65% of gross salary paid by Social Security during maternity and/or parental leave • In general, collective bargaining agreements include an entitlement to full salary during the first month of the maternity leave to be paid by the employer • 18 days' paternity leave • Pay: average 65% gross salary paid by Social Security • Unpaid parental leave until child is three years old	• 16 weeks' maternity leave • Pay*: 80.32% of salary up to a ceiling paid by Social Security • Three days' birth paternity leave on full pay • 11 days' unpaid paternity leave • Three years' unpaid parental leave
Minimum Notice by Employer and Termination Payments	• None/two weeks to four months' notice depending on grounds for termination • Full pay over notice period • Compensation of up to 4 months' average salary if notice period not adhered to	• 14 days to six months' notice depending on length of service, unless otherwise agreed • Compensation of 3 to 24 months' salary only in case of unlawful termination	• Six months' to two years' service – usually one month. Above two years' service – two month's notice • Executives – three months' notice • 1/10th of monthly salary for each year of service after two years' service plus 1/15th of monthly salary for each year of service beyond 10 years' service

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	Germany	Greece	Hungary
Minimum Wage	• No statutory minimum wage; minimum wages set or influenced by sectoral/regional collective agreement	• Minimum wage set by collective agreement • Unskilled and unmarried adults with less than three years service have a minimum monthly salary of €657.89/minimum daily wage €29.39	• Statutory minimum wage • In 2007: HUF 65,500 (approx. €250) for full-time employees
Maximum Weekly Hours	• 48 hours (six day week) but max 10 hours per day • Often reduced by collective agreement to 35-37½ hours per week	• 40 hours • Reduced by collective agreement to 37-40 hours in certain cases (banks etc)	• 40 hours (48 and 60 hours in certain circumstances)
Holiday Entitlement**	• Minimum 4 weeks • Usually up to 30 days	• 20 days (5 day week) • Increased with seniority up to 25 days (five day week) or 30 days (six day week)	• 20 to 30 days depending on the employee's age
Maternity and Family Leave Entitlement	• 14 weeks' maternity leave • Pay*: 100% usual net daily pay • Three years' unpaid parental leave per child for mother and/or father • Right to part-time employment during parental leave	• 17 weeks' maternity leave • Pay* 50% of notional salary by social fund, balance of normal salary payable by employer for 15 or 30 days • Thereafter, paid by state • Three and a half months' unpaid parental leave	• 24 weeks' maternity leave • State benefits: 70% of salary • Family leave following maternity leave until the child reaches the age of three • State benefits: 70% of salary up to a ceiling of HUF 91,700 (approx. €350) in 2007 until the child reaches the age of 2
Minimum Notice by Employer and Termination Payments	• Up to two years' service -four weeks' notice to the 15th day or end of the calendar month • Up to 20 years' service -notice is on a sliding scale of one to seven months' notice to the end of a calendar month • Generally, no statutory redundancy payment (unless required under collective bargaining agreement or social plan)	• White collar employees: one to 24 months' notice and 50% of the salary due in notice period • Blue collar employees: five to 160 days' pay	• 30 to 90 days' notice depending on length of service • If notice period is applicable, full pay over the notice period, and average salary for the term when the employee is exempted from work • Compensation for unused holidays • One to six months' pay depending on length of service (employees close to retirement age are entitled to additional three months' pay)

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	Ireland	Italy	Latvia
Minimum Wage	• Statutory minimum wage of €8.30 per hour • Minimum pay levels exist in certain industries	• No statutory minimum wage • Constitutional right to fair pay • Minimum level of wages and benefits provided by collective agreement	• LVL 0.731 per hour
Maximum Weekly Hours	• 48 hours • Often reduced by collective agreement to 35 to 39 hours	• The average duration of working hours cannot exceed a maximum of 48 hours in any seven day period, including overtime • Normal working hours 40 hours • Generally reduced by collective agreement, at local level to less than 40 hours	• 40 hours per week
Holiday Entitlement**	• 20 days	• Four weeks • More generous arrangements may be agreed by collective agreements	• Four weeks' paid leave
Maternity and Family Leave Entitlement	• 42 weeks' maternity leave • State benefits: 80% of salary up to ceiling (payable during first 26 weeks) • 40 weeks' adoptive leave (payable during the first 24 weeks) • 14 weeks' unpaid parental leave per child	• Generally two months' maternity leave before and three months' leave after birth • State benefits: 80% of salary • 10 months' partly-paid parental leave	• 112 days paid maternity leave • State maternity pay of 100% of average monthly earnings • 10 days' paid paternity leave • State paternity pay of 80% of average monthly earnings • 10 days' paid paternity/adoption leave • 1½ years' childcare leave • 70% of average gross salary is paid during childcare leave
Minimum Notice by Employer and Termination Payments	• One to eight weeks' notice depending on length of service • Statutory entitlement to redundancy payment • Compensation for unfair dismissal up to two years' remuneration; or • Damages for wrongful breach of contract	• Notice period for blue and white-collar employees may vary from one month up to three months depending on the NCLA, seniority and length of service • Up to 12 months' notice for executives (Dirigenti)	• None/10 days'/1 month's notice depending on grounds for dismissal • Employee is entitled to full pay during notice period

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	Lithuania	Luxembourg	Malta
Minimum Wage	• LTL 3.65 per hour	• Statutory minimum wage • As at January 2007: €1,570.28 per month for employees over 18/ €1,884.34 for qualified workers	• National minimum wage of LM 59.63 per week (LM 56.72 per week in the case of young people and trainees aged 17 and LM 55.50 per week in the case of young people and trainees aged 16 and younger).
Maximum Weekly Hours	• 40 hours per week	• 40 hours	• 48 hours per week averaged over a reference period ranging from 17 to 52 weeks. An individual opt-out is also possible.
Holiday Entitlement**	• 28 calendar days	• 25 days (five day week)	• Minimum four weeks and four days excluding national and public holidays
Maternity and Family Leave Entitlement	• 126 days' paid pregnancy and childbirth leave • One months' paid paternity leave • 14 calendar days' unpaid parental leave per year • Up to 3 years' paternity (maternity) leave, 85% of average monthly salary is paid until the child is 1	• 16 weeks' maternity leave • State benefits: 100% of salary up to a ceiling with minimum of two thirds of salary • Six months' unpaid parental leave per child (state indemnity is payable)	• 14 weeks' maternity leave • 100% ordinary pay for 13 weeks and one week unpaid • Special leave (8 weeks with nominal payment determined by the Social Security Department; the remainder unpaid) if required • Three months' unpaid parental leave
Minimum Notice by Employer and Termination Payments	• Generally, two months' notice (four months in specified cases) • Full pay over notice period	• Two to six months' notice depending on length of service • One to 12 months' pay depending on length of service (for white collar workers) • One to three months' pay depending on length of service (for blue collar workers)	• No notice required in cases of termination for disciplinary reasons • A maximum of 12 weeks' notice depending on the length of service for redundancy

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	The Netherlands	Poland	Portugal
Minimum Wage	• Statutory minimum wage • € 1,300.80 per month for employees over 22, excluding 8% holiday allowance	• In 2007 the minimum statutory wage amounts to 936 PLN (app €234) per month	• Statutory minimum wage • In 2007, €403 per month
Maximum Weekly Hours	• 45 hours • Average 36-40 hours by collective or individual agreement	• 40 hours (eight hours per day in a five day work week) • Can be extended up to 48 hours.	• 40 hours • Generally reduced by collective agreement
Holiday Entitlement**	• 20 days, usually increased by individual or collective agreement plus holiday allowance of eight per cent of salary	• 20 working days when the employee has been working up to 10 years; • 26 working days when the employee has been working more than 10 years.	• 22 days (five day week) • Possible increase up to 25 days subject to the employee's attendance record
Maternity and Family Leave Entitlement	• 16 weeks' maternity leave • Pay: 100% of salary up to ceiling • Six months' unpaid part-time parental leave per child • Two days' paid paternity leave • Four weeks' foster care or adoption leave	• 18 weeks' maternity leave for first child; • 20 weeks' maternity leave for subsequent children; • 28 weeks' maternity leave for multiple births; • Maternity pay of 100% of remuneration; • Three years' unpaid parental leave for each parent up to child's fourth birthday.	• 120 days' maternity leave plus 25% (30 days) at employee's option • Pay*: 100% of average salary payable by Social Security for 120 days or 80% for 150 days • Five days' paid paternity leave • Three months' unpaid parental leave
Minimum Notice by Employer and Termination Payments	• One to four months' notice depending on length of service • Generally one to two months' salary per year of service depending on age and length of service and reasons for termination	Employment contract of indefinite duration: • Two weeks' if the employee was employed up to six months; • One month if the employee was employed for at least 6 months; • Three months if the employee was employed for at least three years. • The employee receives remuneration during the whole notice period. Compensation of up to three months' salary may be payable if grounds for dismissal are not justified	• In case of redundancy: 60 days' notice • One month's salary per year of service with minimum of three months' in case of redundancy or illegal dismissal • Two days' salary per month of service up to 6 months' service (term employment contracts) • Three days' salary for each month of service in excess of 6 months' service (term employment contracts) • 15-45 days' salary in cases of illegal dismissal depending on seniority and length of service

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	Romania	Slovakia	Slovenia
Minimum Wage	• Statutory minimum wage: RON 390 per month (approx Euro 110), RON 2.294 per hours (2007)	• Statutory minimum wage: SKK 7,600 per month (approx 225 Euro), SKK 43.70 per hour (approx 1.30 Euro)	• Minimum wage of €522 per month
Maximum Weekly Hours	• 48 hours	• 40 hours • 38.75 in two shift operations • 37.5 in three shift operations • Generally reduced by collective agreement	• Four hours plus a maximum 8 hours overtime
Holiday Entitlement**	• 21 working days • Often extended by collective agreement	• Four weeks (20 working days) • Five weeks if employee worked for 15+ years	• Four weeks
Maternity and Family Leave Entitlement	• 126 days' maternity leave • 85% of salary payable by social security • 15% of salary payable by employer for six weeks – often extended to duration of maternity leave by collective agreement • Unpaid childcare leave up to child's 2nd birthday • 5-10 days' paid family event leave	• 28 weeks' normal maternity/paternity leave (but only one parent eligible) • 37 weeks' maternity leave if single parent or multiple births • Payments provided by state social insurance company from ill-health insurance funds • Unpaid parental leave until the child is three years old, parental leave is funded by the state	• After maternity leave a further 260 days' parental leave to be taken by either parent • All maternity, paternity and parental leave pay borne by social security • 105 days' maternity leave to begin 28 days before the expected date of childbirth at the latest • Paternity leave: 15 days to be taken within 6 months of childbirth and 75 days to be taken before the child's 3rd birthday
Minimum Notice by Employer and Termination Payments	• 20 days' notice	• Two months' notice from employer if less than five years service • Three months' notice from employer if more than five years • Employee needs to give two months' notice • Compensation equal to salary otherwise payable for the duration of court proceedings where dismissal in breach of Labour Code • Severance pay for redundancy usually provided for in collective agreement	• 30-150 days' notice depending on ground for termination and length of service • Severance pay of between one fifth of a months' salary to 10 months' salary according to length of service

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	Spain	Sweden	UK
Minimum Wage	• €513.00 per month	• No statutory minimum wage: wage rates often regulated by collective agreement	• Statutory minimum wage: £5.35 per hour (£5.52 from October 2007) for adults, £4.45 (£4.60 from October 2007) for young people aged 18 to 21, and £3.30 for 16 and 17 year olds (£3.40 from October 2007)
Maximum Weekly Hours	• 40 hours averaged on annual basis • Often reduced by CBAs	• 40 hours – may be reduced by collective agreement • Average weekly working hours in total (including overtime) may not exceed 48 hours during any four month period	• 48 hours per week averaged over 17 weeks
Holiday Entitlement**	• 30 calendar days	• Minimum 25 days	• Four weeks' paid leave • Rising to 4.8 weeks (24 days) from October 2007 • Rising to 5.6 weeks (28 days) from October 2008
Maternity and Family Leave Entitlement	• 16 weeks' maternity leave (18 weeks' leave if more than one child is born) • Pay: 100% of reference contribution base provided by the Social Security System during maternity leave	• 60 days' maternity leave before birth • 480 days' paid parental leave (pre-birth maternity leave included). The benefit which is paid by the Social Insurance Office may be drawn at any time until the child reaches the age of eight or completes the first class of school. • Pay is 80% of ordinary salary as per rules of National Social Security System for 390 days (up to a certain cap), plus SEK 180 per day for 90 days • Different rules apply if the child was born before 1 January 2002 or before 1 July 2006 respectively	• 1 year's maternity leave • Statutory Maternity Pay for 39 weeks • 13 weeks' unpaid parental leave • Two weeks' paid paternity leave at basic SMP rate • Adoption leave of between 26 weeks and one year
Minimum Notice by Employer and Termination Payments	• 30 days' notice for objective dismissal • 45 days' salary for each year of service up to 42 months' salary (unfair dismissal). • 20 days' salary for each year of service up to 12 months' salary (fair objective dismissal). • Eight days' salary per year of service or as specified by applicable legislation (for temporary contracts, except substitution and internship contracts)	• One to six months' notice depending on the employee's length of service and/or age. Longer notice period may be stipulated in collective agreements • Full pay and other benefits throughout notice period	• One to 12 weeks' notice depending on length of service • Statutory redundancy payment (if redundancy) up to a maximum of £9,300 depending on length of service • Compensation for unfair dismissal combined maximum of £69,900 plus annual indexation (from 1 February 2007)

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