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The Fair Work Act 2009 is the principal legislative instrument governing the employment relationship in Australia. The Fair Work Commission and the Fair Work Ombudsman (both established under this Act) are the government agencies charged with providing for workplace-related supervision, assistance and redress for employees and employers.

The employment of most employees in Australia is governed by the national workplace relations system. Within that system, employment is primarily regulated through the use of industry specific modern awards or enterprise agreements negotiated between an employer or employers and employees (or union officials on behalf of employees) for a particular workplace.

The National Employment Standards (NES) also apply to employees under the national workplace relations system. These standards provide a guarantee of basic minimum benefits for employees. These ten conditions cover working hours, leave, flexible work arrangements and termination of employment and cannot be supplanted to the employee’s disadvantage by a modern award, enterprise agreement or individual employment contract.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
Any non-Australian or non-New Zealand citizen seeking permission to work in Australia will need to apply for a visa from the Department of Immigration and Citizenship (DIAC). If eligible, an employer can also sponsor an individual to work in Australia.

Employment structuring and documentation
Every employee in the national workplace relations scheme must be given a copy of the Fair Work Information Statement. This document provides information relevant to employment, including the NES, modern awards, agreements, the right to association and termination of employment.
Discrimination
Employees have the right under the Fair Work Act and various other state and national anti-discrimination statutes not to be discriminated against due to race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction and social origin. Anti-discrimination principles apply from the time of job application and throughout the employment relationship.

ISSUES ARISING FROM THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time
Employees covered by the national workplace relations system generally have a standard working week of 38 hours, as provided for by the NES. Employers are not able to request or require employees to work more than the standard 38 hours and an employee can refuse to work extra hours if they are unreasonable.

As a matter of practice, working hours above 38 hours a week are often agreed to between employer and employee as being ‘reasonable’ and overtime may be provided for in an applicable award or agreement.

The NES also specifies that carers can request flexible working hours with their employer if they have been working for that employer for at least 12 months prior to the request for flexible hours or, for casual workers, have a history of employment with the company and expect to continue in that employment.

The minimum wages for employees are set out in the relevant industry award or enterprise agreement. There is also a national minimum wage (currently AUD 16.37 per hour or AUD 622.24 per week) for employees not covered by an award or an agreement, and other minimum wages set for junior workers, trainees and apprentices.

Under the NES, full-time employees (other than casual employees) are entitled to four weeks’ paid holiday leave a year, with a supplementary leave allowance for shift workers. This leave accrues over the course of the working year and rolls over from year to year if unused. Unused holiday entitlements are paid out to the employee on termination.

Employees are also entitled to ten paid personal leave days a year (which accumulate from year to year), covering personal illness as well as the need to care for a member of their immediate family or an emergency. Employees (including casual employees) are also entitled to take two days’ unpaid carers leave on each occasion they are required to care for an immediate family member.

An employee covered by an award, enterprise agreement or individual contract may have different leave entitlements from those provided in the NES provided those entitlements are in excess of those minimum standards.

Family rights
Once an employee has worked for their employer for 12 months, they are entitled to 12 months’ unpaid parental leave upon the birth of a child or adoption. In addition, certain periods of paid parental leave may be available to an employee. The employee is also able to return to the same or an equivalent position once they return from unpaid parental leave.

The position of casual employees as regards parental leave depends on their employment history and expected future continuous employment with their employer, as they are generally not entitled to leave unless they are a long-term casual employee.

Trade unions
Membership of a union is voluntary and discrimination of an employee on the basis of membership of a trade union is not permitted. All unions are registered with the Fair Work Commission.
A trade union representative is able to enter Australian workplaces in certain circumstances, such as investigating a breach of a workplace-related law, if they represent workers at that particular workplace and they hold a current right of entry permit issued by the Fair Work Commission.

Social insurance
Employers are currently required to pay a 9.25% superannuation contribution in addition to salary or wages for full-time, part-time and casual employees. An employee is able to select the fund that the superannuation contribution is paid into and can also make their own additional superannuation contributions.

ISSUES ARISING FROM THE TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
Employees do not automatically transfer on the sale of a business or an outsourcing or insourcing. Offers of employment must be made by the buyer if it wishes to employ any of the employees who work in the business.

Unless offers are made, or if they are not accepted, the seller must find alternative employment for the employees or make them redundant.

Although there is no specific protection for employees on the transfer of a business, an employee can potentially make an unfair dismissal claim if they are dismissed by the seller (unless the dismissal is a genuine redundancy).

A buyer can generally choose what terms and conditions to offer, including those that match the terms of its existing workplace. However, if the transferring employees are covered by an enterprise agreement (or certain employer specific awards), that agreement will transfer with the employees and continue to apply to them (until replaced or terminated). In limited circumstances, that agreement could also cover new employees the buyer recruits after the transfer.

Terminating employment
The termination provisions of the NES provides a minimum protection for employees which cannot be undermined in an award or agreement. Under these provisions, an employer is able to terminate a contract of employment upon written notice.

The amount of notice required is up to five weeks depending on length of service with the company. An award, agreement or individual contract might provide for alternate notice terms in excess of the minimum standards and provision for payment in lieu of notice is permitted.

There are some situations where no notice is required, such as for serious misconduct or for a casual employee.

Redundancy
Under the NES, an employee is entitled to redundancy pay if the employer decides that the position is no longer required or upon the bankruptcy or insolvency of the company and the worker has been with the company for at least 12 months.

Redundancy entitlements provide employees with up to 16 weeks’ pay, based on their length of service to the company. A modern award, agreement or individual contract may provide for an alternative redundancy scheme for an employee provided it is more beneficial than that provided for under the NES.

Unfair dismissal
The unfair dismissal provisions of the Fair Work Act apply to national workplace relations employees. A minimum period of service applies in order to qualify an employee to bring an unfair dismissal claim and the employee must not be a high income earner.

Under the unfair dismissal scheme, if a dismissal is harsh, unjust or unreasonable, or is not a case of a genuine redundancy, the employee is able to
challenge that dismissal in the Fair Work Commission. Specific considerations apply for a small business. An unfair dismissal claim must be lodged with the Fair Work Commission within 21 days of the dismissal. The Commission has powers of redress such as reinstatement and payment of compensation to the wronged employee.

*Michael Harmer*
E: michael.harmer@harmers.com.au, or

*Jenni Priestley*
E: jenni.priestley@clydeco.com
Like most European Union Member States, Austria’s approach to employment policy fosters a legal environment that provides broad protection and rights for employees. The current legal regime in Austria comprises a complex combination of overlapping European Union and Austrian legislation, broad collective bargaining agreements, shop-floor agreements, and individual employment agreements.

The different classifications of employees within Austria’s employment law system are defined by statutory provisions. While these formal distinctions still exist on paper, they are slowly losing their significance as Austria moves towards unifying its laws in respect of blue and white collar employees. However, employers have consistently resisted change because extending white-collar employees’ rights would result in increased costs for employers.

**ISSUES ARISING ON HIRING INDIVIDUALS**

**Immigration**

In order to work legally in Austria, a foreign national (who is not an EEA-national) must comply with the Employment Act 1975 and obtain an employment permit, a work permit, an exemption certificate or a Red-White-Red card.

An Austrian employer may recruit a foreign national for employment in Austria, but the individual must apply for approval and an employment permit from the regional employment office. This employment permit allows a foreign employee to work in the specifically designated position for the specified employer for a maximum period of one year. The employment office will decide whether to issue the employment permit based on three criterions:
(1) an analysis of the current labour market, and whether the market will benefit from employing a foreigner;

(2) an assessment of whether any public policy issues conflict with issuing the employment permit to the foreigner, taking into account the specific circumstances of the employment agreement; and

(3) an evaluation of whether the employer complies with applicable working conditions, minimum wage requirements, and the Social Security Act.

CBAs are negotiated at industry level, and apply to the employment agreements of all employees within a particular industry, whether or not they are unionised. They cover a very wide range of employment issues, and are the foundation for Austrian employment law policy.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

Austria has no national minimum wage, and instead relies on industry-specific guidelines set out in the relevant CBA. Employees’ salaries must comply with CBA provisions regarding industry-wide minimum salaries. An individual employment agreement that stipulates a lower salary than that stated in the relevant CBA is considered void from inception.

The Working Hours Act is the primary statute which regulates working hours. The Act provides for a maximum 40 hours working week, and a maximum eight hour working day. However, most CBAs impose a shorter working week of 38.5 hours. If an employee works for more than six consecutive hours, they are entitled to a break of at least 30 minutes.

Overtime work is generally permitted in Austria. Blue collar workers most frequently receive overtime pay. Overtime payment schemes are usually agreed to on a CBA-by-CBA basis, but where overtime in not covered in the employment agreement, the Working Time Act applies. This stipulates that overtime should be 25% higher than the employee’s wage for any additional hours worked up to the statutory maximum of 40 hour, and 50% higher for overtime worked in excess of the 40 hour maximum. Overtime performed on Sundays, public holidays, or between midnight and seven o’clock in the morning will attract a 100% wage supplement.
Social insurance
Austria has a contribution based, pay-as-you-go social security system that provides benefits in the three broad spheres of health insurance, unemployment support, and pension entitlements. The pay-as-you-go model means that pensions and benefits paid out within one fiscal year are directly financed by contributions from the workforce in the same fiscal year.

Current workforce contributions are calculated according to an individual’s gross monthly salary, including the monetary value of any non-monetary benefits like a company car, or corporate-owned residences. Employee contributions generally amount to approximately 18% of their gross income.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
Austrian law states that, generally, in the case of a business transfer, all employees who are part of the business affected are automatically transferred to the transferee. The transfer of employment rights includes any unsettled employment claims against the transferor, even if the facts underlying those claims occurred before the business transfer. Austrian law states that, prior to the transfer, the employer must notify the works council of the planned transfer, and of the implications of the transfer on the relevant CBAs.

However, there are no legal penalties for failure to comply with these notification requirements.

Terminating employment
Austrian law does not restrict terminating employment to specific conduct or causes. The bulk of statutory and CBA regulation on termination concerns mandatory notice periods and termination dates. As with much of Austrian employment law, termination procedure regulations differ for blue and white collar workers. Blue collar termination regulations are usually dictated by CBAs. Procedures for dismissing white collar employees are laid out in The Salaried Employees Act, which provides that employers must give at least six weeks’ notice. There is no requirement to state a reason for termination.

Regardless of their length of service, if an employee wishes to terminate their employment they must give one month’s notice.

In addition to the notice requirements, standard termination procedures must also comply with specific statutory or contractually-designated termination dates. These are unrelated to the notice period requirements, and usually operate to extend employment from the last day of the notice period to the designated termination date.

As an alternative to the stringent requirements of the notice procedure, employers and employees may agree a termination date, to avoid the notice requirements.

The employee is, however, still entitled to their statutory severance payments and cannot legally waive those rights.

The Austrian statutory severance pay system is in a state of transition. There are currently two severance pay schemes that apply: the “old system” applies to employment agreements created on or before 31 December 2002, the “new system” applies to all employment agreements created after December 2002.

The “old system” provides for a sliding scale of severance pay, with the employee’s entitlement increasing with length of service. Severance pay entitlements apply once an employee has worked for the same employer for a continuous period of three years.

The “new system” stipulates that employers must withhold 1.53% of their employees’ gross monthly wages (including special payments) and pay this to an independently-managed severance pay provider.

Roland Gerlach
E: roland.gerlach@arbeitsrecht.at
**BELGIUM**

*Belgian labour law applies only to the parties to an “employment contract”. Employment contracts are usually defined as agreements under which one party, the employee, agrees to work under the authority of the other, the employer, for a definite or indefinite period of time. The essential characteristic of an employment contract is the element of subordination; without which the parties are not subject to labour law. The key aspect of this subordination is ‘organisational subordination’, in the sense that one person is assigned the power to direct another person.*

On 26 December 2013, the Belgian Parliament passed a law seeking to put an end to the discriminatory treatment between blue-collar and white-collar workers. This change follows confirmation by the Constitutional Court in 2011 that establishing a distinction between these two categories of employees, in particular with regard to the length of the notice period in case of dismissal, is unconstitutional. The main impact of this change is to equalise notice periods for blue and white collar workers in respect of contracts taking effect from 1 January 2014.

**ISSUES ARISING ON HIRING INDIVIDUALS**

*Foreign nationals*

As a general rule, the employer must obtain prior authorisation to employ a foreign worker (i.e., non-European Economic Area national) within the framework of an employment contract.

European treaties provide for the free movement of persons within the European Economic Area (European Union and Iceland, Norway and Lichtenstein – EEA). This means that employees and self-employed persons who are citizens of one EEA Member State are, in principle, free to work in another Member State without a work permit.

In principle, every non-EEA national working in Belgium must be in possession of a work permit, although some categories of workers are exempt from this requirement.

*Employment structuring and documentation*

Although the contract of employment may be written or verbal, the following employment contracts and/or clauses (without limitation) must
be in writing: (1) trial period clause; (2) training clause; (3) non-competition clause; (4) employment contracts concluded for a fixed period, or for a specific project; (5) part-time contracts; (6) temporary work or interim work; (7) working from home; and (8) in certain cases, employment contracts concluded with a foreign worker.

The terms of the employment contract may be amended by the parties verbally but cannot be changed unilaterally. The standard type of employment contract used in Belgium is the individual employment contract for an unlimited duration which comes into existence solely by mutual agreement of the parties. With the exception of the clauses referred to above, a written contract is not required.

Fixed term contracts are permitted, but a written contract must be produced by the commencement of the employment at the latest. Failing this, contracts are deemed to be concluded for an indefinite duration.

Trial periods are no longer enforceable in contracts of employment taking effect from 1 January 2014 (except in relation to students, temporary workers and temporary agency workers). However, the trial period clauses in contracts already in force before 1 January 2014 will continue to have effect.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

The maximum average working time is 38 hours per week and eight hours per day. Working at night, on Sundays and during public holidays is only allowed in a few strictly regulated cases. Daily minimum working time is three hours, but statutory exceptions exist. Overtime is normally prohibited, although there are several exceptions to this rule. It is possible to work up to 11 hours a day in the case of shift work or even 12 hours in the case of continuous work. Where overtime is authorised, overtime pay is at least 1.5 times the worker’s regular rate of pay, and twice their regular rate if the overtime is done on a Sunday or a public holiday. Workers also benefit from paid rest periods.

Workers are entitled to remuneration for 10 official public holidays. If a public holiday falls on a Sunday or on a day on which the worker does not work, the employer must grant a replacement day. According to the legislation which applies to most salaried workers, the number of days of annual leave to which a worker is entitled for a given year is determined in proportion to the number of working days worked (and deemed to have worked e.g. where the worker was on maternity leave or sick leave) during the preceding calendar year, referred to as the ‘holiday reference year’. Generally, for a full holiday reference year, workers have the right to between 20 and 24 days’ annual vacation, depending on whether their working regime includes five or six working days per week. A separate annual leave regime applies to certain other categories of workers.

**Labour unions**

By application of the constitutional freedom of association, there are no restrictions on the creation of a trade union. However, only a select few unions are granted a specific role and specific rights by law.

Traditionally, unions choose not to organise themselves under a form that would afford them a separate and complete legal personality. As a result, they only exist as legal entities to perform specific acts that are assigned to them by law. Unions, but not their members, essentially enjoy immunity from responsibility.

Representative unions have a place on the National Labour Council and the Joint Committees. In addition, they have the power to: (1) conclude collective labour agreements with one or more employers or employer representative organisations; (2) put forward candidates for elections to the Works Council and the Committee for Prevention and Protection at Work; (3) ensure that the correct procedure is observed for the election of
representatives; (4) depending on circumstances, form a union delegation within the company; (5) propose magistrates to sit on the labour courts of appeal; (6) represent their members before labour tribunals; and (7) engage in legal action on their own behalf to defend the interests of their members.

Social insurance
Unless otherwise stated by an international agreement, salaried employees in Belgium with a labour contract with an employer in Belgium, or an operational office in Belgium, will in principle be subject to the Belgian social security scheme for salaried persons.

It is impossible to deviate from the Belgian social security scheme by special agreement, which would be null and void by law.

In the scheme for salaried persons, both employees and employers have to pay contributions to the RSZ-ONSS. There are different schemes for blue-collar and white-collar workers.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Transfer of undertaking
Under Belgian law, the transferor has an obligation to inform and consult the employees’ representatives (i.e. the representatives in the Works Council or the Trade Union Delegation) or the employees directly about a proposed transfer (which includes a merger, concentration, take-over, closure or other important structural change negotiated by the company).

The information and consultation process should take place before a decision on the planned transfer is made. Failure to comply with this obligation would render the employer liable to criminal sanctions (a fine of EUR 300 to EUR 3,000, multiplied by the number of workers employed in the company, up to a maximum of EUR 300,000), in accordance with Article 196 of the Penal Social Code.

In the event of a transfer, the rights and obligations of the transferring employer arising from the employment contracts existing on the date of transfer are automatically transferred to the transferee.

Terminating employment
From 1 April 2014, all workers have the right to be informed of the reason for their dismissal. Prior to this date, and except in certain circumstances, only blue-collar workers and workers dismissed for serious wrongdoing enjoyed this right. If the employer fails to inform the employee of the reason for dismissal, the employee can require the employer to give an explanation. The employee is entitled to dispute the reason for dismissal before the labour court.

Except on grounds of serious misconduct or other similar reason, employment contracts concluded for an indefinite period may only be terminated by one of the parties by notice. The notice must be given in writing in accordance with the terms of the contract, stating when the notice period starts and its duration.

Furthermore, with respect to dismissals which take place from 1 April 2014, employees engaged under a contract for an indefinite duration may claim damages in the labour court if their dismissal is “unjustified”. An “unjustified dismissal” would be considered as a dismissal which (1) would never have been made by a normal and reasonable employer and (2) is made for a reason unrelated to the employee’s capability or conduct, or to the operational requirements of the undertaking.

Chris Van Olmen
E: chris.van.olmen@vow.be
Canadian workplace law is commonly divided into employment law, which concerns the relationship between an individual and an employer, and labour law, which regulates the collective representation of employees by trade unions. Canadian employment and labour law is governed by a range of legislation, both federal and provincial, as well as case law (in provinces other than Québec), and the Canadian Charter of Rights and Freedoms. Québec’s civil law system, including employment and labour law, is based on France’s Napoleonic Code.

**Issues arising on hiring individuals**

**Immigration**

Employment and labour law in Canada is generally governed under the jurisdiction of Canada’s provinces and territories. Immigration law is under the jurisdiction of the federal government. To be lawfully employed in Canada, you must be a citizen, a landed immigrant or have a work visa. There is some increased movement of professionals, executives and skilled trades through free trade agreements, notably NAFTA (North America Free Trade Agreement).

Apart from senior executives, professionals, and workers with specialized skill sets, most foreign workers in Canada are employed in the domestic care or agriculture sectors. Temporary foreign workers are protected by the same laws as Canadian employees, including labour and employment legislation and the Charter of Rights and Freedoms. The Canadian government recently
introduced new legislation to govern Canada’s Temporary Foreign Worker Program. The legislation appears to be designed to provide greater protection for foreign workers and to address short-term labour and skills shortages. The new regulatory amendments seek to assess the authenticity of employment offers rigorously in order to minimise fraudulent offers and to seek to protect foreign workers from exploitation and abuse. Temporary foreign workers can hold a temporary work permit for a maximum of four years at a time. However, some workers are exempted from this limit, including most individuals who occupy managerial, highly skilled, or other exempt positions.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

The specific obligations an employer owes to its employees will typically depend on the jurisdiction in which it operates, whether it is federal, provincial or territorial.

**Wages, annual leave and working time**
Minimum wages vary by jurisdiction, and from 1 September 2013, range from a low of CAD 9.95 per hour to a high of CAD 11.00 per hour, and are subject to periodic review. Certain jobs are exempt from these requirements. Employment standards legislation commonly sets out various provisions regulating how employees should be paid, record-keeping obligations, and documentation requirements with respect to the payment of wages.

Most jurisdictions have legislation governing the maximum number of working hours. Generally, such legislation sets out maximum daily and weekly figures (typically eight hours per day and between 40 and 48 hours per week). Most jurisdictions require employers to provide employees with at least twenty-four consecutive hours of unpaid time off work every seven days. In certain situations, these maximum working hours may be exceeded, such as where overtime is paid, where employees agree, or if there is an emergency. Specific provisions also exist that permit employers to implement “compressed” four-day working weeks or “continental shifts” with 12 hour working days. Each jurisdiction’s employment standards legislation includes provisions governing overtime pay when an employee works in excess of the maximum working hours (typically $1.5 basic pay).

Employment standards legislation provides employees with a statutory entitlement to annual leave and pay for each year worked. In all provinces, employees are entitled to at least six weeks’ leave per year; in Saskatchewan, employees are entitled to three weeks per year. In many provinces this entitlement will increase with an employee’s length of service, to three weeks. In addition, employees are entitled to between six and ten paid statutory holidays per year. If an employee is required to work on a statutory holiday, they are entitled to premium pay (typically $1.5 basic pay) as well as to holiday pay for that day.

**Trade unions**
The labour legislation of the various Canadian jurisdictions governs how trade unions become certified, how they retain the authority to act as the exclusive bargaining agent for a group of employees, what obligations are created for the employer of those employees, and the framework to govern collective bargaining.

Collective bargaining provisions typically deal with both process and substance. Process provisions include work stoppages (strikes and lockouts), whereas substantive provisions include the grievance and arbitration process, as well as mandatory and permissive terms and conditions for the collective agreement. Labour statutes also place a duty of fair representation on unions with respect to the employees within a bargaining unit. Disputes between parties are submitted to arbitrators or to specialised administrative tribunals located in each jurisdiction.

**Social insurance**
Individuals who are lawful residents in Canada (citizens and landed immigrants) have significant
health care cover (generally covered by public funds), unemployment insurance cover, and pensions for retirement or in some cases long-term disability.

**ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP**

**Business transfers**
Employers cannot defeat legitimate bargaining rights either by organising their affairs in an attempt to change their legal identity or by selling the affected business to a third party (whether or not that third party has any relationship with the vendor). Labour boards take a wide, remedial approach in these circumstances insofar as their primary objective is to preserve acquired bargaining rights. As such, two or more legally distinguishable entities may be considered to be one employer for labour relations purposes, and bind a third party to a pre-existing collective bargaining relationship. Also, a purchaser may be bound to the collective bargaining relationship of the vendor. The term “sale” and related terms are given an expansive interpretation, so that various kinds of commercial transactions that transfer control of the core of a business as a going concern may be captured in such a way that bargaining rights continue to attach to the transferred business.

**Terminating employment**
A noteworthy feature of Canadian employment law is that Canada does not have “at will” employment, which is common in the USA. When employees are dismissed, they are entitled to notice of termination, or pay in lieu of notice, except where they are terminated “for cause”. This is very difficult to establish, and this threshold will typically only be met if the employee committed an unlawful act in the course of their duties, showed willful misconduct or was consistently insubordinate. As a result, in most employer-initiated dismissals, a severance package is negotiated, or is part of an originating written employment contract.

The employment standards legislation applicable in each Canadian jurisdiction, sets out minimum notice periods for termination, or pay in lieu of notice, and in some cases, statutory severance pay. Typically, these statutory notice periods range from one to eight weeks’ notice (or pay in lieu of notice), depending on the employee’s length of service. The statutory minimums apply except where an employee’s employment is legitimately terminated for cause. In addition, most jurisdictions also have rules providing for enhanced notice for mass lay-offs, such as a plant closure. In some jurisdictions, there is a statutory limit on the notice period according to the size of the employer. Statutory severance pay is particularly notable for medium sized to large employers operating in Ontario, where a lump sum payment is calculated as one week per year of service to a maximum of six months’ pay.

In addition to the statutory notice period and severance pay (if any), non-union employees in Canada’s common law jurisdictions (i.e. where the legal system is based on case law) are also entitled to reasonable notice of termination. Common law notice period awards are often much longer than is required by statute (but incorporate any statutorily mandated payments).

Depending on an employee’s position, age, and length of service, up to 24 months may be awarded, and larger notice periods have been awarded in some cases. However, unlike statutory entitlements to notice, employees and employers are entitled to contract out of common law notice periods, provided that the contract provides that the employee is entitled to at least the statutory minimum notice period. Employers are also typically responsible for paying benefits and entrenched bonuses during the common law notice period.

Employees with a fixed-term contact are not entitled to reasonable notice. However, Canadian courts have said that they will closely examine the overall character of the employment relationship
to determine whether it is in fact for a fixed term. For example, where an employee is subject to a series of fixed-term contracts, a court may decide that the employment relationship is of indefinite duration and that the employee is entitled to reasonable common law notice.

**Discrimination**

All jurisdictions have legislation and administrative agencies to deal with human rights complaints concerning harassment and discriminatory practices in the workplace. The list of the defined criteria or prohibited grounds of discrimination and harassment varies with each jurisdiction, but generally includes race-related grounds, creed, gender, age, family or marital status, and disability. As a general statement of the law in Canadian workplaces with respect to human rights, employers have an obligation to offer employment without discrimination and to guard against harassment based on prohibited grounds. Most jurisdictions in Canada also have some form of pay equity legislation to ensure that wage parity exists between male and female workers; such measures are intended to redress systemic discrimination.

*Jamie Knight*

E: jknigh@flichy.com
THE EMPLOYMENT LAWS OF THE PEOPLE’S REPUBLIC OF CHINA

The employment laws of the People’s Republic of China (PRC) are based on statutory law in a civil law system. There is no system of binding case-law precedent and also no requirement for the reporting of cases. There are primary pieces of national legislation, such as the Labour Contract Law 2013, and also local legislation at provincial or municipal level, as well as varying local practices. In general, PRC employment laws are very protective of employees. In particular, employers can only terminate contracts unilaterally if a specific ground prescribed by law exists and these grounds are limited. For example, there is no ground to terminate for under-performance, unless this can be categorized as incompetence and prior procedural requirements are met.

Against this general background, it is important to take great care in structuring and managing employment relationships and to think strategically about the issues that arise.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
Foreign nationals must obtain a work permit and residence visa to work in China for more than three months, whether employed directly by or seconded to work for an entity in China. Foreign employees holding valid work permits may enjoy protection under Chinese employment and labour law. Remuneration paid to foreign nationals for their work performed in China is subject to PRC individual income tax whether employed directly by or seconded to work for, an entity in China. Social insurance obligations now also apply to foreign nationals, whether employed directly by or seconded to work for an entity in China (a few exemptions apply according to the respective treaties – e.g. German nationals).
Employment structuring and documentation

Employers must provide full-time employees with a written Chinese language employment contract governed by PRC law – penalties apply for failure to do so. A subsidiary English version is permissible.

Employment contracts can be for a fixed term or open term – employers tend to use fixed terms (one to three years) because termination opportunities are limited to statutory situations. However, under certain statutory situations (e.g., renewal after two consecutive fixed-term contracts), an employee is entitled to an open term contract.

Foreign nationals can be employed directly by a company in China (with a PRC law governed contract). Secondment to a Chinese company has become less advisable over the years since under the changing laws and practices several risks regarding employment, immigration, tax, etc. may be triggered.

Representative offices of foreign companies cannot employ any staff directly – for Chinese nationals a staffing agency must be used to hire staff; for foreign nationals employment with the foreign companies and secondment to the representative office is normally used.

Implementation of handbooks, rules and policies are subject to a statutory consultation process with employees if they concern matters such as remuneration, working time, etc., which have a direct bearing on the immediate interests of the employees.

It is not possible to contract out of mandatory provisions of PRC employment laws, however, regulations more favourable to the employee than the legal provisions may be agreed. In addition to national level laws and regulations, local regulations also apply (mainly provincial and municipal). In respect of part-time employees (less than four hours per day/24 hours per week), they are not covered by many of the statutory protections – most items (including termination) can be agreed by contract.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time

Minimum wage requirements apply and the exact amount, which is reviewed annually varies by location – in Shanghai (from April 2013) this is RMB 1,620 per month. It is also common, but not mandatory, to pay a 13th month salary as a form of bonus.

Overtime compensation depends on the working schedules of the employees. Employees working under the standard working time schedule of eight hours per day and 40 hours per week are entitled to be paid at increased rates (or in some cases be provided time off in lieu) for their overtime work. Subject to the labour authority’s approval, an employer may implement flexible working time schedules, including non-fixed working time schedules and comprehensive working time schedules to certain positions such as management staff, transport employees, traveling sales people and security personnel. Under these schemes payment of overtime compensation may be avoided to a great extent.

In terms of rest times, employees are entitled to a minimum of one day’s rest per week. After one year’s work (during their career) full-time employees are entitled to a minimum annual leave entitlement of 5 – 15 days per year – the exact amount varies according to total years worked.

Medical treatment leave applies – exact entitlements vary by location and years of work, although salary can normally be reduced during medical leave. Maternity leave also applies – the basic minimum is 98 days with extensions in specific circumstances. Further, female employees are protected against termination (except summary
dismissal) from pregnancy to one year after the birth of the child. Finally, marriage leave applies (three to ten consecutive days, including weekends; exact entitlements vary by location) depending on the age of the employee.

Trade unions
Employees can require their employer to establish a labour union within the company (or branch) and union representatives may attend board meetings on HR related matters and can generally represent employees. Unions must be registered with the All China Federation of Trade Unions. Industrial action is neither expressly permitted nor forbidden, but is increasingly an issue or risk in practice.

Tax and social insurance
Employees have an obligation to pay individual income tax on their remuneration on a monthly basis. Employers have a separate independent obligation to withhold and pay this to the tax authorities on a monthly basis.

Employers and employees have statutory obligations to make contributions to various social insurance and welfare funds. The exact funds and calculation of contributions varies by location, but typically include: medical, pension, unemployment, work-injury and maternity as well as housing funds.

Whistleblowers
Employees have a right and obligation to report unlawful activities to relevant authorities.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
There is no automatic transfer of employees with a transfer of business or assets – employees must terminate their employment with the seller and enter into a new contract with the buyer. Certain acquired rights, e.g. seniority for severance calculation, may be transferred to the new employment.

Discrimination
There is no statutory definition of discrimination, but discrimination on the grounds of nationality, race, sex, religious belief, disability and infectious disease is recognized and prohibited. Sexual harassment of women is also prohibited.

This area of law is not sophisticated but claims are increasing.

Terminating employment
During the probation period an employer can terminate without notice but only if he can prove a reason, mainly that an employee fails to fulfill recruitment criteria; and an employee can resign with three days’ notice. Thereafter, employees can resign at any time by giving notice (normally 30 days).

Employers can only terminate for specific grounds comprehensively listed by law. Permitted grounds without notice or severance include: serious breach of validly implemented employer rules and policies; serious dereliction of duty or graft causing substantial harm to the employer; criminal prosecution, etc. Permitted grounds with prior notice of 30 days (or payment in lieu of notice) and severance include: (1) proven incompetence even after training or re-assignment of duties; (2) failure to return to work after statutory medical treatment leave for non-work related injury or illness even if the position is adjusted; and (3) major changes in circumstances (mainly major organizational changes) which render the contract unperformable after the parties fail to reach an agreement on a contract adjustment.

In specific “mass lay-off” circumstances when an employer faces financial or operational problems and has to lay off a minimum of 20 employees or a number of persons that is less than 20 but accounts for 10% or more of the total number of the enterprise’s employees – consultation with employees/trade union and information obligations
to the labour bureau apply; statutory severance must be provided.

The statutory severance referred to above is one month’s average salary per year of employment, although a cap applies to salary periods of employment from 2008 onwards. The remedy for unlawful dismissal is either double the statutory severance or reinstatement of the employment – the employee is entitled to request his/her preferred remedy.

It’s worth noting that statutory severance must also be provided in case of non-extension of a fixed term contract or conclusion of a termination agreement upon the company’s initiative.

_Iris Duchetsmann_
E: iris.duchetsmann@clydeco.com
FRANCE

In France, employment law affords employees a good level of protection. Nevertheless, this legal environment is constantly changing as a result of government reforms and case law evolution. Recent trends relate in particular to: (1) union representation and collective bargaining agreements; (2) working time; (3) mutual termination agreements; (4) senior management compensation; and (5) termination packages in listed companies. In France, choosing the wrong option may result in costly individual or collective litigation.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration

EU citizens, except for citizens of Bulgaria and Romania, do not need a work or residence permit if they hold a passport or other ID proving that they are EU citizens.

All non-EU citizens must obtain a work permit to work in France. The relevant prefecture (i.e. local government representative) will consider the employment situation within the local region (département) when deciding whether to grant a work permit.

If the foreign national is living abroad, the employer must apply to the local French unemployment authority.

The application is then forwarded to the employment authorities. If they decide that the foreign national can work in France, they issue a temporary one-year work permit.

Employment structuring and documentation

Employment contracts are not generally required to be written, but certain forms of employment contract must be in writing, notably fixed-term contracts, part-time contracts and temporary employment contracts. Oral fixed-term contracts are unequivocally deemed to be indefinite-term contracts and oral part-time contracts are deemed full-time contracts. The employer should provide the employee with a written statement of the essential terms governing the employment relationship.
Indefinite-term contracts should contain the following information: (1) identification of the parties; (2) the employee’s job title or a description of their duties; (3) working time; (4) the employee’s compensation including bonuses; (5) the place of work; (6) start date; (7) the length of the probationary period; (8) holiday entitlement; (9) the applicable collective bargaining agreement (CBA); and (10) the length of the notice period.

In contrast with indefinite term contracts, a fixed term contract must comply with certain requirements as to content and form in order to be valid. However, employees working under fixed term contracts have the same statutory individual rights as those working under indefinite term contracts. Employer and employee may agree on a probationary period, which can be renewed (only once) in certain circumstances, and during which either party may terminate the employment contract without any formality. If both parties are satisfied at the end of the probationary period, the employment contract becomes definitive.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time

Employers and employees are free to negotiate the terms and conditions of their employment relationship. However, employees have various minimum rights under the law, regardless of any provision to the contrary in their employment contract. These minimum working conditions are set out in particular in the French Labour Code and the applicable Collective Agreement.

The minimum gross monthly wage in 2014 is EUR 1,445.38 (about USD 1,992) for a 35-hour working week. All employees who are employed under an ordinary employment contract (either indefinite or fixed term) are entitled to minimum wage.

Usually, employees work 35 hours a week. In addition, employees must not work more than: (1) an average of 44 hours a week during any 12 consecutive weeks; (2) 48 hours during any given week; (3) ten hours a day; (4) 220 hours of overtime a year (subject to the applicable CBA).

Overtime is the hours worked in excess of the statutory weekly working hours. Only hours worked at the request of the employee’s superior will be regarded as overtime, however, the employer has the duty to ensure employees do not exceed the daily and weekly limits.

Employees are entitled to a minimum of five weeks’ paid holiday a year. In addition, there are about ten public holidays every year. The law and CBAs grant additional paid leave for employees who have reached a specific length of service and for family related events.

Trade unions

Under French employment law, the function of the trade unions is to defend the rights and moral and material interests of their members. However, French Employment Law gives wide powers to the so-called “representative” trade unions, i.e. those which are recognised as representing a group of employees, no matter whether these employees are members of the trade union or not. The trade union may be represented at several levels (in the company, at regional level, national level, etc). Representative trade unions have wide powers, most notably, they have the exclusive right to introduce candidates at the first round of voting for the staff representative bodies. In addition, they appoint a representative to be a member of the works council.

Social insurance

Social security contributions in France are divided into employee contributions, which are deducted from salary, and employer contributions, which are not an element of remuneration and are payable by the employer in addition to remuneration. Social security contributions are calculated by reference to the basic salary paid for work done. Most allowances and other cash payments are subject to social security contributions as well as tips and certain benefits-in-kind for private use.
ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
There is no legal requirement in France to inform each employee before a business transfer, but there is a legal requirement to inform and consult the work council before the transfer. However, in practice, employees commonly receive a brief letter advising of the change of employer, in an attempt to achieve a seamless transition and build a relationship with the new entity.

An employee cannot object to a transfer, as the transfer takes effect automatically. A refusal could constitute grounds for dismissal for disciplinary reasons. This automatic transfer applies to all kinds of employment contract (fixed term contracts, trial contacts, contracts suspended for illness, etc).

Employees who enjoy a protected status (e.g. employee representatives) will also see their contract automatically transferred, with their representative role intact; however, when the transfer concerns only part of a business, their transfer must be authorised by the Labour Inspector.

Terminating employment
In the case of an indefinite-term employment contract, there must be real and serious grounds for dismissal. There are two types of valid grounds: personal grounds and economic grounds. Once an employer believes that there is a valid ground for dismissal, it must send a letter giving the employee five working days’ notice of a meeting. This letter must set out the time and place of the meeting and the employee’s right to be accompanied by a fellow employee or an outside party.

The employer must also make every effort to find employees facing redundancy another position in the same company or group, worldwide. It must also see to it that employees can adapt to the evolution of their role by way of training programs.

Non-compliance with these rules may render the redundancy unfair.

Employees who are made redundant must be given priority for the subsequent one-year period if their previous position, or a similar one, becomes vacant within their former employer.

Severance pay is only awarded if the employee has the minimum length of service required by the French Labour Code or the applicable CBA (typically one year).

The amount of severance pay depends on the employee’s length of service and the relevant CBA’s provisions.

Employees who are unfairly dismissed can challenge their dismissals before the Employment Tribunal. If the judges find the dismissals are unfair, they may grant compensation.

An employee is entitled to a minimum of six months’ pay as compensation if the dismissal is deemed unfair, if he has worked for more than two years for his employer and the employer has more than 11 employees.

Compensation is usually financial, but in the case of dismissals that are void, employees have a right of reinstatement.

Joël Grangé
E: grange@filion.on.ca
GERMANY

German labour and employment law is divided into two areas: individual employment law and collective labour law. Individual employment law concerns relations between the individual employee and the employer, while collective labour law regulates the collective representation and organisation of employees as well as the rights and obligations of employees’ representatives. It is not consolidated into a single labour code: the main sources are Federal legislation, case law, collective bargaining agreements, works council agreements and individual employment contracts.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
In principle, employees who are not German nationals who would like to work in Germany require a residence title and a work permit before entering Germany unless they are: (1) EU nationals (since 1 January 2014 all restrictions have been lifted within the 27 EU member states); or (2) nationals of a European Economic Area (EEA) member state (Iceland, Liechtenstein, Norway) or Switzerland.

Employment structuring and documentation
The employer has a statutory obligation to provide the main contractual terms in writing to the employee no later than one month after their
employment commences. The terms and conditions of employment are regulated principally by statute, collective bargaining agreements and works council agreements and as a rule, employment contracts should not deviate from these provisions to the detriment of the employee.

Generally employment contracts are entered into for an unlimited period. A fixed-term contract is possible, provided the term is agreed in writing before the employment commences. A fixed-term employment relationship should also be justified by objective grounds, some of which are statutory grounds (e.g. temporary increase in work volume, substitution of an employee during parental leave). If no objective grounds exist, fixed-term employment is limited to a maximum duration of two years, provided there was no previous employment contract with the same employer. A fixed-term contract ends automatically without written notice at the end of its term. If the employment continues after the fixed-term contract expires, the agreement is deemed to be for an indefinite period.

The employer and employee may agree to a probationary period, which is limited by law to a maximum of six months.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time
There is no overall statutory minimum wage in Germany. There are, however, special regulations and collective bargaining agreements within certain sectors, e.g. the construction industry. As a general rule, remuneration is determined by mutual agreement. The salary is set out in the individual employment contract, either specifically or by reference to a collective bargaining agreement. A salary of less than two thirds of the relevant usual wage is contrary to public policy and such an agreement is generally considered to be void.

The statutory maximum working time is eight hours per day from Monday to Saturday. Working on Sundays and public holidays is generally not permitted, unless expressly allowed by statute. The statutory maximum weekly working time limit is 48 hours.

Overtime pay is not expressly regulated by law but is subject to the employment agreement, collective bargaining agreements and works council agreements.

Employees who work a five day week have a statutory entitlement to 20 days’ paid annual leave. However, it is more typical for employees to receive between 25 and 30 days’ leave, depending on their seniority and the type of business.

Trade unions
The formation, function and internal democratic structures of trade unions are protected by constitutional law. The main function of trade unions is to conclude collective bargaining agreements which can be done with either a single employer or an employers’ association. Trade union representatives also support employees and works councils but do not have participation rights within a company.

Collective bargaining agreements have immediate and binding effect on the individual employment relationship, in the same way that statutes do if one of the following requirements is met: (1) the employee is a member of the relevant trade union and the employer is a member of the relevant employers’ association/concluded the collective bargaining agreement itself; (2) the Federal Ministry of Labour and Social Affairs has declared the collective bargaining agreement to be generally binding; or (3) the employment contract provides for the contractual application of a particular collective bargaining agreement.

Social insurance
All salary payments are subject to tax and social security contributions (pension, unemployment, health, accident and nursing care insurance). These must be withheld from an employee’s salary by the employer and paid to the respective institutions.
In general, the employer and the employee each pay half of the social security contributions, and employers’ contributions are paid in addition to salary, calculated on the basis of the employee’s gross salary, subject to a maximum amount. Contributions to the employee’s accident insurance are made solely by employers.

Protection against dismissal is divided into general and special protection. Special protection is provided to employees who may be at greater risk of dismissal, such as disabled or pregnant employees and works council members. In such cases, the permission of relevant government authorities is required before terminating their employment contract.

The right to dismiss employees is substantially restricted by the German Act on Protection Against Unfair Dismissal. The Act applies if: (1) a business establishment generally has more than ten employees; and (2) the employee has worked in the same company or business establishment for six months without interruption. If the Act applies, a termination is justified only if it is based on reasons relating to: (1) the person; (2) their conduct; or (3) compelling operational requirements which preclude the continued employment of the employee in the establishment.

Severance payments are paid at the end of employment if:
(1) the employment agreement provides for a contractual severance payment; (2) the parties agree a severance payment (in or out of court); (3) the court dissolves the employment in return for a severance payment being made if it finds that, despite the termination being invalid, continued employment would be intolerable either for the employer or the employee; or (4) a social plan concluded with the works council in connection with a mass dismissal provides for severance payments.

The following (non-binding) formula is often used to calculate severance payments: monthly gross salary multiplied by years of employment multiplied by factor of x (where x is generally a factor between 0.5 and 1.5, and may be lower or higher, depending on the circumstances).

Due to the high levels of protection against dismissal, it is not uncommon for the employment to be terminated by a termination agreement. This may occur at any time, with or without a severance payment. Statutory unfair dismissal protection does not apply in such cases.
HONG KONG

It is fair to say that Hong Kong has pursued a laissez-faire approach to the economy and to employment law, in the belief that free competition and minimum intervention would maximise benefits for all. This philosophy has led to a minimalist approach to employment legislation and the general observation that Hong Kong is an employer-friendly jurisdiction.

The Employment Ordinance (Cap. 57) of the laws of Hong Kong (the Ordinance) applies to all employers and employees and to all contracts of employment in Hong Kong. The Ordinance provides for the minimum rights and benefits to be enjoyed by employees in Hong Kong and overrules any contractual provisions which purport to reduce or extinguish the rights and benefits of employees under the Ordinance.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
All persons without a right of abode or right to land in Hong Kong must obtain an entry permit or employment visa before coming to Hong Kong for the purpose of employment. Applications made to the Immigration Department take around six to ten weeks to process and should be made through the sponsor, usually the employer company in Hong Kong, prior to the employee’s arrival in Hong Kong.
Employment structuring and documentation

In Hong Kong, a contract of employment may be made orally or in writing. It is required under the Ordinance that an employer should inform each employee of the terms and conditions under which he is to be employed before the commencement of employment, including the following: (1) wages (including rate of pay, overtime rate, any allowances, whether calculated by the job, hour, day, week or otherwise); (2) wage period; (3) length of notice required to terminate the contract; and (4) any entitlement to an end of year payment and the payment period.

A fixed term contract may be determined by reference to a fixed period or the completion of a task or project. Employees employed on fixed term contracts enjoy the same statutory benefits and protections as employees employed on indefinite term contracts, save that a fixed-term contract will terminate automatically on expiry of the fixed term without the need for either party to give notice of termination. Non-renewal of a fixed-term contract is regarded as a “dismissal” for the purpose of severance and long service payments. Hence, employment protection rights will not be diminished merely because a worker is employed under a fixed-term contract.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time

Statutory minimum wage legislation was first introduced on 1 May 2011 but has since been revised. The revised statutory minimum wage (SMW) came into force on 1 May 2013. In essence, the minimum wage payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, has increased from HKD 28 to HKD 30 per hour.

The statutory minimum wage applies to all employees, whether they are monthly-rated, daily-rated, hourly-rated, permanent, casual, full-time or part-time, and regardless of whether or not they are employed under a continuous contract.1

SMW does not apply to live-in domestic workers, student interns (including work experience students during a period of exempt student employment) and persons that are excluded under the Ordinance. Except in relation to the employment of young persons employed in industrial undertakings where special regulations apply, there are no statutory provisions which prescribe maximum working hours. The Standard Working Hours Committee (SWHC) of the Labour and Welfare Bureau is responsible for considering the way forward for a working hours policy.

In addition to paid statutory holidays, an employee who has been employed under a continuous contract is entitled to not less than one rest day in every period of seven days.

Employees who have been employed under a continuous contract for 12 months or more are entitled to a minimum of between seven and 14 days’ paid annual leave for each period of twelve months’ employment, calculated on the basis of length of service.

Tax and social insurance

Hong Kong adopts the territoriality basis of taxation, whereby salaries tax is imposed only on income from an office or employment or any pension arising in or derived from Hong Kong. Employees are usually responsible for the filing and payment of their own salaries tax to the Inland Revenue Department.

Female employees employed under a continuous contract are entitled to a minimum of ten weeks’ paid maternity leave. This is paid at the rate of four-fifths of the employee’s average wage over the preceding 12 month period.

Since 1 April 2012, all government employees with at least 40 weeks’ continuous service are entitled

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1 A “continuous contract” requires that an employee must have worked for the same employer during each of the previous four weeks for at least 18 hours in each of those four weeks.
to five days’ paternity leave at four-fifths of the average daily wages immediately before the expected or actual date of childbirth. The Legislative Council has discussed the possibility of introducing a statutory paternity leave but the timeframe for the legislation is yet to be finalised.

Employees who have been employed under a continuous contract for a period of one month or more immediately preceding a sickness day are entitled to paid sick leave at the rate of four-fifths of their average wage over the preceding 12 month period.

Under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) each employer in Hong Kong is required to contribute an amount equal to at least 5% of an employee’s salary to a retirement scheme that is registered as a Mandatory Provident Fund Scheme (MPF Scheme).

Every employee will also be required to contribute at least 5% of their salary to the scheme. Employees with a monthly relevant income of less than HKD 6,500 are not required to contribute their share, but their employers must contribute on their behalf. With effect from 1 June 2012, the maximum contribution from both the employer and the employee is HKD 1,250 per month.

The Employees’ Compensation Ordinance (Cap. 282) requires every employer to arrange an insurance policy for a specified minimum amount for all its employees to compensate them for injury, accident or death arising “out of and in the course of employment”.

**Discrimination**

Discrimination on the grounds of gender, pregnancy, marital status (Sex Discrimination Ordinance (Cap. 480)), disability (Disability Discrimination Ordinance (Cap. 487)), family status (Family Status Discrimination Ordinance (Cap. 527)), race (Race Discrimination Ordinance (Cap. 602)) and trade union membership (the Ordinance) is prohibited in Hong Kong. However, there is no protection against discrimination on the basis of age or sexual orientation, nor is there any specific provision on equal pay legislation.

Each of the anti-discrimination ordinances prohibits “direct” and “indirect” discrimination. Direct discrimination is defined as “less favourable treatment by reason of the prohibited ground”. Indirect discrimination occurs when the complainant cannot comply with a requirement or condition which has been applied to all but which has a disproportionate impact upon the group that is protected from discrimination.

The government issued a Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation in 2009 but public consultation on bringing sexual orientation under the existing anti-discrimination legislation was put on hold by the government earlier in 2013.

**ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP**

**Business transfers**

Where a change occurs in the ownership of a business or where a trade, business or undertaking is transferred from one entity to another, there is no obligation on the part of the transferee to employ all or any existing employees of the transferor. However, if the transferee decides to employ all or any of the transferor’s employees, the period of employment of such an employee before the transfer will be carried forward to the transferee entity and, consequently, continuity of employment is not broken.

If a transferred employee who has been employed under a continuous contract for 24 months or more is dismissed by reason of redundancy, the transferor will be liable to make a severance payment to such an employee. Further, where an employee has been in continuous employment for five years or more, even if an offer was made for continued employment, the transferor will still be
obliged to pay long service payments if the employee does not agree to be employed under the new contract.

**Terminating employment**
An employee who has been employed under a continuous contract for not less than 24 months or more is entitled to a severance payment if dismissed by reason of redundancy or is laid off. The amount of severance payment is two-thirds of one month’s pay for each year of employment or HKD 15,000, whichever is less, subject to a maximum payment not exceeding HKD 390,000. Employees who have been employed under a continuous contract for five years or more and whose employment is terminated other than by summary dismissal are entitled to a long service payment on termination. The amount of the payment is calculated by reference to the same formula as for severance pay (discussed above) with the same maximum cap.

The right to a severance payment and a long service payment are mutually exclusive. Further, the amount of any contractual gratuity based on length of service is deductible from the severance or long services payment. In respect of a retirement scheme payment, only the employer’s contributions may be deducted and not the employee’s own contributions or any interest payable thereon.

**Dispute resolution**
As a matter of practice, parties involved in an employment dispute usually/commonly first approach the Labour Relations Division of the Labour Department, which provides an informal and simple mechanism to encourage settlement through voluntary conciliation. In the event that the parties fail to reach settlement through conciliation, a claimant may lodge a claim with the Minor Employment Claims Adjudication Board or the Labour Tribunal, depending on the amount of the claim and the number of claimants involved.

*Simon McConnell*
E: simon.mcconnell@clydeco.com
Indian labour and employment laws have not kept pace with India’s fast track liberalization policies. Foreign companies establishing a presence in India are thus faced with well-meaning but antiquated legislation in a fast changing social-economic environment. Hiring and firing employees must thus be carefully considered bearing in mind the legal, regulatory, social and cultural idiosyncrasies that arise when doing business in India.

Foreign nationals can be employed by an entity in India or can be employed overseas and seconded to an Indian entity. Foreign companies can also consider employing consultants directly in India. Any form of employment in India can trigger local tax, regulatory, immigration and exchange control compliance requirements, the latter two being more relevant when foreign nationals are employed in India.

India operates a quasi-federal system of law – the Central Government legislates on labour and employment matters but State Governments are also entitled to legislate in addition to Central Law. Compliance thus needs to be at both Central & State levels.

Indian law distinguishes between categories of employees, namely ‘workmen’ who are entitled to various statutory protection and non-workmen who receive only limited statutory protection other than what is provided for in their contracts of employment. Employers must therefore clearly ascertain obligations vis a vis their employees and meet minimum statutory requirements.

Indian law recognizes employment at will. Employers cannot contract out of statutory legislation.
ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
All foreign nationals wanting to work in or visit India will require a visa. The decision of whether to enter India on an Employment visa or Business visa depends on the nature of activity to be conducted in India. Foreign nationals must earn a minimum salary of USD 25,000 per annum to be eligible to apply for an Indian Employment visa (amongst other qualifying factors).

Foreign nationals must obtain the employment visa to work in India from their country of origin or habitual domicile whether employed directly by or seconded to work for an entity in India. The time spent in India is no longer an indicator of the type of visa required. Post-arrival formalities are required to be completed within the stipulated time lines, failing which exit from India can be delayed. Foreign nationals are subject to payment of all applicable taxes in India whether employed directly by or seconded to work for an entity in India.

Employment structuring and documentation
Employers should offer employees working in India a clear written contract of employment. Often an “Offer Letter” is used for this purpose – however appropriate terms and conditions should be inserted in this Offer Letter to avoid ambiguity. Further, Indian employment law contracts can be for a fixed term or open term, although it is common to use a fixed term contract as it can assist with termination strategies.

Companies should ensure they comply with all foreign direct investment and exchange control regulations in India when structuring employment agreements in India. In addition, employers must ensure that all handbooks, rules and policies are suitable for use in India and enforceable under Indian law.

Finally, employers have certain obligations under specific legislation towards part time employees and may be held liable even where such employees are hired through an agent.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time
Terms and conditions of employment are regulated by an employee’s employment contract which must meet minimum statutory requirements set out in the respective Shops and Establishment Act (SEA) of the state where the employee is based. The payment of overtime, notice periods, annual leave and sick leave can vary depending on both the state where an employee is based and the seniority of the employee. State specific compliance is required and varying terms of employment may need to be offered to different employees based in different states in India.

India has legislation that offers maternity benefits like maternity leave and pay, but there is no statutory provision for paternity leave.

Discrimination
The Constitution of India guarantees the right to life, liberty and equality, and the right not to be discriminated against on the grounds of nationality, race, sex, religion or disability.

However, such right is ordinarily available only against the State and its instrumentalities and not against private persons. An important new law relating to discrimination is aimed at preventing and prohibiting sexual harassment of women in the workplace and mandates a complaint mechanism to deal with complaints relating to sexual harassment. This new law also places an onus on employers to educate their work force on the respective rights and remedies.
Trade unions
The Trade Union Act 1926 allows workers to organise themselves and form trade unions. Current trends suggest however that with the expansion of the service sector, there has been a decline in the importance of trade unions in the overall landscape of industrial relations in India.

Political patronage to trade unions has also decreased over the years.

Tax and social insurance
Employees have an obligation to pay individual income tax. Further, companies must comply with corporate tax obligations which include an obligation to withhold tax on salary and pay this to the local tax authorities. In addition, both employers and employees have a statutory obligation to make a contribution to applicable social security schemes including provident fund, pensions and employee state insurance. India does not offer a universal social security scheme and courts seek strict enforcement of the obligations with respect to social security related laws.

India has signed social security agreements with countries including Belgium, Germany, Switzerland, Denmark, Luxembourg, Netherlands, Hungary, South Korea and France. This exempts expatriates from these countries from making social security contributions in India in accordance with the terms of the respective social security agreement. Foreign nationals of all other countries are required to make contributions towards provident funds in case they work at establishments that are subject to provident fund legislation.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
The Industrial Disputes Act 1947 (IDA) provides protection to employees falling into the category of “workmen”. In the event of a transfer of an undertaking, eligible workmen are deemed to be “retrenched” (i.e. redundant) and will be entitled to notice and severance compensation only if such transfer results in adverse working conditions or an interruption in the continuity of service. In other words, no special rights or benefits are given if services have not been interrupted and the terms and conditions of employment are not altered to the detriment of the workman.

Employees who are “non-workmen” do not have statutory rights in the case of a transfer of an undertaking. However, employees will be entitled to contractual rights and/or benefits. An action may also lie against the employer in the case of a premature termination of employment or wrongful termination caused due to the transfer.

Terminating employment
The IDA sets out the rules, processes and procedures to be followed by employers when terminating the employment of workmen. Certain categories of employees such as managers, those discharging supervisory duties and those earning more than INR 10,000 per month are exempt from this statutory protection set out in the IDA. In such cases the terms and conditions of individual contracts of employment, or the applicable SEA, will dictate the process of termination.

All employers must comply with the minimum statutory requirements for notice periods and payments in lieu of notice as set out in the applicable SEA.

Redundancy (commonly known as retrenchment) or termination without cause is permitted under Indian law subject to necessary compliances. Further, in the case of proven misconduct, or termination for cause, an employer may be entitled to terminate without notice or payment in lieu. Rules and procedures can vary depending on the nature of activity of the entity or state where operations are based and the number of employees employed by the entity.

Above all, cultural idiosyncrasies of operating in India must always be considered when terminating employment in India.
ITALY

One of the central principles of the Italian Constitution is that “Italy is a democratic Republic founded on work” (Article 1). This is reinforced by Article 4: “The Republic recognizes the right of all citizens to work and shall promote conditions to render this right effective.”

Accordingly, it is a specific obligation of the Italian Republic to eliminate any obstacles that prevent citizens from participating effectively in the political, economic and social structures of the country. As a result, Italian employment law is aimed at protecting employees, as well as fulfilling the State’s commitment to support lower paid workers.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration

There are no immigration rules specifically aimed at the hiring of European Union (EU) citizens as they can move and work in every EU Country without limitation.

In contrast, non-EU citizens are subject to immigration control. Visas and different work permits are necessary in the following situations:

– Hiring of non-EU citizens: non-EU citizens cannot work in Italy without a work permit. The Italian Government sets an annual limit (quota) on the number of permits issued. Those wishing to work in Italy must follow a specific immigration procedure, which includes compliance with the limitation of the annual quotas. Provided the
annual quotas have not been exceeded, a non-EU citizen must request a work visa, provided they already have an offer to work in Italy.

– Secondment in Italy of non-EU citizens: working in Italy under a secondment arrangement is not subject to annual quota limitations and authorization can be obtained by following a simplified procedure.

**Employment structuring and documentation**

In line with a European directive, information concerning the main terms and conditions of employment must be set out in writing in the employment contract, and provided to the employee within 30 days of their commencing employment: (1) the parties; (2) the start date and the duration of any trial period; (3) the date of expiry, if the employment is for a fixed term (where these contracts are permitted by law); (4) the salary, method for calculation, frequency of payment, and any particular term or condition relating to the salary and fringe benefits; (5) working hours; (6) annual entitlement to paid holiday; and (7) the employee's duties and the applicable work “category” as set out in the Civil Code.

An employment contract normally has an unlimited duration. However, an employment contract may be for a fixed-term provided it is for a technical, production, organisational or substitutive reason which must be expressly referred to in the offer letter.

Employment contracts can provide for a trial period. During this period each party is free to terminate the contract without notice and without payment in lieu of notice.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

Salary is usually paid at the end of the working month, as established in the company policies or by the collective agreements, with the employer deducting all applicable social security contributions and withholding taxes.

The salary paid to employees must be stated in a pay slip (produced by the employer or by a third party on the employer’s behalf) which must include the period of service to which the salary relates, the amount and value of any overtime, together with all the elements making up the sum paid as well as all deductions made in accordance with Italian law. Moreover, in addition to the usual 12 monthly payments, Italian law provides for an annual 13th payment, usually a month’s pay, made once a year at Christmas time. Furthermore, collective agreements or even individual contracts may provide for a 14th payment, usually paid in July.

The maximum length of the working week is established by collective agreement. However, the average weekly working time cannot exceed 48 hours, inclusive of overtime. Average working time must be calculated over a period of four months; however, the applicable collective agreement can extend that term for objective, technical or organisational reasons.

The needs of a particular company may, in exceptional circumstances or on an occasional basis, require employees to work beyond their “usual working hours.” Overtime is regulated by law and by the applicable collective agreement. Article 5 of Legislative Decree 66/2003 provides that normally the collective agreement governs the conditions for performing overtime work and that, in the absence of any provisions of the collective agreement, overtime is only permitted to a maximum of 250 hours per annum, provided both employer and employee agree.
Legislative Decree 66/2003 provides for a minimum of four weeks’ holidays per year, but the applicable collective agreement may provide a more generous holiday allowance.

**Trade unions**

Unions are free to regulate their internal activities as they deem appropriate. Legally, collective agreements only bind individuals who are actually members of the union that is a signatory to the agreement. Like all private law contracts, only the signatories are bound and, therefore, only those employers and workers who have specifically given a mandate to an employers’ association or a union to represent them may benefit from the collective agreement concluded on their behalf. Although this is the legal rule, in practice once a collective agreement is concluded, even non-union members typically accept its terms.

**Social insurance**

Both employers and employees are required to pay social security contributions. Receipt of pension benefits is contingent upon payment of the social security required to be paid by law. For employees, the pension is linked to the amount of contributions paid as a percentage of the employee’s overall salary during their entire working life.

**ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP**

**Business transfers**

Article 2112 of the Italian Civil Code provides employees with a high degree of protection in the context of the transfer of an undertaking. These protections include, for example: (1) the automatic transfer of employees along with their employment contracts to the transferee; and (2) joint liability on the part of the transferor and the transferee for all outstanding benefits accrued to employees at the time of the transfer (unless the transferor is released from its obligations by the employees).

**Terminating employment**

Under Italian law, any termination of employment must be justified. Justifiable reasons for terminating an employment contract can be divided into three main categories: (1) objective justified reasons – these relate to job losses caused by the employer’s economic situation for reasons relating to production, work organisation, or proper functioning; (2) subjective justified reasons – these occur when the employee commits any breach of their contractual obligations or is guilty of negligence in the performance of their duties, but the behaviour is not so serious as to constitute a dismissal for just cause; or (3) just cause – this indicates any serious misconduct or breach that renders the continuation of the employment impossible, including theft, riot, serious insubordination, and any other behaviour that seriously undermines the fiduciary relationship with the employer.

Notice of dismissal must be in writing and set out the reasons on which it is based. Indeed, under the new system introduced by the Fornero Reform, the grounds of dismissal must be given in the termination letter: failure to do so renders the termination ineffective.

Italian law provides for the payment of a deferred form of remuneration, otherwise known as the severance payment “Trattamento di Fine Rapporto” (TFR). Along with other minor statutory termination payments, the TFR must be paid to employees whenever an employment contract is terminated, irrespective of the cause of termination. The amount of the TFR varies depending on the employee’s salary and length of service.

Any dismissed employee may bring a legal action if they consider that their dismissal was not properly justified. The action before the labour court must be preceded by an out-of-court appeal against the dismissal (within 60 days of the dismissal).

The employee is entitled to resign giving the notice set out in the collective agreement as applicable to their particular employment. An employee may resign without notice for just cause, in which case the employee will be entitled to payment in lieu of notice plus damages for consequential loss.
Employment relationships in the public and private sectors in Libya are subject to the Libyan Employment Law No. 12 of 2010, as amended (Libyan Labour Law).

Whilst employment is stated to be a right of Libyan citizens, nevertheless the Libyan Labour Law recognises the employment of foreign nationals. Unlike some other jurisdictions in the Middle East, the Libyan Labour Law contains an express anti-discrimination provision, prohibiting discrimination in pay on the grounds of “sex, race, religion or colour”.

**Issues arising on hiring individuals**

**Immigration**

All expatriate employees must be registered with the Ministry of Labour, and hold an employment permit and residence visa. As part of the application process, the employees must enter into a valid employment contract. In addition, expatriate employees must have one of a number of specified job titles in order to be permitted to work in Libya. Certain jobs are reserved for Libyan nationals or those granted similar rights by the state.

**Employment of Libyan nationals**

As noted above, employment is a right of Libyan nationals and companies are required to ensure that a minimum percentage of their workforce is made up of Libyan nationals. In many cases, this minimum can be as high as 75% Libyan nationals, although certain companies are only required to ensure that 30% of their workforce is made up of Libyan nationals.
Exceptions to the nationalisation quotas are allowed in certain cases, such as specialist roles, where it is in the public interest to allow a relaxation of the rules. However, this requires a resolution from the Ministry of Labour allowing the reduction in Libyan national employment.

**Employment structuring and documentation**
All employees must enter into a prescribed form employment contract which is registered with the Ministry of Labour. There are two different forms of the employment contract, depending upon whether the employee is a Libyan national or expatriate.

As a general rule, the Libyan Labour Law sets out the minimum employment entitlements and standards. These can be exceeded to the employee’s benefit, by agreement between the parties, but cannot be reduced or excluded to the employee’s disadvantage.

Contracts may be for either fixed or unlimited terms in accordance with the Libyan Labour Law. The maximum duration for a fixed term contract is two years, which may be renewed once, after which the employment becomes an unlimited term contract with minimum notice provisions.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**
The current minimum wage in Libya is in the range of LYD 400 (approx. USD 300) per month, however few will work for this rate.

The minimum entitlement to paid annual leave under Libyan Labour Law is 30 working days, which increases to 45 working days for those over the age of 50 years or who have attained 20 years’ service. An employee can take 20 days’ paid leave to perform Haj, once in their employment.

With the exception of certain professions, the maximum normal working hours is 48 hours per week and ten hours per day. Friday is the statutory day of rest each week.

Overtime should not exceed three hours per day and is payable with a 50% uplift on the normal hourly wage.

**Family rights**
An employee is entitled to two weeks’ paid marriage leave once during their employment. A female employee is also entitled to paid leave of four months and ten days, following the death of her husband.

The Libyan Labour Law entitles a female employee to 14 weeks’ paid maternity leave, including a compulsory leave following delivery of not less than six weeks. Where the woman has more than one child, the paid maternity leave is extended to 16 weeks. The Libyan Labour Law includes certain protective provisions which prohibit a woman from being dismissed on the grounds of her pregnancy or maternity leave.

Employees are entitled to emergency leave, of up to 12 days in a year, of which no more than three days’ may be taken on one occasion. An employee may take this emergency leave without obtaining prior approval from the employer, provided that the employee is able to provide justification for the leave on return to work.

**Social security**
There is no social security legislation applicable to expatriate employees. However, an employer is required to make payments to the social security fund in respect of Libyan nationals.
Terminating employment
An individual employed under an unlimited term contract must be given at least 30 calendar days’ notice of termination. Where an employee is subject to a fixed term, either party may only terminate the contract where certain specific circumstances arise. In each case, where the reason for termination is not valid, the defaulting party may be liable to pay compensation to the other party, to be determined by the Court.

An employer is obliged to pay an end of service gratuity to expatriate employees who are not covered by the Social Security Fund. End of service gratuity is calculated by reference to length of service.

The Libyan Labour Law contains an exhaustive list of reasons from which either party may terminate employment without notice, due to the conduct of the other party.

Collective disputes
The Libyan Labour Law contains a workforce disputes procedure. In addition, an employee may not be dismissed by reason of participation in a labour association or trade union.

Rebecca Ford
E: rebecca.ford@clydeco.com, or

Sara Khoja
E: sara.khoja@clydeco.com
MEXICO

Mexico’s Federal Labour Law is regulated by Article 123 of the Constitution which establishes that “every individual has the right to decent and socially useful work; to this effect, creation of employment and social organization for work will be promoted, according to the Law.” Legal sources of the right to work include the Constitution, labour legislation and associated regulations, international treaties ratified by Mexico, the general principles deriving from these ordinances and the general principles of law regarding social justice arising from court precedents, custom and equity.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
As a general rule, any foreign national who engages in profitable activities in Mexico by reason of employment needs to obtain a work permit from the Mexican Government. As a prerequisite to obtaining a work permit the foreign national must obtain a residence permit for the duration of the services to be rendered.

Likewise, employers who hire or offer employment to foreign nationals who are to be included on the Mexican payroll and entitled to Social Security benefits, must first obtain from the immigration office a certificate of employer registration. Without this certificate, the employer will not be able to proceed with the immigration process.

Employment structuring and documentation
The written record of the employment conditions must include: (1) Name, nationality, gender, marital status, CURP, RFC (tax ID) and address of the worker and of the employer; (2) Whether the employment relationship is for piecework or seasonal work, for a fixed term or for an indefinite duration, or for initial training and, if it is subject to a trial period; (3) The service or services to be rendered,
described as precisely as possible; (4) The place or places where the work is to be performed; (5) The daily hours of work; (6) Form and amount of the wages; (7) Time and place where wages will be paid; (8) Statement that the worker will be trained for the occupation in terms of the plans and programs established or to be established in the enterprise, according to the provisions of the law; and (9) Other employment conditions, such as rest days, vacation leave and other conditions agreed between the worker and the employer.

If the employer fails to comply with these requirements, the employee will not be deprived of their employment rights but the employer will be liable for a penalty.

Employment contracts may be for a fixed or indefinite term, for piecework or seasonal work, and, if applicable, may be subject to a trial period or initial training. If the contract is unspecific, it will be deemed indefinite.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

Wages may be fixed according to units of time, on a piecework or commission basis, in the form of a lump sum or in any other manner.

Minimum wages may be fixed on a general basis for one or more geographic areas (which may cover one or more States), or for occupational groups in a given branch of economic activity, or for individual occupations, trades or special work within one or more geographic areas.

The hours of work are agreed between the worker and employer but should not exceed the statutory maximum. Day work is work performed between 6am and 8pm, with a maximum duration of eight hours a day and 48 hours per week. Night work is work performed between 8pm and 6am, with a maximum duration of seven hours a day and 42 hours per week.

The statutory maximum may be exceeded in exceptional circumstances, by up to three hours a day or three times a week. These excess hours are paid at double-time rates.

Workers who have been in the service of an employer for more than one year are entitled to paid annual vacation leave of a minimum of six working days, which is increased by two working days (up to a maximum of twelve) for each subsequent year of service.

**Trade unions**

In an effort to establish equality of bargaining power between employers and workers, the law acknowledges the freedom of association of workers and employers, through trade unions, federations and confederations.

Employers who hire workers who are also trade union members are obliged to enter into a Collective Agreement with the trade union, at its request, and if the employer refuses, the workers may exercise their right to strike.

Collective hiring is regulated by the National Labor Contract which establishes the conditions according to which work must be provided in a given field of industry, making those conditions mandatory in one or several federal entities, in one or several economic zones that cover one or more of these entities, or throughout the country.

**Social insurance**

All workers employed by private employers must be registered under the mandatory social security system. The Social Security Law sets out the rules relating to the payment of contributions to the Mexican Social Security Institute, which oversees the administration of social security services.
ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
When the employer changes on the transfer of a business, this has no effect whatsoever on labour relations or employment conditions agreed with the employees or on the conditions set down in the existing Collective Bargaining Agreement, if any.

Notice of this change of employer must be given directly to the employees, the trade union of the company and the Instituto Mexicano del Seguro Social (Mexican Social Security Institute).

For a period of six months after the date on which the employees are notified of the change of employer, both employers are jointly liable for the obligations derived from the employment relationships arising during that period and in respect of the obligations originating prior to that date. Upon expiry of the six month period, the new employer assumes the employee liabilities. If for any reason the employees are not notified of the change, then time does not start running and both employers are jointly and severally liable indefinitely.

Terminating employment
An employer may dismiss an employee on any one of the 15 grounds set out in the Labor Law (these include matters such as dishonesty or violence, failure to follow safety procedures etc). No notice will be required and no legal severance pay is due. However, an employee who is dismissed can challenge the dismissal by following a judicial process, in which case the burden of proving that the employee was guilty of conduct justifying the dismissal will lie with the employer. If the employer fails to discharge this burden, the worker has the right to choose to be reinstated to the position held before the dismissal, or to receive severance pay.

If the worker chooses reinstatement, the employer must comply, except if the worker:

- Has less than one year’s service with the employer
- Is a “trusted worker” or
- Is a domestic worker or has worked on a temporary basis

When the employer dismisses the employee for no reason or for a reason falling outside the 15 grounds set out in the Labor Law, the employer must make a legal severance payment to the worker.

When terminating a fixed term contract of less than one year, severance pay is an amount equal to the total amount of remuneration payable for one-half of the entire period of employment; if the employment lasted for more than one year, the severance pay is an amount equal to six months’ wages for the first year of service, plus 20 days’ wages for each additional year of service.

Tomas Natividad
E: tommnat@natividad-abogados.com.mx
Dutch employment and labour law is elaborate and relatively complex. Dutch employment law is divided into individual and collective law and is closely related to social security law. It is not consolidated into a single code. The employment relationship under Dutch law is governed by the compulsory statutory regulations laid down in (for example) the Dutch Civil Code. In addition to the individual employment contract, the relationship can also be governed, for example, by, where applicable, the conditions laid down in a Collective Labour Agreement and internal regulations.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
If an employer wants to hire a foreign employee, the employee must have a residence permit, and the employer must obtain an employment permit. Employees who are Dutch nationals or who are from one of the countries of the European Economic Area are exempt from these rules.

Employment structuring and documentation
An employment contract under Dutch law may be concluded orally or in writing. Under the Dutch Civil Code, the employer will nonetheless need to inform the employee in writing of (among other things): (1) the name and residence of the parties; (2) the place where the work is to be carried out; (3) the position and job description; (4) the date employment commences; (5) if the employment contract is for a fixed period of time, the time period; (6) the salary and the payment intervals and, if payment is dependent on work being performed, the amount of work to be performed per day or per week, the price per item and the time that will be involved in performing the work, etc.

An employment contract can be agreed for a fixed period (fixed-term contract) or for an unspecified period of time (open-ended contract/
permanent). If the identity of the employment has not changed (for example, with respect to the work to be performed, salary and secondary employment conditions), a fixed-term employment contract that continues as an open-ended contract will become an open-ended employment contract by operation of law.

A probationary period must be laid down in writing. In the case of both an employment contract for an indefinite period and one for a fixed period of two or more years, the maximum probationary period is two months. In other cases, the maximum probationary period is one month.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**
In principle, employer and employee are free to agree the employee’s wages. However, the Act on Minimum Wages and Minimum Holiday Allowances contains certain minimum wages and minimum holiday allowances, which are normally adjusted each year. A Collective Bargaining Agreement may also contain salary scales that are binding on individual employees.

The amount of working hours depends on the industry and the kind of work performed. In general, an employee is only allowed to work a maximum of 12 hours per day, for a maximum of 60 hours per week. Over a period of four weeks the average maximum number of working hours is 55 per week. Over a period of 16 weeks the average maximum number of working hours is 48 hours per week. Working hours provisions in an individual employment contract which do not conform to the Working Hours Act may be null and void.

Employees are entitled to a statutory minimum number of days’ annual leave, equivalent to four times their weekly working hours. In other words, a full-time employee is entitled to a statutory minimum of 20 days’ leave per year.

**Trade unions**
Trade unions are very important in the case of collective dismissals because employers are obliged to inform the unions when they report their intention to implement such dismissals to the Work Placement Branch of the Employee Insurance Agency. After the report has been made, there is a one-month waiting period that allows the employer and the trade unions to discuss the possibility of preventing a collective dismissal or of reducing the number of employees to be dismissed, as well as the possibility of alleviating the consequences of dismissal. To that end, in most cases a social plan (i.e. termination package) is negotiated. If the employer and the trade unions conclude a social plan, a court will usually award the employee a severance amount in accordance with the social plan, unless this would be clearly unfair to the employee.

**Social insurance**
The Dutch social security rules can be subdivided into social insurance benefits (sociale verzekeringen) and social welfare benefits (sociale voorzieningen). The difference between these two can be found in the funding: social insurance is funded from contributions paid by employees. This system is compulsory: all employees pay a contribution and are automatically insured. Social welfare benefits are financed from central government funds.

**ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP**

**Business transfers**
The employer must consult with the works council (or other employee representative body) about a proposed decision regarding the transfer of activities. The employer has to provide the works council or employee representative body with information about the basis for the proposed decision, the consequences for employees, and the proposed “measures” to be taken. The employer must
also inform the individual employees about the transfer and the consequences for those employees.

Under Dutch law, all of the transferor’s employees automatically transfer to the transferee on their existing terms and conditions of employment.

For one year after the transfer, the transferor and transferee are jointly and severally liable for the fulfilment of obligations under the employment contracts insofar as these obligations accrue before the transfer.

**Terminating employment**

A fixed-term employment contract or a contract for a specific project ends by operation of law on expiry of the term or completion of the project, without notice being required.

An open-ended employment contract can be terminated by: (1) the employer giving notice after receiving permission from a government organisation; (2) court proceedings; (3) mutual consent; (4) dismissal because of an urgent reason; or (5) notice by the employee.

An employer can terminate an employment contract by giving notice after the Work Placement Branch of the Employee Insurance Agency (UWV WERKbedrijf) has given permission to do so by a dismissal permit. The UWV WERKbedrijf will only grant permission if there is a valid reason for dismissal. If the UWV WERKbedrijf’s permission has not been obtained, any notice of termination will be null and void. After permission has been granted, notice must be given in accordance with the notice period. In view of the time involved in obtaining permission from the UWV WERKbedrijf, the employer can deduct one month from the notice period (provided that at least one month of notice remains).

Alternatively, an employment contract can be terminated by the court, by the employer filing a petition for dissolution due to an urgent reason or a substantial change of circumstances. In this situation, the court will allow the petitioner a limited period of time to withdraw the termination request. The employee should be reinstated if the application is withdrawn. The employee is entitled to a severance payment on termination if the application is not withdrawn within the limited time period. No notice period needs to be observed in the case of termination by court proceedings. That said, although Dutch employment law does not have a statutory formula for calculating a severance package, in dissolution proceedings the Dutch courts generally apply the “Cantonal Court Formula.”

This formula is also often used by parties to calculate the severance payment on termination by mutual consent.

In order to either receive permission to give notice of termination or to successfully petition the court to dissolve an employment contract, the employer must have a valid reason for termination.

Christiaan Oberman
E: oberman@paltheoberman.nl
There was a significant shift in New Zealand’s employment law regime in 1991 with the passing of the Employment Contracts Act 1991 (ECA). At this time, mandatory union membership and central wage fixing were abolished, and procedures were opened up for all employees to challenge an employer’s actions, including dismissals, by bringing a “personal grievance” for unjustified disadvantage or unjustified dismissal. The ECA introduced the Employment Tribunal and the Employment Court to hear disputes of right.

The regime set up under the ECA largely survives under the Employment Relations Act 2000 (ERA) and its amendments. The Employment Tribunal has now been replaced with the Employment Relations Authority but the Employment Court remains as an appeal and trial court of record. A wide duty of good faith was introduced with the ERA together with a mandatory system of mediation through which 80% of disputes are now resolved.

Most recently, the New Zealand Government has signalled significant changes to the ERA, including changes to collective bargaining and transfers of undertakings.

**ISSUES ARISING ON HIRING INDIVIDUALS**

**Immigration**
Employees who do not hold New Zealand
citizenship, a New Zealand residence visa, Australian citizenship or an Australian permanent residence visa, must obtain a valid work visa to work in New Zealand.

The following types of work may not require a work visa: (1) business negotiations; (2) short-term sales trips; (3) work for official trade missions recognised by the New Zealand government; and (4) work for overseas governments.

“Immigration New Zealand” is the government department which manages work visas. There are various requirements that employees will need to meet such as: (1) be in good health and of good character; (2) have a passport that is valid for at least three months past the date of leaving New Zealand; (3) be genuine in wanting to work in New Zealand; and (4) have the right visa for the visit.

Employment structuring and documentation

Employment agreements may be either individual, where the parties are the employer and the employee, or collective where the parties are the employer and the trade union. In either case the agreement must be in writing.

An individual employment agreement must include the names of the employee and employer, a description of the work and the place of work, hours, salary, a “plain language” description as to how to solve employment relationship problems, an employee protection provision in case of contracting out, sale or restructuring and a provision that confirms the right of the employee to be paid in accordance with overtime rates in the Holidays Act 2003.

The ERA allows for fixed term agreements that specify that the employment will end at the close of a specified date or period, on the occurrence of a specified event or at the conclusion of a specified project. However, before an employee and employer agree on such an arrangement, the employer must have genuine reasons based on reasonable grounds for a fixed term agreement. The employer must advise the employee of when or how his employment will end and the reasons for his or her employment ending in that way.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave, health and safety

In New Zealand, the minimum wage is currently $13.75 per hour (as at March 2014).

The Holidays Act 2003 governs annual leave, public holidays, sick leave and bereavement leave. Employees are guaranteed not less than four weeks’ paid annual leave per year, up to eleven paid public holidays (where time and a half and an alternative day or a day in lieu is provided to most employees who work on such a holiday), five days’ paid sick leave per annum accruable to a maximum of twenty days, and paid bereavement leave on the basis of three days for a close bereavement and one day for other bereavements provided certain criteria are met. These are all minimum entitlements and employment agreements may improve on these rights.

The Health and Safety in Employment Act 1992 (HSEA) imposes obligations on employers and employees in the workplace, and is designed to protect employees and others in a place of work from harm in workplaces. Harm includes physical and psychological harm. The HSEA is penal, and parties who are prosecuted successfully will have a criminal conviction. The HSEA is strict liability in nature, and the only defence to a charge is to prove there has been a complete absence of fault. Penalties are substantial.

Trade unions

The ERA recognises the right to organise into trade unions, have that right recognised by the employer, and legally withdraw work. A key objective of the ERA is to promote unions and collective bargaining.
Consistent with this objective, the ERA specifically recognises trade unions as the only lawful representative of employees’ collective interests. The Employment Relations Authority entitles unions to represent their members in relation to any matter involving their collective interests, and it also allows unions (and other representatives) to represent employees in relation to their individual rights (for example, unions can represent employees at mediation and in court actions), provided that they have the employee’s authorisation.

Collective agreements can only be concluded by a trade union and an employer. Employees cannot band together to negotiate a collective agreement unless they are formed and registered as a trade union. Therefore, while union membership is voluntary, if an employee wants to be involved in a collective agreement and to bargain collectively, he must be a member of a union.

Social insurance
KiwiSaver is a voluntary, work-based savings initiative set up which is governed by the KiwiSaver Act 2006. It is administered by the Inland Revenue Department and enables employees to save for their retirement with the incentive of assistance (in the form of a compulsory employer contribution) from the employee’s employer.

KiwiSaver savings are made up of employee contributions, government contributions and employer contributions.

Employer and employee contributions are calculated using the employee’s gross salary. The employee may elect how much of their salary that they wish to have applied to KiwiSaver (3%, 4% or 8%). The current compulsory employer contribution to KiwiSaver is 3%.

Business transfers
The ERA defines a restructuring in relation to an employer’s business as: entering into a contract or arrangement under which the employer’s business or part of it is undertaken for the employer by another person; or selling or transferring the employer’s business (or part of it) to another person; or the termination of a contract or arrangement if the work carried out under the contract or arrangement is to be carried out by another person, whether by a new person or by the person for whom the employer carried out the work.

Where a restructuring is proposed, an employer is obliged to consult with the other party/new employer about whether existing employees will transfer and if so, on what terms.

The process the employer must follow must be set out in an employee protection provision and this must be contained in all existing employment agreements. The other party/new employer is not obliged to offer employment to existing employees, other than vulnerable employees.

In a sale situation, the parties may negotiate the transfer of existing accrued leave liabilities. Alternatively, accrued and untaken annual leave may be paid out to employees by the vendor on termination. Existing Kiwisaver (superannuation) entitlements transfer between employers.

Terminating employment
Terminating an employment relationship usually happens in one of four ways.

Resignation or Retirement
Employees can resign at any time, provided they give notice to the employer in accordance with the terms of the employee’s employment agreement, or in the absence of an employment agreement, reasonable notice to the employer.

Abandonment
Abandonment of employment usually occurs when an employee is absent from work for an extended period (usually three working days) and they fail to
notify the employer or provide a good reason as to why they are not at work.

Dismissal
An employer is entitled to dismiss an employee for unacceptable behaviour or conduct. A lawful decision to dismiss must comply with the ERA. The test (as set out in s103A) is: whether the employer’s actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

Redundancy
An employer may also terminate employment in a genuine redundancy situation (where the role performed by the employee is no longer required by the employer). If, following a consultation process, the employer determines that the employee’s role is not required, the employer must also consider any opportunities for redeployment before terminating employment. In New Zealand, where an employee claims unjustified dismissal arising from a termination by reason of redundancy, it is dealt with as a personal grievance.

Redundancies are commonly challenged for procedural defects such as a lack of consultation, failure to consider alternatives, the fairness of criteria in selecting those to be made redundant and the giving of proper notice.

Discrimination
The Human Rights Act 1993 protects people in New Zealand from discrimination in a number of areas of life, including in employment. There are a wide range of prohibited grounds of discrimination which include sex, marital status, religious and ethical belief, colour, race and ethical or national origin, disability, age, political opinion, employment status, family status and sexual orientation.

The employee must choose whether to pursue a complaint through the Human Rights Commission or through the Employment Relations Authority; they cannot do both. The Employment Relations Authority is often favoured as it has broader powers, particularly in relation to awarding remedies. The Human Rights Commission has the power to make declarations and to order the payment of damages. Damages can be difficult to prove and the awards are low. Discrimination cases are not common in New Zealand.

Bridget Smith
E: bridget@sbmlegal.co.nz
Compared to the US and many European countries, Norwegian employment law is very employee friendly. Employers must comply with the requirements of the Working Environment Act, which is the main piece of employment legislation. The Act regulates matters such as employment, working environment requirements, working hours, the right to leave, protection against discrimination, termination of employment, rights of employees on the transfer of an undertaking and rules regarding employment disputes. These rules cannot be waived by agreement to the detriment of the employee.

The Working Environment Act applies to all employees, including employees in management positions. As a rule, the Act also applies to employees working in Norway for foreign employers. Self-employed workers are not subject to the Act.

**ISSUES ARISING ON HIRING INDIVIDUALS**

**Immigration**

Foreign employees from outside the EEA/EFTA area, including self-employed individuals, must hold a residence permit with the right to work in Norway. There are different types of permits, depending on whether the individual is a skilled worker, an unskilled worker (such as seasonal workers and seafarers on board foreign ships), a specialist, a student, a researcher, etc.

A residence permit can be obtained from the Foreign Service Mission or the Norwegian Directorate of Immigration.

**Employment structuring and documentation**

The Working Environment Act requires employment contracts to be in writing. The contract must (at a minimum) contain the following elements: (1) names of the parties; (2) place where
the services will be performed; (3) professional group or sector; (4) date of commencement; (5) estimate of the duration of employment for temporary contracts; (6) trial period; (7) number of days’ annual leave and holiday pay; (8) notice periods; (9) wage and wage payment procedures and additional remuneration and benefits, if any; (10) the agreed daily and weekly working hours; (11) length of breaks; (12) working time arrangements; and (13) applicable collective agreement. As a rule, employees should be hired on a permanent basis. Fixed-term contracts are only allowed when certain requirements in the Working Environment Act are met, for example if the employee is replacing someone who is temporarily absent or if the nature of the work justifies the use of a fixed-term contract. If these requirements are not met, the employee is considered to be a permanent employee.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time
There are no statutory regulations concerning minimum wages. However, wage levels and minimum wages are usually laid down in collective bargaining agreements. If the employment contract is subject to a collective bargaining agreement (CBA), the provisions of the CBA apply to salary as well as to work and recruitment conditions.

Normal working hours should not exceed nine hours in a 24 hour period, and 40 hours over seven days. However, for certain groups, such as shift workers, the normal working hours are less. Employers and employees can agree the maximum normal working hours calculated as an average over a maximum period of 52 weeks, but with a limit of nine ordinary hours in 24 hours, and 48 hours work in seven days. Other arrangements can also be reached through agreement between the employer and the employees’ elected representatives, in undertakings bound by a collective pay agreement or with the consent of the Labour Inspection Authority.

Overtime is only permitted when there is an exceptional and time-limited need for it. Overtime must not exceed ten hours over seven days, 25 hours over four consecutive weeks, and 200 hours during a period of 52 weeks.

However, overtime hours can be extended by the same mechanisms as normal working hours.

Employees must receive extra pay for overtime, at least 40 percent more than what they earn during regular working hours.

Minimum holiday rights for employees are outlined in the Holiday Act, which grants employees a minimum of 25 working days’ annual leave per year. The term “working days” includes Saturdays. Employees over 60 years of age are entitled to an additional six working days’ annual leave.

Trade unions
Under the Labour Disputes Act, a union is defined as “any association of workers or workers’ associations when the association has the purpose and interests of promoting workers’ interests to their employers.” There is no requirement that the union has its own statutes, or board etc. A union is, however, often a member of a larger association or confederation.

Trade unions’ rights are regulated by the Labour Disputes Act. Generally, trade unions have the right to enter into collective agreements. Collective bargaining agreements between employees’ and employers’ organisations are usually negotiated every two years.

Social insurance
Individuals who work, or are resident, in Norway are obliged to be members of and to pay contributions to the Social Security Scheme. Employers have to pay social security contributions on wages and other remuneration. The obligation to pay employer’s social security contributions can apply
even if the employer is not engaged in activity in Norway and even if the employee is not liable to pay tax in Norway.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
The Working Environment Act protects employees’ rights in the event of a transfer of an undertaking. It applies if the undertaking is an “autonomous entity which retains its identity after the transfer”. The rights and obligations of the transferor, arising out of the contract of employment or employment relationships in force on the date of the transfer, transfer to the transferee.

The transferee is also bound by any collective pay agreement that was binding on the transferor. This does not apply if, within three weeks of the date of the transfer, the transferee notifies the trade union in writing that it does not wish to be bound. However, the transferred employees have the right to retain their individual working conditions that follow from a collective pay agreement that was binding on the transferor. This applies until the collective pay agreement expires or until a new one is concluded that is binding on the transferee and the transferred employees.

Terminating employment
The Working Environment Act provides that a dismissal must be objectively justified on the basis of circumstances relating to the operation of the business, the employer or the employee.

Norwegian employment legislation does not specify or indicate by way of example what kind of conduct on the part of the employee is sufficient to justify dismissal. This must be determined on the basis of a consideration of all of the circumstances of the case. An employer can assert different reasons for dismissals based on the employee’s breach of contractual terms and conditions, such as poor performance, misconduct, absence, etc. In individual dismissals based on the employee’s conduct, there is no statutory obligation to give a written warning or to consider other suitable available work for the employee, but these are circumstances that are often taken into account in considering whether the dismissal was justified. There is no statutory right to severance pay in Norway. The only payment that the employee is entitled to is payment during the notice period in accordance with the terms of employment.

Terje Andersen
E: terje.andersen@sbdl.no
The Labour Code 1974 (as amended) regulates individual employment relations in Poland. First of all, it defines the rights and obligations of the employer and the employee. It also regulates other issues, like health and safety at work, concluding, registering and terminating collective labour agreements and sets out some of the principles governing employment litigation and the penalties for breaches of employment rights.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
The current regulations on employing foreigners in Poland differentiate between citizens of EU member states and other countries. There are also differences in the scope of the kind of work performed by a foreigner. In the case of some professions, the law does not require a permit, for some other professions simplified procedures apply.

Foreigners from EU member states and from states within the European Economic Area as well as their family members have an unlimited access to employment within Poland. Foreigners from other countries must obtain a work permit and an entry visa if they want to take a job in Poland.

Employment structuring and documentation
The most typical type of contract is the unlimited-term contract. Recently, however, there has been a trend to depart from this form of employment toward the fixed-term contracts or agreements in civil law.
A fixed-term employment contract terminates either on an agreed calendar date or on the date of a particular defined event in the future. Regardless of its type, the employment contract should define the parties to it, the contract’s type, the date of its exclusion and the conditions of work and remuneration, in particular the kind of work, the work location, the remuneration (reflecting the type of work performed and the individual components of the remuneration), working time, and the date of commencement of work.

The employment contract should be concluded in writing. If not, then on the employee’s start date at the latest, the employer should confirm in writing to the employee the parties to the contract, its type and the terms and conditions. Additionally, the employer is obligated to notify the employee in writing about certain other terms relating to the pay (as indicated in the Labour Code) within seven days after entering into the employment agreement. All changes to terms and conditions and to pay are required to be in writing.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

The employee’s remuneration is determined by reference to the employment contract. The most popular and important criteria for determining salary are the kind of work to be carried out and the qualifications required to perform the work and the quantity and quality thereof. However, employees have a guaranteed minimum wage which is set pursuant to the principles and the procedure provided for in the Act on Minimum Wage. If, however, a higher minimum salary has been set in collective labour agreements or the remuneration rules and procedures, then the employer is obligated to respect such agreements instead of the Act.

Working time may not exceed eight hours a day and 40 hours in an average five-day working week over an agreed reference period, which does not exceed four months.

This means that a weekly norm always has an average character and its character may vary depending on the system and organization of the working time. The Labour Code in certain circumstances allows the reference period and the working time per day to be shortened or extended. The weekly working time (including overtime) may not, however, exceed 48 hours over the agreed reference period on average.

Overtime is permissible in two situations only: in the event that it is necessary to conduct a rescue mission to protect human life or health, to protect property or the environment, or to remove a breakdown; or in the event of special employer’s needs. It is the employer who assesses whether it has special needs which justify overtime.

An employee is entitled to annual, uninterrupted, paid holiday leave whose duration, depending on the number of years worked, is 20 or 26 days. Holiday leave is granted on the days which, for the employee, are working days. At the employee’s request, his holiday leave may be divided into parts. However, at least one portion of the holiday leave should last not less than 14 consecutive calendar days.

The employee is entitled to the remuneration for the holiday leave which they would have received had they been working.

**Trade unions**

The essence of the right to freedom of association is an unrestricted right to establish trade unions and to join such organisations.

The structure of trade unions in Poland is defined by Statute and they have a separate legal personality. Trade unions represent employees and
protect their dignity, rights and material and moral interests, both collective and individual ones. They also have a right to represent employees’ interests internationally. Trade unions co-participate in creating advantageous conditions for work, life and rest.

The special character of trade unions results from the fact that they were granted the right to negotiate and to conclude collective labour agreements and other settlement agreements.

Social insurance
The principles of social insurance coverage and the rules relating to social insurance contributions are regulated in the Act on Social Insurance System, under which the employees are subject to mandatory pension, disability, health and accident insurance. The total contribution for each individual insurance type is calculated on the basis of the employee’s remuneration and is deducted by the employer to be paid to the Social Insurance Agency.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
The position of employees employed in an entity which is transferred on to another employer in its entirety or in part is set out in the Labour Code which provides that their employment relationship transfers to the new entity. Consequently, it steps into the shoes of the former employer and acquires any and all rights resulting from the employment relationship with the previous employer and all obligations to which the previous employer was subject. The employees preserve with the new employer the rights they were entitled to prior to the business transfer and they are bound by the same duties which they had towards the previous employer.

Terminating employment
An employment contract can be terminated only on the grounds listed in the Labour Code: collective labour agreements and employment contracts cannot specify alternative grounds for terminating the employment contract. Under the Labour Code employment contracts can only be effectively terminated: (1) under a settlement agreement between the parties; (2) by a unilateral statement of either party honouring the notice period (termination on notice); (3) by a unilateral statement of either party without honouring the notice period (termination without notice); (4) upon the expiry of the term for which the employment agreement was concluded; or (5) on the day of completion of the work for which the contract was entered into.

Terminating an employment contract without notice is a unilateral statement of will made by one party to the other party which causes an immediate termination of the employment relationship. The Labour Code lists three reasons for an immediate termination at the employee’s fault. The list is exhaustive.

Where employment is terminated as part of a group dismissal or if there is an individual dismissal for reasons which do not relate to the employee personally, then if the employer employs at least 20 employees the employee is entitled to a severance payment which is calculated by reference to the employee’s length of service and on their salary.

An employee who considers that his employment was terminated in a manner that is in breach of current provisions of law or that was unjustified can file an appeal with a labour court.

Arkadiusz Sobczyk
E: arkadiusz.sobczyk@sobczyk.com.pl
The rules governing the employment of individuals working in Qatar are principally governed by Law No (14) of 2004 (Labour Law). The Labour Department of the Ministry of Labour and Social Affairs is the main agency of administration.

The Labour Law excludes the workers of Qatar Petroleum and its corporate establishments whose employment is governed by special laws; it also excludes Government/public workers whose employment is governed by the provisions of Law No (8) of 2009 (Human Resources Law). In addition members of the armed forces, the Police, workers at sea, casual, domestic and agricultural workers and dependants are excluded from the Labour Law. Finally mention should be made of the Qatar Financial Centre (QFC) and the Qatar Science and Technology Park both of which each have their own employment regulations.

This guide will focus on the Labour Law which is issued in Arabic with no official translation.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
Immigration rules in Qatar are covered by Law No (4) of 2009 (Immigration Law) which sets out regulations under which expatriates may enter, exit, work and reside in Qatar. The Immigration Department of the Ministry of Interior is the main agency of administration. The Immigration Law defines an expatriate as any individual entering Qatar who is not a Qatari national. Unless an individual is a Gulf Cooperation Council (GCC) national, they must be sponsored by either a Qatari national, an entity registered to undertake business in Qatar or a resident family member on whom the individual is dependent. This arrangement does not lend itself to short term or casual employment arrangements. Currently the nationals of some 33 countries, including the United Kingdom, the United States,
Australia and Japan, can enter Qatar on an on-arrival visa; other nationalities may enter and represent their companies or countries on business visas which must be applied for by individuals or entities authorised by the Immigration Department prior to arrival. Details in relation to such applications may be found on Qatar Embassy websites.

ONLY a holder of a valid work permit may work lawfully in Qatar. Work permits may only be applied for by an individual or entity registered with the employment authorities. These applicants are known as the worker’s sponsor. Sponsorship and immigration are interlinked in Qatar. Once a Qatari entity has been issued with an immigration card it may register with the Labour Department and submit block visa applications. A block visa application should state the gender, nationality and job title of the workers a Qatari entity wants to employ. Once the block visa application has been approved by the Labour Department, passport copies and education certificates if appropriate should be submitted to the Immigration Department in order for each worker to be issued with his or her work permit; then the employer can proceed to apply for the worker’s residency once they have been relocated to Qatar at the expense of the worker’s sponsor. Dual residency is permitted by discretion in Qatar. The process followed by Qatari nationals to sponsor expatriates is slightly different.

Where workers hold a valid Qatari residence permit they can apply to sponsor their spouses and dependent family members at the discretion of the Immigration Department. The resident will have to demonstrate to the immigration authorities that they are appropriately employed with sufficient funds to do so, i.e. currently only a manager or an individual with a degree certificate earning at least QAR 10,000 per month (some USD 2,700). Holders of residence permits may work but ONLY for their sponsors. Contract working for other third parties is not permitted unless approved by the Immigration Department. Individuals holding family residencies do not automatically have the right to work and must apply for, and be issued with, work permits to work, subject to some exceptions, e.g. the QFC. Part time workers can work, subject to the permission of their sponsor/employer, for a Qatari national or an entity registered to undertake business in Qatar; there is no concept of part time work referred to in the Labour Law per se. Penalties can be imposed by the Ministry of Interior in relation to breaches of the Immigration Law. These penalties can be onerous, e.g. up to three years in prison and a fine of up to QAR 50,000. The penalties may be levied against any or all pertinent parties.

Qatarisation
It is important to note that there are laws and regulations in place to encourage the employment of nationals from time to time, known as Qatarisation. Specific sectors including banking may be subject to quota requirements to employ Qatari nationals and some organisations have self imposed quotas, e.g. Qatar Foundation, but otherwise the Labour Department will review new block visa applications on an application by application basis.

Liability
During the period in which individuals reside in Qatar the worker’s sponsor will be legally responsible for them, including obtaining and renewing residence permits and associated registrations. The worker’s sponsor will not be liable financially for any of the obligations of the individuals it sponsors unless it specifically agrees to guarantee such obligations, e.g. in a salary letter addressed to a bank for the purposes of a worker obtaining a car loan.

Recruitment
Strictly speaking only 100% Qatari owned entities and Qatari nationals holding valid manpower licences may undertake the business of recruitment for third parties.

Employment structuring and documentation
Employment terms may be for a definite/fixed or an indefinite/unlimited duration. A fixed term is generally understood to be a term during which
employment can only be terminated by the agreement of both parties, i.e. notice cannot be given. An indefinite term is one in which notice can be given by either party in accordance with the Labour Law and employment contract and subject to the successful completion of probation.

The Labour Law provides for a single period of probation of up to six months’ duration during which the employer may provide the worker with three days’ written notice to terminate employment if the worker is not able to undertake the work for which they have been employed.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time
There is no minimum wage in Qatar, although the Labour Law does stipulate that the Emir can set one. Some Embassies, e.g. the Philippine Embassy, are developing and promoting recommended minimum wage policies for their nationals.

A worker who has completed one continuous year of service is entitled to annual leave with pay. Workers who have been employed for less than five years will receive no less than three weeks’ annual paid leave and those who have been in service for longer than five years will be entitled to no less than four weeks’ annual paid leave.

A Muslim worker is entitled to Haj leave without pay, not exceeding two weeks, to go on pilgrimage once during the period of his service dependent on how such leave is allocated internally from time to time.

The Labour Law provides for a maximum working week of 48 hours, eight hours a day; with Friday being the weekly day of paid rest. In Ramadan this is reduced to a maximum of six hours a day. Workers who are not in a position of responsibility i.e. non-managerial positions, are entitled to a maximum of two hours’ overtime pay a day in accordance with statutory rates, set according to whether overtime is completed on a normal working day, a Friday, during night time or on a public holiday. The actual working hours of a worker should not exceed ten hours a day if overtime is worked.

Family rights
Female workers are entitled to 50 days’ paid maternity leave if they have been in continuous employment for a year or more when they give birth. There is no other provision for family leave. The Labour Law states that female workers must be paid the same wage as male workers if they undertake the same work. Provisions are also made in relation to vocational workers and minors.

Trade unions
The Labour Law provides that where an entity employs more than one hundred Qatari workers, a single worker’s committee may be formed by those Qatari workers.

Striking is permitted under certain circumstances, but, amongst other things, the exercise of political or religious activities, the printing and dissemination of materials insulting the State, etc. is prohibited. Workers’ Committees should publish their policies and regulations according to certain guidelines.

Social insurance
There is currently no public social security scheme or any retirement pension applicable to non-Qatari workers. However, for Qatari national workers, there are obligations on employers in certain sectors to contribute to a pension fund in accordance with the provisions of Law No (24) of 2002.

A new health insurance scheme was enacted through issuance of Law No (7) of 2013 under the terms of which sponsors will be responsible to contribute to their employee’s health care. The regulations associated with this law have recently been issued, but details concerning premiums etc. are still being settled. Qatari and non-Qatari nationals will be the subject of this new scheme.
There are no obligatory insurances other than the new health insurance referred to above. However, some employers may contractually offer workers benefits such as life assurance, permanent health insurance, private medical insurance and company cars.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
The Labour Law (Article 52) provides that when an enterprise merges with another enterprise or transfers its ownership in, or its right to manage that enterprise, an employee’s employment will not necessarily terminate.

In addition the law provides that employment will not terminate on the death of an employer unless the contract of employment has been concluded because of the death or otherwise.

Sponsorship transfer
Residency may be transferred between sponsors, subject to the discretion of the Immigration Department. In order to transfer sponsorship an individual must hold a residence permit which has been valid for more than 12 months, a sponsor’s letter of no objection (NOC) and a “clean” Police Report. Where no NOC is provided (there is no obligation to provide) an individual may not work in Qatar, i.e. be sponsored and employed in Qatar, for a period of two years, although appeals can be made to the Human Rights Department of the Ministry of Interior. Where individuals do not have a residence permit which has been valid for more than 12 months, provided they hold an NOC, they must leave Qatar and re-enter on either an on-arrival or business visa or a work permit in order for their new sponsors to be in a position to apply for a residence permit for them.

Terminating employment
Under the Labour Law if the service contract is of an indefinite duration either the employer or the worker may terminate it without giving any reasons; notification periods will be dependent on the length of service and the terms of the contract. The employer should pay the worker all his or her dues for the notice period if the worker continues to work normally during this period.

If the contract is terminated without observing notice periods, the party (usually the employer) terminating the contract may be obliged to pay compensation. The Labour Law provides for employers of more than ten employees to implement a disciplinary process and sets out the minimum requirements.

The Labour Law (Art 61) sets out a list of circumstances under which the employer can terminate the worker’s employment without notice or the payment of EOSB (as defined below) due to the actions of the worker. The Labour Law also provides (Art 51) for a similar action under which workers can terminate without notice but still receive EOSB if applicable.

The Labour Law (Art 54) provides, in addition to the other monies payable to workers when their employment terminates, that workers must be paid an End of Service Benefi (EOSB). As a minimum, EOSB must equal three weeks’ basic salary for each full year the worker has worked; part years are calculated pro rata and EOSB is only payable once the worker has completed his or her first full year of employment. EOSB cannot be contracted out of or waived.

Workers require an exit permit to leave Qatar. Exit permits can be issued for a single exit; the holders of residence permits may be issued with multi-exit visas at the sponsor’s discretion. If a worker wishes to leave Qatar while still holding a work permit, i.e. before a residence permit is issued, they must obtain a re-entry or return visa before leaving to avoid automatic cancellation of their work permit. Currently, there are tight restrictions on such visas being issued.
Romania

In Romania over the last 20 years, employment legislation has been constantly changing as a result of government reforms. Nevertheless, Romanian legislation provides a wide range of protection for employees. Romanian employment legislation is principally governed by the Labour Code and also by social dialogue, employment health and safety and insurance for accidents at work and industrial diseases.

Issues arising on hiring individuals

Immigration

In Romania, citizens of the EU or of the EEA do not need a work and residence permit. Foreign citizens (who are not EU or EEA citizens) must obtain a work permit to work in Romania. Work permits are issued by the Romanian Office for Immigration. As a rule, work permits are issued for a one-year period. The number of work permits issued every year is limited and the number issued is determined by a government decision.
Employment structuring and documentation

Individual employment contracts are usually for an unlimited term, but they may also be for a fixed-term, and part-time.

According to the Romanian Labour Code, any kind of individual employment contract must be concluded in writing, in the Romanian language and made with both parties’ consent. Before the employment relationship commences, the employer must finalise the terms of the employment contract and register it with its employees’ electronic programme (REVISAL).

Before finalising the terms, or amending the terms of an individual employment contract, the employer must inform the person offered employment or the employee about the essential clauses to be included in the contract or to be amended, as the case may be.

Employment contracts for both a fixed or unlimited term may contain a probationary period clause.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time

The current minimum gross base monthly wage is RON 850 (rising to RON 950 on 1 July 2014) for all full-time employees.

The maximum average working time is 40 hours per week, or 48 hours with overtime, and eight hours per day. In exceptional circumstances working hours can exceed 48 hours per week provided that the average working hours calculated over a four month period do not exceed 48 hours per week, including overtime.

Trade unions

Every employee has the right, under the Constitution and the Romanian Labour Code, to constitute or to become a member of a trade union. To set up a trade union, there must be at least 15 employees in the company.

The representative trade union is entitled to receive any necessary information from employers for the negotiation of collective labour agreements and other employment related agreements. Trade unions play a key role in collective bargaining, but they also have significant information and consultation rights. In addition, trade unions have the right to register petitions and to represent their members’ interests before a Tribunal.

Social insurance

In Romania, employers must pay social security contributions (contributions to the social security system, health system and unemployment system). These contributions are divided between employee and employer contributions.

The average employer’s social security contributions can be up to 30% of the employee’s gross salary, and the employees’ contribution up to 20%. However, these payments are made solely by the employer. These contributions relate to the amount of salary paid to the employee.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers

The transfer of an undertaking, business or part of a business is governed by the Labour Code which grants strong protection for employees affected by the transfer.

Prior to the transfer, both the transferor and the transferee must consult the trade unions or the employees’ representatives with respect to the legal, economic and social implications of the transfer.
All of the transferor’s existing rights and obligations arising out of the employment contracts and collective labour agreements transfer to the transferee, except where the transferor is subject to a restructuring or insolvency procedure. Nevertheless, the transfer is not a valid reason for the individual or collective dismissal of transferring employees.

**Terminating employment**

Under Romanian law, the employment contract may be terminated by law, by mutual consent or by notice given by one of the parties. The grounds for dismissal must be real and serious and there are two types of valid grounds: (1) subjective grounds, such as serious or repeated disciplinary offences or poor performance; and (2) economic grounds.

A dismissal for reasons unrelated to the employee as an individual, i.e. the termination of their position, can be for one or several reasons, such as closing down a workplace or business and must be for a genuine and serious reason.

Dismissals on economic grounds may be individual or collective. Where employees are dismissed on economic grounds, they are entitled to benefit from active measures designed to limit unemployment and they may be entitled to compensation under the terms of the law and the applicable collective labour agreement.

Employees who consider that they have been unfairly dismissed can challenge their dismissal before the Employment Tribunal. If the judge finds the dismissal unfair, they may award compensation which represents the equivalent of their salary from the date of dismissal to the date of the Tribunal’s decision, or the date of reinstatement.

The law provides several time limits for bringing an unfair dismissal claim, which is generally within 45 calendar days of the date when the employee became aware of the relevant act which gave rise to the claim.
KINGDOM OF SAUDI ARABIA

The main piece of employment legislation in the Kingdom of Saudi Arabia (KSA) is Royal Decree No. M/51 dated 27/9/2005 (as amended) (KSA Labour Law). This law is supplemented by Ministerial Resolutions issued by the Ministry of Labour.

A drive to promote the employment of nationals in the private sector has resulted in increased regulation of employment. For example, the introduction of the ‘Nitiqat’ system in 2011, which classifies employers based on the number of KSA-nationals employed and allocates quotas for the employment of KSA nationals, and a crackdown on illegal working practices during the course of 2013. In addition, amendments to the KSA Labour Law have been proposed and published, although there is at present no indication as to when (and to what extent) these will be ratified as law.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
Every employee must be registered with the Ministry of Labour and the General Organisation for Social Insurance (GOSI). If the employee is not a national of a Gulf Cooperation Council member state then he or she must also be registered with the Passport Office. These employees will need to be sponsored by the employer for work permit and residency visa purposes, with such sponsorship being employer-specific. In order to obtain sponsorship, employees must submit attested educational and professional qualifications and undergo medical examinations for contagious diseases. There are restrictions on an employee’s ability to move from one sponsor to another (i.e. to effectively move jobs) and various factors come into play including length of service and both the existing and new employer’s record with the Ministry of Labour.
Saudisation: employment of KSA nationals
An employer is under a duty to consider KSA nationals for all vacancies prior to engaging a foreign national. The majority of vacancies must now be posted with the Human Development Fund and advertised for a minimum of two weeks to unemployed KSA nationals registered with the Fund before a non-KSA national can be offered the role. Certain roles, including HR managers, secretaries, security officers and up to 40 specified roles are reserved for KSA nationals. The KSA government is increasingly offering subsidies and funds to private sector employees to employ KSA nationals and subjecting public tendering and contracts to the company’s achievement of percentage targets for the employment of KSA nationals as a total part of the workforce. Conversely, there is a fee of SAR 2400 per employee levied on the employer, and payable yearly on the renewal of the work permit, where the ratio of KSA nationals to non-KSA nationals is not 1:1. Every employer is also classified according to how many KSA nationals it employs and allocated a target, calculated according to its size, industry sector and number of employees. Failure to achieve a target results in the employer being unable to renew sponsorship of existing employees or to obtain sponsorship for new employees. Employers in the lowest two classifications do not have to give consent to their employees moving jobs and joining employers in higher employer classifications.

Recruitment agencies and employment businesses
The sourcing and supply of labour is extremely regulated with the trade licence for such commercial activities being restricted to KSA nationals. The engagement of individuals from a manpower supplier without the required trade licence can render an employer liable to penalties for engaging individuals without proper sponsorship and also have personal repercussions for the individual.

Employment structuring and documentation
Contracts for KSA nationals may be for a limited or unlimited period. However, contracts for non-nationals must always be for a fixed term (usually linked to the period of the work permit).

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time
A minimum wage of SAR 3,000 a month applies in KSA but only to KSA nationals and for the purposes of meeting the quotas under Nitiqat. An employer can therefore still elect to pay an employee less than the minimum wage.

In September 2013, KSA commenced the implementation of the Wage Protection System (WPS). The WPS monitors the payment of wages to both KSA and non-KSA nationals employed in the private sector, establishing a link between the employer, the local bank into which wages must be paid, and the employee. The WPS is being phased in and currently only applies to registered commercial entities with 1000 or more employees and all private schools (regardless of the number of employees).

The minimum entitlement to paid annual leave is 21 calendar days a year, rising to 30 calendar days a year after five years’ service. The minimum entitlement to sick leave is 120 calendar days a year, with full pay for 30 days, 75% pay for 60 days and nil pay for 30 days. In addition, once during the employment and conditional on accruing two years’ service, an employee is entitled to between 10 to 15 days of paid leave to perform Haj.

The KSA Labour Law provides for a maximum working week of 48 hours, eight hours a day, with Friday being the weekly day of rest. In June
2013, following a Royal Decree, the public sector changed its weekend to Friday and Saturday. Most private sector employers have followed suit, making the position in Saudi consistent with the rest of the region. In addition, the current market practice for a five-day week in the private sector may become a statutory entitlement under the proposed amendments to the KSA Labour Law.

Employees who are not in managerial positions (meaning someone with supervisory authority over other employees) are also entitled to overtime pay in accordance with statutory rates set according to whether overtime is completed on a normal working day, during night time, a Friday or other normal rest day, or on a public holiday. Overtime is normally restricted to two hours a day meaning an employee should not be asked to work for more than ten hours a day. During Ramadan, working hours are reduced to six hours a day for all employees.

Family rights
The KSA Labour Law entitles female employees to four weeks’ maternity leave preceding the expected date of delivery and six weeks after delivery. Such leave is paid at 50% of remuneration if the employee has accrued only 12 months’ continuous service. Employees with three or more years of service (as of the start of leave) are entitled to full pay. The employee cannot legally work during the six-week period following delivery. Female employees are not entitled to pay during annual leave in the same year they received fully paid maternity leave. Similarly, employees who took maternity leave at 50% of pay are entitled to only 50% of pay during annual leave in the same year. A male employee is entitled to one day of leave on the birth of his child, with full pay from the employer.

Trade unions
Trade unions and labour associations are unlawful in KSA with the KSA Penal Code outlawing labour strikes. However, the KSA Labour Law contains a workforce disputes procedure under which employees may collectively submit a written complaint to the Ministry of Labour which will appoint a labour committee to investigate the complaint and conciliate between the employees and the employer. Workers are also permitted to form Welfare Committees for social welfare within the workplace. KSA national employees are also permitted to form work councils.

Tax and social insurance
General Organisation for Social Insurance (GOSI) administers a social security system for KSA nationals including a number of benefits such as old age retirement pensions, disability allowance, survivor’s pensions, and incapacity benefit. The Human Development Fund provides unemployment allowance for KSA nationals who are university graduates for a period of one year from graduation, providing SAR 2,000 a month. It has also been announced that there will be new legislation providing for unemployment benefit. Non-KSA nationals are not entitled to social security – except compensation for workplace injury or disease under the GOSI workplace injury scheme.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
Article 18 of the KSA Labour Law provides for employees to transfer by operation of law from one employer to another, pursuant to a change in the corporate ownership of the employer of the part of the business in which they are employed (including the sale of a business or part of a business as a going concern, and the merger of two companies or demerger). However, such a transfer is only possible upon a special application to the Ministry of Labour whose approval is discretionary and it can take up to two years for the process to be completed. In the absence of Article 18 applying, the transfer of employees is effected through a process of termination and rehire.

Terminating employment
Contracts for KSA nationals may be for a limited or unlimited period. However, contracts for
non-nationals must always be for a limited duration (usually linked to the period of the work permit).

The KSA Labour Law does not set out a list of reasons permitting an employer to terminate an employee’s employment, save that Article 80 of the KSA Labour Law sets out an exhaustive list of gross misconduct reasons for which an employer may terminate employment without notice or the payment of end of service gratuity. These include where the employee fails to perform essential work duties or obey orders and where the employee is absent from work without valid reason for more than 20 non-consecutive days or ten consecutive days in a year.

On termination of employment for any reason other than gross misconduct an employee is entitled to an end of service gratuity, a form of severance pay calculated by reference to final salary and linked to length of service. In addition, an employee whose employment is terminated may make a claim to a Labour Committee claiming that the termination has been unfair (i.e. not for a valid reason) entitling him to compensation (calculated on a case-by-case basis and not, as the law currently stands, by reference to any statutory formula) and possibly reinstatement. There are no anti-discrimination provisions in the KSA Labour Law; however, the Labour Committee will scrutinise the reason for termination where this is challenged by an employee and it is possible that a discriminatory reason could be held to be invalid.

KSA Labour Law does not currently provide for a concept of redundancy. The KSA courts have recognized an employer’s right to reorganize its business and restructure resulting in elimination of roles. However, a high burden of proof is applied and the employer’s business decision is scrutinized very closely. The proposed amendments to the KSA Labour Law appear to indicate that a company shutdown or removal of an employee’s role could be treated as valid reasons for termination.

Discrimination
There is at present no specific discrimination legislation applicable to the workplace in KSA. The Labour Law does provide for equal pay when a man and a woman perform the same job.

Rebecca Ford
E: rebecca.ford@clydeco.com, or
Sara Khoja
E: sara.khoja@clydeco.com
SINGAPORE

Employment law in Singapore is a work in progress. By way of example, the principal piece of employment legislation, the Employment Act (Cap. 91) (the Act), generally covers employees (regardless of nationality) who are under a contract of service with an employer, other than seamen, domestic workers, government employees or any person employed in a managerial or an executive position (EA Employees).

With effect from 1 April 2014, persons employed in managerial and executive positions earning a basic monthly salary of SGD 4,500 or less will be covered under the Act, except for the provisions in Part IV of the Act (which relates to work hours-related protection such as hours of work, rest days, annual leave and overtime pay).

Those employees who do not fall within the scope of the Act (Non-EA Employees) do enjoy certain limited protections under other legislation. However, their employment terms and conditions are principally governed by their employment contracts. More changes are afoot and will be announced later this year.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
All non-residents have to possess a valid work pass before they can work in Singapore. Ordinarily, the holder of the work pass is only permitted to work for a specified employer and in a specified occupation. There are various types of work passes such as Work Permit, Employment Pass, S Pass and Personalized Employment Pass, Miscellaneous Work Pass, Training Work Permit and Training Employment Pass.

Employment structuring and documentation
The standard type of employment contract in Singapore is an “open-ended” contract terminable on notice (subject to the protection which the law provides on unfair dismissal). A contract of employment need not be in writing and may be partly written and partly oral.

An employment contract should as a minimum include the following: (1) commencement of employment; (2) appointment (job title and job scope); (3) hours of work; (4) probation period, if
any; (5) remuneration; (6) employee benefits (e.g. sick leave, annual leave, maternity leave); (7) termination of contract (notice period); and (8) code of conduct (e.g. punctuality, no fighting at work).

Workers may be contracted to work for a fixed period only or to perform a particular task with the contract terminating at the end of such period or on the completion of the task. There is no requirement for fixed term contracts to specify the reason why it is a fixed term.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**
The Act provides that minimum rates of salaries for children or young persons engaged in particular industries or work may be prescribed. However, to date no minimum rate is in force.

Part IV of the Act (which provides for rest days, hours of work and other conditions of service), applies only to the following workers (Part IV EA Employees):

- employees to whom the Act applies (except managers and executives) who are earning a basic monthly salary of SGD 2,500 or less (increased from SGD 2,000 on 1 April 2014), or
- workmen (i.e. manual labourers) earning a basic monthly salary of SGD 4,500 or less.

Part IV of the Act provides that no Part IV EA Employee is required to work for more than eight hours in a day or for more than 44 hours in one week. Further, Part IV EA Employees are allowed one rest day per week, although in the case of a shift worker a continuous period of 30 hours may be substituted for a rest day. For employees who are not Part IV EA Employees, matters such as rest days and hours of work will depend on contractual provisions found in their contracts of employment. Part IV of the Act provides that a Part IV EA Employee who has served his employer for not less than three months will be entitled to paid annual leave of seven days in respect of the first year of continuous service with the same employer, and one additional day for every subsequent year with the same employer subject to a maximum of 14 days. For other employees, matters such as rest days, hours of work and annual leave will depend on contractual provisions found in their contracts of employment.

**Family rights**
In Singapore, there is provision for maternity, paternity, childcare, infant-care, and adoption leave for qualifying employees. There are two relevant statutes: the Act itself and the Child Development Co-Savings Act (Cap. 38A 2002 Rev Ed) (CDCA).

There is no statutory entitlement for marriage, paternity and compassionate leave under the Act. The entitlement to such leave depends on what is in the employment contract or agreed mutually between employer and employee.

**Trade unions**
The Trade Unions Act (Cap. 333) defines a trade union as an association of workers or employers that aims to regulate relations between workers and employers. The objectives of a trade union are stated as being to promote good industrial relations; to improve workers’ working conditions; to enhance the economic and social status of workers; and to raise productivity for the benefit of workers, employers, and the economy. Any employee who is over the age of 16 may join a trade union, and nothing in any contract of service may restrict the right of any employee to join and/or participate in the activities of a registered trade union. While industrial action is permitted, the majority of members affected must have agreed to it by means of a secret ballot. Strike action is prohibited for the three essential services of water, gas and electricity. For other essential services, striking is prohibited unless 14 days prior notice is given of any strike. As the national confederation of trade unions in the industrial, service and public sectors in Singapore, the National Trades Union Congress has always enjoyed a close working
relationship with the Government and employers. Labour disputes between trade unions and employers are relatively rare.

Social insurance
The Central Provident Fund (CPF) is a compulsory comprehensive savings plan for working Singapore citizens and Singapore permanent residents to fund their retirement, healthcare and housing needs. All eligible employees and their employers must make monthly contributions to the CPF. Contribution rates change periodically but are currently pegged at 16% for the employer and 20% for the employee (of the employee’s monthly salary capped at SGD 5,000). Employees aged over 50 will have both their contribution rates revised downwards.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
Under the Act, where a business or part thereof is transferred from the transferor to the transferee, Section 18A automatically operates to novate the contracts of employment of all of the EA Employees to the transferee. Section 18A does not apply in a sale of assets. The Act specifically provides that there will be an automatic transfer with no break in the continuity of employment and the terms and conditions of service of the EA Employees transferred shall be the same as those enjoyed by them immediately prior to the transfer.

Terminating employment
EA Employees and employers may approach the Ministry of Manpower for mediation or conciliation services in respect of employment disputes or be referred to the Commissioner of Labor under the Labor Court. Non-EA Employees can still refer a matter to the Commissioner of Labor for disputes relating to matters such as salary payments. Employees who are union members may seek assistance from their unions in resolving disputes. Finally, disputes between unions and the employer may seek conciliation with the Ministry of Manpower or bring the matter to the Industrial Arbitration Court (very rare).

Under the Act, only Part IV EA Employees, who are employed in the continuous service of an employer for at least three years (to be reduced to two years with effect from 1 April 2015), will be entitled to retrenchment/redundancy benefits. In relation to Non-EA Employees, retrenchment/redundancy benefits will depend on contractual provisions found in their contracts of employment. The minimum age of retirement has been increased to 62 years, and employers are now required to offer re-employment to eligible employees who turn 62, up to the age of 65. Where a retirement age is not specified in an employment contract, the employer should give the employee advance notice of retirement as stipulated in the contract. The Act does not require an employer to pay retirement benefits to an employee, unless it is stated in the employment contract.

Discrimination
Under the Constitution of Singapore, discrimination against Singapore citizens on grounds of inter alia religion, race, or place of birth is prohibited. There is specific legislation prohibiting discrimination based on pregnancy and age. However, discrimination on the basis of sex, disability or sexual orientation is not statutorily provided for. There is a tripartite alliance for fair employment practices which promotes non-discrimination in the workplace but these are just guidelines and are not legally enforceable.

Whilst the rights of foreign citizens/expatriates are not protected by statute, discrimination against such individuals can be argued as contrary to public policy.

However, these types of cases are not commonly reported in Singapore.

Julia Yeo
E: julia.yeo@clydeco.com
As is the case in other European countries, Spanish labour law is very comprehensive and provides significant protection for employees. The labour law regulates individual and collective relationships between employees and employers, the scope of which extends to other related areas such as Social Security, health and safety at work, special employment relationships and procedural law.

**ISSUES ARISING ON HIRING INDIVIDUALS**

**Immigration**
Foreign employees from outside the European community, including self-employed individuals, must obtain an administrative authorisation, or work permit from the Immigration Bureau to work in Spain.

**Employment structuring and documentation**
Generally, Spanish labour law is not prescriptive about the form of the employment contract. Employment contracts may be verbal or in writing. However, during the term of a verbal contract, either of the parties may require that it is put in writing.

Notwithstanding the general “freedom of form” principle, where an employment contract is for a period of more than four weeks, the employer must provide the employee with the following information in writing within two months of the commencement of employment: (1) the names of the parties to the agreement; (2) the date of commencement and (for temporary contracts) the estimated term of employment; (3) the place of work;
(4) the professional group or category; (5) the remuneration; (6) hours of work; (7) annual leave; (8) notice period; and (9) any applicable collective agreement.

Certain employment contracts must, however, be in writing, including (but not limited to) temporary employment contracts, contracts involving special labour relations (such as lawyers, top managers or commercial representatives) and part-time contracts.

In principle, employment contracts are presumed to be for an indefinite term. There are, however, a limited number of fixed-term employment contracts. If the employee continues to work past the original term of the agreement, the relationship becomes indefinite in time and the employee will be entitled to the standard severance on termination.

If there is no special provision in an applicable collective bargaining agreement, probationary periods cannot exceed six months.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

Employers and employees are free to negotiate the terms and conditions of their employment relationship. However, employees have various minimum rights, regardless of what is stated in their employment agreement. These minimum working conditions are principally set out in the Workers Statute and applicable collective agreements. An employee’s remuneration can be monetary or in kind, but benefits cannot represent more than 30% of total remuneration.

The maximum working week is 40 hours, calculated as an average over a year. By agreement, flexible working schedules can be arranged, but with a limit of 9 ordinary hours of work per day, unless provided otherwise in the relevant collective bargaining agreement. Overtime cannot exceed 80 hours per year.

After one year’s continuous employment, employees are entitled to a minimum of 30 days’ paid annual leave. In addition, there are fourteen public holidays per year, which may differ slightly by region.

**Trade unions**

The Spanish Constitution grants unions the authority to promote and defend workers’ economic interests. It also empowers them to represent workers in collective bargaining. Unions are also part of the preliminary mandatory conciliation step before disputes can be presented to government conciliation agencies.

Freedom of association and representation are fundamental rights under the Spanish Constitution. All employees are represented by the elected representatives. There is no distinction between blue and white collar representatives. It is for employees to start the election process, and employers have no obligation to promote them.

**Social insurance**

In Spain, the Social Security’s national insurance contributions cover: (1) common contingencies, for situations included in the Social Security’s general regime; (2) professional contingencies, which covers expenses resulting from accidents at work and occupational diseases; (3) overtime; and (4) other concepts, such as unemployment, training or the Wage Guarantee Fund.

The Social Security offers public medical care to all affiliated workers.

**ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP**
Business transfers
The Workers Statute requires employees to be informed and consulted in the event of the transfer of an undertaking about matters including the date or proposed date of the transfer, the reasons for the transfer, the legal, economic and social implications for the employees and any “measures” envisaged in relation to the employees.

Employment contracts are automatically transferred with the business to the new employer. Employees’ rights and obligations are also transferred, including special benefits and retirement compensation.

Terminating employment
Termination can be based on objective grounds – such as the worker’s poor performance, absence, lay-offs based on economic reasons or lack of attendance at work, the employee’s conduct, such as (1) lack of discipline or insubordination; (2) verbal or physical offences against the employer or other workers; (3) breach of the contractual terms of good faith and trust; (4) a continuous and voluntary decline in the worker’s normal or agreed performance; (5) intoxication due to alcohol or drugs, causing a negative effect at work; (6) harassment based on: race, religion, birth, gender, age, disability, opinion, social condition or sexual orientation.

The labour law requires that a party seeking to terminate an employment agreement provides the other party with a minimum 15 days’ notice. This rule does not apply to interim contracts. The parties may agree to longer notice periods.

Dismissals will be deemed unfair if the grounds are not sufficiently serious, or there is not sufficient evidence from the employer.

If a dismissal is found to be unfair, the employer must reinstate the employee, or make a severance payment equivalent to 45 days’ salary per year of service up to 12 February 2012, or 33 days’ salary per year of service from 12 February 2012, to a maximum of 42 months’ pay.

Dismissals are void if the termination is discriminatory or involves protected employees (e.g. employees on maternity leave, employee representatives), in which case the employee is entitled to reinstatement. An infringement of the employee’s fundamental rights will also make the dismissal void.

Iván Suárez Telletxea
E: isuarez@bufetesuarez.com
The Swedish labour law model is based on civil rules that govern most aspects of the employer–employee relationship. Traditionally, the labour market is, to a great extent, self-regulated by the parties (employers’ organisations and trade unions).

Almost all disputes are settled in civil court proceedings. Where collective bargaining agreements apply, the one and only court with applicable jurisdiction is the nationwide Labour Court. For employers that are not bound by collective bargaining agreements, the dispute will be handled at a district court in the first instance, with a right of appeal to the Labour Court. It should be noted that the majority of disputes are settled between the parties before court proceedings are initiated.

**Immigration**

Citizens of a European Union (EU) or European Economic Area (EEA) country are entitled to work in Sweden without obtaining a work permit. If the work in Sweden continues for more than three months, the employee must register his/her right of residence in Sweden with the Swedish Migration Board. For Swiss citizens, a residence permit is required (no work permit required).

Non EU and EEA citizens must have a work permit, as well as a residence permit, before entering Sweden to work.

However, experts and some other employee categories may work in Sweden under certain circumstances without a work permit.
Depending on the length of the work conducted in Sweden, tax issues will arise. For example, the employer may have to pay social security contributions.

**Employment structuring and documentation**

The Employment Protection Act provides and governs, inter alia, the different types of employments that are permissible in Sweden. As a general rule, employment agreements are entered into for an indefinite term (open-ended contracts). However, in certain circumstances, fixed term employment is acceptable.

A fixed-term contract of employment generally terminates automatically when the agreed employment term lapses, unless otherwise agreed. If explicitly agreed, a fixed-term employment may be terminated in advance provided that there are objective grounds to justify termination.

According to the Employment Protection Act, the employer is obliged to provide the employee with certain information in writing within one month from their start date. The following information must be included:
(1) information about the employer and the employee; (2) the date of commencement of employment and place of work; (3) information about the position; (4) the duration of employment (if applicable); (5) the notice period; (6) salary and other benefits; (7) the number of vacation days; (8) working hours; (9) the collective bargaining agreement, if applicable.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

There are no provisions regarding minimum salary stipulated in law. Thus, the employer and the employee are free to agree on any salary level. However, collective bargaining agreements normally contain provisions regarding a minimum salary level as well as minimum annual salary increases. Working time is regulated in the Swedish Working Hours Act. The provisions in the Act may be deviated from by collective bargaining agreement. According to the Act, the statutory ordinary working time is a maximum of 40 hours per week. Under certain circumstances, ordinary working time may instead be an average of 40 hours per week over a reference period of a maximum of four weeks. The ordinary working hours together with the overtime hours (on which see below) may, during each seven day period, not exceed an average of 48 hours over a period of a maximum of four months. During each 24-hour period the employee is entitled to 11 hours rest. The period between midnight and 5am must be included in the rest period.

According to the Swedish Annual Leave Act employees are entitled to annual leave benefits such as vacation leave, vacation pay and compensation in lieu of annual leave.

Employees are entitled to a minimum of 25 vacation days per year.

The qualifying year runs from 1 April to 31 March. The following 12 months is the vacation year, when vacation may be taken. During the vacation, the employee has a right to vacation pay to the extent that the employee has qualified for such pay. Thus, the vacation may consist of both paid and unpaid vacation days. Employees may carry over days not taken in excess of 20. Generally, any saved paid vacation days must be used within five years.

Most of the collective bargaining agreements contain deviations from the Annual Leave Act, especially regarding calculation of vacation pay and vacation accrual.

**Trade unions**

The Swedish labour system is based on the principles that law and collective bargaining agreements together provide a comprehensive framework. There are approximately 110 parties on the Swedish labour market, of which 60 are trade unions, and 50 are employers’ organisations. The parties
have agreed on more than 650 collective bargaining agreements regarding salary and general employment terms and conditions.

Almost 90 percent of all employers in Sweden are members of an employers’ organisation. Approximately 70 percent of the employees working in Sweden are members of a trade union, which is a fairly high number.

Through membership in employers’ organisations, the employer is bound by the collective bargaining agreements applicable for that organisation. The employer is also obliged to apply the terms and conditions of the collective bargaining agreement to employees who are not members of a trade union.

Social insurance
There is no obligation under the law for the employer to provide the employees with different insurances (except for insurances included in the mandatory employer social security contributions), such as, group life insurance or work injury insurance. However, employers who are bound by collective bargaining agreements are obliged to take out certain insurances in addition to the insurances included in the employer social security contributions.

The employer’s social security contributions amount in 2014 to 31.42 percent of the employee’s gross salary (paid in addition to the salary). The employer’s social security contributions are mandatory and include specific charges, such as old-age pension, survivor’s pension, fees for health insurance and work injury.

**ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP**

Business transfers
In Sweden, the EU Acquired Rights Directive is implemented by the Employment Protection Act. The Act stipulates that in conjunction with a transfer of business, or part of a business, from one employer to another, the employees will automatically be transferred to the acquiring company on unaltered terms and conditions. The transferring company may not terminate employment agreements solely on account of a business transfer.

Thus, pre-transfer termination of employment may result in damages or even a ruling of invalidity. However, post-transfer, the acquiring company is free to initiate a redundancy programme in compliance with Swedish law.

The employees are entitled to refuse to transfer and will, in such a case, remain employed by the transferring company. If the transferring company has no business left, these employees will be made redundant.

**Terminating employment**
According to the Swedish Employment Protection Act, employment may only be terminated by the employer on objective grounds – either shortage of work (redundancies), or personal reasons (serious misconduct or disloyalty).

However, the employer and the employee are free to enter into a settlement under which the employee is financially compensated, and the employment may then be terminated disregarding the strict rules of the Act.

If the employee’s misconduct or disloyalty is extremely serious the employer may summarily dismiss the employee (i.e. the employment is terminated immediately without observing any notice period).

There are no mandatory payments to the employee, i.e. no severance payment is required under Swedish law, but one may be stipulated in the individual contract.

In case of wrongful termination of employment, the termination could be challenged by the employee and declared invalid by the court.
The employer may be obliged to pay salary and benefits during the court proceedings, punitive damages (normally not exceeding SEK 100,000), compensation for economic losses (which normally varies between 16 and 32 months’ salary) and its own and the employee’s litigation costs.

Fredrika Skoog
E: fredrika.skoog@hamilton.se
SWITZERLAND

Compared to other jurisdictions, the legal regime governing the employment relationship in Switzerland is generally more liberal and favourable towards the employer than in many other countries. This is partly because labour unions are somehow less influential in Switzerland compared to many EU countries, but also because the unemployment rate traditionally has been and still is relatively low in Switzerland.

The parties to an employment agreement have freedom of contract to agree on the content and terms of their agreement to an extent that is substantially larger than in most other European jurisdictions. Swiss employment law, however, contains some basic mandatory provisions and the provisions of collective agreements (if they are in place) will also be relevant. Most important are mandatory provisions aiming to protect the safety and the health of the employee. Public law labour protection regulations cover, among other things, working hours and breaks, special protection for young employees, pregnant women and breastfeeding mothers, work-related injury insurance and industrial accident prevention. Some of these provisions may only be modified in favour of the employee and others may not be modified at all.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration
So far, Switzerland has a dual system for the admission of foreign workers. Nationals from EU or EFTA countries benefit from the Agreement on
Free Movement of Persons and, in general, do not need a work permit if residence is taken in Switzerland, subject to certain restrictions and exceptions for nationals from the new EU countries.

This situation may change since the Swiss voters recently backed proposals to reintroduce immigration quotas with the European Union.

In regard to non-EU and non-EFTA nationals, only a limited number of management-level employees, specialists and other qualified employees are admitted from all other countries (subject to a quota as determined by the Federal Council). If non-EU or non-EFTA nationals (without residence in Switzerland) work in Switzerland temporarily for more than eight days for a non-Swiss company, such employees must be reported to the authorities in advance even if no work or residence permit is required.

**Employment structuring and documentation**

Under Swiss law, an employment contract is a contract whereby the employee is obliged to perform work in the employer’s service for either a fixed or an indefinite period of time, and the employer is obliged to pay salary either based on time periods or based on the work performed.

Although generally speaking an employment contract is not required to be in any specific form and may also be agreed verbally or by implication, certain contractual provisions are, however, only valid if agreed in writing (e.g. restrictive covenants, exclusion of compensation for overtime, notice periods differing from statutory law etc.). Moreover, Switzerland has implemented the European Union Directive No. 533/91. Consequently, where the employment contract has been concluded for an indefinite duration or for longer than one month, within one month of the beginning of the employment relationship, the employer must inform the employee in writing of the names of the contracting parties; the commencement date; the employee’s function; the salary and any additional benefits; and the length of the working week.

**ISSUES ARISING DURING EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

Salary is usually paid at the end of the calendar month, as established in the company’s policies or by collective agreement, with the employer deducting all applicable social security contributions and withholding taxes.

The Swiss Labour Act determines the maximum weekly hours of work, distinguishing between two categories of employees: (1) workers employed in industrial enterprises and white-collar workers (office workers, technical staff and other salaried employees) as well as sales staff in large retail undertakings; and (2) other workers, mainly workers in the construction sector and craftsman, in commerce as well as sales staff in small retail undertakings.

The maximum hours of work are fixed at 45 hours a week for the first category and 50 hours a week for the second. If both categories of employees are employed in the same enterprise the maximum of 50 hours applies to both categories. Within these limits the actual hours of work are fixed by collective agreements and individual contracts. The Labour Act does not apply to senior management personnel with regard to working hours and overtime.

Under Swiss law there are two categories of overtime work. The first category is addressed in Article 321c of the Code of Obligations and concerns cases in which the employee works more than the working hours stipulated in the contract up to the maximum working time allowed under the Labour Act. Pursuant to the Code of Obligations, any overtime not compensated for by time off must be paid by the employer with a supplement of at least 25 per cent of the applicable wage, unless there is an agreement to the contrary in writing (i.e., collective agreement or individual employment contract). Thus, an agreement may provide that no supplement applies or that any overtime
is included in the standard wage. Generally, the second option is often used in management contracts.

The second form of overtime work relates to the hours worked in excess of the Labour Act limits of 45 or 50 hours. The payment of a wage supplement of 25 per cent of the hourly wage is a mandatory provision from which the parties may not depart by agreement (in contrast to the first category of overtime.). The Labour Act specifies that for white-collar workers and sales staff in large retail undertakings, the supplement is due only if the overtime work exceeds 60 hours per calendar year.

Trade unions
Switzerland has for many decades enjoyed relative stability in labour relations, with most conflicts being resolved amicably. The basis of the “labour accord” goes back to 1937, when the trade unions and employers in the metalworking industry signed an agreement to regulate the conduct of disputes. On the one hand, the unions undertook not to use strikes as a weapon to settle grievances, while on the other, the employers agreed to accept arbitration to resolve wage claims. As a result, strikes are rare, although occasionally workers may stop work for a few hours as part of a campaign. Lengthy strikes are even more unusual, although not entirely unknown.

Every employee has the right to decide whether to join a trade union or not. The unions are financed through the contributions of their members. The Swiss Federation of Trade Unions (Gewerkschaftsbund/Union syndicale suisse) is the umbrella body for 16 trade unions in the areas of industry and construction, and is Switzerland’s largest employees’ organisation. A second umbrella grouping is Travail Suisse, with 13 member organisations.

Social insurance
The Swiss social security system includes the following schemes:

- Old-age and survivors’ insurance (Alters- und Hinterbliebenenversicherung, AHV)
- Disability insurance (Invalidenversicherung, IVG)
- Military income loss insurance (Erwerbsersatzordnung)
- Unemployment insurance (Arbeitslosenversicherung, ALV)
- Occupational benefit plan (Berufliche Vorsorge, BVG)
- Accident insurance (Unfallversicherung, UVG)
- Sickness insurance (Krankenversicherung, KVG)
- Family allowances (Familienzulagen)

Basically, the Swiss employer is fully liable for social security contributions in respect of his employees. This system, however, only applies to resident employers and non-resident enterprises having a permanent establishment in Switzerland.

The contributions are borne fifty-fifty by both employer and employees. The employer withholds the share of the employee, deducting it from salary at source. The rates are, in general, based on the gross salary.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
Where the employer transfers a business or a part of a business to a third party, the employment relationship and all attendant rights and obligations pass to the acquirer as of the day of the transfer, unless the employee refuses to transfer.

In the event that the employee refuses to transfer, the employment relationship ends on expiry of the statutory notice period; until then, the acquirer and the employee are obliged to perform the contract. The former employer and the acquirer are jointly and severally liable for any claims of an employee which fell due prior to the transfer or which fall due between that juncture and the date on which the employment relationship could
normally be terminated or is terminated following refusal of the transfer.

Where the employer transfers a business to a third party, he must inform the organisation that represents the employees or, where there is none, the employees themselves in good time before the transfer takes place of (1) the reason for the transfer; and (2) its legal, economic and social consequences for the employees and, where measures affecting the employees are envisaged as a result of the transfer, consult them in good time before the relevant decisions are taken.

Discrimination claims
The Federal Act on Gender Equality provides that employees must not be discriminated against on the basis of their sex, whether directly or indirectly, including on the basis of their marital status, their family situation or, in the case of female employees, of pregnancy. This prohibition applies in particular to hiring, allocation of duties, setting of working conditions, pay, basic and advanced training, promotion and dismissal.

Recent court decisions apply these principles in an analogous way to other forms of discrimination (nationality, skin colour etc.).

Terminating employment
A contract concluded for an indefinite period terminates on the expiry of notice given by either of the parties (ordinary termination). The minimum notice period is set forth in the Code of Obligations. The parties may not, however, reduce the notice period to less than one month, subject to any longer periods set forth in collective bargaining agreements. There are certain periods during which a notice of termination is invalid (e.g. during pregnancy).

In principle, no cause to terminate an employment relationship is required. Nevertheless, under the laws against abusive termination, employees have a statutory right to request written reasons for the termination of employment.

Termination of employment must not be “abusive”. An employer who terminates employment abusively must pay compensation to the employee, up to a cap of six months’ remuneration. If any of the parties has a ‘significant cause’ it may terminate the contract at any time without prior notice, and may claim compensation from the other party for the damage caused. But, if the employer terminates the contract with immediate effect without a significant cause, it must compensate the employee for the damage that has been caused to him as a result plus the compensation for abusive termination of up to six months’ remuneration.

The parties may agree upon immediate termination of the employment contract at any time. The Code of Obligations sets out no explicit provisions with regard to termination agreements. However, according to the case law, the mandatory provisions of the Code shall be taken into account and the agreement must include benefits for both employer and the employee. Otherwise, the judge may declare the termination agreement null and void.

André Lerch
E: lerch@shh.ch
Employment relationships in the private sector in the UAE are subject to UAE Federal Law No 8 of 1980 on the Regulation of Labour Relations in the Private Sector (as amended) (UAE Labour Law), save that employees working in the Dubai International Financial Centre (DIFC) are subject to the DIFC Law No 4 of 2005 (DIFC Employment Law).

In addition to the DIFC, other free trade zones have been established in the UAE in order to encourage direct foreign investment. These other free zones have issued their own employment regulations in some cases, although (unlike the position in the DIFC) these must be read in conjunction with the UAE Labour Law.

The UAE Labour Law has been supplemented over the years by Cabinet Resolutions and Ministerial Resolutions issued by the Ministry of Labour. In addition, individual emirates have also issued emirate-wide regulations on a limited basis (for example, there is a pension law for UAE nationals which is unique to the Emirate of Abu Dhabi).

To date, the legislation has provided a broad brush nominal framework for the employment relationship with labour courts adopting an employee friendly approach to enforcement. However, with the establishment of free trade zones and the government drive to diversify the economy through its establishment of government owned entities, the regulatory regime in terms of enforcement and applicable legislation has become increasingly complex. This, coupled with a drive to promote the employment of nationals in the private sector, means that employment is set to be increasingly regulated.

As noted above, employees working in the DIFC are subject to a separate employment law. The DIFC was established through a constitutional amendment to create a free zone in which no UAE federal commercial laws apply. The DIFC is a
common law jurisdiction with its own set of commercial laws and court system.

**ISSUES ARISING ON HIRING INDIVIDUALS**

**Immigration**
All expatriate employees working in the private sector must be sponsored by their employer (or free zone authority on behalf of the employer) and registered with the Ministry of Labour or applicable free zone authority (for work permit purposes) and Department of Immigration within the Ministry of Interior (for residence visa purposes). In order to obtain sponsorship, employees must submit attested educational and professional qualifications, as well as undergo medical examinations for communicable diseases. There are restrictions on an employee’s ability to move from one sponsor to another (i.e. to effectively move jobs) and various factors come into play including length of service, earning levels and educational qualifications.

UAE nationals working in the private sector must also be registered with the Ministry of Labour, although they will not require registration with the Department of Immigration.

**Employment of UAE nationals**
An employer is under a duty to consider UAE nationals for all vacancies prior to engaging a foreign national. Certain roles, including HR managers, secretaries and Government Liaison Officers are reserved for UAE nationals through Ministerial regulations, although these are not always enforced in practice. Specific sectors including retail, insurance and banking are subject to quota requirements to employ UAE nationals of 2%, 5% and 4% of their workforces year on year, respectively. The UAE government is increasingly offering subsidies and funds to private sector employees to employ UAE nationals and government authorities are taking into account a company’s achievement of Emiratisation targets as part of any public tendering process.

UAE nationals are protected from termination of employment in the private sector and employers who fall under the Ministry of Labour jurisdiction must obtain the Ministry’s consent before dismissing a UAE national employee.

**Recruitment agencies and employment businesses**
The sourcing and supply of labour is extremely regulated, with the trade licence for such commercial activities being restricted to UAE nationals, with an additional requirement for the General Manager of the business to be a UAE national with a university degree. The engagement of individuals from a manpower supplier without the appropriate trade licence can render an employer liable to penalties for engaging individuals without proper sponsorship and can also have personal repercussions for the individual.

**Employment structuring and documentation**
Employees based ‘onshore’ in the UAE (i.e. not in a free zone) are required to enter into a prescribed form, dual-language employment contract that is registered with the Ministry of Labour. This forms the operative employment contract for UAE law purposes, although most employers require employees to enter into an additional, company-form employment contract.

Other free zones (such as the Jebel Ali and Dubai Airport free zones) have specific dual-language employment contracts similar to the Ministry of Labour Contract.

Employers in the DIFC need not enter into a prescribed form employment contract, but must submit a written employment contract to the DIFC Authority for every employee.

As a general rule, both the UAE Labour Law and the DIFC Employment Law set out a set of minimum employment entitlements and standards
which can be exceeded to the employee’s benefit by agreement between the parties, but cannot be reduced or excluded to the employee’s disadvantage.

Contracts may be for either fixed or unlimited terms in accordance with the UAE Labour Law. The maximum duration for an unlimited term contract is four years, after which the employment is automatically converted into an unlimited term contract with minimum notice provisions. Generally speaking, it is not possible to have hybrid contracts, featuring a fixed term but with notice of termination provisions. Such contracts will generally be deemed to be for a fixed-term.

Contracts in the DIFC may be for fixed or unlimited terms.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**
There is no minimum wage in the UAE. However, there are minimum earnings requirements for a foreign employee who wishes to sponsor his family to reside with him in the UAE. In 2009, the Ministry of Labour introduced the Wages Protection System pursuant to which all employees registered by the Ministry of Labour must be paid by direct electronic transfer through an institution regulated by the UAE Central Bank. The Wage Protection System initially only applied to employees working outside of a free zone, although most recently, the Jebel Ali Free Zone has adopted the system, and others may follow suit.

The minimum entitlement to paid annual leave under the UAE Labour Law is 30 calendar days a year, after the first year of employment. During the first year of employment, an employee is only entitled to two calendar days per month, after completion of the probation period. Under the DIFC Employment Law, minimum holiday entitlement is 20 working days for an employee employed for at least 90 calendar days. An employee can take 30 days’ unpaid leave to perform Haj, once in their employment.

The UAE Labour Law provides for maximum normal working hours of eight hours per day, or 48 hours per week, assuming a six-day week. Friday is the statutory day of rest each week. Employees who are not in managerial positions (which is limited to certain specified senior individuals who have the delegated authority to act on behalf of the company) are also entitled to overtime pay, calculated with reference to rates set according to whether overtime is completed on a normal working day, during night time, a Friday or other normal rest day, or on a public holiday. Overtime is normally restricted to two hours a day, meaning an employee should not be asked to work for more than ten hours a day. During Ramadan, working hours are reduced to six hours a day for all employees.

The DIFC Employment Law does not provide for statutory overtime. It does provide for a maximum working week of 48 hours and various rest periods. However, an employee is able to agree to contract out of these working time limits.

**Family rights**
The UAE Labour Law entitles a female employee to 45 days’ paid maternity leave if she has accrued 12 months’ continuous service. Such leave is paid at 50% of remuneration if the employee does not have the required service.

The DIFC Employment Law provides for 65 working days’ maternity leave. Provided that the employee has achieved 12 months’ service prior to the expected week of childbirth, the maternity leave is paid at full pay for the first 33 working days, and at half pay for the remaining 32 working days. A female employee may take time off for ante natal classes and has the right to return to work following maternity leave. A female employee adopting a baby under three months has the right to claim leave according to the same provisions as those for maternity leave.
Trade unions
Trade unions and labour associations are unlawful in the UAE with the UAE Penal Code outlawing labour strikes. However, the UAE Labour Law contains a workforce disputes procedure under which employees may collectively submit a written complaint to the Ministry of Labour, who will appoint a labour committee to investigate the complaint and conciliate between the employees and the employer.

Social insurance
There is no applicable social security legislation for expatriate employees. However, UAE and other GCC nationals are entitled to participate in state pension and social security schemes.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
There is no provision providing for the automatic transfer of employees from one employer to another, pursuant to the sale of a business or part of a business as a going concern, or the movement of a service contract pursuant to a retendering or a service provision change. Movement of employees can only occur pursuant to a process of termination and rehire.

Terminating employment
An individual employed under an unlimited term contract (subject to the UAE Labour Law) may be given notice to terminate the contract of at least 30 calendar days, or such longer period as may be stated in the contract. The employee will also be entitled to accrued but untaken annual leave calculated to the termination date. In addition, an employee who has achieved at least one year’s service prior to termination and is not being dismissed for gross misconduct, will be entitled to receive an end of service gratuity payment, calculated with reference to the employee’s length of service and the last basic pay received prior to termination. An employee who is in receipt of a pension in lieu of gratuity may not accept both benefits, however the employee can choose on termination of employment to accept whichever of gratuity or pension is more favourable.

The DIFC Employment Law contains minimum notice provisions where the parties have failed to agree to any contractual notice, although the parties are free to contractually agree to any length of notice (or waive notice altogether). The DIFC Employment Law contains similar provisions regarding end of service gratuity, save that an employee may elect to receive pension in lieu of gratuity during the course of employment.

Under the UAE Labour Law, where the reason for termination of an unlimited term contract is not considered to be valid, as determined by the courts, may claim arbitrary dismissal compensation, of up to three months’ remuneration. This is in addition to any notice or gratuity payment. The DIFC Employment Law does not provide for an entitlement to claim unfair dismissal.

Article 120 of the UAE Labour Law sets out an exhaustive list of gross misconduct reasons for which an employer may terminate employment without notice or the payment of end of service gratuity. The DIFC Employment Law provides that an employer may terminate without notice or the payment of end of service gratuity if it would be reasonable for an employer in those particular circumstances to do so.

Finally, neither the UAE Labour Law nor the DIFC Employment Law provide for a concept of redundancy. The UAE courts have recognized an employer’s right to reorganize its business and restructure resulting in elimination of roles. However, a high burden of proof is applied and the employer’s business decision scrutinized closely.

Rebecca Ford
E: rebecca.ford@clydeco.com, or
Sara Khoja
E: sara.khoja@clydeco.com
For some time, the balance of employment rights in England & Wales has fallen squarely in favour of employees, although most recently the coalition government’s “Red Tape Challenge” initiative has redressed that balance somewhat by cutting out rules and regulations which they perceive as unnecessarily hindering business.

Ultimately, however, regardless of this pro-employee balance, the bottom line remains that, provided they are prepared to pay for the privilege, employers in England & Wales can usually achieve what they wish.

**Immigration**

Any non-EEA national seeking entry or permission to remain in the UK for the purpose of employment may need to apply under Tier 2 of the Points Based System via an approved UK Border Agency Sponsor. EEA nationals have the right to enter, remain in and work in the UK without a work permit.

**Employment structuring and documentation**

The standard type of employment contract in the UK is an “open-ended” contract terminable on notice (subject to the protection which the law provides on unfair dismissal).

A contract of employment need not be in writing and may be partly written and partly oral. Although the contract itself need not be in writing, employees who have been employed for one
month or more must be given a statement containing certain terms and conditions of employment within two months of commencing work with an employer.

The most common employment relationship is that of full time permanent employment but an increasing number of staff have flexible working arrangements. This may include working part time, through fixed term contracts or through an agency. UK law gives special protection for these types of workers. Zero hours contracts are becoming more common in the UK although they have been criticised recently by various political figures. There are also special rules relating to apprentices, trainees and young persons.

ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP

Wages, annual leave and working time
Employers must pay employees and workers at least the national minimum wage. There are four hourly rates for the national minimum wage, the top rate currently being GBP 6.31 (for workers aged 21+). Employees and workers are entitled to 5.6 weeks’ paid annual leave (pro-rated for part-timers). Workers may not work, on average, for more than 48 hours per week, but can agree to contract out of this working time limit.

Agency workers are entitled: (1) from day one of an assignment to the same rights as comparable permanent employees in relation to access to shared facilities and job vacancies; and (2) after 12 weeks of an assignment to additional rights – in particular the same basic working and employment conditions as comparable permanent employees, including those relating to pay, annual leave and working time and rest periods.

Family rights
Pregnancy rights include health and safety protection and the right to reasonable paid time off for ante-natal care.

Employed mothers/adopters are entitled to a total of 52 weeks’ maternity leave. Employees with 26 weeks’ service also qualify for Statutory Maternity/Adoption Pay which is calculated as follows: (1) six weeks at 90% of salary; and (2) 33 weeks currently at GBP 138.18, or 90% of salary if that is lower.

Fathers/co-adopters continuously employed for 26 weeks are entitled to: (1) 2 weeks’ ordinary paternity leave; (2) two weeks’ Statutory Paternity Pay: currently at GBP 138.18, or 90% of salary if that is lower; and (3) 2-26 weeks’ additional paternity leave if their spouse has not exhausted her maternity leave.

Parents/carers continuously employed for 26 weeks have the right to request flexible working, i.e. to change the hours/times they work or their work location, to care for a child or dependant. From 30 June 2014, the law will be changed so that the right to request flexible working will be extended to all employees with 26 weeks’ continuous service, irrespective of their caring responsibilities.

Although compensation for non-compliance, or for a decision based on incorrect facts, is capped at eight weeks’ pay, victimisation, sex discrimination and unfair dismissal claims may also be brought following an employer’s refusal to grant the employee’s request.

Trade unions
It is unlawful to refuse to employ a person because they are a member or a trade union. In addition, the dismissal of an employee on union grounds will be an automatically unfair dismissal (see terminating employment below). A strike, work to rule or other industrial action need not be called
by a union and non-union members can participate. The action that employers can take against employees as a result of industrial action is limited. If employees are on strike, the employer does not need to pay them for the times they are not working. However, they will usually be entitled to full pay when they take industrial action short of a strike.

Tax and social insurance
The UK has a comprehensive social security system, funded from general taxation and from National Insurance Payments. The social security system provides state benefits to cover maternity/paternity, childcare, disability and carer matters. It also administers retirement pensions. State benefits can be contractually supplemented by employers. The national insurance fund aims to provide subsistence level benefits to all those in need. From 1 October 2012, employers will have to ensure that workers in the UK, between the ages of 22 and state pension age, and earning over the income tax threshold (currently GBP 9,440 pa) are automatically enrolled into a qualifying pension scheme to which the employer must contribute. The duty is being phased in according to the size of the employer and will not be fully in force until 2018.

Employers are under an obligation to collect income tax at source from employment income, pensions and taxable state benefits under the Pay As You Earn (PAYE) system. Employed earners and their employers must also pay National Insurance Contributions. Various contributions are required to be made in respect of all UK employees.

Class 1 contributions are payable in respect of earnings by both employer and employee.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies to employees when either:
(1) a business or asset is transferred from one entity to another; or (2) there is a change of identity in an entity providing a service (e.g. outsourcing).

The effect of TUPE is that all employees “assigned” to the economic entity or activity will transfer. In addition, the transferor’s rights, powers, duties and liabilities under the employment contracts of those employees that are transferring, transfer to the transferee. The transferor and transferee have a duty to inform and consult with employee representatives of “affected employees” about the facts, implications, etc of the transfer. Employers that breach this duty may be liable for up to 90 days’ pay for each “affected employee”. Finally, subject to certain exceptions, dismissals are automatically unfair if the reason for dismissal is the TUPE transfer itself, or a reason connected with the transfer.

Terminating employment
Subject to certain exceptions, unfair dismissal claims can be brought by employees continuously employed for one+ years or, where their employment began on/after 6 April 2012, continuously employed for two+ years. Provided there is no discrimination, employers will not be liable for dismissals where: (1) they follow a fair procedure; and (2) the reason for dismissal is fair, e.g. redundancy, capability, misconduct.

An unfair dismissal award, which is currently capped at GBP 90,494, is made up of: (1) a basic award (calculated according to the employee’s age, length of service and pay)

– currently capped at GBP 13,920; and (2) a compensatory award (a “just and equitable” amount)
– currently capped at the lower of one year’s gross pay (excluding pension contributions, benefits in kind and discretionary bonuses) and the overall cap of GBP 76,574.

A redundancy situation arises where the business, workplace or job disappears, or fewer employees are needed. For a fair redundancy, the employer must show:

(1) the reason for dismissal is redundancy; (2) it is reasonable to dismiss the employee for redundancy; and (3) a fair procedure was followed.

There must be fair selection of employees for redundancy and genuine consultation. If an employer proposes to dismiss as redundant a total of 20+ employees across any sites in the UK within a 90 day period, it must also follow a collective consultation procedure involving a minimum consultation period of 30/45 days, depending on the number of redundant employees, in addition to any individual redundancy procedure. Employers that breach these collective obligations may be liable for protective awards of up to 90 days’ pay for each affected employee. Employees with two+ years’ service have the right to a statutory redundancy payment currently capped at GBP 13,920. Lastly, it is unlawful to dismiss employees, or to subject employees or workers to a detriment, if they disclose information with a reasonable belief in its truth, about certain types of wrongdoing by the employer. The awards in whistleblowing claims are uncapped and are assessed on a similar basis to discrimination claims.

Discrimination

Employees and others have the right not to be discriminated against because of age, disability, gender-reassignment, marriage or civil partner status, pregnancy/maternity, race, religion/belief, sex and sexual orientation (Protected Characteristics) from the job application stage onwards.

Discrimination/victimisation/harassment relating to any of the Protected Characteristics is prohibited at any time during the employment relationship. Claims can be brought by all employees, ex-employees, job applicants, contract workers and agency workers – there is no requirement for a period of continuous service. The award is made up of: (1) a compensatory award – uncapped for past and future financial losses and career loss; and (2) an injury to feelings award – there are three guideline bands, with the lower and upper bands ranging from GBP 600-GBP 6,000 and GBP 18,000-GBP 30,000 respectively, depending on the seriousness of the case.

Men and women have the right to be paid the same for the same, or equivalent, work. Where they are paid at different rates, an employee can bring an equal pay claim and the employer must prove that the reason for this is not gender-related, or be able to objectively justify this. Any equal pay award will be made up of: (1) compensation of arrears of pay plus interest, limited to six years; and (2) revised contractual terms, including remuneration terms, so that they are the same as that of the person of the opposite sex doing the same work.

Robert Hill  
E: robert.hill@clydeco.com
USA

The employment relationship in the United States is subject to markedly less regulation than in other countries. With the exception of some minimum protections for wages, working hours, and the prohibition of discrimination, the parties to an employment relationship in the United States are generally free to negotiate and set the terms and conditions of their relationship. Moreover, the default position is that private-sector employment relationships are “at will”: either the employer or the employee may terminate the employment relationship at any time, for any (non-discriminatory or non-retaliatory) reason, with or without notice.

ISSUES ARISING ON HIRING INDIVIDUALS

Immigration

Foreign nationals without permanent resident status or a work visa are not permitted to work in the United States. An employer seeking to hire a foreign national may, on behalf of the prospective employee, file a petition with the United States Department of Homeland Security/United States Citizenship and Immigration Services (USCIS) for an employment visa. If the petition is approved, the prospective employee must obtain a “visa stamp” from a United States embassy or consulate. Canadian citizens are exempt from this requirement.

All employers are obliged to verify that all the individuals they employ are authorised to work in the United States. To do so, employers are required to complete a USCIS Form I-9 for each newly hired employee. Employers have the option of participating in the on-line E-Verify programme, under which USCIS confirms whether or not an employee is in fact authorised to work in the United States.

Employment structuring and documentation

Under United States law, there are no minimum requirements for an employment contract, and in
most states, no written contract is required. An employment relationship in the United States is presumed to be “at will”, i.e. terminable by either party, with or without good reason or notice. Indeed, a majority of employees in the United States are employed without a written contract, and just with a written offer of employment that outlines their basic terms and conditions of employment. There are no requirements as to the minimum contents of an offer letter. In some states, such as New York, employers must by law notify employees in writing of some of their terms of employment (but not as extensive as is required under the law of EU Member countries).

Whether the employment relationship is “at will” or pursuant to a written employment contract, parties are free to negotiate and set the terms and conditions of their relationship, provided none of the provisions violate any federal, state, or local law, rules or regulations governing the employment relationship.

There are no legal provisions governing fixed-term contracts. Unlike many other countries, American law does not limit the duration of a fixed-term contract or the circumstances under which the parties may enter into a fixed-term contract. Many employers have an internal policy on trial periods, often referred to as “introductory periods” or “probationary periods”, but there are no legal provisions governing these.

**ISSUES ARISING DURING THE EMPLOYMENT RELATIONSHIP**

**Wages, annual leave and working time**

The Fair Labour Standards Act prescribes a (national) minimum wage for all non-exempt employees, of USD 7.25 per hour. States are free to legislate a higher minimum wage. In 15 states, the minimum wage is higher than the federal minimum wage. American workplace law does not impose maximum working hours. However, many state statutes provide for daily rest periods as well as a one day rest period each week. For example, a number of states (including California, Colorado, Nevada and Washington) require that employees who work more than four hours per day receive a break of at least ten minutes for every hour worked.

Under Federal law, non-exempt employees must receive overtime pay of $1.5 their regular pay for all hours worked in excess of 40 hours per week. Generally, non-working time, including absence, rest periods, leave, etc is not counted towards the 40 hours per week overtime threshold.

Although the United States government recognises several “national holidays”, no federal law requires employers to provide employees with time off for these holidays. However, it is customary for employers to provide employees with paid time off to observe nationally- and locally-recognised holidays.

Similarly, no federal law requires employers to provide employees with paid annual leave, although in practice, all employers do provide this. It may range from one week per year during the employee’s first few years of employment to three weeks for long-serving employees. Employees who are represented by a trade union may receive more generous annual leave.

**Trade unions**

Trade unions constitute the largest and most influential employee organisations in the United States. Most trade unions are organised under two umbrella organisations: the American Federation of Labour and Congress of Industrial Organisations (AFL-CIO) and the Change-to-Win Federation.

Due to the United States Constitution’s guarantee of freedom of association, employees are free to form and join trade unions. Approximately 15 million workers, or 12% of the workforce, are members of a trade union. More public sector employees than private sector employees are unionised. While only a small portion of the workforce is unionised, trade unions wield enormous lobbying power in the United States, especially within the Democratic political party.
Social insurance
United States law provides for retirement benefits and subsidised health insurance under federal Social Security and Medicare programmes. Employers are required to contribute 6.5% of every employee’s salary to Social Security, and 1.45% of every employee’s salary (without any limit on the wage base) to Medicare. Equal contributions are deducted from all employees’ wages and act as an “employee contribution”. These federal programmes provide benefits for retirees, the disabled and children of deceased workers. Employers are not required to provide employees with health insurance benefits, except where this is required under a negotiated collective bargaining agreement or is provided for in the employment contract.

ISSUES ARISING ON TERMINATION OF THE EMPLOYMENT RELATIONSHIP

Business transfers
There is no legislation which seeks to protect affected employees when a business transfers to new ownership. As most employees are employed “at will,” a transferee is free to offer employment to the employees of the transferor or to change the terms and conditions of employment. If the transfer of an undertaking will result in a plant closure or mass layoff, as defined under the WARN Act, employees are entitled to 60 days’ notice by the transferor. If the affected employees are represented by a union, the transferee may be under a duty to bargain with that union and cannot change any terms and conditions of employment without first bargaining with the trade union.

Terminating employment
Generally, employees employed on an “at will” basis may be dismissed, with or without good reason, whether or not the employee was at fault, provided it is not for an illegal reason, notably unlawful discrimination.

Unless the employment contract or collective bargaining agreement provides otherwise, there is no legal requirement for employers to follow a formal procedure when dismissing individual employees. However, employees are protected from unfair dismissal in violation of federal, state and local discrimination or anti-retaliation laws. Employers are prohibited from discriminating against or dismissing employees on the basis of their race, colour, racial origin, religion, pregnancy, or sex, or in retaliation for making complaints of unlawful discrimination.

The concept of a void dismissal does not exist outside the scope of unlawful terminations in violation of federal, state or local or civil rights laws and/or anti-retaliation provisions. However, to the extent that an employee’s dismissal violates any federal, state or local laws, the employee may be entitled to reinstatement to their former position, effectively rendering their termination void.

Unless it is provided for in an employment contract or collective bargaining agreement, employers are not required to make severance payments on termination.

John L. Sander
E: john.sander@jacksonlewis.com
CONTACT US

Australia
Michael Harmer
Chairman and Senior Team Leader
T: +612 9267 4322
E: michael.harmer@harmers.com.au

Jenni Priestley
Partner
T: +612 9210 4405
E: jenni.priestley@clydeco.com

Austria
Roland Gerlach
Partner
T: +43 1 919 5656
E: roland.gerlach@arbeitsrecht.at

Belgium
Chris Van Olmen
Partner
T: +32 2 644 05 11
E: chris.van.olmen@vow.be

Canada
Jamie Knight
Partner
T: +1 416 408 5509
E: jknight@filion.on.ca

China
Iris Duchetsmann
Partner
T: +86 21 6035 6103
E: iris.duchetsmann@clydeco.com

France
Joël Grangé
Partner
T: +33 0 1 56 62 30 27
E: grange@flichy.com
France (continued)
Olivier Kress
Partner
T: +33 0 1 56 62 30 24
E: kress@flichy.com

Germany
Kara Preedy
Partner
T: +49 0 30 20 62 9530
E: preedy@pwlegal.net

Hong Kong
Simon McConnell
Partner
T: +852 2287 2723
E: simon.mcconnell@clydeco.com

India
Sakate Khaitan
Partner
T: +44 (0)20 7876 4841
E: sakate.khaitan@clasislaw.com

Italy
Luca Failla
Partner
T: +39 2 30 303 111
E: l.failla@lablaw.com
Sharon Reilly
Partner
T: +39 02 30 311 318
E: s.reilly@lablaw.com

Libya
Rebecca Ford
Partner
T: +971 4 384 4653
E: rebecca.ford@clydeco.ae
Sara Khoja
Partner
T: +971 4 384 4689
E: sara.khoja@clydeco.ae

Mexico
Tomas Natividad
Partner
T: +52 55 5089 7200
E: tommnat@natividad-abogados.com.mx

The Netherlands
Christiaan Oberman
Partner
T: +31 0 20 34 46 100
E: Oberman@paltheoberman.nl

New Zealand
Bridget Smith
Partner
T: +09 520 8708
E: bridget@sbmlegal.co.nz

Norway
Terje Andersen
Partner
T: +47 22 01 70 50
E: terje.andersen@sbdl.no

Poland
Arkadiusz Sobczyk
Partner
T: +48 0 12 410 54 10
E: arkadiusz.sobczyk@sobczyk.com.pl

Qatar
Emma Higham
Senior Associate
T: +974 4496 7434
E: emma.higham@clydeco.com

Romania
Magda Volonciu Managing
Partner T: +4 0722 244 798
E: magdavolonciu@volonciu.ro
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