
THE EMPLOYMENT LAW REVIEW

EIGHTH EDITION

EDITOR
ERIKA C COLLINS

LAW BUSINESS RESEARCH

THE EMPLOYMENT LAW REVIEW

The Employment Law Review
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Eighth Edition

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ERIKA C COLLINS

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EDITOR'S PREFACE

Every winter we survey milestones and significant events in the international employment law space to update and publish *The Employment Law Review*. At that time, I read the Preface that I wrote for the first edition back in 2009. In that first edition, I noted that I believed that this type of book was long overdue because multinational corporations must understand and comply with the laws of the various jurisdictions in which they operate. This continues to hold true today, and this eighth edition of *The Employment Law Review* is proof of the continuously growing importance of international employment law. It has given me great pride and pleasure to see *The Employment Law Review* grow and develop over the past seven years to satisfy the initial purpose of this text: to serve as a tool to help legal practitioners and human resources professionals identify issues that present challenges to their clients and companies. As the various editions of this book have highlighted, changes to the laws of many jurisdictions over the past several years emphasise why we continue to consolidate and review this text to provide readers with an up-to-date reference guide.

Our first general interest chapter continues to track the variety of employment-related issues that arise during cross-border merger and acquisition transactions. After a brief decline following the global financial crisis, mergers and acquisitions remain active. This chapter, along with the relevant country-specific chapters, will aid practitioners and human resources professionals who conduct due diligence and provide other employment-related support in connection with cross-border corporate M&A deals.

Global diversity and inclusion initiatives remained a significant issue in 2016 in nations across the globe, and this is the topic of the second general interest chapter. In 2016, many countries in Asia and Europe, as well as North and South America, enhanced their employment laws to embrace a more inclusive vision of equality. These countries enacted anti-discrimination and anti-harassment legislation as well as gender quotas and pay equity regulation to ensure that all employees, regardless of sex, sexual orientation or gender identity, among other factors, are empowered and protected in the workplace. Unfortunately, there are still many countries where certain classes of individuals remain under-protected and under-represented in the workforce, and multinational companies still have many challenges with tracking and promoting their diversity and inclusion initiatives and training programmes.

The third general interest chapter focuses on another ever-increasing employment law trend in which companies revise, or consider revising, social media and mobile device management policies. Mobile devices and social media have a prominent role in and impact on both employee recruitment efforts and the interplay between an employer's interest in protecting its business and an employee's right to privacy. Because companies continue to implement 'bring your own device' programmes, this chapter emphasises the issues that multinational employers must contemplate prior to unveiling such a policy. 'Bring your own device' issues remain at the forefront of employment law as more and more jurisdictions pass, or consider passing, privacy legislation that places significant restrictions on the processing of employees' personal data. This chapter both addresses practice pointers that employers must bear in mind when monitoring employees' use of social media at work and provides advance planning processes to consider prior to making an employment decision based on information found on social media.

Last year we introduced the fourth and newest general interest chapter, which discusses the interplay between religion and employment law. In 2016, we saw several new, interesting and impactful cases that further illustrate the widespread and constantly changing global norms and values concerning religion in the workplace. Religion has a significant status in societies throughout the world, and this chapter not only underscores how the workplace is affected by religious beliefs but also examines how the legal environment has adapted to such beliefs. The chapter explores how several nations manage and integrate religion in the workplace, in particular by examining headscarf bans and religious discrimination.

In addition to these four general interest chapters, this eighth edition of *The Employment Law Review* includes 48 country-specific chapters that detail the legal environment and developments of certain international jurisdictions. This edition has once again been the product of excellent collaboration. I wish to thank our publisher, in particular Gideon Robertson and Iain Wilson, for their hard work and continued support. I also wish to thank all of our contributors and my associate, Ryan Hutzler, for his invaluable efforts to bring this edition to fruition.

Erika C Collins

Proskauer Rose LLP

New York

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Chapter 46

TAIWAN

*Jamie Shih-Mei Lin*¹

I INTRODUCTION

The Labour Standards Act (LSA) is the main legislation in Taiwan regulating employment conditions. Employment contracts may be freely entered into between employers and employees provided that any term deemed contradictory with the mandatory provisions of the LSA will be invalid. In the past decade, the Ministry of Labour (MOL), formerly known as the Council of Labour Affairs, has gradually expanded the coverage of the LSA, and now almost all industries and occupations are subject to the LSA.

Collective labour relations are governed by the Labour Union Act (LUA), the Collective Bargaining Agreement Act and the Settlement of Labour Disputes Act. All employees are entitled to form unions with the exception of military personnel in service and employees in the munitions industry. Collective bargaining of employment conditions is encouraged so that neither the labour union nor the employer may refuse the other party's request for collective bargaining without justifiable cause. Alternative dispute resolution is available for swifter resolution of labour disputes.

Other major laws governing labour relations and employment conditions include the Gender Equality in Employment Act (GEEA), the Labour Insurance Act, the Labour Pension Fund Act (LPFA) and the Occupational Safety and Health Act (OSHA).

The MOL at the central government level and the labour bureaus at the local government levels (labour bureau) are the main government bodies that administer and enforce the employment laws. The MOL's rulings are heavily relied on in the application of employment laws, and are normally respected by courts to determine individual cases. However, courts may make their decisions independently based on their interpretation of the relevant law provision.

The Settlement of Labour Disputes Act (SLDA) provides for mediation, arbitration and decision procedures over labour disputes. The former two procedures are administered

¹ Jamie Shih-Mei Lin is the managing partner at Dawning Law Office.

by the labour bureau and the latter is administered by the MOL, which deals with disputes over unfair practice relating to labour union activities. The mediation plan, if successfully concluded, will form the contract between the parties. If not appealed by any party, and if approved by the court, the decision and the arbitration award will have the same effect as the final ruling of the court. However, the law does not preclude the parties from directly referring the dispute to the courts.

II YEAR IN REVIEW

A 40-hour work week came into effect in 2016, and thus employees are entitled to two days off a week. The supporting measures, including cutting seven national holidays and treating the extra weekly day off as a 'rest day', not a 'regular day off', were also passed at the end of 2016. The difference lies in the fact that extra work is not permissible on a regular day off, unless such work is needed as a result of a natural disaster or other unexpected events as per the LSA. The creation of the 'rest day' concept, with higher overtime pay for work done on this day, allows flexibility for businesses. Other major changes to the LSA include new provisions to regulate post-employment non-compete clauses (See Section V, *infra*), relocation of employees and a minimum years of service agreement (see Section I, *supra*).

As to foreign workers, the Employment Service Act (ESA) removes the provision that required blue-collar and domestic workers to leave Taiwan for at least one day upon expiration of their three-year work permits before starting the next term of work.

To further promote gender equality in the workplace, the GEEA was amended to increase the breastfeeding or pumping time to 60 minutes a day and for up to two years for employees, and to require an employer hiring 100 employees or more to provide breastfeeding or breastmilk pumping space and nursery services.

III SIGNIFICANT CASES

i Justices of Constitutional Court, Judicial Yuan Interpretation No. 740

This interpretation addresses the question whether a contract between an insurance company and its salespersons is a 'labour contract' under the LSA. This is a source of dispute as the LSA provides no definition. It has been generally recognised that it applies to an employment contract, in which 'subordination' is regarded as the most important feature in Taiwan jurisprudences.

This case involves several legal proceedings against an insurance company that retains salespersons as contractors for decades, but the results from civil courts and administrative courts are contradictory. The Justices hold the view that the parties are free to use employment, work for hire or other types of contracts, but whether it is a 'labour contract' depends on the degree of subordination. Further, the Justices do not explicitly use the conventional criteria in determination of subordination, but rather, apply the criteria relating to the parties' main obligations such as whether salespersons are free to determine the way to provide services (including work time) and take own business risks in terms of remuneration programmes. This interpretation seems to deviate from the jurisprudences and it is unclear how far it may affect future cases.

ii China Airline strike

The first-ever strike in aviation industry took place in mid-2016. It is also the first strike launched by a professional union organised by flight attendants, not by a corporate union. The strike has sparked discussions about its legitimacy. The strike procedure is regulated by the SLDA, which only refers to the 'union', so proponents think any kind of union may launch the strike. However, opponents think only a corporate union may launch a strike because the members of a professional union or an industrial union are not limited to employees of the same company. The view is not settled as no judicial review is involved, but it is perceived to be a successful strike, which may encourage more industrial actions in Taiwan.

IV BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

An employment contract may be entered into verbally or in writing with a few exceptions, but it is highly recommended to enter into a written employment contract.

The LSA Enforcement Rules list the information to be included in an employment contract, such as: place and description of work; work hours and leave; determination and timing of pay; start and end of employment; and allowances, bonuses and benefits.

A fixed-term employment contract is permissible for the work of temporary, short-term, seasonal and specific nature employees, and each is further defined under the LSA Enforcement Rules. Except for seasonal work or specific work, a fixed-term contract will become an indefinite contract upon the expiration of either of the following:

- a* an employer raises no immediate objection when a worker continues his or her work;
- or
- b* if the newly signed contract and the prior contract together cover a period of more than 90 days and the time period between expiration of the prior contract and the execution of the new contract does not exceed 30 days.

No minimum years of service provision is permissible, unless meeting the following:

- a* the employer has provided the employee with and paid for professional training;
- b* reasonable compensation shall be provided for the employee's compliance with such minimum years of service; and
- c* the terms shall not be beyond the scope of reasonableness after consideration of, among others: the time and cost of the professional training; the possibility of replacement of the employee for the same or similar job; and the sum and scope of compensation.

An employment contract may not be amended by the employer unilaterally without consent from the employee.

ii Probationary periods

Probationary periods are not mentioned in the LSA, but have been common practice in Taiwan. During probationary periods, the employer and the employee have formed an employment relationship and the minimum work conditions under the LSA still apply. The general rule of termination notice period under the LSA also applies to termination by either

party during the probationary period, which is 10 days for an employment term of three months or more but less than one year. No advance notice is required for an employment term of less than three months.

iii Establishing a presence

Hiring a Taiwanese employee to render services in Taiwan, through a third-party agency or not, for a foreign company without setting up a business in Taiwan is not prohibited by employment laws.

A foreign company without official registration may retain services from independent contractors in Taiwan. If an independent contractor is a 'business agent' for income tax purposes, the foreign company will be regarded to have a permanent establishment (PE) in Taiwan, and its Taiwan source income will be subject to Taiwan corporate income tax. An independent contractor will be deemed a 'business agent' in Taiwan and thus construed as a PE if such contractor:

- a* in addition to representing the foreign company in the purchase of goods, is authorised to regularly represent it in making business arrangements and in signing contracts;
- b* regularly keeps in store goods of the foreign company and delivers the same, for the foreign company, to others; or
- c* regularly accepts, for the foreign company, orders for goods.

Statutory benefits

Social security

Employees are covered by two social security insurances: labour insurance (LI) and national health insurance (NHI). LI and NHI are financed by employers, employees and the government. LI includes ordinary insurance, occupational injury insurance and employment insurance. Employers bear 70 per cent to 100 per cent of the premiums for each employee. The former two are mandatory only for employers hiring five employees or more. Foreign workers are not eligible for employment insurance.

NHI provides mandatory health coverage to all people in Taiwan. Employers bear 60 per cent of the premium for each employee.

Labour pension fund

The LPFA provides a defined contribution system, and became effective on 1 July 2005. There are two types of pension plan:

- a* Individual pension account. For employees covered by the LSA, employers are required to contribute at least six per cent of monthly pay to their individual pension account with the Labour Insurance Bureau (LIB), and employees may voluntarily contribute up to six per cent. Voluntary contributions by self-employed persons and employees not covered by the LSA are available as well. The pension benefit is the total amount accumulated in the individual pension account plus investment return and is paid out by the LIB.
- b* Annuity insurance. Employers with 200 employees or more may purchase annuity insurance after consent from the labour union or by labour-management conference (LMC). Employees shall purchase commercial annuity insurance for employees who agree to participate in annuity insurance in writing with a premium of at least six per cent of monthly pay. The pension benefit is paid out by insurance companies in the form of an annuity.

LSA retirement benefits

LSA retirement benefits, a defined benefit system, apply to employees who were hired prior to 1 July 2005 and opt to remain in the LSA system, as well as to foreign workers who are not eligible for the LPFA plan. Employers make contributions to a pension reserve fund to the extent necessary to fund retirement payment obligations. The retirement benefit is paid out from the pension reserve fund and any deficit shall be borne by the employer.

Other statutory benefits

Employees who are terminated in accordance with Article 11 of the LSA (see Section XII) are entitled to severance pay, which is calculated differently depending on whether the employee is under the LPFA or the LSA retirement plan.

Employees are entitled to annual leave, national holidays, sick leave, personal leave, marriage leave, maternity leave, miscarriage leave, paternity leave, bereavement leave, family care leave, parental leave and menstruation leave under the LSA and the GEEA.

Taxation of payment to employees

The employer shall report and withhold income taxes on the payment to the employee. However, for monthly salary pay, no income tax shall be withheld if the tax is less than NT\$2,000.

V RESTRICTIVE COVENANTS

Restrictions during employment are generally acceptable, as employees are deemed to have a loyalty obligation to their employers. Restrictive covenants after employment are not allowed unless the following requirements are met and any violation would render such clause invalid:

- a* the employer has a legitimate business interest to be protected;
- b* the employee's position allows him or her access to or use of the employer's trade secrets;
- c* the restrictive period, area, vocational activities and employers shall not be beyond the scope of reasonableness;
- d* reasonable compensation shall be made for losses incurred by employees' non-compete obligations (payments received by employees during employment shall not be deemed such compensation); and
- e* the length of the restrictive period shall not exceed two years, and any excess shall be shortened to two years;

VI WAGES

i Working time

The standard maximum work hours are eight hours a day and 40 hours per week, provided that it may be extended to a maximum of 10 hours a day subject to LSA requirements.

Child workers² are not allowed to work between 8pm and 6am the following morning. Female employees are also not allowed to work between those hours except when:

- a* the employer has provided necessary safety and health facilities and transportation facilities or dormitories if no public transportation is available; or
- b* it is necessary due to a natural disaster or an unexpected event.

However, in no event shall female employees who are pregnant or breastfeeding complete night work. Further, the employer may not require female employees to complete night work if such female employees have a health concern or another justifiable concern.³

ii Overtime

Under the LSA, compensation must be made to employees for overtime work in the form of a salary. An employee is entitled to receive (1) one and one-third times the regular hourly wage for the first two hours of overtime worked per day; (2) one and two-thirds times the regular hourly wage for the additional two hours of overtime worked in the same day; and (3) two times the regular hourly wage for overtime worked in that day if overtime work is as a result of a natural disaster, accident or another unexpected matter. A complicated overtime pay regime was enacted at the end of 2016 for overtime worked on the 'rest day' (normally Saturday unless otherwise agreed by employer and employees): (1) for overtime not more than four hours, it shall be calculated as four hours, and employees are entitled to receive six times the regular hourly wage; (2) for overtime of more than four hours but not more than eight hours, it shall be calculated as eight hours, and employees are entitled to received six and two-thirds times the regular hourly salary; and (3) for overtime of more than eight hours but not more than 12 hours, it shall be calculated as 12 hours, and employees are entitled to receive 10 and two-thirds times the regular hourly salary. The maximum work hours included in the standard work hours and overtime should not exceed 12 hours per day and the total overtime hours should not exceed 46 hours per month.

VII FOREIGN WORKERS

i Overview

Hiring foreign workers is governed by the ESA.⁴ Only the types of work set forth in ESA are open to foreign workers. Employers must apply for work permits for foreign workers subject to a few limited exceptions. According to the type of work, foreign workers may be categorised as white-collar workers or blue-collar workers, and each is governed by a different set of rules under the ESA.

2 A 'child worker' is defined as a worker of 15 years old or more but less than 16 years old under the LSA.

3 With consent of the union or LMC, night work restrictions for female employees, along with other restrictions regarding work hours and leave, may be relaxed for employees of designated industries or types of work as per Articles 30-1 and 84-1 of LSA.

4 Chinese nationals are not treated as foreign nationals under Taiwan law, and their employment is governed by the Act Governing Relations between the People of the Taiwan Area and the Mainland Area.

ii Limit on the number of foreign workers

To hire blue-collar workers, the limit varies depending on the industries and the relevant formula applicable. In general, the total number of foreign workers hired by manufacturing companies located in free trade zones shall not exceed 40 per cent of the total number of employees; those manufacturing companies outside free trade zones shall not exceed 20 per cent of the total number of employees. As for white-collar workers, the MOL has not set any limit, although it has the power to do so.

iii Work permits

Work permits are required for all foreign workers with some exceptions. For example, foreigners who stay in Taiwan up to 30 days and who come to Taiwan to perform contractual duties for foreign companies do not need work permits.

The maximum length of time for each work permit is three years. For white-collar workers, the work permit may be extended without limit to the number of extensions. For blue-collar workers, the maximum length of time to work in Taiwan is limited to 12 years and 14 years for domestic workers.

iv Employment law

Foreign workers who work in the industries subject to the LSA are protected by the LSA, so their working conditions should not be lower than the minimum standards. Employers are required to have their foreign workers enrolled in LI, with the exception of employment insurance. Foreign workers are entitled to retirement payment under the LSA.

v Taxation

Foreign workers who reside in Taiwan for 183 days or more are deemed residents and are subject to annual income tax filing for all Taiwan-sourced income, and the same progressive rates. Income tax shall be withheld from employers' payment to foreign workers, with the exception that no withholding will be made if the tax does not reach NT\$2,000. Foreign workers who reside in Taiwan for less than 183 days are non-residents, and their salaries are subject to an 18 per cent withholding tax. Employers have to withhold and pay for such tax at the time of salary payment.

VIII GLOBAL POLICIES

i Work rules

Under the LSA, employers with 30 or more employees are required to establish work rules which shall cover the employment conditions generally applicable to all employees, such as work hours, leave, overtime, allowance, bonus, benefits, welfare, disciplinary measures, as well as the start and end of employment. Employers may establish separate rules for specific matters as necessary.

Work rules have to be filed with the labour bureau for approval within 30 days. The labour bureau may reject in whole or in part the work rules if any provision is inconsistent with the LSA. Amendments should be made and refiled with the labour bureau. Nonetheless, government approval is deemed an administrative measure, not a condition for the work rules to become effective.

Work rules do not require employees' consent. However, certain work rules may require separate consent from a union or LMC under the relevant provisions of the LSA, such as scheduling flexible work hours.

As long as work rules do not violate the minimum work conditions under the LSA or other mandatory laws, work rules should be valid and are part of employment contracts.

ii Sexual harassment prevention

Employers are required to establish channels to receive sexual harassment complaints, and employers with 30 or more employees are required to establish rules to prevent sexual harassment, which cover the process of handling complaints, disciplinary measures and protecting the privacy of relevant parties.

iii Language and publication

There is no language requirement for work rules or other company policies, but it is recommended to have a Chinese version to ensure compliance by employees. The Chinese version of the work rules must be reviewed by the labour bureau. As long as the work rules or any other internal rule are made known to every employee, publication or distribution through intranet or email is sufficient.

IX TRANSLATION

Employment documents may be drafted in a foreign language, as translation into Chinese is not mandatory. However, translations are recommended to ensure that local employees fully understand and comply with the employment documents. Documents that need to be submitted to the government authority, such as work rules, should be translated into Chinese.

X EMPLOYEE REPRESENTATION

LMC is required as a platform for employees and their employer to communicate with each other on various labour issues as per the LSA. LMC is composed of an equal number of employer and employee representatives. The number of representatives from each side should be two to 15 provided that there are not less than five representatives from each side if the company has 100 or more employees. If there is a corporate union, the employees' representatives should be elected from the union. If not, the employees' representatives should be elected from all employees. If the number of workers belonging to the same sex is more than 50 per cent, their representatives should not be less than one-third. The term of service should be four years, and representatives may be re-elected consecutively.

Employers may not dismiss, demote, reduce the wage of or render any other unfair treatment to LMC employees' representatives, and employers should give leave to employees' representatives who attend an LMC.

An LMC shall be convened at least every three months, and special meetings may be convened at any time when necessary.

XI DATA PROTECTION

i Requirements for registration

The Personal Data Protection Act (PDPA) is the general law regulating collection, processing and use of personal data, which does not require registration with any authority. Employees' privacy is also protected under the ESA, which restricts employers from asking for 'private information' that is not necessary for the employment concerned.

Given that there is an employment relationship, consent from employees is not necessary for collection, processing and use of employees' personal data if it is for employers' personal management purpose. However, as notification is required to be given to the data subject under the PDPA, many companies give employees notice in the form of a consent letter for signing back.

A company that collects, processes and uses personal data should adopt proper security measures to prevent personal data from being stolen, altered, damaged, destroyed or disclosed. The Ministry of Justice (MOJ) may request the data collector to set up a plan for the security measures of the personal data file or the disposal measures for the personal data after termination of business.

ii Cross-border data transfers

No registration is required for international transfer of personal data under the PDPA. However, details of international transfer should be provided to the data subject. The MOJ may restrict international transfer:

- a* if it involves major national interests;
- b* where a national treaty or agreement specifies otherwise;
- c* where the country receiving personal data lacks proper regulations that protect personal data and that might harm the rights and interests of the data subject; or
- d* where the international transfer is made indirectly in order to circumvent the PDPA.

iii Sensitive data

Sensitive data includes 'medical information, gene, sex life, health-check results and criminal records.' Sensitive data should not be collected, processed or used unless it is explicitly stipulated by law or meets other requirements. Employees may process medical information because employers are required to provide medical examinations and to keep such results as per the OSHA, provided that the medical information is limited to the statutory examination items under the OSHA.

iv Background checks

Background checks, credit and criminal records are 'private information' as defined by the ESA, and are allowed only pursuant to the ESA. Employers may not request employees or job applicants to provide, against their free will, private information that is not necessary to the employment concerned. Private information includes:

- a* physiological information (e.g., genetic tests, medication test, medical treatment tests, HIV tests, intelligence quotient tests and fingerprints);
- b* psychological information (e.g., psychiatric tests, loyalty tests and polygraph tests); and
- c* personal lifestyle information (e.g., credit, criminal records, pregnancy plans and background checks).

XII DISCONTINUING EMPLOYMENT

i Dismissal

Employers may only terminate employment under statutory causes. If terminated by employers as per Article 11 (with advance notice), employees are entitled to severance pay, and pay in lieu of notice is permissible. If an employee is terminated by employers as per Article 12 (without advance notice), no severance pay is available.

If termination is pursuant to Article 11, the employer is required to notify the labour bureau and employment service office at least 10 days before the termination takes effect, or within three days of termination if such termination is due to the occurrence of a natural disaster or an unexpected event. The employment service office will assist the terminated employee to seek other employment or vocational training.

Terminated employees do not have rehire rights. The laws do not require employers to offer alternative employment unless the termination is due to a change of the nature of business that necessitates reduction of workforce and there is no other suitable position available under Subparagraph 4, Article 11 of the LSA.

Employers are not allowed to terminate employment on the ground that the employee is married, is pregnant, has given birth or raises children.

Entering into a settlement agreement is not prohibited by law. In practice, it is not uncommon to do so to avoid future disputes. However, if a settlement agreement releases an employer's obligation without any pay to an employee, it is highly likely that the court would examine whether there is a statutory cause of termination in case of a dispute.

ii Redundancies

The closest termination cause to 'redundancy' is due to a change of the nature of business that necessitates reduction of workforce and there is no other suitable position available under Subparagraph 4, Article 11 of the LSA. Multiple redundancies may be governed by the Protection of Workers in Massive Lay-Off Act if the number of employees terminated during a specific period reaches the threshold. Under the law, employers must give notice to the labour bureau, union or labour representatives by LMC at least 60 days in advance of a planned collective dismissal, unless a shorter period is permissible due to the occurrence of a natural disaster or an unexpected event. The employment service office should assign officers to provide on-site counselling services regarding seeking employment and vocational training. The employer should give access to such officers and arrange the time for employees to accept individual assistance. If the employer recruits employees for a similar job, the laid off employees have the preferential right to be rehired. This applies to the new company formed by the main shareholders with similar business.

Employees are entitled to severance pay pursuant to the LSA. The labour bureau will assist convening negotiation meetings after being notified. If the parties reach a settlement agreement, the labour bureau will submit it for court review within seven days. Upon court approval, the employees may initiate compulsory enforcement proceedings by presenting the settlement agreement without obtaining court judgment if the employer fails to perform.

XIII TRANSFER OF BUSINESS

The main regulations are Article 20 of the LSA, as well as Articles 16 and 17 of the Business Merger and Acquisition Act (BMAA). The former applies to 'restructuring or ownership

transfer,' which means company organisational change (i.e., the legal entity will be dissolved as a result of the transfer or change of the sole proprietor or representative of the partnership). The BMAA applies to employee transfer as a result of a merger, acquisition or spinoff.

Under both laws, the employees to be retained by the new employer are agreed upon by the parties ('retained employees'). The main difference is procedural. Under the BMAA, the new employer should, no later than 30 days before the effective date of the merger or acquisition, serve a written notice expressly describing employment conditions to the retained employees. A retained employee should give notice of his or her decision within 10 days of receipt in writing to the new employer. The absence of such notice from the employee should be deemed as consent to stay with the new employer. The LSA does not have similar procedural rules, which means that the new employer should obtain employee consent.

Under both laws, severance should be paid by the old employer to employees who either refuse to transfer or are not selected to be transferred. Seniority with the old employer should be recognised by the new employer. Both laws do not require that employment terms are equivalent or better than the old terms, although the new employer commonly provides at least equivalent terms.

XIV OUTLOOK

In an attempt to create an easier legal process for hiring foreign professionals, the government proposed a new bill 'Recruit and Hiring of Foreign Professionals', a universal legislation to handle visa, stay, tax, insurance and neutralisation that are commonly faced by foreign professionals, but scattered across different laws. The government previously also proposed to adopt a points-based system to replace the qualification requirements for hiring foreign professionals. The relevant hiring rules of foreign professionals are expected to be reformed in the coming years.

Another possible legislative move is related to temporary contract workers, and this has been the centre of discussions for years. The MOL approved a draft bill of the 'Protection of Dispatch Workers Act' and submitted it to the Executive Yuan for discussion in 2014. The draft bill regulates the relationships between the dispatching agency, dispatch workers and the company that uses such services. The Act's main points are:

- a* the contract between the dispatch and manpower agency shall be indefinite and fully follow the LSA;
- b* a cap of 3 per cent of the total workforce is imposed on a company to maintain job security for full-time workers; and
- c* the employer must make dispatch workers regular employees if their assignments last at least one year, which has been opposed by many local companies.

The draft bill aims to ensure the employment security and protection of dispatch workers while recognising the reality that temporary contract workers have given companies a flexible workforce. However, certain business associations are concerned with points (b) and (c), while labour rights groups worry that the draft bill would increase the use of dispatch workers and reduce employment security under the LSA.

Appendix 1

ABOUT THE AUTHORS

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