

THE EMPLOYMENT
LAW REVIEW

NINTH EDITION

Editor
Erika C Collins

THE LAWREVIEWS

THE
EMPLOYMENT
LAW REVIEW

NINTH EDITION

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This article was first published in March 2018
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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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Enquiries concerning editorial content should be directed
to the Publisher – tom.barnes@lbresearch.com

ISBN 978-1-912228-17-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

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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 ninth 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 eight 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 2017 in nations across the globe, and this is the topic of the second general interest chapter. In 2017, many countries in Asia and Europe, as well as 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 gender, 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.

In 2015, we introduced the fourth and newest general interest chapter, which discusses the interplay between religion and employment law. In 2017, 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 ninth edition of *The Employment Law Review* includes 46 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, and I wish to thank our publisher. I also wish to thank all of our contributors and my associate, Marissa Mastroianni, for her invaluable efforts to bring this edition to fruition.

Erika C Collins

Proskauer Rose LLP
New York
February 2018

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Erika Collins is a partner in the labour and employment law department and co-head of the international labour and employment law group of Proskauer Rose, resident in the New York office. Ms Collins advises and counsels multinational public and private companies on a wide range of cross-border employment and human resources matters throughout the Americas, Europe, Africa and Asia.

Ms Collins represents US and non-US employers in all aspects of company growth and restructuring, from office openings, executive hires and workforce expansions to company downsizing, employment terminations, mass lay-offs and office closures. She advises clients on preparing competitive employment packages and agreements, such as separation, expatriate and consulting agreements, that are compliant with local laws, as well as on payroll, benefits and vacation issues. Ms Collins regularly conducts multi-country audits of employment laws and practices in order to provide advice to clients regarding compliance with data privacy, fixed term contracts, outsourcing, and working time and leave regulations among numerous other issues.

Additionally, Ms Collins advises employers on sexual harassment and other misconduct allegations, as well as cross-border investigations. She also is experienced in conducting due

diligence on international subsidiaries and advising on applicable business transfer laws and employee transition issues in cross-border M&A transactions.

Ms Collins is the editor of *The Employment Law Review*, which covers employment laws in 46 countries. In addition to authoring numerous articles on international employment topics, Ms Collins is a regular speaker at the International Bar Association and the American Bar Association. Topics on which she has written and spoken recently include: cross-border transfers of executives; global mobility issues for multinationals; employment issues in cross-border M&A transactions; the landscape of issues in international employment law; global diversity programmes; the intersection of EU privacy and anti-discrimination laws; and cross-border investigations.

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TAIWAN

*Jamie Shih-Mei Lin*¹

I INTRODUCTION

The Labour Standards Act (LSA) is the main legislation in Taiwan regulating basic employment conditions. Any employment contracts that stipulate less favourable conditions than these will be invalid. With expansion of coverage over the years, almost all industries and occupations are now subject to the LSA.

Collective labour relations are governed by the Labour Union Act (LUA) and the Collective Bargaining Agreement Act (CBAA). There are three types of labour unions: corporate; industrial; and professional. All employees are entitled to form unions with very few exceptions.

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), the Occupational Safety and Health Act (OSHA), and the Occupational Accident-Incurred Workers Protection Act.

The Ministry of Labour (MOL) at the central government level and the labour bureaus at the local government level (labour bureau) are the main government bodies that administer and enforce the employment laws. The MOL's interpretation rulings are the important source in the application of employment laws, but the courts have final say in individual cases.

The Settlement of Labour Disputes Act (SLDA) provides alternative dispute resolution for swifter resolution of labour disputes in addition to court proceedings. Mediation and arbitration procedures are administered by the labour bureau. The decision procedure administered by the MOL is specifically for disputes over unfair practice relating to labour union activities.

II YEAR IN REVIEW

The Recruitment and Employment of Foreign Professional Talent Act (REFPTA) was passed in November 2017, the product of the government's 2016 initiative to streamline regulations governing the employment of foreign white-collar workers. As part of the government's attempt to attract these workers, the Act relaxes rules regarding work, visa and residency requirements and provides incentives such as wider access to retirement benefits, national health insurance and income tax reduction. Drafts of the most relevant by-laws were also announced for public comment. However, the effective date has not yet been announced.

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

New amendments to the LSA were passed in early 2018 to address issues brought by the 2016 amendment, including relaxing the rules for work hours (see Section VI), which are expected to come into force in March 2018.

III SIGNIFICANT CASES

i **Supreme Administrative Court Judgment Pan-Tzu No. 287 (2015)**

This case addressed whether a bank unfairly treated an employee as a result of him being the standing director of the union under Article 35(1)(i) of the LUA by giving grade D in the year-end performance review. According to Article 36 of the LUA, employers need to grant leave for employees who are union directors to attend union affairs if it is necessary. This employee claimed the bank intentionally refused to grant him leave upon his application and failed to take into account his need to attend union affairs in conducting performance reviews as a result of the its long-held hostility towards the union. The bank took this case to court after the MOL decided in favour of the employee pursuant to the SLDA. The Supreme Administrative Court upheld the lower court's judgment, which overruled the MOL's decision on the following grounds. Despite recognition of the margin of appreciation enjoyed by the MOL in making decisions according to the SLDA, the Court may intervene when the decision is based on inaccurate fact-finding, irrelevant considerations, wrongful application of laws or inconsistent with generally accepted principle. In case of conflict between rights, the right to organise will take priority over employers' rights for the purpose of enhancing the union's power of collective bargaining unless the union activities 'truly deviate from the generally accepted principles of a democratic society'. In this case, the employee's exemption from service obligation is not justified because of his failure to show necessity for handling union affairs. Such acts deviate from the generally accepted principle that the employment contract shall be performed in good faith by the parties.

ii **Taipei Administrative High Court Judgment Su Tzu No. 782 (2017)**

This case addressed whether China Airlines conducted unfair practice to impede union activities under Article 35(1)(v) of the LUA by breaching a 'no free rider' clause with the union and giving special allowance to employees who worked during the strike, as well as whether an agreement reached to end the strike constitutes a collective bargaining agreement under the CBAA. After the first-ever strike in the Taiwan aviation industry launched by a professional union organised by flight attendants in June 2016, China Airlines swiftly reached an agreement to end the strike pursuant to which a provision restricting China Airlines to extend the *per diem* increase agreed with the union to its corporate union and a breach thereof subjected China Airlines to damages. The Court upheld the MOL's decision filed by the union pursuant to the SLDA that China Airlines' breach of a 'no free rider' clause construed an unfair practice, but dismissed all other claims made by the union on the following grounds. The agreement after the strike was a settlement agreement by nature and did not constitute a collective bargaining agreement as per the CBAA, which imposes the obligation to negotiate in good faith. China Airlines was therefore not liable for fines or damages in breach of the obligation under the CBAA. In respect of the special allowance to employees who did not participate in strike, both the employer and the union have the right to compete for employees' support, so China Airlines' announcement of a special allowance prior to the strike and subsequent payment accordingly for employees' services during the strike does not constitute unfair practice.

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 6 per cent of monthly pay to their individual pension account with the Labour Insurance Bureau (LIB), and employees may voluntarily contribute up to 6 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 6 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 LFPA 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. With the consent of the union or LMC, the maximums may be extended to 12 hours a day and 46 hours a month or 54 hours a month provided that the total shall not exceed 138 hours every three months. Child workers are not allowed to work between 8pm and 6am. Female employees are also not allowed to work between those hours except when:

- a* the employer has provided the necessary health and safety facilities and transportation facilities or dormitories if no public transportation is available; or
- b* it is necessary owing 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 cannot require female employees to carry out night work if the female employees have a health concern or another justifiable concern. A continuous rest period of at least 11 hours shall be granted to workers carrying out rotational shift work provided that, with consent of the union or LMC, the rest period may be changed to eight hours for certain categories of work (specified by the MOL).

ii Overtime

Under the LSA, compensation must be paid to employees for overtime work in the form of a salary provided that, with consent of the employer, the worker has the option to take time off in lieu of overtime pay. 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 the result of a natural disaster, accident or another unexpected matter. The above will also apply to overtime worked on the rest day (normally Saturday unless otherwise agreed by employer and employees), which replaces the complicated overtime pay regime introduced by the LSA amendment in 2016.

VII FOREIGN WORKERS

i Overview

Hiring foreign workers is governed by the ESA. The REFPTA and its relevant by-laws, when they become effective, will take priority over the ESA with regard to hiring white-collar workers.

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 must be processed by employers for all foreign workers with some exceptions. For example, foreigners who stay in Taiwan for 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 a limit on 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. Pursuant to the REFPTA, eligible foreign white-collar workers may get work permits from relevant government bodies and the length of time is further extended.

iv Employment law

Foreign workers working in the industries subject to the LSA are protected by the LSA. 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. Pursuant to the REFPTA, eligible foreign white-collar worker will be entitled to enrol in an individual pension fund under the LPFA per REFPA.

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. The REFPTA will provide certain tax incentives, for example for three consecutive years, only half the Taiwan-sourced income in excess of NT\$3 million will be taxable for certain qualified foreign white-collar workers.

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. Work rules have to be filed with the labour bureau for approval within 30 days. Nonetheless, government approval is deemed an administrative measure, not a condition for the work rules to become effective. Employers may establish separate rules for specific matters as necessary.

Work rules do not require employees' consent in general, but separate consent from a union or LMC may be required for specific matters pursuant to 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. 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' unnecessary for the employment concerned.

Given the underlying employment relationship, consent from employees is not required if the personal data is collected, processed and used for personal management purposes. However, as notification must be given to the data subject under the PDPA, it is prudent to give employees notice in the form of a consent letter, which they can sign.

Proper security measures should be adopted 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, and 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 unnecessary to the employment concerned. Private information includes:

- a* physiological information (e.g., genetic tests, medication tests, 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

Termination of employment by employers must be pursuant to statutory causes under the LSA. If terminated according to Article 11, employers need to give advance notice as follows:

- a* 10-day notice for employees who have been employed for three months to one year;
- b* 20-day notice for employees who have been employed for one to three years; and
- c* 30-day notice for employees who have been employed for three years or more.

Employees are entitled to severance pay, and pay in lieu of notice is permissible. In addition, 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 because of the occurrence of a natural disaster or an unexpected event. The employment service office will assist the terminated employee in seeking other employment or vocational training.

If terminated by employers as a disciplinary action according to Article 12, no advance notice is required, and no severance pay is available.

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

Employers are not allowed to terminate employment on the ground that the employee is married, 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

Redundancy may occur if there is a change in the nature of business that necessitates a reduction in the workforce and there is no other suitable position available under Article 11(4) of the LSA. Multiple redundancies may be governed by the Protection of Workers in Mass

Layoff Act if the number of employees terminated during a specific period reaches the threshold. Under the Act, employers must give notice to the labour bureau, union or labour representatives of LMC at least 60 days in advance of a planned massive dismissal, unless a shorter period is permissible owing to the occurrence of a natural disaster or an unexpected event. The employment service office should be given access to provide on-site counselling services regarding seeking employment and vocational training. If the employer recruits employees for a similar job, the laid-off employees have the preferential right to be rehired.

Employees are entitled to severance pay pursuant to the LSA. The labour bureau will assist in 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 a court judgment if the employer fails to perform.

XIII TRANSFER OF BUSINESS

Article 20 of the LSA as well as Articles 16 and 17 of the Business Merger and Acquisition Act (BMAA) provide the main regulations. The former applies to ‘restructuring or ownership transfer,’ which means company organisational change. The BMAA applies to employee transfer as a result of a merger, acquisition or spin-off.

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 this notice should be deemed as the employee’s consent to stay with the new employer. The LSA does not have similar procedural rules, which means that the new employer should obtain each employee’s 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. The seniority of 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

The LSA was enacted in 1984 when the notion of workers was mainly workers in the manufacturing industry. Since then, it has been questioned whether it is suitable to apply the same rules to all type of work, including service sectors and new technology-based businesses. The reform of the LSA and other employment-related laws is expected in the coming years and it is hard to predict what the changes will be. With regard to easing employment laws for foreign professionals, several draft by-laws to accommodate measures set forth in the REFPTA have been published and are pending public comment. It is expected that the REFPTA will enter into force in 2018 when these by-laws are ready.

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ISBN 978-1-912228-17-1