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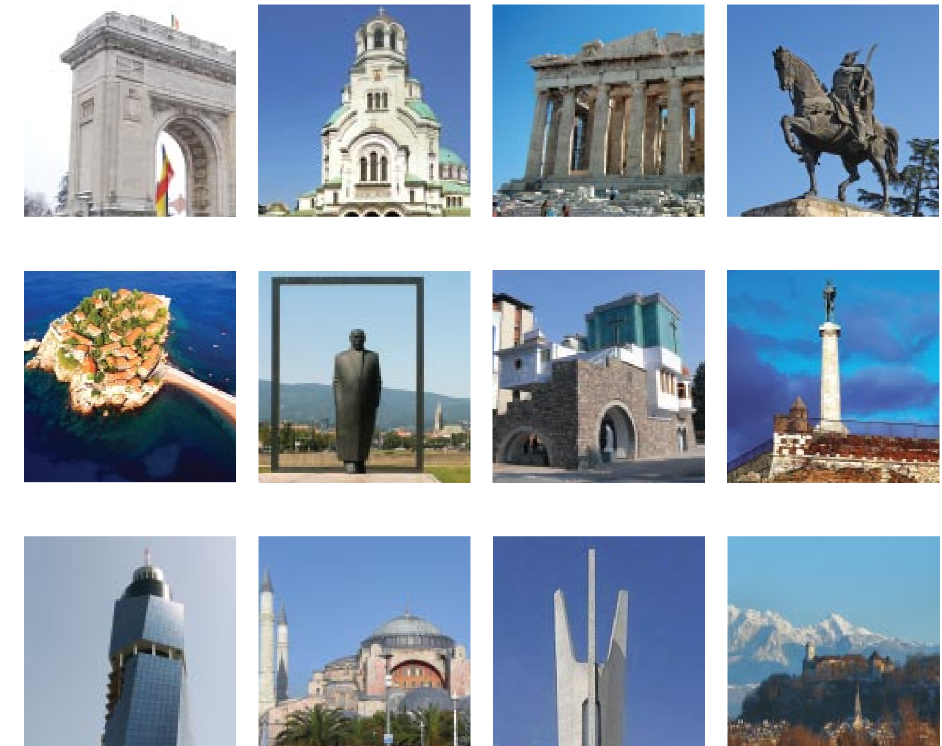

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Preface

Dear Partners and Friends of SEE Legal,

South East Europe Legal Group ("SEE Legal") is a regional formation of leading independent national law firms covering the twelve jurisdictions of South East Europe. Established in 2003, SEE Legal is the largest regional legal force with more than 450 lawyers and an impressive client base of multinational corporations and financial institutions, international agencies and governmental bodies. Over the last two decades, the ten member firms of SEE Legal have worked on major investment transactions and have successfully closed many of the landmark deals in the region. They have all been ranked each year as market leaders in their respective jurisdictions by all reputable research and legal directories such as Legal 500, Chambers & Partners, IFLR1000 and others.

SEE Legal is delighted to be publishing this first edition of the South East Europe Employment Guide. We hope that this practical guide will prove to be a helpful desk-book resource for in-house counsels, human resources professionals and law firm practitioners in dealing with the complex and sensitive issues of employment relations in the eleven jurisdictions of South East Europe.

We have aimed to highlight all the important aspects from our experience of employment relations, such as hiring, amendment and termination of employment, salary and benefits payment and their taxation, working hours, vacation and other leaves, health and safety at work, non-compete obligations, etc. The book is not meant to be a treatise on any particular country's employment legislation and is not exhaustive to the point of eliminating the need of professional advice but it certainly serves its main purpose – to raise readers' attention as to the complexity of employment legislation and it will assist you in identifying the issues that might possibly land your companies or clients in hot water.

As a Group we decided to provide this guide on employment matters as a part of various initiatives to promote our profile in the region and we are working to expand our editorial activities in other areas of law.

We wish you every success and look forward to working with you.

Sincerely,

Borislav Boyanov
Co-Chair of SEE Legal

Gus Papamichalopoulos
Co-Chair of SEE Legal

Disclaimer

This publication is intended to provide a general guide to the law and regulation in the individual jurisdictions described. The information contained herein is not intended to be a comprehensive study nor to provide legal advice. Legal advice should always be sought before taking any action based on the information provided.

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1. General overview

The right to employment is provided for in Article 49(1) of the Constitution which defines that "Everyone has the right to earn a means of living by lawful work that he/she has chosen or accepted himself. Each person is free to choose his profession and place of work as well as the manner of achieving professional or other qualifications or training". Employment in Albania is largely governed and regulated by the 1995 Labour Code, as amended by Law No. 8085 of 13.03.1996 and Law No. 9125 dated 29.07.2003, and which is based on the Albanian Constitution and is in accordance with all international conventions ratified by Albania.

The Labour Code provides for the contractual regulation of the employment relationships between the employer and the employee by means of an individual or a collective labour agreement.

The Labour Code sets out the main legislation regulating and applicable to employment matters, as well as the hierarchy of such legislation which is as follows:

1. the Constitution of the Republic of Albania;
2. international conventions ratified by the Republic of Albania;
3. the Labour Code and its sub-legal acts;
4. the collective contract of employment;
5. the individual contract of employment;
6. internal regulations of the employer;
7. local and occupational customs.

We are aware of steps to amend the Labour Code, such amendment being focused upon trade unions, termination provisions and health and safety at work.

2. Hiring

2.1 General

Based on Article 21 of Law No. 7995, dated 20.9.1995 "On promotion of employment", as amended, any employer is obliged to report to the respective Labour Office any new employment position within 7 (seven) days from the date of the creation of this position. The employer may employ people directly or use the services of state recruitment offices or private employment agencies to recruit employees. An employer may only hire an employee(s) who meets the minimum employment age as required by the Albanian Legislation, which according to Article 98 of the Albanian Labour Code is 16 (sixteen) years old. The employer should notify the relevant tax authorities about the newly hired employee at least 48 (forty-eight) hours before commencement of the employment relationship. Furthermore, the employer is obliged to declare the newly hired employee at the relevant Labour Office the moment such employment relationship begins.

2.2 Disabled persons

According to Law No. 7995, dated 20.9.1995 "On promotion of employment", as amended, each employer is obliged to hire one disabled person for every 25 employees. An employer may hire an employee with a serious handicap instead of five employees with a mild handicap. In the event that the work position offered to a disabled employee requires special working conditions, the employer may request a subsidy from the respective Labour Office.

An employer who does not employ the recommended number of disabled people is obliged to pay into a separate account of the Fund of the National Employment Service ('Fund') an amount equal to the monthly minimum salary that he would have paid to the disabled employee. The revenue of this Fund is used to create jobs for disabled people. According to the abovementioned law, the State Labour Inspectorate controls the fulfilment of the obligation for hiring the required number of disabled persons. We note that this obligation is in practice not fulfilled.

2.3 Foreign employees

Hiring of foreigner employees is governed by Law No. 9959, dated 17.07.2009 "On foreigners", as amended, and by several decisions of Council of Ministers in implementation of this law. According to Albanian legislation there are no restrictions on hiring foreign employees. However, foreign citizens who intend to work and live in Albania need to be provided with work and residence permits. Should the foreigner intend to work, he must acquire a work permit prior to commencement of work.

The work permit is issued by:

(a) Relevant Labour Office corresponding to the business location of the employer and where the employee will perform his work, if the foreigner is residing in the Republic of Albania;
(b) General Directorate of the Employment National Service, if the employer which intends to employ the employee, carries out its business in more than one region, and if the foreigner is residing in the Republic of Albania;
(c) The corresponding Albanian Diplomatic mission of the Republic of Albania, in the Country of Origin, if the foreigner is residing in the Country of Origin.

A residence permit is required when a foreigner is going to stay in Albania for more than 90 (ninety) days at any one time and/or will stay in Albania for more than 180 (a hundred and eighty) days (either at one time or through various visits) within one year. Such a residence permit is issued by the Regional Directorate of Border and Migration, if the applicant fulfils the conditions provided for in the legislation. We note that the procedure is administrative and, provided that the documentary requirements are fulfilled, there is in general no problem in acquiring the necessary residence and work permit.

2.4 Secondments

According to Article 137 of the Labour Code, the employer may not second an employee to another employer without the consent of the employee. In this event, the first contract between the employer and the employee remains in force. When an employer seconds his employee to another employer, then the first employer is obliged to grant the employee at least the same working conditions as those which the second employer has granted to the employee(s) of his

enterprise carrying out the same work. The employer to whom the employee is seconded has the same obligations to the employee with regard to health protection, insurance and hygiene as to his other employees. In the event that the employer fails to fulfil his obligations to the seconded employee, then the second employer, through solidarity with the first employer, will be held liable for the fulfilment of the obligations to the employee.

3. Types of engagement

3.1 Employment

Employment contracts may be agreed orally or in writing. In the even that the employment contract is agreed orally, the employer is obliged to produce a written contract within 30 (thirty) days from the date of the oral agreement, bearing the signature of the employer and that of the employee and containing all mandatory legal elements [1].

According to Article 23(3) of the Labour Code, the following mandatory elements must be included in all written employment contracts:

(a) the identity of the parties;
(b) the workplace;
(c) a general job description;
(d) the starting date of the job;
(e) the duration of a fixed-term contract;
(f) the duration of paid vacations;
(g) the notice period for termination of the contract;
(h) the main aspects of the salary and the day of receipt of such salary;
(i) the normal working hours in a week;
(j) the related effective collective contract (if any).

An employment contract may last for an indefinite or a fixed period of time, although the employer must provide justification if the term is fixed (*i.e.* the job is only of a temporary nature). Unless otherwise agreed in writing, the first 3 (three) months of the employment will be deemed to represent a probationary period, regardless of whether the contract is for a fixed or indefinite term. During the probationary period either party may terminate relations with five days' notice.

3.2 Other types of engagement

The Labour Code provides for the following types of engagement; the parties entering into such engagements are also subject to the conditions of the Albanian Labour Code:

(a) Part-time employment agreement (the employee agrees to work on an hourly basis, either half or complete working day for the normal duration of a week or month, which is shorter than that of full-time employees working under the same conditions);
(b) Home-based work agreement (the employee is obliged to carry out his job at his home or any other location chosen by him/her on the basis of the alternatives offered by the employer);
(c) Commercial agent agreement; and
(d) Agreement for acquiring a specific profession (concluded between the teaching master and the person who is studying to acquire a specific profession).

Furthermore, a service agreement is another type of engagement frequently used in practice in Albania. However, this type of agreement can only be entered into with physical person(s) registered for commercial purposes. The service agreement is a sui generis agreement, and such agreement is regulated by the Albanian Civil Code and not by the Labour Code.

3.3 Engagement of managing directors

Managing directors may be employed, or in the event that they are physical person(s) registered for commercial purposes they may enter into a service agreement. However, in the event that the managing director is a registered person for commercial purposes, the applicable tax regime shall be different and fall outside the scope of the Labour Law. In all other cases the compensation of the managing director shall be considered as a salary, and the rules defined in section 5 below shall apply upon this compensation.

4. Salary and other payments and benefits

4.1 Salary

According to Decision of Council of Ministers No. 566, dated 14.7.2010 "On defining the national minimum salary", the national minimum monthly salary payable to all employees, by any physical or legal person, local or foreign, is 19,000 ALL (~190 USD). The national minimum hourly rate that should be applied to all employees is 109 (1 USD) ALL. The employer shall deduct from the employee's salary the corresponding income tax and the social and health insurance contributions, as per the specifications of the primary and secondary legislation and of the collective or individual employment contracts. Salaries must be paid in ALL, unless otherwise defined by the agreement between the parties.

4.2 Other mandatory payments not considered as salary

According to the provisions of Albanian legislation, the following mandatory payments are not considered salary:

(a) compensation the employee receives for expenses incurred as a result of his professional activity;
(b) payment of expenses when the employee works outside his workplace;
(c) contribution in kind (e.g. accommodation, food and travel expenses);
(d) difference between the damage and the benefit the employee receives from social insurance, in the event that a work-related accident or occupational illness has occurred as a result of serious fault of the employer.

1 Failure to issue this document in written form will not affect the validity of the contract but the employer will be penalised with a fine.

Insofar as these payments are not considered salary, neither the employer nor the employee is obliged to pay mandatory social and health insurance contributions on the above payments. In addition, please note that the abovementioned payments are not considered taxable personal income for the employee. However, please be informed that according to the law, contributions in kind which have a permanent nature are considered as part of the salary and, thus, personal income tax should be paid on the value of such permanent contributions in kind.

4.3 Other benefits

Albanian legislation does not provide for restriction and employers are free to provide their employees with other benefits, such as employees' stock option plans, participation in the profit, etc. As for the employees' stock option plans, it should be noted that this area is not sufficiently regulated in Albania.

5. Salary tax and mandatory social contributions

5.1 Social contribution and health insurance

The payment of social and health insurance contributions and of personal income tax are governed by the following legislation: Law No. 7703, dated 11.05.1993 "On Social Security" (as amended); Law No. 7870, dated 13.10.1994 "On Health Insurance" (as amended); Law No. 8438, dated 28.12.1998 "On Income Tax" (as amended); Decision of Council of Ministers No. 1114, dated 30.07.2008 "On some issues for the implementation of the laws" No. 7703, dated 11.5.1993 "On social security in the Republic of Albania", as amended; and Law No. 9136, dated 11.9.2003 "On the collection of the mandatory contributions of social security and health insurance in the Republic of Albania", as amended; and Law No. 7870, dated 13.10.1994 "On health insurance in the Republic of Albania", as amended; and other relevant pieces of legislation.

The relevant legislation provides for the payment of social contribution and health insurance as a mandatory obligation, and which is an obligation to be executed by both the employer and the employee.

The obligations for contributions of social security and health insurance in Albania are as follows:

(a) Employer: 16.7% of the monthly salary (1.7% for health insurance and 15% for social security);
(b) Employee: 11.2% of the monthly salary (1.7% for health insurance and 9.5% for social security).

Contributions should be calculated using the reference salary as defined by the Decision of Council of Ministers No. 285, dated 4.5.2007 "On defining the referred monthly wage, for purposes of calculating the social and health security contributions, and tax on personal incomes, according to the nomenclature of economic activity, regarding the employees of private and public sector, that perform unqualified and qualified work, and also regarding their executive and technical – economical staff".

In addition, please note that the minimum monthly salary for the purposes of calculating social security and health insurance contributions is 16,820.00 Leke, whereas the maximum salary is 84,100.00 Leke. For the purpose of payment of social security contributions, the employer should withhold the employees' part of contributions from the employee's salary.

5.2 Tax on personal incomes generated from employment

Personal incomes generated from employment are taxable as follows:

Taxable income (monthly income)		Percentage
In Leke	*Up to (in Leke)*	
0	10 000	0%
10 001	30 000	+10% on sums above 10 000 Leke
30 001	More than	10% on sums above 0 Leke

6. Working hours

Working hours are regulated by the Labour Code and by Law No. 9634 dated October 30, 2006 "On Labour Inspection State Labour Inspectorate". According to Article 83 of the Labour Code, reasonable working hours shall not exceed 40 (forty) hours per week and that such weekly working hours must be set out either in a collective agreement or in individual employment contracts. The normal daily working hours are 8 (eight) hours.

Overtime and extra working hours are also regulated by the Labour Code (Article 91), which provides that the employer shall compensate the employee for any overtime with 25 percent of normal payment if time-off in lieu is not given; or, if agreed, to compensate with time-off in lieu plus 25 percent of the hours of the normal working day, unless otherwise provided for in the collective contract. Extra work performed at weekends or on public holidays will give rise to higher extra payments of 50 percent of the normal payment, unless otherwise defined by the collective contract.

The Labour Code also regulates night work, defined as work carried out between 10 p.m. and 6 a.m., and which is only permitted in the case of adults over the age of 18 years of age. The duration of night work and of the work carried out one day before or after must be no longer than eight hours without interruption; it must also be preceded or followed by an immediate break of one day. Working during the evening entitles the employee to extra payment, so for every hour worked between 7 p.m. and 10 p.m. the employee shall receive a payment that is not lower than 20 percent of normal pay; whereas work during the hours of 10 p.m. and 6 a.m. entitles the employee to extra payment of no less than 50 percent of normal salary.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

Annual vacations are governed by the Albanian Labour Code. The Labour Code provides for minimum paid annual leave of no less than four calendar weeks in one year (pro-rata for those who have worked less than one year). For the purpose of calculating annual leave, sick leave shall be considered working time. The period during which an employee can take annual leave shall be determined by the employer taking into consideration the employee's preferences. The employee is obliged to give the employer at least 30 days' prior notice of the dates for his annual leave. Moreover, in cases where the employee receives a salary which includes contribution in kind (e.g. accommodation, food and travel expenses), a bonus equal to the contribution in kind, e.g. travel expenses for homeward travel, is awarded. A decision of the Council of Ministers sets out the method of calculation for such additional contributions.

Under the provisions of the Labour Code "Annual leave must be given during the working year or within the first three months of the consecutive year, but in no case may it be less than one calendar week without interruptions. The right to annual leave which has accrued but has not been (awarded) taken within three years of the date when this right might be enjoyed, is subject to statute of limitations".

Further to the above-stated provisions, such rights of the employee must be exhausted no later than the month of March in the subsequent year. Thus, the employer should designate and award to the employee the right to take his annual leave within the month of March in the subsequent year. The last paragraph acknowledges the right of the employee to be awarded/to take the annual leave even after the month of March in the subsequent year. This paragraph is designated to protect the interests of those employees who, for any reason (their own or that of their employer), is unable to take the annual vacations. Nevertheless, in practice this last paragraph has not been applicable as most employees choose to exhaust their annual vacations within the respective year. Furthermore, in practice, if the employees have not taken the annual leave by the month of March in the subsequent year, they receive compensation equal to the salary of the vacations which have not been taken.

7.2 Paid leave

The employee is entitled to other periods of paid leave in specified circumstances:

(a) for marriage: 5 days;
(b) in the event of death of a spouse, direct predecessors or descendants: 10 days;
(c) in the event of serious illness of direct predecessors or descendants, as evidenced by a medical report: 10 days.

The law on social security provides for maternity leave and pursuant to that law a pregnant woman is entitled to paid maternity leave of 365 calendar days, including a minimum of 35 days prior to childbirth and 42 days after childbirth.

In the event of the birth of more than one child, the duration of this period is extended to 390 days. During this period, employees shall receive payment from the Social Security Institute ('SII') amounting to: 80 percent of the daily average of their salary over the last calendar year, applicable for the first 150 days of the maternity leave; and 50 percent of the daily average of their salary for the last calendar year, applicable for the remaining days of maternity leave. Maternity leave is paid by the SII and not by the employer.

7.3 Sick leave

According to Article 130 of the Labour Code, the employee provides evidence of his disability to work by a medical report duly issued by a doctor. Furthermore, at the request of the employer the employee is obliged to undergo examination by another doctor assigned by the employer; this doctor will declare only the disability of the employee to work, while maintaining medical confidence. In the event of illness, the employer pays the employee 80% salary for a period of 14 (fourteen) days, a period which is not covered by Social Insurance. Law No. 7703, dated 11.05.1993, "On Social Insurance in the Republic of Albania", as amended, defines that after 14 days the employee shall benefit from the social insurance scheme.

7.4 Unpaid leave

The question of unpaid leave is not regulated within Albanian legislation and there are no conditions or procedures to benefit from it. However, in practice unpaid leave, its duration, etc., can be arranged by mutual consent between the employee and the employer. It is at the discretion of the employer to accept or refuse the request for unpaid leave.

7.5 Employment standstill

According to Article 147 of the Labour Code, the employer cannot terminate the employment contract in the event that, according to the legislation in force, the employee is completing his military service, receiving benefits payment(s) (from the employer or Social Insurance Institute) related to temporary inability to work for a period no longer than one year, or in the event that the employee is on leave, if such leave is granted by the employer.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Albania is not prohibited by law. The related regulatory framework is absent from employment law and corporate law.

Albanian tax legislation also does not contain specific provisions relating to the taxation of granting, vesting or delivery of shares. Albanian legislation provides for the taxation of dividends generated from shares delivered to employees; such tax is at the rate of 10% (ten percent).

9. Health and Safety at work

Health and Safety at work is mainly governed by the Labour Code and Law No. 10237, dated 18.02.2010, "On health and safety at work". According to the Albanian Labour Code, the employer must apply for a permit from the Labour Inspectorate prior to commencing operation of the enterprise or a part of it, before creating new workplaces, and prior to any important change in the manner of work, usage of materials, machinery and equipment. If, within 30 days from the date of the submission of the documents, the Labour inspector has not rejected them in writing or in a motivated way, the employer may commence project(s). During the process of employment the employer trains the employees to respect all requirements related to health, safety and hygiene. If the nature of work requires the usage of mechanical and electrical machines and equipment, the employer should only hire qualified persons, or the employer should provide training to the person hired. Furthermore, in order to prevent accidents and occupational illness, the employer is obliged to provide clear technical safety rules and monitor hygiene in the workplaces.

Furthermore, in accordance with Decision No. 207 dated 09.05.2002 "On the definition of difficult and dangerous work", some work in areas such as construction and the electrical industry are considered as difficult and endangering the life and health of the employees. Thus, the employer is obliged to apply high standards of safety-at-work measures and health protection measures.

According to Decision of Council of Ministers No. 461 dated 22.07.1998 "On the Register of Accidents at Work and Occupational Illness", the employer is obliged to keep a register of the Accidents at Work and Occupational Illness in the relevant workplaces.

10. Amendment of the employment agreement

According to Article 12 of the Albanian Labour Code, the employment agreement may be amended by mutual agreement between the parties, wherein such mutual agreement is concluded either orally or in written form. In the event that the amendment of the employment agreement is agreed orally, the employer is obliged to produce a written amendment to the employment agreement within 30 (thirty) days from the date of the oral agreement and this written agreement must be signed by both parties.

11. Termination of employment

11.1 Termination of fixed/open term employment contracts

A fixed-term employment contract is terminated upon the expiry of its term without the need for any prior notice. An open-term employment contract is terminated when one party decides to do so and the prior notice period has been observed. The Labour Code provides that an employment contract can be terminated with or without cause and although in normal circumstances a notice period must be provided, there are circumstances where the law justifies immediate termination for reasonable cause.

11.2 Procedure for termination

There are procedures which must be followed when the employer decides to terminate an employment contract, both in the case of immediate termination with cause or with prior notice period. If such termination takes place after the probationary period, the employer must convene a meeting with the employee, to discuss the reasons giving at least 72 hours' prior written notice. The notice of termination of employment may be given to the employee from 48 hours to one week following the date of meeting. Should the employer fail to follow this procedure, he shall be obliged to pay the employee compensation equal to two months' salary, and other possible compensation. This procedural requirement does not apply to collective dismissals for which there is a separate special procedure.

11.3 Notice period

The notice period for the termination of the employment contract is defined in the individual employment contract. In the event that the parties have not defined the notice term in the employment contract, reference shall be made to the Labour Code. According to the Labour Code, the notice period for termination within the 3 (three) month probationary period is at least five days, which may be changed by the written agreement of both parties.

The Labour Code provides for mandatory minimum notice periods to be applied in the case of termination of an indefinite (open) term contract by either the employer or the employee, as follows:

(a) during the first six months: two weeks;
(b) between six months and one year: one month;
(c) between one and five years of employment: two months; and
(d) for more than five years of employment: three months.

11.4 Termination without cause

The termination of an employment contract by the employer prior to its expiry date, without reasonable cause, can result in the employer being liable to compensate the employee with up to 12 months' salary; the specific obligations of the employer will be decided upon by the courts.

According to the Labour Code termination of the employment contract by employer is considered to be without cause (Article 146 of the Labour Code) when it is:

(a) based on the fact that the employee had genuine complaints arising from the employment contract;
(b) based on the fact that the employee had satisfied a legal obligation (e.g. giving evidence in court);
(c) based only on the employee's characteristics (such as race, colour, sex, age, civil status, family obligations, pregnancy, religious or political beliefs, nationality, social status);
(d) based on the fact that the employee is required to exercise constitutional rights; and
(e) based on the fact that the employee participates in lawful labour organisations and their activities.

If an employee is dismissed without any reasonable cause, he has the right to bring a claim against the employer to court within 180 days, beginning from the day on which the notice of termination expires. In the event that an employer is found to have had an unjustifiable motive discovered after the expiration of this deadline, the employee has the right to start legal actions within 30 days, beginning from the day on which the particular unreasonable cause was discovered.

11.5 Collective dismissals

Collective dismissal is defined as the termination of labour relations by the employer for reasons unrelated to the employee, where the number of dismissals in a 90-day period is at least:

(a) 10 for enterprises employing up to 100 employees;
(b) 15 for enterprises employing 100-200 employees;
(c) 20 for enterprises employing 200-300 employees; and
(d) 30 for enterprises employing more than 300 employees.

Article 148 of the Labour Code defines specific procedures which need to be followed when an employer plans to execute collective dismissals. The employer shall inform in writing the employees' trade union which is recognised as the representative of the employees. In the absence of a trade union, the employees shall themselves be informed by way of a notice visibly placed in the workplace. The notice shall contain:

(a) the reason(s) for dismissal;
(b) the number of the employees to be dismissed;
(c) the number of employees employed; and
(d) the period of time during which it is planned to execute the dismissals.

One copy of this notice must also be submitted to the Ministry of Labour and Social Affairs.

In order to attempt to reach an agreement, the employer shall then undertake the consultation procedure with the employees' trade union within 20 (twenty) days of the date on which the notice was displayed. In the absence of a trade union all interested employees are entitled to participate in the consultations. If the parties fail to reach agreement, the Ministry of Labour and Social Affairs shall assist them in reaching an agreement within 20 days of the date on which the employer informed the Ministry in writing, in the aims of completing the consultation procedure. After the termination of the 20-day deadline, the employer can then inform the employees of their dismissal and begin the termination of employment contracts providing the following notice periods:

(a) for up to one year of employment: one month;
(b) for two-five years of employment: two months; and
(c) for more than five years of employment: three months.

Non-compliance with this procedure shall result in the employees receiving compensation of up to six months' salary in addition to the salary payable for the notice period or to additional compensation awarded due to non-compliance with the provision of the specified notice periods.

12. Non-compete

In addition to the provision which provides that during the employment period the employees are not permitted to work for third parties, if such other employment would harm the employer or create competition for the employer, there are provisions to prevent the employee from working for a competitor after the termination of the employment agreement. According to the amendments of the Labour Code (Law No. 9125 dated 29.07.2003), non-competition clauses taking effect after termination can be enforced subject to the following conditions:

(a) they are provided in writing at the beginning of the employment relationship;
(b) the employee is privy to professional secrets in respect of the employer's business or activity during the course of employment; and
(c) the abuse of such privilege shall cause significant damage to the employer.

The non-compete period shall be no longer than one year after the date of termination. Parties are free to determine and set out agreed non-competition clauses in the employment agreement, but such non-competition clauses shall only be enforceable once the aforementioned criteria are met, and in the event that the conditions of prohibition are clearly defined such as conditions related to place, time and type of activity. An agreement on non-competition after termination is subject to remuneration for the employee, wherein such remuneration is equivalent to the amount of 75 percent of the salary he would have received if he were still working with the employer. The prohibition for competition will not apply if the employer terminates the employment agreement without reasonable cause or if the employee terminates the employment agreement for a reasonable cause related to the employer.

13. Global policies and procedures of employer

Albanian legislation does not provide any special regulation with regard to the global policies and procedures of employer. However, according to Article 23 of the Labour Code the employee must respect the employer's general and specific orders and instructions. The employee is not obliged to execute those employer's general and specific orders and instructions which change the terms and conditions of the employment agreement. Thus, the employer's policies and procedures developed on a global level could be applicable in Albania provided that such policies and procedures are fully in compliance with Albanian legislation and they do not alter the terms and conditions of the employment agreement.

14. Employment and mergers and acquisitions

This issue is regulated by Article 138 of the Labour Code which is in compliance with Council Directive 77/187/EEC known as "The

Acquired Rights Directive" and is applicable only in the event of the transfer of an enterprise, business or part of a business to another employer as a result of a legal transfer or merger.

In the event of transferring an enterprise or part of it, all rights and obligations arising from a contract of employment valid until the moment of transfer, will pass on to the person subject to the transfer of these right. Any employee refusing to change employer in this event remains bound by the employment contract until the expiration of the termination notice. According to Article 138(2) of the Labour Code, the previous employer remains jointly responsible with the new employer for obligations derived from the employment contract until the expiration of the notice period for termination or until such date specified in the contract. The transfer of an enterprise in itself does not generally amount to a valid reason or grounds for the termination of employees' contracts. Exceptions to this rule are when the dismissals are due to economic, technical or organisational reasons that impose changes to the employment structure. In such cases, termination procedure[1] as defined in the Labour Code is required to be followed. Article 139 of the Labour Code provides for an information and consultation procedure in the event of a transfer of enterprise. The transferor and transferee are obliged to inform the trade union of its role as the employees' representative or, in its absence, the employees, and further explain the reason for the transfer, its legal, economic and social effects on the employees, and the measures to be undertaken in respect thereof. Moreover, they are obliged to engage in consultations regarding the necessary measures to be taken at least 30 (thirty) days prior to the completion of the transfer. In the event that an employer terminates the contract without following the abovementioned procedures of information and consultation, the employee is entitled to compensation equal to six months' salary in addition to the salary he would have received during the prior notice period.

15. Industrial relations

In Albania all citizens have the right to join labour organisations for the protection of their employment interests and social security and all employees have the right to form trade unions and employers have the right to form their own organisations (Article 176 of the Labour Code). A trade union must have a minimum of 20 people and is formed as an organisation/body with legal status through registration as such with the Court of Tirana. Employee trade unions are organised on a national level (according to the respective industry sector) and also on a company level.

Each legally founded trade union may submit a collective bargaining request to its employer or employer organisation, in order to commence negotiations in relation to a collective labour contract at either enterprise, group of enterprises, or sector level.

Furthermore, the employees have the right to strike, which is provided for by the Constitution of the Republic of Albania and by the Labour Code. Participation in any strike is voluntary and no one shall be forced to participate in a strike against his will.

Any action that includes threats or any kind of discrimination of workers due to their participation or non-participation in a strike is prohibited. While a strike is taking place, the parties shall make efforts, through negotiations, to reach common understanding and sign the relevant agreement confirming the outcome of the negotiations.

A strike shall be deemed lawful if it fulfils conditions defined in the Labour Code. The right to strike cannot be exercised in services of vital importance, where the interruption of work endangers the life, personal safety or the health of a part of or all of the people. Such vital services include: water supply, electricity supply, fire protection, air traffic control, necessary medical and hospital services, and prison services. A strike shall cease when the parties reach an agreement or the trade union decides to end it.

16. Employment and intellectual property

According to Article 135 of the Labour Code, inventions made by employee or in which the employee has been involved during employment with the employer and in compliance with his contractual obligations, belong to the employer.

Through written agreement the employer may exercise copyright related to those inventions which the employee has made during employment with this employer, but not as part of his job description/contractual obligations. The employee who has made an invention should inform the employer about this invention in writing. The employer within 6 (six) months should notify in writing the employee whether the employer requires the copyright of the invention or not.

If the employer decides to exercise copyright relating to the invention, the employer should pay an award to the employee taking full consideration of all circumstances, the economic value of the invention, the use of his equipment, expenses incurred by the employee, etc.

In the event that the employee during his employment with the employer performs work not in compliance with his contractual obligations/job description, regardless whether protected or not, the employer may use it to the extent that the purpose of the contract allows for this. The same rules are applicable also to industrial drawings and models, and computer programmes that the employee creates during employment with the employer and in compliance with his contractual obligations.

Furthermore, according to Law No. 9380, dated 24.04.2005 "On Authors' Rights and Other Related Rights", the rights pertaining to works created under individual employment contacts belong to the employer. In this event, the period of time during which the employer enjoys these rights, is defined in writing. In the event that the employer and the employee have not entered into any written agreement to define such a term, it shall be 3 (three) years, starting from the date the work was submitted. With the expiry of the abovementioned period, the ownership rights to such works are returned to the employee(s).

1 Please see section 11.4 of this above.

17. Discrimination and mobbing

Albanian legislation provides express guarantees pertaining to the core labour rights of all citizens, regardless of race, colour, sex, age, religion, political beliefs, nationality or social origin. According to Article 9 of the Albanian Labour Code any kind of professional or employment discrimination is prohibited. Furthermore, according to Article 32(3) of the Labour Code, sexual harassment against the employee is prohibited. The prohibition of sexual harassment is also provided for in Law No. 9970, dated 24.07.2008 "On Gender Equality".

Furthermore, according to Article 32 of the Albanian Labour Code, the employer respects and protects the employee's person during the employment relationship. The employer must prevent any relations which might threaten the employee's dignity.

18. Employment and personal data protection

According to the Albanian Labour Code during the employment relationship, the employer shall not collect information concerning the employee, except in cases where this information is related to the skills of trade of the employee, or if necessary for purposes the employment agreement to be entered into.

The area of data protection in Albania is regulated in general by Law No. 9887, dated 10.3.2008 "On Personal Data Protection" the provisions of which are in compliance with the EU Directive 95/46. Pursuant to this law, the Albanian Data Protection Commissioner (DPC) must be notified of the processing of personal data by the data controllers. Notification is not necessary when specific processing has been exempted from the law itself or by other sub-legal acts. Furthermore, the law provides for certain other obligations on the part of the controllers such as the obligation to maintain the confidentiality of personal data accessed during employment, even after the employment relationship has ceased, the obligation to inform and give access to the employers on their personal data being processed or transferred and the duty to correct or delete such data, the obligation to undertake organisational and technical measures for the security of processing of personal data.

With regard to the processing of sensitive personal data (e.g. nationality, union membership, health condition, etc.), written consent must be obtained from the employee prior to the processing of those data. However, such consent shall not be required if processing is subject to certain other requirements such as if the processing is necessary for the purposes of performing the obligations and specific rights of the controller in the field of employment law as in accordance with the Albanian Labour Code, the processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his consent, or the processing relates to data which has manifestly been made public by the data subject or is necessary for the establishment, exercise or defence of legal claims, or the processing is necessary for the administration of justice, etc.

The legislation on data protection enables the employer to verify how his or her data is being handled, in order that he or she can exercise his or her rights if necessary (i.e. the right on information on the use, processing and transfer of his or her personal data, the right to access his or her information, the right to correction of his or her information and most importantly the right to object to certain forms of use made of his data by the organisation).

With respect to the transfer of personal data to foreign countries, such transfer is generally subject to notification. Depending on the level of protection of personal data of the country of destination, the transfer of employees' data abroad may also be subject to a prior DPC authorisation.

19. Employment in practice

The Albanian authorities and institutions, especially the Courts, tend to show favour towards the employees. Therefore, in the event of the termination of the employment relationship, the employer should strictly comply with Albanian legislation in order to minimise the risk for this termination to be considered "without cause", thus resulting in a potential increase in compensation for the employee (e.g. potential 12 months' salary).

In recent years we have noticed that the inspections from the Labour Inspectorate and Tax authority have intensified. Fines are applied only in those cases where the employer has not fulfilled his legal obligations even after the relevant institution (i.e. Tax Authority, Labour Office) has given him/her a determined period of time to comply with the legislation in force.

1. General overview

In accordance with the Constitution of Bosnia and Herzegovina, labour and social rights in Bosnia and Herzegovina are within the exclusive jurisdiction of the separate entities (Bosnia and Herzegovina consist of two entities: Federation of Bosnia and Herzegovina and Republic of Srpska). Therefore, there is no common Labour Law at state level. According to the legislation of Federation of Bosnia and Herzegovina, there is a hierarchy of labour regulations at the top of which is the Labour Law *("Zakon o radu", "Službene novine Federacije Bosne i Herceogvine", No. 43/99, 32/00 and 29/03)* ("Labour Law of Federation of Bosnia and Herzegovina"). In addition to the Labour Law, employment-related matters within companies are regulated by the General Collective Agreement within the specific entity *("Opšti kolektivni ugovor", "Službene novine Federacije Bosne i Hercegovine", No. 54/05)* ("GCA") and is applicable to all employers and employees in Federation of Bosnia and Herzegovina. According to the legislation of the Republic of Srpska, the other entity of Bosnia and Herzegovina, there is a hierarchy of labour regulations at the top of which is the Labour Law *("Zakon o radu", "Službeni glasnik Republike Srpske", No. 38/00, 40/00, 47/02, 38/03, 66/03 and 20/07)* ("Labour Law of Republic of Srpska"). In addition to the Labour Law, employment-related matters in companies are regulated by the General Collective Agreement within the specific entity *("Opšti kolektivni ugovor", "Službeni glasnik Republike Srpske", No. 27/06 and 31/06)* ("GCA") applicable to all employers and employees in Republic of Srpska. There may also be an industrial collective agreement applicable to all employers and employees in specific industry.

A company may have an individual collective agreement between the employer and the representative trade union. The companies which do not have an individual collective agreement usually regulate employment-related matters by a general provision entitled "Work Rules".

Written agreements of employment must be concluded with each employee. The Labour Law provides for certain mandatory elements of employment agreement.

The individual collective agreement or, in the other event, the Work Rules and individual employment agreements must all be consistent with the Labour Law and must not provide for less protection for employees than which is guaranteed by the Labour Law. In addition, individual employment agreements may not provide for less favourable terms than are provided in the individual collective agreement or, as in the other event, the Work Rules.

Employment legislation in Bosnia and Herzegovina is embedded into the socialist heritage of former Yugoslavia. Its main feature is that heavily tilts towards employees' protection, especially with respect to termination of employment.

2. Hiring

2.1 General

The Labour Law does not proscribe any particular requirements pertaining to the recruitment of employees, except a general requirement according to which the employment relationship may be established with a person of at least 15 years of age who fulfils conditions for work on the respective work post (if any).

2.2 Disabled persons

According to the Law on Professional Rehabilitation and Employment of Disabled Persons *("Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba sa invaliditetom", "Službeni novine Federacije Bosne i Hercegovine", No. 12/10),* all employers with 39 or more employees are obliged to employ a certain number of disabled persons (relevant date for the December 31, 2009). As from December 31, 2010 the relevant number of employees has been reduced to 32 employees. According to the Law on Professional Rehabilitation and Employment of Disabled Persons *("Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba sa invaliditetom", "Službeni glasnik Republike Srpske", No. 36/09)*, all employers with 16 (relevant date for the December 31, 2009) or more employees are obliged to employ a certain number of disabled persons. Furthermore, employers who either finance or have suitable commercial cooperation with companies engaged in professional rehabilitation and employment of disabled persons are exempt. It should be noted that the requirement for the mandatory hiring of disabled employees is not enforced in practice. The law itself does not provide a mechanism for efficient enforcement at the moment.

2.3 Foreign employees

The employment of foreign citizens in the Federation of Bosnia and Herzegovina and in the Republic of Srpska is regulated respectively by the Law on employment of Foreigners, "*Zakon o upošljavanju stranaca", "Službene novine Federacije Bosne i Hercegovine", No. 08/99* and *"Zakon o zapošljavanju stranaca i lica bez državljanstva", "Službeni glasnik Republike Srpske", No. 24/09*. In order to be employed in Serbia, a foreign citizen must obtain a so-called "white card" (i.e. a registration of arrival), temporary or permanent residence issued by the Ministry of Interior and a work permit issued by the National Employment Agency *("White card")*. According to the abovementioned Laws, a foreigner is obliged to register with a local police station within 24 hours after entering the country, unless staying in a hotel, in which case the hotel deals with the registration procedure. On the basis of the registration, the local police department issues the so-called "white card".

Upon issuance of the white card a foreigner wishing to work in Federation of Bosnia and Herzegovina or Republic of Srpska must obtain a temporary residence permit (or, if special conditions are met, permanent residence permit). Documents, which need to be submitted together with the request, include evidence of possession of sufficient funds (e.g. credit card) and health insurance documents.

A request for a work permit is submitted by the potential employer of the foreign person. The employer has, *inter alia*, to submit a written explanation on the need for engaging the particular foreigner. The procedure of obtaining the work permit takes at least one month. In practice, the issuance of work permit is almost never denied.

2.4 Secondments

Secondment of Bosnian employees abroad is regulated by the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families *("Međunarodna konvencija o zaštiti prava svih radnika migranata i članova njihovih obitelji")*. According to this Convention, the state of Bosnia and Herzegovina is required to take care about the number of citizens working abroad.

3. Types of engagement

3.1 Employment

Traditional employment relationship is the most usual manner for engaging personnel in Bosnia and Herzegovina. There are two types of employment relationship depending on the duration. As a rule, an employment relationship is created for an unlimited period of time. Exceptionally, employment agreements can be entered into for a limited period of time of up to 24 months, in a limited number of cases such as seasonal work, work on a specific project or to cater for a temporary increase of volume of work. The temporary employment of managers can be equal to their mandate. In case of compulsory apprenticeship, temporary employment can match the duration of compulsory apprenticeship.

3.2 Engagement outside employment

Personnel may also be engaged outside employment relationships, in those events subject to the conditions proscribed by the Labour Law. Flexible kinds of engagement include:

(a) temporary and occasional work (up to 60 days a year);
(b) service agreement (only for work outside the employer's main business activities);
(c) agreement for professional improvement (concluded mainly with trainees).

3.3 Engagement of managing directors

Persons serving as managing directors may be employed under the same conditions as any other employee of the company. The Labour Laws of the Federation of Bosnia and Herzegovina and the Republic of Srpska do not provide separate rules for management agreement. Managers of the company enjoy the same treatment/protection as any other employee of the company.

4. Salary and other payments and benefits

4.1 Salary

The Labour Law proscribes that the total salary is calculated as the sum of the following elements and sub-elements, some of which are mandatory and some of which are not:

(a) salary for the work performed and the time spent at work, which consists of the following elements:

- basic salary (mandatory);
- performance-based part of salary which serves as a corrective of the basic salary and may lead to its increase or decrease (not mandatory); and
- increased salary (mandatory).

(b) salary based on the employee's contribution to the employer's business success (e.g. awards, bonuses) (not mandatory); and

(c) other payments such as:

- meal allowance (mandatory);
- compensation for the costs of commuting to and from work, equal to the amount of public transportation ticket;
- annual vacation allowance (mandatory);
- other payments made to the employee, if any (not mandatory).

4.2 Other mandatory payments not considered as salary

According to the Labour Law, the employer is also obliged to make the following payments to the employees which are treated as compensation for expenses and do not form part of the salary and thus are not subject to tax and mandatory social contributions (unless they exceed statutory non-taxable amounts):

(a) per diem expenditure for time spent on business travel within the country and abroad;
(b) compensation for accommodation and food during field work, unless the employer provides for accommodation and food;
(c) retirement severance payment equivalent to the amount of three average salaries in the Republic of Serbia;
(d) compensation for funeral expenses in the event of the death of the employee or a member of his immediate family;
(e) compensation for damages in the event of a work-related injury or professional illness.

4.3 Other benefits

Employers are free to provide their employees with other benefits, such as employees' stock option plans, profits participation, etc.

5. Salary tax and mandatory social contributions

Salary is subject to salary tax and mandatory pension, health and unemployment insurance (together, "mandatory social contributions"), payable by the employer at source on a withholding basis. Although total mandatory social contributions are payable by the employer on a withholding basis, the law in the Federation of Bosnia and Herzegovina distinguishes between contributions relating to employer and contributions relating to employee.

In the Federation of Bosnia and Herzegovina these amounts are as follows:

Contributions on salaries paid by the employer:	Contributions on salaries paid by the employees:
6% pension insurance	17% pension insurance
4% health insurance	12,5% health insurance
0,5% unemployment insurance	1,5% unemployment insurance

In the Republic of Srpska these amounts are as follows:

Contributions on salaries paid by the employer:
1% pension insurance
11,5% health insurance
0,7% unemployment insurance
1,4% for child health care

Salaries of foreign personnel (with the exception of those employed with foreign diplomatic or consular missions and IGOs not deemed to be Bosnia and Herzegovina residents for tax purposes) are also subject to local taxes and mandatory social contributions.

6. Working hours

The Labour Law determines that full-time working hours are 40 hours per week. As a rule the working week lasts five days but the maximum of 40 hours per week may also be extended over a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the Labour Law, a 30-minute break is a statutory obligation and is included in the full-time working hours. In practical terms this means that a working day normally consists of seven and a half working hours. Work in excess of full-time working hours is deemed overtime and is subject to additional compensation. Senior employees and management are not exempt from the overtime regime, i.e. their overtime is also subject to additional compensation.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 18 days. This minimum can be increased on the basis of various criteria determined in the individual collective agreement or, in other event, the Work Rules applicable to a particular employer or individual employment agreements. According to the Labour Law, annual vacation may be taken in its entirety at once or in two parts. If it is taken in two parts, the first part (which cannot be less 15 days) can be taken in the current year, while the second part has to be taken no later than the 30th June of the subsequent year.

7.2 Paid leave

In addition to annual vacation employees are also entitled to a total of seven days of paid leave per year in cases proscribed by the Labour Laws.

7.3 Sick leave

In the event of sick leave, employees are entitled to a remuneration of salary. This remuneration amounts either to 80% of the employee's average salary calculated over the period of three months preceding the sick leave, in the event of illness or injury not related to work, or 100% of employee's average salary calculated over the period of three months preceding the leave, if the absence is caused by professional illness or injury. The employer is obliged to pay remuneration of salary for the first 42 days of sick leave, while the state compensates the remuneration for the remaining days. It should be noted that there are no limitations with respect to total duration of sick leave or number of sick leaves.

7.4 Unpaid leave and employment standstill

An employer may, at the request of the employee, allow the employee to take unpaid absence from work. In exceptional circumstances an employer shall be required to allow an employee leave of up to four working days in the Federation of Bosnia and Herzegovina and three working days in Republic of Srpska within one calendar year for religious or traditional purposes, provided that two-day leave is taken with compensation of salary as paid leave. During the absence, the rights and obligations of the employees acquired through employment and deriving from employment shall be suspended.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Bosnia and Herzegovina is a rarity. The regulatory framework is absent at both corporate law and tax law levels. The Law on Personal Income Tax *("Zakon o porezu na dohodak građana Republike Srpske", "Službeni glasnik RS", No. 91/06, 128/06 & 120/08* and *"Zakon o porezu na dohodak Federacije Bosne i Hercegovine", "Službene novine FBiH", No. 10/08)* lacks provisions on the topic, which stipulates, in Article 61 of the said law, that "income of employees or managers based on participation in profits…by option purchase of own shares" is considered capital income. There is a lack of provisions specifying when this income becomes valid for the purpose of taxation and how its amount is to be calculated.

In practice, a type of ESOP scheme is modestly applicable only in closed, limited liability, companies, through capital increase by contribution in services.

9. Health and Safety at work

The area of health and safety at work is regulated in detail by the Law on Health and Safety at Work *("Zakon o zaštiti na radu", "Službeni glasnik Republike Bosne i Hercegovine", No. 22/90)* and by the Law on Health and Safety at Work *("Zakon o zaštiti na radu", "Službeni glasnik Republike Srpske",* from *09.10.2007).* All employers and employees are obliged to adhere to specific obligations introduced by these laws. The Law on Health and Safety at Work, inter alia, stipulates that each employer must adopt the Act on Risk Evaluation of Work Posts, containing a description of the work process with evaluated risk attached to each employment post and identification of measures for the removal of such risk. In addition, all employers must have a general provision which regulates the most important matters pertaining to health and safety at work. The Law on Health and Safety at Work also requires employers to insure all employees against work-related injuries and professional illness.

10. Amendment of the employment agreement

The rules provided in this guide pertaining to dismissal/ termination of the employment agreement shall also be applied in the event that the employer cancels the contract, while at the same time offering the employee to enter into an employment contract under amended terms. If the employee accepts the offer of the employer as per paragraph 1 of this article, he shall reserve the right to contest the acceptability of such change of the contract before a competent court.

11. Termination of employment

11.1 Termination by employee

According to the abovementioned Labour Laws, the employee may freely terminate his employment relationship at any time and for any reason, subject to a 15-day notice period. This notice period may not be extended by contract.

11.2 Termination by employer

In accordance with the Labour Law of the Federation of Bosnia and Herzegovina, the employer may unilaterally terminate the employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) intentional breach of work duty (any specific breaches which may trigger dismissal must be stipulated in the employment agreement, collective agreement or, as the case may be, Work Rules);
(b) breach of work discipline (specific breaches which may trigger dismissal must be stipulated in the employment agreement, collective agreement or, as the case may be, Work Rules);
(c) technological, economic or organisational changes within the employer (redundancy).

The notice period is proscribed only when termination is for organisational or economical reasons and it is a minimum of 15 days.

In accordance with the Labour Law of the Republic of Srpska, the employer may unilaterally terminate an employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) The employee has committed a severe breach of employment duties;
(b) The employer is making changes to his organisational structure and a surplus of employees is recognised;
(c) The employee cannot meet his obligations arising from the employment contract in a satisfactory manner;
(d) The employee has not returned to work after 5 days of expiry of paid leave or dormant employment period.

The notice period for the employer depends on the total length of service of the employee during his career and is applicable only if the contract is terminated for the reasons determined in 2 and 3 above, in which case it is calculated as follows:

- Working service from 2 to 10 years – 30 days;
- Working service from 10 to 20 years – 45 days;
- Working service from 20 to 30 years – 75 days;
- Working service above 30 years – 90 days.

11.3 Procedure for termination by employer

The notice period is proscribed only when termination is for organisational or economical reasons and the duration of the period is as mentioned above. In other cases of termination by employer there is no notice period, i.e. termination is with immediate effect subject to proper termination procedure being conducted.

Procedure for termination in the event of breach of work duty or work discipline

Prior to terminating an employee, the employer is obliged to issue to the employee to be terminated a written notice stating the grounds for termination, as well as facts and corroborating evidence and deadline. If there is a trade union within the employer, the said notice must usually also be delivered to the relevant trade union, which has the opportunity to provide its own response. In most of the cases, there is an obligation to consult the trade union but there are also some cases in which the employer is obliged to receive written approval for individual termination (for persons older than 55 or 60 years, disabled persons, trade union members, etc.). After consultation or written approval from the trade union, the employer may issue a decision on the unilateral termination of employment. This decision must contain a comprehensive description of the legal grounds for termination of the employment relationship and advice on legal remedies available to the terminated employee. The decision has to be delivered to the employee in person on the employer's premises or sent to the employee's address by registered mail. The employment relationship is deemed terminated on the day when the decision on termination of employment is delivered to the employee.

In addition to the abovementioned, the Law specifies within one of its provisions that in the event that the employer terminates the Employment Contract for reasons of behaviour or the work of the employee, the employer is obliged to provide the opportunity for the employee to provide his defence, except in those circumstances when it is not reasonable to expect the Employer to do so. However, it is advisable for the employer in all cases to allow the possibility of defence to the employee (in writing or with the employer in form of notes), so that the employer is covered in case of possible lawsuit. In all events, if a lawsuit is initiated against the employer, with regards to termination of the Employment Contract, the employer is obliged by the Law to prove the existence of the reasons for the termination of the Employment Contract.

Procedure for termination in the event of redundancy

In accordance with the Labour Laws, the employer can terminate the Employment Contract of the employee with formal termination notice if such termination of the Employment Contract is justified for economical, technical and organisational reasons.

In the event of termination of the Employment Contract as mentioned above, the Law determines that the termination of the Employment Contract is justified if in relation to the size, capacity and economical condition of the employer and capabilities of the employee, the employer cannot be expected to hire the employee for other activities or educate him or train for the work on other tasks.

The employer may change the organisational structure of the company and as a result of systematisation of working posts may determine that a specific working post is no longer required and, therefore, takes the decision to declare the employee redundant and terminates his Employment Contract. However, in the event that the employee initiates a lawsuit against the employer, it is necessary to prove that the employer was not able to hire the employee on some other tasks, to educate him or train him for the work on other tasks.

Furthermore, in accordance with the Labour Laws the specific procedure needs to be observed in the event of termination for redundancy. Thus, if an employer with over 15 employees intends over a three month period to cancel the employment contracts for more than 10% of his working force, and at least five employees, due to economic, technical or organisational reasons, he shall be obliged to consult in writing with the working council regarding the redundancy. The abovementioned consultation has to specify reasons for redundancy, redundancy criteria, number of redundant employees, measures for employment of redundant employees, etc.

In the event of termination for redundancy, the employer is obliged to offer severance payment to the terminating employees. The minimum redundancy payment proscribed by the Labour Law is 1/3 of the employee's average salary earned in the course of a 3-month period preceding the dismissal, for each year of employment.

Remedies in the event of wrongful dismissal

The employee may initiate litigation for wrongful dismissal within 1 year from the date of delivery of decision on termination. The main remedy available to the employee is reinstatement. In the events that the court finds wrongful dismissal, the employee is also entitled to compensation of salary and other lost remuneration. Pending the dispute, the employee may ask the Labour Inspectorate to render provisional measure on reinstatement.

It should be noted that labour disputes may last in practice for a very long period of time (2-3 years on average). The courts often show benevolence towards dismissed employees. Bearing that in mind, each case of termination should be conducted very carefully, in order to minimise the risk of negative outcome and dispute.

12. Non-compete

Without the approval of the employer, the employee may not, at his own or other's account, transact business in the area of activity performed by the employer. The employer and the employee may enter into a contract that the employee, for a certain period after the termination of the employment contract, which may not exceed two years from the day of termination of such a contract, may not be employed with another person in market competition with the employer and that he may not, either at his own or at the account of a third party, transact business in which he competes with the employer. The contract mentioned above may be an integral part of the employment contract.

The contracted ban of competition shall bind the employee only if by the contract the employer has undertaken the obligation during the period of ban to pay compensation to the employee at least equivalent to the amount of half of the average salary paid to the employee over the period of three months before termination of the employment contract. The compensation shall be paid by the employer to the employee at the end of each calendar month. The amount of compensation shall be coordinated in the manner and under the terms determined by a collective agreement, employment policy, or employment contract. The terms and the method of termination of competition ban shall be regulated in the contract between the employer and the employee.

13. Global policies and procedures of employer

An employer employing over 15 employees shall pass and publish a Rule Book regulating salaries, organisation of work and other issues of relevance to the employees and the employer, in accordance with the law and the collective agreement. The employer shall conduct mandatory consultations with the workers council or the trade union with regard to passing the Rule Book. The Rule Book shall be posted on the billboard of the employer and shall come into effect on the eighth day after the date of publication. The workers council or the trade union commissioner may request from the competent court to annul an unlawful Rule Book or some of its particular provisions.

14. Employment and mergers and acquisitions

The Labour Law imposes certain obligations in cases of "change of employer", which, by virtue of an explicit provision of law, encompasses mainly restructurings such as mergers. The relevant articles of the Labour Laws require the successor employer to notify the completion of the change, the employees and on transfer of their employment agreements on the successor employer.

15. Industrial relations

The Constitution of Bosnia and Herzegovina and the Labour Law guarantee the freedom of trade union association. There are two major trade unions with nationwide coverage: "Samostalni sindikat". Many other trade unions exist on industry level and within individual companies. As in the most other transitional economies, industrial disputes are quite usual in Serbia, especially in companies undergoing financial difficulties. Furthermore, a great deal of them still escalate into strikes, which is a legally recognised right of employees, although strikes are a decreasing trend.

16. Employment and intellectual property

According to the Serbian Copyright Law *("Zakon o autorskom i srodnim pravima", "Službeni glasnik RS", No. 104/09)*, the employer is the exclusive owner of the proprietary (economic) component of copyright developed by the employee while performing regular work duties for a period of five years following the creation of copyright, unless otherwise provided in the employment agreement with the respective employee or in the employer's general enactment. On the other hand, the employee is entitled to special remuneration depending on the monetary effects of the use of his copyright by employer. After the said five-year period, the economic component of copyright reverts to the employee. In both of the abovementioned cases, the employee remains the author and thus the owner or moral component of the copyright.

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal traits is strictly forbidden by the Labour Law, as well as any harassment and sexual harassment. Furthermore, there is also a separate regulation on mobbing. According to the recently adopted Law on Prevention of Discrimination *("Zakon o zabrani diskriminacije", "Službeni glasnik Bosne i Hercegovine")*, mobbing is defined as any act against an employee with the purpose or effect of harming personal dignity.

18. Employment and personal data protection

In concluding employment contracts, an employer may not request the employee to provide information which is not directly related to the nature of the work activity performed by the employee. Personal data of an employee may not be gathered, processed, used or supplied to third persons, unless if this is determined by the law or if this is necessary for the exercising of the rights and obligations deriving from employment.

19. Employment in practice

The collective agreement and each individual employment contract as well as labour rules (Rule Book) can provide favourable terms and rights for employees in comparison with those guaranteed by the Labour Law unless the opposite is expressly regulated in the Labour Law. At the same time, the provisions of the said acts must comply with the minimum rights provided for employees by the Labour Law and other laws, conforming to the lower threshold set by the mandatory provisions contained therein.

1. General overview

Bulgarian legislation is based on the civil law system. Employment relationships between individuals and employers are regulated predominantly by the Constitution of the Republic of Bulgaria, the international treaties to which the Republic of Bulgaria is a signatory and which have been ratified by the Bulgarian Parliament, domestic legislation including the Bulgarian Labour Code, last amended in July 2010, as well as various special laws and a large number of regulations, collective labour agreements and the internal rules and orders of the employers. The Labour Code ("LC") is based on the principle of setting the minimum standards for the relationship between the employer and the employee. The majority of its provisions (i.e., regarding working hours, breaks, leave, labour discipline, information and consultation, duration, termination of the employment, etc.) are mandatory in nature and may not be waived even with the consent of the employee. Any mutual understanding to that effect could result in violation of the LC and in the imposition of sanctions for the employer.

Individual employment contracts must be concluded in writing and must specify as a statutory minimum:

(a) Identities of the parties;
(b) Place where the work will be performed;
(c) Position and nature of the work to be performed;
(d) Date on which the employment contract is concluded and the date of commencement of employment;
(e) Duration of the contract;
(f) Paid holiday and any other leave to which the employee is entitled;
(g) Notice periods that parties should observe in case of termination of the employment contract [1]. Notice period should be one and the same for both parties;
(h) Base salary and the additional salaries of permanent nature, as well as the frequency of their payment; and
(i) Duration of the working day or week.

In addition to the legislation and the individual employment contracts, employment relations can also be governed by internal rules and policies of the employer and collective labour agreements (on a company or a branch level).

2. Hiring

2.1 General

LC does not provide any particular requirements towards the recruitment of employees, except for the minimum age for employment - 16 years. Employment of younger persons is forbidden unless as an exception for certain positions.

2.2 Disabled persons

Employees, who by reason of illness or labour accident are unable to perform the work assigned to them, but who may perform other suitable work or the same work under relaxed conditions without hazard to their health, should be transferred to other work or to the same work under suitable conditions at the proscription of the medical authorities. The employer shall be obliged to transfer the employee to suitable work according to the proscription of the said authorities within 7 days after receipt of the proscription. Employees with permanently reduced working capacity of 50% and more than 50% shall be entitled to basic paid annual leave in an amount of not less than 26 working days.

Employers with more than 50 employees are obliged annually to designate job positions suitable for occupational rehabilitation. These positions can vary between 4 to 10% of the total number of employees depending on the economic activity in which the employer is engaged.

2.3 Foreign employees

EU/EEA nationals and the nationals of Switzerland and members of their families may enter and stay in Bulgaria without any visa or residence permit for up to 90 days. Upon exit of the country, this period is renewed. In the event that they need/wish to stay longer they can apply for long-term (up to 5 years) or permanent residence certificates. As of 01.01.2007 EU/EEA nationals and the nationals of Switzerland are entitled to work in the country without the necessity to obtain work permits.

Other expatriates, citizens of third (non-EU) countries, which have signed visa exemption agreements with Bulgaria or are listed in the Ordinance on the terms and procedure for issue of visas and determination of the visa regime (i.e., countries like Australia, New Zealand, Canada, USA, Israel, Chile, Japan, etc.) are entitled to enter Bulgaria without visa and stay for an overall period of up to 90 days within a 6-month period. Such visa-free stay does not entitle them to work in the Republic of Bulgaria. If they wish/intend to work in the country and depending on the type of position they would occupy, they may need to apply for a work permit (separate document issued by the Bulgarian Agency of Employment). If their work requires a longer stay in the country, they also need to apply for a long-term (for up to 1 year) or permanent residence permit.

All other expatriates (apart from the above two categories) are entitled to enter and stay in the country only on the grounds of a previously issued visa. If they wish/intend to work in the country and depending on the type of position they intend to occupy, they may need to apply for a work permit. If their work requires a longer stay in the country, they would also need to apply for a long-term (for up to 1 year) or permanent residence permit. Receipt of these documents can be simplified if they have received a long-term residence permit in another EU member state.

Issued residence permits do not entitle expatriates to work in the country. In order to work legally in Bulgaria they may need to obtain separate work permits. However, the obtaining of a work permit is one of the legal grounds for the issue of one of the types of visas (type D visa) and the subsequent issue of a long-term residence permit.

1 Notice period in case of termination of an employment contract of indefinite duration is 30 days, provided that the parties have not agreed upon a longer period but no longer than 3 months. Notice period in case of termination of a fixed-term employment contract is 3 months, but no longer than the remaining period of the contract.

The procedure for the issue of work permits must be initiated by the employer prior to the expatriate's entry into the territory of the Republic of Bulgaria. The Bulgarian Encouragement of Employment Act provides that work permits are issued, *inter alia*, in the event that (a) the status, development and the public interest on the national labour market, in the opinion of the Agency of Employment, allow this and (b) the overall number of expatriates working for the employer seeking permission to employ an expatriate has not exceeded 10% of its entire workforce [1] over a period of 12 months prior to the application date.

The entire procedure takes at least one month. The procedure may take even longer if expatriates will not be occupying senior managerial positions.

2.4 Secondments

Employers may second their employees for the performance of their labour duties outside the place of their permanent work for up to 30 calendar days without interruption (business trips). A secondment for a longer period requires the written consent of the employee (secondment).

In the event of a secondment for the provision of services in another Member State of the European Union, in another State party to the Agreement on the European Economic Area or in the Swiss Confederation (if longer than 30 calendar days), the parties should negotiate for the entire secondment period at least the same minimum work conditions as those established for the employees performing the same or similar work in the host country.

For the period of the business trip, the employer is under the obligation to provide transportation, accommodation and daily allowance at the specific minimum amount set in separate Regulations. Amounts mainly vary depending on the destination of the business trip (i.e., in Bulgaria or abroad).

3. Types of engagement

3.1 Employment

For reasons of clarity, under this section we need to first outline some principal differences between an employment contract and a civil contract (for the provision of various services, etc.).

The employment contract is a contract by virtue of which an individual provides his labour (i.e., physical/mental exertion, professional expertise and skills) to perform a certain type of work defined in the job description in return for remuneration. This type of contract is governed by the mandatory provisions of the LC and a large number of regulations. As indicated above, the LC is based on the principle of setting the minimum standards for the relationship between the employer and the employee. The majority of its provisions are mandatory in nature and may not be waived even with the consent of the employee. Any mutual understanding to that effect could result in violation of the LC and in the imposition of sanctions upon the employer.

The civil contract covers the provision of various services (i.e., consultancy, technical, advisory, etc.), fulfilment of certain assignments, accomplishment of certain tasks, etc., and the remuneration received is tied to the delivery of a certain result. However, apart from the delivery of such result, the contractor is free to determine the remaining parameters himself (i.e. how to work, when to work, what materials to use, etc.). These contracts are governed by Bulgarian civil law in particular the Contracts and Obligations Act, defining them as agreements between two or more persons aiming to create, settle or terminate a legal relation between them. As a main rule, the parties are free to negotiate the contents of such contracts. Individuals working under civil contracts, i.e. contractors are not subject to employment legislation and the rules of the LC do not apply.

However, the LC expressly stipulates that all relations between parties in connection with the provision of the individual's labour are regulated solely as employment relationships, to which the LC applies. This provision aims to prevent the concealment of employment relationships by the conclusion of civil contracts for the purpose of evasion of the mandatory provisions/ constraints imposed by the labour and tax legislation. It is considered that such concealment leads to the abuse of employees' rights as guaranteed by the LC (i.e. specified working hours, annual paid leave, breaks, remuneration, safe working conditions, protection against termination of the contract, terms of the contract, etc.). The LC explicitly requires an employment contract where the relationship between the parties features the characteristics of an employment relationship (as indicated above, these are the relations requiring the provision of an individual work force). The Executive Agency of General Labour Inspection is empowered to exercise control over the observance of employment legislation in Bulgaria and it can declare the existence of an employment relationship between the parties, even when they have entered into a civil contract.

In view of the above, parties should carefully consider the nature of the work to be performed in order to enter in the correct type of contract and avoid future complications.

Normally, employment contracts are concluded for indefinite duration. Fixed-term employment contracts can be concluded only as an exception and on certain grounds explicitly and exhaustively listed in the LC. A fixed-term contract concluded in violation of these stipulations is considered an employment contract for indefinite duration.

3.2 Engagement outside employment

As indicated above, personnel may also be engaged outside employment relationship, under civil contracts, which are not regulated by the LC.

Statutory representatives of companies (managers, executive directors or members of Boards) can be engaged under management agreements (please refer to the following section 3.3).

1 Including Bulgarian citizens, expatriates with permanent residence permits, expatriates who have been granted asylum, refugee or humanitarian status, third country nationals, who are family members of Bulgarian citizens or of nationals of a EU Member State, of a Contracting Party to the Agreement on the European Economic Area, or of the Swiss Confederation.

Outsourcing companies (mainly HR agencies) have maintained a presence and have successfully been offering services in Bulgaria for the past 6-7 years. Despite recent attempts of the Bulgarian Parliament to regulate this aspect of employment practices, their activities still take place in a legal vacuum. However, the existence and operation of outsourcing companies is recognised and tolerated in practice.

3.3 Engagement of managing directors

The Bulgarian Commerce Act expressly allows commercial companies to enter into management contracts (a type of civil contracts which are not regulated by the LC) with their statutory managers (i.e., the persons appointed to manage and represent the company and entered in the commercial registry as such). Statutory managers working under management contracts are not employees and they do not enjoy the general protection provided by the LC. Companies are also free to conclude employment contracts (instead of management contracts) with such persons. However, the conclusion of employment contracts with such individuals is an exception.

The LC and the Commerce Act do not expressly regulate the status of other key/ management employees, apart from statutory managers and, therefore, they are subject to the general rule described above – i.e. the type of the contract that will be concluded with them (i.e., whether a civil contract or an employment contract) will depend mainly on the nature of the job to be performed. The predominant understanding, however, is that these persons will enter into employment contracts with the respective company and not management contracts.

A foreigner may be appointed as managing director without any limitations. Registered statutory representatives of companies (managers or executive directors/members of Boards) do not require work permits irrespective of their nationality. However, depending on nationality they would need to obtain either a certificate for long-term residence in the country for up to 5 years if they are EU nationals or a long-term residence permit of up to 1 year (renewable) if they are non-EU nationals.

4. Salary and other payments and benefits

4.1 Salary

The minimum wage levels are set by the Council of Ministers by a decree. As of 1 January 2009 the minimum monthly salary in Bulgaria is BGN 240 (approximately EUR 120) during normal working hours. Men and women have the right to equal pay when performing one and the same work or work to which equal value is attributed.

The LC guarantees payment of a monthly salary to the employee up to the amount of 60% of his gross salary under the employment contract but not less than the national minimum monthly salary, in case of *bona fide* performance of his obligations. The difference between the guaranteed monthly salary and the salary actually agreed in the employment contract remains due. It should be paid by the employer with the legal interest equal to the Basic Interest Rate as established by the Bulgarian National Bank plus 10 points.

Employees are also entitled to the following additional salaries:

GROUNDS	UNDER THE REGULATION ON THE ADDITIONAL AND OTHER REMUNERATIONS
For length of service and professional experience (mandatory)	Minimum is 0.6% over the basic salary agreed in the employment contract for each year of length of service and professional experience. The right to receive this additional salary vests when the employee acquires at least 1 year.
For night work (if such work is performed)	The minimum is BGN 0.25 (approximately EUR 0.12) for each hour of night work (i.e. work between 10 p.m. and 6 a.m.) or part thereof.
For being at the disposal of the employer outside the enterprise	The minimum is BGN 0.10 (approximately EUR 0.05) for each such hour or part thereof.
For overtime work	Please refer to section 6.5 below.

The minimum pay levels are equal for employees working under fixed-term employment contracts and those working under employment contracts of indefinite duration.

4.2 Other mandatory payments not considered as salary

As such payments are considered, *inter alia*, the daily allowances (in cases of business trips) up to the double amount of the minimum allowances as set in the applicable Regulations. Other payments (severance packages, bonuses, other benefits) even if not considered to be part of the employee's salary are treated as such part from tax point of view.

4.3 Other benefits

The employer may, independently or jointly with other authorities and enterprises provide to its employees:

(a) organised nourishment conforming to the ration standards and specific conditions of work;
(b) transportation between the place of residence and the workplace;
(c) facilities for short- and long-term recreation, physical culture, sports and tourism;
(d) facilities for cultural pursuits, clubs, libraries, etc.

The employer shall provide to the employees working clothes and uniforms under terms and according to a procedure established by the Council of Ministers or in the collective agreement. The employee shall be obliged to wear the work clothes or uniforms during working time and to keep them as the property of the employer.

Employers are free to provide their employees with other benefits, such as employees' stock option plans, profits participation, etc.

5. Salary tax and mandatory social contributions

According to the Bulgarian Social Security Code, both employers and employees have to make mandatory social security contributions over employees' monthly social security income. Amount and type of the mandatory social security contributions depend, inter alia, on the category of labour performed by the respective employee. There is a special Regulation on the Categorisation of Labour upon Retirement, which defines 3 categories of labour. The principle is that in 1st and 2nd category of labour are exhaustively listed the type of work conditions & professions that fall within each category and in 3rd category fall all the rest.

Mandatory social security contributions have to be made to the following funds:

5.1 Pensions funds

State Pension Funds

16% for the Pensions Fund for those born before 1 January 1960 and working under the terms of 3rd category of labour (19% for those working under the terms of 1st and 2nd category of labour), distributed between employee and employer in the following ratio: for the account of the employee - 7.1% and for the account of the employer - 8.9% (if an employee works under 3rd category of labour); or 11.9% (if an employee works under 1st and 2nd category of labour).

11% for the Pensions Fund for those born after 31 December 1959 and working under the terms of 3rd category of labour (14% for those working under the terms of 1st and 2nd category of labour), distributed between employee and employer in the following ratio: for the account of the employee - 4.9% and for the account of the employer - 6.1% (if an employee works under 3rd category of labour); or 9.1% (if an employee works under 1st and 2nd category of labour).

Additional Mandatory Pension Security Funds

This is applicable only to the persons born after 31 December 1959, who make contributions to the State Pension Funds.

For a universal pension fund as of 2007 onwards the contribution is 5%, distributed between employee and employer in the following ratio: 2.2% for the account of the employee and 2.8% for the account of the employer.

For a professional pension fund the contribution is 12% for employees working under 1st category of labour and 7% for employees working under 2nd category of labour. This contribution is entirely at the expense of the employer.

5.2 General illness and maternity fund

The contribution is 3.5%, distributed between employee and employer in the following ratio: 40:60.

5.3 Unemployment fund

The contribution is 1%, distributed between employee and employer in the following ratio: 40:60.

5.4 Labour accidents and professional disease fund

The contribution is between 0.4 and 1.1% (exact percentage is established in the 2010 State Social Security Budget Act by main types of economic activities) and it is entirely at the expense of the employer.

Medical security contribution is 8%, distributed between employee and employer in the following ratio: 40:60.

Social security contributions are calculated over the gross social security income of the employee for the respective month, provided that the minimum of this income should not be less than the minimum monthly amount of the social security income for the calendar year by economic activities and qualification groups of professions established in the 2010 State Social Security Budget Act and no higher than BGN 2,000 (the maximum monthly income for social security purposes).

The income upon which social security contributions are due includes all salaries, including such that are charged but unpaid or insurance contributions that have not been charged in the accounts, and other income from work. The elements of the salary and of the income on which social security contributions are due are determined by an act of the Council of Ministers on the basis of a motion by the National Social Security Institute.

Salary is also subject to income tax, which is 10% (flat) calculated over the gross amount of the salary minus the amount of the social and medical security contributions made at the expense of the employee.

Salaries of foreign personnel (with the exception of those employed with foreign diplomatic or consular missions) not deemed to be Bulgarian tax residents are also subject to local taxes and mandatory social contributions, subject to the existence of a DTT and social security treaty which may provide otherwise. Since Bulgaria joined the EU, social security schemes of EU/EEA and Swiss citizens are generally transferable between countries and benefits can be received on the basis of foreign insurance. Foreign social security is proven by the relevant E-forms taken from the social security institutions of the applicant's home country. With respect to other (third, non-EU country) citizens, foreign social security could be accepted by Bulgarian institutions if the person's country has signed international treaties in the field of social security with the Republic of Bulgaria [1].

1 List of countries which have a social security treaty with the Republic of Bulgaria: Albania, the Federative Republic of Yugoslavia (applied with Serbia, Montenegro, Bosnia and Herzegovina), Libya, Turkey, Ukraine, Macedonia, Croatia, the Swiss Confederation, Moldova, Israel, the Russian Federation and Korea.

6. Working hours

6.1 Regular working hours

The LC has established a regular working week of 5 working days, up to 40 working hours per week (eight hours per day), which may be prolonged only in exceptional cases explicitly listed in the LC.

Some categories of employees enjoy reduced working hours, without reduction of their salaries or affecting their other employment rights. Such categories are:

(a) Employees working under harmful or specific conditions subject to a decision of the Council of Ministers, provided that they spend at least half of the working hours in such conditions;
(b) Employees under 18 years of age.

The LC allows the parties to enter into an employment contract for part of the statutory working hours, establishing the duration and the allocation of these working hours. There is no minimum requirement as to the number of hours in such cases, but the monthly working hours of part-time employees must be lower compared to other employees of the enterprise working full-time in identical or similar positions. In the event that there are no such full-time employees, the comparison shall be made between the part-time employees and all remaining employees of the enterprise. Employer could also unilaterally establish part-time work for its entire enterprise or a part thereof (including for the full-time employees) in the case of reduction in the volume of work, for a period of up to 3 months during any one calendar year, after advance co-ordination with the trade union and with the employees' representatives. In such cases the duration of the working time may not be less than half of the statutory duration for the period of calculation of the working time.

6.2 Allocation of working hours

The allocation of working hours should be established by the internal rules of the enterprise. The employer may establish flexible working hours in enterprises where the organisation of work allows for this. The time during which the employee must be at work, as well as the manner of its reporting, should be specified by the employer. Outside the time of his compulsory presence, the employee may determine the beginning of his working hours himself.

For some categories of employees due to the special nature of their work, the employer may, after consultations with the employee and the trade union representatives, establish open-ended working hours. Employees on open-ended working hours must, if necessary, perform their duties even after the expiry of the regular working hours. However, the aggregate duration of the working time may not interfere with the minimum uninterrupted daily and weekly rests established by the LC. Work performed after the regular working hours on working days must be compensated by additional annual paid leave and on public holidays and weekends by increased payment for extra work.

For some categories of employees due to the special nature of their work, the employer may establish an obligation to be on duty or to be on stand-by at the disposal of the employer during specified hours in a 24-hour period.

6.3 Shift Work

When necessitated by the nature of the production process, work in an enterprise may be organised in two or more shifts, which may be combined (including day and night work). The succession of the shifts must be established in the Internal Labour Rules of the enterprise, as the assignment of duties to one employee for two consecutive shifts is not allowed.

6.4 Breaks

The working day must be interrupted by one or several breaks. The employer must provide the employee with a lunch break, which may not be shorter than 30 minutes.

Rest periods are not included in the working hours. In continuous production processes or in enterprises where the work is uninterrupted, the employer must provide the employee with time for a meal, which is included in the working hours.

The employee is entitled to an uninterrupted rest between working days of not less than 12 hours. In a 5-day working week the employee is entitled to a weekly rest of 2 consecutive days, one of which is principally Sunday. In such cases, the employee must be ensured at least 48 hours of weekly rest in one stretch.

6.5 Overtime

Work performed at the order of, or with the knowledge of and with no objection on the part of the employer or the respective superior by an employee beyond his agreed working hours is considered overtime work. As a general rule overtime work is prohibited, except in some explicitly and exhaustively cases listed in the LC.

The duration of overtime work performed by an employee in one calendar year may not exceed 150 hours. The duration of overtime work may not exceed: (a) 30 hours' day work or 20 hours' night work in one calendar month; (b) 6 hours' day work, or 4 hours' night work in one calendar week; (c) 3 hours' day work, or 2 hours' night work on 2 consecutive working days.

Overtime work may not be assigned to special categories of employees (young workers, pregnant women, etc.).

The increased payments for overtime work performed must be agreed on between the employee and the employer but not less than: 50% for work on working days; 75% for work on weekends; 100% for work on official holidays; 50% for work with an accumulated calculation of the working time. If the employer and the employee have not expressly agreed upon the increase of the rate for overtime work, it will be calculated on the basis of the labour remuneration set out in the employment contract. No additional labour remuneration

will be paid for overtime work during regular workdays to employees working under open-ended working hours. Overtime work performed by these employees on weekends and official holidays will be paid with the respective percentages above for overtime work on such days.

6.6 Night work

The normal duration of working hours at night for a 5-day working week is up to 35 hours (up to seven hours per night). Night work is work which takes place between 10 p.m. and 6 a.m. (for employees who have not reached eighteen years of age - between 8 p.m. and 6 a.m.). The employer must provide hot food, refreshments and other facilities to the employees for the effectiveness of the night work. Night work is prohibited for some categories of employees.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

The LC differentiates between the following two main types of leave:

(a) leave for general purposes (paid annual leave and unpaid leave); and
(b) leave for special purposes - leave for performance of civil and public duties (marriage, blood donation, death of a relative, summons by a court or other body as a party to proceedings, witness duty, expert duty in proceedings, jury duty), leave for union activity, official or creative leave, temporary disability (sick) leave, maternity leave (paid or unpaid), leave for breast-feeding and feeding a young child, leave in case of death or severe illness of a parent, military leave, study leaves (could be paid or unpaid).

7.1 Annual paid leave

Any employee with at least 8 months' length of service (irrespective of whether the length of service is with the current or a former employer) is entitled to basic annual paid leave of not less than 20 working days. Certain categories of employees, determined by the government, are entitled to longer paid annual leave due to the specific nature of their work. Two categories of employees are entitled to additional paid annual leave of at least 5 working days: for work in specific conditions and life and health hazards which cannot be eliminated, restricted or reduced regardless of the measures and for work under open-ended working hours.

The parties may agree on longer periods of annual paid leave in the employment contract or in the collective labour agreement.

Until the end of June 2010 the annual paid leave was subject to accrual until the termination of employment. It was the only type of leave that could accrue (all other leaves under the LC are granted for special purposes and, therefore, their non-utilisation cannot be accrued) and had to be compensated upon termination of employment (irrespective of the reasons for such termination). The most recent amendments of the LC changed that rule.

New rules include obligation for the employer to prepare at the beginning of each calendar year a schedule for the use of paid annual leave in a manner which entitles each employee to use his annual leave during the respective calendar year. Such a schedule shall be prepared after consultation with the trade unions and the employee representatives. If the employee does not request to use his paid leave within 5 days after it is due according to the schedule, the employer may unilaterally grant him the leave. If the employer does not grant the requested (according to approved schedule) leave, than the employee may unilaterally determine the time of its use and notify the employer at least 14 days prior to the beginning of its use. There are two hypotheses, when the annual paid leave may be transferred to the next calendar year. In such case the whole accumulated leave is used without interruption in the year, in which the reasons for its non-use languish.

Unlike the previous legislative approach, the new changes in the LC provide that the right for annual paid leave expires 2 years after the year for which the leave was due/in which the reasons for the non-use languish.

As before monetary compensation for paid leave is permissible only in case of termination of employment. In such case, only (a) the unused paid leave for the respective year, and the (b) paid leave, which use have been postponed according to the requirements of the law, the right for which has not expired, is subject to such compensation. The strict interpretation of this provision leads to the conclusion that the leave for previous years, which was not used and was not postponed in accordance with the law, is not subject to compensation, though the right for its use may not yet have expired. This provision enters into force on 1 January 2012.

7.2 Unpaid leave

Upon the request of the employee, the employer may grant him unpaid leave, regardless of the fact whether the said employee has used his paid annual leave or not, and irrespective of the duration of his length of service. The employer is obliged to grant one-time unpaid leave of up to 1 year to an employee who has a current employment relationship with a European Union institution, the United Nations Organisation, the Organisation for Security and Co-operation in Europe, the North Atlantic Treaty Organisation, as well as with any other international governmental organisation.

Unpaid leave of up to 30 working days within 1 calendar year is recognised as length of service. Unpaid leave in excess of 30 working days is recognised as length of service only if this is provided for in the LC, in another law, or an act of the Council of Ministers.

7.3 Sick leave

The LC defines "sick leave" as leave in the event of a temporary working disability. Employees are entitled to sick leave in the event of a temporary disability resulting from a general or occupational illness, occupational injury, for convalescence purposes, for urgent medical examinations and tests, quarantine, suspension from work prescribed by the medical authorities, for taking care of a sick or quarantined member of the family, for the urgent need to

accompany a sick member of the family to a medical examination, test or treatment, and for taking care of a healthy child suspended from a childcare facility because of a quarantine imposed on that facility or on the child. Sick leave is permitted (must be approved) by the medical authorities.

In accordance with the Bulgarian Social Security Code, employees are entitled to cash compensation instead of their salary for the time they are on sick leave (if they have been secured for this social risk) at an amount established in the Social Security Code. Persons insured against labour accidents and professional disease are entitled to cash compensation for a labour accident or professional disease, and to compensation for occupational rehabilitation resulting from a labour accident or professional disease, regardless of the duration of their length of service for social security purposes. The amount of the compensation for temporary disability is calculated on the basis of the average daily gross salary or social security income over which the employee has made social security contributions for this social risk for the 6-month period preceding the month when the disability occurred at the rate of 80%/ 90%. The cash compensation for temporary disability resulting from a general or occupational illness or occupational injury will be paid for the entire period until the recovery of working ability or establishment of permanent disability.

Compensation for the first day of temporary disability leave will be paid at the expense of the employer and for the remaining period - directly by the Bulgarian National Social Security Institute. NB! only for the period until 31.12.2010, the compensation for the first, second and third day of the temporary disability (sick) leave, will be paid at the expense of the employer at 70% of the average daily gross salary for the month during which the disability occurred, but no less than 70% of the average daily agreed salary.

7.4 Maternity leave

Leave for pregnancy and childbirth

Female employees are entitled to paid leave for pregnancy and childbirth of 410 calendar days for each child, of which 45 days will be granted before the expected date of birth. In the event of an error on the part of the medical authorities in predicting the date of birth and if it occurs before the expiry of the 45 days, the remainder will be used afterwards.

For the entire period of the leave, the employee will receive compensation at the expense of any paid directly by the National Social Security Institute. The amount of the compensation is calculated on the basis of the average daily gross remuneration or social security income, upon which the employee has made social security contributions for this particular social security risk (general disease & maternity) for the 12-month period preceding the month when the leave started. The daily compensation is to the amount of 90% of the average daily gross salary (or the average daily social security income over which social security contributions have been paid or are due) for the last 12 calendar months preceding the date of initiation of the leave, but not higher than the average of the maximum social security income for the last 12 months.

After the child reaches 6 months of age, with the consent of the mother (adoptive mother), the remainder of the leave for pregnancy and childbirth may be granted to the father (adoptive father). The father shall be entitled to compensation from the National Social Security Institute in the event that he has made social security contributions for this particular social security risk (general disease & maternity) for the 12-month period preceding the month when the leave started.

Leave for raising a child until the age of 2

After pregnancy and childbirth leave has been used, if the child is not placed in a childcare facility, the mother (adoptive mother) is entitled to additional leave for raising a first, second, and third child until they reach 2 years of age, and 6 months for each subsequent child. With the consent of the mother (adoptive mother), the leave for raising a child may be granted to the father (adoptive father) or to one of their parents if they work under an employment contract.

For the entire period of leave, the employee will receive compensation at the expense of and paid directly by the National Social Security Institute at the fixed amount of one statutory minimum monthly salary for the country. If this additional paid leave is not used, or the person using the leave terminates its use, the mother (adoptive mother), if working under an employment contract, will be paid additional monetary compensation to the amount of 50% of the statutory minimum monthly salary at the expense of the National Social Security Institute.

The above are the main features of some of the types of maternity leaves to which employees working under employment contracts are entitled.

7.5 Employment standstill

The cases when the employment relationship is standstill are not listed separately in the LC. The principle is that in each case when the employee uses a certain permitted leave (either long- or short-term), paid or unpaid, the employment relationship is standstill. Upon expiry of such leave, the employee is entitled to be reinstated to work at the same position.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Bulgaria is not very common. They are exclusively offered to local employees of Bulgarian subsidiaries of international companies, usually in the context of a global ESOP. There is no specific regulation of such plans from employment and corporate tax law perspective. The only express provision related to such plans is set in the Public Offering of Securities Act, exempting such offerings from the requirement to have a prospectus published, provided that the shares subject to the offering are listed on a stock exchange in an EU Member State.

9. Health and Safety at work

Employers are required to ensure healthy and safe conditions of work. Whenever the employees or expatriates of an employer are working on sites administered by another company, the employer has an obligation by means of a written agreement with such other company to ensure that the conditions of health and safety at work are also ensured on these sites.

The principle regulatory acts concerning health and safety at work are the LC and the Healthy and Safe Conditions at Work Act. Moreover, there are more than twenty regulations which provide for rules relevant to complying with the safety obligations of employers and employees. In addition to the regulatory acts, the Ministry of Labour and Social Policy has approved Rule Books which contain detailed norms concerning health and safety in various economic sectors. Rule Books are supposed to be binding on all enterprises, however, from a legal point of view their binding power is questionable in view of the fact that the text has not been published in the Bulgarian State Gazette, and this is a prerequisite under the Constitution for the binding nature of any normative act.

The principle areas and obligations of the employer in ensuring health and safety at work are: constituting internal bodies dealing with healthy and safe conditions at work and their continuous training; performance of risk assessment and determining measures and restrictions for health and safety at work; emergency planning; preparing Internal Rules for Health and Safety at Work and their notification to employees; compliance with regulatory provisions for certain specific risks; ensuring a physiological regime of work and rest; ensuring labour medicine service departments for employees and periodical medical examinations; ensuring the use of personal protection devices, clothing and equipment; initial and periodic instructions to employees on health and safety, etc.

Every employer is obliged to ensure healthy and safe working conditions so that the hazards for the life and health of employees are eliminated, limited or reduced with a view to protecting the working capacity of employees. The employer must develop and approve rules for ensuring healthy and safe conditions of work under the condition that such rules may not be contrary to the regulatory requirements and inform employees of these rules in a suitable manner.

Employees may refuse to discharge their duties or cease discharging their duties if there is a serious and immediate danger to their lives and health. The immediate superior must be notified without delay and must investigate the danger and give instructions concerning the continuation of work.

According to the Healthy and Safe Conditions at Work Act, some of the measures that must be taken in order to provide occupational health and safety are: prevention of risk to life and health; assessment of unpreventable risk; adaptation of the working conditions to the individual with a view to reducing and eliminating their harmful effect; introduction of technical improvements to technological processes, machinery and equipment; substitution of dangerous products, work equipment, tools, substances and materials with safe or less dangerous products, work equipment, tools, substances and materials; use of collective means of protection with priority to personal protective equipment; etc.

The LC provides for increased protection of female and pregnant employees in some areas, including, *inter alia:*

(a) If the employer has 20 or more female employees, the employer is obliged to provide personal hygiene facilities for women and rooms where pregnant employees may rest;
(b) In cases when a pregnant employee or a nursing mother is performing work that is unsuitable for her condition, at the mandatory instruction of the health authorities the employer must implement measures required for temporarily adapting workplace conditions or the working hours or both in order to eliminate the health and safety risk of the pregnant employee or nursing mother or (if not possible) to reassign the employee to another appropriate position;
(c) Together with the health authorities the employer is obliged, on an annual basis, to designate positions and jobs suitable for pregnant employees and nursing mothers;
(d) The employer may not send pregnant employees and mothers of children under 3 years of age on business trips without their written consent.

It should be taken into account, however, that all of the above rights protecting pregnant employees and nursing mothers may be enjoyed only when the employer has been notified of their status, submitting documents duly issued by the competent state health authorities. In the event of termination of the pregnancy, the female employee is obliged to notify the employer within seven days. The employer and his officers are under a duty to keep in confidence the above circumstances.

10. Amendment of employment agreement

The LC contains a general prohibition for the parties to an employment contract to unilaterally amend its conditions, except on the following grounds:

(a) The employer may unilaterally increase the salary of the employee;
(b) Change of the place and nature of work on specific grounds;

In the event of production necessity and/or stoppage of work [1], the employer may temporarily and unilaterally assign the employee to other duties in the same or another enterprise within the same city/region for a period no longer than 45 calendar days within one year in the case of production necessity or in case of stoppage of work – for the period of its duration. Such change of assigned duties may be carried out in accordance with the qualifications and the health status of the employee.

The employer may even assign the employee to duties of a different nature not corresponding to his qualifications when this is necessitated by insurmountable reasons. The LC does not contain

1 The LC does not contain a legal definition of these terms.

a legal definition of this term. However, the interpretation based on existing court practice is that such reasons should qualify as force majeure.

Cases when the employee is transferred to a different working place within the same enterprise and city in the same position and at the same basic monthly salary are not considered an amendment of the employment relationship.

(c) Business trips.

When the needs of the company so dictate, the employer may second the employee to perform his duties outside the place of his permanent work, however, for a period not longer than 30 consecutive calendar days. Business trips for longer periods require the employee's written consent.

Apart from the above cases, the employment relationship may be amended only on the basis of a written agreement between the parties for a fixed or indefinite term.

11. Termination of employment

Procedure and grounds for the termination of an employment contract are not freely negotiable between the parties. Termination grounds are listed exhaustively in the LC, namely:

11.1 Termination of the employment contract on the initiative of either party without notice

Such termination is carried out on the following grounds:

(a) By mutual written consent of the parties;
(b) When the dismissal of an employee is found unlawful or he is reinstated to his previous job by a ruling of the court, but he does not report to work within the stipulated term;
(c) Upon expiry of the contractual term, until the completion of some specified work or upon return of the substituted employee to work (these grounds apply to fixed-term employment contracts);
(d) When a position is listed to be occupied by a pregnant employee or an employee reassigned for rehabilitation, and a candidate entitled to that position appears;
(e) Upon the appointment of an employee who has been elected or has passed a competitive examination for the position;
(f) In the event of inability of the employee to perform the assigned job because of illness resulting in permanent disability (invalidity) or because of health contra-indications established by an expert medical commission. In such cases the employment contract will not be terminated if the employer can provide another job suited to the employee's health status and the employee agrees to perform the job;
(g) Upon the death of the person with whom the employee has concluded an in tuito personae employment contract;
(h) Upon the death of the employee;
(i) When a position is listed to be occupied by a state employee.

11.2 Termination of the employment contract on the initiative of the employer against offering compensation to the employee

This is a form of termination of the employment relationship by mutual consent between the parties. However, the initiative for the termination is provided solely to the employer. The amount offered by the employer must not be less than quadruple the amount of the employee's latest monthly gross salary, unless the parties have agreed upon a larger amount. If the compensation has not been paid within a period of 1 month as of the termination of the employment contract, the grounds for such termination are considered revoked.

11.3 Termination with notice

The employer may unilaterally terminate an employment contract by written notice only on the following grounds:

(a) Closing down of the entire enterprise;
(b) Partial closure of the enterprise or staff cuts;
(c) Reduction of the volume of work;
(d) Work stoppage for more than 15 days;
(e) When the employee lacks the qualities for efficient work performance;
(f) When the employee does not have the necessary education or vocational training for the assigned work;
(g) When the employee refuses to follow the enterprise or a division thereof when it is relocated to another community or locality;
(h) When the position occupied by the employee is to be vacated for the reinstatement of an unlawfully dismissed employee who had previously occupied the same position;
(i) When an employee has become eligible for full retirement pension in terms of length of service and age;
(j) Under the conditions of the Social Security Code, where the employment relationship was established after the employee had acquired and exercised his entitlement to pension;
(k) When the job requirements for the position have been changed and the employee does not meet them;
(l) When it is objectively impossible to implement the employment contract.

Employees occupying managerial positions may also be dismissed with notice by reason of conclusion of a (new) contract for the management of the enterprise (the appointment of a new executive director, board of directors, management board, etc.). The dismissal can be effected after the performance of the (new) management contract has started but within a period not exceeding 9 months thereafter.

In the event of (b) the partial closure of the enterprise or staff cuts; and (c) the reduction of the volume of work, the employer is entitled to make a selection and in the interest of production or business dismiss employees whose positions have not been made redundant in order to retain employees of higher qualifications and better performance. The selection must be performed by a commission appointed by the employer. The commission will hold regular meetings during which the qualifications and the performance

of the employees to be dismissed are examined in detail and incorporate any findings in duly signed minutes. Any proposal made by the commission for the termination of employees must be in writing and well-founded.

The employee may terminate the employment contract with notice without stating any reasons.

11.4 Termination without notice

The employer may terminate an employment contract without notice if:

(a) the employee has been detained in custody for the execution of a sentence;
(b) the employee has been deprived, by a court sentence or by an administrative order, of the right to practice a profession or to occupy the position to which he has been appointed;
(c) the employee has been deprived of his academic title or academic degree if the employment contract has been concluded in view of his holding the respective title or degree;
(d) the official has been struck-off from the registers of the professional organisations under the Doctors and Dentists Professional Organisations Act, from the register of the professional organisation of masters of pharmacy under the Professional Organisation of Masters of Pharmacy Act, or from the register of the Bulgarian Association of Bulgarian Health Care Specialists under the Professional Organisations of Medical Nurses, Midwives and Associated Specialists Guild Act;
(e) the employee refuses to take a suitable job offered in case of medically proscribed reassignment;
(f) the employee is disciplinary dismissed, in which case the employer must follow a certain procedure to ensure that the disciplinary dismissal is lawful;
(g) the employee has failed to perform his obligation to notify the employer if there is an incompatibility with the work performed in the course of such performance or at a later stage such incompatibility has taken place. This ground refers only to the termination of employment contracts in enterprises of the state administration where the law has provided for certain restrictions for the occupation of an office therein;
(h) a conflict of interest has been ascertained by an effective act under the Conflict of Interest Prevention and Disclosure Act.

The employee may terminate an employment contract without notice if:

(a) he is unable to execute the work assigned by reason of illness and the employer fails to provide him with another suitable work conforming to the prescription of the health authorities;
(b) the employer delays the payment of the salary/ compensation under the LC or under the state social security;
(c) the employer changes the place or nature of work or the agreed salary, except in the cases where the employer has the right to make such changes, as well as where the employer fails to fulfil other obligations agreed by the employment contract or by the collective agreement, or established by a statutory instrument;
(d) as a result of a change of the employer due to a transfer of undertaking, the working conditions under the new employer deteriorate substantially;
(e) he commences appointment to a paid election office or begins research work on the basis of a competitive examination;
(f) he continues his education as a full-time student at an educational establishment, or enrols in a full-time doctoral degree course;
(g) he works under a fixed-term employment contract and is transferred to another work for an indefinite duration;
(h) he is reinstated to work according to the established procedure by reason of pronouncement of the dismissal as wrongful, in order to take the work whereto the said worker has been reinstated;
(i) he begins work in the state administration.

The above list is exhaustive.

11.5 Collective redundancies

If the employer wishes to terminate a group of employees, then he must carefully consider if terminated contracts qualify as collective redundancies. According to the definition of the LC "collective redundancy" is the dismissal on one or more grounds made at the discretion of the employer and due to reasons not related to the specific employee, provided that the number of such dismissals over a period of 30 days is:

(a) at least 10 employees in enterprises where the number of employees in the month preceding the mass dismissal is more than 20 employees and less than 100 employees;
(b) at least 10% of the employees in enterprises where the number of employees in the month preceding the mass dismissal is more than 100 and less than 300 employees;
(c) at least 30 employees in enterprises where the number of employees in the month preceding the mass dismissal is 300 employees or more.

When within the above periods, the employer has dismissed at least 5 employees, each subsequent termination of employment, if made at the discretion of the employer on other grounds and due to reasons not related to the specific employee, will also be taken into account when calculating the overall number of dismissed employees.

When the employer intends to make a collective redundancy, he must begin consultations with the trade union representatives and employee representatives, however, not later than 45 days prior to the collective redundancy, in an effort to reach an understanding with them to avoid or limit the collective redundancy and reduce the consequences thereof. Consultations are held in a manner and according to a procedure jointly established by the employer, the trade union representatives and the employee representatives.

Irrespective of whether the decision to carry out a collective redundancy may have been taken by another entity (employer's shareholder, parent company, etc.), the employer must provide, prior to the commencement of the collective redundancy, specific written notice covering a number of mandatory items to the trade

union representatives, the employee representatives and the Agency of Employment. Planned collective redundancy may not be undertaken prior to the expiry of 30 days after the notification to the Agency of Employment.

If the employer does not meet the above obligations, the trade union representatives and employee representatives are entitled to inform the labour inspection authorities of the non-observance of the mandatory provisions of the LC. If a violation is established, the authorities may impose sanctions upon the employer varying between BGN 1,500 (approximately EUR 750) and BGN 5,000 (approximately EUR 2,500) for each separate violation. However, violation of the above rules, even if established, would not automatically lead to the declaration of the dismissals as unlawful. They are considered by the court on individual basis if challenged.

11.6 Remedies in the event of wrongful dismissal

The above list of termination grounds is exhaustive. The non-observance of the applicable termination grounds and procedure may result in a court dispute whereby the termination is found unlawful, involving the reinstatement of the employee to his previous position and the obligation of the employer to pay compensation to the employee for the period of unemployment but for not more than 6 months. Termination is carried out by a written order served to the employee, indicating the grounds for the termination as well as its legal basis. Some termination grounds require a motivated termination order. The employment contract is considered to be terminated as of the moment of delivery of the notice.

12. Non-compete

12.1 Non-compete clauses during employment

The employer may impose certain non-compete clauses in the employment contract, the validity of which is more indisputable while the employee is employed. The LC provides that the employee may enter into other employment contracts with other employers to perform work outside the established working hours with the main employer unless the employment contract with the main employer provides otherwise.

In addition to the above, the employer is in a position to require from the employee that for the duration of his employment obligations he does not with his acts prejudice the good name and the interests of the employer. Further, the employer may require from the employee not to carry out an activity neither under an employment, nor under an assignment contract, neither independently on his behalf and expense, nor in partnership with other natural or legal persons, if such activity is a conflict of interest or it would prevent the employee from performing his duties under the employment contract. However, these restrictions should be negotiated in the employment contract. The employment contract may also provide that the employee may carry out other activities only after the prior written consent of the employer. The duties of the employee include being loyal to the employer, not abusing the trust of the employer, maintaining the image of the employer and not disclosing any confidential data related to the employer.

12.2 Non-compete clauses after termination of employment

The validity of a general/global non-compete clause to be applied following the termination of the employment relationship is highly disputable. It could be successfully challenged and declared null and void by the competent courts as violating basic individual rights guaranteed under the Bulgarian Constitution.

However, if the non-compete clause is tailored in a way that the employee is obliged to refrain from undertaking such activities against a certain consideration (there are no statutory limits as the relevant amount) to be paid by the previous employer for a certain period of time following the termination of the employment, such a non-compete clause could be viewed as an agreement for the provision of negative services under the Bulgarian VAT Act. This would certainly improve the employer's chances of successfully defending his position in court, should there be any dispute. In order to avoid any dispute on the nature of remuneration to be paid to the employee, it would always be better if the employment contract explicitly provides that the consideration is not in any way related to the remuneration received by the employee.

12.3 Legal effects if the non-compete clause is not tailored according to legal requirements

If the non-compete clause is not tailored in accordance with the above statutory requirements, the employee has the right to take the matter to the competent court and request that the clause be declared null and void.

The question of the validity of a non-compete clause is directly related to the question of the validity of any negotiated penalty for its violation. If the obligation is valid and enforceable, then the penalty will also be valid and enforceable. However, if the non-compete clause is declared null and void, the same will apply to the payment made by the employer in return to the obligation undertaken by the employee and this payment will be subject to a refund by the employee. The employer is not entitled to receive the remaining amount of the penalty (if exceeding the amount of the consideration paid), merely on the grounds of breach by the employee of his non-compete obligation.

The Bulgarian Obligations and Contracts Act explicitly provides that a penalty may be reduced by the court if it is excessive compared to the damage incurred (i.e. in case the actual damage suffered by the employer is insignificant compared to the amount of the penalty). This principle applies only when one of the contracting parties is an individual, not a trader (as in the case of the employment contracts). This in fact means that for each separate case of breach of non-compete clause, the court will have to evaluate and compare the amount of the due penalty with the size of the damage actually suffered by the employer.

13. Global policies and procedures of employer

Employer's policies and procedures developed on a global level could be applicable in Bulgaria, provided that such policies and procedures are fully harmonised with the Bulgarian legislation and incorporated by reference by an enactment of the Bulgarian employer.

14. Employment and mergers and acquisitions

The LC complies with the European Acquired Rights Directive regarding the transfer of employees in the event of the reorganisation of the employer. The employment relationship is not terminated in the event of a change of the employer due to:

(a) merger of enterprises by way of incorporation;
(b) merger of enterprises by way of acquisition;
(c) distribution of the operations of one enterprise between several enterprises;
(d) transfer of an autonomous part of one enterprise to another;
(e) reorganisation of the legal form of the enterprise;
(f) change of the owner of the enterprise or of an autonomous part thereof;
(g) delivery or transfer of the operations of the enterprise to another, including the transfer of tangible assets;
(h) delivery of the enterprise or an autonomous part thereof for rent, on lease or under concession.

Prior to effecting the change above, the transferring and the acquiring enterprises must inform the trade union representative and employee representatives of each enterprise of the change and the scheduled date of the transfer; the reasons for the change; the possible legal, economic and social consequences of the change for the employees; and the measures to be undertaken with respect to the employees, including the performance of the obligations arising from employment relationships existing as at the date of the transfer.

The transferring enterprise must submit this information within a period of at least 2 months prior to effecting the change. The acquiring enterprise must submit this information in due course, however, no later than at least 2 months before its employees are directly affected by the change in the employment conditions.

If one of the employers has planned changes with respect to the employees, timely discussions must be held and efforts made to reach an agreement with the trades union representatives and employee representatives regarding these measures.

If there are no trade unions in the respective enterprise, the information must be submitted to the respective employees.

In the above cases of transfer of a business, the rights and obligations of the transferring enterprise, prior to the change, arising from employment relationships existing as at the date of the transfer, are transferred to the acquiring enterprise. The acquiring enterprise is bound to take on the employee obligations which have originated before the change in the case of a merger or joining of enterprises and a change of the legal form of the enterprise. In other cases, the acquiring enterprise and the transferring enterprise are jointly liable for the obligations to employees.

In the case of delivery of the enterprise or an autonomous part thereof for rent, lease or under concession, the employment relationships existing as of the date of the delivery will not be terminated but transferred to the new employer. Both employers are jointly liable to the employees for the employee obligations, which have arisen prior to the date of the change.

After the expiry of the term under the rent, lease or concession agreement, the employment relationships will also not be terminated but transferred back to the previous employer.

In the event of the non-performance of information and consultation procedures by the employer, the trade union or the employee representatives may inform the Executive Agency General Labour Inspection with regard to violations of labour legislation. The employer may be penalised through sanctions that could vary between BGN 1,500 and BGN 5,000, while culpable officials of the employer may be penalised through fines, which could vary between BGN 250 and BGN 1,000.

15. Industrial relations

The Constitution of the Republic of Bulgaria and the LC guarantee the freedom of trade union association. There are two major trade unions with nationwide coverage: The Confederation of Independent Trade Unions and The Confederation of Labour "Podkrepa". Many other trade unions exist at industry level and within individual companies.

As in the majority of transitional economies, industrial disputes are quite usual in Bulgaria, especially in state-owned companies undergoing financial difficulties. Strikes, however, even though a legally recognised right of employees, are not very common.

16. Employment and intellectual property

According to the Bulgarian Copyright and Neighbouring Rights Act, unless agreed otherwise the copyright to computer programmes and databases, created while under employment, belongs to the employer.

The copyright to works created while under an employment relationship belong to the author unless provided for otherwise in the Copyright and Neighbouring Rights Act. The employer shall have the exclusive right, without permission from the author and without paying compensation, to the extent the employment contract does not provide otherwise, to use such a work for his own purposes. The employer may exercise this right in a manner and to a degree corresponding to his customary activity.

Copyright to works created by special order shall belong to the authors unless otherwise provided for in the contract. Unless agreed upon otherwise, the ordering party may use the work without the permission of the author for the purposes for which it was ordered.

17. Discrimination and mobbing

17.1 Areas of protection

In accordance with the Protection Against Discrimination Act, any direct or indirect discrimination on grounds of gender, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status, property status, or on any other grounds established by law or by an international treaty to which the Republic of Bulgaria is a party, is forbidden.

Direct discrimination is defined as any less favourable treatment of a person for the above reasons than the treatment which another person is receiving, received or would receive in comparable similar circumstances. Indirect discrimination is defined as placing a person for the above reasons in a less favourable position when compared to other persons through an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice is objectively justified in view of a legal aim and the means of achieving this aim are appropriate and necessary. Harassment for the above reasons, sexual harassment, incitement to discrimination, persecution and racial segregation, as well as the building and maintenance of an architectural environment hindering the access to public places of people with disabilities, are also considered discrimination.

17.2 Affirmative action

The Protection against Discrimination Act expressly provides that some actions will not constitute discrimination. These include, *inter alia:* (a) treating persons differently on the basis of their citizenship or of persons without citizenship where this is provided for by a law or an international treaty to which the Republic of Bulgaria is a party; (b) treating persons differently on the basis of a characteristic relating to any of the above grounds (i.e., race, nationality, ethnicity, etc.) when the said characteristic, by the nature of a particular occupation or activity, or of the conditions in which it is performed, constitutes a genuine and determining occupational requirement, the aim is legal and the requirement does not exceed what is necessary for its achievement; (c) treating persons differently on the basis of religion, belief or gender in relation to an occupation performed in religious institutions or organisations when, by reason of the nature of the occupation or the conditions in which it is performed, the religion, belief or gender constitutes a genuine and determining occupational requirement in view of the character of the institution or organisation, where the aim is legal and the requirement does not exceed what is necessary for its achievement; (d) setting requirements for minimum age, work experience or length of service in employment procedures or in granting certain job-related privileges, provided that this is objectively justified for attaining a legal aim and the means for attaining it do not exceed what is necessary; (e) treating differently persons with disabilities in conducting training and acquiring education for satisfying specific educational needs aimed at equalizing their opportunities; (f) undertaking special measures benefiting individuals or groups of persons in disadvantaged positions aimed at equalizing their opportunities, in so far as and while these measures are necessary; (g) providing special protection of children without parents, juveniles, single parents and persons with disabilities established by law; etc.

17.3 Sanctions and remedies

In the event of discrimination or breach of rights and duties in an employment relationship, the employee or the candidate for work has the right to file a claim before a special Commission on the Protection against Discrimination requesting the termination of the breach and the remedy of the consequences thereof and compensation for any moral or cash damages incurred. On the basis of such a filed claim, the officials of the Commission on the Protection against Discrimination initiate the proceedings and collect evidence with the assistance from the Ministry of Interior.

Furthermore, employers violating their obligations under the Protection against Discrimination Act can be penalised with sanctions of an amount varying between BGN 250 and BGN 2,500 (approximately EUR 125 - 1,250), while the managers of the employer who have allowed the commitment of the violation to occur will be penalised with a fine of BGN 200 to 2,000 (approximately EUR 100 - 1,000), unless they are liable to more severe punishment.

18. Employment and personal data protection

The area of personal data protection is regulated in detail by the Bulgarian Personal Data Protection Act. In accordance with the said Act, all data controllers (including employers) must obtain registration with the Bulgarian Personal Data Protection Commission prior to commencement of personal data processing. The only exception to this registration rule applies to employers with less than 15 employees (including former employees), provided that these employers do not maintain any other registries (except for the personnel registry).

The Personal Data Protection Act establishes various rights and obligations pertaining to the collection and processing of personal data. Employees whose data is processed have the right to access the collected data and request information on a number of issues related to its processing, such as where the data is being transferred, to whom it is being transferred, the purpose of the transfer and the legal grounds for the transfer. Furthermore, with respect to especially sensitive personal data (e.g., personal data revealing racial or ethnic origin; political, religious or philosophical convictions, membership in political parties or organisations,

associations having religious, philosophical, political or trade-union goals or referring the health, sex life or human genome), written consent must be obtained from the employee prior to the processing of such kinds of personal data.

19. Employment in practice

The mandatory provisions of the LC are in some areas very burdensome towards employers and the Bulgarian authorities and institutions (including the courts) tend to show favour towards the employees, especially in cases of termination of employment. Reinstatement to work is the most frequent outcome of labour disputes.

The labour inspection authorities are also very active and regularly audit employers with regard to compliance with LC provisions and health and safety rules at work. Their main target, however, is upon companies with heavy plant facilities and also present and former state-owned enterprises. Although they are entitled to impose sanctions with regard to established violations, their practice is to issue mandatory proscriptions to employers to remedy the violations within a certain period. The practice is to impose sanctions after the expiry of this deadline if the violations are not remedied.

1. General overview

The general source of employment law in Croatia is the Labour Act (the Official Gazette No. 149/09, hereinafter "Labour Act"). It contains provisions governing employment issues, unless otherwise regulated within international agreements and treaties. The Labour Act is aligned with the conventions of the International Labour Organisation. Please note that parts of the new Labour Act (mostly on Pan-European Employees' Councils and mergers and acquisitions) will enter into force on the day that Croatia enters the European Union (Articles 164-224 of the new Labour Act). Many of the parts of the Act provide the minimum standards that can be agreed upon differently by the employer and employee only if in favour of the employees. Some standards can be derogated by collective bargaining agreements and some within individual working agreements, which also represent a legal framework and a source of labour law for the parties to the agreement. An employer which employs 20 or more workers must create and publish labour relations Employment Rules/By-law on the basis of which salaries, organisation of work, measures and procedures for the protection of the dignity of workers and other matters of importance to workers, are established, unless they are already set out within the collective agreements.

A written employment agreement must be entered into with each employee. The Labour Act provides for certain mandatory elements of the employment agreement.

The individual collective bargaining agreement or, as the case may be, the employment rules, the agreement between the works council and the employer, or individual employment agreements must all be consistent with the Labour Act and may not provide for less protection to employees than that which is guaranteed by the Labour Act. Employers, employers' associations and trade unions may determine less favourable working conditions in a collective agreement than those proscribed by the Labour Act, only if they are expressly authorised to do so by the Labour Act or another law. If a right arising from employment is differently regulated in the employment contract, employment rules, the agreement between the works council and the employer, collective agreement or law, the most favourable right to the employee is applicable, unless otherwise specified by the Act or another law.

The most important legal sources with respect to rights and obligations regarding employment in the Republic of Croatia are as follows:

- The Constitution of the Republic of Croatia, published in the Official Gazette of Republic of Croatia No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10 and 85/10 *("Ustav Republike Hrvatske");*
- The Labour Act, published in the Official Gazette of Republic of Croatia No. 149/09 *("Zakon o radu")*;
- The Foreigners Act, published in the Official Gazette of Republic of Croatia No. 79/07 and 36/09 *("Zakon o strancima");*
- The Act on the Employment Agency and Rights in Unemployment Period, published in the Official Gazette of Republic of Croatia No. 80/08 and 94/09 *("Zakon o posredovanju pri zapošljavanju i pravima za vrijeme zaposlenosti")*;
- The Safety-at-work Act, published in the Official Gazette of Republic of Croatia No. 59/96, 94/96, 114/03, 100/04, 86/08, 116/08 and 75/09 *("Zakon o zaštiti na radu");*
- The Act on Insuring Employee Claims in Cases of Employer Bankruptcies, published in the Official Gazette of Republic of Croatia No. 86/08 *("Zakon o osiguranju potraživanja radnika u slučaju stečaja poslodavca");*
- The Minimum Wage Act, published in the Official Gazette of Republic of Croatia No. 67/08 *("Zakon o minimalnoj plaći");*
- The Act on Professional Rehabilitation and Employment of Disabled Persons, published in the Official Gazette of Republic of Croatia No. 143/02 and 33/05 *("Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom");*
- The Act on Prevention of Discrimination, published in the Official Gazette of Republic of Croatia No. 85/08 *("Zakon o suzbijanju diskriminacije");*
- The Act on Gender Equality, published in the Official Gazette of Republic of Croatia No. 82/08 *("Zakon o ravnopravnosti spolova");*
- The Act on Personal Income Tax, published in the Official Gazette of Republic of Croatia No. 177/04, 73/08 and 80/10 *("Zakon o porezu na dohodak");*
- The Act on Maternity and Paternity Benefits, published in the Official Gazette No. 85/08 and 110/09 *("Zakon o rodiljnim i roditeljskim potporama");*
- The Act on Personal Data Protection, published in the Official Gazette of Republic of Croatia No. 103/03, 118/06 and 41/08 *("Zakon o zaštiti osobnih podataka");*
- The Act on Special Tax on Wages, Pensions and other incomes published in the Official Gazette of Republic of Croatia No. 94/09 *("Zakon o posebnom porezu na plaće, mirovine i druge primitke").*

2. Hiring

2.1 General

The Labour Act does not proscribe any particular requirements pertaining to the recruitment of employees, except that the employment relationship may only be established with a person of at least 15 (fifteen) years of age or a person of 15 (fifteen) years of age or above 15 (fifteen) and under 18 (eighteen) years of age, attending compulsory primary education who fulfils the conditions for work in the respective work post (if any).

2.2 Disabled persons

According to the Law on Professional Rehabilitation and Employment of Disabled Persons published in the Official Gazette of Republic of Croatia No. 143/02 and 33/05 *("Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom")*, all employers with 20 or more employees are obliged to employ a certain number of disabled persons. The public administration, judicial bodies, bodies of local and regional governments, public services, outside of budget funds, and legal entities owned by the Republic of Croatia and legal persons under majority-ownership by local and regional governments are obliged to appropriate the workplace in accordance with their own discretion, and are obliged to employ a certain number of disabled persons in appropriate working conditions depending on the total

number of employees. A disabled person, when commencing an employment relationship by an employment agreement or in another way set out in special regulations, is entitled to all the rights and obligations of employment relationship pursuant to Croatian regulations. Provisions for disabled persons are more favourable than under the Labour Act, e.g., a disabled person has the right to an annual leave of no less than 24 days and the shortest notice period stipulated by the Labour Act is extended by at least one month if notice of termination has not occurred due to the employee's misconduct.

2.3 Foreign employees

The employment of foreign citizens is regulated by the Foreigners Act. Aliens may work in the Republic of Croatia on the basis of a work permit or business permit, and may not commence work prior to having been granted temporary stay, unless otherwise provided by the Foreigners Act. In order to be employed in Croatia, a foreign citizen is obliged to register with a local police station within 48 hours after entering the country, unless staying in a hotel, private accommodation, ports, etc. in which case the legal or natural persons providing accommodation shall undertake the registration procedure. Furthermore, a foreigner employee shall obtain a temporary or permanent stay permit and the employer employing the foreigner employee shall obtain a working permit or a Certificate of work without a working or business permit issued by the Ministry of Interior.

Upon registration with a local police station, a foreigner wishing to work in Croatia has to obtain a temporary stay permit (or, if special conditions are met, permanent residence permit). The documents which need to be submitted with the request must include evidence of possession of sufficient funds and health insurance documents, etc.

A request for a work permit is submitted by the potential employer of the foreign person. The employer must, *inter alia*, submit a written explanation of the need to engage the particular foreigner. The procedure of obtaining the work permit takes at least one month. In practice, the issuance of work permit is rarely denied. Foreigners with a work permit who stay longer than 90 days in Croatia must obtain the temporary stay approval.

Furthermore, the Croatian Foreigners Act proscribes that foreigners shall be guaranteed the same level of rights in relation to employment and work conditions as provided in the labour law of the Republic of Croatia including collective agreements or arbitration rulings. Guaranteed rights shall refer in particular to the stipulated maximum duration of working hours and minimum duration of rest, the minimum duration of paid annual leave, the minimum wage rate, including the overtime wage rate, health conditions and safety at work, protective measures for the employment of expectant mothers, women and minor employees, as well as the prohibition of discrimination. For the purpose of protecting and exercising the right to guaranteed employment and work conditions, foreigners may institute legal proceedings against the employer as a legal or natural person or service recipient before a competent court in the Republic of Croatia.

2.4 Secondments

The secondment of Croatian employees abroad is regulated by the Labour Act and Croatian employees may be seconded abroad on the basis of an employment agreement. Where an employee is posted temporarily to another country, the employment contract in writing or a written certificate stating that the employment contract was entered into before travelling to another country must, in addition to the usual mandatory provisions of this Act, contain additional provisions with regard to: the duration of the work abroad, the schedule of working hours, non-working days and holidays upon which such an employee is entitled not to work and to receive a salary compensation, the currency in which the salaries are to be paid, other payments received in money and in kind to which the employee will be entitled during the work abroad and the conditions for repatriation. Furthermore, the employer must provide the employee with a copy of the registration form for the mandatory pension and health insurance institutes scheme within 15 days of the date upon which the employment contract was entered into or of the date of delivery of the written certificate at the conclusion of the contract or commencement of work before the employee is posted abroad.

The employer posting an employee to work abroad in a business enterprise or other company owned by this employer shall, in the event of termination of the contract of employment concluded between this employee and the foreign business enterprise or company, except in case of dismissal due to the employee's conduct, compensate the employee for relocation costs and provide him or her with adequate employment in the country. When determining the notice period and severance pay, the period spent by the employee in employment abroad, is considered to be continuous employment with the same employer.

3. Types of engagement

3.1 Employment

The traditional employment relationship is the most usual manner for engaging personnel in Croatia. There are two types of employment relationships based on the duration of employment. As a rule, an employment contract is considered to be entered into for an indefinite period of time unless the law specifies differently. An employment contract for an indefinite period obliges the parties until the moment at which one of the parties cancels it or until it terminates in some other way as specified by the law.

The labour relationship is based upon an employment contract. An employment contract must be executed in writing. The parties' omission to execute an employment contract in writing does not influence the existence and validity of such contract. If an employment contract is not signed in writing, the employer is obliged to serve the worker with written certification that the contract has been signed before the beginning of the performance of the work. The employer must provide the worker with a copy of the registration at the Croatian Institute for Pension and Health Insurance within 15 days of the date of the employment contract

signed or the date on which the certification that the contract was signed was delivered to the worker, i.e., upon commencement of work.

Employment commences upon an employment contract and if the employer enters into a contract with the employee for the performance of work which, in view of the nature and type of the work to be carried out and the employer's powers in respect of this work, bears the characteristics of work for which employment should commence (prior to entering into the contract in writing), the employer shall be deemed to have entered into an employment contract with the employee for an indefinite time, unless he or she proves the contrary.

The employer shall keep staff records of employees who are employed by the employer and they must contain information about the employees and working hours, all pursuant to the ordinance of the Minster of Economy, Labour & Entrepreneurship. Upon request by a labour inspector, the employer shall provide the inspector with the data in the staff records.

The employment contract can exceptionally be entered into for a definite period of time ("fixed-term contract"). The duration and termination of such an employment contract must be determined in advance on the basis of objective reasons justified by a time limit, by the completion of specific work or by the occurrence of a specific event. The employer must not enter into one or more consecutive employment contracts for a definite period of time for the same job which is being performed for an uninterrupted time period of longer than three years, except in the case of substitution of temporary absent worker or if it is allowed by law or by collective agreements. Work stoppage shorter than two months is not deemed an interruption of the time period of three years. An employment contract for a definite period of time terminates upon the expiration of time specified in that contract. If an employment contract for a definite period of time is concluded contrary to the provisions of the Law or if the worker remains working with the same employer after the expiration of time for which the contract has been entered into, it is deemed that the worker has entered into an employment contract for an indefinite period. The employer is obliged to inform the workers employed by him/her within a contract for a definite period of time with regard to any jobs for which those workers could apply for with that same employer for a contract for an indefinite period, and is obliged to provide facilities for their improvement and education under the same conditions as the workers who have signed employment contracts for an indefinite period.

The time period for temporary employment of managers can be equal to their mandate while in a mandatory apprenticeship; temporary employment can match the duration of a mandatory apprenticeship.

3.2 Engagement outside employment

Personnel may also be engaged outside of an employment relationship, in those cases and subject to the conditions proscribed by the Labour Act. Such contracts are burdened with contributions by the employer almost as much as employment contracts are, and work inspectorates treat those kinds of contracts unfavourably. Therefore, it is advised to avoid such contracting. Furthermore, as mentioned above, if the employer enters into a contract with an employee for the performance of work, which in the view of the nature and type of the work to be carried out and the employer's powers in respect of this work, has characteristics of work for which employment should commence, the employer shall be deemed to have entered into an employment contract with the employee, unless he or she proves the contrary.

These flexible types of engagements include:

(a) agreement for work (only for work which is outside the employer's main business activities);
(b) agency agreement;
(c) agreement on professional improvement, entered into mainly with trainees (but an apprentice may be employed by the employer for a definite period);
(d) work concluded with employees engaged full time by another employer (a temporary employment agency as an employer who, under an employee assignment agreement, assigns employees to another employer (the user) for the performance of temporary work);
(e) voluntary work (only with respect to non-for-profit activities);
(f) management agreement (please see the following section 3.3).

3.3 Engagement of managing directors

The new Croatian Labour Act came into effect on 1 January 2010 and regulates senior (management) contracts. Senior management contracts are a special kind of contract which includes both obligations and employment law. It is possible to include managerial clauses in the employment contract or to enter into a special managerial contract supplementing the employment contract. Persons serving as managing directors may be employed (permanently or for a limited period of time equal to the duration of the mandate), but may also be engaged outside the employment context pursuant to a management agreement. However, even if a managing director is engaged outside of the traditional employment context, his salary and salary remuneration is taxed similarly as salary (see section 4.1 below).

Therefore, a natural person who as a member of the management board, chief executive officer or a person acting in another capacity pursuant to a special law, is authorised to, on his or her own and individually or jointly together with another person, manage business activities of an employer, and may (but is not obliged to) as an employee as a part of his or her employment relationship carry out specific tasks for an employer. In addition, the provisions of Labour Act upon the termination of an employment contract shall not apply to them.

An employee, who as managing personnel is authorised to manage business operations of the employer as defined in the articles of association, incorporation deed or other employer rules and who makes decisions regarding the organisation of work and business of

the employer independently, shall not be subject to the provisions of the Labour Act with regard to working time, breaks and daily and weekly rest periods, and shall have autonomy in planning these where they agreed with the employer.

4. Salary and other payments and benefits

4.1 Salary and salary remuneration

The employer who is bound by a collective bargaining agreement may not calculate or pay to the worker a salary of an amount less than the amount specified within such a collective agreement. When the basis and measurement for the payment of salary are not specified within the collective agreement, the employer which employs 20 or more workers is obliged to specify them in the labour relations employment rules/by-laws. If the salary is not determined in such a way and an employment contract does not provide sufficient information for the determination of salary, the employer is obliged to pay the worker a "just salary" – such a salary which is normally paid for the same work (if still in doubt the court determines in accordance with the circumstances of the case). The salary is payable upon completion of the work in gross amounts. The salary must be paid within a time period which cannot be extended over one month. The salary for the previous month is payable by the fifteenth day of the current month at the latest.

The employer shall within fifteen days at the latest after the day of payment of a salary, salary compensation, or severance pay, provide the employee with a payroll account which shows how the calculations were made of the salary, salary compensation or severance pay. The employer who fails to provide payment of salary, salary compensation or severance pay on their maturity dates as stated above, or who fails to pay them to the full amount, shall provide the employee with a payroll account for the amount owed by the end of the month in which the salary, salary compensation or severance pay became due. The payroll accounts referred to above are enforceable documents.

In the event of aggravated work conditions, overtime work, night work, or work on Sundays, or on holidays or on some other days determined by law as non-working days, the worker has a right to increased salary. The minimum salary for which the worker must be registered is defined by the Minimum Wage Act, published in the Official Gazette of Republic of Croatia No. 67/08 *("Zakon o minimalnoj plaći")*.

The Labour Law proscribes that the total salary is calculated as the sum of the following elements and sub-elements, some of which are mandatory and some of which are not:

(a) salary for the performed work and the time spent at work, which consists of the following elements:
- basic salary (mandatory);
- performance-based part of salary which serves as corrective of the basic salary and may lead to its increase or decrease (not mandatory); and
- increased salary (mandatory);
- salary based on the employee's contribution to the employer's business success (e.g. awards, bonuses) (not mandatory); and

(b) other payments such as:
- meal allowance (not mandatory);
- annual vacation allowance (mandatory);

(c) other payments made to the employee, if any (not mandatory).

4.2 Other benefits

Employers are free to provide their employees with other benefits, such as employee stock option plans, profit participation, compensation for the costs of commuting to and from work, equivalent to the amount of public transportation ticket, compensation per diems for time spent on business trips within the country and abroad, compensation for accommodation and food during field work, unless the employer provides for accommodation and food, etc. As for the employee stock option plans, it should be noted that this area is not strictly regulated by the Labour Act, but such plans are common in practice in Croatia.

5. Salary tax and mandatory social contributions

In Croatia there are three different salary tax rates depending on the amount of the salary, specifically the rates are 12%, 25% and 40%, and amount of salary tax is augmented for an amount of a surtax rate (if any). Furthermore, obligatory contributions which the employer pays on behalf of the worker are 15% solidarity insurance and 5% savings insurance for pension funds contained in the registered amount of the gross (brutto 1); and 15% for health insurance, 0,5% for accident at work insurance and 1,7% for (un)employment contribution, all calculated based on the registered amount of the "gross 2" salary (brutto 2). Income tax rates vary depending on the level of remuneration, and the local income tax rates vary based on the residence of the employer.

The employer is obliged to provide the worker with a copy of the registration at the Pension and Health Insurance Fund within 15 days after the day of signing of the contract or after the date of delivery of the written confirmation that the employment contract has been signed, i.e., from the beginning of work.

If an individual is hired outside the employment context, the total cost is greater than in case of traditional employment, given that income based on a service contract is taxed at the effective rate of 25% and is subject to all mandatory social contributions, similar as to the contributions for regular salary, provided that the individual is not already insured (e.g. based on employment, entrepreneurship, etc.), in which case the contributions for health and unemployment insurance do not need to be paid. Pursuant to the abovementioned, the work inspectorate unfavourably treats those types of contracts, and therefore, it is advisable to avoid such contracting.

The salaries of foreign personnel (with the exception of those employed with foreign diplomatic or consular missions and IGOs, not deemed to be Croatian residents for tax purposes) are also subject to local taxes and mandatory social contributions, subject to the existence of Double Taxation Treaties and social security treaties which may provide otherwise.

6. Working hours

6.1 Definition of working hours

Working hours are periods of time during which the employee is obliged to carry out tasks or during which he or she is in readiness (available) to carry out tasks at the workplace or another place defined by the employer following the employer's instructions. An employment contract may be entered into for full-time or part-time working hours. Part-time working hours are any working hours shorter than full-time working hours. Full-time working hours must be no longer than 40 hours a week with 8 hours of allowed weekly extensions.

6.2 Overtime work

Overtime work is allowed but for each individual employee must not exceed 32 hours per month or 180 hours a year. If overtime work by a particular employee lasts more than 4 consecutive weeks or more than 12 weeks during one calendar year, or if overtime work by all employees of a certain employer exceeds 10 percent of the total working hours in a particular month, a labour inspector must be notified of such overtime work within 8 days after the appearance of any of the above circumstances. Overtime work by minor employees is prohibited and pregnant women, parents of children under the age of three, single parents of children under the age of six or part-time employees may work overtime only if he or she gives a written statement indicating voluntary consent to such work, except in the case of force majeure. Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation. Senior employees and management are not exempt from the overtime regime, i.e. their overtime is also subject to additional compensation.

6.3 Schedule of working hours

If daily and weekly schedules of working hours are not regulated by a regulation, collective bargaining agreement, agreements between the works council and the employer or employment contract, the schedule of working hours shall be determined by the employer in a written decision. The employer must notify the employees about the schedule or changes to the schedule of working hours at least one week in advance, except in cases of urgent overtime work. The labour inspector shall prohibit overtime work if such work has detrimental effects upon the employees' health, his working ability and safety.

6.4 Shortened working hours

Working hours are shortened in proportion to the detrimental effect of working conditions on the employee's health and working ability in jobs where, despite the application of occupational health and safety measures, it is impossible to protect the employee from detrimental effects. The jobs referred to above as well as the duration of working hours in such jobs are established by a special regulation.

6.5 Rescheduling of working hours

Where the nature of work so requires, full-time or part-time working hours may be rescheduled so that in the course of one calendar year there may be a period of time wherein working hours are longer and another period of time wherein working hours are shorter than full-time or part-time working hours, provided that average working hours in the course of rescheduling may not exceed full-time or part-time working hours. Where rescheduling of working hours is not provided for in a collective agreement or an agreement concluded between the works council and the employer, the employer shall establish a plan of rescheduled working hours indicating jobs and number of employees included in such rescheduled working hours and submit such plan with rescheduled working hours to a labour inspector. Rescheduled working hours are not considered to be overtime work. As an exception to the rule, rescheduled working hours may, during the period when they last longer than full-time or part-time working hours, exceed 48 hours a week and may last up to a maximum of 56 hours a week on condition that this is provided for by a collective agreement and that a written statement regarding voluntary consent to such work is submitted to the employer by the employee. Rescheduled working hours may, in the period when they last longer than full-time or part-time working hours, last up to a maximum of 4 months, unless otherwise provided in a collective agreement, in which case they cannot exceed 6 months.

6.6 Night work

Irrespective of the duration, work between the hours of 10 in the evening and 6 in the morning of the next day and, for agriculture, between 10 in the evening and 5 in the morning of the next day, is considered night work, unless the Labour Act or another law, another regulation, collective agreement or agreement between the employer and the works council specify otherwise for specific cases. Night work is very restricted especially in cases when an employee is a pregnant woman or a minor.

6.7 Work in shifts

Working time can also be organised as shift work. This means that a method of organizing work at an employer's workplace whereby employees take turns to perform the same job and at the same site in accordance with a working time schedule, which may be continuous or discontinuous, in rotating shifts. In organizing night or shift work, the employer shall invest particular efforts to organise work in a way which is adjusted to employees and take into account health and safety requirements in line with the nature of work performed during the hours of night work or in shifts.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Breaks

An employee who works at least six hours a day has, each working day, the right to a rest period ("break") lasting at least 30 minutes, unless otherwise specified by a separate law. The time of the rest period referred to in paragraph 1 of this section shall be included in the working hours. If the special nature of the job does not allow the interruption of work for the purpose of taking a rest period, the time and manner in which this rest period is taken shall be regulated by a collective agreement, agreement between the works council, and the employer or employment contract.

7.2 Daily and weekly rest

In the course of each twenty-four hour period, an employee shall be entitled to a daily rest of at least twelve consecutive hours. An employee has the right to a weekly rest period of at least 24 consecutive hours, to which the daily rest referred to above shall be added. The right to weekly rest shall be exercised on Sundays and on the day immediately preceding or following Sundays.

7.3 Annual leave

An employee has the right to paid annual leave of at least four weeks duration for each calendar year (e.g. when the base for calculation of annual leave shall be the five-day working week counting as 20 working days and when the base for calculation shall be six-day working days then counting as 24 working days). The duration of annual leave for a period longer than the minimum period prescribed under the Labour Act and the number of working days calculated in the annual leave of an employee shall be established by a collective agreement, employment rules or employment contract. Holidays, non-working days and a period of temporary inability to work, confirmed by an authorised physician, established by law, are not included in the duration of annual leave.

An employee who is employed for the first time or who has a period of interruption of work between two consecutive employments longer than eight days acquires the right to annual leave after six months of uninterrupted work. While on annual leave the employee has the right to salary remuneration in an amount determined by a collectively bargained agreement, employment rules or employment contract. The salary compensation may be no less than the employee's average monthly salary in the preceding three months (also taking into account any other monetary or in-kind benefits, which represent remuneration for work done). An employee has the right to take annual leave in two portions, unless otherwise agreed with the employer. The employer shall prepare a schedule for taking annual leave in accordance with a collective bargained agreement, employment rules, employment contract and this Act no later than 30th June of the current year, and inform the employees about the schedule. Furthermore, if annual leave is used by an employee in two parts, the first part (which cannot be shorter than two weeks) can be used in the current year, while the second part has to be taken no later than by 30 June of the subsequent year.

7.4 Paid and unpaid leave

During the calendar year an employee has the right to be free from work obligations and receive salary remuneration ("paid leave") for important personal needs and, in particular, those related to marriage, childbirth of the spouse, serious illness or death of a member of the immediate family. The employee shall have the right to paid leave of a total duration of seven working days per year, unless otherwise stipulated in a collective agreement, employment rules or employment contract. The employer may grant the employee unpaid leave, at his or her request and during the period of unpaid leave, the rights and obligations arising from employment or related to employment are suspended, unless otherwise specified by the law.

7.5 Maternal and Paternal leave

The Labour Act stipulates the provisions which regulate the prohibition of unequal treatment of pregnant women, protection of pregnant employees or employees who are breastfeeding, prohibition of dismissal and the right to return to previous or appropriate job. Furthermore, maternal and paternal rights and benefits are stipulated by the Maternity and Paternity Benefits Act, published in the Official Gazette No. 85/08 and 110/09 *("Zakon o rodiljnim i roditeljskim potporama")*.

Maternity leave commences 28 days prior to the scheduled birth date and continues for six months. However, mothers can return to office after a minimum of 42 days after the birth (mandatory maternal leave). The expected date of childbirth is determined by an authorised doctor. The right to mandatory maternity leave as established by the provisions of this Act shall be exercised without interruption. After the expiry of the abovementioned mandatory maternity leave, if the parents so agree, the right to maternity leave can be exercised by the child's father until a child is six months old (after the 42nd day the father can opt to take the maternal leave in place of the mother).

The period of the child's first 6-12 months is called "paternity leave" and may be used both by mother or father of the child. For twins, the third or any subsequent child, a female worker may remain on paternity leave until the child(ren) is (are) three years of age. Thus the parent (mother or father) after the expiry of the maternity leave referred to in section 8 of this article has the right to use paternity leave for a period of 6 months (for 1st and 2nd born child) to 30 months (for twins, 3rd and every subsequent child), depending on the number of children born and method of usage. If the child's father exercises the right to paternity leave for a period not shorter than three months, the paternity leave is extended for two months.

During annual leave, the employee receives the agreed or latest remuneration, and during maternity leave the employers are reimbursed for their payments from health insurance (directly taking over the payments in the later stages of leave). The employer may not request any information on the woman's pregnancy nor must the employer order another person to ask for such information, except if the female employee personally requests a specific right envisaged under law or other regulation for the protection of pregnant women.

During pregnancy, the exercise of maternal, parental or adoptive parent leave, half-time work, work with shortened working hours for the purpose of intense child care, leave for a pregnant woman or a breastfeeding mother, leave or shortened working hours for the purpose of caring for or nursing a child with severe developmental problems or during a period of fifteen days after the cessation of pregnancy or the cessation of the exercise of these rights, the employer may not dismiss from work a pregnant woman or a person exercising one of the rights mentioned. However, a temporary employment relationship can expire during the maternity leave.

7.6 Sick leave

In the event of sick leave, employees are entitled to remuneration of salary. This remuneration amounts either to 70% of the employee's average salary calculated (if not otherwise stipulated by a collective bargained agreement for a high amount of compensation) over the period of three months preceding the sick leave, in case of illness or injury not related to work, or 100% of employee's average salary calculated over the period of three months preceding the leave, if the leave is caused by professional illness or injury. Salary remuneration paid to the insured person (the employee on a sick leave) resulting from the exercise of rights arising from health and safety shall borne by the employer for the initial 42 days of sick leave. Salary remuneration for any period on sick leave commencing from the 43rd day of sick leave shall be accounted for and paid by the employer, subject to repayment of paid remuneration by the Institute (Croatian Institute for Health Insurance) within 45 days of the receipt of the repayment application. It should be pointed out that there are no limitations with respect to total duration of sick leave or number of periods of sick leave.

The employee shall inform the employer of his or her temporary inability to work as soon as possible, and shall provide the employer, no later than within three days, with a medical certificate regarding his or her temporary inability to work and the expected duration and an authorised doctor shall issue to the employee a certificate. If, due to a legitimate reason, the employee was unable to fulfil the obligation referred to above, he or she shall do this as soon as possible, and no later than within three days after the reason that prevented him or her from doing so ceased to exist.

The employer must not dismiss an employee who has suffered an injury at work or has acquired an occupational illness and is temporarily unable to work due to medical treatment or recovery for as long as he or she is temporarily unable to work due to medical treatment or recuperation. However, the prohibition referred to does not affect the termination of a fixed-duration employment contract. An injury at work or an occupational illness must not have detrimental effect on the promotion of an employee or the exercise of other rights and privileges arising from employment or related to employment.

7.7 Employment standstill

The employee's employment relationship is at a standstill in the event of certain absences from work (e.g., suspension of the employment relationship until a child reaches the age of three pursuant to a special regulation, serving the army, appointment to a public position, etc.). During such absence, the rights and obligations based on employment are at a standstill, unless certain rights or obligations are otherwise explicitly proscribed. Upon the expiry of the reasons for standstill, the employee is entitled to be reinstated to work.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Croatia is relatively common. The regulatory framework is absent on both corporate law and tax law levels. The Law on Personal Income Tax Act on Personal Income Tax, published in the Official Gazette of Republic of Croatia No. 177/04, 73/08 and 80/10 *("Zakon o porezu na dohodak")* contains provisions on the topic and also stipulates that the income of employees or managers based on participation in profits "by option purchase of own shares" is considered capital income. However, dividends themselves are not taxed.

In practice, a type of Employee Stock Ownership Plan scheme is modestly implemented only in closed, limited liability or joint stock companies, by way of capital increase by contribution in services.

9. Health and Safety at work

The area of health and safety at work is regulated by the Labour Act and by the Safety-at-work Act, published in the Official Gazette of Republic of Croatia No. 59/96, 94/96, 114/03, 100/04, 86/08, 116/08 and 75/09 *("Zakon o zaštiti na radu")*. All employers and employees are obliged to adhere to specific obligations introduced by both Acts. The employer shall, in accordance with a separate law and other regulations, provide the employee with safe working conditions which are not hazardous to the health of the employees. Before the employee commences work, the employer must allow him or her opportunity to familiarise him or herself with the employment regulations and inform him or her about the organisation of work and occupational health and safety. Also, the employer shall provide for and maintain the machinery, instruments, equipment, tools, workplace, access to workplace, as well as organise work in a manner which guarantees the protection of life and health of employees in accordance with separate laws and other regulations and in accordance with the nature of the job being performed. Furthermore, the employer shall inform the employee of the dangers of the job performed by the employee and shall train the employee for the work in a way which guarantees the protection of the life and health of the employee and prevents accidents from occurring. If the employer assumes the obligation to provide food and lodging for the employee, in the fulfilment of this obligation he or she must take into account the protection of life, health and morals of the employee as well as his or her religion. An employee who refuses to work because the proscribed occupational health and safety regulations have not been implemented has the right to salary compensation equal to the salary he or she would have received had he or she worked for the period until the prescribed measures are implemented, unless the employee has performed

another appropriate job during this period. The Safety-at-work Act, *inter alia*, stipulates that each employer is obliged to adopt the Act on Risk Evaluation of Work Posts containing descriptions of work processes with evaluation of the risk attached to each employment post and identifying measures for the removal of such risk. In addition, all employers must have a general provision which regulates the most important matters pertaining to health and safety at work.

10. Amendment of the employment agreement

The employment agreement may be amended by an annex. An annex can be offered either by the employer or by the employee. If an employee refuses to sign an annex to the employment contract, the Labour Act provides the possibility that the employer may cancel an employment contract and simultaneously offer the employee an employment contract under different terms ("dismissal accompanied by an offer to alter the terms of the employment contract"). In cases when the employee accepts the employer's offer, he or she retains the right to challenge the permissibility of such cancellation of contract before the court having jurisdiction. The employee must declare his or her acceptance or refusal of the offer to conclude an employment contract under different terms within the time limit specified by the employer which may not be shorter than eight days. In the event of the abovementioned cancellation accompanied by an offer to alter the terms of the employment contract, the time limit is fifteen days for judicial protection of the rights arising from employment.

11. Termination of employment

11.1 Methods for terminating an employment contract

Pursuant to the Labour Act, an employment contract terminates:

(a) upon the death of the employee;
(b) upon expiration of the period for which a fixed-duration employment contract has been concluded;
(c) when the employee has reached 65 years of age and 15 years of insurance periods, unless otherwise agreed by the employer and the employee;
(d) under a written agreement between the employee and the employer;
(e) upon the service of a legally effective decision on retirement due to general inability to work;
(f) by cancellation (notice);
(g) by a decision of a court having jurisdiction.

The employer as well as the employee may give notice that they wish to cancel an employment contract. Both an agreement to terminate an employment contract and a notice of dismissal must be made in writing. In the case of decision of dismissal, the employer must give reasons for the dismissal in writing and a notice of dismissal must be delivered to the person to be dismissed. Reasons not constituting just cause for dismissal are: temporary absence from work caused by an illness or personal injury, filing an appeal or complaint, or taking part in the proceedings against the employer on the ground of a violation of a law, another regulation, collective agreement or employment rules, as well as the employee contacting the competent executive bodies, the employee's contacting the responsible persons or competent state administration bodies or filing a *bona fide* application with these persons or bodies, regarding a reasonable suspicion about corruption, etc.

There are two types of termination of employment contract, termination by regular notice and by extraordinary notice.

11.2 Regular notice

An employer may give notice that it wishes to cancel an employment contract, subject to a proscribed or agreed notice period ("regular notice") if it has a legitimate reason for doing so, in the following cases:

(a) if the need for performing certain work ceases due to economic, technological or organisational reasons ("notice due to business reasons");
(b) if the employee is not capable of fulfilling his or her employment-related duties because of some permanent characteristic or ability ("notice due to personal reasons"); or
(c) if the employee violates his employment obligations ("notice due to the employee's misconduct").

In the event that the reason for dismissal is the need to reduce costs with respect to the number of employees, the only possible and most efficient way of employment reorganisation would be termination notice due to business reasons.

In this respect, please note in the case of employers with twenty-one and more employees, there are several conditions which have to be met when giving notice. Namely, notice due to business and personal reasons is allowed only if the employer cannot place the employee in alternative employment. In making a decision about notice due to business or personal reasons, the employer must also take into account the length of service, age and maintenance obligations of the employee. Furthermore, notice due to business or personal reasons is allowed only if the employer cannot train or qualify the employee for work in another job, or if the circumstances are such that it is not reasonable to expect the employer to train or qualify the employee for work in another job. The employer who has given notice to an employee due to business reasons must not employ another employee in the same job for the following six months. If in that period a need arises to employ an employee to perform the same job, the employer has to offer an employment contract to the employee whom he dismissed for business reasons.

Contrary to abovementioned, the employee may cancel his or her employment contract, subject to a proscribed or agreed notice period, without specifying any reasons for doing so. When an employment contract is cancelled by the employee and the employee has an especially important reason for cancelling the contract, the notice period may be no longer one month.

11.3 Extraordinary notice

Employers and employees have just cause to cancel an open-ended or fixed-duration employment contract, without obligation to comply with a proscribed or agreed notice period ("extraordinary notice") if, due to an extremely grave violation of an employment obligation or due to any other highly significant fact and in consideration of all the circumstances or interests of both contracting parties, continuation of the employment is not possible. An employment contract may be cancelled by giving extraordinary notice only within fifteen days of the day when the person concerned became aware of the fact on which the extraordinary notice is based. Needless to say the party to the employment contract, who is not responsible for the cancellation as a result of extraordinary notice, has the right to claim compensation for damages for non-performance of the obligations from the employment contract from the party who is responsible for the cancellation. A notice of dismissal must be made in writing and the employer must give reasons for dismissal (the type of dismissal and explain the reason and facts of the case) in written form. Written notice of dismissal must be submitted to the person being dismissed and the notice period commences on the day of submission of such notice.

11.4 Procedure for termination by the employer

The notice period for termination is proscribed and lasts from two weeks to between one and four months depending on the employee's total years of employment. In the event of an employee whose employment contract is cancelled due to a violation of an employment obligation ("notice due to the employee's misconduct"), the notice period is half the length of notice periods established. In other cases of extraordinary termination, there is no notice period, i.e., termination is with immediate effect subject to proper termination procedure being conducted.

Pre-cancellation procedure is specifically stipulated prior to giving regular notice due to the employee's conduct. The employer shall draw the employee's attention, in writing, to his or her employment obligations and inform him or her of the possibility of dismissal if further violations occur, unless circumstances exist due to which the employer cannot be reasonably expected to do so. Furthermore, prior to giving regular notice or extraordinary notice due to the employee's conduct, the employer shall give the employee an opportunity to present his or her defence, unless circumstances exist due to which the employer cannot be reasonably expected to do so.

In cases wherein the employer determines redundancy of at least twenty employees and where their employment contracts are to end within a period of ninety days, irrespective of the method of termination, and if at least five of these employees are to be dismissed for business reasons, the employer shall consult the works council with regard to the manner and under the conditions provided for in Labour Act, in the aims of removing the need for dismissals. The employer who, after the consultation on collective redundancies, still intends to terminate employment contracts due to business reasons shall develop a redundancy social security plan ("redundancy program") and while preparing the plan, the employer shall consult the competent public employment service on the possibilities for retraining or additional training or employment of employees with another employer. Redundancy procedure in the abovementioned cases is conducted with the involvement of the works council, if any or trade union representative, and the National Employment Agency.

11.5 Notice period

It is important to be aware that the notice period does not continue during pregnancy, maternity leave, leave for taking care for the child with serious developmental problems, exercise of the right to work short-time working hours by the parent or adoptive parent, adoption leave, temporary inability to work, annual leave, paid leave, military service, and other cases of the employees' justifiable absence from work, as proscribed by the Labour Act or by another law. In the case of normal notice, after the expiry of the notice period proscribed by Labour Act to the amount and in accordance with the years of work under employment contract, or in the case of extraordinary notice at the moment the decision is submitted to the person being dismissed, the Company must deregister the employees from the Health Insurance Fund as well as from the Social Security Provision.

11.6 Consultation or prior consent with the works council regarding dismissal

Please note that when undertaking dismissals, the employer shall inform the existing workers' council about his intention to terminate an employment contract and shall consult with the workers' council about the decision on termination. This consultation does not mean that it is bound by the worker's council opinion but the formal procedure of notification needs to be complied with. If no workers' council has been established within an employer, all the rights and obligations pertaining to the workers' council under the Labour Act shall be exercised by a trade union representative.

Furthermore, in the event of dismissal, the decisions which an employer may make subject only to prior consent of the workers' council are decisions relating to:

(a) dismissing a member of the workers' council;
(b) dismissing a candidate for the workers' council who was not elected and a member of the electoral committee for a period of three months following the establishment of the election results;
(c) dismissing an employee with reduced ability to work or in immediate danger of disability;
(d) dismissing a male employee over sixty years of age or a female employee over fifty-five years of age;
(e) dismissing a workers' representative on the supervisory board;
(f) pregnant woman or person exercising maternity leave, the right to short-time working hours by parents or adoptive parents, adoption leave and leave for taking care of the child with serious developmental problems, in the redundancy social security plan;
(g) collecting, processing, using and sending to third parties the information about an employee;

(h) appointing a person authorised to supervise whether personal information about employees is collected, processed, used or sent to third parties in accordance with the provisions of the Labour Act.

If the workers' council fails to grant or deny its consent within eight days, it shall be presumed to have consented to the employer's decision, and if the workers' council refuses to give its consent, the employer may, within 15 days of receipt of the statement of refusal to give consent, ask that such consent be replaced by a judicial decision or arbitration award. In that case the court of first instance is obliged to make a decision about the legal action brought by the employer within 30 days from the day of filing the action.

11.7 Severance pay

Employee severance terms will depend upon relevant contracts of employment, severance policies, past practice and the terms of any collective agreement. However, the Labour Act proscribes that when the employer dismisses (not reaching an agreement with the employee) an employee following a two-year period of continuous employment, unless dismissal is given for the reasons related to the employee's conduct (when the employee violates employment obligations or he was served with the extraordinary notice), the employee has the right to receive severance pay to an amount determined on the basis of the length of prior continuous employment with that employer. Severance pay for each year of employment with the same employer must not be agreed upon or determined to an amount lower than one-third of the average gross monthly salary earned by the employee within a period of three months prior to the termination of the employment contract. Unless otherwise specified by the employment contract (or by other act, collective agreement, or employment rules), the aggregate amount of severance pay may not exceed the average of six monthly salaries earned by the employee in the three months preceding the termination of the employment contract.

11.8 Judicial protection of the rights arising from employment

An employee who considers that his or her employer has violated any of his or her rights arising from employment may, within fifteen days following the receipt of a decision violating this right, or following the day when he or she became aware of such violation, request the employer to allow him or her to exercise this right. If the employer does not meet the employee's request within fifteen days from the date of serving of the request, the employee may within another fifteen days seek judicial protection before the court with jurisdiction in respect of the right that has been violated. An employee who has failed to submit to the employer a request may not seek judicial protection before the court having jurisdiction over the right that has been violated, except where an employee seeks damages or has other financial claims arising from employment.

As an exception to the rule, an employee with a fixed-term employment contract, an employee posted to work abroad or an employee who is not subject to any collective agreements may take action before a competent court to protect his or her violated right within a period of 15 days from the delivery of the decision violating his or her right or from the date on which he or she became aware of the violation of his or her right. Also, when a law, other regulation, collective agreement or employment rules provide for alternative dispute resolution, the time limit of fifteen days for filing a request with the court commences from the date when the procedure for alternative dispute resolution was completed.

The main remedy available to the employee for wrongful termination of the employment contract is reinstatement. In the event that the court finds wrongful dismissal, the employee is also entitled to compensation of gross salary and other lost remuneration. It should be noted that labour disputes may last in practice for a very long period of time (four years on average). The courts often show benevolence towards dismissed employees. Bearing that in mind, each case of termination should be conducted very carefully, in order to minimise the risk of negative outcome and dispute.

11.9 Judicial rescission of an employment contract

If the court establishes that the termination is not allowed, and it is not acceptable to the worker to continue the labour relationship, the court shall at the request of the worker determine the day of the termination of the labour relationship and award to the worker compensation of damages in the amount of at least 3 and at most 18 average month salaries of that worker paid in the previous 3 months, depending on the duration of the labour relationship, age and obligations of support that burden the worker. The worker may request through court procedure payment of all unpaid salaries from the moment of termination of the employment contract. In the event that the court decides upon the non-justifiableness of the termination of the employment contract and adopts a request for the payment of the unpaid salaries, they shall be paid with the interest, which together with the court costs and the costs of representation can significantly increase the costs of the unfair dismissal. Finally, if the court establishes the employer's termination is not allowed, the court may order that the worker is reinstated.

11.10 Mutual agreement on termination

The Labour Act allows for mutual agreement on termination of the employment relationship but an agreement to terminate an employment contract must be made in writing. No severance payment is mandatory in the case of such termination, but compensation packages are almost always agreed upon in practice. Any such compensation is subject to salary tax and mandatory social contributions. In the event of a mutual agreement on termination, the employer is obliged to provide the employee with a formal written notice of the fact that no unemployment benefits can be claimed following a consensual termination.

12. Non-compete

12.1 Statutory prohibition of competition

An employee must not, without the approval of his or her employer, conclude business transactions, for his own account or for the

account of another, in the field of activity of his or her employer ("statutory prohibition of competition"). If the employee fails to comply with the prohibition, the employer may claim compensation for damages from the employee or may require that the business transaction be considered as concluded for the employer's benefit, or that the employee gives the employer the profit earned from such transaction or transfer to the employer any claims for profits earned from such a transaction. The employer's abovementioned right ceases to exist three months after the date on which the employer learned that the business transaction had been concluded, and in any case five years after the date on which the transaction was concluded. If, at the time of commencement of employment, the employer was aware of the fact that the employee was engaged in certain business activities, and did not require that the employee stop engaging in such activities, it shall be considered that the employer gave the employee approval for engaging in such activities. The employer may revoke the approval referred to in paragraphs 1 and 4 of this article, complying in this respect with the time limit prescribed or agreed upon for cancelling an employment contract.

12.2 Contractual prohibition of competition

The employer and the employee may stipulate that, for a certain time after the termination of the employment contract, the employee must not enter into employment with another person who is competing in the same market as the employer, and that the employee must not conclude business transactions that constitute competition with the employer, either for his own account or for the account of another ("contractual prohibition of competition"). The contract referred must not be concluded for a period longer than two years after the date of the termination of employment and may be an integral part of the employment contract, but must be entered into in writing. The contract referred to above is not binding on the employee if the aim of the contract is not to protect the legitimate business interests of the employer or if, taking into account the area, time and aim of the prohibition and in relation to the legitimate business interests of the employer, the contract disproportionately limits the work and promotion of the employee.

Unless the Labour Act specifies otherwise for a specific case, the contractual prohibition of competition is binding on an employee only if the employer has undertaken a contractual obligation to pay compensation to the employee for the duration of the prohibition, amounting to at least half of the average salary paid to the employee in the period of three months prior to the termination of the employment contract. Salary remuneration shall be paid by the employer to the employee at the end of each calendar month. Where only a contractual penalty has been provided for in the case of a violation of a contractual prohibition of competition, the employer may, in accordance with the general provisions of the law of civil obligations, claim only the payment of this penalty and not the fulfilment of the obligation or compensation for greater damages. A contractual penalty may also be agreed upon for the case when the employer does not undertake to pay salary compensation for the duration of the contractual prohibition of competition.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level in countries outside of Croatia could be applicable in Croatia, provided that such policies and procedures are fully harmonised with Croatian legislation and incorporated by reference by an enactment of the Croatian employer.

14. Employment and mergers and acquisitions

In event that a contract to a new employer, as a result of a change in the status or as a result of a legal transaction, an undertaking, business or part of an undertaking or business, retaining its economic integrity, is transferred to another employer, all employment contracts of employees working in such an undertaking or part of an undertaking, or those involved in pursuing such business or part of business that is transferred shall also be transferred to another employer. The employee whose employment contract has been transferred shall retain the rights he or she acquired as a result of employment by the date of transfer of the employment contract and the employer to whom employment contracts are transferred shall assume, as of the transfer date, all the rights and obligations from the employment contract that has been transferred, in the identical form and scope. The employment contracts shall be transferred to the new employer as of the date on which the legal effect is produced pursuant to the regulations on the legal transaction on the basis of which the transfer of an undertaking, business, or part of an undertaking or business takes place.

The employer shall notify the work council and all employees affected by the transfer of an undertaking, business, or part of an undertaking or business in writing and in due time before the date of the transfer. The abovementioned notification shall include the information on: the date of transfer of the employment contract, the reasons for the transfer of the employment contract, the legal, economic and social implications of the transfer for the employees, any measures envisaged in relation to the employees whose employment contracts are being transferred, etc.

If the transfer of an undertaking, business, or part of an undertaking or business is carried out during bankruptcy proceedings or rehabilitation process, the rights transferable to the new employer may be reduced pursuant to a special law, collective agreement that has been concluded or agreement between the works council and the employer.

If a collective bargaining agreement is entered into in an undertaking, business, or part of an undertaking or business which is subject to transfer, such collective agreement applicable to employees before the change of the employer shall continue to be applicable until the conclusion of a new collective agreement, but for no longer than one year. Furthermore, where an undertaking, business, or part of an undertaking or business that is transferred does not retain its autonomy in such a way that

a works council may not continue its activities, the employees, whose employment contracts are transferred, shall reserve the right to representation until the conditions are in place to elect a new works council or until the expiry of the term of office of their former representative.

15. Industrial relations

15.1 Workers' council

The employees employed with an employer with a minimum of 20 workers, except for the workers in the bodies of the state administration, pursuant to the Labour Act have a right to participate in the decision making process on matter of their economic and social rights and interests, in the ways and under conditions specified by the Act. The employees have a right to elect via free and direct elections, by secret voting, one or more of their representatives (further referred to as Workers' council) who shall represent them with the employer in the protection and promotion of their rights and interests. The procedure to establish the workers' council is initiated at the proposal of the labour union or by the proposal of at least 10% of workers employed by the specific employer. The minimum number of the members of the workers' council is determined by the number of workers. The workers' council is being elected for the electoral period of 3 years.

The employer is obliged to inform the workers' council at least once every 3 months of the condition and the results of the business, development plans and their effect on the economic and social position of the workers, changes in salaries, extent of and reasons for introducing of the overtime work, the number of workers employed for a definite period of time and the number of workers employed on the basis of contracts at remote places of work, as well as the reasons for their employment, the protection and security at work and about the measures taken in order to improve the working conditions, as well as other matters of particular significance for the economic and social position of the workers.

Before making any decision of significance to the workers, the employer must take advice from the workers' council. Important decisions in particular include decisions relating to labour relations, employment rules/by-laws, on the employment plan, on transfer and on notice of dismissal, on expected legal, economic and social consequences for workers in the event of transferring the contract to a new employer, on measures concerning health and safety at work, the introduction of new technologies or changes to the organisation and of manner of work, annual leave, on the schedule of the working time, on working at night, compensation for inventions and technical improvements, on approving a Redundancy Programme and all other decisions for which the Act or collective agreement stipulate that the participation of the workers' council is obligatory. The employer may only with the preliminary agreement of the workers' council present decisions regarding the notice of dismissal to the member of the workers' council, with regard to the notice of dismissal to the candidate for the member of the workers' council who has not been elected, notice of dismissal to the member of the electoral board, all for the period of 3 months after the proclamation of the election results, on the notice of dismissal to a worker with diminished working ability or direct danger of disability, notice of dismissal to a worker older than 60 years of age for a man or 50 years of age for a woman, notice of dismissal to the representative of workers in the supervisory board, incorporation of persons to whom it is prohibited by the Law to terminate the employment contract in the Redundancy Program, collection, treatment and delivery to the third persons of information about the workers, the appointment of the person who is authorised to supervise whether the personal information of the workers is collected, treated and delivered to the third persons in accordance with the provisions of the Law.

15.2 Labour unions and employers' associations

The Croatian Constitution published in the Official Gazette No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10 and 85/10 *("Ustav Republike Hrvatske")* and in the Labour Act guarantees the freedom of trade union association. There are many labour unions with nationwide coverage and many other trade unions exist on industry level and within individual companies. As in the most of other transitional economies, industrial disputes are quite usual in Croatia, especially in companies undergoing financial difficulties. Moreover, a great deal of them still escalate into strikes, which is a legally recognised right of employees, but must be organised in compliance with provisions of the Labour Act. Labour unions independently decide upon the ways of their representation before the employer. Labour unions with members who are employed with certain employers may appoint or choose one or more union representatives who represent them before an employer. Union representatives have the right to protect and promote the rights and interests of the members of labour unions before an employer. It is by law prohibited to terminate an employment contract of a union representative without the consent of the labour union, during his duty and 6 months after the termination of that duty, nor is it possible to transfer him to another place of work or on some other way to put him in an unfavourable position in respect to other workers.

Employers have the right, indiscriminately, and according to their own free choice, to establish an employers' association and to be members of such an association, subject only to such requirements which may be proscribed by a statute or by-laws of that association. The employers may engage in a lockout only as a response to a strike already in progress. A lockout must not commence prior to expiration of eight days from the date of the commencement of a strike and the number of employees locked out from work must not be greater than one half of the employees on strike. With respect to the employees who are locked out, employers must pay contributions prescribed by specific regulations on the base equivalent to the minimum salary.

The activities of an association shall not be prohibited, and an association cannot be disbanded by virtue of an act of executive authorities.

15.3 Collective Bargaining Agreements

A collective agreement regulates the rights and obligations of parties which are signatories thereto, and may contain legal rules which regulate conclusion of the agreement, the substance and termination of contracts of employment, issues related to an employees' council, social security issues, and other issues originating from or related to employment. Legal rules contained in the collective agreement shall be directly applicable and binding on all persons who are, in accordance with the Labour Act, subject to the collective agreement. The collective agreement may contain rules related to collective bargaining procedures and to the composition and methods of work of bodies vested with the authority for the peaceful settlement of collective labour disputes. Parties to a collective agreement may be one or more employers, an employers' association, or a higher level employers' association on one side, and a trade union or a higher level trade union association on the other side, which are, in the course of negotiating a collective agreement, willing and able to use pressure to protect and promote the interests of their members. A collective agreement shall be binding on all persons signatories thereto, and all persons who, at the time of closing such an agreement, were or subsequently became members of the association which is a party to the collective agreement. A collective agreement shall be binding on all persons who have acceded to the collective agreement and all persons who have subsequently become members of the association which has acceded to the collective agreement. Personal employment contracts must have the contents that are responding to the standards that are set in the collective agreements. The Minister of Economy, Labour & Entrepreneurship may, at the request of a party to a collective agreement, extend the application of a collective agreement concluded with an employers' association or a higher-level employers' association to persons who did not take part in its conclusion or who did not subsequently accede to it.

16. Employment and intellectual property

16.1 An invention made at the workplace or in relation to the work

According to the Labour Act, the employer is the exclusive owner of an invention made at the workplace or in relation to the work. An employee shall inform his or her employer of his or her invention made at the workplace or in relation to the work and shall treat all the information about the invention as confidential business information and shall not pass it on to a third person without prior approval of the employer. On the other hand, the employee is entitled to special remuneration established by the collective bargaining agreement, employment contract or special contract, and if the special remuneration is not determined, appropriate compensation shall be established by the court.

16.2 An invention related to the employer's activity

An employee shall inform his or her employer about an invention that was not made at the workplace or in relation to the work, if such invention is related to the employer's activity, and shall make the employer a written offer to transfer to the employer his or her rights in relation to such invention and the employer shall respond to the employee's offer within a period of one month.

16.3 Employees' technical innovations

If the employer agrees to apply a technical innovation proposed by an employee, the employer shall pay to the employee the compensation established by the collective agreement, employment contract or special contract. If compensation is not established, an appropriate compensation shall be established by the court.

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal traits is strictly forbidden by the Labour Act, as well as any harassment and sexual harassment. Direct and indirect discrimination in the field of labour and labour conditions shall be prohibited, which includes selection criteria and employment requirements, promotion requirements, vocational guidance, vocational training, additional training and retraining, in accordance with a special law. The employer shall protect the employees' dignity during work from such treatment by superiors, peers and persons with whom employees come into regular contact during their work that is unwanted and contrary to a separate law.

The procedures and measures for the protection of dignity of employees against harassment or sexual harassment shall be governed in a special law, collective agreement, agreement between the works councils and the employer or in employment rules. An employer employing more than 20 employees shall appoint a person who would, in addition to him, be authorised to receive and deal with complaints related to the protection of employees' dignity. The employer or authorised person shall no later than eight days of the date when the complaint was filed examine the complaint and take all the necessary measures which are appropriate for a particular case to stop the harassment or sexual harassment, if he or she has established that harassment has occurred. The employee who is a victim of harassment or sexual harassment has the right to stop working until he or she is offered protection, provided that he or she seeks protection in the court having jurisdiction and during the period of interruption of work, the employee has the right to receive salary compensation in the amount he or she would have received if he or she had actually worked.

Further to that, there is also a separate regulation on mobbing and gender equality. According to the Act on Prevention of Discrimination *("Zakon o suzbijanju diskriminacije")*, mobbing is defined as any active or passive continuing act against an employee with the purpose or effect of harming personal dignity, respectability, personal or professional integrity, health or status of the affected employee, and which causes fear or creates unfriendly, humiliating or insulting environment, deteriorates work conditions for the employee or causes the employee to isolate himself or herself

or to terminate his or her employment. According to the cited law, the employer is responsible for its own acts of mobbing and is also vicariously liable in case other employees or management engages in mobbing. The employee's conduct occurring with the effect of harassment and sexual harassment constitutes an infringement of the obligations arising from the employment relationship.

18. Employment and personal data protection

The area of personal data protection is regulated in details by the Labour Act and the Act on Personal Data Protection *("Zakon o zaštiti osobnih podataka")*. According to the Labour Act, regarding the protection of employees' privacy, personal information about employees may be collected, processed, used and sent to third persons only if provided for by this Act or another law, or if necessary for the exercise of rights and obligations arising from employment or related to employment. If personal information has to be collected, processed, used or sent to third persons for the exercise of rights and obligations arising from employment or related to employment, the employer must establish in advance, by employment rules, the information which he or she will collect, process, use or send to third persons for this purpose. The employer employing more than twenty employees shall appoint a person who would, in addition to him or her, be authorised to supervise whether the personal information about employees is collected, processed, used and sent to third persons in accordance with the law.

Furthermore, pursuant to the Act on Personal Data Protection, all data processors (e.g. employers) must submit to the Agency for Personal Data Protection a substantiated notification of their intent to establish a personal data collection. The same law establishes various rights and obligations pertaining to collecting and processing of personal data. In that respect, the Data Protection Law, *inter alia,* prohibits taking decisions on person's work ability, creditworthiness, etc. solely based on automated processing of personal data pertaining to such person. The employee whose data is being processed has the right to request information on a number of issues related to the processing, such as where the data is being transferred, to whom it is being transferred, the purpose of the transfer and the legal grounds for the transfer. Furthermore, with respect to especially sensitive personal data (e.g. nationality, union membership, health condition, etc.), a written consent must be obtained from the employee prior to the processing of such kind of personal data.

19. Employment in practice

The registration of employees is time-consuming and administratively burdensome. In addition, the Croatian authorities tend to be sympathetic to employees and reinstatement of work is a frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk. On the other hand, visits by the labour inspectors do not occur often and fines are not frequently assessed, but when fines are assessed, they may be up to HRK 100,000.00 (approximately EUR 14,000.00).

1. General overview

The sources of Greek labour law are numerous and of varying priority and importance. The principal sources of Greek labour law regulating employment relationships are the following:

1.1 Greek Constitution

The Greek Constitution contains important provisions related to employment, which have direct effect and may be invoked by individuals within the context of a dispute or litigation. Such provisions include recognition of collective agreements and free collective bargaining, equality before the law, right to equal pay, freedom of association and protection of associations and determination of the general working terms by law, as further supplemented by collective labour agreements contracted through free negotiations and, in case of failure, by the rules imposed by arbitration.

1.2 Greek Civil Code

Articles 648–680 of the Greek Civil Code provide several general principles on the employment agreement, whereas the regulation of detailed terms of employment is entrusted to special legislative and statutory provisions on matters of labour law.

1.3 Laws

There is an extensive structure of laws, legislative decrees, presidential decrees and ministerial decisions (which are enacted on the basis of legislative authorisation) for the regulation of employment relationships. The Greek labour legislation is detailed and deals exhaustively with various aspects of the employment relationship recognising, however, the managerial right of the employer who may not exercise it abusively or in a manner perceived as constituting detrimental change of the employment terms and conditions.

1.4 Case law

The decisions of the courts constitute another source of law, whereby all relevant labour legislation is open to further interpretation and development through the resolution of labour disputes and the formation of new principles by the judges.

1.5 International treaties

As expressly provided by the Greek constitution, international treaties when ratified by law, form an integral part of the Greek legal order and prevail in case of conflict over any law, decree or decision. Greece is a member of the International Labour Organisation (ILO) and has ratified several treaties adopted under the auspices of the ILO, the most important being the Conventions on the Freedom of Association and the protection of the Right to Organise (No. 87), the Right to Organise and Bargain Collectively (No. 98) and Equal Remuneration (No. 100). Moreover, the relevant provisions of the EU Treaty provide certain protection to EU nationals concerning free movement of goods and services, equal pay for men and women, general prohibition of discrimination, freedom of competition, etc.

Further to these sources of labour law, there are other independent forms of labour law sources which contribute to the regulation of specific labour relationships, the most important of which are the following:

(a) Collective labour agreements

An important part of the labour legislation is the collective labour agreements, concluded between workers' unions and employers' associations. The compliance with the provisions of collective labour agreements is compulsory, irrespectively of whether or not they are a result of statutory legislation. According to Law 1876/1990 the provisions of a collective agreement constitute 'legal norms' and have binding effect upon the labour issues they regulate. An individual employer can also validly conclude a collective labour agreement provided that he employs at least 50 persons. The purpose of a collective labour agreement is to regulate, in a compulsory manner, a substantial part of the employment relationship. The collective labour agreements are distinguished in general national, national or local agreements concerning the same profession. Collective agreements can be concluded at the individual company's level as well.

The validity of the collective labour agreement starts from the date it is submitted to the pertinent Labour Inspectorate, except if the contracting parties agree on retroactivity. Their term may be extended for a definite or indefinite period (but not exceeding two years) and may be proclaimed as compulsory for all employees of the same profession or industry by a ministerial decision, provided that employers employing over 50 percent of the employees of that profession or industry are contracting parties to the relevant collective labour agreement.

In the event that the negotiations between employers and employees reach a deadlock, the law prescribes specific provisions of mediation and arbitration. Hence a decision issued by a mediator or an arbitrator, according to the Mediation/ Arbitration procedure, has the binding effect of a collective contract.

(b) Internal codes or regulations

Companies which employ more than 70 persons have to draft an internal labour code or regulation, which is drafted either unilaterally by the employer or by the employer together with the employees' representatives. These rules regulate only those relations formed in the course of the execution of work and are intended to ensure fair and uniform treatment of all employees, coherent policy and disciplinary sanctions. Such labour codes or internal regulations can include all ethics, business codes or other policies applied by the company. The said rules once finalised must be submitted and ratified by the Labour Inspectorate (Law 2874/2000).

2. Hiring

2.1 General

The employment agreement must be in writing. In the event it is concluded orally, it is still binding upon the employer, who may be subject to sanctions for not observing the relevant legal requirements (P.D. 154/1996). The parties are free to determine the content of their agreement, with the exception of cases where specific requirements are stipulated by law (ex. maximum hours of work per week, annual leave of absence, minimum legal severance, etc.).

Any employment agreement must be notified, within eight days, to the pertinent labour authority (OAED, per its Greek initials). Special regulations are provided for the employment of particular categories of people (such as disabled, war victims).

It is recommended that the employment agreement should be sufficiently precise in order for the contracting parties to ensure its applicability and also for the courts to find a solution if a dispute arises between the contracting parties on issues of additional work or overtime work, etc.

By virtue of Presidential Decree 156/1994, implementing Directive 91/533/EEC, the employer has an obligation to provide the employees with the following minimum information:

(a) the full particulars of the contracting parties;
(b) the agreed place of work, the headquarters of the firm or the employer's address;
(c) the post or the specialisation of the employee, his rank, the category of his employment and the scope of his work (job description);
(d) the date on which the employment contract or relationship starts (started) and its duration, if it is for a fixed period or for an indefinite one;
(e) the duration of the leave of absence with pay, as well as the manner and time it will be granted;
(f) the obligation to pay severance in case of termination of the employment contract or relationship and any advance notices by the employer and the employee that may have to be observed, according to the law;
(g) any and all amounts due to the employee for basic salary, bonuses, etc. and the time and manner in which these will become due;
(h) the normal daily and weekly working hours of the employee; and
(i) reference to the applicable collective labour agreement, which determines the minimum payment and work conditions of the employee.

Employees can be informed of the above by delivery of a written employment agreement: (a) within a period of two months from the actual starting date of employment in case of an indefinite duration; (b) within 8 days for part-time employment.

Moreover, and further to the above explicit terms, the following implicit terms (compulsory terms) are applied in an employment relationship:

(a) the employer must abide to the maximum legal working hours per day and per week (see below);
(b) the employee does not work on Sundays or on public holidays and is allowed to annual leave (see below);
(c) in particular circumstances, the employee is allowed to receive leave of absence (maternity leave, sick leave, marital leave, educational leave, etc.);
(d) the dismissal of an employee has to be made in writing and the legal severance, calculated on the basis of the years of past service times the number of the total salary received during the employment contract, as per the provision of law, must be paid; and
(e) all provisions regarding collective agreements must be followed and applied by employers (maximum working hours, minimum remuneration, etc.).

2.2 Disabled persons

Every company employing more than 50 persons must compulsorily employ a certain percentage of the categories of persons with special needs (handicapped, families with many children, war victims, etc.).

2.3 Foreign employees

The right of foreign nationals to work in Greece is in general recognised and protected by virtue of relevant constitutional provisions, although the right of employment is subject to various restrictions.

EU citizens may freely reside in Greece. The only requirement for lawful residence in Greece is the possession of a valid EU citizen passport. Should an EU citizen wish to work in Greece then he will have to submit a series of documents to the competent authority.

In the case of non-EU citizens, Greek immigration Law provides that a non-EU citizen may obtain a work permit to work in Greece as: a dependent employee, a temporary employee, an executive, for provisional transfer for the provision of services, an athlete and a coach, a member of an artistic group, an intellectual property rights owner, a member of a foreign archaeological school.

Depending on which work permit will be issued, the procedure to obtain same is longer or shorter and requires more or less documents.

For non-EU nationals who are not included in any of the categories above and are simple "blue-collar" employees, the employer must "invite" the foreign employee to take up employment in Greece, at a specific position and at a specific place. This is called in Greece the procedure of "metaklisi". Such an "invitation" has to be pre-approved by the competent authorities.

A work permit, depending on the category under which the interested person falls, may be issued within a period of time from 1 month to 1 year and usually last 6 months to a year with a possibility of renewal.

2.4 Secondments

A secondment takes place when an employee (or group of employees) is temporarily assigned to work for another organisation of a different part of their employer. The secondee will remain employed by the original employer during the secondment, and will, following the termination of the secondment, "return" to the seconder.

A secondment agreement is required, which can have the following forms:

(a) a simple letter of secondment between the employer and the secondee; This is more likely where the secondment is within the employer or its group and may include details of agreed changes to the employee's contract. If so, the employee will need to consent to the changes;
(b) an agreement between the original employer and the host, with a separate letter to the employee, as described above;
(c) a tripartite agreement between all three parties.

The secondment agreement will have to make clear that its terms prevail over those in the employee's contract of employment. However, the employee will have to be reminded that all the terms and conditions of his or her contract of employment with the original employer remain otherwise unaffected during the secondment.

The employee's salary may be paid: a) entirely either by the original employer or by the host employer, or b) partially by both employers, according to the secondment agreement.

In the event that the original employer continues to pay the employee's salary and benefits package, then the host employer will usually pay a secondment fee to the original employer at regular intervals during the secondment period. This fee may just be an amount which covers the employee's costs or include a profit element. The secondment agreement should provide for changes in the fee during the secondment period, in particular to reflect any increases in the employee's salary.

3. Types of engagement

3.1 Employment

The main statutory provisions in Greece relating to employment and employment contracts are included in the Greek Civil Code, laws, legislative decrees, presidential decrees and ministerial decisions, which deal exhaustively with various aspects of employment, and Collective Labour Agreements, which are distinguished in general national, national or local agreements concerning the same profession. Collective agreements can be concluded at the individual company's level as well.

Under Greek law, employees are distinguished in accordance with the nature of their work: blue-collar and white-collar. The above distinction is made on the basis of the nature of the work performed (Supreme Court Decision 591, EED 53 (1994) p. 339). The practical role of the aforementioned distinction concerns mainly:

(a) severance payments;
(b) the payment of salary (daily wage or monthly); and
(c) the compensation under Article 5 of Law No. 435/1976 due to retirement.

Another category provided under Greek labour law is that of the part-time employees. According to Law 1892/1990, as supplemented by Law 2874/2000, part-time work is contractually or informally defined work for an indefinite period of time, daily or weekly, of lesser hours than the normal legal working hours. Part-time employees are entitled to full insurance coverage (when they work more than four hours per day), vacation and bonuses.

A further distinction also exists between fixed-term contracts and employment agreements of an indefinite period. A fixed-term contract ends when the contractual term expires or when the contractual work agreed upon is completed. Article 671 of the Greek Civil Code provides that a contract for the hire of work concluded for a fixed term shall be deemed renewed for an indefinite period if upon the expiration of its term, the employee continues to work without the opposition on the part of the employer. The crucial element of the distinction between indefinite and fixed-term employment contracts arises in cases of dismissals and severance payments. Article 8 of Law 2112/1920 prohibits the employers from entering into successive fixed-term contracts with employees, i.e. dismissing and subsequently re-employing them, when there is not a justifiable reason. In such case the employment agreement is considered as an employment agreement for an indefinite period of time, as recently regulated by P.D.180/2004.

In particular, Presidential Decree 180/2004 protects employees subject to fixed-term contracts. According to this Presidential decree, the unlimited renewal of fixed-term contracts is only allowed if this is particularly justified by the nature of the work to be provided.

3.2 Engagement outside employment

Labour law governs only the employment agreements which have the distinctive feature of the personal, legal and financial dependency of the employee to the employer. Hence, the provisions of law are not applicable to self-employed individuals providing services.

The main criteria used to distinguish an independent contractor from an employee is the exercise of managerial rights versus the freedom of performance. In the event the employer, through his managerial rights, defines the hours, the place, the performance of the duties, etc., then a contract of employment exists. Whereas, if the other party has the right to determine the method of work, the performance of same, the freedom to undertake other assignments, etc. and the prevailing element for the employer is the result of the assignment then it is considered that a status of an independent contractor exists.

3.3 Engagement of managing directors

Greek labour law does not contain special provisions for executive employees, employees holding managerial positions (directors, etc.). Case law has regulated their special status.

Further, executives are not subject to working hours, they are not entitled to payment of any kind of overtime work, work during nights, Sundays or holidays and they are not entitled to annual leave. Greek law considers that executives represent the employer and, consequently, have the flexibility to manage their tasks, schedule their working hours, arrange their vacation when possible and most importantly, negotiate their salary for the increased responsibilities they share with the employer, since their acts reflect on the financial situation of the undertaking. Please note that Greek case law interprets very limitedly the notion of "executive" position, in order to avoid any abusive situation where employers consider simple employee positions as executives in order to avoid payment of overtime, etc.

4. Salary and other payments and benefits

4.1 Salary

Collective Agreements determine the minimum payment. According to 2010 General National Collective Labour Agreement, the minimum payment for unmarried workers (blue collar) who have worked for less than 3 years is EUR 33,04/day and for unmarried employees (white collar) who have worked for less than 3 years is EUR 739,56/month.

4.2 Other mandatory payments not considered as salary

The voluntary benefits paid by the employer are not part of the salary when they are given as a gift or when a future commitment is explicitly excluded, obliging the company to provide these benefits permanently. As it has been accepted in case law, if the employer has not reserved the right to discontinue the benefit, then this benefit is considered as salary.

4.3 Other benefits

Collective labour agreements provide for various benefits, based on seniority, family status, working conditions, specialty of the employee, etc. The payment of such benefits is compulsory.

5. Salary tax and mandatory social contributions

Recently enacted tax law (Law 3842/2010) in Greece provides for a number of fiscal measures intended to meet the challenges facing the Greek economy. A new tax scale and corresponding tax rates have been introduced for all salaried employees, applicable for the provision of services, from 01/05/2010, as follows:

Income Bracket (EUR)	Tax Rate %
0-12,000	0
12,001-16,000	18
16,001-22,000	24
22,001-26,000	26
26,001-32,000	32
32,001-40,000	36
40,001-60,000	38
60,001-100,000	40
Over 100,000	45

The tax-free threshold of EUR 12,000 is related to the collection of receipts. Such receipts are for all categories of goods and services except, among others, those which relate to regular utility bills for telephone service, electricity supply, water supply, etc. In actual fact the tax-free threshold applies as follows:

(a) for the amount of EUR 6,000, income is free of receipts;
(b) for the amount of up to EUR 12,000, the taxpayer is required to declare receipts up to the value of 10% of his income;
(c) for the amount of EUR 12,000 and above, the taxpayer is required to declare receipts up to the value of 10% of his income for the first EUR 12,000 and 30% of the income for the rest of the income.

A discount is provided for the declaration of receipts above the requested threshold. When the costs exceed the required amount and are up to the amount of EUR 15,000 for an individual or EUR 30,000 for a family, the taxpayer is entitled to a tax reduction equal to 10% of the difference between the required amount and the amount that has been declared.

When the costs are less than the required amount, the taxpayer is charged with a tax amount equal to 10% of the amount of costs that are outstanding.

IKA is the largest Social Security Organisation in Greece. IKA covers those who have a dependent employment relationship in Greece or abroad for an employer who is based in Greece, as well as those who offer full-time or part-time personal labour on commissioned work agreements and are not insured with any other Main Insurance Fund.

IKA receives contributions from both employers and employees, so that it can pay out benefits. The amount of contribution is a percentage of the gross income of the employee. The employer deducts the employee's contribution when the salary is paid to the employee and the deducted sum is paid to IKA along with the employer's contribution within the deadline set by law.

In addition to the above, social security contributions apply to monthly gross employment income up to a ceiling amount. No

contribution is due on any remuneration in excess of the ceiling. The maximum monthly ceiling for social security contributions is EUR 2,315 for employees registered with a social security fund prior to January 1, 1993 and EUR 5,279.57 for other employees. Expatriate employees who were insured abroad prior to that date might apply to be subject to this ceiling if they are from an EU country or a country with which Greece has a bilateral social security treaty. Additionally, salaried EU expatriates may be exempted from any contribution in Greece provided they supply the necessary documentation (E101 form).

The basic rate of social security (IKA-TEAM) contributions as percentage of monthly gross salary and wages is 44.06% (16.00% payable by the employee and 28.06% payable by the employer).

6. Working hours

The legal working time is 40 hours per week, except for specific categories of employees, such as bank employees, electricians, builders, under age employees, etc., who are employed for less hours. The employer and employees can also agree that the employees will be employed for less working hours but remunerated for 40 hours. Out of the 40 legal working hours per 5 day week, the first five (5) hours after the legal working time are considered as overwork (41st to 45th) and are remunerated by an increase of 20%. For the realisation of overtime work, an announcement or permission must be granted by the competent labour inspection authority. If said announcement is made or said permission is granted, then the realised overtime is remunerated by an additional 40% (up to 120 hours annually per employee) or an additional 60% (for more than 120 hours annually per employee).

Any overtime not realised according to the legal procedure is considered as special overtime and, if realised, is remunerated by an additional 80% increase.

The engagement of an employee in any type of work between 10 p.m. - 6 a.m. is considered as night work and the employee is entitled to receive an increase of his salary.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

According to Law 543/1955, as amended and currently in force, any employee is entitled to annual vacation comprising of 20 working days (or 24 days for employees working a 6-day week) and up to 25 days (or 30 respectively) depending on the length of employment.

The vacation allowance is equal to one half of the employee's salary and is usually paid during June of each year.

7.2 Paid leave

Sunday and several other days, provided by law, are considered as paid public holidays (compulsory holidays). However, non-compulsory holidays exist based on collective agreement or custom. The difference between such distinctions is that if the employee is working on a compulsory holiday, he receives higher compensation than an employee who is working on a non-compulsory holiday.

7.3 Sick leave

In the case of sick pay, the employee is entitled to remuneration for at least a month if the working relationship has lasted more than one year, or half a month if it has lasted less than a year. The employer may, however, deduct any amounts paid to the employee by the Social Security. No salary is due if the employment relationship has lasted less than 10 working days. Regarding the provision for the days of absence, the law makes a distinction between short period and long period of sick pay. Short sick pay is considered the absence of an employee due to illness for specific periods of time, provided by law, in accordance with the years of the employees' previous employment, i.e. up to 1 month for employees working up to 4 years in the same employer, etc.

7.4 Maternity leave

The total duration of maternity leave is set at 17 weeks in Greece. Of this, 8 weeks must be granted before the expected date of confinement and the remaining 9 weeks after confinement. In cases where confinement takes place earlier than the expected date, the remainder of the leave must be granted subsequent to confinement so that the total of 17 weeks' leave is ensured.

7.5 Unpaid leave

The granting of unpaid leave is always based on mutual agreement between the parties to the contract of employment and serves either special needs on the part of the employee or an unforeseen temporary reduction in the employer's business activities. During the period concerned the obligations of the parties, such as the respective obligations to pay remuneration and to perform work, are suspended.

8. E.S.O.P.

See above concerning voluntary benefits.

9. Health and Safety at work

According to Laws 2224/1994, Articles 24 and 25, and 2639/1998, Articles 16 and 17, the breach of the provisions on health and safety at work on the part of the employer, may result in administrative fines, such as (a) a pecuniary fine, amounting from EUR 1,000-30,000 or (b) discontinuance of the company operations for 6 days or more, or even permanent discontinuance of the company operations and penal fines, imposed on the company and its legal representative(s), such as at least 6 months imprisonment and/or a pecuniary fine of at least EUR 900.

10. Amendment of employment agreement

According to Greek labour legislation, the employer cannot proceed with any unilateral detrimental change of the employee's terms and conditions, without the affected employee's prior written consent. Said changes may be in the form of a sudden reduction in the employee's salary, changes to the bonus/ commission structure or a reduction of the final amount paid, etc.

11. Termination of employment

The employment agreement may be terminated in the following ways:

(a) In the case of fixed-term contracts, upon the expiration of the employment agreement;
(b) In the case of employment agreements of an indefinite term, by the intention of both parties to terminate the agreement;
(c) The death of either the employee or the employer (if he is a physical person). In the case of the employer's death, the contract terminates if it was concluded because the employee was orientated to his or her person or in case there has been no succession to the undertaking;
(d) In the event that the employer and the employee become the same person;
(e) The unilateral act of termination by the employee (resignation) or of the employer (dismissal).

The mere change of employer, his bankruptcy, the dissolution of the undertaking or an event of force majeure are not events justifying the termination of the employment contract.

11.1 Termination by operation of law

In the case of fixed-term contracts, the employment agreement is terminated upon expiration of the employment agreement. Nevertheless, if the employee continues to offer his services and the employer continues to accept them, then it is considered that the employment relationship continues to exist.

11.2 Termination by employee

The employee may terminate the labour contract of indefinite time, at any time, with prior notice, which cannot exceed 3 months maximum.

In the case of a fixed-term contract, termination is not permitted prior to the lapse of its duration without "important reason".

11.3 Termination by employer

Contracts for an indefinite term can be terminated in writing at any time, unilaterally by the employer, with or without prior notice, with payment of severance, unless the employee has been working in the undertaking for less than two months, in which case the termination does not require any formality.

Please note that there are some cases where the working relationship cannot be terminated, such as in case the employee is on a vacation leave, or during army service or in case the employee is a protected member of a trade union, or if the employee is a new mother not having completed one year after the delivery, etc.

In the case of a fixed-term contract, termination is not permitted prior to the lapse of its duration without "important reason". If no such "important reason" exists, then the termination is not valid and the agreement is considered in full force and effect. The employee has the right to attack the termination as abusive and unfair and demand damages in the form of due salaries, until the agreed expiration date.

11.4 Procedure for termination by employer

The procedure for termination of the contract depends on the type of the employment contract, i.e. whether it is a contract for a fixed or indefinite term.

In the case of an employment relationship of indefinite period of time, special provisions apply:

If the employer terminates the contract with prior notice, during which the employee must offer his services, then he will have to pay half the severance payment provided by Law 2112/1920. In case the employer terminates the contract without prior notice, then he will have to pay the whole amount of the severance, which will be calculated according to the employee's seniority, as provided by Law 2112/1920.

Severance payment is calculated on the monthly base salary of the employee at the date of termination, multiplied by 14 (so as to take into account the Christmas bonus – one salary – the Easter bonus – one half salary – and the annual leave of absence bonus – one half salary) and divided by 12 in order to average it on a monthly basis. Such average salary is increased by all the fringe benefits the employee receives on a regular basis (such as car allowance or value of car, housing allowance, mobile telephone, insurance coverage, commissions – if the commission plan or variable pay scheme forms part of his individual agreement or is covered by a collective agreement, bonuses – if given by the employer on a regular basis and on a predetermined percentage, etc.). The average of the last two months fringe benefits is taken under consideration in order to calculate the amount that must be added to the base salary for the correct calculation of the severance due upon termination.

The employer must offer to the employee the termination document and the severance due at the same time – these are the procedural obligations the employer must follow, otherwise, the termination is null and void. Other than said two prerequisites, there is no other formal procedure (i.e. prior approval from a government agency, etc.). In the event that the employee refuses to receive the termination document and his severance, then a court bailiff serves both documents (termination document and severance cheque) to the home address of the employee. In case the latter refuses again to receive the above, then the termination document is attached on the door of his domicile and the severance is deposited to the Loans and Trust Fund.

In all cases of termination, the written form of the termination is required, the legal severance has to be paid simultaneously on the time of termination and the employer has to notify the OAED of the dismissal of the employee.

Procedure for termination in case of breach of work duty or work discipline

The employer may terminate the employment relationship in the case that the employee does not perform his duties or he performs them insufficiently.

In addition, the so-called Internal Labour Codes may regulate matters, such as the imposition of disciplinary measures to employees. The measures imposed may be the following:

(a) oral or written record;
(b) written warning;
(c) pecuniary sanction – the employer has the right to set off up to one twenty-fifth of the employee's salary; or
(d) leave or, according to an expression of the law, compulsory abstention from work – this penalty can last up to ten days per year.

For the imposition of any such penalty, the existence of an approved Internal Labour Code or Regulation is prerequisite.

Before the imposition of any penalty, the employee must be given the right to explain and justify himself.

Procedure for termination for incompetence

See above under Procedure for termination in case of breach of work duty or work discipline.

Procedure for termination in case of redundancy

The employer may dismiss employees in case of restructuring. In such case, certain criteria for dismissals must apply.

The most important criteria, according to the case law, are:

(a) the performance of the employee;
(b) the seniority;
(c) the age;
(d) the family burdens;
(e) the financial situation;
(f) the possibility of finding a new job.

Among those criteria, the case law gives a general and firm preponderance to the performance of the employee. A termination of an employment agreement of an employee whose performance has been judged as inefficient will not be judged as abusive. Therefore, the rest of the aforementioned criteria will have to be applied when deciding the termination between two employees whose performance is on equal level.

Such application must be based on a general, overall appreciation of all the criteria, without discriminating a particular one. However, it has to be mentioned that certain court decisions have given a relative priority to the criterion of seniority.

In the procedure of selecting the employees to be dismissed, the interests of the company cannot be ignored. It is such interest which imposes keeping in the company the employees with the best performance although performance must not be on its own, the only element to be taken into consideration, as in such a case all other social criteria will be superseded. Considering the above, whenever the difference in the social criteria between two employees is big, the difference in performance must be even bigger in order to maintain in the company the employee with the better performance.

Although all criteria should be considered in an overall appreciation, performance and seniority are the most important ones due to the fact that performance is linked with the interests of the company and seniority with the employee's right to work.

The aforementioned criteria are not limitative: the status of health of the employee, the status of health of his relatives, etc. are other elements to be considered as well. The employer must always be informed on all these facts by his own initiative, unless the employee refuses to give such information to his employer.

In addition, specific provisions exist for collective redundancies, which are subject to strict conditions and prerequisites, i.e. maximum percentage of employees' dismissals per month, specific procedure of their application. The law provides that in order for the dismissals not to be considered as collective, undertakings employing more than 20 employees have to abide by a certain threshold in one calendar month. In the case of collective dismissals consultation with the representatives of the employee, as well as with the Ministry of Labour and Employment must take place and alternative solutions to be proposed so as to minimise the impact of the dismissals. In any case for the application of collective dismissals the approval of the Ministry of Labour is required, although rarely granted.

The employer has to inform the employees' representatives of its intention to proceed to collective dismissals and provide the reasons thereby, as well as all other required information. It should thereafter proceed to consultations and negotiations, which should not last less than 20 days. Should the employer and the employees' representatives not reach a solution, the consultation can be extended for 20 more days by decision of the Prefect or the Minister of Labour and Employment. In case a common solution is not reached, it is up to the Prefect or the Minister of Labour to accept or reject the demand for collective dismissals within ten days. If again a decision is not reached, then the employer may proceed to collective dismissal, either within the limits of the agreement which may have been reached between the employer and the employees'

representatives during the consultation process or, in the absence of any such agreement, only within the thresholds herein abovementioned.

In the event that the employer does not respect the provisions of the law on collective dismissals, then the dismissals are void.

In cases of collective dismissals, the employer must also apply the same provisions concerning the termination of employment contracts (written form, payment of severance, etc.).

Remedies in the event of wrongful dismissal

According to Greek law, the termination of a working relationship of indefinite period of time does not have to mention the cause. This does not mean, however, that the employee does not have the right to contest his termination before the courts as invalid, abusive, etc. On the contrary, he has the right to contest same, request salaries in arrears due between the date of dismissal and the date of the issuance of the court decision, plus interest and indemnity for moral damage, as well as demand restitution to his employment position. Consequently, it will be the competent courts that will judge whether a dismissal is valid or not.

Further, paying the right amount of severance in case of termination is extremely important since, if the correct amount is not paid, the employee has the right to file a lawsuit contesting the validity of the termination, requesting the court to declare it abusive and invalid. In the case such lawsuit is accepted by the Court, then the employee is, retroactively to the date of termination, considered as being employed by the company and salaries due are owed to him, upon setting off the amount of severance. Note, however, that there are specific cases, enumerated by law, according to which no severance is due, such as in cases where the employer has filed criminal charges against the employee before the dismissal or in cases where the employee has provoked by his attitude his dismissal in order to receive the severance due, etc.

11.5 Mutual agreement on termination

The parties to the employment agreement may freely agree on its termination.

12. Non-compete

Confidentiality and non-competition clauses are usually included in an employment agreement. Employees have a duty to keep confidential any information related to the employer and its business, which is considered to be of a confidential nature.

Moreover, employees have an obligation to abstain from competitive practices during the whole duration of their employment and, very often, even for a reasonable period of time after the termination of the employment agreement, if specific conditions are met. In such latter case compensation for the compliance with such clause by the employee is provided in the relevant clause, which is usually proportionate to the period bound by such exclusivity obligation.

13. Global policies and procedures of employer

In the case of multi-national companies, the local entity often applies global HR policies and procedures, to the extent permitted by local laws.

14. Employment and mergers and acquisitions

Transfer of an enterprise to a new holder (successor) does not affect the existence of the employment relationship nor the application of the protective provisions of labour legislation (Law 2112/1920, Article 6). The rights and obligations which arise from the contract of employment are assumed in their entirety by the successor. The transferor remains jointly and severally liable with the new employer for the obligations which will result from the employment relationship which the successor is taking over (EC "Transfer Directive" 187/1977, Presidential Decree 572/1988, Presidential Decree 178/2002). The new employer is obliged to observe the terms and conditions of employment established in the relevant collective agreement, arbitration award or contract of employment. In principle, the transfer of an enterprise does not in itself constitute grounds for the dismissal of employees. It is, however, possible to carry out dismissals for economic, technical or organisational reasons which necessitate changes in the enterprise's level of employment. Exception is made regarding private pension schemes, according to which the successor has the right to maintain, amend or discontinue the existing pension scheme(s).

15. Industrial relations

Greece is characterised by state organised business relations, adversarial labour relations and state controlled wage bargaining. Unions are subject to detailed legal regulation. Relationships between employers, employees and the State are defined by law in detail.

More specifically, Law 1876/1990 regulates mediation and arbitration. The resolution of collective labour disputes arising out of unsuccessful collective bargaining, strikes or lockouts can be effected through the Organisation for Mediation and Arbitration (OMED). This organisation is an autonomous public legal entity and is constituted by a number of independent mediators/ arbitrators. Prior to the submission of a dispute to mediation/ arbitration, a summary procedure of reconciliation is provided by law. If the reconciliation procedure fails, then the parties may resort to mediation.

The submission of a dispute to mediation can be effected unilaterally by either party or by both parties, upon mutual agreement. If the mediator is unable to reconcile the parties within 20 days, he may submit his own proposal, which can be accepted or rejected within five days. If both parties accept the mediator's proposal, then the proposal acquires the force and effect of a collective labour agreement. Resort to arbitration is permitted by virtue of agreement of the parties or unilaterally by either party, if the other party rejected outright the mediation, or by the labour unions, in cases where the employer rejected the mediator's proposal.

16. Employment and intellectual property

Often the employment agreement for executives or other special categories of employees, includes an intellectual property clause, according to which the employee shall promptly disclose in confidence to the employer all developments whether or not such developments are patentable, copyrightable or protectable as trade secrets, all developments shall be the sole and exclusive property of the employer, they shall constitute "work made for hire" with the employer being the person for whom the work was prepared and that all intellectual property rights therein shall be the sole and exclusive property of the employer, and that in the event that any such development is deemed not to be a work for hire, the employee hereby irrevocably assigns, transfers and conveys to the employer, exclusively and perpetually, all right, title and interest which the employee may have or acquires in and to each such development throughout the world, including without limitation any copyrights and patents, and the right to secure registrations, renewals, reissues and extensions thereof free and clear of any claims by the employee.

17. Discrimination and mobbing

The basic principle of equal treatment is regulated under the Greek Constitution and it is incorporated into Greek law according to the EU directives. In particular, Directives 2000/78/EC and 2000/43/EC have been recently implemented into Greek Law (Law 3304/2005).

By virtue of these legislative provisions, direct or indirect discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation in the field of employment and occupation is not allowed. Direct discrimination occurs when a person is treated less favourably than another, while his employment status is the same or comparable. Indirect discrimination occurs when a provision, a practice or a criterion puts a person in disadvantage, as compared with other people of the same employment status. Indirect discrimination can only be justified by a legitimate purpose and where the means of achieving the purpose are appropriate and necessary.

The foregoing provisions apply to all persons whether in the private or public sector and in relation to work access, all types of vocational training, vocational guidance, working conditions, involvement in workers' and employees' organisations, social protection, social advantages, education and supply of goods and services that are available to the public.

Differentiation can be justified only if, due to the nature or the context of the particular working practice, it constitutes a basic and crucial working condition, if the aim is just and the condition appropriate.

18. Employment and personal data protection

The basic statutory legislation in Greece is Law 2472/1997 on the "protection of individuals with regard to the processing of personal data" and Law 3471/2006 on the "protection of personal data in the telecommunication sector". The scope and content of these Acts have been supplemented by decisions of the Greek Authority on Data Protection (DPA).

Law 2472/1997 sets out requirements with which all data controllers have to comply to ensure fair collection and processing of personal data (unambiguous consent of the data subject). It also sets out requirements for the issuance of a license by the DPA in case of collection and processing of sensitive data. Please note that processing includes holding and/or disclosing data. Furthermore, it sets out rights of the data subject: (a) to be informed for the identity of the data controller and his representative, if any, the objective of the processing and the recipients or categories of recipients of the data, (b) to access its personal data at all times, (c) to object in writing (special right to object) to the processing of any personal data with the intention of correcting, blocking or deleting the data, and (d) to claim for the inscription of its name in a registry kept by DPA. Finally, said law includes provisions for the imposition of administrative, civil and criminal sanctions, regarding any eventual breach of these obligations.

19. Employment in practice

Individual disputes between employer and employee are resolved according to the Greek Code on Civil Procedure, which incorporates a specific chapter, under the title "Labour Disputes Procedure". It should be noted that the parties cannot agree to private arbitration of employment disputes, since it is not permitted by Greek law.

Waivers of the exercise of statutory and contractual rights to potential employment claims, can be validly made by the employee only after the date when such rights come to existence and can be exercised, otherwise any waiver would be null and void.

The statute of limitations on employment claims, arising out of the working relationship is five years. However, regarding the right of the employee to file a claim for the annulment of his termination as invalid or abusive, the prescription period is three months, following the termination date. Finally, regarding the computation of severance, the prescription period is six months, following the termination date.

The principal governmental institution for the regulation, monitoring and administration of labour relationships is the Ministry of Labour and Employment which comprises central and regional services

through various departments and inspectorates, the most important of which are the following:

(a) The General Inspectorate of Administration, which comprises the internal administration of the Ministry as well as the supervision of other employment organisations;
(b) The General Labour Inspectorate, which regulates issues on terms and conditions of employment, collective agreements, collective relations, organisation and education, social protection, equal opportunities, etc.;
(c) The General Directorate for Security and Hygiene of Labour, which regulates issues on safety conditions and hygiene of employees, such as security at work, training, treatment, medical supervision at work, etc.;
(d) The General Secretariat for the administration of EU and other financial resources, i.e. the application of certain EU programme, as well as joint action with other EU organisations;
(e) The General Secretariat of Social Insurance, which has been subjected to the authority of the Ministry of Labour and Employment by virtue of Presidential Decree 372/1995. The said Secretariat has a supervisory role over all social insurance entities operating in Greece.

By virtue of Law 2639/1998 a special "Body of Labour Inspectors" has been formed, whose principal role is the inspection of the labour law provisions, the prosecution of those violating labour legislation, parallel to, and independently of, any sanctions imposed by other authorities (i.e. police) and reporting to the ministry of any irregularities or problems that are not adequately provided under the existing legislation.

1. General overview

Montenegrin employment legislation is similar to employment legislations of other countries in the region of South-Eastern Europe.

There is a hierarchy of employment regulations at the pinnacle of which is the Labour Law *("Zakon o radu", "Službeni list CG", No. 49/08, 26/09, 88/09* and *26/10)* ("Labour Law"). Besides the Labour Law, employment-related issues in companies are regulated by the General Collective Agreement *("Opšti kolektivni ugovor", "Službeni list CG", No. 01/04, 59/05* and *24/06)* ("GCA") applicable to all employers and employees. There may also be an industrial collective agreement applicable to all employers and employees in particular industry. According to the Labour Law, it is not mandatory for companies to have individual collective agreements concluded between the employer and the trade union organised at the employer.

Where the GCA and individual collective agreement proscribe less favourable terms to employees than those granted under the Labour Law, the relevant provisions of the Labour Law will override the less favourable terms. The GCA and individual collective agreement may, of course, prescribe more favourable terms than the Labour Law.

An employment agreement must be in writing. The Labour Law stipulates certain mandatory elements of employment agreement (e.g. commencement date, working hours, duration of the employment relationship, place of work, amount of the basic salary, etc.). Employment agreements may not exclude rights guaranteed by the Labour Law, GCA, industrial collective agreement and individual collective agreement.

2. Hiring

2.1 General

According to the Labour Law, the employment relationship may be established with a person of at least 15 years of age and who has the general health capability. In addition, such a person also has to fulfil special conditions for work in the respective work post (if any).

2.2 Disabled persons

The Law on Professional Rehabilitation and Employment of Disabled Persons *("Zakon o profesionalnoj rehabilitaciji i zapošljavanju lica sa invaliditetom", "Službeni list CG", No. 49/08)* proscribes that all employers with 20 or more employees are obliged to employ a certain number of disabled persons. Newly established companies are exempt from this obligation for the first 12 months from the establishment. It should be noted that this requirement for the mandatory hiring of disabled employees is not enforced in practice. The law itself does not provide for efficient enforcement mechanisms.

2.3 Foreign employees

The Law on Employment and Work of Foreign Citizens *("Zakon o zapošljavanju i radu stranaca", "Službeni list CG", No. 22/08)* regulates employment and other employment-related issues pertaining to the employment of foreign citizens. In order to be employed or otherwise engaged by a Montenegrin company, a foreign citizen must:

(a) obtain a "white card" and temporary residence or permanent residence, issued by the Ministry of Interior;
(b) obtain a work permit issued by the Employment Bureau of Montenegro;
(c) have an employment agreement or a service contract;
(d) register himself with the Employment Bureau of Montenegro.

According to the Law on Residence Registers *("Zakon o registrima prebivališta i boravišta", "Službeni list CG", No. 13/08* and *41/10)*, a foreign citizen is obliged to register with the local police within 24 hours after entering the country. However, when staying in a hotel or at another facility owned by a legal or natural person who provides accommodation services, a foreign citizen will be registered by that hotel or such legal or natural person within 12 hours of his arrival. Based on that registration, the local police issues the so-called "white card" to the foreigner (or to the hotel, if the foreigner is staying there).

Upon issuance of the white card, a foreigner wishing to work in Montenegro has to obtain a temporary residence permit (or, if special conditions are met, permanent residence permit). Foreign citizens must, *inter alia*, have sufficient funds, accommodation and health insurance.

According to the Law on Employment and Work of Foreign Citizens, there are 3 types of work permits: personal work permits, employment permits and work permits. All of these permits are issued by the Employment Bureau of Montenegro.

The personal work permit is issued for unlimited period of time and it enables a foreign citizen to have free access to the Montenegrin employment market. It may be approved only to a foreign citizen who has permanent residence or refugee status in Montenegro, at his personal request.

Further, under the employment permit, a foreign citizen may enter into employment relationship with a specific Montenegrin employer. Employment permits are issued at the request of the employer and may be approved if the quota for employment of foreign citizens in the given year is not exhausted. The Government of Montenegro proscribes such quotas on the basis of its immigration policy and the current conditions on the employment market. Quotas are established in accordance with the requirements of the respective industry (e.g. tourism, agriculture, etc.). Quotas do not apply to foreign citizens who have personal work permits, foreign citizens employed on the basis of reciprocity in accordance with an international treaty concluded between Montenegro and the foreign citizen's home country, representatives of a Montenegrin company (directors, members of the company's bodies, procurators), foreign citizens who are on secondment, etc.

Finally, the work permit is issued for a finite period of time to a foreigner hired on a contractual basis outside the employment relationship by a Montenegrin company or by a representative office or branch of a foreign company. A request for issuance of a work permit is submitted by the Montenegrin company hiring the foreigner or, as the case may be, by the representative office or branch of a foreign company. A work permit may only be issued to seasonal workers, foreign workers on secondment in Montenegro, foreign citizens undergoing a professional education program in Montenegro, and foreign citizens providing services in Montenegro under a service contract. Work permits are also subject to aforementioned quotas, except in the case of foreign citizens who are representatives of Montenegrin companies (directors, members of the company's bodies, procurators), foreign citizens on secondment in Montenegro and foreign citizens who provide services in Montenegro under a service contract.

The procedure for obtaining work permits takes a couple of months. In practice, the issuance of work permits is almost never denied.

2.4 Secondments

Secondment of Montenegrin employees abroad is regulated by the Law on Protection of Montenegrin Citizens at Work Abroad *("Zakon o zaštiti građana Crne Gore na radu u inostranstvu", "Službeni list CG", No. 11/04)*. According to this law, Montenegrin employees may be seconded abroad on the basis of a cooperation agreement entered into between their Montenegrin employer and the foreign host. The Montenegrin employer is required to notify the Ministry of Labour with regard to each secondment and provide a copy of the cooperation agreement and other documentation pertaining to secondment. It should be noted that the bureaucratic secondment procedure stipulated by the subject law is often disregarded in practice.

3. Types of engagement

3.1 Employment

It should be noted that the traditional employment relationship is the most usual manner for engaging personnel in Montenegro. There are two types of employment relationship, depending on the duration, i.e. the employment relationship is established for an unlimited period of time or for a limited period of time. The duration of the employment relationship entered into for a limited period of time is not subject to any restrictions.

3.2 Engagement outside employment

Personnel may also be engaged outside employment relationship, in cases and subject to the conditions proscribed by the Labour Law. These flexible kinds of engagement include:

(a) temporary and occasional work (up to 120 days a year);
(b) service agreement (only for work which is outside the employer's main business activities); and
(c) voluntary work (only with respect to non-for-profit activities).

3.3 Engagement of managing directors

Persons serving as managing directors must be employed within the company. This employment can be permanent or for a limited period of time equal to the duration of the mandate.

A foreigner may be appointed as the managing director, subject to the conditions for employment of foreign citizens (please see section 2.3 above).

4. Salary and other payments and benefits

4.1 Salary

According to the Labour Law, a salary is comprised of several elements and sub-elements (basic salary, performance-based part of salary, increased salary, etc.). The GCA stipulates that the basic salary cannot be less than the amount of the minimum wage *(najniža cijena rada)* multiplied by a coefficient which depends on the level of qualification. The minimum wage currently amounts to EUR 55,00 per month. The GCA sets the coefficients in the range from 1.00 (non-qualified employees) up to 4.00 (employees with a PhD). Further, the GCA prescribes that the employee is entitled to uplifts on the basic salary as follows:

(a) night work (work between 10 p.m. and 6 a.m.) – 40%;
(b) work on public holidays – 50%;
(c) overtime work – 40%; and
(d) years of employment – from 0.5% up to 1% for each year of employment depending on the total years of employment.

4.2 Other payments and benefits

According to the GCA, the employee is also entitled to the following mandatory payments, which form part of the salary:

(a) food allowance in the amount of EUR 22,50 (50% of the minimum wage); and
(b) annual vacation allowance in the amount of EUR 165,00 (3 minimum wages).

5. Salary tax and mandatory social contributions

Tax and mandatory social contributions are payable on salaries. All mandatory social contributions are actually paid by the employer. However, the law distinguishes between mandatory social contributions payable at the level of employee and mandatory social contributions payable at the level of employer. The difference is only of relevance in accounting terms: contributions payable at the level of the employer are not part of the gross salary which constitutes the basis for salary tax and mandatory social

contributions. The rate of mandatory social contributions payable at the level of the employee is 16.5%, and the rate of mandatory social contributions payable at the level of the employer is 13.5%. The basis for mandatory social contributions is the amount of the employee's gross salary. The salary tax rate is 9% and the basis for taxation is the gross salary (which consists of net salary, salary tax and mandatory social contributions payable at the level of the employee) decreased for the non-taxable amount of EUR 70,00. Furthermore, there is also an addendum to the salary tax. This addendum is prescribed by the respective municipality and usually amounts to between 10% and 15% of the amount of the salary tax.

Salaries of foreign personnel are also subject to local taxes and mandatory social contributions, subject to the existence of a DTT and social security treaty which may provide otherwise.

6. Working hours

Full-time working hours amount to 40 hours per week. As a rule, the working week lasts five days, but the maximum of 40 hours per week may also be extended over a longer period, depending on the employer's business needs (e.g. a six-day working week). In accordance with the Labour Law, a 30-minute break is a statutory obligation and is included in the full-time working hours. In practical terms, this means that in normal cases a working day consists of seven and a half working hours. Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation. Senior employees and management are not exempt from the overtime regime, i.e. their overtime is also subject to additional compensation.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 18 days. This minimum is increased by the GCA on the basis of the years of employment (from 1 to 3 days depending on the total years of employment) and the health condition (3 days). Furthermore, the minimum duration of annual vacation can also be increased based on various criteria determined within the industrial or individual collective agreement or individual employment agreements. According to the Labour Law, annual vacation may be entirely taken at once or in two parts. If it is taken in two parts, the first part (which cannot be shorter than 15 days) can be used in the current year, while the second part has to be taken no later than the 30th June of the subsequent year.

7.2 Paid leave

In accordance with the Labour Law, the employee is also entitled to paid leave in the event of wedding, childbirth, serious illness of an immediate family member, taking an exam and in other cases prescribed by the GCA, or an individual collective agreement, employment agreement. The Labour Law further stipulates that the employee is entitled to seven days of paid leave in the event of death of an immediate family member. The GCA prescribes that an employee is entitled to paid leave for childbirth (up to three days), child care (up to three days), serious illness of an immediate family member (up to seven days), consequences of natural disasters (up to three days), participation in a trade union sports competition (up to two days) and blood, tissue and organ donation (up to three days).

7.3 Sick leave

In each case of sick leave, employees are entitled to remuneration of salary. This remuneration amounts either to 70% of the employee's average salary calculated over the period of three months preceding the sick leave, in case of illness or injury not related to work, or 100% of employee's average salary calculated over the period of three months preceding the leave, if the leave is caused by professional illness or injury. The employer is obliged to pay remuneration of salary for the first 60 days of sick leave, whereas the state pays the remuneration for the remaining days. It should be pointed out that there are no limitations with respect to total duration of sick leave or number of periods of sick leave.

7.4 Maternity leave

In accordance with the Labour Law, maternity leave starts no earlier than 45 days and no later than 28 days prior to the due date and lasts for up to 365 days. Maternity leave is fully paid by the state. Employee cannot be legitimately terminated while on maternity leave. However, a temporary employment relationship can expire during maternity leave. A father is entitled to leave of up to 365 days, if the mother abandons the child, dies or is prevented from taking leave for a justified reason (e.g. illness, serving prison sentence, etc.).

7.5 Unpaid leave

An employee is entitled to unpaid leave in those cases stipulated within the individual collective agreement or employment agreement. During the period of unpaid leave, the employee's employment-related rights (e.g. salary, pension and invalidity insurance, etc.) and obligations are dormant, except that the employer is obliged to pay mandatory health contributions. According to the GCA, an employee is entitled to unpaid leave of up to 30 days for providing care to seriously ill immediate family member, obtaining medical treatment at his own cost, and participation in the cultural, sport and other public manifestation. In the aforementioned cases, the employer may at its discretion grant the employee paid leave longer than 30 days in duration, based on its sole decision.

7.6 Employment standstill

The employee's employment relationship is at a standstill in the event of certain absences from work listed in the Labour Law (e.g.

secondment, appointment to a public position, etc.). During such absence, the rights and obligations based on employment are at a standstill. Upon the expiry of the standstill grounds the employee is entitled to be reinstated to work.

8. E.S.O.P.

With regard to Employee Stock Ownership Plan schemes in Montenegro, the regulatory framework is absent on both corporate law and tax law levels. Furthermore, there is no information on any implemented ESOP scheme in practice.

9. Health and Safety at work

The area of health and safety at work is regulated in detail by the Law on Protection at Work *("Zakon o zaštiti na radu", "Službeni list CG", No. 79/04 and 26/10)*. All employers and employees are obliged to adhere to specific obligations introduced by this law. The Law on Protection at Work, *inter alia*, stipulates that each employer has to adopt the Act on Risk Evaluation of Work Posts, containing a description of the work process with evaluated risk attached to each employment post and identification of the measures for the removal of such risk. In addition, all employers must have a general enactment which regulates the most important matters pertaining to health and safety at work. The Law on Protection at Work also requires employers to insure all employees against work-related injuries and professional illness.

10. Amendment of the employment agreement

The employment agreement may be amended by virtue of an annex, in specified cases. The annex must be accompanied by a written proposal from the employer explaining the reasons for amending the employment contract, deadline for response by the employee and notice of legal consequences of refusing to accept the proposed annex. Refusal to adhere to a proposed annex can lead to a dismissal in the cases referred to in section 11.3, paragraph (f) below.

11. Termination of employment

11.1 Termination by operation of law

In accordance with the Labour law, the employment relationship is terminated by operation of law in the following cases:

(a) when the employee reaches the age of 65 and at least 15 years of employment, unless agreed otherwise;
(b) loss of ability to work;
(c) prohibition to perform certain works imposed on the employee by the court or other competent body;
(d) prison sentence longer than 6 months;
(e) other sentence which requires absence from work longer than 6 months;
(f) bankruptcy or winding-up of employer.

11.2 Termination by employee

In accordance with the Labour Law the employee may freely terminate his employment relationship at any time and for any reason, subject to a 15-day notice period. This notice period may not be extended by contact.

11.3 Termination by employer

The employer may unilaterally terminate the employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) if the employee refuses to perform his work duty as stipulated in the employment agreement;
(b) if the employee breaches rules of conduct at work (such breaches which may trigger dismissal must be stipulated in an internal enactment rendered by the employer or in the employment agreement);
(c) expiry of an employment agreement concluded for a definite term (this means that upon expiry of an employment agreement entered into for a definite term, the employment agreement does not automatically cease to have effect, but the employer must render a decision on termination);
(d) if the employee comes to work under the influence of alcohol or drugs;
(e) unjustified absence from work for 5 consecutive working days or 7 working days within a 3-month period;
(f) refusal of the employee to sign an annex to his employment agreement for the purpose of: (i) transfer to another employment position with the same employer; or (ii) transfer to another location within the same employer;
(g) failure of the employee to provide adequate results during the probation period;
(h) in the event of redundancy but only if the employer has previously offered to the employee an alternative in accordance with his rights under the relevant provisions of the Labour Law (e.g. additional education, alternative employment, work for another employer, etc.) or made a redundancy payment to the employee;
(i) failure of the employee to return to work within 30 days after expiry of his unpaid leave;
(j) if the employee has provided the employer with false data pertaining to the employment relationship;
(k) if the employee has been found to be in breach of his work duties by his superior at least twice in a year;
(l) if the employee has entered into an agreement on additional work without consent of his employer (a full-time employee may enter into an employment agreement for additional work with another employer only with the prior consent of his employer);
(m) if the employee has breached non-compete provisions in the employment agreement;
(n) in other cases prescribed by individual collective agreements (if any).

11.4 Procedure for termination by employer

The notice period lasts for at least 15 days. The Labour Law states that the cases in which the employee is entitled to the notice period should be stipulated by the collective agreement or employment agreement.

Procedure for termination in case of misconduct

Any dismissal must be effected in accordance with the procedure stipulated in the Labour Law: i.e. before terminating an employment contract in the cases referred to under section 11.3, paragraphs (a) to (f) above, the employer is obliged to issue the employee a written notification stating the grounds for termination and to allow the employee a deadline of no less than 5 working days for his response. Upon the expiry of the deadline for the employee's response (if such deadline is applicable), the employer may issue a decision on unilateral termination of employment. This decision must contain a comprehensive description of the legal grounds for termination and an indication of the legal remedies available to the employee.

Procedure for termination in case of redundancy

The Labour Law provides for a separate redundancy procedure if an employer intends to terminate the employment contracts of at least:

(a) 10 employees (where an employer employs more than 20, but less than 100 employees for an indefinite period of time); or
(b) 10% of employees (where an employer employs at least 100, but not more than 300 employees for an indefinite period of time); or
(c) 30 employees (where an employer employs more than 300 employees for an indefinite period of time);

within a time period of 30 days or if it intends to terminate the employment agreements of at least 20 employees within a time period of 90 days, no matter of its total number of employees.

Redundancy procedures must be conducted with the involvement of the trade unions and the Employment Bureau of Montenegro will become involved. The employer is obliged to prepare a redundancy programme in line with the provisions of the Labour Law. This program particularly encompasses redundancy reasons, redundancy criteria, number of redundant employees, measures for employment of redundant employees, etc.

In any case of termination of employment due to redundancy, the employer is obliged to make a severance payment to the employees. The minimum redundancy payment proscribed by the Labour Law is 6 average net salaries in Montenegro in the month prior to the month when the employment relationship is terminated.

Remedies in the event of wrongful dismissal

In the event of wrongful dismissal, the employee may challenge the decision regarding employment termination in court proceedings within 15 days from the date of delivery of this decision. Upon the initiation of the court dispute, the labour inspector may, at the initiative of the terminated employee, temporarily suspend the decision regarding the unilateral termination of employment and reinstate the employment contract pending a final court decision, if the inspector determines that the termination obviously breaches the employee's rights.

11.5 Mutual agreement on termination

The Labour Law allows mutual agreement on termination of the employment relationship. No severance payment is mandatory in case of such termination, but compensation packages are almost always agreed in practice.

12. Non-compete

A non-compete obligation may be imposed on the employee who works on a post at which he may acquire new and important technological knowledge, a wide circle of business partners or important business information and business secrets. The non-compete obligation may survive the termination of employment agreement for a maximum period of two years, provided that compensation is paid to the employee. The law does not proscribe any parameters for such compensation and therefore the amount can be freely agreed upon. The usual practice is to agree the amount which corresponds to the employee's salary for the period of duration of the non-compete obligation.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level are applicable in Montenegro, provided that such policies and procedures are fully harmonised with the Montenegrin legislation and incorporated by reference within an enactment of the Montenegrin employer.

14. Employment and mergers and acquisitions

The Labour Law imposes certain obligations in cases of "change of employer", which, by virtue of an explicit provision of law, encompass not only restructurings such as mergers and spin-offs, but also ordinary change of control.

In the event of the "change of employer", the Labour Law requires that the predecessor employer and the successor employer jointly notify the representative trade union within the company of the following: (i) date of change of employer, (ii) reason for change of employer, and (iii) legal, economic and social consequences of change of employer to the employees and the measures for their amelioration.

In the event of the "change of employer" the collective agreement of the company must continue to apply for at least one year following

the change, unless the collective agreement expires earlier on its own terms or the trade union agrees to enter into a new collective agreement in the company. If this provision of the Labour Law is to be interpreted literally, it would not be possible to amend the collective agreement for one year after the change of control over the company.

Finally, it should be noted that in the event of the "change of employer" the Labour Law requires the predecessor employer to notify, prior to the completion of the change, the employees in writing regarding the transfer of their employment agreement to the successor employer. If an employee fails to accept the transfer or respond within five working days from the receipt of the notification, the predecessor employer is entitled to terminate such non-responding employee.

15. Industrial relations

The Montenegrin Constitution (*"Ustav Crne Gore", "Službeni list CG", No. 01/07)* and the Labour Law guarantee the freedom of trade union association. The main trade union in Montenegro is "Savez sindikata Crne Gore". Many other trade unions exist at industry level and within individual companies.

As in the most other transitional economies industrial disputes are quite usual in Montenegro, especially in companies undergoing financial difficulties. Furthermore, many of them still escalate into strikes, which is a legally recognised right of employees, although strikes are on the decrease.

16. Employment and intellectual property

In accordance with the Copyright Law *("Zakon o autorskom i srodnim pravima", "Službeni list SCG", No. 61/04)* of the former State union of Serbia and Montenegro, which is still applicable in Montenegro, the employer is the exclusive owner of the proprietary (economic) component of the copyright developed by the employee while performing regular work duties for a period of five years following the establishment of copyright, unless otherwise provided for in the employment agreement with the respective employee or in the employer's general enactment. On the other hand, the employee is entitled to special remuneration depending on the monetary effects of use of his copyright by the employer. After the said five-year period, the economic component of the copyright reverts to the employee. In both abovementioned cases, the employee remains the author and thus the owner or moral component of the copyright.

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal traits is strictly forbidden by the Labour Law, as well as any harassment and sexual harassment. On the other hand, there is no any special regulation which regulates mobbing.

18. Employment and personal data protection

The area of personal data protection is regulated in detail by the Data Protection Law *("Zakon o zaštiti podataka o ličnosti", "Službeni list CG", No. 79/08 and 70/09)*. In accordance with this law, all data processors (e.g. employers) must submit to the Personal Data Agency a substantiated notification of their intent to establish a personal data collection prior to establishing the collection. The same law establishes various rights and obligations pertaining to collecting and processing of personal data. In that respect, the employee whose data is to be processed has the right of access with respect to such data. Furthermore, with respect to especially sensitive personal data (e.g. nationality, union membership, health condition, etc.), written consent must be obtained from the employee prior to the processing of such kind of personal data.

19. Employment in practice

With regards to the commencement of the employment relationship, it should be noted that the registration of employees is very time-consuming and administratively burdensome, as it is currently performed before different state authorities.

Furthermore, the Montenegrin authorities tend to be sympathetic of employees and reinstatement to work is frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk.

On the other hand, visits by the labour inspectors do not occur often and fines are not frequently assessed.

1. General overview

In accordance with Macedonian legislation, there is a hierarchy of labour regulations, at the top of which is the Law on Labour Relations *("Zakon za rabotni odnosi", "Služben vesnik na RM", No. 62/05, 106/06, 161/08, 114/09, 130/09, 50/2010, 52/2010* and *124/2010)* ("Labour Law"). Beside the Labour Law, employment-related matters in companies are regulated by the General Collective Agreement for Trade in the Republic of Macedonia *("Opšt kolektiven dogovor za stopanstvoto vo Republika Makedonija", "Službeni vesnik na RM", No. 50/08, 104/08 and 08/09)* ("GCA") applicable to all employers and employees in the Republic of Macedonia. There may also be an industrial collective agreement applicable to all employers and employees in a particular industry.

A company may have an individual collective agreement concluded between the employer and the representative trade union.

Written employment agreement must be concluded with each employee. The Labour Law provides for certain mandatory elements in the employment agreement.

The individual collective agreement and individual employment agreements must all be consistent with the Labour Law and may not provide for less protection to employees than that which is guaranteed by the Labour Law. In addition, the individual employment agreement may not provide for less favourable terms than that which is provided in the individual collective agreement.

Macedonian employment legislation is embedded with the socialist heritage of the former Yugoslavia. Its main feature is that it leans heavily towards the protection of employees especially in the case of dismissals.

2. Hiring

2.1 General

The Labour Law does not proscribe any particular requirements pertaining to the recruitment of employees, except a general requirement according to which the employment relationship may be established with a person of at least 15 years of age who fulfils the conditions for work in the respective work post (if any).

2.2 Disabled persons

In accordance with the Labour Law, the employer shall be obliged to provide conditions for the professional rehabilitation of an employee with a work-related disability entitled to professional rehabilitation based upon a professional inability to work and also to assign such an employee to another full-time position in accordance with the regulations on pension and disability insurance. The employer shall reassign an employee faced with the direct threat of the occurrence of disability to another adequate position in addition to salary compensation equivalent to the amount of the difference between the salary, which the employee received prior to the reassignment and the salary of the new position. The threat of occurrence of disability exists when the employee due to performance of certain work tasks wherein the working conditions, irrespective of the measures that are applied or could be applied, affect the health condition and working capability of the employee to such extent that the deterioration of the employee's health condition has been noticed. In this case, the employee must be reassigned to another position corresponding to his education and abilities for the purposes of preventing the occurrence of disability. The existence of the threat of the occurrence of disability shall be established by the Commission for Evaluating the Working Ability within the Pension and Disability Insurance Fund of Macedonia based on their findings, evaluation and expert opinion.

2.3 Foreign employees

The employment of foreign citizens is regulated by the Law on Employment and Work of Foreigners *("Zakon za vrabotuvanje i rabota na stranci", "Služben vesnik na RM", No. 70/07, 5/09 and 35/10)*. In order to be employed in Macedonia, a foreign citizen must obtain temporary or permanent residence permit issued by the Ministry of Interior and a work permit issued by the National Employment Agency.

According to the Law on Foreigners *("Zakon za stranci", "Službeni vesnik na RM", No. 35/06, 66/07, 117/08 and 92/09)*, a foreigner must register with a local police station within 3 days after entering the country, unless staying in a hotel, in which case the hotel manages the registration procedure.

A foreigner wishing to work in Macedonia must obtain a temporary residence permit (or, if special conditions are met, permanent residence permit). The documents which need to be submitted together with the request include the evidence of possession of sufficient funds (e.g. credit card), health insurance documents and criminal record certificate.

A request for working permit is submitted by the intended employer of the foreign person. The employer must, inter alia, submit a written explanation of the need to engage the particular foreign person.

The procedure of obtaining the work permit takes at least one month. In practice, the issuance of work permit is almost never denied.

2.4 Secondments

The secondment of Macedonian employees abroad is regulated by the Labour Law. In accordance with this law, Macedonian employees may be seconded abroad on the basis of an employment agreement entered into between their Macedonian employer and the foreign host. The Macedonian employer is required to notify the Ministry of Labour and Social Policy with regard each secondment and other documentation pertaining to secondment. It should be noted that the bureaucratic secondment procedure stipulated by the subject law is often disregarded in practice.

3. Types of engagement

3.1 Employment

The traditional employment relationship is the most usual manner of engaging personnel in Macedonia. There are two types of employment relationship, depending on the duration, indefinite and definite term employment agreement. The employment contract may be concluded for a definite period of time for performing the same activities, with an interruption or without an interruption up to five years. The definite-term employment contract for replacement of a temporary absent employee may be concluded for the period until the reinstatement of the temporary absent employee.

3.2 Engagement outside employment

Personnel may also be engaged outside an employment relationship, in cases and subject to the conditions proscribed by the Labour Law. These flexible kinds of engagement include:

(a) service agreement (only for work which is outside the employer's main business activities);
(b) agency agreement;
(c) agreement on professional improvement (concluded mainly with trainees);
(d) voluntary work (only with respect to non-for-profit activities);
(e) management agreement (please see the following section 3.3).

3.3 Engagement of managing directors

Persons serving as managing directors may be employed (permanently or for a limited period of time equal to the duration of the mandate), but may also be engaged outside the employment context, pursuant to a management agreement.

A foreign person may be appointed as the managing director without any limitations. Based on this appointment, such a foreign person is eligible to obtain temporary residence in Macedonia.

4. Salary and other payments and benefits

4.1 Salary

The remuneration on the basis of the employment agreement must always be paid in money. The employer must observe the minimum amount to be paid as proscribed by collective agreement, in accordance with law and which binds him directly.

The Labour Law proscribes that the total salary is calculated as the sum of the following elements:

(a) The basic salary shall be determined taking into account the requirements of the job position for which the employee has entered into the employment agreement;
(b) The job performance of the employee shall be determined taking into account the conscientious conduct, quality and volume of the performed work, for which the employee has concluded the employment agreement; and
(c) The allowances shall be determined for special working conditions arising from the distribution of working hours, such as work in shifts, split work, night work, work on duty, in accordance with the law, overtime work, work on a weekly resting day, work on statutory holidays and years of service allowance.

4.2 Other mandatory payments not considered as salary

In accordance with the Labour Law, the employer is also obliged to make the following payments to the employees:

(a) compensation for the costs of commuting to and from work;
(b) per diem payments for time spent on business travel within the country and abroad;
(c) compensation for accommodation and food during field work, unless the employer provides for accommodation and food;
(d) compensation for the use of a private vehicle for business travel;
(e) family separation allowance; and
(f) compensation for the death of the employee or of a member of his family.

5. Salary tax and mandatory social contributions

The employee shall be entitled to earnings – salary, in accordance with the law, collective agreement and the employment agreement. The remuneration on the basis of the employment agreement must always be paid in money. In matters of payments the employer must observe the minimum amount laid down by the collective agreement, in accordance with the law which binds him directly. The salary shall be composed of a basic salary, part of the salary for job performance and allowances, unless otherwise defined by another law. The employer can pay the employer a 13th salary, provided that the employer is able to pay it. The employer shall be obliged to pay the salary to the employee by the end of the payday at the usual place of payment. If the salary is paid through a bank in the employee's account or in other non-cash manner, the salary must be at employees' disposal on the determined payday, unless otherwise agreed between the parties. The employer shall be obliged to issue to the employee upon every salary payment and until the 31st of January of the new calendar year, a written calculation of the salary, salary contributions and salary allowances for the payment period, i.e. for the previous year, which also shows the calculation and payment of taxes and contributions. The salary shall be payable for periods of no longer than one month. The salary shall be paid not later than 15 days after the expiry of the payment period. If the payday is a non-working day, the salary shall be paid on the first subsequent working day at the latest. The employer shall be obliged to notify the employees in advance in writing of the payday and of any change in the payday.

The rights, obligations and responsibilities based on the performance of work arising from the labour relationship as well as participation in the mandatory social insurance scheme based on the labour relationship is exercised on the day the employee commences work as agreed upon in the employment agreement. The employer shall be obliged to file a registration/cancellation form (M1/M2 Form) for the employee in the mandatory social insurance scheme (pension and disability insurance, health insurance and insurance in case of unemployment), in accordance with the special regulations, in the Employment Agency of the Republic of Macedonia, by electronic means or directly at the Agency, before the commencement of the employment. A certified copy of the registration form or a copy from a computerised entry from the Agency's information system shall be presented to the employee within three day from the day of commencing employment. The Employment Agency of the Republic of Macedonia, the Pension and Disability Insurance Fund of Macedonia and the Health Insurance Fund of the Republic of Macedonia shall be obliged to maintain and permanently keep the records of the registrations and cancellations of the registrations in the social insurance and, at request of the employee, provide data on the condition and the changes related to the social insurance of the employee. The Employment Agency of the Republic of Macedonia, the Pension and Disability Insurance Fund of Macedonia and the Health Insurance Fund of the Republic of Macedonia shall exchange data related to the social insurance. The employee may not commence work prior to the conclusion of the employment agreement and prior to the moment when the employer registers him for the obligatory social insurance.

6. Working hours

The Labour Law determines that full-time working hours are 40 hours per week. As a rule the working week lasts five days, but the maximum of 40 hours per week may also be extended over a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the Labour Law, a 30-minute break is a statutory obligation and is included in the full-time working hours. In practical terms this means that in normal cases, a working day consists of seven and a half working hours. Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 20 days. This minimum can be increased based on various criteria determined in the individual collective agreement or the individual employment agreements. In accordance with the Labour Law, annual vacation may be taken entirely at once or in two parts. If it is taken in two parts, the first part (which cannot be shorter than 15 days) can be taken in the current year, while the second part has to be taken no later than by 30th June of the subsequent year.

7.2 Paid leave

In addition to the annual vacation, employees are also entitled to a total of seven days paid leave per year in cases prescribed by the GCA (e.g. in cases of wedding (three days), childbirth by a spouse (two days)). In addition, employees are entitled to additional paid leave of five days duration in the case of death of a spouse or child, two days in the case of death of a parent, brother, sister, parent of spouse, one day in the case of death of grandmother or grandfather and three days in the case of disasters.

7.3 Sick leave

The employer shall also pay salary compensation in the event of the employee's incapacity to work due to illness or injury for a period of up to 21 days, and if the absence lasts for more than 21 days, the salary compensation shall be covered by the health insurance. In the event of starting a new period of sick leave within three days after the expiry of the previous period of sick leave, the employer shall be entitled to request from the medical commission of the first instance to confirm the new period of sick leave or to extend the previously expired sick leave.

7.4 Maternity leave

According to the Labour Law, maternity leave comprises pregnancy leave and childcare leave. Pregnancy leave starts no earlier than 45 days and no later than 28 days prior to the due date and lasts for nine-month paid leave during the period of pregnancy, childbirth and maternity. If she gives birth to more than one child (twins, triplets, etc.), she is entitled to continuous paid leave period of one year.

Pregnancy leave is fully paid for by the state. Childcare leave begins upon the expiry of the pregnancy leave. The employee cannot be validly terminated while on maternity (pregnancy or childcare) leave. If a female employee gives birth to a stillborn child or if the child passes away before the expiry of the pregnancy, childbirth and maternity leave, she shall be entitled to extend the maternity leave for a period which is, according to the doctor's finding, necessary for her to recover from the childbirth and from the emotional situation caused by the loss of her child, of at least 45 days, when she shall be entitled to all rights pertaining to the pregnancy, childbirth and maternity leave. If the female employee does not use the maternity leave, the child's father or the adoptive parent shall be entitled to parenthood leave.

7.5 Unpaid leave

According to the GCA, the employer is obliged to grant employees up to three months of unpaid leave per year in the cases determined within the individual collective agreement. The employee's employment-related rights and obligations are at a standstill during unpaid leave, unless certain rights or obligations are otherwise explicitly proscribed.

7.6 Employment standstill

The employee's employment relationship is at a standstill in the case of certain absences from work listed in the Labour Law (e.g. serving the army, secondment, appointment to a public position, etc.). During such absence, the rights and obligations based on employment are at a standstill, unless certain rights or obligations are otherwise explicitly proscribed. Upon the expiry of the standstill grounds, the employee is entitled to be reinstated to work.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Macedonia is rarity. The regulatory framework is lacking on both corporate law and tax law levels. In practice, a type of ESOP scheme is modestly implemented only in some companies, but they are not publicly disclosed.

9. Health and Safety at work

The area of health and safety at work is regulated in detail by the Law on Safety and Health at Work *("Zakon za bezbednosti i zdravje pri rabota", "Služben vesnik na RM", No. 92/07)*. All employers and employees are obliged to adhere to specific obligations introduced by this law. The Law on Safety and Health at Work, *inter alia,* stipulates that each employer has to adopt the Act on Risk Evaluation of Work Posts, containing a description of work process with the evaluated risk attached to each employment post and identification of measures for the removal of such risk. In addition, all employers must have a general enactment which regulates the most important matters pertaining to health and safety at work. The Law on Safety and Health at Work also requires employers to insure all employees against work-related injuries and professional illnesses.

10. Amendment of the employment agreement

The employment agreement may be amended by virtue of an annex in specified cases. Amendments to the employment agreement can be proposed by the employer or by the employee. Amendments to the employment agreement shall be carried out by concluding an annex to the employment agreement. In accordance with the law, the annex to the employment agreement shall be concluded in the same form as the employment agreement. Amendments to the employment agreement can be made on the condition that both parties agree thereon.

11. Termination of employment

11.1 Termination by operation of law

The employment relationship is terminated by operation of law in the following cases:

(a) expiry of temporary employment;
(b) employee's death;
(c) loss of ability to work;
(d) prohibition to perform certain work imposed on the employee by the court or other competent body;
(e) cessation of employer;
(f) by consensual cancellation;
(g) by notice of dismissal; and
(h) in other cases defined by law.

11.2 Termination by the employee

In accordance with the Labour Law, the employee may freely terminate his employment relationship at any time and for any reason, subject to a one-month notice period. The employment agreement or the collective agreement may stipulate a longer notice period but it may not exceed three months.

11.3 Termination by employer

The employer may unilaterally terminate the employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) the employee due to his conduct, lack of knowledge or capabilities or due to the non-fulfilment of special requirements defined by law is incapable of performing the contractual or other obligations arising from the labour relationship (personal reason); or
(b) the employee violates the contractual or other obligations arising from the labour relation (fault reason); and
(c) the need to carry out certain work ceases under the conditions stated in the employment agreement due to economic, organisational, technological, structural or similar reasons of the employer (business reasons).

11.4 Procedure for termination by employer

In the event of initiating procedure for the dissolution of the employer, the employment agreement shall cease to be valid in accordance with law. Those employees, whose employment contract is terminated in accordance with law due to the initiation of procedure for the dissolution of the employer, shall also be entitled to payment of:

(a) net salaries, pension and disability insurance contributions and allowances for the period of the last three months prior to the initiation of the procedure for dissolution of the employer;
(b) compensation for injuries at work which the employee sustained with the employer, as well as for occupational illnesses; and
(c) unpaid compensation for annual leave not taken for the current calendar year.

Procedure for termination in case of a breach of work duty or work discipline

Prior to the termination of the employment agreement due to the employee's fault, the employer must warn the employee in writing with regards to the non-fulfilment of the obligations and the

possibility of termination in the event of repetition of the violations. The termination of the employment agreement must be made in writing. The employer shall be obliged to explain the reason for the termination of the employment agreement in writing. The notice of termination of the employment agreement must be presented to the contracting party whose employment agreement is being terminated. The employer must present the notice of termination of the employment agreement to the employee in person, as a rule at the employer's premises, i.e. at the address of domicile, i.e. the residence from which the employee comes to work on a daily basis. If the employee cannot be reached at the address of residence from which he comes to work on a daily basis (except in cases of justified absence from work) or he has no permanent or temporary residence in the Republic of Macedonia or refuses to accept the notice, the termination of the employment agreement shall be made public on the notice board in the employer's headquarters. After the expiry of eight working days from making the termination public on the notice board, the handing over shall be considered done. The notice period shall start running on the day following the day of handing over the decision on termination of the employment agreement.

Procedure for termination on grounds of incompetence

If under the conditions and in the manner determined by law, it is established that the employee has lost his working ability, the employment agreement shall cease to be valid from the day on which a legally valid decision establishing the lost working ability is submitted. The employer shall also pay salary compensation in the cases of employee's incapability to work due to illness or injury for a period of up to 21 days, and if the absence lasts for more than 21 days, the salary compensation shall be covered by the health insurance.

Procedure for termination in the event of redundancy

In the event that that the employer intends to terminate the labour relationships of a large number of employees due to business reasons, i.e. at least 20 employees over a period of 90 days, or in the event of a termination of labour relationship regardless of the number of employees within the employer, this shall be considered as a collective dismissal due to business reasons. When the employer intends to conduct collective dismissal, he shall be obliged to commence a consultation procedure with the employees' representatives at least one month prior to the commencement of the collective dismissal and provide all relevant information before the commencement of the consultations, for the purpose of reaching an agreement. The consultations shall include at least the manners and means for avoiding collective dismissal, reduction in the number of dismissed employees or for the purpose of mitigating the consequences by referring to accompanying social measures, aimed to help the dismissed employees find re-employment or training. In order to allow the employees' representatives to prepare constructive proposals, the employers during the consultation period shall provide them with all relevant information, regarding:

(a) the reasons for the planned dismissals;
(b) the number and categories of employees being dismissed;
(c) the total number and categories of employed employees; and
(d) the period over which the planned dismissals are to take place.

The obligations regarding the provision of information and consultations shall be applied regardless of whether the decision on collective dismissal has been adopted by the employer or a person performing inspection. When reviewing an alleged breach of obligations regarding the provision of information, consulting and reporting, any justification of the employer based on the fact that the person performing inspection adopted the decision for collective dismissals without providing the requested information to the employer, shall not be taken into consideration.

The redundancy procedure in the abovementioned cases is conducted with the involvement of the trade union, if any, and the National Employment Agency. The employer is obliged to prepare a redundancy programme which has to specify the reasons for redundancy, redundancy criteria, number of employees to be made redundant, measures for the employment of redundant employees, etc.

In case of the termination for redundancy, the employer is obliged to provide severance payment to the employees to be terminated.

The employer who terminates the employment agreement due to business reasons shall be obliged to pay the employee a severance pay as follows:

(a) up to 5 years of employment – the amount of one net salary;
(b) from 5 to 10 years of employment – the amount of two net salaries;
(c) from 10 to 15 years of employment - the amount of three net salaries;
(d) from 15 to 20 years of employment - the amount of four net salaries;
(e) from 20 to 25 years of employment - the amount of five net salaries; and
(f) over 25 years of employment – the amount of six net salaries.

The GCA does not proscribe any rules for selecting employees to be declared redundant.

Remedies in the event of wrongful dismissal

The employee shall have a right to object to the management body or the employer against the decision on termination of the employment agreement without notice period or the decision on suspension from duty with the employer. The decision upon the objection shall be adopted within eight days from the submission of the objection. When a decision has not been adopted with regard to the objection referred to or when the employer is not satisfied with the decision adopted upon the objection, he shall be entitled to initiate a dispute before a competent court within a period of 15 days. If the court passes a legally valid decision which determines that the employment agreement has been illegally terminated with regard to the employee, the employee shall be entitled to

return to work if he requires so. In addition to returning to work, the employer shall be obliged to pay compensation for damages to the employee, in accordance with law, collective agreement and employment agreement, and to pay the compulsory social insurance contributions. The compensation for damages shall be reduced by the amount of the income the employee received based on work performed after termination of the labour relationship. The employee who disputes dismissal may request the court to issue an order of temporary return to work temporarily until the completion of the dispute. If the court, by a legally valid decision, establishes that the termination of the employee's employment agreement is illegal, and it is unacceptable for the employee to continue employment, the court at the employee's request shall appoint the date of the termination of the labour relationship and assign compensation for damages depending on the period of employment, age, social status and obligations for support of the employee.

11.5 Mutual agreement on termination

The Labour Law allows for mutual agreement with regard to the termination of the employment relationship. No severance payment is mandatory in case of such termination but compensation packages are almost always agreed in practice. In the case of a mutual agreement on termination, the employer is obliged to provide the employee with a formal written notice of the fact that no unemployment benefits can be claimed following a consensual termination.

12. Non-compete

In accordance with the Labour Law a non-compete obligation may be imposed on the employee who works in a post wherein he may acquire new and important technological knowledge, a wide circle of business partners or important business information and business secrets. The non-compete obligation may survive the termination of the employment agreement for a maximum period of two years, provided that compensation is paid to the employee. The law does not proscribe any parameters for such compensation and, therefore, the amount can be freely agreed upon. If observation of the competition clause prevents the employee from gaining appropriate earnings, the employer shall be obliged to pay him compensation in cash during the whole period of observing the ban. The compensation in cash for observing the ban on competition has to be defined in the employment agreement and shall amount on a monthly basis to at least a half the average employee's salary during the past three months prior to the termination of the employment agreement.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level in Macedonia provide that such policies and procedures are fully harmonised with the Macedonian legislation and incorporated by reference within an enactment of the Macedonian employer.

14. Employment and mergers and acquisitions

All rights, obligations and responsibilities arising from the employment agreement and labour relationship shall be transferred to the new employer in cases of statutory changes. The new employer shall be obliged to guarantee to the employees all rights, obligations and responsibilities for at least one year, i.e. until the expiry of the employment agreement, i.e. the collective agreement which bounds the previous employer. If due to the change of the employer, the rights under the employment agreement deteriorate for objective reasons and the employee, therefore, terminates the employment agreement, the employee shall have the same rights as if the employment agreement was terminated for business reasons. When determining the notice period and the right to severance pay, the employee's period of service with both employers shall be taken into account. The previous and the new employer shall be jointly liable to compensate the employee for damages related to all claims which occurred due to termination of the employment agreement. If the employer, on the basis of a legal transaction (lease, rent), temporarily transfers the overall or part of the activity to another employer, after the termination of the validity of this legal transaction, the employees shall again be transferred to the previous employer or to the new employer taking over the activity. Before the transfer of rights and obligations arising from the labour relationship of the employees within the employer – transferor to the employer - acquirer, the transferee and the acquirer shall be obliged to provide prior notice to the trade unions of this fact and to consult with them, in order to reach an agreement regarding the:

(a) determined or proposed date of transfer;
(b) the reasons for such transfer;
(c) the legal, economic and social implications for the employees; and
(d) the anticipated measures connected to the employees.

The transferee shall be obliged to in connection with the transfer in a timely manner and before the implementation of the transfer, to inform the trade union representatives of its employees. The acquirer must in a timely manner before the implementation of the transfer and in connection with the transfer, inform the trade union representatives representing the interests of its employees before its employees are directly affected with regarding to their working conditions and employment. When the transferee or the acquirer envisage measures affecting their employees, the transferor or the acquirer shall be obliged in a timely manner to consult the trade union representatives representing the interests of their employees, regarding such measures, before concluding an agreement.

15. Industrial relations

The employees shall have the right to constitute a trade union and become members thereof at their own free choice, under the conditions set forth by the statute or by the rules of that trade union. The trade union is an autonomous, democratic and independent organisation of employees which they join voluntarily for the purpose of representing, promoting and protecting of their

economic, social and other individual and collective interests. The employers shall have the right to constitute an association and become members thereof at their own free choice, under the conditions set forth by the statute or by the rules of that association. The employers' association is an autonomous, democratic and independent organisation which they join voluntarily for the purpose of representing, promoting and protecting their economic, social and other interests. The employee, i.e. the employer shall freely decide on his joining and leaving the trade union, i.e. employers' association. Any employee must not be put in a less favourable position because of his membership or non-membership in the trade union, i.e. employers' association, i.e. participation or non-participation in the activity of the trade union, i.e. employers' association. The trade union, i.e. employers' association may not be dissolved or their activity ceased by administrative measures, if they are constituted and perform their activity in compliance with the law. The activity of the trade union and its representative may not be limited by employer's act, if it is in compliance with the law and collective agreement. The trade unions, i.e. employers' associations may constitute their own unions or other forms of associations in which their interests shall be associated at a higher level (trade unions and employers' associations at a higher level). The trade unions and employers' associations at higher level shall enjoy all rights and freedoms guaranteed to the trade union, i.e. employers' association. The trade unions and employers' associations shall be entitled to freely associate and cooperate with international organisations established for the purpose of exercising their rights and interests.

16. Employment and intellectual property

When the author's work is created by an employee in the performance of his duties or when following instructions of the employer, it is considered the economic rights of the copyright holder of this work, are exclusively transferred to the employer for a period of five years upon the completion of the work, unless otherwise proscribed by collective agreement or employment contract. After the expiration of the stated term, the economic rights belong to the employee and the employer may demand their exclusive transfer again, provided that it has duly paid a monetary compensation to the employee.

17. Discrimination and mobbing

The employer must not treat the job seeker (hereinafter referred to as the applicant) or the employee unequally on the basis of race and ethnical origin, colour of skin, gender, age, health or disability, religious, political or other conviction, membership of trade unions, national or social origin, family status, property and financial situation, sexual orientation or other personal circumstances. Women and men must be provided with equal opportunities and equal treatment in connection with:

(a) access to employment, including promotion and training and professional retraining while working;
(b) working conditions;
(c) equal payment for equal work;
(d) professional schemes for social insurance;
(e) absence from work;
(f) working hours; and
(g) termination of the employment agreement.

Any type of emotional abuse at the workplace (mobbing) is prohibited. Emotional abuse at the workplace (mobbing) is discrimination. Emotional abuse at the workplace (mobbing), in terms of this Law, is any negative behaviour of individual or group being often repeated (in minimum period of six months), and refers to violation of the dignity, integrity, reputation and honour of the employees, and causes fear or creates unfriendly, humiliating or offensive behaviour, with final aim to terminate the labour relation or quit the workplace. One or several persons with negative behaviour in terms, regardless of their capacity (employer as natural person, responsible person or worker) can perform emotional abuse on the workplace (mobbing).

18. Employment and personal data protection

The area of personal data protection is regulated in detail by the Data Protection Law *("Zakon za zastita na licni podatoci", "Službeni vesnik na R.M.", No. 7/05, 103/08 and 124/10)*. The employee whose data is to be processed has the right to request information on a number of issues related to the processing, such as where the data is being transferred, to whom it is being transferred, the purpose of the transfer and the legal grounds for the transfer. Furthermore, with respect to especially sensitive personal data (e.g. nationality, union membership, health condition, etc.), written consent must be obtained from the employee prior to the processing of such kind of personal data.

According to the Labour Law, personal data of employees may be collected, processed, used and provided to third parties only if this Law or another law stipulates that or if it is necessary for the purposes of exercising the rights and obligations arising from or related to the labour relationship. Personal data of employees may only be collected, processed, used and provided to third parties by the employer or the employee who is specially authorised to do so by the employer. If the legal basis for collecting personal data of employees does not exist any more, they must be immediately deleted and used no more.

19. Employment in practice

It should firstly be noted that the registration of employees is very time-consuming and administratively burdensome, as it is currently performed before three different state authorities. The Macedonian authorities tend to be sympathetic towards employees and reinstatement to work is the frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk. On the other hand, visits by the labour inspectors are frequent and fines are frequently imposed.

1. General overview

The employment legal framework in Romania is mainly based on the Labour Code approved through Law No. 53/2003, as amended, collective labour agreements (at national, industry or companies' level) and individual employment agreements.

The collective labour agreement concluded at national level applies to all employers in Romania. In addition, with respect to specific industry branches several collective labour agreements are applicable following that additional collective labour agreements may also be concluded at company's level. It should be mentioned that within companies hiring at least 21 employees, the employer is obliged to initiate collective negations for the signing of a collective labour agreement within the company within the deadlines indicated by law. However, the conclusion of a collective labour agreement is not mandatory at the company's level.

Additionally, other rules generally apply to the employment relationships affecting the rights and obligations of the employees and of the employer, such as:

(a) Internal Regulations - Each employer must prepare an Internal Regulation with the consultation of the employee's representatives and based on the minimum content required by law (e.g., rules regarding labour protection, safety and hygiene; rules regarding the principle of non-discrimination and of elimination of any human dignity violation; the rights and obligations of the employer and the employees, etc.);
(b) Minimum content for individual employment agreements – a written employment agreement must be concluded with each employee having the minimum content required by law.

The collective labour agreement concluded at company's level, the Internal Regulation and individual employment agreements must all be consistent with the labour legal framework and may not provide for less protection to employees than that which is guaranteed by such (including collective labour agreements concluded at higher level).

Generally Romanian legislation is very protective of employees, especially in respect of terminating the employment agreement at the initiative of the employer (dismissal).

2. Hiring

2.1 General

As a general rule an employment agreement must be entered into in written form, in the Romanian language and must observe the minimum content provided by the template of employment agreement approved by ministerial order. Before the signing of the employment agreement, the employer is obliged to inform the candidate with respect to the main clauses to be included within the employment agreement. In principle, the candidate must be at least 16 years old and provide a medical certificate attesting that he is able to perform the relevant activity on the basis of the employment agreement.

Obligation to hire disabled persons

According to Law No. 448/2006 on the protection and promotion of disabled persons' rights, legal persons employing at least 50 employees are obliged to hire disabled persons in a percentage of at least 4% of the total number of employees. Alternatively they can choose either (i) to pay to the state budget a monthly amount representing 50% of the minimum gross base salary at national level multiplied by the number of working places which should have been occupied by disabled persons or (ii) to acquire products or services resulted from the activity of disabled persons hired in authorised units, on the basis of a specific partnership, in an amount equal to that calculated pursuant to point (i). The law expressly provides the categories of companies exempted from observing such obligations.

Failure to comply with the abovementioned obligation represents an administrative offence carrying fine.

2.2 Foreign employees

Over the past several years the legal framework governing visas and work permits has undergone extensive amendments following Romania's accession to EU. These changes were meant to ensure the implementation of the EU principle of free movement within the country, as well as to enforce new bilateral agreements related to the treatment of foreign citizens. Another purpose of the amendments was to establish the Romanian Office for Immigration, a new centralised body with the role of ensuring adequate infrastructure within the immigration sector pursuant to the obligations assumed upon joining the EU.

Foreign citizens require work authorisation to be legally employed in Romania. Categories of foreign citizens exempted from the requirement of obtaining a work authorisation would include, among others:

(a) EU/EEA citizens, and their dependents, irrespective of citizenship;
(b) Foreign citizens having permanent residence permits;
(c) Foreign citizens who are family members of Romanians;
(d) Foreign employee of an EU/EEA based company sent on a secondment arrangement to a local Romanian company.

The types of work authorisations may be described, *inter alia,* as follows:

(a) Work authorisations for permanent employees under individual employment contracts - with yearly renewal possibility;
(b) Work authorisation for secondment arrangement – generally limited to 1 year within any given 5 year periods.

The application for the work authorisation must be submitted by the local Romanian company, acting either as local employer or as company benefiting from secondment, or by the local employer natural person. The type of documents varies depending on the declared scope of work. As a general rule, the documents submitted must provide sufficient evidence of the activities that the applicant intends to carry out in Romania. The general legal adjudication deadline for the work authorisation is between 30 to 45 calendar days calculated from the submission date. In fact,

the entire procedure may take at least 90 days, including all the legal deadlines for the issuance of the visas, fulfilment of the preliminary procedures for the work authorisation application and the application for the temporary residence permit.

Foreign citizens require a residence permit if extending their stay in Romania for more than 90 days within any given 6 month period for the following purposes: secondment, local employment, studies, family reunification, etc. The type of documents varies depending on the declared scope of stay (i.e. secondment, employment, professional, commercial, studies, family reunification, religious or humanitarian activities, etc.). The documents submitted must provide sufficient evidence of the activities that the applicant intends to carry out in Romania. The legal adjudication deadline for the residence permit is 30 calendar days.

2.3 Secondments

Secondment of Romanian employees abroad is performed considering the EU Regulation No. 883/2004. According to such Regulation, Romanian employees may be seconded abroad for a period of maximum 2 years. On grounds of the secondment, the Romanian employer can request to the competent authorities to issue an A1 form, in order to assess the payment of the social contributions in Romania during the period of the secondment.

3. Types of engagement

3.1 Employment

Under the Romanian legislation, performance by a natural person of activities to the benefit and under the authority of another person is considered as an employment relationship based on an employment agreement, the natural person having the legal status of an employee benefiting of all rights granted by the labour legislation. Generally, an employment agreement should be concluded in the case of performing work, except for those cases when the law allows that the activity is performed on other contractual grounds (e.g. on the basis of a mandate agreement).

There are two types of employment relationships, depending on the duration, respectively: temporary allowed in limited cases and unlimited-in-time relationships, which represent the general rule. Thus, exceptionally, employment agreements can be entered into for a limited period of time of up to 24 months (except for certain cases expressly provided by law), for example in case of replacement of an employee in the event that his employment contract is suspended, in case of a temporary increase in the employer's activity or in case of performance of seasonal activities. Within the duration mentioned above, the employment agreement concluded for a limited period of time may be extended based on the parties' written consent, but only two consecutive times at the most or the parties may conclude up to three successive agreements for limited period of time. The agreements for a limited period of time concluded within three months after the termination of a previous employment agreement for a limited duration are considered successive.

3.2 Performance of activity outside an employment relationship

A person may also perform a specific activity outside an employment relationship, in the cases and subject to the conditions prescribed by the Romanian Law, such as:

(a) service agreement (only in case of activities performed by freelancers and provided that no subordination relationship is established between the company and the respective freelancer);
(b) internship agreement (concluded with trainees);
(c) voluntary work (only with respect to non-for-profit activities of public interest); and
(d) management agreement (please see section 3.3).

The Labour Code also regulates the work performed by temporary agency workers who are employed (and paid) by a temporary work agent, and placed at the disposal of a user for the duration necessary for carrying out certain precise and temporary duties. The user may "hire" such workers only on the basis of an agreement concluded to this aim with a temporary work agency authorised in accordance with the applicable legislation. The Labour Code provides for mandatory rules regarding the work performed by temporary agency workers, duration of such work and the agreements that must be executed by the involved parties.

3.3 Engagement of managing directors

Pursuant to the Companies Law No. 31/1990, within joint stock companies, *during the exercise of their mandate, directors (members of the board) cannot be in an employment agreement with the company* and *in case the directors were appointed from among the company's employees, the individual employment agreement is suspended during the mandate period.* This provision is applicable also to the managers of joint stock companies (including the general manager) to whom management attributions within the company have been delegated by the *directors (members of the board)*, irrespective of the name of the occupied position.

Thus, in a joint stock company, directors and general managers cannot cumulate their function with the quality of employee during the exercise of their mandate, their relation with the company being usually regulated by mandate / management agreements. Such prohibition is not applicable in what concerns other types of commercial companies (e.g. limited liability companies).

Remuneration of the directors of joint stock companies working based on a mandate agreement are taxed similarly as salary income in terms of income tax and social contributions. Directors working based on a mandate agreement are considered to derive salary income, which is taxed accordingly in terms of income tax and health contribution (i.e. unemployment contribution is optional and pension contribution is due under certain circumstances, the taxation mechanism being different from the one applicable to employees). The same rules apply to the agreements entered into by the abovementioned category of managers.

4. Salary and other payments and benefits

4.1 Salary

According to the Labour Code, the salary includes the following elements:

(a) basic salary (mandatory);
(b) other wage related rights, as follows:
- wage increments – according to the collective labour agreement concluded at national level, employees having at least three years length in service are entitled to a length-of-service increment amounting at least to 5% of the basic salary. No other permanent wage increments are mandatory, except if the collective labour agreements at branch and/or company's level, any internal policy or the individual employment agreements provide otherwise;
- indemnities (not mandatory);
- other additional benefits (not mandatory) – for example, meal tickets.

4.2 Other mandatory payments

In certain cases provided by law and the collective labour agreement at national level, the employer is obliged to make additional payments to the employee, in addition to the salary, which, generally, are not viewed as salary income, such as:

(a) reimbursement of the costs made for the accommodation, transportation and per diems for time spent within the country and abroad in case of delegation;
(b) financial support in the minimum amounts provided by the collective labour agreement concluded at national level in case of: death of the employee (two average monthly salaries at company's level or three average monthly salaries at company's level if the death occurred as a result of a work accident or a professional illness); birth of a child (one average monthly salary at company's level); death of spouse or first degree relative in the employee's care.

To the extent the collective labour agreements concluded at branch/company's level, any internal policy of the employer or the employment agreement provide for more favourable rights for the employees related to such payments, such provisions should be observed.

Note should be made that the Romanian legislation provides for a minimum gross base salary to be granted to the employees as well as hierarchical coefficients to be applied to such minimum salary, depending on the professional qualification of the employee.

4.3 Other benefits

Employers are free to grant their employees other benefits, such as employees' stock option plans, profits participation, etc.

Equity based plans (e.g. stock option plans, restricted stock units, etc.) are poorly regulated under the Romanian tax law, even though the participation of the Romanian employees in such equity based plans is a quite frequent practice for multinational companies having local presence. In relation to tax treatment of such equity based plans, please refer to section 8 below.

5. Salary tax and mandatory social contributions

According to Romanian law salary income is considered all income in cash or in kind derived by an individual carrying out an activity based on an employment contract or another similar contractual arrangement as provided by law, irrespective of the period to which the income refers, the nature of income or the manner in which is granted.

The computation of employment income follows the rules of a payroll deduction system in which the taxes and mandatory social contributions due by the employee are withheld by the employer when the employment income is paid.

Salary income is subject to income tax of 16%. The taxable base determined as the difference between the monthly gross salary and (i) the social contributions (see below), (ii) the trade union contribution, if any, (iii) the personal deductible allowance, available in certain cases and (iv) the contributions to the voluntary pension schemes, within a limit of EUR 400 per year, if the case.

The social contributions due by the employees in 2010 in relation to salary income are the following:

(a) Pension contribution (or social security contribution) - 10.5%, applied to the monthly gross employment income;
(b) Health contribution - 5.5% of the monthly gross employment income; and
(c) Unemployment contribution - 0.5% of the monthly gross employment income.

Moreover, social contributions are due by the employer in relation to salary income, which during 2010 were as set out below:

The pension contribution (or social security contribution) computed by applying the pension contribution rate to the monthly gross salary fund. The pension contribution rates are the following:

(i) for normal working conditions - 20.8%;
(ii) for particular working conditions - 25.8%; and
(iii) for special working conditions - 30.8%.

Note that a significant part of the economic activities falls under the category of normal working conditions. The particular working conditions refer to the working places which, permanently or periodically, may essentially affect the working capacity of employees, due to the high level of risk exposure (e.g. mining areas, nuclear areas, aviation areas).

(a) Health contribution - 5.2%;
(b) Unemployment contribution - 0.5%;
(c) Contribution for vacation and sick leave allowances – 0.85%;

However, this contribution is capped to an amount which is equal to 12 minimum salaries per economy (currently amounting to RON 600) multiplied by the number of employees.

(d) Labour commission - 0.75% (or 0.25%);

If the employer has an authorised person to manage the employees' labour records, then the labour records are kept in the company and the level of the labour commission is 0.25%. Otherwise, the labour records are kept by the labour authorities and the labour commission is higher.

(e) Contribution to illness and work-related accidents fund - from 0.15% to 0.85% depending on the risk of the core activity performed by employer;
(f) Contribution to the guaranteed salaries payment fund - 0.25%.

The social contributions above are generally calculated by applying the relevant rates to the gross salary fund which represents the sum of all gross salaries payable by an employer in a month. Also, they are due in relation to income payable to all individuals working under a labour agreement concluded in accordance with Romanian law, regardless of whether the employee is a Romanian national or a foreign national.

6. Working hours

The Labour law determines that full-time working hours is of 8 hours per day and 40 hours per week. As a rule, the working week lasts five days (from Monday to Friday). According to the collective labour agreement concluded at national level, a 15-minutes break is a statutory obligation of the employer and is included in the full-time working hours. Practically, this means that in ordinary cases, a working day consists of seven and a 45 minutes working hours.

Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation. The law also establishes that, as a rule, the maximum working week is of 48 hours, including overtime. The overtime work is compensated with corresponding paid time-off granted to the employee in the next 30 calendar days since the overtime was performed and, only in case such compensation is not possible, the employee shall be granted with a bonus amounting to at least 100% of the base salary, according to the collective labour agreement concluded at national level. In the case the collective labour agreements concluded at branch/company's level, any internal policy of the employer or the employment agreement provides for a higher amount of such bonus, such provisions should be observed.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 21 working days. Employees working under difficult, dangerous or harmful conditions, visually impaired persons, other disabled persons and young people under the age of eighteen benefit of an additional annual vacation of at least 3 working days.

This minimum annual vacation can be increased based on various criteria determined in the collective labour agreements concluded at the branch level or at the company's level, by an internal policy of the employer or through the individual employment agreements.

Annual vacation, which, as a rule, must be performed each year and may be performed either entirely or in part. If it is performed in part, at least one part shall be of minimum 15 working days. For the duration of the holiday, employees shall benefit from an annual vacation allowance.

7.2 Paid leave

Besides the annual vacation, employees are also entitled to paid time-off in the case of special events (a maximum number of 27 paid days off) as provided by the collective labour agreement concluded at national level (e.g., marriage of the employee, marriage of a child, birth of a child, etc.). The number of such paid days-off or the events in which paid days-off are granted can be increased by the collective labour agreements concluded at branch and/or company's level. In addition, a total number of 11 days of legal holidays is provided by the Labour Code.

7.3 Sick leave

The leave for temporary work incapacity (the sick leave) is generally granted for a period of up to 183 days within a year starting from the first day when the person is ill. Starting from the 90th day of illness, the leave may be extended only with the endorsement of the healthcare security expert physician. For well justified grounds, the primary physician or the specialised physician for the illness affecting the employee may propose the extension of the 183 period, in order to avoid the retirement of the employee on medical grounds. In the event that such a proposal is not made, the employee shall be retired on medical grounds, receiving the relevant pension regulated by the Public Pensions Law No. 19/2000. The minimum contribution threshold is set at 6 months from the previous 12 months prior to the month in which the respective leave is granted. The gross work incapacity indemnity amounts to 75% of the average of the monthly incomes obtained within the last 6 months of the 12 months which represents the duration of contribution without exceeding a limit of 12 minimum gross monthly salaries at national level. In case of special diseases the indemnity amounts to 100% of calculation base.

7.4 Maternity leave

Female employees are entitled to a minimum leave of 126 days of maternity leave (which is divided in two periods: a period of 63 days before the birth and a period of 63 days after the birth). However, such periods can be compensated, according to the medical recommendation provided that a minimum period of 42 days maternity leave shall be carried out by the female employee after giving birth. The female employee with disabilities is entitled to such leave starting with the 6th month of pregnancy.

During maternity leave when the employment agreement is suspended by effect of law, the employee shall receive an

allowance amounting to 85% of the average incomes of the last 6 months, capped to maximum 12 minimum gross base salaries. Such an amount shall be paid by the employer out of the amounts (contributions) owed to the social security system.

In addition, according to the collective labour agreement at national level, the employer is obliged to: (i) compensate the difference between the legal allowance and the employee's base salary for a period of at least 6 weeks and (ii) grant to the mother employee a financial support amounting to one average salary at company's level for each birth. To the extent that the mother is not an employee, her husband shall benefit of the payment of an average salary at company's level.

In addition, according to Romanian legislation, persons with taxable income for the past 12 months before the date of the childbirth may benefit from parental leave with additional parental allowance until the child reaches the age of 2 years / 3 years for children with disabilities. The persons entitled to benefit from such leave are one of the child's parents, the adopter, or other persons entitled by the law.

Parental leave with the additional allowance is granted for the first three (3) births or, as the case may be, for the first three (3) children of the persons entitled to such rights. To the extent that these situations overlap, the duration of parental leave shall be prolonged, but only one allowance shall be granted during such period. Following the first three (3) births or, as the case may be, the first three (3) children, the respective person is entitled to 1 year parental leave without payment.

7.5 Unpaid leave

According to the collective labour agreement concluded at national level, the employees are entitled to a single period of 30 days unpaid leave, for preparing and sustaining a diploma of higher studies. Such leave can be granted in parts at the employee's request. In addition, the collective labour agreement at national level provides that the employees have the right to unpaid leave for resolving personal problems and that an employee who is a mother can benefit from 1 additional year of unpaid leave in addition to the parental leave of 2 years.

The employee's employment-related rights and obligations are suspended during unpaid leave, unless otherwise explicitly stipulated for certain rights or obligations.

7.6 Employment suspension

The employee's employment relationship is suspended in certain cases expressly provided by the Labour code. Considering such cases, the suspension of employment can occur by effect of law, at the initiative of one of the parties or as a result of the parties' agreement. During the suspension the rights and obligations based on employment are at a standstill, unless otherwise is explicitly stipulated by the law (including applicable collective labour agreements), internal policies or individual employment agreements. Upon the expiry of the grounds for suspension the employment agreement shall continue to produce its effects as before the suspension.

8. E.S.O.P.

Currently, neither the Romanian tax legislation nor the Companies Law No. 31/1900 define the concept of 'Stock Option Plan', but the Romanian tax legislation only refers to such a plan when providing for the related tax treatment. Limited provisions are also included in the Companies Law No. 31/1990 which provides that a joint stock company may acquire its own shares in order to distribute them to its employees or may grant loans or advances in view of the acquisition of its shares by its own employees. Specific provisions are applicable in case of the acquisition by the company of its own shares in order to be distributed to its employees, as follows: (a) the operation must be approved by the general meeting of shareholders; (b) the nominal value of the shares to be acquired may not exceed 10% of the subscribed share capital; (c) the transaction can only have as its object fully paid shares; (d) the payment of such shares shall only be made from the profit that can be distributed or from the available reserves mentioned in the last approved financial statements (with the exception of the legal reserves); (e) the shares obtained must be distributed to the employees within 12 months from the date on which they were acquired.

In addition, a definition and certain references to the stock option plan ('SOP') are provided in Romanian secondary legislation. In the context of such secondary legislation, a SOP is defined as a programme initiated by a company whose securities are traded on a regulated market or traded through an alternate trading system, through which the employees of the respective company are entitled to receive, at a preferential price, a determined number of shares issued by the respective company.

Moreover, the Romanian tax legislation provides that the advantages derived under a stock option plan are not deemed as salary income and are not taxable at granting date or at the exercise date.

By corroborating the provisions existing in the law set out above, currently, it appears that the SOPs which do not fall under the definition above do not benefit from the exemption regime provided by the law. Given that the definition provided by law refers only to the situation where a company grants its shares to its own employees, one could conclude that foreign SOPs (i.e. stocks are issued by a foreign company to the employees of the Romanian subsidiary) do not benefit from the exemption regime.

However, the tax treatment applicable to foreign SOPs or to other equity-based plans is not specifically provided under the existing tax law. Based on certain positions within the Romanian Ministry of Public Finance it seems that the category of income within which this type of income should be analyzed is that of 'salaries', subject to relevant taxation regime.

9. Health and Safety at work

Health and safety at work is regulated in detail by the Law on Health and Safety at Work *(Law No. 139/2006)* and its norms. All employers and employees are obliged to adhere to specific obligations introduced by this law. The Law on Health and Safety at Work stipulates, *inter alia,* that each employer has several obligations among which: (i) taking the necessary measures for the provision of the health and safety protection

of the workers, (ii) evaluating the risks for the safety and the health of the workers, (iii) carrying out and holding an evaluation of the risks for the health and safety at work, including for those groups that are sensible of specific risks, (iv) drawing up a prevention and safety plan including the technical, sanitary and organizing measures and of other nature, based on the evaluation of the risks, which will be applied properly to the work conditions that are specific to the company, etc.

10. Amendment of the employment agreement

Any amendments to the employment agreement can be made by means of additional act concluded in written form and which has to be registered with the labour authorities within the legal deadlines. However, please note that lack of the written form and registration of the additional act do not affect the validity of the amendment. In special cases expressly provided by law (e.g. force majeure) the amendments (which can be only temporary) can be made by unilateral decision of the employer.

Failure to conclude an additional act in written form and/or to register it within the legal deadlines represents an administrative offence carrying fines.

11. Termination of employment

11.1 Termination by operation of law

An employment relationship is terminated by operation of law in the following cases, expressly provided by law:

(a) on the date of the employee's death;
(b) on the date a judgment declaring the death or placing under interdiction of the employee is final;
(c) on the date of fulfilling of both age conditions and minimum contribution stage for retirement;
(d) as a result of ascertaining the absolute nullity of the employment agreement, from the date the nullity was ascertained based on the parties' consent, or a final judgment;
(e) as a result of the admittance by the court of the claim for reinstating in the position occupied by the employee of a person unlawfully dismissed or for ungrounded grounds, from the date when such decision is final;
(f) as a result of a sentence to execute an imprisonment punishment, from the date when such judgment is final;
(g) from the date of withdrawal, by the competent authorities or bodies, of the approvals, authorisations, or certifications necessary for exercising one's profession;
(h) as a result of the interdiction to exercise a profession or to perform a job, as a safety measure or complementary punishment, from the date when the judgment ordering the interdiction is final;
(i) on the expiry of the duration of the employment agreement concluded for a definite term;
(j) from the date of withdrawal of the parents' or legal representatives' consent, for employees whose age ranges between 15 and 16 years.

11.2 Termination by employee

According to the Labour law, an employee may freely terminate his employment relationship at any time and for any reason or no reason, by means of a written notification sent to the employer and subject to a notice period. The maximum duration of the notice period is 15 calendar days in case of execution positions and 30 calendar days in case of management positions. This notice period may not be extended by parties' agreement. As an exception, the employee can resign without notice if the employer has not met his obligations according to the individual employment agreement.

During the notice period, the employment agreement shall continue to be in force. The agreement shall terminate on the date of expiry of the term of notice or on the date the employer waives the benefit of such term, either entirely or partially.

11.3 Termination by employer

The employer may unilaterally terminate the employment relationship only for a limited number of reasons specified in the Labour Code, as follows:

(a) for reasons related to the employee's person:
- gross misconduct or repeated misconduct (disciplinary reasons);
- in the event that the employee is under preventive custody for more than 30 days;
- physical unfitness or mental incapacity (only after a decision is issued by the competent medical authority determining such incapacity);
- in case the employee is not professionally fit for the position held (professional inadequacy).

(b) for reasons not related to the employee's person (i.e. redundancy).

The Labour Code prohibits the dismissal of the employees (i) generally based on criteria such as, for example, gender, sexual orientation, race, colour of the skin, or for the exercise, under the terms of the law, of their right to strike and (ii) temporary in those cases expressly provided by law (e.g. for the duration of maternity leave; a temporary working incapacity, medically certified; annual vacation, etc.).

11.4 Procedure for termination by employer

In either case, to achieve dismissal, the employer needs to comply with strict procedural rules.

The notice period is prescribed in case of termination for professional inadequacy, physical unfitness or mental incapacity and redundancy and it is of minimum 20 working days. To the extent that the collective labour agreements concluded at branch/company's level, any internal policy of the employer or the employment agreement provide for a longer notice period, such provisions should be observed.

Procedure for termination for disciplinary reasons

The employee may be dismissed as a disciplinary sanction only in two cases: (i) if the employee committed a serious misconduct and (ii) if the employee committed several deeds of misconduct. The seriousness of the misconduct is evaluated by taking into account all the elements provided by the law (the circumstances in which the deed took place; the employee's guilt degree; the consequences of the breach of discipline; the employee's general behaviour at work; possible disciplinary sanctions previously undergone by him/her).

The disciplinary dismissal may be implemented only following the performance of a disciplinary inquiry procedure provided by the law. Such investigation must be carried out by a commission empowered by the employer to this end after acknowledgement of a situation of misconduct. If the case, a representative of the trade union of which the employee is a member must be appointed as member of the commission (having only an observatory statute).

If the employee does not appear at the investigation meeting he was summoned to, the employer may issue the disciplinary sanction without being obliged to carry out the preliminary investigation procedure.

The dismissal decision has to include specific provisions and to be communicated to the employee in person within 5 calendar days from the day it was issued and will produce effects from the day of the communication. The receipt of the communication must be confirmed by the employee under signature. In case the employee refuses to receive the disciplinary decision or to sign the proof of communication, the disciplinary decision shall be sent to the employee's domicile or residence by means of registered mail.

Procedure for termination for incompetence

The Labour Code and the collective labour agreement concluded at national level provide for strict rules on terminating employment agreements for professional inadequacy. Any decision to terminate the employment relationship due to professional inadequacy may be adopted only after a prior evaluation procedure which has to be performed by a commission appointed by the employer after becoming aware of the situation of professional inadequacy. If the case, a representative of the trade union the employee is a member of must be appointed in the commission. Inadequate performance may be substantiated by the commission by proving improper performance of professional duties, by theoretical or practical examination or by other means. It also must be taken into account that professional inadequacy must result from assessing the employee's performance during a rather long period of time.

A specific procedure has to be followed by the commission. To the extent the commission finds the employee professionally inadequate, the employer is obliged to offer to the employee another position suited to his capacities and background and in the case of an absence of such vacant position, the employer has to notify the workforce agency on the dismissal for professional inadequacy. The employer must also grant to the employee a notice period of at least 20 working days (or a longer notice period if such is provided in the applicable collective labour agreement, any internal policy or employment agreement). However, the employee is not entitled to any severance payment unless the applicable collective labour agreement, the employment agreement or employer's internal policies expressly provide for such payment.

Procedure for termination in case of redundancy

Dismissal for reasons not related to the employee's person represents a cause for termination of the individual employment contract, caused by the suppression of that employee's position due to one or more reasons not related to the employee's person.

The dismissal decision must be issued in writing and must contain all the elements provided within the Labour Code. The company must grant to the employee a notice period of at least 20 working days (or a longer notice period if such is provided in the applicable collective labour agreement, any internal policy or employment agreement). It is recommended that the employer offers the employee another job position suited to his professional capacities and if it has no such vacant position, it has to notify the workforce agency on the dismissal for redundancy.

The employee may receive severance payments as provided by the applicable laws and/or the applicable collective labour agreement. At present there are no legal norms providing the amount of severance payments applicable to private companies, other than the collective labour agreement concluded at national level which stipulates that each employee dismissed for reasons not related to his person (i.e. redundancy) shall receive a severance payment amounting to at least one monthly salary. In case the collective labour agreements concluded at branch and/or company's level, any internal policy or the employment agreement provide for a higher amount of the severance payment than the one provided in the collective labour agreement executed at national level, such provisions should be observed.

Specific selection criteria in the event of cancellation of similar position should be observed by the employer.

Additional rules are provided for the case the employer is performing a collective dismissal. Collective dismissals occur in case the employer operates within a period of 30 calendar days at least a specific number of dismissals for reasons not related to the employee's person, as follows:

(a) at least 10 employees in establishments employing more than 20 and less than 100 employees;
(b) at least 10% of the number of employees in establishments employing at least 100 but less than 300 employees;
(c) at least 30 employees in establishments employing 300 employees or more.

The rules to be observed in the case of collective dismissals include, *inter alia*, consultation with the trade union or the employees' representatives, correspondence with the competent labour authorities, etc.

Remedies in the event of wrongful dismissal

Under Romanian legislation in all cases when the dismissed employee challenges the dismissal decision before the court, the employer has the burden of proving that the dismissal decision is well grounded

and that all procedural rules imposed by the legislation have been complied with. The Romanian law expressly provides the protection of employees against illegal dismissal and the courts pay special attention to the observance of the legal provisions in case of the dismissal of an employee. The employee has 30 calendar days (a term qualified as statute of limitation) to challenge the dismissal decision.

If the employer does not succeed in proving the observance of all applicable legal provisions (the existence of dismissal grounds and observance of all procedural rules), the court shall cancel the dismissal decision, oblige the employer to pay an indemnity equal to the indexed, increased or updated salary and the other entitlements the employee would have otherwise benefited from and, at the employee's express request, reinstate him in the position he has been dismissed from.

11.5 Mutual agreement on termination

The Labour Code allows the mutual agreement on termination of the employment relationship. No severance payment is mandatory in case of such termination, but compensation packages are almost always agreed in practice. Any such compensation is generally subject to salary tax and mandatory social contributions. However, in case of a mutual termination, the employee cannot benefit from unemployment allowance.

12. Non-compete

According to the Labour Code, the non-compete clause produces its effects after the termination of the employment agreement, provided that the clause contains the following elements:

(a) the exact activities that cannot be performed by the employee other than for the employer;
(b) the amount of the monthly non-compete indemnity;
(c) the duration of the prohibition (the maximum duration of a non-compete clause is of 24 months after the termination of the employment agreement);
(d) the third parties to whom the employee in question may not provide services;
(e) the geographic area within which the prohibition is effective.

The monthly non-compete compensation due to the employee is negotiable and shall amount at least to 50% of the average gross salary income of the employee for the past 6 months prior to the termination of the employment agreement or, if the duration of the employment is less than six months, of the average gross monthly salary income due to him throughout the contract period.

The non-compete clause must not lead to the absolute prohibition for the former employee to perform his activity.

However, upon notification of the employee or territorial labour inspectorate, the competent court of law can limit the effects of the non-compete clause.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level could be applicable in Romania, provided that such policies and procedures are fully harmonised with the Romanian legislation and approved by the competent body of the Romanian employer (therefore becoming the policy of the Romanian employer).

14. Employment and mergers and acquisitions

The Labour Code imposes certain obligations in cases of "change of employer" by means of a transfer of undertakings. The Transfer of Undertakings Law No. 67/2006 applies to any transfer of an undertaking, business or part of undertaking or business located on the Romanian territory, as a result of a legal transfer or merger.

Pursuant to the transfer of undertakings related legislation, all employees affected to the transferred business are automatically transferred from the transferor to the transferee as of the date of the transfer, together with all rights and obligations under the employment agreements. In addition, the law expressly prohibits the transferor and the transferee to terminate the employment agreements based solely on the transfer. The collective labour agreement in force at the level of the transferor, if there is such an agreement, will also be transferred as a result of the transfer, and the transferee will not be allowed to initiate negotiations for the amendment of this agreement within the first year from the transfer date.

The Transfer of Undertakings Law No. 67/2006 provides that the transferor and transferee's must inform and/or consult the employees' representatives on the measures envisaged to be taken in relation to the transfer at least 30 days prior to the date thereof. The information should include details relating to the legal, economic and social effects of the business transfer and will have to provide for the minimum content as requested by law. Failure to comply with such obligation represents administrative offence carrying fines.

With regards to a situation involving a company sale (share deal), the Romanian legislation does not make any express reference to obligations of information and/or consultation. As a rule, no changes in the labour relationship arise as a result of such transfer. However, the collective labour agreement concluded at national level expressly provides that the employer and the trade unions shall inform each other about any changes that are to be made to the company's ownership form, the predictable consequences in respect of the employees and the measures envisaged in view of limiting the effects of the redundancies determined by such changes, in case they have such information.

Since the notion of "changes in the company's ownership form" might be interpreted as referring to the sale of the company (share deal), it is recommended that the employer informs the trade unions on the modification that will occur. However, there is no penalty provided for failure to inform the trade unions on the modifications that are to be made.

15. Industrial relations

The Romanian Constitution and Labour Code guarantee the freedom of trade union association. There are five major trade unions confederations in Romania. Other trade unions exist on industry level and within individual companies. However, at the level of the individual companies, it is not usual for the employees to establish a trade union.

16. Employment and intellectual property

16.1 Copyright

According to the Romanian Copyright Law *(Law No. 8/1996 on copyright and related rights)*, the economic rights over the works protected by copyright, created by an employee while performing his work duties mentioned within the employment agreement, belong to the author of the works, unless otherwise contractually agreed. However, the employer may use the respective works within its business scope without requiring the approval of the author-employee. Moreover, the author may authorise third parties to use such works only with the employer's consent and with the indemnification of the employer for its contribution to the costs of the creation.

In the event the employee contractually agrees to assign to the employer his economic rights over the works created in the performance of his work duties, an assignment term must be provided. Otherwise, there is a legal presumption that the assignment has been made for a three years term.

After the expiry of this assignment term the economic rights revert to the employee. In such a case, the employer is entitled to ask for a reasonable share of the revenues obtained by the author from the use of the respective works as compensation for the costs incurred by the employer for the creation of the works.

In all cases the employee remains the owner of moral rights over the works created which cannot be transferred or waived, and has the exclusive right to use the respective works as part of his work portfolio.

16.2 Patents and Utility Models

According to the Romanian Patents Law *(Law No. 64/1991 on patents, republished* and *Government Decision No. 547/2008 for the approval of the Regulation for implementation of Law No. 64/1998 on patents)*, in the event that the inventor is an employee and in the absence of contractual provisions which are more favourable to the employee the right to the patent belongs to:

(a) the employer for inventions developed by an employee based on an inventive mission expressly entrusted thereto and which corresponds to the employee's work duties. In this case the employee has the right to a supplementary remuneration, in addition to his basic salary. However, if the employer does not file with the State Office for Inventions and Trademarks ("SOIT") a patent application for the respective invention, within 60 days from the date on which the employee informed the employer in writing about the description of the invention, the right to the patent belongs to the employee, unless otherwise contractually agreed by the parties;

(b) to the employee, in the absence of a contrary clause, for the inventions developed by such, either in exercising his work duties, or in the employer's field of activity, by knowing or using the technique, means or the data/information of the employer, or with the employer's material support. In this situation, the employer benefits from the right of first refusal in concluding an agreement regarding the respective invention, which must be exercised within three months as of the employee's offer;

However, if the employee and the employer conclude an agreement whereby they expressly provide that the right to the patent belongs to the employer, the employee is entitled to remuneration established by the parties on the basis of the economic and/or social effects resulting from the exploitation of the patent during its validity period or on the basis of the economic contribution of the invention and only for the period of exploitation of such. If the parties do not reach an agreement during the negotiations, the dispute will be of the competence of the courts.

(c) to the company which requested the performance of the research, if the invention results from a research agreement between the employer and a third party. In such a case the employee is entitled to receive a supplementary remuneration which results from the parties' negotiations. Such remuneration must correspond to the economic effects, including those deriving from the social effects during the period of calculation of the profit, and must be calculated based on the same criteria as above.

In this situation, if the company does not file a patent application for the respective invention with SOIT, within 60 days from the date on which the employee provided a written description of the invention, the right to the patent belongs to the employee, unless otherwise contractually agreed by the parties.

In all cases, the employer and the employee have the obligation to inform each other in writing with respect to the status of creation of the invention and to refrain from any disclosure.

As a separate point, according to Romanian Utility Models Law *(Law No. 350/2007 on utility models)*, all the abovementioned provisions regarding the right to patents are also applicable to utility models.

16.3 Plant Varieties

According to Romanian Plant Variety Law *(Law No. 255/1998 on the protection of new plant varieties, republished)*, the right to a patent for a new plant variety created by an employee during his work, belongs to the employee, unless otherwise provided in his individual employment agreement.

16.4 Designs/Models

According to Romanian Designs legislation *(Law No. 129/1992 on the protection of designs and models, republished and Government Decision*

No. 211/2008 for the approval of the Regulation for the implementation of Law No. 129/1992 on the protection of designs and models), the right to a registration certificate for a design/model created by an employee during his work duties belongs to the employer, unless otherwise contractually agreed.

16.5 Topographies of semiconductor products

According to Romanian legislation on topographies of semiconductor products *(Law No. 16/1995 on the protection of topographies of semiconductor products, republished),* the right to protection of a topography created by an employee during his work duties, belongs to the employer, unless otherwise contractually agreed.

17. Discrimination and mobbing

Any direct or indirect discrimination towards an employee, based on criteria of sex, sexual orientation, genetical characteristics, age, citizenship, race, colour, nationality, religion, political option, social origin, physical impairment, family situation or responsibility, belonging to a trade activity, is forbidden by the Labour Code, as well as any harassment and sexual harassment.

No separate regulation on mobbing has been adopted in Romania.

18. Employment and personal data protection

The area of personal data protection is regulated in general by the Data Protection Law *(i.e. Law No. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as amended).* This is the main enactment which transposes into Romanian law the European Data Protection Directive *(i.e. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data).*

The Data Protection Law is generally in line with this directive. Furthermore, particular rules governing the processing of personal data *(e.g.*, exceptions from notification obligations, rules on the transfer of personal data abroad, minimum security standards for processing operations) are detailed in secondary legislation adopted by the Romanian Ombudsman (as former data protection authority) and, as of 2005, by the National Authority for the Supervision of Personal Data Processing (the “DPA”).

The abovementioned legal framework provides for various rights and obligations pertaining to collecting and further processing of personal data of individuals, including in respect of employees’ data.

The following main obligations are incumbent by law upon the employers in respect of the processing of their employees’ data:

(a) to inform the employees in respect of the processing of their personal data, including as regards their rights as such are set forth under the Data Protection Law;
(b) to obtain the consent of the employees for the processing, if such is the case;
(c) to observe the rights recognised by law to employees in regard to the processing;

Under the Data Protection Law, the data controller is under a legal obligation to observe the data subject’s rights of (i) access to and (ii) intervention on its personal data processed, (iii) objection to the processing of its personal data and (iv) not to be subject to individual decisions. Moreover, the data subject is entitled to bring a claim before the competent courts of law for any breach of its rights recognised under the data protection regulations.

(d) to ensure the confidentiality and security of the personal data processed, including by observing the minimum security requirements for personal data processing approved by the Ombudsman’s Order No. 52/2002;
(e) to provide the DPA, upon request, with any relevant information regarding the processing;
(f) to file the processing and data transfer notifications required by law.

While filing of the notification is not required in the case of the processing of personal data referring to one’s employees and external collaborators in fulfilment of legal obligations e.g. payment of wages, or in the event that the processing is carried out with respect to the personal data of the employer's own employees who subscribe to shares offered by the employer, the employer is under obligation to notify any processing undertaken for other purposes (e.g., if the processing of data is done as part of video monitoring activities).

Moreover, transfer of personal data abroad is generally subject to notification. Depending on the country of destination, the transfer of employees’ data abroad may also be subject to a prior DPA authorisation.

19. Employment in practice

Each employment agreement and additional acts thereto needs to be registered with the labour authorities within defined legal deadlines. On the other hand, each employer needs to keep an updated general registry of employees which has to be also submitted to the labour authorities, as well as personal file for each employee.

The Romanian courts of law tend to be sympathetic towards employees and reinstatement to work is a frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk.

On the other hand, visits by the labour inspectors occur often. Nevertheless, fines are not frequently applied, but the employers are given a determined period of time to comply with the law in the event that breaches thereof are identified.

1. General overview

According to Serbian legislation there is a hierarchy of labour regulations at the top of which is the Labour Law *("Zakon o radu", "Službeni glasnik RS", No. 24/05, 61/05* and *54/09)* ("Labour Law"). In addition to the Labour Law, employment-related matters in companies are regulated by the General Collective Agreement *("Opšti kolektivni ugovor", "Službeni glasnik RS", No. 50/08, 104/08* and *08/09)* ("GCA") applicable to all employers and employees in the Republic of Serbia. There may also be an industrial collective agreement applicable to all employers and employees in a particular industry.

A company may have an individual collective agreement concluded between the employer and the representative trade union. Companies which do not have an individual collective agreement usually regulate employment-related issues within a general enactment called Work Rules.

Written employment agreements must be entered into with each employee. The Labour Law provides for certain mandatory elements of employment agreement.

The individual collective agreement or, as the case may be, the Work Rules and individual employment agreements must all be consistent with the Labour Law and may not provide for less protection to employees than that which is guaranteed by the Labour Law. In addition, individual employment agreement may not provide for less favourable terms than those provided in the individual collective agreement or, as the case may be, the Work Rules.

Serbian employment legislation is embedded into the socialist heritage of former Yugoslavia. Its main feature is that heavily leans towards employee protection especially in case of dismissals.

2. Hiring

2.1 General

The Labour Law does not proscribe any particular requirements pertaining to the recruitment of employees, with the exception of a general one according to which the employment relationship may be established with a person of at least 15 years of age who fulfils conditions for work in the respective work post (if any).

2.2 Disabled persons

According to the Law on Professional Rehabilitation and Employment of Disabled Persons *("Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba sa invaliditetom", "Službeni glasnik RS", No. 36/09)*, all employers with 20 or more employees are obliged to employ a certain number of disabled persons. Newly established companies are exempt from this obligation for the first 24 months after their establishment. Furthermore, employers who either finance or have an adequate commercial cooperation with companies engaged in the professional rehabilitation and employment of disabled persons are also exempt. It should be noted that this requirement for the mandatory hiring of disabled employees is not enforced in practice. The law itself does not provide for any efficient enforcement mechanism.

2.3 Foreign employees

The employment of foreign citizens is regulated by the Law on Conditions for Entering into Employment Relationship with Foreign Citizens *("Zakon o uslovima za zasnivanje radnog odnosa sa stranim državljanima", "Službeni list SFRJ", No. 11/78 and 64/89, "Službeni list SRJ", No. 42/92, 24/94* and *28/96,* and *"Službeni glasnik RS", No. 101/05)*, an archaic law from the former Yugoslavia still applicable in Serbia. In order to be employed in Serbia, a foreign citizen must obtain a so-called "white card" (i.e. a registration of arrival), temporary or permanent residence issued by the Ministry of Interior and a work permit issued by the National Employment Agency.

"White card"

According to the Law on Foreigners *("Zakon o strancima", "Službeni glasnik RS", No. 97/08),* a foreigner is obliged to register with a local police station within 24 hours after entering the country, unless staying in a hotel, in which case the hotel manages the registration procedure. Based on that registration, the local police department issues the so-called "white card".

Upon issuance of the white card, a foreigner wishing to work in Serbia has to obtain temporary residence permit (or, if special conditions are met, permanent residence permit). Documents that need to be submitted along with the request include evidence on possession of sufficient funds (e.g. credit card) and health insurance documents.

A request for a work permit is submitted by the would-be employer of the foreign person. The employer has, *inter alia,* to submit a written explanation on the need to engage the particular foreigner.

The procedure of obtaining the work permit takes at least one month. In practice, the issuance of a work permit is almost never denied.

2.4 Secondments

The secondment of Serbian employees abroad is regulated by the Law on Protection of FRY Citizens at Work Abroad *("Zakon o zaštiti građana Savezne Republike Jugoslavije na radu u inostranstvu", "Službeni list SRJ", No. 27/98* and *"Službeni glasnik RS", No. 101/05 and 36/09).* According to this law, Serbian employees may be seconded abroad on the basis of a cooperation agreement entered into between their Serbian employer and the foreign host. The Serbian employer is required to notify the Ministry of Labour on each secondment and provide a copy of the cooperation agreement and other documentation pertaining to secondment. It should be noted that the bureaucratic secondment procedure stipulated by the subject law is often disregarded in practice.

3. Types of engagement

3.1 Employment

Traditional employment relationship is the most usual manner of engaging personnel in Serbia. There are two types of employment relationship depending on the duration. As a rule, the employment relationship is established for an unlimited period of time. In exceptional circumstances, the employment agreement can be entered into for a limited period of time of up to 12 months, in a limited number of cases such as seasonal work, work on a specific project or to cater for temporary increase of volume of work. The temporary employment of managers can be equal to their mandate, while in case of mandatory apprenticeship, temporary employment can match the duration of mandatory apprenticeship.

3.2 Engagement outside employment

Personnel may also be engaged outside an employment relationship, in those cases and subject to the conditions prescribed by the Labour Law. These flexible kinds of engagement include:

(a) temporary and occasional work (up to 120 days a year);
(b) service agreement (only for work which is outside the employer's main business activities);
(c) agency agreement;
(d) agreement on professional improvement (concluded mainly with trainees); and
(e) additional work (concluded with employees engaged full time by another employer);
(f) voluntary work (only with respect to non-for-profit activities);
(g) management agreement (please see the following section 3.3).

Outsourcing companies have recently been offering their services in Serbia. Although their activities take place within a legal vacuum (as there is no law regulating this aspect of employment practices), the existence and operation of outsourcing companies is tolerated in practice.

3.3 Engagement of managing directors

Persons serving as managing directors may be employed (permanently or for a limited period of time equal to the duration of the mandate), but may also be engaged outside the employment context, pursuant to a management agreement. However, even if a managing director is engaged outside employment regime, his remuneration is taxed as salary (see section 4.1 below).

A foreigner may be appointed as the managing director without any limitations. On the basis of this appointment such a foreigner is eligible to obtain temporary residence in Serbia.

4. Salary and other payments and benefits

4.1 Salary

The Labour Law proscribes that the total salary is calculated as the sum of the following elements and sub-elements, some of which are mandatory and some of which are not:

(a) Salary for the performed work and the time spent at work, which consists of the following elements:
- basic salary (mandatory);
- performance-based part of salary which serves as a corrective of the basic salary and may lead to its increase or decrease (not mandatory); and
- increased salary (mandatory).

(b) Salary based on the employee's contribution to the employer's business success (e.g. awards, bonuses) (not mandatory), and
(c) Other payments such as:
- meal allowance (mandatory);
- annual vacation allowance (mandatory);
- other payments made to the employee, if any (not mandatory).

4.2 Other mandatory payments not considered as salary

According to the Labour Law, the employer is also obliged to make the following payments to the employees which are treated as expenditure compensation and do not form part of the salary and thus not subject to tax and mandatory social contributions (unless they exceed statutory non-taxable amounts):

(a) compensation for the expense of commuting to and from work, equivalent to the amount of public transportation ticket;
(b) per diem expenses for time spent on business trip within the country and abroad;
(c) compensation for accommodation and food during field work, unless the employer provides for accommodation and food;
(d) retirement severance payment to the amount of three average salaries in the Republic of Serbia;
(e) compensation for funeral expenses in the event of death of employee or a member of his immediate family;
(f) compensation of damage in case of work-related injury or professional illness.

4.3 Other benefits

Employers are free to provide their employees with other benefits, such as employees' stock option plans, profits participation, etc. In the case of employees' stock option plans, it should be noted that this area is not sufficiently regulated in Serbia and that such plans are not so common in practice.

5. Salary tax and mandatory social contributions

Salary is subject to salary tax and mandatory pension, health and unemployment insurance (together, "mandatory social contributions"), payable by employer on a withholding basis. Even though entire mandatory social contributions are payable by the employer at source on a withholding basis, the law distinguishes between contributions attaching to the employer (approximately 50% of the total amount of social contributions) and contributions attaching to the employee (approximately 50% of the total amount of social contributions). The aggregate combined rate of all mandatory social contributions is 35.8%. However, the taxable basis is capped at five times the average salary in Serbia, which is currently approximately EUR 1,750. Salary tax rate is 12% and is imposed on the gross salary (consisting of net salary, salary tax and mandatory social contributions payable at the level of the employee), reduced for the non-taxable amount of RSD 6,554.00 (approximately EUR 65). For example, in the case of net salary of EUR 1,000, the total cost for the employer is approximately EUR 1,660.

If an individual is hired outside an employment context, based on a hire contract, the total cost is greater than in the case of employment, given that the income based on a service contract is taxed at the effective rate of 16% and is subject to all mandatory social contributions, in the same way as salary, provided that the individual is not already insured (e.g. based on employment, entrepreneurship, etc.) in which case the contributions for health and unemployment insurance are not paid. In practice, the cost of personnel engaged in non-core activities (personnel engaged in core activity must be employed) can be reduced by hiring the services of outsourcing agencies or by hiring individuals organised as private entrepreneurs, since remuneration paid to private entrepreneurs is treated as their business income and not as salary.

The salaries of foreign personnel (with the exception of those employed with foreign diplomatic or consular missions and IGOs not deemed to be Serbian residents for tax purposes) are also subject to local taxes and mandatory social contributions, subject to the existence of a DTT [1] and social security treaty [2] which may provide otherwise.

6. Working hours

The Labour Law determines that full-time working hours are 40 hours per week. As a rule the working week lasts five days, but the maximum of 40 hours per week may also be extended over a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the Labour Law, a 30-minute break is a statutory obligation and is included in the full-time working hours. In practice this means that in normal cases a working day consists of seven and a half working hours. Work in excess of full-time working hours is deemed overtime work and is subject to additional compensation. Senior employees and management are not exempt from the overtime regime, i.e. their overtime is also subject to additional compensation.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The minimum duration of annual vacation is 20 days. This minimum can be increased based on various criteria determined in the individual collective agreement or, as the case may be, the Work Rules applicable to a particular employer or individual employment agreements. In accordance with the Labour Law, annual vacation may be taken at once or in two parts. If it is taken in two parts, the first part (which cannot be shorter than 15 days) can be taken in the current year, while the second part has to be taken no later than by 30th June of the subsequent year.

7.2 Paid leave

In addition to annual vacation, employees are also entitled to a total of seven days paid leave per year in cases proscribed by the GCA (e.g. in cases of wedding (three days), childbirth by a spouse (five days), serious illness of an immediate family member (seven days)). In addition, employees are entitled to additional paid leave of five days in duration in the event of the death of an immediate family member and two days per each voluntary blood donation.

7.3 Sick leave

In the event of sick leave employees are entitled to a remuneration of salary. This remuneration amounts either to 65% of the employee's average salary calculated over the period of three months preceding the sick leave, in the case of illness or injury not related to work, or 100% of employee's average salary calculated over the period of three months preceding the leave, if the leave is caused by professional illness or injury. The employer is obliged to pay remuneration of salary for the first 30 days of sick leave, whereas the state pays the remuneration for the remaining days. It should be pointed out that there are no limitations with respect to total duration of sick leave or number of periods of sick leave.

7.4 Maternity leave

According to the Labour Law, maternity leave comprises pregnancy leave and childcare leave. Pregnancy leave starts not earlier than 45 days and not later than 28 days prior to the due date and lasts for three months from the childbirth. Pregnancy

1 List of countries which have a DTT with the Republic of Serbia: Albania, Belgium, Belarus, Bosnia and Herzegovina, Bulgaria, Great Britain and Northern Ireland, Denmark, Italy, Cyprus, Hungary, Macedonia, Germany, Norway, Poland, Romania, Russian Federation, Slovakia, Slovenia, Ukraine, Finland, France, Netherlands, Croatia, Czech Republic, Sweden, Korea PR, China, Kuwait, Malaysia, Sri Lanka, Egypt.

2 List of countries which have a social security treaty with the Republic of Serbia: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Egypt, France, Netherlands, Croatia, Italy, Libya, Luxembourg, Macedonia, Hungary, Germany, Norway, Panama, Poland, Romania, Slovakia, Sweden, Switzerland, Great Britain and Northern Ireland.

leave is fully paid for by the state. Childcare leave begins upon the expiry of the pregnancy leave. Pregnancy leave and childcare leave combined may last for up to 365 days. Childcare leave is treated in the same way as pregnancy leave and is fully paid for by the state. The employee cannot be validly terminated while on maternity (pregnancy or childcare) leave. However, a temporary employment relationship can expire during maternity leave. A father is entitled to leave of up to 365 days, if the mother abandons the child, dies or is prevented from taking the leave for a justified reason (e.g. illness, serving prison sentence, etc.).

7.5 Unpaid leave

According to the GCA, the employer is obliged to grant to employees up to five days of unpaid leave per year in the cases determined by individual collective agreement. The employee's employment-related rights and obligations are at a standstill during unpaid leave, unless certain rights or obligations are otherwise explicitly proscribed.

7.6 Employment standstill

The employee's employment relationship is at a standstill in the event of certain absences from work listed in the Labour Law (e.g. army service, secondment, appointment to a public position, etc.). During such absence the rights and obligations based on employment are at a standstill, unless certain rights or obligations are otherwise explicitly prescribed for. Upon the expiry of the standstill grounds, the employee is entitled to be reinstated to work.

8. E.S.O.P.

The use of Employee Stock Ownership Plan schemes in Serbia is a rarity. The regulatory framework is absent at both corporate law and tax law levels. The Law on Personal Income Tax *("Zakon o porezu na dohodak građana", "Službeni glasnik RS", No. 24/01, 80/02, 135/04, 62/06, 65/06, 31/09, 44/09* and *18/10)* contains only one, entirely insufficient, provision on the topic, which stipulates, in Article 61 of the said law, that the income of employees or managers based on participation in profits "by option purchase of own shares" is considered capital income. There is an absence of provisions specifying when this income becomes valid for the purpose of taxation and how its amount is supposed to be calculated.

In practice, a type of ESOP scheme is modestly implemented only in closed, limited liability, companies, by way of capital increase by contribution in services.

9. Health and Safety at work

The area of health and safety at work is regulated in detail by the Law on Safety and Health at Work *("Zakon o bezbednosti i zdravlju na radu", "Službeni glasnik RS", No. 101/05)*. All employers and employees are obliged to adhere to specific obligations introduced by this law. The Law on Safety and Health at Work, *inter alia,* stipulates that each employer has to adopt the Act on Risk Evaluation of Work Posts, containing a description of the work process with an evaluated risk attached to each employment post and identification of measures required for the removal of such risk. In addition, all employers must have a general enactment which regulates the most important matters pertaining to safety and health at work. The Law on Safety and Health at Work also requires employers to insure all employees against work-related injuries and professional illness.

10. Amendment of the employment agreement

The employment agreement may be amended by virtue of an annex in specified cases. The annex must be accompanied by a written proposal from the employer explaining the reasons for amending the employment contract, the deadline for the employee's response and notice of legal consequences arising from refusing to accept the proposed annex. Refusal to adhere to a proposed annex can lead to dismissal in those cases referred to in section 11.3, paragraph (g) below.

11. Termination of employment

11.1 Termination by operation of law

Employment relationship is terminated by operation of law in the following cases:

(a) expiry of temporary employment;
(b) when the employee reaches 65 years of age and at least 15 years of employment, unless agreed otherwise;
(c) by request of parents or, as the case may be, guardians of the employee younger than 18 years of age;
(d) employee's death;
(e) loss of work ability;
(f) prohibition to perform certain works imposed on the employee by the court or other competent body;
(g) prison sentence longer than 6 months;
(h) other sentence which requires absence from work longer than 6 months;
(i) cessation of employer.

11.2 Termination by employee

According to the Labour Law, an employee may freely terminate his employment relationship at any time and for any reason, subject to a 15-day notice period. This notice period may not be extended by contact.

11.3 Termination by employer

The employer may unilaterally terminate employment relationship only for a limited number of reasons specified in the Labour Law. These are:

(a) incompetence;
(b) intentional breach of work duty (specific breaches which may trigger dismissal must be stipulated in the employment agreement, collective agreement or, as the case may be, Work Rules);
(c) breach of work discipline (specific breaches which may trigger dismissal must be stipulated in the employment agreement, collective agreement or, as the case may be, Work Rules);
(d) perpetration of a work-related criminal act;
(e) failure of the employee to return to work after the expiry of a period of unpaid leave;
(f) abuse of the right to sick leave;
(g) refusal to enter into an annex to the employment agreement providing for: (i) transfer to another work post with the same employer; (ii) transfer to another location with the same employer; (iii) temporary transfer to another employer; (iv) reduction of salary;
(h) technological, economic or organisational changes within the employer (redundancy).

11.4 Procedure for termination by the employer

The notice period is proscribed only when termination is on grounds of incompetence and lasts from one month up to three months, depending on the employee's total years of employment.

In other cases of termination by employer, there is no notice period, i.e. termination is with immediate effect subject to proper termination procedure being conducted.

Procedure for termination in case of breach of work duty or work discipline

Prior to terminating an employee, the employer is obliged to issue to the terminated employee written notice stating the grounds for termination, facts and corroborating evidence and deadline, which may be no less than five working days, within which the employee may respond to allegations. If there is a trade union within the employer, the said notice must also be delivered to the relevant trade union which has five working days for its own response. Upon expiry of the deadline for the employee's (and trade union's, if applicable) response, the employer may issue a decision on unilateral termination of employment. This decision must contain comprehensive description of the legal grounds for termination of the employment relationship and advice on legal remedies available to the terminated employee. The decision has to be delivered to the employee in person on the employer's premises or sent to the employee's address by registered mail. The employment relationship is deemed terminated on the day when the decision on termination of employment is delivered to the employee.

Procedure for termination for incompetence

The abovementioned procedure for termination in the event of breach of work duty or work discipline also applies in the case of termination for incompetence. Certain additional procedural requirements also apply. The employee is entitled to notice equal to a minimum of one month and a maximum of three months depending on the total years of employment. Further, the GCA requires that a special committee be formed in order to establish the employee's incompetence. The members of such committee are other employees working with the same employer, who must have at least the same level and type of education as the terminated employee. The application of this provision of the GCA is practicably impossible in the case of employers with a small number of employees, yet the GCA has failed to provide for any exemptions in this respect. It should also be noted that dismissals on the basis of this termination ground are often subject to lengthy and complicated court disputes in which the employer is obliged to prove the employee's incompetence.

Procedure for termination in case of redundancy

The Labour Law proscribes the specific procedure to be followed in the case of termination for redundancy, if the employer intends to terminate within the period of 30 days at least:

(a) 10 employees, provided it employs more than 20, but less than 100 employees on permanent basis; or
(b) 10% of total work force, provided it employs in between 100 and 300 employees on permanent basis; or
(c) 30 employees, provided it employs more than 300 employees on permanent basis;

or if it intends to terminate at least 20 employees within the period of 90 days, no matter the total number of employees employed by such employer.

The redundancy procedure in the abovementioned cases is conducted with the involvement of the trade union, if any, and the National Employment Agency. The employer is obliged to prepare a redundancy programme which must specify the reasons for redundancy, redundancy criteria, number of redundant employees, measures for the employment of redundant employees, etc.

In the case of termination for redundancy, the employer is obliged to make a severance payment to the terminated employees. The minimum redundancy payment proscribed by the Labour Law is 1/3 of the employee's average salary earned over the course of a 3-month period preceding the dismissal, for each year of employment. If the employee has been employed for more than 10 years, the employee will be entitled to 1/4 of the average salary for each year above the 10-year threshold.

The GCA proscribes very strict rules for selecting employees to be declared redundant in those cases where more than one employee works at the same work post. Work results are at the top of the hierarchy of criteria prescribed by the GCA. The subsequent redundancy criterion is the employees' respective financial situations. This is measured by per capita income of the family of each employee eligible for redundancy and the market value of real estate owned by the employee or his immediate

family members. In the event that the competing employees have more or less the same work results and are in more or less same financial situation, the GCA proscribes the following redundancy criterions: number of family members, years of employment, health condition of the employee and his immediate family members and the number of children of school age.

Remedies in the event of wrongful dismissal

The employee may initiate litigation for wrongful dismissal within 90 days from the date of the delivery of the decision on termination. The main remedy available to the employee is reinstatement. In the event that the court finds wrongful dismissal, the employee is also entitled to compensation of salary and other lost remuneration. Pending the dispute, the employee may ask the Labour Inspectorate to render a provisional measure on reinstatement.

It should be noted that labour disputes may last in practice for a very long period of time (four years on average). The courts often show benevolence towards the dismissed employee. Bearing that in mind, each case of termination should be conducted very carefully, in order to minimise the risk of negative outcome and dispute.

11.5 Mutual agreement on termination

The Labour Law allows mutual agreement on termination of the employment relationship. No severance payment is mandatory in case of such termination but compensation packages are almost always agreed in practice. Any such compensation is subject to salary tax and mandatory social contributions. In the case of a mutual agreement on termination, the employer is obliged to provide the employee with a formal written notice of the fact that no unemployment benefits can be claimed following a consensual termination.

12. Non-compete

According to the Labour Law, a non-compete obligation may be imposed on the employee who works in a post wherein he may acquire new and important technological knowledge, a wide circle of business partners or important business information and business secrets. The non-compete obligation may survive termination of the employment agreement for a maximum period of two years, provided that compensation is paid to the employee. The law does not proscribe any parameters for such compensation, therefore, the amount can be freely agreed upon. The usual practice is to agree the amount which corresponds to the employee's salary for the period of duration of the non-compete obligation.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level are applicable in Serbia, provided that such policies and procedures are fully harmonised with the Serbian legislation and incorporated by reference by an enactment of the Serbian employer.

14. Employment and mergers and acquisitions

The Labour Law imposes certain obligations in the event of "change of employer" which, by virtue of an explicit provision of law, encompass not only restructurings such as mergers and spin-offs, but also ordinary change of control.

In the case of "change of employer", the Labour Law requires that the predecessor employer and the successor employer jointly notify the representative trade union within the company at least 15 days prior to the change of employer with regard to the following: (i) date of change of employer, (ii) reason for change of employer, and (iii) legal, economic and social consequences of change of employer to the employees and the measures for their amelioration.

Article 150 of the Labour Law also provides that in case of "change of employer" the collective agreement or, as the case may be, the Work Rules of the company must continue to apply for at least one year following the change, unless the collective agreement or, as the case may be, the Work Rules expire earlier on its own terms or the trade union agrees to enter into a new collective agreement within the company. If this provision of the Labour Law is to be interpreted literally, it would mean that it is not possible to amend the collective agreement or, as the case may be, the Work Rules for one year after the change of control over the company. There is an opinion of the Ministry of Labour that change of control as a result of a take-over bid does not trigger the application of Article 150 of the Labour Law. This opinion implies that the intention of Article 150 of the Labour Law is to apply to change of control as a result of privatisation only, since in that context, the state has a particular interest in ensuring that no abrupt changes take place. This would mean that change of control over a private company as a result of sale and purchase of shares should not trigger the application of Article 150 of the Labour Law. However, because of the broad wording of Article 150, uncertainties remain.

Finally, it should be noted that in case of "change of employer" the Labour Law requires the predecessor employer to notify, prior to the completion of the change, the employees in writing on transfer of their employment agreement on the successor employer. If an employee fails to accept the transfer or respond within five working days from the receipt of the notification, the predecessor employer is entitled to terminate such non-responding employee.

15. Industrial relations

The Serbian Constitution *("Ustav Republike Srbije", "Službeni glasnik" RS, No. 98/06)* and the Labour Law guarantee the freedom of trade union association. There are two major trade unions with nationwide coverage: "Nezavisnost" and "Samostalni sindikat". Many other trade unions exist on industry level and within individual companies.

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As in the most of other transitional economies, industrial disputes are quite usual in Serbia, especially in companies undergoing financial difficulties. Furthermore, many of them escalate into strikes, which is a legally recognised right of employees, although strikes are a decreasing trend.

16. Employment and intellectual property

According to the Serbian Copyright Law *("Zakon o autorskom i srodnim pravima", "Službeni glasnik RS", No. 104/09),* the employer is the exclusive owner of the proprietary (economic) component of copyright developed by the employee while performing regular work duties over a period of five years following the creation of copyright, unless otherwise provided for in the employment agreement with the respective employee or in the employer's general enactment. On the other hand, the employee is entitled to special remuneration depending on the monetary effects of use of his copyright by the employer. After the said five-year period, the economic component of copyright reverts to the employee. In both of the abovementioned cases, the employee remains the author and thus the owner of the moral component of the copyright.

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal traits is strictly forbidden by the Labour Law, as well as any harassment and sexual harassment.

Furthermore, there is also a separate regulation on mobbing. According to the recently adopted Law on the Prevention of Mobbing at Work *("Zakon o sprečavanju zlostavljanja na radu", "Službeni glasnik RS", No. 36/10),* mobbing is defined as any active or passive continuing act against an employee with the purpose or effect of harming personal dignity, respectability, personal or professional integrity, health or status of the affected employee, and which causes fear or creates unfriendly, humiliating or insulting environment, deteriorates work conditions for the employee or causes that the employee isolates himself or herself or terminates his or her employment. According to the cited law, the employer is responsible for its own acts of mobbing and is also vicariously liable in case other employees or management engages in mobbing. The indemnifying employee has the right to request compensation from the employer or manager engaged in mobbing.

18. Employment and personal data protection

The area of personal data protection is regulated in detail by the Data Protection Law *("Zakon o zaštiti podataka o ličnosti", "Službeni glasnik RS", No. 97/08 and 104/09).* According to this law, all data processors (e.g. employers) must submit to the Trustee for Information of Public Relevance and Protection of Personal Data a substantiated notification of their intent to establish a personal data collection no later than 15 days prior to establishing the collection. The same law establishes various rights and obligations pertaining to collecting and processing of personal data. In this respect, the Data Protection Law, *inter alia,* prohibits taking decisions on a person's work ability, creditworthiness, etc. solely based on the automated processing of personal data pertaining to such a person. The employee whose data is being processed has the right to request information on a number of issues related to the processing, such as where the data is being transferred to, to whom it is being transferred, the purpose of the transfer and the legal grounds for the transfer. Furthermore, with respect to particularly sensitive personal data (e.g. nationality, union membership, health condition, etc.), written consent must be obtained from the employee prior to the processing of such kind of personal data.

19. Employment in practice

It should firstly be noted that the registration of employees is very time-consuming and administratively burdensome, since it is currently performed before three different state authorities. However, there have been certain announcements that a so-called "one-stop" system should soon be introduced. This would certainly facilitate the entire procedure, not to mention the potential costs saving.

The Serbian authorities tend to be sympathetic towards employees and reinstatement to work is frequent outcome of labour disputes. Therefore, each dismissal should be structured carefully in order to minimise this risk.

On the other hand, visits by the labour inspectors do not occur often and fines are not frequently assessed.

1. General overview

The main piece of employment legislation is the Employment Relationships Act *("Zakon o delovnih razmerjih"*, the Official Gazette of the Republic of Slovenia (hereinafter "RS"), No. 42/2002 as amended, hereinafter the "ERA"). Other mayor employment law acts are the following:

- Collective Agreements Act *("Zakon o kolektivnih pogodbah",* the Official Gazette of the RS, No. 43/2006 as amended);
- Employment and Work of Aliens Act *("Zakon o delu in zaposlovanju tujcev",* the Official Gazette of the RS, No. 66/2000 as amended);
- Occupational Health and Safety Act *("Zakon o varnosti in zdravju pri delu",* the Official Gazette of the RS, No. 56/1999 as amended);
- Minimum Wage Act (*"Zakon o minimalni plači"*, the Official Gazette of the RS, No. 13/2010 as amended);
- Worker Participation in Management Act *("Zakon o sodelovanju delavcev pri upravljanju"*, the Official Gazette of the RS, No. 42/1993 as amended);
- Vocational Rehabilitation and Employment of Disabled Persons Act *("Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov",* the Official Gazette of the RS, No. 63/2004 as amended).

According to Article 7 of the ERA an employer and an employee are bound by the ERA, other employment law acts, ratified and published international agreements, other legislative regulations as well as collective agreements and internal acts adopted by the employer. In the internal acts of the employer, in employment contract and/or collective agreements an employer and an employee may only determine rights and obligations, which are more favourable for an employee than the regulation in the ERA. The employment contract may not include any less favourable provisions for the employee than those determined in the collective agreements and/or internal acts adopted by the employer.

In Slovenia, currently, there is no generally applicable collective agreement for the commercial sector, except the Collective Agreement on the Wage Adjustment Method, Reimbursement of Work-related Expenses, and Holiday Bonus (the Official Gazette of the RS, No. 76/2006 as amended, hereinafter the Collective agreement on the method of salary), which only regulates payment issues and shall be valid until 31.12.2010. There are, however, several branch collective agreements (e.g. Collective Agreement for Trading Activities of Slovenia, Collective Agreement for chemical and rubber industry of Republic of Slovenia, Collective Agreement for Slovenia's Metal Industry, etc.).

A company may have an individual collective agreement between the employer and the representative trade union in the company. Those companies which do not have the individual collective agreement usually regulate employment-related issues with internal acts adopted by an employer.

The employment relationship is entered into by conclusion of a written employment contract. However, the employment relationship exists irrespective of non-conclusion of a written employment contract, if the following conditions are met:

(a) An employer is voluntarily included in the working process;
(b) The employee receives payment for his work by the employer;
(c) The work is performed continuously;
(d) The employee performs work personally in accordance with the instructions and under the control of the employer.

The main feature of the Slovenian employment legislation is the protection of employees as weaker parties in employment agreements, especially with respect to termination of employment contract.

2. Hiring

2.1 General

According to the ERA the employer who intends to employ a new employee, must publicly announce a vacant working position and allow the candidates at least 5 days for the submission of their offers. There are several exceptions to such obligation on the part of the employer, for instance the employment of disabled persons, employment of a trainee for indefinite period of time or a part-time employee for full-time, etc. The employees working for the employer for a definite period of time and/or employees working for an employer part-time and temporary agency workers have to be informed about the offer of employment for an indefinite period of time or for a full working time directly by the employer. The employer must not publish an offer for employment solely for women or men, unless such a requirement is not objectively necessary for the performance of work. Also any other direct and indirect discrimination is prohibited. The employment contract must not be entered into with an employee who is less that 15 years old (such employment contract would be deemed void).

2.2 Disabled persons

According to the Vocational Rehabilitation and Employment of Disabled Persons Act, all employers with at least 20 employees, with the exception of foreign diplomatic and consular representations, social enterprises or employment centres, are obliged to employ a certain number of disabled persons, proportional to the total number of employees (hereinafter the "quota"). The employer who does not fulfil the quota requirement has to pay an amount of 70% of the minimum salary for each disabled person who would have to have been employed by the employer in order to fulfil the quota, into a special fund.

2.3 Foreign employees

According to the Employment and Work of Aliens Act and the Aliens Act (the Official Gazette of the RS, No. 61/1999 as amended)

in order to be employed in Slovenia the following permits have to be acquired and the following registrations have to be made:

(a) By a citizen of a third country (i.e. citizens of countries other than the European Union Member States, States parties of the European Economic Area and Swiss Confederation):

- Registration at the local police station within 24 hours after entering the country, unless staying in a hotel, in which case the hotel deals with such registration procedures;
- Work permit issued by the Employment Service of Slovenia;
- Residence permit issued by the competen Administrative Unit;
- Registration of the temporary residence issued by the competent Administrative Unit;
- Registration of work in Slovenia issued by the Employment Service of Slovenia.

(b) By citizens of the European Union Member States, States parties of the European Economic Area and Swiss Confederation:

- Registration at the local police station within 24 hours after entering the country, unless staying in a hotel, in which case the hotel deals with such registration procedures;
- Registration of work in Slovenia issued by the Employment Service of Slovenia; Residence registration certificate issued by the competent Administrative Unit;
- Registration of temporary residence issued by the competent Administrative Unit.

2.4 Posting abroad

An employee, who has been posted to perform work on the territory of the Republic of Slovenia by a foreign employer on the basis of an employment contract in accordance with the foreign law, shall carry out work for a limited period of time in the Republic of Slovenia under conditions laid down within the Aliens Act (*Zakon o tujcih*, the Official Gazette of the RS, No. 61/1999 as amended). An employer must ensure such employee rights according to the provisions of the Republic of Slovenia and according to the provisions of the applicable collective agreements, regulating working time, breaks and rests, night work, minimum annual leave, wage, safety and health at work, special protection of workers and equal treatment, if these are more favourable to the employee than the regulation in accordance with the foreign law.

The Slovenian employer may temporarily post an employee to perform work abroad on the basis of an employment contract and in accordance with Slovenian law. Should the employment contract not foresee the possibility of work abroad, an employer and an employee would have to enter into a new employment contract, regulating the work abroad. The contract may be concluded for a period of completion of the project or for a period of completion of work which the posted employee performs abroad. An employee may refuse the posting abroad if the following justified reasons exist:

(a) pregnancy;
(b) care of a child under the age of seven;
(c) care of a child under the age of 15 if the employee lives alone with the child and takes care of his education and protection;
(d) disability;
(e) health reasons;
(f) other reasons provided by the employment contract and/or the collective agreement, which directly binds the employer.

3. Types of engagement

3.1 Employment

Traditional employment relationship is the most usual manner for engaging personnel in Slovenia. There are two types of employment relationships, depending on the duration. As a rule, the employment relationship is entered into for unlimited period of time. In exceptional circumstances the employment agreement can be entered into for a limited period of time for up to 2 years in the limited number of cases, such as seasonal work, work on a specific project or due to temporary increase of work, etc. In exceptional cases the employment agreement for a limited period of time may be entered into for more than the 2 year period (e.g. employee replacing an absent employee, employment contract of the general manager, etc.).

3.2 Engagement outside employment

Personnel may also be engaged outside employment relationship on the basis of civil law agreements but only in exceptional cases. Thus, should a relationship entered into on the basis of such civil law contract meet the conditions determined as conditions of an employment relationship (mentioned under point 1 above), such a relationship would be considered as an employment relationship, and would have to meet all the requirements of the ERA, applicable collective agreements and other mandatory regulations, notwithstanding the fact that the employment contract was not entered into.

The employer may also hire temporary agency workers employed by agencies which provide workers to other employers. Such personnel may only be hired continuously for up to 1 year if the same worker performs the same work. The ERA prohibits such work performance in the following cases:

(a) in cases of replacement of employees who are on strike;
(b) in cases when the user has during the period of the past 12 months terminated employment contracts to a large number of employees;
(c) in cases of workplaces for which the risk assessment

shows that workers working there are exposed to dangers and risks due to which measures are provided for reducing and/or limiting the time of exposure; and
(d) in other cases which can be laid down by a branch collective agreement, if they ensure greater protection of workers or they are required by the health and safety of workers.

3.3 Engagement of managing directors

Persons serving as managing directors may be employed on the basis of an employment contract (permanently or for a limited period of time equal to the duration of the mandate), or they may be engaged on the basis of a management agreement (which is a civil law agreement).

4. Salary and other payments and benefits

4.1 Salary

The salary is composed of basic salary, part of the salary for employee's work performance and additional payments. The daily break is a part of working time for which an employee is entitled to the payment as if he was working.

Basic salary

Basic salary is a salary for performance of work, agreed upon in the employment agreement. In accordance with the Minimum Wage Act, the gross minimum salary (i.e. the minimum amount of the salary, to which every employee is entitled) amounts to EUR 734.15. The amount of the minimum wage is adjusted once per year in accordance with the increase in prices of consumer goods and is effective from January 1 of the respective year. The amount of the adjusted minimum wage is published in the Official Gazette of the RS by January 31 of the respective year at the latest.

Salary for employee's work performance

Part of the salary for employee's work performance is a mandatory element of the salary which has to be paid to an employee only if he performs work successfully. The employee's work performance has to be measured in accordance with previously determined measures, taking into account economy, quality and quantity of employee's work performance.

Additional payments

Additional payments are mandatory elements of the salary which have to be paid to employees, who work in special working conditions, for instance for night work, overtime work, work on Sundays and holidays and on other free working days, adverse environmental or dangerous working conditions, determined in the ERA or in applicable collective agreements. Employees are also entitled to additional payments proportionally to their years of service.

4.2 Employees are also entitled to other payments, such as:

(a) compensation of costs for meals during working time, travel expenses (compensation for costs of commuting to and from work in the amount of public transportation ticket and other travel expenses), expenses necessary for work performance and for performance of working tasks on a business trip;
(b) annual leave payment;
(c) severance payment in the case of retirement;
(d) severance payment in the case of the termination of the employment contract due to business reasons or for reason of incapacity by an employer.

5. Salary tax and mandatory social contributions

Salary is subject to income-tax and mandatory pension, disability, health and unemployment insurance contributions (together, "mandatory social security contributions").

5.1 Social security contributions

The mandatory social security contributions are paid by employers and employees in accordance with the following laws which regulate the social security contributions:

(a) Social Security Contributions Act *("Zakon o prispevkih za socialno varnost",* the Official Gazette of the RS, No. 5/96 as amended);
(b) Pension and Disability Insurance Act *("Zakon o pokojninskem in invalidskem zavarovanju",* the Official Gazette of the RS, No. 104/05 as amended);
(c) Health Care and Health Insurance Act (*"Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju",* the Official Gazette of the RS, No. 100/05 as amended);
(d) Parental Protection and Family Benefit Act *("Zakon o starševskem varstvu in družinskih prejemkih",* the Official Gazette of the RS, No. 110/03 as amended);
(e) Employment and Insurance against Unemployment Act *("Zakon o zaposlovanju in zavarovanju za primer brezposelnosti",* the Official Gazette of the RS, No. 5/91 as amended).

The basis for calculations of mandatory social security contributions is gross salary as determined in the employment agreement (or a gross compensation of salary for the time of absence from work in accordance with the ERA). The levels of mandatory social security contributions are as follows:

(a) Paid by employees

Pension and disability insurance contributions	15,50 %
Health insurance contributions	6,36 %
Parental care insurance contributions	0,10 %
Unemployment insurance contributions	0,14 %
Total	22,10 %

(b) Paid by employers

Pension and disability insurance contributions	8,85 %
Health insurance contributions	6,56 %
Occupational illness or injury incurred at work insurance contributions	0,53 %
Parental care insurance contributions	0,10 %
Unemployment insurance contributions	0,06 %
Total	16,10 %

5.2 Taxation

In addition, the employers who obliged to pay salaries and social security contributions must pay the payroll tax in accordance with the Payroll Tax Act *("Zakon o davku na izplačane plače",* the Official Gazette of the RS, No. 5/96 as amended).

The incomes from work (including salaries, compensation of salaries, any other payment for work performance, annual leave payment) are subject to personal income tax in accordance with the Personal Income Tax Act - 2 *("Zakon o dohodnini"* – 2, the Official Gazette of the RS, No. 5/96 as amended). Some payments arising from the employment relationship, such as reimbursement of costs incurred in connection to the employment relationship (costs for meals during working time, for travel expenses, etc.), severance payment in the event of retirement, etc., are not subject to personal income tax up to an amount determined in a regulation issued by the government of the RS. The employer has the obligation to withhold the income tax at source monthly from the employee's salary.

6. Working hours

The ERA determines that full working time amounts to 40 hours per week. As a rule the working week lasts five days, but the maximum of 40 hours per week may also be organised over a longer period, depending on the employer's business needs (e.g. a six-day working week). According to the ERA, a 30-minute break is a statutory obligation and is included in the full-time working hours. In practical terms this means that in normal cases a working day consists of seven and a half working hours. Work in excess of full working time is deemed overtime work and is subject to additional payment. Certain categories of employees are specially protected and therefore special regulations in the ERA apply to working time, night and overtime work for such employees (i.e. older workers, parents, pregnant employees and employees while breastfeeding a child, workers younger than 18 years old).

7. Annual vacation, paid leave, sick leave unpaid leave and employment standstill

7.1 Annual leave

Employees are entitled to annual leave with the minimum duration of four weeks. The total amount of minimum annual leave depends on the number of working days in a week, for instance in case an employee works 5 days a week, he is entitled to 20 days of annual leave at least. Collective agreements or internal acts adopted by the employer may determine more days of minimum annual leave.

The employee is entitled to take annual leave in several parts, whereby one part should consist of at least two weeks. The employee must take two weeks of annual leave by the end of the current calendar year, and the remainder by June 30th of the following year. Otherwise the unused annual leave expires after the abovementioned deadlines. However, if the employee, who during the year, in which he is entitled to annual leave, performed work for at least 6 months, does not use the abovementioned two weeks of the annual leave in the current calendar year due to illness or injury, maternity or childcare leave, he is entitled to use the whole annual leave by June 30th of the following year.

7.2 Paid leave

According to the ERA, employees are entitled to compensation of salary for time within which they do not perform work in the following cases: absence from work due to use of the annual leave, absence due to personal circumstances determined in collective agreements (for instance marriage, birth of a child, etc.), education, statutory holidays and other work free days and when the employees do not perform their work due to reasons on the part of the employer. Unless stipulated otherwise by the law or special regulation, employees are entitled to the salary compensation in the amount of the employee's average monthly salary during the past three months.

7.3 Sick leave

In the event of sick leave, employees are entitled to compensation of salary. In the cases of the employee's incapacity to work due to illness or injury which is not related to work, the employer is obligated to pay compensation of the salary for the period up to 30 working days for individual absence from work but no more than for 120 working days in a calendar year. In cases of a worker's incapacity to work due to an occupational disease or injury incurred at work, the employer is obligated to pay compensation of the salary for the period up to 30 working days for each individual absence from work. In the event of absence from work exceeding the abovementioned periods, the employer is obliged to pay compensation of the salary but is entitled to reimbursement from the Health Insurance Institute of the RS.

Within the abovementioned periods the employer is obliged to pay the compensation of the salary in the following amounts:

(a) 80 % of the employee's salary for full working time in the previous month in the event of absence from work due to an illness or injury not related to work;
(b) 100% of employee's average salary for full working time calculated over the period of three months preceding the leave in the event of absence from work due to professional illness or injury.

7.4 Unpaid leave

According to the ERA, employees who are educating themselves in their own interest (i.e. the education is not in the interest of the employer), are entitled to unpaid leave on the days when they are taking each exam for the first time. The individual or collective agreements may provide for longer periods of unpaid leave. There is no other provision with regard to the unpaid leave in the Slovenian ERA.

7.5 Employment standstill

According to the ERA, employees who do not perform work due to the reasons on the part of the employer are entitled to the compensation of the salary equivalent to the amount of the average monthly salary received by the employee within the last three months prior to the employment standstill.

A special kind of employment standstill is suspension of employment contract. According to the ERA, the employment contract is suspended when an employee temporarily stops working due to the following reasons:

(a) serving a prison sentence or an imposed educational, safety or protective measure or sanction for a minor offence which prevents him from working for six months or less;
(b) serving compulsory or voluntary national military service, substitute civilian service; or
(c) training for performing tasks in the police reserve;
(d) call-up of a contractual member of the Slovenian armed forces reserve to perform peace-time military service and summons or posting to perform protection, relief and assistance assignments as a contracted member of the Civil Protection;
(e) detention;
(f) and in other cases set out by law, collective contract or employment contract.

During the period of suspension the employment contract does not cease to be valid and the employer must not terminate it, unless the grounds for extraordinary termination are given, or if the procedure for termination of the employer is initiated. During suspension of the employment contract, contractual and other rights and obligations arising from employment relationship, which are directly related to work, are suspended.

The employee is entitled and obliged to return to work within five days at the latest after the grounds for suspension of the contract cease to exist. On that day the suspension of the contract ends.

8. E.S.O.P.

The Slovenian legislation does not regulate Employee Stock Ownership Plan models.

Similar profit sharing plans are regulated by Financial Participation Act *("Zakon o udeležbi delavcev pri dobičku",* the Official Gazette of the RS, No. 25/2008). In order to establish the participation of employees in the company's profit, the contract may be entered into between the management of the company (or persons authorised to represent the management), representing the company and the representative trade union in the company, work council or one/more workers' representatives, representing the employees. Such a contract has to be registered with the Ministry of Economy of the RS. The conclusion of the contract is voluntary. In the event that contract is entered into, it is equally valid for all the employees in the company. However, each employee may decide not to participate in the company's profit. The Financial Participation Act provides for the maximum amounts of the employee's participation which are subject to tax and social security contribution benefits for employers and employees.

Based on the Financial Participation Act only 18 companies have entered into agreements on the participation of employees in the company's profit before the end of 2009. Therefore, earlier this year the amendment of the Financial Participation Act was proposed in the legislative procedure with the intention of encouraging more companies to enter into such agreements (providing less complicated procedures, more favourable tax and social security contributions benefits, etc.). However, the amendment was not adopted by the parliament, mainly because it also provided for the obligatory participation of the employees in the company's profit.

9. Health and Safety at work

The area of health and safety at work is regulated by the Occupational Health and Safety Act. All employers and employees are obliged to adhere to specific obligations introduced by this law. The main obligations of the employer are the following:

(a) The employer must adopt a safety statement in a written form, containing a description of the evaluated risk attached to each employment position and identification of measures for the removal of such risks and ensuring health and safety at work;
(b) Appoint a professional to conduct measures to ensure safety at work and hire an authorised doctor to implement measures to ensure health at work;
(c) Provide measures to ensure fire safety in accordance with special regulations;
(d) Provide measures to ensure first aid and evacuation in case of danger;
(e) Inform workers about the implementation of new technologies, working equipment and about dangers for injuries related to them and issue instructions for safe work;
(f) Provide the education and training of workers for safe work;
(g) Provide workers with equipment for personal safety at work and their use if the working equipment does not ensure health and safety at work despite safety measures;
(h) Provide periodic examinations of working environment and periodic examinations and tests of working equipment;
(i) Ensure health checks for workers.

10. Amendment of employment agreement

In accordance with the ERA, a change of employment contract or conclusion of a new employment contract can be proposed by any contracting party. A new employment contract (and not merely an annex to the existing contract) has to be entered into if the following provisions are intended to be changed:

(a) Provisions regulating the working position of an employee (the name of the working position and the short description of the working position);
(b) Provisions regulating the place of the performance of the work;
(c) Provisions regulating the time for which the employment contract is entered into;
(d) Provisions regulating working time (full/shorter working time).

A contract shall be changed and/or a new contract shall be valid if the other party agrees (unilateral changes of the employment contract are not valid).

11. Termination of employment

11.1 In accordance with the ERA, the employment contract terminates in the following cases:

(a) Upon expiration of the period for which it was concluded;
(b) Upon the death of an employee or an employer-natural person;
(c) By conclusion of a mutual agreement between the employer and the employee;
(d) By ordinary or extraordinary termination of the employment contract by the employer or by the employee;
(e) By a court judgement;
(f) By law, in cases stipulated by the ERA;
(g) In other cases determined by law.

11.2 Termination by an employee

An employee may terminate an employment contract with a notice period (ordinary termination of employment contract) or without a notice period (extraordinary termination of employment contract). In accordance with the Employment Relationships Act employees may ordinarily terminate their employment contracts at any time without explanation within a 30-day notice period (longer notice period may be determined in applicable collective agreement or in an employment contract, however, the notice period must not be longer than 90 days). The extraordinary termination of the employment contract is only possible in cases when the reasons for termination are substantially serious and, therefore, the employment relationship cannot be continued until the expiration of notice period or until the expiration of the time for which an employment contract is entered into.

11.3 Termination by an employer

An employer may terminate an employment contract with a notice period (ordinary termination of employment contract) or without a notice period (extraordinary termination of employment contract). An employer may terminate the employment contract only due to reasons determined in the ERA. The reasons for the termination of the employment contract must be justified and due to occurrence of such reasons that further cooperation between an employer and an employee under the conditions set out in the employment contract has become impossible. Certain categories of employees are specially protected and, therefore, special regulation in the ERA applies to termination of employment contracts of such employees (i.e. older workers, parents, pregnant employees and employees while breastfeeding a child, disabled persons, workers absent from work due to illness or disease, worker's representatives).

Ordinary termination

The ERA determines the following reasons for ordinary termination of employment contract by an employer:

(a) Business reason: cessation of the needs to carry out certain work under conditions pursuant to the employment contract, due to economic, organisational, technological, structural or similar reasons on the employer's side;
(b) Incapacity reason: an employee does not meet the anticipated working results, i.e. does not perform work in due time and/or his work lacks quality and/or is performed unprofessionally or the employee fails to fulfil the statutory requirements (determined in laws and other regulations issued on the basis of a law) for performance of work, and therefore fails to or is unable to perform his contractual and other obligations arising from his employment relationship;
(c) Fault reason: violation of the contractual obligation or any other obligation arising from the employment relationship;
(d) Disability reason: disability for work performance under the conditions set out in the employment contract due to occurrence of disability.

Collective dismissals

The special procedure for termination of employment contracts shall be applied in cases of collective dismissal, i.e. when the employer establishes that due to business reasons within the period of 30 days, the work of a number of employees exceeding a certain number (please see below) as stipulated by the ERA shall be made redundant. The number varies depending on the size of the employer's enterprise:

Number of Employees	Size of Employer's Enterprise
10 or more employees	20 – 100 employees
10% of employees or more	100 – 299 employees
30 or more employees	300 or more employees

The threshold shall also apply to the employer (irrespective of its size) who establishes that due to business reasons, within a period of three months, the work of 20 or more employees shall become redundant.

The valid legal ground for collective redundancies is also the initiation of the procedure for the termination of the employer (bankruptcy, judicial liquidation). The administrator in bankruptcy or in liquidation must, prior to terminating the employment contracts of a larger number of employees, fulfil certain obligations as in the case in an ordinary dismissal proceedings (inform Employment Service Office, consult with trade unions). The ERA contains also special rules regarding the collective dismissals applying in case of compulsory settlement.

Extraordinary termination

The extraordinary termination of the employment contract is only possible in cases when the reasons for termination are substantially serious and, therefore, the employment relationship cannot be continued until the expiry of the notice period or until the expiration of time for which an employment contract is entered into. The ERA determines the following reasons for the extraordinary termination of the employment contract by an employer:

(a) violation of contractual or any other obligations arising from the employment relationship, which has all characteristics of a criminal offence;
(b) violation of the contractual or any other obligations arising from the employment relationship performed intentionally or by gross negligence;
(c) an employee does not come to work for at least 5 continuous days and does not inform the employer of reasons for his absence, although he should have done so and is able to do that;
(d) an employee is prohibited by an official decision to carry out certain tasks in the employment relationship or if he is the subject of an educational, safety or protection measure on the basis of which he cannot carry out work for longer than six months, or if due to serving a prison sentence he must be absent from work for longer than six months;
(e) an employee refuses the transfer to a new employer (a transferee) in accordance with the ERA or if an employee refuses to carry out his working tasks for the transferee;
(f) an employee fails to pass the probation period successfully;
(g) an employee unjustifiably fails to return to work within five working days after the cessation of reasons for the suspension of the employment contract;
(h) during the period of absence from work due to illness or injury, an employee fails to respect the instructions of the competent doctor and/or of the competent medical commission, or if he in this period carries out gainful work or leaves his residence without the approval of the competent doctor and/or by the competent medical commission.

11.4 Procedure for termination by employer

Business reason

A written letter of notification of intended termination of employment contract must be delivered personally to the employee. The employee has the right to request that the employer informs a Trade Union, a member of which an employee is at the respective time, about initiation of the procedure of termination of his employment contract. In the event that the Trade Union has been informed, it has the right to provide its opinion within 8 days. The employer is obliged to check whether it is possible to employ the employee under changed conditions or on another employment position, and/or whether it is possible to train the employee for the work the employee carries out, or retrain the employee for another work, or offer the employee a new employment contract under the changed conditions. Furthermore, a written termination letter, containing well-grounded reasons for the termination of the employment contract has to be delivered personally to the employee. Such a written termination letter has to be issued within 6 months after the occurrence of the business reason at the latest. The employee has the right to a notice period and to the severance payment determined in the ERA, the applicable collective agreements and in the employment contract.

Incapacity reason

A written invitation to a defence hearing, including well-grounded reasons for the intended termination of the employment contract, must be delivered personally to the employee at least 3 working days prior to the hearing. An employee has the right to be informed of all the facts and allegations against him/her. At the hearing an employee has the right to present his arguments about all the facts and proof against him and to defend himself/herself. The employee has the right to request that the employer informs a Trade Union, a member of which an employee is at the respective time, about the initiation of the procedure of termination of his employment contract. In the event that the Trade Union is informed, it has the right to provide its opinion within 8 days. The employer is obliged to check whether it is possible to employ the employee under changed conditions or on another employment position, and/or whether it is possible to train the employee for the work the employee carries out, or retrain the employee for another work, or offer the employee a new employment contract under the changed conditions. Furthermore, a written termination letter, containing well-grounded reasons for the termination of the employment contract has to be delivered personally to the employee. Such a written termination letter has to be issued within 6 months after the occurrence of the incapacity reason at the latest. The employee has the right to a notice period and to the severance payment determined in the ERA, the applicable collective agreements and in the employment contract.

Fault reason

The employer must deliver a written warning letter to an employee, in which the employee has to be instructed to cease the violations of his contractual and other obligations arising from employment relationship, otherwise his employment contract shall be terminated. A written warning letter must be issued within 60 days following the disclosure of the violation and within 6 months following the violation at the latest. The employer may only terminate the employment contract due to reason of fault if an employee violates his obligations again within 1 year period following the delivery

of abovementioned written warning letter. In the event of a new violation within the abovementioned period, a written invitation to a defence hearing, including well-grounded reasons for the intended termination of employment contract, must be delivered personally to the employee at least 3 working days prior to the hearing. An employee has the right to be informed about all the facts and allegations against him/her. At the hearing the employee has the right to present his arguments about all the facts and proofs against him and to defend him/herself. The employee has the right to request that the employer informs a Trade Union, a member of which an employee is at the respective time, about initiation of the procedure of termination of his employment contract. In the event that the Trade Union is informed, it has the right to provide its opinion within 8 days. Furthermore, a written termination letter, containing well-grounded reasons for termination of employment contract has to be delivered personally to the employee. Such a written termination letter has to be issued within 60 days following the disclosure of the violation and within 6 months following the violation at the latest. The employee has the right to a notice period determined in the ERA, the applicable collective agreements and in the employment contract. The employee is not entitled to the severance payment.

Disability reason

In the event that an employee becomes disabled, the employer is obliged to check whether it is possible to employ the employee under changed conditions or in another employment position, and/or whether it is possible to train the employee for the work the employee carries out, or retrain the employee for another work, or offer the employee a new employment contract under the changed conditions. The employer has to take into account employees health restrictions and offer an employee a new employment contract for an appropriate working position. If there is no such appropriate working position, the employer has to check if other employers in its vicinity could offer an employment contract for an appropriate working position to the disabled employee. If an employer is unable to offer an employee a new employment contract, it has to deliver a written letter of notification regarding the intended termination of employment contract personally to the employee. The employee has the right to request that the employer informs a Trade Union, a member of which the employee is at the respective time, about initiation of the procedure of termination of his employment contract. In the event that the Trade Union is informed, it has the right to provide its opinion within 8 days. An employer is also obliged to submit an application to the Commission authorised to establish a basis for termination of employment contract (hereinafter the "Commission"), which issues an opinion on whether the employer is justifiably unable to offer a new employment contract to the disabled employee or not. After the Commission's opinion is issued, a written termination letter, containing well-grounded reasons for the termination of the employment contract has to be delivered personally to the employee. Such a written termination letter has to be issued within 6 months after the issuance of the Commission's opinion at the latest. The employee has the right to a notice period and to the severance payment determined in the ERA, the applicable collective agreements and in the employment contract.

Extraordinary termination of the employment contract

A written invitation to a defence hearing, including well-grounded reason for the intended termination of employment contract, has to be delivered personally to the employee at least 3 working days prior to the hearing. An employee has the right to be informed about all the facts and allegations against him/her. At the hearing an employee has the right to present his arguments about all the facts and proofs against him and to defend himself/herself. The employee has the right to request that the employer informs a Trade Union, a member of which an employee is at the respective time, about the initiation of the procedure of termination of his employment contract. In the event that the Trade Union is informed, it has the right to provide its opinion within 8 days. Furthermore, a written termination letter, containing well-grounded reasons for the termination of the employment contract has to be delivered personally to the employee. Such a written termination letter must be issued within 30 days following the disclosure of reason for termination and within 6 months following the occurrence of the reason at the latest. The employee is not entitled to a notice period or to the severance payment. The employment contract terminates on the day following the delivery of the written termination letter personally to the employee.

11.5 Remedies in the event of wrongful dismissal

The employee may initiate litigation due to illegal dismissal within 30 days following the day of delivery of written termination letter. The main remedy available to the employee is reinstatement. In the event that the court declares a dismissal illegal, the employee is also entitled to compensation of salary and other lost remuneration. It should be noted that the labour disputes in practice last for a long period of time (a few years on average). The courts often show benevolence towards dismissed employees. Bearing that in mind, each case of termination should be conducted very carefully, in order to minimise the risk of negative outcome and dispute.

12. Non-compete

According to the ERA, during the employment relationship, the employee may not at his own account or at the account of third persons carry out work or conclude business covered by the activity which is actually carried out by the employer and represents or might represent competition to the employer, without the employer's written consent. The employer may demand compensation for the damage caused as a result of the employee's actions within three months from the day of establishment of the carrying-out of such work or conclusion of such business, and/or within three years after the work was completed or the business was concluded.

If the employee acquires technical, production or business knowledge and business links while carrying out the work or in relation to the work, the employee and the employer may agree in the employment contract on the prohibition of competition after the termination of the employment relationship. The competition clause may be agreed for a period not longer than two years after the termination of the employment contract and only in cases where the employment contract is terminated:

(a) by agreement between the parties;
(b) by ordinary termination by the worker;
(c) ordinary termination due to reason of fault on the part of the employer;
(d) extraordinary termination by the employer, except in the case of extraordinary termination by the employer due to the fact that the employee refused the transfer to a new employer in the event of a change of the employers.

The competition clause must not exclude the possibility of appropriate employment for the worker. If a competition clause is not set out in writing, it shall be assumed not to be agreed.

If respecting the competition clause prevents the employee from gaining earnings comparable to his previous salary, the employer must pay him monthly compensation in money during the whole period of respecting the prohibition. The compensation in money for respecting the competition clause has to be agreed upon in the employment contract and shall on a monthly basis amount to at least a third of the average employee's wage during the past three months prior to the termination of the employment contract. If the compensation in money for respecting the competition clause is not set out in the employment contract, the competition clause shall be regarded as invalid.

13. Global policies and procedures of employer

The employer's policies and procedures developed on a global level could be applicable in Slovenia, provided that such policies and procedures are fully in compliance with the Slovenian legislation and are adopted by the employer in Slovenia in the appropriate form.

According to the ERA rights and obligations of employees may be regulated in collective agreements. Only if there is no organised trade union at the employer, the rights and obligations of employees may be regulated within the internal acts of the employer. In any case the internal acts of the employer and employment agreements may only regulate rights and obligations of the employer in such manner that they are more favorable for employees than the regulation in the ERA or in the collective agreements, which bind the employer.

According to Article 16 of the Public Use of the Slovene Language Act (the Official Gazette of the RS, No. 86/2004 as amended) all general acts of the employers, including those which regulate the employment policies, as well as employment contracts have to be in the Slovenian language. The provision on the basic salary of an employee has to be determined in the currency applicable in RS.

14. Employment and mergers and acquisitions

According to the ERA, in cases of a legal transfer from an employment law perspective (and irrespective of the way of the legal transfer from the corporate law perspective), the employees shall keep the same contractual and other rights and obligations arising from the employment relationship, which were valid on the day of the legal transfer from one employer (i.e. the transferor) to another employer (i.e. the transferee).

According to the ERA, the employees directly or the Trade Union, if organised at the transferor, should be informed about the intended legal transfer (about the date and the reasons of the legal transfer, the legal, economic and social consequences of the transfer and about the measures intended for employees), at least 30 days prior to the date of the legal transfer and an effort to achieve the consent on the legal transfer should be made.

In the event of a legal transfer of a company, the transferee shall not conclude new employment agreements with employees, who were employed with the transferor. The employment relationship with the transferee shall continue on the basis of the employment agreements, concluded between the employees and the transferor, valid on the day of the legal transfer. Moreover, according to the case law of the Slovenian Labour court, a new employment agreement, concluded between the new employer and the employee following the legal transfer, shall be deemed null.

Following the legal transfer, the transferee may not change the rights and obligations of an employee in a way, which would be less favourable for the employee. However, the transferee may offer to the employee more rights than determined in the employment agreement and in the collective agreements, which bound the transferor (such collective agreements bind the transferee for at least one year after the legal transfer). In such a case an appropriate annex or a new employment agreement which would in any case have to be more favourable for the employee, would have to be concluded.

15. Industrial relations

There are two different types of workers' representatives in Slovenia:

(a) Trade unions represent workers in concluding collective agreements, protection of rights arising from the employment relationship and other issues related to the employment relationship, typical of which is a conflict of interests of employers and employees. The trade unions represent interests of their members. Trade unions are organised in different levels (i.e. state level, regional, branch and company level);
(b) Work councils are authorised to represent workers in their participation in management of the company in order to achieve better results at all fields of common interest to employees and employers. Work councils represent the interests of all the employees in the company.

16. Employment and intellectual property

According to the Copyrights and Related Rights Act *("Zakon o avtorski in sorodnih pravicah"*, the Official Gazette of the RS, No. 21/1995 as

amended), the employer is the exclusive owner of the proprietary (economic) component of the copyright and related rights developed by the employee while performing regular work duties for a period of ten years following the creation of the copyright, unless otherwise provided for in the employment agreement. After the abovementioned ten-year period, the economic component of the copyright reverts to the employee. However, the employer may request that such rights are exclusively transferred back to it considering that the appropriate remuneration is paid to the employee. In both of abovementioned cases, the employee remains the owner of the moral component of the copyright.

17. Discrimination and mobbing

Discrimination on the basis of gender, age, health condition, nationality, religious view, social heritage and other personal characteristics is strictly forbidden by the ERA, as well as any ill-treatment and sexual harassment (i.e. mobbing).

According to the ERA, mobbing is defined as any active or passive continuing act against an employee with the purpose or effect of harming personal dignity, respectability, personal or professional integrity, health or status of the affected employee and which causes fear or creates unfriendly, humiliating or insulting environment, deteriorates work conditions for the employee or causes that the employee isolates himself or herself or terminates his or her employment. The indemnifying employee has the right to request compensation from the employer or manager engaged in mobbing.

The employer is obliged to provide such a working environment in which none of the workers is subject to employer's, superior's or co-worker's harassment of sexual or other nature, including undesired physical, verbal or nonverbal treatment or sexually based behaviour, which creates intimidating, hostile or humiliating relationships and environment at work and offends the dignity of men and women at work. According to the ERA, the employer is liable for failure to ensure such working environment as well as for its own acts of mobbing. If the employer violates such obligation, the labour inspector may impose a fine in the amount of EUR 3,000 – EUR 20,000 on the employer and a fine in the amount of EUR 450 – EUR 2,000 on a responsible person of the employer. The employer is also liable for damages incurred to an employee in accordance with general civil law regulation.

If the employer fails to assure equal treatment to the employee and/or the above-described working environment and protection against any ill-treatment and sexual harassment (i.e. mobbing), the employee may extraordinarily (i.e. without notice period) terminate the employment contract, within eight days after having previously reminded the employer to fulfil its obligations and informed the labour inspector about the violations in writing. In such a case the termination of employment shall be effective on the day following the delivery of the termination letter to the employer. The employee may use his right to extraordinary terminate the employment contract no later than within 30 days after he was acquainted with the reason for the extraordinary termination and in any case no later than within six months after the occurrence of the reason. The employee shall be entitled to the severance payment, determined by the ERA, and to the compensation equal to the employee's salary, to which he would be entitled to within the notice period in case of regular termination of employment contract.

18. Employment and personal data protection

The area of personal data protection in the employment relationship is regulated within the ERA, in the Slovenian Personal Data Protection Act and in the Labour and Social Security Registers Act. The employer is obliged to process that personal data which is determined as such in the Labour and Social Security Registers Act or in any other law, irrespective of the employee's consent. The employer must not process any personal data of its employees, which is not connected to the employment relationship, even in the case of the employee's consent. For the purpose of processing sensitive personal data explicit prior written consent from an employee has to be acquired by the employer. The employer must never process personal data about pregnancy, family planning, marital status of an employee or any other personal data which is not connected to the employment relationship.

An employer who employs more than 50 employees must adopt a personal data catalogue determined in the Personal Data Protection Act and register it with the Information Commissionaire of the RS. Such an employer must adopt a special internal act regulating the safety measures for protection of personal data. All employers are obliged to protect the personal data of the employees in accordance with the Slovenian Data Protection Act. Employees whose data is processed have the right of access to the collected data and request information on a number of issues related to its processing, such as where the data is transferred, to whom it is transferred, the purpose of the transfer and the legal grounds for the transfer, etc.

19. Employment in practice

The Slovenian judicial authorities tend to be sympathetic to employees and reinstatement of employment relationship is a frequent outcome of labour disputes. Therefore, each termination of an employment contract by the employer has to be undertaken carefully and all procedural requirements have to be followed with due diligence. Labour inspectors mostly perform the supervision of the employment relationship on the basis of the proposal of the employees. However, they also perform periodical general ex-officio supervisions. The violations of employees' rights, determined in the applicable legislation, are in many cases determined as minor offences. The Labour inspectors may issue a mere admonition and order the employer to eliminate the violations within a certain period. However, if the violation is more serious and if the employer is not willing to cooperate, the Labour inspector would impose a fine on the employer in accordance with the applicable legislation.

1. General overview

In the Republic of Turkey ("Turkey"), employment relationships are regulated by the Turkish Labour Code *(Law No. 4857)* (the "Labour Code") and its relevant regulations.

2. Hiring

2.1 General

The Labour Code requires the Turkish Labour Organisation and authorised private recruitment agencies to mediate between employers and employees in order to avoid or reduce unemployment. However, employers are free to hire employees through advertisements in newspapers and internet sites, and by using other similar sources. Employers are free to choose whom they hire as employees.

The Labour Code does not draw any specific distinction between blue-collar employees and white-collar employees or between senior management employees or other employees.

2.2 Disabled persons

In workplaces where there are 50 or more employees the Labour Code requires private sector employers to ensure that 3% of the workforce is composed of disabled employees in full-time roles that are suitable in respect of their professional qualifications and physical and psychological status.

The number of disabled persons that must be employed by an employing entity, which has more than one establishment within a single province, is calculated on the basis of the aggregate number of employees employed in the various establishments. In addition, when assessing the number of disabled persons employed, no differentiation is made between those employees working under an open-ended employment contract and those working under a fixed-term contract.

With regard to an employer's statutory obligation to employ disabled persons, employees who become disabled during the term of their employment receive priority over other disabled persons.

Employers are provided with the disabled employees whom they are obliged to employ through the Turkish Labour Organisation. Private sector employers are obliged to employ disabled employees. Publicly-owned companies (governmental companies) are also obliged to employ former convicts and victims of terror.

2.3 Foreign employees

Law No. 4817 on Work Permits for Foreigners ("The Work Permit Law") requires foreigners to obtain a permit before they start work either independently or for an organisation in Turkey, unless otherwise provided for in any bilateral or multi-lateral agreements to which Turkey is a party. A work permit is valid only when the required work visa and residence permit are obtained.

Accordingly, a foreigner who wishes to work in Turkey must obtain the following:

(a) Work Permit (to be obtained from the Ministry of Labour and Social Security);
(b) Work Visa (to be obtained from the diplomatic representatives of Turkey);
(c) Residence Permit (to be obtained from the Foreign Affairs Department of the Police Headquarters in the city where the head office of the employer is located).

Foreigners issued with a work permit must request a visa to enter the country no later than 90 days after the date of receipt of the work permit. In addition they must apply to the Ministry of Internal Affairs for a residence permit no later than 30 days after the date they entered the country.

Foreign nationals residing outside Turkey may submit their work permit applications through Turkish consular representatives in their respective countries. For foreign nationals holding residence permits, their employers may file their applications directly with the Ministry of Labour and Social Security.

Work permits are granted by the Ministry of Labour and Social Security after consultation with the relevant bodies, such as trade associations or relevant governmental bodies and regulatory agencies, if necessary. The work permit does not give the right of employment to spouses.

The Work Permit Law specifies a number of work permit categories: (a) work permits for a fixed period of time, (b) work permits for an indefinite period of time and (c) independent work permits required by the self-employed.

Work permit for a fixed period of time

The Work Permit Law stipulates the conditions for the granting of work permits for a fixed period of time. Accordingly, unless otherwise provided for in any bilateral or multi-lateral agreements to which Turkey is a party, a work permit for a fixed period of time will not exceed one year in duration. Relevant factors that will be taken into consideration are: the state of the economy, developments in the labour market and rates of employment, the duration of the foreigner's residence permit, the duration of the service contract or the project, the identity and location of the enterprise and the type of job.

Upon the expiry of the initial work permit, the duration of the work permit may be extended by up to three years, conditional upon the foreigner working in the same workplace or enterprise and in the same job.

Upon the expiry of an extended work permit after three years, the work permit may be extended by up to six years, conditional upon the foreigner working in the same profession.

Work permit for an indefinite period of time

Unless otherwise provided for in any bilateral or multilateral agreements to which Turkey is a contracting party, a work permit for an indefinite period of time may be granted to foreigners who have legally resided continuously in Turkey for at least eight years or who have legally worked for six years without regard to the state of the economy, etc.

Independent work permit

An independent work permit may be granted by the Ministry of Labour and Social Security to foreigners who will work independently, on the condition that they have legally resided continuously in Turkey for at least five years.

2.4 Secondments

Some atypical employment relationships, such as a sub-contracting relationship (*alt işverenlik*), temporary employment relationship *(gecici is iliskisi),* definite term of employment *(belirli sureli istihdam),* part-time employment *(kismi sureli istihdam) and on-call work (cagri uzerine calisma),* are regulated under the Labour Code. However, there is no specific regulation regarding a "secondment of an employee".

Please be informed that principal and secondary employer (sub-contracting party) relationship *(sub-contracting relationship)* is defined and regulated under Article 2 of the Labour Code. According to the definition a secondary employer is a person/entity (i) who assumes a contractual obligation (ii) for work that requires specialisation for technological reasons and according to the nature of business and the conditions of the enterprise:

(a) for associated work relating to the production of goods and services in a workplace by the employer or
(b) for a certain part of the work in the workplace,

and (iii) who employs certain designated employees only and solely for the work assumed at that workplace. Moreover, a secondary employer is liable to its employees for its obligations relating to that workplace and arising out of the Labour Code, the employment contract or the collective bargaining agreement to which the secondary employer is a party, jointly with the principal employer.

Apart from the foregoing, Article 7 of the Labour Code defines and regulates temporary employment relationships. According to the said article, a temporary employment relationship is established when the employer temporarily transfers and assigns its employees to another employer for the performance of certain work, providing that:

(a) the prior written consent of the employee for such transfer is obtained;
(b) the employee is employed in the holding; or
(c) the employee is employed in another workplace of the same group of companies; or
(d) the employee is employed in work similar to his existing work.

In this case, the employee's employment contract with the principal employer remains in force and the employee is only liable to perform the work assigned in his temporary workplace. Moreover, the employee shall perform the work for and on behalf of the temporary employer and the employee is further held liable for any losses or damages that may be caused to the temporary employer.

In order to establish a temporary employment relationship, in the case that the temporary employer is not an affiliated company of the principal employer, in other words if the temporary employer is a separate company and workplace, the employee shall be assigned to the temporary employer to do similar work to his existing work. Moreover, since the temporary employer's right to give instructions to the employee shall be limited, the scope of the work to be performed by the employee for the temporary employer shall be determined in the temporary employment agreement in detail.

As stated in the said article, the temporary relationship cannot be established without the prior written consent of the employee. Therefore, such consent of the employee shall constitute a pre-condition to establish a temporary relationship. Moreover, a temporary employment agreement shall be executed between the principal and temporary employer with regards to the assignment of the employee. The temporary employment agreement shall be executed for a term up to a maximum of six months and may be renewed no more than twice. This means that the maximum term is one and a half years (18 months) according to the Labour Code.

With regards to the renewal of the temporary employment agreement, there is no regulation stating that the prior consent of the employee is to be obtained for each renewal or that each renewal shall be made in writing. However, we are of the opinion that a written addendum to the temporary employment agreement and written consent of the employee on the addendum should be obtained for each renewal.

The liability of the principal employer to pay the salary and social security premiums of the employee shall continue; however, the principal employer and the employer with whom the temporary employment relationship has been established shall be jointly liable for the social security premiums of the employee, the unpaid salary of the employee for the term of the temporary employment and the obligation to surveillance of the employees.

3. Types of engagement

3.1 Employment

An employment contract is formed when one party (the employee) undertakes to perform a job for another party (the employer) who undertakes to pay him a wage. The employment contract is not subject to a specific format, unless otherwise specified in the Labour Code (see further below).

Provided that the rights and obligations imposed by the Labour Code are adhered to, the parties may tailor the employment contract to meet their needs.

An employment contract may be for a fixed or indefinite term, may be full-time or part-time and may include a trial period.

Fixed-Term and Open-Ended Employment Contracts

A fixed-term employment contract covers a specified period or concludes upon the completion of a specific task or project.

Fixed-term employment contracts may not be concluded consecutively in the absence of justification; for example, if a specific task or project cannot be completed within the term of the employment contract, then a consecutive fixed-term contract can be concluded until completion of the task or project. If fixed-term contracts are concluded consecutively without justification, the initial fixed-term contract is deemed to be a contract of indefinite duration.

Employees engaged under contracts of indefinite duration may not be treated differently from comparable employees engaged under fixed-term contracts in the absence of justifiable grounds.

Severable benefits, such as bonuses or similar monetary benefits must be paid pro-rata to employees working under fixed-term contracts in proportion to the time period they work. Where a qualifying period of service is required in order to benefit from a particular work condition, employees engaged under a fixed-term contract must be treated no less favourably than a comparable employee engaged under an open-ended contract unless the application of a different length of service requirement can be justified.

Open-ended employment contracts with duration of one year or more should be executed in writing.

Employment contracts should be executed in Turkish where such contracts are concluded between employees who are Turkish citizens and legal entities incorporated under the laws of Turkey; failing to do so will render the contract invalid.

If there is no written contract, within two months of commencement of employment the employer must give the employee a document outlining the general and specific working conditions, daily or weekly work periods, the term of the employment contract, if specified; the amount of salary and any additional payments such as allowances, bonuses, premiums, etc., the intervals at which the salary is paid and the conditions of termination.

The Labour Code imposes strict obligations on employers seeking to materially change employees' working conditions. Material amendments may only be made to employment contracts or the personnel regulation (such as internal policies and procedures) by informing the employees in writing. The employee must then accept the amendment in writing within six business days.

Any amendments not made in accordance with these requirements are not binding upon the employees.

If the employee does not accept the proposed amendment within this six-day period, the employer may terminate the employment contract, provided that it complies with the notice period and explains in writing that the amendment is based on justifiable grounds or that there are other justifiable grounds for termination. In the event of such termination, the employee in question is entitled to file a lawsuit in accordance with the relevant provisions of the Labour Code.

However, the parties may at any time amend the working conditions by mutual agreement. Any amendment to the working conditions may not be enforced retrospectively.

In the event that the employment contract includes a trial period, this may only be for a period of up to two months. The trial period may be extended to four months in collective bargaining agreements. Within the trial period, parties may terminate the agreement without notice or compensation for termination.

Part-time employees cannot be treated in a less favourable manner than comparable full-time employees and enjoy the same rights and obligations arising from the employment relationship as full-time employees. Similarly, employees engaged under a fixed-term contract may not be treated less favourably than a comparable employee engaged under a contract of indefinite duration.

3.2 Engagement outside employment

It is possible to engage service providers under a service contract signed with independent service contractors. This does not create an employment relationship.

3.3 Engagement of managing directors

When a general manager or other managers of a company are employed and registered with the social security authority and added to the Company's payroll, they also become employees regulated by the Labour Code. However, a member of the board of directors (a board member/director) is not an employee for the purposes of the Labour Code.

A member of the board of directors/a director is subject to the Turkish Commercial Code. In the event that a board member is also appointed as the general manager of a company, then he will also be subject to the Labour Code by virtue of his general manager role.

4. Salary and other payments and benefits

4.1 Salary

The Labour Code requires a salary to be paid at intervals of no longer than once a month; however, employment contracts or collective bargaining agreements can provide for weekly payments.

The Ministry of Labour and Social Security establishes the monthly national minimum wage twice a year. The statutory minimum wage for employees older than 18 years old is TRY 760 (approximately 349 EUR) for 1 July 2010 to 31 December 2010.

4.2 Other mandatory payments not considered as salary

Incentive schemes, such as bonuses and share option plans, are normally regulated under individual employment contracts and provided to the employees.

4.3 Other benefits

Fringe Benefits, such as company cars and cell phones, are normally regulated under individual employment contracts and provided to the employees.

Private pensions are not mandatory; they are normally regulated by the individual employment contracts and provided to the employees. Some international and multinational companies provide their employees, or at least their directors and managers, with private pensions and establish private pension plans in this respect as an additional benefit for employees on top of the statutory pension from the applicable social security regime.

5. Salary tax and mandatory social contributions

All employees subject to the Labour Code are required to be registered with the Turkish Social Security Administration. The mandatory social security system provides, amongst other benefits, unemployment pay, work accident pay, maternity pay, death pay, pension pay, sick pay and disability pay. Employers are required to deduct the mandatory social security premiums from their employees' gross salaries on their behalf. Income tax and stamp tax are also deducted from the gross salary.

6. Working hours

The average working week is 45 hours.

Towards the middle of the working day and in accordance with local custom and working requirements, employees must be given a break as follows:

Total Working Hours Hours a Day	Duration of Break (minutes)
4 or less	15
4-7.5 (inclusive)	30
7.5 +	60

Employees may be required to work in excess of the weekly forty-five hour limit (overtime) on the grounds of national benefit, characteristics of employment or increasing productivity. Employees are paid at a rate of 150% of the normal hourly rate of pay for any overtime worked.

Where an agreement has been reached that the duration of the average working week should be less than 45 hours, if the employee's weekly working week exceeds the agreed average, the additional hours are classified as overtime even though the hours worked by the employee do not exceed 45. Employees are paid at a rate of 125% of the normal hourly pay for such overtime.

An employee may opt to take time-off in lieu of receiving overtime pay by taking one and a half or one and a quarter hours off for each hour of overtime worked depending on the nature of the overtime worked (see above).

The employee must take such time-off in lieu within six months of earning it and is entitled not to suffer any reduction in work hours or pay as a consequence.

Certain categories of employees are not allowed to work overtime for health reasons or because they are engaged in night work.

Employees must consent to working overtime and overtime work cannot exceed 270 hours in a year.

7. Annual vacation, paid leave, sick leave, unpaid leave and employment standstill

7.1 Annual vacation

The Labour Code provides that the duration of annual paid leave cannot be less than:

(a) 14 days for employees with between 1 year and 5 years' service;
(b) 20 days for employees who have between 5 and 15 years' service;
(c) 26 days for employees who have 15 years' or more service.

However, annual paid leave cannot be less than 20 days for employees who are 18 years old or younger and employees who are 50 years old or older.

The parties to an employment contract are free to agree longer periods of holiday entitlement. As a general rule, an employee takes his annual paid leave entitlement in one instalment. However, it is open to the parties to agree to annual paid leave being taken in a number of instalments (subject to a maximum of three) provided that one instalment is not less than ten days.

The employer is obliged to grant unpaid leave of up to four days when the employees wish to spend their paid leave in a location other than that in which the workplace is situated, in order to

compensate the employee for the time spent travelling to and from their chosen destination provided that the employees can produce documentary evidence of the proposed journey.

An employee must use paid leave during the course of the employment year following the employment year in relation to which the holiday accrues (e.g. an employee with 14 years' service will be entitled to 20 days' holiday - this holiday must be taken during the 15th year of service).

Any other paid or unpaid leave or sick leave granted to the employee cannot be deducted from the annual paid leave. Any national holiday, weekly rest breaks and general holiday cannot be included in the annual paid leave entitlement. In addition, an employer cannot oblige an employee to take holiday during the notice period or to take holiday instead of granting the employee leave to look for new employment to which he is entitled as a matter of law.

Where employees are granted holiday rights in excess of the statutory minimum in the employment contract or by custom and practice, then such holiday entitlement is considered an acquired right and must be adhered to by the employer.

Employees are entitled to receive their normal rate of pay on any day recognised by law as a national or a general holiday. If an employee works on such holidays, they are entitled to be paid at a rate of 200% of the daily rate of pay.

7.2 Sick leave

Employees are entitled to take paid sick leave of up to one week upon the production of a medical report. Following such a period, if the absence of the employee due to illness is extended, the leave is on an unpaid basis. In the event of such absence, the employee must provide the employer with a medical report setting out the duration of the ill-health absence.

7.3 Maternity leave

Maternity leave is 16 weeks in total, eight of which must be taken before and eight of which must be taken after giving birth. When the mother is pregnant with more than one child, a further two weeks is added to the eight-week antenatal maternity leave period. However, if the employee so wishes and her health allows her to carry on working, an employee may, with the approval of her doctor, continue to work until three weeks before giving birth. In such cases, the unused portion of the eight week antenatal maternity leave is added to the eight week post-natal maternity leave period.

The period of maternity leave specified above may be increased before and after the birth in accordance with the employee's state of health and the characteristics of the employment. Any extension to the period of ante- and post-natal maternity leave must be determined in light of a doctor's report.

Pregnant employees are entitled to take paid leave for the purpose of periodical medical examinations.

If a medical report deems it necessary, a pregnant employee must be given lighter duties suitable to the employee's medical condition. The employee's pay may not be reduced in these circumstances.

If the employee so wishes, she may take unpaid maternity leave of up to six months after the completion of the 16 weeks (or 18 weeks as the case may be) of paid maternity leave. Any period of unpaid maternity leave is not taken into consideration when calculating the annual paid leave entitlement.

Employees are entitled to one and a half hours' paid time-off to breastfeed their babies who are less than one year old. The employee herself determines when to take such time-off. Such time-off is considered to be part of the daily work hours.

7.4 Unpaid leave

With the exception of such leave regulated under the Labour Code, an employee can take unpaid leave upon the sole discretion of the employer.

7.5 Employment standstill

In addition to annual paid leave, the Labour Code entitles employees to take up to three days leave for their own marriage. Employees are further entitled to take up to three days leave in the event of the death of a parent, spouse, sibling or child.

Any employee who is called for military service or for manoeuvres or who leaves his job for any other form of compulsory service is considered as having been dismissed with effect from the date falling two months after the date on which he actually left his job (extended dismissal date).

In order for an employee to benefit from the right to an extended dismissal date, he must have been employed in the job in question for at least one year. For employment exceeding a period of one year, the extended dismissal date is extended by an additional two days for each additional year of service up to a maximum of 90 days.

Although the salaries of the employee are not paid during the period between departure and the extended dismissal date, the provisions of special laws (such as military regulations) are, however, preserved during this period. Even if notice of termination is given by the employer or by the employee for other legal reasons, the period provided for by law for the extended dismissal date starts to run after the expiry of the notice. However, this extended dismissal date protection does not apply to a fixed-term employment contract that expires automatically in the period between departure and the extended dismissal date.

When an employee who has left employment due to military or legal service wishes to be reemployed within two months after the termination of the said service, the employer is obliged to employ them immediately in their former job or in a similar job if there is a vacancy, or otherwise employ them in preference to

other applicants as soon as there is a vacancy, under the terms and conditions prevailing at the time. If the employer fails to comply with its obligation to conclude an employment contract with a suitably qualified ex-employee who has requested re-employment, it is obliged to pay the employee compensation equal to three months' wages.

8. E.S.O.P.

Please be informed that there is no specific regulation under the Turkish Labour Law in relation to Employee Stock Ownership Plans and implementation of the same. However, it is very common practice to have an ESOP in multinational companies established in Turkey and accordingly very high level employees are entitled to participate in such plans.

9. Health and Safety at work

The employer is obliged to "implement" the decisions taken by the workers' health and safety representatives at work committees in accordance with the laws and regulations relating to workers' health and safety at work.

An employer that permanently employs at least 50 employees is required to employ one or more in-house physicians depending on the number of employees in the work place and the degree of risk that the work carries. Such employers must also form an occupational health unit in order to look after the health of those employees who require healthcare services while performing their duties, and offer first aid and urgent treatment and preventive medicine services.

The Ministry of Labour and Social Security regulates qualifications, numbers, recruitment, duties and working conditions of in-house physicians and occupational health units.

10. Amendment of the employment agreement

The provisions of the Labour Code should be strictly observed, if any material changes to the working conditions of the employees shall be made. Pursuant to the provisions of Article 22 of the Labour Code, material amendments can be made to the working conditions constituted by the employment contracts or the personnel regulations, such as internal policies and procedures in the nature of its attachment and similar sources or practices of working place, only by informing the employees in writing of the situation. Any amendments, which are not made in compliance with such form and which are not accepted in writing by the employees within six business days, shall not be binding upon such employees.

If the employee does not accept the proposed amendment within this six business day period, the employer may terminate the employment contract, provided that it complies with the notice period and explains in writing that the amendment is based on justifiable grounds or that there are other justifiable grounds for termination. In the event of such termination, the employee in question shall be entitled to file a lawsuit in accordance with the relevant provisions of the Labour Code. However, the parties may at any time amend the working conditions by mutual agreement. Amendments to the working conditions cannot be enforced retrospectively.

11. Termination of employment

11.1 Termination by operation of law

Article 18 of the Labour Code titled "basing termination on valid grounds" also determines the scope of the provisions of "job security" set forth in the subsequent Articles (19-21).

According to Article 18 of the Labour Code, in workplaces where 30 or more employees are employed, an employer who terminates the open-ended employment contract of an employee with at least six months of experience is required to have valid grounds to do so, such as incapacity or attitude of the employee or the requirements of the enterprise, workplace or the business. Accordingly, in order for an employee to benefit from job security, the following conditions must be met:

(a) the employee must be working at a workplace employing 30 or more employees;
(b) the employee must have at least six months of seniority at the workplace;
(c) the employee must not hold the status of employer representative or employer assistant managing the entire enterprise;
(d) the employee must not hold the status of employer representative managing the entire workplace with the authority to recruit and dismiss employees.

The abovementioned six months of seniority of the employee is calculated by way of addition of the periods in which the employee has worked in one or more workplaces of the same employer.

It must be added that in order for an employee to benefit from the abovementioned security, he must be working under an open-ended employment contract and such contract must be terminated by the employer. Employees working under an employment contract with fixed-term or employees who quit their jobs voluntarily are outside the scope of the abovementioned provision.

In determining the number of employees, the number of employees employed at the workplaces of the same employer in the same field of business as at the date of the termination shall be taken into consideration.

Termination on Valid Grounds

The Labour Code states the cases which shall not be considered as a valid grounds rather than specifying the definition of valid grounds.

The following cases shall not be considered as valid grounds for termination by the employer and the employer shall not rely upon these grounds for termination:

(a) Trade Union Membership:
- Joining in trade union activities out of work hours;
- Joining in trade union activities during work hours with the prior consent of the employer;

(b) Being a workplace trade union representative;
(c) Applications to administrative or legal authorities or participation in a pending legal proceeding against the employer in order to defend or protect his contractual or legal rights;
(d) Race, creed, gender, marital status, familial obligations, pregnancy, birth, religion, political view and similar reasons;
(e) Absence from work during the period in which women employees are legally allowed not to attend work;
(f) Temporary absence of an employee from work due to illness or an accident within the waiting period of six weeks following the notice periods.

Notice Periods

A termination notice may terminate an employment contract upon the expiry of a stipulated notice period or with immediate effect for just cause.

The minimum notice periods (from employee and employer) stipulated by the Labour Code are as follows:

Length of Employment	Notice Period
less than 6 months	2 weeks
6-18 months	4 weeks
18-36 months	6 weeks
more than 3 years	8 weeks

The minimum notice periods stipulated by the Labour Code may be increased by collective agreement or by the employment contract. When increased notice obligations are agreed, the employer may terminate the employment contract only by complying with the increased notice obligation; however, even if the employee contractually accepts an increased notice obligation, such a provision is not legally binding on the employee and, accordingly, the employee can terminate the employment agreement by giving the shorter notice prescribed by the Labour Code.

The rights and liabilities of the parties continue during the notice period. If during the notice period circumstances arise that allow one of the parties to terminate summarily for good cause, the contract may be terminated summarily and the consequences of immediate termination will apply.

The Labour Code allows an employer to terminate the employment contract immediately upon payment to the employee of a sum equal to the net salary and other benefits that the employee would have received during the notice period.

11.2 Termination by employee

In the event that certain material reasons exist making the continuation of the employment relationship difficult, as explicitly set out in the Labour Code, the parties may terminate the contract without adhering to the notice periods or before the expiration thereof, irrespective of whether the contract is open-ended or entered into for a certain period. The Labour Code refers to such right as "immediate termination for just cause".

Employee's Right of Immediate Termination

(a) Reasons of health:
- If the performance of the work covered by the employment contract threatens the health or life of the employee due to its very nature;
- If the employer or another employee with whom the employee is regularly, closely and directly in contact is suffering from an illness which is contagious or does not relate to his work;

(b) Events contrary to ethical rules and to goodwill and others:
- If the employer has deceived the employee when executing the employment contract by misrepresentation on the essential issues of the employment contract, or by giving information or making statements which do not represent the truth;
- If the employer makes statements or acts in any way which is damaging to the honour and integrity of the employee or of any member of the family thereof; or sexually harasses the employee;
- If the employer molests or threatens the employee or a member of his family or encourages, incites or induces the employee or a member of his family to commit an illegal action or if he commits towards the employee or a member of his family an offence liable to prison, or if he indulges against the employee in serious accusation which are dishonouring and groundless;
- If the employee is sexually harassed by another employee or a third party at the working place and no precautions are taken although the employee has informed the employer;
- If the employer does not calculate or pay the salary of the employee in accordance with the law or the terms of the employment contract;
- If it has been decided that the salary would be paid on a piece-work or job-work basis and the employer gives to the employee less work than he can do and the difference in pay is paid on a time-basis and does not compensate the difference in pay which the employee is short or if the conditions of the work are not adapted to.

(c) Force majeure:
- In the case of force majeure in the working place where the employee is employed, involving the stoppage of work for over a week;

- Due to a male employee's compulsory military service;
- In order to draw monthly or lump sum old age, retirement pension or disability allowance from institutions or special annuity funds to which they are attached; or
- By the female employee of her own will within one year of her marriage; or
- Due to the death of the employee (severance pay is disbursable to the legal successors of the employee).

11.3 Termination by employer

Employer's Right of Immediate Termination

The following reasons stated under Article 25 of the Labour Code are exhaustive and in the event of occurrence of such reasons, the Employer may terminate the employment contract without waiting for the notification period or paying any notice pay.

Additionally, for the reasons listed in subparagraph (II) of Article 25 of the Labour Code, the employer has the right to terminate the employment contract without paying any severance pay.

(a) Reasons of health:
- If the absence exceeds 3 (three) consecutive days or 5 (five) days in a month, in cases of sickness or disability, resulting from the employee's own intent or his disordered life or his addiction to alcohol;
- If it is determined by the Medical Board that the employee had a health condition which is incurable and creates an unhealthy work environment;

The employer's right of termination of the employment contract without notification for reasons other than those set forth in paragraph (a), such as sickness, accident, birth and pregnancy, shall commence six weeks after expiration of the applicable notification period provided as per the employee's severance according to Article 17. In cases of birth and pregnancy such period starts with the expiration of the period provided according to Article 74. However, salary is not paid for the period that the employee does not go to work, as the employment contract is suspended for that time period.

(b) Events contrary to ethical rules and to goodwill and others:
- Employee misleading the employer by telling words or giving false information or contending that he possesses certain qualifications or conditions on the date of execution of the employment contract that are required in such contract, even though he does not possess them;
- Employee insulting or acting in a way that is harmful for the employer's or one of his family members' honour or integrity, or providing incorrect information or allegations about the employer that are degrading and offensive;
- Employee committing sexual assault on another employee of the employer;
- Employee harassing the employer or one of his family members or any other employee of the employer, or acting contrary to Article 84 ("Ban on the use of alcoholic drinks and drugs");
- Employee not acting in good faith and honesty such as breaching the employer's faith, committing theft, disclosing the professional secrets of the employer;
- Employee committing a criminal offence in the work place which is punished with a minimum of seven days of custody and the punishment of which cannot be postponed;
- Employee's absence without having obtained the permission of the employer or without a peremptory reason for two consecutive days, or twice within a month, on the first office day following a holiday, or three office days in the course of one month;
- Employee not performing the duties, which he is under an obligation to and is, reminded to perform;
- Employee jeopardizing the job security voluntarily or by negligence, damaging or creating a loss from the machines, installations or other goods or products that belong to the employer or that the Employer holds for an amount that cannot be recovered with his 10-day payment.

(c) Occurrence of a compelling event preventing the employee from working in the workplace for more than one week;

(d) In the event that the absence of the employee exceeds the applicable notice period as a result of his detention and arrest .

Period for Exercising the Right of Immediate Termination

According to Article 26, the authority of termination of the employment contract relying on immoral behaviour and goodwill, may not be used after 6 (six) days from the day on which the employer learns such behaviour of the employee, and in any case after 1 (one) year as of the occurrence of the conduct. However, the 1 (one) year period shall not apply in the event that the employee enjoys any material advantage.

Right of compensation to be obtained from the other party is reserved for the employer or the employee who has terminated the contract for the aforesaid reasons within the period mentioned above.

Procedure for termination by employer

The employee or the employer is obliged to send notice to the other party before the termination of an open-ended employment contract. The Labour Code requires a written termination notice to be served on the employee and that it is signed for by the employee. In this regard, the notice must be served through a notary public or by hand-delivery or registered postage-paid mail. In the event that the employee refuses to accept delivery of a notice served by hand-delivery, an attendance record of the refusal to accept delivery must be drawn up in the place of delivery. In the event that the notifications served through a notary public or the Post Office (via registered postage-paid mail) are not accepted

by the employee, the reason for such notification failure must be set out on the notification envelope by the notifying party, the employer. The employer is obliged to draw up a record of a returned notification.

In the event of termination of employment by the employer, the employer shall pay to the employee (i) notice pay (in lieu of notice), (ii) severance pay, (iii) an amount equivalent to the accrued but unused annual paid leave days, (iv) contractual compensation (if any) and (v) any payment arising from work place practice.

(a) Notice pay:

Calculation of the notice pay is based on salary along with the value of other benefits (such as car allowance, cell phone, bonuses, premiums, etc.) provided under the contract or laws and which have a monetary value.

(b) Severance pay:

The employer shall pay the employee severance pay at the rate of 30 days' salary for each full year worked since the date of employment. Payments shall be made pro rata for any incomplete years. Calculation of severance pay shall be made based on the most recent gross wage payment prior to dismissal together with the contractual or legal monetary benefits provided by the employer to such employee, including but not limited to the following, if regularly provided:

(i) Fringe benefits;
(ii) Premiums and bonuses;
(iii) Children and family payments; and
(iv) Occupation, health, food, clothing and residence assistance and any other such assistance with a monetary value and provided at regular intervals (monthly, annually, etc.).

An employee's gross salary may also include certain other payments in addition to those mentioned above. However, any irregular payments such as overtime payments, maternity leave payments, extraordinary assistance, bonuses, and travel expenses are excluded from the gross salary base in the calculation of the severance pay.

A maximum threshold has been fixed for the severance payment, which is TRY2,517.01 between 1 July 2010 and 31 December 2010.

(c) The amount equivalent to the annual vacation days entitled but unused:

In accordance with Article 59 of the Code; where the employment contract has been terminated for any reason, any fee relating to the annual paid leave that the employee is entitled to but has not used, shall be paid to the employee or beneficiaries in accordance with his salary/wages at the time the employment was terminated.

(d) Contractual compensation:

Above all, should compensation be foreseen under the employment contract of the employee in the event of dismissal, such contractual compensation should also be paid.

(e) Workplace practice:

If the employer has expressly promised the employees that in the event of the termination of their employment contracts certain benefits shall be provided to them upon fulfilment of certain conditions, or if the provision of such benefits has become customary through permanent practice although an express promise was not made, the employees also have to be provided with the concerned benefits.

11.4 Mutual agreement on termination

Please be informed that mutual termination of employment is not defined or regulated under the Labour Code. However, in practice, mutual termination agreements are executed between the employer and the employee, in which the terms and conditions of the termination are determined. In such a case, neither the employer nor the employee is required to send a termination notice however; the employer does pay the statutory legal rights of the employee except the notice pay.

12. Non-compete

The Labour Code does not impose any non-compete obligations on employees. Nevertheless during the currency of the employment contract, an obligation of fidelity *(obligation de fidelite-Treuepflicht)* can be contractually imposed on the employee requiring him to act in good faith and in the legal interests of the employer.

Any post-termination prevention of competition by the employee is regulated by the employment contract, through a non-competition clause or by executing a separate "non-competition agreement", having regard to the general provisions of the Code of Obligations and the established principles of the Turkish Competition Board, a governmental body to ensure the formation and development of markets for goods and services in a free and sound competitive environment.

The Code of Obligations imposes a number of conditions that must be satisfied for a non-competition clause to be valid. First there must be a common understanding between the parties that the employee knows the employer's customers and confidential information and that accordingly there is a risk that the employee may cause considerable loss to the employer by using such information.

In addition, non-competition clauses must be reasonable with respect to their term, geographical application and the nature of work to which the prohibition applies.

It should be noted that what is considered a reasonable duration for a non-compete provision will differ according to the practices

in the relevant market; however, the common practice of the Turkish Competition Board is to allow a non-compete provision to be inserted into the employment contracts for a maximum period of two years provided that the market conditions allow for such a period. It should be noted that in practice market conditions in certain sectors, such as banking and finance, can result in much shorter restriction periods of two to six months. The Code of Obligations also stipulates that in order to be valid a prohibition on competition must be in writing.

13. Global policies and procedures of employer

Please be informed that there is no special regulation with regard to the global policies and procedures of employers. However, under the Labour Code the provisions of such policies and procedures shall be deemed as internal regulations that determine the further terms and conditions of the employment and workplace practices in addition to the employment contract. Therefore, the employees are subject to such policies and procedures unless they are applicable and in accordance with the provisions of the Labour Code.

14. Employment and mergers and acquisitions

According to Article 6 of the Labour Code, when the working place or a department thereof is transferred to another legal body on the basis of a legal transaction within the scope of Article 179 of the Code of Obligations, the employment contracts that exist at the workplace or a part thereof at the date of transfer are transferred to the new employer along with all their rights and obligations. The new employer is obliged to implement all procedures according to the date on which the employee has commenced work with the former employer in respect of the rights for which the service term of the employee is taken into consideration. Furthermore, the transferor and the new employer shall be jointly responsible for the debts accrued before the transfer and that become due on the date of transfer. However, the liability of the transferor to fulfil such obligations is limited to two years as of the date of the transfer. Such a provision stipulating joint liability may not be applicable in the case of dissolution of the legal entity by merger, participation or change of status. Furthermore, neither the transferor nor the transferee may terminate the employment contract due to the transfer of working place or part of it. In order words, a transfer may not constitute justifiable grounds from the aspect of the employee.

15. Industrial relations

Trade unions are regulated by the Trade Unions Law *(Law No. 2821)* (the "Trade Unions Law"). Trade unions are organisations with legal entity status formed by either employees or employers to protect and improve the common economic and social rights and benefits in employment relations. Employee trade unions must be established in relation to a specific branch of business and are to be active throughout Turkey in respect of the employees working in that specific business branch. There can be more than one trade union operating in respect of a particular business branch. A trade union cannot engage in any activities other than its field of activity.

Collective bargaining agreements are regulated by the Collective Bargaining Agreement, Strike and Lockout Law *(Law No. 2822)* (the "Collective Agreement Law"). Collective bargaining agreements are agreements executed between employee trade unions and employer trade unions or employers that are not members of employer trade unions. There cannot be more than one collective bargaining agreement covering a workplace at any one time. Unless otherwise agreed in the collective bargaining agreement, the provisions of the individual employment agreements cannot contradict the provisions of the collective bargaining agreement.

16. Employment and intellectual property

In the case of an employment invention, the employee should give immediate written notice of the invention to his employer. The employer may assert partial or full rights over the invention. The employer should notify the employee in writing of his assertion of rights over the invention within four months of receipt of the employee's notice regarding the invention. All rights related to such invention are transferred to the employer automatically at the time the employee receives his employer's notification regarding the assertion of full rights over the invention. In the case of an assertion of partial rights over the invention, the employer may use the invention based on his partial rights. However, if such usage makes it difficult for the employee to assess his invention to a large extent, the employee may request that the employer either acquires full rights over the invention or that it abandons all rights. Any transfer of rights over the invention by the employee prior to the assertion of rights by the employer is invalid to the extent that such a transfer violates the employer's rights.

In the event that the employer asserts rights over the invention, the employee is entitled to a payment from the employer. In determining the amount of the payment, the exploitability of the invention, the duty and position of the employee within the enterprise and the contribution of the enterprise to the realisation of the invention are taken into consideration.

In the case of an invention developed outside the workplace but during the currency of employment, the employee must give his employer immediate notice of the invention. If the employer wishes to assert that such an invention is an employment invention, it must do so within three months of the employee's notice. The employee does not have to give notice to his employer if it is evident that the invention cannot be exploited within the employer's field of activity. If the invention is capable of use within the employer's field of activity, the employee should set out proposals for the use of the invention without granting full rights to the employer. If the employer does not respond within three months of receipt of such a proposal, he loses his right of first option over the invention.

17. Discrimination and mobbing

The Labour Code prohibits discrimination in employment relations on the grounds of language, race, gender, political opinion, religion and sect, or similar reasons, which may cause discrimination and which will be evaluated according to the facts of each specific case. Employees working in the same or equivalent jobs may not be discriminated against on the grounds of gender when being remunerated. In addition, employees working under fixed-term or part-time contracts may not be discriminated against. In the event of such discrimination the employee is entitled to claim compensation of up to four months' salary and the rights or interests she/he was deprived of.

18. Employment and personal data protection

There is no specific data protection law in Turkey forbidding the retention of employee data by the employer.

However, the Labour Code provides that "Employers may keep a personal file for each of their employees, in which they shall include, in addition to the identification details of the employee, all the documents and records that the employers are obliged to keep by law and present them to the authorised officials and offices as and when requested". It also provides that "Employers are obliged to use the information they gain access to regarding employees with integrity in line with the law and not to disclose any information, the confidentiality of which would be to the rightful benefit of the employee".

The Turkish Constitution also provides for the protection of privacy of persons.

In light of the above, although no specific prohibition has been imposed on the type of data/documents that employers may keep in respect of their employees, it is recommended that the prior written consent of the employee to the retention and use of the employee's data for employment purposes is obtained and that steps are taken to ensure that such data is not disclosed to third parties.

19. Employment in practice

If the employer has expressly promised the employees that in the event of the termination of their employment contracts certain benefits shall be provided to them upon fulfilment of certain conditions, or if the provision of such benefits has become customary through permanent practice, although an express promise was not made, the employees also have to be provided with the concerned benefits.

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