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Lee, Tsai & Partners, Attorneys-at-Law's key office locations are in Taipei, Shanghai, and Beijing. The firm's main practice consists of advising on employee benefits' issues arising in mergers and acquisitions, reorganisations, spin-offs, and other transactions, drafting and revising employment work rules and employment policies, counselling and planning regarding compensation, benefits, and other issues for multinational corporations, negotiating, designing and drafting agreements on executive employment, stock options plans and profit-sharing schemes, and other employment incentive schemes, in addition to representing the client in employment-related dispute resolution mechanisms (mediation, litigation, etc). We advise many clients, including Singapore Airlines, Bayer Group and Agfa-Gevaert NV, on employment matters. The services that we frequently provide include labour disputes, mass redundancy, employment transfers, foreign national employees and dispatched employees.

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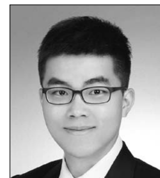

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1. Terms of Employment

1.1 Status of Employee

For the personnel of a company, Taiwan law does not make a distinction between blue-collar and white-collar workers per se. The main distinction drawn is between whether the (white-collar) worker is a hired or retained individual, as blue-collar workers usually belong to the former. A hired individual is one who enters into a form of "hire-of-services agreement" as defined in the Civil Code and provides labour services to the other party, while a retained individual enters into a "mandate agreement" that is separately defined in the Civil Code and deals with the other party's affairs. The primary difference is based on whether the individual has independent decision-making authority in following the instructions of the employer/company. Under the "hire-of-services agreement", the individual does not have any independent decision-making authority and must follow the instructions of the employer as he/she is subject to personal, economic and organisational dependency upon the employer; in contrast, under the "mandate agreement", the individual has independent decision-making power within the scope of authority.

Typical employment agreements under the Labour Standards Act ("LSA") are considered "hire-of-services agreements" in nature.

Another type of labour agreement under the Civil Code is known as the "contractor agreement". Under this agreement, the individual is hired solely for the completion of the work (which may be blue-collar or white-collar work) stated in the

agreement. A blue-collar or white-collar worker under such agreement is subject to relevant provisions under the Civil Code and such individual should not be considered as the (internal) personnel of a company.

1.2 Contractual Relationship

According to Article 9 of the LSA, employment contracts may be divided into two categories: fixed term contracts and non-fixed term contracts. A contract for employees to conduct temporary, short-term, seasonal or specific work can be a fixed term contract, while a contract for employees to conduct ongoing work should be a non-fixed term contract.

In the following situations, a fixed term contract for temporary or short-term work shall be deemed as having a non-fixed term upon the expiration of the contract:

- Where an employer raises no immediate objection when a worker continues his/her work;
- Where, despite the execution of a new contract, the prior contract and the new contract together cover a period of more than 90 days, and the period of time between expiration of the prior contract and execution of the new contract does not exceed 30 days.

According to the LSA and the Enforcement Rules of the LSA, contracts are required. Except for the following scenarios, there is no strict requirement in principle for an employment contract to be in writing:

- For supervisory/administrative employees, professional employees with designated responsibility, monitoring or intermittent jobs, and other work with special characteristics where the employer and the employee have the flexibility to negotiate with respect to "work hours and days of leave (eliminating the applicability of the LSA rules)", the LSA requires such agreement to be memorialised in writing (Article 84-1).
- According to Article 7-1 of the Enforcement Rules of the LSA, the post-employment non-compete agreement must be in writing.
- Employment of foreigners: According to Paragraph 3, Article 46 of the Employment Service Act ("ESA"), an employment contract in writing is needed for a foreign worker engaging in specific works (marine fishing/netting work; household assistant and nursing work; and works designated by the Central Competent Authority in response to national major construction projects or economic/social development needs).

Other formal requirements:

- In cases where the employer and the employee have the flexibility to negotiate on work hours and days of leave, the LSA also requires such agreement to be submitted to the local competent authorities for approval and recordation (Article 84-1).
- If an agreement for engaging in a specific work exceeds one year, the Enforcement Rules of the LSA require such agreement to be submitted to the local competent authorities for approval and recordation (Article 6).
- For employees less than 18 years old, letters of consent from their legal guardians and documents certifying the minor employees' ages are required (Article 46 of the LSA).
- An employer hiring 30 workers or more shall set up work rules according to the LSA and publicly display them after they have been submitted to the competent authorities for approval and recordation (Article 70).

For the terms that should be included in an employment agreement, Article 7 of the Enforcement Rules of the LSA provides the following list of items:

- Matters relating to the workplace and the work to be performed in the workplace;
- Matters relating to time of starting and finishing work, rest periods, holidays, public holidays, rest days, leave, and shift changes in the rotation system;
- Matters relating to the determination, readjustment, calculation, final settlement, the dates and the methods of wage payment;
- Matters relating to the entering and termination of a labour contract, and retirement;
- Matters relating to severance pay, pension and other allowances, and bonuses;
- Matters relating to the expenses for boarding, lodging and tools which the worker should bear;
- Matters relating to health and safety;
- Matters relating to labour education and training;
- Matters relating to welfare;
- Matters relating to compensation and remedy for occupational accident and subsidy for ordinary injury or sickness;
- Matters relating to work discipline that shall be observed;
- Matters relating to award and discipline; and
- Other matters relating to rights and obligations of the labour and management.

1.3 Working Hours

Maximum Working Hours

According to the LSA, a worker's regular hours may not exceed 8 hours per day and 40 hours per week (Article 30). However, the employer may, with the consent of the labour union if present, or the consent of the labour-management conference if there is no labour union, adopt flexible arrangements and adjust the regular working hours pursuant to the adjustment schemes laid out under Articles 30 and 30-1 of the LSA.

Part-Time Contracts
According to the Items of Concern in Hiring Part-Time Employees, part-time employees shall generally enjoy the same employment terms and forms of employment agreements as full-time employees, and employers are tasked with informing part-time employees of their rights (Article 5). Two points shall be separately negotiated for part-time employees: wages for work beyond the regular part-time hours but below regular full-time hours each day (Article 6, Paragraph 2, Item 2), and wages for work on holidays and rest days (Article 6, Paragraph 3, Item 1).

Overtime
According to the LSA, overtime work requires the consent of a labour union, or if there is no labour union, the approval of a labour-management conference. The overtime hours combined with the regular hours shall not exceed 12 hours a day, and cumulative overtime hours shall not exceed 46 hours a month. However, with the consent of a labour union or, if there is no labour union, the approval of a labour-management conference, those hours may be extended to 54 hours a month and 138 hours every 3 months. The extension of total overtime working hours shall be reported to the local competent authority for recordation when an employer hires 30 employees or more (Article 32).

According to the LSA, overtime wages shall be paid according to the following rules:

(1) An additional one third of regular hourly rates for up to 2 hours of overtime; an additional two thirds of regular hourly rates for between 3 and 4 hours of overtime. For overtime work as a result of natural disasters, acts of God or other force majeure events, the worker shall be paid double regular hourly rates (Article 24, 32, 40).

(2) If the worker is required to work on holidays or regular days off, the worker shall be paid double regular rates provided that the employer has obtained consent from the worker to work during those times (Article 39).

(3) If an employer requires the services of an employee on rest days, the overtime rates will be even higher than in (1) above (Article 24):

- Additional four thirds of regular hourly rates for up to 2 hours of work; and
- Additional five thirds of regular hourly rates for work beyond 2 hours.

1.4 Compensation

Minimum Wage
The current minimum wage (starting from 1 January 2018) as announced by the Ministry of Labour is NT$22,000 per month and NT$140 per hour.

Thirteenth Month, Bonuses, etc.
In the LSA, wages are defined as any compensation paid for work performed, which includes any bonuses or stipends that are paid regularly (Article 2, Item 3). Therefore, in terms of the 13th month wages and bonuses, it depends on whether the employer has promised to the employee that those payments will be made every year. If so, they are likely to be deemed regular payments and thus part of the employee's wages; if not, they are likely to be considered discretionary payments only rather than regular payments and are thus not part of the employee's wages.

Government Intervention
Minimum wage hourly and monthly rates are adjusted and announced by the government on occasion (generally once a year for the following year). For compliance, according to Article 27 of the LSA, the competent authority may order an employer to pay wages if the employer fails to make regular wage payments on time. Other than the above, the government generally does not intervene in wage compensation matters.

1.5 Other Terms of Employment

Vacations and Vacation Pay
Under the current LSA, an employee who has worked for at least 6 months but less than 1 year shall be granted 3 days of annual leave with full pay; for at least 1 year but less than 2 years, 7 days; for at least 2 years but less than 3 years, 10 days; for at least 3 years but less than 5 years, 14 days; for at least 5 years but less than 10 years, 15 days; 1 day is added for each year from 10 years until up to a maximum of 30 days (Article 38).

In addition, an employee is also entitled to full paid holidays, public holidays and rest days (Article 39).

Required Leave
(1) For maternity leave:

The LSA grants 8 weeks of maternity leave in general, but for a miscarriage after carrying past the first trimester, 4 weeks of maternity leave is granted (Article 50). The Act of Gender Equality in Employment ("AGEE") further provides that a miscarriage after a pregnancy period between 2 and 3 months shall be granted 1 week of maternity leave, and a miscarriage after a pregnancy period of no more than 2 months shall be granted 5 days of maternity leave (Article 15).

The female worker employed for 6 months or more shall be paid regular wages during the maternity leave, while if less than 6 months, she shall be paid wages at half of the regular payment (Article 50 of the LSA).

(2) For sick leave:

According to Regulations of Leave-Taking of Workers ("RLTW"), an employee is entitled to 30 days of sick leave per year for illness not requiring hospitalisation. For illness requiring hospitalisation (including the out-patient treatment period when a worker diagnosed with cancer (carcinoma in situ included) or pregnancy requiring tocolysis), 1 year of hospitalised sick leave is granted for every two-year period. The sum of non-hospitalised and hospitalised sick leave may not exceed 1 year over a two-year period. Sick leave not exceeding 30 days shall be paid at half salary (Article 4).

(3) For occupation-related injury leave:

Employees shall be granted paid leave for medical care in response to disability, injury or sickness incurred as a result of an occupation hazard (Article 6 of the RLTW and Article 59 of the LSA).

(4) For childcare leave:

According to the AGEE, an employee who has worked for at least 6 months may apply for unpaid childcare leave for children under the age of 3 at the time of the application. The child leave may not exceed 2 years. For an employee taking care of 2 or more children, the childcare leave for each child may be combined together for up to 2 years of care for the youngest child (Article 16).

(5) For family care leave:

According to the AGEE, for an employee taking care of family members receiving vaccinations, or if an employee's family has fallen seriously ill or otherwise become involved in a serious accident, such employee may apply for a 7 day family care leave, which is classified as unpaid personal leave (Article 20).

(6) For marriage leave:

According to the RLTW, an employee may take up to 8 days of paid marriage leave (Article 2).

(7) For personal (unpaid) leave:

According to the RLTW, an employee may take up to 14 days of unpaid personal leave per year (Article 7).

(8) For leave for pregnancy check-ups:

According to the AGEE, a pregnant employee may take up to 5 days of paid leave for pregnancy check-ups (Article 15).

(9) For paternity leave:

According to the AGEE, an employee whose spouse is giving birth may take up to 5 days of paid paternity leave (Article 15).

(10) For funeral leave:

According to the RLTW, depending on which relative of the employee has passed away (parents, children, grandparents, great-grandparents), an employee may be granted between 3 and 8 days of paid funeral leave (Article 3).

(11) For menstruation leave:

According to the AGEE, a female employee whose menstruation is causing her difficulties at work may request a half-paid 1 day menstruation leave per month. Menstruation leaves of no more than 3 days in a year will not be counted as sick leaves, while any additional days will be deemed as part of sick leave days used (Article 14).

(12) Public leave:

According to the RLTW, an employee shall be entitled to public leave with pay (Article 8).

Confidentiality and Non-Disparagement

There is no law or regulation in Taiwan stipulating limitations on confidentiality and non-disparagement requirements.

Employee Liability

Under the LSA, if the employer and the employee had entered into a minimum service duration agreement, and the employment agreement was terminated prior to the completion of the minimum service period for reasons not attributable to the employee, then the employee is not considered to have breached the minimum service agreement or be obliged to return any training fees (Article 15-1).

Other than the above, the same rules in the Civil Code regarding damages in civil matters apply to employees as well. In other words, unless otherwise stipulated in law or contract, the employee's liability is limited to recovery of the damages incurred by and any lost profits of the injured party (Article 216). Also, the employer and employee may agree on a penalty to be paid by the employee for breach of contract; unless agreed otherwise, since a penalty for breach of contract is considered compensation for failure to perform, the court has the right to reduce the amount if the penalty is excessive (Articles 250, 252).

The general principles of respondeat superior also apply: employers shall be held jointly liable for injury to a third party

caused by an employee in the course of performing his/her duties; however, if the employer has taken reasonable care in hiring the employee as well as in the supervision of the employee's performance of his/her duties, or if the injury is unavoidable despite reasonable care, then the employer shall not be held liable (Article 188). Employers may not withhold wages for penalties or damages (Article 26 of the LSA).

2. Restrictive Covenants

2.1 Non-Competition Clauses

Requirements for Post-Employment Non-Compete Agreement

For a post-employment non-compete agreement, the LSA stipulates that the following requirements be met for an employer to reach such a non-compete agreement with an employee:

- The employer has a proper business interest to protect;
- The employee's job or duties would cause him/her to come into contact with the employer's business secrets;
- The duration, region, the (limitation on the) scope of employment activities and the new employers stipulated in the non-compete agreement do not exceed reasonable limits; and
- The employer will provide reasonable compensation for all losses incurred by the employee for refraining from engaging in competitive acts after departure from the current employment.

Failure to abide by the above may render the non-compete clause invalid, and the non-compete clause after departure from employment may not exceed 2 years (Article 9-1).

Requirements for Independent Consideration

As above, non-compete clauses require the employer to provide reasonable compensation for the post-employment non-compete obligation. According to the Enforcement Rules of the LSA, the standards for the amount shall take the following into consideration (Article 7-3):

- The monthly compensation provided must be no lower than 50% of the monthly wages received by the employee at the time of his/her departure from employment.
- The compensation must be sufficient for the employee's livelihood during the non-compete period.
- The compensation must be commensurate with the loss incurred by the departing employee for compliance with the duration, region, the (limitation on the) scope of employment activities and the new employers stated in the non-compete agreement.

Enforcement of Non-Compete Clauses

There is generally no prohibition in Taiwan law on an employer requesting an employee to enter into a non-competition agreement during the term of employment, and the courts have recognised the enforceability of such a non-compete agreement. For a post-employment non-compete agreement, such agreement would be enforceable if it is in compliance with the above statutory requirements.

2.2 Non-Solicitation Clauses - Enforceability/ Standards

There is no law or regulation in Taiwan on point regarding the non-solicitation of employees or customers. Such provisions are generally governed by the principle of freedom of contract; as long as the substance of such provisions are not against public policy or morals or are obviously unfair, such provisions should be enforceable.

3. Data Privacy Law

3.1 General Overview of Applicable Rules

The controlling statute in Taiwan regarding data privacy is the Personal Information Protection Act ("PIPA"). Under the PIPA, if the employer would like to collect personal information of employees for a clear and specific purpose relating to human resources management, the employer may begin the collection and processing of non-sensitive personal information of the employees once it has complied with the notice requirements under Article 8 of the PIPA (Article 19). For "sensitive personal information" (such as medical history, genetic information, sex life, results of physical examinations, and criminal backgrounds), unless otherwise provided by law, in general, in addition to the notice under Article 8 of the PIPA, the employer shall obtain the express written consent of the employee first before collection and processing (Article 6).

4. Foreign Workers

4.1 Limitations on the Use of Foreign Workers

According to the ESA, unless the foreign worker is (i) retained by the government or an academic institution as a consultant or researcher, or (ii) married to a Taiwan national who has a household registration and has been permitted to stay therein, or (iii) retained by a public or private university to give a presentation speech or carry out academic research approved by the Ministry of Education, the employer must seek permission from the central competent authority before hiring a foreigner (Article 48). Foreigners may be employed for a maximum of 3 years, but the employer may apply for an extension if it is necessary to continue employing such foreign individual; if the hiring is for a major construction project, the maximum term of extension is 6 months (Article

52). The specific jobs that an employer may hire a foreigner for in Taiwan are the following (Article 46):

(1) Specialised or technical work;

(2) Manager/executive of a business invested in or set up by overseas Chinese or foreigner(s) with the approval of the government;

(3) Teacher at high schools, universities/colleges or higher education, teacher at a school established for foreign residents;

(4) Temporary foreign language instructor at cram schools;

(5) Athletics coach and athlete;

(6) Religious, artistic and show business work;

(7) Crew member of a vessel permitted by the competent authority (such as merchant vessel, working vessel, etc.);

(8) Marine fishing/netting work;

(9) Domestic assistant and nursing work;

(10) Workers designated by the central competent authority in response to national major construction project(s) or economic/social development needs; and

(11) Other specialised workers ad hoc approved by the competent authority due to the lack of such specialists in the domestic employment market and hence the necessity to retain the service of such specialists.

For (8)-(11) above, the employer is required to show that it had attempted to recruit Taiwan nationals with reasonable employment terms but was unable to fill its needs before applying for permission to hire foreigners (Article 47).

4.2 Registration Requirements

Other than the application for work permits described above, there is no registration requirement for hiring foreigners.

5. Collective Relations

5.1 Status of Unions

The Labour Union Act ("LUA") categorises unions into business unions, manufacturing (industry) unions and professional unions (Article 6). The Ministry of Labour reports on its website that, as of March 2018, there are 897 business unions, 200 manufacturer unions and 4,162 professional unions in Taiwan.

The main functions of a labour union include the execution, amendment or abolition of collective agreements, handling labour disputes, improvement of labour conditions and promotion of member benefits (Article 5). Any adoption of flexible work hours arrangements, increase in work hours, reduction of rest times between shifts, adjustment of holiday leaves, and requests for female employees to work from 2200 to 0600 the next day shall require the consent of the labour union if the entity has a labour union (Articles 30, 30-1, 32, 34, 36 and 39 of the LSA). The labour union shall also participate in proceedings regarding mass redundancy, labour inspections and labour disputes (Articles 4 and 6 of the Act for Worker Protection in Mass Redundancy, Articles 15 and 22 of the Labour Inspection Act, Article 7 of the Act for Settlement of Labour-Management Disputes).

5.2 Employee Representative Bodies - Elected or Appointed

The LUA provides workers with a right to join labour unions (Article 4). Member representatives may be elected by the union members per the union's charter rules for unions of 100 or more members in size. The member representative's term shall be four years, commencing from the date of the first member representatives' meeting after the election (Article 15). In general, the general meeting of union members shall be the highest authority body of the union. However, if a labour union has a general meeting of member representatives instead, the authority of the general meeting of members shall be exercised by the general meeting of member representatives in its stead (Article 16).

If a member or member representative cannot attend a union meeting, he/she may authorise another member or member representative to act as a proxy (Article 27). Proxies may not make up more than one-third of the members/member representatives who attend in person at the meeting. The Council of Labour Affairs (predecessor of the Ministry of Labour) officially explained in 2011 that while members may have another member act as a proxy in union member meetings, member representatives may only call upon another member representative as a proxy in a union member representatives' meeting, so a regular member may not act as a proxy for a member representative in a union member representatives' meeting.

According to the LUA, the following matters shall be resolved by the general meeting of member representatives (Article 26):

- Amendment of the union charter;
- Disposal of property;
- Confederation, merger, splitting or dissolution of the labour union;
- Election, dismissal and suspension of member representatives, directors, supervisors, standing directors, standing

supervisors, deputy chairperson, chairperson of board of directors and chairperson of board of supervisors;
- Suspension and expulsion of members;
- Standards for collecting various fees, budget, standards for payment and methods of payment and auditing for the labour union;
- Approval of business reports and annual financial settlement;
- Utilisation and disposal of funds;
- Establishment of businesses for members;
- Maintenance and alteration of labour conditions for members; and
- Other important matters concerning members' rights and obligations.

5.3 Collective Bargaining Agreements

Under the Collective Agreement Act, a collective agreement is defined as a written agreement entered into between an employer or employer organisation with juristic person status and a labour union established in accordance with the LUA regarding labour relations and other related matters (Article 2). Both labour and management shall proceed in good faith when bargaining for a collective agreement; any party without justifiable reasons cannot reject the collective bargaining proposed by the other party (Article 6). In executing a collective agreement, in principle, a quorum of half of the union or employer organisation members or member representatives must be present in a member or member representative meeting and a supermajority (two thirds) vote of the members or member representatives in attendance; an alternative is to notify all members and have three-quarters of all members agree in writing. The collective agreement shall be submitted to the competent authority for recordation by the party from the labour side after being concluded (Articles 9 and 10).

The collective agreement may cover the following matters with respect to fixed term or non-fixed term work, or be concluded for a specific period of accomplishing a certain assignment (Articles 12 and 26):

- Wages, work hours, stipends, bonuses, workplace relocations, layoffs, retirement, occupational hazard compensation, injury pension and bereavement;
- The establishment and usage of internal labour organisations, the usage of employment service institutions, the resolution of labour disputes, the establishment and use of arbitration mechanisms;
- The collective agreement negotiation process, the provision of information for negotiation, the scope, term and harmonious performance of the collective agreement;
- The usage of union organisations, operations, activities and the facilities of the enterprise;
- The establishment and usage of organisations for participating in the operation of the enterprise and the cooperation between the employer and the employees;
- The reporting/whistleblower mechanism, the encouragement of cooperation, promotions, awards and demerits, training, safety and sanitation, benefits and other matters that the employer and the employees agree to abide by; and
- Other matters agreed upon by the parties.

After the conclusion of the collective agreement, (i) the employer that is the party of the collective agreement, (ii) the employers and workers who are affiliated with the organisations that are parties of a collective agreement, and (iii) the employers and workers who join the organisations that are parties of a collective agreement after concluding a collective agreement, shall comply with the working conditions agreed within the collective agreement (Article 17). The labour terms and conditions set out in the collective agreement shall be deemed as a part of the terms of the employment agreement between the employer and the employee of that collective agreement; terms in the employment agreement that are inconsistent with the terms of the collective agreement shall be deemed void and superseded by the terms of the collective agreement (Article 19).

6. Termination of Employment

6.1 Grounds for Termination

Cause is required for termination. Causes for unilateral termination by employers are limited to the circumstances specified under Articles 11 and 12 of the LSA.

The employer may give notice of termination upon the occurrence of any of the following (Article 11):

- Suspension or transfer of employer's business.
- Employer incurring operating losses or facing a business contraction.
- Suspension of business operations for 1 month or more due to force majeure.
- Change in the nature of employer's business necessitates a reduction of workforce, and there are no other suitable positions for the terminated employees to be reassigned to.
- The employee is clearly unable to satisfactorily perform the duties of the position held.

The employer may immediately terminate the employment relationship upon the occurrence of any of the following (Article 12):

- If the employee misrepresented any facts at the time of signing of an employment contract in a manner so as to mislead his/her employer and thus caused him/her to incur damages therefrom.

- The employee commits a violent act against or grossly insults the employer, his/her family member or agent of the employer, or a co-worker.
- The employee has been sentenced to temporary imprisonment in a final and conclusive judgment, and is not granted a suspended sentence or permitted to commute the sentence to payment of a fine.
- The employee was in serious breach of the employment contract or committed a serious violation of work rules.
- The employee deliberately damaged or abused any machinery, tool, raw materials, product or other property of the employer, or deliberately disclosed any technical or confidential information of the employer thereby causing damages to the employer.
- The employee went absent from work for 3 consecutive days, or for a total of 6 days in any month without just cause.

For resignation from the employee's side, in principle, an employee may terminate a fixed term employment contract for a term of more than 3 years with a 30-day notice to the employer upon completion of 3 years' work, while an employee may terminate an employment contract with indefinite term without cause with prior notice (Article 15).

The employee may also immediately terminate the employment relationship upon the occurrence of any of the following (Article 14):

- If the employer misrepresented any facts at the time of signing of an employment contract in a manner so as to mislead the employee and thus caused him/her to incur damages therefrom.
- The employer, the employer's family member or the employer's agent engaged in a violent act or grossly insults the employee.
- The contracted work is hazardous to the employee's health and the employer refused to make improvements despite requests to do so.
- The employer, the employer's agent or other co-workers were afflicted by a harmful contagious disease and continued work may cause the employee to contract such disease and seriously threaten the employee's health.
- The employer fails to pay the compensation agreed in the employment contract, or fails to provide sufficient work to the employee who is paid on a piecework basis.
- The employer's violation of the employment contract or labour laws has adversely affected the rights of the employee.

Per above, for terminations by the employer under Article 11 of the LSA, the employer must provide advance notice to the employee. In cases where the employee terminates an employment contract with indefinite term without cause, or the employee terminates a fixed term employment contract with a term of more than 3 years upon completion of 3 years' work, the employee is also required to provide advance notice to the employer.

Collective redundancies

Mass redundancy is defined under the Act for Worker Protection in Mass Redundancy as the circumstance where a business entity has a need to lay off its workers on account of any of the conditions set forth in Article 11 of the LSA, or due to mergers and restructures, and is under any of the following circumstances (Article 2):

- A single business entity with fewer than 30 workers at a single site lays off more than 10 workers in 60 days.
- A single business entity with between 30 and 200 workers at a single site lays off one third of the workers in 60 days or more than 20 workers in one day.
- A single business entity with between 200 and 500 workers at a single site lays off one quarter of the workers in 60 days or more than 50 workers in one day.
- A single business entity with more than 500 workers at a single site lays off one fifth of the workers in 60 days or more than 80 workers in one day.
- A single business entity lays off more than 200 workers in 60 days or more than 100 workers in a single day.

Before conducting a mass redundancy, the employer is required to notify the competent authority and other relevant authorities or personnel of the mass redundancy plan 60 days beforehand and publicly display the plan at the workplace. The employer and the employees shall commence negotiations within 10 days afterwards; if the sides are unable to or refuse to negotiate, the competent authority will convene both sides to form a mediation committee to negotiate on the mass redundancy plan and timely arrive at an alternative solution (Articles 4 and 5).

Once the committee reaches a consensus, an agreement shall be prepared and executed by the committee members. The competent authority will then, within 7 days from the consensus made, send the agreement to the court with jurisdiction for review and approval so that it may be executed. The effect of such an agreement covers all individual employees (Article 7).

6.2 Notice Periods/Severance

Notice Periods

Terminations under Article 11 of the LSA detailed above require the employer to notify the employee, but the notice may be replaced by a payment of wages. The minimum notice periods are as below (Article 16):

- 10-day notice for employees who have worked for the employer for 3 months or more but less than 1 year;
- 20-day notice for employees who have worked for the employer for 1 year or more but less than 3 years; and

- 30-day notice for employees who have worked for the employer for 3 years or more.

The above notice periods apply to termination of an indefinite term employment agreement without cause by an employee. A 30-day advance notice is required for the termination of a fixed term agreement with a term of more than 3 years by an employee upon completion of 3 years' work (Article 15).

Severance

According to the LSA, for both an employer termination under Article 11 of the LSA and an employee termination under Article 14 of the LSA, the employer is required to provide severance (Article 17). For the former, the severance is on top of notice. The severance calculation standards are:

- For employee's seniority calculated under the LSA: 1 month of wages for each full year of service; the amount shall be prorated for a partial year of service, and service of less than 1 month shall be deemed as 1 month of service.
- For employee's seniority calculated under the Labour Pension Act ("LPA"): One-half month of wages for each full year of service; the amount shall be prorated for a partial year of service. The maximum amount of severance shall be capped at 6 months' wage (Article 12 of the LPA).

Severance must be paid to the employee within 30 days of the termination of the employment contract.

According to Article 33 of the ESA, when an employer lays off an employee pursuant to Article 11 of the LSA, the employer shall, 10 days before the employee's departure, submit to the local competent authority(ies) as well as public employment services institution(s) the name of the laid-off employee, his/her sex, age, address, telephone number, position, the cause(s) of the layoff, and whether he/she is in need of employment counselling. Layoffs reaching mass redundancy levels shall follow the aforementioned mass redundancy rules.

6.3 Dismissal for (Serious) Cause (Summary Dismissal)

The LSA specifies the possible grounds for dismissal of an employee for cause under Article 12, Paragraph 1 of the LSA. As soon as any one of those grounds is present (e.g. violence against the employer), the employer may terminate the employment agreement.

Terminations for cause under Article 12, Paragraph 1 of the LSA do not require advance notice, nor is the employer required to pay severance afterwards. A point of note is that other than terminations under Article 12, Paragraph 1, Item 3 of the LSA (employee has been sentenced to temporary imprisonment in a final and binding court decision and has not been granted a suspended sentence or have the sentence commuted to a fine), the employer is required to terminate within 30 days once the grounds for termination became known.

As stated above, terminations for cause do not require advance notice or severance pay.

6.4 Termination Agreements

Under the principle of freedom of contract, a termination agreement is generally effective under law if agreed to between the parties. However, there are no specific provisions in Taiwan law stipulating the required procedure/formalities of a termination agreement.

Currently, releases may be divided into two categories:

- Contracting away the statutory rights of the employee: If the agreement contains a clause that causes the employee to waive a statutory right against the employee, such releases will generally be found to be unenforceable under Taiwan's Civil Code for violation against a compulsory legal requirement or an inequitable waiver of rights for the employee (in case of a release in a standard form contract).
- Contracting away the rights of the employee that are more favourable than those provided in the law: As there is no violation of statutory requirements, it will generally be considered enforceable under the freedom of contract principle.

For releases in the termination of a mandate agreement between an employer and a manager, the freedom of contract principle generally applies, and as long as the release is not contrary or repugnant to the public morals of Taiwan, the parties may freely decide on the terms of the release.

However, there are statutory limitations in play for releases in the termination of an employment contract between an employer and an ordinary employee. Per above, the release generally may not cause the employer to no longer be responsible for matters that the employer is required to perform by law, nor may the release be contrary or repugnant to the public morals of Taiwan.

The particular circumstances in the Taiwan Civil Code that will be considered an inequitable waiver of rights for the employee if the release is not negotiated are (Article 247-1):

- The drafting party's obligations are eliminated or decreased.
- The liability of the other party is increased.
- The other party is caused to waive its rights or restrict the exercise of its rights.
- Other material disadvantages to the other party.

6.5 Protected Employees

Occupational Hazard

Under the LSA, a worker who has been receiving medical treatment for injuries suffered as a result of an occupational hazard may not in principle be terminated by the employer (Article 13).

Gender Equality

An employer may not engage in discriminatory behaviour based on the employee's gender or sexual orientation in the case of discharge, severance and termination of an employee. An employer may not stipulate (whether in advance or not) in the work rules, employment agreement or collective agreement that employees who become married, pregnant, are giving birth or raising children shall resign or will be terminated. Any arrangement that contravenes the above, as well as the termination of the labour contract, shall be deemed as null and void (Article 11 of the AGEE). In addition, the LSA also stipulates that a worker who has been on maternity leave may not in principle be terminated by the employer (Article 13).

Participation in Union Activities

Under the LUA, the employer or a representative of the employer in a capacity to exercise managerial powers may not engage in the following actions (Article 35):

- Refuse to employ, terminate, demote, cut wages or otherwise treat an employee unfavourably for forming or joining a union, participating in union activities or holding a position in a union.
- Condition employment on refraining from joining a union or holding a position in a union.
- Refuse to employ, terminate, demote, cut wages or otherwise treat an employee unfavourably for requesting collective bargaining or participating in collective bargaining.
- Terminate, demote, cut wages or otherwise treat an employee unfavourably for participating in or supporting a labour dispute.
- Other inappropriate impact, interference or restriction in the establishment, organisation or activities of a union.

Terminations pursuant to the above actions are void.

The above protections apply to employee representatives as well.

7. Employment Disputes

7.1 Wrongful Dismissal Claim

In Taiwan, if the employer did not comply with Article 11 of the LSA in dismissal of an employee, such termination would be regarded as arbitrary termination. Per above, Article 35 of the LUA also provides that if an employee is terminated by an employer for forming a labour union, joining a labour union, participating in a labour union's activities, requesting to engage in group negotiations, participating in a group negotiation, or participating or supporting labour protests, such termination shall be deemed invalid, and the wrongfully terminated employee may petition the competent authority to make a decision pursuant to the Act for Settlement of Labour-Management Disputes ("ASLMD").

7.2 Anti-Discrimination Issues

According to the anti-discriminatory in the workplace rules in Taiwan, the law addresses anti-discrimination in the following manner:

Overall regulations

A general anti-discrimination rule is found in the ESA, which specifically provides that: "An employer is prohibited from discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labour union. Matters clearly stated in other laws shall be followed in priority…" (Article 5). Violations shall be punishable by a fine of NT$300,000 to NT$1,500,000 (Article 65).

The term "job applicant or employee" in Article 5 of the ESA above also includes:

- Foreigners granted permission to work in Taiwan;
- Foreigners granted permission to work and reside in Taiwan and has married to a Taiwan national with household registration records;
- Mainland China citizens with permission to stay with relatives in Taiwan as well as permission to work in Taiwan;
- Mainland China citizens with permission to reside in Taiwan for an extended period and work in Taiwan during such period of residence;
- Hong Kong or Macau residents who qualify as overseas Chinese with permission to work in Taiwan and his/her spouse or children who meets the conditions to obtain Taiwanese citizenship; and
- Hong Kong or Macau residents with permission to work in Taiwan.

Sexual/gender discrimination

The AGEE expressly prohibits the employer from engaging in any discriminatory behaviour based on the gender or sexual orientation of the employee, including for matters such as performance reviews, availability of benefits, wages, retirement pensions and severance (Chapter 2).

Burden of proof

For discrimination based on gender and sexual orientation, the AGEE provides that the employee or the job applicant

shall first state the facts of the discrimination matter, the employer then has the burden of proof to show that such discrimination was not based on gender or sexual orientation, or that the employee's position or the position sought by the job applicant has special gender considerations (Article 31).

For employment discrimination other than gender, the Council of Labour Affairs (predecessor of the current Ministry of Labour) has issued a circular in 2011 stating that the competent authority may, if needed, order the employer in writing under Article 39 and 40 of the Administrative Procedure Act to explain the matter as part of its investigation. The employer has the burden of proof and must provide the necessary documents, objects or information for the investigation (Council of Labour Affairs Lao-Zhi-Ye-Zi-1000072018 Circular dated 11 May 2011).

Relief and damages

Back pay

Should an employer be found by a court or other legal adjudication body to have violated the labour laws (such as wrongful termination, unlawful request for employee to go on leave without pay, etc.), the employer shall be required to make up all back pay owed to the employee starting from the time of the unlawful act until the day the employee is reinstated, plus a 5% annual interest accruing from the day after the payment is due.

Front pay

Taiwan has no statute on point as to the concept of "front pay" in the sense of compensation in lieu of reinstatement. However, if "front pay" is defined as damages for loss of future earnings, the current practice in Taiwan does not allow for such relief, as a debt obligation in the future is only actionable if such obligation is already confirmed to exist, and there is good cause to believe that the obligor will not perform such obligation at that point in time. As the nature and extent of such debt obligation are thought to be not yet fixed due to potential for wage adjustments, reassignments or other changes, Taiwan law does not allow an employee to make such front pay claims.

Emotional distress/compensatory damages

According to the AGEE, if the employer is found to have engaged in sexually discriminatory conduct, such as violating the rules on wages, job assignment, pregnancy, childcare and other benefits accorded, the employee may claim for damages even if no monetary damages were incurred, and the employee may also seek relief for restoration of personal reputation if the discriminatory act has damaged the personal reputation of the employee (Article 29).

The Civil Code also provides for a more general version of emotional distress relief in the same manner as the aforementioned relief for sexual discrimination under the AGEE. If an employer caused injury or infringed upon an employee's body, health, personal reputation, freedom, credit, privacy or other personality interests, the employee may seek compensatory damages even if no monetary damages were incurred, and the employee may also demand restoration of personal reputation (Article 195).

Punitive damages

There is currently no law on point in Taiwan regarding punitive damages in a labour dispute. However, if the employment contract does provide for punitive damages, Taiwan law and practice as a rule will generally allow such provision to be enforceable.

Attorneys' fees

There is currently no law on point in Taiwan regarding the scope of attorneys' fees in a labour dispute.

Reinstatement damages

According to current practice in Taiwan, if an employee initiates and prevails in a declaratory action regarding the existence of the employment relationship, the employee may, in addition to back pay, also request reinstatement as specific relief.

8. Dispute Resolution

8.1 Judicial Procedures

Taiwan has special labour forums designed to handle labour disputes, and they are headed by judges who have been chosen by their fellow judges in other courts as having particular expertise in labour laws.

The procedure for a labour dispute is generally identical to that of any other civil dispute. The Code of Civil Procedure allows a group with similar legal interests to appoint one or more persons amongst themselves to sue or be sued on behalf of the appointing parties and the appointed parties (Article 41). In terms of a group of employees in the same legal position, they may seek the assistance of the labour union that they are a member of in initiating the action on their behalf.

Under the Code of Civil Procedure, per se representation is possible at the first and second instance civil proceedings and a litigation representative is not always required. While representation is generally through a licensed attorney, with permission from the presiding arbiter, it is possible to be represented by a non-attorney with any of the following qualifications (Article 68; Articles 2 and 3 of the Regulations governing the permission of representations by a non-attorney litigation representative in civil incidents):

- University law degree graduate.
- Currently working for a central or regional government authority and has been designated by that authority as a litigation representative.
- Currently employed by a corporate person or a non-corporate entity for providing legal services and has been designated by the corporate person or non-corporate entity as a litigation representative.
- Passed the high-level exam on legal systems, financial law or other high-level exams with a primary focus on legal studies.
- Any other individual who has explained how he/she is qualified to be a litigation representative in the matter.
- A spouse, a blood relation within the third degree or a relative in-law within the second degree.

Attorney representation is required for the third instance proceeding, otherwise the court shall dismiss the appeal by a ruling on the ground that it was not filed in conformity with the law (Article 466-1).

8.2 Alternative Dispute Resolution

According to the ASLMD, labour disputes are split into two types: rights (dispute over the rights and obligations of the parties under law, collective agreements or employment agreements) and interests (disputes over whether the labour terms should be maintained or adjusted) (Article 5).

While both types of disputes may be resolved through arbitration, rights disputes may be arbitrated based on the Arbitration Law if the parties agree, while interests disputes can only be arbitrated based on the ASLMD (Articles 6, 7 and 64).

In Taiwan, the validity of pre-dispute arbitration agreements depend on the type of labour dispute in question:

- For disputes over adjustments, only the ASLMD applies, and Article 25 of the ASLMD stipulates that the parties may submit to the competent authority for arbitration if they have already failed in mediation, or if the parties had agreed in writing to not go through mediation.
- For disputes over rights, both the ASLMD and the Arbitration Law apply. The Arbitration Law allows the parties to have an arbitration agreement in place to have current or future disputes to be settled by an arbitration tribunal of one or more arbitrators (Article 1). Hence, in a labour dispute over rights, the parties may agree pre-dispute the terms of the arbitration agreement.

An additional note is warranted here: according to Article 37 of the ASLMD, an arbitration award rendered for a labour dispute over rights has the same effect on the parties as a final court decision. However, for an arbitration award rendered for a labour dispute over adjustments, such award is deemed as a contract between the parties, and if one party is represented by a union, the award is in effect a collective agreement.

8.3 Awarding Attorney's Fees

There is currently no law on point in Taiwan regarding the scope of attorney's fees in a labour dispute, regardless of side.

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