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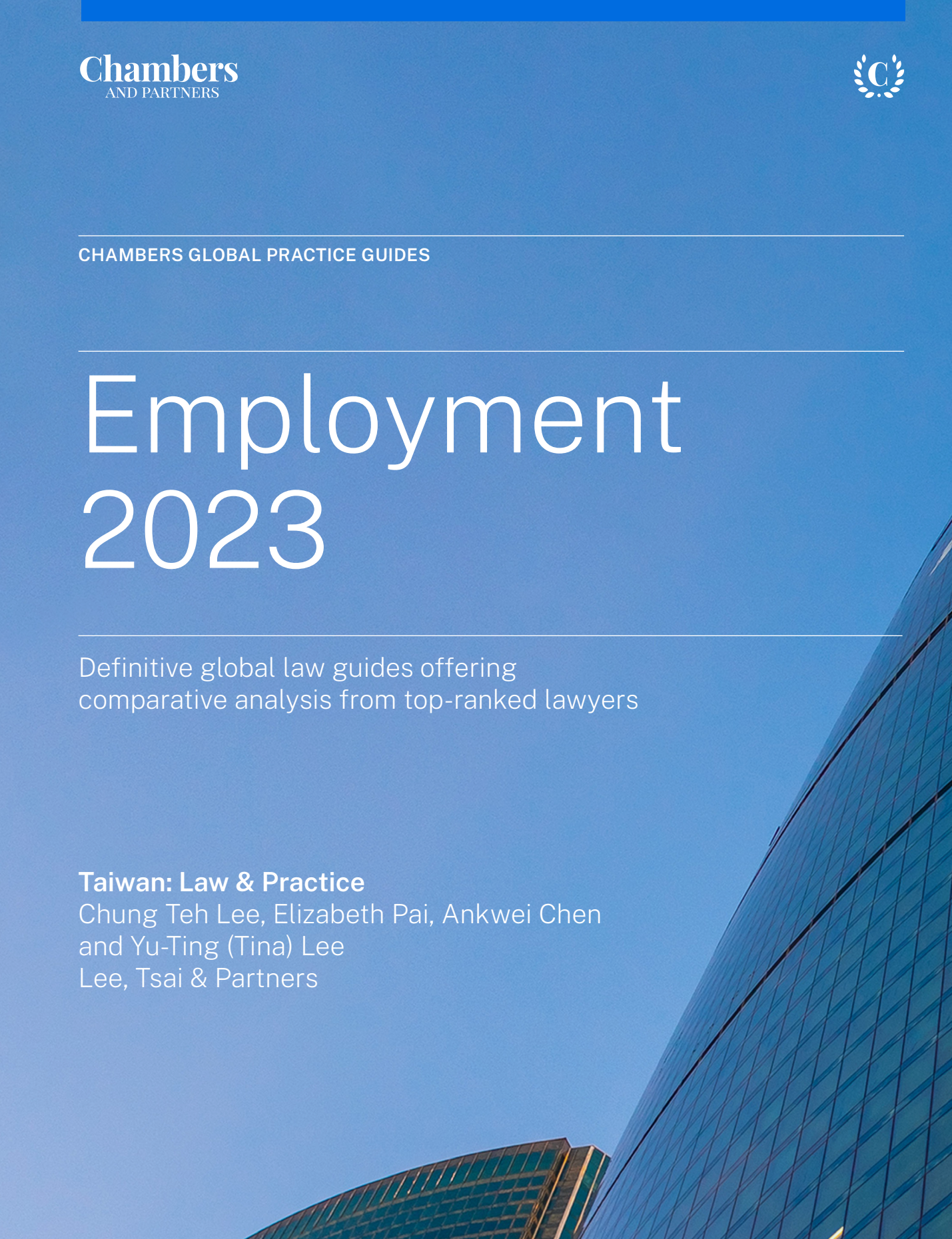
Taiwan: Law & Practice

Chung Teh Lee, Elizabeth Pai, Ankwei Chen and Yu-Ting (Tina) Lee
Lee, Tsai & Partners



TAIWAN

Law and Practice

Contributed by:
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Lee, Tsai & Partners has an employment team of 20 lawyers with a comprehensive employment law practice, advising on employee benefits issues arising in mergers and acquisitions, reorganisations and other relevant transactions, as well as drafting and revising employment policies and procedures. Additionally, the firm provides counselling and advice on compensation, benefits, pensions, terminations, mass redundancies, and other matters to multinational corporations. It provides services in negotiating, designing, and drafting agreements on executive employment, stock options schemes, profit sharing schemes, and other employee incentive schemes in line with best practices. Furthermore, its practice specialises in the representation of clients in employment-related dispute resolution mechanisms. The firm has served numerous clients with extensive employment law practice experience, including a leading Asian airline, a German multinational pharmaceuticals and biotechnology company, a well-known American commercial real estate services provider, and various French luxury fashion houses.

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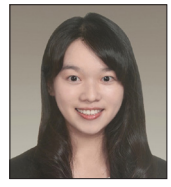

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1. Employment Terms

1.1 Employee Status

Taiwan law does not make a distinction between blue collar and white collar workers per se. The main distinction is whether the (white-collar) worker is a hired or retained individual, since blue collar workers usually belong to the former. A hired individual is one who enters into a form of a "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", which 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 they are subject to personality, economic and organisational dependency with the employer; in contrast, under the "mandate agreement", the individual has independent decision-making power within the scope of the employer's authority.

In general, employment agreements under the Labour Standards Act (LSA) constitute "hire-of-services agreements".

Another type of labour agreement under the Civil Code is known as the "contractor agreement". According to this agreement, the individual is hired solely for the completion of the stated work (which can be either blue-collar or white-collar work). A blue-collar or white-collar worker engaged in work under such agreement is subject to relevant provisions of the Civil Code and should not be considered as (internal) personnel of a company.

1.2 Employment Contracts

Fixed Term Contracts and Non-fixed Term Contracts

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 continuous 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 a non-fixed term contract upon the expiration of the contract.

- Where an employer raises no immediate objection when a worker continues their 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.
- The labour agreements entered into between dispatcher entities and dispatched workers shall be considered indefinite-term agreements. This shall provide more clarity to the nature of long-term employer-employee relationships established and maintained by dispatched workers and dispatcher entities in Taiwan. In addition, it will prevent dispatcher entities from avoiding their relevant severance upon termination responsibilities under applicable labour laws by entering into fixed-term contracts with the dispatched worker based on the dispatch period, while also taking into account the stable employment of dispatched workers (Article 9, paragraph 1 of the LSA).

Scenarios Where an Employment Contract Should be in Writing

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 in regard to "work hours and days of leave" (eliminating the applicability of the LSA rules), the LSA requires a written agreement (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 project(s) or economic/social development needs).

Additional Formal Requirements

The following additional formal requirements also apply to employment contracts.

- In cases where the employer and the employee have the flexibility to negotiate on work hours and days of leave, the LSA 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, the letters of consent from their legal guardians, and documents certifying the minor employees' age 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).

According to Article 7 of the Enforcement Rules of the LSA, employment agreements should contain:

- an overview of the workplace and the work to be performed there;
- time of starting and finishing work, rest periods, regular days off, public holidays, rest days, leave, and shift changes in the rotation system;
- the determination, readjustment, calculation, final settlement, dates and methods of wage payment;
- the entry into and the termination of a contract of employment, as well as retirement;
- severance pay, pension and other allowances, and bonuses;
- boarding, lodging and tool expenses that the worker should bear;
- health and safety;
- education and training for workers;
- welfare;
- compensation and remedy for occupational accident and subsidies for ordinary injury or sickness;
- work discipline to be observed;
- awards and discipline; and
- other matters relating to the rights and obligations of the labour and management.

1.3 Working Hours

According to the LSA, a worker's regular hours may not exceed eight 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.

In accordance with the Guidelines for Employment of Part-Time Employees, part-time employees should be generally entitled to the same employment terms and forms of employment agreements as full-time employees, and employers are responsible for informing part-time employees of their rights (Article 5). For part-time employees, contracting parties must separately negotiate:

- 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 regular days off and rest days (Article 6, paragraph 3, Item 1).

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 per three month period. 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.

- An additional ⅓ of regular hourly rates or more for up to two hours of overtime; an additional ⅔ of regular hourly rates or more for between three to four 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 the regular hourly rates (Articles 24, 32, 40).
- If the worker is required to work on public holidays or scheduled annual leave days, the worker shall be paid double the regular rates, provided that the employer has obtained consent from the worker to work during those times (Article 39).
- If an employer requires the services of an employee on rest days, the overtime rates will be even higher than above (Article 24):
  (a) An additional 1⅓ of regular hourly rates or more for up to two hours of work; and
  (b) an additional 1⅔ of regular hourly rates or more for work beyond two hours.

1.4 Compensation

As announced by the Ministry of Labour (MOL), the minimum wage is TWD26,400 per month and TWD176 per hour as of 1 January 2023.

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.

Occasionally, the government adjusts the minimum hourly and monthly wage (generally once a year for the following year). In order to ensure compliance, the competent authority may order an employer to pay wages if the employer fails to make regular wage payments on time according to Article 27 of the LSA.

Aside from the above, the government generally does not intervene in issues relating to wage compensation.

1.5 Other Employment Terms

Under the LSA, an employee who has worked:

- for at least six months but less than one year shall be granted three days of annual leave with full pay;
- for at least one year but less than two years shall be granted seven days of annual leave with full pay;
- for at least two years but less than three years shall be granted ten days of annual leave with full pay;
- for at least three years but less than five years shall be granted 14 days of annual leave with full pay; and
- for at least five years but less than ten years shall be granted 15 days of annual leave with full pay.

Workers gain one additional day of annual leave for each year of service after the tenth year and onwards, up to a maximum of 30 days (Article 38).

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

Required Leaves

Maternity leave

The LSA grants eight weeks of maternity leave in general, but for a miscarriage after carrying past the first trimester, four 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 of two months or more, but less than three months, shall be granted one week of maternity leave,

while a miscarriage after a pregnancy period for less than two months shall be granted five days of maternity leave (Article 15).

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

Sick leave

According to the 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 is diagnosed with cancer (carcinoma in situ included) or a pregnancy requiring tocolysis, one year of hospitalised sick leave is granted for every two-year period. The sum of non-hospitalised sick leave and hospitalised sick leave may not exceed one year over a two-year period. Sick leave not exceeding 30 days shall be paid at half salary (Article 4).

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).

Childcare leave

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

If an employee needs to take the childcare leave for less than six months, they may file the application with their employer for the leave persisting for no less than 30 days for a maximum of two times (Article 2 of the Regulations for Implementing Unpaid Parental Leave for Raising Children).

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 seven-day family care leave, which is classified as unpaid personal leave (Article 20).

Marriage leave

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

Personal (unpaid) leave

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

Leave for pregnancy check-ups

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

Paternity leave and pregnancy check-up accompaniment leave

According to the AGEE, when an employee accompanies their spouse for pregnancy check-ups or when their spouse is in labour, their employer shall grant the employee seven days off as paid pregnancy check-up accompaniment and paternity leaves (Article 15).

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 three to eight days of paid funeral leave (Article 3).

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

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

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

If, under the LSA, 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 and is not required 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). The employer and employee can also 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 and 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 or her duties. However, if the employer has paid reasonable care in hiring the employee as well as in the supervision of the employee's performance of his or 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-competes

Requirements for Post-Employment Non-compete Agreement

According to the LSA, for an employer to reach a post-employment non-compete agreement with an employee:

- the employer must have a proper business interest to protect;
- the employee's job or duties would have to cause them to come into contact with the employer's business secrets;
- the duration, region, the scope of employment activities and the new employers stipulated in the non-compete agreement must not exceed reasonable limits; and

- the employer must provide reasonable compensation for all losses incurred by the employee for refraining to engage 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 two years (Article 9-1).

Requirements for Independent Consideration

As mentioned above, non-compete clauses require the employer to provide reasonable compensation for post-employment non-compete obligations. The Enforcement Rules of the LSA state that the monthly compensation provided must be (Article 7-3):

- no lower than 50% of the monthly wages received by the employee at the time of their departure from employment;
- sufficient for the employee's livelihood during the non-compete period; and
- commensurate with the loss incurred by the departing employee for compliance with the duration, region, the scope of employment activities and the new employers stated in the non-compete agreement.

As a general rule, Taiwan law does not prohibit employers from requesting an employee to enter into a non-competition agreement for the employee's non-competition obligation during the term of employment, and courts have recognised the enforceability of such a non-compete agreement. Post-employment non-compete agreements are enforceable if they comply with the above statutory requirements.

2.2 Non-solicits

There is no law or regulation in Taiwan regarding the non-solicitation of employees. 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

3.1 Data Privacy Law and Employment

Personal Data Protection Act (PDPA) is the applicable statute in Taiwan when it comes to data privacy. Under the PDPA, if the employer would like to collect personal data 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 data of the employees once it has complied with the notice requirements under Article 8 of the PDPA (Article 19).

For "sensitive personal data" (such as, medical history, genetic information, sex life, results of physical examinations and criminal backgrounds), unless otherwise specified by law, it is generally required that, in addition to the notice under Article 8 of the PDPA, the employer shall obtain the express written consent of the employee before collection and processing (Article 6).

4. Foreign Workers

4.1 Limitations on Foreign Workers

According to the Employment Service Act (ESA), an employer must obtain permission from the central competent authority before hiring a foreigner (Article 48), unless the foreign worker is:

- retained by the government or an academic institution as a consultant or researcher;
- married to a Taiwan national who has a household registration and has been permitted to stay therein; or
- retained by a public or private university to present a speech or conduct academic research approved by the Ministry of Education.

Foreigners may be employed for a maximum of three years, but the employer may apply for an extension if it is necessary to continue employing such foreign individual. However, if the foreign worker is hired for a major construction project, the maximum term of extension is six months (Article 52). According to Article 46, an employer in Taiwan may hire a foreigner for the following specific jobs.

- For specialised or technical work.
- As a manager or executive of a business invested in or set up by overseas Chinese or foreigner(s) with the approval of the government.
- As a teacher at primary or high schools, universities/colleagues or other higher educational institutions, or as teachers at schools established for foreign residents.
- As a short-term cram school class instructor.
- As an athlete or coach of athletics.
- For religious, artistic and show business work.
- As a crew member of a vessel permitted by the competent authority (such as a merchant vessel or working vessel).

Additionally, an employer in Taiwan may hire a foreigner for the following specific jobs, so long as they demonstrate that they had attempted to recruit Taiwan nationals with reasonable employment terms but was unable to fill its needs (Article 47).

- For working in the marine fishing and netting industry.
- As a domestic assistant and nursing work.
- As a worker designated by the central competent authority in response to national major construction project(s) or economic and social development needs.
- As an ad hoc specialised workers approved by the competent authority due to the lack of such specialists in the domestic employment market and the necessity of retaining their services.

4.2 Registration Requirements for Foreign Workers

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

5. New Work

5.1 Mobile Work

Since the location of the workplace is a mandatory item in an employment agreement, a change in the location from an office space to remote/mobile work constitutes a change in the employment terms under the LSA and thus requires the consent of the parties.

As the employer is still required to maintain attendance records on a daily basis to the minute for employees working remotely for five years, employment agreements for employees who will be working remotely need to clearly stipulate how the employee would report the amount of time on-the-clock (eg, a dashcam for truck drivers or periodic check-ins over phone

or the company network) (Article 30, Paragraphs 5 and 6 of the LSA)

The employer is also still responsible for taking reasonable efforts to implement safety equipment or measures under Article 5 of the Occupational Safety and Health Act to protect the remote employee from becoming involved in an occupational accident.

5.2 Sabbaticals

Current Taiwan labour laws do not expressly provide for sabbatical leaves for employees of a corporate employer. In practice, an employee who wishes to take time off to engage in further study typically requests the employer for an extended unpaid leave, but the employer is not obliged under law to consent to such request. In a related note, the employer may designate an employee to travel abroad for study and research on behalf of the employer. Since the employee is still working for the employer, the employer must continue to pay the employee wages, and the employee's labour insurance and employment insurance enrolment must still be maintained during the travel period. (Article 9, paragraph 2 of the Labour Insurance Act, Article 40 of the Employment Insurance Act).

5.3 Other New Manifestations

There are no other regulations regarding new work that are pertinent to Taiwanese employers.

6. Collective Relations

6.1 Unions

The Labour Union Act (LUA) categorises unions into corporate unions, industrial unions and professional unions (Article 6). As of March 2023, there are 939 corporate unions, 257 industrial unions, and 4,313 professional unions in Taiwan (figures based on information on the MOL Website).

The main functions of a labour union include the execution, amendment or abolition of collective agreements, handling labour disputes, the improvement of labour conditions and the promotion of member benefits (Article 5). If the employing entity's employees are organised into a labour union, any adoption of flexible working hours arrangements, increases in work hours, reductions in rest times between shifts or adjustments to regular day off shall require the consent of the labour union (Articles 30, 30-1, 32, 34 and 36 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 and Article 7 of the Act for Settlement of Labour-Management Disputes).

6.2 Employee Representative Bodies

The LUA provides workers with a right to join labour unions (Article 4). In unions with 100 or more members, union members may elect member representatives according to the union's charter. A member representative's term shall be four years, commencing from the date of the first member representatives' meeting after the election (Article 15). The general meeting of union members is generally the highest authority body within the union. If, however, 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 (Article 16).

If a member or member representative cannot attend a union meeting, they may authorise another member or member representative to act as a proxy (Article 27). The number of proxy

members/member representatives attending the meeting in person may not exceed ⅓ of the total attendees. It was officially announced in 2011 by the Council of Labour Affairs (predecessor of the MOL) 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. As such, a regular member may not act as a proxy for a member representative in a union member representatives' meeting.

According to the LUA, matters itemised in Article 26 of the LUA (such as the amendment of the union charter, disposal of property or suspension and expulsion of members) shall be resolved by the general meeting of member representatives (Article 26).

6.3 Collective Bargaining Agreements

Under the Collective Agreement Act, a collective agreement is defined as a written agreement entered 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). When bargaining for a collective agreement, both labour and management shall proceed in good faith. A party without justifiable reason cannot reject the collective agreement proposed by the other party (Article 6). In executing a collective agreement, in principle, a quorum of half of the union/employer organisation's members or member representatives must be present in a meeting of member or member representatives and a supermajority (⅔) vote of the members or member representatives in attendance. Alternatively, parties can notify all members of the labour union or employer organisation and have ¾ of all members agree in writing. Upon completion of the collective agreement, the contracting parties shall submit it to the competent authority for recordation (Articles 9 and 10).

The collective agreement may be concluded for a specific period for accomplishing a certain assignment or cover, with respect to fixed term or non-fixed term work (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/whistle-blower 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.

Upon the conclusion of the collective agreement, compliance with its terms and conditions is required from (Article 17):

- the employer who is the party of the collective agreement;

- the employers and workers who are affiliated with the organisations that are parties to the collective agreement; and
- the employers and workers who join the organisations that are parties to the collective agreement.

The labour terms and conditions set out in the collective agreement shall be deemed to be part of the terms of the employment agreement between the employer and the employees who are subject to that collective agreement. As such, employment agreements that are inconsistent with the terms of the collective agreement shall be deemed as void and superseded by those of the collective agreement (Article 19).

7. Termination

7.1 Grounds for Termination

A unilateral termination by an employer is permitted only under the conditions outlined in Articles 11 and 12 of the LSA.

A notice of termination may be given by the employer upon the occurrence of (Article 11):

- the suspension or transfer of employer's business;
- the employer incurring operating losses or facing a business contraction;
- the suspension of business operations for one month or more due to force majeure;
- a change in the nature of employer's business that necessitates a reduction of workforce, with there being no other suitable positions for the terminated employees to be re-assigned to; or
- the employee being clearly unable to satisfactorily perform the duties of the position held.

The employer may immediately terminate the employment relationship if (Article 12):

- the employee misrepresented any facts at the time of signing the employment contract in such a way as to mislead the employer and cause them damages therefrom;
- the employee commits a violent act against or grossly insults the employer, their family members/agents 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 by 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 material, product or other property of the employer, or deliberately disclosed any technical or confidential information of the employer thereby causing damages to the employer; or
- the employee went absent from work for three consecutive days, or for a total six days in any month without just cause.

Employees may also immediately terminate their employment relationship if (Article 14):

- the employer misrepresented any facts at the time of signing of the employment contract in a manner so as to mislead the employee and thus cause them to incur damages therefrom;
- the employer, the employer's family member or the employer's agent engaged in a violent act against or grossly insults the employee;
- the contracted work is hazardous to the employee's health and the employer refuses 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 in such a way that the employee may contract the disease their health may be seriously threatened;
- the employer fails to pay the compensation agreed to in the employment contract or fails to provide sufficient work to the employee who is paid on a piece-of-work basis; or
- the employer has violated the employment contract or labour laws and this has adversely affected the rights of the employee.

In accordance with Article 11 of the LSA, when an employer terminates an employee, they are required to provide advance notice to the employee. In cases where the employee terminates an employment contract with an indefinite term without cause, or the employee terminates a fixed-term employment contract with a term of more than three years upon completion of three years' work, the employee is also required to provide advance notice to the employer.

A mass redundancy is defined under the Act for Worker Protection in Mass Redundancy (AWPMR) as a situation where a business entity is forced to lay off workers on account of any of the conditions outlined in Article 11 of the LSA or as a result of a merger or restructuring. The number of employees that must be made redundant for the event to qualify as a mass redundancy vary depending on the total number of individuals employed by the business in question (Article 2 of the AWPMR). These limits are as follows.

- A single business entity with less than 30 workers at a single site lays off more than ten 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.

If a single business entity of any size lays off more than 200 workers in 60 days,or more than 100 workers in a single day, this shall be automatically considered a mass redundancy event.

Prior to conducting a mass redundancy, employers must notify the competent authority and other relevant authorities or personnel of the plan 60 days in advance and display it at the workplace. Within ten days, the employer and the employees must initiate negotiations; if the sides are unable to or refuse to negotiate, the competent authority will convene a mediation committee involving both sides, which will negotiate on the mass redundancy plan and find a timely alternative solution (Articles 4 and 5).

Once the committee has reached a consensus, an agreement will be drafted and executed by the committee members. The competent authority will then, within seven days following the consensus, submit the agreement for approval and review by the court with jurisdiction for execution. The effect of such an agreement covers all individual employees (Article 7).

7.2 Notice Periods

In the case of terminations under Article 11 of the LSA, the employer must notify the employee, but the notice may be replaced by a payment of

wages. The minimum notice periods are listed below (Article 16).

- A ten-day notice is required for employees who have worked for the employer for three months or more but less than one year.
- A 20-day notice is required for employees who have worked for the employer for one year or more but less than three years.
- A 30-day notice is required for employees who have worked for the employer for three years or more.

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

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 as follows.

- For employee's seniority calculated under the LSA – one month's average wages for each full year of service; the amount shall be prorated for a partial year of service, and service of less than one month shall be deemed as one month of service.
- For employee's seniority calculated under the Labour Pension Act (LPA) – half a month of average 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 six months' wage (Article 12 of the LPA).

Average wage means the figure reached by taking the total wages for the six months preceding the day on which an event requiring that a computation be made occurs, divided by the total number of days in that period. In the case of a period of service not exceeding six months, the term "average wage" means the figure reached by taking the total wages for the service period divided by the total number of days of that period.

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, ten days before the employee's departure, submit to the local competent authorities and public employment services institution(s) the name, sex, age, address, telephone number and position of the laid-off employee, as well as the cause(s) of the layoff and whether they are in need of employment counselling. Lay-offs reaching mass redundancy levels shall follow the aforementioned mass redundancy rules.

7.3 Dismissal for (Serious) Cause

The LSA specifies the grounds for dismissing an employee for cause in Article 12, paragraph 1 (see **7.1 Grounds for Termination**). The employer may terminate the employment agreement if any one of those grounds are present (eg, violence against the employer).

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. As a point of note, 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 a reduction of the sentence to a fine), employers must terminate the employee within 30 days of becoming aware of the grounds for termination.

As stated above, terminations for cause do not require advance notice nor severance pay.

7.4 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.

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 employee's rights that are more favourable than those provided in the law is generally enforceable under the freedom of contract principle, as long as there is no violation of statutory requirements.

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. As 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 it be contrary or repugnant to the public morals of Taiwan.

According to Taiwan Civil Code (Article 247-1), the following circumstances constitute an inequitable waiver of rights for the employee if the release is not negotiated.

- The drafting party's obligations are eliminated or decreased.
- The liability of the other party is increased.
- The other party has its rights waived or restricted.
- Other material disadvantages the other party.

7.5 Protected Categories of Employee

Specific Protection Against Dismissal for Particular Categories of Employees

Occupational hazard

Under the LSA, a worker who has been receiving medical treatment for injuries suffered as a result of an occupation 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 a 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 con-

tract, shall be deemed as null and void (Article 11 of the Act of Gender Equality in Employment (AGEE)). In addition, the LSA 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 (Article 35), the employer or a representative of the employer in a capacity to exercise managerial powers may not:

- refuse to employ, terminate, demote or cut the wages of or otherwise treat unfavourably an employee as a result of forming or joining a union, participating in union activities or holding a position in a union;
- condition employment upon refraining from joining a union or holding a position in a union;
- refuse to employ, terminate, demote, cut the wages of or otherwise treat unfavourably an employee for requesting collective bargaining or participating in collective bargaining;
- terminate, demote, cut the wages of or otherwise treat unfavourably an employee for participating in or supporting a labour dispute; or
- inappropriately impact, interfere in or restrict the establishment, organisation or activities of a union.

Any terminations pursuant to the above actions are void.

The above protections apply to employee representatives as well.

8. Disputes

8.1 Wrongful Dismissal

In Taiwan, if an employer fails to comply with Article 11 of the LSA in dismissing an employee, that termination is considered to be arbitrary. Moreover, Article 35 of the LUA provides that, when an employee is terminated by an employer because they form a labour union, join a labour union, participate in the activities of a labour union, request to take part in group negotiations or participate in or support a labour protest, such termination shall be deemed invalid, and the wrongfully terminated employee may petition the competent authority for a decision pursuant to the Act for Settlement of Labour-Management Disputes (ASLMD).

8.2 Anti-discrimination

Generally speaking, Taiwanese workplace anti-discrimination laws can be summarised in the following manner.

Overall Regulations

A general anti-discrimination rule is found in the ESA, which specifically stipulates 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, horoscope, blood type, or past membership in any labour union. Matters clearly stated in other laws shall be followed in priority…" (Article 5). In the event that violations occur, they will be punishable by a fine of between TWD300,000 and TWD1,500,000. Also, the competent authority(ies) at the municipal and county/city government level shall publicly disclose both the employer's name or title and the person-in-charge and order the employer to make improvements within a specified period.

Failure to timely make such improvements will result in successive fines for each violation thereafter (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 married to a Taiwan national with household registration records;
- citizens of Mainland China with permission to stay with relatives in Taiwan and to work in Taiwan;
- citizens of Mainland China with permission to reside in Taiwan for an extended period and work in Taiwan during such a period;
- residents of Hong Kong or Macau who qualify as overseas Chinese with permission to work in Taiwan, or their spouses or children who are eligible to become Taiwanese citizens; and
- residents of Hong Kong or Macau with permission to work in Taiwan.

Sexual/Gender Discrimination

The AGEE expressly prohibits an employer from discriminating against an employee because of their gender or sexual orientation, including in performance reviews, benefits, wages, retirement pensions and severance payments (Chapter 2).

According to the AGEE, an employee or job applicant who is subject to discrimination based on gender or sexual orientation must first provide a statement of the facts relating to the discrimination. The employer then bears the burden of proving that the discrimination was not motivated by gender or sexual orientation or that the position of the employee or applicant has special gender considerations (Article 31).

The Council of Labour Affairs (predecessor of the MOL) issued the Lao-Zhi-Ye-Zi-1000072018 Circular in 2011 to address discrimination in employment based on factors other than gender, which states that, if necessary, the competent authority may, under Articles 39 and 40 of the Administrative Procedure Act, order an employer to explain the matter in writing. The employer has the burden of proof and must provide all the necessary documents, objects or information for the investigator to review.

Damages/Relief

Back pay

If a court or other legal adjudication body finds that an employer has violated labour laws (through wrongful termination, an unlawful request for employees to go on unpaid leave, etc), the employer will be responsible for making up all back pay owed to the employee, starting from the time of the unlawful act until the day the employee is reinstated, along with annual interest of 5% beginning the day after the payment was due.

Front pay

Taiwan does not have a statute addressing 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, Taiwan does not allow for such relief, since a debt obligation in the future is only actionable if it has already been established that such an obligation exists and there is good cause to believe that the obligor will fail to fulfil such obligation at that point. In light of the fact that the nature and extent of such debt obligations may not be entirely established for a number of reasons (such as possible wage adjustments,

reassignments and other changes) Taiwanese law does not permit an employee to assert such a claim for front pay at this time.

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, child care and other benefits) 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

Taiwan does not have a law on punitive damages in a labour dispute. However, in the event that the employment contract provides for punitive damages, Taiwan law and practice will generally allow such a provision to be enforced.

Attorney's fees

Please refer to **9.3 Awarding Attorneys' Fees**.

Reinstatement damages

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

8.3 Digitalisation

The MOL promulgated the "Issues of Note in the Use of Videoconference by a Competent Authority in a Labour Dispute Mediation" on July 26, 2022, which authorises local competent authorities to hold labour dispute mediations remotely based on the circumstances of the case and the parties have consented to videoconferencing. Consent of the parties is again needed for the second and each subsequent remote mediation meeting.

In addition, the competent authority is obliged to designate a remote mediation meeting location that is properly furnished with electronics equipment and telecommunications connections, as well as making sure before the start of a mediation meeting that the parties can sufficiently perceive and communicate with each other in real-time.

9. Dispute Resolution

9.1 Litigation

There are Specialised Employment Forums

In Taiwan, every court has a dedicated chamber (the Labour Court) to handle labour disputes. For smaller courts with smaller pools of judges, the Labour Court may instead be a separate division of the court. Judges of the Labour Courts are generally selected by their peers based on their expertise in labour law.

The Labour Court is in charge of (Article 3 of the Labour Incident Adjudication Rules):

- mediation, litigation, provisional remedies and other related procedural matters in labour cases;
- labour matters stipulated by the ASLMD, including compulsory enforcement petitions in labour cases made pursuant to Article 59, paragraph 1 of the same Act;
- approval of agreements under the Act for Worker Protection of Mass Redundancy; and
- other matters that the law or the Judicial Yuan has designated to the Labour Court.

Class Action Claims are Available

A labour union may, pursuant to the scope designated in its charter, file suit on behalf of a number of its members with a common interest. Pursuant to Article 13 of the Labour Incident Act (LIA), a labour union filing a class action claim filed under its own name may be entitled to a reduction or exemption of the court fees, namely:

- no court fee is assessed for any part of the claim in excess of TWD1 million; and
- no court fee is assessed for a class action seeking to enjoin an employer from ongoing infringement of the rights of the labour union's members.

General Rules Under the Code of Civil Procedure Regarding Representations in Court

Under the Code of Civil Procedure, pro 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, Article 68 of the Code of Civil Procedure states that it is possible to be represented by a non-attorney with any of the qualifications specified in Articles 2 and 3 of the Regulations Governing the Permission of Representations by a Non-Attorney Litigation Representative in Civil Incidents (such as, a university law degree graduate), subject to permission by the presiding arbiter.

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 of Code of Civil Procedure).

Special Rules Under the LIA Regarding Representations in Court

The following additions rules apply to disputes brought under the LIA.

- A lawyer is required for a labour union's class action to enjoin an employer's ongoing infringement of union members' rights (Article 40).
- An employee does not require prior approval of the presiding judge to be accompanied by an assistant "designated by the labour union or legal foundation" in support of the employee (Article 9).
- A foreign individual employed in the professions specified under Article 46, paragraph 1, subparagraphs 8–10 of the ESA (see **4.1 Limitations on Foreign Workers**) may, with the approval of the presiding judge, retain a non-lawyer (a responsible person, employee, or staff member of a private employment service institution) as their agent in the labour action (Article 10).

9.2 Alternative Dispute Resolution

Labour Disputes May Be Resolved Through Arbitration

Article 5 of the ASLMD categorises labour disputes into two types.

- Rights disputes – disputes over the rights and obligations of the parties under law, collective agreements or employment agreements.
- Interests disputes – disputes over the maintenance or adjustment of labour terms.

Although both types of disputes can be settled through arbitration, rights disputes may be arbitrated under the Arbitration Law if the parties agree, whereas interests disputes can only be arbitrated under the ASLMD (Articles 6, 7 and 64).

In Taiwan, the validity of pre-dispute arbitration agreements depends on the type of labour dispute involved.

- For disputes over adjustments, only the ASLMD will apply. Article 25 of the ASLMD stipulates that the parties may submit to the competent authority for arbitration if mediation has already failed, or if the parties have expressly agreed in writing not to participate in mediation.
- For disputes regarding rights, both the ASLMD and the Arbitration Law apply. Under the Arbitration Law, the parties may enter into an arbitration agreement for the settlement of current or future disputes by an arbitration tribunal of one or more arbitrators (Article 1). Hence, in a labour dispute over rights, the parties may agree pre-dispute to 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.

9.3 Costs

Generally speaking, in civil actions in Taiwan, only attorneys' fees for the third instance proceeding may be included in the litigation costs and awarded to the prevailing party. However, the LIA specifically stipulates that, in the aforementioned case of a class action brought by a labour union seeking to enjoin an employer from continuing violations of the rights of a number of its members, the attorney's fees paid by the labour union may be counted as part of the litigation costs of the case. Therefore, it will be possible for the prevailing party to be awarded that amount (Article 40 of the LIA).

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