

## FRANCE

### The new procedure for redundancy/works council consultation

In 2013 the French procedure for collective redundancies has been the subject of a considerable overhaul; indeed, the French socialist government introduced in 2013 a law entitled the “law for the safeguard of employment” which aims to simplify such redundancy procedures in France.

The new law provides that a redundancy process may be more carefully managed through two potential avenues: a collectively bargained company-wide agreement with unions, or a timeline submitted to and approved by the Labor administration. Both potential avenues require that the Works’ Council be informed and be consulted twice on the redundancy project as well as the potential timeline.

In addition, French employers are legally obliged to define a “Plan for the safeguard of employment”, which must contain social measures aiming to reduce redundancies. Under the new provisions of the law for the safeguard of employment, the labor administration now has the right to make any observations and ask any question regarding the contents of such a plan, and the employer is obliged to answer all of them, even if he must not necessarily modify his plan accordingly.

### Co-employment

French case-law has also seen a new concept emerge in the notion of “co-employment”. Indeed, over the past few years, certain labor courts as well as courts of appeal rendered decisions where the employees of two distinct companies were considered as employed by both entities, if the two companies shared “a common management, common interests and the same activity”. The consequence of co-employment is that both “employers” now share, collectively, the burden of employment, which includes the payment of salaries and even damages for wrongful dismissal.

On August 30, 2013, a French Labor Court rendered a decision in which the German parent company of a French subsidiary of Continental was deemed liable for the wrongful dismissal of 678 employees, and was ordered to pay damages to each employee amounting to 30 to 36 months of his salary on average. An appeal has been filed by both the parent and subsidiary.

Roselyn Sands

## HONG KONG

There have been several statutory developments and one case law development of note in 2013. On 1 May 2013, the minimum wage increased to HK\$30 per hour. Under the Employment Ordinance, an employer is now required to keep records of hours worked for employees who earn less than HK\$12,300 per month.

### Changes to minimum wage and the mandatory provident fund

The government approved the proposal to change the minimum and maximum relevant income levels for contributions to the mandatory provident fund (“MPF”) regime. As of November 2013 the new minimum relevant income level is HK\$7,100. A relevant employee earning less than this income level is not required to contribute to an MPF scheme although the employer is required to make the

relevant contributions. Effective June 1, 2014 the new maximum relevant income level is HK\$30,000. A relevant employee earning more than this is not required to make any MPF contributions in respect of any earnings which exceed that maximum level. Further, the maximum mandatory contribution amount will increase from HK\$1,250 to HK\$1,500 per month, effective June 1, 2014.

### “Stigma” damages in unfair dismissal case

Finally, in a high profile case, a (former) employee sought an entitlement to “stigma” damages when challenging his dismissal. In addition to terminal payments, the court held that the employer had breached the implied term of trust and confidence in effecting the dismissal and awarded, in respect of that breach, a substantial sum in damages, to compensate the employee for the difficulties that the court deemed that he would have faced in seeking employment after his dismissal.

K. Lesli Ligorner

## ITALY

Following the major reform of the Italian Employment Law (L. 92/2012) which introduced significant amendments to the regulation on termination, temp contracts and unemployment compensation among others, during the year 2013 Italian government further engaged to promote employment and support to companies.

### Fiscal and social incentives

Accordingly, during the year 2013, and recently within the Budget Law currently under final approval, taxes on salaries have been reduced and shall bring a benefit per employee of around 200 euros/month compared to the previous year; fiscal incentives have been introduced in favor of companies hiring with an unlimited contract individuals between 18 and 29 years old who have been unemployed for more than 6 months: the incentive cannot exceed the sum of 650 euros per employee and lasts three years; the regulation on apprenticeship contracts have been significantly simplified under its administrative aspects.

### Labor and union relationships

Constitutional Court n. 231/2013 confirmed that the values of “pluralism and freedom of union activity” deserve constitutional protection; as a consequence, each time an employer wishes to sign an internal collective agreement, all the union bodies present in the company (not only the more representative at the national level) have to be invited to the negotiation.

This judgment is even more significant, given that it was issued in a proceeding involving FIAT Auto.

As a result, it is foreseeable that the role of the local unions will be strengthened by this judgment and this should also lead to a more effective negotiation with the Employees’ Representatives.

Massimo Audisio

# MEXICO

## Limits and controls on outsourcing

Mexican Labor Law Reform (LFT), which entered into force as of the 1st of December, 2012 has forced companies using a dual corporate structure involving an operating company and a labor outsourcing company to merge or to restructure the outsourcing company as all companies within a group may be held jointly liable for the payment of salaries, fringe benefits, profit sharing and any other labor obligations of all employees in Mexico.

Now permanent compliance supervision is required, as the contracting companies must supervise outside contractors at all times to make sure they comply with all applicable environmental, health and safety at work laws and regulations. A government authorized "verification unit" may also perform this supervision.

The new types of labor agreements have provided for additional flexibility for employers, as more and more employees are being hired for the season or by the hour. The extended trial period for new hires (now allowed for a period of 30 days or 180 days for employees for management positions, managerial and other persons involved in the management of the company) has been a great tool for employers.

## Labor implications of the 2013 Tax Reform

The government has also passed a tax reform, which will enter into force on January 1, 2014, which will also impact social contributions for both employers and employees. Indeed, starting 2014 fringe benefits will now be accounted for in employees' income tax declaration, which will result in higher taxes for employees with such benefits in 2014. In addition the manner in which social contributions are calculated has been modified, which will translate in a 20% to 40% increase in contributions. Some local payroll taxes are also being increased by 20-30%.

Juan Nájera

# PEOPLE'S REPUBLIC OF CHINA

## Restrictive measures on specific types of labor schemes

On July 1, 2013 an amendment to the People's Republic of China (PRC) Labor Contract Law came into effect, which further restricts the use of labor dispatch arrangements in China (except for representative offices). The amendment limits the hiring of dispatched workers to temporary, auxiliary or substitute positions, provides definitions of these positions for the first time, and provides increased penalties for breach of the labor dispatch provisions. The percentage of an employer's workers hired under labor dispatch arrangements will also be capped (likely at 10% of the employer's workforce; measured by employing entity), and those positions that are deemed "auxiliary" are subject to employee consultation. While the amendment was originally meant to take effect from July 1, 2013, the enforcement is likely to be delayed for an additional two years in order to give companies more time to adapt to this substantial change to this business model used across the country and by multinational companies as well as domestic companies.

Also on July 1, 2013, the PRC Exit and Entry Law came into effect, tightening regulation on the employment of foreigners in China. A regulation issued by the State Council followed, effective on September 1, 2013, and made changes to the existing visas and permanent residency arrangements for foreigners, including introducing new visa categories and splitting existing categories. These developments will assist the PRC government to regulate, monitor and control foreigners' activities in the PRC more effectively, and it is expected that scrutiny of all foreigners living and working within the PRC will increase.

## Non-compete compensation

On February 1, 2013 an Interpretation of the Supreme People's Court came into force, which, amongst other things, addresses enforcement of non-compete covenants. The Interpretation suggests a national benchmark for the minimum level of compensation which must be paid to a former employee for compliance with a non-compete, where the written agreement is silent: 30% of the employee's average monthly remuneration. In addition, if an employer wishes to terminate the post-employment restriction before its expiry, the employer must provide three months' prior notice.

## Data protection

On February 1, 2013, new data protection guidelines issued by the Ministry of Information and Industry of China came into force. The guidelines regulate the collection, use, processing, transfer, retention and erasure of personal information and, importantly, impose an obligation to obtain consent of an individual whose data is being collected. Special rules apply to "sensitive" personal information. Whilst the guidelines are not binding, all entities are encouraged in the PRC and expected to follow them as a matter of best practice.

K. Lesli Ligorner

## SINGAPORE

### Increase in scope of the Employment Act

Following on the Singapore government's policy to improve employment terms and benefits for employees, the Singapore Employment Act has been amended in November 2013 to increase its coverage for rank and file employees and junior executives. Prior to this round of amendments, only rank and file employees were covered by the Employment Act, with those earning up to S\$2,000 per month being entitled to additional protections on working hours, annual leave and overtime benefits. Junior executives earning up to S\$4,500 per month were entitled to limited protection for salary disputes. With the amendments, the salary threshold for working hours, annual leave and overtime protection has been raised to S\$2,500 (although overtime computation will be based on a maximum salary of S\$2,250 per month). Junior executives will now be entitled to full cover under the Employment Act, including for sick leave, and for the right to complain of unfair dismissal so long as they have been employed for at least 12 months. These changes are expected to come into force in April 2014.

### Job protection for nationals

To help Singaporeans compete for jobs, companies which apply for employment passes for foreign workers must first satisfy new rules under a "Fair Consideration Framework" which require employers to advertise jobs in a national job bank for at least 14 days, ensuring that jobs advertised are open to Singaporeans and are non-discriminatory in accordance with official guidelines. These rules are aimed at reinforcing policy under which employers are expected to consider Singaporeans fairly before hiring foreigners. Companies with discriminatory practices may have their work pass privileges curtailed. Small companies with 25 or fewer employees, and jobs which pay a fixed monthly salary of S\$12,000 or more will be exempted from the rules. The Fair Consideration Framework requirements will come into effect on 1 August 2014.

Susan de Silva

## SPAIN

### Implementation labor reforms

Employers have been implementing during year 2013 the broader scope provided by the 2012 labor reform to implement changes where the business so required, including salary reductions, flexibility of working hours, redundancies, etc.. Courts have declared in a number of court decisions issued in 2013 that despite the 2012 law being silent in defining the scope of the reasons justifying such changes, employers should apply the test of reasonableness when assessing the measure justifying the need to restructure. They have also declared that employers should proactively consult collective measures with employee representatives. Courts' restrictive interpretation in assessing employers' compliance of procedural requirements for collective redundancies has led the government to approve in August 2013 an amendment to the October 2012 regulation so as to provide a clearer and straightforward procedure to ensure employers may implement collective redundancy plans with no risks of nullity challenges.

## Privacy at work

The Constitutional Court has for the first time declared that an employer who monitored employees' emails was not infringing employees' privacy, since it was exercising its right to monitor employees' compliance and it had previously informed employees that they should not have expectations of privacy.

## Termination of collective bargaining agreements

Finally, 2013 was to be the year when a number of collective bargaining agreements were to cease to be in force because unions and employer representatives had failed to reach agreements after one year of negotiations as set forth by the 2012 law. The High Court has however limited such effect in those (fairly common) cases where the collective bargaining agreement contained the same wording as that of the previous law, whereby the agreement was to remain in force until the parties agreed on the new agreement.

Sonia Cortes

# GULF COOPERATION COUNCIL MEMBER STATES

## Increased employee protection

2013 saw a continued trend across the Gulf Cooperation Council (GCC) region with regard to legislative reform in the employment field. In the UAE, the Emirate of Dubai announced new legislation obliging employers to provide health insurance benefit to all employees. The legislation is due to come into force in 2014 and is modelled on the legislation currently applicable in Abu Dhabi which provides for extensive coverage including dental care. Qatar also introduced similar legislation this year and the obligation to provide this benefit to employees extends to the employee's spouse and up to 3 children.

## Job protection for nationals

In another regional trend, GCC Governments sought to promote the employment of nationals within the private sector by limiting the availability of visas for foreign nationals to employers in the private sector. Kingdom of Saudi Arabia (KSA) developed its Nitiqat system introduced in August 2011 and designed to categorise employers by size and sector, applying a quota to every employer for employing KSA nationals within the business. In 2013, the quotas were refined further and made stricter for smaller employers. Alongside the Nitiqat system, the Ministry of Interior and Ministry of Labour launched a series of inspections designed to root out illegal workers. A 6 month amnesty ending in November 2013 was declared and regulations issued to permit individuals to regularise their status or leave the country. In Kuwait, measures were also introduced to limit expatriate workers and included limitation of day to day activities such as the issue of driving licences.

## Creation of Labor Courts in KSA

In KSA, new civil and criminal procedures were introduced and a time frame for removal of the Labour Grievance Committees and their replacement with Labour Courts (as part of the wider civil courts) put in place to be effective in 2014.

Sara Khoja

## UNITED KINGDOM

The coalition government in the UK has committed to removing red tape to promote economic growth. This has led to a number of legislative changes including the introduction of the Enterprise and Regulatory Reform Act 2013 ("Act") and other changes which are a pot-pourri of measures covering various areas of employment law.

### Protection of pre-termination negotiations

The Act includes changes to pre-termination negotiations (i.e. any discussion or offer of proposed settlement terms) to prevent their reference in unfair dismissal cases, except when there has been "improper behavior". In essence, employers and employees are now able to negotiate termination of employment openly without the need for a genuine dispute to arise, though there are some restrictions in the small print of the Act, so employers should continue to act cautiously. The Act also includes a new limit for compensatory awards in unfair dismissals which are set as the lower of the current cap (£74,200) or one year's gross pay.

### Reduction in the consultation period for collective redundancies

In addition the collective redundancy consultation period is reduced from 90 days to 60 days or from 45 days to 30 days, depending on the number of people being made redundant. The Employment Appeal Tribunal ("EAT") has held that when calculating the number of proposed dismissals in a redundancy, to establish if the collective redundancy consultation obligations are triggered, the concept of separate establishments should be disregarded. However, this case is being appealed to the Court of Appeal as there are conflicting EAT decisions on this point. For now, the calculation of the number of people being dismissed should be based on an employer's entire business.

### Creation of disincentive up-front litigation costs

Finally, anyone bringing a claim in an employment tribunal now has to pay a fee between £160 and £250, when filing a claim, depending on its nature. Fees between £230 and £950 are also payable for hearings. These fees may be awarded as costs if the claimant wins. Previously claimants had been able to bring a claim and have their claim heard for free. This reform is intended to reduce the number of claims being brought to tribunal, which in turn will reduce the strain faced by tribunals and employers in the UK. An assessment of the practical impact of the law is expected in the months to come.

Georgina McAdam

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