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Global Employment Law Update - Part 1: Angola to China

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Introduction

Welcome to the latest edition of the McDermott Will & Emery Global Employment Law Update. The purpose of this publication is to provide you with concise summaries of many of the laws and court decisions from 2020 that significantly affect employers and employees all over the world. No publication has ever captured all new employment law developments from every single country. However, our effort to create the most comprehensive global employment update ever assembled has resulted in updates from 53 countries.

Many of the updates presented in this publication describe changes in the law that are well known to lawyers and human resources professionals from those countries, but are lesser known in other parts of the world. Our aim is to provide you and your colleagues with a useful reference guide to significant changes in employment law all across the globe. Furthermore, we hope this guide—and other specially designed products we create for our clients—will serve as a tool to assist multi-national businesses in their ongoing struggle to maintain a consistent global corporate culture amidst an ever-changing landscape of local employment laws.

Local employment lawyers from each country, who are either McDermott lawyers or part of McDermott's Global Employment Law Network, prepared these updates. We select each law firm participating in our network based on their outstanding local reputation and, in most cases, our prior experiences in working with them. Participants in the network work closely with McDermott lawyers on client projects, article writing, seminar and webinar presentations as well as signature client events.

Angola - China | Colombia - El Salvador | Estonia to Ireland | Israel to Malaysia | Mauritius to Portugal | Russia to South Africa | Spain - Vietnam

ANGOLA

Laws

COVID-19 Legislation

2020 was characterized by the pandemic that impacted countries around the world, and Angola was

no exception. Starting with the Presidential Decree 82/20, which established the first employment-related measures in response to the pandemic, through the Presidential Decree 314/20, the last COVID-19-related regulation of 2020, the pandemic compelled the legislature to enact a number of temporary rules affecting the country's labor and employment laws. These rules included: (i) exemptions from on-site work requirements for employees aged 60 and over, pregnant women and other populations deemed to have high vulnerability to COVID-19, (ii) extending the expiration date of employment visas, (iii) limiting the percentage of employees performing on-site work for certain activities, (iv) suspending the right to strike and (v) prohibiting the suspension of employment contracts or the termination of employment based on the employee's absence from work.

Presidential Decree 295/20 (Extension of the Social Protection Regime to Activities Which Generate Low Income)

This decree extended the social protection regime to employees in positions that generate low income, such as agricultural and fishing, and small businesses. With this regulation, these employees are now protected by the Social Protection System with respect to disability, old age and death. The regulations also define specific contribution rates for these companies and employees.

Presidential Decree 299/20 (Old-Age Protection System Regime)

This decree approved the Old-Age Protection System regime, establishing an old-age retirement, early retirement and pension payments system. All employees who are at least 60 years old and with at least 180 months of contributions to the Social Protection System, or 420 months of contributions regardless of their age, are entitled to an old-age allowance. Significantly, employees may still continue working even after receiving the allowance, if the employer accepts their request.

Law 33/20 (Civil Requisition)

This decree regulates instances of civil requisition, setting the principles, rules and proceedings applicable to this mechanism, which permits the state, in urgent situations, to take control of companies and goods, and obliges citizens to provide services or work under the conditions defined by the government. Failure to comply with those orders may constitute a crime of disobedience.

Case Law

Constitutional Court – Judgement 606/2020 (Minimum Period Between the Convocation and the Disciplinary Interview)

With regard to disciplinary proceedings, the Angolan Constitutional Court followed the Supreme Court's decision that, despite the Employment General Law remaining silent as to a minimum period between the Convocation (the act of calling by summons) and the Disciplinary Interview, employers must wait at least five days between those acts to, among other things, avoid infringing on employees' rights to properly defend themselves. (More information available here.)

Belgium

NOTICE PERIODS ARE SUSPENDED IN CASE OF CORONA FURLOUGH

Belgian rules on employee dismissal have been amended in the context of the COVID-19 pandemic. On June 11, 2020, a law was enacted to suspend the notice period of dismissed employees during periods of temporary furlough due to COVID-19-based force majeure ("Corona furlough"). This was intended to prevent employers from dismissing employees without having to pay any remuneration or

severance indemnity.

After review by the Council of State, the law was not ultimately given retroactive effect. This measure, therefore, became applicable as of June 22, 2020, without any effect on notice periods that began before June 22, 2020. If the notice periods already expired before this date during a period of corona furlough, the employment agreements were deemed terminated.

Paternity and Co-Maternity Form New Grounds of Discrimination in Gender Act

Paternity, co-maternity, breastfeeding, adoption, gender and medically assisted procreation are new grounds for discrimination on the basis of gender. The new grounds of protection are in addition to the already existing protected criteria: pregnancy, childbirth, motherhood, gender transition, gender identity and gender expression.

Among other things, this extension to the Gender Act will better protect fathers who are discriminated against for taking paternity leave, and other parents who are often absent from work for in vitro fertilization (IVF) treatment.

Court of CASSATION 22 June 2020, AR S.19.0031.F

The case concerns the basis for calculating the severance and protection allowance of an employee who was dismissed and worked half time under a time credit scheme to care for her son. The Mons Labour Court ruled that there was no indirect discrimination on the grounds of sex when this severance and protection allowance was calculated on the basis of the remuneration received as a result of her reduced work performance. Both the employee and the Institute for the Equality of Women and Men challenged this judgment on the basis of Article 157 of the Treaty on the Functioning of the European Union (TFEU), which provides for equal pay for male and female employees, and on the basis of the European Anti-Discrimination Directive and the Belgian Anti-Discrimination Act.

The Court stated that when the pay for reduced working hours in the context of parental leave credit constitutes the basis for the calculation of the severance pay and protection pay, a difference in treatment between male and female employees is created. According to the Court, significantly more women than men opt for this time credit system. Such a distinction can be compatible with Article 157 TFEU only if it is justified by objective factors. Since the judgment under appeal failed to examine those points, it was therefore contrary to Article 157 TFEU.

Bosnia and Herzegovina

CONSTITUTIONAL COURT SUPPORTS STAFF LEASING ALTHOUGH NOT EXPLICITLY REGULATED

The Constitutional Court of Bosnia and Herzegovina in its decision no. AP-809/19 dated November 10, 2020, found that staff leasing is not prohibited in Bosnia and Herzegovina (BH) even though such an arrangement lacks explicit regulation in the relevant labor legislation.

During a labor inspection at the premises of the appellant, the labor inspector established that the work performed by leased employees sent by a staff leasing agency represents regular business activities of the appellant. Therefore, these employees should have been employed by the appellant for conducting such work pursuant to the labor regulations instead of leased from another employer

based on a commercial agreement.

The Constitutional Court of BH found that the lower courts interpreted the Labour Law (published in the Official Gazette of the Federation of Bosnia and Herzegovina, nos. 26/16 and 89/18) arbitrarily to the extent that such interpretation represented a breach of the appellant's right to a fair trial.

The Constitutional Court of BH reasoned that although staff leasing is not explicitly regulated in BH, it is not explicitly forbidden and thus cannot be interpreted as such solely due to lack of explicit regulation, particularly since staff leasing is recognized as a permitted activity pursuant to the BH Classification of Business Activities. Furthermore, the Court noted that there is no regulation on how a company should organize its business activities, i.e., whether regular business activities should be conducted by way of engaging employees or whether a company can use commercial agreements to lease employees, as the relevant regulations allow companies to make their own decisions in this regard.

The decision is extremely important because it is not uncommon for local authorities to interpret business decisions which do not result in direct employment to be executed for the purpose of avoiding higher tax and social security contribution liabilities or avoiding the local labor regulations (which are fairly rigid, inflexible and outdated in BH).

LAW ON WORK SAFETY AND PROTECTION FINALLY ADOPTED IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

The new Law on Work Safety and Protection (Work Safety Law) has finally been adopted in the Federation of Bosnia and Herzegovina (FBH), ending the application of an outdated law from 1990. The Work Safety Law is harmonized with the conventions of the International Labour Organization as well as regulations of the European Union. It envisages the establishment of a new authority, i.e., the Work Safety Council consisting of nine members, including the FBH Prime Minister, the FBH Minister of Labour, the FBH Minister of Health as well as representatives of employers and employees which signals that this segment of labor regulations has been lifted to a higher position of importance in FBH. The law went into effect on November 7, 2020, and employers have until November 7, 2021, to harmonize their internal work safety and protection-related enactments.

Brazil

EXPATRIATES AND TEMPORARY ASSIGNMENT – FEDERAL COURT RELEASES BRAZILIAN COMPANY FROM OBLIGATIONS TO COLLECT FGTS AND SOCIAL SECURITY CONTRIBUTIONS FROM EXPATRIATE TEMPORARILY ASSIGNED TO WORK IN BRAZIL

On August 7, 2020, the Federal Trial Court of Curitiba (Federal Court) rendered a decision releasing a Brazilian company from its obligation to collect Government Severance Indemnity Fund for Employees (FGTS) and the corresponding Social Contribution (INSS) related to salaries paid by a foreign entity for expatriate employees temporarily assigned to work in Brazil.

The Federal Court's decision found it both illegal and abusive for the tax authorities to consider the Brazilian company liable for the payment of FGTS and INSS over amounts paid abroad, in foreign currency and by a foreign legal entity. According to the decision, the mere fact that both companies are part of an economic group (i.e., a conglomerate) does not result in the assumption of fraud.

The case, which involves concepts of tax and labor laws, is extremely relevant for multinational

businesses that encourage the exchange of employees between companies of the same economic group located in different countries. (More information available here.)

COVID-19 PANDEMIC AND ITS EFFECT ON REMOTE WORK

By Legislative Decree 6/2020, Brazil was placed under a state of emergency until December 31, 2020, because of the COVID-19 pandemic. Throughout the year, the government issued a series of provisional measures setting out for emergency and transitional rules to cope with the need to quarantine the workforce. One of the most relevant and commented measures was the possibility to implement remote work during the state of emergency.

In view of that, on September 10, 2020, the Employment Branch of the Brazilian Public Attorney's Office (MPT) issued an Advisory Note (Nota Técnica 17/2020 do GT Nacional COVID-19) expressing its views and concerns about remote work, including 17 recommendations on work safety and ergonomics, work hours and breaks, excess of workload, domestic privacy and digital ethics and etiquette.

Nothing in MPT's recommendation is entirely new: It addresses some traditional employers' obligations in the light of the extraordinary COVID-19 situation and expands rules of telework introduced by the Labor Reform of 2017. In addition, it is important to highlight that the MPT does not have the legal capacity to regulate employment or work relations. They can only audit and take legal action against companies on matters of collective or public interest. (More information available here .)

DATA PROTECTION – LABOR COURTS ALREADY APPLYING THE NEW LAW AND EMPLOYERS' RACE TO COMPLY

On September 17, 2020, the president sanctioned Conversion Bill (PLV) No. 34/2020, resulting in the immediate entry into force of the General Data Protection Law (Law No. 13,709 / 2018, or LGPD). Because of the coronavirus pandemic (COVID-19), the Brazilian Congress decided that administrative sanctions for breaches of the LGPD will only apply as of August 1, 2021 (Law No. 14.010 / 2020), and can reach up to 50 million reais.

Brazilian companies and those that collect and/or store data from individuals in Brazil are in a true race to ensure compliance with the LGPD, which requires implementing technical and administrative measures, as well numerous updates of internal policies, protocols and contracts with regards to the treatment of data of customers, suppliers and employees, as the case may be.

Labor Courts are not indifferent to the new law. According to a recent research from Data Lawyer, as of November 26, 2020, the LGPD had already been mentioned in at least 139 labor claims. (More information available here.)

Bulgaria

Deadline for Disciplinary Sanctions

The Labour Code was amended to include a tolling period to the statute of limitations for imposing disciplinary sanctions on employees. Generally, the employer may impose such sanctions on an employee for violating company work rules and policies no later than two months from the date on which the employer has found out about the violation, but, in any event, no later than one year from

the date the violation was committed. This statute of limitations does not run while the employee is on statutory leave or takes part in a strike. However, if the applicable sanction is a disciplinary dismissal and the employee is in a protected category pursuant to the Labour Code, the employer needs to obtain the prior consent of the competent Labour Inspectorate and, in some cases, an opinion by a specific Labour Expert Medical Commission. According to case law from the Supreme Court of Cassation, any disciplinary dismissal imposed after the two-month deadline is unlawful even if non-compliance with the deadline is due to a delay in the issuance of the prior consent by the Labour Inspectorate and/or the opinion by the Labour Expert Medical Commission (since the Labour Code only provided exceptions for statutory leave or strike). These rulings from the Supreme Court of Cassation significantly hindered the employer's right to dismiss protected employees and led to the adoption of the Labour Code amendment. Effective December 21, 2020, Art. 194, para. 4 of the Labour Code provides that the statute of limitations is tolled during the period from the submission of the employer's request to, and the receipt of the opinion from, the Labour Expert Medical Commission and/or the prior consent for dismissal of the Labour Inspectorate.

Overtime Work

With a new amendment to the Labour Code, more overtime work can now be negotiated. Pursuant to Art. 146, para. 1 of the Labour Code, the amount of overtime work performed by an employee within one calendar year may not exceed 150 hours. However, the newly introduced para. 2 allows employees to work up to 300 hours of overtime in one calendar year, provided that this has been negotiated in a collective bargaining agreement at the industry or branch level between the respective representative organization for the employees and employers. Nevertheless, the amount of overtime work may not exceed:

- 30 hours of day work, or 20 hours of night work during one calendar month;
- 6 hours of day work, or 4 hours of night work during one calendar week;
- 3 hours of day work, or 2 hours of night work during two successive working days.

Systemic Violations of the Labour Discipline

Pursuant to the Labour Code, a disciplinary dismissal may be imposed as a sanction in case of systemic violations of work rules and policies. However, the lack of definition of what constitutes "systemic violations" of work rules and policies led to confusion in the implementation of the provision. With the newest amendment to the Labour Code, such definition is now included - it describes systemic violations as three or more violations of work rules and policies, committed over a period of one year, when at least one of them has not been a subject of disciplinary action, the applicable statute of limitations has not yet expired for it, and the sanctions for the other violations have not been removed under the relevant procedures.

Reinstatement of the Employee

Under Bulgarian law, if an employee has been unlawfully dismissed, a court may reinstate the employee to their position. According to Art. 345 of the Labour Code, the employee may return to said position if they report to work within two weeks from receiving the notice for reinstatement. However, the case law is inconsistent as to the start date of the two-week deadline, with some cases holding that the term starts to run only after the employee receives a specific notice for reinstatement

from the court that has ruled on the case, while others hold that the time period starts upon the employee learning about the effective court judgment for reinstatement, which does not contain a specific notice providing for a return-to-work date within two weeks. An interpretative judgment that will resolve the controversy is currently pending before the Supreme Court of Cassation.

Minimum Wage

The minimum wage in 2020 was BGN 610 per month for full-time employment. Effective January 1, 2021, the statutory minimum monthly wage increased to BGN 650 or BGN 3.90 per hour.

Cambodia

SENIORITY PAYMENTS

The 2019 Instruction on Payment of New Seniority Indemnity continues to have a significant effect on employer-employee activities in Cambodia. The instruction provides that seniority be counted once every six months (a “semester”). Employees who have worked for at least one month and who work until the end of a semester are entitled to seniority payments equaling seven and a half days of average wages and other benefits each semester, for a total of 15 days’ ongoing seniority payments per year. The payments for each semester are to be made during the second payment period for June and December, respectively; this occurs between the first and seventh of the following month.

The Ministry of Labour and Vocational Training (MLVT) issued two other instructions to lay out the process for paying seniority back payments. The calculation of the back payments only includes actual wages, not bonuses. In the non-textile, garment and footwear sectors, employers must make back payments (which accrue at 15 days per year) starting in December 2021 at a rate of three days per semester. In the garment, textile and footwear sector, back payments are due at a rate of 15 days per semester, and the maximum seniority back payment amount cannot exceed six months of average net wages. In calculating the daily average basic net wage, employers must treat a month as 26 working days.

On June 2, 2020, the MLVT issued the Notification on the Postponement of Seniority Indemnity Back Payments for Periods Before 2019 and Postponement of Seniority Payments in 2020 to relieve employers (as a result of the COVID-19 pandemic) from the obligations to make seniority back payments or ongoing seniority payments in the normal course of business until 2021. However, if an employer terminates an employee for any reason, except for serious misconduct, the employer will be obliged to pay any seniority back payment or seniority payments required under Cambodian law.

In light of the continuing effects of the COVID-19 pandemic, employers will want to monitor whether the government further postpones employers’ obligation to pay seniority payments and seniority back payments.

FIXED DURATION CONTRACTS AND RENEWALS

Another measure which has had a lasting impact on employment operations is the MLVT’s Instruction on Determination of Type of Employment Contracts, enacted on March 17, 2019. This instruction sets the maximum duration of an initial fixed duration contract (FDC) for a local or foreign employee at two years. The contract can be renewed one or more times so long as the total duration of the renewals does not exceed an additional two years, after which it will be deemed an undefined duration contracts (UDC). If an employee reaches the maximum duration for an FDC, which is

potentially up to four years, and the employer wants to continue the employment on an FDC basis, a one-month break must be inserted between the expiration of the FDC and the start of the new FDC.

FOREIGN WORKERS AND EMPLOYMENT CONTRACTS

Another significant contract-related change that continues to be felt in the employment landscape in Cambodia is the MLVT's Notification on the Registration of Foreign Employment Contracts, which was enacted on March 29, 2019. This allows employers to submit Khmer-language translations of employment contracts with their foreign employees when applying for work permits for their foreign employees. Further, both FDCs and UDCs are now accepted by the MLVT. These regulations replaced the previous rules, which had required an employer to submit a contract that followed an MLVT template, and deemed an FDC the only contract type valid for a work permit. Finally, the notification specifies that if the contract expires or is amended, the employer must submit an updated agreement.

PENSION SCHEME

Under the Law on Social Security Schemes and its related regulations, there are three social security schemes available to the private sector: occupational risk, health and pensions. However, only the first two schemes have been implemented in Cambodia. The Cambodian government has been working on implementing the pension scheme, which is expected to launch in the near future. According to the draft Sub-Decree on Social Security Scheme Pension for Persons Defined by Provisions of Labor Law including Airline and Maritime Personnel and Household Servants, the pension contribution rate is expected to be 4%, half of which will be contributed by the employer and the other half will be deducted from the employee's salary.

MEDICAL CHECKUP

Another significant change in the employment landscape relates to physical examinations for Cambodian employee pursuant to the MLVT's Prakas No. 429 on Cambodia Employee's Physical Examination dated December 31, 2020 (Prakas 429). Previously, Cambodian employees were only allowed to undergo medical checkups at the Labor Medical Department of the MLVT (LMD). However, under Prakas 429, Cambodian employees covered under Article 1 of the Labor Law may undergo physical health checkups at the LMD or any healthcare facilities that are duly recognized by the Ministry of Health (MOH) and are collaborating partners of the LMD.

If an employee undergoes a physical examination at a municipal/provincial health center, employers must request physical checkup certificates from the LMD by registering in an automated system and attaching the employee's health check results, which must be dated no more than six months from the submission date.

Canada

COVID-19: TEMPORARY LAYOFFS, STAY-AT-HOME ORDERS, AND PROVINCIAL DEVELOPMENTS

As the COVID-19 pandemic continues to spread in Canada, many of the country's provinces have turned to unique legislative measures to combat the rising case numbers. For example, on the east coast of the country, Canada's maritime provinces have created an "Atlantic Bubble," with specific inter-provincial travel restrictions, including mandatory quarantine orders, in place for Canadians and

foreign nationals who wish to travel to any of Nova Scotia, New Brunswick, Prince Edward Island or Newfoundland and Labrador.

The rise of COVID-19 case numbers has also affected many Canadian employers—both large and small—with many employers turning to temporary layoffs during periods of retail, restaurant and nonessential business restrictions and shutdowns as permitted under the applicable provincial legislation. Layoff numbers have increased dramatically during the winter months, as certain provinces, such as Ontario and Quebec, have also implemented “stay-at-home” orders or mandatory curfews, forcing all nonessential employees to remain at home and heavily curbing the public’s ability to shop, eat and participate in the in-person retail market.

COVID-19 FEDERAL RELIEF PROGRAMS

The Federal Government of Canada has taken a notably proactive approach toward providing unemployment assistance and economic relief for Canadian small businesses, employers, employees and students, through a variety of COVID-19 programs.

Since March 2020, Canadians have taken advantage of a multitude of federal programs, which have often worked in conjunction with specific economic relief measures put in place by the individual provinces. Most notably, there have been programs aimed at wage subsidization (the Canada Emergency Wage Subsidy, or CEWS), unemployment relief (Canada Emergency Response Benefit, or CERB), commercial rent relief (Canada Commercial Rent Assistance, or CECRA), enhanced sickness benefits (the Canada Recovery Sickness Benefit, or CSRB), unemployment relief for those who would not ordinarily qualify (the Canada Recovery Benefit, or CRB) and measures to assist with home mortgage deferrals, as well as programs designed specifically to support Indigenous communities and those facing residential evictions.

WAKSDALE V. SWEGON NORTH AMERICA INC.: ONTARIO EMPLOYERS FACE SWEEPING IMPLICATIONS FOR THE ENFORCEABILITY OF TERMINATION CLAUSES

In the significant case of Waksdale v. Swegon North America Inc., 2020 ONCA 391, the Court of Appeal for Ontario ruled that an unenforceable "for cause" termination clause in an employee's employment agreement rendered unenforceable the entire termination provision (which included the “without cause” clause, which attempts to contract out of an employee’s entitlement to a much more expensive common law severance entitlement). This decision is one of the more substantial Ontario employment decisions in several years as it has rendered most “standard” termination provisions in many employment agreements unenforceable, thereby enabling terminated employees to claim reasonable notice at common law and significantly increasing the severance obligations of Ontario employers. As a result of this decision, most Ontario employers have re-assessed their template employment contracts and redrafted the
termination provisions.

POST-TERMINATION INCENTIVE COMPENSATION: KEY DEVELOPMENT FROM CANADA’S HIGHEST COURT

The recent decision of Matthews v. Ocean Nutrition Canada Ltd., 2020 SCC 26, from the Supreme Court of Canada, has applied further pressure on employers in the area of “post-termination” incentive compensation. In the case, the Supreme Court of Canada awarded a former senior executive more than $1 million for the loss of a long-term incentive plan (LTIP) payment that came due only after he stopped working, because he would have received the LTIP during the 15-month

notice period the Court awarded had he worked through that period. The Court held that language in the LTIP that attempted to contract out of the employee's entitlement to any LTIP payment during any post-termination period of reasonable notice was not sufficiently clear to divest the employee of the LTIP entitlement.

In deciding in the employee's favor, the Supreme Court of Canada held that employers have to draft clauses limiting post-employment rights unambiguously and explicitly if they wish to oust an employee's right to compensation during any period of reasonable notice. As a result, employers may face increased claims from employees for such compensation, even for periods of time in which they are not actively employed, and will again have to look to edit or rewrite any incentive plans or employment agreement templates they regularly use.

Cape Verde

Laws

COVID-19 Legislation

In Cape Verde in 2020, the COVID-19 pandemic had some effects on employment law, namely with Law 83/IX/2020, which established a simplified employment contract suspension regime, regulated by Laws 97/IX/2020 and 103/IX/2020. With the simplified regime, the legislature intended to preserve jobs and part of employees' remuneration and to reduce companies' expenses, with less bureaucracy.

Decree-Law 58/2020 and Decree Law 88/2020 (Work Accidents and Work-Related Diseases)

The Decree Laws established the new legal regime regarding mandatory insurance to cover work accidents and work diseases, safeguarding all the employees and self-employed individuals. Among other things, Decree Law 58/2020 also defined the situations in which the employer is not required to indemnify the employee, and all the necessary proceedings in case of professional accident or illness.

Ministerial Order 15/2020 (Temporary Employment Licenses)

This Order approved a new licensing model for temporary employment agencies to develop their activity.

Law 89/IX/2020 (Creation of the Employment Observatory)

The Employment Observatory will be an independent entity, integrated into the Environmental, Economic and Social Council, whose purpose is to identify, analyze and propose legal solutions regarding employment politics and regulation, professional formation and rehabilitation and the employment market.

China

INTERIM MEASURES FOR PARTICIPATION OF HONG KONG, MACAU AND TAIWAN RESIDENTS IN SOCIAL INSURANCE PROVIDED IN MAINLAND CHINA

The Ministry of Human Resources and Social Security (MOHRSS) and the National Healthcare

Security Administration (NHSA) issued Interim Measures for Participation of Hong Kong, Macao and Taiwan Residents in Social Insurance in Mainland China (Mainland), effective as of January 1, 2020 (Interim Measures).

The Interim Measures consist of 15 articles in total. The main contents include: (a) the scope of personnel to whom the Interim Measures are applicable—two categories of residents from Hong Kong, Macao and Taiwan (those working in the Mainland and those living but not working in the Mainland); (b the scope of applicable insurance types—Hong Kong, Macao or Taiwan residents working in the Mainland should participate in any of five types of basic social insurance while Hong Kong, Macao or Taiwan residents living but not working in the Mainland may participate in the basic pension insurance and medical insurance for urban and rural residents at their places of residence in accordance with the relevant provisions; (c) the handling procedures for Hong Kong, Macau and Taiwan residents to complete social insurance formalities should be consistent with those for the Mainland residents; (d) residents of Hong Kong, Macao or Taiwan who have participated and continue to participate in local social insurance programs in Hong Kong, Macao or Taiwan may, on the strength of a certificate issued by the relevant authorized agency, opt not to participate in the pension insurance and unemployment insurance in the Mainland. (More information available here.)

THREE DEPARTMENTS, INCLUDING THE MOHRSS, HAVE DISTRIBUTED THE CIRCULAR ON PROVISIONALLY REDUCING AND EXEMPTING THE SOCIAL INSURANCE CONTRIBUTIONS BORNE BY ENTERPRISES (THE CIRCULAR)

The Circular reads that from February 2020, each province (except Hubei Province), autonomous region, municipality directly under the central government and the Xinjiang Production and Construction Corps may, according to the extent of the epidemic's influence on the local region and in consideration of the balance of the social insurance fund, exempt small- and medium-sized enterprises (SMEs) and micro firms from making contributions to three types of social insurance borne by employers for a period up to five months and exempt large enterprises and other insured entities (excluding government bodies and public institutions) from making contributions to three types of social insurance borne by employers for a period up to three months. The Circular specifies that, as of February 2020, Hubei Province may exempt all types of insured employers (excluding government bodies and public institutions) from making the contributions to three types of social insurance borne by employers for a period up to five months. Enterprises that have material difficulties in production and business operations due to the epidemic may apply for deferring the social insurance contributions and the deferment may last, in principle, for a period not exceeding six months, during which period no overdue payment will be incurred. Moreover, the Circular points out that the proportion of the central government's relief for the employees' basic pension will be raised to 4% in 2020 to enhance support to regions in need. (More information available here.)

WRITTEN EMPLOYMENT CONTRACTS MAY BE CONCLUDED ELECTRONICALLY

On March 4, 2020, the General Office of the MOHRSS issued a Letter on Issues Concerning the Conclusion of Electronic Employment Contracts (the Letter). The Letter specifies that employers and employees may conclude written employment contracts in electronic form upon negotiation and mutual agreement. Where an employment contract is entered into electronically, data messages regarded as written form under the Electronic Signature Law and other relevant laws and regulations and reliable electronic signatures shall be used. Employers shall ensure that the generation, transmission, and storage of electronic employment contracts satisfy the requirements stipulated in the Electronic Signature Law and related laws and regulations, and ensure that the contracts are complete, accurate, and tamper-proof. Electronic employment contracts that comply with the

provisions of the Employment Contract Law and the aforesaid requirements shall have legal effect upon execution. (More information available here.)

STANDARDIZE THE TRIAL OF CIVIL CASES REGARDING COVID-19

On April 20, 2020, the Supreme People's Court released the Guiding Opinions for Several Matters on Hearing Civil Cases Regarding the COVID-19 Epidemic According to Law I (the Opinions). The Opinions point out that the People's Courts of each level shall fully understand the material impact of the COVID-19 epidemic on the economy and society. They shall insist on taking non-contentious measures, prioritizing the use of mediation and actively guiding the parties to negotiate and reconcile. The Opinions also clarify that the courts shall precisely apply force majeure and seriously control the conditions where it is applied.

The Opinions stressed that relevant provisions of the PRC Employment Law and the PRC Employment Contract Law shall be applied accurately. The People's Court will not support employee termination where employers terminate the employment relationship merely on the ground that the employee is a confirmed, suspected, or asymptomatic case of COVID-19, is legally quarantined or comes from an area more affected by the epidemic.

In addition, the Opinions also prescribe the application of punitive damages, suspension of action limitation, postponement of the litigation period, strengthening judicial relief and flexible adoption of preservation measures. (More information available here.)

SOCIAL INSURANCE CONTRIBUTIONS WILL BE COLLECTED BY THE TAX DEPARTMENT IN SEVERAL MUNICIPALITIES AND PROVINCES OF CHINA

On October 30, 2020, it was announced that, according to the deployment of reforming the social insurance premiums collection system by the State Council and local governments, beginning November 2020, all social insurance contributions will be collected by the tax department on a unified basis in Beijing, Shanghai, Shenzhen, Tianjin, Sichuan, Shanxi, Hunan, Shandong, Jilin, Jiangxi, Guizhou, Guangxi, Tibet and Xinjiang. The scope of collection mainly includes premiums contributed by companies for basic pension insurance, basic medical insurance, maternity insurance, work injury insurance and unemployment insurance as well as premiums for basic medical insurance and basic pension insurance contributed by flexible employment individuals.

The payer will declare payable amounts of social insurance contributions to the social insurance authority and pay to the tax department based on the amounts verified by the social insurance authority.

RELEASE OF PERSONAL INFORMATION PROTECTION LAW (DRAFT)

On October 21, 2020, after being reviewed by the Standing Committee of the National People's Congress, the Personal Information Protection Law (Draft) (the Draft) was officially released for public comment.

Employers' HR management inevitably involves processing employees' personal information. The Draft has set forth the principles to be followed in handling such personal information. For example, among other measures: (a) processing personal information shall be conducted in a legal and proper way for explicit and reasonable purpose; (b) handling personal information shall be limited to the

minimum scope to achieve the processing purpose; (c) the rules on personal information handling shall be publicized; and (d) protective measures shall be adopted and information accuracy ensured. These principles shall be implemented throughout the whole process and every step of personal information processing.

National Law Review, Volumess XI, Number 159