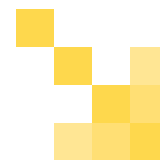


South Korea



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GENERAL

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Are there any mandatory laws that apply regardless of a choice of law in the employment contract?

Laws applicable to foreign nationals

The Labour Standards Act 1997 (LSA) automatically applies to all workplaces in South Korea, whether the employees are Korean or foreign nationals. Different provisions of the LSA apply depending on the number of employees in the workplace (see below, *Mandatory laws*).

The parties are free to choose a foreign law to govern the employment contract (*Article 9, Private International Act*), provided that the LSA's mandatory provisions prevail (*Article 7, Private International Act 2001*).

Laws applicable to nationals working abroad

South Korean nationals working abroad are governed by the relevant foreign jurisdiction's laws even if they have been sent to the foreign branch office of a South Korean employer. However, if the head office in South Korea controls and manages the employees' working conditions, South Korean law will also apply because the employment contract is deemed to be between South Korean nationals.

Mandatory laws

The provisions of the LSA are mandatory and override terms and conditions of employment that do not comply with their statutory minimums. It is unlawful for employers and employees to contract out of these mandatory provisions and such agreements are voidable (usually on the employee's application).

All of the LSA's provisions apply to workplaces with more than four employees.

For workplaces with four employees or less, provisions concerning the following apply:

- Maternity leave (see *Question 10, Maternity leave*).

- Compensation for industrial accidents.
- Wages and notice before dismissal (see *Question 15, Notice periods*).

However, provisions concerning annual leave and severance pay do not apply (see *Questions 8 and 15, Severance pay*).

The Civil Code 1958 sets out the general principles of contract that govern the other aspects of the employment relationship.

EMPLOYING PEOPLE

2. Are there any age or nationality restrictions on managers or company directors? If so, please give details.

Age restrictions

There are no statutory age restrictions on managers or company directors.

Nationality restrictions

In general, there are no statutory nationality restrictions on managers or company directors. However, a board of directors comprised entirely of non-resident foreigners is not recommended because of the importance of the representative director, who is legally required to represent and bind the company in all its business transactions. A non-resident representative director would cause problems because of the nature of the role.

3. Are any grants or incentives available for employing people? If so, please give details.

The Employment Promotion for the Aged Act 1991, and the Employment Promotion and Vocational Rehabilitation for the Disabled Persons Act 2000 (Disabled Persons Act), provide government grants and incentives to hire disabled persons and the elderly (employees who are 55 years of age or older). However, the conditions are hard to meet and funding is generally quite limited.

When an employer hires 50 or more employees, at least 2% of these must be disabled persons (*Disabled Persons Act*). The government provides subsidies only in relation to the number of disabled employees that exceed this 2% requirement.

4. What permits do foreign nationals require to work in your country? Please explain:

- How these permits are obtained.
 - How much they cost.
 - How long the process takes.
-

- **Required permits.** It is relatively easy for foreign nationals to obtain permission to live and work in South Korea, particularly those who move to establish and manage a business. As a result, multinational businesses planning to transfer employees to South Korea need only worry about complying with the procedural requirements. The Immigration Control Act 1992 governs immigration and the Ministry of Justice (MOJ) administers the system.

All foreign nationals require a visa unless there is a treaty between their country and South Korea that exempts them from this requirement, which enables the foreign national to travel as a business visitor. However, all foreign nationals who intend to visit South Korea for 90 days or more, and nationals who leave South Korea at the end of 90 days to return to resume the same activities, must obtain visas. The two most common employment visa categories for executive officers, senior managers and professionals (with specialist knowledge) are the:

- **Investor/Business Manager (D-8).** This is for employees working at a foreign-invested company established under the Foreign Investment Promotion Act 1998;
- **Intra-Company Transferee (D-7).** This is for employees who have been working in a foreign company for at least one year and are dispatched to its branch office in South Korea.

Both are relatively easy for bona-fide foreign employees to obtain.

- **Obtaining permits.** The foreign national must apply to the South Korean local embassy or consulate in his jurisdiction to obtain the application form. The employee must complete the application form and submit it to the immigration bureau of that branch, with the required accompanying documents, including the:
 - certificate of education or qualification; and
 - employment contract.

The director of the Immigration Service sends the documents to the Minister of Justice for his approval.

The local embassy or consulate in the foreign national's jurisdiction issues the visa.

- **Cost.** Usually, the visa application fee ranges from US\$30 (about EUR22) to US\$50 (about EUR37).
- **Length of process.** Applications made through an overseas embassy or consulate can take six to eight weeks. Applications made to the MOJ through a law firm reduce this period considerably.

TERMS OF EMPLOYMENT

5. What terms govern the employment relationship? In particular:

- Is a written employment contract or statement of employment terms required?
 - Are any terms implied by law into the employment contract (in addition to the mandatory terms referred to in *Question 1*)?
 - Are collective agreements with trade unions common (generally or in specific industries)?
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- **Written employment contract.** The law does not require a formal written contract of employment. However, the employer must, at the time of entering into a contract of employment, clearly state the following employment terms in writing (*Article 17, LSA*):

- wages;
- working hours;
- paid holidays; and
- paid annual leave.

Other employment conditions must be clearly stated to the employee at the time of employment but not necessarily in writing.

The written work rules required by the LSA often provide that an employment contract with domestic employees take the form of an employment application form countersigned by the employer.

Multinationals tend to use written offer letters and/or employment contracts.

- **Implied terms.** The law implies a variety of mutual obligations between employer and employee, including:
 - a duty of good faith and trust;
 - confidentiality; and
 - loyalty.

- **Collective agreements.** The LSA requires employers hiring ten or more employees to prepare and file with the government a comprehensive set of written work rules. These must be made available to the employees. Before filing a set of work rules with the government, the employer is expected to consult with employees and solicit their views.

The work rules resemble a collective agreement in form and function. Collective bargaining agreements (CBAs) are also entered into.

6. Is there a minimum wage? If so, please give details, in particular whether it applies to all employees, regardless of their age and experience?

The Ministry of Labour (MOL) has set the 2008 minimum wage

as follows (*Minimum Wages Act 1986*):

- KRW3,770 (about US\$4) an hour.
- KRW30,160 (about US\$33) a day.
- KRW852,020 (about US\$919) a month, based on a 44 hour week.
- KRW787,930 (about US\$850) a month, based on a 40 hour week.

The 2007 minimum wage had been set at KRW3,480 (about US\$4) per hour. The 2008 minimum wage is due to come into force on 1 January 2008.

The minimum wage also covers temporary and part-time employees.

Employers can waive minimum wage requirements for the employment of:

- Disabled persons.
- Apprentices and trainees who have been working for less than three months.
- Security guards.

This can only be done only with the MOL's prior approval.

The minimum wage is based on basic pay plus fixed allowances paid at regular intervals. The calculation excludes:

- Bonuses and irregular allowances.
- Overtime and holiday premiums.
- Fringe benefits.
- Welfare allowances, such as meals and transportation.

Employers may pay minors 90% of the hourly minimum wage during their first six months of employment.

7. Are there restrictions on working hours? If so, please give details.

Before September 2003, the basic working hours for all employees were 44 hours a week (made up of five eight-hour working days and one four-hour day (usually Saturday)) (the six-day week). However, the LSA was amended in September 2003 to provide a working week consisting of 40 hours, spread over five days (the five-day week). This change was implemented to come into force in transitional stages; currently, it does not apply to employers with less than 50 employees. All employees will be covered by July 2011.

For three years after adopting the five-day system, an employer can require employees to work up to 16 hours of overtime a week (as opposed to the former statutory maximum of 12 hours a week). The first four hours of overtime are remunerated at 125% of the basic wage, with the balance being paid at the pre-existing

150% overtime rate.

8. Is there a minimum holiday entitlement? If so, please give details. How many public holidays are there in a year and are they included in the minimum holiday entitlement?

Holiday entitlements depend on whether the employer operates the six or five-day working week (*see Question 7*):

- **Six-day working week.** These employers must give minimum holidays of (*LSA*):
 - one paid day off per week (customarily Sundays);
 - one day of paid monthly leave;
 - ten days' paid annual leave for full attendance during the previous year, or eight days' paid annual leave for 90% attendance or more;
 - Labour Day (1 May);
 - any other days off that it designates in its work rules or agrees in a CBA;
 - female employees are entitled to one additional paid day off per month as menstrual leave.

The basic annual leave allowance increases by one day for each year of service, to a maximum of 20 days' paid annual leave a year.

- **Five-day working week.** These employers must give employees minimum holidays of (*LSA*):
 - one day paid leave a week;
 - 15 days' paid annual leave for at least 80% attendance the previous year;
 - Labour Day;
 - unpaid menstrual leave (on request).

Employees who have been employed for less than one year are entitled to one day's paid leave for each full month of attendance (instead of 15 days' paid annual leave).

The annual leave allowance increases by one day for every two years of service, not including the first year of service, to a maximum of 25 days. Annual leave not used may be lost, especially if the employer has documented attempts to encourage employees to use it.

9. What rights do employees have to time off in the case of illness or injury? Is that time off paid? Can an employer recover from the state sick pay granted to its employees?

The LSA does not specifically provide for time off in case of illness or injury. Employees have to use their annual paid leave in this instance.

The LSA provides that days taken off due to work-related illness or injury are not deducted from annual leave.

10. What are the statutory rights of employees who are parents or carers (including those of disabled children and adult dependants)? How is employees' pay affected during periods of leave?

Maternity rights

Employees are entitled to 90 days' maternity leave, of which at least 45 days must be taken after the birth. 60 days are paid and 30 days are unpaid. An employer must give working mothers of infants (under one year old) at least 30 minutes of paid nursing time twice a day.

Employees who suffer a miscarriage after 16 weeks of pregnancy are entitled to 90 days' leave, depending on the length of pregnancy.

Employees can apply to the government for an additional subsidy of up to KRW1.35 million (about US\$1,456) to cover maternity leave.

Paternity rights

At present there is no formal recognition of paternity leave. However, employer work rules and CBAs often contain a clause allowing new fathers from three to five days paid leave after their child is born.

It is likely that paternity leave will be adopted in the near future (see *Question 31, Proposed amendments to the Equal Employment for both Sexes Act*).

Adoption rights

Employees who adopt a child under one year old (under three years old, for a child born after 31 December 2007) can use childcare leave (see *below, Parental rights*).

Parental rights

The Equal Employment for Both Sexes Act 2001 was amended in December 2005 to expand the scope of childcare leave. Existing childcare leave provisions allowed male or female employees with children that are under one year old a maximum leave of one year. However, in relation to children born after 31 December 2007, employees can request leave for children that are under three years old.

To apply for childcare leave, the employee must have worked for the same employer for at least one continuous year. The employer is not obliged to pay wages during this leave; employees are paid under the employment insurance system (see *Question 19, Social security contributions*).

There are proposed amendments to the childcare leave system under the Equal Employment for Both Sexes Act. Employees will be able to:

- Break up the leave into two periods of use.
- Take hours (rather than a full day) off.

The one-year limit will remain the same.

There are proposals to alter childcare leave (see *Question 31, Proposed amendments to the Equal Employment for both Sexes Act*).

Carers' rights

At present there is no statutory recognition of carer's rights. This is proposed to be amended (see *Question 31, Proposed amendments to the Equal Employment for both Sexes Act*).

11. Does a period of continuous employment create any benefits for employees? If individual employees are transferred to a new entity, are they deemed to retain their period of continuous employment?

Benefits

After two years of continuous employment, an employee is deemed to be a permanent employee whose employment may not be terminated under most circumstances without statutory just cause (see *Question 16*). This even applies to employees with fixed-term contracts of more than two years, once the two-year threshold has passed.

Under the recently enacted Protection of Part Time Employees and Fixed Period Employees Act 2006, an employer who recruits an employee for a fixed term of up to two years (including any renewed time) must rehire the employee as a permanent employee after two years have expired. This does not apply to professions such as qualified architects, patent attorneys, lawyers, tax accountants and Certified Public Accountants.

Continuous employment can give additional rights to paid annual leave (see *Question 8*).

Transfer

If individual employees are transferred to a new entity, they are not deemed to retain their period of continuous employment.

EMPLOYEE PROTECTION

12. What statutory data protection rights do employees have?

Employees have no specific statutory data protection rights under employment law. However, there is a general right to privacy under the Constitution and the Civil Code, and a general strict social prohibition on sharing private information. In addition, employee personal credit information must not be provided to the employer unless the employee provides written consent (*Credit Information Act 2001*).

13. What protection do employees have from discrimination or harassment, and on what grounds?

Discrimination

There are three main Acts prohibiting discrimination:

- **The Employment Promotion and Vocational Rehabilitation of Disabled Persons Act 2000.** This provides that employers must not discriminate against disabled employees.
- **The Equal Employment for Both Sexes Act 2001.** This prohibits discrimination against female employees.
- **The Employment of Foreign Workers Act 2003.** This provides that employers must not discriminate against foreign workers once they are employed. However, it also provides that before hiring a foreign worker, the employer must make active efforts to employ a worker with Korean nationality.

Harassment

Sexual harassment in the workplace is prohibited (*Equal Employment for Both Sexes Act*). Employers must hold sexual harassment prevention education classes at least once a year, in an attempt to highlight and prevent sexual harassment in the workplace. Employers must reprimand any employees found to be committing sexual harassment in the workplace. Employees who report sexual harassment must not be discriminated against.

14. Do whistleblowers have any protection? If so, please give details.

The LSA protects employees who report employer breaches of the LSA to the MOL or a labour inspector. An employer who dismisses or shows unfavourable treatment to an employee for the above actions may be either:

- Imprisoned for up to two years.
- Fined up to KRW10 million (about US\$10,786).

Employees who report unfair labour practices in respect of trade union activity to the Labour Relations Commission or any other governmental agency are also protected (*Trade Union and Labour Relations Adjustment Act 1997*). An employer who dismisses or shows unfavourable treatment to an employee due to participation in a union may be either:

- Imprisoned for up to two years.
- Fined up to KRW20 million (about US\$21,572).

Unfair labour practices include the:

- Dismissal or unfavourable treatment of employees on grounds that they have:
 - joined or intend to join a trade union;
 - attempted to organise a trade union; or
 - performed any other lawful act for the operation of a trade union.
- Refusal or delay of the execution of a collective agreement or other collective bargaining.

- Dismissal of employees or acts against their interests for participating in justifiable collective activities.

DISMISSALS AND REDUNDANCIES

15. What rights do employees have when their employment contract is terminated? Please provide information on:

- **Notice periods.**
- **Severance payments.**
- **Any specific categories of protected employees.**
- **Any procedural requirements for dismissal.**

- **Notice periods.** An employer must notify employees of their dismissal at least 30 days in advance, or pay 30 days' wages in lieu of notice (*LSA*). This is in addition to the severance payment (see below, *Severance payments*). However, notice periods apply when fixed-term employment has come to an end or when the employee resigns.

- **Severance payments.** Minimum payments are 30 days of average wages per full year of continuous service (*Article 34, LSA*). Employment of less than one year is paid on a pro-rata basis. The average wages include:

- base salary;
- regular bonuses and benefits, including overtime.

Welfare allowances are also included in the calculation of severance payment, if employees are receiving these on a regular basis. These are miscellaneous allowances given to employees in relation to help with paying for meals, physical training, transport, education and so on. They are not considered as wages if the company remunerates the actual expenses but are deemed wages if the company pays a fixed amount to all employees at a fixed time according to the collective agreement, work rules contracts or custom.

- **Protected employees.** The following employees are protected from dismissal (*LSA*):
 - employees recovering from work-related illness or injury during their period of recovery and for 30 days afterwards;
 - employees who take statutory maternity leave (see *Question 10, Maternity rights*), until 30 days after the leave has ended.

Employees who take childcare leave are protected from dismissal (*Equal Employment for Both Sexes Act*).

- **Procedural requirements.** Where the employee is dismissed due to his fault, a notice period or payment in lieu must be provided (see above, *Notice Periods*). The dismissal notice needs to include the:
 - reason for dismissal; and
 - time of dismissal.

There are no statutory requirements to convene a disciplinary committee, unless such procedures are prescribed in the work rules or CBA.

Separate procedures apply on redundancy (see *Question 17*).

16. What protection do employees have against wrongful or unfair dismissal?

An employer cannot dismiss, lay off, suspend or transfer an employee without just cause (*Article 23, LSA*). Just cause is not defined in the LSA, making its application largely subjective.

Generally, it exists in only two circumstances:

- **Fault attributable to the employee making continued employment untenable.** This applies where the employee is guilty of sufficiently grave misconduct making it impossible to continue the relationship. Court cases have also found it in the following situations:
 - continuous and persistent unsatisfactory performance;
 - criminal or deliberate tortious acts against the employer;
 - serious criminal acts that are not in the line of duty;
 - improper relationships with other employees; and
 - material misrepresentation in the hiring process.

Unfitness for work can sometimes be considered to be a fault attributable to the employer. This can include disease or illness occurring outside the line of duty and complete lack of aptitude (although the court is generous to the employees in its assessment). Although debilitating illness or injury may in some cases be just cause to dismiss an employee from the payroll, employees taking statutory maternity leave and childcare leave are protected (see *Question 15, Protected employees*).

- **Urgent managerial necessity to try and save a failing business from imminent bankruptcy.** The scope of urgent managerial necessity is also largely undefined (see *Question 17*).

If employees are dismissed for other reasons, this is deemed to be unfair. Employees can apply to the Labour Relations Commission, within three months of dismissal. If the Labour Relations Commission finds the employer guilty of wrongful or unfair dismissal, it will order the employer to rehire the employee. If the employee prefers not to return, the Labour Relations Commission can order the employer to compensate the employee in excess of the wages he would have received during the period of his unemployment (*Article 30, LSA*).

Both employee and employer can appeal to the administrative court against the decision.

The dismissed employee can also bring a civil claim against the decision to reclaim his wages for the dismissed period.

17. What rules apply on redundancies?

Redundancies are in theory permitted under the amended Article 24 of the LSA. However, in practice, the conditions for redundancies are very difficult to meet. This is because they are only permitted in cases of imminent bankruptcy resulting from grave financial problems. The LSA sets out the procedures for effecting mass redundancies in times of urgent managerial necessity (see *Question 16*).

Redundancies resulting from business transfers, mergers or acquisitions constitute urgent managerial necessity (*Article 24 (1), LSA*). The employer must:

- **Make every effort to avoid involuntary redundancies.** Supreme Court decisions interpreting this requirement have held that employers must first exhaust all other options by:
 - offering early retirement packages;
 - implementing a hiring/wage freeze;
 - reducing working hours/wages; and
 - other reasonable measures.

The MOL's guidelines indicate that multinationals cannot lawfully lay off South Korean employees simply because of a worldwide retrenchment plan. If the South Korean business is profitable, the MOL's position is that employees cannot be sacrificed simply for the convenience of management.

- **Adopt and use reasonable and fair criteria in selecting the employees to be made redundant.** Discrimination based on gender, for example, is forbidden (see *Question 13, Discrimination*).

Where there is a union, representing more than half the employees, the employer must give notice of the redundancies to the union no later than 50 days before the intended date of dismissal.

The employer must also consult in good faith with the union (or, where no union exists, a person duly selected by more than half of employees as their representative) to discuss:

- Steps taken by the employer to avoid the redundancies.
- The criteria used to select the affected employees.

The requirement to consult does not grant the union or representative a right to veto the employer's plan. The LSA stipulates that the employer should sincerely consult with the union or representative. However, there is no set time limit for this consultation.

The Supreme Court has held that redundancy planning is not a matter subject to collective bargaining between employers and unions. Industrial action in response to proposed redundancies is therefore unlawful (although common).

An employer must rehire former employees when recruiting within three years of the redundancy for positions that are similar to those held at the time of redundancy, unless the employees do not wish to be rehired.

When an employer intends to dismiss more than ten employees, in most cases a report must be filed with the MOL at least 30 days before the proposed redundancies. The notice must be made in Korean in a form prescribed by the MOL. The form requires, among other things, statements regarding the following:

- The date when notice of redundancies was given to employees.
- The method of employee notice.
- The criteria used by the employer for selecting employees to be made redundant.
- The alternatives considered to avoid redundancies, for example:
 - shortened work hours;
 - hiring freeze; and
 - employee relocation.
- Other matters, including the employer's plan to rehire redundant employees.

TAXATION OF EMPLOYMENT

18. What is the basis of taxation of employment income for:

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

- **Foreign nationals.** Income tax is payable on the global income of all South Korean citizens and foreign nationals who are physically resident for at least one year in South Korea (*Income Tax Act 1994*). A non-citizen's residence in South Korea is calculated from the day following his day of arrival, until his day of departure. If, however, the departure is clearly temporary, in view of his job, the residence of his family and location of his assets, he is deemed to be a resident (*Article 1, Income Tax Act 1994* and *Article 4, Presidential Decree*).
- **Nationals working abroad.** Non-resident South Koreans are subject to income tax. However, taxes are levied only on income from domestic sources, such as wages received from companies or businesses located in Korea (*Articles 3 and 119, Income Tax Act 1994*).

19. What is the rate of taxation on employment income? Are any other taxes or social security contributions levied on employers and/or employees? If so, please give details, including the rates.

Income tax

Income taxes are progressive. They (*Article 55, Income Tax Act 1994*):

- Start at an initial marginal tax rate of 8% based on an annual income of KRW10 million (about US\$10,786) or less.

- Progress to a top marginal tax rate of KRW16.3 million (about US\$17,581) plus 35% on income exceeding KRW80 million (about US\$86,288).

Employees' salary is taxed at source.

Social security contributions

Employment-related taxes include:

- Mandatory contributions to the Industrial Accident Compensation Insurance System (to about 3% of salary).
- Mandatory contributions to the Employment Insurance System including:
 - between 0.25% and 0.85% of salary for the "employment stability plans". These aim to reduce unemployment rates and provide more employment opportunities for women, the aged, retired and the long-term unemployed (*Article 19, Employment Insurance Act 1993*);
 - 0.9% of salary for "unemployment benefit".
- State-administered health insurance under the National Health Insurance Plan (up to 8% of salary).
- The National Pension Plan (up to 9% of salary).

Both employer and employee pay 50% of the amount payable, except for the Industrial Accident Compensation Insurance System, where the employer pays the whole amount.

LIABILITY

20. Are there any circumstances in which:

- **An employer can be liable for the acts of its employees?**
- **A parent company can be liable for the acts of a subsidiary company's employees?**

- **Employer liability.** An employer can be held responsible for its employee's acts where (*Civil Code*):
 - an employee acts with his employer's apparent authority; and
 - a third party believes in good faith that the employee is acting within the limits of the employer's authority.

However, an employer can be exempted from liability if it can prove that it has acted with appropriate care in recruiting and supervising the employee.

Various business-related statutes contain criminal provisions. Breach of these by employees will subject the company (and, in some cases, its representative director) to administrative sanctions or criminal liabilities including fines and possible jail sentences.

- **Parent company liability.** Parent companies are not usually liable for the acts of a subsidiary company's employees, unless the parent company:
 - recruits the employees of the subsidiary company; and
 - controls the personnel management or exercises general supervision over the employees.

21. What are an employer's obligations regarding the health and safety of its employees?

The employer must prepare and implement safety and health management regulations, which should include (*Industrial Accident Compensation Insurance Act 1994*):

- Establishing:
 - the safety and health management plan and its officers; and
 - administrative procedures for implementation of the plan.
- Safety and health education for employees.
- Measures for inspection and improvement of the workplace environmental conditions.
- Health-management measures, including medical-examination regulations and procedures.
- Measures to investigate, identify and manage workplace safety and health hazards.
- Other items related to safety and health of the employees.

CONSULTATION AND MAJOR TRANSACTIONS

22. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Management representation

Employees are not entitled to management or board representation, unless the work rules or a CBA state otherwise.

Consultation

Generally, an employer should consult employees in advance of any action that may be expected to adversely affect their interests. Under the Constitution and the Trade Union and Labour Relations Adjustment Act, the trade unions have collective bargaining rights in relation to decisions that affect the employment conditions, such as:

- Wages.
- Work time.

- Dismissal.
- General employee welfare.

Workplaces with 30 or more employees must set up labour-management committees consisting of a maximum of ten employees and managers, in equal proportions (*Act on Promotion of Workers' Participation and Co-operation 1997*).

The labour-management committee must meet at least once every three months to discuss (though do not have to reach an agreement) various items including:

- Productivity of the company.
- Hiring and positioning the employees.
- Wages.
- Health and safety.
- General employee welfare.

At the meeting, the company must report a number of matters, such as management and production plans, and results for each quarter.

The employer is expected to consult with the employees before filing a set of work rules with the government (*see Question 5, Collective agreements*). In most cases, work rules can only be changed with collective approval of the employees or their elected representatives.

Remedies

The work rules do not have to be accepted by the government, unless the employer can document a proper approval process and, in the case of change, the employees' collective approval (*see above, Consultation*). The employer is fined if it does not set up the labour-management committee. However, there are no remedies if the employer fails to comply with its consultation duties.

Employee action

The trade unions have the right to strike if the employer fails to participate in a collective bargaining process. However, the purpose of the strike must be to protect the welfare of the employees and not to interfere with purely managerial decisions such as re-organisation or restructuring of the company (*see Question 17*).

23. Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

A recent Supreme Court decision held that company transactions such as acquisitions, mergers, disposals and privatisations are managerial decisions (*2002 do 5577, 25 May 2006*). These are not subject to collective bargaining, unless they are transactions being pursued with wrongful intentions, and without any reasonable purpose or managerial necessity.

24. Is there any statutory protection of employees on a business transfer? In particular:

- **Are they automatically transferred with the business?**
- **Are they protected against dismissal (before or after the disposal)?**
- **Is it possible to harmonise their terms of employment with other (existing) employees of the buyer?**

- **Automatic transfer.** Employees have the right, but are not obliged, to transfer their employment along with the transferred business, regardless of whether this takes place through a share or asset structure. An employee cannot, however, be transferred to another workplace against his will.
- **Protection against dismissal.** Employees are protected against dismissal during the disposal of a business by share transfer or asset transfer (*Article 23, LSA*) (see *Questions 15 and 16*), except in cases of dismissal for just cause. Unless the business is losing money and in danger of failing, employees cannot be laid off simply because of the business transfer.
- **Harmonisation.** As the terms and conditions of employment in the work rules or a CBA cannot be changed without employees' consent, the usual outcome of a business transfer is to "average up" benefits. This means that each workplace gains the benefits afforded to the other workplace.

PENSIONS

25. Do employers and/or employees make pension contributions to the state in your jurisdiction? If so, please give details of:

- **The contributions payable.**
- **The tax treatment of those contributions.**
- **The monthly amount of the state pension.**

- **Contributions.** Employers and employees each pay 4.5% of the employees' standard income (*Article 88, National Pension Act 1986*). The employees' contributions are deducted directly from their monthly wages.
- **Tax.** Income tax is not charged on employer contributions (*Article 12, Item 4-ha, Income Tax Act*).
- **Monthly amount.** See above, *Contributions*.

26. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? Are any tax reliefs available on contributions to such schemes (by the employer and employees)? If so, please give details.

It is unusual for employees to participate in private pension schemes. Instead, workers are enrolled in the state National Pen-

sion Plan. They are also entitled to severance pay on termination (see *Question 15, Severance pay*).

The Guarantee of Workers' Retirement Benefit Act (which took effect in December 2005) introduced the possibility of defined-benefit contribution pension schemes (an employer-sponsored retirement plan where employee benefits are calculated according to a formula, using factors such as salary history and duration of employment) and defined-contribution pension schemes (a retirement plan in which the employer sets aside a certain amount or percentage of money for the benefit of the employee). This will replace the severance pay system with the approval of the employees' representatives. These schemes are being adopted gradually. However, their adoption is slow because of the requirement for approval.

Income tax is not charged on the employer's contributions to the retirement pensions system (*Article 12, Item 4-ha, Income Tax Act*).

27. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- **Employees who are working abroad?**
- **Employees of a foreign subsidiary company?**

Are the same tax reliefs referred to in Question 26 still available in these circumstances?

Employees working abroad

National Pension Plan eligibility depends on employment with a relevant workplace in South Korea. Generally, an employee working abroad at a South Korean company's overseas subsidiary cannot participate in the National Pension Plan. However, South Korean employees who are sent abroad in the course of their employment may continue their employment relationship with the original employer. In such cases, the employee can continue to participate. If the employee's wages and benefits are accounted for in the parent company's books during the period abroad, then that employee's statutory contributions to all social programmes such as the Industrial Accident Compensation Insurance, the National Health Insurance Plan and the National Pension Plan (as well as income tax withholding) continue uninterrupted (see *Question 19, Social security contributions*).

Employees of a foreign subsidiary company

The National Pension Plan also applies to foreign employees working at a subsidiary company located in South Korea.

Tax relief

The tax relief referred to in *Question 26* is available in both cases.

BONUSES

28. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded? If so, please give details.

Korean employers commonly pay contractual bonuses to all employees in accordance with contractual obligations found in the com-

pany's work rules or CBA. Typical bonuses range from three to six months' basic wage, usually paid around the Korean traditional holidays: the autumn thanksgiving festival (*chuseok*) and lunar new year (*seollal*). Discretionary bonuses are less common, although since 1998 an increasing number of employers have been paying them.

There are no guidelines or standards of reasonableness for employers on the award of such bonuses. Individual employment agreements, work rules and CBAs clearly indicate which bonuses are contractual and which are discretionary. This reduces potential demands from employees for discretionary bonuses.

INTELLECTUAL PROPERTY

29. If employees create intellectual property rights in the course of their employment, do the employees or the employer own the rights?

Intellectual property rights belong to the individual who creates the work subject to the rights. However, the employer may specify in the work rules, CBA or individual employment agreement that the employee must assign patent or design rights to the employer.

For unpublished works subject to copyright, the employee who produces the work is deemed to be its author for purposes of determining ownership rights to the work. Works published under the name of a company are assumed to belong to that company, unless otherwise is agreed between the employer and employee.

RESTRAINT OF TRADE

30. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer pay its former employees remuneration while they are subject to post-employment restrictive covenants?

It is possible to sign a non-compete agreement with the employee. However, in order for it to be enforceable, the non-compete

undertaking should be limited in scope so that it does not excessively restrict the employee's constitutional right to earn a living.

The maximum allowable time limit is usually one year. The courts usually hold that non-compete undertakings should be limited to businesses, companies, products and geographical areas in which competition is expected. A non-competition undertaking in an employment agreement does not require remuneration. However, compensation for the restriction can be taken into account when the court decides whether the individual non-compete agreement is enforceable.

PROPOSALS FOR REFORM

31. Please summarise any official proposals for reform of employment law.

Proposed amendments to the Equal Employment for Both Sexes Act

In March 2007, the MOL proposed amendments to the Equal Employment for Both Sexes Act, including:

- Paternity leave: the introduction of three days' paternity leave.
- Childcare leave: leave and flexible working for employees who have family to care for due to illness, injury or old age.
- Carers' rights: allowing female employees' to take childcare leave after pregnancy and before the child is born.

Proposal to enact special employment protection

The National Assembly is considering a bill to extend employment-law protection to certain independent and casual workers who are not currently protected by the LSA. Notably, the law intends to cover a range of workers, from insurance agents and golf caddies who tend to work for tips or commissions instead of salaries.

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