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The International Comparative Legal Guide to:

Employment & Labour Law 2018

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A practical cross-border insight into employment and labour law

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Employment & Labour Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of labour and employment laws and regulations.

It is divided into two main sections:

One general chapter titled "Where Next for the Gig Economy?".

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 41 jurisdictions.

All chapters are written by leading labour and employment lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Stefan Martin and Jo Broadbent of Hogan Lovells International LLP for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The primary source of Maltese employment law is the Employment and Industrial Relations Act ("**EIRA**") (Chapter 452 of the Laws of Malta). It regulates the main terms and conditions of employment. In addition to the EIRA, various subsidiary legislation has been promulgated to regulate specific fields of employment law, which seek to transpose the different directives of the European Union. Moreover, Wage Regulation Orders are an important element of Maltese employment law as they determine the minimum entitlement of specific sectors including the specific leave entitlements applicable to a particular sector. The Constitution of Malta is also a primary source of Maltese employment law as it devotes considerable attention to work and work relations. Collective Agreements usually regulate the employees' conditions of employment and such agreements include both substantive and procedural clauses, making them important sources of employment law. Lastly, whilst the doctrine of precedent does not apply in Malta, decisions and judgments of the Industrial Tribunal and the Court of Appeal are salient sources of employment law. Decisions of the European Court of Justice of the European Union, are an important source of Maltese employment law.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Generally speaking, employment legislation in Malta is equally applicable to employees at every level of the workplace. The Maltese workforce can generally be split into two categories, namely those who are employed and those who are self-employed. An employee is defined in Section 2 of the EIRA as "any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker but excluding work or service performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service".

The definition of employee makes it clear that any person who has entered into a contract of employment is considered to be an employee. The definition then attempts to include other persons such as outworkers and other personnel who fall under the direction and control of another person, however, the last part of this definition seems to exclude professionals and contractors who do not have a contract of employment with an employer.

As with English legislation, some recent legislation refers to the term 'workers' which, broadly speaking, is a term encompassing employees, agency workers, contract staff and self-employed persons who are "dependant" on one particular employer.

A Maltese employee is usually categorised as a full-timer, a whole-timer or a part-timer. A full-timer is a person who works an average of 40 hours per week. A Wage Regulation Order (also known as a Sectoral Order) specifies a number of employment parameters and rights which are applicable only to a particular sector of the employment market (e.g., the Food Manufacturing Wage Regulation Order of 1991). One of the specified parameters is the whole-timer weekly hours rate (usually ranging between 20 and 35 hours per week). An employee working in that sector who reaches that number of hours is entitled to be given the maximum leave and benefits entitlement as a full-timer.

A part-timer under Maltese employment law is an employee who works less than the full-time or the whole-time weekly hours of work. Broadly speaking, part-timers are not to be treated less favourably than full- or whole-timers in so far as remuneration and benefits are concerned. *Pro rata* calculations and payments as compared to whole-timers or full-timers are usually applicable to part-timers. Also, under the Part Time Employees Regulations (Subsidiary Legislation 452.79) part-timers are entitled to *pro rata* benefits and leave notwithstanding the number of hours worked. On the other hand, Maltese law regulates self-employment through the Employment Status National Standard Order (Subsidiary Legislation 452.108) (the "Self Employment Regulations") which tends to restrict the use of self-employment in Malta.

A similar right not to be treated less favourably also applies to fixed-term contract employees as compared to those comparable employees employed on indefinite-term contracts.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Under Maltese law, every employee must have a written contract of employment or a minimum statement of conditions. Such a contract of employment may be written or verbal. However, if the contract entered into is verbal then the employer has eight working days to give the employee either a contract of employment or a written statement of minimum conditions according to the Information to Employees Regulations (Subsidiary Legislation 452.83). Such information includes normal rates of pay, overtime rates, hours of work, place of work, and a reference to all the leave to which an employee is entitled.

1.4 Are any terms implied into contracts of employment?

There are terms implied in contracts of employment as the Maltese Courts have taken the view that terms which are very obvious do not need to be stated expressly in the contract of employment.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

It is a basic principle of Maltese Civil law that parties are free to contract on whatever terms they choose. Freedom to contract is, however, limited by statutory intervention in that no parties may agree to terms that are below the minimum rights granted by statute. The EIRA in fact specifies that if a contract of employment specifies conditions that are less favourable to the employee than those specified in the EIRA or the regulations issued under it, the statutory conditions shall prevail. Minimum employment conditions include (but are not limited to) minimum wage rate, vacation leave entitlements, family leave entitlements and conditions relating to the termination of the employment contract.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Where unions are present they usually negotiate collective agreements with employers. In such instances the content of the collective agreement is deemed to be part of the terms and conditions of employment and can be enforced by employees and the employer alike. Such agreements are typically negotiated at company level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

The necessity of having a right to associate is particularly important in the industrial relations scenario wherein trade unions and employers' associations are organised with a view to protecting their representative interests. The main source of industrial relations is the EIRA which outlines the manner in which trade unions and other associations may be formed and registered, their status and their conduct. The EIRA also provides for restrictions on liability, the right to act in contemplation or furtherance of trade disputes, the ensuring of the provision of essential services in this respect and restriction on the union membership. Recognition of a trade union for bargaining purposes at a particular enterprise is normally based on the membership exceeding 50 per cent of the entire workforce. Recently, however, there is a tendency for particular categories of employees to claim a separate recognition from that of the other workers within the same organisation.

The verification of union recognition is regulated via the Recognition of Trade Unions Regulations (Subsidiary Legislation 452.112). According to these regulations the verification exercise which determines who must be granted recognition by the employer is carried out by the Director of Industrial and Employment Relations in accordance with the main rules established by these regulations.

2.2 What rights do trade unions have?

Trade Unions have a right to act in contemplation or furtherance of trade disputes. They have the power to enter into contracts and, subject to certain restrictions, may sue and be sued. Additionally, trade unions are permitted by the Constitution to take action for the protection of the occupational interests of its members. Collective bargaining and industrial action are two very characteristic types of such action.

2.3 Are there any rules governing a trade union's right to take industrial action?

Maltese law does not have a comprehensive "strike law" or any enshrined right to strike. Rather, unions are granted statutory protection from liability, which they would otherwise incur under the tort law, when taking industrial action pursuant to a trade dispute. It is unfair to dismiss an employee who is taking part in "official" industrial action.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

The European Works Council (Further Provisions) Regulations (Subsidiary Legislation 452.107) holds that employees of a Community-scale group of undertakings which has at least 1,000 employees within the Member States, at least two group undertakings in different Member States, at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State, may set up a works council. Employees of a Community-scale undertaking which has at least 1,000 employees within the Member States and at least 150 employees in each of at least two Member States, may also set up a works council.

The works councils represent collectively the interests of the employees of the Community-scale undertaking or Community-scale group of undertaking.

A special Negotiating Body is to be set up which has the task of determining together with the central management the scope, composition, functions and term of office of the European Works Council.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

In no circumstance does the law require co-determination; however, in practice, should the employer not be observing the law, the works council representatives can always apply to the Malta courts for an injunction, which, if upheld, even provisionally, will prohibit the employer from proceeding.

2.6 How do the rights of trade unions and works councils interact?

Trade Unions have stronger laws in their favour which works councils do not have (such as the right to be immune in tort during strike action). That being said, in workplaces where unions are present, the union representatives usually sit on the company's works council.

2.7 Are employees entitled to representation at board level?

No, this is an entirely voluntary right that can be self-imposed by the company concerned.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The protection against discrimination is one of the fundamental rights and freedoms of the individual provided under Chapter IV of the Maltese Constitution. Article 45 of the Maltese Constitution specifically caters for the protection from discrimination on the basis of race, place of origin, political opinion, colour, creed, or sex. This article protects persons from being discriminated in every aspect of life including work. The advent of EU membership brought about an overhaul in Maltese equality law in relation to employment. A number of anti-discrimination provisions with direct relevance to the workplace were included in the EIRA, and a number of statutory instruments were introduced in order to expand upon the general principles found in the EIRA. The EIRA seeks to cover various grounds of discrimination. A non-exhaustive list of these grounds is provided for under Article 2 of the EIRA which defines "discriminatory treatment" as any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or employers' association. The term "including" clearly indicates that other grounds which, though not specifically mentioned therein, such as age or sexual orientation for example, can also be deemed to constitute discriminatory treatment, if the distinction, exclusion or restriction in question is not otherwise justifiable in a democratic society. Moreover, discrimination against part-timers and persons employed on fixed-term contracts is also regulated.

3.2 What types of discrimination are unlawful and in what circumstances?

The EIRA expressly prohibits forms of discriminatory treatment at the various stages of employment. Discrimination in the workplace is unlawful as far as recruitment, treatment during the course of employment and termination is concerned.

A number of regulations have been enacted to strengthen the legal framework on equality. Such instruments include the Equality for Men and Women Act (Chapter 456 of the Laws of Malta) which focuses on sexual and gender discrimination, the Employment and Industrial Relations Interpretation Order (Subsidiary Legislation 452.89) which instructs the Industrial Tribunal to refer to the European Directives on discrimination, and the Equal Treatment in Employment Regulations (Subsidiary Legislation 452.95) which focuses on the principle of equal treatment in relation to religion and religious belief, racial or ethnic origin, disability, age and sexual orientation.

Moreover, the only provision on equal pay found in Maltese law is in Article 27 of the EIRA. This provisions states that employees in the same class of employment are entitled to the same rate of remuneration for work of equal value. However, this article also specifies that when the matter is regulated by a collective agreement, then such an agreement may provide for different salary scales, annual increments and other conditions of employment that are different for those workers who are employed at different times, where such scales have a maximum that is achieved within a specified time frame.

With respect to disabled persons, the Persons with Disability Act (Chapter 210) and the Equal Opportunities (Persons with a Disability) Act (Chapter 413) and the Equal Treatment in Employment Regulations (Subsidiary Legislation 452.95), prohibit discrimination against persons with a disability as far as their employment is concerned.

3.3 Are there any defences to a discrimination claim?

The statutory justifications from liability for unlawful discrimination in employment are found in the EIRA. The EIRA provides three instances when exclusion or preference in relation to one of the grounds that may constitute discrimination would not amount to discriminatory treatment:

- when it is reasonably justified taking into account the nature of the vacancy be filled or the employment offered;
- where a required characteristic constitutes a genuine and determining occupational requirement; or
- where the requirements are established by an applicable laws or regulations.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

An employee who alleges that the employer has discriminated against him/her may, within four months of the alleged breach, lodge a complaint to the Industrial Tribunal. Employees can settle claims before and after proceedings are initiated through private settlements.

3.5 What remedies are available to employees in successful discrimination claims?

Employees are entitled to be awarded monetary compensation in cases where the Industrial Tribunal establishes that discrimination has taken place.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

"Atypical" workers such as those working part-time, on a fixed-term contract or as a temporary agency worker cannot be treated less favourably than full-time employees in the same class of employment, and they are entitled to equal rights and benefits.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Subject to satisfying the necessary statutory criteria, a woman is entitled to 18 weeks' ordinary maternity leave.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

A woman on maternity leave is entitled to 14 weeks on full pay and four weeks at the minimum wage rate payable by the social

security department. Subject to certain conditions the employer may claim the first 14 weeks of maternity from the maternity fund. In the case of an employee who is pregnant, breastfeeding or has recently given birth, and who could be exposed to a risk at work that could jeopardise her health and safety and/or the pregnancy/the child, the employee is entitled to special maternity leave as long as the risk exists.

When an employee is on maternity leave or special maternity leave, she shall be deemed to have been in the employment of the employer and during any such absence she shall be entitled to all rights and benefits which may accrue to other employees of the same class or category of employment at the same place of work, including the right to apply for promotion opportunities at her place of work.

Additionally, a pregnant employee is entitled to time off without loss of pay or any other benefit, in order to attend antenatal examinations, if such examinations have to take place during her hours of work. Adoption leave and leave for medically-assisted procreation are also governed by Maltese law.

4.3 What rights does a woman have upon her return to work from maternity leave?

On return to work from maternity leave, a woman is entitled to return to the same job or when this is no longer possible for a valid reason, to equivalent or similar work which is consistent with her original contract of employment.

4.4 Do fathers have the right to take paternity leave?

Fathers are entitled to take birth leave which is regulated by specific Wage Regulation Orders depending on the sector of employment in question. In absence of a Wage Regulation Order, the Minimum Special Leave Entitlement Regulations (Subsidiary Legislation 452.101) stipulate that the father is entitled to one working day of birth leave.

4.5 Are there any other parental leave rights that employers have to observe?

Men and women with one year's continuous service are entitled to four months' unpaid parental leave in respect of children under eight years of age. Employees are also allowed 15 hours of paid time off to deal with emergencies arising in relation to persons related to them up to the first degree; the 15 hours of vacation leave are deducted from the employee's annual leave entitlement.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

No, there is no entitlement to flexible work for employees who are responsible for caring for dependants. Rather, such right is granted at the discretion of the employer.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

Upon the transfer of an undertaking, the contracts of employment of the transferor's employees automatically transfer from the transferor to the transferee in line with the Transfer of Business Protection of Employment) Regulations (Subsidiary Legislation 452.85). These regulations apply in the following cases:

- in any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger; provided that there is a transfer within the meaning of this regulation whenever there is a transfer of an economic entity which retains its identity, with the objective of pursuing an economic activity;
- to a service provision change;
- to any undertaking engaged in economic activities whether or not that activity is central or ancillary and whether or not it is operating for gain; and
- where and insofar as the undertaking, business or part of the undertaking or business to be transferred is situated in Malta.

The Regulations have also made it clear that a transfer of business may even take place with more than one transaction and that no property, movable or immovable, needs to be transferred.

Finally, the regulations do not apply in a share transfer scenario if the business is not transferred.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

On a business sale, all employee rights are transferred. Additionally, existing collective agreements are transferred together with the transfer of the business.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

When the undertaking carrying out the transfer (transferor) employs 20 or more employees, Section 38 (2) of EIRA requires both the transferor and the transferee to give the employees' representatives the following information:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the legal, economic and social implications of the transfer for the employees; and
- the measures envisaged in relation to the employees.

The employees' representatives are the officials of a recognised trade union or a number of employees elected specifically for the purpose of negotiation in relation to the business transfer.

The requisite information must be provided by means of a written statement given to the employee representatives at least 15 working days before the transfer is carried out or before the changes in conditions of employment of the employees come into effect, whichever is earlier.

If the employment conditions of the affected employees will change as a consequence of the transfer, consultation on the impact of the changes has to begin with the employees' representatives seven working days after the information statement is received by the representatives. Although statute does not stipulate whether a sale and purchase agreement can be signed before the information/consultation obligations are fulfilled, employers are discouraged from doing so.

Any person contravening these requirements to inform and consult are liable on conviction to a fine of not less EUR 1,164.69 for every employee that is affected by the transfer.

5.4 Can employees be dismissed in connection with a business sale?

Any dismissal in connection with the transfer will, in principle, be unfair and give rise to an entitlement to claim compensation.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Changes to terms and conditions of employment by reason of the transfer are voidable, even if agreed to by the employees.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employees on an indefinite contract of employment are obliged to be given a notice period of termination of their employment. Statute lays down a minimum period of notice that will apply where the contract of employment does not make any provision for notice. Notice periods only apply in cases of redundancy or resignation. There are no notice periods for termination for good and sufficient cause (e.g., gross misconduct).

The statutory minimum period of notice depends on the length of time the employee has been in employment with a particular employer. The notice cannot, however, exceed a maximum of 12 weeks. These notice periods apply to all categories of employees irrespective of seniority. Longer notice periods may be agreed in the contract of employment when the employee holds a technical, executive, administrative or managerial role.

If an employer prefers that an employee does not work his/her notice period, the general practice is for employers to pay salary *in lieu* of the notice period. There are no special formalities for making such payments (except as to the deduction of tax where required).

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

The extent to which garden leave clauses would be enforceable in Malta is debatable. Once the employer has received the notice of resignation of the employee, the employer may opt to keep the employee in employment for the duration of the notice period or he/she may opt to release the employee with immediate effect by paying the employee an amount equal to all the wages which the employee would have earned during the notice period. If, on the other hand the employee fails to work all or part of the notice period which has to be given to the employer, the employer has the right to demand the employee to pay him/her an amount equal to half the wages that the employee would have earned during the notice period or that part which is unexpired, but the employer cannot force the employee to remain in employment, even during a period of garden leave.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

With respect to indefinite contracts of employment, the employer is always free to terminate the employment, but he/she may only do so for a good and sufficient cause or in cases of redundancy. Even so, the employee may always contest the redundancy or the actual termination in the Industrial Tribunal. In cases where the employee is engaged on a fixed-term contract, the law stipulates that if either party wishes to terminate the employment before the time stipulated at law without a good and sufficient cause, the defaulting party has to pay to the other an amount which is equal to half the wages that the employee would have earned in the period remaining. Also, according to statute, fixed-term contracts may not be terminated on the basis of redundancy.

Generally, it is accepted that theft, misconduct and a genuine redundancy are good and sufficient causes for termination. As with most common law jurisdictions, the employer must show that he/she has a good reason for the dismissal and that a fair and reasonable procedure has been followed when implementing the dismissal.

Consent from a third party is not required before an employer can dismiss an employee.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The same rules apply to dismissals in connection with pregnancy or maternity, parental leave, health and safety, trade union membership or activities, transfers of undertakings, breach of the Organisation of Working Time Regulations and making a disclosure to the proper public authority ("whistle-blowing") although if the termination is found to be made for reasons in connection with the employee wanting to exercise his/her statutory rights in relation to the abovementioned topics, the dismissal is statutorily one which is unfair.

The only instance in which the law expressly prohibits termination of employment is when the employee is on injury leave.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

An employer is entitled to dismiss an employee for reasons related to the individual employee in situations where the employer has good and sufficient reasons to dismiss the employee. Additionally, an employer will be entitled to dismiss an employee for business-related reasons if the termination is due to a genuine redundancy.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

The law does not establish any specific procedures which an employer must follow in relation to individual dismissals. However, through case law it has been established that an employee must be given the opportunity to defend himself/herself and be fairly heard. Additionally, the collective agreement and employee handbooks may stipulate a particular procedure which must be followed.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

An employee may bring forward the claim that the dismissal was not for a good and sufficient cause. If the employer does not manage to prove that he/she had a good and sufficient cause for termination the Industrial Tribunal may either order reengagement, reinstatement and/or monetary compensation. Having stated this, where the complainant is employed in a managerial or executive post, the Tribunal shall not order the reinstatement or the reengagement of the complainant.

6.8 Can employers settle claims before or after they are initiated?

Employers can settle claims before and after claims are initiated through private settlements.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Where a collective redundancy (as defined in the Collective Redundancies (Protection of Employment) Regulations (Subsidiary Regulations 452.80)) is proposed to take place within a period of 30 days, consultation with appropriate representatives must take place at the earliest possible opportunity. Additionally, the employer is bound to supply the employees' representatives with a statement in writing giving all relevant information and shall in any event give such employees' representatives the reasons for the redundancies, the number of employees he/she intends to make redundant, the number of employees normally employed by him/her, the criteria proposed for the selection of the employees to be made redundant, details regarding any redundancy payments which are due and the period over which redundancies are to be effected.

The employer must also forward to the Director responsible for Employment and Industrial Relations, a copy of the written notification and a copy of the written statement on the same day that these are notified to the employees' representatives.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Employees can enforce their rights by applying to the Malta courts for a remedy or by roping in the government department for the protection of employment rights in order to defend their interests. If the employer fails to observe its obligations, it is also open to civil damages and a criminal action brought by the Department for Industrial and Employment Relations.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

In Malta, the recognised restrictive covenants are limited. Recent jurisprudence on non-compete clauses has held enforceable a clause which prohibits the employee from soliciting clients of the employer with whom he/she had contact. The Maltese Courts have emphasised that the limitations of time and market have to be reasonable within a small area such as Malta, as an ex-employee cannot be forced to leave his/her country in order to pursue his/her vocation.

7.2 When are restrictive covenants enforceable and for what period?

It is quite common for employers in Malta and elsewhere to include clauses in contracts of employment that seek to impose a restriction on employees which attempt to restrict employees from working with the competition of the employer following termination of the employee's contract of employment. It must be said that the Courts of Malta have consistently interpreted such clauses restrictively, on the basis of public policy in that the courts felt time and time again that the liberty of employees to find suitable employment should supersede such restrictive covenants in employment contracts. Such clauses have in fact been seen as contracts in restraint of trade and therefore susceptible of close examination, as well as being considered to unreasonably restrict employees from seeking to better themselves. The Maltese Courts have emphasised that the limitations of time and market have to be reasonable within a small area such as Malta, as an ex-employee cannot be forced to leave his/her country in order to pursue his/her vocation.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Pure restrictions from working with a competitor are usually not enforceable but should the Company wish to enforce such covenants and the employee agrees, then the employee would need to be paid during the restrictive period if the employer requires the employee not to work at all. Should the employer allow the employee to work elsewhere, then payment is not necessary.

7.4 How are restrictive covenants enforced?

Restrictive covenants may be enforced through judicial proceedings.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Essentially employers, as data controllers, are under an obligation to ensure that they process personal data about their employees in accordance with specified principles including the principles of proportionality and transparency. It is also recommended that the workforce is informed of any procedure being implemented due to the provisions of the Data Protection Act 2001 ("DPA"). As from the 25th May 2018, the General Data Protection Regulation will come into force and the principles established therein shall be directly applicable.

An employer who wishes to provide employee data to third parties must do so in accordance with the DPA principles and processing conditions. It should be noted that the DPA prohibits the transfer of data to a country outside the EEA unless (i) that country ensures an adequate level of protection for personal data, (ii) measures are in place to ensure proper protection of personal data, or (iii) one of a series of limited exceptions applies.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Employees, as data subjects, have the right to make a subject access request. This entitles them, subject to certain limited exceptions, to be told what data is held about them, to whom it is disclosed and to be provided with a copy of such personal data. Subject access requests cover personal data held in manual and electronic records such as email.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers are entitled to carry out pre-employment checks on prospective employees but only in situations where this is required and permitted by law.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Whilst there have been no decisions from the Maltese Courts on the subject as of yet, monitoring an employee's emails, telephone calls or use of an employer's computer system is so far permissible provided that it is carried out in accordance with the Data Protection Act principles in that it should be adequate, relevant and not excessive and should be carried out in the least intrusive way possible. Any adverse impact of monitoring on employees must be justified by its benefit to the employer and/or others. Express employee consent to monitoring is not usually required; however, employees should be made aware that monitoring is being carried out, the purpose for which it is being conducted and to whom the data will be supplied. Where disciplinary action is a possible consequence of anything discovered, this too should be made clear to employees. The principles outlined by the Grand Chamber of the European Court of Human Rights in the case of *Bărbulescu v. Romania*, will be applied in practice.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

An employer controlling an employee's use of social media is only permissible in accordance with the principles laid down by the EU General Data Protection Regulation.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Many disputes between employers and employees are settled in the Industrial Tribunal which has exclusive jurisdiction to hear cases instituted by employees relating to dismissal, trade disputes and other employment law disputes such as those related to harassment, discrimination and the observation of the working time requirements, most of which originated from Malta's membership of the European Union. In situations where the dispute relates to the conditions of employment, the Industrial Tribunal is composed of a Chairperson. In situations relating to Industrial Relations, the Tribunal is composed of a Chairperson and two other members who are selected by the Chairperson of the Tribunal.

A right of Appeal from the decision of the Industrial Tribunal exists on point of law to the Court of Appeal composed of a judge.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

A complaint is to be submitted to the Industrial Tribunal within four months from the alleged breach. Conciliation is optional and not mandatory and a fee is payable to submit a claim. There is no mandatory conciliation prior to judicial proceedings.

9.3 How long do employment-related complaints typically take to be decided?

There is no pre-established time frame within which an employment-related complaint is decided. However, based on experience, a claim instituted in front of the Industrial Tribunal typically takes one-and-a-half years to two years to be decided.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

A right of Appeal from the decision of the Industrial Tribunal exists on point of law to the Court of Appeal. The appellant has 12 days to file an appeal. Like the Industrial Tribunal, the Court of Appeal does not have a time limit within which it should give a judgment, however from practice this usually takes around one year from that of when the appeal was filed.

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GANADO ADVOCATES

GANADO Advocates is a leading commercial law firm with a particular focus on the corporate, financial services and maritime sectors, predominantly servicing international clients doing business in or out of Malta. The firm traces its roots back to the early 1900s, and is today one of Malta's foremost law practices, consistently ranking as a leading firm in all its core sectors. GANADO Advocates has, over the past decades, contributed directly towards creating and enhancing Malta's hard-won reputation as a reliable and effective international centre for financial and maritime services. Today, the firm continues to provide high standards of legal advisory services to support and enhance Malta's offering.

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