

Guide to Employment Law in Hong Kong



- 1 Overview
- 3 Summary of Minimum Statutory Entitlements
- 6 Annual Leave
- 9 Maternity Leave
- 11 Sickness Benefits
- 14 Form of Contract
- 14 Termination
- 19 Discrimination Laws
- 29 Data Privacy Legislation
- 35 The Mandatory Provident Fund
- 39 Employee Compensation
- 41 Summary of Visa Requirements

Overview

EMPLOYMENT IN HONG KONG IS LESS REGULATED THAN IN MANY OTHER JURISDICTIONS.

The primary piece of legislation, the Employment Ordinance (the “EO”), prescribes certain basic rights and protection for all employees. The EO applies to every employee engaged under a contract of employment in Hong Kong with only a few minor exceptions, for example, in relation to family members employed in family businesses and merchant seamen. The EO applies equally to locals and foreign nationals working in Hong Kong. Provided that the contractual terms of service are no less favourable than the basic protection afforded by the EO, the contract of employment will govern the relationship between employer and employee. To the extent that any contractual terms are less favourable, the EO will prevail.

There are a number of labour organisations/trade unions in Hong Kong but no closed shops. These are principally established on a trade-by-trade basis, although some of the larger corporations with substantial numbers of employees have labour unions particular to that corporation. Membership of trade unions in Hong Kong on a percentage basis is relatively low compared to its European or American counterparts. However, with the down turn in the economy, collective bargaining and union organised activities are gathering momentum. The EO contains protection against anti-union discrimination.

There is no statutory requirement that a percentage of employees must be local nationals or that a percentage of payroll be paid to local national employees. All non-locals are subject to immigration controls and require employment visas before entering into employment in Hong Kong. The general rule is that a visa must

be obtained from the Chinese Embassy in the country of residence of the applicant before departure for Hong Kong. A local sponsor is required (normally the employing company) to support the application. The sponsor is required to assume responsibility for repatriation of the employee at the expiration of his permitted stay in Hong Kong. The application should be completed and returned to the Chinese Embassy in the country of residence, which will forward it to the Immigration Department in Hong Kong for processing. Alternatively, the local sponsor may submit the employee's application to the Hong Kong Immigration Department. In considering an application, the Immigration Department must be satisfied that there is no suitable local candidate for the position. Where the post involves a special skill or is of a senior nature, this is not normally a problem.

Summary of Minimum Statutory Entitlements

WAGES

There is currently no minimum wage prescribed by statute, although under guidelines introduced by the Government permitting the import of certain types of foreign labour, certain minimum wages must be paid so as not to undermine pay levels of local employees in similar jobs.

The Hong Kong administration has indicated that it will shortly introduce minimum wage legislation with a view to an hourly minimum wage being imposed in early 2011.

HOURS

Except in relation to the employment of young persons employed in industrial undertakings where special regulations apply, there are no statutory provisions which prescribe maximum working hours. The EO does however, provide that in addition to paid statutory (public) holidays, an employee is entitled to not less than one rest day in every period of seven days.

BENEFITS

Vacation

Employees are entitled a minimum of between seven days and fourteen days annual leave for each period of twelve months' employment, calculated on the basis of length of service.

Bonuses

Many employers in Hong Kong pay an automatic annual bonus of one month's salary at Chinese New Year, although the trend is to replace this with a performance related bonus.

Pensions

The Mandatory Provident Fund Schemes Ordinance requires that every employer in Hong Kong contribute an amount equal to at least 5% of an employee's salary (up to a maximum of HK\$20,000 per month) to a retirement scheme that is registered as an MPF scheme. Every employee will also be required to contribute at least 5% of his or her salary (again up to a maximum of HK\$20,000 per month) to the scheme. There are certain exceptions to this general rule. Certain employers provide additional benefits through occupational retirement schemes. These are regulated by the Occupational Retirement Schemes Ordinance.

Workmen's compensation

Employers are required to maintain insurance coverage pursuant to the Employees Compensation Ordinance in respect of work-related injuries but otherwise, there is no statutory requirement to provide medical benefits.

SOCIAL SECURITY

Hong Kong has a non-contributory social security system to provide a basic social safety net. No deductions are made from salary in respect of social security contributions.

OTHER CONDITIONS

Maternity leave

Subject to the qualifying requirements, female employees are entitled to paid maternity leave of ten weeks or as provided by the terms of the employer, whichever is more favourable. Maternity leave pay is paid at the rate of 4/5ths of the employee's average wage over the preceding 12 month period.

Sickness leave

Employees are entitled to paid sick leave at the rate of 4/5ths of the employee's average wage over the preceding 12 month period.

Entitlement to sickness leave may be accumulated at the rate of two paid sickness days for each completed month of employment during the first twelve months of employment and at the rate of four paid sickness days for each month thereafter, up to a maximum of 120 paid sickness days. The entitlement to sickness pay only applies, however, to periods of absence due to sickness of not less than four consecutive days.

Severance pay

An employee who has been employed for not less than 24 months is entitled to severance pay if he is dismissed by reason of redundancy or if the employee is laid off (i.e., where the remuneration of an employee depends on his being provided with a particular kind of work and he is no longer provided with a sufficient amount of such work). The amount of severance pay is two-thirds of one month's pay for each year of employment or two-thirds of HK\$22,500, whichever is less, subject to a maximum payment not exceeding HK\$390,000. The amount of any contractual gratuity based on length of service is deductible from the amount of severance pay entitlement. In addition, that part of a retirement scheme payment which is due to the employer's contributions may be deducted from the amount of the severance pay.

Long service pay

Certain employees who have been employed under a continuous contract for not less than five years are entitled to long service pay on dismissal. The amount of long service pay is calculated by reference to the same formula as for severance pay. The maximum entitlement shall not exceed HK\$390,000. The amount of any contractual gratuity based on length of service is deductible from the amount of long service entitlement. In addition, that part of a retirement scheme payment which is due to the employer's contributions may be deducted from the amount of long service payment.

The right to severance pay and the right to long service pay are mutually exclusive. Severance pay is relevant to a redundancy situation whereas long service pay is intended to reward employees who are dismissed in a non-redundancy situation for their long service.

Annual Leave

STATUTORY ENTITLEMENT

Under the EO, employees are entitled to a minimum of 7 to 14 days statutory annual leave for each period of 12 months' employment, calculated on the basis of length of service as follows:

Period of employment	Number of days' annual leave
At least 1 year but less than 3 years	7
At least 3 years but less than 4 years	8
At least 4 years but less than 5 years	9
At least 5 years but less than 6 years	10
At least 6 years but less than 7 years	11
At least 7 years but less than 8 years	12
At least 8 years but less than 9 years	13
At least 9 years	14

CONTRACTUAL ENTITLEMENT

An employee's contractual entitlement (i.e., entitlement in excess of the statutory entitlement above) to annual leave varies depending on the nature of the employer and the employee's position. The EO, however, only regulates statutory annual leave and therefore the

comments made in this section relate solely to an employee's statutory annual leave entitlement.

TIME OF TAKING LEAVE

Employers are entitled to determine when annual leave is to be taken and must give 14 days' notice in writing to the employee of the time that they have selected. Annual leave must, however, be granted within 12 months of the end of the leave year, although in practice, most employers allow annual leave to be taken as it accrues. A "leave year" may either be the anniversary of the employee's commencement of employment or such other date as the employer may elect so as to use a common leave year for all employees, such as a calendar year.

PAYMENT IN LIEU

Employees are entitled to take a payment in lieu of any accrued and untaken statutory annual leave from the previous leave year and are also entitled to payment in respect of any outstanding annual leave due upon cessation of employment. The EO also permits employees to carry forward all untaken annual leave for 12 months after the preceding leave year.

The payment received by employees by way of holiday pay is a sum equal to the average wage of the employee over the preceding 12 month period.

CALCULATION OF STATUTORY ENTITLEMENTS

Daily Average Wage

Certain statutory benefits (annual leave pay, holiday pay, sickness allowance and maternity leave) as well as the determination of the amount needed to pay wages in lieu of notice, are calculated by reference to the "daily average wage" of an employee.

In computing the employee's "daily average wage", the legislation requires an employer to average an employee's wages over the preceding 12 months. However, certain periods (and the wages that are earned in such periods) are ignored for this purpose. Such "disregarded periods" are 'any period therein for which the employee was not paid his wages or full wages by reason of:

- Any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee,
- Any leave taken by the employee with the agreement of his employer,
- His not being provided by his employer with work on any normal working day, or
- His absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap 282).

The determination of daily average wage for an employee is therefore calculated by the following formula:

$$\text{DAW} = (\text{W} - \text{L Wages}) \div (365 - \text{L})$$

Where:

'W' is the wages earned by the employee in the preceding 12 months (or the shorter period if the employee has been employed for a period of less than 12 months);

'L' is the relevant periods of leave described above on which 'full wages' were not paid; and

'L Wages' is the amount of 'wages' paid on those 'L' days.

Where it is 'impracticable' to calculate the DAW of an employee then the 'amount may be calculated by reference to the wages earned by

a person who was employed in the same trade or occupation and at the same work in the same district' during the relevant 12-month period.

Maternity Leave

ELIGIBILITY

A female employee who is employed under a continuous contract of employment (i.e., she has been employed for four or more weeks and has worked at least 18 hours in each week) immediately before the expected date of her commencement of maternity leave, is entitled to take maternity leave in accordance with the EO (or as provided by the terms agreed with the employer, whichever is more favourable).

NOTIFICATION AND CERTIFICATION REQUIREMENTS

The employee must notify the employer of her intention to take maternity leave after her pregnancy has been confirmed by a medical certificate. Presentation of a medical certificate confirming pregnancy is sufficient notice on behalf of the employee. If so required by her employer, the employee must produce a medical certificate specifying the expected date of birth. Where confinement takes place before notice is given, or after notice is given but before the agreed date of commencement of maternity leave, the employee must, within seven days of her confinement, give notice to her employer of the date of confinement and of her intention to take any period of maternity leave.

PERIOD OF MATERNITY LEAVE ENTITLEMENT

Under the EO, the employee will be entitled to take a continuous period of ten weeks as maternity leave from the date of commencement of maternity leave or the actual date of confinement

if earlier. With the agreement of her employer, a pregnant employee may decide on the date of commencement of her maternity leave provided that such date is not less than two weeks before, and not more than four weeks before the expected date of confinement. If agreement cannot be reached, the maternity leave period will commence four weeks before the expected date of confinement. In addition, the employee is entitled to maternity leave in respect of the period between the expected and the actual date of birth and to a maximum of four weeks maternity leave on account of pregnancy-related illness to be taken wholly or in part either before or after the birth.

PAYMENT FOR MATERNITY LEAVE

To qualify for *paid* maternity leave, which is applicable only to the ten week maternity leave period, the employee must:

- Have been employed for a period of not less than 40 weeks immediately before the expected date of commencement of maternity leave
- Have given the required notice and
- Have complied with requirements for the provision of medical certificates referred to above

The rate of statutory maternity leave pay is 4/5ths of the employee's Daily Average Wage. Rest days and statutory holidays occurring during paid maternity leave are counted as part of the maternity leave entitlement. It is not permissible to make any payment in lieu of the grant of maternity leave.

PROHIBITION AGAINST TERMINATION

After a pregnant employee has served notice of pregnancy on her employer, her contract of employment cannot be terminated by the employer (other than for reasons permitting summary dismissal)

from that date until the end of her maternity leave or the date of cessation of pregnancy (otherwise than by reason of birth). Where an employee serves notice of her pregnancy immediately after being informed of the termination of her contract the employer must withdraw the notice of termination. Employers are, however, entitled to terminate a pregnant employee's contract during the first 12 weeks of a probation period for reasons other than pregnancy.

An employer who contravenes the EO in this respect will be guilty of an offence and subject to imprisonment and a fine of up to a maximum of HK\$100,000. In addition, an employee (of more than two years' continuous service) would be able to make a claim of unfair dismissal under Part VIA of the EO (dealing with employment protection) and, if successful, obtain an award of compensation from the Labour Tribunal of up to HK\$150,000. Finally, the dismissal (and other less favourable treatment) of an employee after her returning to work from maternity leave can give rise to a claim of pregnancy discrimination under the Sex Discrimination Ordinance in Hong Kong.

Sickness Benefits

ELIGIBILITY

An employee who has been employed under a continuous contract for a period of at least one month immediately preceding a sickness day is entitled to paid sickness allowance in accordance with the EO.

There is no entitlement to take sick leave for reasons other than the employee's own poor health or injury. So, for example, a female employee cannot claim sickness allowance in respect of a day where she has been absent from work to care for her sick child.

RATE OF SICKNESS ALLOWANCE

Sickness allowance is paid at the rate of $\frac{4}{5}$ ths of the employee's Daily Average Wage. Other than in the case of pregnancy and post-natal sickness, the entitlement to sickness allowance only applies, however, to periods of absence due to sickness of not less than four consecutive days. In other words, payment will only be received from the fourth consecutive day of absence and then in respect of the total number of sickness days taken by the employee. Consequently, employers are, strictly speaking, entitled to withhold pay for any absence of less than four days.

Note: In light of the rather restrictive entitlement to statutory sickness allowance, it is not unusual for employers to provide a contractual sickness benefit which is more beneficial than statutory sick allowance (e.g., by providing that sick leave is paid at full pay or by allowing employees an upfront entitlement to a certain number of days rather than accruing sick leave days on a month-by-month basis).

AMOUNT OF ENTITLEMENT TO SICKNESS ALLOWANCE

An employee's entitlement to sickness allowance accumulates at the rate of two paid sickness days for each completed month of employment in the first 12 months of employment and at the rate of four paid sickness days for each month thereafter, up to a maximum of 120 paid sickness days.

REQUIREMENT FOR MEDICAL CERTIFICATE

An employee must produce a medical certificate issued by a medical practitioner or registered dentist in respect of any sickness day for which he is claiming statutory sickness allowance and if he fails to do so, the employer is not liable to make any payment for that particular day.

RECORD KEEPING

The EO requires that records of sickness allowance are kept in a very particular manner and we therefore summarise the requirements here.

There is a general requirement for employers to maintain records of employees' entitlement to sickness allowance and of sickness days. The records must show the date of commencement and termination of employment of each employee, the sickness days accumulated, paid sickness days, total sickness allowance paid to each employee and the sickness days in respect of which sickness allowance was paid.

In addition, the employer's sick pay record for each employee must be divided into two sections: category 1 listing the first 36 days taken and category 2 containing additional accumulated days up to a maximum of 84. When an employee takes a paid sickness day, it must first be deducted from category 1, then from category 2. Further days accumulated are added first to category 1 until the maximum of 36 days is reached, then to category 2. Additional medical evidence may be required to support sickness days taken from category 2.

PROHIBITION AGAINST TERMINATION

There is a specific prohibition against the termination of employees whilst entitled to statutory sickness allowance.

An employer who terminates an employee on a paid sickness day will be guilty of an offence and subject to imprisonment and a fine of up to a maximum of HK\$100,000. The employer is also liable to pay the employee a sum equivalent to payment in lieu of notice, an additional one month's wages, and the total amount of sickness allowance that the employee would have been entitled to receive if the contract of employment had not been terminated.

In addition, an employee (of more than two years' continuous service) would be able to make a claim of unfair dismissal under Part VIA of the EO (dealing with employment protection) and, if successful, obtain an award of compensation from the Labour Tribunal of up to HK\$150,000.

Finally, the dismissal (and other less favourable treatment) of an employee on the grounds of illness can give rise to a claim of discrimination under the Disability Discrimination Ordinance in Hong Kong.

Form of Contract

There is no requirement in Hong Kong for a contract of employment to be in writing. However, upon written request before commencement of employment, the employer is required to give written particulars of certain conditions of employment. Where the contract of employment is in writing, the employer must provide a copy of it to the employee immediately after it is signed. The basic conditions which are required to be stated are the wages and wage period, the amount of end-of-year payment or the proportional entitlement and the length of notice required to terminate the employment.

Termination

TERMINATION BY NOTICE

The services of an employee on *probation* may be terminated by the employer or the employee without notice during the first month and by not less than seven days' notice thereafter.

In all other cases, the employee is entitled to:

- Not less than one month's notice of termination where the contract is deemed to be for one month renewable from month to month under the EO (i.e., where the employee has worked for 18 hours or more each week for a period of four weeks) and does not otherwise provide for the length of notice required to terminate the contract or
- Seven days or the agreed period, whichever is the longer, where the contract is for one month renewable from month to month and the length of notice of termination is provided for in the contract or
- In every other case (e.g., a fixed term contract), the agreed period, but not less than seven days in the case of a continuous contract.

The length of notice for the termination of employment contract mentioned above does not include annual leave and maternity leave.

TERMINATION BY PAYMENT IN LIEU OF NOTICE

An employment contract may also be terminated without notice by either party agreeing to pay to the other a sum equal to the amount of wages which would have accrued to the employee during the requisite period of notice.

Wages are defined broadly in the EO to include (with certain exceptions) all remuneration, earnings and allowances, howsoever designated or calculated, capable of being expressed in terms of money and payable to an employee in respect of work done under his contract of employment.

Where a notice period is expressed in days or weeks then the amount payable as wages in lieu of notice will be the number of days in the notice period multiplied by the Daily Average Wage of the employee. Where a notice period is expressed in months then the amount

payable as wages in lieu of notice will be the number of months in the notice period multiplied by the monthly average wage of the employee. “Monthly average wage” is calculated in the same manner as Daily Average Wage, but using monthly wages, not daily wages.

EMPLOYEES’ ENTITLEMENTS ON TERMINATION

Accrued wages and unused annual leave

All outstanding wages and payments in respect of accrued but unused annual leave (only statutory leave, unless contract specifies otherwise) up to the time of termination are payable.

End of year payments

Where the employees are contractually entitled to an annual bonus, they will be entitled to a proportional payment thereof in respect of the year in which they are dismissed, *unless* the bonus is payable solely at the discretion of the company or they have not been employed for a continuous period of three months or more in the payment period.

If an end of year payment is not specified in the employment contract, a sum equal to the monthly average wage of the employee will be awarded.

Severance payments

An employee who has been employed under a continuous contract for *not less than 24 months* is entitled to severance payment if dismissed by reason of redundancy or if the employee is laid off (that is, where the remuneration of an employee depends on their being provided with a particular kind of work and they are no longer provided with a sufficient amount of such work).

“Dismissal” includes:

- Termination by an employer with or without notice or payment in lieu other than by summary dismissal

- The expiry of a fixed term contract which is not renewed with comparable terms and
- Constructive dismissal where an employee is entitled to terminate their contract without notice by reason of the employer's conduct

Redundancy occurs where the employer has ceased, or intends to cease, to carry on the business for the purpose of which the employee was employed, or in the place where the employee was so employed or where the requirements of that business for employees to carry out a particular kind of work or to carry out such work in the place where the employee was so employed have ceased or diminished or are expected to cease or diminish.

The amount of severance payment for a monthly-rated employee is, for each year (and pro rata as respects an incomplete year) in which the employee has been continuously employed, two-thirds of their last full month's wages, or two-thirds of HK\$22,500, whichever is less and, in any other case, 18 days' wages based on any 18 days chosen by the employee and occurring during their last 30 normal working days, or two-thirds of HK\$22,500, whichever is less. This entitlement is subject to a maximum payment of HK\$390,000.

Set-off against gratuity and retirement scheme payments

Where the employee is entitled, pursuant to a contract of employment, to a gratuity based upon length of service or to a payment under a retirement scheme, the amount of such gratuity or payment may be deducted from the severance payment to which the employee would otherwise be entitled. In the case of a retirement scheme payment, only the employer's contributions may be deducted and not the employee's own contributions or any interest payable thereon.

Long service payments

An employee with at least *five years of service* (other than an employee who retires) will be entitled to a long service payment if they are dismissed and his employer is not liable to pay them a severance payment. “Dismissal” has the same meaning as that under the provisions relating to severance payments described above.

The amount of the long service payment is calculated according to the same formulae used to calculate severance payments. The calculation is also subject to the same restrictions on maximum payments.

As with severance pay, long service payments may be reduced by the total amount of any contractual gratuities based on length of service and the employer contribution element of any retirement scheme benefits paid to the employee in respect of any or all of the years of service for which severance pay is due.

EMPLOYMENT PROTECTION UNDER PART VIA OF THE EO

Requirement for valid reason

The EO enables any employee who has been employed under a continuous contract for a period of *not less than 24 months* and who is *dismissed* or whose contract is *varied without his or her consent* to make a claim for “unreasonable dismissal” to the Labour Tribunal. Once such a claim is made, the employer is required to produce a valid reason for the dismissal or variation. Valid reasons include:

- The conduct of the employee
- The capability or qualifications of the employee for performing the work of the kind which he was employed by the employer to do and
- Redundancy of the employee or other genuine operational requirements

Remedies

Even if an employee files a claim with the Labour Tribunal and their claim is upheld, the remedies available to the employee are unlikely to be significant unless the employer has terminated the employee in contravention of certain sections in the EO prohibiting the termination of employees on the grounds of pregnancy, while they are on a paid sickness day, or for participation in trade union activities (for which there are greater remedies).

Assuming that termination of an employee is not for a prohibited ground, the Labour Tribunal can only make an order for re-instatement of conditions and/or re-engagement if the parties, including the employer, agree. Otherwise, the Tribunal may only make an award of terminal payments.

Terminal payments are, in effect, unpaid statutory and contractual entitlements which the employer should already have paid upon termination of the employee's contract. Although the Labour Tribunal may also award pro-rata entitlements where the employee has not attained the qualifying length of service, this is really only relevant to severance and long service pay. Severance and long service pay awarded by the Labour Tribunal can be set off by the amount of any contractual gratuity based on length of service or the employer's contribution element of any retirement scheme payment paid to the employee upon termination of employment.

Discrimination Laws

GENERALLY

Discrimination on the grounds of sex, pregnancy, marital status (Sex Discrimination Ordinance "SDO"), disability (Disability Discrimination Ordinance "DDO"), family status (Family Status

Discrimination Ordinance), race (Race Discrimination Ordinance “RDO”) and trade union membership (EO) is currently prohibited by legislation in Hong Kong. Specifically, there is no protection against discrimination on the basis of age or sexual orientation nor is there any equal pay legislation.

Each of the anti-discrimination Ordinances prohibits “direct” and “indirect” discrimination.

Direct discrimination is less favourable treatment by reason of the prohibited ground. In establishing less favourable treatment, courts have used the “but for” test – i.e., whether or not the complainant would have received the same treatment as another person (who does not possess the attribute which gives rise to the discrimination complaint) in similar or not materially different circumstances (“the Comparator”) *but for* the existence of the relevant attribute.

Indirect discrimination occurs where the complainant cannot comply with a requirement or condition which has been applied to all but which has a disproportionate impact upon the group that is protected from discrimination and which cannot be justified under the circumstances.

Employers should note that for the purposes of the four Ordinances, if an act is done for two or more reasons and one of the reasons is the prohibited ground (whether or not it is the dominant or substantial reason for doing the act), the act shall be taken to be done for the prohibited ground.

Therefore, an employer would need to ensure that the prohibited ground played no part in the decision which is unfavourable to the employee with the relevant attribute.

Each Ordinance prohibits direct and indirect discrimination in a broad range of fields including employment.

It is unlawful for an employer to discriminate against an *employee* on a prohibited ground:

- In the way they afford that person access to opportunities for promotion, transfer or training, or to any other benefits, services or facilities or
- By refusing or deliberately omitting to afford that person access to them by the terms of employment they afford that person or
- By dismissing that person, or subjecting them to any other detriment.

There are very few exemptions in the four Ordinances that apply to private sector employment.

All four Ordinances also prohibit victimisation – which is discrimination against a person on the ground that the person has made allegations of unlawful discrimination or harassment, has given evidence, or has taken steps to enforce one of the four Ordinances.

Finally, each Ordinance provides that an employer will normally be held *vicariously liable* for an unlawful act of an employee in the course of employment regardless of whether the act was done with the employer’s consent or knowledge. However, an employer can avoid vicarious liability by demonstrating that it took such steps as were “reasonably practicable” to prevent the employee from committing the unlawful act. This is intended to encourage employers to institute and enforce equal opportunity policies.

DISABILITY DISCRIMINATION

“Disability” is defined broadly in the DDO to include:

- Total or partial loss of bodily or mental functions
- Total or partial loss of a part of the body

- The presence in the body of organisms causing disease or illness
- The presence in the body of organisms capable of causing disease or illness
- The malfunction or malformation or disfigurement of a part of the person's body
- A disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction
- A disorder or illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour

The DDO covers a current disability, previous disability, future disability and imputed disability.

The definition of “disability” will include most if not all of the reasons for which sickness leave is taken (the most common source of problems) including the common cold or stress. There is one general exemption in respect of discriminatory recruitment criteria or conduct which leads to the dismissal of or other detriment to an employee (such as demotion or change of duties) by reason of their disability if that person's disability prevents them from carrying out the *inherent requirements of the job* or would, in order to carry out those requirements, require services or facilities that are not required by persons without a disability and the provision of which would cause *unjustifiable hardship* on the employer.

In assessing whether a person is unable to perform the inherent requirements of the job, an employer must take into account that person's training, qualifications, experience and past performance. To determine whether an imposition on the employer is “unjustifiable”, regard will be had to the nature and effect of the employee's disability, the detriment to be suffered by the employee if discrimination is permitted, and the employer's ability to bear the expenditure required in order to provide the necessary facilities.

Genuine occupational qualifications operate as a (limited) exemption to disability discrimination in the field of employment.

Under the DDO, genuine occupational qualifications include:

- Where the essential nature of the job requires a person without a disability for reasons of physiology or reasons of authenticity in dramatic performances or
- Where the nature or location of the employment establishment requires the holder of the job to live in premises provided by the employer, which premises are lived in, or normally lived in, by persons without a disability, and are not equipped with accommodation and facilities for persons with a disability and it would impose an unjustifiable hardship on the employer to so equip them

However, there are no exceptions regarding other categories of discriminatory conduct towards a disabled employee (i.e., other than dismissal or other detriment). Therefore, employers must be careful to ensure that the way in which they afford employees access to promotion, transfer, training, benefits and so forth do not amount to discrimination against employees with a disability

In relation to the terms of employment afforded, employers need to ensure that they do not explicitly offer different terms of employment on the basis of an employee's disability. In respect of general conditions of service, this should be a relatively simple exercise. Obviously, if the actual application of certain benefits differs, the employer's conduct will fall within the first category of discriminatory conduct regarding access to promotion and benefits.

RACE DISCRIMINATION

The RDO prohibits less favourable treatment of employees on grounds of race.

The legislation is modelled on concepts contained in the existing anti-discrimination legislation. A Code of Practice on Employment under the Race Discrimination Ordinance has been issued by the Equal Opportunities Commission to provide practical guidance in preventing race discrimination in the employment field.

The term 'race' means 'race, colour, descent or national or ethnic origin of the person'. The following considerations (among others) are excluded from 'race' for the purposes of the ordinance :

- Whether the person is an indigenous inhabitant of the New Territories
- Whether or not a person is a Hong Kong permanent resident;
- Whether or not a person has the right of abode or the right to land in Hong Kong
- Whether or not a person is subject to any restriction or condition of stay imposed under the Immigration Ordinance (Cap.115)
- Whether or not a person has been given the permission to land or remain in Hong Kong under the Immigration Ordinance (Cap.115)
- The length of residence in Hong Kong of a person or
- The nationality, citizenship or resident status of a person under the law of any country or place concerning nationality, citizenship, resident status or naturalisation of or in that country or place

Genuine occupational qualifications operate as a (limited) exemption to race discrimination in the field of employment. Under the RDO, genuine occupational qualifications apply only in five specified circumstances. These are:

- The job involves participation in a dramatic performance or other entertainment in a capacity for which a person of a particular racial group is required for reason of authenticity.
- The job involves participation as an artist's or photographic model in the production of a work of art, visual images or sequence of visual images for which a person of a particular racial group is required for reason of authenticity.
- The job involves working in a place where food or drink is provided to and consumed by the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity.
- The holder of the job provides persons of a particular racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group.
or
- The job involves providing persons of a particular racial group with personal services of such nature or in such circumstances as to require familiarity with the language, culture and customs of and sensitivity to the needs of that racial group, and those services can most effectively be provided by a person of that racial group.

RACIAL HARASSMENT

Racial harassment in the workplace is specifically prohibited under the RDO. It occurs where the harasser:

- Engages in unwelcome conduct on the grounds of the race of the victim where a reasonable person would have anticipated that such person would be offended, humiliated or intimidated, or
- Engages in conduct that renders hostile or intimidating the environment in which the victim works or carries out related activities

Calling employees derogatory names based on their ethnic group is likely to amount to harassment. Also, inappropriate racial jokes or pictures making fun of a particular ethnic group in the workplace may amount to unlawful harassment.

SEX DISCRIMINATION SPECIFICALLY

The SDO prohibits the less favourable treatment of employees on the grounds of sex, marital status and pregnancy.

Genuine occupational qualifications operate as a (limited) exemption to sex discrimination (but not pregnancy, marital status or family status discrimination) in the field of employment.

Under the SDO, genuine occupational qualifications include:

- Where the essential nature of the job requires a person of a given sex for reasons of physiology or reasons of authenticity in dramatic performances
- Where the job needs to be held by a person of a given sex to preserve decency or privacy
- Where the job is likely to involve people doing the work or living in a private home and objection may reasonably be taken to a person of a given sex because of the degree of physical or social contact with that person in the private home or
- Where the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and such services can be best provided by a person of a given sex

Separate exemptions exist under the SDO for affirmative action programmes and the withholding of housing, education and similar benefits to a married employee on the basis that his or her spouse receives the same benefit.

SEXUAL HARASSMENT

Sexual harassment in the workplace is specifically prohibited by the SDO. There are two types of behaviour that can amount to sexual harassment.

The first and more obvious form of sexual harassment arises from the conduct of a manager or employee (the harasser) towards another employee or applicant (the victim). Sexual harassment occurs where:

- The harasser makes a sexual advance or request for sexual favours, or engages in other conduct of a sexual nature towards the victim in circumstances where the victim does not welcome such conduct and
- The harasser should reasonably have anticipated that the victim would be offended, humiliated or intimidated

The second form of sexual harassment occurs where one or more co-employees engage in conduct of a sexual nature which creates a sexually hostile or intimidating work environment. This provision may transform seemingly trivial sexual conduct or conversations, and conduct or conversations which are not specifically addressed to a single employee, into cases of sexual harassment.

Where a sexual harassment claim is made by an employee against one or more other employees, the *only defence* open to an employer is to demonstrate that it took all steps which were reasonably practicable to prevent the sexual harassment occurring.

REMEDIES

Proceedings under the anti-discrimination Ordinances in Hong Kong are commenced either by lodging a complaint with the Equal Opportunities Commission (EOC) and/or in the District Court. Prior

conciliation by the EOC is not a pre-requisite to lodging proceedings in the District Court.

If proceedings are commenced in the EOC it will investigate and attempt to conciliate the complaint and may direct the parties to attend a conciliation conference. The EOC may require either party to provide such information as it requests, although the parties may opt for early conciliation rather than continuing with the investigation.

Employers should be aware that, in the event of a successful prosecution under the anti-discrimination Ordinances, there is no limit to the amount of damages a Court may award (if proceedings are brought in the District Court). In an employment context, compensatory damages will be assessed largely by reference to loss of earnings and injury to feelings caused by the act of discrimination. In particular, damages for injury to feelings can be substantial. For example, in one case, awards for injury to feelings ranged from HK\$100,000 to HK\$150,000 for each of the three plaintiffs with each plaintiff receiving an average of HK\$800,000 in overall damages.

COSTS

Employers should be aware that unless proceedings were brought maliciously or vexatiously or there are special circumstances which warrant an award of costs, each party bears their *own* costs in any Court proceedings brought under the anti-discrimination Ordinances.

PREVENTING DISCRIMINATION AND HARASSMENT

An employer will clearly be liable if it discriminates. An employer will generally also be vicariously liable for any discriminatory acts committed by its employees *in the course of their employment*.

In such circumstances the employer will have to rely on the statutory defence that it took such steps as were reasonably practicable to prevent its employees committing a particular discriminatory act or committing such acts in general. The burden of proof is on the employer to show that it has taken these steps. In practice, the most common starting point for employers undertaking this exercise is to show the tribunal that there was an equal opportunities policy which they actively brought to the attention of all employees and consistently enforced.

Data Privacy Legislation

GENERALLY

The collection, use and handling of personal data of employees in Hong Kong is governed by the Personal Data (Privacy) Ordinance (PDPO). With certain exemptions, the requirements of the PDPO are principally contained in six data protection principles set out in Schedule 1 of the Ordinance. Section 4 of the PDPO states that “a data user shall not do an act or engage in a practice that contravenes a data protection principle unless the act or practice as the case may be, is required or permitted under this Ordinance.”

“Personal data” is defined as any data:

- Relating directly or indirectly to a living individual (e.g., an employee), from which it is practicable for the identity of the individual to be directly or indirectly ascertained and
- In a form in which access to or processing of the data is practicable

“Data user” is defined as “the person who, either jointly or in common with other persons, controls the collection, holding,

processing or use of the personal data” (e.g., an employer). It is worth noting that data protection principle 1, in relation to the collection of personal data, provides, inter alia, that:

- The data user must have a lawful purpose for such collection (e.g., employment, human resource management)
- The collection of data is necessary for or directly related to that purpose and the amount of data collected is adequate but not excessive in relation to that purpose

In addition, the data user is required to take all reasonably practicable steps to ensure that the data subject (i.e., the employee) is informed, at the time of or before the collection of personal data, of, inter alia:

- The purposes for which the data is to be used and
- The classes of persons to whom the data may be transferred.

THE DATA PROTECTION PRINCIPLES

Principle 1 - Purpose and manner of collection of personal data

Personal data shall not be collected unless:

- The data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data
- Subject to principle 3, the collection of the data is necessary for or directly related to that purpose and
- The data are adequate but not excessive in relation to that purpose

Personal data shall be collected by means which are:

- Lawful and
- Fair in the circumstances of the case

Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that:

he is explicitly or implicitly informed, on or before collecting the data, of:

- Whether it is obligatory or voluntary for him to supply the data, and
- Where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data and

he is explicitly informed

- On or before collecting the data of the purpose (in general or specific terms) for which the data are to be used and
- The classes of persons to whom the data may be transferred and

on or before first use of the data for the purpose for which they were collected of

- His rights to request access to and to request the correction of the data and
- The name and address of the individual to whom any such request may be made

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose if specified in Part VIII of this Ordinance as a purpose in relation to which personal data are exempt from the provisions of data protection principle 6.

Principle 2 - Accuracy and duration of retention of personal data

All practicable steps shall be taken to ensure that:

- Personal data are accurate with regard to the purpose (including any directly related purpose) for which the personal data are or are to be used

- Where there are reasonable grounds for believing that personal data are inaccurate with regard to the purpose (including any directly related purpose) for which the data are or are to be used, the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by rectification of the data or otherwise or the data are erased

Where it is practicable in all the circumstances of the case to know that

- Personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party, and
- That data were inaccurate at the time of such disclosure, that the third party
 - » Is informed that the data are inaccurate and
 - » Is provided with such particulars as will enable the third party to rectify the data having regard to that purpose

Personal data shall not be kept longer than is necessary for the fulfilment of the purpose (including any directly related purpose) for which the data are or are to be used.

Principle 3 - Use of personal data

Personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than:

- The purpose for which the data were to be used at the time of the collection of the data or
- A purpose directly related to the purpose referred to in the previous said.

Principle 4 - Security of personal data

All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorised or accidental access, processing, erasure or other use with particular regard to:

- The kind of data and the harm that could result if any of those things should occur
- The physical location where the data are stored
- Any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored
- Any measures taken for ensuring the integrity, prudence and competence of persons having access to the data and
- Any measures taken for ensuring the secure transmission of the data

Principle 5 - Information to be generally available

All practicable steps shall be taken to ensure that a person can:

- Ascertain a data user's policies and practices in relation to personal data
- Be informed of the kind or personal data held by a data user and
- Be informed of the main purpose for which personal data held by a data user are or are to be used.

Principle 6 - Access to personal data

A data subject shall be entitled to:

- Ascertain whether a data user holds personal data of which he is the data subject
- Request access to personal data
 - » within a reasonable time
 - » at a fee, if any, that is not excessive
 - » in a reasonable manner and
 - » in a form that is intelligible
- Be given reasons if an access request is refused
- Object to a refusal to access personal data
- Request the correction of personal data
- Be given reasons if a correction request is refused and
- Object to a refusal to correct personal data.

OTHER REQUIREMENTS

Other principal requirements under the Ordinance which affect data users include:

- Data access requests
- Data correction requests
- Recording and retention requirements
- Use of personal data for matching procedures or direct marketing and
- Transfer of personal data outside of Hong Kong

There are also three codes of practice published by the Privacy Commissioner for the purpose of providing practical guidance in respect of the PDPO as follows:

- Code of Practice on the Identity Card Number and other Personal Identifiers (regarding collection, use, retention and other matters relating to identity card number and other personal identifiers)
- Code of Practice on Consumer Credit Data (regarding collection, use and access of consumer credit data) and
- Code of Practice on Human Resources Management (this is a code to human resources practitioners on how to comply with the requirements under the Ordinance)

Failure of any data user to comply with any provision of a code of practice does not constitute a criminal offence. However, in any proceedings against the data user for breach of a requirement under the PDPO and where such requirement is covered by a provision in a code of conduct, proof of breach of the provision in the code of conduct may be considered as proof of breach of the requirement under the Ordinance.

Apart from codes of practice, the Privacy Commissioner has issued a number of guidelines to data users. One major subject covered by the guidelines is the collection and transmission of personal data through the Internet.

The Mandatory Provident Fund

OBLIGATION TO CONTRIBUTE

Under the Mandatory Provident Fund Schemes Ordinance (“the MPF Ordinance”), every employer in Hong Kong must contribute an amount equal to at least 5% of an employee’s salary (up to a maximum salary of HK\$20,000 per month) to a retirement scheme that is registered as an MPF scheme. Every employee will also be required to contribute at least 5% of their salary (up to a maximum salary of HK\$20,000 per month) to the scheme. There are certain exceptions to this general rule.

TAX TREATMENT OF MANDATORY CONTRIBUTIONS

The first HK\$12,000 per annum of an employee's contributions to an MPF scheme is deductible for salaries tax purposes.

WHEN DO CONTRIBUTIONS NEED TO BE MADE?

An employer must pay contributions to an MPF scheme for each contribution period (generally meaning the period for which the employer pays income to the employee) in respect of a relevant employee.

CONTRIBUTION HOLIDAY

Employers' contributions shall count from the first day of employment, while the employee is not required to make contributions for the first 30 days of employment and the first incomplete payroll cycle immediately following the 30-day contribution holiday (not applicable to casual employees).

In addition, no contribution shall be made either by the employer or employee in respect of an employee who is employed for less than 60 days, except a casual employee.

Whilst the above requirements may appear confusing, their total effect is as follows:

- If an employee (not a “casual employee”) is in employment for less than 60 days, then no contributions are payable either by the employer or the employee and
- if an employee is still in employment after 60 days, then:
 - » the employer must pay contributions for the full 60-day period of employment and
 - » the employee must pay contributions, but only commencing on the first day of the first complete payroll cycle immediately following the 30-day contribution holiday.

VOLUNTARY CONTRIBUTIONS

The MPF Ordinance enables both employees and employers to make “voluntary contributions” to an MPF scheme. These are, basically, contributions in excess of the minimum contributions (i.e., 5% on the first HK\$20,000 per month). An employee may also elect to pay contributions where his relevant income is below HK\$5,000 per month.

These contributions will also be “voluntary contributions”. Those parts of the MPF Ordinance which impose limitations on the circumstances in which benefits may be paid the vesting of benefits the preservation of benefits and the portability of benefits do not, in general, apply to that part of an employee’s benefits derived from voluntary contributions.

EXCEPTIONS

Certain employees are exempt from the MPF system. These include:

- A non-Hong Kong permanent identity card holder who:
 - » is entering Hong Kong for the purposes of employment for a period of 13th months or less or
 - » is a member of a retirement scheme (or equivalent) in some other jurisdiction (note this is very broad and would include a deferred benefit in a social security system – e.g., UKSERPS) and
- A member of an MPF-exempt occupational retirement scheme (being a voluntary retirement scheme established by an employer prior to the introduction of the MPF)

MPF SCHEMES

Types of MPF schemes

MPF schemes can be of three types. These are:

- An employer-sponsored scheme
- An industry scheme or
- A master trust scheme

An employer-sponsored scheme is a scheme which is only available for employees of companies which are associated.

An industry scheme is a scheme established specifically for employees who are engaged in a particular industry or classes of industries. They will primarily be set up to cater for casual employees.

A master trust scheme is the MPF equivalent of a pooled provident fund. Employers participate in master trust schemes for the benefit of their employees.

Regulatory requirements

In order to become an MPF scheme, numerous conditions need to be satisfied. All MPF schemes need to obtain registration from the MPF Authority and the approval of the Securities and Futures Commission.

Structure of MPF schemes

The fundamental structure of an MPF scheme is that it is constituted under a Hong Kong trust and provides defined contribution benefits.

The vast majority of MPF schemes offer a choice of investment products and employees are given the option to elect how their money is invested (as in 401K plans in the US). One of the investment options offered must always be a very conservative “capital preservation fund”.

Assets invested in a “capital preservation fund” must be invested in a particular manner set out in section 37(2) of the General Regulation (basically just bank deposits and government backed debt securities). Administrative expenses can only be taken from the capital preservation fund if the returns on such fund in any month exceed the returns which would have been earned had the assets in the fund “been placed on deposit in a Hong Kong Dollar savings account at the prescribed savings rate” (as determined by the MPF Authority), and then only the excess can be taken as administrative expenses. This is softened somewhat by the ability to “roll over” outstanding administrative expenses for a period of up to 12 months.

Employee Compensation

The Employees’ Compensation Ordinance (ECO) obliges every employer to obtain a policy of insurance for a specified minimum amount in respect of its liability to compensate employees for “injury by accident” or “death” arising “out of and in the course of employment”.

The amount of the liability which must be insured is determined by reference to the total number of the employer’s employees:

- If fewer than 200 employees, the employer must take out a policy of insurance which provides a minimum coverage of HK\$100 million per event
- If more than 200 employees, the minimum cover required is HK\$200 million per event.

Once insured, the employer will be able to claim against its insurer in respect of any liability on its part to compensate employees for work-related injuries.

The types of compensation paid to an employee will depend on the nature of the work-related injuries and include:

- Compensation for fatal cases
- Compensation for permanent total incapacity
- Compensation where employees require the attention of another person to perform the essential actions of life
- Compensation for permanent partial incapacity
- Compensation for temporary incapacity and medical expenses.

Other than medical expenses, compensation for work-related injuries is assessed by reference to the employee's previous month's earnings or is averaged over the previous 12 months, whichever calculation is more favourable.

The ECO sets out a number of procedural steps to be followed with respect to the notification of any accident and the assessment of compensation. In particular, the employee must notify the employer of any accident as soon as practicable and in any event before the employee voluntarily leaves employment. The application for compensation must be made within 24 months of the occurrence of the accident which caused the injury.

The ECO also preserves common law remedies against employers whose negligence, breach of statutory duty (such as the Occupational Safety and Health Ordinance) or other wrongful act or omission has caused injury to the employee although the amount of damages awarded to an employee who has brought a common law action will be reduced by the amount of any compensation payable under the ECO.

Summary of Visa Requirements

GENERALLY

All persons having, prima facie, no right of abode or right to land in Hong Kong, must obtain an entry permit/employment visa before coming to Hong Kong for the purpose of employment.

THE APPLICATION

Applications should be made through the sponsor (usually the employer company in Hong Kong) prior to the employee's arrival in Hong Kong.

The applicant and their sponsor must complete **Form ID(E)936A**.

A recent photograph of the applicant must be affixed to the application form and be accompanied by:

- A photocopy of the sponsor's Hong Kong Identity Card
- Photocopies of the applicant's travel document containing his personal particulars, the date of issue and expiry of the travel document and details of any re-entry visa held
- And one additional photograph identical to that affixed on the application form

If the applicant is overseas at the time of making the application but is planning to come to Hong Kong, as a tourist, prior to the completion of the application process so that he is in Hong Kong at the time when the work visa is issued, then the applicant should complete Forms **ID(E)936A** and **ID91** (Application for extension of stay and change of status).

SUPPORTING DOCUMENTS

The following supporting documents should be submitted together with the application form:

- A copy of the sponsor's Business Registration Certificate, Certificate of Incorporation and/or Memorandum of Incorporation and Articles of Association
- Information about the sponsoring company's financial standing (income tax return, trading profit and loss account, profit tax return)
- Company staff list with salary offered and position held and list of expatriate staff previously or currently recruited from overseas
- A copy of the applicant's service contract or letter of appointment with details of post, salaries and benefits
- Full description of the applicant's post
- Details, with proofs, of applicant's academic qualifications and experience relevant to the post, e.g., copies of diplomas, certificates, testimonials, curriculum vitae
- A letter, with supporting proof from the employer (if possible), stating the reason why the post cannot be filled locally
- If the applicant is to replace someone already working in Hong Kong, the personal particulars and their whereabouts (if known) should be given
- If the applicant is to fill a new post, explain why his/her services are essential and
- Evidence of the applicant's past residence in Hong Kong (if any).

The compilation of this bundle is a straight forward procedure but care should be taken in meeting all the requirements as the Immigration Department will not hesitate in calling for extra documents which can considerably increase the time taken to process the application. Of particular note is the supporting letter from the sponsor explaining why the position that the applicant will take up cannot be taken up by a local resident.

FACTORS TAKEN INTO ACCOUNT BY THE IMMIGRATION DEPARTMENT

An application may be favourably considered if:

- The applicant possesses a special skill, knowledge or experience of value to and not readily available in Hong Kong or
- The applicant is in a position to make substantial contribution to the economy of Hong Kong

Criteria to be considered include:

- Whether there is a genuine vacancy for an employee in Hong Kong
- What skills, knowledge and experience are needed for the job
- Whether the terms and conditions of employment are comparable to those in the local market
- Whether the applicant is suitably qualified and experienced relevant to the job and
- Whether the job can be filled locally

DEPENDANTS OF THE APPLICANT

Successful applicants may apply to have their dependants brought to Hong Kong if the dependant has been residing overseas for at least one year immediately before the submission of their application. “Dependants” mean spouse and unmarried dependant children aged below 18.

Application of dependants may be favourably considered if:

- The bona fides of the successful applicant and the dependant are not in doubt
- The relationship between the successful applicant and dependant is satisfactory
- The successful applicant has been permitted to take up employment in Hong Kong in their own right and
- The successful applicant is able to support the dependant's living at a reasonable standard and provide their with suitable accommodation in Hong Kong.

TIME FOR PROCESSING

The time required for processing the application is usually six to ten weeks on receipt by the Immigration Department of all necessary documents.

FEES

The application fee is HK\$160.

Payment should be made by the sponsor in Hong Kong at the time of collection of the visa/entry permit.

About Mayer Brown JSM

Mayer Brown JSM is part of Mayer Brown, a global legal services organisation advising clients across the Americas, Asia and Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

Please visit www.mayerbrownjism.com for comprehensive contact information for all our offices.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe – Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is intended to provide a general guide to the subject matter and is not intended to provide legal advice or a substitute for specific advice concerning individual situations. Readers should seek legal advice before taking any action with respect to the matters discussed herein. Please also read the Mayer Brown JSM legal publications disclaimer.