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I. GENERAL

1. Introductory paragraph

Belgium has fairly extensive protective labour laws, as enacted by Parliament. Moreover, collective bargaining between the so-called ‘social partners’, i.e. the employers’ organizations and the trade unions, plays a very important role in the shaping of the rules of labour law. In addition to the legal sources stipulated under I.3, case law, in particular that of the Supreme Court and the Constitutional Court, can have considerable influence on the application of labour and employment law in practice. In Belgium, labour courts deal with disputes in relation to employment relationships. Enforcement of labour law provisions may also be initiated by other authorities, including the labour inspectorate or tax and social security authorities. The Social Legislation Inspectorate also provides information to employers and workers, gives advice, arbitrates and verifies whether labour law and the various collective labour agreements are complied with.

2. Key Points

- Collective bargaining agreements are entered into on national or industry level between the unions and employers’ organizations or on company level between the unions and an individual employer. They include provisions with regard to wages and working conditions.
- Belgian labour law is characterized by stringent language regulations. All labour documents and labour-related communications with the employees must be conducted in either Dutch, French or German, depending on the location of the employer’s operating unit. The sanction is the nullity (with the exception of the Brussels and German regions where the sanction is the replacement of the document).
- As a rule, termination of an employment contract is not subject to any prior administrative or court approval in Belgium. As of 2014, the rules on the calculation of notice periods have changed drastically. Moreover, all employees now have the right to ask for the concrete reasons which have led to dismissal.

3. Legal Framework

Employment law in Belgium is mainly based upon the following sources:

- the Constitution;
- different Acts, in particular the Act of 3 July 1978 on employment contracts;
- Decrees of the Regions and Communities;
- Royal and Ministerial decrees;
- Collective bargaining agreements, i.e. agreements on national, sectorial or company level between one or more trade unions, on the one hand, and one or more employers’ organizations or one or more employers, on the other hand, on a wide range of collective labour issues;
- employment contracts;
- work rules (‘arbeidsreglement / règlement de travail’), i.e. a mandatory document including a set of rules that are proper to the employer and the employees of his/her undertaking;
- custom.

In principle, case law precedents have no legally binding force. Yet, in practice, decisions of the highest courts, i.e. the Supreme Court (‘Hof van Cassatie / Cour de Cassation’) and the Constitutional Court, have strong persuasive authority, especially when confirmed repeatedly.

4. New Developments

The centre-right federal government that was formed after the general elections of 25 May 2014, has made the reduction of the wage cost and increasing the employment rate of the Belgian population a top priority in order to ensure competitiveness of the
Belgian open market economy. In this regard, the following measures have been taken or were executed in 2015:

• The Act of 10 August 2015 progressively raises the legal retirement age from 65 to 67 for workers retiring as from 1st February 2030. It also progressively restricts access to early retirement as regards to both the age and the years of activity required. Now that the government has raised the retirement age, it is also considering setting-up a new legal pension system, where pension benefits would be determined according to the number of “points” accumulated throughout the career, which would then be converted into a specific amount of money at the moment of retiring.

• At the end of April 2015, two new laws, which are intended to enhance the competitiveness of the Belgian economy, came into force. Based on a proposition of most of the social partners, the federal government adopted a law on the maximum margin for wage cost development in the next two years. In 2015, no salary increases (with the exception of an increase due to a pay scale change) were permitted. In 2016, the total wage cost for the employer will only be allowed to increase with 0,5% (including employer’s social security contributions, which comes down to a gross salary increase of 0,37% maximum) and with 0,3% net (without added cost for the employer, e.g. by means of an increase of the maximum amount of meal vouchers from 7 to 8€).

• On 26 December 2015, the Belgian federal government reached an agreement on guidelines of a ‘tax shift’ from labour to other forms of income in August 2015. One of the key reforms is the drop in employer’s social security contribution from 33% to 30% from 1 April 2016 onwards and to 25% from 1 January 2018 onwards.

The government also wants to simplify and modernise the labour legislation related to working hours. The expression “feasible work” has been put forward by the Minister for Employment with a view to trigger a debate about the need for more flexible working time arrangements that would, among others, allow for a better balance between professional and family life.

In order to encourage employers to comply with the rules on the prevention of psychosocial risks at work, the Social Penal Code, established in 2010, was amended with a particular focus on prevention of violence, moral and sexual harassment at work. In addition, another important change was the (re) introduction of sanctions against workers (or the self-employed or civil servants) who perform undeclared work, even if they do not receive replacement incomes. Such a possibility existed since 2009, but never effectively entered into force.

Finally, social elections for the works council as well as for the committee for prevention and protection in the workplace have been held between 9 May 2016 and 22 May 2016.

• Also, an indexation leap was introduced by the government as a measure to improve Belgium’s competition position. On 1 April 2015, the government blocked the flattened health index at the level of March 2015. This blocking period would be maintained until an indexation leap of 2% would be reached. As a result of the high inflation rate, the period covered by the indexation leap was over in April 2016. This implicates that salaries may be indexed again, be it that the timing of such indexation will vary from sector to sector. In sectors of industry that apply a monthly indexation mechanism, an indexation of the salaries has already been carried through as of 1 May 2016. However, the employees pertaining to the Joint Committee n° 200 (which is the Supplementary National JC for white-collar workers, which concern many white-collar workers), will have to wait until 1 January 2017 for their salary to be indexed, as their sector applies a yearly indexation mechanism.
II. HIRING PRACTICES

Employers are forbidden by law, or restricted by CBAs, from asking certain questions of applicants or requiring them to undergo certain tests. The purpose of background checks must be to assess the applicant’s ability to perform the job.

As a rule, an employer can only ask questions to an applicant that are genuinely relevant, taking into consideration the nature and working conditions of the job offered (such as diplomas, previous jobs, etc.). The applicant has the right not to answer questions that are not relevant for the job or violate privacy and anti-discrimination laws. However, it is worth noting that applicants have an obligation to cooperate in good faith during the selection process. An applicant is not only bound to answer the employer’s relevant questions, but should also spontaneously provide the employer with all relevant information that he/she might be expected to know, and which would be important to the employer.

In case an applicant provides false information, the employment contract could be terminated for serious cause based on error or deceit. However, this is only the case when the false information is relevant to the application procedure (for example, the applicant does not have the required diplomas or hides medical information that could endanger himself or a co-worker).

It is generally accepted that an employer can submit applicants to certain tests in order to obtain information about their abilities if these tests are job-relevant (for example, tests with regard to the use of computers and various software, personality and IQ tests which the Belgian Privacy Commission recommends to be carried out under the responsibility of a psychologist or, if the applicant agrees, by a person who has been properly trained by a psychologist to administer the tests). Practical tests may not take longer than the time required to test the applicant’s competence.

The results of the tests must be kept confidential and the processing of the obtained data requires the applicant’s approval.

Extended background checks on employees are not common in Belgium. They should be limited to the strict necessity of assessing the applicant’s professional skills relevant to the job offered. The most common background checks relate to education and past employment records and, in relation to employment with an international dimension, confirmation that the applicant has the appropriate permission to work in Belgium.

An employer is permitted to ask the applicant questions about his/her educational background that are genuinely relevant to the nature and working conditions of the job. In such a framework, an employer may therefore require the applicant to produce copies of academic certificates.

An employer is also permitted to ask the applicant questions about his/her prior employment that is job-relevant. An employer can request an employment certificate - i.e. a document that needs to be delivered by a former employer, indicating the period of employment and the position of the employee concerned or the nature of the job performed - and, with the applicant’s consent, contact his/her previous employer in order to ask questions about his/her job performance.

As a general rule, the employer may not ask questions about an applicant’s credit and financial background. The general anti-discrimination Act of 10 May 2007 prohibits any discrimination based on personal wealth. Belgian law does not allow recruiters to have access to the financial information of applicants.

An employer can undertake social media/internet checks, if the general rules are complied with (i.e. no discrimination, in line with the Data Protection Act, and genuinely relevant for the job). However, arguments of applicants invoking their ‘right to privacy’ when confronted with information extracted from the internet will often be rebutted when they have put the information online themselves, and either had the intention to make certain information public or should have known that the posted information would become public. Therefore, the use by an employer of information on LinkedIn should in principle not raise any issues as this social network is exclusively dedicated to business and professional relations and one of its aims is to be identified by employers. The use of information posted on Facebook, on the other hand, can be more problematic as it may cover the private sphere.
When the information gathered through background checks is used in a discriminatory way, compensation is due on a flat rate basis (six months’ gross wages) or the employee can claim, from the potential employer, an indemnity for the actual damage suffered.

Privacy legislation imposes fines of up to 100,000 EUR for employers who violate its provisions.
III. EMPLOYMENT CONTRACTS

1. Minimum Requirements

In principle, an employment contract may be written or verbal. Yet, the following employment contracts and/or clauses (without limitation) must be in writing: (1) training clause; (2) non-competition clause; (3) employment contracts entered into for a fixed term or for a specific project; (4) part-time contracts; (5) temporary work or interim work; (6) working from home; (7) arbitral clauses for high-paid employees with high management responsibilities, and (8) in certain cases, employment contracts entered into with a foreign worker.

For some of these exceptions, the contract must be signed before the employee actually starts his activity. Sanctions for failure to comply with the written contract requirement range from the nullification of the clause or contract to the creation of a legal presumption that the contract has been entered into for an indefinite term (open-ended employment contract).

Without prejudice to the above-mentioned stipulations, the law does not impose the inclusion of particular clauses in the employment contract. However, the mandatory legal and regulatory conditions, as well as the conditions within collective bargaining agreements are generally deemed to form an integral part of the employment contract, and no clause may validly depart from these conditions.

Characteristic for Belgium is that, when in written form, an employment contract must be drafted in French, Dutch or German, depending on the location of the employer’s operating unit. If the operating unit where the employee works is located in the Flemish region, the employment contract must be drafted in Dutch. If this operating unit is in the Walloon region, the employment contract must be drafted in French and if the location is in the German-speaking region, the contract must be in German. For the Brussels region, the employment contract must be either in French or Dutch depending on the language used by the employee.

Yet, in the particular context of a cross-border employment contract, the European Court of Justice recently rendered a landmark decision stipulating that the principle of freedom of movement for employees requires the parties to be able to draft their contract not only in the official language of the state of the workplace. Consequently, the Flemish Decree on the use of languages in social relations has, to a certain extent, been amended accordingly.

2. Fixed-term / Open-ended contracts

The standard type of employment contract used in Belgium is the open-ended employment contract. With the exception of the clauses referred to above, a written contract is not required.

Fixed term contracts are permitted, but a written contract must be produced by the commencement of the employment at the latest. Failing this, contracts for a fixed term are deemed to be open-ended contracts.

3. Trial Period

Trial periods have been suppressed by the Unified Employment Status Act (except in relation to students, temporary workers and temporary agency workers).

4. Notice Period

This will be dealt with under Chapter VIII. Termination of employment contracts.
IV. WORKING CONDITIONS

1. Minimum Working Conditions

In Belgium, the terms and conditions of employment are not only embedded in laws, but also in collective bargaining agreements (CBA’s).

CBA’s are entered into either on an industry level between the unions and employer organizations or on a company level between the unions and an individual employer.

2. Salary

In principle, minimum wages are fixed per sector of industry in collective bargaining agreements. Yet, these minimum wages may not be lower than the guaranteed average minimum monthly pay, fixed by national CBA, which amounts to 1.559,38€ (as of the age of 20; figure in 2016).

In addition to their monthly gross salary, employees are entitled to double holiday pay. Moreover, in most sectors of industry, the payment of an end-of-year premium is mandatory.

3. Maximum Working Time

The maximum average working time is 38 hours per week and 8 hours per day. Yet, the maximum working time per week may be lower in some sectors of industry on the basis of a collective bargaining agreement.

There are several statutory exceptions to this rule. In case of shift work, it is for instance possible to work up to 11 hours per day and in case of continuous work even up to 12 hours.

Under certain conditions, flexible working time schedules with a weekly working time exceeding 38 hours may be introduced, provided that the quarterly or yearly average remains at 38 hours per week.

Daily minimum working time is three hours, but statutory exceptions exist.

4. Overtime

Overtime work is normally prohibited, although there are several exceptions to this rule. Where overtime is authorized, overtime pay is at least 1.5 times the employee’s regular rate of pay, and twice his/her regular rate if the overtime is performed on a Sunday or a public holiday. Employees also benefit from paid rest periods in case of overtime.

Rules relating to working hours and overtime pay do not apply to, amongst others, sales representatives, homeworkers and employees in a managerial role or a position of trust within the company.

5. Holidays and Annual Vacation

Employees are entitled to remuneration for 10 official public holidays. If a public holiday falls on a Sunday or on a day on which the employee does not usually work, the employer must grant a replacement day.

The number of days of annual leave to which an employee is entitled for a given year, is determined in proportion to the number of days worked (and deemed to have worked e.g. where the employee was on maternity leave or sick leave) during the preceding calendar year, referred to as the ‘holiday reference year’.

Generally, for a full holiday reference year, employees have the right to between 20 and 24 days of annual leave, depending on whether their working regime includes five or six working days per week.

As from April 2012, employees who are starting their careers or who are restarting their activities after a long time off, are entitled to additional holidays after an introductory period of three months, so that they have the possibility to benefit from four weeks of holiday over one year. The employee will receive holiday pay that is equal to his/her regular salary. The holiday pay will be financed through a deduction from the double holiday pay of the next year.
6. Employer’s Obligation to Provide a Healthy and Safe Workplace

The basic regulation on health and safety in Belgium is the Act of 4 August 1996 on the well-being of employees during the performance of their work (‘Well-being Act’). The Well-being legislation defines goals, but not the means to achieve these goals. This grants flexibility to the employer. The legislation on health and safety also provides for the involvement of different key actors.

Every employer is obliged to establish an “Internal Service for Prevention and Protection at Work” (the ‘Internal Service’). This body assists the employer, the members of the hierarchical line and the employees with implementing the legal and regulatory provisions regarding the well-being of the employees and all prevention measures and activities. For this purpose, every employer has at least one ‘prevention advisor’, competent for safety at work (the ‘Safety Prevention Advisor’), who is an employee of the undertaking and connected to an Internal Service. In companies employing less than twenty employees, it is the employer that may exercise the function of Safety Prevention Advisor.

The higher the risk of the company (based on the number of employees and the nature of the activities), the more tasks will be executed by the Internal Service; the lower the risk of the company, the less tasks will weigh upon the Internal Service and the more responsibilities can be outsourced to a so-called External Service for Prevention and Protection at Work (the ‘External Service’), with whom the employer collaborates. External Services must be duly authorised by the authorities.

Other specialised prevention advisors intervene in matters related to psychosocial risks at work (the ‘Prevention Advisor-Psychosocial Risks’) or occupational medicine (the ‘Prevention Advisor-Occupational Physician’). These Prevention Advisors can be internal or external depending on the size of the company. An external Prevention Advisor is an employee of an External Service.

The employer determines the means and the way to carry out the well-being policy as well as the competences and responsibilities of the persons in charge of applying the well-being policy.

Furthermore, the employer is required to draw up a number of mandatory documents pertaining to health and safety rules. The most important ones are:

- A Global Prevention Plan. In this 5-year plan the results of the company’s risk analysis and the prevention activities to be developed and adopted with regard to safety and health need to be programmed, taking into account the size of the company and the nature of the risks attached to the activities of the company.
- Yearly Action Plan. This plan works out the Global Prevention Plan on a yearly basis.
- Yearly report on the activities of the Internal Service.

Under Belgian law, workplace violence is a part of the broader concept of ‘psychosocial risk’, which covers any potential psychological damage, potentially accompanied by physical damage, linked to work in its widest sense (for example, organisation of work, working conditions, interpersonal relationships), on which the employer has an influence and which objectively involves a danger. Violence, moral or sexual harassment, stress and an excessive workload are types of psychosocial risks.

Management of psychosocial risks revolves around 3 key phases: prevention, internal procedure and external remedies.

Risk analyses constitute the keystones of the prevention system. 2 types of analysis exist: (i) a general analysis, as an integral part of the overall management of risks that the employer is obliged to implement, and (ii) a specific analysis, relating to an individual work situation holding a danger.

The employer is only obliged to carry out a specific risk analysis when he is asked to do so by a member of the hierarchical line or when at least one third of the representatives of the employees in the Health and Safety Committee require the employer to do so.

- An employee who is deemed to be a victim of a psychosocial risk may address his/her employer, a member of the hierarchical line, a member of the Health and Safety Committee or a Trade Union Delegate directly.
- He/she may also resort to the internal procedure, consisting of two phases: (1) A compulsory preliminary phase prior to any request, during which the Confidential Counselor...
(‘vertrouwenspersoon – personne de confiance’) or the Prevention Advisor listens to the employee and advises him/her on the available procedures; and (2) Upon the employee’s choice:

i) an informal request for psychosocial intervention, consisting of interviews, conciliations and/or intervention from an outside party within the undertaking; or

ii) a formal request for psychosocial intervention, with a special feature in case of acts of violence or moral or sexual harassment.

• Besides an individual risk, the application for a formal intervention may also address a collective risk. This means that the psychosocial risk affects several employees and has an impact on the work organisation.
1. Brief Description of Anti-Discrimination Laws

The Belgian Constitution guarantees the equality of Belgian citizens and the equality between men and women (art. 10). It also guarantees the exercise of the rights and freedoms for all Belgian citizens without any discrimination. This also covers the rights and freedoms of the ideological and philosophical minorities (art. 11). The framework of anti-discrimination legislation is mainly composed by three Acts:

- An Act of 10 May 2007 on discrimination between men and women (“the Gender Act”)
- An Act of 30 July 1981 aimed at the punishment of acts characterized by racist or xenophobic motives (“the Racism Act”)

The anti-discrimination legislation is not applicable in cases qualified as harassment in the workplace. In such situations, the legislation on well-being at work is applicable. Therefore, in a case where the discrimination also constitutes harassment, the victim may choose the grounds on which he/she wants to introduce the procedure. If it is based on the legislation on well-being at work, the anti-discrimination legislation will not apply. The following principles are identical in the three anti-discrimination acts:

- A prohibition on every form of discrimination, direct or indirect, on the basis of a number of grounds or criteria, called ‘protected criteria’. Depending on the level of sensitivity of the criterion, it will be less or more difficult to justify a distinction on the basis of the concerned criterion. Indirect discrimination occurs when a seemingly neutral term or criterion appears to be especially disadvantageous to certain people characterised by a given protected criterion in comparison to other people.
- There is a difference between the concept of ‘discrimination’, which is always illegal, and the concept of ‘distinction’, which can be justified and permitted if there is a legitimate ground for the justification. A distinction, which is not justified by a legitimate ground of justification, constitutes discrimination and is therefore prohibited.
- Compensation for damages in case of discrimination is either a lump sum amount equal to 3 to 6 times a monthly wage, depending on the circumstances, or the actual amount of the damage suffered. The different acts also include penalty sanctions.
- A protection against dismissal and any other detrimental measure related to the filing of a motivated complaint for discrimination. This protection also includes compensation for damages equal to a lump sum amount of 6 times a monthly wage or compensation for the actual damages suffered.

2. Extent of Protection

The protected criteria are the following:

- General Act
  - Sensitive Criteria: age, sexual orientation, religious and philosophical conviction and handicap.
  - General Criteria: marital status, birth, wealth, political conviction, syndical conviction, language, current or future health condition, physical or genetic characteristics and social background.
- Gender Act: sex, including pregnancy, giving birth and maternity, sex change and gender identity or gender expression.
- Racism Act: nationality, a so-called race, colour of skin, social background and national or ethnic origin.

Besides the explicitly protected criteria, a victim of discrimination can also revert to the common law liability rules. In this hypothesis, a victim must prove the existence of the three constitutive elements of this liability: (i) a fault, (ii) damage and (iii) a causal link between fault and damage. The victim cannot benefit from compensation provided for in the anti-discrimination legislation at the same time.
3. Protections Against Discrimination

A distinction, which is based on a legitimate ground of justification, is not discrimination.

There are more or less strict grounds of justification, which can be summarised as follows:

- **Direct distinction**
  - General criteria in the General Act: (i) legitimate purpose and (ii) the means to reach this purpose are appropriate and necessary.
  - Sensitive criteria in the General Act and criteria in the Gender Act and Racism Act: the criterion must be an essential and defining requirement for the job.

- **Indirect distinction**
  - All criteria, except handicap: (i) legitimate purpose and (ii) the means to reach this goal are appropriate and necessary.
  - Handicap: proof that no reasonable modifications can be implemented.

A distinction, which should be regarded as discrimination, pursuant to the conditions set out above, could nevertheless be regarded as lawful if it is justified by one of the motives below:

- **General grounds** (for direct or indirect distinction, regarding all the criteria, except age and religious or philosophical conviction):
  - Measures of affirmative action, provided that certain conditions are met (for an extensive overview of the rules in this respect).
  - A distinction dictated by law which is in conformity with the Constitution, the law of the European Union and international law.

- **Specific Grounds** (for direct distinction)
  - Age: (i) legitimate purpose of the policy in the field of employment, labour market or any other comparable legitimate purpose; and (ii) the means to achieve that purpose are appropriate and necessary.
  - Religious or philosophical conviction: the nature of the activities or the context in which they are being performed constitute an essential, legitimate and justifiable professional requirement, given the nature of the organisation (applicable for organisations founded on the basis of a religious or philosophical conviction).

A measure of affirmative action is subject to the following conditions:

- there must be a manifest inequality
- the eradication of this inequality should be an appointed goal
- the measure of affirmative action should be limited in time and should cease to exist once the goal is attained
- the measure of affirmative action should not needlessly limit someone else’s rights.

A Royal Decree must determine the situations and conditions in which a measure of affirmative action can be taken, provided that the above conditions are complied with. As a consequence, private employers should not develop their own affirmative actions out of the framework of a Royal Decree.

To this day, no such Royal Decree has been adopted on the basis of the anti-discrimination legislation. However, several measures constituting affirmative actions are set out in Acts, regulations and some employers’ recruitment campaigns, in order to address specific discrimination towards women, disabled people, young employees and homosexuals.

Furthermore, a law was voted on in 2012 to reduce the salary gap between men and women. The main idea is to make the salary gap more visible and transparent in order to allow the Social Partners to negotiate and decrease the gap. In view of this, certain measures have been taken (for example, the drafting of an analysis report on the remuneration structure at company level and a gender test for the functions’ classification at industry level).

4. Employer’s Obligation to Provide Reasonable Accommodations

According to Belgian Legislation, employers are obliged to provide all reasonable accommodations that would allow a person with a disability to have access to a job, unless such measures would entail an unreasonable burden for the employer. Since the Belgian antidiscrimination legislation is predominantly a transposition of EU legislation, the case law of the ECJ is
crucial for the determination of which accommodations can be deemed reasonable or not.

5. Remedies

Any provisions which are inconsistent with the anti-discrimination acts or which stipulate that a contracting party renounces any rights granted by these acts are null and void.

Victims of discrimination and witnesses who testified are protected against detrimental measures taken by the employer.

The employee (victim of discrimination) has a choice between compensation on a lump sum basis and compensation of the actual damage suffered. In the latter case, the employee has to prove the amount of the damage suffered.

The compensation on a flat rate basis is the following:

- 6 months of gross wages in all cases, except in the situations described below
- 3 months of gross wages if it is proven that the disputed disadvantageous treatment would also have been carried through on non-discriminatory grounds
- 650,00 EUR if the material damage can be redressed by application of the general nullity sanction
- 1,300,00 EUR if the material damage can be redressed by application of the general nullity sanction, but (i) there is no proof that the disputed disadvantageous treatment would also have been carried through on non-discriminatory grounds or (ii) other circumstances justify a higher sum, such as the particular gravity of the moral damage suffered.

When a person presents facts before a Court, which could lead to the suspicion of discrimination, it is up to the accused to prove that there is no discrimination.

Other than the abovementioned compensations for damages, victims of discrimination can request the order of cessation of the discriminatory actions in the frame of a summary proceeding before the Labour Court.
VI. SOCIAL MEDIA AND DATA PRIVACY

1. Can the employer restrict the employee’s use of Internet and social media during working hours?

Subject to compliance with legal, regulatory and contractual provisions, employers are free to determine the conditions in which the employment contract is to be performed (Articles 17 and 20 of the Act of 3 July 1978 on employment contracts). Nowadays, it is undisputed that this includes the conditions of use of equipment made available to employees by the employer.

Employers can therefore freely regulate the use of communication instruments within their company, particularly by prohibiting private use of the communication equipment available for use by the employees, by banning the access to certain websites (including social media sites) or by blocking this access by the use of filters.

In that regard, the following principles must be stressed:

- The employer can decide whether to allow access to social media through its equipment and for what purposes;
- The employer has a right of control in order to make sure the company ICT policy and instructions are observed. However, this right of control is subject to the rules of CBA No. 81 of 26 April 2002 on employees’ privacy with regard to the control of electronic communications networks. The control is limited to the nature of the website visited, the frequency of the visits, the periods and time of connections, and cannot target the content of the communications or the content of the pages consulted. Employees must be informed of such control and a statement should be submitted to the Commission for the Protection of Privacy;
- In any event, the right to the protection of personal data must be respected when processing such data (Act of 8 December 1992 concerning protection of privacy with regard to personal data processing operations).

2. Employee’s use of social media to disparage the employer or divulge confidential information

An employee who disparages the employer via social media can be dismissed for serious cause when the statutory requirements are met. However, as always in case of serious case, the precise circumstances and the possible aggravating or alleviating circumstances should be taken into account.

Furthermore, it is advisable to adopt clear guidelines in the company with rules on who can speak on behalf of the company via social media, both for professional and personal accounts, and what types of information may be divulged.
VII. AUTHORIZATIONS FOR FOREIGN EMPLOYEES

1. Requirements for Foreign Employees to Work

(I) EEA NATIONALS
European treaties provide for the free movement of persons within the European Economic Area (European Union and Iceland, Norway and Lichtenstein - EEA). This means that employees who are citizens of one EEA Member State are, in principle, free to work in another Member State without a work permit.

(II) NON-EEA NATIONALS
In principle, every non-EEA national working in Belgium must be in the possession of a work permit, although some categories of employees are exempt from this requirement or benefit from relaxation. The following categories of employees are exempt (non-exhaustive list):

- Spouse of Belgian or EEA nationals under certain conditions;
- Persons employed within the framework of a service agreement between two EEA-member companies;
- Foreign managerial employees coming to work in Belgium, if they are employed by the Belgian head office (i.e. under a local employment contract) and if their gross annual salary exceeds a certain amount;
- Foreign employees sent to Belgium by their foreign employer to attend academic conferences or closed meetings (‘business trips’), provided they do not stay in Belgium for more than five days in one month;
- Foreign employees sent to Belgium by their foreign employer to receive intra-group classroom training, provided that the training does not exceed three months;
- Research workers sent to Belgium to carry out research with a recognized research institute as part of a visiting agreement. The exemption is limited to the duration of the research project as laid down in the visiting agreement between the subject and the institute.

To obtain a work permit, an official application form accompanied by a set of prescribed documents has to be sent to the regional work permit authorities.

There are three types of work permits:

- Work permit A: valid for all kinds of employment, for all employers, professions and sectors and for an indefinite duration. Only a limited number of applicants qualify for this type of permit, e.g. foreign nationals who can prove 4 working years that are covered by a work permit type B, during a maximum and uninterrupted residence period of 10 years.
- Work permit B: valid for one specific position with one specific employer. This work permit is valid for a maximum of 1 year, but can be renewed.
- Work permit C: valid for all employers and for foreigners having a temporary right of residence in Belgium. This is usually issued to migrant agricultural or domestic workers. These permits are generally not renewable.

Prior to the foreign employee entering Belgian territory, the employer must obtain an employment authorization from the competent regional minister. An employment authorization will only be granted if all of the following conditions are fulfilled:

- A labour market test has been held (certain categories of employees are exempt);
- The employee is a citizen of a State that Belgium has concluded an international treaty on employment with;
- An employment contract has been signed between the employer and the employee;
- The application is accompanied by a medical certificate.

Once the employment authorization is granted, a type-B work permit will automatically be granted to the foreign employee.

Both the work permit and the employment authorization documents have to be obtained prior
to the commencement of any activities in Belgium. In practice, both applications are filed at the same time by the employer or his/her agent.

Depending on the foreign national’s country of origin, he may need a visa in order to have access to the Belgian territory. Moreover, at his/her arrival, the foreign employee must also apply for a Belgian residence permit (foreign identity card A).

### Step 1

<table>
<thead>
<tr>
<th>Notice period based on seniority before 01/01/2014</th>
<th>Employment agreement</th>
<th>Employment agreement ≥ 01/01/2012 (“IPA-law”)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice by employer by employee by employee by employee</td>
<td>Notice by employer by employee by employee by employee</td>
<td>Notice by employer by employee by employee by employee</td>
</tr>
<tr>
<td>&lt;6m : 28d</td>
<td>&lt;6m : 28d</td>
<td></td>
</tr>
<tr>
<td>≥6m and &lt;1y 35d</td>
<td>≥6m and &lt;1y 40d</td>
<td></td>
</tr>
<tr>
<td>≥1y and &lt;10y 42d</td>
<td>≥1y and &lt;10y 48d</td>
<td></td>
</tr>
<tr>
<td>≥10y and &lt;15y 56d</td>
<td>≥10y and &lt;15y 64d</td>
<td></td>
</tr>
<tr>
<td>≥15y and &lt;20y 66d</td>
<td>≥20y : 116d</td>
<td>≥20y : 124d</td>
</tr>
</tbody>
</table>

Or deriving notice periods included in CBA’s applicable on 31/12/2013.

<table>
<thead>
<tr>
<th>Lower white collar employees (salary on 31/12/2013 ≤ 32.254€)</th>
<th>Notice by employer</th>
<th>Notice by employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice by employer</td>
<td>Notice by employee</td>
<td></td>
</tr>
<tr>
<td>3 months per started period of 5 years seniority</td>
<td>1,5 months per started period of 5 years seniority, with a max. of 3 months</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Higher white collar employees (salary on 31/12/2013 &gt; 32.254€)</th>
<th>Notice by employer</th>
<th>Notice by employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice by employer</td>
<td>Notice by employee</td>
<td></td>
</tr>
<tr>
<td>1 month for each started year of seniority, with a minimum of 3 months</td>
<td>1,5 months per started period of 5 years seniority, with a max. of:</td>
<td></td>
</tr>
<tr>
<td>&gt; 4,5m if wage ≤ 64.500€</td>
<td>&gt; 6m if wage &gt; 64.500€</td>
<td></td>
</tr>
</tbody>
</table>

### Step 2

<table>
<thead>
<tr>
<th>Notice period based on seniority after 01/01/2014</th>
<th>Seniority</th>
<th>Notice by employer</th>
<th>Notice by employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-3 months</td>
<td>0-3 months</td>
<td>2 weeks</td>
<td>1 week</td>
</tr>
<tr>
<td>3-6 months</td>
<td>3-6 months</td>
<td>4 weeks</td>
<td>2 weeks</td>
</tr>
<tr>
<td>6-9 months</td>
<td>6-9 months</td>
<td>6 weeks</td>
<td>3 weeks</td>
</tr>
<tr>
<td>9-12 months</td>
<td>9-12 months</td>
<td>7 weeks</td>
<td>3 weeks</td>
</tr>
<tr>
<td>12-15 months</td>
<td>12-15 months</td>
<td>8 weeks</td>
<td>4 weeks</td>
</tr>
<tr>
<td>15-18 months</td>
<td>15-18 months</td>
<td>9 weeks</td>
<td>4 weeks</td>
</tr>
<tr>
<td>18-21 months</td>
<td>18-21 months</td>
<td>10 weeks</td>
<td>5 weeks</td>
</tr>
<tr>
<td>21-24 months</td>
<td>21-24 months</td>
<td>11 weeks</td>
<td>5 weeks</td>
</tr>
<tr>
<td>As of 2 years</td>
<td>As of 2 years</td>
<td>12 weeks</td>
<td>6 weeks</td>
</tr>
<tr>
<td>2 years</td>
<td>2 years</td>
<td>13 weeks</td>
<td>6 weeks</td>
</tr>
<tr>
<td>3 years</td>
<td>3 years</td>
<td>15 weeks</td>
<td>7 weeks</td>
</tr>
<tr>
<td>4 years</td>
<td>4 years</td>
<td>18 weeks</td>
<td>9 weeks</td>
</tr>
<tr>
<td>5 years</td>
<td>5 years</td>
<td>21 weeks</td>
<td>10 weeks</td>
</tr>
<tr>
<td>6 years</td>
<td>6 years</td>
<td>24 weeks</td>
<td>12 weeks</td>
</tr>
<tr>
<td>7 years</td>
<td>7 years</td>
<td>27 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>8 years</td>
<td>8 years</td>
<td>30 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>9 years</td>
<td>9 years</td>
<td>33 weeks</td>
<td>12 weeks</td>
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<tr>
<td>10 years</td>
<td>10 years</td>
<td>36 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>11 years</td>
<td>11 years</td>
<td>39 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>12 years</td>
<td>12 years</td>
<td>42 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>13 years</td>
<td>13 years</td>
<td>45 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>14 years</td>
<td>14 years</td>
<td>48 weeks</td>
<td>13 weeks</td>
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<tr>
<td>15 years</td>
<td>15 years</td>
<td>51 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>16 years</td>
<td>16 years</td>
<td>54 weeks</td>
<td>12 weeks</td>
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<tr>
<td>17 years</td>
<td>17 years</td>
<td>57 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>18 years</td>
<td>18 years</td>
<td>60 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>19 years</td>
<td>19 years</td>
<td>63 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>20 years</td>
<td>20 years</td>
<td>66 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>21 years</td>
<td>21 years</td>
<td>69 weeks</td>
<td>13 weeks</td>
</tr>
<tr>
<td>22 years</td>
<td>22 years</td>
<td>72 weeks</td>
<td>12 weeks</td>
</tr>
<tr>
<td>23 years</td>
<td>23 years</td>
<td>75 weeks</td>
<td>12 weeks</td>
</tr>
<tr>
<td>24 years</td>
<td>24 years</td>
<td>78 weeks</td>
<td>12 weeks</td>
</tr>
<tr>
<td>As of 25 years</td>
<td>As of 25 years</td>
<td>+ 1 week/started year</td>
<td>13 weeks</td>
</tr>
</tbody>
</table>

### Step 3

The total notice period (NP) = NP step 1 + NP step 2.

But in case of notice by employee:
- If step 1 resulted in the max. of 3, 4 ½ or 6 months ○ no step 2.
- Step 1 + step 2 are limited to 13 weeks.
VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. Grounds for Termination

From 1 April 2014, all employees with more than six months of seniority have the right to be informed of the reason for their dismissal. If the employer fails to inform the employee of the reason for dismissal, the employee can require the employer to give an explanation. If no (timely) explanation is provided, the employer owes a lump-sum civil fine of two weeks of salary. The employee is entitled to dispute the reason for dismissal before the labour court.

Employees engaged under an open-ended employment contract may claim damages, ranging between 3 and 17 weeks of salary, in the labour court if their dismissal is ‘unjustified’. An ‘unjustified dismissal’ would be considered as a dismissal (i) for reasons unrelated to the employee’s capability or conduct, or to the operational requirements of the undertaking, and (2) which would never have been decided upon by a normal and reasonable employer.

If a party has committed a serious fault, the employment contract can be terminated for serious cause without the serving of a notice period or the payment of an indemnity. Examples of a serious fault are theft, violence, ...

Some employees enjoy special protection against dismissal, meaning that they may not be dismissed on some grounds (e.g. pregnant women may not be dismissed because of their pregnancy) or cannot be dismissed unless for specific reasons provided by law (e.g. employee representatives in the Works Council and Committee for Prevention and Protection at Work (CPPW) and non-elected candidates may only be dismissed for serious cause with prior approval of the labour court, or for economic or technical reasons that have been recognized by the competent joint committee).

2. Collective Dismissals

Where multiple redundancies qualify as a collective dismissal, the legislation on collective dismissals applies, and possibly the legislation regarding the closure of undertakings.

There is a collective dismissal where, during a continued period of 60 days, a minimum number of employees are terminated for reasons, which do not relate to the person of the employees. This minimum number is:

- 10 in undertakings (or a division thereof) employing more than 20 but less than 100 employees;
- 10% of the total number of employees in undertakings employing at least 100 but less than 300 employees;
- 30 in undertakings employing at least 300 employees.

There is a closure of undertaking if:

(i) there is a definite stoppage of the principal activity of the undertaking (or a division thereof); and
(ii) the number of employees is reduced beneath one fourth of the average number of employees who were employed in the undertaking during the four quarters preceding the definite stoppage of the activity.

A collective dismissal or a closure triggers the prior information and consultation obligations towards the employees (either through the Works Council or, if there is none, the Trade Union Delegation, or, failing this, the employees in person). The intention to proceed with a collective dismissal or closure must also be communicated to the competent administration (the director of the sub-regional unemployment office).

In principle, a collective dismissal gives rise to the payment of a special monthly compensation during a period of 4 months, in addition to any indemnity in lieu of notice. Only employees entitled to a notice period of less than 7 months are entitled to this compensation for collective dismissal. For the purpose of the payment of a special monthly compensation, a slightly different definition of collective dismissal has been adopted. Collective dismissal in this context means any dismissal for economic or technical reasons affecting, over an uninterrupted period of 60 days, at least 6 employees.
if the undertaking employs at least 20 and less than 60 employees, and 10% of the average number of employees employed during the previous calendar year if the undertaking employs at least 60 employees.

In case of closure of an undertaking and if the conditions are met, the employees will be entitled to a closure indemnity equal to a fixed amount per year of seniority within the undertaking and per year exceeding the age of 45, with a maximum total of 5,998,2 € (figure in 2015). In the majority of cases, employers and trade union organisations establish a social plan granting additional compensation to the employees’ concerned and other measures with a view towards reducing the consequences of the collective dismissal (e.g. early retirement schemes).

If the employer employs more than 20 employees, a re-employment unit (‘cellule pour l’emploi’ / ‘tewerkstellingscel’) aimed at the activation of the dismissed employees has to be installed in case of a collective dismissal (in this context, yet another definition of collective dismissal is applied). An employer employing 20 employees or less is only obliged to install such re-employment unit if he wishes to dismiss employees within the framework of an early retirement (system of unemployment benefits with employer top-up) at an age lower than the age that is normally applicable for early retirement within the company. The re-employment unit has to make an outplacement offer to the employees who are dismissed and who participate in the re-employment unit.

3. Individual Dismissals

(I) TERMINATION OF AN OPEN-ENDED EMPLOYMENT CONTRACT THROUGH SERVING A PERIOD OF NOTICE OR PAYMENT OF AN INDEMNITY

Employment contracts are generally terminated through serving a notice period or the payment of an indemnity in lieu of notice. A combination of both, where the serving of a notice period is followed by the payment of an indemnity for the remainder of the notice period is also possible.

An employer does not require any authorization to dismiss an employee (except for the dismissal of an employee representative or a prevention advisor, see below).

As part of the recent Belgian labour law reform, notice periods for blue- and white-collar employees are now aligned for employment contracts taking effect from 1 January 2014. These notice periods are fixed by law and only depend on the employee’s seniority. They are expressed in weeks.

For open-ended contracts that took effect before 1 January 2014, the notice period to be observed in case of dismissal comprises two parts which must be added up. The first part is based on the employee’s seniority acquired before 1 January 2014 and will be calculated according to transitory rules; the second part is based on the employee’s seniority as of 1 January 2014 and is calculated on the basis of the new regime.

The table below summarizes the rules with regard to the notice periods to be respected for open-ended contracts that took effect on or after 1 January 2014 (only step 2), on the one hand, and contracts that took effect before 1 January 2014 (step 1 + step 2 = step 3), on the other hand.

The Unified Employment Status Act also provides for transitory measures for blue-collar employees of certain labor-intensive and competitive industries (e.g. construction, clothing, diamonds industry, etc. ...) and temporary and mobile workplaces.

To be valid, notice must be given in writing and specify the starting date and the length of the notice period. If the contract is terminated by the employer, notice must be served by registered mail or by bailiff. Moreover, notice must be given in the correct language.

If the employment contract is terminated with the payment of an indemnity in lieu of notice, no specific formalities need to be complied with.

(II) TERMINATION FOR SERIOUS CAUSE

Either of the parties may terminate the employment contract for serious cause, irrespective of whether this employment contract had been entered into for a fixed term or for an indefinite term. ‘Serious cause’ is defined as a fault so serious that it renders the continuation of the working relationship immediately and definitively impossible. Where an employment contract is terminated for serious cause, no notice period needs to be observed nor does any compensation in lieu of notice have to be paid.
In case of a termination for serious cause, the employer needs to observe the following formalities: he must dismiss the employee within three working days as of the day he became aware of the serious facts and he must inform the employee, by registered mail, of the grounds of his/her dismissal at the same time or within another 3-day-period.

(iii) PROTECTED PERSONS STATUS
Some employees enjoy special protection against dismissal based on a specific circumstance, which they find themselves in. Therefore, it is explicitly forbidden for employers to dismiss someone because of this specific circumstance (e.g. pregnant employee, employees who have filed a complaint for harassment, employees on maternity leave, …) during the protection period. In case of violation, special protection indemnities (equal to 3 or 6 months of salary) will be due in addition to the notice period or indemnity in lieu of notice.

Employee representatives in the Works Council and the CPPW and also non-elected candidates may only be dismissed for serious cause with the prior approval of a labour court, or for economic or technical reasons that have been recognized beforehand by the competent joint committee. In each of the aforementioned cases, the law prescribes a specific and complex procedure.

Violation of these rules of protection will oblige the employer to pay compensation to the dismissed employee, in a fixed and variable amount depending on the employee’s seniority within the company (from 2 up to 8 years of wages).

Also, for the dismissal of a member of the Trade Union Delegation or the dismissal of the prevention advisor, a specific procedure needs to be complied with. In case of violation, additional compensation will be due on top of the indemnity in lieu of notice (1 year of salary for the trade union delegate and 2 or 3 years of salary for the prevention advisor).

Moreover, CBA’s entered into on industry level may include specific procedures to be complied with in case of dismissal and additional compensation in case of violation (e.g. banking sector).

(iv) SEVERANCE PAYMENT (INDEMNITY IN LIEU OF NOTICE)
An employer can choose to either terminate an employment contract with the granting of a notice period or to terminate the employment contract immediately with the payment of an indemnity in lieu of notice. A combination of both, where the serving of a notice period is followed by the payment of an indemnity for the remainder of the notice period is also possible.

The indemnity in lieu of notice is calculated on the basis of the annual salary of the employee at the time of termination, including statutory and contractual fringe benefits.

If the employment contract is terminated with the payment of an indemnity in lieu of notice, no formalities need to be complied with; this is contrary to a termination through serving a notice period.

4. Separation Agreements

(i) IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?
It is common practice (especially for higher employees) that the parties to an employment contract would conclude a separation agreement stipulating, a.o. the amount of the indemnity in lieu and that the employee waives any other claim he may have.

(ii) WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?
The indemnities that will be paid by the employer to the employee upon signing the agreement, a confidentiality clause, a clause in which the employee waives the right to make any claim he may have, a non-compete clause, etc.

(iii) DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE
No

(iv) ARE THERE ANY ADDITIONAL PROVISIONS TO CONSIDER?
No

5. Remedies for employee seeking to challenge wrongful termination

The employee can dispute:

- The length of the notice period served (although these kinds of claims have become exceptional as the new Unified Employment Status Act includes fixed notice periods now, contrary to what was the case before).
• The salary package used as a calculation base for the indemnity in lieu of notice.
• The fact that no (timely) motivation of the dismissal was given by the employer, although the employee asked for the reasons for his/her dismissal (indemnity of 2 weeks of salary).
• The reason for dismissal. If the dismissal is deemed unjustified, meaning that it was "manifestly unreasonable", the employer owes damages for an amount ranging from 3 to 17 weeks of remuneration.
• The dismissal for serious cause. The employee can invoke that the 3 day-term to dismiss or to inform the employee on the grounds of the dismissal has been violated, or that the grounds for dismissal do not constitute a serious cause. If the claim is successful, the employee will be entitled to an indemnity in lieu of notice equal to the salary for the notice period that should have been served.
• The fact that the employer terminated the employment contract of an employee who enjoys special protection against dismissal, in violation of any rule with regard to the employee’s protected person’s status. If the court rules in favor of the employee, a special protection indemnity ranging from 3 or 6 months (in general) up to even 8 years of salary (maximum amount in case of a dismissal of a member of the Works Council or CPPW) will be due by the employer.
• That his/her dismissal was discriminatory. In that case, the employer risks to be sentenced to a supplementary indemnity of 6 months of salary.

Failing this, the notice may be deemed null and void. In that case, the employment contract will have been terminated without serving notice so that the employer will be obliged to pay an indemnity in lieu of notice.

(II) TERMINATION FOR SERIOUS CAUSE
In case of a termination for serious cause, the employment agreement should be terminated within three working days after the party who terminates the contract acquired enough knowledge with respect to the serious cause. The notification of the grounds for dismissal should also be presented to the other party no later than 3 working days after the termination and by registered letter or via a bailiff.

If these strict deadlines and formalities are not complied with, the dismissal for serious cause will be null and void, and an indemnity in lieu of notice will be due to the employee.

The employee should bring any claim before the labour court within a maximum of one year as of the termination of his/her employment contract. If not, the claim will be deemed barred by the statute of limitation.

6. Void dismissal

(I) TERMINATION WITH A NOTICE PERIOD
As indicated, any notice must be given in writing and in the correct language, stating when the notice period starts and its duration. Moreover, the employer must serve notice by means of a registered letter or via a bailiff.
1. Definition of Restrictive Covenants

As a general rule, article 6 of the Employment Contracts Act stipulates that all clauses which are not compatible with the content of the said act, are null and void, insofar such clause limits the rights or aggravates the duties of the employee.

For some types of clauses, a legal framework is foreseen in the Employment Contracts Act. One example is Article 17 of the Employment Contracts Act, which provides that during the contract and after its termination, the employee must abstain from i) divulging manufacturing secrets, trade secrets and secrets pertaining to any matter of a personal or confidential nature, the knowledge of which the employee may have acquired in the exercise of his/her professional activity, and ii) performing or cooperating with any act of unfair competition. These two obligations result from the duty of good faith, which governs any contract under the rules of Belgian civil law. Other types of clauses (e.g. place of residence clause for fire fighters) are not legally defined, but are nevertheless legal under certain conditions.

2. Types of Restrictive Covenants

(i) NON-COMPETE CLAUSES

As a consequence of the principle of good faith, the employee is prohibited from competing with his/her employer during the execution of the employment contract. A non-compete clause, which recalls this prohibition, may validly be inserted into the employment contract without any specific formality or condition.

For a non-compete clause to apply after termination of the employment contract, strict conditions have to be complied with. The clause must be in writing and is valid if the employee’s annual gross remuneration exceeds 66,441 EUR. There are further restrictions on its applicability if the annual gross remuneration does not exceed 66,441 EUR, as a CBA authorising it must be entered into at an industry or company level and the annual gross remuneration must in any case exceed 33,221 EUR (these amounts, applicable for 2016, are updated annually).

In general, a non-compete clause is valid if it is limited to activities similar to those presently performed by the employee and to a well-defined geographical area limited to the national territory, if the new employer is a competitor, and provided that the clause does not exceed 12 months.

Except for sales representatives, the clause must provide for the payment of an indemnity to the employee equal to at least 50 % of the salary corresponding to the duration of the non-compete provision. The clause is not applicable if (i) the employer terminates the contract during the first six months of employment, (ii) if after the first six months of employment, the employer terminates the employment contract with a notice period or an indemnity in lieu of notice, or (iii) the employee puts an end to the agreement on the basis of a serious breach committed by the employer.

Provided that some specific requirements are met, various deviations from the conditions of the general non-compete clause can be carried through (i.e., the ‘special non-compete clause’). This clause may only be used for certain categories of enterprises and for white-collar employees (except sales representatives) with specific functions.

The enterprises concerned have to comply with one of the following conditions:

- they must have an international activity or considerable economic, technical or financial interests in the international markets; or
- they must have their own research department.

In such enterprises, the special non-compete clause may only be applied to those employees whose work allows them to directly or indirectly acquire a practice or knowledge peculiar to the enterprise, which, if used by another entity, could be detrimental.

If these conditions are met, it is possible to deviate from the general non-competition clause insofar as it restricts the geographical application of the non-compete to the national territory and is limited to a maximum period of 12 months. The special non-compete clause may also be applicable when the employment contract is terminated.
by the employer with a notice period or an indemnity in lieu of notice after the first six months of employment have elapsed, or if the contract is terminated during the first six-months of employment, whatever the cause of the termination may be.

(II) NON-SOLICITATION OF CUSTOMERS
See IX. 2. (i)

(III) NON-SOLICITATION OF EMPLOYEES
It is not uncommon to foresee a ‘non-solicitation of employees clause’ in employment contracts or separation agreements that entails a restriction not to approach employees of the (former) employer. In principle however, former employees are allowed to approach employees of the former employer, as long as such actions cannot be qualified as unfair competition (i.e. with the sole intent to harm the former employer).

3. Enforcement of Restrictive Covenants—process and remedies

It is customary to foresee the possibility of damage claims in case the employee would violate certain restrictive covenants. The enforcement possibilities for certain restrictive covenants are however defined by law. In case an employee violates the non-compete clause for example, the damage claim cannot be higher than the repayment of the indemnity awarded to the employee (see supra IX. 2. (i)) on top of indemnity equal to the same amount.

4. Use and Limitations of Garden Leave

Garden leave is as such not allowed under Belgian employment law, as it entails that the employee would not be allowed to perform his/her job, while this condition is deemed an essential element of every Belgian employment contract. A garden leave where the employee is exempt from performing his/her duties during the notice period, is only possible with the employees’ explicit consent. The unilateral decision of an employer to send an employee on garden leave, would grant the employee the right to claim damages or the contract could even be regarded as being terminated by the employer (constructive dismissal).
X. RIGHTS OF EMPLOYEES IN CASE OF A TRANSFER OF UNDERTAKING

1. Employees’ Rights

Under Belgian law, the transfer of an undertaking (or of a division thereof) is governed by Collective Bargaining Agreement n° 32bis of 7 June 1985.

If a business or a division of a business, forming an economic entity, is transferred to a new employer, so that there is a ‘going concern’ of the activity of the business (division) after the transfer, there is a transfer of undertaking as referred to in CBA 32bis.

In the event of a transfer:
- All employees working in the transferred business division are automatically transferred to the transferee. In principle, the employees may not oppose the transfer, unless the transfer would entail serious modifications to an essential element of the employment contract (e.g. salary, place of work, duties).

In the absence of such modifications, a refusal on the part of the employee could be considered as an implicit resignation. Alternatively, the employer (the transferee) could also dismiss the employee concerned for serious cause.

- The rights and obligations of the transferor arising from the employment contracts existing on the date of transfer are automatically transferred to the transferee.

- It is prohibited for both the transferor and the transferee to dismiss employees on the grounds of the transfer of undertaking, besides dismissals for just cause and dismissals based on technical, economic or organizational reasons.

Any employee illegally dismissed by the transferor will have the possibility to introduce a court procedure against both the transferor and the transferee in order to obtain the payment of a termination indemnity and/or damages (the illegality of the dismissal does not have, as a consequence, that the dismissal would be considered null and void). Case law generally sets the amount of the damages between 500€ and 5.000€.

- A joint and several liability of transferor and transferee vis-à-vis the transferred employees and the National Social Security Office is in place for the debts existing at the date of the transfer.

2. Requirements for Predecessor and Successor Parties

Under Belgian law, the transferor and the transferee have an obligation to inform their respective employee representative bodies (i.e. the Works Council, or in the absence thereof, the Trade Union Delegation, or in the absence thereof the Committee for Prevention and Protection at Work) about a proposed transfer (which includes a merger, concentration, take-over, closure or other important structural change negotiated by the company). The employees must be informed individually about the proposed transfer in case (i) there is only a Committee for Prevention and Protection at Work, or (ii) there are no employee representative bodies within the undertaking.

The transferor and the transferee must also consult the employee representative bodies in particular with regard to the repercussions on the employment prospects for the personnel, the work organization and the employment policy in general.

The information and consultation process should take place before a decision on the planned transfer is made. Failure to comply with this obligation would render the employer liable to criminal sanctions (a fine of 300€ to 3.000€, multiplied by the number of employees employed in the company, up to a maximum of 300.000€), in accordance with Article 196 of the Penal Social Code.
XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. Brief description of Employees and Employers Organizations

The most important employers’ organization in Belgium is the VBO/FEB (‘Verbond van Belgische Ondernemingen/ Fédération des Entreprises de Belgique’). It is organized on a national scale and its members are the various employers’ organizations that are each active in a specific industry or sector. In addition, several regional employer organizations exist.

By application of the constitutional freedom of association, employees have the right of decision whether or not to join a trade union. Any employer applying pressure to join or not to join a trade union will be liable to criminal sanctions. Closed shops and non-union shops are outlawed in Belgium.

In Belgium, there are no restrictions regarding the creation of a trade union. However, only a few unions, considered as representative, are granted by law a specific role and specific rights. The three main representative unions are:

- The Belgian General Federation of Labour (FGTB / ABVV);
- The Confederation of Christian Unions (CSC / ACV);
- The Central Organization of Liberal Trade Unions of Belgium (CGSLB / ACLVB).

In certain fields, the Belgian National Confederation of Executives and Managerial Staff (CNC / NCK) is also considered a representative union.

As their names suggest, the abovementioned large unions federate several smaller trade union organizations, traditionally competent in a given geographical area and within a set branch of activities.

2. Rights and Importance of Trade Unions

Traditionally, unions choose not to organize themselves under a form that would entail a separate legal personality. As a result, they only exist as legal entities to perform specific acts that are assigned to them by law. Trade unions, but not their members, essentially enjoy immunity from responsibility.

Representative unions have a place on the National Labour Council and the joint committees (committees at industry level where collective bargaining agreements are negotiated). In addition, they have the power to: 1) conclude collective bargaining agreements with one or more employers or representative employers’ organizations; 2) put forward candidates for elections to the Works Council and the Committee for Prevention and Protection at Work; 3) ensure that the correct procedure is observed for the election of representatives; 4) depending on the circumstances, form a Trade Union Delegation within the company; 5) propose lay judges to sit on the labour courts and labour courts of appeal; 6) represent their members before labour courts; and 7) in some circumstances, engage in legal action on their own behalf in order to defend the interests of their members.

3. Types of Representations

The representative bodies that must be set up within the Belgian undertakings if the conditions are met, are the Works Council, the Committee for Prevention and Protection at Work (CPPW) and the Trade Union Delegation.

Works Councils must be set up in undertakings employing at least 100 employees on average.

A Committee for Prevention and Protection at Work (CPPW) must be set up in undertakings normally employing at least 50 employees on average.

The notion “undertaking” is to be understood as a “technical operating unit”, i.e. an entity having a certain social and economic autonomy, whereby the social criteria are considered as more important than the economic criteria. An undertaking does not necessarily correspond to the legal entity (incorporated company).

A Trade Union Delegation must be established at the
request of one or more representative trade unions in undertakings employing a minimum number of employees determined by CBA. The employer is obliged to accept this request.

In the event that there is no Works Council, the tasks of the Works Council are transferred to the Committee for Prevention and Protection at Work and/or the Trade Union Delegation.

4. Number of representatives

The number of employee representatives within the Works Council and the CPPW depends on the number of employees employed within the undertaking at a certain time within the election procedure (see section 3 below) and ranges from 4 (for undertakings employing less than 101 employees) up to 22 employee representatives (for undertakings employing more than 8,000 employees). If the undertaking employs at least 15 managerial employees, the number of mandates within the Works Council (not the CPPW) will be increased with one or two.

The employee delegation within the Works Council and the CPPW also consists of substitute members, equal to the number of effective members.

The number of union representatives within the Trade Union Delegation is fixed by CBA entered into on industry level.

5. Appointment of Representatives

Both the Works Council and the CPPW are composed of an employer’s delegation and an employees’ delegation. The employer’s delegation consists of one or more acting or substitute members designated by management and chaired by the head of the undertaking.

The employee representatives within the Works Council and the CPPW are union members, nominated by their union and elected within the frame of social elections, which must be organized by the employer every four years.

The most recent social elections took place in May 2016. Yet, the election process starts 150 days prior to the election date, so that Belgian employers had to start with the preparations of the elections in December 2015.

The members of the Trade Union Delegation are employees of the undertaking who are either appointed by the unions or elected by the other unionized employees of the undertaking (although not in the frame of social elections). Detailed regulations governing its establishment are laid down in CBAs concluded at industry and undertaking level.

6. Tasks and obligations of Representatives

(I) THE WORKS COUNCIL

A Works Council is a representative body at company level designed to foster information, consultation and collaboration between employer and employees. The Works Council has competence in four areas: 1) the right to information; 2) advisory competence; 3) decisive competence; and 4) organizational competence.

In terms of content, they are competent at the technical, economic and social level.

For instance, the employer is obliged to provide the Works Council with economic and financial information concerning the undertaking at regular intervals.

The Works Council also has a right to be informed (and in some cases consulted) regarding the employment structure of the undertaking, any planned changes and their consequences on the work force, as well as employment matters such as work organization, collective lay-offs or closure, early retirement issues, time-credit, etc.

(II) THE COMMITTEE FOR PREVENTION AND PROTECTION AT WORK (CPPW)

The CPPW plays an advisory role in health and safety matters and is also closely involved in the recruitment of prevention officers.

(III) THE TRADE UNION DELEGATION

The Trade Union Delegation is a body representing union members within the undertaking whose competencies include matters relating to (i) industrial relations (supervision of the observing of employment legislation) and (ii) negotiations for concluding Collective Bargaining Agreements (CBAs) without affecting existing CBAs or other agreements concluded at other levels. They also have a crucial role to play in conflict resolution and mediation between parties.
1. Legal framework

Unless stated otherwise by an international agreement, employees working in Belgium for an employer established in Belgium, or an operational office in Belgium, will in principle be subject to the Belgian social security scheme for salaried persons.

It is impossible to deviate from the Belgian social security scheme by special agreement, which would be null and void by law.

2. Contributions

In the scheme for employees, both employees and employers have to pay contributions to the National Social Security Office (RSZ - ONSS). The employer’s contributions amount to approximately 33% for white-collar employees and around 40% for blue-collar employees.

The employee’s contributions are fixed at 13.07% and are deducted from his/her gross salary.

One of the major reforms announced by the new Belgian government is a structural drop in employer’s social security contributions to 25%. A bill in this respect has not yet been adopted.

3. Insurances

The Belgian social security system for employees covers:
1. old-age and survivor’s pensions;
2. unemployment benefits;
3. insurance for accidents at work;
4. insurance for occupational diseases;
5. family allowances;
6. sickness and disability benefits; and
7. annual vacation (only for blue-collar employees).

4. Required Maternity / Sickness / Disability

Employees have the right to be absent from work without salary loss on the occasion of:

- certain family events (marriage, funeral, childbirth, adoption, holy communion, non-confessional youth celebration, etc.)
- for meeting civil duties (jury service, participation in the electoral process, etc.)
- appearance before a court

The reasons for such short leave periods, as well as the duration of the allowed time-off (the day of the event, up to a couple of days) for each absence are provided for in the Royal Decree of 1963. Yet, more favourable provisions may be determined at an industry or company level.

In case of illness or private accident, the employee continues to receive his/her normal salary during a period of thirty calendar days. This is the so-called ‘guaranteed salary’.

To be entitled to the guaranteed salary, the employee needs to comply with some legal obligations, which includes, amongst other things, immediately informing his/her employer of his/her incapacity to work and presenting a medical certificate. Moreover, the employer may call upon an independent medical officer (the ‘controlling officer’) to verify an employee’s incapacity for work.

During the first year of incapacity following the period covered by the guaranteed salary, the employee will receive sickness benefits from the Health Insurance Fund (‘ziekenfonds - mutuelle’). These benefits will be equal to 60% of the employee’s gross capped remuneration. As of the second year, the employee will be entitled to invalidity benefits if the Medical Board for Invalidity of the National Sickness and Invalidity Insurance has confirmed the invalidity (the level of incapacity for work must be at least 66%). These invalidity benefits amount to 65% (for an employee with at least one dependent),
55% (for a single employee) or 40% (for a cohabiting employee without dependents) of the employee’s gross capped remuneration.

The Health Insurance Fund also reimburses numerous medical and pharmaceutical costs.

Women may take up to 15 weeks of maternity leave (with a possible extension of 2 weeks in case of multiple births). At least nine weeks must be taken after the birth and at least one week must be taken before the expected date of birth.

Women receive maternity benefits whilst on maternity leave. This benefit, paid by the social security system, is equal to 82 percent of the employee’s salary for the first 30 days and then drops to 75 percent of her salary (which will be ceiling). During this period, the employer is not obliged to make any payments to the employee. Following the birth of a child, the father has a right to ten days of paternity leave, seven of which will be paid for by the social security system at 82 percent of the employee’s ceiling salary. This leave must be taken up within four months after the birth.

5. Mandatory and Typically Provided Pensions

The statutory retirement age in Belgium is officially 65. Yet, the Federal government has decided at the beginning of June 2015, that this age will increase to 66 by 2025 and to 67 by 2030 (Act still to be published in the Belgian Official Gazette).

However, there are exceptions to this minimum retirement age (i) for labour-intensive professions and (ii) in case the employee can prove a minimum number of years worked (63 years of age and 42 years worked by 2019). The employee receives a pension from the Belgian social security system.

Apart from these social security benefits (the “first pillar”), many employees are entitled to an additional pension insurance (the “second pillar”) paid by the employer as part of their salary package. Occasionally, the second pillar pension is organized on sectoral level. Some people also add to these two pillars a private pension insurance scheme (the “third pillar”).
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