

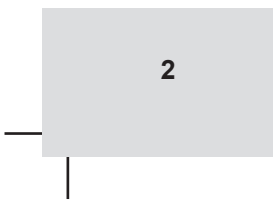
EXPORT-IMPORT BANK OF INDIA

OCCASIONAL PAPER NO. 160

COMPARISON OF LABOUR LAWS: SELECT COUNTRIES

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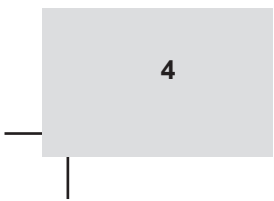
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Project Team:

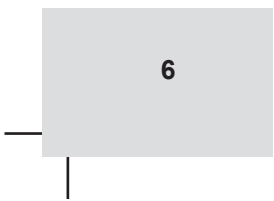
Mr. S. Prahalathan Iyer, Chief General Manager, Research and Analysis Group

Ms. Renuka Vijay, Manager, Research and Analysis Group



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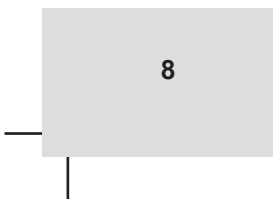


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EXECUTIVE SUMMARY

INTRODUCTION

India's stated objectives of economic policy planning are achievement of high rates of growth of the economy, besides achieving sustainable improvement in the standards of living of people. A rapid growth in employment opportunities for all sections of the society is important to achieve these objectives. However, despite impressive economic growth over the years, generation of employment has not been at a desired level of proportion in comparison to the level of growth achieved. The situation on employment gets worsened with vagaries of global economic crisis with growing integration of our economy with the world. Various research studies have concluded that employment elasticity of output in India has come down over the years - from 0.53% (during the period 1977-78 to 1983), to as low as 0.01% during the period (2004-05 to 2009-10). It implies that with every percentage point of growth in GDP, employment increases by just one basis point (0.01%).

There have been concerns about decline in India's exports and growing imports, leading to high trade deficit, and the resultant high current account deficit. One of the reasons for growing imports has been the low level of capacities in certain sectors of Indian manufacturing. For example, import of capital goods, electronics, transport equipment, chemicals and products, and metals and products, add up to US\$ 130 bn, which is nearly two-thirds of India's total trade deficit, or one-and-half times of India's current account deficit. Capacity additions in these sectors are not in proportion to the growth in demand.

On the export front, India's exports are majorly low and medium-tech oriented, and only a small portion is hi-tech oriented. According to industry sources, our peer countries like China, Malaysia, Singapore and Thailand, enjoy either cost advantage (due to the large scale of manufacturing), or technology advantage (due to hi-tech manufacturing) in select product groups. In contrast, a majority of players in the manufacturing sector

in India are largely MSMEs. This fact has also been articulated in the Economic Survey (2012-13) citing that Indian manufacturing sector has a presence of large number of small-scale units in most of the manufacturing sub-segments. The low level of large-scale investments in Indian manufacturing is one of the prime reasons for the sector's share remaining stagnant at 15% to 16% of GDP for several decades.

The ceiling on investment for SMEs has also been a major constraining factor in capacity additions in the manufacturing SMEs, and the resultant low-technology orientation. Both the above-mentioned constraints – small size and low technology orientation – are revealed to be adversely affecting the ability of the firms to respond to the challenges, thereby pulling down the relative competitiveness of Indian manufacturing, as compared to other countries.

Our analysis of comparison of factory employment in select countries using UNIDO data revealed that average number of workers in an Indian firm is low at 75, in comparison to China's 191 and Indonesia's 178. Per unit employment in India is low despite the fact that India's manufacturing base is largely labour intensive. While this data speaks about the situation

in organized sector, average number of workers in unorganized enterprises is revealed to be at much lower level. While the average number of factory employment in India at 75 correlates to the applicability of Industrial Disputes (ID) Act (applicable to units employing over 100), large number of enterprises are estimated to be employing less than 10 workers, even in labour intensive manufacturing (Economic Survey 2013), which remains unexplained. Low level of average factory employment in developed economies such as Germany, UK, USA and France is self-indicative of the level of technology intensiveness in these economies, which is also in contrast to the stage of industrial development in India.

Another important feature of the Indian manufacturing sector is that only a small share of employment in manufacturing is in organized manufacturing (the unorganized manufacturing sector accounted for almost 70 per cent of total manufacturing employment in 2009-10); and employment is heavily concentrated in small firms. The degree of concentration is much higher than in other Asian countries. For example, the share of micro and small enterprises in manufacturing employment is 84 per cent for India versus 27.5 per cent for Malaysia and 24.8 per cent for China.

Industry associations and academia have been harping on inflexible labour market, especially, outdated labour laws as principal reasons for declining employment elasticity in India. Research studies on this subject have argued that in a competitive world, with market fluctuations, firms are required to quickly change the size, composition, and at times even the location of the business. Further, rising competitiveness also demands for wages associated with productivity or profitability. In the absence of labour market flexibility, firms operating in a competitive environment are likely to adopt alternative routes to mitigate this challenge. In general, firms in developing economies adopt the practice of informal employment to counter the labour market flexibility. The Economic Survey 2012-13 has also opined that outdated labour laws could be one of the reasons responsible for small size of Indian enterprises. It is known that small size and below-scale operations limit technology orientation and profitability.

The Working Group on Labour Laws for the Twelfth Five Year Plan has highlighted that about 96% of the workforce being employed were in the informal sector, which means that just about 17 million persons were engaged in formal sector, of which about 12 million workers were engaged in factories.

Inflexibility in Indian labour market has also been highlighted by the Global Competitiveness Report of World Economic Forum (WEF), which ranks India at 82nd position. The respondents of World Economic Forum (WEF) have cited restrictive labour regulations as one of the major factors hindering the business environment. Within the labour market efficiency, India scores relatively low in parameters such as flexibility of wage determination, hiring and firing practices, redundancy costs, and women ratio to men in labour force.

An analysis of these reference studies and statutes of the identified countries reveals that at a macro level the degree of intent of labour protection is similar in most countries and not very different from that of India. However, the distinguishing feature is that the administrative processes which are framed under Indian labour statutes are complicated hindering flexibility in labour market. Three main labour laws that are being debated as employment un-friendly are: Industrial Disputes Act (1947), the Contract Labour Act (1970) and the Trade Unions Act (1926). In order to ascertain India's position vis-à-vis other countries with regard to such provisions, this Study has undertaken a comparative analysis of labour laws in 20 countries under 15 broad parameters. The countries analysed and parameters studied are given in the tables that follow:

More than 80 reference materials have been sourced to analyse the information and data to compare these parameters. Besides the reports brought out by the International Labour Organisation comparing some of the parameters, information have been collated from country level reports / studies on labour regulations, and nearly 40 statutes of select analysed

countries. The list of such references is given as Annexure.

COLLECTIVE BARGAINING AND SETTLEMENT OF INDUSTRIAL DISPUTES

Industrial relations have become one of the most delicate and complex problems of modern industrial society.

| The countries analysed include: | | | | |
|--|---|---------------|---------------|--|
| Asia | Europe | Latin America | North America | Africa |
| Bangladesh, China, India, Indonesia, Malaysia, Pakistan, Philippines, Sri Lanka, Thailand, and Vietnam | France, Germany, Russia, and UK | Brazil | USA | Kenya, South Africa, Tanzania and Uganda |
| The parameters studied were: | | | | |
| Broad headings | Parameters for comparison | | | |
| Collective Bargaining and Settlement of Industrial Disputes | <ul style="list-style-type: none"> • <i>Regulations on collective bargaining and settlement of industrial disputes</i> | | | |
| Conditions of Employment: Contract | <ul style="list-style-type: none"> • <i>Fixed-term contracts prohibited for permanent tasks</i> • <i>Maximum length of a single fixed-term contract (months)</i> • <i>Maximum length of fixed-term contracts, including renewals (months)</i> | | | |
| Employment Security: Termination | <ul style="list-style-type: none"> • <i>Termination of employment not at the initiative of the employer</i> • <i>Termination of employee by the employer</i> • <i>Notice and prior procedural safeguards</i> • <i>Severance pay</i> • <i>Collective dismissals</i> | | | |
| Comparisons on Conditions of Work Hours/Leave | <ul style="list-style-type: none"> • <i>Standard workday in manufacturing (hours)</i> • <i>Minimum daily rest required by law (hours)</i> • <i>Maximum working days per week</i> • <i>Maximum overtime limit</i> • <i>Premium for overtime work over and above the normal pay</i> • <i>Paid annual leaves for employees</i> | | | |

Industrial progress is impossible without the cooperation of labourers, and harmonious relationships. Therefore, it is in the interest of everyone concerned to create and maintain good relations between employees (labour) and employers (management). The relationships which arise in and out of the workplace generally include the relationships among individual workers, the relationships between workers and their employer, the relationships among employers, the relationships employers and workers have with the organizations formed to promote their respective interests, and the relations among those organizations, at all levels. Industrial relations also include the processes through which these relationships are expressed (such as, collective bargaining, workers' participation in decision making, and grievance and dispute settlement), and the management of conflict among employers, workers and trade unions, when it arises. The conflict between the management and the employee is inherent in an industrial society. One argues for more investment and profits while the other argues for better standard of living. These two conflicting interests can be adjusted temporarily through the principle of give and take. The principle of give and take has been infused in the principle of collective bargaining.

Collective bargaining is one of the methods wherein the employer and the employees can settle their disputes. This method of settling disputes was adopted with the emergence and stabilization of the trade union Government. It was believed that the labour was at a great disadvantage in obtaining reasonable terms for contract of service from the employer. With the development of the trade unions in the country and the collective bargaining becoming the rule, it was equally found by the employers that instead of dealing with individual workmen, it is convenient and necessary to deal with the representatives of the workmen, not only for the making or modification of contracts, but also in the matter of taking disciplinary action against the workmen, and handling other disputes. So, collective bargaining has come to stay having regard to modern conditions of the society where capital and labour have organized themselves into groups for the purpose of settling their disputes.

However, the Trade Unions Act (1926) of India enables leadership to come from outside the industry, and in the process multiple unions have cropped up, often with the blessings of outsiders, neglecting the interests and aspirations of workers in an enterprise. This clause has been partially amended to avoid cropping

up of multiple trade unions in an establishment. With the amendment, no trade union shall be registered in India unless at least ten percent or one hundred of the workmen, whichever is less, in an establishment are members of such trade union. Further, the amendment states that no trade union shall be registered unless it has a minimum membership of seven persons. These provisions allow formation of at least ten unions in an establishment with a size of 70 workers, and upwards of ten unions if the size exceeds 1100 workers. Existence of multiple trade unions in an establishment results in union rivalry, thereby affecting industrial harmony.

In the above context, analysis has also been undertaken to study the differences in trade union structure, orientation and collective bargaining capacity among identified countries.

In comparison to India, Bangladesh, which has reformed its labour laws in 2006, needs a minimum membership of 30 percent of workers to form a trade union. In Sri Lanka, the Ordinance to provide for the Registration and Control of Trade Unions (1935) permit formation of trade unions with a minimum membership of 7 workers. However, the Industrial Disputes Act, which was amended in 1999, stipulates that at least 40 percent of the workers on

whose behalf the trade union seeks to bargain with the employer should be members of such trade union. This condition demands that although several trade unions could be formed in an establishment, only the union with a minimum of 40 percent workers can engage in collective bargaining in Sri Lanka. Pakistan, which has amended its Industrial Relations Act in 2012, stipulates that at least 20% of workmen should be members of a Union to be entitled for registration. However, when it comes to collective bargaining, the Act stipulates that the Union with at least one-third of workers employed in an establishment will be eligible to be the collective bargaining agent.

As per the Trade Unions Act (1959) of Malaysia, multiple unions can be formed initially, but the Director General of Trade Unions appointed for registration of trade unions has powers to cancel the certificate of registration of all trade unions except the one that holds majority workmen in the said establishment. The Director General can also issue an order requiring all trade unions other than the trade union which has largest number of workmen, to remove their members from the membership register, facilitating formation of single union.

UK, from whom we have drawn our legal framework, stipulates a minimum

of 21 workers to be as members of a trade union to be recognized by the employer eligible for collective bargaining, though the Act does not explicitly states minimum number of workmen to form a trade union. In countries such as China, Vietnam and Uganda only national centric trade unions can engage in collective bargaining.

The All China Federation of Trade Unions (ACFTU) in China is the main authority for collective bargaining. In Vietnam, in order to represent and defend the rights and interests of workers and their labour collectives, the Federation of Labour at the provincial level can set up provisional trade union organizations in every enterprise. By law, the National Organization of Trade Unions (NOTU) is the sole federation to which all national unions affiliate in Uganda.

In countries such as Kenya and Russia, though there will be multiple labour unions, only the single largest union is empowered to engage in collective bargaining. In Kenya, it is not proper for an employer to engage in any trade union in the process of collective bargaining agreement negotiations without a signed recognition agreement. To enter into a recognition agreement with the employer, the trade union must have recruited a simple majority of the total number of unionisable employees of

that employer. Without a recognition agreement, the employer cannot take cognizance of the union for the purposes of representation of employees on issues relating to terms and conditions of employment. Also, it is an offence to implement a collective agreement before the Industrial Court registers it.

In Russia, the right to engage in collective bargaining, sign agreements on behalf of the employees shall be granted to relevant labour unions (labour union associations). Should several labour unions (labour union associations) be in existence at the relevant level, each of them shall be entitled to representation within a unified representative body for collective bargaining formed based on the number of labour union members they represent. In the absence of an accord on establishing a unified representative body for collective bargaining, the right to engage in it shall be granted to the labour union (labour union association) amalgamating the largest number of the labour union (labour unions) members. The parties shall provide each other, not later than two weeks after receiving the appropriate request, with the information at their disposal required for collective bargaining.

The Labour Relations Act, 2004, Tanzania, establishes, among other things: that the trade union

representing the majority of employees in a company can be recognized as the relevant negotiation partner (exclusive bargaining agent), and that any bargaining should be conducted in good faith; the confidentiality in regard to any information exchanged as a result of the bargaining constitutes a binding agreement and requirements of the bargaining process.

Some of the countries have fragmented trade unions at both national, state and enterprise levels. The countries are: Thailand, Indonesia, Philippines, Sri Lanka, South Africa, India, UK, France, Germany and Brazil. Collective bargaining and industrial dispute procedures are given in detail in the chapter on Collective Bargaining and Settlement of Industrial Disputes.

CONDITIONS OF EMPLOYMENT: CONTRACT

In this age of globalization, the employment structure across the globe has been undergoing changes. In order to effectively compete in a globalized market, one needs flexibility relating to labour, capital, or bureaucracy; this allows a producer to adapt to the fast-changing world and compete effectively. In particular, it is argued that stringent labour regulations not only put domestic producers at a disadvantage but

also deter foreign direct investment and eventually impact adversely on investment, output and employment. Over the last two decades, a number of countries have attempted to liberalize their respective labour markets and have also amended their labour laws so as to make them more investment and employment friendly. Globalization has also created non-traditional employment structures including part time, casual and contract labour.

Research studies have opined that contract labour is becoming the prominent form of employment in various economies, including India. However, in developed countries contract employment is preferred course for both employers as well as employees. In fact, enterprises in several countries practice contract employment to retain talent. Workers, especially the skilled ones also find contract employment with better perquisites beneficial to them.

In India, contract labourers are protected by the Contract Labour (Regulation and Abolition Act), 1970. A contract labourer is defined in the Act as one who is hired in connection with the work of an establishment by a principal employer (who is the firm owner or a manager) through a contractor. The Act applies to any establishment in which 20 or more workmen are employed on a contract

basis on any day of the last one year, and also to all contractors who employ or have employed 20 or more workmen on any day of the preceding 12 months. The Act, however, does not apply to the establishments in which work is intermittent or casual in nature.

Under the provisions of the Act, every principal employer to whom this Act applies should register his establishment in the prescribed manner for employing contract labour. The contractor to whom this provision applies also necessarily has to get license for his operations from a licensing officer. Further, a set of perennial or core activities are defined in terms of what a company had declared as main activities at the time of registration. Several litigations arose because of the use of contract labour in the so called 'core activity'. Once a particular activity has been barred for contract labour, workers for such activity cannot be outsourced by an enterprise. This provision restricts labour market flexibility, impedes efficiency and reduces employment. Besides, enterprises circumvent the provisions of the Contract Labour Act, and thus compliance seems to be another issue. According to a Study by V V Giri National Labour Institute, about 55 percent of the workforce in organized industry is on contract basis and they are not paid industry-wise minimum wages. According to

data collated by Labour Bureau in the year 2011-12, 3886 inspections have been conducted, and about 2451 prosecutions have been launched (about two-third of inspections) for violations, and 1528 persons have been convicted (about 40 percent of total inspections) under the Contract Labour Act.

Against this background, in this chapter a comparison of legal provisions related to contract labour in various countries have been examined, with particular reference to prohibition of fixed term contracts for permanent tasks, maximum length of single fixed term contracts, and provisions for maximum length of fixed term contracts including renewals.

In every country, employment contracts are divided into various types of work relationships distinguishing between apprentices, casual workers, permanent and temporary workers. While some countries permitted fixed term contracts for permanent tasks, some others do not. The countries that prohibited fixed term contracts for permanent tasks include Bangladesh, Indonesia, Pakistan, Philippines, Thailand, South Africa, Tanzania, France, Russian Federation and Brazil. The countries which do not prohibit fixed term contracts for permanent tasks include: China, India, Malaysia, Sri Lanka, Vietnam, Kenya, Uganda, Germany,

UK and USA. In countries such as Bangladesh, China, India, Malaysia, Philippines, Sri Lanka, Thailand, Kenya, Uganda and USA, there are no limit on the maximum length of fixed term contract. Although Indian regulations allow engagement of contract workers for permanent tasks, central and state governments can notify prohibition of contract workers in any industry or even in a single employment. In addition, inspection and administrative hurdles make the enterprises taking the course of informal employment. Besides, central or state governments can also impose ban on fresh recruitment of permanent workers where contract workers are engaged.

India needs to encourage contract employment, with adequate safeguard measures, including provision of social security measures; this would generate formal employment in the manufacturing sector. Contract employment with higher compensation package, than the normal employment, could also be encouraged to bring in talent. This has been the practice in developed nations, in several professional streams.

EMPLOYMENT SECURITY – TERMINATION

An employee's employment right is not to be unfairly or unjustifiably

dismissed is a modern cornerstone of the law relating to the termination of employment. However, while widespread amongst a variety of national legal systems, this right is not universal. For example, some countries like United States do not recognize this as a general right. Because of its economic and social implications, and in spite of regulation at the highest level, the termination of employment by the employer is one of the most sensitive issues in labour regulations today. Protection against dismissal is seen by most workers as crucial, since its absence can lead to dire economic consequences in most countries.

Termination of employment by the employer is one of the most sensitive issues in labour laws today. Research studies undertaken by organisations such as Rajiv Gandhi Institute for Contemporary Studies, New Delhi; Delhi School of Economics; and Planning Commission, Government of India; have opined that strict regulations with regard to closure of a unit or retrenchment of workers are hampering the ability of an enterprise to respond to the changing business dynamics. Studies have also cited this situation as one of the reasons for high informal employment in India. It is argued that since permission is difficult to obtain for closure of a unit or termination of employees, employers are reluctant to hire workers (even in

| Table: 1 Labour Laws Prohibiting Fixed Term Contracts for Permanent Tasks: Comparison in Select Countries | |
|--|--|
| Country | Fixed term contracts prohibited for permanent tasks |
| ASIA | |
| Bangladesh | Yes |
| China | No |
| India | No |
| Indonesia | Yes |
| Malaysia | No |
| Pakistan | Yes |
| Philippines | Yes |
| Sri Lanka | No |
| Thailand | Yes |
| Vietnam | No |
| EUROPE | |
| France | Yes |
| Germany | No |
| Russian Federation | Yes |
| UK | No |
| LATIN AMERICA | |
| Brazil | Yes |
| NORTH AMERICA | |
| USA | No |
| AFRICA | |
| Kenya | No |
| South Africa | Yes |
| Tanzania | Yes |
| Uganda | No |

Source: Exim Research

temporary or on contractual basis) whom they cannot easily layoff; labour regulations, thus, with the intention of protecting the workers in the organized sector, are unintentionally preventing the expansion of industrial employment that could benefit the mass of workers.

This study compared and analysed this feature and found that enterprises in India, who have employed more than 100 workers are covered under the ID Act, are required to undertake prior consultations, notify to the public administration as well as to the workers' representatives, and get the approval from both the public administration (for which consent of workers' representation is also required), before undertaking collective dismissal. Of the 20 countries analysed in this Study:

- only two countries (Pakistan and Sri Lanka) along with India require approval by public administration; and
- only Vietnam along with India require consent of workers representatives prior to collective dismissal.

Besides, enterprises in India have obligations to consider alternatives prior to considering dismissal. Thus, India is the only country in which the procedures mandate fulfillment of all requirements prior to collective

dismissal. Even countries such as Bangladesh (manufacturing-GDP ratio 18%), Philippines (21%), and Malaysia (24%), which have restrictive labour regulations, do not have requirements of prior consultations and approval by trade unions. In these countries, employers also do not have obligations to consider alternatives to dismissal.

CONDITIONS OF WORK-HOURS/ LEAVE

It is widely believed that the advent of industrial capitalism was accompanied by the emergence of the modern concept of time and increase in working hours. The dominant concept of working time in early industrialization was based on the perception that hours spent outside work were seen simply as 'lost' time. The logical result of this perspective was the extension of working hours, often to the physical maximum, and the policy concern was how to secure minimum hours of work to discipline workers and maintain production levels. The negative consequences of very long working hours on health and productivity have been slowly recognized, and the importance of guaranteeing free time or leisure for workers is gradually acknowledged.

As a result, working hours began to be progressively reduced from as early as the 1830s, notably through legal

interventions. In the late nineteenth century, the idea for the eight-hour/day gathered increasing support, and its positive impacts on productivity were reported in various pioneering experiments. All this eventually paved a way to the adoption of the first international labour convention in 1919, the Hours of Work (Industry) Convention, 1919 (No. 1), which stipulates the principle of 'eight hours a day and 48 hours a week'.

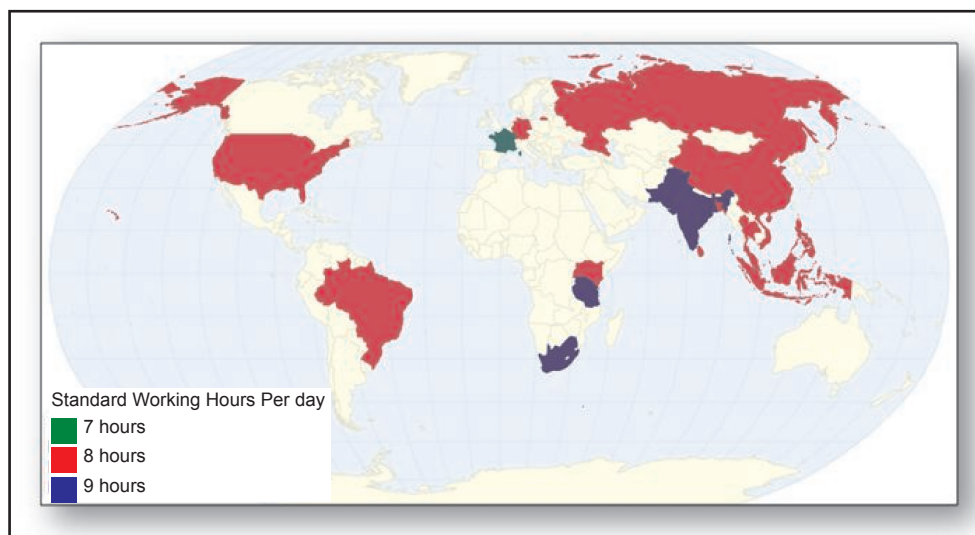
Taking this into consideration, in this chapter, an attempt has been made to compare the conditions of work hours and leave entitlement.

A comparison on working hours reveals that most of the countries

used for comparison in this study followed this ILO convention of eight hours a day. It is observed that the exceptions include Tanzania, South Africa, India and Pakistan which followed a 9 hours a day schedule, and France which followed a 7 hours a day schedule. The maximum working days in a week were 6 hours a day for all the analysed countries except Sri Lanka, wherein it is 5 full days in a week and a half day on Saturday.

The ILO Convention sought not only to limit working hours but also to establish overtime work as an international standard. Under the Convention's specific terms, only industrial operations that operated on a 24-hour basis, or with union

Exhibit: 1 Comparison of Standard Working Hours: Select Countries



Source: Exim Research

Note : Countries in the colour white signify those that have not been analysed.

bargained contracts, and other rare exceptions, could require overtime work. In general, a country decides to place a limit on the maximum number of overtime working hours, considering a large impact on the protection of the workers and any potential negative consequences for business. The most common of these limits is 2 hours over the normal working time in each day. In addition, countries have weekly limits, with most setting the overtime limits at 10-12 hours. Also, countries have yearly limits in the number of overtime hours that can be worked. For example, in China, overtime limit during normal circumstances in a day is 1 hour and under exceptional circumstances is 3 hours, and for countries such as India (200 hours per year) and France (220 hours per year) overtime limit is based on hours per year.

Usually overtime pay is provided to workers who work overtime and on a normal day it is generally a minimum of 50% (of hourly pay) over and above the normal pay and 100% when it is on a holiday. Also, overtime premium helps many workers with low base wages earn more money. In addition to the host of differences regarding overtime rules, there are a number of other important differences among these policies. There is a large consensus on weekly rest.

While some countries have specified daily rest during the work time, for e.g. India specifies a 30 minute rest every 5 hours of work, there are few countries like Malaysia and Vietnam which have specified in number of non-working hours in a full day with a minimum daily rest of 12 hours.

Most countries around the world have labour laws that mandate employers provide a certain number of off-days with wages per year to workers. Public holidays, sick leaves and annual leaves were given for all the employees in all the countries considered for comparison; however, it differed from country to country. For e.g. in the case of Thailand, an employer has to inform employee of 13 annual traditional holidays in advance. If traditional holiday falls on a non-working day, an additional holiday will be given on the following working day. Also, an employer may require an employee to work on holidays if his business is that of a hotel, theatre, transport, restaurant, cafe, club, society, medical establishment or such other business as is prescribed by Ministerial Regulations in Thailand. In India, public holidays, sick leaves, annual leaves and casual leaves are given to employees. Casual leaves are available as per the company policy and the quantum of casual leave and sick leave is usually fixed by the company/organization.

SUMMARY AND CONCLUSION

In India, economic growth is directly linked with industrial growth. To achieve industrial growth industrial harmony is important. A set of labour laws that are tuned to benefit solely the labour force without taking the interests of the industry is bound to throw up road blocks that can impact sustainable growth. Indian labour laws, which presently take care of the interest of the labour force, are indirectly impairing the smooth working of the industry due to cumbersome procedures.

This aspect of Indian labour laws serve as a source of irritant for new investors, besides driving the existing units towards cost cutting mode in times of recession. Essentially, structural changes to labour laws rely on four important stake holders, viz, the trade unions, industry, national and regional political parties, and eventually the Government. While there are no diametrically opposite interests between the industry and trade unions, it is important to understand by the workers and trade unions serving the interests of the workers, that the proposals for changes in labour laws are only to smoothen the operations of the industry, which will attract new investments, generate

more jobs, and thereby provide more employment opportunities.

In general, across the globe, a majority of firms are born small and tend to grow over the years, both in terms of size and employment. In contrast, in India, firms are born small and majority of them tend to stay small. For example, in the United States, in 35 years of existence, a company grows ten times both in terms of operations and employment. In contrast, in India, the productivity of a 35 year-old firm merely doubles, while its headcount actually falls by a fourth¹. Main reason cited for such a situation has been the stringent labour laws and inflexibility in labour market.

For example, the Industrial Disputes Act provides for procedures for investigation for settlement of industrial disputes and applies to all firms irrespective of size. Apart from this, the Act lays down conditions for layoffs, retrenchment and closure of an industry. Any establishment, employing more than 100 workers, who may need to lay off some workers, have to seek permission from the government and also according to this provision, employers and employees are expected to inform the Labour Commissioner in case of any

¹World Development Report 2013

dispute. Hence, in order to retrench workers, the employer has to seek the permission of the unions besides the Labour Commissioner. This makes labour market inflexible and this is believed to have added significantly to the duration of insolvency procedures in the country, forcing firms to maintain suboptimal sizes.

In the case of Contract Labour Act, there was a ruling that if the work done by a contract labour is essential to the main activity of any industry, then contract labour in that industry should be abolished. This affected labour flexibility because there was also a need for clarification, whether, after abolition of contract labour, they should be absorbed as permanent labour in the industry or not. Also, the Industrial Employment Act requires defining job content, employee status, and area of work by State law or by collective agreement, after which changes would not be made without the consent of all workers. This has made it difficult for businesses to shift workers not only among plants and locations, but also among different jobs in the same plant.

Labour inflexibility would also reduce productivity because it increases the costs of adjusting a firm's scale of operation. That is why, firms

would optimally want to reduce their workforces, when hit by adverse demand shocks. But according to the Act, permission needs to be sought for closing or downsizing a business. Hence, closing or downsizing at short notice during a crisis period is practically impossible leading to high operating costs and reduction in firm's profitability. Anticipating such situation, firms in general, tend to become reluctant to expand and, therefore, fail to capture the economies of scale, which is otherwise possible. While India is living with cumbersome regulatory obstacles, other developing countries with similar constraints have accomplished more efficiency enhancing labour reallocation.

China started liberalizing the labour market from the mid-1980s and deepened the liberalization with ownership and labour-restructuring reforms from the late 1990s. The reforms have given Chinese firms more flexibility than Indian firms have in adjusting staffing to meet changing economic conditions and to take advantage of technological developments. The immediate consequence of China's labour market reforms is that firms can hire temporary workers. Chinese firms have taken advantage of this flexibility by increasing the proportion of workers on temporary contracts².

²Diagnosing Development Bottlenecks: China and India, Policy Research Working Paper, World Bank.

In China, there is no limit on the maximum length of fixed term contract and in case an employee has kept working in a same employing unit for ten years or more and the parties involved can agree to extend the term of the labour contract, a labour contract with a flexible term shall be concluded between them if the labourer so requested.

The Global Competitiveness Report 2012-13 (World Economic Forum), has an index on hiring and firing practices. This is measured on a scale of 1-7, wherein 1 stands for impeded by regulations and 7 stands for flexibly determined by employers. Indian hiring and firing practices index stood at 4 which means it was mainly impeded by regulations. This shows the inflexibility of labour market in India. Countries such as Malaysia, Thailand, Bangladesh and Pakistan stood at a higher rank than India. Also the index shows that USA and Uganda had more flexibility in hiring and firing practices.

Also the ability of companies to flexibly manage their workforce and quickly hire and fire employees is an important factor in general business competitiveness. Summarized below is the Rigidity of Employment Index that measures company's flexibility to manage their workforces in different countries. The index has values of 0 to 100 with higher values indicating

more rigid regulation. The USA (0) and Uganda (0) has the most flexible employment market followed by Malaysia (10), UK (10), Thailand (11), Kenya (17) and Sri Lanka (20). The larger outsourcing locations of the Philippines (29), India (30) and China (81) are all in the lower half and hold space for improvement. Countries such as Brazil (46), France (52) and Tanzania (54) has very rigid regulations.

Bringing in flexibility in the labour market and hence flexibility in labour laws is therefore, an important matter in structural reforms. The main problem in labour laws is that in the absence of flexible labour markets, growth in output is not leading to a proportionate growth in employment, hence the employers are going for more capital intensive production processes because of rigidity in labour market. Hence, though the labour laws are meant to protect the jobs of the workers, the scope for creation of more job opportunities in future is being lost. The findings of various research studies and surveys also echo similar opinion. Employment elasticity of output in India has come down to as low as 0.01% during the period 2004-05 to 2009-10 according to research findings by Institute for Applied Manpower Research, New Delhi. The Working Group on Labour Laws for the Twelfth Five Year Plan has highlighted that about 96% of

the workforce being employed were in the informal sector; this again is opined by researchers as an outcome of labour market rigidity in India. With more and more Indian firms adopting the strategy of informal employment to counter the provisions of labour laws, the average number of workers in an Indian firm stood low at 75, in comparison to China's 191 and Indonesia's 178.

In the above context, it is important to undertake the following measures to bring in labour market flexibility in India.

Trade Unions Act, 1926

India's Trade Union Act (1926) stipulates that any seven or more members can form a trade union and apply for registration as trade union. This clause has been partially amended to avoid cropping up of multiple trade unions in an establishment. With the amendment, no trade union shall be registered in India unless at least ten percent or one hundred of the workmen, whichever is less, in an establishment are registered as members of such trade union. Further, the amendment states that no trade union shall be registered unless it has a minimum membership of seven persons.

Existence of multiple trade unions in an establishment results in union rivalry, thereby affecting industrial harmony.

With the apprehension of cropping up of multiple trade unions, Indian entrepreneurs especially in the unorganized sector, limit their size of operations and resort to engaging informal employment.

The Indian Trade Union Act was enacted in the colonial period, during which our focus on the industrial development was different from what is being propagated now. Most of our peers have modified the statutes to suit the changing conditions. India also needs to modify its regulations to match with its requirements, and with what peer group countries have done.

Contract Labour Act

The most dominant forms of precarious work in India are contract work, when workers are employed by a contractor who pays the worker their wages, and direct, fixed-term contracts. The term of a direct fixed term contract can be as short as a single day. These short-term contracts are commonly known as 'hire and fire' contracts, as workers are under

the constant threat of losing their job and hence do not make demands on the company. While direct fixed term contracts are widely used in the services industry, employment via contractors is far more common in the industrial sectors.

The comparative analysis of contract labour regulations revealed that countries such as Bangladesh, Indonesia, Pakistan, Philippines and Thailand prohibit engagement of contract workers for permanent tasks. Countries such as India, China, Malaysia and Sri Lanka permit engagement of contract workers for permanent tasks.

Though Indian regulations allow engagement of contract workers for permanent tasks, central and state governments can notify prohibition of contract workers in any industry or even in a single establishment. In addition, inspection and administrative hurdles make the enterprises taking the course of informal employment. Besides, central or state governments can also impose ban on fresh recruitment of permanent workers where contract workers are engaged. In general, industrially active countries are encouraging contract form of employment to retain talent, while contract workers are not

widely prevalent in industrially weak economies. With moderate level of industrial development and contract labour regulations, most of the employed workforce in India is in the informal sector.

Few provisions in the Act need re-consideration to bring labour market flexibility; a) the provisions related to using contract workers to undertake core activities; b) the provisions related to ban on fresh recruitment of workers in enterprises where contract workers are engaged; and c) provisions related to the responsibility of payment of wages to the workers engaged through a contractor on the principal employer. Employers circumvent such provisions of Contract Labour Act making compliance an issue. This has also been brought out by research studies by V V Giri National Labour Institute. One such research study has revealed that contract labourers were paid lower wages than their permanent counterparts.

It may be pertinent to make engagement of contract workers even in core jobs legal, and make provisions for better wages, social security system for the contract labourers to ensure employment generation with equity. India needs to encourage contract employment,

with adequate safeguard measures; including provision of social security measures which would generate formal employment in the manufacturing sector.

Industrial Disputes Act (IDA)

Termination of employment by the employer is one of the most sensitive issues in labour laws today. Many research studies, such as Rajiv Gandhi Institute for Contemporary Studies, New Delhi; Delhi School of Economics; and Planning Commission, Government of India; opined that strict regulations with regard to closure of a unit or retrenchment of workers are hampering the ability of an enterprise to respond to the changing business dynamics. Studies have also cited this situation as one of the reasons for high informal employment in India.

One of the main statute which regulates termination of employment in India is The Industrial Disputes Act, 1947. Chapter V-B of The Industrial Disputes Act, 1947 pertains to special provisions relating to lay-off, retrenchment and closure. The ID Act was amended in 1953 and introduced Chapter V-A to regulate lay-off, retrenchment, transfer and closure of industrial undertaking with less than 50 workers in the preceding calendar month. Further, in 1976, when chapter V-B was added, the

threshold limit was increased to 300 or more workmen. It was reduced to 100 by the amendment in 1982. The provisions of this Chapter are now applicable to industrial undertaking having 100 or more workmen.

It is argued that since permission is difficult to obtain for closure of unit or termination of employees, employers are reluctant to hire workers whom they cannot easily get rid off. Job security intent thus protects a tiny minority of workers in the organized sector and prevent the expansion of industrial employment that could benefit the mass of workers. Thus, with the intention of protecting the workers in the organized sector, regulations are unintentionally preventing the expansion of industrial employment that could benefit the mass of workers. Bureaucratic interference in closing down a non-viable unit could be cited as an ideal example of the Theory of Unintended Consequences.

The study compared and analysed this feature and found that as per Section 25 N (2) of the Industrial Disputes Act, 1947, an application for permission has to be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of this application has to be served simultaneously to the workmen. The Appropriate Government then hears both the sides – employer and

workmen – and based on this may grant permission for retrenchment as outlined under Section 25 N (3) of ID Act. As per Section 25 N (4), if the Government does not refuse to grant permission to the retrenchment application within 60 days from the date of application, the permission applied for, shall deemed to have been granted on the expiration of the said period of 60 days. Since retrenchment is a sensitive issue, the consent of workmen, thus, becomes an important factor for the application to get a favourable decision, though it is not mandated by the Act. Besides, enterprises in India have obligations to consider alternatives prior to considering dismissal.

In this age of liberalization, it is recommended to minimize the stand of ‘protection of labour force’, but help the firms to enhance competitiveness. To be competitive, technological innovations sometimes become a must and economic and commercial viability is a pre-requisite for job security along with flexibility in the labour market.

Another major problem with dispute settlement in India is the time taken to resolve a dispute. The process of conciliation is invariably time consuming. For example, while in India, workers can take conciliation at four levels prior to arbitration, in

Indonesia and USA, there is only one level of mediation, which helps in reducing the time to resolve disputes. Though we do not have details on dispute resolution mechanism for other countries, hearsay reports are that in most of the countries the conciliation levels are either one or two. The main aim of the IDA should not be providing plethora of approvals for a resolution in industrial disputes but to provide a single forum with powers to bring finality to a dispute within the shortest possible time.

Arbitration is probably the quickest method of labour dispute settlement in India. However, it is not used very much mainly because the parties can rarely agree on the choice of the arbitrator will influence the arbitrator. Another problem faced by industry is time consumption due to the writs and stay orders against the orders of the labour courts taken from the higher courts, i.e. High courts and Supreme Courts, adding further to the time taken for industrial dispute resolution.

One of the emerging dispute resolution mechanisms these days is the Online Dispute Resolution (ODR). Any person who is interested to get his dispute resolved on-line without approaching personally either an arbitrator or a mediator or approaching the judicial forums can use ODR. Online Dispute

| Table 2 : Labour Regulations Related to Consultations and Notifications Prior to Collective Dismissal: Comparison in Select Countries | | | | | | |
|--|---|---|---|--|--|--|
| Country | Prior consultations with trade unions required | Notification to the public administration required | Notification to the workers' representative required | Approval by public administration or judicial bodies required | Consent of workers' representatives | Employers obligations to consider alternatives to dismissal |
| ASIA | | | | | | |
| Bangladesh | No | Yes | Yes | No | No | No |
| China | Yes | Yes | Yes | No | No | Yes |
| India | Yes | Yes | Yes | Yes | Yes* | Yes |
| Indonesia | Yes | No | Yes | No | No | Yes |
| Pakistan | - | - | Yes | Yes | - | - |
| Philippines | No | Yes | No | No | No | No |
| Malaysia | No | Yes | No | No | No | No |
| Sri Lanka | No | Yes | No | Yes | No | No |
| Thailand | No | Yes | No | No | No | No |
| Vietnam | Yes | Yes | Yes | No | Yes | Yes |
| EUROPE | | | | | | |
| France | Yes | Yes | Yes | No | No | Yes |
| Germany | Yes | Yes | Yes | No | No | Yes |
| Russia | Yes | Yes | Yes | No | No | Yes |
| UK | Yes | Yes | Yes | No | No | Yes |
| LATIN AMERICA | | | | | | |
| Brazil | - | - | - | - | - | - |
| NORTH AMERICA | | | | | | |
| USA | No | Yes | Yes | No | No | No |
| AFRICA | | | | | | |
| Kenya | - | - | - | - | - | - |
| South Africa | Yes | No | Yes | No | No | Yes |
| Tanzania | Yes | No | Yes | No | No | Yes |
| Uganda | No | Yes | Yes | No | No | No |

Source: International Labour Organisation; Industrial Disputes Act for India (1947) for India; Exim Research

* Section 25N of ID Act states that the appropriate Government or the Specified Authority may grant or refuse permission after giving a reasonable opportunity of being heard to the employer, the workmen, and the persons interested in such retrenchment, which implies that without the consent of the Workers' Union it would be difficult to get the permission granted.

Resolution is a branch of dispute resolution, which uses technology to facilitate the resolution of dispute between parties. It primarily involves negotiation, mediation or arbitration or a combination of all three. In this respect, it is often seen as being the online equivalent of alternative dispute resolution. However, ODR is also enhancing these traditional means of resolving disputes by applying innovative techniques and online technologies to the process.

Many countries have started following ODR. One of the most technologically impressive ODR websites is the Philippine Online Dispute Resolution service. This ODR service suite can be accessed via instant messages over cell phones for features such as notification and case status checker (with automated negotiation over cell phones). One of the newest and most ambitious private ODR providers in Malaysia is ODRWorld, and in China, Beijing Deofar Consulting Ltd. launched the China Online Dispute Resolution Center (ChinaODR). Online dispute resolution is simple, speedy and provides an easy and expeditious way of resolving problems for parties which are in different parts of the world. Online Dispute Resolution (ODR) in India is in its infancy stage and it is gaining

prominence day by day. With the enactment of Information Technology Act, 2000 in India, e-commerce and e-governance have been given a formal and legal recognition in India. Also, Delhi High Court has e- courts but need to be utilized properly, to have a successful arbitration system.

Simplification of Labour Legislations

Since the beginning of the reforms in the early 1990s, there have been demands from industry for reforms in the stringent labour regulatory framework. Foreign investors have also joined the demand for more relaxation in labour laws to make investment conditions more conducive. It is viewed by both Indian and foreign investors that the presence of a large body of legislations complicates the normal functioning of enterprises. There is an urgent need to simplify, rationalize, and consolidate the complex and ambiguous extant pieces of labour legislations into a comprehensive but simple code that allows for labour adjustment with adequate social and income security for the workers, after wide consultation among employers, trade unions, and labour law experts. According to the Working Group on Labour Laws & Other Regulations

for the Twelfth Five Year Plan (2012-17) all the major labour laws should be clubbed into major cognate groups e.g. Laws governing industrial relations should come under one law i.e. Industrial Relations Act; laws governing wages should be consolidated into one Act which is the Payment of Wages Act and so on. Simplification and rationalization of labour laws will require examination of labour laws individually. In the process, provisions which have outlived their existence may be deleted. If necessary, certain laws may be considered for being repealed.

Common Definitions

Having common definitions is a prerequisite for codification/consolidation of labour laws. At present different terminologies and definitions used in various labour laws create confusion and complications in effective compliance and enforcement. The Working Group on Labour Laws & Other Regulations for the Twelfth Five Year Plan (2012-17) felt that with consolidation of labour laws and with harmonization of key definitions in select cognate groups, the disputes regarding applicability of Acts to separate classes of establishments and different categories of workers

may reduce. This should also result in better compliance, reduction in cost of administration of the laws and improved implementation with lesser registers to be maintained and lesser returns to be filed. In the long run, it may even have a positive impact on expansion of regular employment with simplification of rules and procedures under various legislations.

IN SUM

While the labour regulations in India are made with the objective of protecting the interests of employees, they give a sense of neglecting the interests of employers who are investors. To cite an example, no employer would be interested in laying-off productive employees in a profitably running business. The employers, in such a situation, would like to adopt competitive practices to retain talent. Our analyses, thus, reveal that labour related statutes in India are claimed to be often well above the spirit with which the statutes were enacted.

While there could be several other reasons, such as infrastructural bottlenecks, low ranking in doing business index, inflexible labour market regulations also are believed to

be hindering large-scale investments, technology absorption, productivity enhancement and high employment growth in Indian manufacturing. Inflexible labour market could also be one of the reasons for the share of manufacturing in Gross Domestic Capital Formation (GDCF) hovering around 30% since 1970s, and growth in share of services sector in GDCF from 39% in 1970 to 51% in 2010.

This fact has been realized by some of the Indian states, which have made the labour-related administrative regulations investor-friendly, as has been reported by TeamLease (a HR Consultancy & Services company). Such states have also progressed well in crucial economic parameters. Based on the ranking of States by TeamLease and the analysis of select parameters, it could be inferred that

States like Maharashtra, Andhra Pradesh, Karnataka, Gujarat, Madhya Pradesh and Tamil Nadu scored well in the labour law reform index, as also progressed in industrial development, as compared to States like Uttar Pradesh, Assam, Bihar, Jammu & Kashmir and West Bengal, which are ranked low in the index.

With favourable demographic dividend, India needs to align its policies to encourage employment generation, and thereby improve quality of workforce and retain talent. If done so, productivity in industrial enterprises could be well-augmented. Indian manufacturing sector would be in a position to attract large-scale investments, contributing to industrialization and economic growth of the country.

1. INTRODUCTION

India's stated objectives of economic policy planning are achievement of high rates of growth of the economy, besides achieving sustainable improvement in the standards of living of people. A rapid growth in employment opportunities for all sections of the society is important to achieve these objectives. However, despite impressive economic growth over the years, generation of employment has not been at a desired level of proportion in comparison to the level of growth achieved. The situation on employment gets worsened with vagaries of global economic crisis with growing integration of our economy with the world.

According to a research paper (2006) by Dr. C Rangarajan (Chairman, Prime Ministers Economic Advisory Council), employment elasticity of output has come down from 0.53% (during the period 1977-78 to 1983), to 0.41% (during the period 1983 to 1993-94) and further to 0.15% (during the period 1993-94 to 1999-2000). A recent report by Labour Bureau indicates that employment elasticity has come down to as low as 0.01%

during the period 2004-05 to 2009-10. It implies that with every percentage point of growth in GDP, employment increases by just one basis point (0.01%). While it could be argued that these data are based on surveys, and adopting different sampling methods, and may not reflect the reality, it should be understood that in general growth is not accompanied by employment generation.

There have been concerns about decline in India's exports and growing imports, leading to high trade deficit, and the resultant high current account deficit. One of the reasons for growing imports has been the low level of capacities in certain sectors of Indian manufacturing. For example, import of capital goods, electronics, transport equipment, chemicals and products, and metals and products, add up to US\$ 130 bn, which is nearly two-thirds of India's total trade deficit, or one-and-half times of India's current account deficit. Capacity additions in these sectors are not in proportion to the growth in demand.

On the export front, India's exports are majorly low and medium-tech

oriented, and only a small portion is hi-tech oriented. According to industry sources, our peer countries like China, Malaysia, Singapore and Thailand, enjoy either cost advantage (due to the large scale of manufacturing), or technology advantage (due to hi-tech manufacturing) in select product groups. In contrast, a majority of players in the manufacturing sector in India are largely MSMEs. This fact has also been articulated in the Economic Survey (2012-13) citing that Indian manufacturing sector has a presence of large number of small-scale units in most of the manufacturing sub-segments. The low level of large-scale investments in Indian manufacturing is one of the prime reasons for the sector's share remaining stagnant at 15% to 16% of GDP for several decades.

The ceiling on investment for SMEs has also been a major constraining factor in capacity additions in the manufacturing SMEs, and the resultant low-technology orientation. Both the above-mentioned constraints – small size and low technology orientation – are revealed to be adversely affecting the ability of the firms to respond to the challenges, thereby pulling down the relative competitiveness of Indian manufacturing, as compared to other countries.

Our analysis of comparison of factory employment in select countries using

UNIDO data revealed that average number of workers in an Indian firm is low at 75, in comparison to China's 191 and Indonesia's 178 (**Table 3**). Per unit employment in India is low despite the fact that India's manufacturing base is largely labour intensive. While this data speaks about the situation in organized sector, average number of workers in unorganized enterprises is revealed to be at much lower level. While the average number of factory employment in India at 75 correlates to the applicability of Industrial Disputes (ID) Act (applicable to units employing over 100), large number of enterprises are estimated to be employing less than 10 workers, even in labour intensive manufacturing (Economic Survey 2013), which remains unexplained. Low level of average factory employment in developed economies such as Germany, UK, USA and France is self-indicative of the level of technology intensiveness in these economies, which is also in contrast to the stage of industrial development in India.

Research studies on this subject have argued that in a competitive world with market fluctuations, firms are required to quickly change the size, composition, and at times even the location of the business. Further, rising competitiveness also demands for wages associated with productivity or profitability. In the absence of labour market flexibility, firms operating in a competitive environment are likely to adopt alternative routes to mitigate this challenge. In general, while the

| Table 3: Factory Employment in Various Countries | | | | |
|--|-----------------------------|---------------------|--------------------------|--|
| Countries | No of Employees (thousands) | Per unit employment | Labour Force (thousands) | No. of employees in organized manufacturing as % of labour force |
| China | 77195 | 190.5 | 795546 | 9.70 |
| Indonesia | 4345.2 | 177.6 | 118023 | 3.68 |
| Tanzania | 107.1 | 157.5 | 21520 | 0.49 |
| Malaysia* | 2568.7 | 79.0 | 11549 | 22.24 |
| India | 10847.9 | 74.6 | 470737 | 2.30 |
| Russia* | 8118.3 | 44.4 | 76162 | 10.65 |
| Germany* | 6938.6 | 35.5 | 42698 | 16.25 |
| USA* | 12990 | 30.2 | 159266 | 8.15 |
| UK* | 2726 | 20.7 | 32066 | 8.50 |
| France* | 3082.2 | 14.6 | 29000 | 10.65 |

Source: UNIDO International Yearbook on Industrial Statistics 2012

* Note: Per unit factory employment is low for these countries due to technology orientation of manufacturing.

firms in several developed countries have taken the route of mechanization to reduce labour dependency, firms in developing economies adopted the practice of informal employment to counter the labour market flexibility, and firms in some countries are adopting both the strategies.

One of the feature of the Indian manufacturing sector is that only a small share of employment in manufacturing is in organized manufacturing (the unorganized manufacturing sector accounted for almost 70 per cent of total manufacturing employment in 2009-10); and employment is heavily concentrated in small firms. The degree of concentration is much higher than in other Asian countries.

For example, the share of micro and small enterprises in manufacturing employment is 84 per cent for India versus 27.5 per cent for Malaysia and 24.8 per cent for China. Economic Survey 2012-13 also has opined that labour laws may be one of the factors responsible for the skewed distribution of size in Indian industries.

The Working Group on Labour Laws for the Twelfth Five Year Plan (2012-2017) has highlighted that about 96% of the workforce being employed were in the informal sector, which means that just about 17 million persons were engaged in formal sector, of which about 12 million workers were engaged in factories. Most of the informal labourers were in agriculture, construction, and services sector.

Box: 1**Research Report by International Organisations on Inflexible Labour Market**

A WTO Report on Globalisation and Informal Jobs in Developing Countries (2009), has opined that strong growth in world economy has not, so far, led to a corresponding improvement in working conditions and living standards for many. Though the poverty in absolute terms has declined across the countries, labour market conditions and the quality of employment growth have not improved to the same proportion. The Report further surmises that in many developing economies job creation has mainly taken place in the informal economy, which is characterised by less job security, low incomes, limited or no social benefits and fewer participation in skill development. Such vulnerabilities in labour market have been preventing developing countries from fully benefitting from the dynamics of globalization.

Extent of Informality in Employment – Comparison of Select Countries

| Country | Informality ³ (%) | Reference Year |
|--------------|------------------------------|----------------|
| India | 93.2 | 2004 |
| Sri Lanka | 88.3 | 2003 |
| China | 85.9 | 2003 |
| Tanzania | 76.8 | 1995 |
| Thailand | 72.7 | 2001 |
| Indonesia | 70.8 | 2003 |
| Pakistan | 63.8 | 2000 |
| Kenya | 58.1 | 1997 |
| Brazil | 54.2 | 2006 |
| South Africa | 25.5 | 2006 |

Source: International Institute of Labour Studies Database

The choice of whether to employ formal workers or informal workers rests with the employing firms. In general, economic units weigh costs and benefits that formalization entails and consider their internal and resource constraints. Regulations, particularly labour regulations, entail substantial compliance costs, and thus many firms in developing economies employ informal workers, even though it is partially detrimental to firm level productivity.

According to a Report by International Labour Organisation (ILO), 'Global Employment Trends 2012', the number of workers in vulnerable employment globally in 2011 is estimated at 1.52 billion, an increase of 136 million since 2000. According to the Report, there is wide regional variation with reduction in vulnerable employment in East Asia region of 40 million since 2007, as compared to increases of 22 million in Sub-Saharan Africa, 12 million in South Asia, and 5 million in Latin America. India has been main driver of increase in vulnerable employment in South Asia.

³Informality refers to all remunerative work – both self employment and wage employment – that is not recognized, regulated or protected by existing legal or regulatory frameworks and non-remunerative work undertaken in an income-producing enterprise (ILO and WTO 2009). Depicted as percent to total employment.

The Global Competitiveness Report 2012-13 of the World Economic Forum (WEF) ranks India at 82nd position as regards labour market efficiency. The respondents of WEF (World Economic Forum) have cited restrictive labour regulations as one of the major factors hindering the business environment. Within the labour market efficiency, India scores relatively low in parameters such as flexibility of wage determination, hiring and firing practices, redundancy costs, and women ratio to men in labour force.

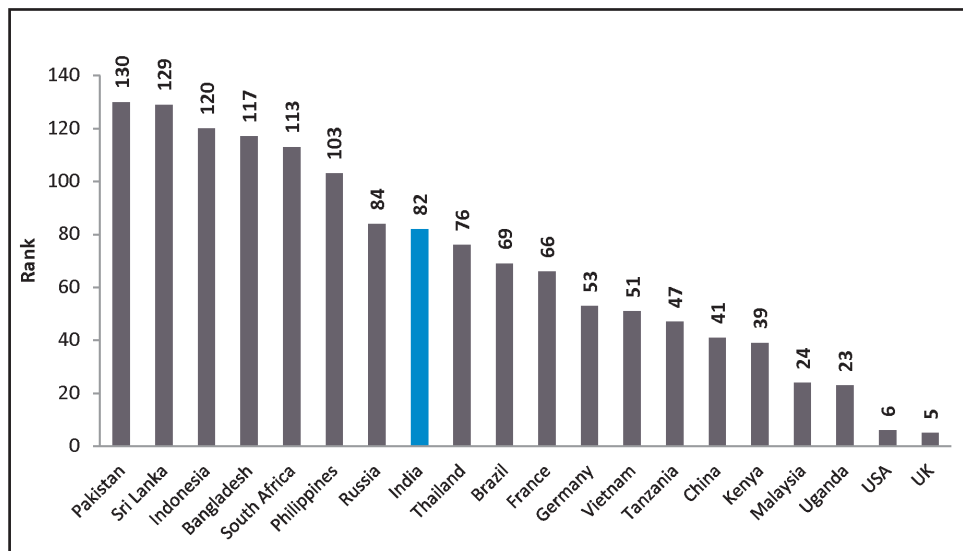
Industry associations and academia have been harping on inflexible labour market, especially, outdated labour laws as principal reasons for declining employment elasticity in

India. Three main labour laws that are being debated with regard to India are Industrial Disputes Act (1947), the Contract Labour Act (1970) and the Trade Unions Act (1926).

As regards the Industrial Disputes Act (1947), Chapter V-B has been the point of contention by the industry associations. This provision made compulsory prior approval of the appropriate government necessary in the case of lay-offs, retrenchment and closure in industrial establishments employing more than 100 workers.

Another important factor causing labour market inflexibility in India is the Contract Labour (Regulation and Prohibition) Act of 1970. The Act regulates for the employment

Exhibit: 2
Labour Market Efficiency Comparisons



Source: Global Competitiveness Report 2012-13

and abolition of contract labour in establishments employing 20 workmen as contract labour on any day of preceding 12 months.

cited as real deterrent to business by some analysts, it is argued that the Act is causing loss of man-days due to strikes and lockouts.

The third factor, the Trade Unions Act (1926), allows workers to form union and take part in organized negotiations. Though this Act is not

Considering these three factors, this Study aims to compare the labour laws in select countries under the following different parameters:

| The countries analysed include: | | | | |
|--|---|---------------|---------------|--|
| Asia | Europe | Latin America | North America | Africa |
| Bangladesh, China, India, Indonesia, Malaysia, Pakistan, Philippines, Sri Lanka, Thailand, and Vietnam | France, Germany, Russia, and UK | Brazil | USA | Kenya, South Africa, Tanzania and Uganda |
| The parameters studied were: | | | | |
| Broad headings | Parameters for comparison | | | |
| Collective Bargaining and Settlement of Industrial Disputes | <ul style="list-style-type: none"> • <i>Regulations on collective bargaining and settlement of industrial disputes</i> | | | |
| Conditions of Employment: Contract | <ul style="list-style-type: none"> • <i>Fixed-term contracts prohibited for permanent tasks</i> • <i>Maximum length of a single fixed-term contract (months)</i> • <i>Maximum length of fixed-term contracts, including renewals (months)</i> | | | |
| Employment Security: Termination | <ul style="list-style-type: none"> • <i>Termination of employment not at the initiative of the employer</i> • <i>Termination of employee by the employer</i> • <i>Notice and prior procedural safeguards</i> • <i>Severance pay</i> • <i>Collective dismissals</i> | | | |
| Comparisons on Conditions of Work Hours/Leave | <ul style="list-style-type: none"> • <i>Standard workday in manufacturing (hours)</i> • <i>Minimum daily rest required by law (hours)</i> • <i>Maximum working days per week</i> • <i>Maximum overtime limit</i> • <i>Premium for overtime work over and above the normal pay</i> • <i>Paid annual leaves for employees</i> | | | |

2. COLLECTIVE BARGAINING AND SETTLEMENT OF INDUSTRIAL DISPUTES

Industrial relations has become one of the most delicate and complex problems of modern industrial society. Industrial progress is impossible without the cooperation of labourers, and harmonious relationships. Therefore, it is in the interest of everyone concerned to create and maintain good relations between employees (labour) and employers (management). The relationships which arise in and out of the workplace generally include the relationships among individual workers, the relationships between workers and their employer, the relationships among employers, the relationships employers and workers have with the organizations formed to promote their respective interests, and the relations among those organizations, at all levels. Industrial relations also include the processes through which these relationships are expressed (such as, collective bargaining, workers' participation in decision-making, and grievance and dispute settlement), and the management of conflict among employers, workers and trade unions, when it arises.

The conflict between the management and the employee is inherent in an

industrial society. One argues for more investment and profits while the other argues for better standard of living. These two conflicting interests can be adjusted temporarily through the principle of give and take. The principle of give and take has been infused in the principle of collective bargaining.

Collective bargaining is one of the methods wherein the employer and the employees can settle their disputes. This method of settling disputes was adopted with the emergence and stabilization of the trade union Government. Before the adoption of the collective bargaining the labour was at a great disadvantage in obtaining reasonable terms for contract of service from its employer. With the development of the trade unions in the country and the collective bargaining becoming the rule it was equally found by the employers that instead of dealing with individual workmen it is convenient and necessary to deal with the representatives of the workmen, not only for the making or modification of contracts but also in the matter of taking disciplinary action against the workmen and regarding other

disputes. So, collective bargaining has come to stay having regard to modern conditions of the society where capital and labour have organized themselves into groups for the purpose of settling their disputes.

ASIA

Bangladesh

The Industrial Relations Ordinance of 1969, including the Industrial Relations Rules of 1977 provides for formation of trade unions and regulation of relations between employers and workers. This Ordinance provides for various ways of settlement of industrial disputes which have been defined in the Act of 1965. Since public interest is involved in settlement of industrial dispute, adjudication as such through labour courts bears much importance. The labour courts play an important role for maintenance of industrial peace through settlement of issues on labour management problems, and hence they enjoy the confidence of both the employers and the workers. The Industrial Relations Ordinance, envisaged constitution of labour courts with a chairman and two members to advise him, one to represent the employers and the other to the workers. The labour court acts as civil court as well as criminal court and tries offences punishable under labour laws. The Industrial Relations Ordinance of 1969 also provided for establishment of a Labour Appellate

Tribunal for entertaining appeals against awards of labour courts on industrial disputes. The Employment of Labour (Standing Orders) Act, 1965 provided for a grievance procedure for redress of individual grievance of any particular worker in respect of their employment or conditions of work or infringement thereof. This widened the scope of the Labour Court and its jurisdiction to look into the grievances of individual workers in respect of their rights arising out of any matter covered by the said Act. This covers cases of illegal dismissal, discharge, lay off, retrenchment or termination of service by victimization for trade union activities or infringement of their rights covered by the said Act, and the Court as such was vested with jurisdiction to provide effective remedy to the workers for any wrong done to them by the employer.

China

The regulations in relation to collective bargaining and industrial relations are established in accordance with the Labour Law of the People's Republic of China and the Trade Union Law of the People's Republic of China, and their purpose is to protect the legal rights and interests of the employees and the employing entity by regulating the acts of collective negotiation and of concluding collective contracts. These regulations are applicable to all enterprises and institutions within the territory of the People's Republic of

China. Collective contract refers to a written agreement concluded through collective negotiation between the employer and its employees in conformity with the stipulations of the relevant laws, regulations and rules on the subjects of wage, hours of work, rests and holidays, labour safety and health, vocational training, insurance and welfare etc. The conclusion of collective contracts or subject-specific collective contracts between the employing entity and its employees, and the making of any decision on the relevant matters, should be done through collective negotiations. The principal form of collective negotiation is a negotiating conference. The labour protection administrations at the county level and above shall monitor the collective negotiation, conclusion, and performance of collective contracts between the employing entities and their employees within their respective jurisdiction. They shall also be responsible for reviewing the relevant collective contracts and subject-specific collective contracts. Also in China there is a monopoly of workers' representation by the official national centres of trade unions, the All China Federation of Trade Unions (ACFTU). The trial of labour dispute cases is done by the People's Court of China on issues such as: where an employee requires his employer to compensate him for losses, any dispute arising from the self-restructuring of an enterprise, where

an employer fails to obtain a business license, and when there are issues relating to payment of compensation, payment of pension etc.

India

The Industrial Disputes Act of 1947 was enacted with the specific purpose of settling industrial disputes and to secure industrial peace and harmony by providing the machinery and procedure for the investigation and settlement of such disputes. It seeks to regulate the employer-employee relationship and streamlines a network of machinery and authorities stipulating their powers and procedures. The Appropriate Government i.e. Central Government or State Government as the case may be under the Industrial Disputes Act is a major cornerstone in the process of Dispute Resolution. It has been given power to refer disputes either to Non-Adjudicatory or Adjudicatory modes of dispute settlement under the Industrial Disputes Act. 'Labour Courts', 'Industrial Tribunals' and 'National Tribunals' are the compulsory adjudication authorities and the non-adjudicatory authorities are 'Works Committees', 'Conciliation Officer', 'Board of Conciliation' and 'Court of Inquiry' apart from 'Voluntary Arbitration' (Exhibit: 3 and Box: 2). After the procedures are followed with adjudicatory authorities or non-adjudicatory authorities, the case

can go to the High Court or Supreme Court.

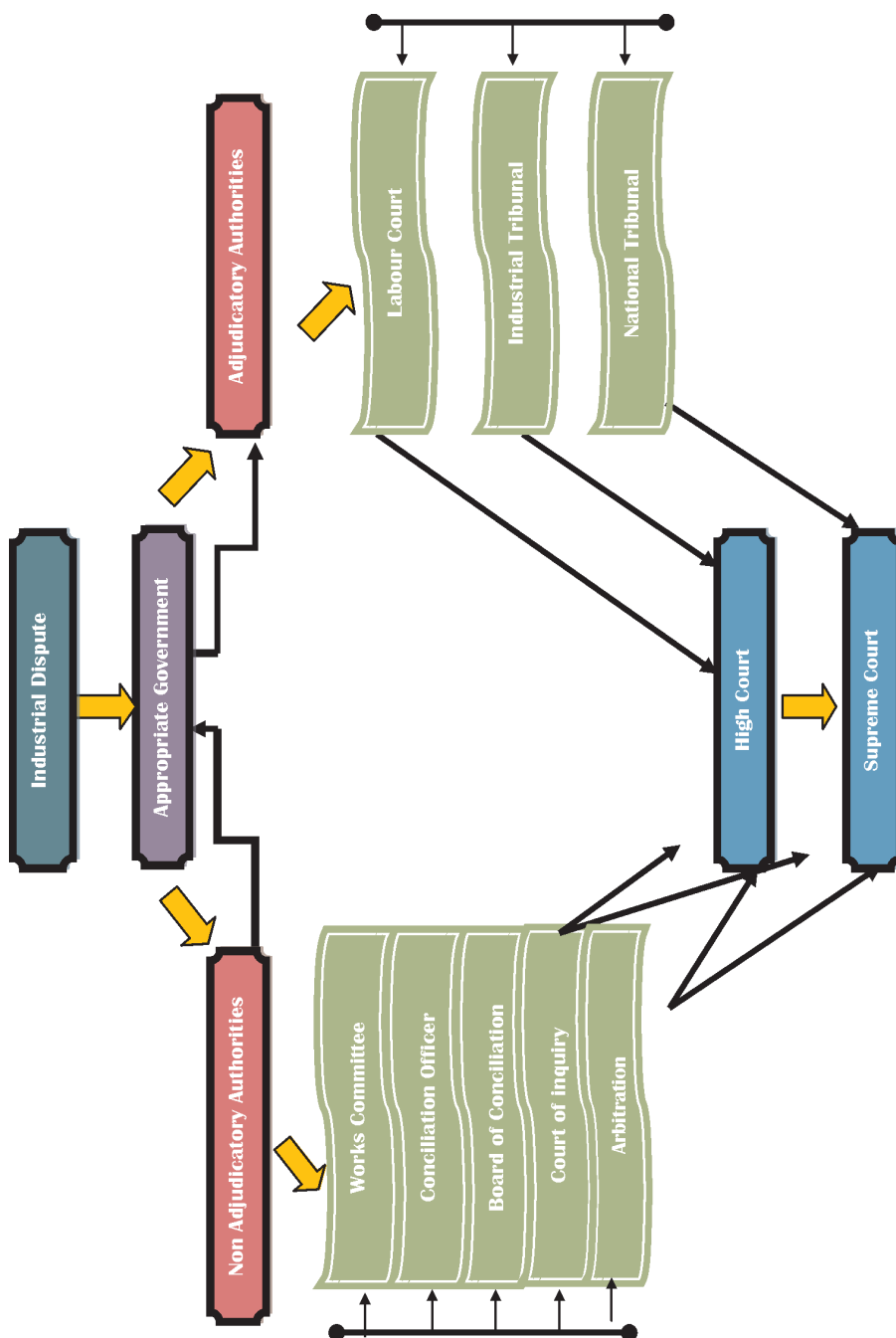
The principal techniques of dispute settlement provided in the Industrial Disputes Act are collective bargaining, mediation and conciliation, investigation, arbitration and adjudication.

- **Collective bargaining:** is a technique by which disputes of employment are resolved amicably, peacefully and voluntarily by settlement between labour unions and managements. The method of collective bargaining in resolving the industrial dispute, while maintaining industrial peace has been recognized as the bed rock of the Act. Under the provisions of the Act, the settlement arrived at by the process of collective bargaining with the employer has been given a statutory recognition under Section 18 of the Act.
- **Mediation and Conciliation:** Under the Act, effective mediation and conciliation machinery has been provided which can take cognizance of the existing as well as apprehended dispute, either on its own or on being approached by either of the parties to the dispute. Conciliation of disputes is compulsory in all public utility services but non-mandatory in non-public utility services.
- **Investigation:** Section 6 of the Act empowers the government to constitute a court of inquiry, for inquiring into any matter pertaining to an industrial dispute. The procedure of the court of inquiry has also been prescribed by Section 11. While the report of the court is not binding on the parties, many times it paves the way for an agreement.
- **Arbitration:** Voluntary arbitration is a part of the infrastructure of resolving the industrial dispute in the industrial adjudication. Section 10 of the Act provides for the provision for resolving the industrial dispute by way of arbitration, which leads to a final and binding award.
- **Adjudication:** means a mandatory settlement of industrial disputes by labour courts, Industrial Tribunals or National Tribunals under the Act or by any other corresponding authorities under the analogous state statutes. By and large, the ultimate remedy of unsettled dispute is by way of reference by the appropriate government to the adjudicatory machinery for adjudication. The adjudicatory authority resolves the industrial dispute referred to it by passing an award, which is binding on the parties to such reference. There is no provision for appeal against

Box: 2 Dispute Resolution in India

1. *Works Committee:* A Works Committee is a unit-level committee consisting of representatives of employees and the management. Works Committees is a purely consultative body whose recommendations and suggestions are not binding. No real powers are thus envisaged through the Industrial Disputes Act. The Works Committee may be considered as the first step in the direction of labour participation in industrial management. With good will, it should be possible for the Committee to foster mutual understanding, to prevent occasions for friction, and to iron out differences if and when they arise.
2. *Conciliation Officer:* The Appropriate Government appoints 'Conciliation Officers' either permanently or temporarily. They facilitate or/and strive to find solutions by bringing the disputing parties together, in an impartial way. However, they have no powers to decide.
3. *Board of Conciliation:* Board of Conciliation' is another machinery for conciliation involving third party intervention, empowered under section. The powers of the board are broader and largely similar to the ordinary courts and the board must endeavour to bring about a settlement of the dispute.
4. *Court of Enquiry:* A Court of Enquiry is constituted to enquire into and report to the Government on any matter connected with or relevant to an industrial dispute. A Court of Enquiry also has no power to impose any settlement upon the parties.
5. *Labour Court, Industrial Tribunal and National Tribunal:* A Labour Court, Industrial Tribunal and National Tribunal are regular adjudicating authorities entitled to summon parties, to take evidence and to make a binding decision on the parties to a dispute. The only distinction between a Labour Court and an Industrial Tribunal is that, while a Tribunal is competent to adjudicate and decide any industrial dispute, a Labour Court has jurisdiction only to adjudicate disputes relating to certain matters enumerated in the second schedule to the Industrial Disputes Act, such as dismissal, discharge, etc. A National Tribunal is constituted to adjudicate industrial disputes of national importance, or which are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such dispute.
6. *Arbitrator:* Section 10A of the Industrial Disputes Act provides for the arbitration of industrial disputes. Under this Section, the parties to a dispute may, in writing, agree to refer the matter to the decision of an arbitrator or arbitrators to be specified in the agreement. The arbitration agreement has to be drawn up in the prescribed manner, and copies thereof have to be forwarded to the Government, the Labour Commissioner, and the Conciliation Officer. The Government will then publish the agreement in the Gazette within one month of its receipt. If the Government is satisfied that the persons making the reference for arbitration represent the majority of each party, it may issue a suitable notification in the Gazette within the time limit specified above, and thereupon the employers and workmen who are not parties to the arbitration agreement, but nevertheless concerned in the dispute, shall have the opportunity of presenting their case before the arbitrator. The arbitrator shall investigate the dispute and submit the award to the Government. It may be noted that the parties to a dispute are not bound to refer the dispute for arbitration nor can they be forced or compelled to do so. It is absolutely voluntary.

Exhibit: 3 Dispute Resolution Process in India



such awards and the same can only be challenged by way of writ under Articles 226 and 227 of the Constitution of India before the concerned High Court or before the Supreme Court by way of appeal under special leave under Article 136 of the Constitution of India.

Also, the employer in relation to every industrial establishment in which fifty or more workmen are employed or have been employed on any day in the preceding twelve months, shall provide for, in accordance with the rules under this Act, a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment. The Grievance Redressal Committee consists of equal number of members from the employer and the workmen. The chairperson of the Grievance Redressal Committee is selected from the employer and from among the workmen alternatively on rotation basis every year. The Grievance Redressal Committee completes its proceedings within thirty days on receipt of a written application by or on behalf of the aggrieved party. Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal is executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court.

Indonesia

Every worker/labourer has right to form and become a member of trade union/labour union. A trade union is formed by at least 10 workers/labourers. A federation of trade union/labour union is formed by at least 5 trade unions/labour unions. A Confederation of trade unions/labour unions is formed by at least 3 federations of trade unions/labour unions in Indonesia. A worker/labourer cannot be prevented from or forced from forming or not forming a trade union/labour union, becoming union official or not becoming union official, becoming union member or not becoming union member and or carrying out or not carrying out trade/labour union activities. The employer must provide opportunity to the officials and members of a trade/labour union to carry out trade/labour union activities during working hours that are agreed upon by both parties and or arranged in the collective labour agreement. In case of dispute settlement, there are many ways to solve it, such as bipartite settlement; litigation process through Special Court in General Court, and Supreme Court; and adjudication process that is through arbitration. Special Court consists of Ad hoc Judge from representative of Employers' organization and Trade Unions, as well as a career judge.

Malaysia

The Yang di-Pertuan Agong (Head of the state of Malaysia) appoints a Director General of Trade Unions who shall have the general supervision, direction and control of all matters relating to trade unions throughout Malaysia. Application for registration of any association, combination or society as a trade union is made to the Director General in the prescribed form, and shall be signed by at least seven members of the union. Unless it is registered, a trade union will not be able to enjoy any of the rights, immunities or privileges of a registered trade union. Every dispute is referred to the Director General and the Director General of Trade Unions shall either by himself or by any Deputy Director General, or any Director, or any Assistant Director, hear and determine any dispute, and shall have powers to order the expenses of determining the dispute to be paid either out of the funds of the union, or by such parties to the dispute as he may think fit, and his determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the Rules of the union. Where no decision is made on a dispute within forty days after application to the union for a reference under its rules, the member or person aggrieved is allowed to a Sessions Court and the Sessions

Court may hear and determine the matter in dispute.

Pakistan

A worker may bring his grievance to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises. Where a worker himself brings the grievance to the notice of the employer, the employer will within fifteen days communicate his decision in writing to the worker. Where a worker brings the grievance to the notice of the employer through a shop steward or collective bargaining agent, the employer will within seven days communicate his decision in writing to the shop steward or collective bargaining agent. If the worker is unsatisfied with the decision, then the next level is taking the grievance to the Commission, and the Commission will give its decision within seven days. There shall also be a Tripartite Council for review of grievances of workers in the Islamabad Capital Territory comprising of not less than three members each of the workers, employers and Government. If at any time an employer or collective bargaining agent finds that an industrial dispute has arisen or is likely to arise, then the collective bargaining agent may communicate his views to the Works Council. On

receipt of communication, the Works Council shall try to settle the dispute by bilateral negotiations within ten days, and if the parties reach a settlement, a memorandum of settlement shall be recorded in writing and signed by both the parties. In case a settlement is not reached, then a strike or lockout notice may be given. During this period a Conciliator maybe appointed, who shall within fifteen days call a meeting for settlement of dispute. In case the dispute is still not settled, Conciliator shall try settling it through Arbitrator and the award given by him will be valid for two years. In case of still no settlement, it may proceed to labour court.

Philippines

A federation, national union or industry or trade union center or an independent union will acquire legal personality and will be entitled to the rights and privileges granted by law to legitimate labour organizations upon issuance of the certificate of registration. Managerial employees are not eligible to join, assist or form any labour organisation. Supervisory employees are not eligible for membership in the collective

bargaining unit of the rank-and-file employees, but may join or assist or form separate collective bargaining units and/or legitimate labour organizations of their own. The rank and file union and the supervisors union operating within the same establishment may join the same federation or national union. Under collective bargaining, when a party desires to negotiate an agreement, it has to serve a written notice upon the other party with a statement of its proposals. The other party has to make a reply not later than ten calendar days from receipt of such notice and if differences arise on the basis of such notice and reply, either party may request for a conference which will begin not later than ten calendar days from the date of request. If the dispute is not settled, the Board shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue subpoenas⁴ requiring the attendance of the parties to such meetings. It will be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call. The Board has to exert all efforts to settle disputes

⁴A subpoena is a writ by a government agency, most often a court that has authority to compel testimony by a witness or production of evidence under a penalty for failure. There are two common types of subpoena:

- Subpoena ad testificandum orders a person to testify before the ordering authority or face punishment. The subpoena can also request the testimony to be given through phone or in person.
- Subpoena duces tecum orders a person or organization to bring physical evidence before the ordering authority or face punishment.

amicably and encourage the parties to submit their case to a voluntary arbitrator.

Sri Lanka

Every employee has right to form and become a member of trade union. Collective agreements in Sri Lanka relates to an agreement between an employer and employee, and any employee or any trade union, and also relates to the terms and conditions of employment of any employee, or to the privileges, rights or duties of any employer or employers, or any workmen or any trade union or trade unions consisting of workmen, or to the manner of settlement of any industrial dispute. The industrial disputes are settled by the Commissioner (labour officer) wherein the Commissioner himself endeavours to settle an industrial dispute by conciliation or an industrial dispute is referred to an authorized officer for settlement. It shall also be the duty of the Commissioner or that officer to endeavour to effect a settlement after investigation as he may consider necessary of the matters in dispute; and he can take all such steps as he may deem fit for inducing the parties to the dispute to come to a fair and amicable settlement of the dispute.

Thailand

In Thailand, industrial disputes are settled by Labour Courts. The central

labour court is established in Bangkok Metropolis and has jurisdiction throughout Bangkok Metropolis, Samutprakarn, Samutsakhon, Nakhon Pathom, Nonthaburi and Pathumthai provinces. A regional labour court can also be established and the inaugurated date has to be proclaimed by Royal Decree which will also specify its territorial jurisdiction and its location. Labour court has jurisdiction in matters such as: disputes concerning the rights and duties under an employment agreement; disputes concerning the rights and duties under the law relating to labour protection; cases where rights must be exercised through court according to the law relating to labour protection or labour relations; cases of appeal against a decision of the competent official under the law relating to labour protection or of labour relations committee or the Minister under the law relating to labour relations; cases arising from the ground of wrongful acts between the employers and the employees in connection with a labour dispute or in connection with the performance of work under an employment agreement; and labour disputes which the Minister of Interior requests the labour court to decide in accordance with the law relating to labour relations. Collective bargaining in Thailand is not well developed. Most collective bargaining in Thailand occurs at the workplace level instead of at the national or industry level, and the collective bargaining

issues are mostly related to wages, salaries, wage or salary increases, and bonuses. Only the issue of the minimum wage concerns collective bargaining at the national level (or the National Tripartite Wage Committee). In companies where there are established collective bargaining relationships, the agreements are skeletal.

Vietnam

In order to represent and defend the rights and interests of workers and their labour collectives, the Federation of Labour at the provincial level can set up provisional trade union organizations in every enterprise. The scope of activities of the provisional trade union organization is determined by the Government in conjunction with the Vietnam General Confederation of Labour. The Vietnam General Confederation of Labour and trade unions at various levels takes part, together with the competent authorities and representatives of employers, in discussing and resolving labour relations issues, and has the right to establish employment service agencies, vocational training establishments, mutual aid funds, legal consultancy offices and other welfare services for workers, and shall have other rights provided for in the Trade Unions Law. In case of collective agreement, it is negotiated and concluded by the representative of the labour union and the employer

in accordance with the principles of voluntariness, equality and openness to the public. Each party has the right to make a request for a collective agreement and to propose its subject matter. No later than 20 days after receiving the request, the recipient party must agree to bargain and agree on a date for the commencement of bargaining. A collective agreement may be concluded for a period of one to three years. Prior to expiration of the collective agreement, both parties have to bargain for the extension of the duration of the agreement or for a new agreement. Labour disputes shall include individual labour disputes between individual workers and the employer, and collective labour disputes between the workers' collective and the employer. Labour disputes shall be settled through direct negotiation and arrangement between the two parties at the place where the dispute arises; conciliation and arbitration on the basis of mutual respect of rights and interests, respect of the general interest of society and compliance with the law; examination and settlement of disputes publicly, objectively, in a timely manner, rapidly, and in conformity with the law; ensuring the participation of representatives of trade unions and of employers in the dispute settlement proceedings; the Labour Conciliation Council of the enterprise, or the Labour Conciliator of the local labour office in wards, districts and towns and cities of provinces; and in the event

that there is no Labour Conciliation Council the People's Court have the competence to examine and settle individual labour disputes.

EUROPE

France

In France, resolution through courts, mediation, arbitration and out of court settlements are the main dispute resolution methods. Workplace disputes are mostly settled through the court process. The judicial procedure applicable to workplace disputes is simple and inexpensive generally, because parties do not need to be represented by a lawyer before the Labour Court – they are entitled to appear in person and employees may be assisted by a union representative.

Mediation is always voluntary. Two different types of mediation are used. One is mediation within the framework of judicial proceedings under which a judge, with prior consent of the parties, appoints a mediator who will hear the parties and help them resolve the dispute. The main characteristics of this mediation are: the mediator is an impartial third party; there is an initial three-month time limit to resolve a dispute (which may be extended once for a further three-month period) and the mediator is bound by an obligation of confidentiality. Second type is mediation implemented in

the workplace (at the request of an employee) to resolve an allegation of bullying. This is rarely used in practice and does not fall within judicial proceedings.

Generally, labour courts have sole jurisdiction to resolve workplace disputes. Arbitration clauses in contracts of employment are prohibited and unenforceable. The only exception to this is that workplace disputes may be arbitrated if the parties agree to submit to arbitration after the termination of the employment contract. In practice, arbitration is mainly used for disputes that involve senior executives. The last method, out of court settlement agreements, which include a waiver of claims by both parties, are common in France when resolving dismissal disputes.

Collective bargaining can take place at three levels: at the national level covering all employees; at the industry level which can involve national, regional or local bargaining; and at company or plant level. The position of national level bargaining has been enhanced by the legislation, passed in January 2007, which gave unions and employers a much clearer role in the development of legislation in the areas of industrial relations, employment and training. Under its terms, when the Government wishes to make changes in these areas, it must first consult with employers and

unions on the basis of a document setting out its analysis of the situation, aims and potential options, and allow them, if possible, to reach an agreement. The government must also formally consult on the draft legislation. This system does not commit the government to accept any agreement and in cases of urgency it can bypass the process entirely, but it clearly strengthens the importance of the negotiations between unions and employers at national level. Negotiations are normally conducted by the trade unions on one side and employers' federations or individual employers on the other. At national level, agreements can only be signed by representative trade unions. Agreements will only be valid if they have been signed by a national union confederation or national union confederations with at least 30% support nationally, as demonstrated in Works Council and similar elections, and if they are not opposed by other confederations. At industry level, the organisations that have negotiating rights on the union side are the industry federations of the nationally representative union confederations together with other unions which have shown that they have a degree of support in the specific industry. To be valid, an agreement must be signed by unions with at least 30% support in the industry, as demonstrated in Works Council and similar elections, and it should not be opposed by unions with majority support. Once

signed, the terms of the agreement are binding on all the employers who are members of the employers' federation which has signed the agreement and must be applied to all employees. At company or plant level, agreements can normally only be signed by the trade unions present in the workplace, as represented by the union delegate, or delegates.

Germany

In Germany, labour courts are the principal mechanism of conflict resolution, in individual as well as in collective labour disputes. The German labour court system is three-tiered: labour courts of first instance (Arbeitsgerichte); higher labour courts (courts of appeal) in the second instance (Landesarbeitsgerichte); and, at the top, the Federal Labour Court (Bundesarbeitsgericht), which has the final say in labour law matters (only cases that are believed to infringe constitutional rights may be sent, on further appeal, to the Federal Constitutional Court). These courts deal with private law disputes involving statutory rights - such as wrongful dismissal, infringement of works council procedures, disputes over wage payments and the interpretation of collective agreements. In other words: Labour courts have exclusive jurisdiction in matters involving civil legal disputes between employer and employee arising from an employment relationship, in questions relating to

the existence or non-existence of an employment contract, as regards obligations remaining after the dissolution of an employment contract, and, in addition, in civil legal disputes involving torts, in so far as these are connected with the employment relationship. This means that labour courts have exclusive jurisdiction over virtually all legal conflicts between employer and employee arising from the employment relationship. Representation by counsel is optional in labour courts of first instance. It is, however, required at higher levels - that is to say, the parties involved in the dispute must be represented either by an attorney, or by an employers' association official, or by a trade union official. Any attorney admitted to practice in Germany can represent clients before any labour court of any instance. Social security cases are heard by separate courts. This is due to the fact that social security law in Germany is strictly separated from labour law, and is understood to be a part of public law. Therefore, disputes arising in the field of social security are not settled by labour courts (or administrative courts), but by special social security courts (Sozialgerichte). Civil law courts play a role mainly in two respects. First, all problems relating to the field of workers' representation on company supervisory boards are dealt with by the civil courts (this is because civil courts are responsible for the settlement of company law cases, and workers' representation is

partly embedded within the traditional structures of company law). Second, civil courts decide disputes of rights referring to the internal structure of trade unions and employers' associations. For example, disputes concerning whether or not a union member can be excluded are decided by the ordinary civil courts.

Labour court proceedings aim to be simple, speedy and inexpensive. Therefore, every case brought before a court of first instance begins with a conciliation hearing (Gütetermin), heard by the chair sitting alone. The purpose of this procedure is to achieve an amicable settlement - a compromise between the parties - without recourse to a formal hearing. If a settlement is concluded at this stage, the court will generally not charge court fees other than the initial filing fee. Cases are not generally expected to go to mediation before being heard by a labour court. A few exceptions are: first, if the case concerns vocational training or, second, if mediation is built into a relevant collective agreement. There is an automatic right of appeal for all cases before the labour courts of first instance within one month. The higher labour court reviews the case in complete detail, both on points of law and on matters of fact. Normally, an appeal to the Federal Labour Court requires consent either from a higher labour court or (on complaint) from the Federal Court itself; this consent

has to be issued within one month of the ruling by the higher labour court. The appeal may be based on points of law (Berufung) in the case of civil proceedings and through a petition for review (Beschwerde) in the case of collective proceedings.

Also, arbitration as an alternative or supplementary means of resolving disputes of rights exists in Germany. The procedure to be followed by an Arbitration Committee depends on whether the conflict involves a conflict of rights or a conflict of interests. If the complaint involves a conflict of rights, the decision of the Arbitration Committee can only serve as a recommendation to the employer and Works Council on how the case should be settled. In a conflict of interests, the decision of the Arbitration Committee supersedes any agreement between employer and Works Council. Either of these two bodies may appeal to the labour court, however, arguing that the Arbitration Committee has exceeded its jurisdiction.

Collective bargaining at industry level between individual trade unions and employers' organisations is still the central arena for setting pay and conditions in Germany. Negotiations normally take place between the unions and the employers' federations. The agreements are legally binding in respect of trade union members and the members of the employers' organisations who sign

them. German collective agreements regulate a wide range of issues. Apart from pay, agreements also deal with issues such as shiftwork payments or pay structures, working time, the treatment of part-timers and training. There is no system for setting a single national minimum wage, although, there are minimum rates which must be paid in some important industries.

Russia

Representatives of employees and employers shall participate in collective bargaining for preparing, concluding and amending the collective contract agreement, and shall be entitled to take initiative on engaging in such bargaining. The right to engage in collective bargaining, sign agreements on behalf of the employees shall be granted to relevant labour unions (labour union associations). Should several labour unions (labour union associations) be in existence at the relevant level, each of them shall be entitled to representation within a unified representative body for collective bargaining formed with account for the number of labour union members they represent. In the absence of an accord on establishing a unified representative body for collective bargaining, the right to engage in it shall be granted to the labour union (labour union association) amalgamating the largest number of the labour union (labour

unions) members. The parties shall provide each other, not later than two weeks after receiving the appropriate request, with the information at their disposal required for collective bargaining.

In order to resolve individual labour disputes, Labour Dispute Commissions are formed, on the initiative of employees and (or) employer from the representatives of employees and employer in equal numbers. Labour Dispute Commission must process an individual Labour Dispute in ten calendar days since the submission of an appeal by an employee. Proceedings of labour dispute Commission are entered on the records, signed by the Chairman of the commission or his deputy and stamped by the seal of the Commission. The decision of the Industrial Disputes Commission is subject to enforcement within three days upon expiration of ten days period provided for appeal. On the basis of the certificate issued by the Industrial Disputes Commission and submitted within three months of its receipt, the bailiff⁵ shall enforce the decision of the Industrial Disputes Commission compulsorily. In the event that the Commission fails to hear an individual industrial dispute within ten days, the employee shall be entitled to refer his complaint to the

Court. The procedure of settlement of a collective industrial dispute includes the following steps: consideration of collective industrial dispute through the Commission for Conciliation, consideration of collective industrial dispute through mediation and/or at the Industrial Arbitration. Consideration of collective industrial dispute through the Commission for Conciliation is a mandatory step. In case of failure to settle the collective industrial dispute through the Commission for Conciliation, the parties shall refer to mediator and/or at the Industrial Arbitration.

United Kingdom

The Employment Act 2002 Regulations (the Dispute Resolution Regulations) came into force on 1 October 2004 and require all employers to follow minimum statutory procedures in dealing with dismissal, disciplinary action and grievances in the workplace. The three steps they must follow in respect of dismissal and disciplinary action are:

- 1) The employer sends the employee a written explanation of the circumstances that have led them to consider taking dismissal or disciplinary action.
- 2) The employer invites the employee

⁵A bailiff is a manager, overseer or custodian; a legal officer to whom some degree of authority, care or jurisdiction is committed. Bailiffs are of various kinds and their offices and duties vary greatly.

to a meeting to discuss the issue. After the meeting, the employer informs the employee about any decision, and offers the employee the right of appeal.

- 3) If the employee wishes to appeal, he/she informs the employer. The employer then invites the employee to attend a further hearing to appeal against the employer's decision, and the final decision is communicated to the employee. Where possible, a more senior manager should conduct the appeal hearing.

Employees and employers must, similarly, follow statutory procedures if the employee has a grievance and they are as follows:

- 1) The employee sets down in writing the nature of the alleged grievance and sends the written complaint to the employer.
- 2) The employer must invite the employee to a meeting to discuss the grievance. After the meeting, the employer informs the employee about any decision, and offers the employee the right of appeal.
- 3) If the employee considers that the grievance has not been satisfactorily resolved, he/she

informs the employer that he/she wishes to appeal. The employer then invites the employee to an appeal meeting. After the meeting, the employer's final decision must be communicated to the employee. Where possible, a more senior manager should attend the appeal hearing.

In a case of unfair dismissal, an employment tribunal will check that the employer has followed these procedures. If the employer has not done so, the employment tribunal must make an automatic finding of unfair dismissal. Likewise, in most cases a tribunal will not accept a claim if the employee has not first sent a grievance letter and waited for a specified period.

If a dispute is not resolved in the workplace, an employee may make a claim to an employment tribunal. These are specialist judicial bodies made up of a legally qualified chair and two lay⁶ members- one from a trade union or employee background and one from an employer background. An employee wishing to submit a claim to an employment tribunal must do so on a prescribed claim form (known as the ET1). This is checked by the Tribunals Service to determine whether the form has been completed correctly and whether the statutory grievance procedure has

⁶ The non-legal side members of an Employment Tribunal

been followed, and to filter out claims that are weak, incomplete or that the tribunal does not have jurisdiction to hear. The employer will then be asked to complete a response form (known as the ET3). If this is not received within 28 days, the employment tribunal may issue a default judgment without a hearing. A conciliation officer from the Advisory, Conciliation and Arbitration Service (ACAS) is then appointed to deal with the case. This may lead to a formal legal settlement of the dispute (this is known as a COT3). Parties may also resolve the dispute privately, which may involve a compromise agreement. Claims can also be withdrawn. ACAS conciliation is available for specified time periods (for most claims this is seven weeks, for unfair dismissal 13 weeks, and for equal pay and discrimination cases the period is open ended). An appeal against a tribunal judgment can be made to the Employment Appeal Tribunal but only on points of law or if there has been an administrative mistake.

Collective bargaining is conducted by trade unions and employers. The union side may be made up of full-time officials, workplace representatives or a mix of both. Usually local union representatives are involved in collective bargaining. The employers' side can be the individual employer or, if at industry level, the employers' association. There will often be several unions represented on the

union side, who normally will have agreed their position together in advance. Collective agreements do not have to run for a specific period although the most common pattern is that they run for a year.

LATIN AMERICA

Brazil

Disputes arising out of relations between employers and employees should be settled by the labour courts. The Labour Appeal Court, regional labour courts, and the conciliation and arbitration boards, or the courts of ordinary jurisdiction, have right to settle disputes. Recourse to the labour courts is compulsory, without exemption, except for good and sufficient reason. The conciliation and arbitration boards are competent to judge and settle (among others) disputes in which the recognition of the security of tenure of the employee is claimed, and disputes relating to compensation for the cancellation of a contract of employment. The regional courts, on the other hand, are responsible for conducting conciliation proceedings and handing down judgment in the last instance, on appeals against decisions of the conciliation and arbitration boards and the ordinary courts dealing with labour matters.

Collective bargaining is regulated specifically by the Consolidation of

Labour Rights. In Brazil, collective bargaining normally occurs on the base date (an agreed annual date on which conventions are revised and renegotiated) – but any party can demand revisions, at any time. Workers in a firm may also initiate a bargaining process without a union, but the municipal representative institution must be informed, and it will sign and register the resulting agreement. In the rare event that no union exists, the process will be taken up by the federation or ultimately by the relevant confederation. Employers' associations in Brazil have the same legal status and are regulated by the same labour code as trade unions. In Brazil, a collective agreement negotiated at the firm level may be extended to the whole work category in a territorial base via collective convention, or collective dissidio (dispute), but this is not automatic⁷. Only collective conventions are mandatory for the entire category of work in a given jurisdiction. Both conventions and agreements apply to union members and non-members of the work category only. For example, if a clerks' union negotiates working standards for clerks in a metallurgic company, these standards apply to workers in this profession only. If a metalworkers' union bargains for better conditions for its constituency in the same firm, these can be

extended to the administrative workers if a new agreement is signed joining the two unions' interests. As a consequence, in big firms, bargaining is normally headed by the strongest union and all other unions in that firm sign the contract, irrespective of the possibility that a smaller craft union may negotiate better conditions.

NORTH AMERICA

USA

As there is no separate institutional mechanism for termination of employment procedures, there is no special judicial or quasi-judicial body which could deal with dismissal claims in particular. Rather, different avenues for redress of dismissal claims are dependent on the applicable statutory provisions and on the route which the employee has taken in order to pursue such claims. For example, under the National Labour Relations Act, employees may pursue their claims under special appeal procedures set up under this Statute. Claims based on discrimination charges arising out of any of the various statutes prohibiting discriminatory practices must be settled before the ordinary courts of law if attempts to resolve the issue administratively have not succeeded. Arbitration is a method of dispute resolution used as an

⁷In Brazil, "collective agreements" cover one firm and a municipal union, while "collective conventions" cover a municipal union and all firms employing the category of work represented by that trade union.

alternative to litigation. It is commonly designated in collective agreements between employers and employees as the way to resolve disputes. The parties select a neutral third party (an arbiter) to hold a formal or informal hearing on the disagreement. The arbiter then issues a decision binding on the parties. Both federal and state law governs the practice of arbitration. While the Federal Arbitration Act, by its own terms, is not applicable to employment contracts, federal courts are increasingly applying the law in labour disputes.

Collective bargaining is governed by federal and state statutory laws, administrative agency regulations, and judicial decisions. In areas where federal and state law overlap, state laws are preempted. The main body of law governing collective bargaining is the National Labour Relations Act (NLRA). It explicitly grants employees the right to collectively bargain and join trade unions. It applies to most private non-agricultural employees and employers engaged in some aspect of interstate commerce. The NLRA establishes procedures for the selection of a labour organization to represent a unit of employees in collective bargaining. The Act prohibits employers from interfering with this selection. The NLRA requires the employer to bargain with the appointed representative of its employees. It does not require either side to agree to a proposal or

make concessions but does establish procedural guidelines on good faith bargaining. Proposals which would violate the NLRA or other laws may not be subject to collective bargaining. The NLRA also establishes regulations on what tactics (e.g. strikes, lock-outs, picketing) each side may employ to further their bargaining objectives. State laws further regulate collective bargaining and make collective agreements enforceable under state law. They may also provide guidelines for those employers and employees not covered by the NLRA, such as agricultural labourers.

AFRICA

Kenya

Any dispute involving dismissal or termination of employment (and not being a termination as a result of redundancy) shall be reported to the Minister by or on behalf of any party to the dispute within 28 days of the dismissal or termination. The Minister shall consider the dispute and consult a Tripartite Committee to take one of the following steps: refuse the report, make proposals for settlement, initiate the conciliation procedure, commence an investigation of the dispute, or recommend that the case be referred to the Industrial Court. The Minister may make use of machinery or arrangements for the settlement of disputes, which exist by agreement at the enterprise or branch

level. He or she may also appoint a conciliator or a tripartite conciliation panel. The Industrial Court is not to take cognizance of any trade dispute concerning dismissal unless it has received a certificate of exhaustion of the conciliation machinery for the voluntary settlement of the dispute, and the written authorization of the Minister stating that the dispute should be referred to the court. The Industrial Court does not have jurisdiction over disputes in the public sector. If the dismissal is held to be wrongful, the court may order reinstatement and/or award compensation equal to the actual loss of the reinstated employee.

Labour Relations Act 2007 contains the conditions for collective bargaining in Kenya. According to the Act, all agreements must be in writing and signed by the CEO, employer, national secretary or any representative of an employers' organization that is party to the agreement. The agreements become enforceable after registration. In general, collective agreements have a duration span of up to two years before renewal by parties. Collective agreements modify individual contracts and are commonly conducted either on a single establishment or a single plant basis or in a multi-employer approach. Section 60 of the Labour Relations Act requires that collective agreements be registered with the

Industrial Court. Submission of the agreement to the industrial court for registration is done by the employer or employers' organization, though submission can be done by a trade union due to failure by the employer. The Industrial Court may object to the registration if the agreement either conflicts with the Act that forms it or any other law, or it does not comply with any guidelines concerning wages, salary and other conditions of employment issued by the Minister. The Industrial Court may register a collective agreement within fourteen days of receiving it, unless there is an objection which has been given.

It is not proper for an employer to engage in any trade union in the process of collective bargaining agreement negotiations without a signed recognition agreement. A recognition agreement means an agreement in writing made between a trade union and an employer, a group of employers or employers' organization regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of the employers' organization. To enter into a recognition agreement with the employer, the trade union must have recruited a simple majority of the total number of unionisable employees of that employer. Without a recognition agreement, the employer cannot

take cognizance of the union for the purposes of representation of employees on issues relating to terms and conditions of employment. Also, it is an offence to implement a collective agreement before the Industrial Court registers it. Once so registered, the collective agreement binds parties to comply with the commitments made under it.

South Africa

When a dispute arises, any party to the dispute may refer the dispute in writing to (a) a council, if the parties to the dispute fall within the registered scope of that council; or (b) the CCMA (Commission for Conciliation, Mediation and Arbitration), if no council has jurisdiction. The party who refers a dispute must satisfy the council or the CCMA that a copy of the referral has been served on all the other parties to the dispute. The council or the CCMA must attempt to resolve a dispute through conciliation and if a dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication. A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party and the trade union is also entitled to be a party to any proceedings if one or more of its members are a party to the proceedings.

In South Africa, the right to collective bargaining is recognised in terms of the Constitution and also in terms of the Labour Relations Act. Collective agreement is a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions on the one hand and on the other hand – a) one or more employers; b) one or more registered employers organisations; or c) one or more employers and one or more registered employers organisations. Collective bargaining takes place at national level at NEDLAC (National Economic Development and Labour Council), sectoral or centralised level and at plant level. In order for the collective agreement to be valid, it must be in writing, the trade union must be registered and the agreement must concern itself with conditions of employment or any other matter of mutual interest between the parties. The parties to the collective agreement, their members, the members of the trade unions and the employers organisations that are parties to the agreement are all bound to the collective agreement. Furthermore the agreement is also binding on employees who are not members of the registered trade union if the union represents the majority of the employees employed by the employer at the work place and

these employees are identified and specifically bound to the agreement by terms of the agreement. A collective agreement remains in force for the whole period of the agreement and if it is concluded for an indefinite period, its termination maybe effected by either party giving the other party reasonable notice, unless the agreement contains a provision prohibiting this. When there is more than one trade union that wishes to bargain collectively with an employer, the following approaches are used:

- Majoritarian approach: The employer bargains only with a trade union that represents a majority (more than 50%) of the employees.
- Pluralist approach: the employer bargains with all trade unions that represent a substantial percentage (usually 30% or more) of the employees.
- All comers approach: the employer bargains with all trade unions irrespective of their representivity.

Tanzania

The Labour Institution Act, 2004 and the Employment and Labour Relations Act, 2004 mark the cornerstones of the labour relations regime in

Tanzania. The Acts establish new labour institutions, an important one being the Commission for Mediation and Arbitration (CMA) as a means of resolving labour disputes. The labour regime introduces the principle that labour disputes should be solved as early and at a low a level as possible. It is encouraged therefore that labour disputes be resolved at the place of work. If it is not possible to settle the disagreement at the workplace, the parties can bring their dispute to the Commission for Mediation and Arbitration (CMA). The Commission for Mediation and Arbitration (CMA) provides a new, less legalistic and bureaucratic system for resolving labour disputes through an informal but structured hearing and discussion process. The Commission for Mediation and Arbitration (CMA) will achieve this firstly by mediation. If unsuccessful, the case will go for arbitration. The CMA is independent of the Government, political parties, trade unions and employers' association. When a dispute is brought to the CMA, the parties must be represented by a third party, the trade union, ATE (Association of Tanzanian Employers) or a lawyer specialized in labour relations. This highlights the relevance for workers and employers to seek assistance from those that can offer them legal advice.

Besides guaranteeing core rights and protections, minimum employment standards, regulation of the registration of trade unions and associations, regulation of the right to strike and lockout and a new labour dispute resolution system, the Employment and Labour Relations Act, 2004 also offers a framework for voluntary collective bargaining. The law is based on the ILO Collective Bargaining Convention. The law establishes, among other things: that the trade union representing the majority of employees in a company can be recognized as the relevant negotiation partner (exclusive bargaining agent), and that any bargaining should be conducted in good faith, the confidentiality in regard to any information exchanged as a result of the bargaining, constitutes a binding agreement and requirements of the bargaining process. The result of the negotiation procedure is a written agreement signed by both parties, also called a Collective Bargaining Agreement (CBA). In Tanzania, a Collective Bargaining Agreement (CBA) should, as it is mentioned in the law, be lodged with the Labour Commissioner (Ministry of Labour Employment and Youth Development). Private sector Collective Bargaining Agreements (CBA) are often confidential at the request of one or both parties, whereas in the public sector, working

conditions including salaries and allowances are set by the respective government authorities.

Uganda

A labour dispute whether existing or apprehended maybe reported in writing to a Labour Officer and if the dispute is likely to become a national disaster then alone it may be reported to the Commissioner. The Labour Officer will within two weeks of getting the report resolve it either by meeting up with the parties, or by arranging a conciliator or reject the report stating reasons as to why the dispute report was rejected (reasons such as not complying with Act, insufficiency of particulars and other reasons found relevant by Labour officer). In case the dispute is not resolved by the Labour Officer, then within four weeks after receipt of labour dispute the Labour Officer will, at the request of any party to the dispute refer the dispute to the Industrial Court. Also where a dispute referred to the Labour Officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties can refer the dispute to the Industrial Court. Within 21 days from the effective date of the award, the party may apply to the Industrial Court to review its decision on a question of interpretation or in light of the new facts. When the Industrial Court is unable to make a decision, the matter is decided by the Chief Judge.

When there are any arrangements for settlement by conciliation or arbitration in a trade or industry between a labour union and one or more employers, or between one or more labour unions and one or more employers organisations, the Labour Officer shall not refer the matter to the Industrial Court but shall ensure that the parties follow the procedures for settling the dispute laid out in the conciliation or arbitration agreement, which apply to the dispute.

Article 29 (e) of the Constitution of Uganda states that every citizen shall have the freedom of association which shall include the freedom to form and join associations or unions, including trade unions, political and other civic organizations. Workers have the rights to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests; to collective bargaining and representation; and to withdraw his or her labour according to law. By law, the National Organization of Trade Unions (NOTU) is the sole federation to which all national unions affiliate. National Organization of Trade Unions (NOTU) is affiliated to the International Confederation of Free Trade Unions (ICFTU). The enactment of the Trade Union Laws (Miscellaneous Amendments) Statute of 1993 allowed for the unionization of some grades of civil servants, medical workers and teachers, and

the employees of the Bank of Uganda who were not allowed to form or belong to unions.

A union is a society of workers that, at its best, is a means to help employees choose their working environment. Effective participation in their workplaces may well enhance their productivity. When unions faithfully represent employees' interests, they are a natural expression of workers aspirations to participate in determining their conditions of employment. The challenge for public policy is how these beneficial aspects of unionism can be enjoyed without making it undesirable to both the parties. Every country faces the challenge of designing a system to minimize undesirable effects such as industrial disputes and maximize unionism's potential as a constructive element for the company as well as society.

Governments around the world have in recent years become aware that labour standards are a potentially important determinant of economic performance. The best way for governments and the international community to protect workers' interests and their families' welfare may be to promote economic efficiency and mechanisms that ensure a fair distribution of efficiency gains. However, systems of coordination such as collective bargaining are neither easily

replicable nor necessarily a panacea. The degree and kind of coordination at the labour market achieved in each country are specific in terms of their economic conditions and institutional and cultural characteristics. In most countries where coordination exists, it evolved gradually through piecemeal legislation over decades rather than as a massive policy

intervention at a specific point in time. Labour regulation introduced at a time when particular circumstances prevailed should be reconsidered when economic conditions change. Therefore collective bargaining is not simply an instrument for pursuing workers needs rather it is intrinsically valuable as an experience in self-governance in any organization.

3. CONDITIONS OF EMPLOYMENT: CONTRACT

In this age of globalization, the employment structure across the globe has been undergoing changes. In order to effectively compete in a globalized market, one needs flexibility relating to labour, capital, or bureaucracy; this allows a producer to adapt to the fast - changing world and compete effectively. In particular, it is argued that stringent labour regulations not only put domestic producers at a disadvantage but also deter foreign direct investment and eventually impact adversely on investment, output and employment.

Over the last two decades, a number of countries have attempted to liberalize their respective labour markets and have also amended their labour laws so as to make them more investment and employment-friendly. Globalization has also created non- traditional employment structures including part time, casual and contract labour. Among different kinds of employment that have been created in various economies to circumvent labour laws, contract labour is becoming one of the prominent forms.

In India, contract labourers are protected by the Contract Labour (Regulation and Abolition Act), 1970. A contract labourer is defined in the Act as one who is hired in connection with the work of an establishment by a principal employer (who is the firm owner or a manager) through a contractor. Against this background, in this chapter a comparison of labour laws provisions on contract labour in various countries have been examined.

ASIA

Bangladesh

In Bangladesh employment contracts are divided into various types of work relationships distinguishing between apprentices, the badli, casual workers, permanent and temporary workers. A badli (transfer worker) is a worker who is employed during the absence of a permanent worker or of a probationer worker. A casual worker is a worker performing work of a casual nature. A temporary worker is a worker who is employed to perform work which is essentially of temporary

| Table 4 : Labour Laws Provisions Related to Fixed Term Contracts: Comparison in Select Countries | | | |
|--|--|---|---|
| Countries | Fixed-term contracts prohibited for permanent tasks? | Maximum length of a single fixed-term contract (months) | Maximum length of fixed-term contracts, including renewals (months) |
| ASIA | | | |
| Bangladesh | Yes | No limit | No limit |
| China | No | No limit - after 10 years of work or 2 renewals of fixed-term contracts, contract may be concluded between employer and employee upon consultation. | No limit |
| India | No | No limit | No limit |
| Indonesia | Yes | 24 | 36 |
| Malaysia | No | No limit | No limit |
| Pakistan | Yes | 9 | 9 |
| Philippines | Yes | No limit | No limit |
| Sri Lanka | No | No limit | No limit |
| Thailand | Yes | No limit | No limit |
| Vietnam | No | 36 | 72 |

| EUROPE | | | | |
|-----------------------|-----|---|---|--|
| France | Yes | 18 months; can be extended to 24 months for work abroad or in certain other specific circumstances | 18 | |
| Germany | No | No maximum duration for fixed-term contract with objective cause; 24 months for fixed-term contract without objective cause | 24 | |
| Russian Federation | Yes | 60 | 60 | |
| United Kingdom | No | No limit, but employees who have worked successive fixed term contracts for a period of four years or more will become permanent employees unless the employer can objectively justify the continued use of a fixed term arrangements. | No limit | |
| LATIN AMERICA | | | | |
| Brazil | Yes | 24 | 24 | |
| NORTH AMERICA | | | | |
| United States | No | No limit | No limit | |
| AFRICA | | | | |
| Kenya | No | No limit for term contracts (excluding casual employees) | No limit | |
| South Africa | Yes | There is no prescribed maximum duration. The parties can agree on a particular date or a particular event upon the occurrence of which the employment automatically terminates. The length of the contract should relate to the duration of the task which the employee has been appointed to perform. The courts consider what is reasonable in the circumstances. | No limit | |
| Tanzania | Yes | No limit. However oral contracts may not be for a period exceeding six months | No limit. However oral contracts may not be for a period exceeding six months | |
| Uganda | No | No limit | No limit | |
| Source: Exim Research | | | | |

nature, and is likely to be finished within a limited period. A probationer is a worker who is provisionally employed in an establishment to fill a permanent vacancy in a post and has not completed the period of his probation in the establishment. A permanent worker is a worker employed in an establishment on a permanent basis or who has satisfactorily completed the period of his probation in the establishment. The period of probation for a worker is six months for work of a clerical nature and three months for other probationers. Fixed terms contracts were prohibited for permanent tasks in Bangladesh and there is no limit specified on the maximum length of fixed term contract.

China

In China, the term labour contract is divided into fixed term or flexible term or taking the completion of a specific amount of work as a term. Fixed term contracts are not prohibited for permanent tasks in China. There is no limit on the maximum length of fixed term contract. However, in case an employee has kept working in a same employing unit for ten years or more and the parties involved agree to extend the term of the labour contract, a flexible term labour contract shall be concluded between them, if the labourer so requested.

Labour contract will terminate upon the expiration of its term or emergence of conditions for the termination of labour contract as agreed upon by the parties involved.

India

In India, the Contract Labour (Regulation and Abolition) Act, 1970 specifies that a workman is deemed to be employed as contract labour when he is hired in connection with the work of an establishment by or through a contractor. Contract workmen are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn, is compensated by the establishment. Contract labour has to be employed for work which is specific and for definite duration and applies to every establishment in which 20 or more workmen are employed, or employed on any day on the preceding 12 months as contract labour, and to every contractor who employs or who employed 20 or more workmen on any day of the preceding 12 months. It does not apply to establishments where the work performed is of intermittent or seasonal nature. An establishment wherein work is of intermittent and seasonal nature will be covered by the Act if the work performed is more than 120 days in a year respectively. The Act also applies to establishments of the Government and local authorities as well.

Indonesia

A work agreement for a specified period of time or contract in Indonesia shall be made based on a term; or the completion of a certain job, like work to be performed and completed at one go, or work which is temporary by nature; work whose completion is estimated at a period of time which is not longer than 3 years; seasonal work; or work that is related to a new product, a new activity or an additional product that is still in the experimental stage or try-out phase. Some of the other specifications for contract labour in Indonesia include: a work agreement for a specified period of time cannot be made for jobs that are permanent by nature; a work agreement for a specified period of time can be extended or renewed; a work agreement for a specified period of time may be made for a period of no longer than 2 years and may only be extended one time for another period that is not longer than 1 year, entrepreneurs who intend to extend work agreements for a specified period of time shall notify the said workers/ labourers of the intention in writing within a period of not later than 7 days prior to the expiration of the work agreements, and a work agreement for a specified period of time cannot stipulate a probation period. If a work agreement stipulates a probation period the probation

period shall be declared null and void by law. The termination of labour contract happens upon the expiration of its term.

Malaysia

In Malaysia, the conditions for part time labour are different. Fixed terms contracts were not prohibited for permanent tasks and there was no limit to the maximum length of fixed term contract. The normal hour of work of a part-time employee is seventy per cent of the normal hours of work of a full time employee. If a part-time employee is required by his employer to work beyond his normal hours of work, the employer shall pay the part-time employee not less than his hourly rate of pay for each hour or part which exceeds the normal hours of work of the part-time employee but does not exceed the normal hours of work of a full time employee employed in a similar capacity in the same enterprise; and not less than one and a half times the hourly rate of pay of the part time employee for each hour or part which exceeds the normal hours of work of a full time employee employed in a similar capacity in the same enterprise. Every part-time employee shall be entitled to a paid holiday at his ordinary rate of pay on the national holidays similar to full time employees. Annual leave of six days is given for every twelve months

of continuous service with the same employer if he has been employed by that employer for a period of less than two years; eight days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and eleven days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of five years or more. Upon the expiration of its term, labour contract will terminate.

Pakistan

There are four types of workers distinguished in Pakistan, viz., permanent employees, temporary workers, baldi and probationers. Permanent employees are defined as workers who are engaged in work likely to last more than nine months and who have satisfactorily completed a probationary period; temporary workers are those who have been engaged for work of an essentially temporary nature that is likely to be finished within a period not exceeding nine months; baldi describes a worker who is appointed in the place of a permanent worker or probationer who is temporarily absent; and probationers are workers provisionally employed to fill a permanent vacancy, and who have not completed three months service.

Philippines

Philippines Labour Code provides for the following categories of employment:

- Project - where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee;
- Seasonal - where the work or services to be performed is seasonal in nature and the employment is for the duration of the season; and
- Casual - where the employment is not covered by the foregoing, provided that an employee who has rendered at least one year of service, whether continuous or broken, shall be considered regular with respect to the activity in which he or she is employed and his or her employment shall continue while the activity exists.
- Another category of employment recognized in jurisprudence is 'term' or 'fixed-period employment' which states that obligations with a resolutive period take effect at once, but terminate upon arrival of the 'day certain' (day agreed upon by the parties for the commencement and termination).

The decisive determinant in 'term employment' should not be the activities that the employee is called upon to perform, but the day certainly agreed upon by the parties for the commencement and termination of the employment relationship. Stipulations in employment contracts providing for 'term employment' or 'fixed-period employment' are valid when the period has been agreed upon knowingly and voluntarily by the parties, without force, duress or improper pressure exerted on the employee, and when such stipulations were not designed to circumvent the laws on security of tenure.

Sri Lanka

Both the IDA (Industrial Disputes Act of 1950) and TEWA (Termination of Employment of Workmen (Special Provisions) Act of 1971) define workman in Sri Lanka broadly as any person who works under a contract of employment in any capacity, including apprentices. No distinction is made in the legislation between casual, probationary and fixed-term employees.

Thailand

In Thailand, fixed duration contract labour can be employed when a special project is undertaken which is

not in the normal way of business or trade of the employer; or when there is a fixed schedule for commencement and completion of work; or when the work is of a temporary nature with a fixed schedule for its commencement or completion; or for seasonal work in respect of which employees are only engaged during the season; or when work has to be completed within a period of two years and the employer and employee have entered into a written agreement at or prior to the commencement of employment. Fixed terms contracts were prohibited for permanent tasks in Thailand and there is no limit specified on the maximum length of fixed term contract.

Vietnam

In Vietnam, contract labour is defined as definite term labour. A definite term labour contract is a contract in which the two parties determine the term and the time for termination of the validity of the contract as a period of twelve months to thirty six months and it can also include a labour contract for a specific or seasonal job with duration of less than twelve months. In certain cases the term can extend to 72 months including renewals. As regards termination of a contract, a notice of at least thirty days is given in the case of a definite term labour contract with duration of twelve months to thirty six months,

and at least three days notice is given in the case of a labour contract for a seasonal or specific job with duration of less than twelve months. Also an employee working under a definite term labour contract with a duration of twelve months to thirty six months or a labour contract for a seasonal or specific job with a duration of under twelve months shall have the right to terminate unilaterally the contract prior to expiry of such duration, under certain circumstances, such as when the employee is not assigned with the correct job or work place or not ensured with the requisite work conditions as agreed in the contract; when the employee is not paid in full or in time the wages due as agreed in the contract; when the employee is maltreated or is subject to forced labour; when due to real personal or family difficulties, the employee is unable to continue performing the contract; when the employee is elected to full-time duties in a public office or is appointed to a position in a state body; when a female employee is pregnant and must cease working on the advice of a doctor; and where an employee suffers illness or injury and remains unable to work after having received treatment for a period of three consecutive months in the case of a definite term labour contract with a duration of twelve months to thirty six months, or for a quarter of the duration of the contract in the case of a specific or seasonal

labour contract with a duration of less than twelve months.

EUROPE

France

In France, a fixed-term contract may be made only for the performance of a specified and temporary job. The total duration of this type of contract may not exceed 18 months generally, and nine months while waiting for an employee recruited on a contract for an unspecified period to take up his or her post. The minimum period may be extended to 24 months if the job is performed by a foreigner. This type of contract may be renewed only once, and its maximum duration may not exceed 24 months. If the contractual relationship continues after the expiry of the contract, the contract becomes a contract for an unspecified period. A fixed-term contract of employment may contain a probationary period, the duration of which is calculated on the basis of one day for each week that the fixed term contract will exist.

Germany

In Germany Part Time and Fixed Term Employment Act governs the Contract Law. The regulations on part time work include:

- Employers must enable employees - including those

at managerial level - to switch from full-time to part-time work. Employees are entitled to reduce their working time, provided no agreement has been made with employers on the numbers of hours the employee would work. A reduction of working time is not allowed if "internal reasons" within the company are an obstacle to this request. These internal reasons could be, for example, negative effect of reduced working time on the operations of the organization, workflow or safety, or would lead to excessive costs. Acceptable reasons for refusal can be laid down in collective agreements;

- If full-time jobs are available, part-time workers who want to return to full-time work must be given preference by the employer; and
- Employers are obliged to inform employees who want to change their working time, as well as employee representatives, about vacant full-time or part-time jobs within the company and about opportunities to participate in training measures.

In concrete terms, the Act makes the following provisions for employees to reduce their working time:

- Employees who have worked in the company for more than six

months can ask for a reduction in their agreed weekly working time;

- Employees who want to reduce their weekly working time must submit their request three months before the reduction is to come into force and give notice of the requested distribution of working time over the working day;
- Employers and employees are to discuss the request in order to reach a common agreement.
- Employers are to agree on a reduction of weekly working time and to lay down the distribution of working hours according to the employee's wishes, as long as no internal reasons stand in the way of such a change. Employees who want to reduce their working time must be given notice at least four weeks before the reduction will take effect; and
- Only employees working in companies with more than 15 employees are entitled to reduce their weekly working time.

The new Act contains the following regulations on fixed-term contracts:

- In principle, employees with fixed-term employment contracts are to be treated equally with permanently employed workers;

- With the exception of cases of employers taking on new labour, the duration of the employment contract or relationship must be set according to objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event;
- If an employee takes up a new job, the employment contract (or the maximum period of three renewals of a shorter contract) can be limited to two years, without special reasons being given.
- These restrictions do not apply to employees over the age of 58, in order to give them a chance to engage themselves; and
- Employers are obliged to inform employees with fixed-term employment contracts about vacant permanent jobs, allow them to participate in training measures, and inform employee representatives about the proportion of fixed-term-employment relationships within the company.

Russian Federation

In Russia, labour contracts can be concluded for an indefinite term and for a definite term not exceeding five years (a term labour contract), unless

another term is set by this Code and other federal laws. Contract labour is usually employed for replacing a temporary absent employee for whom the job is retained in accordance with the law; or when the period of performing temporary (up to two months) work as well as seasonal work; or for performing urgent work on preventing accidents, incidents, catastrophes, epidemics, epizootics etc, or persons enrolling in small business organizations with the personnel numbering up to 40 persons (up to 25 persons in the trading and consumer services organizations) as well as working for individual employers; or when persons hired for performing a knowingly predetermined work in cases when its implementation (completion) cannot be determined by a specific date; or for jobs directly connected with practical training and professional training of the employee; or other cases stipulated by federal laws. Contract labour is terminated at the expiration of the term of its validity. The employee is warned about expiration of the agreement in written form not later than three days prior to dismissal. A contract labour agreement that was assigned for performing job functions of a missing employee is terminated with the return of the missing employee. At the end of a specified season, the labour contract of a seasonal employee is terminated.

United Kingdom

In UK the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 [FTER], came into effect from 1st October 2002. The Regulations stipulate that a fixed-term employee shall become a permanent employee after four years of continuous employment under one or successive fixed-term contracts. However, this statutory four-year limit does not apply if employment on a fixed-term contract can be justified on objective grounds, or if the period of four years has been lengthened under a collective or workplace agreement.

LATIN AMERICA

Brazil

In Brazil, the term of an employment contract may be for an indefinite or fixed term, the latter permitted only in specific circumstances. The term of an employment contract will be considered indefinite in any of the following cases: (i) the contract expressly states that the term is indefinite; (ii) the contract does not stipulate a term; (iii) a contract for a fixed term is implicitly or expressly renewed more than once; and (iv) an existing contract for a fixed term is terminated and within six months of such termination, another contract for a fixed term is entered into, with the same employee, except where

the termination of the fixed term was connected to the execution of specialized services or occurrence of certain events. In comparison to employment contracts for an indefinite term, enhanced flexibility and reduced benefit contributions and severance payments are the primary advantages of fixed term contracts. An employment contract for a fixed term is permitted: (i) during an initial 90 day trial employment period, the continuation of which will trigger its transformation into a contract for an indefinite term; and (ii) for a maximum two year term where: (a) the nature of the object services, including their transitional nature, justifies a pre-set term; or (b) the object services are related to business activities of a transitional nature. Individual agreements may be terminated upon expiration of their fixed term, or otherwise by notice from either the employer or the employee. In the event of termination, the employee is entitled to receive (a) the balance of his or her pay, (b) the corresponding payment for vacations not yet taken, and (c) a proportional amount of the Christmas bonus equivalent to the number of months he or she has worked during the calendar year. In the event fixed-term agreements are terminated without cause, the terminating party must pay damages to an extent of fifty percent of the compensation established for the remaining term of the agreement.

NORTH AMERICA

USA

In USA, there is no federal legislation distinguishing between different kinds of employment contracts (including in regard to termination of employment). In general, the term of an employment contract is decided by the parties to the contract.

AFRICA

South Africa

Contract labour is defined as temporary employment service. However, a person who is an independent contractor is not an employee of a temporary employment service nor the temporary employment service is the employer of that person. The temporary employment service and the client are jointly and severally liable if the temporary employment service in respect of any employee who provides services to that client does not comply with the Employment Act. Termination is according to the contract that is binding upon the temporary employment service and the employer. Fixed terms contracts were prohibited for permanent tasks in South Africa. There is no limit on the maximum length of fixed term contract. However, the parties can agree on a particular date or a

particular event upon the occurrence of which the employment automatically terminates. The length of the contract should relate to the duration of the task which the employee has been appointed to perform. The courts consider what is reasonable in the circumstances.

Tanzania

In Tanzania, there are two types of contract, viz., oral or written contracts. Both oral and written contracts for a fixed term or fixed piece of work may terminate upon the expiry or completion of the terms, without giving rise to liability by the employer to pay compensation, or enabling the employee to challenge the termination. However, oral contracts for a set period of time are deemed to be renewed for the same period on the same terms and conditions unless notice of termination has been lawfully given to the employee. Furthermore, oral contracts may not be for a period exceeding six months.

Kenya & Uganda

In general, Kenya and Uganda labour legislations do not distinguish between the various types of contract of employment and nothing specific is given on fixed term contract and the limit on the maximum length of fixed term contract.

In every country, employment contracts are divided into various types of work relationships distinguishing between apprentices, casual workers, permanent and temporary workers. The comparative analysis of prohibition of fixed term contracts for permanent tasks reveals that while some countries permitted fixed term contracts for permanent tasks, some others do not. The countries that prohibited fixed term contracts for permanent tasks include Bangladesh, Indonesia, Pakistan, Philippines, Thailand, South Africa, Tanzania, France, Russian Federation and Brazil. The countries which do

not prohibit fixed term contracts for permanent tasks include: China, India, Malaysia, Sri Lanka, Vietnam, Kenya, Uganda, Germany, UK and USA. In countries such as Bangladesh, India, Malaysia, Philippines, Sri Lanka, Thailand, Kenya, Uganda and USA, there were no limit on the maximum length of fixed term contract. Though India appears in the list of countries that do not prohibit employment of contract workers for permanent tasks, Central and State Governments are empowered to notify any industry or even a single establishment prohibiting employment of contract labour.

4. EMPLOYMENT SECURITY: TERMINATION

An employee's employment right not to be unfairly or unjustifiably dismissed is a modern cornerstone of the law relating to the termination of employment. However, while widespread amongst a variety of national legal systems, this right is not universal. For example, some countries like United States do not recognize this as a general right. Because of its economic and social implications, and in spite of regulation at the highest level, the termination of employment by the employer is one of the most sensitive issues in labour law today. Protection against dismissal is seen by most workers as crucial, since its absence can lead to dire economic consequences in most countries.

Within the common law legal tradition, the regulation of termination of employment may be seen as being based on various justifications. The first is a concept of individual justice between the employer and employee, whereby employers are prohibited from making arbitrary dismissal decisions. The second is the rationale

of market intervention and economic regulation, with legal intervention justified by reference to a desire to minimize the costs of such dismissals to the employee. Third, legal regulation can be seen as protecting public rights, such as the right to join a trade union and the right for not to be discriminated on certain prohibited grounds such as gender and race. Fourth, in some jurisdictions, a clear regulatory framework can be viewed as a mechanism by which employers may be protected from excessive litigation costs that might otherwise arise from employment termination. Finally, to the extent that dismissal regulation promotes employment security, such regulation can be seen as encouraging employers to invest in the training and development of workers⁸.

However, many employers and employers' associations view that strict regulations for termination of employment lead to restrictions on hiring of new workers. They see it as hampering the ability of an enterprise to respond flexibly to change and to

⁸Termination of employment digest, ILO

improve, and therefore as undermining an enterprise's productivity and efficiency.

Taking all these into consideration, the chapter on Employment Security; Termination, makes an attempt to capture provisions of Labour Laws on termination based on various parameters.

ASIA

BANGLADESH

The Employment of Labour (Standing Orders) Act, 1965, and the Industrial Relations Ordinance, 1969 regulate termination of employment in Bangladesh. Employment contracts are divided into various types of work relationships distinguishing between apprentices, the badli (a person employed in the post of a temporary or permanent worker during his or her absence), casual workers, permanent and temporary workers. The period of probation for a worker is six months for work of a clerical nature and three months for other probationers.

Termination of employment not at the initiative of the employer

A distinction is made in the Employment of Labour (Standing Orders) Act between the "discharge" of an employee and his or her "dismissal". While the former means the termination of services of a worker

for reasons of physical or mental incapacity or continued ill health or similar reasons not amounting to misconduct, while the latter means the termination of services of a worker for misconduct.

Termination of employee by the employer

A worker may be lawfully discharged from employment for reasons of physical or mental incapacity or continued ill health or other reasons of incapacity unrelated to misconduct. Workers may also be dismissed without notice or compensation if guilty of misconduct or a criminal offence. The statute outlines several categories of misconduct including willful insubordination or disobedience, theft, fraud or dishonesty, bribe-taking, habitual late attendance, habitual negligence and falsifying or tampering with the employer's official records. All workers who have been in continuous employment for more than one year are entitled to written notice indicating the reasons for retrenchment or to payment in lieu of such notice where retrenchment is contemplated. A copy of such notice must also be sent to the chief labour inspector, and also provides that the employer shall ordinarily give priority against retrenchment to workers who have been first employed, thus dismissing first those who were employed last.

In the event of fire, catastrophe, machinery breakdown, power outage, epidemic, civil commotion or other causes beyond the employer's control, the employer may stop work (lay-off). The employer has to notify the workers affected as soon as practicable. If a worker is laid off for more than 45 days during a year, the employer may retrench him or her.

Notice and prior procedural safeguards

Long notice requirements are laid down for permanent workers in the form of 120 days notice and 60 days notice for other workers. Workers who are dismissed for misconduct or for committing an offence are not entitled to notice.

Severance pay

For mere termination of employment of a permanent worker, who has been employed in continuous service for more than one year, the employer is required to pay his/her employee compensation at the rate of 14 days' wages for each completed year of service. In case of retrenchment, workers who have been employed in continuous service for more than one year, are entitled to severance pay equivalent to 30 days' wages for every completed year of service. In case of discharge from service for incapacity, workers who have been employed in

continuous service for more than one year, are entitled to compensation at the rate of 30 days' wages for every completed year of service or for every part thereof in excess of six months in addition to gratuity, if any.

Workers who have been dismissed for misconduct or for a criminal offence, are also entitled to compensation if their service amounts to more than one year, at a rate of 14 days' wages for every completed year of service, or for any part thereof in excess of six months, or gratuity, if any, whichever is higher.

Where a worker is entitled to benefits from a Provident Fund, termination of employment for whatever reason may not disentitle him or her from such benefits. In case of dismissal for misconduct, the worker is deprived of the portion of employer's contribution.

In case of lay-off, for the first three weeks of stoppage the workers are to receive full wages. After three weeks of stoppage, employees may be laid off and receive compensation equal to half of the total of the basic wage and dearness allowance (and equal to one-quarter after 45 days).

CHINA

The relevant law on termination of employment in China is the Labour

Law of the People's Republic of China, 1994 (also called Labour Law), and 17 regulations pertaining to Labour Law have been promulgated. The most important of these regulations as regards termination of employment are the Circular of the Ministry of Labour on the Provisions on Personnel Reduction due to Economic Reasons in Enterprises (No. 447) and the Circular of the Ministry of Labour on the Measures of Economic Compensation for the Violation and Revocation of Labour Contracts (No. 481). In addition, provisions applicable to employment termination are found in the Provisional Rules on Dismissal of Workers Violating Labour Discipline in State-Owned Enterprises, 1986. The Labour Law applies to all categories of employees and enterprises. There are two categories of employment: permanent (or lifelong) employment and temporary employment.

Termination of employee by the employer

Under Sec. 29 of the Labour Law, a claim of unfair or illegal dismissal would be successful where the worker is dismissed:

- For reasons of incapacity to work due to disease or injury suffered at work;
- Where the worker is in receipt of medical treatment; or,

- In the case of a woman worker, during pregnancy or the puerperal or breast-feeding period.

Dismissal without notice is done when there are serious violations of labour discipline, or the rules and regulations of the employing unit, or causing great losses to the employing unit due to serious dereliction of duty or engagement in malpractice for selfish ends. Where the worker is being investigated in connection with a crime, he or she may also be dismissed without notice. After consultation with trade unions, state employees may also be dismissed for the above and, additionally, for:

- having bad attitudes in serving customers, and having frequent quarrels with customers;
- disobeying orders of transfers to another place;
- serious misdeeds not amounting to a crime;
- willfully making trouble or seriously disrupting the social order; or
- committing other serious mistakes

Probationary employment may be terminated where the employee fails to fulfill the required standards for work. Collective dismissals are

possible during redundancy. The employer may make a reduction in the workforce where the employing unit comes to the brink of bankruptcy or runs into difficulties in production and management, and if reduction of its personnel becomes a necessity. A limited attempt is made to alleviate the negative consequences of dismissal from employment. In the case of redundancy situations, priority for re-employment must be given to redundant employees where the employing unit recruits personnel up to six months after the redundancy. Further, employees who have been dismissed or disabled due to work-related injury or disease are entitled to social insurance benefits.

Notice and prior procedural safeguards

It is compulsory that notice be given for certain categories of dismissals in China. This is merely a procedural safeguard and does not affect the employer's right to dismiss the employee in such circumstances. Notice is required where the worker is: unable to continue his or her original work after illness or injury not suffered at work; not qualified for the required work; or unable to reach agreement with his or her employer on the modification of the labour contract when its objective conditions have changed. The notice period for

such categories of dismissal is 30 days. For workers in state enterprises, their work unit provides a variety of services, and dismissal involves much more than the loss of a job. There is a requirement that the appropriate trade union and workers be consulted and their opinions sought on proposed collective dismissals. Further, the labour administrative department must be informed although there is no need for prior authorization. A notice period of 30 days is required for consultation in relation to redundancy. Several provisions provide regulations on: payment of compensation where the worker is unqualified for the position or where the employing unit breaks a labour contract; in the event of personnel reduction and dismissal of the worker if he or she has engaged in certain acts and has shown no sign of repentance following education or administrative sanction.

The 1994 Circular on Personnel Reduction reinforces the provisions of the Labour Law and reiterates that reduction of personnel is only permissible when the employer is on the brink of bankruptcy or deep into difficulties in production and management. This Circular also requires employers to explain the situation to the trade union and workers 30 days in advance, and consult on a plan of personnel reduction. Certain employees may

not be retrenched, including victims of occupational accidents, pregnant employees or workers on sick leave.

Severance Pay

Where the employee has been dismissed for economic reasons or reasons wherein prior notice is given, the employer is required to provide economic compensation. No compensation is granted where the employee is dismissed for violation of labour discipline or where he or she neglects his or her duty or engages in malpractice. Economic compensation is paid to employees according to the number of years he has worked for the employer by the rate of one month's salary for each full year he has worked. Any period above six months but less than one year will be deemed as one year. The economic compensations that are paid to a worker for any period of less than six months shall be one half of his monthly salary.

INDIA

The main statutes which regulate termination of employment are the Industrial Employment (Standing Orders) Act (IESA), 1946, and the Industrial Disputes Act (IDA), 1947. Another source of regulation is the case law of the courts. Any questions arising from the application or the interpretation of a standing order can

be raised before the Labour Court and its decision will be final and binding. Workers are classified as permanent, probationers, badlis (that is, workers filling in for permanent or temporary workers on a temporary basis), temporary, casual and apprentices.

Termination of employment not at the initiative of the employer

The contract of employment can terminate, not at the initiative of the employer, in certain circumstances, including by: employee retirement; and the expiry of a fixed-term contract.

Termination of employee by the employer

The law relating to termination of employment in India distinguishes broadly between three different situations: dismissal for misconduct, discharge and retrenchment. Some instances for dismissal for misconduct include: willful insubordination or disobedience; theft or dishonesty; willful damage or loss of employer's property; bribery; habitual lateness or absence; and striking unlawfully. Retrenchment corresponds broadly to terminations based on economic grounds or related to the employee's capacity (except retirements, dismissals for ill health and the expiry of fixed-term contracts). Termination of employment is unlawful if it is

for reasons related to trade union membership or activity; filing complaints concerning the employer; race, colour, sex, marital status, pregnancy, religion, political opinion or social origin.

Notice and prior procedural safeguards

Employers are required to give one month's notice or payment in lieu of such notice in order to lawfully terminate the employment of permanent workers. Notice is not required for workers found guilty of serious misconduct and would constitute summary dismissal. Notice is not required either for probationers, badli or temporary workers.

Severance pay

Under the Payment of Gratuity Act, 1972, a worker continuously employed for five years or more is entitled to a gratuity payment upon termination of service, except where such termination has been as a result of his or her willful omission or negligence resulting in damage or loss of the employer's property, in which case the gratuity shall be forfeited to the extent of the damage caused. Where the employee has been dismissed on account of his or her riotous, violent or disorderly conduct or for an offence involving moral turpitude committed in the course

of employment, the gratuity shall be wholly or partly forfeited. The sum is calculated at 15 days average pay for every completed year of service. For retrenchments, employees with more than one year's service, other than temporary or casual employees, are entitled to compensation equivalent to 15 days pay for each completed year of service. In case of redundancy, compensation is calculated in the same way as for retrenchment of permanent employees.

INDONESIA

Decree of the Minister of Manpower No KEP.15A/Men 1994 (the "Decree"); the Termination of Employment in Private Undertakings Act, 1964 (TEPU); the Instruction on the Prohibition of the Massive Manpower Dismissal of the State-Owned Enterprises without Consultation with the Department of Manpower (PMMD); the Manpower Minister's Regulation on the Settlement of Working Relationships, Severance and a Stipulation on Severance Monies; Service Monies and Compensation in Private Companies, 1996; are some of the legislations and regulations that comprise termination of employment in Indonesia. The relevant legislation on termination of employment does not distinguish between the various types of employment contract, except in relation to fixed-term and probationary contracts.

Termination of employment not at the initiative of the employer

Contracts of employment can terminate, not at the initiative of the employer, but by retirement; the expiry of a fixed-term contract; and the worker's termination of the contract at his or her own initiative.

Termination of employee by the employer

Termination of employment contracts can take place when the worker dies; on the expiry of any fixed term; in case of emergency; by court order; or according to the terms of the contract. Neither the transfer of the business or death of the employer will terminate employment.

Termination of employment is specifically prohibited while the worker is unable to work due to certified sickness over a period not exceeding 12 consecutive months or where the employee is prevented from performing work due to fulfilling his or her legal duties towards the State or as commanded by his or her religion and approved by Government. Termination permits will not be issued by the Government for: matters related to union membership or activity; the lodging of a proven complaint; or ideology, religion, political opinion, social group or gender. In addition, permits will not be issued for dismissals based on

illnesses of less than 12 months, fulfilling of approved religious duties, or reasons of marriage, pregnancy or childbirth. Permission from a governmental authority is not required for terminating the employment of probationers, whose period of probation may not exceed three months. Permits are also not required for written resignations, retirements according to company regulations or collective agreements, or expiry of fixed-term contracts.

Dismissal permits may be issued for grave mistakes including theft; fraud; intoxication; indecency or gambling at work; criminal act; abuse of the employer or his or her family; reckless or deliberate damage to life or property; divulging trade secrets; gross negligence, after a warning; and other conduct as specified in company regulations or collective agreements. Also, collective dismissals or mass dismissals arising from redundancy or any government measures are regulated by law.

An employer cannot terminate an employee due to reasons such as marriage, pregnancy, confinement and miscarriage. However, dismissal on the grounds of having a relative or spouse at the same establishment is allowed if it is provided for in a collective agreement or company regulations. Where termination could not be avoided, the employer is to discuss his or her intention to

terminate with the relevant trade union, or worker.

Notice and prior procedural safeguards

A notice period of one month is to be given to the employee before termination. However, where the employer believes that termination of employment cannot be avoided, the employer may discuss his or her intention to terminate with the workers organization concerned or with the worker directly, with a view to reaching agreement. If no consensus is reached, the employer may make a request for cessation (termination) of employment to the Regional Committee for the Settlement of Labour Disputes, giving written reasons for the request. Thereafter, the employer may only dismiss the worker after having obtained a permit from the Regional Committee. Parties to a deliberation concerning proposed termination of employment may also apply to the Ministry of Manpower for mediation. The Ministry must deal with the matter within 30 days. Where mediation fails, the matter is then forwarded to the Regional or Central Committee. Moreover, an employee may not be suspended or his or her employment affected in any way while the outcome of a request for a permit for termination of employment is pending. In the case of mass dismissals arising from redundancy or any Government measures,

the Government will endeavour to alleviate the consequences to workers by attempting to transfer them to undertakings or projects.

Severance pay

The employer is obliged to pay the dismissed employee severance pay and or a sum of money as a reward for service rendered during his or her term of employment [reward-for-years-of-service pay] and compensation pay for rights or entitlements that the dismissed employee has not utilized. The severance pay is normally paid based on the number of years of service; e.g 1 month wages for 1 year of service; 2 months wages for service up to 1 year but less than 2 years, etc.

MALAYSIA

The central pieces of legislation governing the termination of employment in Malaysia are the Employment Ordinance, 1955 (as amended) (EA), the Industrial Relations Act, 1967 (as amended) (IRA), and the Employment (Termination and Lay-Off Benefits) Regulations, 1980 (as amended). In addition, the common law, as developed by Industrial and Appeal Courts, is an important source of law. Collective agreements and individual contracts of service may also be additional sources of regulation. Fixed-term contracts are permitted in Malaysia, but must be in

writing, and for less than six months. In addition, the courts have been prepared to examine the nonrenewal of contracts to ascertain if the reasons for non-renewal are genuine, and to prevent employers circumventing the applicable statutory protections. In relation to probationary employees, case law has established that an employee continues as a probationer even after the expiry of the probation period, until the appointment is confirmed. A termination within the probation period will not be set aside unless the probationer can show the employer acted with malice.

Termination of employment not at the initiative of the employer

Fixed-term contracts will terminate on the expiry of the term. Contracts of employment may also terminate through the employee giving notice. Employees may terminate the contract without notice if they are ill-treated or exposed to a risk of disease or injury that they did not contract to undertake. The Malaysian courts also recognize the concept of constructive dismissal and will treat a resignation as a dismissal if the resignation is involuntary or under threat of dismissal.

Termination of employee by the employer

Terminations are possible for operational reasons, provided the

requisite notice periods are complied with. The courts do not interfere with the employer's prerogative to retrench workers provided the retrenchment decision is bona fide and not taken to victimize the employee. Moreover, if an employee covered by the Employment Ordinance is continuously absent for more than two days, without leave or reasonable excuse, then, his or her employment may be terminated. Terminations, without notice, on the grounds of misconduct, are also possible, but only after due inquiry. It is also unlawful to dismiss an employee for union membership activities.

Notice and prior procedural safeguards

Statutory notice periods, applicable to all terminations except terminations for misconduct, are as given below:

- Four weeks for employees with less than two years of service;
- Six weeks for employees with two to five years of service; and
- Eight weeks for employees with more than five years of service.

Employees who may be terminated for misconduct are entitled to receive due inquiry before being terminated.

Severance pay

Where an employer terminates the contract of service of an employee without notice, the severance pay

would be equivalent to his one month pay for every year of service. Severance pay does not apply to terminations for misconduct, after due inquiry; retirement upon the employee attaining retirement age; or voluntary retirement by the employee.

PAKISTAN

The main statutes governing termination of employment in Pakistan are the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (ICEO), and the Industrial Relations Ordinance, 1969 (IRO). Other relevant legislations which covers a smaller proportion of workers include the Road Transport Ordinance, 1961 (RIO), the Newspaper Employees (Conditions of Service) Act, 1973 (NEA), the Pakistan Essential Services Maintenance Act, 1952 (ESMA), and the West Pakistan Shops and Establishments Ordinance, 1969 (SEO).

Workers are defined under four categories. “permanent employees” are defined as workers who are engaged in work likely to last more than nine months and who have satisfactorily completed a probationary period, “temporary workers” are those who have been engaged for work of an essentially temporary nature that is likely to be finished within a period not exceeding nine months, There is also a concept known as “badli”, which

describes a worker who is appointed in the place of a permanent worker or probationer who is temporarily absent. Finally, “probationers” mean workers provisionally employed to fill a permanent vacancy, and who have not completed three months’ service.

Termination of employee by the employer

While provisions concerning termination of employment for misconduct apply to all workmen, protections related to termination for other causes are restricted to permanent workers under the Industrial and Commercial Employment (Standing Orders) Ordinance.

For workers falling under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, a valid and written reason must be given for termination of employment to be upheld. This applies to both termination simpliciter (termination on grounds other than that of misconduct,) and dismissal on the grounds of misconduct. A valid reason must be given for termination, even though there is no other specific legislative requirement in this regard. For workers falling outside the purview of the legislation, no reason for termination is required by law. However, common law principles on procedural fairness will be applicable.

While the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, obliges the employer to state, in writing, a reason for termination of employment, except in very few instances, it neither prescribes any reasons for which the services of a worker could be lawfully terminated nor specifies limits on the kinds of reasons which will be acceptable. In relation to termination unrelated to misconduct, case law establishes that acceptable reasons for dismissal include serious illness, economic needs of the industry or establishment, and inefficiency or incapacity to perform the required job.

In the event of fire, catastrophe, breakdown of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond the employer's control that frustrate the operation of the work, workmen may be laid off and then receive a payment equal to their daily wage. The stoppage must be notified to the workers. After 14 days of lay-off, the contracts of employment may be terminated with appropriate notice. Apart from these situations of extreme emergency, the employer must obtain prior authorization from the Labour Court in order to close down an establishment or to terminate the employment of more than 50 per cent of the workmen.

Notice and prior procedural safeguards

Notice for termination of employment is only mandatory for permanent employees falling under the purview of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, or the West Pakistan Shops and Establishments Ordinance. This notice period is specified as one month's notice or equivalent pay in lieu of such notice.

Severance pay

Under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, workers whose employment has been terminated for any reason other than misconduct are entitled to severance pay or a gratuity equivalent to 30 days wages for every completed year of service or any part thereof in excess of six months. A pension may be substituted for any gratuity.

PHILIPPINES

Book Six of the 1974 Labour Code sets out principles governing the termination of employment. The provisions of the Labour Code governing termination of employment apply to all private sector employees, whether employed by a profit-making enterprise or not. There are two

key distinctions between types of employees in Filipino labour law: the first is between regular employment and non-regular employment or casual employment; and the second is between managerial and rank and file⁹ employees.

The scope of the protection against termination applies to all employees in regular employment. Regular employment is defined as employment whereby the employee has been engaged to perform activities which are usually necessary or desirable in the usual course of business or trade of the employer, except where employment has been fixed for a specific project or undertaking, or seasonal employment. Employment which falls outside the definition of regular employment is deemed to be casual employment, provided that casual employment which lasts for over a year is considered regular employment. While the prohibition against dismissal except for just cause applies to both managerial and rank and file workers, the requirement to obtain a clearance to terminate only applies for rank and file workers (explained in notice and prior procedural requirements section below). A managerial worker is one who is vested with powers and prerogatives to lay down and

execute management policies and/or to hire and fire employees. Also, probationary employment is not to exceed six months, unless pursuant to an apprenticeship agreement.

Termination of employment not at the initiative of the employer

Employment may terminate, other than at the employer's initiative: if the worker abandons his or her contract; if the employee dies; by mutual consent of the parties; if the employee retires; and if the employee resigns by giving written notice at least one month in advance. If the employee does not comply with this notice obligation, he or she will be liable for damages for the notice period not given.

The employee may resign without notice if: the employee's honour or person has been seriously insulted; there has been inhuman or unbearable treatment; the employer has committed a crime against the employee or the employee's family; or there is any cause analogous to the above causes.

Termination of employee by the employer

An employer may terminate an employee for the following reasons:

⁹The non-executive and non-managerial employees of a company are called rank and file employees. The term originates from the formations of military personnel, since troops would stand next to each other (rank) and in a line (file) when marching, while officers would march on the outside of the formation.

serious misconduct or willful disobedience; gross and habitual neglect by the employee of his or her duties; fraud or willful breach of trust; commission of a crime against the employer or his or her family; and a cause analogous to the above (which has been interpreted by the courts as including gross inefficiency and incompetence).

Employment may also be terminated by the employer for economic, technological or structural reasons. Finally, an employer may terminate an employee who is suffering from any disease, if his or her continued employment will be prejudicial to himself or herself, or any coworker's health, or if the employee's employment is illegal because of the disease. However, employment cannot be terminated if an employee is fulfilling a military or civic duty and it is an unfair labour practice and a criminal offence to dismiss employees because of their trade union membership or activities

Notice and prior procedural safeguards

There are stringent procedural requirements which apply to dismissals of rank and file employees. A clearance to terminate must be sought for all dismissals: ten days before based on conduct or capacity and at least one month before based

on economic reasons. Importantly, in addition, when seeking clearance, the employer must be able to show that the employee has had notice of the reason for the dismissal and that a due internal inquiry has followed to allow the employee to answer the allegations of misconduct or refute the case for redundancy or retrenchment, as the case may be. If clearance is not sought, the termination is deemed to be without cause and the employee is entitled for reinstatement. Dismissal is possible if the worker's continued employment poses a serious and imminent threat to the life and property of the employer or the worker's co-workers.

Severance pay

In case of termination due to the installation of labour-saving devices or redundancy, the worker affected shall be entitled to a separation pay equivalent to at least his one month pay or to at least one month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one month pay or at least one-half month pay for every year of service, whichever is higher. Retirement benefits are not available to employees in domestic service or

agriculture, or to those exclusively engaged in retail or household and individual services.

SRI LANKA

The main pieces of legislation governing the termination of employment in Sri Lanka are the Termination of Employment of Workmen (Special Provisions) Act of 1971 (TEWA), and the Industrial Disputes Act of 1950, as amended (IDA).

Termination of employment not at the initiative of the employer

The Termination of Employment of Workmen Act provides that the employment may terminate with the written consent of the workman. Aside from this, both the Termination of Employment of Workmen Act and the Industrial Disputes Act only regulate termination of employment at the initiative of the employer.

Termination of employee by the employer

The Labour Commissioner from whom the employer must seek authorization to dismiss may decide the application in his absolute discretion and further, the decision of the Labour Commissioner is non reviewable. The Commissioner may also order reinstatement of any worker.

Notice and prior procedural safeguards

Those employees not covered by the Termination of Employment of Workmen Act, who are not seasonal employees and work for an establishment of more than 15 workers, and who have been employed for more than a year are entitled to one month's notice of any retrenchment. In such cases, the employer must also give this period of notice to the Government and any relevant union. Employers must obtain the approval of the Labour Commissioner for the dismissal of employees covered by the Termination of Employment of Workmen Act. In addition, for these employees, the employer must notify the employee of the reasons for the termination before the expiry of the second working day after the termination.

Severance pay

The Commissioner usually decides the terms and conditions subject to termination, including any particular terms and conditions relating to the payment by such employer to the workman of a gratuity or compensation for the termination of such employment. 2.5 months of severance pay is given for every completed year of service in case of redundancy dismissals.

THAILAND

The Thai law governing contracts of employment is laid down in the Civil and Commercial Code and in a number of notifications of the Ministry of Interior and, more recently, the Ministry of Labour and Social Welfare. Severance pay is primarily governed by the Notification of the Ministry of Interior Labour Protection. Apart from this, there is also the Labour Relations Act which governs the termination of employees.

In Thailand, employment contracts are defined as definite period and indefinite period contracts. Every establishment employing at least 20 employees must have an agreement on conditions of employment, negotiated between the employer or his or her representative and a maximum of seven elected representatives of the employees. This agreement must contain particulars on, inter alia, conditions of work or employment and termination of employment, which will be binding on the employer and the employees who have given their signatures or who have participated in the election of representatives to conduct the negotiations.

Termination of employment not at the initiative of the employer

In a definite period contract, upon completion of term, the employment is terminated. If upon expiry of a

contract concluded for a definite period, the employee continues to render services with the knowledge of the employer, then the parties are presumed to have made a new contract of hire on the same terms. Both employer and employee can, however, terminate the new contract under the same conditions as a contract concluded for an indefinite period.

Termination of employee by the employer

An employer may dismiss an employee who willfully disobeys or habitually neglects the lawful commands of his or her employer; absents himself or herself from service; is guilty of gross misconduct; or otherwise acts in a manner incompatible with the due and faithful discharge of his or her duties. However, the employer cannot, except with the approval of the Labour Court, terminate employment of, or reduce the wages of, or punish a member of an employees' committee. Such committees are set up by employees in establishments employing at least 50 employees. An employer must meet at least once every three months with such a committee to discuss matters such as employees' welfare, employees' petitions, pending disputes in the workplace and work rules. It is generally unlawful for an employer to terminate the employment or transfer the duties of the employees, their representatives, the committee

members, subcommittee members, or members of the labour union, or committee members or subcommittee members of the labour federation, who are involved in the presentation, negotiation or reconciliation of a request to renegotiate an agreement on conditions of employment. Termination or transfer is, however, lawful if the persons concerned dishonestly perform their duties or willfully commit a criminal offence against the employer; willfully cause damage to the employer; neglect work for three consecutive working days without a suitable reason; or violate the rules, regulations or lawful orders of the employer, provided the employer has issued a warning in writing. The written warning is not required in severe cases.

Notice and prior procedural safeguards

Both employer and employee can terminate a contract concluded for an indefinite period by giving notice at, or before, any time remuneration is paid. The termination will normally take effect at the following time remuneration is paid, but parties are under obligation to give more than three months notice. If the employer terminates the contract, he or she has the option of paying the employee his or her remuneration up to the expiry of the notice instead of having the employee serve the

notice period. However, an employee dismissed for misconduct as outlined in the previous paragraphs is not entitled to notice or compensation. In the event of retrenchment due to restructuring, the employer must, at least 60 days in advance of the date of termination of employment, inform the labour inspection services and the employees, about the grounds for termination and the names of employees affected.

Severance pay

The employer must pay compensation to the employee when terminating the contract of employment, or when the employer commits any act to prevent the employee from continuing to work or discontinues payment of wages to this end. This compensation is also due when the termination is the result of the employer's inability to continue business operations. The compensation is not due upon termination of a contract concluded for a definite period or when the employee has been dishonest on duty; has deliberately committed a criminal offence against the employer; has intentionally caused damage to the employer; has violated working rules or lawful orders from the employer; has been absent for three consecutive working days without justification; has caused serious damage to the employer due to negligence; or has been sentenced to imprisonment.

The provisions on compensation also apply to fixed-term employment up to a maximum of two years on a temporary project or seasonal work which is not part of the employer's core business, provided that the employment relationship has been put in writing from the beginning. The amount of compensation depends on the length of service; employee who worked for at least 120 consecutive days but less than one year will get compensation for not less than 30 days of the last basic pay he received; employee who worked for at least 1 year but less than three years will get compensation for not less than 90 days of the last basic pay he received; employee who worked for 3 years but less than six years will get compensation for not less than 180 days of the last basic pay he received; employee who worked for 6 years but less than 10 years will get compensation for not less than 240 days of the last basic pay he received and employee who worked for more than 10 years will get compensation for not less than 300 days of the last basic pay he received.

In the event of retrenchment following restructuring, an employer who does not give notice or gives notice less than 60 days in advance must pay compensation in lieu of notice, equal to the last 60 days wages. If the employee has been employed for at least six years, however, the employer must pay additional

compensation equal to 15 days wages for every year of employment, with a maximum amount equal to 360 days wages. With respect to this additional compensation, a period of work of more than 180 days constitutes a year.

VIETNAM

The termination of contracts of employment is governed by the Labour Code, 1994, and Decree No. 198 on Employment Contracts, 1994. Separate provisions governing apprenticeship contracts are laid down in Decree No. 90 on Apprenticeship.

In Vietnam, a contract of employment must be concluded in one of the following three forms: a contract with an indefinite term ("Type I"); a contract with a definite term of one to three years ("Type II"); or a contract for seasonal work or a specific task of less than one year's duration ("Type III"). The employer and the employee may agree on a probationary period of work not exceeding 60 days in respect of highly specialized technical work, or 30 days in respect of other work.

Termination of employment not at the initiative of the employer

A contract of employment ends, other than at the initiative of the employer, when: the contract expires; the work under the contract has been

completed; both parties agree to terminate the contract; the worker is sentenced to imprisonment or is prohibited from resuming his or her work by decision of the court; or the worker dies or is declared missing by the court.

In a number of cases the worker employed under a Type II or Type III contract of employment is entitled to unilaterally terminate the contract before its term, provided he or she gives proper notice. A pregnant female worker can unilaterally terminate the contract of employment without paying a sum (which resigning employees may otherwise have to pay), provided she produces a doctor's certificate and respects the period of notice specified by the certificate. A worker employed under an employment contract with an indefinite term has the right to terminate the contract unilaterally at any time, provided he or she gives the employer at least 45 days notice.

Termination of employee by the employer

In a number of cases the employer has the right to terminate the contract of employment unilaterally, subject to discussion and agreement with the Executive Committee of the enterprise's trade union. In some other cases the employer is entitled to do so as long as he or she gives

proper notice. Agreement with the trade union must be reached when:

- the worker regularly fails to fulfill the tasks assigned under the contract;
- the dismissal of the worker is a disciplinary measure; or
- the worker is ill and there is no foreseeable recovery of working ability after having received treatment for 12 consecutive months in respect of a Type I contract, six consecutive months for a Type II contract and half the contract duration for a contract for less than one year

Dismissal is the ultimate disciplinary measure for workers contravening labour discipline. It can only be applied to workers:

- who commit acts of theft, embezzlement, disclosure of technological and business secrets, or other acts causing severe loss to the property and interest of the enterprise;
- who are transferred to another job as a disciplinary measure and who again commit the same breach of labour discipline when the disciplinary measure is still in effect; or

- who have been absent for a total of seven days per month or 20 days per year without legitimate reasons.

It is unlawful for an employer to unilaterally terminate a contract of employment when the worker is under treatment or care as prescribed by doctors for sickness, industrial accident or occupational disease, except in the case of an enduring working disability outlined above, or when the employer ceases his or her activities. Similarly, the employer cannot terminate the contract of a worker who is on annual leave, leave for personal reasons, or any other type of leave permitted by the employer. Female workers enjoy specific protection against dismissal or unilateral termination of employment. Marriage, pregnancy, maternity leave or breast-feeding a child under 12 months of age are not lawful grounds to unilaterally terminate an employee's contract of employment, except in cases where the enterprise ceases its activities. When, due to technological or structural changes, workers become redundant, the employer can only terminate their employment contract after verifying that there are no new jobs in the enterprise for which workers with at least 12 months of service could be retrained.

Notice and prior procedural safeguards

The employer can unilaterally terminate a Type I contract by giving at least 45 days notice, a Type II contract with at least 30 days notice and a Type III contract with at least three days notice in the following circumstances:

- In the event of natural disasters, fire or other cases of force majeure;
- When the employer has made every effort to overcome difficulties but is nevertheless compelled to reduce production and its workforce; or
- When the employer ceases its activities.

Severance pay

The calculation of severance pay will be as follows:

- Where the labour contract of an employee who has been regularly employed in an enterprise or organization for twelve months or more is terminated, the employer must pay such employee a severance allowance equal to the aggregate amount of half of one month's wages for each year of employment plus wage allowances (if any).

- Where an employer unlawfully unilaterally terminates a labour contract, he must re-employ the employee for the position stipulated in the signed contract and must pay compensation equal to the amount of wages and wage allowances (if any) for the period the employee was not allowed to work, plus at least two months wages and wage allowances (if any).
- Where the employee does not wish to return to work, the employee shall be paid the allowance in addition to compensation.
- Where the employer does not wish to re-employ the employee and the employee so agrees, in addition to the compensation provided, the two parties shall agree on an additional amount of compensation for the employee for the purpose of termination of the labour contract.
- Where an employee unlawfully unilaterally terminates the labour contract, he shall not be entitled to any severance allowance and must pay the employer compensation equal to half of one month's wages and wage allowances (if any).
- Where an employee unilaterally terminates the labour contract, he shall be liable for payment of compensation for costs of training (if any) in accordance with the provisions of the Government.
- Where a labour contract is unilaterally terminated in breach of the provisions on giving advance notice, the party in breach shall pay compensation to the other party in a sum equal to the wages which would otherwise have been paid to the employee for those days not notified.
- Within seven days from the date of termination of a labour contract, each party shall be responsible for full payment of all sums outstanding to the other party. In special cases, this period may be extended, but shall not exceed thirty days.

EUROPE

FRANCE

The French Labour Code establishes the rules and fundamental principles of labour law. The Labour Code (LC) is divided into nine Books, and Book I, Title 2; and Book 3, Title 2, Chapter I, of the Labour Code deal with contracts of employment and dismissal for economic reasons, respectively, and apply to termination of contracts of employment by the employer.

A contract of employment is made in writing and must be drawn up

in French. It may be concluded without specifying a definite duration (contract for an unspecified period). However, it may include a precise duration fixed at the time the contract is made. A fixed-term contract may be made only for the performance of a specified and temporary job. The total duration of this type of contract may not exceed 18 months generally, and nine months while waiting for an employee recruited on a contract for an unspecified period to take up his or her post. The minimum period may be extended to 24 months if the job is performed by a foreigner. This type of contract may be renewed only once, and its maximum duration may not exceed 24 months. If the contractual relationship continues after the expiry of the contract, the contract becomes a contract for an unspecified period. A fixed-term contract of employment may contain a probationary period the duration of which is calculated on the basis of one day for each week that the fixed term contract will exist.

Termination of employment not at the initiative of the employer

The contract of employment can terminate, not at the initiative of the employer, in circumstances like the expiry of a fixed-term contract, force majeure; and the completion of the specific job for which the employee was employed.

Termination of employee by the employer

The Labour Code states that all dismissals should be based on well-founded and valid grounds. In the absence of agreement between the parties, a contract of employment may be terminated by the employer only on account of serious misconduct or in the case of force majeure. A contract of employment for an unspecified period may be terminated by either of the parties. The termination by an employer should be justified by a genuine and serious reason. Termination of the employment of a trade union delegate, an employee representative and persons of similar status can only occur after authorization by the labour inspectorate.

Notice and prior procedural safeguards

The termination of a contract for an unspecified period is subject to a notice period except in the case of serious fault. The notice period is: one month, if the employee has worked for between six months and two years; and two months after two years' service. If the length of service is less than six months, the notice period applied, will be governed by local custom and the practice in the occupation. An employer who proposes to dismiss workers on economic grounds must summon and

consult the works committee or staff delegates and inform the competent authority of the proposed dismissal. After notifying the competent administrative authority about the proposed dismissal, the notice period for sending the letters of dismissal will be as given below:

- at least 30 days if the number of dismissals is less than 100;
- 45 days if the number of dismissals is equal to 100 and less than 250; and
- 60 days if the number of dismissals is at least 250

Severance pay

Severance pay is calculated according to the remuneration of the employee and the duration of the contract, but it may not be lower than a minimum, fixed by decree. A basic rate of at least one week's wages per year of service is given as severance pay. It is not payable in the event of premature termination at the initiative of the employee, serious misconduct on the part of the employee or in cases of force majeure.

GERMANY

The general rules governing statutory protection against dismissal in Germany are to be found in the Civil Code (Bürgerliches Gesetzbuch) (CC)

and the Protection against Dismissal Act (Kündigungsschutzgesetz) (PADA). Other sources of legislation relevant to the termination of employment include the Maternity Protection Act; the Disabled Persons Act; the Vocational Training Relationship Act; the Federal Child Care Payment and Child Care Leave Act; and the Job Protection during Compulsory Military or Community Service Act.

German labour law makes a distinction between ordinary termination with notice, by which the employment relationship is ended when the period of notice expires, and summary termination, which brings about an immediate cancellation of the employment relationship. General rules of protection for every contract of employment, in both cases of summary and ordinary dismissal, are contained in the Civil Code. However, in situations of ordinary dismissal, the minimum protections under the Civil Code may also be supplemented by those in the Protection against Dismissal Act. To qualify for protection under the Protection against Dismissal Act, an employee must be employed in an establishment regularly employing more than ten full-time equivalent employees (not counting vocational trainees and marginal, part-time workers) and have worked there without interruption for longer than six months.

Labour law in Germany applies only to employment relationships based on a private contract. This covers blue-collar and white-collar workers as well as civil servants in the public service and private sector who are employed under normal contractual employment relationships. There is provision for labour contracts of indefinite periods, definite periods, fulltime and part-time work and also temporary work. It is presumed that working anything less than the weekly hours worked by full-time workers is therefore part-time work.

Termination of employment not at the initiative of the employer

The contract of employment can terminate in Germany, not at the initiative of the employer, but by: employee resignation; expiry of a fixed-term contract; contractual retirement age being reached; termination by mutual consent; and the contract being declared null and void because it is illegal.

Termination of employee by the employer

The reasons for termination relate to: the employee's ability, e.g. personal capability or ill health; the employee's conduct, e.g. breach of obligations, violation of plant regulations or collateral contractual obligations, breach of confidence; redundancy, i.e. due to urgent operational reasons,

meaning it must be economically necessary and warranted by factors such as rationalization, reorganization, reduction of work volumes and so on. The reasons for summary dismissal must be based on grave misconduct or incompetence of the employee, or severe economic circumstances unrelated to the behaviour of the employee. However the dismissal is only lawful if in view of all circumstances of the case, and in evaluating the interest of both parties, it is intolerable for either of the parties to fulfill the contract until the period of notice.

Notice and prior procedural safeguards

The statutory period of notice for both blue-collar and white-collar workers is four weeks before the 15th, or before the end of the calendar month. Contractual regulations providing shorter periods of notice are only lawful for casual employment relationships lasting less than three months. Also, a shorter contractual period can be provided if the employer regularly employs no more than 20 workers (not counting vocational trainees) and does not exceed the notice period of four weeks. However, collective agreements may provide for shorter periods of notice than the statute. In addition, longer periods of notice are provided according to the employee's continuous length of service in the same establishment,

and after the worker's 25th birthday (e.g., one month after two years' service, two months after five years' service; four months after ten years' service and seven months after 20 years' service). Dismissals based on these periods have to be pronounced before the end of the calendar month. For a probationary employment relationship, the period of notice is only two weeks.

Severance pay

The amount of severance pay is decided based on employee's social circumstances like marital status, dependants, state of health and prospects in the labour market, the extent to which the dismissal is deemed to be unfair or unjustified, and the employee's economic situation. Usually it is 15 days pay for one year of service.

RUSSIAN FEDERATION

The central source of law in the Russian Federation as regards termination of employment is the Labour Code. Contracts of employment may be: for an indefinite period; for a definite period not exceeding five years; or for specific work.

Fixed-term contracts are permitted when employment relations cannot be established for an indefinite period due to the character of the anticipated work, or the conditions of

work, or the interests of the worker, or as permitted by other specific legislation. All labour contracts, including indefinite ones, are required to be in writing. If a fixed-term or fixed-work contract is extended beyond its terms, the contract is then regarded as an indefinite one. Probationary (or trial) periods are permitted, provided that the probation period is recorded beforehand in the contract. However, probationary periods cannot be utilized in respect of certain categories of employees, such as workers under 18 years of age, disabled Second World War veterans, and young workers graduating from specialized or vocational institute.

Termination of employment not at the initiative of the employer

Labour contracts may be terminated, other than at the initiative of the employer: by mutual agreement; by expiry of a fixed-term or fixed-work contract; if the employee is called to, or enlists for, military service; if the employee resigns (on two weeks' notice); if the employee's employment is transferred, with his or her consent, to another establishment; if the employee refuses to transfer with the establishment to another location; if the employee refuses to continue working due to a change in basic working conditions; or if the employee is sentenced to imprisonment or some other sentence, making employment impossible. Also,

employers are obliged to dismiss chief executives on the request of the relevant trade union if the executive: breaches the provisions of labour legislation; fails to observe the terms of a collective agreement; or displays bureaucraticism or red tape.

Termination of employee by the employer

Lawful grounds for dismissal are: closure of the enterprise or reduction in staffing levels; the discovery of the employee's inability to fulfill his or her post or carry out his or her functions due to lack of qualifications or reasons of health; another employee is reinstated to the position; regular unsatisfactory performance by the employee in fulfilling his or her contractual duties, after the application of disciplinary and social sanctions short of dismissal; idleness (including a single absence for more than three hours in one working day) without good reason; absence from work for more than four continuous months due to a temporary disability (not including maternity leave), provided other legislation does not stipulate a longer period and the disability is not attributable to an employment injury or occupational disease; appearance at work in an intoxicated state; and a court conviction for stealing public or state property. Some of the additional grounds for dismissal for heads of enterprise or their deputies are when there is violation of duties or such

other grounds as may be stipulated in their labour contracts; for employees directly involved in dealing with money or commodities, an act such as to destroy the employer's trust in the employee; for employees carrying out educational work, immoral acts incompatible with continuation of such work; and for heads or directors, or members of a company's management council of a joint stock company, termination by shareholders without notice or cause.

In Russia, for dismissals on economic grounds, the following procedure is to be followed:

- The employer is to submit to the relevant trade union information on possible economic dismissals at least three months beforehand;
- Employees are to be informed of any pending dismissals at least two months beforehand;
- The employer is to provide the local employment agency with details of the employees to be made redundant at least two months before the dismissals;
- Selection for dismissal is to be carried out in accordance with the criteria set out in Sec. 34 together with any additional criteria in the collective agreement. According to Sec. 34 of the Labour Code, employees with greater

productivity and qualifications are given priority in relation to retaining employment. If the productivity and qualifications of various employees are equal, priority against dismissal is given to employees with more than two dependent family members, employees who are the only earning family member, employees with long continuous service at the enterprise, employees who have suffered an employment injury or occupational disease at the enterprise, employees studying while working, disabled veterans and family members of deceased veterans, inventors, spouses of military personnel, and victims of the Chernobyl nuclear power plant disaster (including those who were resettled); and

- The employer, on dismissal, is to suggest alternative work to the employers at the same enterprise.

Notice and prior procedural safeguards

The consent of the relevant trade union is required for dismissals resulting from a worker's inability to fulfill the duties of a post or his or her lengthy absence due to illness or injury; prior to imposing a disciplinary penalty, a written explanation from the employee is required; for dismissals on the basis of misconduct,

employers are to consider the gravity of the employee's conduct, the employee's work record, and all the circumstances of the case before deciding which, if any, disciplinary penalty (including dismissal) to impose; disciplinary penalties should be imposed immediately after the misconduct is discovered, and no later than one month from the date of discovery. No penalty may be imposed more than six months from the day the misconduct was committed, or more than two years after the instigation of a financial investigation (not counting the time taken for any criminal proceedings in these time limits); only one disciplinary penalty can be imposed for each act by the employee and reasons must be given to the employee for any disciplinary penalty.

Severance pay

Employees dismissed for economic reasons are entitled to one month of severance pay and to a further two months of wages. Employees who have not found employment two weeks before the dismissal are entitled to a third month's wages. Two weeks of severance pay is payable for: employees who are called for, or enlist for, military service; employees who refuse to change location with the employer or are subjected to another change in the basic conditions of employment; terminations due to insufficient qualifications or ill health;

terminations due to another employee being reinstated; and employees terminated due to their employer's breach of legislation or a collective agreement.

If an employee fails to perform satisfactorily during a probation period, his or her employment may be terminated without severance pay, and without the trade union's consent, although the employee has the right to appeal any such termination to the City People's Court.

UNITED KINGDOM

The United Kingdom law governing contracts of employment derives from three main sources: common law, Statute, and the law of the European Community. The main Statute governing termination of employment is the Employment Rights Act, 1996 (ERA). Other legislations relevant to the termination of employment include the Disability Discrimination Act, 1995, the Trade Union and Labour Relations (Consolidation) Act, 1992 (TULRA), the Sex Discrimination Act, 1975, the Race Relations Act, 1976, and the Equal Pay Act, 1970.

In addition to contracts for indeterminate periods, there are fixed, short-term, and probationary contracts as well as apprenticeships. Fixed-term workers engaged for more than a year can contract out of their statutory right to claim unfair

dismissal. There is also no dismissal automatically upon the expiry of a fixed-term contract. The expiry of a period of extension of less than a year of an original fixed-term contract of more than a year is also deemed to be not a dismissal. Temporary workers are defined as those whose services are supplied by an intermediary (employment agent or business) for the benefit of a third party (hirer) for a limited period of time. There is no separate legal category, however; for casual workers or home workers. They must establish both a contract of service and necessary continuity of service to qualify for protection.

Termination of employment not at the initiative of the employer

The employee is entitled to terminate an employment contract at will (by the provision of due notice), unless otherwise agreed in the contract. Contracts of employment may also be frustrated, by an event external to the parties, which renders the further performance of the contract impossible, and may terminate by operation of law, or by the death of the employee or employer.

Termination of employee by the employer

The employer's grounds for dismissal must fall within one of the following categories (According to Employment Rights Act):

- Dismissal on grounds of a worker's aptitude in relation to personal capability or ill health;
- Dismissal on grounds of a worker's conduct;
- For taking part in any kind of industrial action, provided all employees who took part in that action were dismissed without discrimination and not re-engaged within three months;
- Dismissal on grounds of the establishment's needs, if further employment would contravene a duty or restriction imposed by law either on the employer or on the employee. This case might, for example, arise if an employee, who has to use a vehicle at work, had his or her driver's licence suspended;
- Dismissal for reasons of redundancy, where the employer has a wide discretion to determine when it is necessary to dismiss a worker for redundancy; and
- Dismissal for some other substantial reason of a kind such as to justify the dismissal.

Notice and prior procedural safeguards

The length of notice relates to the length of continuous uninterrupted

service, and the minimum periods of notice are as given below: - one week, if continuously employed for less than two years; one week for each year of continuous employment if the period is between two years and less than 12 years; and 12 weeks if the period of continuous employment is 12 years or more. In cases where the required period of notice has not been observed, the Industrial Tribunal may grant payment in lieu of the period that should have been observed. If the employee has been continuously employed for at least two years, the employer is required upon request to hand over a written statement, explaining the reasons for the dismissal. In case of redundancy, if more than 19 employees are affected, the employer must notify the Secretary of State in writing.

Severance pay

An employee whose contract has been terminated on the grounds of redundancy is entitled to receive a redundancy payment and the amount of the payment is calculated according to the length of uninterrupted employment. The employee is to receive:

- for each complete year of service where age during year less than 22, $\frac{1}{2}$ a week's pay
- for each complete year of service where age during year is between 22 and 40, 1 week's pay

- for each complete year of service where age during the year is 41+, 1½ week's pay.

Also, both employers and employees have to contribute to the National Insurance Fund, out of which redundancy payments are financed in case the employer is financially unable to do so.

LATIN AMERICA

BRAZIL

The Constitution of the Federal Republic of Brazil (FC) of 1988 is the primary source of labour law. The source of labour law on termination of employment is to be found in the Consolidation of Labour Laws (CLL). There are two types of labour contract, contract for specified period and contract for unspecified period. A contract for a specified period is a contract in which duration is fixed in advance or which depends upon the performance of specified services or on the occurrence of a particular event, the approximate date of which can be foreseen. Contracts for a specified period are valid only if they govern services whose nature or transitional character justifies the fixing of their duration in advance, transitional activities carried out by the undertaking, and contracts of a probationary nature. Contracts concluded on a probationary basis may not exceed 90 days. The first

year of a contract for an unspecified period is deemed to be a trial period and compensation for termination of employment is not payable until it has been completed.

Termination of employment not at the initiative of the employer

Employment may be terminated, other than at the initiative of the employer for instances such as when the worker resigns; for reasons unrelated to the wishes of the parties; through the operation of law; by mutual consent of the parties; upon the retirement or death of the worker; and on expiry of the contract period or completion of the task. In addition, the employee is entitled to suspend work or cancel the contract if he or she has to perform any statutory duty which is incompatible with the continuation of the employment. In the case of an individually owned undertaking, the employee is entitled to cancel the contract of employment in the event of the death of the employer.

Termination of employee by the employer

Apart from misconduct and refusal of employee to work according to the principles of the work place, if it is established by an administrative inquiry that the employee is guilty of acts which are detrimental to national security, such proof would also constitute valid grounds for the

dismissal of the employee. Also, abusive acts committed by strikers during a strike action, depending on the nature of any prejudice caused as regards the rights of others serve as grounds for the employer to terminate a contract. In this sense, mere participation in a strike action does not constitute serious misconduct, but active participation in a strike which is recognized as illegal, or in violent or restraining acts which impede the access of others to the workplace, is a valid reason for dismissal.

Notice and prior procedural safeguards

A party who wishes to cancel the contract without lawful cause is bound to give notice to the other party of his or her intention as given below:

- eight days in advance if wages are paid weekly or at shorter intervals;
- thirty days in advance if wages are paid fortnightly or monthly, or if the employee's length of service in the undertaking exceeds 12 months;

If the contract is cancelled by the employer during the notice period, the employee's normal hours of work must be reduced by two hours a day during the period of notice, without any reduction in wages. A worker who decides to continue working normal

working hours is also allowed to be absent from work for one to seven days depending on the case. Also, if, during the period of notice given to the employee, the employer commits any action which justifies immediate cancellation of the contract, he or she is obliged to pay the wages for the period of notice, without prejudice to any compensation which may otherwise be due.

Severance pay

Compensation is based on the highest remuneration which the employee has received in the undertaking. Compensation for the cancellation of a contract of indeterminate duration must be equal to one month's remuneration for each year of actual service or any fraction of a year exceeding six months. Apart from this, if the wages are paid by the day, compensation is calculated on the basis of 30 days and if the wages are paid by the hour, compensation is calculated on the basis of 240 hours a month. In case the worker is paid by commission or entitled to a supplement, compensation is calculated on the basis of the average amount of the commission or percentage received during the last 12 months of employment. If the worker is employed at piece rates or by the job, compensation is calculated on the basis of the average time usually spent by the person concerned in

the performance of his or her task, according to the work which would be done in 30 days; and, in the case of contracts for which a time limit has been fixed, if the employer dismisses the worker without a valid reason, he or she is obliged to pay the worker, by way of compensation, a sum equal to half the remuneration to which he or she would have been entitled on the expiry of the contract.

NORTH AMERICA

USA

The United States is one of the few countries in the world which still embraces the employment-at-will concept. Although, as elsewhere, the pure concept of employment at will has been eroded somewhat by jurisprudence, it is still predominant, particularly when one compares it to employment security law in other Western and developed countries. Consequently, with the exceptions of the State of Montana, the Commonwealth of Puerto Rico, and the non-metropolitan territory of the US Virgin Islands, as yet there is no legislation specifically focused on termination of employment. Also, there is no federal legislation which distinguishes between the various types of employment contracts in relation to termination of employment.

Termination of employment not at the initiative of the employer

The contract of employment can terminate, not at the initiative of the employer, in certain circumstances, including by: employee resignation on the appropriate notice; employee retirement; - the expiry of a fixed-term contract; and the completion of the task for which the contract was concluded.

Termination of employee by the employer

The emphasis on the master and servant relationship in employment, which forms the basis of the employment-at-will concept, means that workers may be dismissed for any reason or no reason at all. Nevertheless, protection from arbitrary termination of employment may be given to American workers in three ways. First, employees covered by collective agreements are often protected by provisions requiring that dismissals must be for a valid reason. Second, developments in the common law, specifically tort law and contract law, may be applied to cases of dismissal along with public policy principles. Finally, it is unlawful for an employer to dismiss a beneficiary of a defined benefit pension plan for exercising any right under an employee benefit plan or to prevent any entitlement under such a plan from being attained.

Notice and prior procedural safeguards

There is no legal requirement for notice to be given prior to termination of employment.

Collective agreements usually include provisions for a reasonable period of notice. However, these do not always guarantee compensation in lieu of such notice. There is no legal policy or statute which requires the employer to grant the worker a fair hearing or follow any other natural justice process before dismissing him or her. Typically, collective agreements provide a mechanism for challenging dismissals for cause, normally through a grievance arbitration procedure or other alternative dispute settlement mechanism. Where states have enacted statutes on non-discrimination or wrongful discharge, these sometimes contain due process clauses which mandate that certain procedures be followed. The Worker Adjustment and Retraining Notification Act of 1988 (WARN) requires employers with 100 or more employees to give 60 days' advance notice of redundancies, plant closure or mass lay-off of workers. Mass lay-off is defined as 500 employees or 50 or more employees if they constitute one-third or more of the workforce. The notice must be given to the employees or their union representatives, as well as to local officials. If the employer does not

provide the requisite advance notice, the employer must provide a day's wages for each day the notice was not given.

Severance pay

Severance pay is usually governed by the terms of the collective bargaining agreement, if any. As a matter of practice, most large employers voluntarily provide some redundancy pay for employees terminated for economic reasons.

AFRICA

KENYA

Legislation giving specific protection in relation to termination of employment in Kenya has been enacted in the form of the Employment Act, Cap. 226 (EA), the Trade Disputes Act, Cap. 234 (IDA), and the Regulation of Wages and Conditions of Employment Act, Cap. 229. Pursuant to the Regulations of Wages and Condition of Employment Act, Regulations of Wages Orders are adopted which also contain provisions on termination of employment, either by branch or generally, including the Regulation of Wages General Order (RWGO). In addition, collective agreements, common law principles and case law are important sources of regulation. In general, Kenyan labour legislation does not distinguish between the various types of contract of

employment in relation to termination of employment.

Termination of employment not at the initiative of the employer

The contract of employment can terminate, not at the initiative of the employer, in circumstances like expiry of a fixed-term contract; and the completion of the task for which a contract was concluded.

Termination of employee by the employer

There is no statutory requirement for a valid cause or justifiable reason of dismissal in Kenya. The employer is only required to respect a specific notice period, or to give the employee pay in lieu of notice. In case of gross misconduct, the employer may summarily dismiss an employee (i.e. without notice). Some of the reasons for gross misconduct are absence from work without leave or lawful cause; intoxication during working hours that prevents proper performance of work; willful negligence or carelessness; insulting the employer or other authority; knowingly failing or refusing to comply with a lawful and proper order from a person in authority; imprisonment for an offence lasting more than four days; and commission of, or reasonable suspicion of commission of, a criminal offence against the employer or his or her property.

Notice and prior procedural safeguards

Notice is required for terminating all contracts except those for a fixed-term period or for specific tasks and except when the employee is summarily dismissed. The relevant notice periods are as follows: for workers paid daily, one day's notice; for contracts where wages are paid periodically at an interval shorter than a month, notice equivalent to this interval; and for contracts where wages are paid at intervals longer than a month, 28 days notice. Employees declared redundant are entitled to one month's notice or wages in lieu. The trade union, of which a redundant employee is a member, and the local Labour Office shall be informed of the reasons and the extent of the redundancy. In addition, employers are required to have due regard to seniority, skill, ability and reliability in selecting employees for redundancy and no employee is to be placed at a disadvantage for being or not being a trade union member. An employee cannot be summarily dismissed for conduct which does not by itself warrant summary dismissal, unless he or she has received two written warnings for misconduct, the second being no more than a year old.

Severance pay

An employee declared redundant should be entitled to severance pay at

the rate of not less than 15 days pay for each completed year of service.

SOUTH AFRICA

There are four sources of law that regulate the termination of the employment relationship in South Africa: the Constitution, legislation, the common law and collective agreements. Two pieces of legislation apply to the termination of employment: the Labour Relations Act (LRA) (No. 66 of 1995) and the Basic Conditions of Employment Act (No. 75 of 1997) (BCEA). A contract of employment may be concluded for a definite or an indefinite period, and it can provide for full- or part-time work as well as temporary work. However, under the Labour Relations Act, an employer who fails to renew a fixed-term contract, when a reasonable expectation that it will be renewed is held by the employee, is deemed to have dismissed the employee.

Termination of employment not at the initiative of the employer

When a contract is entered into for a fixed period of time, it will automatically come to an end when the contract period expires. The parties to the contract can also agree on the automatic termination of the employment contract on the occurrence of a future event: for example, when the task or project

for which the employee has been employed is completed. As a general rule, a contract of employment can also be terminated by mutual agreement of the parties. Moreover, the death (but not the illness) of the employee will lead to the end of the contract. However, in terms of common law, the death of an employer will not necessarily lead to the contract's termination. A contract may also terminate by operation of law.

Termination of employee by the employer

Some of the main reasons for termination of an employee are connected with the employee's conduct; connected with the employee's capacity; or based on the employer's operational requirements. Dismissal must be in compliance with a fair procedure, which includes taking account of the Code of Good Practice. Participation in an illegal strike may also constitute a fair reason for dismissal.

Notice and prior procedural safeguards

A party wishing to terminate a contract of employment must, during the first four weeks of employment, give the other party one week's notice. For employment of more than four weeks, but less than a year, two weeks'

notice is required. For employment of more than a year (or more than four weeks for farm or domestic workers), the notice period is four weeks. An employer may make a payment in lieu of notice, but a contractual notice period required of an employee may not be longer than the period to be given to an employee. Collective agreements, but not individual contracts, may provide shorter notice periods.

Severance pay

A basic rate of at least one week's wages per year of service is given as severance pay but only for dismissals for operational requirements. This rate, which accords with current industry norms, may be adjusted by the Minister of Labour from time to time. It may also be improved upon by collective agreement. Where a dispute over severance pay forms part of a dispute over unfair dismissal for economic operational reasons, it is determined as part of the latter dispute by the Labour Court.

TANZANIA

The central sources of legislative regulation on the termination of employment in the United Republic of Tanzania are the Security of Employment Act, 1964 (SEA), the Employment Ordinance, 1956 (E,O) and the Severance Allowance Act, 1962 (SAA). The Employment

Ordinance distinguishes between oral and written contracts in relation to termination. Both oral and written contracts for a fixed term or fixed piece of work may terminate upon the expiry or completion of the terms, without giving rise to liability by the employer to pay compensation, or enabling the employee to challenge the termination. However, oral contracts for a set period of time are deemed to be renewed for the same period on the same terms and conditions unless notice of termination has been lawfully given to the employee. Furthermore, oral contracts may not be for a period exceeding six months.

Termination of employment not at the initiative of the employer

The death of the employee terminates both oral and written contracts. The death of the employer terminates written contracts, with the approval of the Labour Officer, and terminates oral contracts after one month. A written contract may also be terminated by mutual agreement, provided a Labour Officer approves the conditions of termination.

Termination of employee by the employer

Misconduct inconsistent with the terms of the contract of service; willful disobedience of lawful orders; lack of skill which the employee has warranted to possess; habitual or

substantial neglect of duties; and absence from work without permission or reasonable excuse are some of the main reasons for termination of employment in Tanzania.

Notice and prior procedural safeguards

Statutory notice periods for oral contracts are as given below:

- 24 hours notice where the oral contract is for less than a week;
- 14 days notice for oral contracts not paid daily but at intervals not exceeding a month and;
- 30 days notice for oral contracts of a month or more.

Oral contracts may be terminated by a payment in lieu of notice. Employees on written contracts are entitled to not less than 28 days notice, except for cases of termination due to serious misconduct. Such notice must also be given to any relevant workers' committee.

Severance pay

Two forms of severance pay are payable in the United Republic of Tanzania. The first is a severance allowance under the Severance Allowance Act, which is paid for all terminations of employment by the employer, (except termination

due to serious misconduct), and for terminations giving rise to an entitlement by the employee to a pension. The second form of severance pay is statutory compensation under the Security of Employment Act, which is payable for all terminations by the employer, except those involving:

- the business being wound up or transferred from the United Republic of Tanzania;
- the expiry of fixed-term or fixed-project work;
- the suspension of work for reasons outside the employer's control (such as climatic reasons or natural disasters);
- the completion of seasonal or temporary work;
- redundancy dismissals;
- dismissals due to the employee's neglect or poor performance, or absence from work beyond the entitlement to leave;
- the employee attaining the age of retirement;
- the reinstatement of another employee;
- summary dismissal;
- the employee undermining the authority of the employer or the Workers' Committee; or
- The Minister of Labour certifying that, in the interests of good

industrial relations, the employee should not be paid statutory compensation.

A basic rate of at least one week's wages per year of service is given as severance pay.

UGANDA

The central source of legislative regulation on the termination of employment is the Employment Act 2006.

Termination of employment not at the initiative of the employer

Termination takes place not at the initiative of the employer in the following instances:

- Where the contract of service is ended by the employer with notice;
- Where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favourable to the employee;
- Where the contract of service is ended by the employee with or without notice, as a consequence

of unreasonable conduct on the part of the employer towards the employee; and

- Where the contract of service is ended by the employee, in circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice.

Termination of employee by the employer

Summary termination takes place when an employer terminates the service of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term. An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.

Notice and prior procedural safeguards

A contract of service shall not be terminated by an employer unless he or she gives notice to the employee except where the contract of employment is terminated summarily or where the reason of termination is attainment of retirement age.

Generally the notice period is given as follows:

- Not less than two weeks, where the employee has been employed for a period of more than six months but less than one year
- Not less than one month, where the employee has been employed for a period of more than twelve months, but less than five years.
- Not less than two months, where employee has been employed for a period of five, but less than ten years; and
- Not less than three months where the service is ten years or more.

Also during the notice period, the employee shall be given at least one half day off per week for the purpose of seeking new employment.

Severance pay

An order of compensation to an employee who has been unfairly terminated shall, in all cases, include a basic compensatory order for four weeks wages. They are eligible for additional compensation of three months wages maximum and minimum of one month wages. Employees are eligible for additional

compensation based on the following criteria:

- The employee's length of service with the employer;
- The reasonable expectation of the employee as to the length of time for which his or her employment with that employer might have continued but for the termination;
- The opportunities available to the employee for securing comparable or suitable employment with another employer;
- The value of any severance allowance to which an employee is entitled;
- The right to press claims for any unpaid wages, expenses or other claims owing to the employee;
- Any expense reasonably incurred by the employee as a consequence of the termination;
- Any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and
- Any compensation including ex gratia payments, in respect of termination of employment paid by the employer and received by the employee.

COLLECTIVE DISMISSALS

None of the countries gave any specific definition on the number of employees for collective dismissals, except China, Pakistan, South Africa, Uganda, UK, USA, France and Germany. The specifications for these countries are as given below:

- **China:** collective dismissals could be completed only if there are more than 20 employees, or less than 20 accounting for at least 10% of the total number of employees.
- **Pakistan:** if more than 50% of employees need to be terminated then approval from labour court is essential.
- **South Africa:** To any employer with more than 50 employees who contemplates to dismiss, the following rules apply: 10 employees out of up to 200 employees; 20 employees out of 201 to 300 employees; 30 employees out of 301 to 400 employees; 40 employees out of 401 to 500; 50 employees out of more than 500 employees.
- **Uganda:** Collective dismissals of at least 10 employees over a period of not more than 3 months for reasons of an economic, technological, structural or similar nature are permitted.
- **UK:** Redundancies concerning at least 20 employees within 90 days.
- **USA:** In case of Mass lay-off: at least 500 or more employees or, - 50-499 employees where that number is at least 33 percent of the employer's workforce, and in case of plant closure: a shut-down of one or more facilities or operating units that results in a loss of employment for 50 or more employees over a 30-day period.

However in the case of approvals and notifications to be given to the public administration, trade unions, workers representatives or judicial bodies, India is the only country among those analysed which required approval from all these bodies. Prior consultations with trade unions for collective dismissals was compulsory for countries such as China, India, Indonesia, Vietnam, Russia, South Africa, Tanzania, UK, France and Germany. Notification to the public administration was a must for all the countries except Indonesia, South Africa and Tanzania. Countries such as China, Bangladesh, India, Indonesia, Vietnam, Pakistan, Russia, South Africa, Uganda, Tanzania, UK, USA, France and Germany have to give notification to workers' representatives for collective dismissals. Approval from public administrative bodies is a must for India, Sri Lanka and Pakistan; and

approval by workers representatives is compulsory for India and Vietnam before collective dismissals. Countries such as China, Bangladesh, Malaysia, India, Vietnam, Russia, France and Germany considered priority rules such as social considerations, age, and job tenure before collective dismissals. Some of the countries which considered options such as transfers before collective dismissals

were China, India, Indonesia, Vietnam, Russia, South Africa, Tanzania, UK, France and Germany. Countries such as China, Bangladesh, Sri Lanka, India and France considered re-employment of the employees once the company attains stability, while for the other countries it is not considered. Kenya and Brazil do not give any specific information on collective dismissals.

Table: 5 Labour Laws Provisions Related to Consent for Collective Dismissal: Comparison in Select Countries

| Countries | Definition of collective dismissal (number of employees concerned) | Prior consultations with trade unions (workers' representatives) | Notification to the public administration | Notification to workers' representatives | Approval by public administration or judicial bodies | Consent of workers' representatives | Priority rules for collective dismissals (social conditions, age, job tenure) | Employer's obligation to consider alternatives to dismissal (transfers, retraining) | Priority rules for re-employment: |
|-------------|---|--|---|--|--|-------------------------------------|---|---|-----------------------------------|
| ASIA | | | | | | | | | |
| Bangladesh | No provision on the number of employees concerned. | No | Yes | Yes | No | No | Yes | No | Yes |
| China | More than 20 employees or less than 20, accounting for at least 10% of the total number of employees. | Yes | Yes | Yes | No | No | Yes | Yes | Yes |
| India | No provision on the number of employees concerned | Yes | Yes | Yes | Yes | Yes* | Yes | Yes | Yes |
| Indonesia | No provision on the number of employees concerned. | Yes | No | Yes | No | No | No | Yes | No |
| Pakistan | If more than 50% of employees need to be terminated then approval from labour court is essential | - | - | Yes | Yes | - | - | - | - |
| Philippines | No provision on the number of employees concerned. | No | Yes | No | No | No | No | No | No |
| Malaysia | No provision on the number of employees concerned. | No | Yes | No | No | No | Yes | No | No |
| Sri Lanka | No provision on the number of employees concerned. | No | Yes | No | Yes | No | No | No | Yes |
| Thailand | No provision on the number of employees concerned. | No | Yes | No | No | No | No | No | No |
| Vietnam | No provision on the number of employees concerned. | Yes | Yes | Yes | No | Yes | Yes | Yes | No |

| EUROPE | | | | | | | | | | |
|---------------|---|-----|-----|----|----|-----|-----|-----|-----|-----|
| France | The Labour Code contains specific sections on the legal requirements applicable to economic dismissal concerning: 1) less than 10 employees over a 30-day period; 2) 10 or more employees over a 30-day period. | Yes | Yes | No | No | Yes | Yes | Yes | Yes | Yes |
| Germany | Within a period of 30 days: 1) more than 5 employees in undertakings with 21 to 59 employees; 2) 10% or more than 25 employees in undertakings with 60 to 499 employees; 3) at least 30 employees in undertakings with at least 500 employees. | Yes | Yes | No | No | Yes | Yes | Yes | Yes | No |
| Russia | No provision on the number of employees concerned. | Yes | Yes | No | No | Yes | Yes | Yes | Yes | No |
| UK | Redundancies concerning at least 20 employees within 90 days. | Yes | Yes | No | No | No | Yes | No | Yes | No |
| LATIN AMERICA | | | | | | | | | | |
| Brazil | - | - | - | - | - | - | - | - | - | - |

| NORTH AMERICA | | | | | | | | |
|---------------|---|----|-----|-----|----|----|----|----|
| USA | The WARN (Worker Adjustment and Retraining Notification Act) provides for the following notice requirements to be observed by employers with at least 100 employees when contemplating mass lay-off of workers or plant closure: 1) Mass lay-off: loss of employment not resulting from a plant closing affecting over a 30 day period: - at least 500 or more employees or, - 50-499 employees where that number is at least 33 percent of the employer's workforce. 2) Plant closure: a shut-down of one or more facilities or operating units that results in a loss of employment for 50 or more employees over a 30-day period. | No | Yes | Yes | No | No | No | No |
| | | | | | | | | |
| | | | | | | | | |
| AFRICA | | | | | | | | |
| Kenya | - - | - | - | - | - | - | - | - |

| | | | | | | | | | | | | | | | | |
|--------------|---|--|---|---|-----------------------------------|--|-----|----|-----|----|----|----|----|-----|----|----|
| South Africa | To any employer with more than 50 employees who contemplates to dismiss, the following rules apply | • 10 employees out of up to 200 employees; | • 20 employees out of 201 to 300 employees; | • 30 employees out of 301 to 400 employees; | • 40 employees out of 401 to 500; | • 50 employees out of more than 500 employees. | Yes | No | Yes | No | No | No | No | Yes | No | No |
| Tanzania | No provision on the number of employees concerned. | Yes | No | Yes | No | No | Yes | No | No | No | No | No | No | Yes | No | No |
| Uganda | Termination of at least 10 employees over a period of not more than 3 months for reasons of an economic, technological, structural or similar nature. | No | Yes | Yes | No | No | No | No | No | No | No | No | No | No | No | No |

Source: International Labour Organisation; Industrial Disputes Act for India (1947) for India; Exim Research

* Section 25N of ID Act states that the appropriate Government or the Specified Authority may grant or refuse permission after giving a reasonable opportunity of being heard to the employer, the workmen, and the persons interested in such retrenchment, which implies that without the consent of the Workers' Union it would be difficult to get the permission granted.

| Table 6: Labour Laws Provisions Related to Severance Pay: Comparison in Select Countries | | | | | |
|--|--|------------------------------------|-------------------------------------|--------------------------------------|--------------------------------------|
| Country | Severance pay for redundancy dismissal (in months) | | | | |
| | for a worker with 9 months of tenure | for a worker with 1 year of tenure | for a worker with 5 years of tenure | for a worker with 10 years of tenure | for a worker with 20 years of tenure |
| ASIA | | | | | |
| Bangladesh | 0.0 | 1.0 | 5.0 | 10.0 | 20.0 |
| China | 1.0 | 1.0 | 5.0 | 10.0 | 20.0 |
| India | 0.5 | 0.5 | 2.5 | 5.0 | 10.0 |
| Indonesia | 0.0 | 1.0 | 5.0 | 10.0 | 20.0 |
| Malaysia | 0.0 | 1.0 | 5.0 | 10.0 | 20.0 |
| Pakistan | 1.0 | 1.0 | 5.0 | 10.0 | 20.0 |
| Philippines | 1.0 | 1.0 | 5.0 | 10.0 | 20.0 |
| Sri Lanka | 2.0 | 2.5 | 12.5 | 22.0 | 40.0 |
| Thailand | 1.0 | 3.0 | 6.0 | 10.0 | 10.0 |
| Vietnam | 0.0 | 0.5 | 2.5 | 5.0 | 10.0 |
| EUROPE | | | | | |
| France | 0.0 | 0.2 | 1.0 | 2.0 | 4.0 |
| Germany | 0.0 | 0.5 | 2.5 | 5.0 | 10.0 |
| Russia | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| UK | 0.0 | 0.3 | 1.5 | 3.0 | 6.0 |
| LATIN AMERICA | | | | | |
| Brazil | 0.2 | 1.0 | 5.0 | 10.0 | 20.0 |
| NORTH AMERICA | | | | | |
| USA | - | - | - | - | - |
| AFRICA | | | | | |
| Kenya | 0.3 | 0.5 | 2.5 | 5.0 | 10.0 |
| South Africa | 0.0 | 0.2 | 1.0 | 2.0 | 4.0 |
| Tanzania | 0.0 | 0.2 | 1.0 | 2.0 | 4.0 |
| Uganda | - | - | - | - | - |

Source: Exim Research

5. CONDITIONS OF WORK HOURS/LEAVE

It is widely believed that the advent of industrial capitalism was accompanied by the emergence of the modern concept of time and increases in working hours. The dominant concept of working time in early industrialization was based on the perception that hours spent outside work were seen simply as 'lost' time. The logical result of this perspective was the extension of working hours, often to the physical maximum, and the policy concern was how to secure minimum hours of work to discipline workers and maintain production levels. The negative consequences of very long working hours on health and productivity were slowly recognized, and the importance of guaranteeing free time or leisure for workers is being gradually acknowledged.

As a result, working hours began to be progressively reduced from as early as the 1830s, notably through legal interventions. In the late nineteenth century, the idea for the eight-hour day gathered increasing support, and its positive impacts on productivity were reported in various pioneering experiments. All this eventually paved a way to the adoption of the

first international labour convention in 1919, the Hours of Work (Industry) Convention, 1919 (No. 1), which stipulates the principle of 'eight hours a day and 48 hours a week'.

Taking this into consideration, in this chapter, an attempt has been made to compare the conditions of work hours and leave entitlement. The parameters that have been used for comparison include:

- Standard workday in manufacturing (hours)
- Minimum daily rest required by law (hours)
- Maximum working days per week
- Maximum overtime limit
- Premium for overtime work over and above the normal pay
- Holidays for employees

Working Hours

In terms of working hours most of the countries followed an 8 hours schedule per day. However India, Pakistan and Tanzania followed a 9 hours a day schedule, and France followed a 7 hours a day schedule. Some of the other exceptions were Bangladesh

| Table: 7 Labour Laws Provisions Related to Conditions of Work Hours: Comparison in Select Countries | | | | | | |
|---|---|---|-------------------------------|--|---|--|
| Country | Standard workday in manufacturing (hours) | Minimum daily rest required by law (hours) | Maximum working days per week | Maximum overtime limit in normal circumstances (hours) | Maximum overtime limit in exceptional circumstances (hours) | |
| ASIA | | | | | | |
| Bangladesh | 8 or 9 hours a day, 48 hours a week | Not specified | 6.0 | 12 overtime hours a week | Up to the Government's discretion. | |
| China | 8 hours a day, 44 hours a week | Not specified. In a 24 hour period not less than 13 hours need to be given as rest period | 6.0 | 1 hr/day | 3 hrs/day, 36 hrs/month | |
| India | 9 hours a day, 48 hours a week | 30 minute rest for every 5 hours of work | 6.0 | 200 hrs/year | Not specified. | |
| Indonesia | 8 hours a day for 5 workdays/week or 7 hours a day for 6 workdays/week, 40 hours a week | Not specified. In a 24 hour period not less than 13 hours need to be given as rest period | 6.0 | 3 hrs/day; 14 hrs/week | Not specified. | |
| Malaysia | 8 hours a day, 48 hours a week | Not specified. | 6.0 | 104 hrs/month | 104 hrs/month should not be exceeded even in exceptional circumstances. | |

| | | | | | |
|---------------|--|---|-----|--|---|
| Pakistan | 9 hours a day (7 hours a day for a young person) ¹⁰ | Not specified. | 6.0 | Not exceeding 624 hours per year, 60 hours/week and 12 hours/day (adult), not exceeding 488 hours per year, 48 hours per week and 9 hours per day (young person) | Not specified. |
| Philippines | 8 hours a day, 48 hours a week | Not specified. | 6.0 | Not specified. | Not specified. |
| Sri Lanka | 8 hours a day, 45 hours a week | 1 hour interval for meal or rest | 5.5 | 12 hours/week | Not specified. |
| Thailand | 8 hours a day, 48 hours a week | 1 hour | 6.0 | 36 hours/week | Not specified. |
| Vietnam | 8 hours a day | Not specified. | 6.0 | 4 hours/day, 200 hours/year | 300 hours/year |
| EUROPE | | | | | |
| France | 7 hours a day | Not specified. In a 24 hour period not less than 11 hours need to be given as rest period | 6.0 | 220hrs/year. Fixed by company level or national collective bargaining agreement. | Not specified. Exceptional circumstances not defined under French law |
| Germany | 8 hours a day | Not specified. In a 24 hour period not less than 11 hours need to be given as rest period | 6.0 | 2 hours/day; up to 20 hrs/week on a temporary basis as long as the average is 8 hrs/week or less within 6 months or 24 weeks | Nothing specified but possible as long as the average within 6 calendar months or 24 weeks is 48 hrs/week or less |

¹⁰Under age of 18

| | | | | | |
|---------------|---------------------------------|---|-----|---|---|
| Russia | 8 hours a day | Not more than 2 hours long and not shorter than 30 mins and is not included into working hours. | 6.0 | 4 hours per day, but not more than 1/2 of the regular monthly work time (the average 20 hours per week). No more than 120 hours per year applies. | No more than 4 hours per two consecutive days and no more than 120 hours per year (if the overtime is initiated by the employer). |
| UK | There is no daily limit by law. | 20 minutes of rest for six hours of work. In a 24 hour period not less than 11 hours need to be given as rest period | 6.0 | Not specified. No limit, if the employee agrees to it. | No special provisions for exceptional circumstances. Depends on whether the employee agrees or not. |
| LATIN AMERICA | | | | | |
| Brazil | 8 hours a day | 1 hour break for rest or food and should not exceed 2 hours. Interval of fifteen minutes when the duration exceeds four hours. The rest intervals are not counted in the duration of labor. | 6.0 | 2 hrs/day | 4 hrs/day |
| NORTH AMERICA | | | | | |
| USA | 8 hours a day | Not specified. | 6.0 | Not specified. | Not specified. |
| AFRICA | | | | | |
| Kenya | 8 hours a day | Not specified. | 6.0 | 12 hrs/2 weeks | Not specified. |

Source: Exim Research

which followed 8 or 9 hours per day schedule, Indonesia which followed 8 hours for 5 workdays/week or 7 hours for 6 workdays/week, and South Africa which followed 9 hours per day for a 5-day workweek and 8 hours per day for a 6-day workweek with 5 hours on the 6th day. There is no daily limit by law for UK.

Minimum Daily rest

Bangladesh, Philippines, Malaysia, Vietnam, Pakistan, Russia, Uganda, Kenya and USA have not specified any minimum daily rest period. However, China and Indonesia have specified daily rest of 13 hours in a full day i.e. after work (including overtime) an employee should get 13 hours of rest in a day. Out of the 24 hours in a day they can work maximum for 11 hours which includes the 3 hours of overtime in exceptional circumstances. Similarly, France, Germany and Brazil have specified daily rest of 11 hours in a full day and South Africa and Tanzania have specified daily rest of 12 hours in a full day. Sri Lanka and Thailand have specified minimum daily rest of 1 hour in between the work hours. While in UK for every six hours of work 20 minutes of rest was to be provided, in India 30 minutes of rest is to be given for every 5 hours of work.

Maximum working days per week

All the countries followed a 6 days a week schedule except Sri Lanka,

wherein it is 5 full days in a week and a half day on Saturday.

Maximum overtime limit

In general, an employee is required to perform overtime work when the country is at war or when any other national or local emergency is declared or has happened and when the work is necessary to prevent loss or damage to perishable goods; and where the completion or continuation of the work started before the eighth hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer. The maximum overtime limit for Bangladesh is 12 hours a week and under exceptional circumstances it is up to the discretion of the Government. China specified an overtime limit under normal circumstances to be 1 hour a day and under exceptional circumstances it will not exceed 3 hours a day or 36 hours a month. Indonesia, Sri Lanka and Thailand follows 14 hours a week, 12 hours a week and 36 hours a week schedule, respectively for overtime work and nothing is specified for the maximum overtime limit. In the case of Malaysia, the overtime limit in normal circumstances is not to exceed 104 hours a month and this is not to be exceeded even under normal circumstances. In Pakistan, overtime limit is not to exceed 624 hours per year, 60 hours/week and 12 hours/day for an adult, and not exceeding 468 hours per year, 48

hours per week and 9 hours per day for a young person (below 18 years). Vietnam and Russia followed an overtime limit of 4 hours per day. However, in Russia, overtime limit was 4 hours per day, but not more than 1/2 of the regular monthly work time (the average 20 hours per week) and also not more than 120 hours per year applies, and in Vietnam it should not exceed 200 hours per year in normal circumstances and 300 hours per year under exceptional circumstances. Brazil and Uganda specified 2 hours of overtime in a day under normal circumstances whereas under exceptional circumstances it is 4 hours per day for Brazil. While South Africa followed an overtime limit of 10 hours per week in normal circumstances and 15 hours per week in exceptional circumstances, Kenya followed a 12 hours per 2 weeks schedule for overtime. In France, overtime was 220hrs/year and was fixed by company level or national collective bargaining agreement. Under normal circumstances, Germany followed 2 hours/day; up to 20 hrs/week on a temporary basis as long as the average is 8 hrs/week or less within 6 months or 24 weeks, and in exceptional circumstances the average overtime should be 48 hours/week within 6 calendar months or 24 weeks. Indonesia provided an overtime of 3 hrs/day and 14 hrs/week; and Tanzania provided overtime of maximum 3 hours/day, 50 hours

per 4-week period. In India overtime under normal circumstances were 200 hours per year and no specific rules for working overtime under exceptional circumstances. UK, USA and Philippines have not specified anything under overtime work.

Premium for overtime work over and above the normal pay

While Sri Lanka, Brazil, South Africa, Uganda, Kenya, Tanzania, and USA paid an overtime of 50 percent over and above the normal pay, Bangladesh, Pakistan and India paid an overtime of 100 percent over and above the normal pay as premium for overtime work. China, Malaysia and Vietnam paid a 50 percent premium for working overtime on a normal day; a 100 percent premium for working overtime on a rest day; and a 200 percent premium for working overtime on a public holiday. Premium for overtime work was different in Philippines wherein they paid 25% of the regular rate on ordinary days for work in excess of first 8 hours; 30% of the regular rate on special days, rest days, and holidays; and additional 30% of the increased rate for work in excess of the first 8 hours on these days. While Thailand paid a premium of 50% on normal working day and 200% on a holiday; Russia paid premium of 50% for the first two hrs; and 100% thereafter. In France, premium was 5% for first

| Table: 8 Labour Laws Provisions Related to Premium for Overtime Work : Comparison in Select Countries | | | |
|---|---|---|--|
| Country | Premium for overtime work (% of hourly pay) over and above the normal pay | Premium for night work (% of hourly pay) in case of continuous operations | Premium for work on weekly rest day (% of hourly pay) in case of continuous operations |
| ASIA | | | |
| Bangladesh | 100% | 0% | 0% |
| China | 50% where an extension of working hours is arranged for workers on a normal day; 100 % where workers are required to work on a rest day and no compensation leave can be arranged; 200% where workers are required to work on statutory rest days or holidays | 39% | 100% |
| India | 100% | 0% | 0% |
| Indonesia | for normal workdays: 50% first hour; then 100%. For holidays: 100% first 7 hours; 200% 8th hour; then 300% | 0% | 0% |
| Malaysia | There is a 50% premium for working overtime on a normal day; a 100% premium for working overtime on a rest day; a 200% premium for working overtime on a public holiday. | 0% | 0% |
| Pakistan | 100% | 0% | 100% |
| Philippines | 25% of the regular rate on ordinary days for work in excess of first 8 hours; 30% of the regular rate on special days, rest days, and holidays and additional 30% of the increased rate for work in excess of the first 8 hours on these days | 10% | 30% |
| Sri Lanka | 50% | 0% | 50% |

| | | | |
|----------------------|---|-----------|---|
| Thailand | 50% normal working day; 200% holiday (in other words, 1.5 times the normal hourly rate for overtime work on normal working day; 3 times the normal hourly rate for overtime work on a holiday.) | 0% | 0% |
| Vietnam | 50% on a weekday, 100% on weekly holiday/rest day, 200% on national holidays and paid leave days, and 30% for night work. | 30% | 100% |
| EUROPE | | | |
| France | 5% for first eight hrs; 50% after; can be reduced to 10% by collective agreement | 0% | 0% |
| Germany | Between 20%-60% | 12.5%-50% | 50%-70% (Sundays) 50%-150% (Public holidays) |
| Russia | 50% first two hrs; 100% thereafter | 20% | 100% |
| UK | Not specified | - | - |
| LATIN AMERICA | | | |
| Brazil | 50% | 20% | 100% |

| | | |
|-----------------------|-----|-----|
| NORTH AMERICA | | |
| USA | 50% | 0% |
| AFRICA | | |
| Kenya | 50% | 0% |
| South Africa | 50% | 0% |
| Tanzania | 50% | 55% |
| Uganda | 50% | 0% |
| Source: Exim Research | | |

| Table: 9 Labour Laws Provisions Related to Paid Annual Leaves: Comparison in Select Countries | | | | | | |
|---|--|--|------------------------------------|-------------------------------------|--------------------------------------|--------------------------------------|
| Country | Holidays | Paid annual leave for a worker (in working days) | | | | |
| | | 9 months of tenure (in working days) | 1 year of tenure (in working days) | 5 years of tenure (in working days) | 10 years of tenure (in working days) | 20 years of tenure (in working days) |
| ASIA | | | | | | |
| Bangladesh | Public holidays, festival leaves, annual leave and sick leave | 0.0 | 17.0 | 17.0 | 17.0 | 17.0 |
| China | Public festivals like New Year's Day, Spring Festival, International Labour Day, National Day and other holidays stipulated by laws and regulations. Sick leaves and annual leaves. | 0.0 | 5.0 | 5.0 | 10.0 | 15.0 |
| India | Public holidays, sick leave, annual leave, casual leave | 0.0 | 15.0 | 15.0 | 15.0 | 15.0 |
| Indonesia | Public holidays, sick leaves and annual leaves | 0.0 | 12.0 | 12.0 | 12.0 | 12.0 |
| Malaysia | Public festivals like National Day, Birthday of the Yang di Pertuan Agong, the Birthday of the Ruler or the Yang di Pertua Neger, the Workers' Day and other holidays stipulated by laws and regulations, sick leaves and annual leaves. | 0.0 | 8.0 | 16.0 | 16.0 | 16.0 |
| Pakistan | Annual Holidays, festival holidays, casual leave and sick leave | 0.0 | 14.0 | 14.0 | 14.0 | 14.0 |

| | | | | | | |
|-------------|--|------|------|------|------|------|
| Philippines | Public festivals like New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and thirtieth of December and the day designated by law for holding a general election. Sick leaves and annual leaves. | 0.0 | 5.0 | 5.0 | 5.0 | 5.0 |
| Sri Lanka | Public holiday, sick leaves and annual leaves | 14.0 | 14.0 | 14.0 | 14.0 | 14.0 |
| Thailand | Employer to inform employee of 13 annual traditional holidays in advance. If traditional holiday falls on a working day an additional holiday will be given on the following working day. An employer may require an employee to work on holidays if his business is that of a hotel, theatre, transport, restaurant, cafe, club, society, medical establishment or such other business as is prescribed by Ministerial Regulations. | 0.0 | 6.0 | 6.0 | 6.0 | 6.0 |
| Vietnam | Public holidays like solar and lunar new year, victory anniversary, may day etc, sick leaves and annual leaves | 9.0 | 12.0 | 13.0 | 14.0 | 16.0 |
| EUROPE | | | | | | |
| France | Annual leaves, sick leaves | 22.5 | 30.0 | 30.0 | 30.0 | 30.0 |
| Germany | Annual leaves, sick leaves | 24.0 | 24.0 | 24.0 | 24.0 | 24.0 |
| Russia | Annual leaves, sick leaves and public holidays | 22.0 | 22.0 | 22.0 | 22.0 | 22.0 |
| UK | Annual leaves, sick leaves | 28.0 | 28.0 | 28.0 | 28.0 | 28.0 |

eight hrs; 50% after 8 hours which can be reduced to 10% by collective agreement. Germany followed a different system wherein the premium is determined by collective bargaining agreements and depends on the type of overtime work, e.g. premium was between 20% and 60% if overtime work is performed on a regular working day, between 12.5% and 50% for night time work, between 50% and 70% for working on Sundays and between 50% and 150% for working on public holidays. UK did not specify anything under premium for overtime work.

While China paid a 39 percent premium for night work in case of continuous operations, Russia and Brazil paid a premium of 20 percent each. Philippines, Vietnam and Tanzania paid night premium of 10 percent, 30 per cent and 55 per cent respectively.

Holidays for employees

Public holidays, sick leaves and annual leaves were given for all the employees in all the countries considered for comparison. In the case of Thailand, employer has to inform employee of 13 annual traditional holidays in advance. If traditional holiday falls on a working day an additional holiday will be given on the following working day. Also, an employer may require an employee to work on holidays if his

business is that of a hotel, theatre, transport, restaurant, cafe, club, society, medical establishment or such other business as is prescribed by Ministerial Regulations in Thailand. Public holidays, sick leaves, annual leaves and casual leaves are given to employees in India. Casual leaves are available as per the company policy and the quantum of casual leave and sick leave is fixed by the company/ organization in accordance with the State's Shops and Establishment Act or any other law applicable to it, except where it has been specifically provided by law. For establishments which are not covered under the ESI Act, the workers get sick leave as per company policy or standing orders.

Paid Annual Leave

Usually in most of the countries annual leave becomes eligible to the employee upon completion of one year of uninterrupted service in the organization. However, Sri Lanka (14 days), Vietnam (9 days), Russia (22 days), South Africa (11 days), Uganda (14 days), Kenya (16 days), Tanzania (20 days), UK (28 days), France (22.5 days) and Germany (24 days) give annual paid leave starting from 9 months of tenure. India, Bangladesh, Indonesia, Pakistan, Brazil and Philippines gave annual leaves of 15 days, 17 days, 12 days, 14 days, 26 days and 5 days on completion of 1 year of tenure and above.

In the case of Malaysia for every twelve months of continuous service with the same employer, eight days are granted if the employee completed 1 year of tenure, 16 days are given to employees who are employed for more than 5 years.

In China, upon completion of twelve months of continuous service with the same employer, 5 days are granted if the employee completed 1 year of tenure and less than 5 years of tenure. Paid annual leave for 10 years of service is 10 days, and 20 years of service is 15 days.

In Sri Lanka, annual leave is for 12 workdays if the employee works for 1 year and above consecutively. Additionally, a rest of one month each is awarded in the seventh and eighth year of work to employees who have been working for six years consecutively with the same enterprise on the condition that the said employee will no longer be entitled to their annual period of rest in those 2 current years (seventh and eighth year).

Also, in Sri Lanka after one year of service, annual leave is given with following conditions:

- Where the employment of employee commences on or after the first day of January but before the first day of April, a

holiday of fourteen days with full remuneration;

- Where the employment of employee commences on or after the first day of April but before the first day of July, a holiday of ten days with full remuneration;
- Where the employment of employee commences on or after the first day of July but before the first day of October, a holiday of seven days with full remuneration; and
- Where the employment of employee commences on or after the first day of October a holiday of four days with full remuneration, and the employer shall allow such holiday and be liable to pay such remuneration.

In India, every employee who has worked for a period of 240 days or more during a calendar year shall be allowed during the subsequent calendar year, leave with wages calculated at the rate of one day for every twenty days of work performed by him during the previous calendar year.

Employment of ladies

One of the common laws in all the countries considered for the study was that ladies are not allowed to

be employed in underground work, mining, and construction work and women were not to be allowed to work at night between the working hours 1000 Hrs in the evening and 0500 hrs in the morning. In India also, similar rules are being followed, wherein women are not allowed to work near cotton openers, in any factory to lift,

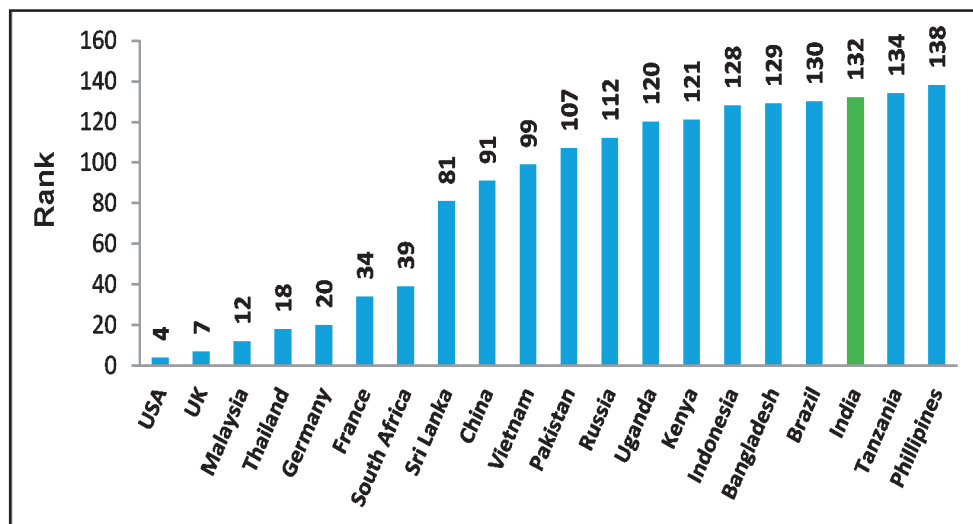
carry or move any load so heavy as to be likely to cause them an injury, working in fish-curing or fish- canning factories and women should not be employed in these factories night between 1000 hrs and 0500 hrs . All women are also entitled to minimum of three months for maternity leave in all the countries under comparison.

6. SUMMARY AND CONCLUSION

As economic growth in any country is directly linked to the industrial growth, and industrial growth having influence on employer-employee relationship, a set of labour laws that are also tuned to benefit the interests of the industry is the need of the hour. Indian labour laws, which presently take care of the interest of the labour force, are not providing conducive environment to the functioning of the industry due to cumbersome procedures. As a result, the labour laws are considered having negative influence for new investors.

Essentially, structural changes to labour laws rely on four important stake holders, viz, the trade unions, industry, national and regional political parties and eventually the Government. While there are no diametrically opposite interests between the industry and trade unions, it is important to understand by the workers, and trade unions serving the interests of workers, that the proposals for changes in labour laws are only to smoothen the operations of the industry, which will

Exhibit 4 : Ease of Doing Business Index



Source: Doing Business 2013, World Bank

attract new investments, generate more jobs, and thereby provide more employment opportunities.

In general, across the globe, a majority of firms are born small and tend to grow over the years, both in terms of size and employment. In contrast, in India, firms are born small and majority of them tend to stay small. For example, in the United States, in 35 years of existence, a company grows ten times both in terms of operations

and employment. In contrast, in India the productivity of a 35 year-old firm merely doubles, while its headcount actually falls by a fourth, according to World Development Report 2013. Main reason cited for such a situation has been the stringent labour laws and inflexibility in labour market.

For example, the Industrial Disputes Act provides for institutions and procedures for investigation for settlement of industrial disputes.

Table 10: Starting a Business and Resolving Insolvency: Countrywise Ranking

| Countries | Starting a business (Rank) | Procedures (number) | Time (days) | Countries | Resolving Insolvency | Time (years) |
|--------------|----------------------------|---------------------|-------------|--------------|----------------------|--------------|
| USA | 13 | 6 | 6 | UK | 8 | 1 |
| UK | 19 | 6 | 13 | USA | 16 | 1.5 |
| France | 27 | 5 | 7 | Germany | 19 | 1.2 |
| Sri Lanka | 33 | 5 | 7 | France | 43 | 1.9 |
| South Africa | 53 | 5 | 19 | Malaysia | 49 | 1.5 |
| Malaysia | 54 | 3 | 6 | Sri Lanka | 51 | 1.7 |
| Thailand | 85 | 4 | 29 | Russia | 53 | 2 |
| Bangladesh | 95 | 7 | 19 | Thailand | 58 | 2.7 |
| Pakistan | 98 | 10 | 21 | Uganda | 69 | 2.2 |
| Russia | 101 | 8 | 18 | Pakistan | 78 | 2.8 |
| Germany | 106 | 9 | 15 | China | 82 | 1.7 |
| Vietnam | 108 | 10 | 34 | South Africa | 84 | 2 |
| Tanzania | 113 | 9 | 26 | Kenya | 100 | 4.5 |
| Brazil | 121 | 13 | 119 | India | 116 | 4.3 |
| Kenya | 126 | 10 | 32 | Bangladesh | 119 | 4 |
| Uganda | 144 | 15 | 33 | Tanzania | 129 | 3 |
| China | 151 | 13 | 33 | Brazil | 143 | 4 |
| Philippines | 161 | 16 | 36 | Indonesia | 148 | 5.5 |
| Indonesia | 166 | 9 | 47 | Vietnam | 149 | 5 |
| India | 173 | 12 | 27 | Philippines | 165 | 5.7 |

Source: Doing Business 2013, World Bank

Apart from this, the Act lays down conditions for layoffs, retrenchment and closure of an industry. Any establishment, employing more than 100 workers¹¹, who may need to lay off some workers, have to seek permission from the Government, besides, employers and employees are expected to inform the Labour Commissioner in case of any dispute. Hence, in order to retrench workers, the employer has to seek the permission of the unions besides the Labour Commissioner. This makes labour inflexible and this is believed to have added significantly to the duration of insolvency procedures in the country, making the firms to maintain suboptimal sizes.

In the case of Contract Labour Act, there was a ruling that if the work done by a contract labour is essential to the main activity of any industry, then contract labour in that industry should be abolished. This affected labour flexibility because there was also a need for clarification, whether after abolition of contract labour, they should be absorbed as permanent labour in the industry or not. Also, the Industrial Employment Act, 1946, requires defining job content, employee status, and area of work by State law or by collective agreement, after which changes would not be made without the consent of all

workers. This has made it difficult for businesses to shift workers not only among plants and locations, but also among different jobs in the same plant.

Labour inflexibility would also reduce productivity because it increases the costs of adjusting a firm's scale of operation. That is why firms would optimally want to reduce their workforces, when hit by adverse demand shocks. But, according to the Act, permission needs to be sought for closing or downsizing a business. Hence, closing or downsizing at short notice during a crisis period is practically impossible leading to high operating costs and reduction in firm's profitability. Anticipating such situations, firms in general, tend to become reluctant to expand and, therefore, fail to capture the economies of scale, which is otherwise possible. While India is living with cumbersome regulatory obstacles, other developing countries with similar constraints have accomplished more efficiency-enhancing labour reallocation.

China started liberalizing the labour market from the mid-1980s and deepened the liberalization with ownership and labour-restructuring reforms from the late 1990s. The reforms have given Chinese firms more flexibility than Indian firms

¹¹The ID Act was amended in 1953 and introduced Chapter V-A to regulate lay-off, retrenchment, transfer and closure of industrial undertaking with less than 50 workers in the preceding calendar month. Further in 1976, when chapter V-B was added, the threshold limit was increased 300 or more workmen. It was reduced to 100 by the amendment in 1982.

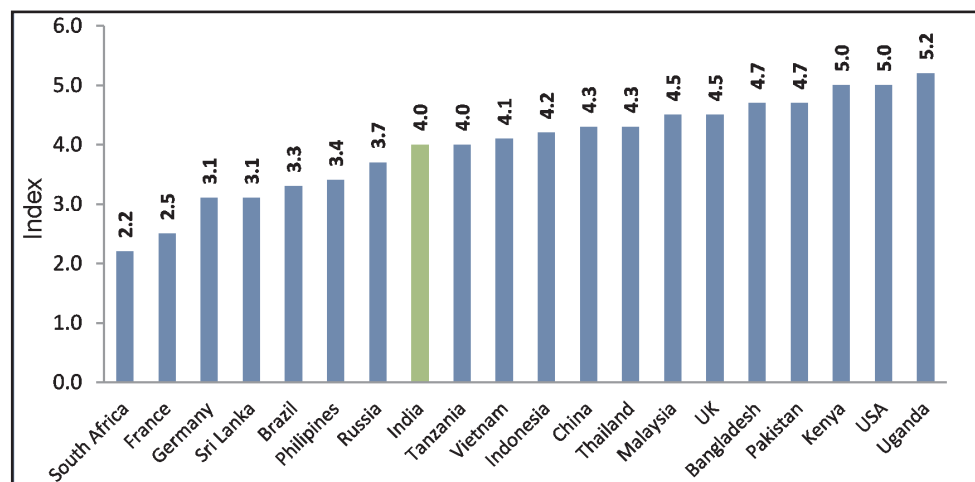
have, in adjusting staffing to meet changing economic conditions and to take advantage of technological developments. The immediate consequence of China's labour market reforms is that firms can hire temporary workers. Chinese firms have taken advantage of this flexibility by increasing the proportion of workers on temporary contracts. In China, there is no limit on the maximum length of fixed term contract and in case an employee has kept working in a same employing unit for ten years or more and the parties involved can agree to extend the term of the labour contract, a labour contract with a flexible term shall be concluded between them if the labourer so requested.

The Global Competitiveness Report 2012-2013 (World Economic Forum), has an index on hiring and firing

practices. This is measured on a scale of 1-7, wherein 1 stands for impeded by regulations and 7 stands for flexibly determined by employers. Indian hiring and firing practices index stood at 4 which means it was mainly impeded by regulations. This shows the inflexibility of labour in India. Countries such as Malaysia, Thailand, Bangladesh and Pakistan stood at a higher rank than India. Also the index shows that USA and Uganda had more flexibility in hiring and firing practices.

Also the ability of companies to flexibly manage their workforce and quickly hire and fire employees is an important factor in general business competitiveness. Summarized below is the rigidity of employment index that measures company's flexibility to manage their workforces in different

Exhibit 5 : Hiring and Firing Practices



Note: 1 = impeded by regulations and 7 = flexibly determined by employers

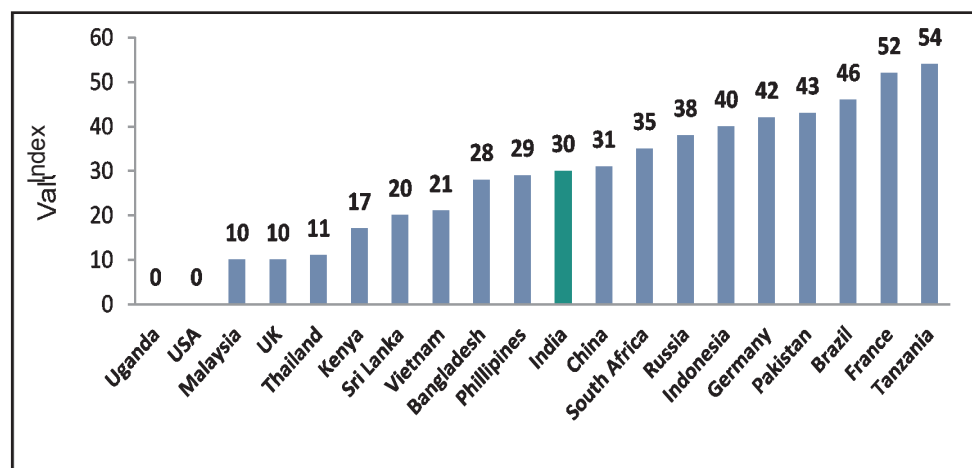
Source: The Global Competitiveness Report, 2012-2013

countries. The index has values of 0 to 100 with higher values indicating more rigid regulation. The USA (0) and Uganda (0) has the most flexible employment market followed by Malaysia (10), UK (10), Thailand (11), Kenya (17) and Sri Lanka (20). The larger outsourcing locations such as Philippines (29), India (30) and China (31) are all in the lower half and hold space for improvement. Countries such as Brazil (46), France (52) and Tanzania (54) too have very rigid regulations.

Bringing in flexibility in the labour market and hence flexibility in labour laws is therefore, an important matter

in structural reforms. The main challenge in labour laws is that in the absence of flexible labour markets, growth in output is not leading to a proportionate growth in employment, as the employers are either going for more capital intensive production processes because of rigidity in labour market. Hence, though the labour laws are meant to protect the jobs of the workers, the scope for creation of more job opportunities in future is being lost. The findings of various research studies and surveys also echo similar opinion. Employment elasticity of output in India has come down to as low as 0.01% during the period 2004-05 to 2009-10, according

Exhibit 6 : Rigidity of Employment index on 0-100 (worst) scale



Source: The Global Competitiveness Report, 2011-12

The Rigidity of Employment Index was dropped from the labour market efficiency pillar (7th) in 2012-13 report, as the World Bank ceased to provide this indicator¹².

¹²Further minor adjustments to the data are that the redundancy cost in the labor market efficiency pillar (7th) is now calculated based on a different tenure of the employee than in previous years and that the Internet bandwidth is now indicated per user instead of per capita, Global Competitiveness Report 2012-13.

to research findings of Institute of Applied Manpower Research, New Delhi. The Working Group on Labour Laws for the Twelfth Five Year Plan has highlighted that about 96% of the workforce being employed were in the informal sector; this again is opined by researchers as an outcome of labour rigidity in India. With more and more Indian firms adopting the strategy of informal employment to circumvent the provisions of labour laws, the average number of workers in an Indian firm stood low at 75, in comparison to China's 191 and Indonesia's 178.

In the above context, it is important to undertake the following measures to bring in labour market flexibility in India.

TRADE UNIONS ACT, 1926

Trade unions are a major component of the system of modern industrial relations in any nation, each having their own set of objectives or goals to achieve according to their constitution and each having its own strategy to reach those goals. A trade union is an organization formed by workers to protect their interests and improve their working conditions, among other goals. The major deficiencies in the Trade Unions Act (1926) are:

- a. ***Scope of Outside leadership:***
The nature of leadership

significantly influences the union-management relations as the leadership is the lynch-pin of the management of trade unions. The leadership in most of the trade unions in India has been significantly drawn from outside. Several reasons are cited for this state of situation, such as inability of insiders to undertake trade union movement, low level of knowledge about labour legislations, limited financial muscle for arbitration, etc. However, experts opine that the provision in the Trade Unions Act, 1926 enabling the scope of outside leadership is the principal reason in the present day context. Section 22 of the Act requires that ordinarily not less than one half of the total number of the office-bearers of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected. Thus, this provision provides the scope for outsiders to the tune of 50% of the office bearers. Even though outside leadership is permissible in the initial stages, it is undesirable in the long run. In view of the limitations of having leadership drawn from inside in an union, it is desirable to replace the leaders drawn from inside progressively by the leaders drawn internally. The National Commission on Labour, 1969, also stated that outsiders

in the Trade Unions should be made redundant by forces from within rather than by legal means. Another suggestion is to reduce the scope of outside leadership from 50% to about 10%. Both the management and trade unions may take steps in this direction.

b. ***Immunity From Criminal and Civil Liability:***

In certain cases as defined in the Act, the members of the Trade Unions enjoy certain immunities from criminal and civil punishments when they do certain acts for furthering the interest of their Trade Union. These immunities allow them to call numerous strikes which hinder smooth functioning of industrial units. For e.g. in the employment contract it might be mentioned that manufacturing process may not be hindered in any way. However, when the members of a trade union go on a strike, they would actually be breaching that term of the contract, and the employer can ideally take legal actions against them, had they not been enjoying the immunity under the Trade Union Act.

c. ***Multiplicity of Trade Unions:***

The trade union can be formed with a minimum of 7 members as executive members and get

it registered in prescribed format with the Registrar. Twenty five percent of the total workforce of an establishment would be required for registration as a trade union. This is one of the reasons for an establishment to have multiple trade unions. Under Section 18(1) of the Industrial Disputes Act, 1947 any bilateral settlement entered into between the management and the workers is binding only on the signatories to the settlement. If the Management signs a settlement with one Union, such a settlement is binding only between the Management and that Union. The other Unions in that establishment are free to carry out industrial disputes regarding the same matter and demand higher benefits. This clause have been partially amended to avoid cropping up of multiple trade union in an establishment. With the amendment, no trade union shall be registered in India unless atleast ten percent or 100 of the workmen, which every is less, in an establishment are members of such trade union. Further, the amendement state that no trade union shall be registered unless it has a minimum member ship of seven persons. These provisions allow formations of atleast 10 unions in an establishment with a size of 70 workers, and upwards of 10 unions is the size exceeds

1100 workers. Thus, there is multiplicity of industrial disputes, which is leading to multiplicity of settlements and jeopardizing the industrial relations atmosphere.

d. **Definition of Trade Union:**

According to the Trade Union Act, 1926; the Definition of "Trade Union" is as follows:

"Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions"

It contains the phrase "imposing restrictive conditions on the conduct of any trade or business" while defining the scope of function for Trade Unions in India which means that a Trade Union can ideally stop work completely in case of any difference in opinion with management. This Act was passed in the year 1926 and it was then the word "RESTRICTIVE" was used because the legislature intended to protect the working

class of people. However with time, the scenarios of socio-economic conditions have changed. Hence the word "RESTRICTIVE" could be replaced by the word "REGULATED" and there should be prescribed set of regulations which specify how many hours a trade union can strike, so on and so forth.

CONTRACT LABOUR ACT

The most dominant forms of precarious work in India are contract work, when workers are employed by a contractor who pays the worker their wages, for direct, fixed-term contracts. The term of a direct fixed-term contract can be as short as a single day. These short-term contracts are commonly known as 'hire and fire' contracts, as workers are under the constant threat of losing their job and hence do not make demands on the company. While direct fixed-term contracts are widely used in the services industry, employment via contractors is far more common in the industrial sectors.

Few provisions in the Act need serious reconsideration to bring labour market flexibility.

- a) The provisions related to using contract workers to undertake core activities;

- b) The provisions related to ban on fresh recruitment of workers in enterprises where contract workers are engaged; and
- c) Provisions related to the responsibility of payment of wages to the workers engaged through a contractor on the principal employer.

Employers circumvent such provisions of Contract Labour Act making compliance an issue. This has also

been brought out by research studies by V V Giri National Labour Institute. One such research study has revealed that contract labourers were paid lower wages than their permanent counterparts. According to the study, 30% of all workers in the private sector, and 32% in the public sector are employed through contractors. The study further revealed that the average daily wages of contract workers in the private sector were Rs. 143.5, which is much less than Rs. 212 paid for permanent workers.

Box : 3

Temporary Staffing Industry in India

World Development Report 2012 has stated that temporary staffing industry is growing in developing countries as a response to the complex regulatory framework facing employers. With specific reference to India, the Report adds that the temporary staffing industry in India is only 15 years old, and is developing rapidly. The number of temporary workers recruited by labour brokers grew more than 10 percent in 2009 and 18 percent in 2010. According to some media reports, workers are quitting permanent jobs to move into more attractive temporary roles. Some firms claim that as many as 15 percent of new recruits are permanent employees switching to temporary jobs. Competition in the Indian temporary staffing industry is strong. Agencies have introduced lower recruitment fees to gain more market share and to drive growth. Large temporary staffing firms are entering niche activities such as business consulting and training.

As temporary staffing grows, so do demand to examine the regulatory framework of the industry. Some of those demand focus on addressing vulnerability. Workers in these jobs typically face lower earnings (because a portion of the pay is diverted to temporary staffing agencies). They also face lack of benefits, low coverage by labour laws, and job in security. Staffing firms also demand for professionalizing the industry; leading players have also formed Indian Staffing Federation which actively advocates for changes in labour laws and recognizing the fact that a vast majority of the labour force in India is unorganized.

Besides low wages, such workers are also often not entitled to the same levels of social protection, such as retirement provision, the right to unemployment compensation, sickness benefits or maternity leave. Employers commonly do not invest sufficiently in the education or training of agency-supplied workers. Inadequate education and training may undermine the quality of service provided by the agency workers, while lack of training on health and safety increases the risk of occupational accidents and diseases. Besides, the cost of downsizing is lower if contract labourers are engaged, because ending a commercial contract is often less costly than terminating an employment relationship. In various countries and sectors, the financial crisis resulted therefore in massive job losses for contract labourers, who are not generally entitled to any of the compensations that are required to be paid in the case of forced redundancies. This experience heightens the danger that as economies recover, employers will increasingly favour hiring contract labour as a means to avoid the costs of terminating regular employees. This would add additional instability and volatility to the economy, as more and more workers are made disposable, many business risks are shifted from employers to workers.

Working Group on Labour Laws and Other Regulations for the Twelfth

Five Year plans (2012-17) has also recommended amendment to the Contract Labour Act so that contract workers get the same wages, facilities and benefit as regular employees, even if they have no security of tenure.

INDUSTRIAL DISPUTES ACT (IDA)

One of the main statute which regulates termination of employment in India is The Industrial Disputes Act, 1947. Chapter V-B of The Industrial Disputes Act, 1947 pertains to special provisions relating to lay-off, retrenchment and closure. The ID Act was amended in 1953 and introduced Chapter V-A to regulate lay-off, retrenchment, transfer and closure of industrial undertaking with less than 50 workers in the preceding calendar month. Further in 1976, when chapter V-B was added, the threshold limit was increased to 300 or more workmen. It was reduced to 100 by the amendment in 1982. The provisions of this Chapter are now applicable to industrial undertaking having 100 or more workmen.

It is argued that since permission is difficult to obtain for closure of unit or termination of employees, employers are reluctant to hire workers whom they cannot easily get rid off. Job security laws thus protect a tiny minority of workers in the organized sector and prevent expansion of industrial employment that could

benefit mass of workers. Thus, with the intention of protecting the workers in the organized sector, regulations are unintentionally preventing the expansion of industrial employment that could benefit the mass of workers. Bureaucratic interference in closing down a non-viable unit could be cited as an ideal example of the Theory of Unintended Consequences.

As per Section 25 N (2) of the Industrial Disputes Act, 1947, an application for permission has to be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of this application has to be served simultaneously to the workmen. The Appropriate Government then hears both the sides – employer and workmen – and based on this may grant permission for retrenchment as outlined under Section 25 N (3) of ID Act. As per Section 25 N (4), if the Government does not refuse to grant permission to the retrenchment application within 60 days from the date of application, the permission applied for, shall deemed to have been granted on the expiration of the said period of 60 days. Since retrenchment is a sensitive issue, the consent of workmen, thus, becomes an important factor for the application to get a favourable decision, though it is not mandated by the Act. Besides, enterprises in India have obligations to consider alternatives prior to considering dismissal.

In this age of liberalization, it is recommended to minimize the stand of 'protection of labour force', but help the firms to enhance competitiveness. To be competitive, technological innovations sometimes become a must, and economic and commercial viability is a pre-requisite for job security along with flexibility in the labour market.

Another major problem with dispute settlement in India is the time taken to resolve a dispute. The process of conciliation is invariably time consuming. Although by statute conciliation proceeding is supposed to be completed within fourteen days, this is rarely achieved. The conciliation officer normally calls a meeting of the parties, and if his efforts are not successful, he may decide to call another conference at a later date or may submit a failure report of the meeting with his recommendations to the appropriate Government. The appropriate government may make a decision to refer the dispute to a labour court or national tribunal for adjudication. While this procedure may work in theory, in practice, after a failure report is filed, the conciliation officer at the regional level normally calls a conference of the parties and tries to mediate the dispute. He may call one or two successive conferences before submitting the failure reports and, consequently, the conciliation process often takes weeks or months, since the

| Table 11: Man - Days Lost due to Strikes and Lockouts in India | | | | |
|--|---------|----------|-------|------------------------|
| Year | Strikes | Lockouts | Total | Mandays lost (million) |
| 2007 | 210 | 179 | 389 | 27.17 |
| 2008 | 240 | 181 | 421 | 17.43 |
| 2009 | 205 | 186 | 391 | 13.36 |
| 2010 | 208 | 174 | 382 | 22.74 |
| 2011 | 199 | 190 | 389 | 14.29 |
| 2012 (P) | 207 | 21 | 228 | 2.57 |

Source: Labour Bureau, Ministry of Labour & Employment, Government of India

Note: P- Provisional

| Table 12 : Workers Affected due to Retrenchment and Closures in India | | | | |
|---|----------------------------|------------------|------------------------|------------------|
| Year | Retrenchment (No of units) | Workers Affected | Closures (No of Units) | Workers Affected |
| 2008 | 19 | 1748 | 58 | 4552 |
| 2009 | 29 | 2693 | 68 | 3571 |
| 2010 | 13 | 559 | 42 | 2401 |
| 2011 | 8 | 47 | 83 | 3604 |
| 2012 (P) | 7 | 72 | 32 | 419 |

Source: Labour Bureau, Ministry of Labour & Employment, Government of India

Note: P- Provisional

conferences are usually held at the rate of one conference per week or every two weeks. There are so many disputes pending conciliation that officers rarely have the time for continuous sittings on each dispute. A failure at the regional level implies that the conciliation officer at the State level will get involved in the dispute resolution. The conciliation officer at State level is normally the Additional Labour Commissioner, or the Labour Commissioner of the State. A failure of conciliation proceedings at the State level implies that the State Labour Minister will get involved in the dispute resolution. Normally, disputes get settled at this level, mainly due to the power and authority exercised by the Minister that forces the parties to accept a reasonable compromise.

With delay in adjudication, the labour unrest prevails leading to loss of man-days in factories. According to Labour Bureau, Ministry of Labour & Employment, the number of man-day's lost due to strikes and lockouts in 2012 were 2.57 million. Even though the number of workers affected due to retrenchment and closures have come down over the years, it is still considerably on the higher side (**Table 11 & 12**).

Appeal made by either of the Parties in the higher courts, i.e. High courts and Supreme Courts through writs and stay orders against the orders

of the various fora of the IDA, further adds to the time taken for industrial dispute resolution. The main aim of the IDA should not be providing plethora of stages for resolution of Industrial Disputes but to provide a single platform with powers to bring finality to a dispute within the shortest possible time.

For example, major difference between the conciliation system in India and USA is mainly with the levels in conciliation. While India can take conciliation to various levels, in USA, there is only one level of mediation, which helps in reducing the time to resolve disputes.

Arbitration is probably the quickest method of labour dispute settlement in India. However, it is not used very much mainly because the parties can rarely agree on the choice of the arbitrator will influence the arbitrator. Such suspicions are symptomatic of the distrust, the unions have for management. In India, almost any kind of dispute may be brought before arbitration. In the United States, it is primarily grievance disputes that reach the arbitration process, after the dispute goes through the steps of the grievance procedure.

One of the emerging dispute resolution mechanisms these days is the Online Dispute Resolution (ODR). Any person who is interested to get his dispute

resolved on-line without approaching personally either an arbitrator or a mediator or approaching the judicial forum can use ODR. Online Dispute Resolution is a branch of dispute resolution, which uses technology to facilitate the resolution of dispute between parties. It primarily involves negotiation, mediation or arbitration or a combination of all the three. In this respect, it is often seen as being the online equivalent of alternative dispute resolution. However, ODR is also enhancing these traditional means of resolving disputes by applying innovative techniques and online technologies to the process.

Many countries have started following ODR. One of the most technologically impressive ODR websites is the Philippine Online Dispute Resolution service. This ODR service suite can be accessed at www.disputeresolution.ph or via instant messages over cell phones for features such as notification and case status checker (with automated negotiation over cell phones). One of the newest and most ambitious private ODR providers in Malaysia is ODRWorld (www.odrworld.com) and in China, Beijing Deofar Consulting Ltd. launched the China Online Dispute Resolution Center (ChinaODR), available at www.odr.com.cn. Online dispute resolution is simple, speedy and provides an easy and expeditious way of resolving problems for parties

which are in different parts of the world. Online Dispute Resolution in India is in its infancy stage and it is gaining prominence day by day. With the enactment of Information Technology Act, 2000 in India, e-commerce and e-governance have been given a formal and legal recognition in India. Also, Delhi High Court has e- courts but need to be utilized properly, to have a successful arbitration system.

SIMPLIFICATION OF LABOUR LEGISLATIONS

Since the beginning of the reforms in the early 1990s, there have been demands from industry for reforms in the stringent labour regulatory framework. The influx of foreign companies has increased the demand for more relaxation in labour laws to make investment conditions more conducive. It is viewed by both Indian and foreign investors that the presence of a large body of legislations complicate the normal functioning of enterprises.

- The working conditions are governed principally by the Factories Act, 1948; The Maternity Benefit Act, 1961; the Workmen's Compensation Act, 1936; the Contract Labour (Regulation and Abolition) Act, 1970; and the Inter-State Migrant Workers (RE&CS) Act, 1979.

- The principal laws relating to wages are the Payment of Wages Act, 1937; The Payment of Bonus Act, 1965; The Equal Remuneration Act, 1976; and the Minimum Wages Act, 1948.
- Laws related to industrial relations include; the Trade Unions Act, 1926; the Trade Unions (Amendments) Act, 2001; and The Industrial Employment (Standing Orders) Rules, 1946.
- Laws governing social security are: the Employees' State Insurance Act, 1948; the Employees' Provident Funds and

Box: 4

Suggestions of Working Group on Labour Laws & Other Regulations for the Twelfth Five Year Plan (2012-17): Common Definitions

For purposes of consolidation and also for effective implementation, the Working Group on Labour Laws & Other Regulations for the Twelfth Five Year Plan (2012-17) suggested the following common definitions:

- **Establishment:** A place or places where some systematic activity is carried out with the help and co-operation of employee. This definition can be used for all labour laws. For each cognate group given above, the definition of establishment in terms of minimum number of workers employed will have to be the same.
- **Employee:** In various labour laws various terminologies such as workman, worker, labour, and employee are used with different meanings. It may be considered to replace all these by a single word "Employee." However, if it is not feasible to have the common definition of "employee" for all the labour laws, it may be considered to have a common definition of the term "employee" for the cognate groups given above.
- **Wage:** The definition of wage given in the Payment of Wages Act, 1936 may be considered for adopting in all labour laws.
- **Employer:** A uniform definition of "employer" can be "the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent."
- **Appropriate Government:** For the laws, which are enforced by the Central Government as well as by the State Governments, a simple and uniform definition of appropriate Government is very essential. The definition of "appropriate Government" provided in the Industrial Disputes Act, 1947 can be adopted for this purpose.

Box – 5

State-Level Comparison of Labour Laws

Labour is on Concurrent List of our Constitution, and thus the industry needs to comply with Central as well as State legislations. In that sense, it is pertinent to analyse the position of States of India with regard to flexibility in labour laws and regulations. We came across a Study 'India Labour Report' by TeamLease, a leading HR services company in India. The Study has rated and ranked States on the basis of overall eco-system, called State Labour Ecosystem Index. The rating covered performance of States related to education and training, infrastructure, governance, legal and regulatory structure, etc. The Index comprised three sub-indices, Employment Eco-System Index, Labour Law Environment Index, and Labour Eco-system Index. Of these, Labour Law Environment Index is very relevant for further analysis in this Study, as the index measures legal, regulatory and procedural regimes prevailing at the State level, and its role in functioning of labour markets. As per the TeamLease Report, States like Maharashtra, Andhra Pradesh, Karnataka and Gujarat have been placed at the top of the list, while States like Haryana, Delhi, Goa and Kerala are ranked in the bottom.

In our analysis, we have made an attempt to establish the correlation between the Labour Law Environment Index of TeamLease with some of the parameters that are signaling economic progress/development. Our analysis revealed that the top 6 states ranked by TeamLease accounted for 47.6% share in total NSDP in 2007-08, which has increased to 48.5% in 2011-12. Most of these states have also witnessed reasonably high CAGR of NSDP, even with large base. These states also have higher share of manufacturing in their GSDP. These six states account for about 50% of industrial investments of the country, as also FDI inflows. As regards exports, these states accounted for nearly 70% of national exports.

Based on the ranking of States by TeamLease, and the analysis of select parameters, it could be surmised that States like Maharashtra, Andhra Pradesh, Karnataka, Gujarat, Madhya Pradesh and Tamil Nadu scored well in the labour law reform index, as also progressed in industrial development, as compared to States like Uttar Pradesh, Assam, Bihar, Jammu & Kashmir and West Bengal, which are ranked low in the index.

...continued

| State | Team/Lease Rank | Share of NSDP in All India (2007-08) | Share of NSDP in All India (2011-12) | CAGR of NSDP | Manufacturing as a % of GDP (2007-08) | Manufacturing as a % of GDP (2011-12) | Industrial Investment Proposals (% share in total 2008-2012) | FDI Inflows (% share in total 2009-10 to 2012-13) | Exports (% share in total 2007-08) | Exports (% share in total 2010-11) | Gini coefficient of distribution (urban) 2009-10 |
|------------------|-----------------|--------------------------------------|--------------------------------------|--------------|---------------------------------------|---------------------------------------|--|---|------------------------------------|------------------------------------|--|
| Maharashtra | 1 | 15.5 | 16.0 | 8.2 | 23.2 | 19.8 | 8.4 | 31.4 | 27.5 | 21.4 | 0.41 |
| Andhra Pradesh | 2 | 7.9 | 7.8 | 7.1 | 11.9 | 12.3 | 9.2 | 4.3 | 4.6 | 5.0 | 0.38 |
| Karnataka | 3 | 5.9 | 5.5 | 5.5 | 18.4 | 17.9 | 8.1 | 4.7 | 9.0 | 5.4 | 0.33 |
| Gujarat | 4 | 6.9 | 7.4 | 9.4 | 27.8 | NA | 10.7 | 2.9 | 21.3 | 24.6 | 0.33 |
| Madhya Pradesh | 5 | 3.5 | 3.8 | 10.3 | 13.3 | 12.6 | 9.1 | 0.4 | 1.8 | 1.2 | 0.36 |
| Tamil Nadu | 6 | 7.9 | 8.0 | 7.9 | 19.6 | 20.7 | 3.5 | 6.3 | 9.1 | 9.3 | 0.33 |
| Haryana | 7 | 3.3 | 3.5 | 9.4 | 20.6 | 18.7 | 0.5 | 0.3 | 2.7 | 3.4 | 0.36 |
| Delhi | 8 | 3.8 | 4.4 | 11.5 | 6.8 | 5.1 | 0.01 | 22.3 | 3.2 | 2.4 | 0.35 |
| Goa | 9 | 0.4 | 0.4 | 10.4 | 28.8 | 26.9 | 0.1 | 0.5 | 0.9 | 0.7 | 0.41 |
| Kerala | 10 | 3.9 | 4.0 | 8.3 | 8.5 | 8.2 | 0.1 | 0.7 | 1.4 | 2.6 | 0.50 |
| Rajasthan | 11 | 4.0 | 4.3 | 8.9 | 14.0 | 13.0 | 1.7 | 0.3 | 2.0 | 2.1 | 0.38 |
| Punjab | 12 | 3.1 | 3.0 | 6.0 | 19.6 | 21.2 | 0.7 | 0.3 | 1.6 | 1.6 | 0.37 |
| Himachal Pradesh | 13 | 0.8 | 0.7 | 6.4 | 11.6 | 15.8 | 0.3 | 0.3 | NA | NA | 0.40 |
| Orissa | 14 | 2.5 | 2.2 | 4.1 | 15.7 | 17.2 | 17.5 | 0.2 | 1.9 | 2.8 | 0.39 |
| Uttar Pradesh | 15 | 8.1 | 8.0 | 7.1 | 15.1 | 13.5 | 1.5 | 0.2 | 2.6 | 3.3 | 0.33 |
| Assam | 16 | 1.5 | 1.5 | 7.4 | 7.9 | 6.5 | 0.4 | 0.02 | NA | NA | 0.32 |
| Bihar | 17 | 2.5 | 2.8 | 10.9 | 5.7 | 5.1 | 2.2 | 0.02 | NA | NA | 0.33 |
| Jammu & Kashmir | 18 | 0.8 | 0.7 | 5.9 | 7.1 | 8.4 | 0.1 | NA | NA | NA | 0.31 |
| West Bengal | 19 | 6.8 | 6.7 | 7.0 | 11.2 | 10.6 | 7.7 | 1.0 | 3.5 | 2.8 | 0.38 |

Source: TeamLease, India Labour Report; Planning Commission, Government of India; Exim Analysis.

Miscellaneous Provisions Act, 1952; and the Payment of Gratuity Act, 1972.

There is an urgent need to simplify, rationalize, and consolidate the complex and ambiguous extant pieces of labour legislations into a comprehensive but simple code that allows for labour adjustment with adequate social and income security for the workers, after wide consultation among employers, trade unions, and labour law experts.

The Working Group on Labour Laws & Other Regulations for the Twelfth Five Year Plan (2012-17), has also recommended on these lines. According to the Working Group, all the major labour laws should be clubbed into major cognate groups - e.g. Laws governing industrial relations should come under one law i.e. Industrial Relations Act; laws governing wages should be consolidated into one Act which is the Payment of Wages Act, and so on. Simplification and rationalization of labour laws will require examination of labour laws individually. In the process, provisions which have outlived their existence may be deleted. If necessary, certain laws may be considered for being repealed.

COMMON DEFINITIONS

Having common definitions is a pre-requisite for codification/consolidation of labour laws. At present, different terminologies and definitions are used in various labour laws creating confusion and complications in effective compliance and enforcement. The Working Group on Labour Laws & Other Regulations for the Twelfth Five Year Plan (2012-17) felt that with consolidation of labour laws and with harmonization of key definitions in select cognate groups, the disputes regarding applicability of Acts to separate classes of establishments and different categories of workers may reduce. This should also result in better compliance, reduction in cost of administration of the laws and improved implementation with lesser registers to be maintained and lesser returns to be filed. In the long run, it may even have a positive impact on expansion of regular employment with simplification of rules and procedures under various legislations.

IN SUM

While the labour regulations in India are made with the objective of protecting the interests of employees, they give a sense of neglecting the interests of employers who are investors.

To cite an example, no employer would be interested in laying-off productive employees in a profitably running business. The employers, in such a situation, would like to adopt competitive practices to retain talent. Our analyses, thus, reveal that labour related statutes in India are claimed to be often well above the spirit with which the statutes were enacted.

While there could be several other reasons, such as infrastructural bottlenecks, low ranking in doing business index, inflexible labour market regulations also are believed to be hindering large-scale investments, technology absorption, productivity enhancement and high employment growth in Indian manufacturing. Inflexible labour market could also be one of the reasons for the share of manufacturing in Gross Domestic Capital Formation (GDCF) hovering around 30% since 1970s, and growth in share of services sector in GDCF from 39% in 1970 to 51% in 2010.

This fact has been realized by some of the Indian states, which have made the labour-related administrative

regulations investor-friendly, as has been reported by TeamLease (a HR Consultancy & Services company). Such states have also progressed well in crucial economic parameters. Based on the ranking of States by TeamLease and the analysis of select parameters, it could be inferred that States like Maharashtra, Andhra Pradesh, Karnataka, Gujarat, Madhya Pradesh and Tamil Nadu scored well in the labour law reform index, as also progressed in industrial development, as compared to States like Uttar Pradesh, Assam, Bihar, Jammu & Kashmir and West Bengal, which are ranked low in the index.

With favourable demographic dividend, India needs to align its policies to encourage employment generation, and thereby improve quality of workforce and retain talent. If done so, productivity in industrial enterprises could be well-augmented. Indian manufacturing sector would be in a position to attract large-scale investments, contributing to industrialization and economic growth of the country.

ANNEXURE : REFERENCES

- NATLEX - Database of National Labour, Social Security and Related Human Rights Legislation, International Labour Organisation
- ILOSTAT – Database of Labour Statistics, International Labour Organisation
- LABORSTA – Database of Labour Statistics, International Labour Organisation
- NORMLEX –Database on International Labour Standards, International Labour Organisation
- Key Indicators of Labour Market Database (KILM), International Labour Organisation
- Termination of Employment Digest, International Labour Organisation
- Industrial Disputes Act, 1947, India
- Industrial Disputes Amendment Act, 2010, India
- Contract Labour (Regulation & Abolition) Central Act, 1970, India
- Factories Act, 1948, India
- Labour Regulations, Act No. 21/2000, Act No. 13/2003, Act No. 2/2004 Indonesia
- Act of the Republic of Indonesia, 2003
- Brief Overview on Industrial Relations in Indonesia
- Decree on the Organization, Operation and Management of Associations, Vietnam
- Provisions on Overtime Working, Ministry of Labour, War Invalids and Social Affairs, Vietnam
- Labour Code of Socialist Republic of Vietnam
- Act on the Establishment of and Procedure for Labour Court, 1979, Thailand
- Labour Protection Act, 1998, Thailand
- Labour Contract Law of People's Republic of China

- Shop and Office Employees (Regulation of Employment and Remuneration) Act, Sri Lanka
- Termination of Employment of Workmen(Special Provisions), Sri Lanka
- Wages Boards Ordinance, Sri Lanka
- Employment of Trainees (Private Sector) Act, Sri Lanka
- Industrial Disputes Act, 1951, Sri Lanka
- National Labour Migration Policy for Sri Lanka
- Bangladesh Labour Law
- Republic Act 9481, Philippines
- Labour code of the Philippines
- Trade Unions Act, 1959, Malaysia
- Employment (Part-Time Employees) Regulations 2010, Malaysia
- Arbitration Act 2005, Malaysia
- Employment Act 1955, Malaysia
- Guidelines on Retrenchment Management, Malaysia
- The Interpretation (III) of the SPC of Several Issues on the Application of Law in the Trial of Labor Dispute Cases, China
- Decree 22 of the Ministry of Labor and Social Security of the People's Republic of China
- A Review of Employment Dispute Resolution in Great Britain
- Kenya Gazette Supplement, Acts 2007
- Fixed Term Contracts in France
- Ordinance No 5 of 2011 for Collective Bargaining, Pakistan
- The Mines Act, 1923, Pakistan
- The West Pakistan Industrial And Commercial Employment (Standing Orders) Ordinance, 1968
- Trade Unions and Industrial Relations in EU Countries
- Termination of Employment Relationships in EU
- The Employment Act 2008, UK
- Terms and Conditions of Employment, The Working Time (Amendment) Regulations 2009, EU

- Government Gazette, Republic of South Africa
- Economic and Social Survey of Asia and the Pacific 2012
- Labour Insertions Act 2004, Tanzania
- Employment and Labour Relations Act, 2004, Tanzania
- The Labour Disputes, Arbitration and Settlement Act 2006
- The Employment Act 2006, Uganda
- Brazil Labour Relations

Research papers/studies/articles and other references

- Industrial Disputes Act: A Critical Appraisal, Rajiv Gandhi Institute for Contemporary Studies, New Delhi
- India's Economic Reforms: The Steps Ahead, Rajiv Gandhi Institute for Contemporary Studies, New Delhi
- An Analysis of Severance Pay Policies in India and Sri Lanka, Rajiv Gandhi Institute for Contemporary Studies, New Delhi
- A Sustainable and Scalable Approach in Indian Pension Reform, Rajiv Gandhi Institute for Contemporary Studies, New Delhi
- Labour Market Regulation and Industrial Performance in India - A Critical Review of the Empirical Evidence, Delhi School of Economics
- Judicial Intervention in the Contract of Employment: Some Reflections on Labour Adjudication in India, Centre for Development Economics, Delhi School of Economics
- Report of the Working Group on Labour Laws and Other Labour Regulations for Twelfth Five Year Plan (2012-17), Ministry of Labour and Employment, Government of India
- Globalization and Labour Laws in India, Asialaw India Investor
- Diagnosing Development Bottlenecks China and India, The World Bank
- Article on Asia: The New Frontier for Online Dispute Resolution, World Views on Alternate Dispute Resolution, Association for Conflict Resolution, Virginia Resolution, USA
- Working Paper on 'Is India Ready for Online Dispute Resolution?', Indian Institute of Management, Ahmedabad, India
- Precarious Work in India, Industriall Global Union, Switzerland
- Labour Productivity Indicators, OECD

- Global Competitiveness Report 2012, World Economic Forum
- Monthly Labour Review, Bureau of Labor Statistics, US Department of Labour
- International Comparisons of Annual Labor Force Statistics, Bureau of Labor Statistics, US Department of Labour
- Working Paper on 'Labour Chains': Analyzing the Role of Labour Contractors in Global Production Networks', Brooks World Poverty Institute, University of Manchester, UK
- The Role of Labor Market Regulations, Institutions, and Programs, More and Better Jobs In South Asia, World Bank
- Consultation Paper on Alternative Dispute Resolution, Law Reform Commission, Ireland
- Doing Business 2013, World Bank
- Project Country Report on India - An Overview of Women's Work, Minimum Wages and Employment, Amsterdam Institute for Advanced Labour Studies (AIAS), Amsterdam
- Discussion Paper on Contemporary Issues on Labour Law Reform in India: An Overview, Tata Institute of Social Sciences, Mumbai, India
- Discussion Paper on Understanding Labour Market Flexibility in India: Exploring Emerging Trends in Employment, Tata Institute of Social Sciences, Mumbai, India
- Summary Record of Discussions of the 44th Session of Indian Labour Conference, February 2012, Ministry of Labour and Employment, Government of India
- Article on Dispute Resolution in India, Nitish Desai Associates, Mumbai, India
- Working Paper on Dispute resolution and the Transformation of U.S. Industrial Relations: A Negotiations Perspective, Alfred p. Sloan School of Management, Massachusetts Institute of Technology, USA
- Dispute Resolution Commitment – Guidance for Government Departments and Agencies, Ministry of Justice, UK
- Working Paper on Labour and Labour-Related Laws in Micro and Small Enterprises: Innovative Regulatory Approaches, International Labour Organization
- A Brief Introduction to International Labour Standards, International Labour Organization

- Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Organization
- Report on 'A Study on Labour Laws in India', Meridian Business Consultants Pvt Ltd, India
- Report on Labour Migration in Asia, International Organisation for Migration
- Labor Regulations in Developing Countries: A Review of the Evidence and Directions for Future Research, World Bank
- Working Paper on The Evolution of Labour Law: Calibrating and Comparing Regulatory Regimes, Centre for Business Research, University of Cambridge, UK.
- Article on Industrial Dispute Resolution in India in Theory and Practice, Loyola Marymount University and Loyola Law School, Los Angeles, California
- Article on Post-Reforms Labour and Employment Issues, The Liberal Budget, Indian Liberal Group, India
- Labour Market Second Quarter 2012, Ministry of Manpower, Manpower Research and Statistics Department, Singapore
- Labour Law Reforms at the Crossroads of ILO Standards and OECD and World Bank's Indexes: A Global Review of Regulation on Collective Redundancies, International Labour Office, Geneva, Switzerland
- Article on Reform Labour Laws to Bridge the Gap between Permanent and Contract Workers, Economic Times
- Article on Regulation of Online Dispute Resolution: Between Law and Technology, Rafal Morek, University of Warsaw, Poland
- Article on Trends in Factory Size in Indian Industry, 1950 to 1980: Some Tentative Inferences, Economic and Political Weekly
- Report on Practical Ways to Reduce Long Hours and Reform Working Practices, Department of Trade and Industry, UK

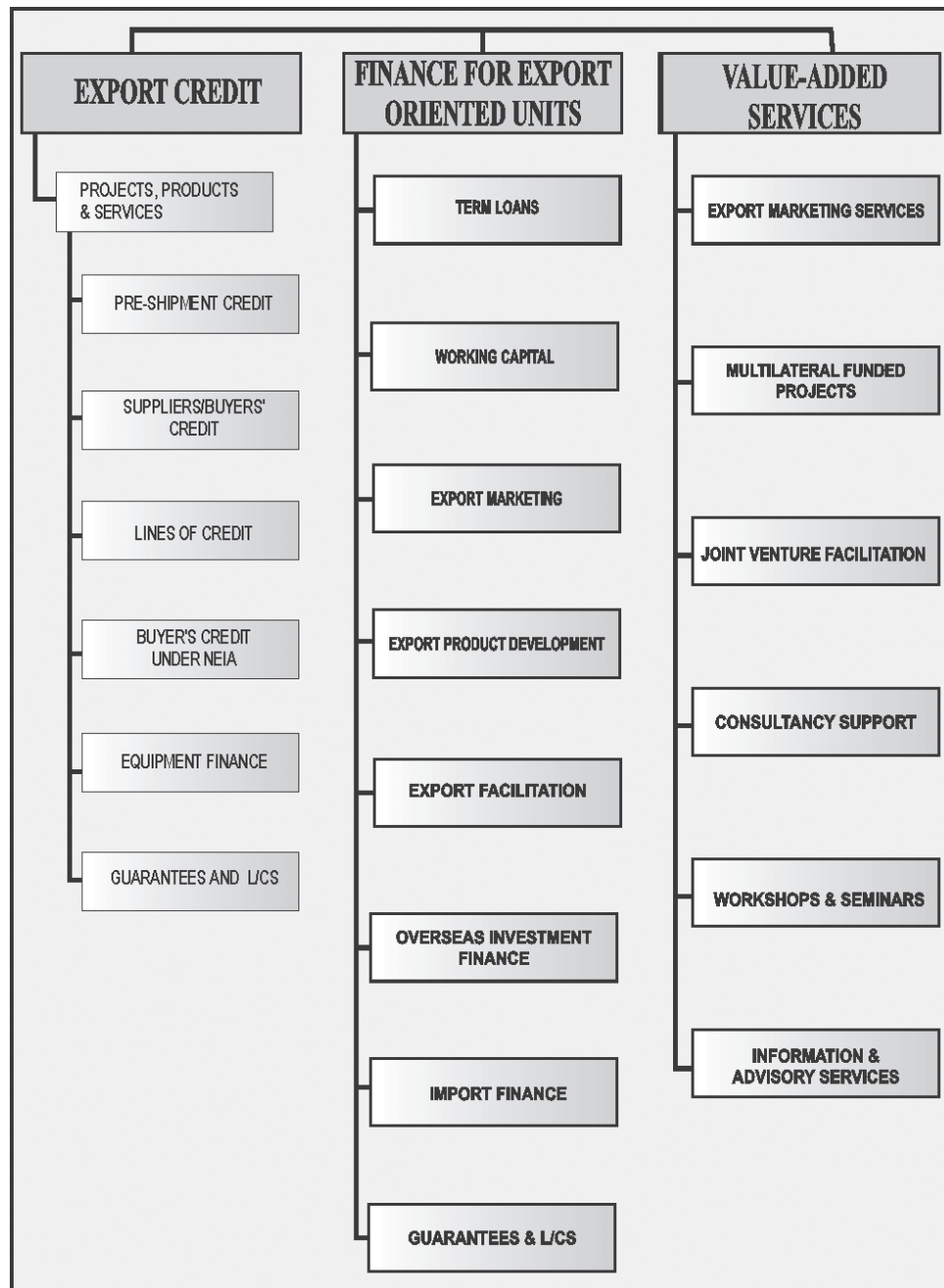
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152. Southern African Development Community (SADC): A Study of India's Trade and Investment Potential
153. Strategic Development of MSMEs: Comparison of Policy Framework and Institutional Support Systems in India and Select Countries
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155. Technological Interventions In Indian Agriculture for Enhancement of Crop Productivity
156. Exports of Services and Offshore Outsourcing: An Empirical Investigation in the Indian Context
157. Indian Ocean Rim Association for Regional Co-operation (IOR-ARC): A Study of India's Trade and Investment Potential
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LONDON BRANCH

88/90, Temple Chambers, 3-7, Temple Avenue, London EC4Y OHP, United Kingdom.
Phone : (44) 20 73538830 Fax : (44) 20 73538831 E-mail : eximlondon@eximbankindia.in

Indian Offices

AHMEDABAD

Sakar II, Floor 1 ,
Next to Ellisbridge Shopping Centre,
Ellisbridge P. O., Ahmedabad 380 006.
Phone : (91 79) 26576852/26576843 Fax : (91 79) 26577696
E-mail : eximahro@eximbankindia.in

BANGALORE

Ramanashree Arcade, Floor 4,
18, M. G. Road, Bangalore 560 001.
Phone: (91 80) 25585755/25589101-04 Fax: (91 80) 25589107
E-mail : eximbro@eximbankindia.in

CHANDIGARH

PHD House, Floor 1, Sector 31-A,
Dakshin Marg, Chandigarh 160 031
Phone : (91 172) 2641910/12/39/49 Fax : (91 172) 2641915
E-mail : eximcro@eximbankindia.in

CHENNAI

Overseas Towers, Floors 4 & 5,
No. 756-L, Anna Salai (Opp. TVS), Chennai - 600 002.
Phone : (91 44) 28522830, 28522831
Fax : (91 44) 28522832
E-mail : eximchro@eximbankindia.in

GUWAHATI

NEDFI House, Floor 4,
G. S. Road, Dispur, Guwahati - 781 006
Phone : (91 361) 2237607, 2237609
Fax : (91 361) 2237701
E-mail : eximgro@eximbankindia.in

HYDERABAD

Golden Edifice, Floor 2, 6-3-639/640, Raj Bhavan Road,
Khairatabad Circle, Hyderabad 500 004.
Phone : (91 40) 23307816-21 Fax : (91 40) 23317843
E-mail : eximhro@eximbankindia.in

KOLKATA

Vanijya Bhawan, Floor 4, (International Trade Facilitation Centre),
1/1 Wood Street, Kolkata - 700 016.
Phone : (91 33) 22833419/22833420 Fax : (91 33) 22891727
E-mail : eximkro@eximbankindia.in

MUMBAI

Maker Chambers IV, Floor 8,
222, Nariman Point, Mumbai 400 021.
Phone : (91 22) 22823320 / 92 / 94 Fax : (91 22) 22022132
E-mail : eximwro@eximbankindia.in

NEW DELHI

Ground Floor, Statesman House,
148, Barakhamba Road, New Delhi 110 001.
Phone : (91 11) 23474800
Fax : (91 11) 23322758/23321719
E-mail : eximndro@eximbankindia.in

PUNE

44, Shankarseth Road, Pune 411 037.
Phone : (91 20) 26403000 Fax : (91 20) 26458846
E-mail : eximpro@eximbankindia.in

Overseas Offices

ADDIS ABABA

Bole Kifle Ketema
Kebele - 19, (03/05), House No. 015-B
Addis Ababa, Ethiopia,
Phone : (251 116) 630079
Fax : (251 116) 610170
E-mail : aaro@eximbankindia.in

DAKAR

Floor 1, 7, rue Félix Faure,
B.P. 50666, Dakar, Senegal
Phone : (221 33) 8232849
Fax : (221 33) 8232853
E-mail : eximdakar@eximbankindia.in

DUBAI

Level 5, Tenancy 1B,
Gate Precinct Building No. 3,
Dubai International Financial Centre,
PO Box No. 506541, Dubai, UAE.
Phone : (971 4) 3637462
Fax : (971 4) 3637461
E-mail : eximdubai@eximbankindia.in

JOHANNESBURG

Floor 2, Sandton City Twin Towers East,
Sandhurst Ext. 3, Sandton 2196,
Johannesburg,
South Africa.
Phone : (27 11) 3265103 / 13 Fax: (27 11) 7844511
E-mail : eximjro@eximbankindia.in

SINGAPORE

20, Collyer Quay,
10-02, Tung Centre,
Singapore 049319.
Phone : (65) 65326464
Fax : (65) 65352131
E-mail : eximsingapore@eximbankindia.in

WASHINGTON D.C.

1750 Pennsylvania Avenue NW,
Suite 1202, Washington D.C. 20006,
United States of America.
Phone : (1 202) 223 3238
Fax : (1 202) 785 8487
E-mail : eximwashington@eximbankindia.in