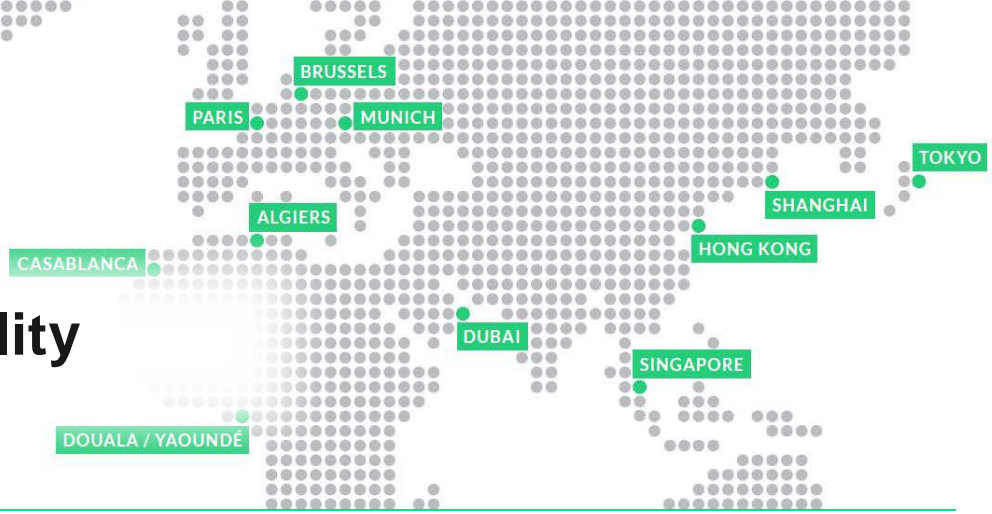




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Smart News Mobility

July 2018



» **EUROPE**

Revision of the posting of workers directive

The revision of directive 96/71 concerning the posting of workers in the framework of the provision of services dated December 16, 1996, proposed by the Commission, was passed by the Council on June 21, 2018.

Under the principle “same pay for the same work in the same place”, all of the host country’s working conditions and remuneration rules will be applied to posted workers, in compliance with law and collective bargaining agreements.

Furthermore, the duration of the posting has been set at a maximum of 12 months (with a possible 6 months extension). Beyond that duration, the host country’s labour regulations will be applied to posted workers (and thus not only remuneration and working conditions).

This revision will have to be transposed by member states within two years into their national laws. Thus, new rules should be enforceable from 2020.

Certificate of secondment in European Union: binding force

The Court of Justice of the European Union and the French Supreme Court stated on the binding force of the certificate of secondment A1 delivered by legal authorities (former E101).

The CJEU already stated in several occasions that a certificate of secondment issued by a Member State in the context of a temporary secondment to another Member State is binding the competent institution and Courts of the host Member State, even though the certificate does not fulfill the conditions of Article 14 of the European regulation (CJEU, April 27, 2017, C-620/15).

The French Supreme Court aligned with this case law. Unless the competent institution of the State of origin withdraw or cancel the certificate, a court of the host Member State is not entitled to scrutinise the validity of an A1 certificate, even if the certificate was improperly obtained. In this case, the social institution identified irregularities concerning employees (from a Swiss branch of a German company) who worked on two boats on French rivers. They were affiliated to the Swiss social security whereas they should have been affiliated to the French social security (Cass. Ass. Plén., December 22, 2017, n° 13-25.467).

In a recent case, for the first time, the Court of Justice of European Union limits the binding force of the A1 certificate. Pursuant to Court, it is possible to dismiss an A1 certificate if it was obtained fraudulently duly ascertained after judicial inquiry. In this case, the institution from the host Member State asked the origin institution for the reexamination of the validity of the certificate and its withdrawal. The origin institution declined this request without having examined the judicial inquiry demonstrating the fraud. In this context, the national judge is entitled to dismiss the A1 certificate (CJEU, February 6, 2018, C-359/16).

France : Denial of justice: connecting factor with France

In order to combat denial of justice in international case, in case of impossibility to submit the dispute to a foreign judge, there is a principle of competence of French judges. This principle requires a sufficient connecting factor with France.

In this case, employees from a company under Congolese law brought their cases before Congolese courts in order to challenge their redundancies. After 25 years of procedure, and the absence of decision, employees brought their cases before the French jurisdiction arguing that the Congolese company had capitalistic links with French companies, even though the links arose after the redundancies.

The French Supreme Court stated that if there is a denial of justice, the sole capitalistic link with a French company is not considered as a sufficient connection with France. So the French judge is not competent (Cass. soc., September 14, 2017, n°15-16.737).

New Immigration Bill

A new Immigration and Asylum bill, presented by the French government on February 21, 2018, is currently debated in French Parliament. This law should be enforceable by the end of 2018.

The bill provides several measures regarding residence and work permits. It extends the international Talents Residence permit and creates new permit categories for students and researchers.

Furthermore, French Government may be entitled to simplify the work permits for the hiring of some categories of employees by companies which benefit from a specific recognition by the State. A single residence permit for employees may be also created.

The tax point of view

On 26 April 2018, the OECD published its annual report on taxation of wages in OECD member countries.

This publication, available in eight languages, contains detailed information on taxes and contributions (income tax and social security contributions) paid by employees and their employers in OECD countries.

» **AFRICA**

Cameroon : Simplification of the formalities required for the benefit of the simplified tax system for exceptional and deferred salary income

The Finance Law N°2017/021 dated December 20, 2017 for the financial year 2018 simplified the formalities required for the benefit of the lowered tax regime for the Income Tax of Individuals "IRPP" on exceptional income or deferred.

The simplification consists in the elimination of the mandatory procedure with the Tax Administration to obtain an authorization prior to the implementation of the scheme. It is now applied by the employer at the sole request of his employee subject that the income

concerned actually consists in exceptional or deferred income as defined in Article 69 of the General Tax Code.

The exceptional nature of the income is assessed by both its nature and its amount, while the deferred income is defined as "... any income from which the taxpayer, as a result of circumstances beyond his control, has had the disposition during the year, but which by its normal due date refers to one or more previous years".

As a reminder, only one-quarter of the amount of exceptional or deferred income received by the employee is included in the annual base of calculation of the IRPP by the latter.

Morocco: Case law on conclusion of both a classical employment contract and an employment contract for seconded employee in the framework on an international agreement

Pursuant to the Moroccan labor code, employer hiring a foreigner must enter into a specific employment contract (called "CTE") despite the existence of a classical employment contract. The CTE must be endorsed by the Labor Ministry and the duration of the endorsement fixes the duration of the CTE which is thus a fixed-term employment contract.

An international agreement, entered into between Morocco and several countries (Algeria, Senegal and Tunisia) guarantees equality of treatment in the recruitment. As a consequence, those employees are exempted from requesting the endorsement of their employment contract and can enter into a classical employment contract (and thus be entitled to indemnities to be paid in case of unfair termination of the contract).

Recent case law of the Labor Court of Casablanca, dated December 13, 2017 (Dos. No. 1361/1501/2017), stated on the case where a Tunisian national, after the termination of his CTE contract, challenged this termination by arguing that pursuant to the international agreement he was entitled to an equality of treatment and thus was entitled to the indemnity for unfair dismissal.

The Court stated that "Considering that Tunisian employees are exempted from endorsement, entitling them to enter into an employment contract without prior endorsement of the competent authorities, Considering that the claimer decided to enter into a CTE with the defender and to submit the contract for endorsement, this CTE is thus opposable to the parties and bound the employee".

» [ASIA](#)

Japan : **Creation of new residence permits for foreign workers in Japan**

The Japanese Government adopted on June 15 2018 "Basic Policies for the Economic and Fiscal Management and Reform" which deal with various issues relating to the aging of the population and the sustainable development of the Japanese economy.

The Japanese Government provides in these Policies for the creation of new type of visas of a 5-year duration with the authorization to work for foreign workers with a limited education background but having certain skills or specialization. The conditions of eligibility for the new visas include the completion of preliminary practical internship (such as an internship in a workshop) or the success to the Japanese Language Proficiency Test evidencing the level of Japanese achieved.

The Ministry of Justice is in charge of preparation of the bill, the amendment of Immigration Control and Refugee Recognition Act is expected to come into force in April 2019.

The purpose of creating new visas is to remedy the labor shortage, particularly in the field of agriculture, tourism, caring for the elderly people or construction. Japan currently has 1.27 million foreign workers out of a total of 66 million workers.

Expert point of view : *France-China bilateral social security agreement*

Since January 2017, the ratification of the France-China bilateral social security agreement, signed on October 10, 2016, is pending before the French Parliament.

The date of ratification is still not known even though many companies, both in France and in China, are waiting for its enforcement.

Hong-Kong : **Reducing salaries tax for the year of assessment 2017/18 and 2018/2019**

Salaries tax for the year of assessment 2017/18 is reduced by 75%, subject to a ceiling of HKD 30,000

per taxpayer. In addition, the width of tax bands is widened from HKD 45,000 to HKD 50,000 and the number of tax bands is increased from 4 to 5 with marginal tax rates of 2%, 6%, 10%, 14% and 17% commencing from the year of assessment 2018/19. The allowances (which reduce the taxable income) are also increased (for example, the child allowance is increased from HKD 100,000 to 120,000 per child) and a personal disability allowance is introduced commencing from the year of assessment 2018/19.

Proposal to abolish MPF off-setting mechanism

The Mandatory Provident Fund (MPF) is a pension scheme set up by the government to help generate retirement savings. All employed individuals must partake in a mandatory subscription where both employers and employees collectively make mandatory monthly contributions through private MPF providers. Under current legislations, employers are entitled to use the benefits attributable to their contributions to offset an employee's statutory severance or long service payments. This has been the subject of complaints from unions for many years. Chief Executive Carrie Lam emphasized in her 2017 policy address that the offsetting of severance payments or long-service payments with MPF contributions will be abolished. The government hopes the proposed bill will pass by 2020 and come into effect by 2022.

Foreign same-sex marriages recognised for visas

After a three-year legal battle against the immigration policy, the Hong Kong Court of Final Appeal (the Court) ruled on 4 July in favour of a lesbian expatriate which in effect would make dependant visas normally granted to heterosexual married couples also available to same-sex couples who are married in other foreign jurisdiction (see *Director of Immigration v. QT* [2018] HKCFA 28). The ruling sets the city apart from its usual competitors such as Singapore, mainland China and Japan and make Hong Kong a more competitive city attracting new talents. The Court however confirmed that its ruling does not have any legal effect on the definition of marriage under Hong Kong's Marriage Ordinance which does not recognise a marriage between persons of different sex. Institution of marriage under Basic Law remains intact.

The whole LPA-CGR avocat mobility team is at your disposal should you need further informations

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