1. SOURCES OF EMPLOYMENT LAW

1.1 What are the principal sources of law and regulation?

Employment law in Switzerland is mainly based upon the following sources, set out in order of priority in the event of a conflict:

• Federal Constitution.
• Public law, in particular the Federal Labour Act and the relevant four implementing regulations, regulating work conditions.
• Civil law, in particular the Swiss Code of Obligations (CO).
• Collective labour agreements if applicable.
• Collective company agreements if applicable.
• Individual employment agreements.
• Market practice (usage and customs), doctrine and case law.

The contractual relationship between employer and employee is essentially governed by Articles 319 to 362 of the CO. The individual employment contract is extensively regulated with regard to its content. The provisions are either mandatory or optional. To the extent the statutory provisions are mandatory, they may not be modified at the expense of either the employer or the employee – or in some instances at the expense of the employee only – by agreement or by collective labour contract.

1.2 What is the order of priority of the relevant sources? Which take precedence in the event of a conflict?

Please see answer to 1.1 above.

1.3 What are the relevant statutes and international treaties?

In addition to the Labour Act and the CO, other important sources of Swiss employment law are:

• The Federal Act on the Equal Treatment of Women and Men (ETA).
• The Federal Merger Act.
• The Federal Act on Personnel Recruitment and Hiring-out of Employees.
• The Federal Act on Information and Consultation of Workers (the Participation Act).
• The Federal Regulation Against Excessive Remuneration in Public Companies.
• The Federal Act on Private International Law.
• The EC EFTA Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the Lugano Convention).
2. PRINCIPAL INSTITUTIONS

In general, federal and cantonal authorities do not play an important role in connection with the execution and performance of an individual employment agreement in the private sector. In some areas or under certain circumstances, the following authorities have a certain role:

- Cantonal labour authorities need to be notified in the case of a collective dismissal.
- Federal or cantonal labour authorities approve regular work during the night and on Sundays (see section 6.3 below).
- Federal or cantonal labour authorities approve the general terms for the contracting-out of workers.
- Federal or cantonal labour authorities approve and supervise working, safety and health conditions in industry.
- Cantonal authorities supervise the proper performance of apprenticeship contracts.

3. ROLE OF THE NATIONAL COURTS

Employment disputes are submitted to civil courts. The Swiss cantons still have important legislative competences with regard to the organisation of the judiciary. However, in all Swiss cantons, claims arising from an employment relationship have to be submitted to a dedicated and specialised employment court. Judgments of the labour court are subject to appeal to the cantonal court of higher instance. The appeal to the Swiss Federal Supreme Court in Lausanne is available for issues of federal law, provided that the amount in dispute is at least CHF15,000. The Federal Supreme Court oversees the correct and consistent application of federal law by the cantonal courts.

Due to the fact that employment law is regulated on a federal level, its application throughout Switzerland is uniform, despite the cantonal jurisdiction. The enactment in 2011 of the Federal Code of Civil Procedure has further enhanced the consistent application of employment law nationally.

4. EMPLOYMENT STATUS AND CATEGORIES OF WORKER

4.1 What defines employment status (whether an individual is employed or self-employed)?

The legal definition of the employment contract as determined by the CO is a contract pursuant to which the employee commits to perform work in the employer’s service for either a fixed or an indefinite period of time and the employer undertakes to pay compensation based either on time periods or on the work performed.

The main elements of the employment relationship are the employee’s subordination to the instructions of the employer and the duty to personally perform work. The employer’s main duty is to pay salary for the time the employee is in its service or for the work performed.

Contrary to an employee, a self-employed person is not part of the employer’s organisation and is not subordinated to the instructions of the employer. A self-employed person typically enters into a mandate agreement with the principal. As contractor, a self-employed person is required to perform the services for which he has been contracted or manage the business affairs with which he has been entrusted.
4.2 What is the relevance of the distinction?
Different statutory rules apply which afford a much higher level of protection to employees as compared to self-employed persons. The most relevant differences are listed below.

Employee
- Employment agreement.
- Protection against dismissal.
- Statutory sick pay.
- Termination: mandatory notice period.
- Minimum holiday entitlement.
- Working time regulations.
- Equal pay.
- Discrimination protection.
- Maternity rights.
- Social security to be shared between employer and employee.

Self-employed
- Mandate agreement.
- Protection against dismissal: not applicable.
- Statutory sick pay: not applicable.
- Termination without notice.
- Minimum holiday entitlement: not applicable.
- Working time regulations: not applicable.
- Equal pay: not applicable.
- Discrimination protection: not applicable.
- Maternity rights: not applicable.
- Social security to be borne by self-employed person only.

4.3 What are the main categories of worker?
There are numerous categories of worker, such as full-time or part-time workers, shift, night and day workers, workers with fixed term or open term contracts, all of which are governed by the generally applicable provisions of the CO as outlined in
section 1 above. The CO applies to the vast majority of employees in Switzerland. Furthermore, the CO explicitly regulates three separate employment contracts: the apprenticeship contract, the travelling salesman’s contract, and the homeworker contract. Specific provisions also exist for mariner’s contracts and for secondment (contracting-out) agreements.

4.4 What is the position of directors?
As a general rule, Swiss employment law applies uniformly to all persons employed under an employment agreement, including executive directors. However, senior executives are exempt from the scope of the Labour Act. As a consequence, the public law working time rules do not apply to them and, in particular, directors are, as a matter of statutory law, not eligible for overtime compensation. In addition, Swiss corporate law applies to the appointment and removal of directors (board members) of Swiss stock corporations and of managing directors of Swiss limited liability companies.

5. CONTRACT
5.1 What constitutes an employment contract?
An individual employment contract is deemed to be concluded if the employer accepts work in its service for a given time, the performance of which, under the circumstances, is only to be expected against remuneration.

5.2 What formal requirements are there in relation to the formation of an individual employment contract?
In principle, an individual employment contract requires no special form in order to be valid unless specifically provided for by law (such as for the apprenticeship and the mariner’s contract). However, certain provisions of an employment contract are only valid if agreed upon in writing (see section 6.1).

5.3 Where do the terms come from?
Express or implied terms
The contractual relationship between employer and employee is essentially governed by the terms of the CO. Its provisions are either mandatory or optional. To the extent they are compulsory, they may not be modified by the parties at the expense of either the employer or the employee – or in some instances to the detriment of the employee only. By contrast, optional statutory provisions apply unless the parties to the employment contract modify them by mutual consent.

Collective labour agreements are reasonably common in the manufacturing and construction industry and in the public sector. Typically, collective labour agreements provide for issues such as co-operation between the parties to the collective labour agreement, the unions and the employers’ associations and co-operation at plant level, as well as provisions relating to the terms of employment such as working hours, holidays and salaries.

The Swiss Federal Council (that is, the Swiss government) may under certain circumstances declare a collective labour agreement to be binding, typically for sectors with a particularly low salary level. In addition, the cantons or the Federal Council may impose standard employment contracts that regulate the working time and the working conditions of female and juvenile employees. The practical relevance of standard employment contracts is limited to contracts for agricultural and domestic workers.
In addition to these provisions, the general rules of Swiss civil law apply to the employment relationship: both parties are bound to exercise their rights and fulfil their obligations according to the principle of good faith. The employer has to be aware that past company practice may be binding for the future.

Finally, fundamental rules of Swiss law may be important for the employment relationship, that is, the employer’s obligation to respect the principle of equal treatment.

6. TERMS AND CONDITIONS

6.1 What terms, if any, must be included in a contract?

As a rule, an individual employment contract requires no special form in order to be valid. However, some provisions of an employment contract are only valid if agreed upon in writing, such as:

• Exclusion of overtime compensation for employees other than senior executives.
• Inclusion of holiday pay into hourly salary.
• Reservation of the employer’s right to acquire any inventions that are made by the employee during the performance of his/her activity, but outside the scope of his/her contractual duties.
• Agreement of a probation for a period other than one month.
• Agreement of a notice period which differs from the statutory notice periods (one month during the first year of service, two months in the second and up to and including the ninth year of service and three months thereafter).
• Non-competition covenant.

6.2 What terms are typically included in a contract?

An employment contract typically includes:

• Name of employer and employee.
• Function/position and responsibility of the employee.
• Term and starting date.
• Notice period.
• Probation period.
• Working hours.
• Rules regarding overtime compensation.
• Details of compensation.
• Intervals at which compensation is paid.
• Details of holidays (including public holidays).
6.3 What rules apply to:

6.3.1 Working time and rest breaks
Working time is typically agreed upon on a weekly basis in the individual employment agreement. The working hours must not exceed limits as stated by public law, in the Labour Act. According to the Labour Act, the maximum weekly working time is:

- 45 hours for workers employed in industrial enterprises and office personnel, including technical staff as well as sales staff in large retail enterprises.
- 50 hours for other workers (mainly construction and craft trades, commerce and sales staff in small retail enterprises).

Working time is often determined by collective labour agreements and is typically lower than the maximum working time as set out in the Labour Act. Work has to be interrupted by a break of:

- At least one hour if the working day is more than nine hours.
- At least half an hour if it is more than seven hours.
- At least a quarter of an hour if it is more than five-and-a-half hours.

Work performed between 23.00 and 06.00 is considered to be night work. Regular work at night and regular work on Sundays is subject to authorisation by the competent cantonal labour authority.

6.3.2 Annual leave
An employee is entitled to at least four weeks of vacation in each year of service and to at least five weeks in the case of juvenile employees less than 20 years of age.

The number of public holidays varies considerably from one canton to another (Switzerland is a confederation consisting of 26 cantons, each having a limited legislative competence). Some cantons do not even have uniform rules and the number of public holidays is governed by local or regional legislation. As a general rule, the number of public holidays varies between nine and 14 per year in different regions.

7. Employee representation
According to the Swiss Act on Information and Consultation of Workers (the Participation Act) employees may elect works councils in enterprises with at least 50 employees. The works councils have to be informed of all matters on which they need information in order to fulfil their tasks and they have to be consulted as described in section 8 below.

Switzerland is not a member state of the EU. However, EU directives apply to Swiss employers operating in EU member
states. A large multinational enterprise (MNE) operating in two or more EU states and which employs at least 1,000 employees in EU member state and at least 150 employees in each of at least two EU member states may be required to establish a European works council or some other suitable transnational body for the purpose of informing and consulting its employees.

8. INFORMATION AND CONSULTATION

In general

According to the Participation Act the employees’ representative body, or, if there is none, the employees directly, have certain consultation rights in the following matters:

- Security at work and health protection.
- Transfer of enterprise.
- Collective dismissals.
- Affiliation to an occupational pension fund and termination of the affiliation agreement.

It is common that collective labour agreements extend the employees’ entitlement to be consulted beyond the matters listed above.

In practice, the information and consultation in the case of transfer of undertakings and in the case of collective dismissals (see section 11 below) are of particular relevance.

Transfer of undertaking

If the employer transfers the business in whole or in part to a third party, the employees’ representative body or, if there is none, the employees, shall be informed or consulted. A transfer of undertaking is considered to be any transfer of an entire business or a business unit from one legal entity to another. The employees have a right to be informed or consulted, but are not required to approve the transfer of undertaking.

Consultation

Employees or the employees’ representative body are entitled to be consulted when the employer transfers the business in whole or in part to a third party and, as a result of the transfer, measures affecting the employees such as dismissals, salary cuts or material adjustments in employment conditions are envisaged. Consultation must take place in a timely manner in advance of the decision on any measures. In case the transfer of undertaking leads to a collective dismissal, the collective dismissal consultation procedure applies (see section 11 below).

Information

If in connection with a transfer of undertaking no measures are proposed that might affect the employees, it is sufficient to inform the employees in a timely manner prior to the transfer itself. In this case the employees may be informed after all relevant decisions have been made. It is even possible (but not advisable) to inform the employees after a public announcement of the transfer of undertaking has been made. However, the employees must be informed before the implementation of the transfer in Switzerland. All employees must individually have the opportunity to object to the transfer of their own employment relationships before the transfer occurs.
Sanctions
The CO does not contain particular sanctions if the employer fails to comply with the information or consultation obligation in connection with a transfer of undertaking (for sanctions in case of failure to comply with the collective dismissal procedure, see section 11 below).

The Swiss Federal Merger Act (Merger Act) is designed to facilitate the adaptation of the legal structure of businesses to new business models and market realities. The Merger Act contains a number of provisions designed to protect employees by way of reference to the provisions relating to the transfer of undertaking in the CO. If the employer fails to comply with its duty to consult, the employees have the opportunity to have the registration of the merger in the commercial register enjoined by the court.

9. EQUAL OPPORTUNITIES
9.1 What protection do employees have from discrimination?

The purpose of the Swiss Federal Act on the Equal Treatment of Women and Men (Equal Treatment Act) is to enhance equal treatment of women and men in the workplace by means of a general prohibition of discrimination based on gender, including a prohibition on sexual harassment.

The Equal Treatment Act prohibits any unjustified discrimination based on gender, in particular regarding marital status, family situation, or – with respect to female employees – pregnancy. Gender discrimination is explicitly prohibited in relation to recruiting, work assignments, working conditions, salary policy, continuing education, promotion and dismissal of employees. For the sanctions against discrimination to be imposed under the Equal Treatment Act no intention or negligence on the employer’s part is required.

The prohibition of discrimination encompasses both direct and indirect discrimination: (i) direct discrimination is discrimination based on gender or a criterion which can only be fulfilled by one gender (such as the promotion of men only into management as a matter of principle, although some of the female employees are qualified for a management position); (ii) indirect discrimination means that a criterion is used which can, as a matter of principle, be fulfilled by both genders, but which leads to an unjustified disadvantage of one gender (such as strict refusal to promote part-time employees into management if such promotion policy is not justified by business reasons and women are substantially overrepresented in the group of part-time employees).

However, a measure is deemed not to be discriminatory if it justified by objective reasons. Measures or criteria that (i) are required for the performance of a specific task (for example, the fact that an employee of a certain gender must fulfil a specific assignment, such as a woman for a female acting role) or (ii) are designed to enhance the equal treatment of men and women (such as the preference of female applicants to their equally qualified male co-applicants with the purpose of increasing the percentage of women in a specific position) are deemed not to be discriminatory.

Prohibition of discrimination through sexual harassment in particular
Pursuant to the Equal Treatment Act, any undesired conduct of a sexual nature or any other improper conduct based on gender that impairs the dignity of women and men at work is considered sexual harassment and, thus, discriminatory. The Equal Treatment Act mentions in particular, threats, the promise of advantages, or the exertion of pressure, to derive sexual
benefits. In addition, sexist or suggestive remarks or the presentation or public use of pornography is also considered sexual harassment pursuant to the Equal Treatment Act.

**Sanctions**

Employees affected by discrimination are entitled to bring the following claims against the employer for (i) prohibition or restraint of a future discrimination, (ii) removal of an existing discrimination or (iii) qualification of a specific conduct as discriminatory provided such conduct continues to impair the claimant's position and – in the case of discriminatory salary policy – (iv) salary payments for the past five years only due to the statute of limitations.

Apart from the claims set out under (i)–(iv) above, the victim of sexual harassment has a claim against the employer for payment of a penalty, provided the employer cannot prove that it has taken all measures necessary to prevent such harassment which it was reasonably required to take. Such penalty must not exceed the amount of six monthly salaries based on the average salary in the respective industry as documented by the Swiss Federal Office of Statistics, collective labour agreements, or by other sources.

A person who has been affected by a discriminatory refusal to be hired can only claim a penalty up to the maximum amount of three prospective monthly salaries. Employees who have been dismissed on discriminatory grounds have a claim for payment of a penalty of up to six months' salary.

**Equal salary**

The concept of “work of equal value” has been construed on numerous occasions under Swiss law. The value of a type of work is usually established pursuant to certain post-evaluation processes of the position but, according to recent case law, all currently recognised methods are admissible and the employer retains a wide discretion to assess the value of work.

Differences in salary must be based on objective reasons such as academic backgrounds, qualifications, professional experience, age, seniority, the physical or mental difficulty of the task, degree of particular responsibility, as well as risks or managerial functions, and these reasons must materially influence the value of work. Labour market factors and the state of the economy are admissible as grounds in this context only if differences in salary are proportionate, correspond to the real economic needs of the company, do not exceed economic volatility, and are limited in time to what is considered necessary.

**Trade union discrimination**

Notice of terminations by an employer is deemed to be abusive (see section 10.3 below) if it is given because the employee belongs, or does not belong to a trade union, or because he/she lawfully exercise a union activity.

9.2 What rights do parents have?

All female employees, regardless of their length of service, are entitled to 16 weeks’ ordinary maternity leave. Within the first eight weeks following the birth, a mother must not be employed. During pregnancy an employee may stay at home by simply notifying the employer of her absence.

Legislation on maternity leave is not fully co-ordinated with legislation on maternity pay. A mother is entitled to 80% of her salary for a period of 14 weeks following the birth. The maximum monthly maternity pay is currently limited to 80% of CHF7,350. Many employers go beyond the statutory minimum and provide for a maternity pay of 80 to 100% of the salary.
(including salaries exceeding CHF7,350), be it through voluntary payments or by entering into a collective insurance policy.

The employee is protected from dismissal during her pregnancy and the 16 weeks following the birth (see section 10.3 below).

The law does not provide for any paternity leave, but some employers have introduced paternity leave of between one and two weeks on a voluntary basis.

10. DISCIPLINE AND TERMINATION

10.1 What rules/procedures must be followed if an employer wishes to discipline an employee?

The employer may establish general directives and give specific instructions about the performance of the work and the conduct of employees in the enterprise. The employees must in good faith observe general directives and specific instructions given to them by the employer.

In establishing directives and giving instructions the employer is required to respect the employee’s personality, pay due regard to the employee’s health and care for the preservation of morality.

10.2 What disciplinary action may be taken?

Except as set forth below (termination procedures), there are no specific legal provisions applicable to disciplinary procedures.

10.3 What are the grounds on which employment contracts can be terminated (by both employer and employee)?

As a rule, either party to the employment contract is free to give notice at any time – with or without reason and irrespective of the employee’s age, subject to applicable contractual or statutory notice periods (freedom of giving notice).

Unless otherwise stipulated in the contract in writing, the notice periods are one month during the first year of service, two months in the second and up to and including the ninth year of service and three months thereafter. Unless agreed otherwise, the termination date is at the end of a month. A minimum notice period of one month may only be reduced by collective labour contract and only for the first year of service. The notice periods must not differ for the employer and the employee (mandatory provision).

Individual and collective employment contracts often modify notice periods whereas a modification of the termination date which as a matter of law is set at the end of a month is unusual. An extension of the statutory term of the notice period by written agreement to six or even 12 months is quite common for senior management staff.

In addition to the parties’ obligation to observe legal or contractual notice periods, various restrictions to the freedom of giving notice are imposed typically on the employer.
10.4 What procedure must be followed?

Notice of termination at an improper time

The employee is protected from dismissal during certain periods called “restricted periods”. The employer shall not give notice during restricted periods such as:

- The employee’s pregnancy and 16 weeks following the birth.
- A period of 30 days in the first year of service, of 90 days in the second year until and including the fifth year of service and of 180 days after the sixth year of service, if the employee is fully or partially prevented from working due to illness or accident.
- The employee’s performance of compulsory military or civil defence service, provided such service lasts more than 11 days, as well as four weeks prior to and four weeks following such service.

10.5 What indemnities must be paid?

As a matter of statutory law, no indemnities or severance is payable when the employment is terminated. The individual employment contract may provide for indemnities, but this would be the exception rather than the rule in Switzerland.

10.6 What are the consequences of not having the right grounds/following the right procedure?

Consequences of a termination at an improper time

The notice given by the employer during a restricted period is deemed to be null and void. It has to be given again once such period has expired. An employee’s absence due to a serious illness may continue, but once the restricted period has expired (maximum term of 180 days), the employer may validly give notice.

However, each new accident or illness triggers a separate new restricted period. Thus, employees who have an accident just after recovering from an illness are protected by a new restricted period, whereas if they fall ill with the same sickness no new restricted period is triggered.

If notice is given prior to the beginning of a restricted period and if the notice period has not yet expired, the expiration of the notice period is suspended and continues only after the termination of the restricted period. Since in the majority of the employment relationships the termination date is at the end of the month, even a brief suspension due to illness of a few days can cause an extension of the notice period of up to one month.

Abusive notice of termination

A notice of termination given for certain reasons specified in the CO is considered abusive. The relevant reasons are:

- A quality inherent in the personality of the employee, such as age, race, sex, origin or other.
- If the employee exercises a constitutional right such as political activity or practices his or her religious belief.
- To prevent the arising of claims based on the employment contract.
- If the employee asserts in good faith claims based on the employment contract (notice of termination as an act of retaliation).
• If the employee performs compulsory military or civil defence service.
• If the employee is a member or refuses to be a member of an employees’ association or the employee lawfully exercises a union activity.
• If the employee is elected employee representative unless the employer can justify the notice based on valid reasons.
• If the employer violates the consultation procedure in connection with a mass dismissal.

Unlike the notice given by the employer during a restricted period, the abusive notice of termination is valid. The term of the employment relationship is not influenced by an abusive notice of termination. However, the employer which abuses its right to give notice of termination is required to pay an indemnity to the employee. The indemnity is determined by the court and may not exceed the employee’s salary for six months (two months in case of abusive notice of termination in connection with a mass dismissal).

Equal treatment of women and men
A notice of termination by the employer may be challenged under the Equal Treatment Act if it is given following a complaint of discrimination to a superior, or following a proceeding initiated by the employee before a conciliation authority or a court, unless the employer can justify the notice based on valid reasons. This protection against termination is granted while the relevant proceeding is ongoing and for six months thereafter.

By challenging a notice of termination the employees may request a judgment ordering the employer to reinstate the employee for the duration of the proceedings. Instead of a provisional reinstatement, the employee may claim an indemnity according to the provisions that apply in the event the employer abuses its right of termination.

Termination without notice
For important reasons both the employee and the employer may at any time terminate the employment relationship without notice. The employment contract may also be terminated with immediate effect after a (ordinary) notice of termination has already been given. Any circumstances in which the terminating party cannot in good faith be expected to continue the employment relationship is considered to be an important reason for termination. The court decides at its own discretion on the existence of such circumstances. The CO does not specify what type of behaviour justifies a termination with immediate effect. According to doctrine and case law, only serious misconduct that destroys mutual trust may give the other party the right to terminate the contract with immediate effect, termination without notice constitutes the last resort.

If the employer terminates the employment contract with immediate effect without important reason (unjustified dismissal), the employee is entitled to claim for compensation equivalent to what he would have earned if the employment relationship had been terminated in compliance with the applicable notice period or until the expiration of the specified fixed term. Furthermore, the court may order the employer to pay an indemnity to the employee. As a rule, courts adjudicate the indemnity as a penalty. The indemnity may not exceed an amount equal to six times the employee’s monthly salary.

If the employee terminates the employment contract with immediate effect without a valid reason, the employer has a claim for compensation equal to one quarter of the employee’s wage for one month, subject to additional damages.
10.7 Do special rules apply in certain situations?

Fixed-term contracts are not subject to any notice of termination, they simply expire at the end of their term. For important reasons a fixed-term contract may be terminated without notice and with immediate effect.

As a matter of law, during the probation the notice period is seven days. The parties may agree to extend the notice period beyond seven days, but cannot shorten the relevant notice period. For temporary work contracts, special rules apply: the notice period is two days during the first three months and seven days thereafter.

11. COLLECTIVE DISMISSALS

11.1 What is the definition of collective dismissal?

A collective dismissal is defined as a notice of termination given by the employer within a period of 30 days for economic reasons (reasons unrelated to the performance of the individual employee) and which affects:

- At least 10 employees in enterprises usually employing more than 20 and fewer than 100 persons.
- At least 10% of all employees in enterprises usually employing more than 100 and fewer than 300 persons.
- At least 30 employees in enterprises usually employing at least 300 persons.

11.2 What is the procedure that must be followed in the event of collective dismissals?

In a first step, the employer has to provide the necessary information to the employees’ representative body or, if there is none, to the employees. It has to provide written information on:

- The reasons for the collective dismissal.
- The number of employees to be made redundant.
- The number of persons usually employed.
- The time period within which the notifications of the redundancies are to be given.

Once the above information is distributed to employees, the consultation period starts running. During this period the employees must have the opportunity to make suggestions on how to avoid the redundancies or to limit the number of redundancies and to mitigate their consequences. However, the employer is not required to follow these suggestions.

If the consultation with the employees does not result in a substantial reduction of the number of redundancies, the employer must notify the competent labour office in writing of every planned collective dismissal after completion of the consultation period. This notification to the cantonal labour office must include the results of the consultation with the employees. Only once the cantonal labour office has been notified, may the employer terminate the employment relationships by giving notice to the employees that are being made redundant.

11.3 What are the consequences of not complying with the applicable procedures?

The notice of termination of the employment relationship by the employer is deemed to be abusive if it is not in compliance with the rules governing the collective dismissal. In this case, the employer must pay compensation to each employee affected by the abusive termination of up to two months’ salary.
The employment may terminate at the earliest 30 days after the date of notification of the planned collective dismissal (after completion of the consultation period) to the cantonal labour office. As a result, a notice of termination is deemed invalid, if it is given prior to the lapse of the relevant 30-day period.

11.4 What are employees’ rights in the event of collective dismissals?
In addition to the right of information and consultations, statutory law requires employers to provide for a social plan if, on average, they employ more than 250 persons. The terms of such social plan are to be negotiated between the employer and the employees or their representatives.

11.5 Are there other circumstances which trigger collective dismissal rights?
Any type of dismissal which affects the relevant minimum number of employees as set forth above may trigger collective dismissal rights. In practice, the most relevant event that might trigger collective dismissal rights is when the employer intends to change the terms of the employment agreements to the extent such changes negatively affect the position of employees. Any such change of material terms of employment is considered to be a termination of employment with an offer of new employment and as such triggers the collective dismissal rights.

12. FORTHCOMING LEGISLATION
The timekeeping requirements that are currently in force in Switzerland are widely considered to be outdated as they do not take into consideration the requirements of the modern workplace. A proposal has been submitted to amend the relevant regulations in order to relax today’s stringent timekeeping requirements. Specifically, the proposal would exempt from the timekeeping requirement all employees whose annual salaries exceed CHF120,000 (including bonus), provided the relevant company is party to a collective labour agreement that must include specific measures to protect the health of employees. In addition, the employees who enjoy “a certain discretion in managing their working schedule”, but whose salary does not reach the threshold of CHF120,000, may be subject to a simplified requirement to record their working time, provided the employee agrees to such simplified timekeeping. The details of the amended regulations are not yet entirely clear and it is likely to take another six to 12 months for the regulations to be enacted.

13. USEFUL REFERENCES
Statutes and statutory instruments
Federal Authorities of the Swiss confederation: www.admin.ch.

General bodies
Swiss State Secretariat for Economic Affairs: www.seco.admin.ch.

Federal judiciary
Federal Supreme Court: www.bger.ch.