Dechert LLP

Overview of Russian Employment Law

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Compliance with local employment and immigration laws remains an area of constant interest to Russian regulatory authorities and, consequently, for companies operating in Russia. International companies operating in Russia should pay close attention to the employment and immigration aspects of their local operations. This overview highlights some of the features of Russian employment and immigration legislation.

The Labor Code

The central piece of Russian employment legislation is the Labor Code of the Russian Federation (the **"Labor Code"**). Initially adopted on 30 December 2001 when it effectively replaced the old Soviet Code of 1971, the Labor Code and has been amended several times since it entered into force, with the latest series of amendments having been carried out in 2013. The most important of these latest amendments are covered in this overview.

Article 9 of the Labor Code provides for one of the fundamental rules underlying Russian employment legislation. This Article sets forth that any provision in an employment agreement or in an employer's internal regulations that worsens the position of an employee in comparison with his/her position under the Labor Code will be considered invalid and the relevant provisions of the Labor Code will prevail. The Code contains minimum guarantees and protections for employees that are mandatory and from which the parties to an employment agreement are not permitted to stray. As a result, the position of employees in Russia is quite strong in comparison with that of their employers. However, there has been significant progress with respect to Russian courts becoming increasingly employer-friendly, especially in cases where the employee obviously manipulated the circumstances of his/her employment or abused his/her rights. Even in cases where an employment agreement is governed by a foreign law, the position of the Russian court will be the same. Russians courts will likely disregard a foreign law governed clause in an employment agreement that worsens the employee's position, and instead apply the minimum standards granted by the Labor Code.

Employment Agreement

The relationship between an employee and an employer is regulated by an employment agreement. Generally, an employment agreement is concluded for an indefinite term. A fixed term employment agreement (for a period of up to five years) may be concluded only when expressly permitted by law, such as for the temporary replacement of an employee or for the performance of temporary (up to two months) or seasonal work, or for individuals who are sent to work abroad, etc. In the event of a dispute the employer bears the burden of proving that the relevant employment agreement was indeed justified in being set for a fixed term.

If an employee continues to work after the expiration of the employment agreement and if neither party (the employer or employee) intends to terminate such employment agreement, then the relevant employment agreement shall be deemed open-ended.

In accordance with the Labor Code, an employer should conclude an employment agreement with the relevant employee within three business days from which the employee actual commences work. However, even if no written employment agreement was signed, this does not undermine the employer's rights. During the period in which the employee works without an employment agreement, the Labor Code will effectively constitute the terms and conditions of his/her employment.

The Labor Code provides a list of *sine qua non* terms to be included into employment agreements, such as the place of work, commencement date, remuneration, social insurance, etc. It should be noted that the absence of these terms does not necessarily lead to the invalidation of the employment agreement. Rather, the agreement shall be amended so that these terms are included so as to avoid any potential claims from the state authorities.

It is recommended that an employment agreement contain the employee's functions or that a respective job description (*dolzhnostnaya instruktsiya*) be attached to the agreement itself, given that the employer is not entitled to force an employee to perform the functions that are not provided by the employment agreement.

Article 65 of the Labor Code includes the list of documents that should be presented by the employee upon concluding the employment agreement. This list includes, for example, the employee's ID (passport), his/her labor book, diploma, pension insurance certificate and military records (for men). According to the Labor Code, the employer is not entitled to request from the employee any other documents. However, some categories of employees are obliged to present additional documents. For example, a certificate of an absence of a criminal record may be requested from persons assuming the position of general director and/or members of a collegial executive body and chief accounts of a bank.

In addition to that, the Labor Code stipulates special requirements for employers hiring ex-government officials; in particular:

i. ex-government officials may only be hired if consent is obtained from a special commission of the relevant government authority; and

ii. such authority must be notified by the employer of the ex-government within 10 days from the date on which the employment agreement was concluded.

These above rules apply to ex-government officials seeking employment in the private sector within a period of two years following their official retirement from their respective government authority.

Probation Period

Probation period is optional. The Labor Code stipulates the following maximum terms with respect to probation periods:

i. no more than 6 months for the heads of a company (i.e. CEO) and their deputies, chief accounts and their deputies, as well as the heads of a branch office or a representative office or other separate structural departments of legal entities; and

ii. no more than 3 months for other employees.

The term of a probation period must be stipulated in the employment agreement. Some categories of individuals (pregnant women, women with children younger than one and a half years, and recent graduates (within one year after graduation from a university or institution of secondary education)) cannot be subjected to a probation period.

During the probation period the employment agreement can be terminated by the employer on three days' notice stating the reasons why the employee failed to pass the probation period. Such employer's decision can be appealed by the employee to the court. An employee under probation may terminate an employment agreement by giving the same three days' notice to his/her employer.

Labor Books

A "labor book" (*trudovaya knizhka*), which is a documental record of an employee's employment history from his/her first employment until retirement, shall be issued to all employees in Russia (including, arguably, foreign employees). The Labor Code obliges an employer to keep a labor book in respect of any employee who works for the company for a period longer than five days.

The employers are responsible for keeping their employees' labor books and recording the employee's position, dates of joining and termination, grounds for termination of employment, etc. All records should be completed by the employer in a timely manner and pursuant to the required format.

If an employee was brought to disciplinary liability it will not be recorded in his/her labor book unless such sanction is a dismissal. Employees prefer to have their labor books "clean", that being without any "bad" record made by the employer on grounds that might make it difficult to find a job in future. As addressed further below, this is often used by an employer as a negotiation tool during termination discussions.

Employers do not need to retain the labor books for their remote employees (see Section "Remote Employment" below).

Internal Regulations and Employment Orders

Russian legislation requires that the employer adopt certain internal regulations (*localnie normativnie akti*) with respect to various employment issues. Some of these internal regulations are mandatory, while others are not. In particular, the law stipulates the following mandatory internal regulations: (i) regulations on labor discipline (*pravila vnutrennego trudovogo rasporyadka*), and regulations relating to (ii) the remuneration system, and (iii) personal data processing.

The internal regulations are deemed valid only if the following conditions are satisfied:

i. the internal regulations are in Russian;

ii. they are approved locally by the head of a company; and

iii. they are acknowledged by the employees against their signatures.

Having the company's policies displayed on a company's intranet is generally not sufficient for making them binding from a Russian employment law perspective.

Again, the internal regulations should not worsen an employee's position in comparison with his/her position under the Labor Code. In case of any conflicts, the statutory rights will prevail.

An employer is required to issue internal orders (*prikaz*) on any matter related to employment (e.g., when an employee is hired, granted a vacation, paid a bonus, disciplined or dismissed and in certain other cases).

Working Hours

A normal working week cannot exceed 40 hours irrespective of whether the employee works a five- or six-day week. Any additional time worked is classified as overtime, of which employers may request from the employee only in circumstances expressly specified by the Labor Code. In most cases (e.g., if and when business so requires from time to time), an employer must receive the employee's prior written consent for engaging in

overtime work. The general rule is that overtime work must not exceed 4 hours for each employee in two consecutive days and must not exceed 120 hours per year.

Overtime work must be paid:

i. for the first two hours of work – at a rate of 150% of the regular hourly rate; and

ii. for subsequent hours – at a rate of 200% of the regular hourly rate.

Overtime work may also be compensated by granting an employee additional rest time that cannot constitute less time than the amount of overtime hours worked. Overtime work is prohibited for pregnant women, minors and certain other categories of employees.

A written consent for overtime is not required where an employee works under a so-called "irregular working regime" (*nenormirovanniy rabochiy den*). Such employees may be required to work overtime at the employer's discretion. This regime can only apply to specific categories of employees as set out in the company's internal regulations. It should also be noted that it is unlawful to require an employee to work overtime on a daily basis (rather than from time to time and under certain circumstances only). Employees working under the irregular working regime are entitled to at least 3 additional days of holiday per year, which must be expressly stated in their employment agreement.

The employee and the employer could also agree on part time employment. In some cases, provided by the Labor Code, such part time employment should be provided by employee's request (pregnant women, for one of the parents having child under 14 years old, etc).

The employer is obliged to keep a record of all time actually worked by each employee, including overtime and irregular working time.

Breaks in Work, Days Off and Public Holidays

The Labor Code provides that an employee must be given a break for rest and meals during the working day. Such break time is not included in the working time and must not be less than 30 minutes or more than 2 hours.

All employees must be provided with days off (two days off for a five-day week, and, one day off for a six-day week). The length of the days off (time off between working days) may not be less than 42 hours.

There are currently eight official paid public holidays in Russia providing employees with 14 days off. These days are: 1-8 January, 23 February, 8 March, 1 and 9 May, 12 June and 4 November. If a holiday falls on a weekend, the next business day after the public holiday day will usually be a paid day off. Employees' salaries are not affected as a result of such holidays.

As a rule, employees are not permitted to work on days off and public holidays unless they provide their written consent and then only in a very limited set of circumstances. In extraordinary cases specified by the Labor Code (e.g., catastrophe, disaster, fire, flood, earthquake, etc) they may be required to work without providing prior written consent. An employer must issue an internal employment order when keeping employees at work on days off and public holidays.

Holidays

The minimum holiday entitlement is 28 calendar days per year of employment. Public holidays, if they fall during an employee's annual holiday, are not counted as part of his/her minimum annual holiday entitlement.

The Labor Code provides for additional holiday time as compensation for some special conditions of work. An employee is entitled to take vacation days during the first year of work upon the expiration of the six-month period starting from the commencement of his/her employment (unless otherwise agreed between an employer and an employee or when an employee is a pregnant woman, minor, etc). Holiday time for the second and subsequent years of work may be taken at any time during the working year in accordance with the holiday schedule. Such schedule shall indicate each employee's holiday days for the calendar year and must be prepared and approved by the employer no later than 2 weeks before the succeeding year. Where there is no company holiday schedule, an employee has the right to apply to an employer for vacation time at any time.

An employer may recall an employee from holiday only with the employee's written consent. Such recall is prohibited with respect to minors, pregnant women, and employees working in harmful and/or hazardous conditions.

In some cases and upon an employee's request, unused holiday shall be carried forward to the next year (e.g., employee's sickness). Moreover, where the granting of vacation time to the employee in a current year might affect the normal operation of the employer's business, such vacation may be postponed by the employer and carried forward to the next year with the employee's written consent, but such holiday time must be used within 12 months following the end of the current year. The employer is prohibited from denying the relevant employee vacation time for two consecutive years.

A part of the vacation exceeding 28 calendar days can be replaced with monetary compensation. Furthermore, on termination of employment the employer is obliged to pay the employee compensation for all accrued but unused holiday time.

Sickness and Maternity Leave

In case of sickness, employees are required to provide an employer with a medical certificate after their recovery and return to work. As of 1 January 2007, sick leave and maternity leave compensations are regulated by Federal Law No. 255-FZ "On the Provision of Sick Leave and Maternity Leave Compensation to Citizens Eligible for Mandatory Social Insurance," dated 29 December 2006 (the **"Sick Leave Law"**).

According to the Sick Leave Law, sick leave compensation must be paid *inter alia* to an employee in the event of his/her illness, injury, and when an employee is caring for a sick family member. The amount of sick leave compensation and the period of time for which such compensation is payable will vary according to the grounds for the sick leave. The Sick Leave Law also specifies compensation for maternity leave, which amounts to 100 % of the employee's average earnings for the two preceding years. If the woman's total work history is less than six months, the maximum sick leave compensation cannot exceed the minimum monthly wage.

In the event of an employment related injury or any occupational disease, the amount of sick leave compensation shall also constitute 100% of the employee’s average earnings for the two preceding year; however, in 2014 such compensation should not exceed an amount four times that of the maximal monthly insurance indemnities provided by the Sick Leave Law (RUR 247,680). If the employee’s total work history is less than six months, the maximum sick leave compensation cannot exceed the minimum monthly wage.

An employer is obliged to pay an employee sick leave compensation only for the first three days of sick leave. Compensation for further sick leave is payable out of the Russian State Social Insurance Fund, which is funded by the employer’s mandatory social security contributions and paid as a percentage of each employee’s salary.

The Labor Code provides that women shall be granted maternity leave upon their request and on the basis of a medical certificate. Maternity leave is also payable out of the Russian State Social Insurance Fund. Paid

maternity leave starts to accrue no later than 70 calendar days prior to birth, and continues to accrue for an additional 70 calendar days thereafter. Paid maternity leave is provided for a longer period in the event of complications while giving birth or in cases of multiple births (84 day prior to birth and 110 days after birth).

Medical Examinations and Evaluation of Working Conditions

The Labor Code provides that the employer has to carry out at its own expense the medical examination of employees (the same applies, with certain exceptions, to candidates applying for a specific position) working in harmful and/or dangerous conditions, and/or in the transport sector. Russian legislation is very strict in defining the working conditions that should be regarded as harmful/dangerous. The frequency of such examinations depends on the results of the evaluation of the respective working conditions.

The recently adopted Federal Law No. 426-FZ “On Evaluation of Working Conditions” dated 28 December 2013 (the **"Evaluation Law"**) established a new procedure for assessing the employees’ working conditions. According to the Evaluation Law, the evaluation of working conditions must be conducted in relation to all employees’ (except to those who work at home, as well as to remote employees) at least once within every five-year period. The evaluation should be executed by a special organization that should be included in the specific register of evaluators of working conditions. However, the employer is obliged to create a special commission consisting of its representatives (including employees dealing with occupational safety) and members of the professional union (if any) and issue separate rules for such commission procedure. There should be an odd number of members on the commission.

If in the course of the evaluation no harmful and/or dangerous conditions were discovered, the employer is obliged to file a declaration of compliance with the territorial body of the Federal Service for Labor and Employment. Such declaration is deemed valid within 5 years from the moment when a report on the evaluation results was issued and subsequently approved by the commission. Such declaration is deemed prolonged for another 5 years if there were no employment related accidents or employment related injury discoveries within the term of the validity of declaration. Otherwise, the declaration is deemed annulled in relation to the particular workplace and a new evaluation should be conducted. A new evaluation should also be conducted should new work places be created by the employer.

Compensation and Minimum Wage

Salaries must be paid to employees in Russian currency (in RUB) no seldom than twice a month. Though not expressly stipulated in the Labor Code, salaries must also be fixed in employment agreements in RUB. The date of the payment is fixed by the internal labor regulations of each employer or by the employment agreement.

A monthly salary may not be lower than the minimum monthly wage established by Russian law. The amount of the minimum monthly wage is subject to regular indexation. From 1 January 2014 and at the time of writing, the minimum monthly wage is RUB 5,554 (approximately US$158).

An employer is obliged to pay compensation for any delay in salary payments and other employment-related payments in accordance with the rules provided for by Article 236 of the Labor Code (in an amount not less than 1/300 of the refinancing rate of the Central Bank of the Russian Federation (currently 8.25% per annum)).

The employer's authorized personnel responsible for the payment of salaries may be exposed to administrative or even criminal liability for breaching rules on making salary payments. Moreover, under Article 142 of the Labor Code, employees, upon written notice, may stop working in cases where salary payments have been delayed for more than 15 days. In such case, employees are entitled to not appear at work until they have received payment

for all sums due to them in arrears. Employees are also eligible to receive their average wages for the period during which they had stopped working.

An employer is also obliged to adjust yearly salaries paid to its employees in accordance with the increase of consumer prices on goods and services. Russian legislation does not provide for any specific procedure and rules relating to such adjustment. Failing to comply with this statutory duty may potentially result in claims for recovery of increased salaries.

Disciplinary Sanctions

An employee may be sanctioned by an employer for failing to perform his/her employment duties or for improperly performing such duties. The Labor Code provides three types of disciplinary sanctions:

i. warning;

ii. reprimand; and

iii. dismissal.

An employer can only apply one sanction for each breach. Before the imposition of any disciplinary sanction the employer must request from the employee an explanation in writing for the breach of his/her employment duties (refusal to provide such explanation should be documented and is not considered as an obstacle to imposing a disciplinary sanction).

An employee can be disciplined within one month from the date of discovery of the breach, but not later than six months from the date of the breach or two years if a breach was discovered during the course of audit. An internal employment order for the imposition of a disciplinary sanction must be issued and delivered to the employee, who must acknowledge it within three business days from the date of its issuance (this time period does not include the employee's absence from work). Any refusal by the employee to follow the rules of the Labor Code (e.g., to provide explanations, to acknowledged the internal employment order, etc.) must be recorded in separate acts.

The disciplinary sanction is deemed annulled if the employee is not disciplined again within one year from the date of the sanction having been imposed. An employee is entitled to appeal against the disciplinary sanction by applying to a court, labor inspection or an internal tribunal (which can be created in each company on the basis that the employer and employees are equally represented on the tribunal).

Termination of Employment

An employee may terminate the employment agreement at any time by providing two weeks' written notice. This right cannot be contracted out and any agreement to the contrary will be disregarded by a Russian court. The agreement may be terminated prior to the expiration of the two week notice period with the employee's and employer's mutual consent. At any time before the expiration of the notice period, the employee may withdraw the application for termination, unless the employer has not already become bound by law to enter into an employment agreement with another employee by virtue of Russian law. If, upon the expiration of the notice period, the employment agreement has not been terminated and the employee no longer insists on his/her termination, the original employment agreement will continue in force.

The employment agreement can be terminated by the employer only on the basis of an exhaustive number of grounds specified in the Labor Code. Attached to this paper is an overview of the grounds for terminating an

employment agreement under the Labor Code. This list applies to all individuals except for heads of a company and employees of an equivalent nature whose employment agreements may contain contractual grounds not specified by the Labor Code.

In particular, the employer may terminate an employee's employment agreement:

- pursuant to a redundancy procedure or in the event of the company's liquidation;
- for incapacity/incompetence due to the employee's bad health or insufficient qualifications;
- for repeated non-performance of employment obligations without valid cause when one disciplinary sanction has already been in effect against such an employee;
- for a single material violation of an employment agreement by an employee (e.g., absence from work without valid cause for a period of four consecutive hours during one business day, appearance at work in a state of intoxication, etc); and
- for several other rarely invoked grounds.

It is prohibited to terminate the employment of an employee who is sick or on vacation, as well as to dismiss pregnant woman except in the event of a company's liquidation.

The Labor Code stipulates detailed procedures for terminating employment. Such procedures differ depending on the ground for termination.

If an employer fails to comply with termination procedures set out by law, the termination may be deemed invalid by a court. Cases related to termination of employment are heard before the courts of general jurisdiction.

In case of an unfair dismissal an employee is generally entitled to the following remedies:

i. reinstatement of work;

ii. salary for the period of forced absence from work; and

iii. compensation for moral harm.

Russian courts look closely at whether the relevant procedure has been complied with, and, if not, tend to rule in favor of the employee.

Severance Payments and Market Practice

In cases where an employer terminates an employment agreement due to the company's liquidation or due to redundancy, the employer must give the employee two months notice. The employer is further obliged to pay a severance payment equivalent to two month's salary. Moreover, the employer may also have to pay an additional one month's salary in cases where the discharged employee (within two weeks after the termination of his/her employment agreement) registers himself with an employment agency, having not yet found new employment. Since five months' salary is the maximum exposure (the two month notice period; two month's severance payment; and one additional month in specific cases only), an employee will usually be encouraged to resign against the receipt of compensation ranging from two to three months salary.

Redundancy must be based on some valid managerial or economic reasons and should not be aimed at terminating the employment of a particular employee. If there is a dispute, the employer bears the burden of proving that the redundancy was driven by business reasons.

Given the employee-friendly nature of Russian labor legislation, employers prefer to terminate employment relationships by entering into agreements with the employee who they wish to dismiss. This usually involves negotiating a settlement amount typically ranging from two to four months' salary for ordinary employees and from three to six months' salary for heads of a company and senior management. One of the tools typically used by employers to persuade employees to resign or to receive less compensation is the promise that the employer, in return, will keep the employee's labor book "clean".

Sometimes employers force the “problem” employees to leave the company by changing the working conditions of these employees, citing the change of organizational or technical conditions of their employment. In such cases, the employer is entitled to reduce such employees’ salary, which usually compels employees to terminate their employment by themselves.

Liability

It is the employer who is liable to third parties for damage caused by its employee. An employer who compensates a third party has a right of recourse against the employee who caused the damage to the third party. The employee him or herself is also obliged to compensate damage caused to the employer. However, the employee's liability in both cases is limited by the Labor Code to an amount equivalent to the employee's monthly salary.

Limitation of liability does not apply where damage was caused by an employee under intoxication, or when such damage constitutes a criminal or administrative offense, etc.

In certain cases provided by the Labor Code, the employee may be obliged to compensate damage caused to the employer and/or damage caused to a third party that the employer had to account for in full. Such full liability provisions

i. can only apply to certain categories of employees specified by Russian legislation (heads of a company, his/her deputies, chief accountant, etc.); and

ii. must be expressly stipulated in the employment agreement or in the separate agreement (*dogovor o polnoy materialnoy otvetstvennosti*).

The resolution of the Supreme Arbitrazh Court of the Russian Federation, issued in August 2013, provides a number of important clarifications with respect to the liability of officers. In particular, a company’s officer is deemed liable if he acted in bad faith (e.g., when there was a conflict of his/her personal and employers’ interest, when a transaction was concluded on disadvantageous conditions, etc.).

Restrictive Covenants

Common law concepts such as post termination non-competition clauses, garden leave, non-solicitation, and non-dealing covenants are alien to Russian employment law and would, most likely, be either unenforceable or assume a different form.

Garden leave is not expressly provided for by the Labor Code, and whilst an employer could attempt to enter into such an arrangement, it would be highly unlikely to be enforceable if breached.

Post termination non-competition covenants are likely to be unenforceable in Russia since imposing such a limitation would likely be deemed an infringement on the constitutional principle of freedom of employment. Non-solicitation and non-dealing covenants are also likely to be unenforceable for the same reasons.

The effect of non-solicitation and non-dealing covenants could, however, potentially be achieved by different means, namely in the context of confidentiality. A properly drafted Russian employment law agreement could contain confidentiality provisions covering, in particular, information relating to the company's employees and clients. Moreover, each employer should also establish a proper trade secret regime. In the event of a dispute, these measures could be used to effectively achieve the same effect as non-solicitation and non-dealing clauses. However, there are very few precedents enforcing such provisions in Russian courts.

Confidentiality

Under the Federal Law “On Trade Secrets” No. 98-FZ, dated 29 July 2004 (the **"Trade Secrets Law"**), a company may classify certain information as a trade secret and oblige its employees not to disclose it. A number of formalities should be complied with in this regard.

A regime of trade secrecy shall be deemed to have been established if the holder of the trade secret adopts the set of measures listed in Article 10 of the Trade Secrets Law, which are as follows:

- provides a list of information that is subject to trade secrecy regime;
- limits access to information under the trade secrecy regime;
- records the list of individuals who have the access to the relevant information under the trade secrecy regime;
- manages the use of information under the commercial secrecy regime; and
- uses the "confidential" (*”commercheskaya taina”*) stamp on documents containing commercial secrets with the reference to the owner of such information (if the owner of such information is a company, the full name and address of such company must be referred to on the “confidential” stamp).

Moreover, the Trade Secrets Law requires that the company inform employees on information deemed secret, the conditions of the secrecy regime, and liability for its violation.

It is advisable for the employer to adopt special internal regulations in relation to trade secrets, which should contain a list of information classified as trade secrets and procedural requirements in relation to handling and keeping such information secret. These provisions could also be included into the employment agreements with the employees. Moreover, the Trade Secrets Law requires that employment agreement with a general director (or head of a company) should contain special provisions on maintaining the confidentiality of trade secrets and provide liability for violations of such confidentiality.

In the event of the disclosure of a trade secret, the employee may be subject to:

i. damages for civil liability;

ii. disciplinary sanctions (during the employment);

iii. administrative liability; or

iv. criminal liability.

Each employee is also obliged to comply with his/her confidentiality obligations in relation to trade secrets upon his/her dismissal. The limitation period for an employer to bring a claim against an employee in this regard is limited by the time when the information classified as a trade secret becomes publicly available.

Remote Employment

Developments in technology and network systems have created opportunities for employees to work remotely instead of at their employer's place of business, including in offices or any other places under the employer's control. The changes made to the Labor Code in 2013 significantly simplified the procedure for hiring such remote employees as opposed to normal employees (e.g., employees who work at the employer's office or at any other facility controlled by the employer). In particular, there is no need to execute hard copy documents when a remote employee is engaged, except for (a) an original hard copy of the executed employment agreement to be retained by the employee, (b) an employment labor book to be provided to the employer, (c) a copy of the employment termination order, and (d) other documents specifically agreed upon by the employer and the employee.

In all other cases, the document exchange between the employer and employee may be performed electronically provided that a protected, verified electronic signature is used for their execution. Moreover, an obligation to obtain a state pension insurance certificate is imposed on the remote employee rather than on the employer. In addition to that, there is no need for the employer to register the remote employee's workplace for tax purposes. However, the employer is still obliged to ensure minimum workplace safety requirements, in particular, mandatory social insurance of remote employees from accidents.

The remote employee may be obliged by the employer to use a specific hardware and/or software configuration while performing his/her employment duties. The employer and employee can agree on covering and sharing the costs incurred due to purchase and further usage of such hardware and/or software.

Moreover, the remote employee may be dismissed on additional grounds (not provided in the Labor Code) as agreed upon in his/her employment agreement.

Foreign Personnel

While Russian and non-Russian personnel are required to be treated equally from an employment law perspective, the employment of foreign individuals brings with it additional difficulties as the law generally requires both the employer and the employee to obtain special permits from the migration authorities (representative offices or branches of foreign companies (excluding those that provide warranty repair and after-sales services) are also subject to this requirement).

In 2010 significant amendments to Russian laws were passed aimed at facilitating foreign, white-collar work in Russia. A new category of foreign employees was introduced into Russian legislation, namely that of "highly qualified specialists" (the "**HQS**"), who enjoy significant advantages over non-HQS foreign employees.

Under the Federal Law "On Legal Status of the Foreign Citizens" No. 115-FZ, dated 25 July 2002 (the **"Foreign Citizens Law"**), in order to qualify for HQS status a foreigner must be an experienced specialist with skills or achievements in a specific area (which is a more formal requirement), and earning at least: (i) RUR 1,000,000 (approximately US$28,500) per year for HQS being scientists or lecturers if invited by scientific institutions, state academies or higher education institutions; or (ii) RUR 2,000,000 (approximately US$57,100) per year for other

HQS. The requirement as to the minimum yearly salary does not apply to HQS invited to work on the Skolkovo project.

The advantages that the HQS enjoy include the following:

i. their employers are not required to obtain employment permits;

ii. invitations and work permits issued to HQS and members of their families will not count towards quotas that limit issuance of these documents;

iii. they enjoy an accelerated procedure for obtaining work permits (14 business days);

iv. the maximum term for a work permit and employment visa for them is three years (both documents may be extended when their term expires);

v. their work permits allow them to work in multiple Russian regions;

vi. they and members of their families are required to register with Russian migration authorities only after the expiration of the 90 day period following their arrival into Russia;

vii. they and their families can receive a permanent residence permit (*vid na zhitelstvo*) without having to live in Russia for a year; instead the Permanent Residence Permit will be issued for the term of the work permit of the HQS;

viii. their work permit, permanent residence permit, and visa shall be deemed valid for 30 days following the date of the early termination of the employment agreement; and

ix. their incomes are subject to the 13% PIT rate irrespective of the period of residence in Russia.

To make use of these benefits, the employers – being either Russian companies or accredited branches of foreign companies – must file an application with the Federal Migration Service to employ an HQS. Permission should be granted almost automatically unless some documents are missing or in cases where the employer has been subject to administrative sanctions for the unlawful employment of foreigners during the two years preceding the filing of the application.

The procedural requirements relating to employment of non-HQS employees are more complicated and hiring such employees usually takes longer than HQS. For instance, in addition to a work permit (required for HQS) employers in Russia wishing to employ non-HQS employees must also obtain an employment permit from the migration authorities.

Engaging foreign personnel without required permits may result in various sanctions, including fines against the company in amounts up to RUB 800,000 (approximately US$22,800). In extreme cases, the activity of such company may be suspended for up to 90 days.

Personal Data Protection

The issues of personal data protection are governed mainly by Chapter 14 of the Labor Code and the Federal Law “On Personal Data” No. 152-FZ, dated 27 July 2006 (the **"Personal Data Law"**). According to the Personal Data Law, personal data constitutes any information directly or indirectly relating to the identified or identifiable individual (e.g., his/her full name, date and place of birth, address, marital and social status, education, occupation, etc.)

Personal data processing is regarded as any operation involving personal data, including its: collection, systematization (such as organization or classification), accumulation, storage, correction (such as renewal or alteration), use, dissemination (including transfer), depersonalization, blocking, and destruction. Any person engaged in personal data processing is deemed an operator of personal data.

Unless otherwise provided by Russian law, an operator has to obtain an individual's consent to the processing of their personal data. The Labor Code, as well as the Personal Data Law, does not provide any specific requirements as to the form of the consent, save for in four specific situations that require mandatory written consent of a respective individual:

i. the processing of biometric data;

ii. a cross-border transfer of personal data to jurisdictions that do not provide an adequate level of protection for personal data;

iii. the processing of data in relation to an individual's race, nationality, political, religious and philosophical views, health or private life; and

iv. transfer of an employee's personal data to a third party by the employer (such consent *inter alia* should contain a list of such third parties, including other companies of the same corporate group).

Any consent may be revoked by the relevant individual at any time.

It should be noted that the Personal Data Law requires that the written consent to personal data processing should contain an individual's full name, his/her passport details, name of the personal data operator or that of another recipient, list of personal data to be provided, the intended goal warranting the processing of the individual's personal data, list of actions to be exercised in respect of the personal data provided and the term for which consent is given, together with its conditions for revocation. Written consent should be signed by the individual or his/her representative.

The Federal Service for the Supervision of Communication, Information Technologies and Mass Communication (the **"Roskomnadzor"**) carries out general supervision in the sphere of personal data processing and is authorized to carry out audits of companies and keep a register of personal data operators. A company must inform this state authority on its intention to process personal data. This requirement does not apply if the company only processes personal data relating to its employees and contractual counterparties.

Clarifications published by Roskomnadzor in December 2012 contain some provisions regarding the personal data of candidates. These clarifications stipulate that the employer is obliged to obtain the candidate's consent to process personal data during the recruitment period. Such consent is not required if the candidate is represented by a recruiter under an agreement concluded between the candidate and recruiter or if the candidate published his/her CV in publicly available databases. If the CV was sent to the employer by e-mail, the employer should check whether such CV was indeed sent by the candidate (e.g. by contacting him/her or inviting him/her to interview). If the candidate is not hired, his/her personal data should be deleted by the employer within 30 days of the date on which the relevant decision was made to not hire the candidate.

In 2013 Roskomnadzor issued several important clarifications. In particular, one of such clarifications relates to the usage of personal biometric data. According to Roskomnadzor, photos of individuals, including photos in passports, shall be deemed as personal biometric data. Processing of such personal data (including employer's HR records, publishing photos of the employees on corporate websites, etc) is subject to the written consent of the individual.

Roskomnadzor has in fact became more proactive within last 2-3 years than it was before, and now conducts audits of companies on a regular basis in accordance with the schedule it has published on its website. The schedule has become increasingly longer over time (for 2014 it has about 1,300 companies on the list).

Violations in processing personal data may result in various sanctions, including fines of up to RUB 10,000 (about US$285). The Russian Government has expressed its intention of increasing these fines.

Professional Unions

Under Russian law employees are entitled to create professional unions for the purposes of protecting their rights. Such organizations might be created in the form of a primary professional union (*pervichnaya profsouznaya organizatsiya*) by the employees working in one company or regional or federal professional unions by the employees working in different industries.

According to the Labor Code, an employer planning to reduce staff should notify the professional union no later than two months (or three months for mass dismissal) before terminating relevant employment agreements (citing redundancy).

It should be noted that the procedure for founding trade unions, as provided by Russian law, is quite simple and allows employees to create a professional union or primary professional union shortly after the employer announces redundancy. Taking into account that the employer who plans to dismiss the member of the professional union should consider the opinion of the professional union, such organizations are often used by the employees as a “bargaining tool” against the employer.

The Federal Labor Inspection

The Federal Labor Inspection (the **"FLI"**) is the Russian regulator in charge of supervising and controlling employers with respect to their compliance with Russian labor legislation. The FLI is also responsible for:

i. investigating work accidents;

ii. considering cases of administrative offenses in relation to violations of employment legislation;

iii. considering applications and complaints of individuals in relation to violations of their employment rights, etc.

The FLI may visit the employer's office at any time without notice and conduct an inspection. FLI inspectors may also remain at the employer's office and the law provides them with the right to request and receive (at no charge) from the employers documents, explanations and information enabling them to conduct and monitor the inspection process. Employers are obliged to comply with the requests of the FLI inspectors. If in the course of an inspection/investigation the FLI inspectors discover breaches of Russian labor legislation, they will typically issue an order:

i. requiring the rectification of such breaches by the employer and restoration of the employees' rights; and

ii. imposing fines on the employer and/or its officials (e.g. the heads of HR services).

Employers can appeal FLI orders through the Russian courts.

Grounds for terminating an employment agreement under the Labor Code of the Russian Federation of 2001

1. Mutual agreement of the employer and employee.

2. Expiration of the term of an employment agreement.

3. Termination of the employment agreement by an employee.

4. Termination of the employment agreement by an employer due to:

   A. Failure by the employee to pass the probation period;

   B. Liquidation of the company;

   C. A redundancy procedure;

   D. Discharge for incompetence due to insufficient qualification;

   E. Change of ownership of the property of the company (applies only to the head of a company, his/her deputies, and the chief accountant);

   F. Repeated non-performance by an employee of his/her obligation without valid cause in the event that previous disciplinary sanctions have been made against such employee;

   G. Intentional wrongdoing by an employee who is directly in control of funds or commodity values, if such actions undermine the employer's confidence in the employee;

   H. Immoral wrongdoing by an employee in the sphere education that is inconsistent with his/her position;

   I. Unreasonable decision-making by the head of a company (head of a representative office/branch), his/her deputies or the chief accountant, resulting in damage to the company's property;

   J. Single material breach of employment obligations by the head of a company (head of a representative office/branch) and his/her deputies;

   K. Provision of false documents by an employee for the purposes of concluding an employment agreement;

   L. According to the termination provisions of an employment agreement with the head of a company and members of its collegial executive body;

   M. Loss of confidence to the employee due to the non-provision of data on the employee's incomes and property, bank accounts opened in the foreign banks (for some categories of employees), or failure to take measures in order to reconcile a dispute to which such employee is a party; and

   N. Single material violation of employment obligations by an employee:

      (i) Absence from work without valid cause for a period of four consecutive hours in one business day;

      (ii) Appearance at work in a state of intoxication;

(iii) Disclosure of any restricted information that became known to an employee during the performance of his/her duties (e.g. confidential information, employees' personal data);

(iv) Destruction or damage to property in the workplace, confirmed by a court ruling or by a resolution of an authorized administrative body; and

(v) Breach of employment protection rules if such breach caused grave consequences or threatened to do so.

O. Transfer of an employee to another employer upon the employee's request or with the employee's consent; or transfer of an employee to an elective post.

P. Refusal of an employee to continue work due to:

(i) a change of ownership or governance of the company; or

(ii) the reorganization of the company.

Q. Refusal of an employee to continue work due to a change in the material conditions of the employment agreement (i.e., change of organizational or technical conditions of the work).

R. Refusal of an employee to be transferred to another post, which is necessary for him pursuant to a medical opinion or due to his/her current post having been made redundant in the company.

S. Refusal of an employee to be transferred together with the employer to another post in another region (together with an employer).

T. Circumstances beyond the control of an employer and employee:

(i) Requirement for an employee to fulfill military service or other similar state requirement;

(ii) Re-employment of an employee who performed this function previously upon the orders of the state employment inspection or the court;

(iii) Non-election to the post;

(iv) Condemnation of an employee by the court, which excludes continuation of work;

(v) Incapacitation of an employee;

(vi) Death of an employee or an individual employer or a decision of the court declaring an employee or an individual employer dead or missing;

(vii) Extraordinary circumstances (e.g. catastrophe, disaster, fire, flood, earthquake, etc);

(viii) Disqualification or other administrative penalty prohibiting the performance of employment obligations under the employment agreement by an employee;

(ix) Expiration of the term, suspension for a term exceeding two months or forfeiture of a particular right of the employee (e.g. forfeiture of a driver's license), which prevents him from performing his/her employment obligations under the employment agreement;

(x) Termination of access to state secrets if the job requires such access;

(xi) Reversal of a court decision and/or state employment inspection committee on the re-employment of the employee; and

(xii) Adjustment to the number of foreign employees in accordance with quotas.

U. Breach of the rules governing the conclusion of employment agreements if such breach precludes the possibility of further work:

(i) Conclusion of an employment agreement with a person who cannot hold certain positions or perform certain work pursuant to a court ruling;

(ii) Conclusion of an employment agreement for performance of work that is harmful to an employee, pursuant to a medical opinion;

(iii) Absence of requisite qualifications; and

(iv) Conclusion of an employment agreement in violation of a court ruling or the ruling of other authorities precluding an employee from performing his/her duties under the employment agreement.

V. Other grounds set forth by the Labor Code and other federal laws of the Russian Federation.

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