Chapter XX

RUSSIA

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I INTRODUCTION

The labour relationship between employees and employers of all types (including legal entities, individual entrepreneurs and natural persons) is governed by the Constitution, the Labour Code, federal laws and other statutory acts containing norms of labour law. The parties to a labour relationship cannot contract out of requirements imposed by Russian labour law.

The Labour Code is the main codified legislation that regulates labour relationships based on constitutional principles. Additionally, there are federal laws regulating various important aspects of labour relationships.

Cases relating to employment issues are presented before a court of general jurisdiction. Generally, the terms and procedures of trials on employment issues are specified in the Civil Procedure Code. The specific terms and procedures of trials on administrative issues are stipulated in the Administrative Procedure Code.

In addition to the judicial opportunity to protect labour rights, there are other options set forth in the Labour Code. An employee may pursue self-protection of labour rights, protection of labour rights and legitimate interests by labour unions, state authorities' supervision, and control of labour law observance. For instance, the employee may apply to a commission on labour disputes convened on a parity basis by representatives of the employer and employee, and settle a labour dispute out of court, if the dispute is not exclusively subject to the consideration of the court of general jurisdiction.

Government agencies have competence in the following areas of employment law and employment relations:

a general issues relating to state supervision and control of labour are the responsibility of the Federal Service for Labour and Employment;

b migration is monitored and regulated by the General Directorate for Migration of the Ministry of Internal Affairs (on the basis of the Presidential Decree of 5 April 2016, the functions of the abolished Federal Migration Service of Russia were transferred to the General Directorate for Migration of the Ministry of Internal Affairs);

c processing of personal data is the responsibility of the Federal Supervision Agency for Communication, Information Technology and Mass Communication; and

d sanitary and epidemiological control is covered by the Federal Supervision Agency for Customer Protection and Human Welfare.

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Authorities of the constituent states of Russia, municipal bodies and the Public Prosecutor's Office also oversee the observance of employment law.

II YEAR IN REVIEW

The following are the most significant amendments to labour legislation and related areas that have been introduced during 2020.

i New rules for recording employees' labour activities

Federal Law 'On amendments to the Labour Code of the Russian Federation with regard to the regulation of recording labour activities in electronic form' came into force on 1 January 2020. New rules require employers to record all information about the labour activities of their employees in electronic form and submit it to the information system of the Russian Pension Fund.

Furthermore, as of 31 December 2020, labour records must be maintained in hard copy if this is requested by employees. However, even in the absence of any such requests, employers shall continue to keep labour records in hard copy. Thus, employers will be keeping records of information about employees' labour activities in both electronic form and hard copy.

The Law establishes that for all employees commencing employment after 31 December 2020, labour records will be maintained in electronic form only. However, employees who have previously requested that records be kept in written form will maintain that right even after changing employment.

ii Day off for annual health check

As of 11 August 2020, employers are obliged to provide one additional day off every year to employees who are more than 40 years old to undergo a medical examination. Employers are entitled to request a medical certificate that confirms the medical check-up has taken place. This requirement shall be prescribed in a local policy.

However, because of the coronavirus pandemic, medical check-ups may be temporarily suspended.

iii New rules on severance payments

A Law specifying the procedure and establishing new rules in respect of severance payments following dismissal resulting from liquidation of an organisation or redundancy was adopted and came into force on 13 August 2020.

If an organisation is being put into liquidation, all payments shall be made to the dismissed employees prior to its completion. However, an employer may replace monthly payments during the job-placement period with a single payment of compensation equal to two average salaries.

iv New duties for employers of foreign employees

As of 25 September 2020, employers should take measures to ensure that invited foreign citizens observe the stated purpose of their entry into the country, including the following:

a provide the invited foreign employee with contact details for communication purposes;
b ensure that assurances declared in the work invitation for the foreign employees (such as medical, material and housing) are fulfilled;
c assist in achieving the declared purpose of entry to the Russian Federation; and
d notify the local office of the Ministry of Internal Affairs within two days in the event of loss of contact with a foreign employee.

In the event of failure to comply with the residency regime, an undertaking may be subject to an administrative fine of up to 500,000 roubles. Any official of the company found to be liable may be subject to an administrative fine of up to 50,000 roubles.

v Strengthening of administrative liability for violating rules on keeping archives

A new administrative liability for violating the rules on keeping, completing, registering and using archival documents came into force on 26 October 2020. For breach of these rules, the relevant company official (e.g., the general director) may be subject to an administrative fine of up to 5,000 roubles. In addition, the company itself may be subject to an administrative fine up to 10,000 roubles.

vi Temporary suspension of migration terms because of covid-19

The period of validity of migration documents (such as visas and residence permits) for foreign nationals legally residing in Russia is automatically extended if they expire between 15 March 2020 and 15 June 2021. However, for foreign citizens from countries with which air traffic corridors are open, the suspension is cancelled from 15 March 2021 (or 90 days after traffic is opened with a new country).

III SIGNIFICANT CASES

The Supreme Court made the following significant decisions in 2020:

a In respect of staff redundancy, employers are obliged to offer all vacant job roles available in a particular Russian region, including those in branches.
b Difficulties with transport can be a sufficient reason for an employee not attending the workplace.
c It is not possible to recover unjust enrichment from an employee.
d If a foreign citizen decides to change his or her place of residence within the Russian Federation, his or her employer will not be held liable for non-fulfilment of its obligations to provide housing.
e An employee's complaint to a state body is a sufficient reason for failing to file the claim with the court within the limitation period for filing.
f Filing a claim for unlawful dismissal or other violation of rights may be a legitimate reason for failing to apply to the court with a claim for reinstatement at work within the limitation period.

IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

i Employment relationship

A written employment contract setting forth the basic terms of the employment relationship and employment duties must be concluded with every employee working in Russia. The employer is obliged to ensure the conclusion of the employment contract. If an employee starts working before a written contract is finalised, the employment contract with that employee is deemed to have been concluded and the employee cannot be deprived of the rights provided for by law.

Employment contracts may be drawn up for either an indefinite or a fixed term, but not for more than five years.

A fixed-term employment contract can be concluded only on the grounds provided by law, and as such will apply only when a fixed term (1) is required or (2) can be decided between the parties. In all other cases, the contract should be for an indefinite period.

Further, a fixed-term employment contract is required when an employee is hired under the following circumstances in particular:

a to perform the duties of another employee who is on a leave of absence but who retains his or her job;
b to perform temporary work or seasonal work (up to two months);
c to be sent to work abroad;
d to perform work that goes beyond the framework of an employer's ordinary activity;
e to work for organisations that are intentionally formed for a fixed period or for the purpose of completing a particular task;
f to carry out a defined task, for which a specific date of completion cannot be determined; and
g in some other cases as provided by law.

Subject to agreement by the parties, a fixed-term employment contract may be executed under, *inter alia*, the following circumstances:

a with persons hired by small businesses (including individual entrepreneurs) that have up to 35 employees, or 20 employees in the case of businesses (individual entrepreneurs) operating in the retail or consumer service sectors;
b with pensioners (who obtain this status because of their retirement age);
c with persons who are only allowed to perform temporary work, pursuant to a properly issued medical certificate;
d for the purpose of carrying out emergency work required for the prevention of catastrophes, disasters, accidents, epidemics, epizootics and for reparation in the aftermath of these and other emergencies;
e with creative employees in the mass media, cinematographic organisations, theatres, theatrical and concert organisations, circuses, etc.;
f with the heads, deputy heads and chief accountants of organisations; and
g in some other cases as provided by law.

In all other cases, an employment contract should be for an indefinite period. An employment contract concluded for a fixed term without sufficient reasons, as established by the court, is deemed to be concluded for an indefinite period. Moreover, if several fixed-term employment contracts have been executed to perform the same type of work, the court may decide, taking into account the details of the case, that the employment contracts last for an indefinite period.

The employment contract should contain information about the parties to the contract, and the place and date of conclusion. It must specify the place of work, the commencement date, the position of the employee according to the staff schedule of the company, the rights and duties of the parties, remuneration, conditions of the working place (all of which are mandatory provisions of a contract) and other provisions. It is forbidden to stipulate directly or indirectly any limitations or privileges relating to the age, nationality, religion, gender or political views of an employee.

It is the employer's obligation to conclude the employment contract with the employee in writing no later than within three working days of the day the employee was admitted to work.

Substantial provisions of an employment contract can only be modified with the mutual consent of the parties thereto, for instance, by addenda or attachments to the contract. In the event of changes to the organisational or technological conditions of the company, the employment contract can be amended without the consent of the employee provided that his or her function will not be changed. These types of changes are subject to two months' prior notice.

ii Probationary periods

An employer has the right to establish a three-month probationary period for a newly hired employee. As an exception to this rule, an employer may establish a six-month probationary period for employees hired for certain top-level executive positions (e.g., head of a company, chief accountant, their deputies, or head of a branch or representative office of an enterprise).

There are some categories of employees for whom no probationary period should be stated, such as pregnant women or women with children under one-and-a-half years old, or employees who are starting a job within one year of graduating from an educational institution.

The probationary period should be specifically provided for by the employment contract. In the absence of this provision, no probation period is considered to be established for the employee. During the probationary period, if the employer determines that the employee does not meet the criteria established for the job position for which he or she was hired, an employee can be dismissed by the employer without a severance payment by giving three days' written notice specifying the reasons for dismissal. An employee is entitled to resign during the probationary period without any reason, giving three days' written notice to the employer.

iii Establishing a presence

Generally, a foreign company can hire employees without being officially registered to carry on business in Russia; however, if it employs (or intends to employ) an individual to work in Russia for more than 30 calendar days (continuously or cumulatively) in a year, it is obliged to obtain Russian tax registration.

A foreign company is not prohibited from hiring employees through a specialist agency or another third party, for example under an outsourcing agreement. As these employees conclude employment contracts with the specialist agency or another third party, a foreign company has no obligation to pay remuneration to them, or withhold or pay the corresponding taxes.

Under certain conditions, tax registration issues and permanent establishment (PE) risks may arise for a foreign company.

A foreign company may engage an independent contractor under a service agreement (i.e., a civil law contract) without tax registration in Russia. In this situation, under certain conditions, these relationships can lead to the creation of a PE of a foreign company in Russia. Pursuant to the Tax Code, a PE is a branch, representation, department, bureau, agency or any other separate subdivision or other place of activity of the company, or a 'dependent agent' through which this foreign company regularly conducts commercial activities in Russia.

A dependent agent of a foreign company for tax purposes is a Russian company (or individual or individual entrepreneur) who acts based on an intercompany agreement, exclusively represents this foreign company in Russia and conducts regular business activities (i.e., negotiates and concludes agreements) on behalf of this foreign company. Therefore, if the activity of a foreign company through an independent contractor creates a PE in Russia, the foreign company may be subject to full taxation in Russia.

Among the statutory payments that are required to be paid to employees are salary, sick leave allowance, annual holiday pay and other additional payments stipulated for certain categories of employees. Foreign employees are entitled to some of these local benefits (e.g., payment for annual holiday).

Some statutory benefits are not subject to personal income tax. Income that is not taxable includes:

a state allowances, including maternity leave and unemployment benefits; and

b all types of compensation payable in accordance with effective laws within established limits (e.g., recompense for harm caused by injury or other damage to health, dismissal of employees, compensation for unused holiday and the expenses involved in the improvement of employees' professional skills).

The employer paying statutory benefits in favour of employees is obliged to declare them and withhold personal income tax at source.

V RESTRICTIVE COVENANTS

Pursuant to Russian law, non-compete clauses in employment contracts are not enforceable, as one of the main labour principles protected by law is that each employee has freedom of labour, including the right to work, and any person is free to choose his or her profession or type of activity.

Following these principles, the law does not allow a company to restrict an employee from working for another employer (a competitor). If a non-compete clause is included in an employment contract, it cannot be applied legally and will not be enforceable in Russian courts. The only statutory possibility allowing companies to restrict or control work for third parties relates to heads of companies: pursuant to the Labour Code, a general director (chief executive officer) can work for another employer only with the consent of the authorised body of his or her employer.

In addition, an employee of a state company or corporation should inform his or her employer of any potential conflicts of interest. Failure to report a conflict of interest could form grounds for dismissal of an employee.

VI WAGES

i Working time

Employers are required to keep a record of the working hours of every employee, including any overtime. The regular working week is 40 hours, or less for certain categories of employees and under certain working conditions.

An employee may be expressly engaged for night work according to the working conditions or production necessity, with the obligatory consent of the employee. In these circumstances, the statutory requirements for payment shall be that each hour of work during the night shall be compensated at a higher amount than work during the normal working day. The rate of pay must be at least 20 per cent greater than the normal hourly payment for a day's work.

ii Overtime

Any time worked in excess of 40 hours per week is classified as overtime (unless an employee has an open-ended working day regime pursuant to his or her employment contract) and may only be required by employers with the employee's prior written consent. Without the employee's consent, overtime work may be required only in emergency situations (such as fire, accident or disaster).

Pursuant to the labour laws, overtime should be compensated as follows:

a for the first two hours of overtime, no less than one-and-a-half times the usual hourly rate; and

b for subsequent hours of overtime, no less than twice the usual hourly rate; or

c in accordance with an employee's wishes, overtime work may alternatively be compensated by the provision of additional rest periods or time off work. However, the rest period or time off may not be for less time than the overtime actually worked.

An employee's overtime work cannot exceed four hours within two consecutive days or 120 hours per year.

Overtime work performed at the weekend or on a public holiday and compensated as work performed at the weekend or on a public holiday by an increased payment or by provision of another day of rest shall not be compensated as overtime work.

VII FOREIGN WORKERS

Chapter 50.1 of the Labour Code specifies the general conditions and requirements of the employment of foreign nationals. The basic requirements are that:

a the employment contract must be concluded for an indefinite term (except when there are special grounds);

b the employment contract must contain details of the work permit (as well as work patent, residence permit or temporary residence permit) and a voluntary medical insurance policy;

c a foreign national must have a voluntary medical insurance policy that covers the whole period of employment in Russia;

d a foreign national must confirm his or her knowledge of the Russian language, history of Russia and basics of Russian legislation; and

- in the event of expiry of a work permit (or work patent, residence permit, temporary residence permit or voluntary medical insurance policy), the employer is obliged to suspend the foreign national from work until he or she obtains new documents.

The law does not stipulate a requirement for employers to keep a register of foreign employees. Generally, there is no limit on the number of foreign employees that may be engaged by Russian-registered corporations, with the exception of some economical areas that are specified by the government every year. Representative offices of foreign commercial organisations that are incorporated in a World Trade Organization Member State may initially hire up to five foreign employees. Despite the general rule, a company is not allowed to hire as many foreign employees as it wishes – in the year preceding the prospective employment of foreign workers, it must apply for a quota. The company must submit a special form, indicating how many employees it expects to employ in the following year, their professions, job titles and countries of origin. Filling in and submitting the form does not guarantee that the company will be allowed to hire foreign employees or employees from certain professions or with certain qualifications. The decision is made by state bodies based on the current economic situation and the company's legal record (i.e., any prior violation of the law by the company may negatively affect the decision). The quota requirement applies only to the less highly qualified foreign nationals coming into Russia with a visa.

The Ministry of Labour and Social Protection of Russia is entitled to adopt a list of those professions, positions and qualifications that are given a quota exemption in a given year. However, these professions, positions and qualifications may vary from year to year, or may not be adopted at all.

Companies and representative offices of foreign companies may also engage foreign nationals as highly qualified specialists. The main condition for engaging a foreign worker as a highly qualified specialist is that he or she has experience, skills and achievements in the sphere in which he or she is to be employed and that the company will pay him or her more than 167,000 roubles per month. Salary requirements differ depending on the type of highly qualified specialist, for example teachers and scientists invited by state-accredited institutions, and foreign nationals engaged in Project Skolkovo (Russia's technical innovation project). For these specialists, quotas for obtaining work permits are not applicable. Employers do not have to obtain a decision from the State Employment Centre to legally hire a foreign worker as a highly qualified specialist.

The period of employment of a foreign national in Russia is limited by the duration of his or her work permit. Generally, a work permit is issued for up to one year; a work permit for highly qualified specialists can be issued for up to three years. If an employee continues working when his or her work permit expires, both the company and the foreign employee will be subject to administrative fines (which are quite considerable for the company).

Foreign nationals who will be working in Russia, rather than travelling to Russia on business, need to have work permits and should be staying under a work visa (except in the case of visa-free entry).

Remuneration received by a foreign employee from a source in Russia is generally subject to Russian personal income tax. It may also be subject to social insurance contributions. An employer should also provide any highly qualified specialist and his or her accompanying family members with medical insurance.

A company paying remuneration to a foreign employee is deemed a tax agent and, therefore, must withhold personal income tax from the remuneration payable to employees and remit it to the tax authorities. If the personal income tax was not withheld by a tax agent, the employee should file a tax return and pay the tax independently.

The personal income tax rate is 13 per cent for Russian tax residents (individuals staying in Russia for more than 183 days during a period of 12 consecutive months or more than 183 days during a calendar year) and 30 per cent for non-Russian tax residents (individuals staying in Russia for fewer than 183 days during a period of 12 consecutive months). As of 1 January 2021, a progressive rate of personal income tax applies to Russian tax residents whose income exceeds 5 million roubles. Income up to this amount is taxed at 13 per cent and an increased rate of 15 per cent is applied to the income exceeding 5 million roubles.

For those foreign employees who have the status of highly qualified specialist (see above), the personal income tax rate is the same as for Russian tax residents, irrespective of their tax residency status.

Employers (both Russian companies and Russian subdivisions of foreign companies) shall pay social insurance contributions with respect to those foreign employees who have a long-term or temporary residence permit in Russia. Employers are obliged to remit contributions to the Federal Tax Service of Russia from compensation paid to foreign citizens who are temporarily resident in Russia.

There is also obligatory accident insurance in Russia. All individuals (including foreign nationals) working under employment agreements are subject to this insurance irrespective of their immigration status. The insurance covers incidents of temporary or permanent injury to employees (including death) that occur while performing employment duties (as a result of a professional illness or a work-related accident).

The applicable rate of obligatory accident insurance depends on the degree of professional risk that an employer's activity entails and may vary from 0.2 per cent to 8.5 per cent. The base for calculating obligatory accident contributions is generally the same as the base for calculating social insurance contributions.

Foreign employees have the same rights and obligations as Russian employees and are granted the same level of protection under Russian law.

VIII GLOBAL POLICIES

The main disciplinary principles are contained in the Labour Code. Internal disciplinary rules can be adopted by the employer in the form of by-laws and regulations on discipline. As a general rule, however, these are incorporated into the rules of the internal labour regulations of the company.

Internal labour regulations are a local standard governing the hiring and dismissal of employees; the basic rights, obligations and accountability of the parties to an employment contract; the work regime; rest periods; incentives and punitive measures applicable to employees; and other regulations concerning labour relations, including disciplinary rules.

Internal labour regulations do not need to be filed with or approved by any government authorities.

The Labour Code establishes some mandatory rules prohibiting discrimination on various grounds. Everyone shall have equal opportunities to implement their labour rights under the labour laws.

Nobody may be subject to restrictions in labour rights and liberties or gain any advantages based on gender, race, skin colour, nationality, language, ethnic origin, property, family, social status, occupational position, age, place of residence, attitude to religion, political views, affiliation or failure to affiliate with public associations, or any other circumstances not pertaining to the employee's ability to perform his or her work.

Sanctions for sexual harassment are regulated by the Criminal Code.

A company's internal labour regulations have to be executed in Russian, being the official language, and must be used by all companies regardless of their ownership structure for their employment contracts, by-laws and record management.

When an employee is hired (before a labour contract is signed), he or she should be provided with the internal labour regulations and other internal regulations relating to his or her work as a hard copy that he or she must sign. If the internal labour regulations are altered subsequently, the employee shall be provided with a revised copy.

The rules of the internal labour regulations shall be approved by an employer, taking into account the opinion of the representative body of the organisation's employees, if there is one within the company.

Generally, if there is a collective contract in the company, the rules of the internal labour regulations shall be supplementary to it.

The internal labour regulations shall be freely accessible. They should be available on the company's intranet, but in any case a hard copy should be held by the company.

The disciplinary rules can be incorporated into the employment contract by reference to them.

IX PARENTAL LEAVE

Pregnant employees are entitled to maternity leave of 70 calendar days before the expected date of birth and 70 calendar days after the birth. The pregnancy must be medically certified. In the event of a multiple birth, the prenatal part of the leave is increased to 84 calendar days and the postnatal part of the leave is increased to 110 calendar days. In the event of a complication relating to the birth of a child, the postnatal leave is increased to 86 calendar days.

During maternity leave, employees are not entitled to receive pay from their employer but receive a state benefit from the Social Insurance Fund. The benefit is set at 100 per cent of the employee's previous average pay, up to a statutory ceiling. In 2020, the maximum total benefit for the full 140 days was 322,191.80 roubles, and in 2021, the maximum total benefit is 340,795 roubles.

The employer pays the benefit to the employee and reclaims the sums paid from the Social Insurance Fund.

Female employees are entitled to take their annual leave entitlement immediately before or after maternity leave (even if they have less than six months' service with their employer).

If a pregnant employee's work is medically certified as representing a hazard to her health, and the employee so requests, her workload must be reduced or she must be transferred to another job (whichever is necessary to prevent the hazard) while retaining her former average pay. If the employee must be transferred to another job, and that type of post is not available, she must be given time off until such a job is available, and receive her former average pay from the employer.

Pregnant employees must not:

a be sent on business trips;

b work overtime; or

c work at night, at weekends or on public holidays.

If, on returning to work, an employee is unable to perform her previous job on health grounds, women who have recently given birth are entitled, at their request, to be transferred to another job until their child is 18 months old. They must be paid either the wage for the job being performed or their former average pay, whichever is higher.

An employer must not dismiss an employee who is pregnant or on maternity leave, except when the employer's business is liquidated or wound up, or an individual entrepreneur's activities are terminated. Further, an employer must not discriminate in recruitment against women on any grounds relating to pregnancy or having children.

If an employee has a fixed-term employment contract, and the contract is due to expire during the term of her pregnancy or maternity leave, the employer must, at the employee's written request, extend the term of the contract until the end of her pregnancy or maternity leave.

Except when an employer's business is liquidated or wound up, or it is an individual entrepreneur whose activities are terminated, or on specified grounds of serious misconduct, the employer must not dismiss certain categories of employee, namely:

a female employees with children under the age of three;

b lone parents (of either gender) with children under the age of 14, or 18 in the case of a child with disabilities; and

c parents (or legal guardians) who are the only wage earner (that is, any other parent or guardian is unemployed) in a family where there is a child with disabilities under the age of 18 years, or in a family where there are at least three children under the age of 14 and one child under the age of three.

An employee who adopts a child is entitled to take leave from the date of the adoption for 70 calendar days (110 days if adopting two or more children). The leave may be taken by only one adoptive parent. During adoption leave, employees are not entitled to receive pay from their employer, but receive a state benefit, as for maternity leave.

Employees are also entitled to take parental (or childcare) leave to care for a child aged under three. The entitlement is granted per child and may be taken by the mother, the father, a grandparent, a guardian or any other relative who cares for the child. One of these people may take all the leave, or two or more of them may each take parts of the leave.

An employee taking parental leave is entitled to receive a state benefit from the Social Insurance Fund until the child is 18 months old, but not to be paid by the employer. The benefit is set at 40 per cent of average pay, calculated on the basis of pay for the previous two years, subject to a monthly maximum (set at 27,984.66 roubles in 2020 and 29,600.48 roubles in 2021).

An employee who adopts a child is entitled to take parental leave to care for the child until it reaches three years of age, under the same conditions as natural parents. The leave may be taken by only one adoptive parent.

Employees who are entitled to take parental leave may, at their request, do so on a part-time basis, while working part-time, and retain their entitlement to state benefits.

Employees have a right to return to their former job after taking parental leave. The period spent on leave is counted as continuous service with their employer. An employer must not dismiss an employee who is on parental leave, except when the employer's business is liquidated or wound up, or the employer is an individual entrepreneur whose activities are terminated.

Male employees are entitled to up to five calendar days of unpaid leave following the birth of their child.

X TRANSLATION

Russian is the official language of Russia and must be used by all companies – regardless of their ownership structure – for all human resources documentation (including employment contracts) and record management. There are no formalities such as notarial certification of translation or use of certified translators.

In the republics and other constituent territories of Russia, employment contracts can be executed in two languages: Russian and the language of the republic, or any other language used by the population of the subject. The exact rules and obligations on the use of languages are established by the relevant Russian legislation.

As for foreign employees who know neither Russian nor the language of the constituent territory of Russia, Russian legislation contains no general requirement that the employment contract be presented in a language familiar to the individual. However, in practice, an employment contract with a foreign employee is usually signed both in Russian and in the language in which the foreign employee is fluent, to guarantee that he or she has a clear understanding of his or her rights and responsibilities under the agreement.

If the employment documents are not translated into a language that is familiar to the employee, he or she could challenge the implication of any disciplinary sanctions upon him or her for breach of the obligations stipulated in the document on the grounds that he or she did not understand the contents of the document.

XI EMPLOYEE REPRESENTATION

Employees are permitted to form representative bodies to protect their rights. As such, there are no works councils as a form of representation in Russia. Under the Labour Code, the representatives of employees shall be trade unions and other representatives. Russian law does not define 'other representatives', however, nor the rules governing their activity. Therefore, all information regarding employee representation in this section concerns trade unions.

Once created at the company level, a trade union represents all workers engaged by the specific employer who have become members of the trade union, or who have authorised the trade union to represent their interests.

Trade unions shall have the right to exert control over the employers and the official persons observing the legislation on labour, including on the issues of the labour agreement (contract), working hours and rest periods, remuneration for labour, guarantees and compensations, privileges and advantages, and other social and labour issues in the organisations in which the members of the given trade union work. They shall also have the right to demand that the disclosed violations are eliminated. Employers and official persons shall be obliged, within a week of receiving a request to eliminate the exposed violations, and to inform the trade union about the results of its consideration and the measures effected.

For the trade unions to exert their control over the observation of the legislation on labour, they shall have the right to set up their own labour inspection service, which shall be vested with the powers stipulated by the legislative provisions and approved by the trade unions.

If the employees of a given employer are not united in any primary trade union organisation, or if fewer than half of the employees of the given employer are members of the existing primary trade union organisation, or if no existing trade union has the power to represent the interests of all the employees in a social partnership at the local level, another representative (or representative body) may be elected by secret ballot from the ranks of the employees at a general meeting (conference) of the employees for the purpose of exercising these powers.

The existence of this other representative shall not be deemed an obstacle to a primary trade union organisation exercising its powers.

Trade union organisations shall represent the interests of employees in collective negotiations, the conclusion or alteration of a collective contract, control over execution thereof, and in the implementation of the right to participate in the management of an organisation, and in considering labour disputes between employees and employers.

The trade unions shall independently formulate and approve their rules, which should define the length of a representative's term, how frequently representatives must meet, terms and procedures for setting up the trade union, the rules for becoming a member of the trade union and leaving it, the rights and the duties of the trade union members, the authority of the trade union bodies and the term of their powers. Trade unions also determine provisions relating to the structure of the union and shall hold meetings, conferences, congresses and other events.

The employer shall give the trade unions functioning in its organisation the equipment, premises and means of transport and communications necessary for their activity in conformity with the collective agreement or other type of valid agreement.

XII DATA PROTECTION

i Requirements for registration

As a general rule, before processing personal data, an operator is obliged to notify the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications of its intention to process personal data. The notification should contain information required by the respective laws in Russia.

The 'operator' is defined as a legal entity, individual, state authority or municipal authority that individually or collectively organises or carries out the processing of personal data, and determines the purpose and content of processing that personal data or the operations to be performed with that data.

Employers have the right to process the personal data of their employees without notifying the above-mentioned authorised state body. However, if the purposes of processing personal data fall beyond the scope of labour law and employment relations, the employer is obliged to notify authorised state authorities of its intention to carry out the processing of employees' personal data.

According to the general rule, it is required to obtain the consent of an employee prior to the processing of their personal data. If personal data may be obtained only from a third party, the employer is obliged to notify the employee in advance and obtain his or her written

consent. The employer shall inform the employee of the purposes, probable sources and methods of obtaining the personal data, the nature of the personal data to be obtained and the consequences of an employee's refusal to provide written consent for the use of the data.

The general rule is that a subject of personal data shall make a decision to supply his or her personal data and give his or her consent, of his or her own free will, to the data being processed in his or her own interest. As mentioned above, the employer is entitled to request personal data that is necessary for the performance of the labour agreement with the employee. The consent of the employee will be required if the employer intends to transfer the personal data of its employee to third parties. However, consent may be withdrawn by the personal data subject at any time.

To ensure the rights and liberties of the employee, the employer and its representatives must permit only specially authorised persons to access employees' personal data. Moreover, these persons shall be permitted to obtain only the data that is necessary to fulfil particular functions. Employers shall adopt an internal policy covering the procedure of processing employees' personal data. This policy shall be adopted in Russian (or in a bilingual form) by order of the general director of the legal entity (or other authorised person) and all employees shall acknowledge familiarisation with their signatures.

The company is obliged to take the required organisational and technical measures in processing personal data, including using ciphering facilities (where applicable), to protect the data against any illegal or accidental access, destruction, alteration, blocking, copying and dissemination, and other illegal actions.

The Federal Law of 21 July 2014 introducing amendments to the Federal Law on Personal Data sets out the obligation on operators of personal data to ensure that certain types of processing of personal data belonging to Russian nationals is carried out by the use of databases located in the territory of Russia at the moment of collection of the personal data of Russian nationals, including collection via the internet. This localisation requirement entered into force on 1 September 2015.

The localisation requirement does not apply to all possible types of processing in Russia. Only the following types of processing must be performed by the use of databases located in Russia: collection, recording, systematisation, accumulation, storage, adaptation or alteration, retrieval and extraction (the 'target types of processing').

The localisation requirement does not prevent companies from transferring data abroad. However, in the context of localisation requirements, some peculiarities shall be taken into account; that is to say, personal data shall be placed initially in a 'primary database', which shall be located and maintained (to the extent that maintenance involves the target types of processing) in Russia. Personal data contained in a primary database may be transferred abroad and be placed in other databases (secondary databases) if the rules on cross-border data transfer are complied with.

Further, a new enforcement mechanism in the sphere of personal data came into effect on 1 September 2015. It implies inclusion of information resources (domain names, references to pages on the internet, website addresses), where the data is processed in violation of the rights of personal data subjects, in a special registry of violators of data subject rights (the Registry). Under this mechanism, the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications is granted the power to restrict access to these types of information resources by users from Russia. The Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications can apply these restrictions on the grounds of a court's decision.

ii Cross-border data transfers

Russian law does not require registration for the purposes of the cross-border transfer of personal data.

The general rule is that the employer should ensure that the receiving states are parties to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data or are deemed by the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications as states providing adequate protection of the rights of the data subjects despite their non-membership of the aforementioned Convention (Member States are listed in the respective order issued by the Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Communications). If the employer transfers personal data to states that do not ensure adequate protection of the rights of the data subject, the Russian company must obtain written consent from the data subject (i.e., the employee).

Taking into account that employers are obliged to gain the consent of their employees when intending to transfer their personal data to third parties (regardless of the location of the receiving third party) and to avoid any possible claims from the employees regarding the processing of personal data by the company without consent, it is recommended in all cases of cross-border transfers that the employer obtains the written consent of the data subjects, stating the scope of the personal data to be transferred, the purpose of the processing and the recipients of the data. The employers should require the recipients of personal data to treat the data as confidential information. If the transfer is made on the ground of an agreement, the agreement should provide for an obligation of the recipient to treat the personal data as confidential information.

Additional transfers of personal data are allowed if the employee's consent covers any such transfers.

iii Sensitive data

Information relating to an employee concerning race or ethnic origin, political views, religious or philosophical convictions, state of health or private life is considered as sensitive data.

As a general rule, an employer may not request or process sensitive data. In cases directly associated with the issues of labour relations, an employer may obtain and process information relating to the private life of an employee only with his or her personal consent.

For a cross-border transfer of sensitive data, a Russian company must obtain the written consent of the employee.

iv Background checks

Russian law limits the amount and type of data that can be obtained about a candidate or an employee. The main principle is that the volume and character of personal data to be obtained about a candidate should be justified by a lawful reason. According to the Labour Code, these reasons are:

a to observe laws and regulations, for example if a certain check is prescribed by law, an employer can demand this information, or if a certain job is prohibited to a specific group of people (e.g., those under 18), an employer can request the relevant personal data;

b to assist in employment, training and promotion (this may imply any information that is reasonably and lawfully required to hire, train and promote efficiently);

c to ensure the personal safety of employees (this may appear to allow a rather broad interpretation, but the general principle of non-excessiveness is to be observed);
d to control performance (the quality and volume of work carried out); and
e to ensure the safety of assets (again, the general principle of non-excessiveness is to be observed).

Russian law provides a full list of documents a job candidate must present to an employer, and prohibits the employer from requiring extra certifications. Thus, bank statements, credit repayment records and the like cannot be demanded from the candidate. Moreover, even if the candidate voluntarily agrees to provide certain documents, unnecessary requests can be interpreted as an invasion of privacy and discrimination on grounds of property. Additional documents can be required only when explicitly provided for in legislation (e.g., public servants should present information about their income, property and material liabilities).

Criminal record checks may be required for certain jobs. For example, applicants for teaching positions may be subject to these checks as people with a criminal record are prohibited from working in educational roles. In other instances, enquiring about an applicant's criminal background can be considered excessive. However, there is no relevant court practice so far.

There is a statutory minimum amount of information an employer is entitled to know about a potential employee. Demanding further information or documents is illegal, and requesting them might be risky, as it may imply that the candidate was not hired for a protected reason or that there has been an invasion of privacy.

An employer should also avoid receiving any information about, for instance, the political, religious or other views of an applicant or an employee, or his or her membership of social organisations.

Obtaining information about an applicant's or an employee's private life is permitted only to the extent that is relevant to the job. For example, information about dependants is relevant to determining whether an applicant or employee is entitled to certain guarantees.

XIII DISCONTINUING EMPLOYMENT

i Dismissal

Pursuant to the law, employment may be terminated only on the grounds provided for by the law. The Labour Code sets out a list of the principal grounds for termination of employment, but it is not exhaustive; it can be extended by grounds stipulated in other federal laws.

As a general rule, a company does not have to notify the state bodies of a dismissal. Among the exceptions are dismissals resulting from a company being wound up and redundancies (see Section XIII.ii). If a company is dismissing a foreign employee, it must notify the General Directorate for Migration of the Ministry of Internal Affairs within three days of termination of the employment agreement.

Notification of the elected body of the trade union is to take place if an employer initiates dismissal of a trade union member on the grounds of staff reduction, insufficient qualification of the employee or numerous failures by the employee to fulfil his or her labour duties, provided that he or she has had a disciplinary punishment. The opinion of the trade union is not binding on the employer. The employer could dismiss an employee who is a member of the trade union-elected body for reasons of staff reduction or if he or she has

insufficient qualifications, provided the elected body of the higher-level trade union gives its consent. The dismissal can take place within one month of the trade union providing its reasoned opinion.

If an employer decides to reduce its staff numbers, it should submit a written notification to the elected body of the trade union organisation no later than two months before the planned action, and three months in advance if the staff reduction may lead to collective dismissal.

It is not common practice for employers to provide a social plan containing measures that are additional to those required by law or contained in industry or territorial agreements. However, measures aimed at reducing the number of employees subject to collective redundancy or providing re-employment may be contained in the company's collective bargaining agreement and may be implemented by the employer.

Offers of suitable alternative employment have to be made in the event of redundancy.

There are different notice periods depending on the type of dismissal. A notice of dismissal must be made in writing. Furthermore, it should be signed by the employee, proving that he or she received that notice. A notice period does not depend on the length of employment.

An employee who is not performing as expected during a probation period can be dismissed by giving three days' notice.

A fixed-term contract is terminated when it expires. An employer must notify an employee of the contract's termination three days beforehand.

In the case of redundancy or reduction of personnel, an employer has to notify employees two months before dismissal. Seasonal workers are to be given seven days' notice in such circumstances and three days' notice applies for temporary employees (working under an employment contract with a term of up to two months).

In all other cases of dismissal, the notification period is not defined in the law.

If a company is being wound up or there is a reduction of staff, an employer can, with the written consent of the employee, terminate the employment contract before expiry of the two months' notice period provided it pays additional compensation to the employee in the amount of the employee's average earnings calculated pro rata to the time remaining until the expiry of the notice period.

The general principle is that protection is granted to all employees. Special protection against dismissal at the initiative of the employer applies, *inter alia*, to the following groups:

a pregnant employees (can be dismissed at the employer's initiative only if a company is being wound up; a fixed-term labour contract should be extended until the end of the pregnancy);

b employees under 18 years old (can be dismissed at the employer's initiative only with the consent of the appropriate state labour inspectorate and commission for juvenile affairs and protection of their rights (unless the company is wound up)); or

c employees with two or more dependants.

A severance payment shall be paid to employees in the event of termination of employment as a result of the company being wound up, or in the case of redundancy (as described in Section XIII.ii). Severance pay equal to two weeks' average wages is paid to an employee in the following cases of dismissal:

a the employee's refusal to be transferred to another job as might be required according to a medical certificate[2] prohibiting the employee from remaining in his or her current job, or if the employer does not have an appropriate job to offer;
b the employee being called to military service (or alternative civil service);
c the reinstatement of an employee who previously occupied that position;
d the employee's refusal to be transferred to a job in another location;
e the employee is recognised as being fully incapable of working in accordance with a properly issued medical certificate; or
f the employee refuses to continue working following a change in the terms of the employment contract.

An employment contract or a collective contract may stipulate other cases of severance pay, as well as the amount of severance pay that is due.

If the employment is terminated by mutual agreement between the parties, then a respective agreement specifying the terms of the termination shall be concluded.

ii Redundancies

If a company decides to make certain posts redundant, it should first select the employees that can be subject to redundancy, considering the protected categories.

Each employee must be notified individually in writing at least two months before the proposed date of dismissal, and each employee should confirm receipt of the notification in writing. Seasonal workers will be given seven days' notice in such circumstances and temporary employees (i.e., those with an employment contract of up to two months) are entitled to three days' notice.

The company further offers the employees all suitable vacancies within the company (including those requiring fewer qualifications or with a lower salary). Each offer should be made in writing and the employee's refusal or consent should also be in writing. If there are no vacancies within the company, the employee should be served the appropriate notices and confirm the receipt thereof.

Under Russian legislation, there is no difference between collective dismissal and reduction in the workforce. Mass lay-offs are not directly regulated. However, provisions in the Russian labour legislation relating to 'downtime' indirectly regulate lay-offs. Under these provisions, in the event of a temporary suspension of work owing to economic, technological, technical or organisational causes, an employee may be transferred without his or her consent for up to one month to a job with the same employer that is not stipulated by the employment contract. In this case, a transfer to a job that requires fewer qualifications is permitted only with the employee's written consent. If transferred, the employee is paid for the work he or she performs and at a rate not below the average earnings in his or her previous job.

A period of downtime attributed to fault by an employer shall be remunerated in the amount of not less than two-thirds of the employee's average salary. A period of downtime

2 A medical certificate must be issued according to the procedure established by federal laws and other normative legal acts of Russia.

occasioned by reasons dependent neither on the employer nor on the employee shall be remunerated by no less than two-thirds of the tariff scale and salary, which are calculated pro rata for the duration of the downtime.

In a case of collective dismissal,[3] an employer must provide notifications to the State Employment Agency of certain information in two stages. At the first stage (three months before the dismissals), the following information is required:

a details of the employer and employees;
b a list of all employees of the organisation as at the date of the notice;
c the reasons for the collective redundancy;
d the number of employees to be made redundant;
e the commencement date of the collective redundancy;
f the final date of the collective redundancy; and
g information about the employees to be made redundant (professions, number of persons, date of dismissal).

At the second stage (two months before the dismissals), the employer must again provide details about itself and each employee to be made redundant (full name, education, profession, qualifications and average salary).

The following categories of employees cannot be made redundant:

a pregnant women;
b women with children under three years old;
c single mothers with children under 14 years old (or disabled children under 18 years old);
d individuals bringing up a child under 14 years old (or a disabled child under 18 years old) without a mother; and
e a parent who is a sole breadwinner for a child under three years old in a large family bringing up minors in which another parent is not employed and takes care of their children.

Among other employees, protection should first be given to employees with higher qualifications and labour productivity. To evaluate labour productivity, a performance review can be used; however, there is no statutory procedure on how performances are evaluated.

Among employees with equal qualifications and productivity, the following categories should be given preference:

a employees with dependent family members;
b employees who have suffered from workplace injury or work-related disease while working for the company;
c employees doing professional training at the employer's instruction; and
d disabled veterans.

Protection may be given to additional categories by regional or industrial agreements, collective bargaining agreements, company policies, employment contracts and the like.

3 Dismissal may be considered to be collective depending on the number of employees the company plans to dismiss. The exact thresholds for collective dismissal are provided in agreements relevant to a specific industry sector or territory.

Actual termination of the employment contract cannot take place while an employee is on holiday or on sick leave (unless in cases of termination of employment owing to the company winding up).

If the employment is terminated because a company is being wound up, or in the case of redundancy, a dismissed employee is to be paid severance pay equal to his or her average monthly wage. Further, an employee is entitled to payment of average monthly wages while searching for a new job. These payments are limited to a two-month period upon termination of employment (including the severance pay). If the employee obtains the agreement of the State Employment Service, he or she may be entitled to severance for the third month as well, provided he or she has registered with an employment service within two weeks of the date of dismissal. As of 2020, the employer may, at its discretion, replace the monthly payments during the job placement period with a lump sum payment in the amount of two average salaries.

If the employment is terminated with the mutual agreement of the parties, an agreement specifying the terms of the termination shall be concluded.

XIV TRANSFER OF BUSINESS

In the case of a sale of shares of an employer to another company, the employment contracts are not subject to termination as the employing company remains the same. Thus, any changes in the terms and conditions of employment can be made only in accordance with the general procedures prescribed by the Labour Code, which provides that the employer should notify the employee of any change to material terms and conditions of employment at least two months before it occurs. A change to material terms and conditions can take place only in the case of a change in organisational or technological conditions of employment and only with prior written notice to the employee.

According to the law, a change in the owner of the property (assets) of an organisation is not a ground for termination of employment contracts with employees except for its general director, deputies of the general director and chief accountant. The Supreme Court has clarified that this applies to cases of sales of all property (assets) of an organisation. The Court also commented that this rule applies, for example, to the privatisation of state-owned companies, enterprises or assets of state-owned companies or enterprises. This rule may also apply to the sale of an enterprise as a property complex (which is considered and registered as a real estate object). The new owner has the right to dismiss the general director, deputies of the general director and chief accountant within three months of obtaining the ownership title to the property (assets). In this situation, these employees, if dismissed, are entitled to compensation in the amount of no less than three months' salary.

Reorganisation of a company (whether a merger, accession, division, split-off or transformation) is also not a ground to terminate employment and thus the transfer of employment agreements will be required. An employee may refuse to continue to work in connection with the change of the owner of the assets of an organisation or in connection with the reorganisation of the company. If that is the case, the employment will be terminated.

XV OUTLOOK

No particular trends or significant developments in employment law are expected in 2021. However, employers need to remain aware of the following recent changes during the coming year.

i New rules on remote working

The law introducing new rules for the remote working regime entered into force on 1 January 2021. It establishes two types of remote work, namely permanent and temporary. Employees can work remotely on a temporary basis either continuously (for a maximum of six months) or periodically (which implies alternation of remote work and office-based work).

In exceptional circumstances (such as a natural or industrial disaster, workplace accident, or a decision by federal or local authorities), an employer can temporarily transfer employees to a remote working regime without their consent. At this point, the employer is obliged to approve a local normative act, including the ground and duration of the transfer, list of employees, the order of work (working time regime, ways of communication) and other issues.

The new rules establish a limited list of additional termination grounds with employees working remotely, namely:

a an employee's failure to interact with the employer without good reason for more than two working days in a row from the moment the employer's request is received; and

b change of the area (territory) of performance of labour, if this makes it impossible for the employee to fulfil his or her labour duties under the conditions established in the employment contract (this ground applies only to permanent remote employees).

ii New entry e-visa

A new unified electronic visa (e-visa) for entering Russia has come into force with effect from 1 January 2021.

A unified electronic visa is a single-entry visa for the following purposes: guest, business, tourism, scientific, cultural, social and political, economic and sportive. An electronic visa is issued for foreign citizens arriving from foreign countries, the list of which is established by the government. The visa can be used during the 60 days from the date of its issuance, and the permitted stay in Russia is up to 16 days from the day of entry.

At present, e-visas can be used for entering Russia via the following checkpoints: Vladivostok, the special economic zone in Kaliningrad Oblast, St Petersburg and Leningrad Oblast, and the air checkpoints in the Far Eastern Federal District. Applications for e-visas accepted for processing up to 31 December 2020 must be issued by 3 February 2021. All other e-visa applications will be processed in accordance with the new rules.

iii Remuneration for use of employee inventions

New rules regarding employees' remuneration for the creation and use of inventions, utility models and industrial designs entered into force as of 1 January 2021.

One of the most important changes is the increased amount of employee's remuneration for the employer's use of such objects, namely three average salaries for work-related inventions, and two average salaries for a utility model or industrial design for each year of use. It is important to mention that the new rules will apply unless other terms are agreed by the employer and the employee and set down in a written agreement between them.

APPENDIX 1: ABOUT THE AUTHORS

IRINA ANYUKHINA

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Irina Anyukhina is a partner at ALRUD Law Firm, and heads the labour and employment practice. Irina is a recommended expert on labour law, advising international and Russian companies on international and cross-border workplace issues, reductions and restructurings, senior executives and expatriate issues. Irina operates at the interface of employment and corporate law in cases involving mergers and acquisitions, implementation of incentive programmes, executive compensation and benefits, global and local employment policies, outsourcing, and employee privacy issues. She is often involved in cross-border and internal investigations into employees' misconduct.

Irina joined ALRUD in 2002 and became a partner in 2007. Clients praise her business-oriented approach, outstanding communication skills, thoughtfulness and ability to clearly enunciate the core of the matter.

Irina graduated from the Moscow State University of International Relations with the Ministry of International Affairs of Russia, in the public international law division of the international law department. She is fluent in English.

Irina coordinates cooperation with Ius Laboris, the largest international alliance of labour law professionals. She regularly speaks at international conferences, and is a member of the International Bar Association and American Bar Association.

Irina has been highly recommended for her labour and employment practice by *Chambers Europe* 2020 and by *The Legal 500* as Leading Individual and Recommended Lawyer. *Best Lawyers* 2021 recommends Irina for labour and employment law, intellectual property law, media law, privacy and data security law, real estate law, telecommunication law and informational technology law. In addition, Irina has been awarded Lawyer of the Year 2021 by *Best Lawyers*.

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