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Overview of Russian Employment Law

1. Introduction

From a Russian law perspective, an employment relationship is a contractual relationship based on an agreement between a legal entity or individual entrepreneur (the "employer") and an individual (the "employee") under which the employee undertakes to personally perform the work in the relevant professional or hierarchical capacity and observe the employer's internal policies and procedures relating to the organisation of work, and the employer undertakes to provide the appropriate working conditions for the employee and remunerate the employee for the work done.

Russian employment law consists mainly of the relevant provisions of the Constitution of the Russian Federation of 12 December 1993 (the "Constitution") and the Labour Code of the Russian Federation of 30 December 2001 (the "Labour Code"). The Constitution sets out the fundamental principles governing employment relations in Russia. The Labour Code contains detailed provisions governing all aspects of employment relations in Russia, including, among other things, collective bargaining, requirements applicable to the form and substance of an employment contract, employee remuneration, working time and holidays, general principles of occupational safety rules etc.

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2. CATEGORIES OF EMPLOYEES

2.1 General

The Labour Code applies to any employees working in Russia, including expatriate employees.

The Labour Code distinguishes certain categories of employees to which specific rules apply. Such categories include, among others, pregnant employees, employees with certain family commitments, employees below the age of 18, chief executive officers and members of management boards, employees working for more than one employer, employees working under short-term employment contracts, seasonal workers, employees with rotating jobs, employees employed by individual entrepreneurs, home workers, employees working in the Far North and similar areas, and transport workers.

2.2 Directors

Under the Labour Code, the employment status of a Chief Executive Officer/General Director ("CEO"), Deputy CEO ("Deputy"), Member of Management Board and Chief Accountant ("CA") differs to that of other employees to a certain extent (see below).

From a Russian law perspective, the CEO acts in two capacities, namely as a corporate governance appointment of a company whose status is governed by Russian corporate law, and as an employee.

Since the CEO is the governing body, the CEO may only be appointed and terminated by the appropriate corporate body (such as the general shareholders' meeting or the board of directors, as the case may be). As a corporate governance appointment the CEO owes a fiduciary duty to the company.

In addition, as the relationship between the CEO and the company usually meets the criteria for an employment relationship (as described above), the company is obliged to enter into an employment contract with the CEO. From the perspective of the Labour Code, the CEO's status differs from that of other categories of employee in a number of respects: (i) the CEO can be obliged to serve a six-month probationary period instead of the standard three-month probationary period applicable to other categories of employees, (ii) the CEO can be terminated on a wider range of grounds than the statutory grounds applicable to other categories of employee (the CEO and the employer are free to agree termination on grounds that are not listed in the Labour Code), (iii) the CEO can be required to serve one month's notice as opposed to the standard 14 calendar days' notice applicable to other categories of employees, (iv) the CEO can be dismissed without cause; and (v) the CEO can be prohibited from working for another employer contemporaneously with his/her employment with the company.

2.3 Other

Unlike the CEO, the Deputy is only an employee, not a corporate governance appointment. The status of the Deputy is governed by the Labour Code. Unlike the CEO, the Deputy cannot be dismissed without cause and cannot be placed under an obligation to serve a period of notice longer than the standard 14 calendar days' notice period applicable to other categories of employee.

The Deputy, in addition to the CEO and CA, may be required to serve a probationary period of up to six months, as opposed to the three months applicable to other categories of employee.

The Labour Code provides that a Member of the Management Board ("MMB") may be treated in a similar fashion to the CEO if the company charter explicitly provides so. Otherwise the MMB will be treated as an ordinary employee.

In terms of employment status, the CA differs to a certain extent from ordinary employees. In particular, the CA may be required to serve a probationary period of up to six months, as opposed to the three months applicable to other categories of employee. The CA may also be terminated without cause in the event of a change in ownership of the company. (For more detail on the grounds for termination applicable to the CA, please refer to Section 13 below).

Key issues

3. HIRING

3.1 Recruitment

There is no particular legal regulation of recruitment practices and policies in Russia other than the general provisions of the Labour Code regarding pre-employment discrimination and documents that may be required for the conclusion of an employment contract.

However, recruitment through state employment agencies is closely regulated. State employment centres provide free recruitment services to employers and job seekers, but in practice neither employers nor job seekers use them extensively. It should be noted that employers are not legally obliged to apply to employment centres.

Private recruitment agencies are more popular among employees and employers. Private agencies are not obliged to obtain a specific licence (except agencies that act as intermediaries between employers based outside Russia and job seekers who consider working for such employers abroad).

The general principle of recruitment through both public and private employment agencies is that the employer does not have the right to request any documents from the job applicant other than those expressly listed in the Labour Code and other legislation. In particular, the Labour Code provides that the employee must produce the following documents:

- passport or other ID card;
- employment history (except when the employee enters into the employment contract for the first time);
- compulsory pension insurance certificate;
- documents evidencing military registration of an employee who is obliged to do military service; and
- diploma and other qualification documents.

3.2 Work Permits

As a general rule, a foreign national is obliged to have a work permit (and the employer is obliged to have a hiring permit) to work in Russia. Russian immigration legislation provides for a limited number of exceptions to this rule (professors, diplomats etc.).

To obtain a work permit for an expatriate employee, the employer must first apply for a work permits quota to hire foreign employees. After the quota has been approved, the employer must then apply to the local employment centre for approval of the number and positions of the expatriate employees that it intends to employ. The process within the employment centre takes about a month. After the application has been approved the employer should submit the required documents for the expatriate employee's work permit and its own hiring permit to the Federal Migration Service ("FMS"). FMS grants work and hiring permits within a month.

In addition to the work permit, an expatriate employee is obliged to have a work visa. To procure the work visa for the expatriate employee, the employer must be registered with the relevant FMS subdivision, a process that takes about a month.

It should be noted that a new category of foreign employee – the highly qualified specialist ("specialist") – has recently been introduced. The decisive criterion determining whether or not a foreign employee is treated as a specialist is that his/her annual salary must be at least RUB 2,000,000 (approximately USD 65,600). A lower threshold of RUB 1,000,000 (approximately USD 32,800)) applies for scientists and university professors. No minimum salary requirements apply to foreign participants of the Skolkovo project.

For the purpose of obtaining work permits for specialists, employers do not need to:

- obtain quotas for work permits;
- apply to the local employment centre for approval of the number and positions of the expatriate employees that it intends to employ; and
- obtain a hiring permit.

However, the above exemptions do not apply to highly qualified specialists who are employed by (among others):

- representative offices of foreign legal entities; or
- employers on which administrative fines have been imposed for illegally hiring foreign employees in the two years period prior to filing.

A specialist's work permit will be issued within 14 days of an application being filed with FMS.

A 13% personal income tax rate is applicable to a specialist's income earned in that capacity, irrespective of whether or not the specialist is a Russian tax resident (the current rate of income tax for any employees who are not tax residents in Russia is 30%.).

4. DISCRIMINATION

The Labour Code prohibits any direct or indirect employment discrimination on the grounds of gender, race, skin colour, nationality, language, origin, property, family, social and official status, age, place of residence, religious and political beliefs, affiliation with non-governmental organisations and on other grounds that do not relate to the employee's professional qualities (such as qualifications, work experience etc.)

The Labour Code prohibits an employer from refusing to employ a job seeker without cause. The job seeker has the right to ask the employer to provide a written explanation of the reasons for refusing to employ him/her, and the employer is obliged to respond to such request. Employment may only be denied on the grounds of the job seeker's inappropriate professional qualities, not on any other grounds.

Refusing to employ a woman on the grounds of her pregnancy or family commitments is prohibited. The unjustified refusal to employ a pregnant

woman or a woman with children under the age of three is a crime and is punishable by fines or up to 180 hours of community service.

The Labour Code does not contain any provisions prohibiting sexual and mental harassment at work. However, sexual and mental harassment in the workplace may be construed as a crime punishable under the Criminal Code of the Russian Federation.

5. CONTRACTS OF EMPLOYMENT

5.1 Freedom of Contract

The form and substance of an employment contract are closely regulated in accordance with the Labour Code. However, the parties are free to include in the employment contract any provisions that are not detrimental to the employee. Any provisions of an employment contract that are detrimental to the employee or not compliant with the Labour Code and other applicable legislation are null and void.

The Labour Code applies in the territory of the Russian Federation to all individuals and entities, regardless of their citizenship or legal status. Therefore, the parties to the employment contract cannot choose foreign law as the law applicable to the employment contract where the employment duties will be performed in the territory of the Russian Federation.

As a general rule, employment contracts must be open-ended. Fixed-term contracts may be entered into in a limited number of cases listed in the Labour Code. In particular, a fixed-term employment contract may be concluded where no open-ended employment relationship is possible (e.g., substitution for a temporarily absent employee, seasonal work, internship etc.) or by agreement of the parties (e.g., employment contracts with a CEO, Deputy or CA).

5.2 Form

The Labour Code provides that an employment contract must be in writing. Any amendments to the employment contract must also be in writing. However, if the employee has actually started to work at the instruction of the employer, the employment contract will be deemed to have been entered into between the parties. In this case the employer is obliged to enter into a written employment contract with the employee no later than three days after the employee has actually started work.

5.3 Trial Periods

A probationary period cannot exceed six months for the CEO, Deputy, CA, Deputy CA and the head of a representative office or branch office, or three months for other employees. Certain categories of employee, such as pregnant women or women with a child under the age of 18 months, minors, and graduates starting their first job in the field in which they received their education, cannot be required to serve a probationary period. If an employment contract does not contain an express provision establishing a probationary period, then no probationary period applies.

5.4 Confidentiality and Non-competition

To place an employee under the obligation to keep the employer's business secrets confidential, the employer must: (i) define the information that constitutes its business secrets (either in the relevant internal written policy or directly in the employment contract), (ii) restrict access to such information, (iii) keep a record of employees who have access to such information; and (iv) have documents that contain such information marked "Business Secret", with a reference to the owner of such information.

Certain data, including, among other things: (i) data contained in a company's incorporation documents; (ii) data on environmental pollution or other factors adversely affecting the safety of production facilities and/or society in general; (iii) data on violations of law and sanctions imposed; and (iv) data on the number of employees, compensation packages, working conditions, vacancies, occupational injuries and death rates cannot be defined as business secrets.

Under Russian law, after employment is terminated a person is obliged to keep the employer's business secrets confidential until the relevant information enters the public domain and/or ceases to have commercial value for the employer.

Covenants not to compete with the employer after termination of employment and covenants to abstain from poaching the ex-employer's employees, clients or directors appear to be unenforceable under Russian law. Russian law applies the principle that no obligation survives the termination of employment other than the duty to keep confidential the employer's business secrets, bank secrets and the personal data of other employees.

6. PAY AND BENEFITS

6.1 Basic Pay

The Federal Law "On the Minimum Wage" provides for minimum monthly rate of pay (MROT), which change on an annual basis. The minimum pay rate effective from 1 June 2011 is equal to RUB 4, 611 (approx. USD 151) per month.

Employee remuneration consists of (i) a fixed monthly salary, (ii) compensation payments (e.g., business trip allowance or relocation allowance), (iii) incentives

(e.g., performance bonuses) and (iv) social benefits (e.g., sickness benefit).

6.2 Pensions

Russian pension legislation provides that work pensions may consist of two parts: insurance and cumulative. The insurance and cumulative parts of the work pension are paid out of the Pension Fund.

Employees have a legal opportunity to pay (personally or through the employer) additional insurance contributions to the cumulative part of their pensions. In such cases employers may also decide to voluntarily pay additional pension insurance contributions for the benefit of their employees. Such a decision is executed by means of a separate order of the CEO (but not by the resolution of any other corporate body of the company). Alternatively, the provisions of a collective bargaining agreement or the employment contract may provide for such additional contributions.

There is no minimum/maximum limit on the amount of voluntary contributions that employers and employees may choose to pay.

Private pension schemes are governed by the Federal Law "On Private Pension Funds" dated 7 May 1998 and subordinate legislation.

The main types of private pension schemes are (i) schemes with fixed amounts of pension premiums and (ii) schemes with fixed payments which may be either lifelong or for a fixed number of years.

6.3 Incentive Schemes

Employers do not usually implement structured bonus schemes; instead they tend to operate discretionary bonus schemes. However, a number of companies do implement structured bonus plans with transparent rules regarding eligibility for cash bonuses (key performance indicators and methods for measuring such indicators, time frames for meeting the targets etc.).

Employee share plans are not explicitly regulated under Russian law. Certain general requirements and restrictions of the Russian securities market legislation apply to shares in foreign companies and options relating to shares in foreign companies. In particular, it is now the case that shares in foreign companies may only be offered in Russia to qualified investors, unless:

(a) the shares are assigned both an International Securities Identification Number (ISIN) and a Classification of Financial Instruments Code (CFI);

(b) the shares are classified as "securities" in accordance with the procedure established by the Federal Service for Financial Markets ("FSFM") (in the absence of such a qualification, foreign securities are regarded as "foreign financial instruments"); and

(c) such shares are admitted for public placement and/or public circulation in Russia.

If the shares fail to satisfy any of the above criteria, they may only be offered to employees who are qualified investors. The necessary transactions with the shares should be undertaken through a Russian broker. In addition, a prospectus should be registered with the FSFM if the shares in a foreign company transferred to the employees are new shares being issued to the employees for the first time.

Options relating to shares in a foreign company are likely to be treated as "foreign financial instruments" and as such may only be offered in Russia to a qualified investor. Under the current regulatory regime, a qualified investor (e.g., a broker) is not permitted to buy foreign securities or foreign financial instruments for, or hold them on behalf of, an individual non-qualified investor (e.g., an employee). An individual can be recognised as a qualified investor if any two of the following requirements are met:

- the individual owns securities and/or other financial instruments with an aggregate value of more than RUB 3 million; or
- the individual has work experience in a Russian or foreign company that deals in securities or other financial instruments, provided that the work experience is at least: (i) one year at a company that is a qualified investor by operation of law (rather than a company that has obtained that status), if he or she has already ceased working with that company; (ii) three months at a company that is a qualified investor by operation of law, if he/she is still an employee of that company; or (iii) two years in any other case; or
- the individual (i) has been a party to at least 10 transactions with securities and other financial instruments during the last four quarters, provided that the aggregate value of such deals is at least RUB 300,000; or (ii) has been a party to at least five transactions with securities and other financial instruments during the last three years, provided that the aggregate value of such deals is at least RUB 3 million.

There is a considerable degree of ambiguity in the new rules governing the offering of foreign financial instruments and securities in Russia. The application of these provisions will depend on, among other things, their interpretation by the Federal Service for Financial Markets. Therefore, advice in relation to the proposed launch of an employee share plan in Russia should always be sought on a case-by-case basis.

Securities market legislation allows the offering of shares in a Russian company

to employees, subject to compliance with certain regulatory and corporate requirements.

Depending on how an employee share option plan is structured, options for shares in a Russian company may fall under the category of "mass-issue securities" under Russian law. In this case their offering in Russia will be subject to the general requirements and restrictions of the Russian securities market legislation.

In general, due to the ambiguity of current regulation of employee share option plans in Russia, legal advice should always be sought on a case-by-case basis.

6.4 Fringe Benefits

Under Russian Law, as a general rule the employer is not obliged to provide any fringe benefits to employees. In practice, however, employers often grant certain fringe benefits that vary depending on the area of work and category of employee. The most typical fringe benefits provided by Russian subsidiaries of international companies to their employees include voluntary health insurance, reimbursement of mobile phone services, reimbursement of lunch expenses etc.

6.5 Deductions

Russian law obliges the employer to deduct an employee's social security contributions and to withhold and to pay the employee's income tax to the competent authorities.

Russian law provides for an exhaustive list of grounds on which deductions from salary and other amounts due to employees may be made (including payment of alimony, return of mistakenly overpaid salary etc.). However, the Labour Code does not expressly prohibit employers from making any deductions at the request of the employee (e.g., for the purpose of repaying loans etc.).

The amount of any deductions made (excluding applicable taxes) usually cannot exceed 20% of the salary payment.

In cases where an employee is at fault for damage caused to the employer's property, business or other interests, a deduction of up to one month's average salary is permitted. An employee's liability for damage is unlimited in certain situations (deliberately inflicted damage, damage caused while intoxicated etc.).

7. SOCIAL SECURITY

7.1 Coverage

The employer is required to register with the Pension Fund, the Social Insurance Fund and the Federal and Territorial Compulsory Medical Insurance Funds. Social security benefits are funded through the obligatory contributions that the employer regularly pays to the funds of the relevant state budget.

7.2 Contributions

An employer is obliged to pay contributions to the Pension Fund, the Social Insurance Fund and the Federal and Territorial Compulsory Medical Insurance Funds. Tax rates vary depending on the category of employer and other factors. The maximum aggregate rate is 34%.

8. HOURS OF WORK

Under the Labour Code, the maximum normal working time is 40 hours per week. Any work performed in excess of 40 hours is classified as overtime.

Some categories of employees must work on a reduced working time basis only. In particular, workers working in hazardous conditions may work a maximum of 36 hours a week and minors of 16 to 18 years of age may work a maximum of 35 hours a week.

The employer is obliged to keep records of the time actually worked by its employees.

The Labour Code provides for a wide range of flexible working arrangements. They include:

- part-time jobs;
- non-consecutive working hours (e.g., for bus drivers working in the morning and in the evening);
- flexible working hours;
- working at home; and
- unmeasured working time.

The Labour Code does not confine the list of flexible working arrangements to those set out above and does not provide for an exhaustive list of scenarios when flexible working can be agreed to. The regulatory framework for flexible working arrangements is accordingly quite liberal.

Except in certain cases referred to below, the Labour Code does not prescribe any special procedure to be followed by a party to an employment contract when requesting flexible working arrangements from the other party. As a general rule, the employer is not under an obligation to grant an employee's request for flexible working hours.

If the organisation of work, technology or structure within an enterprise or office changes to the extent that there is a possibility of mass redundancies, the employer may introduce part-time working for all categories of staff. What constitutes a "mass" redundancy varies depending on the industry and other factors. A redundancy of more than 50 employees in the course of 30 days is normally considered a mass redundancy.

To introduce the part-time employment regime, the employer must consider the non-binding opinion of the trade union (if any). The duration of the part-time employment regime cannot exceed six months. If the employer decides to

discontinue the part-time employment regime ahead of schedule, the employer must again consider the non-binding opinion of the trade union (if any).

The Labour Code provides that overtime work may not exceed four hours in two consecutive days and 120 hours a year. To require an employee to work overtime, the employer is obliged to obtain the employee's written consent. Such consent is not required in a number of extraordinary cases such as accidents and other life- or health-threatening situations. The employer is obliged to make the relevant overtime payment for the overtime work performed by the employee, in the amount of 150% of the employee's hourly rate for the first two hours and 200% for the subsequent hours of overtime worked.

9. HOLIDAYS AND TIME OFF

9.1 Holidays

According to the Labour Code, any day of the New Year holidays, namely 1, 2, 3, 4 or 5 January, 7 January (Christmas day), 23 February (Defenders of the Fatherland Day), 8 March (International Women's Day), 1 May (Spring and Labour Day), 9 May (Victory Day), 12 June (Day of Russia), and 4 November (National Unity Day) are statutory public holidays in Russia and non-working days. If a public holiday falls on a Saturday or Sunday, the subsequent working day is a non-working day.

The Labour Code provides that each employee is entitled to 28 calendar days' annual paid holiday. Employees working on an unmeasured working time basis and certain other categories of employees are entitled to 31 calendar days' annual paid holiday.

Holiday may be taken at various times throughout the year, but at least one period must be for at least 14 consecutive days.

Employers are prohibited from refusing annual paid holiday to an employee over two consecutive years, which means that paid holiday may theoretically be withheld during one year by mutual agreement of the parties. Payment in lieu of untaken annual paid holiday is possible only in the case of termination of employment. However, an employee may request that any holiday entitlement exceeding the statutory 28 calendar days be replaced with the relevant cash payment.

9.2 Family Leave

Female employees are entitled to 70-84 days' paid maternity leave before the birth of the child and 70-110 days' paid maternity leave afterwards (depending on the number of children and other factors). However, where an employee takes fewer than 70-84 days prior to the birth, the postnatal maternity leave is extended by the number of unused days. Maternity pay is equal to the employee's average daily salary, up to a maximum of approximately RUB 1,137. There is no right to paternity leave. Employees are entitled to paid adoption leave of 70-110 days, depending on the circumstances. This is payable at the same rate as maternity leave. Employees (both parents, both grandparents, and other relatives or custodians of the child) are entitled to paid parental leave until the child is three years old. Parental leave is paid by the social fund at a rate of 40% of the employee's average salary, up to a maximum of RUB 6,000 per month until the child is 18 months' old. Parental leave is paid by the social fund at different regional rates for leave taken in the period that the child is between 18 months and three years of age.

9.3 Illness

As long as the employee is able to produce a valid medical certificate for his/her absence, the employee may be absent from work. Employees absent from work due to ill health are entitled to receive compensation in the amount of:

- 100% of the average salary, if they have more than 8 years of working experience;
- 80% of the average salary, if they have more than 5 years, but less than 8 years of working experience;
- 60% of the average salary, if they have less than 5 years of working experience.

For these purposes working experience refers to the number of years the employee has been working generally (regardless of whether with a single employer or multiple employers).

The above compensation shall be paid by the employer only for the first three days of illness. For subsequent days of illness compensation is paid from out of the social insurance fund. However, the maximum amount of compensation payable by the social insurance fund cannot exceed the statutory maximum (approximately RUB 1,137 per day). In practice, however, when the statutory maximum is reached, employers often make up the shortfall to the employee.

10. HEALTH AND SAFETY

10.1 Accidents

The employee is covered by compulsory social insurance against work-related accidents and occupational health issues. In the event of an accident/occupational health issue, the employee receives the relevant benefits from the Compulsory Social Insurance Fund. The provision of social benefits to an employee does not limit the employee's right to file a lawsuit against the employer if the latter was at

fault for the work-related accident or occupational health issue.

10.2 Health and Safety Consultation

The employer must take appropriate measures to prevent accidents in the workplace, including extensive training and consultation of personnel, introducing the relevant internal policies regarding occupational safety etc.

11. INDUSTRIAL RELATIONS

11.1 Trade Unions

The Constitution provides that all persons have the right of association, including the right to create or become members of trade unions. Thus, employees may be represented by a trade union or any other employee representation body in any circumstances. The activities of trade unions are primarily governed by the Labour Code and the Federal Law "On Trade Unions, Their Rights and Guarantees in Respect of Such Activities".

By operation of law, trade unions do not usually have the right to veto employer decisions. However, in the event that the relevant collective bargaining agreement vests a trade union with such right, an employer will be obliged to obtain the consent of the trade union on the relevant matters referred to in the collective bargaining agreement. This practice, while not common, is not unheard of.

11.2 Collective Agreements

The Labour Code provides that employees directly, or acting through their authorised representatives, have the right to initiate a collective bargaining exercise with a view to concluding a collective bargaining agreement with the employer. It should be noted that the employer is legally obliged to participate in the collective bargaining exercise once the employees concerned have given the employer relevant written notice.

However, the employer is not under obligation to enter into a collective agreement as a result of the collective bargaining.

In practice, collective agreements mostly reproduce provisions of the Labour Code. They also typically provide for certain additional benefits for employees, set out dispute resolution procedures, establish the structure and status of trade unions etc. Collective agreements are quite common in large traditional industrial companies (both privatised and non-privatised) operating in the mining, metals, timber and other industries. However, statistics show that less than 5% of business organisations in the Russian Federation have entered into collective agreements.

11.3 Trade Disputes

Employees have the right to strike as the main type of industrial action. A strike may be called when preliminary conciliation and mediation between the employer and employees has failed. A strike must be approved by at least half of the employees present at the meeting discussing such action, and for such decision to be valid at least half of the total number of the organisation's employees must be present at such meeting. During a strike the personnel must perform the minimum amount of work required for the employer to continue to operate. If the amount of work performed is below the minimum, the strike may be ruled illegal.

A strike may be ruled illegal by the relevant court if it is launched at a company involved in the supply of power, heat, communications, medical care or other "vital" sectors.

An employer whose personnel is on strike has the right to suspend payment of salaries to those employees who are on strike. The employer is entitled to take disciplinary measures (including dismissal) against the employees only if such employees continue the strike after a judicial decision ruling the strike illegal. In addition, if the employee representation body fails to declare a stop to the strike once the strike has been ruled illegal, it may be held liable for the damage caused to the employer, with the amount to be determined by a court.

11.4 Information, Consultation and Participation

See Section 11.1 above.

12. ACQUISITIONS AND MERGERS

12.1 General

Employment contracts do not terminate in the event of a reorganisation of the employer, a change in the owner of the employer's assets or a change in the employer's shareholder(s).

However, in the event of a change in the ownership of the employer's assets (e.g., asset sale, privatisation of state or municipal property, nationalisation) the new owner has the right to terminate the CEO, Deputy and CA, subject to the relevant severance payment being made to them.

Where a share sale results in a change in the employer's shareholder(s), this does not affect current employment contracts in any way.

12.2 Information and Consultation Requirements

The Labour Code provides that employee representatives have the right to obtain information from the employer on reorganisation of the latter and make relevant proposals to the employer's management bodies. There is no statutory time frame or exact procedure for responding to such requests. The relevant procedure may, however, be provided in collective bargaining agreements. Applicable law is silent as to whether an employer has any obligation

to provide information on other corporate issues such as the disposal of a controlling stake in the company, and there is no established market practice in this regard.

As regards consultation, the employer is not obliged to consult its personnel unless there is an employee representation body/trade union. Under the Labour Code, if an enterprise has an employee representation body, the employer is obliged to consider the body's opinion on (i) internal documents that may affect employees and which the employer intends to approve (including regulations on remuneration packages etc.), (ii) planned mass redundancies, (iii) overtime work that employees are required to perform in the relevant cases; (iv) approval of job positions entailing an unmeasured working time regime etc.

12.3 Notification of Authorities

From an employment law perspective there is no requirement to notify the authorities in the event of a business or share sale.

12.4 Liabilities

If an employer fails to comply with its consultation obligations (see 12.2 above), administrative fines may be imposed. However, the payment of any fines does not release the employer from the duty to negate the consequences of its failure to co-operate (e.g., the relevant labour inspectorate may compel the employer to revoke internal documents that were adopted without prior consultation with the employee representation body in the event a claim is brought by the latter).

13. TERMINATION

13.1 Individual Termination

The Labour Code contains an exhaustive list of the grounds on which employers may terminate employment contracts. Dismissal without cause is prohibited by the Labour Code except in relation to CEOs.

An employee has the right to terminate its employment contract at any time for any reason, subject to the relevant notice requirements.

13.2 Notice

If an employer decides to terminate an employment contract with:

(a) an employee who has not successfully completed his/her probation period, the employer must give at least three calendar days' prior notice to the employee;

(b) an employee working under a fixed-term employment contract – at least three calendar days' notice;

(c) an employee who will be made redundant – at least two months' notice.

In other cases, as a general rule, no prior notice by the employer is required, unless otherwise stipulated in the employment contract.

13.3 Reasons for Dismissal

General grounds for dismissal include:

- winding-up of the employer;
- redundancy;
- professional incompetence of the employee, certified by performance appraisal results;
- repeated failure by the employee to discharge his/her duties without good cause, if the employee has previously been disciplined more than once;
- absence from work without good cause during the entire work day or for more than four consecutive hours;
- appearance in the workplace or other territory or premises of the employer in a state of alcoholic, narcotic or other state of intoxication;
- disclosure of the employer's confidential information or other employees' personal data;
- theft, destruction of or damage to property in the workplace, if the offences are certified by a relevant court decision or administrative act;
- violation of occupational safety requirements which has resulted in or posed a danger of work-related accidents or catastrophe (such as a fire or explosion at industrial facilities etc.); and
- provision of false documents to the employer at the time of conclusion of the employment contract.

Specific grounds for dismissal include:

- misconduct by an employee who handles money and merchandise, if it causes the employer to lose their trust and confidence in the employee (cashier etc.);
- implementation of a groundless decision by the CEO, Deputy and CA which had an adverse effect on the integrity of the employer's property, led to the unlawful use of such property or caused any other damage to the employer;
- a single material breach of duty by the CEO or the Deputy; and
- any grounds specifically provided for in the employment contracts of the CEO and MMB.

13.4 Special Protection

It is important to ensure that dismissal is properly documented (to negate the risk of employee lawsuits alleging wrongful dismissal). To dismiss an employee, the employer must pass the relevant resolution on the employee's dismissal and make a corresponding entry in his/her employment record book.

In cases where the employer dismisses an employee due to misconduct on the part of the employee (e.g., absence from work without good cause), the employer must

adopt a written resolution on taking disciplinary measures against the employee (which will serve as evidence in the event of a dispute).

The employee cannot waive his/her statutory rights, including the right to file a claim against the employer citing the violation of his/her employment rights. Thus, any compromise or settlement agreements between the parties meant to preclude the employee's filing a claim against the employer appear to be unenforceable under Russian law.

In the event that members of a trade union are to be made redundant, the employer must notify the local trade union immediately after the decision on redundancy is taken and provide a number of supporting documents. The representative body of the local trade union must consider this and issue its reasoned opinion to the employer in writing not later than seven days after receipt of the relevant documents. If such an opinion is not sent within the specified time frame, the employer is not obliged to take it into consideration. If the representative body of the local trade union objects to the dismissal of the relevant employees, then within three days of issuing a reasoned opinion it must initiate negotiations with representatives of the employer. The results of such negotiations must be recorded in minutes. In the event that the representatives of the employer and the representative body of the local trade union do not agree on terms and conditions of redundancy within ten days of commencement of the negotiations, the employer may take a final decision on dismissal of the relevant employees at its sole discretion. However, such decision may be challenged by an employee and/or the representative body of the local trade union in the labour inspectorate or in court.

As a general rule, the amount of compensation that may be payable for unlawful dismissal (including in the course of a redundancy procedure) is the relevant employee's average salary over the period of unemployment until he/she gets another job or is reinstated in his/her former position by court decision.

It is not necessary to follow any individual consultation process prior to dismissing an employee on the grounds of redundancy. When dismissed for reason of redundancy, employees are entitled to a statutory redundancy payment equal to five times their average monthly salary. Higher amounts of severance compensation may be payable to certain categories of employees (e.g., employees working in harsh climatic conditions etc.).

When making employees redundant, an employer must give priority to the retention of certain categories of staff such as employees who have demonstrated superior job performance, employees with two or more dependants, employees who have suffered from a work-related accident or occupational health issue while working for the employer etc.

Collective bargaining agreements and employment contracts may provide for enhanced rates of redundancy payments, but this appears to be a relatively uncommon practice.

13.5 Closure and Collective Dismissals

In the event of collective dismissal such as redundancies or lay-offs in anticipation of the closure of an enterprise, the employer must give at least two months' notice to each of the employees who is to be made redundant, consult the trade union, if any (see Section 13.4), and notify the relevant employment centre.

14. DATA PROTECTION

14.1 Employment Records

The Labour Code contains a number of requirements regarding the protection, use and transfer of employee personal data. Notwithstanding the provisions of the Labour Code, operations with employee personal data must comply with the general requirements set out in the Federal Law "On Personal Data" of 27 July 2006.

The Labour Code defines personal data of an employee as information that the employer needs in connection with the employment relationship and which relates to a particular employee.

The Labour Code imposes certain restrictions on the processing of employee personal data, including restrictions on the transfer of information and the nature of the information to be processed (e.g., the employer may not collect and process information on an employee's political or religious beliefs, or on the employee's participation in public associations or trade unions).

Employers are under obligation to protect their employees' personal data against unauthorised access and loss.

As regards the processing of employee personal data, the employer is obliged to approve internal documents establishing the procedure for the processing of employee personal data and internal (i.e., within one and the same organisation) transfer of such data.

As a general rule, an employer may collect employee personal data only directly from the employees themselves and not from other sources. Where an employer wishes to obtain such data from third parties, the employer must notify the employee of this in advance and obtain the employee's consent to the collection of his/her personal data from third parties.

Data on race, nationality, political and religious beliefs, and biometric data may be processed by an employer only with the employee's prior consent.

14.2 Monitoring

Under the Constitution every citizen has the right to privacy of correspondence, telephone conversations and other communications. This right may be restricted only by a relevant judicial decision. Thus, monitoring of employees' e-mail, telephone and other communications appears to be illegal.

14.3 Employee Access to Data

Employees have the right to obtain full information about the data their employers possess about them and how such data is processed. Employers are obliged to provides their employees with unhindered access to their respective personal data, including the right to obtain a copy of any record containing employee personal data, except where such is expressly prohibited by law (e.g., if the processing of personal data is for purposes of national security and defence).

14.4 Transmission of Data to Third Parties

As a general rule, an employee's personal data may be transferred to third parties (including group companies) with the employee's prior written consent, but the latter may be revoked at the discretion of the employee. Consent must be obtained from each individual employee. In certain exceptional cases an employer may transfer employee personal data without the employee's prior consent (e.g., when necessary to prevent risk of death or injury to the employee).

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