
Labour Law in Russia

Edition 2006–2007

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Introduction

Any company utilizing the labour of employees in Russia must strictly adhere to the requirements of Russian labour legislation. Along with corporate law, labour law is one of the first legal matters a foreign investor faces on the way to Russia.

The new Labour Code, which was passed in 2002 and provides the basis for Russian labour legislation, was followed by a large-scale labour law reform in the summer of 2006. The legislative framework remained unchanged, however multiple minor amendments of considerable practical importance were adopted. The new regulations entered into force in early October 2006. While drafting this serie, we strove to concentrate on the most important legislative changes.

The serie offers a brief review of Russian individual and collective labour law. Special attention is paid to the legal preconditions of labour activities of employees of foreign companies in Russia.

The serie was prepared by Russian and German lawyers from Beiten Burkhardt's labour law practice group, all of whom possess many years of experience in the area of labour law.

In its series of analytical brochures on Russian law, Beiten Burkhardt has already published:

- Investments in Russia
- Investments in Real Estate in Russia
- Banking Law in Russia

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www.beitenburkhardt.com.

Abbreviations

CC RF	Civil Code of the Russian Federation (Part One) No. 51-FZ dated November 30, 1994, as amended on July 27, 2006
UST	Unified Social Tax
CAO RF	Code of Administrative Offenses of the Russian Federation No. 195-FZ dated December 30, 2001, as amended on July 27, 2006
MW	Minimum Wage
TC RF	Tax Code of the Russian Federation (Part One) No. 146-FZ dated July 31, 1998, as amended on February 02, 2006
RF	Russian Federation
LC RF	Labour Code of the Russian Federation No. 197-FZ dated December 21, 2001, as amended on June 30, 2006
FZ	Federal Law
FZ "On Commercial Secret"	Federal Law "On Commercial Secret" No. 98-FZ dated July 29, 2004, as amended on February 02, 2006
FZ "On MW"	Federal Law "On Minimum Wage" No. 82-FZ dated June 19, 2000, as amended on December 22, 2005
FZ "On Social Insurance"	Federal Law "On the Bases of Mandatory Social Insurance" No. 165-FZ dated July 16, 1999, as amended on March 05, 2004
FZ "On JSC"	Federal Law "On Joint Stock Companies" No. 208-FZ dated December 26, 1995, as amended on July 27, 2006
FZ "On Foreign Citizens"	Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation" No. 115-FZ dated July 25, 2002, as amended on July 18, 2006

FZ "On LLC"

Federal Law "On Limited Liability Companies" No. 14-FZ dated February 08, 1998, as amended on July 27, 2006

FZ "On Trade Unions"

Federal Law "On Trade Unions, Their Rights and Guarantees of Activities" No. 10-FZ dated January 12, 1996, as amended on May 09, 2005

1. Individual Labour Law of the Russian Federation

This section concerns issues related to individual labour relations of foreign and Russian employees hired by Russian (subsidiary) companies or representative offices of foreign enterprises.

1.1 Commencement of Labour Relations

In the former Soviet Union, concluding a written employment agreement was not common. Often, no employment agreement was concluded at all. Today, concluding a written employment agreement between an employee and an employer is obligatory, and this is reflected in practice.

1.1.1 Concluding an Employment Agreement

An employment agreement is concluded as a result of agreement between an employee and an employer. At the same time, in accordance with Article 67 of the LC RF, an individual employment agreement must be concluded with each particular employee. The legislator unambiguously stipulates that a non-written agreement is considered unduly executed. Any amendments agreed upon by the parties to an employment agreement must also be in writing, Article 72 of the LC RF.

Nonetheless, an employment agreement is considered concluded in the event the employee has factually started working, with the employer's knowledge or upon instructions from the employer or its representative, though no employment agreement has been concluded. In such case, the employer is obligated to execute a written employment agreement with the employee within three days, Part 2 of Article 67 of the LC RF.

When concluding an employment agreement, the employee is required, in accordance with Article 65 of the LC RF, to provide his/her passport (or another identity document), work book, insurance certificate, and verification of his/her education (qualifications) if the intended occupation requires special knowledge or skills. Additional documents may be requested only in particular cases provided for by law.

If the employee is concluding an employment agreement for the first time, the employer, including an employer being an individual entrepreneur, is required to execute a work book and certificate of state pension insurance for the employee, Part 4 of Article 65 of the LC RF. Furthermore, the legislator obligates an employer to execute, upon a written

application from an employee and at the moment of hiring, a new work book for the employee in the event of its absence due to loss or damage, Part 5 of Article 65 of the LC RF¹.

1.1.2 Parties to an Employment Agreement

1.1.2.1 Employer and Employee

The parties to an employment agreement are an individual employee, on one hand, and an employer, being an individual or legal entity, on the other hand.

1.1.2.2 Statutory Application of Labour Law of the RF

In the territory of the RF, Russian labour legislation covers the labour relations of all individuals regardless of their citizenship, as well as all legal entities regardless of their organizational legal form, ownership pattern and the right under which they were established, Article 11 of the LC RF. Exceptions to this rule may be established only by international treaties of the RF, Article 11 of the LC RF.

Non-application of Russian labour legislation under an employment agreement is prohibited. The Russian legal system does not provide for special regulations for choosing the law applicable to labour relations in the territory of the RF in the case of hiring of employees by representative offices (branches) of foreign legal entities or in the case of hiring of foreign citizens by Russian or foreign legal entities to occupy regular or managerial positions.

If a foreign citizen goes to the RF to work at a representative office (branch) or Russian subsidiary of a foreign company, along with a "foreign" employment agreement and a secondment agreement, a "Russian" employment agreement must be concluded as well. Such an employment agreement is concluded between the foreign employee and the representative office (branch) of the foreign legal entity or Russian subsidiary of the foreign company.

1.1.3 Types of Employment Agreements

Labour legislation of the RF provides for conclusion of employment agreements of the following types:

¹ For more detailed information on work books, see Section 1.2.3 "Documenting the Hiring of an Employee/ Commencement of Work / Work Book".

- indefinite term agreements (unlimited) (Article 58 of the LC RF)
- definite term agreements (fixed-term) (Article 59 of the LC RF)

1.1.3.1 Unlimited Agreements

As a rule, employment agreements in the RF are concluded for indefinite periods of time. If an employment agreement does not contain a term of validity, it is considered unlimited.

1.1.3.2 Fixed-Term Agreements

Fixed-term agreements are concluded in cases when labour relations cannot be established for an indefinite period in consideration of the nature of the intended work and the conditions of its performance. At the same time, the term of an employment agreement is fixed or may be fixed upon agreement of the parties given the existence of one of the grounds listed in Article 59 of the LC RF.

The legislator has divided the grounds for concluding a fixed-term agreement into those that are obligatory and those that arise upon agreement of the parties. In accordance with Part 1 of Article 59 of the LC RF, a fixed-term employment agreement is concluded for:

- substitution for a temporarily absent employee
- temporary (up to two months) and seasonal work, when due to natural conditions, the work may be performed only during certain periods of time
- performance of works that are outside the scope of the company's usual activities (reconstruction, assembly works, etc.) and performance of works connected with a knowingly temporary (up to one year) expansion of production or volume of provided services
- work for an organization established for a knowingly certain period of time or for fulfilling knowingly certain tasks
- traineeship and internship of the employee, and in other cases provided for by legislation

In accordance with Part 2 of Article 59 of the LC RF, upon agreement of the parties, a fixed-term employment agreement may be concluded with:

- employees of small-businesses staffing up to 35 employees (in organizations operating in the retail sales and household services sector staffing up to 20 employees)²
- retirement pensioners and persons permitted to perform only temporary works due to the state of their health
- employees attending daytime classes
- persons selected in a competition to occupy a respective post, and art-related specialists
- directors, deputy directors and chief accountants, regardless of the organizational legal form and ownership pattern
- persons combining works in various organizations, and in other cases provided for by legislation

In the event neither of the parties to a fixed-term employment agreement has demanded its termination due to its expiry and the employee continues working, the provision on the term of the agreement becomes invalid and the fixed-term agreement is considered concluded for an indefinite period, Article 58 of the LC RF.

1.1.3.3 Agreement with the Director

In practice, the agreement with the head of a company is frequently a foreign investor's first encounter with Russian labour legislation.

Special prescriptions exist for regulating the labour relations with heads of companies. The head of a company is the company's manager (the following titles are used in Russia: General Director, Director, and President). A fixed-term agreement may be concluded with the head of a company. Its exact term is established upon agreement of the parties. Moreover, the head of a company may combine jobs only if permitted by an authorized body of the legal entity (as a rule, the general participants meeting or the general shareholders meeting) or by the owner of the property of the organization, Article 276 of the LC RF.

Prior to the state registration of a subsidiary of a foreign company in the RF, the person who will be its director after the registration is entitled to carry out preparatory activities (for example, searching for office premises) on the basis of an employment agreement

² This provision is not applied to representative offices of foreign companies and joint ventures with foreign ownership interest in the capital exceeding 25%, Article 3 of the Federal Law "On State Support of Small Business in the RF" No. 88-FZ dated June 14, 1995, together with Letter of the State Tax Service of the RF No. 06-114/8702 dated July 11, 1996 "On Criteria for Attributing Organizations to Small-Business Companies".

and secondment (delegation) agreement concluded with the parent foreign company, an agency agreement or a service agreement, but not on the basis of a Russian employment agreement. Upon the registration of the subsidiary in the RF, an employment agreement must be concluded between the director and the Russian company.

In addition to the general grounds, law establishes additional grounds for the termination of an employment agreement with a company's head, for example:

- resolution to early terminate the employment agreement, adopted by the legal entity's authorized body (as a rule, the General Shareholders (Participants) Meeting) or by the owner of the company's assets
- insolvency of the company
- other grounds provided for by the employment agreement, i.e. non-fulfillment of a resolution of the General Shareholders (Participants) Meeting), Article 278 of the LC RF

Given absence of any faulty actions (omissions) on the part of the head of a company, he/she shall be compensated for the early termination of the employment agreement in the amount established by the employment agreement, but not less than triple the average monthly salary of the head of the company.

Pursuant to Article 277 of the LC RF, contrary to other employees, the head of a company bears full material liability for direct actual damages inflicted upon the employer, and is also obligated to compensate for losses, including lost profits, incurred by the organization due to his/her faulty actions, in cases stipulated by RF legislation, for example the FZ "On LLC".³

1.1.3.4 Agreements for Combining Jobs

Article 60¹ of the LC RF divides jobs in various organizations into internal secondary jobs, in cases when the employee performs other compensated work for the same employer during time free from the main work, and external secondary jobs, in cases when the employee combines the job with work for another employer. Working hours at a secondary job may not exceed four per day. At the same time, legislation provides for the possibility to work a full workday (shift) at a secondary job on days free from the main work. Nonetheless, the amount of time worked within one month at a secondary job may not exceed half of the standard monthly working time of the employee, Article 284 of the LC RF.

³ See Section 1.7 "Financial Liability of Employees".

In addition to the grounds prescribed by law for the termination of employment agreements, an employment agreement for combining jobs may be terminated in the event of hiring an employee for whom the job will be his/her principal job. The employer must notify the employee thereof in writing not less than two weeks prior to the termination of the employment agreement, Article 288 of the LC RF.

1.2 Content of an Employment Agreement

The following information must be included into an employment agreement: the full name of the employee and the employer (whether an individual or a legal entity); identification documents of the employee and the employer – individual; taxpayer identification number (INN) of the employer (except for individuals who are not individual entrepreneurs); representative of the employer authorized to sign employment agreements and the grounds for such powers; place and date of conclusion of the agreement.

1.2.1 Essential Conditions of an Employment Agreement

Pursuant to Part 2 of Article 57 of the LC RF, essential conditions are:

- place of employment, with indication of the structural division (branch, representative office, etc.)
- date of commencement of work; in case of a fixed-term agreement – its validity period and the grounds (reasons) for its conclusion
- employment function (title of the position in accordance with the personnel list, specialty, qualifications and profession, as well as the particular type of assigned work)
- conditions determining the nature of the work (mobile, connected with travel, in transit, etc.); compensation, and benefits to the employee for working in severe, detrimental, and dangerous conditions
- work and holiday time (if with regard to the particular employee these arrangements differ from the general rules established in the company)
- payment system (official salary, possible premiums, bonuses, etc.)
- provision on mandatory social insurance in accordance with legislation

The rights and obligations of the employee and the employer specified in labour legislation may be included into an employment agreement upon the mutual consent of the

parties and are not essential conditions thereof, Part 5 of Article 57 of the LC RF; however, not including them into the text of an employment agreement may not be considered as a refusal to exercise such rights and fulfill such obligations.

In the event any essential information and/or conditions of an employment agreement provided for by the LC RF have not been included into the agreement at the moment of its conclusion, this shall not be a reason for recognizing such agreement as non-concluded and does not lead to its termination. In this case, the missing information must be added to the agreement. Non-included essential conditions are determined within the framework of a written annex or a separate agreement being an integral part of the employment agreement, Part 3 of Article 57 of the LC RF.

1.2.1.1 Description of the Place of Employment and the Employment Function

As a rule, in an employment agreement the location of the employer is stated as the place of employment.

If an employee is hired to work at one of the separate subdivisions of a company, i.e. a representative office or a branch located in a different region, the separate subdivision's name and address are stated in the employment agreement. If various structural subdivisions of a company are situated in different areas far from one another, the employer may not transfer an employee from one division of the company to another without the employee's consent. An exception is a temporary transfer of an employee to other work for a period of up to one month in cases of downtime (temporary suspension of work of an economic, technological, technical or organizational nature), necessity to prevent destruction of or damage to property or substitution of an employee temporarily absent from work, provided such downtime, necessity to prevent destruction of or damage to property or substitution of an employee temporarily absent from work is caused by extraordinary circumstances.

At the same time, transfer to a job requiring lower qualifications is allowed only upon the written consent of the employee, Article 72.2 of the LC RF.⁴

Legislation defines employment function as the work in a certain position in accordance with the personnel list, profession, specialty and qualifications, including the particular type of work assigned to the employee. An employer may not unilaterally change the employment function of an employee specified in the employment agreement, while an employee, in his/her turn, in order to protect its labour rights, is entitled to refuse to perform works not provided for by the employment agreement, Article 379 of the LC RF.

⁴ For more detailed information, see Section 1.2.4 "Amending Provisions of an Employment Agreement / Transfer to Another Job".

During the conclusion of employment agreements, it is recommended that employers avoid providing considerably detailed definitions of employees' places of employment and employment functions, as such definitions restrict their right to commission employees to perform unforeseen tasks required by current working situations. On the other hand, it should be taken into consideration that an employee may refuse to perform tasks not directly related to his/her employment function, and the employer will not have the right to dismiss the employee on the basis of his/her non-compliance with the occupied position or performed work.

1.2.1.2 Salary

In accordance with the LC RF, salary is remuneration for labour that depends on the qualifications of the employee, the difficulty, amount, quality and conditions of the work, as well as compensation payments (additional payments for compensation purposes, including for work in abnormal conditions) and incentive payments (additional payments for motivational purposes, bonuses and other premiums), Article 129 of the LC RF. Article 129 of the LC RF also provides for the notions of official and basic salary for employees of state and municipal institutions.

Pursuant to Point 3 of Article 37 of the Constitution of the Russian Federation and Article 133 of the LC RF, the monthly salary (as well as official and basic salary) of an employee who has completed the standard working time for the month and fulfilled his/her employment duties may not be less than the minimum wage (MW)⁵ established by federal law for the entire territory of the RF. The MW, in turn, in accordance with Article 133 of the LC RF, may not be less than the so-called "cost of living" of a working age person.

However, in practice, the MW and the "cost of living" differ considerably. Such situation is possible due to Article 421 of the LC RF and the federal law adopted in accordance therewith establishing the procedure and terms for a staged increase in the MW.

Therefore, to date, the MW in the RF is less than half, and in some subjects of the RF less than one fifth, of the official cost of living. For example, in accordance with the FZ "On MW", since May 1, 2006, the MW equals RUB 1,100 per month (approximately EUR 32). At the same time, the cost of living in Moscow equals RUB 5,752 (approximately EUR 167) (data for quarter I, 2006), and in St. Petersburg – 3,949 rubles 70 kopeks (approximately EUR 116) (data for quarter II, 2006).

Salaries must be paid in the currency of the RF and at least biweekly, Articles 131 and 136 of the LC RF. At the same time, neither a provision on accrual of salary in a foreign

⁵ Article 129 of the TC RF defines the minimum salary (minimum wage) as the amount of the monthly salary of an unskilled worker for performing simple works during the established standard working time and under normal working conditions, exclusive of compensation, incentive and social payments.

currency nor a provision on payment of salary once a month may be established on the basis of a written application of an employee.

1.2.1.3 Work and Holiday Time

Regular working hours may not exceed 40 hours per week. Pursuant to Article 100 of the LC RF, an employment agreement must contain provisions on the duration of the workweek and workday, the time for commencing and completing work during the day, the duration of breaks, and the rotation of workdays and days-off.

At the same time, in accordance with Russian labour legislation, an employee and an employer may agree on flexible working hours, which means that the commencement, completion and duration of a workday (shift) is determined upon agreement of the parties and the employer ensures that the employee works the total number of working hours during the respective reporting periods (workday, workweek, month, etc.), or in the case of the so-called "unlimited" workday. This is possible only for particular positions, the list of which is established in the employer's internal documents (in internal regulations, for example). Within the framework of unlimited working hours, the employer may request, if necessary, that certain employees occasionally work beyond regular working hours. Agreeing upon unlimited working hours is general practice in the RF, particularly for managerial staff.

Employees hired on the basis of unlimited working hours are entitled to a minimum three calendar days of additional holiday, Article 119 of the LC RF.

1.2.1.4 Overtime Work

Russia's transition to the market economy has resulted in employees oftentimes working more than as established in their employment agreements. Four hours of overtime in two consecutive days and not more than 120 hours per annum are allowed. Overtime work may only be assigned subject to the employee's written consent and in consideration of the opinion of the primary trade union organization, if such exists, Article 99 of the LC RF.

Engaging an employee to work overtime without his/her consent is allowed in cases of performing works necessary for preventing or eliminating consequences of a catastrophe, accident, or disaster, for the performance of socially important works for eliminating unforeseen circumstances disrupting the functioning of the water supply system, heating, transportation, etc., as well as in a state of emergency or in case of martial law or other extraordinary situations (fires, floods, earthquakes, etc.) threatening the lives and normal living conditions of the population, Part 3 of Article 99 of the LC RF.

Overtime work may be compensated for by means of providing additional days-off or paying no less than one and a half times the regular hourly rate for the first two hours and no less than twice the regular hourly rate for subsequent hours, Article 152 of the LC RF.

Premiums are also paid for nightwork. The minimum amount of such premiums is established by the Government and is fixed by an employer in consideration of the opinion of the employees' representative body under a collective agreement, other local regulatory act or the employment agreement, Article 154 of the LC RF.

On the basis of an application, working hours are reduced for certain categories of employees (pregnant women, parents of children under the age of 14 or persons taking care of an ill family member), Article 93 of the LC RF.

1.2.1.5 Statutory Holidays

Statutory holidays of the RF are:

January 1, 2, 3, 4, and 5	–	New Years holidays
January 7	–	Christmas
February 23	–	Day of the Defender of the Fatherland
March 8	–	International Women's Day
May 1	–	Holiday of Spring and Labour
May 9	–	Victory Day
June 12	–	Day of Russia
November 4	–	National Unity Day

If a holiday falls on a day-off, the following business day becomes a day-off, Article 112 of the LC RF. The business day or shift preceding a holiday is reduced by one hour, Article 95 of the LC RF.

Work on holidays and days-off is prohibited, except in cases provided by law, and, as a rule, requires the written consent of the employee, Part 1 of Article 113 of the LC RF.

Upon his/her written consent, an employee may be engaged to work on a holiday or day-off to perform unforeseen works which must be performed urgently in order to maintain the further normal operation of the employer. Furthermore, on statutory holidays it is permitted to perform works whose suspension is impossible due to production and technical conditions (constantly operating enterprises), works required for providing services to the population, and urgent repair and loading/unloading works, Parts 2 and 6 of Article 113 of the LC RF.

An employee may be engaged to work on holidays or days-off without his/her consent in cases when the purpose of such work is to prevent or eliminate consequences of a catastrophe, accident, disaster, industrial accident, destruction of or damage to the employer's property, as well as in a state of emergency or in case of martial law, disaster or threat of disaster (fires, floods, earthquakes, etc.), threatening the lives and normal living conditions of the population, Part 3 of Article 113 of the LC RF.

Special conditions for engaging employees to work on holidays or days-off may be established by a collective agreement, local regulatory act or employment agreement for employees of art-related and similar organizations (mass media, cinematography, TV, video, theaters, theatre and concert organizations, circuses, etc.), Part 4 of Article 113 of the LC RF.

Engaging handicapped individuals and women with children under three years of age to work on holidays or days-off is possible only upon their written consent, provided it is not prohibited due to the state of their health, Part 7 of Article 113 of the LC RF.

1.2.1.6 Vacation

Each employee is granted 28 calendar days of paid vacation per annum according to the employer's schedule of vacations. While scheduling vacations it is necessary to keep in mind that at least one portion of the total vacation time must not be less than 14 calendar days.

In cases when labour legislation or the employment agreement establishes that total vacation time is in excess of 28 calendar days, the employee may be entitled to request payment of a cash compensation for the portion of unused vacation time that is in excess of 28 calendar days. If total vacation time is 28 calendar days, no cash compensation for unused vacation time may be paid. For specifically protected groups of people, such as pregnant women, employees under 18 years of age, and employees involved in arduous work, replacing vacations with cash compensations is prohibited.

As a general rule, vacations are granted to employees in calendar days, Article 120 of the LC RF. The LC RF specifies only one case of provision of vacation in working days: to employees who have concluded an employment agreement for a period of up to two months, Article 291 of the LC RF.

1.2.2 Optional Conditions of an Employment Agreement

The parties are entitled to include into an employment agreement certain optional conditions agreed upon in the course of negotiations. Any optional conditions incorporated into an employment agreement may not restrict the rights of the employee as compared

to provisions of legislation, collective contracts (agreements) or local regulatory acts of the employer, Part 4 of Article 57 of the LC RF.

To the optional conditions of an employment agreement the legislator attributes a detailed description of the place of work of the employee (i.e. particular mechanism, machine, object with which the employee is in contact while performing his/her employment duties); testing of the employee in order to verify his/her compliance with the assigned work; non-disclosure of legally protected secrets (state, service, commercial, etc.); the employee's obligation to work not less than a certain period of time after having completed an education paid for by the employer; a provision on additional insurance of the employee and improvement of his/her social conditions, and other provisions, Part 4 of Article 57 of the LC RF.

Upon agreement of the parties, an employment agreement may include rights and obligations of parties to labour relations established by labour legislation and other statutory acts containing regulations of labour law, local regulatory acts, as well as rights and obligations of the employee and the employer arising from provisions of a collective contract, agreements. Not including in an employment agreement any of the said rights and/or obligations of the employee and the employer may not be considered as a refusal to exercise such rights or fulfill such obligations.

1.2.2.1 Probationary Period

In accordance with labour legislation of the RF, a probationary period may be established for an employee. As a general rule, the maximum duration of such period may not exceed three months. A probationary period may not be established for certain categories of employees, for example people under 18 years of age, women with child under eighteen months, etc., Article 70 of the LC RF. Absence of a provision on probationary period in an employment agreement means that the employee has been hired without such verification.

If an employee has factually started working without execution of an employment agreement, a provision on probationary period may be included into the agreement only if the parties have executed it as a separate agreement prior to the commencement of the work, Part 2 of Article 67 of the LC RF.

Probationary periods established for directors, deputy directors, chief accountants, deputy chief accountants, and heads of structural subdivisions may be of six months, Article 70 of the LC RF.

Employers are obligated to notify in writing employees who have failed to pass their probationary periods at least three days prior to expiry with indication of the reasons; otherwise a probationary period is considered to have been passed, Article 71 of the LC RF.

1.2.2.2 Provision on Commercial Secret

Issues of observance of commercial secrets are regulated in the RF by several legislative acts. The main source of provisions on commercial secrets is the FZ "On Commercial Secret". This Federal Law determines the manner for treating information constituting a commercial secret of the employer and the procedure for familiarizing employees with such information. Article 5 of the FZ "On Commercial Secret" establishes which information may not be considered a commercial secret. For example, information contained in the foundation documents of a company, as well as data concerning the number of employees, the payment system, environmental pollution and violations of RF legislation may not be commercial secrets.

Provisions on commercial secret are also contained in civil and criminal legislation of the RF, Article 139 of the CC RF, Article 181 of the Criminal Code of the RF.

In the event of an employee's failure to observe a commercial secret, the employer may claim damages from the employee. The condition therefor is the employer's taking of preventative measures for protecting its commercial secrets (the so-called "commercial secret regime" under Point 1 of Article 10 of the FZ "On Commercial Secret"):

- compiling a list of the information constituting a commercial secret
- restricting third parties' access to this information
- compiling a list of the individuals entitled to access this information
- regulating, in the form of an agreement, issues regarding use of this information by employees and business partners
- marking information media as "commercial secret"

In addition, pursuant to Point 1 of Article 11 of the FZ "On Commercial Secret", in order to ensure the protection of a commercial secret, an employer is obligated to:

- familiarize, against signatures, employees who, due to their working duties, have access to the commercial secret with the list of the information constituting the commercial secret
- familiarize, against signatures, employees with the established commercial secret regime
- provide employees with the conditions necessary for observing the commercial secret regime

It is necessary to note that disclosure of information constituting a commercial secret of an employer may entail not only the employee's obligation to compensate for the damage inflicted upon the employer, but also dismissal and criminal prosecution of the employee in accordance with Article 183 of the Criminal Code of the RF.

During labour relations, employees are liable for disclosure of information constituting a commercial secret only to the extent of the direct damage inflicted upon the employer.

Pursuant to the FZ "On Commercial Secret", an employment agreement may obligate the employee to not disclose commercial secrets following the expiry of the employment agreement, Paragraph 3 of Part 3 of Article 11 of the FZ "On Commercial Secret". Regarding managerial staff, this condition may also be agreed upon in accordance with Point 6 of the same Article. Upon dismissal, the relations between the employee and the employer are regulated by civil legislation. Point 2 of Article 139 of the CC RF allows the employer to demand that a former employee fully compensate for damages, including lost profits. The same right is provided to employers by Point 4 of Article 11 of Law No. 98-FZ.

1.2.2.3 Non-Competition Provision

RF legislation does not allow for establishing in an employment agreement that the employee is prohibited for the term of the employment agreement from performing business activities that compete with the employer's activities. An employee may also not be prohibited from competing with his/her employer following the expiry of the employment agreement. The right to freely perform business activities, work and dispose of one's capabilities to work, which is established by the Constitution of the Russian Federation, is referred to as the supporting basis.

Pursuant to Article 276 of the LC RF, the head of a company may be prohibited from working for another employer only within the term of the employment agreement. However, such prohibition may not be established in an employment agreement concluded with an employee other than the head of the company.⁶

1.2.2.4 Employers' Copyrights / Additional Remuneration to Employees for Employers' Use of Business Works

Pursuant to the RF Law "On Copyright and Related Rights" No. 5351-1 dated July 9, 1993, copyright objects are, in particular, literary, musical and photographic works, graphic and design works, and photographs, as well as software programs and databases.

⁶ See also Section 1.1.3.4 "Agreements for Combining Jobs".

If an employee's employment duties under an employment agreement include creating works being copyright objects, the exclusive rights to use such works created by the employee within the framework of his/her employment activities (hereinafter "business works") belong to the employer, unless the employment agreement provides otherwise, Point 2 of Article 14 of the Law "On Copyright and Related Rights". Exclusive rights to use business works include, in particular, the right to reproduce, sell, lease, translate, and process the works.

At the same time, despite the fact that exclusive property rights to business works belong to the employer, personal non-property rights belong to the employee and include:

- right to be recognized as the author of the works (right of authorship)
- right to use or to permit use of the works under the authentic name of the author, pseudonym or without any name, i.e. anonymously (right to one's own name)
- right to divulge or permit to divulge the works in any form (right to divulge)
- right to protect the works, including their names, from any distortions or other infringements capable of inflicting damage upon the honor and dignity of the author (right to protect the author's reputation)

It is necessary to note that the right to divulge works is a personal non-property right of the employee and therefore the employer must obtain the employee's permission to divulge the works created by the employee.

It is a matter of controversy as to whether it is possible to include into an employment agreement a provision under which the salary is simultaneously remuneration for the employer's use of all business works created by the employee. Part 2 of Article 14 of the RF Law "On Copyright and Related Rights" provides that the agreement between an author and an employer determines the amount of the author's fee for each type of use by the employer of works created by the employee. On the basis of this Article, directly opposite conclusions are made in Russian legal literature.

On one hand,⁷ salary is remuneration for the creation of business works only, not for the use of the business works by the employer. Consequently, apart from the salary, the employee must receive a fee for the employer's use of the business works created by the employee. According to another opinion, payment of fees for use of business works is not compulsory, as rights to use business works automatically belong to the employer.⁸

⁷ V.V. Pogulyaev "Legal Status of Intellectual Property Objects" // "Law and Economy", No. 1 2005.

⁸ A.P. Sergeev "Intellectual Property Rights in the RF", 2nd edition, pages 163/164.

1.2.3 Documenting the Hiring of an Employee / Commencement of Work / Work Book

An employee is obligated to start work on the particular day specified in the agreement or if there is no provision in this regard, on the next business day after the agreement enters into force. If the employee has not commenced working on the specified date, the employer is entitled to cancel the agreement, i.e. consider it non-concluded, Part 4 of Article 61 of the LC RF. Cancellation of the employment agreement does not deprive the employee of the right to be covered under the mandatory social insurance in case of an insured event within the period from the date of conclusion of the employment agreement until the day of its cancellation, Part 4 of Article 61 of the LC RF.

Upon concluding an employment agreement, the employer must issue an order on the hiring of the employee. The employer's order is presented to the employee, against his/her signature, within three days from the date of actual commencement of fulfillment of the employment duties by the employee, Article 68 of the LC RF.

The receipt of a counterpart of the employment agreement by the employee must be confirmed by the employee's signature on the counterpart of the agreement kept by the employer, Article 67 of the LC RF.

An employer, with the exception of an individual who is not an individual entrepreneur, must maintain the work books of each employee who has been working at the company for more than five days, provided that the work at this company is the employee's main work. Also, upon an employee's written request, the employer must execute a work book for the employee in case the book has been lost or damaged, Article 66 of the LC RF. Information on combining jobs may be included into the work book by the main employer upon the employee's request.

The work book is the only source of information on an employee's work history. It contains information on all major employers of the employee and the grounds for his/her dismissal. Employees are obligated to provide the work book if concluding an employment agreement is intended, with the exception of part-time jobs (in this case, the work book is kept by the main employer).

An employer must, against signature, familiarize an employee with the collective agreement and all local regulatory acts related to the employee's activities, for example internal labour regulations, rules for using information constituting a commercial secret of the employer, etc., prior to signing the employment agreement, Article 68 of the LC RF.

1.2.4 Amending Provisions of an Employment Agreement / Transfer to Another Job

Amending provisions of an employment agreement is performed upon agreement of the parties, except in cases directly provided for by legislation, and in any case must be done in writing, Article 72 of the LC RF.

Legislation distinguishes the following particular cases of amending an employment agreement:

- transfer to another job with the same employer
- amending the employment agreement due to organizational or technological changes in the working conditions, Article 72.1 of the LC RF

In accordance with Part 1 of Article 72.1 of the LC RF, transfer to another job with the same employer implies:

- change of the employee's employment function
- change of the structural subdivision, if the structural subdivision is indicated in the employment agreement
- moving to another location together with the employer

Such a transfer may be permanent or temporary – up to one year; in the case of performing the functions of a temporarily absent employee, the transfer lasts up until the moment the employee returns to work. If upon completion of the term of temporary transfer neither of the parties insists on restoring the status quo, the transfer is considered permanent.

An employee may be transferred without his/her consent for a period of up to one month if the transfer is for purposes of preventing or eliminating consequences of a natural or technological disaster, industrial accident, fire, flood or other exceptional cases threatening the lives and normal living conditions of the population or a part thereof, Part 2 of Article 72.2 of the LC RF. Moreover, in cases of downtime, necessity to prevent destruction of or damage to property of the employer or substitution for a temporarily absent employee, if caused by reasons listed above, an employee may be transferred to another job without his/her consent, provided the work corresponds to his/her qualifications, Part 3 of Article 72.2 of the LC RF.

Organizational or technological changes in the working conditions may be a ground for amending provisions of the employment agreement without the employee's consent

other than the employment function. The employee must be notified of future changes at least two months prior to the changes, Article 74 of the LC RF.

1.3 Termination of Labour Relations

1.3.1 Fixed-Term Employment Agreements

Fixed-term labour relations terminate upon the lapse of the term established in the agreement. If upon the lapse of the term of the employment agreement neither the employee nor the employer has demanded termination of the labour relations, the provision on the term of the agreement loses force and such agreement becomes an unlimited-term employment agreement, Article 58 of the LC RF.

Labour relations may also terminate upon achievement of the goals established during the conclusion of the employment agreement (for example, harvesting).

The employer must notify the employee in writing of the termination of the employment agreement three days prior to the expiry of the term of the agreement, Part 1 of Article 79 of the LC RF. An employment agreement concluded for a period of performing a certain work terminates upon the completion of such work.

1.3.2 Unlimited Employment Agreements

Unlimited-term labour relations may be terminated at the initiative of one of the parties or upon the mutual agreement of the parties.

1.3.2.1 Termination upon Agreement of the Parties

Labour relations may be terminated upon the mutual agreement of the parties, Part 1 of Article 77, Article 78 of the LC RF. This type of termination of an employment agreement is most frequently used in practice, as preparing a legally flawless dismissal on the grounds of poor quality work performance or material violations of internal regulations requires considerable organizational effort and is oftentimes practically impossible. If the employer initiates termination of an employment agreement on the mutual agreement of the parties, the employee is, as a rule, compensated for the termination of the agreement. The amount of such compensation is not established by legislation.

If an employment agreement is terminated upon mutual agreement of the parties, a written agreement must be executed by the parties. However, even a properly executed agreement does not always fully protect the employer from the employee's further application to a court with claims that the termination of the employment agreement

occurred under pressure from the side of the employer. In this case, special attention should be paid to the amount and actual payment of the compensation specified in the agreement.

1.3.2.2 Termination on the Employee's Initiative

Resignations must be in writing. Compared to provisions of labour legislation of many foreign countries, the term for notifying the employer of intended resignation is extremely short – as a general rule, two weeks – and may not be extended by an agreement. If an employee resigns due to a significant reason, for example if he/she starts studying, the employment agreement is to terminate at the moment indicated in the employee's letter of resignation, Part 3 of Article 80 of the LC RF.

Until the two-week term has lapsed, an employee may withdraw his/her letter of resignation, provided that the employer has not yet made an irrevocable written offer for the position to another individual, Part 4 of Article 80 of the LC RF.

Regarding managerial staff, the minimum term for notification of resignation in the event of early termination of labour relations is one month, Article 280 of the LC RF.

1.3.2.3 Termination on the Employer's Initiative

In accordance with labour legislation of the RF, the dismissal of an employee on the employer's initiative always requires grounds therefor. The Labour Code contains a wide range of grounds for dismissing an employee on the employer's initiative, Article 81 of the LC RF.

The most important grounds are:

- liquidation of the company or termination of activities by the individual entrepreneur
- reduction in the number of the company's or individual entrepreneur's employees
- insufficient qualifications of the employee, confirmed by the results of an evaluation
- change of owner of the company's assets (applies to the head of the company, his/her deputy, and the chief accountant). This provision is only applicable to state or municipal enterprises and is not valid in the event of change of shareholders or participants⁹

⁹ Enactment of the Plenum of the Supreme Court of the RF No. 2 dated March 17, 2004 "On Application of the Labour Code of the Russian Federation by Courts of the Russian Federation", Point 32.

- single material violation by the employee of his/her working duties (absence from work, coming to work in a state of alcohol- or drug-induced intoxication, theft or destruction of work materials, etc.)
- disclosure by the employee of a legally protected secret (for example, a commercial secret)¹⁰

Business-related Grounds for Dismissal

As a prerequisite, a company planning to use reduction of the number of employees or cancellation of certain positions as the grounds for dismissal must have a personnel arrangement schedule. The personnel arrangement schedule contains all positions provided for at the given company and the number of employees hired to occupy those positions.

Reduction of the number of company employees is conditioned by the decision of the head of the company to perform such action. Cancellation of positions means that the head of the company has decided to cancel certain positions from the personnel arrangement schedule.

If an employer chooses to justify a dismissal by cancellation of certain positions, the employer is obligated to offer the employee a vacant position or work corresponding to his/her qualifications or a vacant lower position or lower paying work that is suitable for the employee in consideration of the state of his/her health. At the same time, the employer must offer the employee all vacancies meeting the said requirements that are available to the employer at the given location, as well as vacant lower positions or lower paying work that is suitable for the employee in consideration of the state of his/her health. The employer is obligated to offer vacancies at other locations if such is provided for by a collective contract, agreements, employment agreement, Article 180 of the LC RF. Furthermore, a sufficient number of grounds for which the company no longer needs this employee should exist. If a dismissal is conditioned by reduction of the number of company employees or cancellation of certain positions, the company may not, within a respective period of time, re-include the cancelled position into the personnel arrangement schedule. Otherwise, it would be possible to suggest that the grounds for dismissal were fictitious.

In the event of reducing the number of company employees or canceling certain positions, it is necessary to provide evidence that the company requires a smaller number of employees.

¹⁰ For more detailed information, see Section 1.2.2.2 "Provision on Commercial Secret".

It is necessary to consider Article 179 of the LC RF, which regulates issues connected with preemptive rights to positions. The preemptive right to be further employed is granted to especially qualified employees, employees with several dependants, and to those who are the single breadwinners in their families.

Qualifications-related Grounds for Dismissal

An employee may be dismissed on grounds of insufficient qualifications only if such insufficient qualifications are discovered as a result of an evaluation. It should be taken into consideration that an employer is not entitled to terminate the employment agreement with an employee on the said grounds if an evaluation with respect to this employee has not been conducted or if the evaluation commission has concluded that the employee suits the position occupied by him/her, Part 3 of Article 81 of the LC RF.

In the event of a dispute over reinstatement of an employee dismissed on grounds of insufficient qualifications, the conclusions of the evaluation commission on the business qualities of the employee are subject to review together with the other evidence under the case and may be ignored by the court if they contradict other evidence collected for the case. The employer will be required to provide evidence showing that the employer offered another position to the employee that the employee refused to occupy or evidence showing that the employer had no possibility to transfer the employee to another position corresponding to the level of qualifications of the employee (for example, due to absence of such position in the personnel arrangement schedule).

Deadline for Dismissal Notice

No deadlines for dismissal notices are required to be met, with the exception of dismissal on grounds of reduction of the number of company employees or cancellation of certain positions, as well as dismissal due to company liquidation, in which cases the employees' representative body or the employees themselves must be notified at least two months prior to dismissal, Articles 81, 82, and 180 of the LC RF.

1.3.2.4 Particularities of Dismissal Due to the Employee's Faulty Actions

Dismissal due to faulty actions in cases enumerated by law (material violation of working duties, for example coming to work in a state of alcohol-, drug- or toxic agent-induced intoxication, being absent from work for four consecutive hours without a valid reason, breaching an obligation to not disclose commercial secrets, etc.) is considered a disciplinary sanction.¹¹ Therefore, during dismissals on these grounds the following rules of

¹¹ A disciplinary offense is non-fulfillment or undue fulfillment by an employee of his/her employment duties due to his/her fault. Disciplinary sanctions may include admonitions, reprimands and dismissal, Article 192 of the LC RF.

imposing disciplinary sanctions must be observed, Article 193 of the LC RF:

- upon discovery of a violation, the employer is required to request a written explanation from the employee
- if the employee refuses to provide a written explanation, it is necessary to execute a protocol (in the presence of witnesses)
- upon execution of the protocol, the employer may issue a respective order to impose a disciplinary sanction (including in the form of dismissal), with which the employee is to be familiarized, against his/her signature, within three days as of the issuance thereof

Only upon completion of all above actions may an employee be dismissed.

Dismissal due to faulty actions is to be carried out no later than within one month after the discovery of the faulty actions and not later than within six months after the faulty actions occurred. Should faulty actions of an employee be discovered in the course of an audit of the company's financial and economic activities, the employee may be dismissed within two years as of the day on which the faulty actions occurred, Article 193 of the LC RF.

1.3.3 Termination of Labour Relations Due to Circumstances

Beyond the Parties' Control

An employment agreement is terminated if the employee is conscripted into the army, recognized as unemployable, or if the employee who previously performed the work is reinstated upon resolution of the state labour inspectorate or a court, Article 83 of the LC RF.

1.3.4 Prohibited Dismissals

As a general rule, an employee may not be dismissed within a period of his/her temporary disability or while on vacation. Legislation prohibits dismissing pregnant women (with the exception of when the company is being liquidated or the employer terminates its activities, as well as in case of expiry of a fixed-term employment agreement concluded for the period of fulfilling the duties of an employee temporarily absent from work, or if the female employee refuses to be transferred to another job suitable for her in consideration of the state of her health), Article 261 of the LC RF. It is also prohibited to dismiss women who have children under 3 years of age, as well as single mothers with children under 14 years of age or handicapped children under 18 years of age (or other individuals who raise motherless children). Dismissal is exceptionally allowed if the

company is being liquidated, if the female employee does not suit the position due to the state of her health, has violated her working duties through her own fault, or if she provided fabricated documents while concluding the employment agreement.

1.3.5 Compensation

The practice, common in many other countries, of lodging claims primarily against business-related dismissals in order to obtain whatever possible compensation is not widespread in Russia. Legislation regulates all cases in which dismissed employees are entitled to compensation.

As an example, we can consider payment of compensation in the event of dismissing an employee due to the company's liquidation or reduction of the number of employees, Parts 1 and 2 of Article 178 of the LC RF.

The total amount an employer must pay to an employee in consideration of the salary paid to the employee within the period of time between notice of dismissal and termination of the labour relations equals four or, in extraordinary cases subject to the consent of the Employment Service's respective body, five average monthly salaries. The total amount includes:

- two monthly salaries being standard pay to the employee for the two months following the dismissal notice
- one monthly salary as severance pay
- one monthly salary kept for two months (and in extraordinary cases subject to the consent of the labour exchange – three months) if the employee fails to find a new job (offset by the severance pay)

For managerial staff, in case of termination of the employment agreement on the employer's initiative and in the absence of any faulty actions on the part of the employee, the amount of compensation should be fixed in the employment agreement, Article 279 of the LC RF. At the same time, the amount of compensation may not be less than three average monthly salaries.

1.3.6 Documenting the Termination of Labour Relations

A resolution to dismiss an employee is documented by an order that must contain the grounds for the dismissal. Additionally, an entry indicating the grounds for the dismissal is entered in the work book. In the event of terminating an employment agreement, the

employer is obligated to return the work book to the employee on the day when the employment agreement terminates, Article 62 of the LC RF. For unlawful retention of a work book, the employer shall pay the employee monetary compensation.¹²

If an employee is not present at work on his/her final workday, and consequently the work book may not be timely returned to the employee, it is necessary to send written notice to the employee by post, requesting that the employee collect his/her work book or allow for having the work book sent thereto by post. As of the date of sending the said notice the employer is released from responsibility for delay in returning the work book. The return of the work book must be recorded in the company's internal documents, with indication of the date of return as verified by the employee's signature, Article 84.1 of the LC RF.

1.4 Specific Labour Relations

1.4.1 Part-Time Work

In accordance with labour legislation of the RF, a part-time workday or workweek may be agreed upon by an employer and an employee. In certain cases, the employer is obligated, upon the employee's request, to establish a part-time workday or workweek (upon the request of a pregnant woman, the parent of a child under 14 years of age or the primary caretaker of his/her family members), Article 93 of the LC RF.

If an employee has a part-time workday or workweek, he/she receives a wage that is proportionate to the time spent or that depends on the volume of work performed.

1.4.2 Delegating Employees

The notion of "delegation" of employees does not exist in Russian law. Provisions similar to delegation are contained in the Labour Code in respect of specific groups of employees, for example employees of Russian embassies, consulates and representations of Russian state organizations outside the RF. Instead, Russian labour law mentions business trips, whereas the employee's consent is not required for sending him/her on a business trip. Business trips within Russia are, as a rule, limited to 40 days.¹³ In the absence of any special rules, business trips to foreign destinations are not subject to time limits. It is, however, necessary to note that "long-term business trips" are in essence comparable to delegation (for example, delegation for three years to work at a

¹² For more detailed information, see Section 1.8.1 "Liability for Deprivation of the Possibility to Work".

¹³ See Resolution of the Council of Ministers of the USSR "On Business Trips within the USSR" No. 351 dated March 18, 1988.

representative office) and may be considered as an alteration of conditions agreed upon by the parties in an employment agreement. Consequently, if an employee does not agree to a long-term business trip, he/she may not be sent.

1.4.3 Seconding Personnel

Under a secondment agreement, an organization (hereinafter the “Executor”) concludes employment agreements with specialists of necessary qualifications and transfers them to the disposal of another organization to perform certain functions in the interests of the latter (hereinafter the “Customer”).

Russian labour legislation does not provide for the secondment agreement. However, as seconding personnel is often within the economic interests of enterprises, it is practiced in the RF and sometimes referred to as “personnel leasing”.

While executing this type of relations, difficulties appear with application of labour and tax legislation of the RF. Seconding personnel is connected with the following main legal risks:

- risk of recognition of the employment agreement between the Executor and the employee as void
- risk of commencement of labour relations between the Customer and the employee
- risk of recognition of the labour relations between the Executor and the employee or the Customer and the employee as not limited in time
- risk that the employee will demand from the Customer the same working conditions and salary, including all compensation and incentive payments, as those of the members of the labour collective of the Customer
- risk of negative tax consequences, in particular difficulties in the taxation of such activities

In relation to the foregoing, it is recommended that secondment agreements are executed in the form of agreements on rendering services. In order to minimize the risk of recognition of the labour relations between the Executor and employees as not limited in time, the Executor should take into consideration the list of the grounds for concluding a fixed-term employment agreement provided for by the LC RF and ensure that the purpose for seconding an employee to the Customer corresponds with the said grounds. Repeatedly seconding one and the same employee to one and the same Customer increases the risk of recognition of the labour relations as not limited in time.

1.5 Special Cases of Payment of Remuneration to Employees

1.5.1 Remuneration to Employees Working in Special Working Conditions

Article 146 of the LC RF establishes a general rule stipulating that employees working in special working conditions shall be paid an increased amount of remuneration. Special working conditions are understood as the following:

- arduous work – works related to the employee’s hard, physical activities
- detrimental working conditions – working conditions encompassing factors capable of causing disease or impairing the employee’s performance
- dangerous working conditions – working conditions encompassing factors capable of causing trauma, sudden health deterioration, the onset of severe acute forms of occupational diseases, or endangering the lives of employees
- special climate conditions

The list of arduous works, works in detrimental, dangerous and other working conditions should be established by the RF Government in consideration of the opinion of the Russian Trilateral Commission for the Regulation of Social and Labour Relations. To date this list has not been approved and consequently respective regulatory acts of the RF and USSR authorities, which were adopted prior to the LC RF’s entry into force (February 1, 2005), remain in effect with respect to the sections that do not contradict the provisions of the LC RF. The said regulatory acts establish the list of the works, positions, and occupations that encompass detrimental, dangerous, and difficult working conditions, particularly in the spheres of exploration, mining and processing of mineral resources, industrial production, energy, construction, transportation, communications, scientific research, as well as others.

Remuneration to employees involved in arduous works, works in detrimental, dangerous, and other special working conditions shall be increased upon the results of workplace assessments.

Today, the procedure for conducting workplace assessments is regulated by special Regulation approved by Resolution of the Ministry of Labour and Social Development of the RF, No. 12 dated March 14, 1997. Workplace assessments concerning working conditions are aimed at identifying arduous works, works in detrimental, dangerous, and other working conditions. The results of workplace assessments provide the grounds for provision of compensation for work in dangerous working conditions. Workplace assess-

ments are conducted upon the employer's initiative by the employer independently or with the participation of respective laboratories and other expert organizations authorized to perform the said activities.

The particular amounts of salary increases are determined by the employer while taking into consideration the opinion of the employees' representative body or may be established in a collective or employment agreement. However, in any case, such amounts may not be less than the amount established by current legislation.

1.5.2 Remuneration in case of Additional Work within the Established Duration of Working Time

Additional work within the established duration of working time in the same or another profession (position) may be assigned to an employee upon his/her written consent and for additional remuneration, Article 151 of the LC RF. The legislator distinguishes such types of additional work as combination of professions (positions), fulfillment by an employee of the duties of an employee temporarily absent from work, expansion of service areas, and increase of the volume of works. In all these cases, it is presumed that such additional work is performed for one and the same employer, without releasing the employee from his/her main works, and is considered by labour legislation as work performed in abnormal working conditions.

Upon the instructions of the employer, an employee who performs additional works receives additional payments. The amount of the additional payments is established upon agreement of the parties to the employment agreement, but may not be less than as established by RF legislation. In particular, the amount of such payments for fulfilling the duties of an employee temporarily absent from work should not be less than the difference between the official salary of the employee who has performed the work and the official salary of the absent employee.¹⁴ Previously effective restrictions concerning the maximum amount of additional payments established by statutory acts of state authorities of the USSR are currently void, and the parties to an employment agreement are not bound by any other restrictions.

1.5.3 Payment for Downtime Periods

Article 157 of the LC RF regulates issues concerning salary payments in cases of downtime. Downtime is a temporary suspension of work due to economic, technological, or organizational reasons. During downtime, employees are unable to fulfill their duties under employment agreements.

¹⁴ See Explanations of the State Labour Committee of the USSR No. 30 dated December 29, 1965.

An employer does not pay salary to an employee during a downtime period that commenced due to such employee's fault, for example coming to work in a state of alcoholic intoxication.

An employer is obligated to pay employees at least 2/3 of their average salaries if downtime has commenced due to the employer's fault and provided that the employees have notified the employer in writing of the impossibility to fulfill the employment functions. Examples of downtime that has commenced due to the employer's fault include production downtime due to a lack of raw materials as well as suspension of production in accordance with a resolution of state authorities due to the employer's performance of production activities which endanger the health of employees.

An employer is obligated to pay employees at least 2/3 of their wages or salaries in proportion to the period of downtime if the downtime has commenced due to the employer's fault and provided that the employees have notified the employer in writing of the impossibility to fulfill the employment duties. Causes beyond the parties' control include, in particular, suspension of production due to natural disasters, major accidents, and other emergency situations.

During downtime the employer is also obligated to pay those employees who are not taking part in a strike which renders them unable to perform their work, provided that such employees have notified the employer in writing of the commencement of the downtime caused by such strike.

1.5.4 Payments to Employees During Periods of Temporary Disability

Pursuant to Article 183 of the LC RF, employers are obligated to pay employees allowances for temporary disability caused by disease, illness, or trauma.

Today, the amount of an allowance depends on the number of years the employee has worked uninterruptedly. Thus, if the employee has worked uninterruptedly for more than eight years, the allowance equals 100% of the salary amount; if the number of years worked uninterruptedly varies from five to eight, the allowance equals 80% of the salary amount, and 60% of the salary amount is paid if the number of years worked uninterruptedly is less than five.¹⁵ However, in accordance with a ruling of the Constitutional Court of the RF,¹⁶ this provision is recognized as contradictory to the Constitution of the Russian Federation and becomes invalid on January 1, 2007.

¹⁵ Resolution of the Council of Ministers of the USSR and the Union-wide Central Council of Trade Unions (VTsSPS) "On State Social Insurance Allowances", No. 191 dated February 23, 1984.

¹⁶ Ruling of the Constitutional Court No. 16-é dated March 02, 2006.

At the same time, in accordance with the Federal Law "On Certain Issues of Calculating and Paying Allowances for Temporary Disability, Maternity Allowances and Amounts of Mandatory Social Insurance with respect to Industrial Accidents and Professional Diseases in 2006" No. 180-FZ dated December 22, 2005, regardless of the number of years worked at a company, the maximum amount of temporary disability allowance may not exceed 15,000 rubles (approximately EUR 440) per month. This restriction worsens the financial situations of highly paid employees whose salary amounts exceed the maximum amount of temporary disability allowance, but this may be compensated at the employer's expense.

Employers are reimbursed by the Social Insurance Fund for amounts of disability allowances paid out to employees, subject to the employers' payment of the unified social tax,¹⁷ with the exception of allowances for the first two days of disability, which are completely paid for by employers at their own expense.

Any disease, illness, or trauma is to be confirmed by a disability certificate issued by a respective medical institution. A disability certificate is issued for 10 days and may be extended up to 30 calendar days. If a period of temporary disability exceeds 30 calendar days, a decision on further medical treatment of the employee is to be made by a clinical-expert commission appointed by the management of the medical institution. Upon the decision of the clinical-expert commission, in case of a favorable medical and employability prognosis, the disability certificate may be extended before complete rehabilitation, but for no longer than 12 months. In case of an unfavorable prognosis, the employee is sent to a medical-social examination, upon whose conclusion he/she may be recognized as handicapped. If upon the conclusion of the medical-social examination, the employee is not recognized as handicapped, the disability certificate is extended in accordance with the procedure established by regulatory acts. Employers shall pay disability allowances for entire periods of medical treatment, regardless of the duration thereof.

A conclusion of a medical-social examination may provide grounds for termination of an employment agreement if the employee is recognized as fully incapable of performing labour activities due to the state of his/her health, Article 83 of the LC RF, for transfer of the employee to another job that suits him/her in accordance with the medical conclusion, or for termination of the employment agreement in case the employee needs to be transferred to another job for a period over four months or permanently due to the medical conclusion and he/she refuses such transfer or the employer has no respective job, Articles 73 and 77 of the LC RF.

¹⁷ See Section 4.1 "Unified Social Tax".

1.6 Rights of Certain Categories of Employees

Labour legislation of the RF provides for a number of provisions granting special rights to handicapped individuals, pregnant women, mothers, and members of trade union bodies.

1.6.1 Handicapped Individuals

In accordance with Article 92 of the LC RF, the normal duration of working hours – 40 hours per week – is reduced by 5 hours per week for handicapped individuals of categories 1 and 2.

Moreover, upon a handicapped individual's request, the employer is obligated to grant him/her leave without pay of up to 60 days per year, Article 128 of the LC RF.

Handicapped individuals may be engaged to perform nightwork and overtime work only upon their written consent, provided they are not prohibited from performing such work due to the state of their health, Part 5 of Article 96 and Part 5 of Article 99 of the LC RF.

To ensure the employment of handicapped individuals, Russian legislation provides for quotas for their employment. Article 21 of the Federal Law "On Social Protection of Handicapped individuals in the Russian Federation" dated November 24, 1995, and the regional legislation of RF subjects establish quotas for the employment of handicapped individuals ranging from 2% to 4% of the average number of employees for organizations employing more than 100 persons.

1.6.2 Pregnant Women and Persons with Family Obligations

Women are entitled to maternity leave of 70 calendar days before childbirth and 70 calendar days following childbirth, Article 255 of the LC RF. Maternity leave is granted upon a female employee's request on the basis of a medical conclusion. While on maternity leave, a female employee is paid a social benefit from the Social Insurance Fund in the amount equal to her average monthly salary at work for the last twelve months, which currently may not exceed 15,000 rubles (approximately EUR 440).

Furthermore, in accordance with Article 256 of the LC RF, a female employee is entitled to maternity leave until her child reaches the age of three. A mother is entitled to a monthly benefit paid by the Social Insurance Fund until the child reaches the age of one and a half years. The amount of the benefit is 700 rubles (approximately EUR 20) per month.

It is necessary to note that childcare leave may also be fully or partially taken by a child's father, grandmother, grandfather, another relative or guardian looking after the child.

Pregnant women are prohibited from performing nightwork and overtime work as well as work on holidays and days-off and from being sent on business trips, Part 1 of Article 259 of the LC RF. Mothers with children under three years may perform nightwork and overtime work only upon their written consent, provided they are not prohibited from performing such work due to the state of their health, Part 2 of Article 259 of the LC RF. This provision also applies to single parents taking care of children under five years or handicapped children as well as to employees looking after sick members of their families, Part 3 of Article 259 of the LC RF. Furthermore, legislation prohibits dismissing pregnant women and persons with family obligations (women with children under three years, single mothers with children under fourteen years or handicapped children under eighteen years, as well as other persons raising motherless children), with the exception of dismissing a woman due to the expiry of her employment agreement during the period of pregnancy if such agreement was concluded for fulfilling the duties of an employee temporarily absent from work and it is impossible to relocate the woman upon her written consent by the end of her pregnancy to another job with the same employer (a vacant position or job corresponding to the woman's qualifications, a lower vacant position or a lower paying job), provided such work may be performed by the woman in consideration of the state of her health.¹⁸

1.6.3 Members of Trade Unions

Employees who are elected members of trade union collegial bodies may be dismissed due to redundancy, insufficient qualifications, or repeated non-fulfillment of official duties without a valid reason only in consideration of the reasoned opinion of the elected trade union body of the organization, Article 374 of the LC RF. When dismissing members of trade unions on the same grounds, employers must consider the reasoned opinion of the elected trade union body, Article 373 of the LC RF.

For periods of participating as delegates in the work of congresses and conferences held by trade unions, or for periods of participating in the work of elected trade union collegial bodies, members of trade unions are released from their main duties by the employers. The conditions of a release from main duties and the procedure for paying salaries during the period of such a release are determined by the collective agreement and/or individual employment agreements, Article 374 of the LC RF.

¹⁸ For more details, see Section 1.3.4 "Prohibited Dismissals".

Finally, a trade union employee who has been released from work due to his/her election (delegation) to an elected post in a trade union body shall, upon the expiration of the term of his/her powers, be provided with his/her former job, or if such former job is unavailable – with another equal job at the same organization. If the former job may not be provided due to termination of the employer’s activities or absence of a suitable position, the employee keeps receiving the average salary for one year, such payments being made at the expense of the Russian (inter-district) trade union, Article 375 of the LC RF.

1.7 Financial Liability of Employees

In accordance with Articles 233 and 238 of the LC RF, an employer is entitled to claim from an employee direct actual damages incurred as a result of an illegal action or omission by the employee. In accordance with the LC RF, direct actual damages include:

- a tangible decrease in the employer's property
- a deterioration of the condition of the employer’s property or of third parties’ property kept by the employer and for whose safety the employer is responsible
- necessary expenses for acquiring or restoring property
- compensation by the employer for damage inflicted by an employee upon third parties

By virtue of direct reference of law, employers may not claim lost profits from employees, Part 1 of Article 238 of the LC RF. Chief executives of organizations are the exception to the rule. Chief executives, for example the general director of a limited liability company or a joint stock company, are liable to their employing organizations for losses they have caused, including for lost profits, Article 277 of the LC RF, Article 44 of the FZ “On LLC”, Article 71 of the FZ “On JSC”. As a general rule, chief executives of companies (general director, members of the board of directors/supervising board) are not financially liable to the companies’ creditors. However, subsidiary liability may be imposed on chief executives in the cases established by legislation. For example, a chief executive bears subsidiary liability to the company’s creditors if the company has become insolvent through his/her fault and does not have enough property at its disposal, Part 3 of Article 3 of the FZ “On LLC”, Part 3 of Article 3 of the FZ “On JSC”.

The LC RF distinguishes between limited and full financial liability. As a general rule, an employee who has caused losses to an employer shall be liable within the limits of his/her average monthly salary (limited liability), Article 241 of the LC RF. This means that the employer may not claim from the employee damages that exceed his/her average monthly salary.

Full financial liability means that an employee is obligated to compensate for all losses that he/she has caused to the employer, even if such losses significantly exceed his/her average monthly salary. The employee shall bear full financial liability only in the cases directly stipulated by the LC RF, Article 242 of the LC RF.

The following cases are examples of damage subject to full financial liability, Article 243 of the LC RF:

- malicious damage
- damage caused while inebriated
- damage caused as a result of the employee's criminal actions as established by a court
- shortage of valuables entrusted to the employee on the basis of documents
- damage caused not while fulfilling employment duties
- damage caused as a result of disclosure of a legally protected secret, including a commercial secret

In accordance with Article 277 of the LC RF, the head of a company bears full financial liability for damage inflicted upon the company. Furthermore, full financial liability may be established in the employment agreement with the deputy chief executive and with the chief accountant, Article 243 of the LC RF.

In accordance with Article 244 of the LC RF, employers are entitled to enter into agreements on full individual or collective financial liability with employees above eighteen years of age who directly attend to or use monetary or other valuables or property of the company, provided that the position of the employee attending to the material valuables is specified in the List of Positions approved by Decree of the Ministry of Labour and Social Development of the RF dated December 31, 2002. According to this List, agreements on full financial liability may be concluded, in particular, with cashiers, shop assistants, heads of departments of organizations performing trading, catering, and public service activities, as well as storekeepers, chemists, and pharmacists, etc.

The LC RF also contains a number of provisions on the procedure for claiming damages from an employee. If the damages caused by an employee do not exceed his/her average monthly salary, the employer shall be entitled to claim damages from the employee out of court, i.e. on the basis of a written order of the employer, which must be issued no later than within one month from the date of final determination of the amount of the damages and the causes thereof, Part 1 of Article 248 of the LC RF.

If the amount of the damages caused to the employer exceeds the employee's average monthly salary and the one month term for imposing sanctions has lapsed or the employee does not agree to compensate for the damages voluntarily, the employer shall be entitled to claim damages only on the basis of a court ruling, Part 2 of Article 248 of the LC RF.

An employer that is entitled to collect damages from an employee on the basis of a court ruling or out of court procedure may deduct the amount of damages from the employee's salary in portions. As a rule, the total amount of all deductions from each salary payment may not exceed 20%; however, in cases provided for by legislation, for example in case of compensation for damages incurred via a crime, the employer may deduct up to 70% from the employee's salary, Article 138 of the LC RF.

1.8 Financial Liability of the Employer

The LC RF provides for four main cases of financial liability of the employer: compensation for damages due to deprivation of the possibility to work pursuant to Article 234; compensation for damages to property of the employee pursuant to Article 235; the employer's liability for delaying payment of salary pursuant to Article 236; and compensation for emotional distress pursuant to Article 237.

1.8.1 Liability for Deprivation of the Possibility to Work

An employer is obligated to indemnify an employee for unpaid salary in case of illegal deprivation of the possibility to work, Article 234 of the LC RF. Among such cases are, in particular, unfair dismissal, illegal transfer to another job, delays in obeying a court ruling to reinstate employment (in accordance with Article 396 of the LC RF, such a judgment must be immediately obeyed), and illegal delay in returning the work book.

An employer shall indemnify an employee for damages in the amount equal to his/her average salary for the entire period of his/her forced absence or in the amount of the difference in salary for the entire period of performance of lower paying work, Article 394 of the LC RF.

1.8.2 Compensation for Damages to Property of an Employee

In accordance with Article 235 of the LC RF, an employer who has inflicted damages upon property of an employee is obligated to fully compensate for such damages at market prices.

In particular, the employer must compensate for damages to the employee's property used for production purposes, for example in case of a car accident if the employee uses his/her personal vehicle for business trips.

An employee wishing to receive compensation from an employer for damages must submit a claim for the damages to the employer. The employer is obligated to decide to compensate or not to compensate for the damages within ten days from the date of receipt of the claim. An employee not in agreement with the employer's decision is entitled to address a court with a respective claim pursuant to Article 235 of the LC RF.

1.8.3 Liability for Delaying Payment of Salary

An employer that fails to meet deadlines for paying salary, leave allowances or other sums due an employee shall be required to pay such financial obligations along with interest of at least 1/300th of the current Central Bank refinancing rate for each day of delay. In accordance with Article 236 of the LC RF, the obligation to pay the said interest arises regardless of fault of the employer.

In case of a delay in payment of salary of more than 15 days, the employee shall be entitled, having preliminarily notified the employer in writing, to stop working until the outstanding salary is paid. This right does not apply to employees of organizations attending to especially dangerous types of production or related to vital public functions, public servants, as well as all employees during martial law, a state of emergency or other special measures taken in accordance with emergency legislation, Article 142 of the LC RF. During the suspension of work the employee is entitled to be absent from the workplace and is obligated to return to work only on the day following receipt of the employer's written notification of readiness to effect the salary payment, Article 142 of the LC RF.

In case of non-payment of salary for more than two months, the employer may be held criminally liable, Article 145 of the LC RF.

1.8.4 Compensation for Emotional Distress

Emotional distress is an employee's moral or physical suffering resulting from unjust actions of the employer.

An employee and an employer are entitled to determine in the employment agreement the amount of monetary compensation to be paid to the employee in case of emotional distress caused to him/her by unjust actions or omissions of the employer, Article 237 of the LC RF.

The amount of compensation for emotional distress is determined by a court in consideration of the particular circumstances of the case, the amount and type of moral or physical suffering, the extent of the employer's fault, other circumstances worth considering, as well as requirements of rationality and fairness.

Compensation for emotional distress is effected in money, in the amount determined by agreement of the employer and the employee, and in case of a dispute the fact of emotional distress caused to the employee and the amount of compensation shall be determined by a court, regardless of property damage subject to compensation.

1.9 Control over Observance of Labour Legislation

1.9.1 Powers of the Federal Labour Inspectorate

Implementation of state monitoring of and control over the observance of legal acts containing labour law regulations is the obligation of the Federal Labour Inspectorate, Article 353 of the LC RF.

In particular, the Federal Labour Inspectorate is entitled to:

- exercise control over observance of labour legislation by employers; investigate cases of administrative violations; analyze the circumstances of discovered violations; take measures to eliminate violations and restore violated rights; generalize the practice of application; analyze grounds of violations of labour legislation and prepare respective proposals for their improvement as well as forward the respective information to state and municipal executive authorities, law enforcement agencies and courts
- exercise control over observance of employees' rights when conducting investigations of industrial accidents; participate in investigations of industrial accidents and conduct such investigations independently; exercise control over receipt by employees of funds under mandatory social insurance against industrial accidents and occupational diseases as well as assign and pay out benefits for temporary disability at the expense of employers
- receive and review applications and other appeals from citizens regarding violations of their labour rights; take measures to eliminate discovered violations and restore violated rights
- review proceedings on administrative offenses in accordance with legislation of the Russian Federation
- inform and consult employers, employees and the public on issues of observance of labour legislation

Furthermore, the Federal Labour Inspectorate, jointly with executive labour protection authorities of the subjects of the RF, conducts state inspections of working conditions. The objective of a state inspection of working conditions is to monitor the quality of ratings of workplaces on working conditions, the correctness of granting compensation to employees for arduous work and work in hazardous and dangerous conditions, actual working conditions of employees, as well as the compliance of construction and reconstruction projects for industrial facilities and introduction of new technologies with the state requirements for labour protection, Article 216.1 of the LC RF.

For exercising the given powers, state labour inspectors are granted the following rights:

- to visit enterprises of any ownership form and at any time
- to request from employers any information necessary for control and monitoring
- to sample materials and substances used in industrial processes for analysis
- to conduct investigations of industrial accidents
- to give employers binding instructions on remedies for breaches of labour legislation and prosecution of those responsible
- to forward a demand to a court for the liquidation of organizations or their structural divisions
- to initiate proceedings on administrative liability of individuals in breach of labour legislation as well as submit documents to law enforcement authorities for the criminal prosecution of these individuals, Article 356 of the LC RF

1.9.2 Grounds for Inspection by the Federal Labour Inspectorate

According to the Federal Labour Inspectorate,¹⁹ it conducts inspections in the following cases:

- complaints of employees (those currently employed, those who have been dismissed, as well as individuals who were refused conclusion of an employment agreement on the grounds of the results of an interview) – about 95% of all cases

¹⁹ Valentina Mitrofinina at the German Economic Union's Conference "Tension Spheres and Conflicts while Working with Personnel (from Representative Offices to Major Companies)", June 22, 2004, in Moscow.

- scheduled inspections (once every two years) – about 1% of all cases
- reasonable decision of the Federal Labour Inspectorate (e.g. if many offenses have been revealed as a result of inspecting a company belonging to a certain industry, other companies in the same industry may be inspected) – about 4% of all cases

In the course of an inspection, the Federal Labour Inspectorate most often reveals the following offenses:

- absence of internal documents required by legislation
- non-compliance of internal documents and employment agreements with labour legislation
- errors in maintaining work books
- non-observance of labour protection rules

For maximum reduction of the possibility of discovery of violations of labour legislation during inspections by the Federal Labour Inspectorate, it is recommended that the employer instruct its employees – lawyer, chief accountant and/or HR manager – to analyze changes in labour legislation on a regular basis and pay special attention to the necessity to timely prepare internal documents of the organization pertaining to labour relations with employees and to duly formalize all primary documentation, in particular those referring to payments of salaries and wages.

1.9.3 Liability of the Employer – Legal Consequences

In particular, employers are liable for:

- breach of labour and labour protection legislation
- refusal to participate in negotiations concerning the conclusion of a collective agreement and failure to provide information required for conducting collective negotiations²⁰
- unjustified refusal to conclude a collective agreement
- failure to fulfill obligations under a collective agreement

²⁰ See Section 2.5 “Collective Agreements”.

- dismissal of employees due to collective labour disputes or for calling for strike
- breach of rules on employment of foreign employees

Fines may be imposed on an employer's officials in amounts ranging from 5 to 50 MWs (the current MW for the purpose of calculating administrative fines is 100 rubles, which equals approximately EUR 3). Discovery of further offenses may entail the imposition of sanctions in the form of prohibition from occupying certain posts for a term ranging from one to three years, Article 5.27 of the CAO RF.

Currently, the development of the practice of imposing sanctions in the form of fines or prohibitions from occupying certain posts for violations of labour legislation is moving in the direction of amplification of the state monitoring of economic activities.

For example, according to operational information on the activities of state labour inspectorates of the RF in the first quarter of 2006,²¹ the total number of offenses discovered by state labour inspectorates during inspections grew fourfold compared to the same period last year. The number of cases of disciplinary liability initiated by claims of state labour inspectors grew almost twofold. Incidents of imposition of administrative fines and criminal cases initiated after inspections also increased by more than 30%.

1.10 Labour Protection

1.10.1 Obligations of an Employer

In accordance with labour legislation of the RF, the following, in particular, are among an employer's obligations:

- to ensure the safety of employees during use of buildings, facilities and implementation of production processes
- to ensure the application of certified means of personal and collective protection of employees
- to establish the work and rest schedule of employees in accordance with labour legislation
- to train employees on safe methods and techniques for performing work and on first aid treatment, to instruct on labour safety

²¹ See <http://www.rostrud.info/download/0305-1.doc> as of September 1, 2006.

- to not allow persons not trained and instructed in labour safety to work
- to rate workplaces on working conditions, with subsequent certification of the organization of the work in view of labour safety
- to organize preliminary and periodic health examinations as well as compulsory psychiatric examinations of employees in all cases stipulated by legislation

Preliminary and periodic medical examinations are compulsory for employees engaged in arduous or harmful and hazardous work, in occupations related to traffic flow, for workers of food industry enterprises, catering and trade facilities, waterworks, medical and preventive treatment facilities, child care centers as well as certain other types of enterprises. A psychiatric examination is compulsory for employees performing certain types of activities, such as working under conditions of heightened danger.

- to inform employees of the conditions and protection of labour at workplaces, of the risk of damage to health and the respective compensation, as well as of the means of personal protection
- to investigate and maintain records of industrial accidents and occupational diseases
- to provide for sanitary, medical and preventative treatment for employees as well as transportation of employees to medical institutions if urgent medical treatment is needed due to trauma or exacerbation of a disease taking place at work

1.10.2 Organization of Labour Protection

One of the main directions of state policy on labour protection is the conducting of state examinations of working conditions, which consists of assessment of the examined object's compliance with regulatory requirements of labour protection.

Examinations are conducted by an authorized state body on the basis of court rulings, appeals of executive authorities, employers, employees, trade unions, or other representative bodies authorized by employees, bodies of the Social Insurance Fund of the RF.

For the purpose of ensuring that labour protection requirements are observed, each employer performing production activities²² and whose personnel exceeds 50 people is

²² Production activities are all activities of employees with application of working materials that are necessary for transforming resources into ready production, including production and processing of various types of raw materials, construction, and rendering of different types of services, Article 209 of the LC RF.

obligated to establish an occupational safety service or provide for a labour protection specialist having the relevant qualifications or experience in this field.

In case of absence of a staff specialist, his/her functions are exercised by the head of the organization, another employee authorized by the employer or specialists rendering services in the area of labour protection on the basis of a civil law agreement. Heads of organizations or other employees exercising the functions of labour protection specialist shall undergo training in accordance with the procedure established by legislation of the RF. Organizations rendering services in the area of labour protection are subject to compulsory state accreditation.

1.10.3 Ensuring Employees' Rights to Labour Protection

The following, in particular, are among an employee's rights established in the LC RF:

- the right to a workplace meeting the requirements of labour protection
- the right to mandatory social insurance against industrial accidents and occupational diseases in accordance with federal law
- the right to refuse to work in case of occurrence of any danger to the employee's life and health as a result of violations of requirements of labour protection, with the exception of cases provided for in federal laws, until such danger is eliminated
- the right to request an examination of the conditions and protection of labour at the employee's workplace by an authorized state body

In accordance with requirements of labour protection, in certain cases the employer is obligated to furnish sanitary facilities, dining premises, first aid premises, recreational facilities, etc.

Accidents that have happened to employees or other people participating in the production activities of the employer during the performance of their employment duties or any work commissioned by the employer, as well as during the performance of other lawful actions resulting from labour relations with the employer or performed in its interests, must be recognized as industrial accidents. An employee who has suffered an industrial accident shall be transported to a medical institution or to his/her residence by means of transportation of the employer or at its expense.

In case of an industrial accident, the employer is obligated to:

- immediately provide first aid to the aggrieved person and, if necessary, to transport him/her to a medical institution
- ensure that the scene of the accident remains unchanged, or sketch, photograph, video or take other measures prior to the beginning of the investigation
- immediately inform the authorized bodies about the accident, and in case of a serious accident or deadly accident, inform relatives of the aggrieved person as well
- take other necessary measures

2. Collective Labour Law

2.1 Social Partnership in the Labour Sphere

Social partnership is a system of mutual relations between employees (or representatives of employees), employers (or representatives of employers), state authorities, as well as local self-governing bodies, aimed at ensuring the concordance of interests of employees and employers with regard to the regulation of labour relations and other relations directly connected with them.

Legislation provides for the following forms of social partnership:

- collective negotiations on preparation of drafts of collective agreements and their conclusion, as well as on issues of regulation of labour relations and provision of guarantees of the labour rights of employees
- participation of employees and their representatives in the management of an organization
- participation of representatives of employees and employers in out-of-court resolution of labour disputes

2.2 Representatives of Employees. Trade Unions

Representatives of employees are trade unions and their associations or other representatives elected by the employees. Employees who are not members of a trade union are entitled to authorize a body of a shop-floor union organization to represent them in relations with the employer. At the same time, the LC RF provides for the possibility of election by the employees of another representative of their interests in the social partnership at the local level.

In accordance with Clause 1 of Article 2 of the FZ “On Trade Unions”, a trade union is a voluntary public association of citizens united by common industrial and professional interests which is established for the purposes of representation and protection of their social and labour rights and interests.

Trade unions are, as a rule, formed on a branch, regional, or regional-branch basis and may establish alliances (associations) of trade unions.

Trade unions have the following basic rights:

- the right to represent and defend the social and labour rights and interests of employees
- the right to conduct collective negotiations, conclude agreements and collective contracts on behalf of employees, as well as to supervise the fulfillment of these agreements
- the right to promote employment
- the right to information in order to conduct their activities in accordance with the Articles of Association
- the right to protect the interests of employees in authorities investigating labour disputes
- the right to monitor employers' observance of labour legislation, and in case of discovering any breach, to demand that such breach be remedied and that a report on the remedial measures be submitted
- the right to conduct negotiations on observance of the rights and interests of the members of the trade union in case of liquidation of the organization, full or partial suspension of production, as well as other cases entailing a reduction in workplaces or a deterioration of working conditions

Legislation also establishes that in cases stipulated by collective agreements the employer is obligated to provide trade unions acting in the company with free-of-charge use of equipment, premises, and means of transportation and communication necessary for their activities.

2.3 Employers' Associations

In accordance with Article 33 of the LC RF, an employers' association is a non-commercial organization that unites, on a voluntary basis, employers for the purposes of representation and protection of the members thereof in relations with trade unions, other representatives of employees, state and local self-governing authorities.

Like trade unions, employers' associations are, as a rule, formed on a branch, regional, or regional-branch basis. Alliances of employers' associations may be established, as well.

The basic rights of employers' associations are established by Article 13 of the Federal Law "On Employers' Associations" dated November 27, 2002. The most important rights are as follows:

- the right to defend the lawful interests and protect the rights of their members in relations with trade unions, state and local self-governing authorities
- the right to initiate collective negotiations on preparation, conclusion, and amendment of agreements
- the right to information necessary for conducting collective negotiations
- the right to initiate labour legislation

2.4 Agreements on the General Principles of Regulation of Social and Labour Relations

In accordance with labour legislation of the RF, agreements between employees and employers are legal acts regulating labour relations and establishing general principles of regulation of economic relations connected therewith, to be concluded between representatives of the employees (trade unions) and representatives of the employers (employers' associations) on the federal, regional (interregional), branch (inter-branch), and territorial levels within their authorities.

In their agreement, the parties stipulate their mutual rights and obligations as regards remuneration, working conditions and labour protection, the work and rest schedule, development of social partnership, as well as other issues determined by the parties. The terms and conditions of the agreement apply to the employees and employers that have authorized their representatives to prepare and conclude such agreement on their behalf through collective negotiations, as well as to the employees and employers that have joined the agreement after it was concluded. The agreement applies to all employers that are or were at the moment of conclusion members of an employers' association that has concluded the agreement. Termination of membership in the employers' associations shall not release an employer from performance of the agreement concluded during its membership.

A draft agreement is to be prepared during collective negotiations between employees' and employers' representatives. The procedure for conducting collective negotiations for the purposes of preparing for conclusion of the agreement is regulated by the LC RF.

The agreement shall enter into force on the date of its signing by the parties or on the date determined in the agreement. The term of the agreement shall be determined by the parties, but may not exceed three years. The parties are entitled to extend the agreement for a term not exceeding three years.

2.5 Collective Agreements

In accordance with labour legislation of the RF, a collective agreement is a legal act regulating the social and labour relations in the particular organization, concluded between the employees (as represented by the company's trade union or another party authorized by the employees) and the employer. The collective agreement may be concluded by the entire organization, its branches, representative offices, and other separate structural subdivisions. The collective agreement concluded in a subdivision of the organization (branch, representative office) shall apply only to the employees of the respective subdivision.

In their collective agreement, the parties stipulate their mutual rights and obligations as regards remuneration, payment of allowances and compensation, the work and rest schedule, improvement of conditions of labour protection of the employees, as well as other issues stipulated in Article 41 of the LC RF or determined by the parties. For example, a collective agreement can include conditions of full or partial payment for meals of the employees and it can provide for the procedure for notifying employees of the performance of the collective agreement. The legislator attaches particular significance to the inadmissibility of conclusion of collective agreements on behalf of employees by entities representing interests of employers or by representatives of bodies financed by an employer.

A collective agreement shall enter into force on the date of its signing by the parties or on the date determined in the agreement. The term of a collective agreement shall be established by the parties, but may not exceed three years. The parties shall be entitled to extend the agreement an unlimited number of times for a term not exceeding three years.

Monitoring of the performance of a collective agreement is to be conducted by the parties to the social partnership, their representatives, and the respective labour authorities. In the course of the abovementioned monitoring, the representatives of the parties are obligated to provide each other and the respective labour authorities with the necessary information not later than one month from the date of receipt of a respective request, Article 51 of the LC RF.

2.6 Internal Regulatory Acts Adopted by Employers

In accordance with Article 8 of the LC RF, employers are entitled to adopt internal regulatory acts containing rules of labour law. The main purpose of such acts is to fix labour legislation provisions related to the particularities and conditions of the activities of the particular organization. The guidelines of internal labour policy of the employer, regulations on commercial secrets, and regulations on remuneration and bonuses are all among the most important internal regulatory acts.

Certain acts of the employer are adopted solely through its management bodies (in particular, instructions, orders containing rules of law), while others are adopted in consideration of the opinion of the employees' representative body. For example, acts concerning the remuneration and incentive system (Article 135 of the LC RF) and the guidelines of internal labour policy (Articles 189 and 190 of the LC RF) must be adopted in consideration of the opinion of the employees' representative body.

Article 372 of the LC RF determines the procedure for considering the opinion of the representative body while adopting an internal regulatory act.

It is important to note that in accordance with the LC RF both internal regulatory acts that worsen the employees' situation, as compared to labour legislation and collective and other agreements, and acts adopted without consideration of the opinion of the employees' representative body are invalid. In such cases, labour legislation of the RF and other regulatory acts containing rules of labour law, collective and other agreements are applied.

2.7 Right of Employees to Participate in Management of the Organization

Articles 21 and 52 of the LC RF establish the right of employees to participate in the management of the organization. Employees exercise the said right either directly or through their representative bodies in accordance with the procedure provided for by the LC RF, other federal laws, the organization's foundation documents, and the collective agreement.

Article 153 of the LC RF determines the main forms of employee participation in the management of the organization. They include:

- consideration of the opinion of the employees' representative body in cases provided for by the LC RF or the collective agreement (e.g. dismissal of an employee who is a trade union member)
- consultation by the employees' representative body with the employer on issues concerning adoption of internal regulatory acts containing rules of labour law
- receipt of information from the employer concerning issues directly affecting the employees' interests (including reorganization and liquidation of the organization, introductions of technological changes entailing alterations of the employees' working conditions, etc.)
- participation in the preparation and approval of collective agreements

- discussion of issues with the employer concerning the activities of the organization, provision of proposals on their improvement
- discussion with the employees' representative body of plans for social and economic development of the organization

Participation in the management of the organization can also be in other forms stipulated by the LC RF, foundation documents of the organization, collective agreement or internal regulatory acts of the organization.

2.8 Strike

A strike is one of the means of resolving a collective labour dispute. The right of employees to strike is stipulated by Article 37 of the Constitution of the Russian Federation and Article 409 of the LC RF.

In accordance with the LC RF, employees are entitled to organize a strike (1) if there is a dispute between them and the employer concerning working conditions (e.g. salary), conclusion, amendment, or observance of the collective employment agreement, and (2) if the conciliation procedures have not led to resolution of the dispute, as well as if the employer avoids conciliation procedures or does not implement the agreement reached in the course of resolving the collective labour dispute.

A resolution to announce a strike is adopted by a meeting (conference) of the employees. The employer must be notified in writing of the commencement of the impending strike no later than ten calendar days prior to the strike. A resolution on the employees' participation in the strike announced by the trade union is adopted by the meeting (conference) of the employees without conciliation procedures.

For the period of a strike, the employees participating therein shall keep their jobs and positions. Moreover, lockout (dismissal of employees upon the employer's initiative on grounds of their participation in the dispute) is prohibited. The employer is, however, entitled to not pay salaries to the strike participants during the strike.

Legislation provides for cases in which strikes are prohibited. In such cases, a court may declare a strike illegal. A strike may also be declared illegal if there is a valid collective employment agreement or if the strike was announced without observance of the terms, procedures, and requirements stipulated by the LC RF. Employees who have initiated an illegal strike or who have not stopped a strike on the day following notification of the body in charge of the strike of an effective court ruling declaring the strike illegal may be disciplined for violating labour discipline in the form of a reprimand or, in case of absence of the employee from his/her workplace for more than four hours, in the form of dismissal.

3. Resolution of Labour Disputes

Russian legislation divides labour disputes into collective and individual disputes. Depending on its type, a dispute is considered by special authorities or by a court.

3.1 Individual Labour Disputes

An individual labour dispute can be a dispute over unsettled differences between an employer and an employee on issues concerning application of labour legislation, a collective agreement, an internal regulatory act or the employment agreement. An individual labour dispute can also refer to a dispute between an employer and a party that had previous labour relations with the employer as well as an entity with whom the employer refused to conclude an employment agreement.

Individual labour disputes are considered by special commissions for labour disputes or by a court. Any individual labour dispute may be taken to both a commission for labour disputes and to a court, with the exception of disputes that may be settled only in court.

Courts directly consider individual labour disputes in the following cases:

When the employee acts as claimant in the action:

- reinstatement of employment
- changes in the date and wording of the cause of dismissal
- transfer to another job
- payment of wage/salary
- wrongful acts (omissions) of the employer and protection of personal data of the employee, Article 391 of the LC RF

When the employer acts as claimant in an action pertaining to compensation for damages inflicted upon the employer by an employee.

Furthermore, the following individual labour disputes are within a court's exclusive jurisdiction:

- between an employee and an employer being an individual that is not an individual entrepreneur
- between an employee and an employer being a religious organization
- on refusal to hire
- regarding alleged discrimination in the workplace

Commissions for settlement of labour disputes are established in enterprises on the initiative of employees or the employer and comprise representatives of both parties on a parity basis. The procedure for the establishment and operation of a commission is governed by the LC RF. If a labour dispute is resolved by a commission for labour disputes, the decision of the commission may be challenged in a general jurisdiction court.

The term for filing a suit or appealing to a commission for labour disputes is three months from the date the employee learned or should have learned of the violation of its rights. In case of dismissal, the term is one month from the date of issuance of a copy of the dismissal order or the work book.

An employer is entitled to file a suit against an employee pertaining to compensation for damages within one year after the damages were discovered. The said terms may be reinstated accordingly by a commission for labour disputes or a court in case of valid reasons. Lapse of the limitation periods in absence of valid reasons serves as a ground for a court to reject a suit.

Court practice concerning labour disputes predominantly inclines toward defending the interests of employees.

3.2 Collective Labour Disputes

Collective labour disputes are unsettled differences between employees (their representatives) and employers (their representatives) on issues connected with working conditions, collective contracts and agreements as well as employers' refusal to consider opinions of elected representative bodies of employees while adopting internal regulatory acts.

Claims lodged by employees or their representative body shall be approved at the respective meeting of the employees, fixed in writing and submitted to the employer. The employer is obligated to accept the employees' claims for consideration. The decision on the submitted claims is reported by the employer to the representative body of the employees in writing within three working days as of the date of receipt of the said

claims. The date of commencement of a collective labour dispute is the date the employer reports that it has decided to reject all or a part of the claims of the employees or the date the employer fails to report its decision in due time.

The procedure for resolution of collective labour disputes significantly differs from the procedure for consideration of individual labour disputes and consists of the following stages:

- consideration of the collective labour dispute by the conciliation commission
- consideration of the collective labour dispute with a mediator and/or in labour arbitration

Consideration of the collective labour dispute by the conciliation commission is a compulsory stage.

The conciliation commission is formed out of the representatives of the parties to the collective labour dispute on an equal basis and must consider the dispute within five working days as of the date of its foundation.

In case of failure to reach agreement within the conciliation commission, the parties to the collective labour dispute shall proceed to negotiate inviting a mediator and/or establishing labour arbitration. After the conciliation commission executes the statement of disagreements, the parties to the collective labour dispute can invite a mediator. If necessary, the parties to the collective labour dispute appeal to the relevant state authority for regulating collective labour disputes for a recommendation for a candidate for mediator. If the parties to the collective labour dispute fail to reach agreement on the candidate for mediator within the established period of time, they shall start negotiations on establishing labour arbitration.

Labour arbitration consists of a provisional body for considering collective labour disputes, which is established if the parties to the dispute have concluded a written agreement on compulsory implementation of decisions of labour arbitration. Labour arbitration is established by the parties to the collective labour dispute and the respective state authority for regulating collective labour disputes after the collective labour dispute has been considered by the conciliation commission or a mediator.

Establishing labour arbitration is compulsory when a strike to resolve the collective labour dispute is impossible. At the same time, if the parties fail to reach agreement on establishing labour arbitration, its composition, rules of procedure and authorities, these issues are decided by the respective state authority for regulating collective labour disputes.

If the reconciliation efforts do not result in resolution of the collective labour dispute, or if the employer (its representatives) avoids participating in the reconciliation efforts, fails to fulfill the agreement reached as a result of the resolution of the collective labour dispute,

or does not carry out the decision of the labour arbitration, which is binding on the parties, the employees or their representatives are entitled to proceed to organize a strike, with the exception of in cases when strikes may not be held in accordance with legislation.

A significant role in resolving collective labour disputes is assigned to state authorities: the Federal Labour and Employment Service and the respective executive authorities of the RF subjects. The mentioned authorities, in particular, carry out informative registration of collective labour disputes, organize preparation of labour arbitrators, provide methodological assistance to the parties to collective labour disputes at all stages of their consideration and resolution.

4. Right to Social Insurance

4.1 Unified Social Tax

In accordance with Article 22 of the LC RF, employers are obligated to ensure the provision of mandatory social insurance for employees according to the procedure established by federal laws. Such a law determining the procedure for providing mandatory social insurance is the FZ “On Social Insurance”.

For the purposes of ensuring the provision of mandatory social insurance for employees, as well as medical and pension insurance, the unified social tax (UST) was established, the collection of which is regulated by Chapter 24 of the TC RF. The UST is paid to the federal budget and subsequently distributed among respective funds.

The UST is collected at a basic rate of from 26% to 2% of the salary amount, with application of a regressive scale. The regressive scale means that the higher an employee’s income, the lower the percentage of the tax to be paid.

Proceeds from the UST are, in particular, used for paying disability allowances, unemployment benefits, and a portion of state pensions.²³

All payments to employees working under employment agreements by organizations and individual entrepreneurs (including attorneys-at-law and private notaries) are subject to the UST. Apart from payments to employees under employment agreements, payments to individuals under civil and copyright agreements are subject to the UST, as well.

4.2 Mandatory Insurance Against Industrial Accidents and Occupational Diseases

The transfer of insurance contributions for insurance against industrial accidents and occupational diseases is regulated by the Federal Law “On Mandatory Social Insurance Against Industrial Accidents and Occupational Diseases” dated July 24, 1998, annual federal laws establishing insurance rates for the upcoming year, as well as decrees of the RF Government approving industry classifications on an occupational risk basis.

Insurance contributions for this type of insurance are transferred by employers monthly along with transfers of salaries to employees. The insurance rate depends on the

²³ See also Section 4.3 “Pension Insurance”.

occupational risk class applicable to the particular employee's occupation and varies within 0.2% – 8.5% (the Federal Law "On Insurance Rates for Mandatory Social Insurance Against Industrial Accidents and Occupational Diseases for 2006" dated December 22, 2005).

The classes of occupational risk and the respective insurance rates are determined by the Social Insurance Fund on the basis of the list of activities established in a company's Articles of Association.

4.3 Pension Insurance

A portion of the UST is allotted for pension purposes. This portion is divided into two portions: one remains in the federal budget while the other is transferred to the Pension Fund of the RF. This division is necessary for funding pensions and the administrative apparatus of the Pension Fund of the RF. It is important to note that in accordance with the Federal Law "On Mandatory Pension Insurance in the Russian Federation" dated December 15, 2001, and the Federal Law "On Labour Pensions in the Russian Federation" dated December 17, 2001, only foreign employees permanently residing in the RF are entitled to a labour pension. Foreign citizens are recognized as permanently residing in the RF if they hold residence permits. Foreign employees temporarily residing on the basis of temporary residence permits or who temporarily stay in Russia on the basis of visas for the purposes of performing labour activities are not entitled to a labour pension paid from the Pension Fund of the RF, regardless of the fact that the employer is obligated to pay the UST accrued on the payments to these employees.

5. Taxation of Employees' Income

Individuals' income is subject to the personal income tax in accordance with the procedure established by Chapter 23 of the TC RF. Although individuals (employees) are the taxpayers of the personal income tax, in accordance with tax legislation it is employers, acting as tax agents, that are obligated to calculate, deduct from the remuneration amount, and pay to the budget the personal income tax.

5.1 Taxpayers

Taxpayers of the personal income tax are:

- tax residents – persons staying in the territory of the RF for more than 183 days per calendar year (upon the entry into force of amendments to the TC RF in January 2007 – for 12 consecutive months)
- individuals receiving income from sources within the RF

5.2 Object of Taxation

The object of taxation is:

- income received from sources within the RF and/or from sources outside the RF by individuals who are tax residents of the RF
- income received from sources within the RF by individuals who are not tax residents of the RF

5.2.1 Income from Sources within the RF

The complete list of such income is set forth in the first paragraph of Part 1 of Article 208 of the TC RF. It is important to note that income from sources within the RF includes remuneration for the fulfillment of employment and other duties, work performed, services rendered, and for the performance of other actions in the territory of the RF, regardless of who makes such payments. Remuneration of directors and other similar payments received by members of management bodies of organizations located within the RF (boards of directors and similar bodies), provided that such individuals are tax residents of the RF, are considered received from sources within the RF, regardless of the

actual place of performance of the management functions and the place of payment of such remuneration.

5.2.2 Income from Sources Outside the RF

The complete list of such income is set forth in Part 3 of Article 208 of the TC RF. The procedure for determining whether income is received from foreign sources is similar to the procedure for determining whether income is received from sources within the RF. It is important to note that remuneration for fulfilling employment and other duties, work performed, services rendered, and for the performance of actions outside the RF is considered income from sources outside Russia. A similar procedure applies to the taxation of income in the form of remuneration of directors and similar payments received by members of management bodies of foreign organizations. Such income is considered received from sources outside Russia, regardless of the actual place of performance of such functions and the place of payment of the respective remuneration.

In order to avoid double taxation of foreign employees, tax relief in one state or another may be executed in accordance with the provisions stipulated in international treaties of the relevant states on avoidance of double taxation.²⁴

5.2.3 In-Kind Income

Employees' in-kind income is also subject to taxation. In-kind income includes, in particular, income such as rent payments and public utilities payments by an employer in favor of an employee, use of a company car by an employee for his/her own needs and needs of members of his/her family, meals, holidays of an employee and members of his/her family, training of an employee for his/her own needs, etc.

5.3 Tax Rate

The tax rate depends on the individual's tax residency. If the individual is a Russian tax resident, his/her income paid by an employer is subject to taxation at a 13% rate. If the individual is not a tax resident, his/her income paid by an employer is subject to taxation at a 30% rate. If an employee who initially was not a Russian tax resident obtains tax resident status, the tax amount previously deducted from this individual's salary and paid by the employer is recalculated at a 13% rate.

²⁴ For example, see the Agreement between the RF and the Federal Republic of Germany on the avoidance of double taxation with respect to taxes on income and property, Moscow, dated May 29, 1996.

6. Employment of Foreign Citizens

The principal terms and conditions of employment of foreign citizens in the Russian Federation are established in the FZ “On Foreign Citizens”.

The procedure for entering and departing the RF is established in the Federal Law “On the Procedure for Departing from the Russian Federation and Entering the Russian Federation” dated August 15, 1996. As of January 15, 2007, after the amendments made on July 18, 2006, enter into force, monitoring of the residence and stays of foreign citizens will be conducted by a federal executive migration authority.

The Federal Law “On Migration Registration of Foreign Citizens and Persons without Citizenship in the Russian Federation” dated July 18, 2006, governing the relations that emerge during the registration of foreign citizens and connected with their entry to, movement within and departure from the RF, will also enter into force on January 15, 2007.

6.1 Necessity to Obtain a Work Permit

In accordance with the FZ “On Foreign Citizens”, the principal terms and conditions for foreign citizens to perform labour activities in the territory of the RF are the employer’s permit to attract and engage foreign employees and the work permit of a foreign citizen. The said procedure does not apply to foreign citizens employed by diplomatic missions and consular establishments of foreign countries in the RF, international organizations, journalists accredited in the RF, employees of foreign legal entities performing assembly works, service and guarantee maintenance, as well as follow-up service for technical equipment installed in the RF.

Foreign citizens holding residence permits or temporary residence permits are not required to obtain work permits. However, foreign citizens holding temporary residence permits are entitled to work freely only in the territory of the RF subject in which they are allowed to temporarily reside.

Violation of the rules for attracting and engaging foreign employees in the RF is subject to administrative liability. In accordance with Article 18.10 of the CAO RF, liability is stipulated for both the employing organization (a fine in an amount of from 100 to 3,000 MWs (from EUR 295 to 8,824)) and an official of the organization (a fine in an amount of from 25 to 200 MWs (from EUR 74 to 588), with the possibility of prohibition from occupying certain posts for a period of up to three years)), as well as for the employee – a foreign citizen or a person without citizenship – (a fine in an amount of from 10 to 25 MWs (from EUR 29 to 74) with or without administrative expulsion from the RF).

In accordance with Article 23.1 of the CAO RF, cases of such administrative offenses are considered by courts.

6.2 Procedure for Executing Documents for Performance of Labour Activities by a Foreign Citizen

The procedure for preparing the documents required for the performance of labour activities by foreign citizens in the RF can be conditionally divided into four stages:

- the employer's obtaining of a permit to attract foreign labour
- the employer's obtaining of a work permit for the foreign citizen
- the employer's issuance of an invitation for the foreign employee to enter the RF
- the foreign employee's obtaining of a visa for performing labour activities in the RF

The preparation of all documents required for a foreign citizen's entry to the RF for the purposes of performing labour activities takes up to three months

6.2.1 Permit to Attract and Engage Foreign Employees

An employer wishing to employ a foreign citizen must first obtain a permit to attract and engage foreign employees. The federal body of the state authorities empowered to issue permits to attract and engage foreign labour is the Federal Migration Service (hereinafter the "FMS").

The list of necessary documents and the procedure for issuance of permits to attract and engage foreign employees are established in the Decree of the President of the RF "On Attracting and Engaging Foreign Labour in the Russian Federation" dated December 16, 1993.²⁵ Along with documents containing information about the employer and its activities, it is necessary to submit a conclusion of the territorial body of the Federal Employment Service on the expediency of attracting and engaging foreign employees. In order to obtain a permit to attract and engage foreign employees, the employer pays a state fee of 3,000 rubles for each attracted foreign employee (approximately EUR 90).

The employer submits the packet of documents to the territorial body of the FMS in the particular subject of the RF for preliminary examination. The territorial body examines the

²⁵ The Decree is effective in the part not contradicting the FZ "On Foreign Citizens".

compliance of the submitted documents with legislation and forwards them to the FMS. The process of obtaining a permit to attract and engage foreign employees takes approximately six weeks.

The permit to attract foreign labour is issued for a one-year term and is valid only in the territory of the particular subject of the RF in which the foreign employees will perform labour activities.

6.2.2 Work Permit for a Foreign Citizen

Having obtained a permit to attract and engage foreign employees, the employer must file to the territorial body of the FMS in its subject of the RF an application for issuance of a work permit to a foreign citizen, together with documents concerning the foreign citizen to be employed, including a copy of his/her passport and a medical certificate in the established form. The employer must also pay a state fee of 1,000 rubles (approximately EUR 30) for the issuance of the work permit to the foreign citizen.

Preparation of a work permit for a foreign employee takes approximately one month.

It is important to note that a work permit is valid within the term and territory of validity of the permit to attract and engage foreign employees issued to the employer.

6.2.3 Issuance of an Invitation to a Foreign Employee

The employer must also ensure the issuance of an invitation for the foreign employee to enter the RF, as a foreign citizen can obtain a Russian visa only on the basis of such an official invitation of an employer.

For the issuance of an invitation to enter the RF in order to perform labour activities, the employer must submit the following documents to the federal executive authority in charge of issues of internal affairs, or to its territorial body (the Passport and Visa Department), or from January 15, 2007, to the federal executive migration authority:

- 1 petition for issuance of an invitation
- 2 permit to attract and engage foreign employees
- 3 work permit issued to the foreign employee
- 4 guarantee letter from the employer regarding provision of medical and social insurance, salary and accommodations for the foreign employee

Only employing organizations registered with a territorial body of the RF Ministry of Internal Affairs may issue invitations for foreign citizens to enter Russia. Consequently, if an employer is preparing an invitation for a foreign employee for the first time, it must first register with the Passport and Visa Department of the RF Ministry of Internal Affairs, which takes less than two weeks, and subsequently apply for issuance of the invitation. Invitations to enter the RF are subject to a fee currently amounting to 200 rubles per invitation.

6.2.4 Entry and Registration of a Foreign Employee at the Place of Residence

To enter the RF for employment purposes a foreign citizen must obtain an ordinary work visa. The invitation received from the employing organization is the basis for issuance to the foreign citizen of a visa by a consular establishment of the RF in the country of the foreign citizen's permanent residence. Apart from the invitation, the foreign citizen must submit to the consular establishment of the RF abroad his/her valid passport, a visa application form, one 3x4 cm photograph, a medical insurance policy valid in the territory of the RF, and a certificate confirming the absence of HIV.

Visas are issued within a maximum of 20 working days.

Foreign employees are obligated to register with the territorial body of internal affairs within three days after entering the RF, and from January 15, 2007, with the territorial body of the executive migration authority at the place of such foreign employees' residence.

Upon entering the territory of the RF, a foreign citizen is obligated to fill out a migration card in the established form. The foreign citizen must keep such migration card for the entire period of his/her stay in the RF and submit it at the border crossing point when leaving the RF.

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