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COMPLYING WITH RUSSIA'S LABOR CODE

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Complying with Russia's labor law is increasingly important for foreign firms there. The Russian Labor Code (the "KZOT") remains substantially unchanged since the Soviet period, but retains its force and influence. Russian employees ranging from general directors to hotel chambermaids have made employers pay for violating the KZOT. In spite of its Soviet-era anachronisms, the KZOT provides clear rules for hiring, compensating, and terminating Russian employees. In using the KZOT, the most important considerations are: respect for Russian workers' numerous rights under the KZOT; recognition of opportunities to assert employers' rights; creation of a proper paper trail; and working with employees, even when terminating them.

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Hiring

Under the KZOT and the quasi-official "KZOT Commentary," an employer hires an employee using three documents: a written labor contract; an administrative order, or "Akt," and the employee's labor book. The labor contract specifies the essential clauses of the working relationship, and may not provide less protection than the KZOT. Upon the contract's execution, the employer formalizes the hiring by issuing the Akt, which the new employee signs and returns. The employee then gives the employer his or her labor book. The employer records in the labor book the hiring date, job title, and beginning pay, and holds the labor book for the duration of the employee's employment. A worker employed by multiple employers must provide his labor book to his place of primary employment. Employers of "second job" workers need not obtain the labor book, but should remember that such workers face certain limitations on time and pay.

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A labor contract must be executed with permanent, temporary and part-time employees. A valid contract contains a job description, the location of the workplace, the worker's specialty and qualifications, the requirements of the position, the amount of compensation (equivalent to at least the minimum wage), the compensation regime, and the work schedule. The contract must state its duration: indefinite, fixed-term (less than five years), or job-specific. When in doubt, labor contracts are generally considered indefinite. Moreover, if an employer requires a fixed-term contract, the term must relate to the natural duration of the employee's duties. As a prominent hotel learned in a much-publicized court case, there is nothing inherent in a chambermaid's job which justifies a one-year term contract; such a contract should be for an indefinite term.

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The KZOT has optional provisions. An employer may require a probationary period (to be stated in the Akt) of up to three months. An employer may compensate for the use of the employee's car for business, provide medical insurance and other incentives, and may require employees to take business trips. The labor contract may contain a confidentiality clause. Finally, an employer should list a position's necessary qualifications and skills. Such a list can be used as criteria for evaluating the employee's qualifications and performance, an important step in terminating a poorly-performing worker.

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Termination

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The KZOT provides broad grounds for terminating a labor agreement, generally favoring the employee. The primary grounds are: by agreement between the parties, expiration of a fixed-term contract, on the employee's initiative, and on the employer's initiative.

Employees are generally free to quit their jobs upon two weeks' notice. They may withdraw the notice within the two weeks and continue working, unless the position has been offered to another person with stronger statutory labor rights. Workers on temporary disability or annual leave may not be terminated except when an organization is being liquidated. Expectant mothers, women with children, and those under age eighteen enjoy preferential hiring, transfer, and firing rights. Finally, where collective bargaining agreements exist, consent of the labor union is often required before termination.

Termination by the employer is limited under the KZOT to: company liquidation or reduction in work force; the employee's lack of qualification for his position because of insufficient skills or poor health; the employee's systematic failure to perform under the labor agreement or to comply with the employer's internal rules, after prior disciplinary actions were taken; unauthorized absence from work (including absence for more than three hours during a working day); failure to report to work for more than four months due to a temporary disability (with certain exceptions); return of a previous employee formerly holding a current employee's position; drunkenness at work; and theft, documented by a ruling from a court or other competent body. In some cases, a terminated employee must receive at least two weeks' severance pay.

Additional grounds for termination exist for senior officers and their deputies, and for employees with fiduciary responsibilities. A single serious violation of professional duties by an enterprise head or deputy is grounds for dismissal. An enterprise head or deputy may also be dismissed for grounds expressly stated in their contract. Finally, an employee with fiduciary responsibilities may be terminated for a breach of trust.

Termination must be supported with documentation, such as records of missed workdays, unperformed assignments, and repeated failures to follow company rules. For an unqualified employee, an evaluation against the position's required qualifications and skills is important. Employees who feel their labor rights are violated may bring a civil suit seeking damages. Even if such suit is unsuccessful, defending it will cost time and money, and may cause ill feeling among the remaining staff.

Given the difficulty of creating a paper trail, a judiciary generally favoring employees, and the possible disruption to the workplace, many foreign employers choose to discharge unwanted employees by "agreement of the parties." Typically, employees will agree to a termination and a release of any claims in exchange for their unused leave payments and related compensation, and perhaps a month or two in salary. For Russian employees, grounds for termination are listed in their labor books, and their future employment prospects are better if they are terminated "by mutual agreement," instead of for cause, or at the employee's initiative. Generally, as with much else in Russia, a negotiated settlement may provide closure to an otherwise potentially difficult dispute. *For a list of U.S. law firms with representation in the NIS, visit BISNIS Online at: www.mac.doc.gov/bisnis/country/9712law.htm.*

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