
labour and employment lawflash

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Secondment Arrangements in Russia: The Game Is Changing

Russian law now recognises secondment, but restricts the sphere of its use.

On 7 May, Russian President Vladimir Putin signed into law a long-discussed act that will regulate private employment agencies and secondment arrangements in Russia (the Law).¹ The Law amends, in relevant ways, the Law on Employment of the Population (the Employment Law) as well as the Labour Code, the Tax Code, and a few other related laws. It will take effect on January 1, 2016.

Secondment arrangements have not been clearly defined in Russia's labour and civil laws to date (although they have been recognised for tax reporting and payment purposes). This has caused uncertainty for employers and lawyers in Russia because the widely used international secondment practice has not fit into the rather stiff Russian legal framework. Various political undercurrents have also contributed to the vagueness of the compromises reached.

Thus, the Law, for the first time, provides a specific definition for secondment: "loaned labour" (in Russian, "заемный труд") provided under an "agreement for provision of the labour of workers (personnel)" (in Russian, "договор о предоставлении труда работников [персонала]"). The Law first states flatly (at Labour Code new article 56.1) that "loaned labour" is prohibited. It then goes on (at Labour Code new chapter 53.1 and Employment Law new article 18.1) to outline and regulate the instances where secondment is permitted and not permitted (including permissible parties to such arrangements) and sets forth tough new restrictions on private employment agencies and secondment through them.

Summarised below are the most significant changes introduced by the Law.

Parties to Shareholders' Agreements and Affiliated Entities May Use Secondment

As now expressed in the amended Employment Law, "legal entities (including foreign legal entities) and their affiliates" may second their employees to other legal entities if they are

- affiliated with the seconding party;
- joint-stock companies, if the seconding party is a party to a shareholders' agreement with respect to the joint-stock company in question; or
- a party to such a shareholders' agreement with the seconding party.

The fact that secondments will now be clearly permitted between corporate parties to a shareholders' agreement and affiliated entities reflects a partial success for the business community in its lobbying for changes to an earlier draft of the Law that would have outlawed such arrangements.

However, by the words of the Law, the new permission for secondment does not seem to extend beyond the Russian OAO and ZAO stock company context. It does not apply (i) to and between parties to a participant's

1. Federal Law No. 116-FZ, "On Amendments to Certain Legal Acts of the Russian Federation".

agreement in a limited-liability company (LLC) (in Russian, an OOO—the form mostly commonly used for joint ventures) or (ii) to secondments to a company's own branch in Russia (an approach often used by foreign companies) because a branch is not a separate "legal entity" from the civil or corporate law perspective.

The permission to second employees between affiliated entities would, in practice, allow parent companies to send employees to their subsidiaries (in which they hold more than 20% of the charter capital) and vice versa. This could be an approach used by companies that structure their own businesses or joint ventures in Russia through LLCs.

The general terms of and procedures for such permitted secondment arrangements going forward will be set out in a further separate new law, which has not yet appeared in draft form. It is possible that certain clarifications could be introduced in that law—spurred by further lobbying effort—to expressly broaden the permitted sphere to cover LLC-based joint ventures and parent-to-branch secondment.

Companies that currently use secondment arrangements in Russia should watch this situation closely between now and the end of 2015 to determine whether they will need to make any changes in their current employment or secondment approaches.

Limitations on Private Employment Agencies

The Law sets out a limited number of situations where a private employment agency will be entitled to administer secondment arrangements with commercial-employer clients. It also establishes an accreditation requirement for such agencies and sets out certain standards that they must meet in this regard.

Ongoing secondment arrangements for major foreign companies through private employment agencies would likely have limited practical use because of the new restrictions imposed (if they are not softened by the end of 2015). These include the temporary nature of (up to nine months) and prohibition on such secondments to dangerous-category workplaces.

As a result, we expect that many companies using employment agencies in Russia will have to reconsider or restructure their current arrangements. Some companies may feel compelled to move to outsourcing arrangements or to restructure their secondments by following either the shareholders' agreement or affiliated entity option.

Related Tax Code Amendments

As noted, the Russian tax treatment of secondment has been more laissez-faire to date, and the Tax Code amendments simply conform to the newly introduced terminology.

One Tax Code provision (article 306.7, regarding permanent establishment for Russian tax purposes) is worth flagging in this regard. It, too, is unchanged in essence and changed only in terminology. It states that a foreign company will not be deemed to have a permanent establishment in Russia solely by virtue of seconding its employees into a Russian company and, absent any other indicia of permanent establishment, as long as such employees "are acting exclusively and in the interests of the receiving organisation."

The Law has, so far, received a mixed reaction in the Russian business community, and it remains to be seen how the labour regulatory authorities will implement the new regime in practice and how the contemplated further special law on secondment will develop.

Contacts

We continue to follow developments in this area and will report further as needed. If you have any questions or would like more information on the issues discussed in this LawFlash, please contact the authors, **Bela Pelman** (+7 495 212 2528; bpelman@morganlewis.com) or **Dmitri Dmitriev** (+7 495 212 2574; ddmitriev@morganlewis.com).

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