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Recruitment Agencies: Developing Contractual Relationships

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Now, when the labor market in Russia experiences a new development phase, it is necessary for many large companies to rely on recruitment agencies that are able to search for and assess candidates on a tight time frame and at a high level of proficiency. However, the form of the contractual relationship between the companies and the recruitment agencies sometimes leaves much to be desired. Although there are, more or less, stable standards and practices of personnel recruitment contracts that have been established over recent years by the leading companies, there is still much space for development and review to both parties' benefit.

When developing the contractual relationship, the parties sometimes fail to account for certain considerations apart from purely commercial ones, for example those relating to labor and tax.

It is not uncommon for many labor aspects arising from the nature of recruitment services to be omitted from recruitment agreements. To give an illustration one should consider the omission of aspects such as the employee belonging to a special category entitling him or her to enjoy additional benefits and rights. As a result, the company might enter into an agreement containing elements not applicable to a particular employee that it should have been aware of by virtue of its relationship with the recruitment agency. Needless to say, the respective obligations should be secured by strict compliance with personal data protection requirements.

Tax aspects are also numerous and should be taken into account in advance, allowing the parties to optimize their costs. As an example, many recruitment agencies seek to cover search-related costs reserve the right to periodically charge their clients agreed amounts for additional services that might give rise to tax risks if such amounts are not duly documented and justified. Another example is the existing practice of the tax authorities not

to recognize costs related to the search for personnel as tax deductible where the company employs an HR specialist whose duties include search and assessment. However, the court's approach suggests that the relevant costs might be found to be reasonable if they can be justified by the workload or other similar reasons, which therefore makes it crucial to set out such details within the scope of the agreement.

It is, however, worth noting that commercial standards for recruitment agreements have begun to emerge. Among these is the replacement standard implying from one to a series of replacements of the candidate if he or she resigns from the company. For the clients it is also advisable to pay careful attention to the quality of services provided by the agencies in order to set HR management standards and forms that may substantially differ from company to company.

A separate issue is fixing the price formation under the agreement because this will be dependent on how the scope of services is defined in the agreement. It is particularly important to clearly state whether, and if so to what extent, the company is to pay for the agency's services in circumstances where the search and assessment are carried out by the agency, but the candidate is ultimately unsuccessful and is not hired by the client.

Generally, the highest standards in this field are found in the major agencies, carrying out a high level of services that reflect the best foreign practices. Nevertheless, the possibility cannot be excluded that, sooner or later, recruitment agreements will develop into a separate type of agreement, thus obliging minor or narrowly tailored recruitment agencies to follow the same standards.

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