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B2B: Outsourcing in Russia: Advantages and Risks

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The word outsourcing has become a staple in Russian business language, but it is still not encountered in Russian law. Generally, outsourcing contrasts with the leasing of personnel in that outsourcing involves certain business processes being contracted out to an external service provider. Outsourcing is typically used to transfer processes that are vital for the company's activity but are of an auxiliary nature to its core activities: for example, IT, HR processes and payroll.

One of the biggest advantages of outsourcing is the lower cost of operations and workforce. As the saying goes, a company can do what it does best and let someone else handle the rest. This may provide a serious competitive advantage, especially in an industry where outsourcing is not common.

Another advantage is that outsourcing is flexible. It helps to reduce the risks and potential liability connected with the extensive legal requirements in Russia. For example, Russian employment law is burdensome for an employer and offers little flexibility in terms of dismissing an employee. When a company uses an outsourcing provider, it does not have the obligations of an employer for the employees in question.

A third advantage of outsourcing is that it gives access to expertise and professional skills that normally only large companies can afford. Certain forms of outsourcing allow companies to bring qualified specialists on board quickly when it needs to but without establishing long-term employment commitments.

Nonetheless, outsourcing has its disadvantages too. One of the most serious risks is that the security or confidentiality of sensitive information may be compromised; this is especially so in areas as such as finance and accounting. The outsourcing contract needs to guard

against this by carefully addressing these issues. The provider's employees should also sign confidentiality undertakings.

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A further disadvantage is that managerial control is lost over outsourced operations, which can result in greater dependence on the outsource provider — especially if important functions are outsourced.

Importantly, under Russian law, the customer company is legally responsible for information prepared by the outsourcing company. This means that the customer may be legally liable for any failings of the outsourcing provider. While the outsource contract may allow the customer to recover his losses, this is obviously not ideal.

Another disadvantage of outsourcing is that hidden costs and legal problems may arise if the outsourcing terms and conditions are not clearly defined. Then there is a risk of the service provider's employees being treated or managed in a manner that triggers the so-called risk of de-facto employment relationships, which could be recognized as personnel leasing.

Russian labor law states that an employment relationship is established if an employee is actually performing job duties, even if no employment contract has been signed. As a result, there is a risk the customer company could be declared the actual employer of the specialists whose services are provided under an outsourcing agreement. The customer company therefore needs to safeguard its position by drafting the outsource contract carefully and supervising the outsourced staff closely.

Currently, the Russian parliament is giving serious thought to banning outsourcing. However, if this happens, an arrangement will be permitted under which services are performed under a contract by the outsource company's specialists (rather than the contract providing for particular staff to be made available). However, the difference between these two things is often very marginal; if the ban comes into force, then, great care should be taken when drafting outsourcing contracts with the service provider, while the terms of the contracts of the providers' employees are also critical. Additionally, to eliminate risks of de-facto

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employment, measures should be taken such as ensuring that the provider's employees treated separately from the company's own employees, and are not managed by the company's manager.

If a company considers that certain types of work can be better done outside the company than inside, it is crucial to choose a reliable outsourcing provider. This partner should have a long-term record of successful work on the market and should provide positive references from past and current clients.

In summary, the customer company needs to pay close attention to how it documents its contractual relationship with the outsource company. And more than that, the outsource company's contracts with its own staff are crucial, too. If the customer gets things wrong, it may find itself being treated as the de-facto employer, with an array of additional obligations imposed upon it. Worse still, if the proposed ban comes into force, the customer could find itself in breach of the law. The only option is to review with great care relationships with the service provider's employees, including interaction and communication with them. By providing a proper formal platform for this and by being generally prudent, it should still be able to use outsourcing as a tool for achieving significant benefits while avoiding the pitfalls.

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