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Changes to the Labour Code of Kazakhstan Regarding Outstaffing Issues

Dear Partners,

This is to inform you that on 19 December 2020, the Law of the Republic of Kazakhstan 'On the Introduction of the Amendments to Some Legislative Acts of the Republic of Kazakhstan on outstaffing services' (*hereinafter – the 'Law'*). Pursuant to the Law, the Labour Code of the Republic of Kazakhstan (*hereinafter – the 'Labour Code'*) **now regulates the outstaffing relationships.**

Please note that this method of staff engagement has existed in Kazakhstan for a long period of time, but has never been regulated by labour legislation before. Along with the consolidation of already applied provisions, the Law dramatically **changes the parties' approach to the delivery of outstaffing contracts, imposing a great number of new obligations thereon, including obligation regarding amendments of current contracts.**

Below we have outlined the most significant novelties of the outstaffing relations reflected in the Labour Code:

Article 1 is supplemented with a number of definitions, including but not limited to:

'Outstaffing' – sending an employee under the outstaffing contract (*hereinafter – the 'OC'*) by the sending party to the host party to perform labour duties for, under management and control 3a the host party;

'Sending Party' – a legal entity registered in the procedure established by the laws of the Republic of Kazakhstan and rendering outstaffing services, including a branch of a foreign legal entity;

'Host Party' – an individual or legal entity, individual businessman, including a peasant household or a farm, who/which engage employees of the sending party under the OC;

'Sending Party Employees' – employees hired under an employment contract concluded with the sending party, in accordance with the OC.

There are exhaustive lists of reasons when the Sending Party Employees can and cannot be sent to the Host Party (Articles 137-1.3 and 137-1.5).

The Labour Code now also provide for the rights and obligations of the Host Party and Sending Party Employees, **including the HSE rights and obligations** (Articles 137-1.10, 137-1.11, 181-1, 182-1).

The following requirements are defined as preconditions for the OC conclusion (Article 137-1.2, Article 182-1.2.1):

– the Host Party shall provide the Sending Party with workplaces certification, where the Host Party activities are associated with harmful working conditions;

– the Sending Party shall insure its employees against accidents during job performance, **in view of**

the occupational risk class of the Host Party.

There is now **a ban on allowing the Host Party to discriminate the Sending Party Employees in salaries** when concluding the OC under Article 137-1.8. Besides, Article 103.1-1 stipulates that the size of the basic salary of the Sending Party Employees **shall not be lower than the same of the Host Party employees** on a similar position, as well as production and living conditions.

The Labour Code introduces provisions **on the obligatory participation of the Host Party in the investigation of accidents related to the job of the Sending Party Employees** (Articles 187-1, 188-1).

There is an obligation for the Host Party to keep records of the working hours of the Sending Party Employees (Article 137-1.11.7).

Article 123 is supplemented with the provision **on the material liability of the Sending Party Employee for damage caused to the Host Party**.

The Labour Code also clarifies **the procedure for bringing the Sending Party Employees to disciplinary liability**.

Pursuant Article 137-1.12, in case of violation by a Sending Party Employee of labour discipline, the Host Party shall notify the Sending Party within 5 business days so the Sending Party could make a decision to bring the employee to disciplinary liability.

The Labour Code determines that the date of completion of work by the employee of the Sending Party **is the date specified in the notification sent by the Host Party to the Sending Party** (Article 137-1.4).

In conclusion, we would like to note that the legislator, on one hand, while ensuring the regulation of outstaffing relations, **also ensured the protection of the rights of employees engaged within outstaffing procedure, which is a key and positive factor of the above novelties**. On the other hand, new liabilities and increased responsibility of the Host Party (being legislatively bind with a number of obligations as employer) can contribute into the decrease in the number of companies using outstaffing contracts.

For detailed information please contact our Firm.

We would be pleased to assist you.

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