

# Corporate transactions. Key labour issues

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Dear Colleagues!

Business reorganization is a commonly utilized strategy to enhance efficiency and reduce costs within a business. Reorganization not only impacts corporate changes, but also has an effect on labour relations, which can pose certain risks.

We have summarized the key labour issues that illustrate the red flags associated with corporate transactions, along with practical issues that should be taken into consideration.

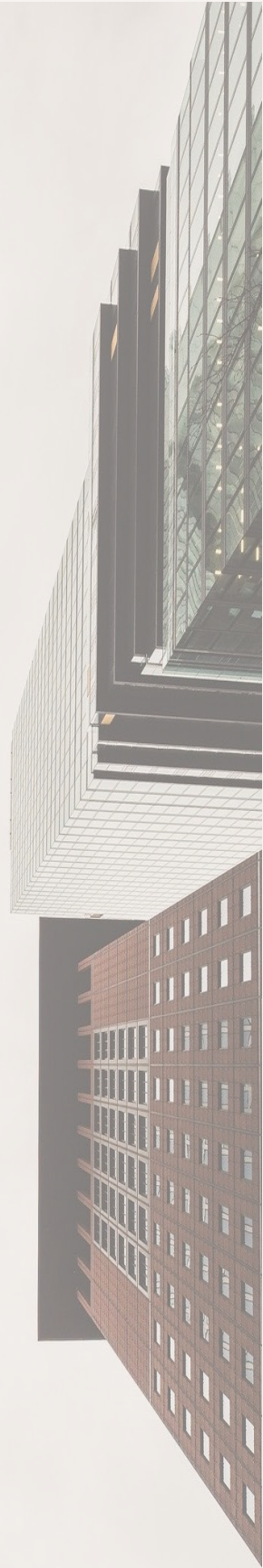
## I. Personnel restructuring

Corporate transactions often involve staff changes and personnel restructuring. The challenge for a business is to determine the most effective organization chart, identify specific positions that need to be restructured, properly follow the legal procedure and estimate associated costs.

According to Russian law, reorganization alone is not a valid reason for terminating employment. In order to lay off employees, a company should first **identify** potential termination options and **evaluate** relevant factors to minimize the risks that come with them.

### RED flags to consider:

- Identify the goals and objectives of the reorganization
- Analyse the strengths and weaknesses of the current structure
- Research and compare different corporate and organizational structures
- Evaluate the potential impact on employees and stakeholders
- Consult with experts or seek professional advice if necessary
- Implement the chosen structure and monitor its effectiveness over time
- Develop a plan for the restructuring process
- Evaluate the layoff options
- Determine the applicability of each option
- Make an informed decision based on the analysis
- Estimate the financial costs of the business: severance pay, taxes, social and other benefits



## II. Employment contracts, service agreements and policies

When preparing a restructuring case, it is essential to carefully review employment contracts, service agreements and policies to ensure their appropriateness and assess whether terms and conditions can be modified with ease. It is important to carefully review the employment contracts or service agreements of key individuals to determine if they contain non-compete, non-disclosure obligations, retention or enhanced severance payments in the event of dismissal or change of control.

### RED flags to consider:

- Review all agreements with key employees
- Check for any additional guarantees, considerations and benefits offered to employees
- Review local policies for additional guarantees
- Look for extended notices, occupational pension schemes, retention bonuses, etc.

## III. Remuneration, pension and incentive schemes

Corporate transactions are not exempt from the broad impact that any reorganization can have on pay issues. These issues may pertain to optimizing personnel costs or ensuring the accurate fulfilment of obligations.

### RED flags to consider:

- Verify that wages, premiums, cost allowances, holiday pay, overtime pay and variable pay have been properly provided
- Review the existing bonuses, benefits, occupational pensions and equity award schemes
- Determine if these schemes can be modified without difficulty

## IV. Staff representative bodies and collective bargaining agreements (CBAs)

Addressing the issue of trade union organizations and works councils is crucial, particularly in cases where they exist within a company that is undergoing reorganization or in multiple entities involved in the transaction.

### RED flags to consider:

- Check whether there is a trade union or works council within the company
- Find out the potential number of trade union members – dismissing them will be more difficult
- Identify the company CBAs that are currently in place
- Review the terms and conditions of the CBAs
- Determine if there are any additional obligations outlined in the CBAs
- Understand the conditions under which the CBAs can be terminated

## V. Labour litigation

The transaction process can become significantly more complicated due to labour disputes, conflicts with employees, inspections and investigations.

### **RED flags to consider:**

- Check information regarding any threatened or pending complaints or labour disputes related to employment
- Look for details on any legal actions, investigations, settlement agreements and judgements or rulings against the company in relation to employment

## VI. Atypical workers

Employers who work with third-party employees, such as temporary agency workers, employee leasing and subcontracting, may be subject to strict regulations that could result in civil and criminal liability if they fail to comply. The aforementioned statement also pertains to instances of the 'fake' self-employment of contractors or commercial agents, which could lead to claims for employment rights, social security and taxes.

### **RED flags to consider:**

- Review existing terms of engagement
- Analyse underlying facts
- Determine true employment status
- Check potential termination options and costs

## VII. Top managers

The success of a transaction often heavily relies on senior executives and members of the board. When exploring reorganization options, it is vital to take into account their status and legal position. Their commitment to the process and active participation are crucial.

### **RED flags to consider:**

- Check the scope of corporate functions (the company Charter will be of importance)
- Ensure that there is no hidden conflict with the top manager
- Determine potential back-up plans (replacement, allocation of responsibilities, etc.)
- Evaluate whether it is necessary to replace the General Director and other managers in the organization
- Review the conditions outlined in their employment agreements and company bylaws
- Assess the financial impact of termination and/or replacement

## VIII. Foreign employees

If reorganization involves a change in the employer, any work permits issued to foreign employees will no longer be valid. Obtaining new work permits will be necessary in this case. Failure to do so may result in the company being held administratively liable, which could result in a fine.



### RED flags to consider:

- Check if there are any foreign employees
- Confirm their legal status, including visa or visa-free stay
- Check the validity of work permits
- Verify the job positions of foreign employees
- Verify compliance with stay rules
- Consult with a legal expert to ensure that the changes resulting from the transaction are in compliance with relevant laws and regulations
- Review all relevant contracts and agreements to ensure that the proposed changes resulting from the transaction do not violate any terms or conditions

## IX. Post-transactional changes

The terms of employment contracts and local policies may differ when companies undergo reorganization, and they will not change automatically following the transaction. Any changes to the agreement must be properly documented in compliance with the regulations outlined in Russian labour legislation.

Altering the terms of employment without an employee's consent can be a challenging and potentially unfeasible task, which could lead to labour conflicts.

### RED flags to consider:

- Check what kind of edits are required
- Consider the extent to which these edits change the agreed working conditions
- Make sure that all the necessary documents have been prepared by the time the deal is registered

## X. ALRUD services

- With an eye on the transaction itself and/or post-closing integration and harmonization activities, we perform due diligence procedures to identify potential liability with an **expert perspective of employment, labour, compliance and migration**.
- We have a strong understanding of the market. Our **comprehension of business operations** allows us to clearly recognize the **correlation between labour issues and the success of a transaction**. Our skills and knowledge enable us to be a reliable partner in providing support for complex transactions, starting from initial negotiations and continuing through to the final stages.
- We specialize in developing **suitable personnel restructuring options** for both pre- and post-reorganization phases. Our approach includes **assessing the risks of dismissal** on various grounds, while considering the latest court practices, actual circumstances, provisions of internal policies and employment contracts.
- We provide guidance to parties on **various matters**, including severance compensation, termination issues related to benefit plans, developing criteria to select employees, union bargaining and representation rights, succession issues, and decision and effects bargaining.
- We possess significant expertise in **handling labour disputes and effectively resolving them** in a manner that is both sustainable and equitable. Our expertise lies in assisting clients during sensitive moments such as transactions, where reputation is crucial.



## XI. About ALRUD Law Firm

Established in 1991 by Senior Partners Maxim Alekseyev and Vassily Rudomino, ALRUD is widely known as one of the most leading and reputable Russian law firms.

The ALRUD Labour and Employment Practice is a prominent player in the Russian legal market. We boast the largest team of specialists who possess extensive experience in both local and international projects. The Labour Practice and ALRUD Corporate Practice work closely together to conduct a thorough evaluation of corporate reorganization issues. This assessment takes into consideration all legally significant details and specific aspects of the client's business.

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