

**Baker
McKenzie.**



2018 Global Outsourcing Employment Handbook

Global Outsourcing Employment Handbook

2018

©2018 Baker McKenzie

All rights reserved.

This publication is copyrighted. Apart from any fair dealing for the purposes of private study or research permitted under applicable copyright legislation, no part may be reproduced or transmitted by any process or means without the prior permission of the editors.

The material in this guide is of the nature of general comment only. It is not offered as legal advice on any specific issue or matter and should not be taken as such. Readers should refrain from acting on the basis of any discussion contained in this publication without obtaining specific legal advice on the particular facts and circumstances at issue. While the authors have made every effort to provide accurate and up to date information on laws and regulations, these matters are continuously subject to change. Furthermore, the application of these laws depends on the particular facts and circumstances of each situation, and therefore readers should consult their attorney before taking any action.

Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a “partner” means a person who is a partner or equivalent in such a law firm. Similarly, reference to an “office” means an office of any such law firm.

This may qualify as “Attorney Advertising” requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.



Foreword

Welcome to the second edition of our Global Outsourcing Employment Handbook!

Outsourcing transactions can be complex processes raising a variety of legal and regulatory challenges. These warrant careful consideration early in the process by both the outsourcing party (**Customer**) and the third party service provider (**Service Provider**). As most jurisdictions do not have in place outsourcing-specific laws and regulations other than in certain regulated industries (such as financial services), the rules governing outsourcing transactions are generally scattered amongst general laws and regulations such as privacy, tax and employment laws.

From an employment law perspective, one of the challenges that frequently arises in an outsourcing transaction relates to the Customer employees that work in functions to be outsourced (**In-scope Employees**). Commonly, the Customer no longer needs or wants to retain those In-Scope Employees unless it can redeploy them within its business. But can these In-scope Employees be dismissed on the basis that the Customer no longer needs them following the outsourcing? If so, are they entitled to severance payments? Or do they automatically transfer to the Service Provider by operation of law meaning that the Service Provider has no choice but to employ them and, if so, on what terms and conditions? Or are there compelling reasons for the Customer and the Service Provider to commercially agree such employee transfer? What if the In-scope Employees object to such transfer and ask to remain employed by the Customer? What consultation obligations apply to the Customer/ Service Provider in these scenarios?

These are only some of the questions that arise. And they are not answered easily, nor are they answered uniformly across different jurisdictions. For example, in Europe, the Acquired Rights Directive protects employees in the event of a transfer of business scenario. In very simplified terms, it provides that, in the event of a business transfer, employees of the vendor transfer automatically to the purchaser by operation of law with the latter being obliged to take on the vendor employees on their existing terms of employment. The concept of “business transfer” is very broad and can be triggered in an outsourcing scenario. Most Asian and South American countries, on the other hand, do not recognise the concept of “employee transfers by operation of law”. Consequently, in those countries, an outsourcing only results in a “transfer of employees” through termination / rehire if and as commercially agreed between the parties and there might be more room for dismissals. While the Customer and Service Provider would most likely welcome the flexibility that this approach offers compared to the European approach,

various aspects would need to be considered in practice. For example, obligations to pay severances or standard market practices might make dismissals an unattractive option.

This Handbook provides high-level answers to these and other questions for 24 jurisdictions. It is intended to help gain a basic understanding of the key issues to consider and to provide an overview of how these issues are dealt with in the different countries. If you have any questions or comments, please get in touch with any of the contributors to this Handbook or your usual Baker McKenzie contact.



Anne-Marie Allgrove
Global Chair
IT & Communications Group
+61 2 8922 5274
anne-marie.allgrove
@bakermckenzie.com



Guenther Heckelmann
Global Chair
Employment &
Compensation Group
+49 692 990 8142
guenther.heckelmann
@bakermckenzie.com



Anna von Dietze
Sr. Professional Support
Lawyer,
Global IT & Communications
+49 211 3 11 16 0
anna.vondietze
@bakermckenzie.com



Baker McKenzie's Global IT/C Outsourcing Leadership Team



Anne-Marie Allgrove (Sydney)

+61 2 8922 5274

anne-marie.allgrove@bakermckenzie.com



Sonia Baldia (Washington, D.C.)

+1 202 452 7096

sonia.baldia@bakermckenzie.com



Lorenzo de Martinis (Milan)

+39 02 76231 334

lorenzo.demartinis@bakermckenzie.com



Sue McLean

+44 20 7919 1998

sue.mclean@bakermckenzie.com



Peter George (Chicago)

+1 312 861 6587

peter.george@bakermckenzie.com



David Halliday (London)

+44 207 9191 459

david.halliday@bakermckenzie.com



Sergio Legorreta-Gonzalez (Mexico)

+52 55 5279 2954

sergio.legorreta-gonzalez@bakermckenzie.com

Editor-in-Chief



Anna von Dietze

Sr. Professional Support Lawyer,

Global IT & Communications

+49 211 3 11 16 0

anna.vondietze@bakermckenzie.com



Contributing Lawyers

Australia

Michael Michalandos
Sydney
+61 2 8922 5104
michael.michalandos
@bakermckenzie.com

Aran Alexander
Singapore
+65 6434 2716
aran.alexander@bakermckenzie.com

Austria

Simone Liebmann-Slatin
Vienna
+43 1 2 42 50 530
simone.liebmann-slatin
@bakermckenzie.com

Brazil

Tricia Oliveira
Sao Paulo
+55 11 3048 6997
tricia.oliveira@trenchrossi.com

Giovanna Parga
Sao Paulo
+55 11 5091 5908
giovanna.parga@trenchrossi.com

Chile

Andres Valdes
Santiago
+56 2 2367 7036
andres.valdes@bakermckenzie.com

Colombia

Tatiana Garces-Carvajal
Bogota
+57 1 634 1543
tatiana.garces@bakermckenzie.com

Sebastián Salazar Muñoz
Bogota
+57 1 634 1567
sebastian.salazar@bakermckenzie.com

Czech Republic

Alexandr Cesar
Prague
+420 236 045 001
alexandr.cesar@bakermckenzie.com

Zuzana Ferienc
Prague
+420 236 045 001
zuzana.ferienc@bakermckenzie.com

France

Nadège Dallais
Paris
+33 1 44 17 53 60
nadege.dallais@bakermckenzie.com

Germany

Hagen Koeckeritz
Frankfurt
+49 69 2 99 08 152
hagen.koeckeritz@bakermckenzie.com

Hong Kong

Rowan McKenzie
Hong Kong
+852 2846 2103
rowan.mckenzie@bakermckenzie.com

Indonesia

Susie Beaumont
Jakarta
+62 21 2960 8608
susie.beaumont@bakernet.com

Alvira M. Wahjosoedibjo
Jakarta
+62 21 2960 8503
alvira.m.wahjosoedibjo@bakernet.com

Mohammad Rinaldo Aditya
Jakarta
+62 21 2960 8642
rinaldo.aditya@bakernet.com

Italy

Uberto Percivalle
Milan
+39 02 76231 330
uberto.percivalle@bakermckenzie.com

Japan

Tomohisa Muranushi
Tokyo
+81 3 6271 9532
tomohisa.muranushi@bakermckenzie.com

Genichiro Ito
Tokyo
+81 3 6271 9753
genichiro.ito@bakermckenzie.com

Malaysia

Brian Chia
Kuala Lumpur
+60 3 2298 7999
brian.chia@wongpartners.com

Sujintana Mongkolthanit
Kuala Lumpur
+60 3 2298 7912
sujintana.mongkolthanit@wongpartners.com

Mexico

M Rosario Lombera-Gonzalez
Mexico City
+52 55 5279 2936
mrosario.lombera-gonzalez
@bakermckenzie.com

Javiera Medina-Reza
Mexico City
+52 55 5351 4135
javiera.medina-reza
@bakermckenzie.com

Netherlands

Mirjam de Blécourt
Amsterdam
+31 20 551 7466
mirjam.deblecourt@bakermckenzie.com

Anna van Bracht
Amsterdam
+31 20 551 7562
anna.vanbracht@bakermckenzie.com

Peru

Monica Pizarro
Lima
+51 (1) 618-8518
monica.pizarro@bakermckenzie.com

Poland

Piotr Rawski
Warsaw
+48 22 445 3133
piotr.rawski@bakermckenzie.com

Bartłomiej Babańczyk
Warsaw
+48 22 445 3212
bartlomiej.babanczyk
@bakermckenzie.com

Paulina Labecka
Warsaw
+48 22 445 3186
paulina.labecka@bakermckenzie.com



Russia

Evgeny Reyzman
Moscow
+7 (495) 787-2700
evgeny.reyzman@bakermckenzie.com

Nina Mogutova
Moscow
+7 495 663-6030
nina.mogutova@bakermckenzie.com

Singapore

Kelvin Poa
Singapore
+65 6434 2524
kelvin.poa@bakermckenzie.com

Ng Zhao Yang
Singapore
+65 6434 2701
zhao.yang.ng@bakermckenzie.com

Nicole Wong
Singapore
+65 6434 2273
nicole.wong@bakermckenzie.com

Spain

Javier Pera
Madrid
+34 91 436 66 70
javier.pera@bakermckenzie.com

Taiwan

Seraphim Ma
Taipei
+886 2 2715 7252
seraphim.ma@bakermckenzie.com

Pamela Tsai
Taipei
+886 2 2715 7396
pamela.tsai@bakermckenzie.com

Thailand

Suriyong Tungsuwan
Bangkok
+66 2636 2000 p 4111
suriyong.tungsuwan@bakermckenzie.com

Nam-Ake Lekfuangfu
Bangkok
+66 2636 2000 p 4114
nam-ake.lekfuangfu@bakermckenzie.com

UK

Paul Harrison
London
+44 20 7919 1320
paul.harrison@bakermckenzie.com

USA

Carole Spink
Chicago
Tel: +1 312 861 8065
carole.spink@bakermckenzie.com

Elizabeth Ebersole
Chicago
Tel: +1 312 861 8272
elizabeth.ebersole@bakermckenzie.com







Table of Contents

Foreword.....	i
Baker McKenzie’s Global IT/C Outsourcing Leadership Team.....	iii
Contributing Lawyers	v
Australia	1
Austria.....	5
Brazil	9
Chile.....	15
Colombia.....	19
Czech Republic.....	25
France.....	29
Germany	35
Hong Kong.....	41
Indonesia	45
Italy	51
Japan	57
Malaysia.....	63
Mexico	67
Netherlands	73
Peru	79
Poland.....	83
Russia.....	87
Singapore	93
Spain.....	99
Taiwan	105



Thailand 109
United Kingdom 113
United States 119
Baker McKenzie Offices 123





 	Are there laws/ regulations / precedents excluding or limiting outsourcing?	Is Service Provider under certain circumstances obliged to employ the in-scope employees?	Is the concept of “automatic employee transfers” recognised?	In case of automatic employee transfers, is Service Provider in principle required to honor existing terms and conditions/ seniority?	Do preconditions (e.g., information and consultation duties) apply in an automatic employee transfer scenario?	If no automatic transfer applies, are there other ways for employees to transfer (e.g., by way of a termination/ rehire)?
Australia	No	No	No	N/A	N/A	Yes
Austria	No	Yes	Yes	Yes	Yes	Yes
Brazil	Yes	No	No	N/A	N/A	Yes
Chile	No	Yes	Yes	Yes	No	Yes
Colombia	Yes	Yes	Yes	Yes	Yes	Yes
Czech Republic	No	Yes	Yes	Yes	Yes	Yes
France	No	Yes	Yes	Yes	Yes	Yes

 	Are there laws/ regulations / precedents excluding or limiting outsourcing?	Is Service Provider under certain circumstances obliged to employ the in-scope employees?	Is the concept of “automatic employee transfers” recognised?	In case of automatic employee transfers, is Service Provider in principle required to honor existing terms and conditions/ seniority?	Do preconditions (e.g., information and consultation duties) apply in an automatic employee transfer scenario?	If no automatic transfer applies, are there other ways for employees to transfer (e.g., by way of a termination/ rehire)?
Germany	No	Yes	Yes	Yes	Yes	Yes
Hong Kong	No	No	No	N/A	N/A	Yes
Indonesia	Yes	No	No	N/A	N/A	Yes
Italy	No	Yes	Yes	Yes	Yes	Yes
Japan	No	Yes	Yes	Yes	Yes	Yes
Malaysia	No	No	No	N/A	N/A	Yes
Mexico	Yes	No	Yes	Yes	Yes	Yes
Netherlands	Yes	Yes	Yes	Yes	Yes	Yes



 	Are there laws/ regulations / precedents excluding or limiting outsourcing?	Is Service Provider under certain circumstances obliged to employ the in-scope employees?	Is the concept of “automatic employee transfers” recognised?	In case of automatic employee transfers, is Service Provider in principle required to honor existing terms and conditions/ seniority?	Do preconditions (e.g., information and consultation duties) apply in an automatic employee transfer scenario?	If no automatic transfer applies, are there other ways for employees to transfer (e.g., by way of a termination/ rehire)?
Peru	No	No	No	N/A	N/A	Yes
Poland	Yes	Yes	Yes	Yes	Yes	Yes
Russia	Yes	No	No	N/A	N/A	Yes
Singapore	No	Yes	Yes	Yes	Yes	Yes
Spain	No	Yes	Yes	Yes	Yes	Yes
Taiwan	No	No	No	N/A	N/A	Yes
Thailand	No	No	No	N/A	N/A	Yes

 	Are there laws/ regulations / precedents excluding or limiting outsourcing?	Is Service Provider under certain circumstances obliged to employ the in-scope employees?	Is the concept of “automatic employee transfers” recognised?	In case of automatic employee transfers, is Service Provider in principle required to honor existing terms and conditions/ seniority?	Do preconditions (e.g., information and consultation duties) apply in an automatic employee transfer scenario?	If no automatic transfer applies, are there other ways for employees to transfer (e.g., by way of a termination/ rehire)?
United Kingdom	No	Yes	Yes	Yes	Yes	Yes
United States	No	No	No	N/A	N/A	Yes

Australia

Michael Michalandos

Sydney

Tel: +61 2 8922 5104

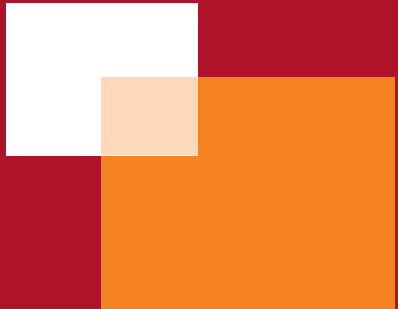
michael.michalandos@bakermckenzie.com

Aran Alexander

Singapore

Tel: +65 6434 2716

aran.alexander@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, there are specific regulations that must be complied with, depending on the nature or type of outsourcing, including complying with data privacy requirements, etc.
- In-scope employees do not automatically transfer to Service Provider but an employee transfer can be effected by way of a termination/ rehire.
- In-scope employees that reject Service Provider's employment offer can be terminated with notice and without payment of redundancy pay in specified circumstances.
- Dual employment is not recognised in Australia and accordingly the risk of a court finding this exists is very minimal.
- If Customer continues to exercise overall control over the employees after the transfer they are at real risk of still being considered Customer employees.

1. Existence of laws or regulations excluding / limiting outsourcing

There are specific regulations and requirements that will need to be complied with, depending on the nature or type of outsourcing. Such regulations and requirements will not prevent Customer from outsourcing certain functions or services, however they need to be addressed in any proposed outsourcing arrangement.

2. Obligation of Service Provider to employ in-scope employees

There is no obligation on Service Provider to employ in-scope employees but the parties may reach a commercial agreement with respect to the form of any employment offer by Service Provider to in-scope employees. In this regard, it is common for Customer to require Service Provider to make offers of employment to in-scope employees on terms which are no less favourable, when considered on an overall basis, than the employee's terms of employment with Customer, and with recognition of employee's prior service with Customer. This is for Customer to avoid the obligation to make statutory redundancy payments if the offers of employment are rejected by employees.

Customer cannot compel the employees to accept any offer. If an in-scope employee rejects the offer, Customer must make a decision as to whether it wishes to redeploy the employee within its business or terminate the employment. Rejection of the offer does not constitute an automatic termination of the employment. If Customer cannot redeploy rejecting



employees, their employment will terminate for reason of redundancy. The obligation to make redundancy payments will depend on the applicable terms of employment and the standard of offers made by Service Provider (see above). An order can be sought from the relevant tribunal to reduce redundancy payments to nil where the Customer obtains acceptable employment for the employee with Service Provider.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Employee's. Any employee whose employment is to be assigned from Customer to Service Provider requires a termination by Customer and acceptance of an offer of employment made by Service Provider.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

Service Provider is not required to credit seniority, or honor Customer terms and conditions of employment. But this is frequently commercially agreed, in particular, for critical employees, and also to minimise the risk of Customer having to make statutory redundancy payments (see 2 above).

Under Australian labor law employee's employment will be considered to have transferred where a 'transfer of business' occurs. Where this occurs certain service based entitlements will automatically transfer from Customer to Service Provider (such as sick leave, entitlement to parental leave and long service leave). Some other service based entitlements will also transfer, unless specifically excluded by Service Provider (such as redundancy pay and annual leave)

A 'transfer of business' will occur where:

- Customer outsources work to Service Provider;
- the employee's employment is terminated by Customer;
- the employee commences working for Service Provider within 3 months of the employment ending; and
- the employee performs the same or similar role for Service Provider as they did for Customer.

Please also note that if there is a collective labor agreement in place (such as an enterprise agreement), in a 'transfer of business' the terms of the industrial instrument will be binding on the new employer in relation to the transferring employees and, in certain circumstances, their replacements, unless orders are sought from the relevant tribunal to terminate the agreement.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

No.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer should avoid exercising too much control over Service Provider's employees and also avoid treating Service Provider's employees the same as its own employees. The risk of a court/tribunal finding there to be dual employment is very minimal as this not being a recognised concept in Australia. However, there is a risk that the Customer could be found to be the employer rather than the Service Provider if it is exercising the overall control over the employees.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Australian courts will permit some degree of direction and guidance from the previous employer and even a third party. However, the Service Provider will need to exercise overall control over the employees. This includes it being responsible for elements like hiring and firing, performance counselling and discipline, performance appraisals, remuneration, policies and training, hours or work and rosters and any uniforms or equipment. The employing entity should also be clearly defined and agreed. The Customer should avoid extending employment benefits it provides to its own employees to the employees of Service Provider. If Customer exercises too much control it risks being found to be the employer, despite any transfer of business arrangements.

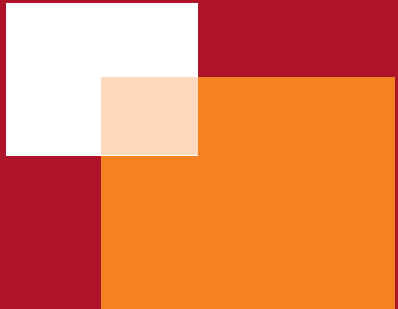
Austria

Simone Liebmann-Slatin

Vienna

Tel: +43 1 2 42 50 530

simone.liebmann-slatin@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy requirements and consultation with works councils.
- If the outsourcing constitutes a transfer of business, the in-scope employees transfer automatically to Service Provider (on existing terms and conditions of employment and crediting of service), unless they exercise their right to object in which case they remain employees of Customer.
- In principle, in-scope employees cannot be made redundant, and any dismissals will likely be subject to unfair dismissal claims.
- In order to minimise the risk of co-employment, Customer must not act as though it was the employer of Service Provider employees.

1. Existence of laws or regulations excluding / limiting outsourcing

Austrian law does not per se limit or exclude the outsourcing of functions or services. Although there are certain legal requirements that have to be complied with in any proposed outsourcing arrangement (e.g., data privacy, employee notification and works council consultation requirements, etc.), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

If the outsourcing constitutes a transfer of business, Service Provider is required to employ in-scope employees. A transfer of business requires the transfer of a defined business unit and the continuation of that business unit post-transfer. A business unit is defined as a unit of persons and/or assets that perform business activities over a longer period with a defined economic objective (i.e., “economic business unit”). The mere continuation of some activities by the Service Provider post-outsourcing is not sufficient to trigger a business transfer. For assuming a business transfer, generally, Service Provider would have to continue the same or similar business activities and take over material and/or immaterial assets, the major part of core staff and/or customers. The importance of each single parameter depends on the nature of the business. For example, if no assets are used in the business unit to be transferred, an outsourcing can constitute a transfer of business even if no assets are transferred.



Unilateral terminations of employment of in-scope employees as a result of a business transfer are void unless they are based on other reasons.

If the outsourcing does not constitute a transfer of business, Service Provider is not required to assume in-scope employees but the parties may agree such transfer by way of a tripartite agreement. Non-transferring employees stay with Customer who has then to decide whether to re-deploy or terminate them.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If the outsourcing constitutes a business transfer, in-scope employees transfer automatically by operation of law, unless they validly object to the transfer. In-scope employees have a very limited right to object to the transfer if Service Provider does not take over specific protections resulting from any existing applicable collective bargaining agreement or pension arrangement. In addition, there might be other comparable cases, where the right to object might apply in analogy.

If there is no business transfer, employees do not transfer automatically. Usually, the parties enter a tripartite agreement to provide for a transfer by way of termination and rehire.

4. If automatic transfer applies, any preconditions for such transfer

In case of an automatic transfer, in-scope employees will have to be informed in advance. If there is a works council, the works council has to be notified before any decision is made and, if requested, the employer has to consult with the works council.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of an automatic transfer, Service Provider must honor existing terms and conditions of employment and credit seniority. Nevertheless, a different collective bargaining agreement might apply following the transfer. In that case, statutory law protects the prior salary to some extent. If Service Provider is genuinely unable to honor specific terms and conditions of employment (e.g. specific bonus arrangements, stock options etc.), Service Provider must grant comparable benefits or compensation instead.

If there is no business transfer, employees transfer by way of agreement, as described above. In such cases the parties are free – in line with statutory

laws - to negotiate new terms and conditions as well as the crediting of seniority.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

If there is no transfer of business, the replacement of customer employees by employees of Service Provider will not provide leverage to redundant employees to claim a higher severance or re-instatement with Customer. Re-instatement can be requested if the individual notice is socially unjustified and there are at least five employees.

If there is a transfer of business, replacement of Customer employees by employees of Service Provider will not provide leverage to redundant employees to claim a higher statutory severance payment. However, it does provide leverage to claim re-instatement. Therefore, in order to obtain a mutual termination agreement with the affected employees, higher (voluntary) payments will most likely be required.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

As a general rule, Customer must be careful not to act as though it was the employer of Service Provider employees. In particular, Customer should not (i) integrate Service Provider employees in the daily workflow, (ii) provide company equipment to them, (iii) give direct instructions regarding the fulfillment of Service Provider tasks or organisational issues (e.g., implement internal reporting lines), or (iv) involve Service Provider employees in any services or tasks provided by Customer’s staff.

Further, in order to minimise the risk of violating illegal labor lending/ personnel leasing rules, any agreement between Customer and Service Provider must be structured so that Service Provider is required to deliver a specific result/ success.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Customer can provide general information and instructions as required for Service Provider employees to perform the services under the service contract. Customer can also audit compliance of contractually owed services. Customer can (and has to) comply with general safety regulations.

Brazil

Tricia Oliveira

Sao Paulo

Tel: +55 11 3048 6997

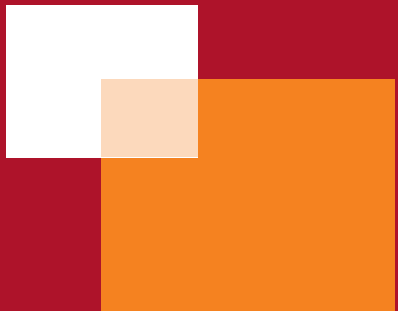
tricia.oliveira@trenchrossi.com

Giovanna Parga

Sao Paulo

Tel: +55 11 5091 5908

giovanna.parga@trenchrossi.com



Key Takeaways

- Historically, in Brazil Labour Court precedents preclude Customer from outsourcing activities that are directly related to its core business. Two new pieces of legislation will most likely overrule this case law meaning that as of 10 November 2017 the outsourcing of core activities will be permissible, as long as the requirements of the Outsourcing Law are met.
- It is recommended that Customer and Service Provider specifically list and define in the outsourcing agreement the services to be performed by Service Provider.
- Care still must be taken that Service Provider employees are not directly subordinated to Customer or render services to Customer on a personal basis.
- Under Brazilian law, in an outsourcing scenario, Service Provider is not obliged to employ in-scope employees and employees do not transfer automatically from Customer to Service Provider but such transfer may be effected by way of a termination and rehire. In such scenario, Service Provider is generally not required to credit seniority or honour Customer terms and conditions of employment.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid employment misclassification risk. Customer shall request on a regular basis evidence that Service Provider is complying with labour taxes, social security contributions, compensation and benefits to reduce financial exposure, due to the secondary liability.

1. Existence of laws or regulations excluding / limiting outsourcing

Historically, in Brazil, Labour Court precedents preclude Customer from outsourcing activities that are directly related to its core business. The term “core business” is not defined and what constitutes a company’s “core business” is a matter of case law. Some courts take the restrictive view that a company’s core business comprises only those activities listed in its corporate documents, whereas other courts apply a broader view and consider all steps of a company’s “production chain” to form part of its core business.

However, two recent pieces of legislation (Law no 13,429 of 31 March 2017 - **Outsourcing Law**, and Law no 13,467 - **Labour Reform Law** applicable as of 10 November 2017), will most likely overrule this case law. While the Outsourcing Law does not distinguish between core and non-core activities and does therefore not necessarily overrule established case law prohibiting the outsourcing of core activities, the Labour Reform Law will likely do so. It



proposes additional amendments to the Outsourcing Law including the express possibility of outsourcing any activities, “*including primary ones*”. In our view, there are good arguments that this will overrule established case law meaning that as of 10 November 2017, the outsourcing of core activities will be permissible, provided that the requirements of the Outsourcing Law are met. However, care should be taken until this view is confirmed more broadly.

The Outsourcing Law authorizes the outsourcing of determined and specific services and expressly prohibits Service Provider to provide services to Customer other than those stated in the services agreement. Therefore, it is recommended that Customer and Service Provider specifically list and define in the outsourcing agreement the services to be performed by Service Provider. The concept of “determined and specific services” is not further explained by the Outsourcing Law and there is some debate around this concept. Some are of the view that the Outsourcing Law does not allow outsourcing of staff/general administrative activities (e.g., printing and secretarial tasks). Again, it remains to be seen how this will be interpreted and applied in practice.

It is also worth noting that the Outsourcing Law explicitly imposes a secondary liability on Customer for unpaid labour/ employment obligations by Service Provider in relation to the outsourced workers rendering services to Customer. Customer should ask Service Provider to regularly send it the payment forms of social security contributions and FGTS for outsourced workers as it will be able to present such forms to the court as evidence of payments in case of an employee bringing a claim against Customer enforcing the secondary liability.

2. Obligation of Service Provider to employ in-scope employees

In an outsourcing scenario, Service Provider is under no circumstances required to employ in-scope employees. But a transfer of in-scope employees from Customer to Service Provider may be commercially agreed.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Under no circumstances do employees transfer automatically from Customer to Service Provider in an outsourcing scenario. But in-scope employees may transfer from Customer to Service Provider by way of a termination/ rehire procedure.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honour Customer terms and conditions of employment; limits to changes to terms and conditions

In a termination/ rehire scenario, generally Service Provider is not required to credit seniority or honour Customer terms and conditions of employment as, in principle, a new employment relationship will be formed.

However, if employees continue to render services to Customer post-outsourcing in a way similar to the situation pre-outsourcing (e.g., they perform the same/similar activities in the same work place), there is a risk that a court will assume “labour succession” and, as a consequence, a continued employment relationship between Customer and outsourced workers (i.e., encompassing their period of employment by Customer and their period of assumed employment by Service Provider). In case of a “labour succession”, terms and conditions of employment must not be changed to the employee’s detriment.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

In principle, no. In Brazil, employees may be terminated at any time with or without cause (except where employees are entitled to provisory job tenure by law or collective bargaining agreement).

Redundancies due to an outsourcing would be considered a termination without cause. While such termination does not entitle the redundant employees to claim reinstatement, they will be entitled to a severance payment.

It is worth noting that in case of “mass lay-offs”, Customer would be required to consult with the Union prior to affecting the terminations in order to mitigate any adverse effects. In the absence of such consultation, terminated employees may challenge their termination. However, the Labour Reform Law excludes this consultation requirement as of 10 November 2017 but, for the time being, it is recommended to honour any such consultation requirements to the extent prescribed in collective bargaining agreements.

Brazilian labour courts have established the following criteria for mass lay-offs:



- (i) terminations are conducted for economic, technological, structural or similar reasons to reduce the workforce in the company/establishment or sector;
- (ii) the terminations affect 5% or more of the workforce (although this number is indicative on); and
- (iii) terminations are conducted in a period of less than 60 days.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labour lending rules

Post-outsourcing, there is a real risk that Service Provider employees deployed to work for Customer bring a claim for employment misclassification and/or joint liability between Customer and Service Provider for taxes, social security contributions and compensation and benefit claims. The threshold question is whether Service Provider employees can be seen as directly subordinated to Customer and substance prevails over form in this regard.

To minimise such risk, Customer must not:

- demand Service Provider to provide services exclusively to Customer or otherwise cause Service Provider to be economically dependent on Customer;
- include Service Provider employees in internal Customer organization, reporting structure and directories;
- give Service Provider employees Customer business cards, Customer business e-mail addresses and/or telephone numbers;
- allow Service Provider employees to use Customer company systems such as time recording and other attendance systems, travel booking systems, etc.;
- provide any form of compensation and benefits to Service Provider employees;
- provide Service Provider employees with Customer-operated production equipment or personal assistance;
- request that specific Service Provider employees render the services or object to the substitution of individual Service Provider employees; or
- give direct working instructions or guidelines to Service Provider employees or supervise, or impose targets on, them.

Violation of these rules may not only result in claims for employment misclassification (e.g., claims by outsourced employees that Customer is their

employer) and or joint liability. Customer may also be exposed to collective claims filed either by the Worker's Union and/or Labour District Attorney Office (depending on the number of individuals involved) and to administrative fines imposed by the Labour Ministry for lack of compliance with labour legislation (e.g., not properly registering one's workforce). Further, repeated assessments may lead to investigations by the Labour District Attorney Office.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labour lending?

Interfaces may be established between Customer personnel and Service Provider personnel to exchange information and products. However, Customer instructions related to the services provided should be directed to a single point or multiple points of contact at Service Provider and not directly to the outsourced employees.

Customer may provide unique tools to Service Provider in the rare case that Service Provider cannot be expected to have equivalent tools and such tools are essential to maintain the standard/quality of the services provided /products developed.

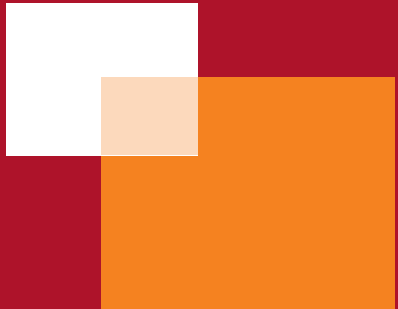
Chile

Andres Valdes

Santiago

Tel: +56 2 2367 7036

andres.valdes@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy requirements.
- Personnel supply or temporary staffing is subject to several restrictions.
- If the outsourcing constitutes a business (unit) transfer, the in-scope employees transfer automatically to Service Provider (on existing terms and conditions of employment and subject to crediting of service). In other cases, a transfer may be executed by way of a termination/ rehire.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid co-employment risk.

1. Existence of laws or regulations excluding / limiting outsourcing

In Chile, the outsourcing of functions or services is not per se limited or excluded. Although there are certain legal requirements that must be complied with in any proposed outsourcing arrangement (e.g., data privacy requirements), such limitations should not preclude Customer from outsourcing certain functions or services. Temporary staffing may only be executed by specialized companies called “EST”, which should be enrolled in a special registry of the labor authority and pay a monetary deposit. Additionally, it is only permitted for specific temporary events listed in the Labor Code.

2. Obligation of Service Provider to employ in-scope employees

If the outsourcing constitutes a business (unit) transfer, the in-scope employees would transfer automatically to Service Provider by operation of law and Service Provider would be required to employ them. In all other cases, Service Provider is not obligated to employ in-scope employees but it may be commercially agreed between the Customer and the Service Provider. No tripartite agreements are advisable nor customary in Chile.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Only if an outsourcing triggers a business (unit) transfer, the in-scope-employees will be transferred automatically by operation of law to Service Provider. In all other cases, the only way to transfer in-scope employees is by terminating the employment relationship with Customer and rehiring by Service Provider.



4. If automatic transfer applies, any preconditions for such transfer

There are no preconditions for an automatic transfer. As a matter of best practice, affected employees should be notified of the transfer and an annex to the employment agreement indicating the new employer should be executed.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

If an outsourcing triggers a business (unit) transfer, Service Provider will be required to maintain employees' previous conditions and credit seniority. In case of a transfer by way of a termination/ rehire, Service Provider is not required to honor existing terms and conditions of employment or credit seniority unless this is commercially agreed between the parties.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

Replacement of Customer employees by employees of Service Provider would not provide leverage to redundant employees to claim a higher severance because outsourcing a whole area in order to reduce operational costs may be a reasonable and valid justification of a dismissal. Re-instatement would not be a valid claim in case of unjustified dismissal, unless the terminated employee has dismissal protections (e.g. maternity protection, union leaders, etc.).

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer must not:

- (a) include transferred employees in internal Customer organization, reporting structure and directories;
- (b) give transferred employees Customer business cards, Customer business e-mail addresses, telephone numbers and/or any other Customer working tool;

- (c) allow transferred employees to use Customer company systems such as time recording and other attendance systems, travel booking systems, etc.;
- (d) provide any form of compensation and benefits to transferred employees;
- (e) provide transferred employees with Customer-operated workplaces, production equipment or personal assistance; or
- (f) give direct working instructions to transferred employees.

If Customer violates these rules, employees could claim to be employed by Customer and Customer could be held liable for social security contributions, compensation and benefits which could be claimed by the employees (even retrospectively). In addition, establishing a co-employment could be a violation of mandatory labor lending regulations and trigger administrative fines.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

This will depend on the type of service that will be outsourced and a case-by-case-basis analysis will be required. In any case, Customer instructions should be directed to a single point or multiple points of contact at Service Provider and not directly to the outsourced employees.

Colombia

Tatiana Garces-Carvajal

Bogota

Tel: +57 1 6341543

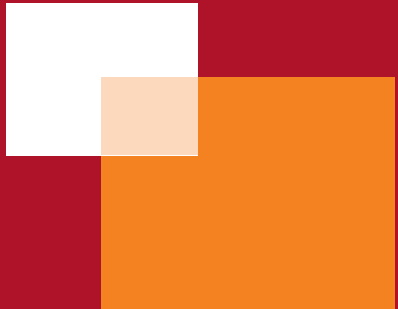
tatiana.garces@bakermckenzie.com

Sebastián Salazar Muñoz

Bogota

Tel: +57 1 6341567

sebastian.salazar@bakermckenzie.com



Key Takeaways

- Generally, outsourcing is legal in Colombia. However, the implementation of outsourcing activities and labor lending schemes which undermine constitutional and legal rights of employees are prohibited by law.
- Every outsourcing / labor lending scheme should be reviewed on a case-by-case basis to ensure it is compliant with applicable employment legislation.
- If the outsourcing constitutes a transfer of business, the in-scope employees will automatically transfer by operation of law to Service Provider on their existing terms and conditions of employment.
- In the absence of an automatic transfer, Customer and Service Provider may agree to assign employment agreements of in-scope employees from Customer to Service Provider subject to the affected employees' prior consent. Alternatively, a termination/ rehire may be effected.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid co-employment risk, misclassification risk and fines from governmental authorities.
- Governmental authorities, led by the Ministry of Work, are routinely reviewing the legality of outsourcing schemes as part of investigations and dawn raids.

1. Existence of laws or regulations excluding / limiting outsourcing

Colombian law does not exclude outsourcing per se but several regulations limit outsourcing in order to protect employees (ie, the Colombian labor code and other laws and decrees enacted in the past). The enforceability of these limitations was enhanced with the signing of the Free Trade Agreement between Colombia and the US Government, under which the Colombian Government committed to eliminate all illegal forms of labor lending.

Essentially, agreements according to which Service Provider personnel will perform “permanent activities” for Customer must not undermine employment rights of the involved employees. Governmental authorities apply a broad interpretation and consider as “permanent activities” even those activities that, in practice, are not truly related to the core business of Customer. Also, they have enacted regulations providing a list of “indicative behaviors” that are likely to constitute illegal labor lending/ outsourcing activities. Violations can be sanctioned with fines up to around US \$1,230,000 (for 2017) depending on the severity of the breach.



2. Obligation of Service Provider to employ in-scope employees

If the outsourcing constitutes a business transfer, the in-scope employees will transfer by operation of law to the Service Provider on existing terms and conditions of employment (an employer substitution occurs).

In all other cases, Service Provider is not obligated to employ in-scope employees but it may be commercially agreed between Customer and Service Provider. In this scenario, the transfer of the in-scope employees to Services Provider will require the employee's consent and acceptance (tripartite agreement).

However, the transfer of Customer employees to Service Provider for the rendering of services that are directly or indirectly related to Customer's corporate purposes or business, is considered as one of the activities that "indicate" the existence of an illegal labor lending activity.

3. Mechanism of employee transfer (automatic vs. termination and offer)

In-scope employees may transfer from Customer to Service Provider via: (a) employer substitution, ie, automatic transfer, (b) assignment of employment agreements, or (c) termination and rehire.

(a) Employer substitution

An employer substitution takes place automatically whenever there is a "change of an employer for another". This would be the case in a business unit transfer involving a transfer of assets), no matter what the cause may be (such as a sale of assets, sale of a division or business unit, sale of the commercial establishment), provided that the nature of the business transferred does not suffer any essential variation and that the employees continue to perform their services.

Substitution of employers entails an automatic transfer. The general rule is that the old and the new employer are jointly and severally liable for all labor obligations related to the existing employment agreements at the time the employer substitution takes place. The new employer is responsible for the obligations that come into effect after the substitution occurs.

(b) Assignment of the employment agreements

In the absence of an automatic transfer, Customer and Service Provider may agree to assign employment agreements of in-scope employees from Customer to Service Provider subject to the affected employees' prior consent. Save for this requirement, the assignment has the same effects as

an employer substitution and Service Provider would become the new employer of the in-scope employees.

- (c) Termination of the employment agreements and rehire by the new employer

In an outsourcing scenario, in-scope employees may also be transferred from Customer to Service Provider by a termination/ rehire procedure. Customer would terminate the employment agreements (either without cause or with the employees' consents) and pay the employees all mandatory separation payments, including potential severances. Obtaining the employees' consent is advisable in order to minimize the risk of unfair dismissal claims. Service Provider would execute new employment agreements with the employees and would not be required to honor seniority.

4. If automatic transfer applies, any preconditions for such transfer

An automatic transfer does not require the consent of in-scope employees. If a collective bargaining agreement is in place and provides a prior consultation requirement in a business transfer scenario, Service Provider and/ or Customer need to consult with the relevant union/ association of employees prior to proceeding. The obligation to consult will fall either on Customer or on Services Provider depending on the wording of the CBA (if any).

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In a termination/ rehire scenario, there is no legal obligation for Service Provider to credit seniority with Customer or honor the employee's terms and conditions of employment.

In an employer substitution, seniority and current employment conditions shall be honored as employment agreements are transferred on an "as is" basis. This will also apply in a scenario of assignment of the employment agreements, except if employees agree with the Services Provider new terms and conditions of employment.



6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

As the outsourcing will not constitute a legal ground for termination of an employment contract, Customer will be required to pay employees the statutory severance. However, replacement of Customer employees by employees of Service Provider will not provide leverage to redundant employees to claim reinstatement or a severance that is higher than the statutory severance.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer must not directly subordinate Service Provider employees, as this would trigger a high risk that Customer is considered the employer of the relevant Service Provider employees. In particular, Customer shall not:

- grant typical labor benefits to Service Provider employees similar or identical to the ones granted to its employees. (eg, transportation or meal allowances)
- give direct orders in writing to Service Provider employees (eg, via email)
- certify the existence of an employment agreement between Customer and the Service Provider employees
- provide work materials and tools to Service Provider employees to perform the contracted services
- allow Service Provider employees to fill out Customer forms and reports
- reprimand Service Provider employees in writing and, generally, avoid any actions that may be considered as involving subordination.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

This will depend on the type of service that will be outsourced and a case-by-case basis analysis will be required. In any case, Customer must not subordinate outsourced employees. Instructions should be directed to a single point at Service Provider (usually a contract administrator) and not directly to the outsourced employees.

Czech Republic

Alexandr Cesar

Prague

Tel: +420 236 045 001

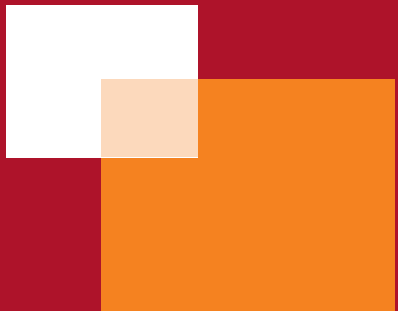
alexandr.cesar@bakermckenzie.com

Zuzana Ferienc

Prague

Tel: +420 236 045 001

zuzana.ferienc@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy and notification/consultation requirements.
- If the outsourcing constitutes a transfer of (part of) tasks or business activities, the in-scope employees transfer automatically to Service Provider (on existing terms and conditions of employment and subject to crediting of service), unless they exercise their right to terminate their employment.
- In case of an automatic transfer, notification and consultation duties arise.
- Czech law does not recognize the concept of co-employment. However, care needs to be taken to avoid illegal labor-lending.

1. Existence of laws or regulations excluding / limiting outsourcing

In Czech Republic, the outsourcing of functions or services is not per se limited or excluded. Although there are certain legal requirements that must be complied with in any proposed outsourcing arrangement (e.g., data privacy and notification/consultation requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Service Provider is required to employ in-scope employees if the outsourcing constitutes a transfer of (part of) tasks or business activities, unless the in-scope employees file a termination notice in connection with the transfer before the transfer date. If the outsourcing does not constitute a transfer of (part of) tasks or business activities, there is no obligation on Service Provider to take on in-scope employees.

Czech law does not specify any conditions/requirements for the transfer of (part of) tasks or business activities. Tasks or business activities may be transferred during the transfer of an enterprise as a going concern, or separately by an agreement between the parties.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If an outsourcing constitutes a transfer of (part of) tasks or business activities, the in-scope employees transfer automatically from Customer to Service Provider by virtue of law (including their rights and obligations ensuing from



their labor relationships with Customer). The parties cannot exclude the automatic transfer through a contractual arrangement.

Employees have no right to object to the automatic transfer. However, they may file a termination notice in connection with the transfer before the transfer date in which case their employment will terminate as of the day immediately preceding the transfer. No severance payment is applicable in such case.

If there is no valid legal ground for an automatic transfer of employees, the only option for in-scope employees to transfer from Customer to Service Provider is by way of a termination / rehire.

4. If automatic transfer applies, any preconditions for such transfer

30 days prior to an automatic transfer, Customer and Service Provider must notify, and consult with, the employee representatives about the transfer. In case there are no employee representatives, all employees to be transferred must be informed individually.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of an automatic transfer of in-scope employees, Service Provider is required to credit their seniority and honor their existing terms and conditions of employment. A transferred employee whose employment terminated within 2 months from the effective date of the transfer (by notice or by mutual agreement) is entitled to file a court petition claiming that such termination of the employment relationship was caused by a substantial deterioration of working conditions (including, inter alia, conditions of remuneration) in relation to the transfer. If the court declares that the employment relationship was terminated due to substantial deterioration of working conditions, such employee will be entitled to a statutory severance payment.

In the absence of an automatic transfer, Service Provider is not required to credit seniority or honor existing terms and conditions of employment of transferring employees.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

No, assuming that there is a genuine redundancy situation and a fair process is followed.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Czech law does not recognize the concept of co-employment. To avoid any potential issues with illegal labor-law lending, Service Provider (and not Customer) should be responsible for assigning work to, and instructing, the outsourced employees, and for organizing, managing and supervising the outsourced employee’s work. Further, the following should be reflected in the services agreement between Customer and Service Provider:

- the outsourced services should be described in detail;
- the service fees should be calculated on the basis of the services provided rather than being calculated as the repayment of costs for the outsourced employees with a margin; and
- the services agreement should not state that the outsourced employee will be assigned to the Customer.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Interfaces may be established between Customer personnel and Service Provider personnel to exchange information and products. However, Customer instructions should be directed to a single point or multiple points of contact at Service Provider and not directly to the outsourced employees.

Customer may provide unique tools to Service Provider in the rare case that Service Provider cannot be expected to have equivalent tools.

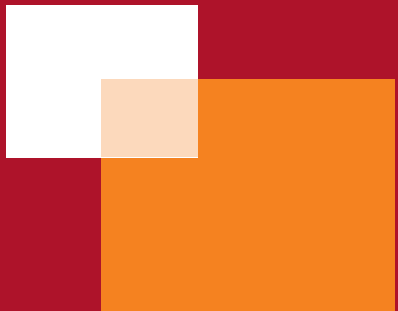
France

Nadège Dallais

Paris

Tel: +33 1 44 17 53 60

nadege.dallais@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy requirements and consultation with works councils and health and safety committees (CHSCT).
- If the outsourcing involves the transfer of an “autonomous economic entity”, the in-scope employees transfer automatically to Service Provider (generally on existing terms and conditions of employment and subject to crediting of service). Any dismissal by Customer of an in-scope employee would be null and void.
- Any works council CHSCT of Customer and Service Provider must be informed and consulted before any binding decision to outsource is made.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid co-employment risk.
- France has a highly-regulated labor environment and implementation of outsourcing projects is generally difficult from a labor law perspective.

1. Existence of laws or regulations excluding / limiting outsourcing

Although there are certain legal requirements that have to be complied with in any proposed outsourcing arrangement (e.g., data privacy requirements, consultation with works councils and health and safety committee (CHSCT)), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Service Provider would be required to employ in-scope employees if the outsourcing constitutes a transfer of an autonomous economic entity. Article L. 1224-1 of the French Labor Code (which reflects transfer of business legislation) provides that if an “autonomous economic entity” is transferred in such a way that it retains its identity and is operated as such by the purchaser, then the employment contracts of those employees working in such entity are automatically transferred to the purchaser. An “autonomous economic entity” is an organized group of persons with its own assets, clients and line of business. Whether an outsourcing scenario leads to the transfer of an “autonomous economic entity”, which in turn leads to an automatic transfer of in-scope employees, needs to be examined on a case- by-case basis. If a



transfer of an “autonomous economic entity” takes place, any dismissal by Customer of in-scope employees will be null and void.

3. Mechanism of employee transfer (automatic vs. termination and offer)

In the case of a transfer of an autonomous economic entity, the employees will transfer automatically by operation of law to Service Provider. They cannot object to the transfer (if transferring employees refuse to transfer they should be considered as having resigned or abandoned their work position). No offers of employment need to be made by Service Provider. However, if “protected employees” (such as works council members, union members) are included in the in-scope employees, their transfer to Service Provider will be subject to the prior approval of the labor inspector. Customer will be required to file an application with the local labor inspector at least 15 days before the proposed date of transfer. The local labor inspector will verify that the transfer of the “protected employee” is not discriminatory (i.e., the transfer has not been organized to eliminate the protected employees from the company) and grant/refuse authorization accordingly.

If the outsourcing does not satisfy the criteria of a transfer of an autonomous economic entity, employees could only transfer by way of a termination and re-hire.

4. If automatic transfer applies, any preconditions for such transfer

The respective works councils CHSCT of Customer and Service Provider will need to be informed and consulted before any binding decision to outsource can be made.

With regard to the employees, there are no preconditions for such transfer to occur if the automatic transfer applies as indicated above (subject to the approval procedure in respect of “protected employees” outlined above). Although it is not legally required, an information letter is usually sent by Service Provider a few days before the effective date of the transfer.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In a termination/rehire scenario, Service Provider is not obliged to credit seniority with Customer or honor Customer terms and conditions of employment.

In case of an automatic transfer of employees, Service Provider's obligations with regard to benefits enjoyed by in-scope employees with Customer depend upon whether the benefits derive from individual employment contracts, collective bargaining agreements, in-house agreements negotiated with union delegates, "atypical" agreements or custom and practice.

(a) Individual employment contracts

The employment contracts of in-scope employees are automatically transferred to Service Provider meaning that Service Provider is bound by the substantive obligations under the individual employment contracts as they existed on the day of the transfer (e.g., obligations in respect of remuneration, place of work and seniority).

However, Service Provider may - with caution - offer new terms and conditions of employment to in-scope employees individually which the in-scope employees are free to accept or reject. If an in-scope employee rejects such an offer, Service Provider must either renounce the offer and employ the in-scope employee on the Customer terms and conditions or dismiss the employee. Such a dismissal risks being construed as an unfair dismissal (triggering the payment of damages to the employee) if Service Provider is not able to justify its decision to dismiss the employee by a valid economic reason. Moreover, a specific procedure (including consultation with the works council and the CHSCT) must be followed in proposing the modification of the employment contract based on economic grounds. Service Provider bears the post-transfer dismissal liability unless otherwise agreed with Customer. Customer cannot undertake to support the costs of the damages granted to the employees in the event of an unfair dismissal or the costs of a settlement indemnity as this would be considered a violation of the French regulations regarding the automatic transfer of employees.

(b) Collective bargaining agreements

If the collective bargaining agreement applicable to Service Provider is the same as the collective bargaining agreement applicable to Customer, there will be no need to negotiate a harmonization of the benefits under the respective companies' collective bargaining agreements.

However, if the agreements are different (which will probably be the case when "non-core" functions such as IT or HR functions are outsourced), the in-scope employees will entirely fall into the collective bargaining agreement of Service Provider after a 15 month transition period, during which time they will continue to benefit from the provisions of the Customer collective bargaining agreement, if more favorable.



- (c) In-house agreements, custom and practice, unilateral employer's practices

Benefits resulting from in-house agreements, custom and practice and unilateral employer's practice, automatically bind Service Provider, but they may be "denounced" subject to complying with a specific procedure.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

The replacement of in-scope employees by Service Provider employees does provide leverage to redundant employees to claim re-instatement or a higher severance as the ostensibly redundant position would in fact not be redundant.

7. Absolute "no-goes" for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

It is very important that Customer does not continue to "manage" the outsourced activity post-transfer because this would refute the transfer of an autonomous economic entity and potentially create a "co-employment" situation.

In particular, Customer must not:

- include transferred employees in internal Customer organization, reporting structure and directories;
- give transferred employees Customer business cards, Customer business e-mail addresses and/or telephone numbers or any work clothing with the Customer's name;
- allow transferred employees to use Customer company systems such as time recording and other attendance systems, travel booking systems, etc.;
- provide any form of compensation and benefits to transferred employees;
- provide transferred employees with Customer-operated workplaces, production equipment or personal assistance; and
- give direct working instructions to transferred employees.

If Customer violates these rules, employees could claim to be employed by Customer and Customer could be held liable for taxes, social security

contributions and compensation and benefit claims by the employees (even retroactively). In addition, this could trigger administrative fines for not properly registering its workforce.

The violation of these rules could also trigger criminal offences as it might constitute profit-driven workforce supply and illegal lending of workforce prohibited pursuant to articles L. 8231-1 and following of the Labor Code, wherever it causes any prejudice to any of the employees concerned (e.g., the latter receiving less compensation, benefits or other social rights or profits from Service Provider than they would have been entitled to, had they been directly employed by Customer). This risk will be higher if the benefits or collective status are less favourable with Service Provider than with Customer.

These criminal offences are subject to a maximum fine of Euros 30,000 (Euros 75,000 if several employees are subject to this violation) and a maximum imprisonment of 2 years (5 years if several employees are involved) for individuals. The legal entity can also be sanctioned by a maximum fine of Euros 150,000. The courts may also prohibit the “workforce” supplier from performing any activity for 5 years and have the judgment published in the newspapers.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Interfaces may be established between Customer personnel and Service Provider personnel to exchange information and products. However, Customer instructions should be directed to a single point or multiple points of contact at Service Provider and not directly to the outsourced employees.

Customer may provide unique tools to Service Provider in the rare case that Service Provider cannot be expected to have equivalent tools.

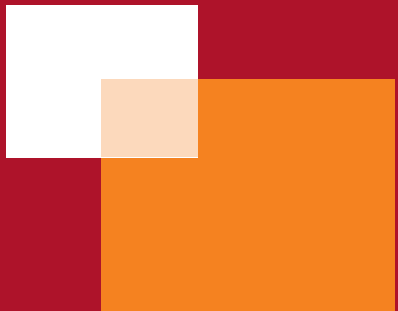
Germany

Hagen Koeckeritz

Frankfurt

Tel: +49 69 2 99 08 152

hagen.koeckeritz@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy and consultation with works councils requirements.
- If the outsourcing constitutes a transfer of undertaking, the in-scope employees transfer automatically to Service Provider (on existing terms and conditions of employment and subject to crediting of service), unless they exercise their right to object in which case they remain employees of Customer.
- In principle, in-scope employees cannot be made redundant, and any dismissals will likely be subject to unfair dismissal claims.
- In case of automatic transfers, strict notification requirements apply.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid co-employment risk.

1. Existence of laws or regulations excluding / limiting outsourcing

German law does not per se limit the outsourcing of functions or services. Although there are certain legal requirements that have to be complied with in any proposed outsourcing arrangement (e.g., data privacy requirements, works council consultation requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Service Provider is required to employ in-scope employees if the outsourcing constitutes a transfer of undertaking (“Betriebsübergang”), unless the in-scope employee objects to the transfer and opts to remain with Customer within one month from the time the employee receives a properly drafted transfer notice. In principle and subject to the below, employees cannot be made redundant on the basis of a transfer of undertaking. Terminations “due to a transfer of undertaking” are explicitly prohibited under German law.

If the outsourcing does not qualify as a transfer of undertaking, no employees transfer automatically from Customer to Service Provider.

A transfer of undertaking occurs if (a) the outsourced function forms a separate business unit or a part of an identifiable business unit within Customer with an inner-organizational structure, and (b) Service Provider assumes a certain amount of assets and/or personnel associated with the outsourced function. Relevant assets do not only include tangible assets such



as real estate, production and office facilities, equipment, or inventory but also customer contracts, a customer data base, IP rights, know-how and other intangible assets. There is no one-size-fits-all test as to whether a transfer of undertaking occurs, rather a case-by-case consideration is required.

In-scope employees (i.e., those that automatically transfer to Service Provider in a transfer of undertaking scenario) are primarily those employees that are part of, or fully assigned to, the business unit (or part thereof) to be transferred. Employees in overhead areas servicing multiple business units or departments are typically not considered in-scope employees for the purpose of transfer of undertaking regulations and do therefore not enjoy the protection of the transfer of undertaking regulations. Whether or not employees are in-scope employees needs to be assessed on a case-by-case basis.

To the extent employees are not in-scope employees, they do not automatically transfer to Service Provider and Customer can issue redundancy terminations provided that the generally applicable requirements of German law are satisfied. In particular, Customer must be able to prove that the job of the particular employee will in fact be redundant, that there is no alternative position in the company which the employee could assume, and that the proper social selection criteria are met.

Finally, although the transfer of undertaking rules are mandatory, the individual situation may offer room for interpretation and allow the parties to find a pragmatic solution that accommodates the needs of both sides as long as certain risks are accepted and financial burdens are properly allocated.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If the outsourcing triggers a transfer of undertaking, the in-scope employees transfer automatically by operation of law (subject to their right to object to a transfer and remain employees of Customer). Service Provider effectively steps into Customer's shoes with regard to the in-scope employees. No offers of employment need to be made by Service Provider.

If the outsourcing does not trigger a transfer of undertaking, employees may be transferred by a termination/ re-hire procedure.

4. If automatic transfer applies, any preconditions for such transfer

German law sets out very strict notification requirements for the employer towards all employees affected by a transfer of business. Accordingly, either Customer or Service Provider – or frequently both parties jointly – are obliged to inform each employee affected by the transfer in writing about the date or purported date of the transfer, the reasons for the transfer, the legal,

economic and “social” consequences of the transfer for the employee, and the measures envisaged towards the employee.

If the information that is provided to the employees is incorrect, incomplete or misleading, the one-month objection period will not start to run and employees can object to the transfer and sue their way back into Customer several months or even years later. The financial risks resulting from such improper information should be addressed in the outsourcing agreement.

Generally, the transfer of a business does not trigger an obligation to notify or consult with works councils or unions. However, exceptions may apply. For example, if the transfer entails operational changes (e.g., relocation of employees, split of operations, etc.), such operational changes may be implemented only after completion of consultations with works councils or unions.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In accordance with mandatory transfer of undertaking regulations Service Provider has to recognize the employees’ seniority with Customer and, in principle, has to honor existing terms and conditions of employment. Service Provider’s ability to change terms and conditions of employment is very limited (and subject to restrictive legal requirements) and depends on whether the terms and conditions are based on an employment agreement, a works council agreement or a collective bargaining agreement.

As a general rule, where terms and conditions of employment are governed by works council agreements (“Betriebsvereinbarungen”) or collective bargaining agreements (“Tarifverträge”), as of the date of transfer, the works council agreements and collective bargaining agreements in force at Service Provider will typically prevail over the works council agreements and collective bargaining agreements in force at Customer to the extent they cover the same subject matter. A case-by-case assessment is necessary.

If Service Provider does not have works council agreements in place and/or is not bound by collective bargaining agreements, terms and conditions of employment that, prior to the transfer, arose from works council agreements and/or collective bargaining agreements will, in principle, be converted into individual contractual entitlements at the level of the employment agreement. In such a case, these terms and conditions must not be modified to the employee’s detriment during the first year after the date of the transfer of business. Any change after the first year has to be effected either by mutual



agreement or by unilateral termination with the intent to change the terms and conditions.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

If the outsourcing constitutes a transfer of undertaking, terminated Customer employees whose positions are filled with Service Provider employees will have significant leverage to challenge the termination and claim for reinstatement or negotiate a higher severance payment on the basis that their position was not redundant.

If the outsourcing does not constitute a transfer of undertaking, Customer employees whose functions are outsourced to a Service Provider that uses its own personnel and does not assume any assets or operate on-premise, will not have additional leverage to claim re-instatement or a higher severance.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer must not:

- include transferred employees in internal Customer organization, reporting structure and directories;
- give transferred employees Customer business cards, Customer business e-mail addresses and/or telephone numbers;
- allow transferred employees to use Customer company systems such as time recording and other attendance systems, travel booking systems, etc.;
- provide any form of compensation and benefits to transferred employees;
- provide transferred employees with Customer-operated workplaces, production equipment or personal assistance; and
- give direct working instructions to transferred employees.

If Customer violates these rules, employees could claim to be employed by Customer and Customer could be held liable for taxes, social security contributions, and compensation and benefit claims by the employees (even retrospectively). In addition, establishing a co-employment could be a violation of mandatory labor lending regulations and trigger administrative fines.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Interfaces may be established between Customer personnel and Service Provider personnel to exchange information and products. However, Customer instructions should be directed to a single point or multiple points of contact at Service Provider and not directly to the outsourced employees.

Customer may provide unique tools to Service Provider in the rare case that Service Provider cannot be expected to have equivalent tools.

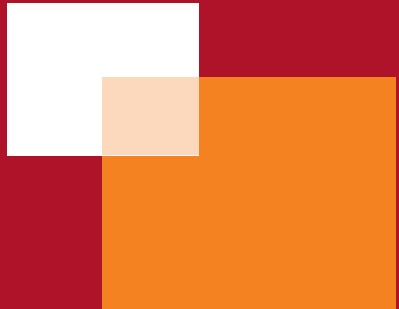
Hong Kong

Rowan McKenzie

Hong Kong

Tel: +852 2846 2103

rowan.mckenzie@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements such as data privacy requirements must be met.
- Hong Kong does not recognize automatic transfers of employees. In-scope employees only transfer from Customer to Service Provider by way of a termination/ rehire if and as commercially agreed by all parties.
- The risk of co-employment is low.

1. Existence of laws or regulations excluding / limiting outsourcing

In Hong Kong, the outsourcing of functions or services is not per se limited or excluded. Although there are certain legal requirements that must be complied with in any proposed outsourcing arrangement (e.g., data privacy requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Service Provider is not required to employ in-scope employees but the parties may commercially agree a transfer of the in-scope employees to Service Provider by way of a tripartite agreement.

If no transfer is agreed, the in-scope employees remain with Customer unless their employment is validly terminated with notice. In case of a termination, Customer must honor employee entitlements such as payment of unpaid wages and bonus entitlements, payment for accrued leave and payment of statutory severances. That said, in an outsourcing scenario, statutory severances must not be paid if Customer and Service Provider are “associated companies” and an employee refuses an offer by Service Provider to recognize past service and employ him/her on terms and conditions that are no less favourable than the existing Customer terms (which offer must be made at least seven days prior to the intended transfer date).

3. Mechanism of employee transfer (automatic vs. termination and offer)

There is no automatic transfer of employees in Hong Kong. The transfer must be carried out by Customer terminating the employment of the in-scope employees and Service Provider making an offer of employment to those employees (termination/ re-hire). The relevant employees should be provided with a letter terminating their employment with Customer, and a letter offering



new employment with Service Provider. To simplify the process, one tri-party transfer letter may be used. This letter would be jointly issued by Customer and Service Provider and, once signed by the employee, the terms of the transfer would be agreed. There is no mandated or formal procedure for the transfer of employment. Specifically, there is no obligation to consult with employees prior to termination, or any notification requirements to local government or unions.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

Service Provider is not required to credit seniority or honor customer terms and conditions of employment. However this is frequently commercially agreed, in particular, for critical employees. As per response to question (2) above, if Customer and Service Provider are associated companies, Service Provider should recognize past service and offer employment to the employees on terms and conditions that are no less favourable than the existing Customer terms in order to avoid being liable to pay statutory severance.

However, while there is no requirement to credit seniority or honor customer terms and conditions of employment, in-scope employees must consent to the transfer and might refuse such consent in case of variations to their terms and conditions of employment. If a substantive change is made and consent is not obtained then there is a risk that constructive dismissal claims may be brought and any restrictive covenants are likely to be unenforceable as a result.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

No.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

If Customer employees are working for Service Provider post-outsourcing this should not be problematic as long as the identity of their employer is clear. If Service Provider engages agency workers or independent contractors for long periods then this could present employment status challenges later on but this would not impact on Customer.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Hong Kong courts will permit a reasonable degree of direction and guidance from the previous employer and even a third party provided the employing entity is clearly defined and agreed.

Indonesia

Susie Beaumont

Jakarta

Tel: +62 21 2960 8608

susie.beaumont@bakermckenzie.com

Alvira M. Wahjosoedibjo

Jakarta

Tel: +62 21 2960 8503

alvira.m.wahjosoedibjo@bakernet.com

Mohammad Rinaldo Aditya

Jakarta

Tel: +62 21 2960 8642

rinaldo.aditya@bakernet.com



Key Takeaways

- Outsourcing is not prohibited in Indonesia. However, it is highly regulated and both Customer and Service Provider need to meet specific requirements depending on the types of outsourcing.
- If the outsourcing requirements are not fulfilled, the employees of Service Provider deployed to work for Customer will be deemed as employees of Customer.
- There is no automatic transfer of employment in Indonesia but employees may transfer from one employer to another employer by way of “transfer” or by “termination and rehire”. In both cases, employee consent is required.
- Under Indonesian law, in an outsourcing scenario, Service Provider is not obliged to employ in-scope employees.
- Post-outsourcing, there are matters that will need to be avoided by Customer to mitigate the risk of employees of Service Provider being deemed as employees of Customer.

1. Existence of laws or regulations excluding / limiting outsourcing

Outsourcing is highly regulated in Indonesia and there are specific requirements that must be fulfilled by Customer and Service Provider, depending on the types of outsourcing. There are 2 types of outsourcing, ‘outsourcing of work’ and ‘outsourcing of labor’.

Importantly, if an outsourcing of work or labor does not fulfil the respective requirements set out below, the employees of Service Provider deployed to work for Customer will be deemed as employees of Customer.

(a) In an “outsourcing of labor” arrangement, the focus is on the supply of people (ie, labor/manpower/employees). Typically the fees of the labor supplier are calculated based on the actual expenses related to the number of employees supplied (plus an additional management fee). In an ‘outsourcing of labor’ scenario (labor supply), only “supporting” activities can be outsourced and these activities are limited to the following five activities:

- cleaning services
- catering services for employees
- security services
- support services in the mining and oil sector



- transportation services for employees.

Service Provider must be in the form of a limited liability company and must have a labor supply operational licence. In addition, Service Provider must register the labor supply agreement between Service Provider and Customer with the competent office of the Ministry of Employment (“**MOE**”).

- (b) An “outsourcing of work” focuses on the outsourced services. Typically, in an outsourcing of work arrangement, the services are not described as providing labor/manpower/employees. Instead, the services to be provided are described. Service Provider is paid a fee for those services, regardless of the number of employees Service Provider uses to provide the services.

It is illegal to outsource core activities. Only those non-core activities that are set out in a “**Flowchart**” issued by the relevant Industry Association of which Customer is a member may be outsourced.

Customer must submit a “Description of Supporting Work” (“**DSW**”) to the competent office of the MOE. The DSW must list the non-core activities that the Customer proposes to outsource.

If a DSW is compliant, the competent office of the MOE will issue a “**Proof of Report**”. Service Provider will then need to register the underlying outsourcing agreement with the competent office of the MOE prior to Service Provider starting to provide the services to Customer.

2. Obligation of Service Provider to employ in-scope employees

In an outsourcing scenario, Service Provider is under no circumstances required to employ in-scope employees of Customer. However, moving in-scope employees from Customer to Service Provider can be commercially agreed. The consent of the affected in-scope employees is required.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Indonesian law does not recognise the concept of an automatic transfer of employees. There are two options for moving in-scope employees from Customer to Service Provider. Firstly, employees may be “transferred” by way of a tripartite transfer agreement between Customer, Service Provider and employee. Alternatively, employees may move by way of “termination and rehire”. This requires Customer and employee to terminate their employment agreement and Service Provider and employee to enter into an employment agreement.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of a transfer of employees, Service Provider must honor the existing terms and conditions of employment and credit seniority (including recognizing the years of service of the employees at Customer). In a termination and rehire scenario, Service Provider is not required to honor the existing terms and conditions of employment, credit seniority or recognise years of service as the latter would have been paid the termination payment by Customer.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

Yes, in this scenario it would be very difficult to legally terminate the Customer employees. If the matter goes to the Industrial Relations Court (“IR Court”), the IR Court would likely not approve the termination because the reason for such termination is not a reason set out in the Indonesian Labor Law.

There is no concept of unilateral termination of employment due to “redundancy” in Indonesia. Essentially in a redundancy situation the employee must agree to be terminated (ie, a “mutual termination”) and enter into an agreement with the employer that is registered at the IR Court. If this procedure is followed, any subsequent claims by employees for re-instatement or a higher severance are likely to be unsuccessful. If a joint agreement is not registered with the IR Court, employees have a good chance of succeeding in claims for reinstatement or a higher severance.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

In Indonesia, there is no concept of “co-employment” under which two entities share employment responsibilities as joint employers. However, in Indonesia it is possible for an individual to have two employers at the same time (ie, dual



employment). In a dual employment situation, each employer has separate obligations towards the employee.

To mitigate any dual employment risk on an outsourcing scenario, Customer should avoid:

- providing Service Provider's employees with company name cards
- allowing Service Provider's employees to act on behalf of Customer
- providing Service Provider's employees with uniforms, name tags and access cards which are similar to those of Customer's employees
- providing Service Provider's employees with the same benefits (such as health insurance) or office's facilities (such as club membership, office car, etc.) which are given to the Customer employees
- involving Service Provider's employees in office functions (such as family day, meetings, etc.) without specific invitation from Customer to Service Provider stating that the employees of Service Provider are welcome to attend Customer's functions
- placing Customer employees in the same office as other regular employees.

In short, it is important to clearly differentiate between the outsourced employees the regular Customer employees.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Please see response to question 7.

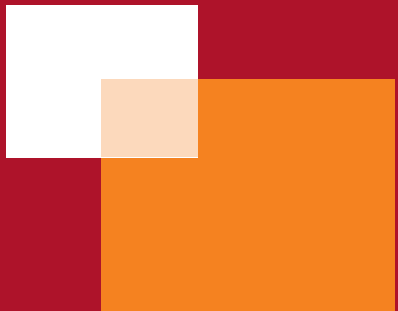
Italy

Uberto Percivalle

Milan

Tel: +39 02 76231 330

uberto.percivalle@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met (e.g., relating to data privacy and national collective agreements).
- If the outsourcing constitutes a transfer of undertaking, the in-scope employees transfer automatically to Service Provider (including on existing terms and conditions of employment and subject to crediting of service). In-scope employees cannot be made redundant for the reason of a transfer of undertaking.
- Any works councils or unions of Customer and Service Provider must be consulted on the planned outsourcing if it constitutes a transfer of undertaking.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid co-employment risk.

1. Existence of laws or regulations excluding / limiting outsourcing

Although there are certain legal requirements that must be complied with in an outsourcing context (such as consultation of unions, occupational safety precautions and more general precautions addressing employment law concerns), Italian law does not limit the outsourcing of functions or services per se. That said, specific provisions may apply and require consideration in particular cases (e.g., outsourcing of call centres outside the European Union).

2. Obligation of Service Provider to employ in-scope employees

Service Provider is required to take on the in-scope employees if the outsourcing as a whole constitutes a transfer of undertaking. According to article 2112 of the Italian Civil Code, which implements the European Transfers of Undertakings Directive, a “transfer of undertaking” occurs if:

- an undertaking/ business (or an autonomous part thereof), whether or not operating for profit,
- is transferred from one entity to another regardless of the nature of the transaction or the instrument effecting the transfer (including usufruct or leasing of an undertaking), and
- the identity of the undertaking/ business (or part thereof) is retained throughout the transfer.



Employees cannot be made redundant for the sole reason of a transfer of undertaking. This does not exclude redundancies for a different, genuine reason, but any termination in the context of an outsourcing transaction requires careful consideration.

If the outsourcing does not constitute a transfer of undertaking, Service Provider is not required to employ in-scope employees according to the law on transfers of undertakings. However, the national collective agreements of many industries in which outsourcing transactions are common, include so-called “social clauses” which commonly require Service Provider in an outsourcing scenario to offer employment to in-scope employees and/or consult with unions.

Finally, even in the absence of a requirement for Service Provider to employ in-scope employees, it is not unusual for Customer and Service Provider to contractually agree that Service Provider will employ at least part of the in-scope employees.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If the outsourcing triggers a transfer of undertaking, the in-scope employees transfer automatically by operation of law. In-scope employees do not have a right to object to being transferred to Service Provider except that they may challenge the existence of a transfer of undertaking itself. They can also choose to resign prior to the transfer taking effect.

Employees whose working conditions have been materially affected to their detriment, may resign for just cause within three months of the transfer and would then be entitled to receive an indemnity in lieu of notice.

If the outsourcing does not constitute a transfer of undertaking, an employee transfer may be effected by a termination and re-hire procedure, frequently executed through a tri-partite assignment of employment agreements.

4. If automatic transfer applies, any preconditions for such transfer

In case of automatic transfers, article 47 of Law No. 428/1990 provides a mandatory consultation procedure between the employers and works councils/ unions if the transferor has more than 15 employees (regardless of the number of employees that are being transferred). To start with, in an outsourcing scenario, Customer and Service Provider must provide a written notification of their intention to carry out a transfer of undertaking to their respective works councils and/ or the unions that concluded the collective agreements applicable to the employees affected by the transfer.

Within seven days of receiving the transfer of undertaking notice, the works councils/ unions may request a joint review of the planned transfer. Within seven days of receiving such request (if any), Customer and Service Provider must start the joint review of the planned transaction with the representatives of the works councils/ unions. The procedure is deemed completed within 10 days even if no agreement is reached (which would be unusual in practice).

Breach of the notice and joint review duties does not invalidate the transfer of undertaking. Unions may, however, react by filing a judicial petition for so-called anti-union behaviour, in which case courts have a broad discretion to order the measures deemed adequate to remedy the breach (e.g., suspending the effects of the transaction until completion of the joint review).

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of an automatic transfer of in-scope employees by operation of law, Service Provider must credit the employees' seniority with Customer and honor existing terms and conditions of employment. In case of special terms such as incentive plans, corporate health and life insurance plans, stock options or RSU plans, that cannot be continued, a common solution is to replace them with equivalent plans or benefits of Service Provider (usually negotiated with the unions/ works councils). If it is not possible to replace a plan or other benefit with an equivalent one, it is customary to reach an agreement with the unions/ works councils (or at individual level) to financially compensate employees for losses.

Special attention needs to be paid to the fact that, in case of an automatic transfer of in-scope employees, collective agreements applicable to the transferring employees are replaced by collective agreements applicable to Service Provider. Resulting changes are generally a major reason of concern for unions and employees and often bear strategic consequences which should be analysed prior to the transaction.

In a termination/ re-hire scenario, Service Provider is not required to credit seniority or honor Customer terms and conditions of employment. However, in practice, this is frequently commercially agreed (or negotiated with unions or required by collective agreements).



6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

Bearing in mind that employees cannot be made redundant for the sole reason of a transfer of undertaking, should a claim be raised for unlawful dismissal on the basis that the employee is being replaced by a lower paid Service Provider employee, this would not entitle the dismissed employee to reinstatement or a higher severance package, on the assumption that outsourcing and redundancies have been completed in compliance with the law.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

The law provides that in order for a services agreement to be deemed genuine, the Service Provider has to bear the relevant business risk and manage the relevant human and other resources. In practice, depending on circumstances, it may be advisable for Customer to not:

- include transferred employees in internal Customer organization, reporting structure and directories;
- give transferred employees Customer business cards, Customer business e-mail addresses and/or telephone numbers;
- allow transferred employees to use Customer company systems such as time recording and other attendance systems, travel booking systems, etc.;
- provide any form of compensation and benefits to transferred employees;
- provide transferred employees with Customer-operated workplaces, production equipment or personal assistance; and
- give direct working instructions to transferred employees.

Breach of the above could cause confusion regarding the actual employer, with the consequence that the outsourced employees could claim to be employed by Customer. In addition, this may trigger issues regarding the lending of workmanship from one company to another, something that is prohibited under Italian law except where temporary workers are supplied by a duly authorised work agency.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Interfaces may be established between Customer personnel and Service Provider personnel to exchange information and products. However, Customer instructions should be directed to a single point or multiple points of contact at Service Provider and not directly to the outsourced employees.

Customer may reasonably provide unique tools to Service Provider in the rare case that Service Provider cannot be expected to have equivalent tools.

Japan

Tomohisa Muranushi

Tokyo

Tel: +81 3 6271 9532

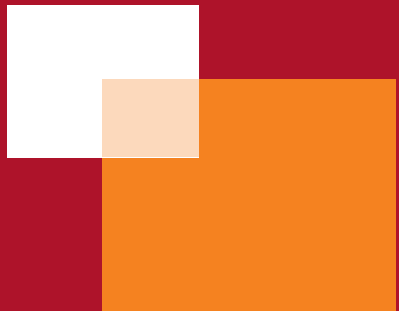
tomohisa.muranushi@bakermckenzie.com

Genichiro Ito

Tokyo

Tel: +81 3 6271 9753

genichiro.ito@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy and consultation requirements. That said, Japan has a highly-regulated labor environment and implementation of outsourcing transactions is generally difficult.
- The mechanism for employee transfers will depend on whether the outsourcing is structured as a business transfer or corporate split. In a corporate split scenario, in-scope employees transfer automatically (generally on their existing terms and conditions), unless they validly object to the transfer. In a business transfer scenario, employees only transfer if and as commercially agreed.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid violating labor lending rules.

1. Existence of laws or regulations excluding / limiting outsourcing

There are no general laws or regulations that broadly limit or exclude the outsourcing of functions or services in Japan. Although there are certain legal requirements that have to be complied with in any outsourcing arrangement (e.g., data privacy and consultation requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Whether or not Service Provider has an obligation to employ in-scope employees depends on the structure of the outsourcing arrangement.

If the outsourcing is structured as a transfer of business (“Jigyo Joto”), Service Provider has no obligation to take on in-scope employees. But the parties may commercially agree the transfer of the in-scope employees. Those employees that do not consent to the transfer will remain with Customer.

If the outsourcing is structured as a corporate split (“Kaisha Bunkatsu”), in principle, the employees will transfer automatically along with the business and Service Provider is obliged to employ in-scope employees except if employees have, and exercise, a right to object to being transferred (see below under 4. regarding objection rights). Any employees that enforce a valid right to object remain with Customer.

Those employees that remain with Customer may generally not be terminated on the basis that their functions were transferred to Service Provider and no longer exist at Customer. Under the Labor Contract Act and relevant court precedents, a unilateral termination will be invalid if there is no justifiable



reason and is generally very difficult to justify. If there is no strong ground for unilaterally terminating the remaining employees, an alternative approach would be to ask the employees to voluntarily resign by offering severance payments. In practice, this voluntary approach is safer and more common than a unilateral termination.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If the outsourcing is structured as a corporate split, the in-scope employees transfer automatically subject to certain procedures being complied with. No consent from the employee is required.

If the outsourcing is structured as a transfer of business, the employees will only transfer if agreed by the parties. Such transfer will take place either by way of a transfer of contract or by way of a termination/ rehire. Either way, consent from each of the transferring employees will be required. The government guidelines encourage Customer to have sufficient consultation with the transferring employees to obtain informed consent.

4. If automatic transfer applies, any preconditions for such transfer

An automatic transfer requires Customer to consult with the employee representative (or the union representing the majority of the employees of Customer's workforce) and the employees (i) who are engaged in the transferring business and (ii) who are not engaged in the transferring business but transferred to the Service Provider based on the split agreement.

Once these consultations are completed, Customer must notify in writing those employees who primarily provide services to the transferred business or who are otherwise being transferred. The purpose of the notifications is to formally offer employees the opportunity to object to being transferred or not being transferred, and such notifications are required separately from the consultations.

The following classes of the employees have a right to object to either being transferred or not being transferred:

- the employees who do not primarily provide services to the transferred business but are being transferred (if any) will have a right to object to being transferred;
- the employees who primarily provide services to the transferred business but are not being transferred (if any) will have a right to object to not being transferred.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In the business transfer scenario, Service Provider is not required to credit seniority or honor existing Customer terms and conditions but this may be commercially agreed.

In the corporate split scenario, in principle, the terms and conditions of employment must be kept unchanged upon transfer. If Service Provider wants to change the terms and conditions of employment, it will need to follow separate procedures depending on whether the terms and conditions form part of an individual employment contract or are provided under the work rules or their ancillary rules.

- In order to change the terms and conditions set forth in an individual employment contract, the employer is required to obtain employee consent.
- In order to change terms and conditions provided under work rules or their ancillary rules, Service Provider must follow certain procedures prescribed under the Labor Standards Act. However, even if such procedures are followed, a detrimental change to working conditions is only valid if consented to by the affected employee or if it is reasonable considering the totality of the circumstances. In determining whether a change is reasonable, a court would generally consider (a) the necessity for the change, (b) the degree of detrimental impact on the employee, (c) the reasonableness of the working conditions after the change, and (d) whether there have been sufficient consultations with the labor union/employee representative.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

Replacement of terminated employees by Service Provider employees does provide leverage to redundant employees to claim re-instatement or a higher severance as this would support an argument that their termination was not necessary.



7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer must not retain direct “supervision and control” over the outsourced employees as this might violate labor lending rules. The lending of employees from Service Provider to Customer would only be permissible if Service Provider has a dispatching license (or in certain situations, registration). In the absence thereof, it must be ensured that Service Provider has supervision and control over the outsourced employees.

In determining whether Service Provider has such direct supervision and control the court will consider whether Service Provider:

- gives instructions as to how the work should be assigned and performed;
- evaluates the employee’s work;
- controls working hours, breaks, holidays and leave of the employees;
- gives instructions when overtime work or holiday work is required;
- controls discipline of the employees at the work place;
- decides the physical location where the employees work;
- pays any expense necessary for performing work at its responsibility;
- remains solely and independently responsible for any responsibility under the labor laws as the employer of the employees.

Not all of the above factors must be met. However, the more of those factors are not met, the higher the risk of the arrangement being seen as labor supply.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Generally, it is important to make sure that work orders go through Service Provider as opposed to being given directly to outsourced employees. In other words, work orders should be routed to an authorized team leader who receives the orders on behalf of Service Provider. The team leader can instruct each of his team members to perform his/her work based on that.

Malaysia

Brian Chia

Kuala Lumpur

+60 3 2298 7999

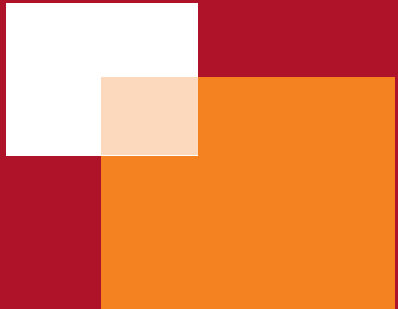
brian.chia@wongpartners.com

Sujintana Mongkolthanit

Kuala Lumpur

+60 3 2298 7912

sujintana.mongkolthanit@wongpartners.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, there are specific regulations that must be complied with, depending on the nature or type of outsourcing, including complying with data privacy requirements, etc.
- The only way for in-scope employees to transfer from Customer to Service Provider would be by way of termination and rehire, and Service Provider is under no circumstances required to take on in-scope employees.
- The law is not completely clear as to what constitutes co-employment liability. Post-outsourcing, Customer needs to ensure not to provide outsourced employees with benefits or subject them to actions as though Customer is the employer.

1. Existence of laws or regulations excluding / limiting outsourcing

Malaysian law does not per se limit the outsourcing of functions or services. Although there are certain legal requirements that have to be complied with in any proposed outsourcing arrangement (e.g., data privacy requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Under no circumstances, Service Provider is required under Malaysian law to employ in-scope employees.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Malaysia does not recognise automatic transfers of employees as individuals have the constitutional right to choose their employer. The only way for employees to transfer from Customer to Service Provider is via termination / rehire. This requires the employee's consent.

Employees that reject an employment offer by Service Provider which recognises past service with Customer and includes terms and conditions no less favourable than the existing Customer terms and conditions, will not be entitled to termination benefits (i.e., severances), where there is also a change in the ownership of business to Service Provider. The position is not clear where no such ownership change occurs. Post-outsourcing, Customer will



need to re-deploy remaining employees or terminate them on grounds of redundancy.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

Service Provider is not obliged to credit seniority or honor Customer terms and conditions of employment. However, employees are free to reject any offers of employment that do not recognise past service with Customer or contain terms and conditions less favourable than the existing Customer terms and conditions. In that case, the employee would either stay employed by Customer, or, if terminated, would be entitled to severances.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

The replacement of Customer employees by Service Provider employees will not, in itself, mean that Customer is automatically liable for unfair dismissal on account of Customer employees' redundancy. The individual facts will need to be considered, i.e., whether Customer had sought to procure Service Provider to make offers to Customer employees and, if so, the nature of those offers.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer must avoid treating, and being seen to be treating, Service Provider employees akin to Customer employees. Customer employment benefits, badges, email addresses and so on must not be provided to Service Provider employees, and under no circumstances should Customer undertake any disciplinary and / or performance management action against Service Provider employees as though they were Customer employees.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

There are no legally-prescribed benefits or entitlements which Customer may or may not provide in order to avoid co-employment risks. As a general guide, Customer must not provide benefits or entitlements to outsourced employees similar or comparable to what Customer provides to its own employees and Customer should not provide anything to, or interact with, outsourced employees above and beyond what is necessary for outsourced employees to carry out the relevant tasks. To the extent, benefits from Customer to outsourced employees are unavoidable, it is advisable to channel them through Service Provider.

Mexico

M Rosario Lombera-Gonzalez

Mexico City

Tel: +52 55 5279 2936

mrosario.lombera-gonzalez@bakermckenzie.com

Javiera Medina-Reza

Mexico City

Tel: +52 55 5351 4135

javiera.medina-reza@bakermckenzie.com



Key Takeaways

- While outsourcing is generally permissible, certain conditions imposed by labor law must be met and care must be taken to avoid an outsourcing to constitute the existence of a labor relationship which implies subordination. Other general requirements, such as data privacy obligations, must be met.
- Depending on the circumstances, in-scope employees may transfer from Customer to Service Provider by way of an employer substitution or a termination/ rehire, with or without recognition of service.
- In case of an employer substitution, affected employees must be provided with an employer substitution notice and Service Provider must honor seniority and existing Customer terms and conditions of employment.
- Customer should refrain from supervising, directing or controlling the outsourced employees in order to avoid being considered the employer of record, or co-employment risk, or joint liability for employment and social security related obligations.

1. Existence of laws or regulations excluding / limiting outsourcing

(a) Labor Law

While Mexican labor law does not distinguish between “core functions” and “non-core functions”, it provides that outsourced functions and services must:

- not cover the totality of the Customer activities;
- be specialized in nature; and
- not include assignments equal or similar to those performed by Customer employees.

If not all these three conditions are fulfilled, there is a risk that Customer will be considered the employer of record of the Service Provider personnel deployed to work on Customer assignments, and as such will be responsible to comply with all labor and social security obligations (including profit sharing) in relation to those employees.

Non-compliance with the above conditions for outsourcing might also result in the Labor and Social Welfare Department (“STPS”) imposing fines on Customer. Fines may range from 50 to 5,000 times the Adjustment and Measurement Unit (UMA) - prior based on minimum wage in effect. The UMA is currently MX\$75.49 pesos, meaning that the fines may range from US\$209 - US\$20,970 approximately) and may be imposed for each affected employee.



Further, any outsourcing agreement must be in writing and Customer must verify by way of audits that Service Provider has its own and sufficient resources to comply with all labor, health and safety and social security obligations.

To reduce the above mentioned risks, it is advisable that:

- (i) the scope of the agreement be referred to as the delivery of services rather than the provision of personnel services;
- (ii) the agreement states that Service Provider has autonomy in managing the provision of services; and
- (iii) the consideration is not calculated based on payroll cost plus a mark-up, but rather a lump sum.

(b) Social Security Law

The Mexican Social Security Law does not prevent or limit outsourcing but strictly regulates the rendering or receiving of personnel services. In terms of this law, if a company (i.e., Customer) receives services from the employees of a third party contractor (i.e., Service Provider) and directs and supervises the activities to be performed, the Social Security Institute will consider that the services are performed under a subcontracting regime. In this event, Customer and Service Provider would be required to file a specific form and provide information in connection with the agreement executed by the parties, the identity of the parties, the type of services to be rendered, the number of employees involved in the activities and the cost of the particular services. Therefore, from a social security law perspective, it is also advisable to clarify that the subject matter of the service agreement is the delivery of services, rather than the provision of personnel services.

(c) Other

Certain other, more general legal requirements have to be complied with in an outsourcing context (e.g., data privacy requirements), but such requirements do not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

There is no obligation on Service Provider to employ in-scope employees.

3. Mechanism of employee transfer (automatic vs. termination and offer)

In-scope employees may transfer from Customer to Service Provider by way of an employer substitution or a termination and rehiring mechanism. In order

for an employer substitution to be valid, a transfer of essential assets must take place between the substituted employer to the substitute employer.

In either case, the transfer needs to be formalized before the Social Security Institute.

(a) Employer Substitution

In an employer substitution scenario, in-scope employees transfer automatically from Customer to Service Provider. In principle, the employee cannot object to the employer substitution and Service Provider effectively steps into the shoes of Customer.

According to Mexican legislation, if an employer substitution takes place, the substituted employer will be jointly liable with the substitute employer for a period of six months from the effective date of the employer substitution for any employment and social security related obligations.

(b) Termination and rehiring

The transfer of employees pursuant to a termination/ rehire procedure requires the consent of each affected employee. In case an employee does not consent to the transfer, he/she will be entitled to the payment of a severance as provided in the Federal Labor Law.

4. If automatic transfer applies, any preconditions for such transfer

If an employer substitution scenario, there is no need to execute new employment contracts. Rather, affected employees (or the Union, if applicable) need to be provided with an employer substitution notice in which the new employer recognizes that all existing labor conditions and benefits as well as seniority will be honored. Further, a specific notification to the Social Security Institute may be required.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of an employer substitution, Service Provider is required to credit seniority with Customer and honor Customer terms and conditions of employment.

If employees transfer by way of a termination/ rehire, Service Provider is not required to credit seniority with Customer or honor Customer terms and conditions of employment. However, this may be advisable in order to avoid severance payments. If Service Provider does not credit seniority with



Customer and honor Customer terms and conditions of employment, in-scope employees are unlikely to consent to the transfer and would then be entitled to a mandatory severance.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

No. However, employees cannot be forced to terminate their labor relationship with Customer and if they refuse to consent to the transfer, they may file a labor claim arguing an unfair dismissal, and either the reinstatement in their job, or the payment of the constitutional indemnification as provided by the Federal Labor Law.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

- The outsourced employees must not be subject to Customer control or subordinated to Customer employees and must not receive instructions from Customer employees.
- Customer must not provide working tools to outsourced employees post-outsourcing.
- Customer must not provide e-mail addresses, uniforms, presentation cards, benefit plans, etc. to outsourced employees.

Overall, Customer must not direct, or supervise the outsourced employees. This may increase the risk that Customer is deemed to be the employer of record, or that Customer and Service Provider are jointly liable towards the employees.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

It is advisable that Service Provider employees remain absolutely independent from Customer.

Netherlands

Mirjam de Blécourt

Amsterdam

Tel: +31 20 551 7466

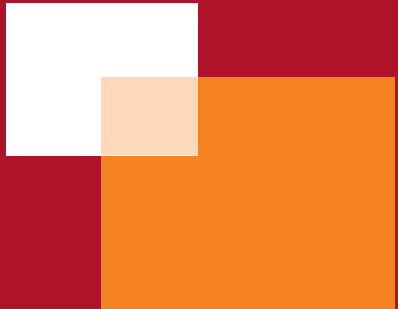
mirjam.deBlecourt@bakermckenzie.com

Anna van Bracht

Amsterdam

Tel: +31 20 551 7562

anna.vanBracht@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy requirements and consultation with works councils.
- If the outsourcing constitutes a transfer of business, the in-scope employees transfer automatically to Service Provider (including existing terms and conditions of employment and crediting of service). In principle, in-scope employees cannot be made redundant.
- If Customer has a works council, it is required to seek the works council's prior advice about the intended outsourcing. If there is no works council but the intended outsourcing would affect at least 25% of Customer's workforce, the prior advice of a personnel meeting or employee representative body is required.

1. Existence of laws or regulations excluding / limiting outsourcing

In the Netherlands, the outsourcing of functions or services is not per se limited or prohibited. Although there are certain legal requirements that have to be complied with in an outsourcing arrangement (e.g., data privacy requirements and works councils consultation requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Service Provider is required to take on the in-scope employees that are associated with an outsourced function if the outsourcing as a whole constitutes a transfer of business (in Dutch: "Overgang van Onderneming"). Employees who are subject to a transfer of business can, in principle, not be made redundant as it is prohibited to give notice of termination due to a transfer of business.

A transfer of business occurs if - in short - the activities transferred can be seen as an economic entity (i.e., an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary) that will retain its identity after the transfer (to the third party). An economic entity must be sufficiently structured and autonomous but is not required to have tangible or intangible operations of any significance. In case of a transfer of business all employees dedicated to the transferring activities will transfer to the acquirer by operation of law. The key question in deciding whether there has been a transfer of business of an economic entity is whether the business in question retains its identity and is carried on by the acquirer post-transfer, i.e. the identity is considered to be retained in particular



if Service Provider actually continues or resumes the same or similar operations. In considering that question, however, all relevant facts will be taken into account and no one factor is conclusive.

There is no one-size-fits-all test as to the amounts of assets and/or the number of employees that - if assumed by Service Provider - establish a transfer of a business. However, a continuation of service functions within Customer premises and within pre-existing organisational and working structures, regardless of whether personnel is assumed, is typically a strong argument for a transfer of business.

Whether employees in shared service functions that - to a certain extent - also provide services to the economic entity that will be transferred, also transfer to Service Provider by operation of law in case of a 'transfer of business', will depend on the facts and circumstances of the case. Courts may, for example, take the position that these employees do not transfer since the respective corporate service department does not transfer. In that case, with regard to these employees, Customer could seek termination of the employment contract (provided that the applicable conditions and restrictions of Dutch law are met, in particular that Customer is able to prove that it has a reasonable ground for terminating the employment contract, that redeployment of the employee in an alternative suitable position, whether or not with the help of schooling, is not possible or appropriate and that the proper objective social selection criteria for redundancies are met).

If the outsourcing does not constitute a transfer of a business, service provider is not required to employ in-scope employees but the parties and employees may commercially agree a "transfer" of the in-scope employees to service provider by way of a tripartite agreement, i.e. the employment contract will be terminated with the Customer and the employee will enter into service of the Service Provider.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If the outsourcing triggers a transfer of business, the employees transfer automatically by operation of law. An unambiguous refusal of an employee to transfer to Service Provider results in a termination of his/her employment with Customer by operation of law effective as of the date of the transfer of business.

If the outsourcing does not constitute a transfer of business, in-scope employees can only transfer by way of a termination/ rehire.

4. If automatic transfer applies, any preconditions for such transfer

Depending on the facts and circumstances the following preconditions apply:

- (a) If Customer has a works council in place, Customer is, in principle, required to seek prior advice of its works council regarding the intended outsourcing.
- (b) To the extent that Customer does not have a works council in place, but the intended outsourcing affects at least 25% of Customer's workforce, the prior advice of the personnel meeting (consisting of all personnel working in the company) or employee representative body (if any) is required.
- (c) In case the situations above under (a) and (b) do not apply, Customer is legally required to inform its employees in good time before the transfer about:
 - the intended transfer of the business (or the business unit);
 - the intended date of the transfer;
 - the reason(s) for the transfer;
 - the legal, economic and social consequences of the transfer for the employees; and
 - the measures for the employees considered in connection with the transfer.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

As a general rule, in case of an automatic transfer the terms and conditions of employment with Customer remain unchanged and have to be continued after the transfer meaning that Service Provider has to honor all existing (collective) terms and conditions of employment. Specific rules, however, apply with regard to pension benefits.

Changing terms and conditions of employment following the transfer is only permissible for economic, technical or organisational reasons ('ETO reasons'). In addition, changing employment conditions would generally require consent of the individual employees.

Seniority rights will only transfer to the extent that seniority is linked to terms and conditions that transfer to Service Provider, meaning that the employee



cannot invoke his seniority built up with Customer for employment conditions that only apply in the organisation of Service Provider (for example a service anniversary) unless agreed to by Service Provider.

If employees transfer by way of commercial agreement (rather than by operation of law), Service Provider is not required to credit seniority or honor terms and conditions of employment.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

If a Customer employee is terminated in a transfer of business situation and his/ her position is filled by a Service Provider employee, the dismissed Customer employee will have significant leverage to challenge the termination and/or claim employment with Service Provider.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Dutch law generally does not recognise a risk of co-employment, as long as Customer does not directly pay any salary to the ‘insourced’ employees from Service Provider and the primary relationship of employment related authority lies with Service Provider (following the employee transfer).

All companies in the Netherlands that assign employees for (financial) consideration must request the Dutch Chamber of Commerce to register them as such in the Commercial Register (even if the assignment activities do not qualify as the company’s core activities).

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

This is not an issue in the Netherlands.

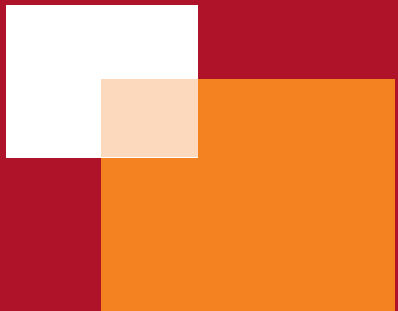
Peru

Monica Pizarro

Lima

Tel: +51 1 618-8518

monica.pizarro@bakermckenzie.com



Key Takeaways

- Peruvian law defines key characteristics and requirements which an outsourcing must meet in order to be legal. It is crucial that Service Provider renders the services with its own technical, administrative, financial and material resources.
- Peruvian law does not recognize the concept of an automatic transfer of employees.
- Under no circumstances is Service Provider obliged to employ in-scope employees but a transfer of employees from Customer to Service Provider may be agreed by way of a termination/ rehire. In that case, Service Provider is not required to honor seniority or existing terms and conditions of employment.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid violating labor lending rules or co-employment risk.

1. Existence of laws or regulations excluding/limiting outsourcing

According to Peruvian regulations, “outsourcing” is defined as the business organization by which a company entrusts or delegates the development of one or more parts of its main activity to one or more companies (Service Provider) that procure works or services related to Customer’s main activity. Key characteristics of an outsourcing include the following:

- (i) the subject matter of the agreement must be the provision of services and not the simple provision of personnel
- (ii) Service Provider has more than one Customer
- (iii) Service Provider has its own equipment and capital investment
- (iv) the compensation to be paid to Service Provider is calculated on the basis of the services rendered rather than the number of Service Provider employees deployed to deliver the services.

In addition, in order for outsourcing to be lawful, Service Provider must:

- (i) provide the services at its own risk
- (ii) provide the financial, technical, administrative and material resources required to render the services
- (iii) carry responsibility for the result of its activities



- (iv) be exclusively responsible for supervising and instructing the employees providing the outsourced services.

In case the outsourcing relationship does not meet the above requirements, it is considered illegal and the deployed personnel of Service Provider will be considered as Customer employees.

2. Obligation of Service Provider to employ in-scope employees

Under no circumstances, Service Provider is required to employ in-scope employees.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Peruvian law does not recognize the concept of an automatic employee transfer. In-scope employees may only transfer from Customer to Service Provider by way of a termination and rehire which require the employee's consent. In such termination/ rehire scenario, Customer could be required to pay the statutory compensation or severance payments to the affected employees.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

If in-scope employees transfer from Customer to Service Provider by termination and rehire, Service Provider is not required by law to credit seniority or honor Customers terms and conditions of employment.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

Under Peruvian law, a redundancy is not considered a reason for dismissal and requires the employee's consent. Usually, a redundancy results in the payment of a severance or an equivalent gratuity. If the employee agrees to such termination by redundancy, he/she would not be able to claim

reinstatement or a higher severance if replaced by a Service Provider employee. If the redundancy negotiation fails, the employee is entitled to be relocated to a new position maintaining his/her salary and seniority.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

In order to minimize any risk of violating labor lending rules or avoid a post-outsourcing claim for employment misclassification or joint liability, Customer must not to:

- provide equipment or working tools to outsourced employees
- exercise control over outsourced employees
- treat outsourced employees the same as its own employees/ include them in its internal organization (eg, give them Customer business cards, e-mail addresses and/or telephone numbers, extend employment benefits to them, etc.)
- give direct working instructions to outsourced employees (all communications to outsourced employees should come from Service Provider).

Further, to avoid joint liability, Customer would be well advised to request on regular basis evidence that Service Provider is complying with its obligation to pay labor benefits.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

On an exceptional basis, Customer may reasonably provide unique tools or conditions to Service Provider if it is impossible or prohibitively costly for Service Provider to provide those (eg, Customer may provide electricity, sanitation facilities, customised software and the like.). Such provision must be agreed in the outsourcing agreement.

Poland

Piotr Rawski

Warsaw

Tel: +48 22 445 3133

piotr.rawski@bakermckenzie.com

Bartłomiej Babańczyk

Warsaw

Tel: +48 22 445 3212

bartlomiej.babanczyk@bakermckenzie.com

Paulina Labecka

Warsaw

Tel: +48 22 445 3186

paulina.labecka@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy requirements and consultation with trade unions/works councils.
- If the outsourcing constitutes a transfer of business, the in-scope employees transfer automatically to Service Provider (on existing terms and conditions of employment and subject to crediting of service). Since a transfer of undertaking itself cannot constitute a basis for termination, neither Customer nor Service Provider (if outsourcing in fact constitutes a transfer of business) may terminate in-scope employees before or after a transfer solely because of it occurring.
- In case of an automatic transfer, notification and consultation obligations apply.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid violating labor rules.

1. Existence of laws or regulations excluding / limiting outsourcing

In Poland, the outsourcing of functions or services is not per se limited or excluded. Although there are certain legal requirements that must be complied with in any proposed outsourcing arrangement (e.g., data privacy and notification/consultation requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

If the outsourcing constitutes a transfer of business, Service Provider is required to employ the in-scope employees by operation of law. No new employment agreements need to be executed.

The automatic transfer is governed by several conditions, including: (a) there must be a factual base of transfer (transfer of assets, functions, leasing, other); (b) all employees assigned to a particular enterprise or part thereof must transfer (i.e., no cherry picking is allowed); (c) employees transfer on the existing terms and conditions; and (d) employees transfer at the same time as assets/functions.

If the outsourcing does not constitute a transfer of business, Service Provider is not required to employ in-scope employees but the parties may commercially agree a transfer of the in-scope employees to Service Provider by way of a tripartite agreement.



3. Mechanism of employee transfer (automatic vs. termination and offer)

If the outsourcing constitutes a transfer of business, the employees transfer automatically. In-scope employees have no right to object to the transfer. However, they have a right to terminate their employment within two months of the transfer date by providing seven days' notice. If the employees terminate their employment following the transfer on the basis of material adverse changes to their work/remuneration conditions, they may be entitled to severance payments. In an automatic transfer scenario, both Customer and Service Provider would be jointly and severally liable for the duties resulting from the employment relationship (unless Customer is entirely transferred to Service Provider in which case Service Provider would be solely liable).

If the outsourcing does not constitute a transfer of business, employees may be transferred by way of a termination and rehire which may be effected by a tripartite agreement between Customer, Service Provider and employee.

4. If automatic transfer applies, any preconditions for such transfer

Both Customer and Service Provider must notify relevant trade unions about the intended transfer in writing and, if they intend to change in-scope employees' terms and condition of employment (to the extent this is permissible), they must negotiate these changes with the trade unions. In the absence of trade unions, the written notice of the intended transfer (providing, among others, its anticipated dates, reason and consequences for in-scope employees) must be provided to the employees directly. Notices must be issued no later than 30 days prior to the intended transfer date.

Relevant works councils (if any) must also be notified and consulted about the intended transfer. While the law does not prescribe a specific notice period, notice is typically given 30 days prior to the intended transfer to allow works councils sufficient time to analyse the information provided.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of an automatic transfer, Service Provider must credit seniority and honor Customer terms and conditions of employment (i.e. the employees transfer on their current terms and conditions of employment).

In a termination/rehire scenario, Service Provider is not required to credit seniority or honor Customer terms and conditions of employment, but this is frequently done in practice.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

If Customer employees are replaced by employees of Service Provider, they may be entitled to a statutory severance payment since such terminations would be considered as taking place due to reasons not related to an employee. In this case, whether a severance payment will be due or not, will depend on the Customer's headcount – these severance rules apply only to entities with at least 20 employees.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer must not retain direct “supervision and control” over the outsourced employees as this might violate labor lending rules. The lending of employees from Service Provider to Customer would only be permissible if Service Provider has a licence (registration with the authorities is required). In the absence thereof, it must be ensured that Service Provider has supervision and control over the outsourced employees.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Generally, it is important to make sure that work orders go through Service Provider as opposed to being given directly to outsourced employees. In other words, work orders should be routed to an authorized team leader who receives the orders on behalf of Service Provider. The team leader can instruct each of his team members to perform his/her work based on that.

Russia

Evgeny Reyzman

Moscow

Tel: +7 495 787 2700

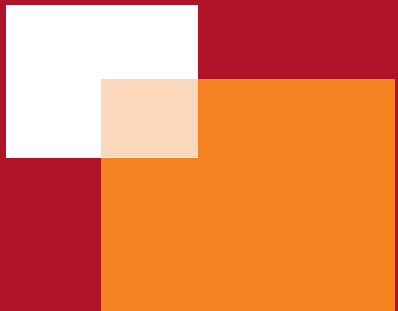
evgeny.reyzman@bakermckenzie.com

Nina Mogutova

Moscow

Tel: +7 495 787 2700

nina.mogutova@bakermckenzie.com



Key Takeaways

- Russian legislation differentiates the concepts of “outsourcing” (the provision of specific services) and “outstaffing”/ “borrowed labor” (the provision of personnel). While the first is not prohibited by law, the second is significantly limited by Russian labor legislation. Care must be taken that an outsourcing is not considered as prohibited “borrowed labor”.
- Russian law does not recognise an automatic transfer of employees. An employee transfer may only be effected by way of a termination/ rehire.
- Termination of employment is only permitted on grounds specifically listed by law or with the employee’s written consent.
- A number of actions should be avoided by the Customer in order to eliminate the risk of being recognised as an actual employer of Service Provider employees.

1. Laws or regulations that prohibit/limit outsourcing

Under Russian law, it is important to differentiate between the concepts of “outsourcing” on the one hand and “outstaffing”/ “borrowed labor” on the other hand.

The concept of “outsourcing” is understood in Russia in the same way as in other jurisdictions, i.e., Customer engages Service Provider to perform certain tasks or services (often in the fields of IT, accounting, clearing services, etc.) which Customer used to perform itself. Service Provider would use its own employees and/ or engage specialists to perform those services for Customer. The subject matter of the agreement would be the provision of services (rather than the provision of personnel). Subject to the below, Russian law does not per se limit the outsourcing of functions or services.

The concepts of “outstaffing” and “borrowed labor” entail the provision of personnel by one company to another pursuant to a provision of staff services agreement. Generally, the provision of personnel is prohibited under Russian law. More specifically, since January 2016, Federal Law No. 116-FZ “On changes to certain legislative acts of the Russian Federation” (“Law”) prohibits the provision of personnel as “borrowed labor”. As an exception to this prohibition, the Law allows the provision of personnel as legitimate “outstaffing” on strict conditions (e.g., there are specific needs/ reasons for the provision of personnel such as the temporary expansion of business/services and the term of the provision of personnel is limited to a maximum of nine months).

Care must be taken that an outsourcing is not seen as a camouflaged “borrowed labor”.



2. Obligation of Service Provider to employ in-scope employees

Service Provider is not required in any circumstances to employ in-scope employees (unless contractually agreed between the parties). It is not recommended to a contractually agree a transfer of in-scope employees from Customer to Service Provider as the provision of services by those in-scope employees to Customer post-outsourcing will likely violate strict labor lending rules (as explained above).

3. Mechanism of employee transfer (automatic vs. termination)

Russian law does not recognise an automatic transfer of employees. The only way to transfer in-scope employees from Customer to Service Provider would be via termination/rehire which would require the employees' respective consents.

Additionally, it should be borne in mind that in Russia employment termination is only allowed on grounds specifically set out by the Russian Labor Code. In the absence of such ground, a termination of employment requires the employee's explicit written consent.

4. Preconditions for automatic transfers

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case in-scope employees transfer from Customer to Service Provider by way of a termination/ rehire, Service Provider is not required to credit seniority or honor Customer terms and conditions of employment.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

As explained, replacing employees is possible only through the termination/rehire procedure. Termination of employment, in turn, is strictly regulated in Russia and allowed only on grounds set out in the Russian Labor Code. The most reliable termination is a termination with the employee's consent. If Customer employees are replaced by Service Provider employees,

they may challenge their termination and claim reinstatement if the termination cannot be based on a valid ground set out in the Russian Labor Code or the employee's valid consent.

The Russian Labor Code prescribes severance payments in cases of redundancies. Further, if a termination is based on mutual consent, the parties may agree that a severance is paid. To the extent Customer employees are made redundant because they are replaced by Service Provider employees, they may be able to claim severances as provided for by law or as agreed but the replacement as such does not provide leverage to claim a higher severance provided that the employment termination procedure has been conducted in compliance with the Russian Labor Code.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

To ensure that Service Provider employees do not have grounds to claim de-facto employment by Customer, employees should only be included in the Service Provider's (not the Customer's) staff schedule and be required to comply with Service Provider's internal labor regulations. Moreover, Customer should avoid the following actions:

- selecting employees to be hired by Service Provider (e.g., participating in the interview process, etc.);
- conducting training of Service Provider employees;
- determining remuneration and other benefits of Service Provider employees (such as annual leave);
- defining and amending job duties of Service Provider employees; and
- including employees in the Customer's internal systems (for instance, ID and e-mail).

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Interfaces may be established between Customer personnel and Service Provider personnel to exchange information and products. However, Customer instructions should be directed to a single point or multiple points of contact at Service Provider (e.g., a manager who communicates with respective employees), but not directly to the outsourced employees. Thus, Customer may give instructions to a contact person at Service Provider, and the latter then delivers such instructions to the outsourced employees.



As a general rule, Service Provider provides tools, premises and infrastructure to its employees. However, if Service Provider does not have adequate tools and the parties have agreed this in the Services Agreement, Customer may provide tools or infrastructure to outsourced employees.

Singapore

Kelvin Poa

Singapore

Tel: +65 6434 2524

kelvin.poa@bakermckenzie.com

Ng Zhao Yang

Singapore

Tel: +65 6434 2701

zhao.yang.Ng@bakermckenzie.com

Nicole Wong

Singapore

Tel: +65 6434 2273

nicole.wong@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy and notification/ consultation requirements. Specific rules apply to outsourcing undertaken by financial institutions.
- If the outsourcing constitutes a transfer of undertaking, Service Provider is required to employ employees that fall within the scope of the Employment Act (“EA”) on existing terms and conditions and recognising seniority. In all other cases, a transfer may only occur by way of a termination/ rehire and there is no legal obligation on Service Provider to honor existing terms and conditions of employment or past seniority.
- In the case of an automatic transfer, notification and consultation obligations arise.
- Customer should be careful to avoid being considered co-employer of outsourced employees.

1. Existence of laws or regulations excluding / limiting outsourcing

In Singapore, the outsourcing of functions or services is not per se limited or excluded. Although there are certain legal requirements that must be complied with in any proposed outsourcing arrangement (e.g., data privacy and notification/ consultation requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

Any outsourcing arrangement by any financial institution as defined in section 27A of the Monetary Authority of Singapore Act (Cap. 186) is regulated by the Monetary Authority of Singapore (“**MAS**”) and must comply with the MAS Guidelines on Outsourcing issued on 27 July 2016 (the “**Guidelines**”) as a matter of best practice. These Guidelines define “outsourcing arrangement” as an outsourcing arrangement in which a service provider provides the institution with a service that may currently or potentially be performed by the institution itself and which includes the following characteristics: (i) the institution is dependent on the service on an ongoing basis; and (ii) the service is integral to the provision of a financial service by the institution or the service is provided to the market by the service provider in the name of the institution.

2. Obligation of Service Provider to employ in-scope employees

If the outsourcing constitutes a transfer of undertaking, Service Provider is required to employ those employees that are covered by the EA, namely:

(a)



non-manager and non-executive employees; and (b) professional managerial and executive employees who earn a base salary of less than S\$4,500 per month.

The EA defines an “undertaking” as any trade or business and “transfer” to include the disposition of a business as a going concern and a transfer effected by sale, amalgamation, merger, reconstruction or operation of law. For an outsourcing to constitute a transfer of undertaking, an “economic entity” must be transferred as a whole meaning that the “economic entity” will need to retain its identity throughout and following the transfer. An “economic entity” is defined as an organised grouping of resources (which includes employees, assets and functions).

If the outsourcing does not constitute a transfer of undertaking, Service Provider is not required to employ in-scope employees but the parties may commercially agree a transfer of the in-scope employees to Service Provider. Service Provider is also not required to employ employees not covered by the EA.

3. Mechanism of employee transfer (automatic vs. termination and offer)

In-scope employees transfer automatically from Customer to Service Provider by operation of law if the outsourcing satisfies the criteria of a “transfer of undertaking” (or part thereof) provided the employees fall within the scope of the EA (as outlined above).

A dispute or disagreement between Customer/ Service Provider and an employee regarding such automatic transfer may be referred to the Commissioner for Labor who has the power to:

- delay or prohibit the transfer of the employee concerned; and
- order the transfer of the employee and set terms that are considered just.

In-scope employees will automatically transfer to Service Provider unless they are redeployed within the Customer business, they resign or they agree with Customer to terminate the employment relationship. There is no legislation in Singapore providing for payment of severance benefits upon termination. Accordingly, severance benefits would be a matter left to the employment contract or for the employee and Customer to negotiate.

Where the employees do not transfer automatically by operation of law, they may transfer by termination/resignation and rehire. The termination / resignation must be carried out in accordance with the terms of the existing employment contracts. To the extent that the employees do not accept Service Provider’s offers of employment and Customer does not wish to retain

them, the termination of their employment will have to be carried out in accordance with the terms of the employment contract.

4. If automatic transfer applies, any preconditions for such transfer

Notification and consultation obligations arise under the EA in automatic transfer scenarios. Customer shall notify the employees and the trade union of such employees (if any) of:

- the fact that the transfer is to take place, the approximate date on which it is to take place and the reasons for it;
- the implications of the transfer; and
- the measures that Customer/ Service Provider will take in relation to those employees in connection with the transfer.

As soon as reasonably possible, Service Provider must provide Customer with the information necessary to enable Customer to carry out its consultation duty with the employees and the trade union of such employees (if any) regarding the intended transfer. If consultations are not conducted reasonably, the Ministry of Manpower may order the consultations to be held in a specific form and manner.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In a termination/ rehire scenario, there is no legal obligation for Service Provider to credit seniority with Customer or honor the employee's existing terms and conditions of employment. However, from a practical point of view, employees may not accept Service Provider's offers of employment unless the terms and conditions are at least comparable to their existing terms of employment.

In case of an automatic transfer scenario, the EA effectively provides for a rollover of benefits and obligations. Employees covered by the EA effectively transfer to Service Provider on their existing terms and conditions of employment and retain their seniority i.e., years of continuous service with Customer. However, it may not always be practicable to offer the exact same terms and conditions of employment in practice. The EA allows Service Provider to negotiate with employees for the purpose of agreeing terms of service that are different from the existing terms and conditions of employment.



6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

Severance benefits are left for the parties to negotiate. Although the employees' redundancy is not likely to be genuine, the employees may have leverage to claim for reinstatement or negotiate a higher severance payment.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Singapore employment law recognises the concept of co-employment but no additional labor lending rules. To the extent possible, Customer should not exercise any control or management over the outsourced employees to avoid any co-employer risk. The service agreement implementing the outsourcing arrangement should clearly provide that Service Provider is responsible for managing the outsourced employees.

Further, Customer should avoid any direct communication with the outsourced employees, i.e. all communication should be done through Service Provider. This includes not giving the outsourced employees any instructions in carrying out work and not providing any tools, equipment or training post-outsourcing.

Notwithstanding the above, there always remains a co-employment risk. The Singapore courts will consider whether the outsourcing qualifies as second employment on a case-by-case analysis according to the factors used to determine employment status.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

In general, Customer should refrain from providing any tools, resources or training to the outsourced employees post-outsourcing as this will incur the risk of co-employment.

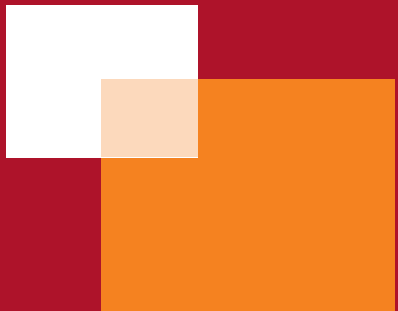
Spain

Javier Pera

Madrid

Tel: +34914366670

javier.pera@bakermckenzie.com



Key Takeaways

- As a general rule, outsourcing is permitted by Spanish law, unless the sole purpose of the contract is the workforce supply (other than in case of valid fixed-term contracts with authorized temporary employment agencies).
- If the outsourcing constitutes a transfer of business, in-scope employees transfer automatically to Service Provider by operation of law, on existing terms and conditions and retaining seniority. In other circumstances, Service Provider would not be legally required to employ in-scope employees or honor existing terms and conditions of employment, unless this is required by an applicable collective bargaining agreement.
- In case of an automatic transfer, employee representatives or, in their absence, the affected employees, must be informed of the transfer sufficiently in advance. Consultation would not be required unless any employment measures that may be unfavourable for the employees are to be taken.
- Replacement of Customer employees by Service Provider employees in case of a transfer of business could lead to Customer employees challenging their dismissal.
- In order to avoid co-employment risks, Service Provider should provide its own organization, work tools, training and instructions to the employees and control all the aspects of the employment relationships, while Customer should abstain from treating Service Provider employees as their own employees.

1. Existence of laws or regulations excluding / limiting outsourcing

Spanish law does not per se limit or exclude the outsourcing of functions or services. But any trading in workforce alone is generally considered an illegal transfer of employees, except in case of valid fixed-term contracts with registered employment agencies. Although there are certain legal requirements that must be complied with in any proposed outsourcing arrangement (eg, information to employee representatives, coordination of occupational risk prevention activities), such requirements should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

If the outsourcing constitutes a transfer of an autonomous business unit, Service Provider is required to employ in-scope employees, as such



employees would automatically transfer to Service Provider by operation of law and on existing terms and conditions of employment.

An automatic transfer occurs when the essential elements of a business which permit continuity of the economic activity carried out by such business are transferred. This usually requires the transfer of a set of productive assets with sufficient functional autonomy to continue the activity. The mere continuation of an activity is not sufficient to trigger the automatic transfer if there is no transfer of the necessary assets to continue such activity. That said, an asset transfer is not strictly necessary for an automatic transfer to occur if the business concerned is labor intensive (as opposed to asset reliant). In those cases, even when no specific transfer of assets takes place, an automatic transfer may arguably occur if Service Provider effectively employs a significant part of Customer's employees.

If there is no transfer of business, Service Provider would not be obliged to employ in-scope employees, unless required by an applicable collective bargaining agreement. Some industry-wide collective bargaining agreements (eg, cleaning and security services) stipulate that a change of service provider or an outsourcing of services results in a transfer of the in-scope employees.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If the outsourcing constitutes a transfer of business the employees will automatically transfer to Service Provider on existing terms and conditions of employment and their consent would not be required. If the outsourcing does not constitute a transfer of business, Customer employees only transfer to Service Provider in case of a termination/ rehire.

4. If automatic transfer applies, any preconditions for such transfer

The employee representatives of the affected employees must be notified of the transfer sufficiently in advance about the reasons for the transfer, its effective date and the legal consequences for the employees. The law does not provide a specific deadline, but considering the employee representatives have 15 days to issue a report, the information should be provided at least 15 days before the transfer.

In the absence of employee representatives, the affected employees should be informed directly. In any case, it is common practice to provide the notice both to the employee representatives and to the affected employees.

Consultation will not be required unless any employment measures that are unfavourable to the employees are intended (such as salary or benefits reduction, relocations, demotions or terminations).

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of an automatic transfer, Service Provider must credit seniority with Customer and honor Customer terms and conditions of employment. Such terms and conditions can only be changed unilaterally by Service Provider to the employees' detriment if there are sufficient objective grounds (such as economic, productive, technical or organizational reasons) and by following the legal procedure for substantial modification of employment conditions. The latter requires consultation with employee representatives when the number of affected employees exceeds certain thresholds. Otherwise, if the number of affected employees does not exceed such thresholds, the procedure would consist in providing a 15-day prior notice where the grounds for the changes are explained in full detail. However, care must be taken as Spanish Labor Courts tend to be very restrictive when it comes to validating substantial changes of employment conditions.

In case of termination/ rehire scenario, Service Provider may negotiate with the employees new terms and conditions of employment.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

If Customer employees are made redundant and paid the legal severance compensation for objective dismissal (ie, 20 days of salary per year of service) but there is a transfer of business that would result in an automatic transfer of employees, replacement of Customer employees by employees of Service Provider would provide leverage to redundant employees to challenge their dismissal and claim the severance compensation for unfair dismissal (ie, 45 days of salary per year of service until 11 February 2012 and 33 days of salary per year of service from 12 February 2012 onwards). Employees might even be successful in claiming reinstatement if they can prove that the dismissals were effected with the fraudulent intent of avoiding the automatic transfer of employees (eg, if no information on the transfer of business was provided to them even if the employer was aware of such transfer) or in case the employees have protection against unfair dismissals (eg, employees with reduced work hours for childcare purposes).



7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer should not be acting as the employer of Service Provider employees who provide the services, and should abstain particularly from including Service Provider employees in employee mailing lists and organizational charts, giving them instructions on a consistent basis, reprimanding them, inviting them to employee events such as training sessions, providing them with the necessary work tools, controlling work hours and vacation, providing compensation or benefits, etc.

Service Provider should have its own business structure and independent capacity to offer the services, and it should per se be providing some services beyond the mere provision of workforce. It should provide its organization, its know how, training for the employees, required equipment and work tools, instructions to and responsibility for the employees, etc.

If Service Provider is found to exclusively be providing workforce, both Customer and Service Provider could be found jointly and severally liable to the employees for any employment and social security related obligations. Moreover, the affected employees would be entitled to opt between continuing as employees of Service Provider or Customer and to enjoy at least the same employment conditions as employees at Customer. Fines could also be imposed.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Customer can only supervise the services provided by Service Provider and, in case there are any measures required to improve the services, the instructions should be channelled through a coordinator appointed by Service Provider so as not to provide direct instructions to Service Provider employees.

Taiwan

Seraphim Ma

Taipei

Tel: +886 2 2715 7252

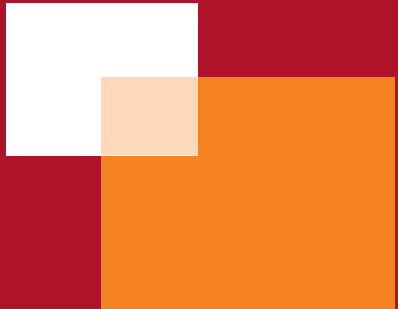
seraphim.ma@bakermckenzie.com

Pamela Tsai

Taipei

Tel: +886 2 2715 7396

pamela.tsai@bakermckenzie.com



Key Takeaways

- Although there are no general prohibitions on outsourcing, certain legal requirements must be met such as data privacy requirements.
- Taiwan does not recognise automatic transfers of employees as a result of outsourcing. In-scope employees are usually transferred from Customer to Service Provider by way of “termination and rehire” or “transfer by contract”.
- Post-outsourcing, Customer should refrain from directing or controlling the outsourced employees in order to avoid co-employment risk.

1. Existence of laws or regulations excluding / limiting outsourcing

In Taiwan, except for financial institutions, the outsourcing of functions or services is not per se limited or excluded. Although there are certain legal requirements that must be complied with in any proposed outsourcing arrangement (e.g., data privacy requirements), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Service Provider is not required to employ in-scope employees but the parties may commercially agree a transfer of the in-scope employees to Service Provider. If no transfer is agreed, the in-scope employees remain with Customer unless their employment is validly terminated with notice and severance payment in accordance with the Labor Standards Law. The Service Provider is then free to hire those employees.

3. Mechanism of employee transfer (automatic vs. termination and offer)

In Taiwan, there is no automatic transfer of employees as a result of outsourcing. The commonly adopted approaches for the transfer of employees are the “termination and rehire” method or the “transfer by contract” method.

For “termination and rehire,” Customer will dismiss the employees (provided Customer can rely on a statutory termination ground) with statutory severance payments and Service Provider will hire the employees without recognising their service years accrued with the Customer.

For “transfer by contract,” no severance payment will be triggered. Theoretically, the “transfer by contract” approach is structured as an employee’s voluntary resignation from Customer or the employee’s/



Customer's mutually agreed termination and the employee's joining of the Service Provider with the Service Provider usually recognising the years of service and benefits accrued with Customer without any interruption. In practice, a tri-party transfer letter may be used to effect the transfer.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

Regardless of whether an employee transfer occurs by way of termination/ rehire or transfer by contract, Service Provider is not required to credit seniority or honor customer terms and conditions of employment. However this is frequently commercially agreed, in particular, for critical employees. As per response to question (3) above, in case of a transfer by contract, Service Provider would usually credit seniority of employees with Customer and honor existing terms and conditions in order to provide an incentive to in-scope employees to transfer for Service Provider.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

If a Customer employee is terminated and his/ her position is filled by a Service Provider employee, the dismissed Customer employee will have significant leverage to challenge the termination and/or claim reinstatement.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer must not:

- include transferred employees in internal Customer organisation, reporting structure and directories;
- give transferred employees Customer business cards, Customer business e-mail addresses and/or telephone numbers; or
- provide any form of compensation and benefits to transferred employees.

If Customer violates these rules, employees could claim to be employed by Customer and Customer could be held liable as an employer to the employee.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Interfaces may be established between Customer personnel and Service Provider personnel to exchange information and products. However, it is recommended that Customer instructions be directed to a single point or multiple points of contact at Service Provider and not directly to the outsourced employees.

Thailand

Suriyong Tungsuwan

Bangkok

Tel: +66 2 636 2000 Ext 4112

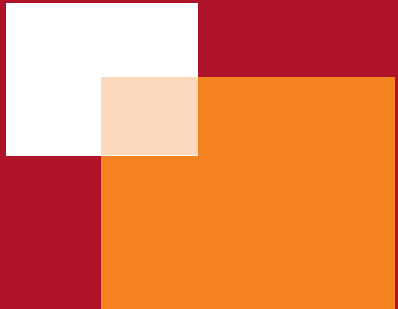
suriyong.tungsuwan@bakermckenzie.com

Nam-Ake Lekfuangfu

Bangkok

Tel: +66 2 636 2000 Ext 4112

nam-ake.lekfuangfu@bakermckenzie.com



Key Takeaways

- Thai law does not per se limit the outsourcing of functions or services.
- Thai law does not recognise the concept of an automatic employee transfer. An employee transfer can be effected by either a transfer of employment or a termination/ rehire. Both options require the employee's consent.
- Under no circumstances is there a legal obligation on Service Provider to employ in-scope Customer employees or honor their seniority or existing terms and conditions with Customer.
- If the Customer decides to terminate in-scope employees that do not transfer to Service Provider, there is a considerable risk of employees bringing unfair termination claims.
- Customer should avoid treating the outsourced employees as its own employees.

1. Existence of laws or regulations excluding / limiting outsourcing

Thai law does not per se limit the outsourcing of functions or services. Although there are certain considerations that have to be taken into account in any proposed outsourcing arrangement (eg, the use of personal information), such limitations should not preclude Customer from outsourcing certain functions or services.

2. Obligation of Service Provider to employ in-scope employees

Under no circumstances, is there is a legal obligation on Service Provider to employ in-scope Customer employees in an outsourcing scenario.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Thai law does not recognise the concept of an automatic employee transfer. An employee transfer can be effected by either a transfer of employment or a termination/ rehire. Both options require the employee's consent.

A transfer of employment is generally effected by way of a tripartite agreement executed by Customer, Service Provider and the transferred employee. In a termination/ rehire scenario, the affected employees must formally resign from Customer and then enter into an employment agreement with Service Provider.



In both options, the employee is free to object to become a Service Provider employee in which case he/she will remain a Customer employee. If Customer then terminates the employment without a statutory cause (eg, without any wrongdoing of the employee), Customer will be required to pay a severance and risks an unfair termination claim from the terminated employee.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

In case of employment transfer, the Service Provider must recognise the employee's length of service with Customer. In a termination and rehire scenario, Service Provider is not legally required to do so but it would be advisable and common practice to do so.

In both options, Service Provider may amend the employee's employment terms and conditions as deemed appropriate and is not required to honor seniority, so long as the employees agree and accept to join the Service Provider.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

Yes, if Customer terminates employees as a result of outsourcing services to Service Provider, this does provide leverage to the terminated employees to bring an unfair termination claim against Customer asking for re-instatement or unfair termination compensation in addition to the usual statutory severance payments. Customer will have to justify the termination to the court's satisfaction in order to defend the case, especially why it decided to use services from the Service Provider instead of relying on its employees to perform the services. The threshold for justifying the termination before the courts is quite high.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer should not exercise any control or management over the outsourced employees to avoid a co-employer risk. The service agreement implementing the outsourcing arrangement should clearly provide that Service Provider is responsible for managing the outsourced employees.

Further, Customer should not pay any remuneration, wage or benefits to the outsourced employees at all, and should not include them into Customer’s internal systems (eg, ID, emails). Moreover, Customer should also avoid treating Service Provider’s employees the same as its own employees.

Notwithstanding the above, there always remains a co-employment risk. Thai courts will consider whether the outsourcing qualifies as second employment on a case-by-case analysis according to the factors used to determine employment status.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

Customer may provide some limited instructions to the outsourced employees but only to the extent that they are specifically related to the services they perform under the services agreement with the Service Provider.

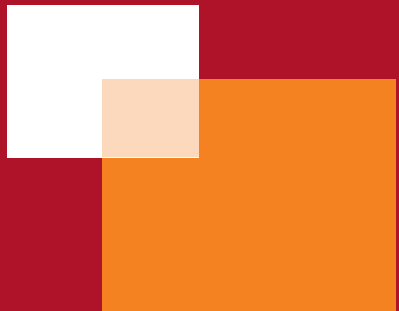
United Kingdom

Paul Harrison

London

Tel: +44 20 7919 1320

paul.harrison@bakermckenzie.com



Key Takeaways

- UK law does not exclude or limit outsourcing.
- Outsourcing generally attracts TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006) which means that the in-scope employees transfer automatically to Service Provider on existing terms and conditions of employment and subject to crediting of seniority.
- In an automatic transfer scenario, there are various obligations to inform and consult with employee representatives.
- The risk of dual employment or violating labor lending rules in typical outsourcing scenarios in the UK is very low.

1. Existence of laws or regulations excluding / limiting outsourcing

UK law does not exclude or limit outsourcing.

2. Obligation of Service Provider to employ in-scope employees

Service Provider is obliged to employ in-scope employees if the outsourcing constitutes a “service provision change” or a “transfer of business” under TUPE (the UK’s implementation of the Acquired Rights Directive).

An outsourcing will constitute a “service provision change” under TUPE where:

- activities cease to be carried out by Customer and are carried out instead by Service Provider,
- immediately before the outsourcing, there is an organised grouping of employees (which can be just one employee) in Great Britain whose principal purpose is the carrying out of the activities concerned on behalf of Customer, and
- the activities are fundamentally the same before and after the outsourcing.

Outsourcings will generally trigger the “service provision change” principles under TUPE. They may also be triggered where the Customer decides to insource services or change the existing Service Provider.

It is also possible for an outsourcing to constitute a “transfer of business” under TUPE if it involves the transfer of an economic entity which retains its identity.



If the outsourcing does not constitute a transfer of a business or service provision change, Service Provider is not required to employ in-scope employees but the parties may commercially agree a transfer of the in-scope employees to Service Provider.

3. Mechanism of employee transfer (automatic vs. termination and offer)

If TUPE applies, the in-scope employees will transfer automatically by operation of law to Service Provider (subject to the employees' right to object). Service Provider will effectively step into Customer's shoes and inherit all the liabilities relating to the in-scope employees (including those pre-transfer) save in respect of some rights under occupational pension schemes which do not transfer.

If TUPE does not apply, employees may be transferred by a termination/ offer procedure.

4. If automatic transfer applies, any preconditions for such transfer

Both Customer and Service Provider must inform and - if appropriate - consult appropriate representatives of those of its employees who are "affected" by the transfer or any measures taken in connection with it, in "good time" before the transfer.

Where there is already a recognised trade union, the consultation must be with representatives of that union. Where some or all of the affected employees are not covered by a recognised trade union, the employer must in respect of those employees inform and consult with either:

- a pre-existing employee representative body with a mandate to act in relation to the transfer; or
- representatives elected for the purpose.

A breach of these requirements will not stop the automatic transfer of employees from taking place, but may result in a claim for compensation, up to a maximum amount of 13 weeks' actual pay for each affected employee.

Customer must also provide Service Provider with certain key information about the transferring employees at least 28 days before the transfer.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

If TUPE applies, the in-scope employees transfer to Service Provider on their existing terms and conditions of employment (apart from some terms in relation to occupational pensions) and retain their seniority i.e., years of continuous service with Customer.

Any changes to terms and conditions will be void if the reason for the change is the transfer itself unless Service Provider has an “ETO” reason, and Service Provider and the employee agree the change, or the terms of the existing contract permit the change. An ETO reason is an economic, technical or organisational reason which involves a change in workforce functions, numbers or location. Changes which are purely to harmonise Customer’s terms with Service Provider’s terms will not be enforceable.

In the UK, collectively-agreed terms (i.e., terms negotiated with a union at local or national level) are typically incorporated into individual contracts of employment. They therefore need to be preserved as explained above. However, TUPE does allow changes to collectively-agreed terms, provided they are implemented more than one year after the transfer and the overall contract of employment is no less favourable than before.

In addition, if the transfer involves any substantial change to the employee’s working conditions to his/her material detriment, he/she is entitled to resign and treat the resignation as a dismissal.

If TUPE does not apply, and employees transfer by way of a termination/rehire scenario, Service Provider is not legally required to credit seniority or honor existing Customer terms and conditions of employment.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

If Service Provider uses its own employees instead of allowing Customer employees to transfer in circumstances where TUPE applies, the in-scope Customer employees may bring a claim. The fact that they were made redundant and their work is now being done by Service Provider’s employees does not make it more likely that TUPE applies but does, in practical terms, make it more likely that they will bring claims. If they can show that they should have transferred under TUPE, they can claim compensation for unfair dismissal (assuming they have 2 years’ service) on top of their redundancy



severance payment. Re-instatement orders are rare in the UK and, if made, they can be avoided on payment of extra compensation.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

UK law has not historically recognised the concept of co-employment in this context. In addition, UK law is very permissive towards “labor lending”. The conduct of employment agencies/businesses (i.e., companies who supply labor to other companies) is lightly regulated, in that there are certain paperwork and transparency requirements. However, there are no onerous labor lending rules.

If Service Provider only provides labor/employees to Customer it could end up being regarded as an employment agency/business and so caught by the applicable regulatory regime. In practice, however, this is unlikely in an outsourcing context since Service Provider ordinarily takes responsibility for the service, rather than simply supplying labor.

As long as Service Provider is defined and agreed to be the employer, UK law is very permissive about how its employees operate/appear whilst working on an outsourced contract. For example, Service Provider employees can wear Customer Uniforms, have Customer e-mail addresses and use Customer equipment but Service Provider would still be the employer.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

See question 7.

United States

Carole Spink

Chicago

Tel: +1 312 861 8065

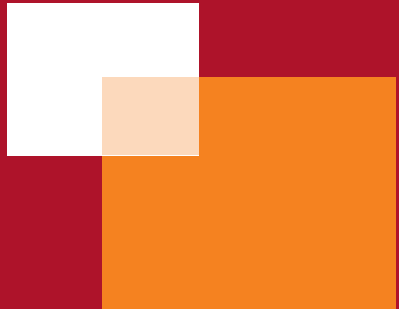
carole.spink@bakermckenzie.com

Elizabeth Ebersole

Chicago

Tel: +1 312 861 8272

elizabeth.ebersole@bakermckenzie.com



Key Takeaways

- US Federal law does not exclude or limit outsourcing.
- In-scope employees do not automatically transfer to Service Provider but an employee transfer can be effected by way of a termination/ rehire.
- The risk of dual employment or violating labor lending rules in typical outsourcing scenarios in the US is low.

1. Existence of laws or regulations excluding / limiting outsourcing

US law does not exclude or limit outsourcing.

2. Obligation of Service Provider to employ in-scope employees

None. There is no obligation on Service Provider to employ in-scope employees but the parties may reach a commercial agreement with respect to the form of any employment offer by Service Provider to in-scope employees. In this regard, it is common for Customer to require Service Provider to make offers of employment to in-scope employees on terms which are no less favorable than the respective employee's terms of employment with Customer, and with recognition of the respective employee's prior service with Customer.

If an in-scope employee rejects the offer, Customer must decide whether to terminate the employment. In the absence of an agreement with the employee or applicable Collective Bargaining Agreement, employees in the US are engaged at-will, and no statutory notice or severance is due in the case of an individual termination. (Please see Questions 3 below regarding WARN Act implications.)

If Service Provider elects to "cherry-pick" in-scope employees, both parties should be aware of potential discrimination issues in the event that those not chosen will be terminated.

Note that additional State and local requirements may apply.

3. Mechanism of employee transfer (automatic vs. termination and offer)

Employees do not transfer automatically. Any employee transfer from Customer to Service Provider requires a termination by Customer and acceptance of an offer of employment made by Service Provider.



In the absence of an agreement with the employee or applicable Collective Bargaining Agreement, employees in the US are engaged at-will, and no statutory notice or severance is due in the case of an individual termination.

Generally, if a Customer has 100 or more employees, the Worker Adjustment Retraining and Notification Act 1988 (“WARN Act”) will apply. In such cases, Customer must provide employees with 60 days’ prior notice in case of:

- (a) mass layoffs (50 or more employees (if they make up at least 33% of the workforce) or 500 employees) at a single site of employment; or
- (b) plant closing (50 or more employees during any 30 day period).

These requirements can be triggered even if Service Provider engages some or all of the in-scope employees. Additional State and local requirements may apply.

Additionally, if employees will be terminated and will not receive an offer from Service Provider, Customer should follow the best practice steps for a reduction in force, including conducting a disparate impact analysis, as well as considering timing and whether Customer wants to provide a separation payment in exchange for a release, and if so, group data reports for compliance with the Older Workers Benefit Protection Act of 1990 (“OWBPA”) as applicable.

4. If automatic transfer applies, any preconditions for such transfer

N/A.

5. Obligation of Service Provider to credit seniority with Customer and/or honor Customer terms and conditions of employment; limits to changes to terms and conditions

None. However, the parties often commercially agree to credit service.

6. Does replacement of Customer employees by employees of Service Provider provide leverage to redundant employees to claim re-instatement or a higher severance?

No.

7. Absolute “no-goes” for Customer post-outsourcing to avoid any co-employer risk or violation of labor lending rules

Customer should avoid exercising direction and control over Service Provider’s employees and also avoid treating Service Provider’s employees the same as its own employees.

8. What can Customer provide to the outsourced employees post-outsourcing without incurring the risk of co-employment/illegal labor lending?

See question 7.



Baker McKenzie Offices

Argentina

Buenos Aires

Cecilia Grierson 255, 6th Floor
Buenos Aires C1107CPE
Argentina
Tel: +54 11 4310 2200
Fax: +54 11 4310 2299

Australia

Brisbane

Level 8
175 Eagle Street
Brisbane QLD 4000
Australia
Tel: +61 7 3069 6200
Fax: +61 7 3069 6201

Melbourne

Level 19
181 William Street
Melbourne VIC 3000
Australia
Tel: +61 3 9617 4200
Fax: +61 3 9614 2103

Sydney

Level 27, A.M.P. Centre
50 Bridge Street
Sydney, NSW 2000
Australia
Tel: +61 2 9225 0200
Fax: +61 2 9225 1595

Austria

Vienna

Schottenring 25
1010 Vienna
Austria
Tel: +43 1 24 250
Fax: +43 1 24 250 600

Azerbaijan

The Landmark Building
90A Nizami Street
Baku AZ1010
Azerbaijan
Tel: +994 12 497 18 01
Fax: +994 12 497 18 05

Bahrain

18th Floor
West Tower
Bahrain Financial Harbour
P.O. Box 11981
Manama
Kingdom of Bahrain

Belgium

Antwerp

Meir 24
2000 Antwerp, Belgium
VAT BE 0426.100.511 RPR Brussels
Tel: +32 3 213 40 40
Fax: +32 3 213 40 45

Brussels

Louizalaan 149 Avenue Louise
Eleventh Floor
1050 Brussels, Belgium
VAT BE 0426.100.511 RPR Brussels
Tel: +32 2 639 36 11
Fax: +32 2 639 36 99

Brazil

São Paulo

Rua Arq. Olavo Redig de Campos,
105 – 31º andar - Ed. EZ Towers
Torre A
04711-904
São Paulo - SP
Tel.: (55-11) 3048-6800
Fax: (55-11) 5506-3455

Rio de Janeiro

Av. Rio Branco,
1 - 19º andar
Ed. RB1
Setor B - 20090-003
Rio de Janeiro - RJ
Tel.: (55-21) 2206-4900
Fax: (55-21) 2206-4949

Brasília

SAF/S Quadra 02,
Lote 04, Sala 203
Ed. Comercial Via Esplanada
Brasília
DF - 70070-600
Tel.: (55-61) 2102-5000
Fax.: (55-61) 3323-3312

Porto Alegre

Av. Borges de Medeiros,
2233 - 4º andar - 90110-150
Porto Alegre - RS
Tel.: (55-51) 3220-0900
Fax: (55-51) 3220-0901

Canada

Toronto

181 Bay Street, Suite 2100
Toronto, Ontario M5J 2T3
Canada
Tel: +1 416 863 1221
Fax: +1 416 863 6275

Chile

Santiago

Avenida Andrés Bello 2457, Piso 19
Providencia, CL 7510689
Santiago
Chile
Tel: +56 2 2367 7000

China

Beijing

Suite 3401, China World Office 2,
China World Trade Centre,
1 Jianguomenwai Dajie,
Beijing 100004
Tel: +86 10 6535 3800
Fax: +86 10 6505 2309

Hong Kong

14th Floor, Hutchison House,
10 Harcourt Road, Central,
Hong Kong SAR
Tel: +852 2846 1888
Fax: +852 2845 0476

Shanghai

Unit 1601, Jin Mao Tower,
88 Century Avenue, Pudong,
Shanghai 200121
Tel: +86 21 6105 8558
Fax: +86 21 5047 0020



Colombia

Bogota

Avenue 82 No. 10-62 6th Floor
Bogota
Colombia
Tel: +57 1 634 1500 / 644 9595
Fax: +57 1 376 2211

Czech Republic

Prague

Praha City Center,
Klimentská 46
Prague 110 02
Czech Republic
Tel: +420 236 045 001
Fax: +420 236 045 055

Egypt

Cairo

Nile City Building, North Tower
21st Floor 2005C, Cornich El Nil
Ramlet Beaulac
Cairo
Egypt
Tel: +20 2 2461 9301, +20 2 2461
5520
Fax: +20 2 2461 9302

France

Paris

1 rue Paul Baudry
75008 Paris
France
Tel: + 33 1 4417 5300
Fax: + 33 1 4417 4575

Germany

Berlin

Friedrichstraße 88/Unter den Linden
10117 Berlin
Germany
Tel: +49 30 2 20 02 81 0
Fax: +49 30 2 20 02 81 199

Dusseldorf

Neuer Zollhof 2
40221 Dusseldorf
Germany
Tel: +49 211 3 11 16 0
Fax: +49 211 3 11 16 199

Frankfurt

Bethmannstrasse 50-54
60311 Frankfurt/Main
Germany
Tel: +49 69 2 99 08 0
Fax: +49 69 2 99 08 108

Munich

Theatinerstrasse 23
80333 Munich
Germany
Tel: +49 89 5 52 38 0
Fax: +49 89 5 52 38 199

Hungary

Budapest

Dorottya utca 6.
1051 Budapest
Hungary
Tel: +36 1 302 3330
Fax: +36 1 302 3331

Indonesia

Jakarta

Hadiputranto, Hadinoto & Partners,
The Indonesia Stock Exchange
Building
Tower II, 21st Floor
Sudirman Central Business District
Jl. Jendral Sudirman Kav. 52-53
Jakarta 12190
Indonesia
Tel: +62 21 2960 8888
Fax: +62 21 2960 8999

Italy

Milan

Piazza Meda, 3
Milan 20121
Tel: +39 02 76231 1
Fax: +39 02 7623 1620

Rome

Viale di Villa Massimo, 57
Rome 00161
Tel: +39 06 44 06 31
Fax: +39 06 4406 3306

Japan

Tokyo

Ark Hills Sengokuyama Mori Tower,
28th Floor
1-9-10, Roppongi, Minato-ku
Tokyo 106-0032
Japan
Tel: +81 3 6271 9900
Fax: +81 3 5549 7720

Kazakhstan

Almaty

Samal Towers, 8th Floor
97, Zholdasbekov Street
Almaty Samal-2, 050051
Kazakhstan
Tel: +7 727 330 05 00
Fax: +7 727 258 40 00

Luxembourg

10 - 12 Boulevard Roosevelt
Luxembourg 2450
Luxembourg
Tel: +352 26 18 44 1
Fax: +352 26 18 44 99

Malaysia

Kuala Lumpur

Wong & Partners, Level 21, The
Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
Kuala Lumpur 59200
Malaysia
Tel: + 603 2298 7888
Fax: + 603 2282 2669

Mexico

Guadalajara

Av. Paseo Royal Country 4596
Torre Cube 2, 16th Floor
Fracc. Puerta de Hierro
Zapopan, Jalisco 45116
Mexico
Tel: +52 33 3848 5300
Fax: +52 33 3848 5399



Juárez

P.O. Box 9338 El Paso, TX 79995
P.T. de la República 3304, 1st floor
Juárez, Chihuahua 32330
Mexico
Tel: +52 656 629 1300
Fax: +52 656 629 1399

Mexico City

Edificio Virreyes
Pedregal 24, 12th floor
Lomas Virreyes / Col. Molino del Rey
México City, 11040
Mexico
Tel: +52 55 5279 2900
Fax: +52 55 5279 2999

Monterrey

Oficinas en el Parque
Torre Baker McKenzie, 10th floor
Blvd. Antonio L. Rodríguez 1884 Pte.
Monterrey, N.L. 64650
Mexico
Tel: +52 81 8399 1300
Fax: +52 81 8399 1399

Tijuana

P.O. Box 1205 Chula Vista, CA
91912
Blvd. Agua Caliente 10611, 1st floor
Tijuana, B.C. 22420
Mexico
Tel: +52 664 633 4300
Fax: +52 664 633 4399

Morocco

Casablanca

Ghandi Mall - Immeuble 9
Boulevard Ghandi
20380 Casablanca
Morocco
Tel: +212 522 77 95 95
Fax: +212 522 77 95 96

Myanmar

Yangon

Level 18, Unit 18-03
Sule Square
221 Sule Pagoda Road,
Kyauktada Township
Yangon
Myanmar
Tel: +95 1 925 5095

Netherlands

Amsterdam

Claude Debussylaan 54
1082 MD Amsterdam
P.O. Box 2720
1000 CS
Amsterdam
The Netherlands
Tel: +31 20 551 7555
Fax: +31 20 626 7949

Peru

Lima

Av. De la Floresta 497
Piso 5 San Borja
Lima 41
Peru
Tel: +51 1 618 8500
Fax: +51 1 372 7171/ 372 7374

Philippines

Manila

Quisumbing Torres,
12th Floor, Net One Center
26th Street Corner 3rd Avenue
Crescent Park West
Bonifacio Global City
Taguig City 1634
Philippines
Tel: +63 2 819 4700
Fax: +63 2 816 0080; 728 7777

Poland

Warsaw

Rondo ONZ 1
Warsaw 00-124
Poland
Tel: +48 22 445 3100
Fax: +48 22 445 3200

Qatar

Doha

Al Fardan Office Tower, 8th Floor
Al Funduq Street
West Bay
P.O. Box 31316
Doha, Qatar
Tel: +974 4410 1817
Fax: +974 4410 1500

Russia

Moscow

White Gardens
9 Lesnaya Street
Moscow 125047
Russia
Tel: +7 495 787 2700
Fax: +7 495 787 2701

St. Petersburg

BolloevCenter, 2nd Floor
4A Grivtsova Lane
St. Petersburg 190000
Russia
Tel: +7 812 303 9000
Fax: +7 812 325 6013

Saudi Arabia

Jeddah

Abdulaziz I. Al-Ajlan & Partners,
Bin Sulaiman Center, 6th Floor,
Office No. 606,
Al-Khalidiyah District, P.O. Box
128224
Prince Sultan Street and Rawdah
Street Intersection
Jeddah 21362
Saudi Arabia
Tel: + 966 12 606 6200
Fax: + 966 12 692 8001

Riyadh

Abdulaziz I. Al-Ajlan & Partners,
Olayan Complex
Tower II, 3rd Floor
Al Ahsa Street, Malaz
P.O. Box 69103
Riyadh 11547
Saudi Arabia
Tel: +966 11 265 8900
Fax: +966 11 265 8999

Singapore

8 Marina Boulevard
#05-01 Marina Bay Financial Centre
Tower 1
Singapore 018981
Singapore
Tel: +65 6338 1888
Fax: +65 6337 5100



South Africa

Johannesburg

1 Commerce Square
39 Rivonia Road
Sandhurst
Sandton
Johannesburg
South Africa
Tel: +27 11 911 4300
Fax: +27 11 784 2855

South Korea

Seoul

17/F, Two IFC
10 Gukjegeumyung-ro
Yeongdeungpo-gu
Seoul 150-945
Korea
Tel: +82 2 6137 6800
Fax: +82 2 6137 9433

Spain

Barcelona

Avda. Diagonal, 652
Edif. D, 8th Floor
Barcelona 08034
Spain
Tel: +34 93 206 0820
Fax: +34 93 205 4959

Madrid

Paseo de la Castellana, 92
Madrid 28046
Spain
Tel: +34 91 230 4500
Fax: +34 91 391 5149

Sweden

Stockholm

Vasagatan 7, Floor 8
P.O. Box 180
Stockholm SE-101 23
Sweden
Tel: +46 8 566 177 00
Fax: +46 8 566 177 99

Switzerland

Geneva

Rue Pedro-Meylan 5
Geneva 1208
Switzerland
Tel: +41 22 707 9800
Fax: +41 22 707 9801

Zurich

Holbeinstrasse 30
Zurich 8034
Switzerland
Tel: +41 44 384 14 14
Fax: +41 44 384 12 84

Taiwan

Taipei

15F, 168 Dunhua North Road
Taipei 10548
Taiwan
Tel: +886 2 2712 6151
Fax: +886 2 2712 8292

Thailand

Bangkok

25th Floor, Abdulrahim Place
990 Rama IV Road
Bangkok 10500
Thailand
Tel: +66 2636 2000
Fax: +66 2636 2111

Turkey

Istanbul

Ebulula Mardin Cad., Gül Sok. No. 2
Maya Park Tower 2, Akatlar-Beşiktaş
Istanbul 34335
Turkey
Tel: + 90 212 339 8100
Fax: + 90 212 339 8181

Ukraine

Kyiv

Renaissance Business Center
24 Bulvarno-Kudriavska
(Vorovskoho) Street
Kyiv 01601
Ukraine
Tel: +380 44 590 0101
Fax: +380 44 590 0110

United Arab Emirates

Abu Dhabi

Level 8, Al Sila Tower
Abu Dhabi Global Market Square
Al Maryah Island, P.O. Box 44980
Abu Dhabi
United Arab Emirates
Tel: +971 2 696 1200
Fax: +971 2 676 6477

Dubai

Level 14, O14 Tower
Al Abraj Street
Business Bay, P.O. Box 2268
Dubai
United Arab Emirates
Tel: +971 4 423 0000
Fax: +971 4 447 9777

Dubai - DIFC

Level 3, Tower 1
Al Fattan Currency House
DIFC, P.O. Box 2268
Dubai
United Arab Emirates
Tel: +971 4 423 0005
Fax: +971 4 447 9777

United Kingdom

London

100 New Bridge Street
London EC4V 6JA
UK
Tel: +44 20 7919 1000
Fax: +44 20 7919 1999

Belfast

City Quays One
7 Clarendon Road
Belfast BT1 3BG
United Kingdom
Tel: +44 28 9555 5000

United States

Chicago

300 East Randolph Street, Suite
5000
Chicago, Illinois 60601
United States
Tel: +1 312 861 8000
Fax: +1 312 861 2899

Dallas

2001 Ross Avenue, Suite 2300
Dallas, Texas 75201
United States
Tel: +1 214 978 3000
Fax: +1 214 978 3099

**Houston**

700 Louisiana, Suite 3000
Houston, Texas 77002
United States
Tel: +1 713 427 5000
Fax: +1 713 427 5099

Miami

1111 Brickell Avenue, Suite 1700
Miami, Florida 33131
United States
Tel: +1 305 789 8900
Fax: +1 305 789 8953

New York

452 Fifth Avenue
New York, New York 10018
United States
Tel: +1 212 626 4100
Fax: +1 212 310 1600

Palo Alto

660 Hansen Way
Palo Alto, California 94304
United States
Tel: +1 650 856 2400
Fax: +1 650 856 9299

San Francisco

Two Embarcadero Center, Suite
1100
San Francisco, California 94111
United States
Tel: +1 415 576 3000
Fax: +1 415 576 3099

Washington, DC

815 Connecticut Avenue, N.W.
Washington, District of Columbia
20006
United States
Tel: +1 202 452 7000
Fax: +1 202 452 7074

Venezuela**Caracas**

Centro Bancaribe, Intersección
Avenida Principal de Las Mercedes
con inicio de Calle París,
Urbanización Las Mercedes
Caracas 1060
Venezuela
Tel: +58 212 276 5111
Fax: +58 212 993 0818; 993 9049

Valencia


Urbanización La Alegria
P.O. Box 1155
Valencia Estado Carabobo
Venezuela
Tel: +58 241 824 8711
Fax: +58 241 824 6166

Vietnam**Hanoi**

Unit 1001, 10th floor, Indochina
Plaza Hanoi
241 Xuan Thuy Street, Cau Giay
District
Hanoi 10000
Vietnam
Tel: +84 24 3825 1428
Fax: +84 24 3825 1432

Ho Chi Minh City

12th Floor, Saigon Tower
29 Le Duan Blvd
District 1
Ho Chi Minh City
Vietnam
Tel: +84 28 3829 5585
Fax: +84 28 3829 5618



Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

www.bakermckenzie.com

©2018 Baker McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee similar outcomes.