

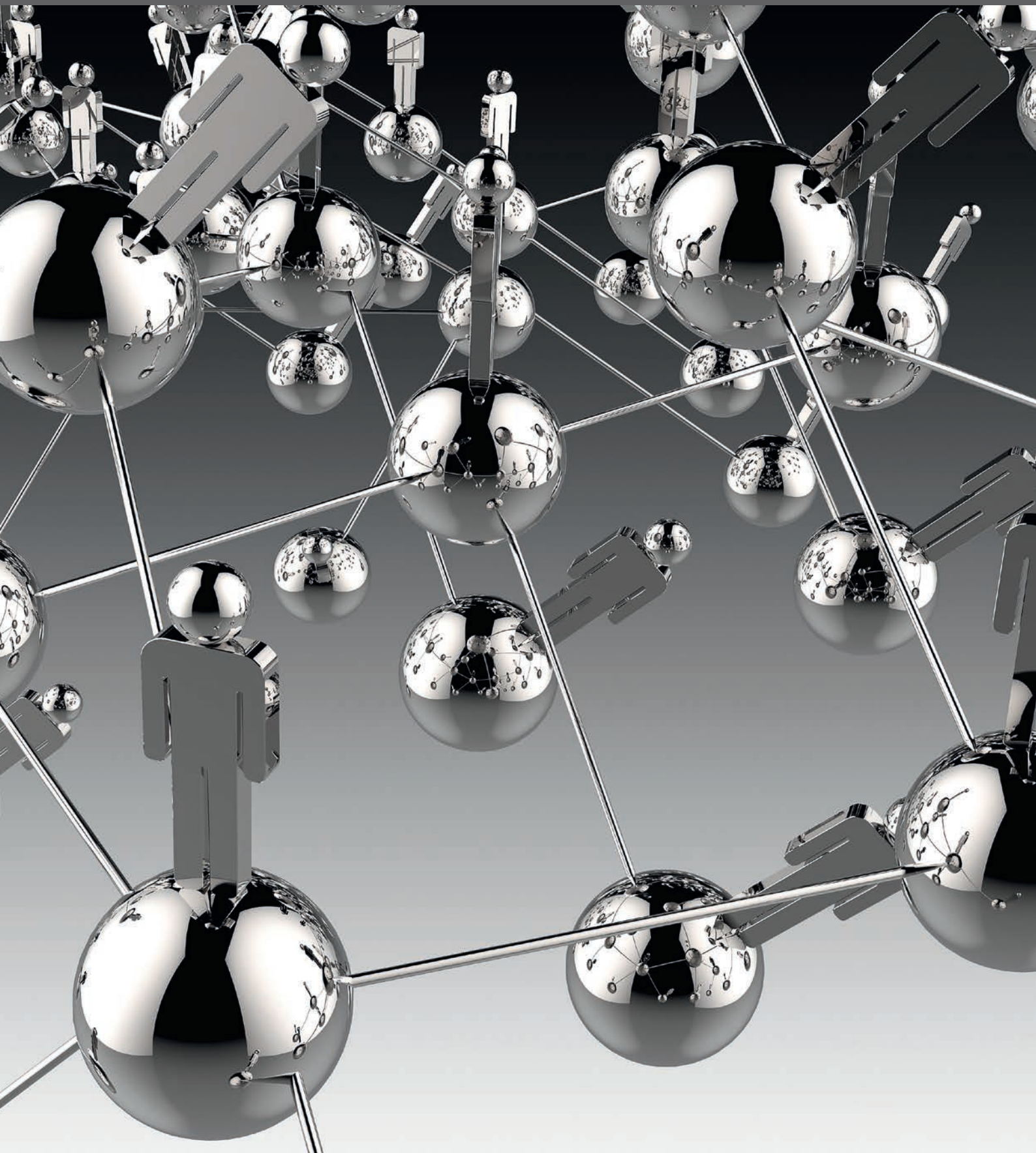


2018

Russia's HR sector: surveys, analyses, facts

Association of European Businesses

КАДРОВЫЕ ВОПРОСЫ В РОССИИ: ИССЛЕДОВАНИЯ, АНАЛИТИКА, ФАКТЫ



Litigating with the Ministry of Internal Affairs and the State Labour Inspectorate under the new rules of the Code of Administrative Court Procedure: five important aspects to consider



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In 2015, Russian lawmakers enacted the Code of Administrative Court Procedure (CACP), which among other things governs the procedure for appealing against directives and decisions (such as entry bans) issued to companies and foreign nationals by the migration divisions of the Ministry of Internal Affairs (MIA) and the State Labour Inspectorates (SLI). During the application of the CACP, a number of issues arise that require close attention.

1. JURISDICTION

Court proceedings that employ the provisions of the CACP are held in courts of general jurisdiction. However, it is not always the case that claims are filed at the location of the state executive authority. If the location of the state executive authority does not coincide with the territory to which its powers apply, or where the official performs their duties, then the claim is filed with the court of the district in which the authority performs its duties. In other words, for example, if the SLI of Moscow issues a directive to a company, then the appeal must be filed at the location where the inspection was performed, and this means the district court that covers the company's address.

2. SCOPE OF ISSUES

The CACP prescribes the scope of cases that are to be resolved using this Code. Not all acts of the state authorities can be appealed using the procedures of the CACP. Those that can include directives of the SLI and decisions of the MIA on prohibiting a foreigner from entering the country, i.e. acts that are authoritative and administrative in nature and that are binding on the company/foreigner. For example, appeals against MIA resolutions imposing an administrative penalty for late registration of a foreign national with the migration authorities are considered according to the procedures set forth in the Code of Administrative Offenses.

3. PROCEDURAL DEADLINES

Under the CACP, the deadline for a company to appeal against an act of the MIA or SLI is three months. This deadline is reckoned from the time the company learned of the violation of its rights and lawful interests. Thus, the legislation establishes a deadline that runs regardless of whether the company attempts to appeal the act through a superior authority or official.

The deadline for foreign nationals to file appeals is also three months from the time when they learned or should have learned of the violation of their rights (for example, this may be from the date a stamp denying entry is made in their passport).

4. ENGAGEMENT OF LAWYERS

The CACP places stricter requirements on a person who represents a party's interests in court. The representative may be any person who has the status of attorney-at-law or other person with a higher education in law. To confirm their authorities, the representative must show their attorney's certificate or a document confirming they have a higher education in law. However, the requirement of a higher education in law extends specifically to representatives acting based on a power of attorney; if a company's interests are represented by, for example, its CEO, no such requirement is made.

5. REQUIREMENTS ON THE CONTENTS OF THE POWER OF ATTORNEY

The CACP makes strict requirements on the contents of any power of attorney to represent a party's interests in court. The power of attorney must clearly indicate the right of the representative to take the basic procedural actions and the right to take these actions independently or with the consent of the party being represented. The CACP contains a list of actions, the power to perform which must be stipulated in the power of attorney, regardless of which of these will be performed in practice:

- signing of the statement of administrative claim, objections thereto, and their submission to court;
- petition for a preliminary injunction in the claim;
- submission of an administrative counterclaim;
- conclusion of a settlement agreement or an agreement on matters of fact;
- full/partial withdrawal of an administrative claim or recognition of a claim;
- change in the subject of/grounds for an administrative claim;
- signing of an application for a review of judicial acts based on newly discovered facts;
- appeal of a judicial act;
- submission of an enforcement document for execution;
- receipt of monetary awards or other property;
- delegation of powers to another person. ■