

# ClientInsight

24 June – 28 July 2013

## Russian Legislation Update

### Civil Code Reform

**On 2 July 2013 the President signed Federal Law No. 142-FZ amending Subsection 3 of Section I of Part One of the Civil Code.**

This Law is the third set of the amendments to the Russian Civil Code within the framework of the civil legislation reform. Overall the amendments aim at improvement of the regulation of the objects of the property rights. In particular, the securities provisions have been substantially amended, the notion of an immovable property object has been changed, and the possibilities to protect honor, dignity, and business reputation have been expanded.

**Securities.** The amendments materially expand legal regulation of securities. Chapter 7 of the Russian Civil Code is now divided into three paragraphs containing general provisions and standards with respect to documentary and uncertificated securities which were previously present in various industry-oriented regulatory acts (specifically, note-related (*veksel*), corporate and laws on securities). The *notion of a security* has been updated: it evidences not only cash-related but also other (contractual) rights (e.g., the right to corporate participation, the right to obtain information, etc.). The status of the uncertificated securities has been defined: these are contractual rights formalized in the resolution on the issue or similar act by the person that has issued such security. – *Article 142 of the Civil Code.*



**For more information, please contact:**

#### Igor Ostapets

**Partner**

+ 7 495 787 3019

[iostapets@whitecase.com](mailto:iostapets@whitecase.com)

#### Irina Dmitrieva

**Partner (Tax)**

+ 7 495 787 3003

[idmitrieva@whitecase.com](mailto:idmitrieva@whitecase.com)

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White & Case LLC

Tel + 7 495 787 3000

Fax + 7 495 787 3001

[whitecase.com](http://whitecase.com)

Material amendments have been made to the procedure for execution under **documentary securities** and the filing of objections to them – *Articles 143.1 – 145*. The procedure for the transfer of rights under a documentary security has been made more precise. Specifically, the parties will have to draw up an acknowledgment of transfer in the presence of the registrar of rights. Should one of the parties be absent, such acknowledgment is to be notarized. In addition, the concept of a *registered endorsement* is introduced (previously, only way of usual assignment) – *Article 146 of the Civil Code*.

Rules are introduced to the effect that in the event of transfer of a registered security by way of inheritance (succession) or levy of execution (i.e., in the absence of a continuous series of endorsements, as is the case in the usual course of events), such transfer is effected based on an endorsement of a notary, court bailiff or trading organizer (i.e., based on the principle of “public authenticity”) – which are in fact equated to the effect of an endorsement. – *Article 146 Item 8 of the Civil Code*.

There remains the overall principle that with respect to certain securities, standards of specialized laws will apply (e.g., laws on notes or on pledges). Uncertificated securities are governed by rules established for documentary securities unless the nature of the security prescribes otherwise.

The amendments specify a procedure for the transfer of rights and protection of affected rights under **uncertificated securities**. Any actions with uncertificated securities are to be reflected in the register; legal effects with respect to such securities arise only as of the moment the relevant entry is made in the register (specifically, on transfer, pledge, restrictions on disposal and the like). – *Article 149 of the Civil Code*.

In order to strengthen the rights of shareholders, the rule on the *effects of a loss of registration entries* evidencing rights is introduced for the first time. The person that has lost the securities’ register shall promptly publish information on such loss in the mass media (specifically, in *Kommersant* newspaper) to enable all interested parties to promptly register evidence files with the court to have such entry reinstated. – *Article 149.5 of the Civil Code*.

Also a rule on the *joint and several liability of the registrar and the issuer of securities* is introduced to the Civil Code (which in fact accumulates established court practice in these matters and the JSC Law provisions). Joint stock companies holding registers of shareholders must delegate the keeping of the registers to a party holding a proper license before **1 October 2014**. – *Article 3 of Law No. 142-FZ*.

A number of provisions have been introduced to expand the means of reinstatement of corporate control and at the same time aiming to stabilize business practice. In particular, vindication of uncertificated securities is impossible. However, the holder of rights whose securities were written off unlawfully may claim, from the party to whose account they were credited, return of as many such securities (by analogy with the claim for the recovery of unjust enrichment; while previously the courts applied vindication by analogy). If lost securities were converted into other securities, the holder of rights may claim the securities into which the securities (written off from its account) were converted. – *Article 149.3 of the Civil Code*.

A new rule is introduced to the effect that uncertificated securities evidencing cash claims and those acquired at an auction (irrespective of the type of rights they evidence) may not be recovered from a *bona fide* acquirer.

Also for the first time, a rule is introduced to the effect that a party may contest a resolution of the company’s meeting *within three months* of the day such party became or should have become aware of the unlawful debiting of securities from its account but *no later than one year from the date the resolution was approved*. The court may however turn down such claim if third parties may suffer incommensurate damages as a result of such challenge. These rules seek to protect a balance of interests between a company’s shareholders and its creditors. – *Article 149.4 of the Civil Code*.

**Indivisible items.** In order to simplify turnover and classify complex sets of infrastructure as immovable property, the concept of an *indivisible item* is introduced – an item that is actually impossible to divide without its destruction, damage or change of purpose and representing, in terms of turnover, an integral set of rights *in rem*. – *Article 133 of the Civil Code*.

**Integral immovable complex.** Pursuant to the amendments, an *integral immovable complex* is an immovable item in turnover as an integral item – an aggregate of buildings, structures and other items made whole by a single purpose and are (i) indivisibly connected physically and technologically (including rail tracks, power lines and pipelines) or are (ii) located on a single land plot and title thereto is registered with respect to the aggregate of such items as a single immovable item. – *Article 133.1 of the Civil Code*.

**Results, products, income.** Now, pursuant to the amendments, results, products and income obtained from the use of an item, according to the general rule, belong to the owner of the item (previously – to the party using the item on legitimate grounds). – *Article 136 of the Civil Code*.

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**Intangible benefits.** The amendments considerably expand possible protection of intangible benefits in court. Specifically, they provide for defense techniques such as claims for the termination or estoppel of actions that infringe upon or threaten to infringe upon a personal non-property right. – *Article 150 of the Civil Code.* New standards on the protection of individual privacy have been introduced. – *Articles 150 – 152.2 of the Civil Code.*

In addition to the existing opportunity for individuals to contest information discrediting their honor, dignity or business reputation, there are now provisions making it possible to *contest any untrue* information. – *Article 152 of the Civil Code.* However, it is impossible to claim compensation of moral harm for the dissemination of such untrue information.

Legal entities may no longer claim compensation for intangible damages (moral harm or damage to goodwill). – *Article 152 Item 11 of the Civil Code* (previously, such possibility was upheld by top-level courts).

The statute of limitations period for claims against mass media for the protection of honor and dignity has been reduced to one year. – *Article 152 Item 10 of the Civil Code.*

*The amendments will take effect on 1 October 2013.*

## Intellectual Property

### **On 2 July 2013 the President signed Federal Law No. 187-FZ “On Amending Russian Legislative Acts Regarding Protection of Intellectual Property Rights in Telecommunications and Information Networks.”**

The Law introduces amendments, in particular, to the Russian Civil Code, the Code of Civil Procedure and Federal Law No. 149-FZ “On Information, Information Technologies and Data Protection.”

The amendments establish liability of an *information broker* in order to improve the means for the protection of IP rights *to films* in telecommunications and information networks (e.g., the Internet). An *information broker* is an entity that (i) *performs information communication* [activities] in the network; (ii) *provides for the possibility to place information* in the network; or (iii) *provides for the possibility to access information* in the network.

An information broker that *performs information communication* is not liable for a breach of IP rights provided that it, *simultaneously*, (i) neither initiates such communication nor designates the recipient of the information; (ii) does not modify the information after its receipt; and (iii) did not know and should not have known that the use of the object of IP rights was unlawful. An information broker that *provides for the possibility to place information* in the network is exempt from liability provided that it, *simultaneously*,

(i) did not know and should not have known that the use of the object of IP rights was unlawful; and (ii) promptly took necessary and adequate actions to terminate the infringement on IP rights having received the corresponding claim from the rights holder. However, the rights holder may, among other things, claim damages from an information broker for the breach of the IP rights even if the information broker had no guilt in it.

The amendments include in the Code of Civil Procedure the concept of *preliminary injunctive relief* (i.e., such relief that may be applied prior to the law suit) for the protection of IP rights to films in telecommunications and information networks; the term of such relief may not exceed 15 days. The Law “On Information, Information Technologies and Data Protection” has been amended to include a procedure for limiting (based on a court ruling granting injunctive relief with respect to the property interests) the access to the information that breaches the IP rights to films, and the authority of the Federal Service for Supervision of Communications, IT and the Mass Media (*Roskomnadzor*) in this regard.

*The Law entered into force on 1 August 2013.*

### **On 23 July 2013 the President signed Federal Law No. 194-FZ “On Amending Articles 14.7 and 14.10 of the Administrative Offences Code.”**

The amendments supplement the provisions of the Administrative Offences Code establishing liability for the unlawful use of trademarks and other distinguishing means. In particular, manufacturing for sale as well as selling the infringing goods similar to those of the proprietor now constitutes a separate administrative offence. For such offence, the Law establishes an administrative fine in the amount of up to the threefold cost of the infringing goods (but not less than RUB 40,000) with confiscation of the goods.

*The Law entered into force on 3 August 2013.*

## Currency Control

### **On 2 July 2013 the President signed Federal Law No. 155-FZ amending the Federal Law “On Currency Regulation and Currency Control”**

The amendments primarily seek to regulate trans-border transfers in rubles between residents and between non-residents. In particular, they expressly allow ruble transfers from a Russian bank account of one resident to an overseas bank account of another resident and, conversely, transfers from an overseas account of one resident to a Russian bank account of another resident. Similar operations are expressly allowed for ruble transfers among non-residents.

In addition, the amendments lay down more precisely the residents' right to open overseas accounts in any countries, both in foreign currency and in rubles.

*The Law entered into force on 14 July 2013.*

## Banking

### **On 2 July 2013 the President signed Federal Law No. 184-FZ amending the Federal Law "On the Central Bank (Bank of Russia)":**

Previously, the Central Bank may have appointed its authorized representatives to banks that received state support. Under the amendments, the Central Bank will also be able to appoint its authorized representatives to banks whose assets worth RUB 50 billion or more and (or) the amount of funds attracted from individuals is RUB 10 billion or more. Such authorized representatives may attend meetings of the bank's management bodies and request certain data on the bank's business.

*The Law entered into force on 14 July 2013.*

### **On 15 April 2013 the Bank of Russia issued Directive No. 2993-U amending Regulation No. 254-P "On the Formation of Provisions by Lending Organizations to Cover Potential Losses in Loans, Loan Indebtedness and Other Similar Indebtedness.":**

*The Directive was registered with the Ministry of Justice on 26 June 2013.*

The Directive amends a number of rules on the formation of provisions, in particular:

- lending organizations will need to form larger provisions for loans of borrowers who do not engage in any real business activity or whose business activity is quite insignificant as compared to the amount of loans obtained (the Directive contains a minimum list of signs of absence or insignificance of the business activity, as well as a wide list of exemptions from this rule);
- where a borrower uses the loan to discharge the debt of another borrower, lending organizations will be able to form smaller provisions if the borrowers are related in a production process or are controlled by the same persons;
- lending organizations will need to form certain provisions for loans, payments under which are absent or insignificant within a year or more, as well as for loans granted to a borrower related with a lending organization on the non-market terms; and

- where loans are granted to small and medium-size businesses, it will be possible to include loans for up to RUB 5 million in the portfolios of such loans (as opposed to RUB 1 million previously).

The new rules on the provisions for loans indicated in items (i) and (iii) above will apply to loans granted as of **1 January 2014**. For the loans granted earlier, these will apply as of 1 January 2015.

*The Directive entered into force on 9 July 2013.*

## Procurement

### **On 2 July 2013 the President signed Federal Law No. 160-FZ amending Article 1 of Federal Law No. 223-FZ "On Procurement of Goods, Works, Services for Certain Types of Legal Entities":**

The amendments now exclude from the scope of the Procurement Law No. 223-FZ relations involving (i) sale and purchase of securities, currency values, precious metals and conclusion of contracts that are derivative financial instruments (except for contracts made on the over-the-counter market and whose performance includes supply of goods) and (ii) performance by a lending organization of inter-bank and leasing transactions, including the transactions with foreign banks.

Earlier, relations involving conclusion and performance of contracts that are mandatory for the players on the wholesale market for electric power and (or) capacity according to the electric power laws were excluded from the scope of the Procurement Law (see our update for 27 May – 23 June 2013).

*The Law entered into force on 14 July 2013.*

## Subsoil

### **On 23 July 2013 the President signed Federal Law No. 227-FZ amending Article 1 of the Subsoil Law.**

Subsoil plots may be leased for the purpose of conducting a geological survey for a five-year period. The amendments extend from five to seven years the lease period for conducting a geological survey at the subsoil plots located in the regions with complicated weather conditions (e.g., Yamalo-Nenets Autonomous District, Sakhalin and Kamchatka Regions). Simultaneously, the amendments raise the maximum amounts of the regular payment rates for the subsoil use for the purpose of prospecting and appraisal of mineral deposits.

*The Law will enter into force on 1 January 2014.*

## Strategic Companies

**On 24 June 2013 the Government issued Decree No. 1243-r amending the list technologies of social and economic significance or significance for the national defense and security of the Russian Federation (“critical technologies”).**

Federal Law No. 57-FZ on Foreign Investments in Business Sectors of Strategic Importance, dated 29 April 2008 (the “Law”) requires approval of transactions as a result of which a foreign investor obtains control over a strategic company. In particular, the company is deemed to be strategic if it possesses exclusive rights to the results of intellectual activity in the area of critical technologies (according to the list approved by the Government).

The Decree now amends the list of critical technologies, among other, by the following: (i) generic engineering; (ii) cryobiology and biomaterials preservation; and (iii) development and production of immunobiological pharmaceuticals as well as medical products used for diagnostics, prevention and treatment of diseases which pose a threat to human health.

*The Decree entered into force on 24 June 2013.*

## Privatization

On 1 July 2013 Government issued Decree No. 1111-r approving the program of privatization of the federal property for 2014 – 2016.

In particular, it is planned to:

- terminate the participation of the Russian Federation in OJSCs Rosspirtprom, United Grain Company, RUSNANO, Rostelecom, Sheremetyevo International Airport, Vnukovo Airport, Vnukovo International Airport; and
- reduce participation of the Russian Federation in OJSCs ALROSA (25%+1), INTER RAO UES (0%+9), Aeroflot – Russian Airlines (25%+1), Russian Railways (75%+1), Transneft (75%+1), Uralvagonzavod (75%+1), RusHydro (50%+1), Zarubezhneft (90%, to 50%+1 by 2020), VTB Bank (50%+1).

*The Decree entered into force on 1 July 2013.*

## Court Practice

### Bankruptcy

**On 2 July 2013 the Plenum of the Supreme Commercial Court adopted Resolution No. 56 amending its Resolution No. 63 regarding the application of the Bankruptcy Law provisions on challenging debtors’ transactions.**

According to the clarifications, if loan repayments under a revolving credit line agreement are challenged as a preferential deal: (i) the principal of tranches that were granted and then repaid cannot be summed up, the amount of preference cannot exceed the credit limit, and (ii) the interest paid for various tranches, on the contrary, can be summed up.

*The Resolution is mandatory for lower commercial courts when considering similar issues.*