

Insight

18 March – 14 April 2013

Russian Legislation Update

Corporate

Credit organizations with state participation

On 5 April 2013 the President signed Federal Law No. 47-FZ amending Article 41 of the Federal Law “On Joint Stock Companies.”

Pursuant to the JSC Law, the general term for exercising a preemptive right to acquire shares, or serial securities convertible into shares, is 45 days from the date notification on the accrual of such right was published. The amendments decrease to eight working days the term for exercise of such preemptive right for the acquisition of additional shares or serial securities convertible into shares of a credit organization with state participation (where the state owns more than 50 percent of the ordinary shares) that carries out an additional share issuance (placement) by way of open subscription. The term commences on the date the information contained in the notification on the accrual of such right was disclosed. The decision on the placement of the securities shall provide for the placement price or the procedure for its determination.

The Law will enter force on 19 April 2013.

Hazardous Production Facilities

On 4 March 2013 the President signed Federal Law No. 22-FZ amending the Federal Law “On Industrial Safety of Hazardous Production Facilities” and certain other legislative acts.

The Law, in particular, divides hazardous production facilities into four classes of hazard depending on the level of potential danger (e.g., facilities of rated a Class I hazard are of the highest danger). The appropriate class of hazard is to be assigned to facilities upon their state registration. Facilities which were registered before 15 March 2013 (the date when the Law entered into force) must be re-registered before 1 January 2014.



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Pursuant to the Law, requirements applicable to hazardous production facilities may vary depending on the class of hazard. In particular,

- Explosive, inflammable and chemically hazardous facilities rated a Class IV hazard may be operated without a license (1 July 2013);
- Action plans for post-accident clean-up in relation to certain types of facilities rated a Class I, II or III hazard must be approved (1 January 2014);
- An industrial safety management system (1 January 2014) and industrial safety declarations in relation to facilities rated a Class I or II hazard must be approved; and
- Continuous state supervision of facilities rated as Class I hazard is to be established (1 January 2014).

The Law abolishes the requirement to obtain permits from the Federal Service on Ecological, Technological and Nuclear Supervision (“Rostekhnadzor”) to use technical devices at hazardous production facilities. Before necessary technical regulations establishing other forms of compliance for certain types of technical devices are adopted, such technical devices are subject to industrial safety expert review.

In addition, the Law, in certain cases, gives organizations an opportunity to establish individual standards of industrial safety for a hazardous production facility in preparation for design documentation (e.g., if relevant industrial safety rules are not sufficient or established by Russian law).

The Law entered into force on 15 March 2013, save for certain provisions.

On 19 March 2013 the Federal Service on Ecological, Technological and Nuclear Supervision (“Rostekhnadzor”) issued Decree No. 31-rp on a temporary procedure for the maintenance of a state register of hazardous production facilities.

Pursuant to Article 10 of Federal Law No. 22-FZ amending the Federal Law “On Industrial Safety of Hazardous Production Facilities” and certain other legislative acts (the “Law”), hazardous production facilities which were registered before 15 March 2013 must be re-registered and assigned an appropriate class of hazard before 1 January 2014. The Decree specifies the procedure for the (re)registering of hazardous production facilities following the new requirements established by the Law.

The Order will enter into force ten days after the date of its official publication.

Public Procurement

On 5 April 2013 the President signed Federal Law No. 44-FZ “On Contractual System for the Procurement of Goods, Works and Services for Public and Municipal Needs.”

The Law introduces the definition of “contractual system of public procurement”, sets out methods to determine the supplier of the goods, works and services, and will replace Federal Law No. 94-FZ “On Placement of Orders for Delivery of Goods, Performance of Works and Rendering Services for State and Municipal Needs” of 21 July 2005.

Public procurement may be conducted by means of (i) *a bid*; (ii) *an electronic auction* (the Government establishes the list of the goods which may be procured in such form); and (iii) *from a single source*, i.e. from a particular supplier without a tender (this method of public procurement may be used in exceptional cases envisaged by the Law). The Law provides, in particular:

- (i) the posting on the official website of, among other things, a register of model contracts and a register of bank guarantees;
- (ii) institution of public control over public procurement; and
- (iii) the obligation of the bidder to justify its offered contract price if this price is 25 percent or more lower than the ceiling contract price.

Among other things, the Law establishes that where the ceiling contract price is higher than the amount fixed by the Government, the contract must provide for:

- (i) the obligation of the supplier (performer) to provide the customer with information about its beneficiaries, a company’s sole executive body and the members of the board of directors; for the purposes of the Law, “beneficiaries” mean individuals directly or indirectly owning more than ten percent of the company’s voting shares or a stock exceeding ten percent of the company’s charter capital;
- (ii) the obligation of the supplier (performer) to provide the customer with information about its co-performers (subcontractors) if the subcontract price (total price of several subcontracts) exceeds ten percent of the contract price.

The contract must provide that, if the supplier (performer) fails to submit the required information, it must pay liquidated damages for every day of delay. In itself, the failure to submit such information does not entail the invalidity of the contract. The circumstances under which the Government establishes the contract price are provided for by separate legal acts.

The Law establishes the following regimes for the allowance of foreign goods, works and services to be procured by the state: (i) *national* – applies when and where the international agreements of the Russian Federation so provide; within the framework of the WTO, the application of the national regime will depend on the accession of Russia to the WTO Agreement on Government Procurement and the conditions of such accession (Russia has undertaken an obligation to start negotiations on the accession to the Agreement in 2016); (ii) *prohibition* and (iii) *limitation of allowance* – are established by the Government in order to guarantee national defense and state security, to protect the fundamentals of the constitutional system, internal market and the development of the Russian economy and to support Russian manufacturers; and (iv) *conditional allowance* – allowance conditions are established by the authorized federal executive authority (as a rule, the Ministry of Economic Development) upon the Government's instruction.

Information on the terms, prohibition and limitation of the procurement of foreign goods, works and services will be available via the unified information system of public procurement (from 1 January 2016).

The provisions of the Law do not apply to the rendering of the services by the international financial institutions.

The Law will enter into force on 1 January 2014 (save for certain provisions which will enter into force on later dates).