

ClientInsight

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Russian Legislation Update

Civil Code Reform

Third Reading

On 18 December 2012 the State Duma adopted in the third reading Draft Law No. 47538-6/1 amending Chapters 1, 2, 3 and 4 of Part I of the Russian Civil Code.

On 16 November 2012 the Council of the State Duma elected to divide Draft Law No. 47538-6 amending Parts I, II, III and IV of the Russian Civil Code and certain other legislative acts into several parts to simplify and speed up the adoption process.

Draft Law No. 47538-6/1, approved in the third reading, among other things, seeks to incorporate: (i) the concept of good faith as a guiding principle of civil relations – Articles 1, 8¹(6), 10 (3, 5); (ii) the specifics of state registration of property rights – Article 8¹; and (iii) compensation of damages caused by lawful actions of state and municipal bodies – Article 16¹.

It is expected that the provisions of Draft Law No. 47538-6/1 come into force on 1 March 2013 (save for certain provisions which come into force on later dates).

The provisions of the Draft Law will apply if adopted by the State Duma in three readings, approved by the Federation Council, signed by the President and officially published.

Banking

In December 2012 the Central Bank has placed on its website the Central Bank's clarifications and answers to commercial banks' questions regarding banking regulations and supervision.

A comprehensive searchable database of the answers to banks' questions regarding banking regulations and supervision has been made available on the Central Bank's website. The answers deal, among other things, with the application of regulations on making provisions for loans, on a calculating bank's net worth (capital) and mandatory economic ratios.

The answers are available in Russian at: www.cbr.ru (go to Section "Information and Analytical Materials" on top of the screen, then click on "Normative Acts" on left-hand side of the screen, then choose Section "Banking Regulations and Supervision").

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This update is a general summary of recent developments in Russian legislation and should not be treated as legal advice. Readers should seek the advice of legal counsel on any specific question. All translations of terminology in this update are unofficial.

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Securities/Pledges

On 28 June 2012 the Federal Service for Financial Markets issued Order No. 12-52/pz-n approving the "Procedure for Recording Pledges of Registered Securities in the Registers and Amendments Regarding the Transfer of Rights to Pledged Securities."

The Order was registered with the Ministry of Justice on 24 August 2012.

The Order generally reiterates the previous rules and specifies some issues, in particular:

- (i.) a pledge order underlying the registration of a pledge of securities is to be signed by both the pledgor and the pledgeholder;
- (ii.) a pledge order which provides for the possibility of extra-judicial enforcement of a pledge may have no date when such enforcement can start, if the secured debt is discharged by periodic payments; and
- (iii.) if the pledgeholder acquires the pledged securities, a notice of the commencement of extra-judicial enforcement and/or a notice of the acquisition is to be sent to the pledgor no less than 20 business days (or 10 business days if delivered in person) before resorting to the registrar for registration of the pledge termination and the transfer of the securities to the pledgeholder.

Registrars need to bring their activities into compliance with the Order before 21 March 2013.

The Order entered into force on 21 December 2012 and abolished FSFM Order No. 11-10/pz-n of 5 April 2011 on the same issue.

Securities

On 25 October 2012 the Federal Service for Financial Markets issued Order No. 12-91/pz-n approving the list of foreign stock exchanges and depository clearing companies with a view to the recognition of bonds and other debentures as marketable bonds according to Article 310 of the Russian Tax Code.

The Order was registered with the Ministry of Justice on 7 December 2012.

Article 310 of the Tax Code provides that bonds and other debentures may be recognized as *marketable bonds* (for taxation purpose) if, among other things, they are accepted for trading on a foreign stock exchange and/or recording of the rights to them is effected by a foreign depository clearing company, provided that such stock exchange and depository are on the list approved by the FSFM.

The list now approved by the FSFM includes, specifically, the following stock exchanges: the London Stock Exchange, the New York Stock Exchange, the Stock Exchange of Hong Kong, the Singapore Exchange and NASDAQ, and the following depository clearing companies: Bank of New York Mellon Corporation,

Deutsche Bank Trust Company, Citigroup Corporation, and the central depositories of Austria, Denmark, Sweden, Norway, Poland, Hungary and certain other countries.

The Order will enter into force on 29 December 2012.

Anti-Corruption

On 3 December 2012 the President signed Federal Law No. 230-FZ "On Control over the Conformity of Officials' and Certain Other Persons' Expenses to Their Income" (the "Expenses Control Law") and Federal Law No. 231-FZ and Federal Constitutional Law No. 4-FKZ amending certain other federal laws and the Federal Constitutional Law "On the Government of the Russian Federation" in this regard.

The Expenses Control Law seeks to fight corruption and extends to control expenses of certain state officials (including members of the Russian Government, members of the Board of Directors and certain employees of the Bank of Russia, certain employees of the Pension Fund, state corporations, and certain other state employees), their spouses and underage children. The Law stipulates that such persons are to submit information regarding their expenses when purchasing property if such property's value exceeds an official's and his/her spouse's common income for a three-year period preceding the transaction. Furthermore, information regarding such expenses may be provided, among others, by the Civic Chamber of the Russian Federation and the all-Russia mass media. Expenses arising from transactions involving purchasing a land plot (or another immovable property), a vehicle, and securities and shares (interest) in the charter capital of a company are subject to control.

The decision to initiate control will be made by the chief official (and the control will be carried out by the anti-corruption department) of the employer organization. The relevant employee will be removed from office for the duration of the control with pay. If an employee fails to submit information about his/her (his/her spouse's, underage children's) expenses, he/she is subject to dismissal. Information about sources of income should be available for the mass media (save for state secret and personal data laws considerations).

If revealed that a person's (his/her spouse's, underage children's) expenses do not conform to his/her income, any such materials are to be sent to the office of the public prosecutor. A public prosecutor will have the right to file a law suit requiring that the property in question is to be turned into the property of the state.

Following the Expenses Control Law, amendments have been made, in particular, to the Labour Code, and the federal laws "On Banks and Banking Activity"; "On the Central Bank of the Russian Federation (Bank of Russia)"; "On Countermeasures with Respect to Laundering Revenue Derived from Criminal Activity and Terrorism Financing"; and "On Combating Corruption".

Federal Laws No. 230-FZ, No. 231-FZ and Federal Constitutional Law No. 4-FKZ will enter into force on 1 January 2013.

Energy

On 3 December 2012 the President signed Federal Law No. 241-FZ amending the Federal Law "On Gas Supply in the Russian Federation."

Pursuant to Federal Law No. 69-FZ "On Gas Supply in the Russian Federation," organizations which are owners of gas supply systems are required to give independent suppliers access to their gas transportation and supply systems subject to the availability of spare capacity in the systems. Following the adoption of the Law, a priority right to access such spare capacity shall be given to independent suppliers for the transportation of dry gas produced as a result of the processing of associated petroleum gas.

The Law will enter into force on 1 January 2013.

First Reading

Banking

On 18 December 2012 the State Duma adopted in the first reading Draft Law No. 126502-6 amending the Law on the Central Bank.

According to the Draft Law, the Central Bank will be entitled to impose a limit, of up to one year, on the maximum amount of interest payable by a bank on deposits if the bank fails to comply with remedial measures prescribed by the Central Bank or the bank's actions or operations pose a tangible threat to the interests of the bank's creditors (depositors).

The Draft Law also empowers the Central Bank to appoint its authorized representatives not only to banks that received state support, but also to top-100 banks (by the amount of assets or attracted deposits) and banks that attract five percent or more of the total amount of deposits attracted on a regional level. In addition, the Draft Law removes the requirement that banks inform such representatives about their intent to make certain transactions.

The provisions of the Draft Law will apply if adopted by the State Duma in three readings, approved by the Federation Council, signed by the President and officially published.

Oil Export Duty

On 21 December 2012 the Government adopted Resolution No. 1368 approving new export customs duty rates on crude oil and crude-oil products exported beyond the borders of the Russian Federation to countries outside the Customs Union.

The Resolution reduces the rate of customs duty payable on crude oil and certain crude-oil products extracted from bituminous formations (TN VED 2709 00) exported outside the member countries of the Customs Union (i.e., Russia, Belarus, and Kazakhstan). The new rate is set at US\$395.6 per ton (the previous rate was US\$396.5 per ton).

The new rate applies as of 1 January 2013.