

ClientInsight

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Russian Legislation Update

Investment Partnership

On 28 November 2011 the President signed Federal Law No. 335-FZ “On the Investment Partnership.”

The Law introduces a new type of joint venture (general partnership) agreements – the *investment partnership agreement*. Similarly to general partnerships, an “investment partnership” is not a separate legal entity, but rather a contractual form that allows two or more partners to cooperate in the making of joint investments. This new contractual mechanism is designed to foster venture capital investment in Russia.

Under an investment partnership agreement, two or several partners agree to pool their contributions in order to perform investment activities listed in the Law and derive profits from these activities. Such activities may include both equity investment (acquisition and/or sale of non-publicly traded shares and participatory interest) and non-equity investment (such as acquisition of bonds and derivative financial instruments).

An investment partnership is comprised of two types of partners: (i) managing partners that are involved in the management of the affairs of the investment partnership; and (ii) ordinary partners. Whilst managing partners are allowed to make both cash and in-kind contributions to the investment partnership, the contributions of ordinary partners are limited to cash. Managing partners may receive a management fee for their management activities. Certain other traits of investment partnerships are set out below:

- Partners can participate in more than one investment partnership;
- Foreign and Russian legal entities, individual entrepreneurs, non-profit organizations (including state corporations and pension funds) and foreign organizations that are not legal entities under the law of a foreign state, may be parties to an investment partnership agreement;
- Foreign corporations that do not have a permanent representative office in Russia may not act as managing partners;
- Partners may make contributions to the partners’ common property step-by-step;
- Although the actual provisions of the investment partnership agreement are confidential, the parties need to disclose the fact of the existence of the investment partnership;
- The number of partners of an investment partnership may not exceed 50;
- The term of an investment partnership agreement may not exceed 15 years, but it can be entered into until the occurrence of an event stipulated in the investment partnership agreement;

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- Partners are jointly and severally liable with all their property for non-contractual obligations and contractual obligations assumed in relations to the parties that are not entrepreneurs;
- Ordinary partners are liable for the contractual obligations of the investment partnership assumed in relation to the entrepreneurs to the extent of the value of their respective contributions to the partners' common property. If the common property is insufficient, the managing partners jointly and severally bear subsidiary liability for such obligations of the investment partnership.

An investment partnership agreement must be notarized.

The Law will enter into force on 1 January 2012.

Economic Partnership

On 3 December 2011 the President signed Federal Law No. 380-FZ "On the Economic Partnerships."

The Law introduces a new form of legal entity – the *economic partnership*. It is designed, in the first place, for investors implementing high-risk innovative business projects. The economic partnership, in particular, has the following specific features:

- The partnership may not issue securities and may not own shares in other legal entities, but can be a member in unions and associations of legal entities;
- The partners bear no liability for the obligations of the partnership and the partnership bears no liability for the obligations of its partners;
- The partnership is managed in accordance with the charter and the partnership management agreement (if the partners decide to execute one); the partners are free to define in their partnership management agreement the rules on the management of the partnership, on the admission of new partners, withdrawal from the partnership, on profit distribution and voting rights;
- Unless the management agreement provides otherwise, partners may transfer their participatory interest in the partnership's joint capital to third parties subject to rights of first refusal of the other partners;
- Profit distribution and voting rights can be regulated under the partnership management agreement and are not required to mirror the amount of the partners' participatory interests in the joint capital.

A partnership management agreement is subject to notarization at the location of the partnership.

The Law will enter force on 1 July 2012.

Currency Control

On 6 December 2011 the President signed Federal Law No. 406-FZ amending the Currency Control Law.

The amendments extend the category of Russian citizens who are considered non-residents to include Russian citizens permanently residing abroad for no less than one year (including based on a residence permit) and those temporarily staying abroad for no less than one year based on an employment or study visa.

Further, the amendments provide that residents engaged in foreign trade are obliged to inform banks of the maximum terms proposed in accordance with the contracts for receipt of 1) export proceeds or 2) imported goods due on account of advance payments. The procedure for the submission of such information is to be defined by the Central Bank.

It is also provided that the documents requested from residents and non-residents by a currency control authority or agent are to be submitted to such authority or agent only once; if the data indicated in such documents change, residents and non-residents are to so inform the currency control authority or agent. It is stressed that where facts need to be confirmed, residents and non-residents may be requested to provide only those documents which are used in business, there is no need to draw up separate documents specifically for currency control purposes.

The amendments introduce rules aimed at improving the procedures for the exchange of information among currency control agents and authorities: 1) banks are obliged to transfer filed transaction passports in an electronic form to currency control authorities and agents within three business days of their filing; and 2) customs authorities are obliged to transfer information on registered customs declarations on goods in an electronic form to the Central Bank and banks within three business days of the day following the day of release (conditional release) of goods by the customs authorities. The procedure for the transfer of transaction passports and information on declarations is to be established by the Central Bank and the Government, respectively.

Finally, the amendments provide that banks possessing information on residents in breach of the repatriation requirement are obliged to transfer, to the currency control authority, the relevant banking control sheet as of the date of detecting the breach.

The Law will enter into force on 5 June 2012, save for the rule specifying the term for the transfer of data by customs authorities to banks, which will become effective on 1 January 2013.

Stability of the Financial System

On 3 December 2011 the President signed Federal Law No. 381-FZ amending Federal Law No. 175-FZ "On Additional Measures for Strengthening the Stability of the Banking System within the Period until 31 December 2011."

Federal Law No. 175-FZ specifies measures that may be applied by the Deposit Insurance Agency to prevent the bankruptcy of Russian banks. The Central Bank is entitled to refrain from revoking a banking license or imposing penalties on a bank while the preventive measures are applied. The amendments now extend the term of the Law for three more years – i.e., until 31 December 2014 (as opposed to 31 December 2011 previously); the name of the Law was changed accordingly.

The Law entered into force on 16 December 2011.

Minimum Charter Capital of Banks

On 3 December 2011 the President signed Federal Law No. 391-FZ amending the Federal Law "On Banks and Banking Activity."

The Law increases the minimum charter capital for newly established banks and the minimum net worth (capital) for existing banks and non-banking lending organizations seeking to become banks from RUB 180 million to RUB 300 million (about US\$10 million).

Banks whose net (worth) capital is below that threshold are to increase it to RUB 300 million by 1 January 2015. Failure to do so will entail revocation of the bank's banking license.

The Law will enter into force on 1 January 2012.

Intellectual Property

On 6 and 8 December 2011 the President signed Federal Constitutional Law No. 4-FKZ amending the Federal Constitutional Laws "On the Judicial System of the Russian Federation" and "On Commercial Courts in the Russian Federation" and Federal Law No. 422-FZ amending certain legislative acts of the Russian Federation due to the establishment of a Court for Intellectual Rights.

In particular, amendments are made to the Commercial Court Procedural Code of the Russian Federation. The purpose of the amendments is to improve the system for the protection of intellectual property rights in Russia by establishing a special commercial court – the Court for Intellectual Rights.

According to the amendments, the Court is formed to try disputes involving intellectual property rights, including disputes regarding legal acts regulating protection of intellectual property rights adopted by Rospatent and other federal executive authorities.

The amendments also aim to introduce a category of specially qualified counselors who will examine specific matters arising in the course of the hearing.

According to the amendments, the Court for Intellectual Rights is to be formed no later than 1 February 2013.

The Laws entered into force on 7 and 8 December 2011 respectively.

Banking

Economic ratios

On 24 November 2011 the Central Bank issued Letter No. 15-1-2-7/5195 regarding Directive No. 2613-U amending Instruction No. 110-I "On Mandatory Economic Ratios for Banks."

The Directive amended the rules on the calculation of a bank's net worth (capital) ratio (N1) by including 'operations subject to a high risk multiplier' in its calculation (see our update for 23 May – 5 June 2011).

The Letter refers to the Directive – on Central Bank's website – for frequently asked questions (see http://www.cbr.ru/analytics/standart_acts/bank_supervision/).

The Letter was posted at www.arb.ru on 5 December 2011.

Insider information

On 8 December 2011 the Association of Russian Banks reported on the development of its Methodological Recommendations for Compiling Lists of Insiders by Lending Organizations.

The Recommendations, called the "matrix of insiders," are intended to be helpful for banks when they compile lists of insiders in accordance with the Law on Combating Unlawful Use of Insider Information.

The Recommendations are available at www.arb.ru.