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Insight

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Russian Legislation Update

Privatization/Corporate

On 1 November 2012 the Russian Government adopted Resolution No. 1127 extending government control over M&A deals by subsidiaries of state-owned companies.

The Resolution extends Russian Government control over M&A deals by subsidiaries of state-owned companies. Pursuant to the Resolution, (i) open joint stock companies in which the Russian Federation owns more than a 50 per cent stake and (ii) any company in which federal state-owned unitary enterprises own more than a 50 per cent stake (i.e., state-controlled companies) must seek a government directive (i.e., a non-public authorisation signed by the Prime Minister or a Deputy Prime Minister) for acquisition of shares in any company (including by means of the incorporation of such company) *by their subsidiaries* and dependent entities in which such state-controlled companies own more than 20 per cent of the shares.

The rule applies to state-controlled open joint stock companies if the acquisition price is 15 per cent or more of the book value of the assets of the subsidiary or the dependent entity.

State-controlled banks are exempt from this regulation.

Pursuant to the Resolution, charter documents of the above-mentioned state-owned companies shall be amended before 1 October 2013 to include this requirement.

The Resolution entered into force on 13 November 2012.

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Currency Control

On 12 November 2012 the President signed Federal Law No. 194-FZ amending the Administrative Offences Code as to liability for illegal currency operations.

The Law defines in detail an illegal currency operation (one which results in a fine of up to 100 per cent of its sum). Apart from the operations directly prohibited by the currency legislation, illegal currency operations now also expressly include the following operations made in breach of the law:

- Sales and purchases of foreign currency and foreign currency-denominated checks which bypass authorised Russian banks;
- Currency operations which bypass bank accounts in authorised Russian banks, or overseas banks in cases which are not provided for in the currency legislation; and
- Currency operations made with funds credited to overseas accounts in cases which are not provided for in the currency legislation.

The Law will enter into force on 13 February 2013.

Monetary Policy

On 1 November 2012 the Central Bank Board of Directors approved the "Guidelines for Unified State Monetary Policy for 2013 – 2015."

The Guidelines set forth an overview of economic development in Russia in 2012 and plans for 2013 – 2015. The principal goals include the reduction of inflation rates to 4% – 5% in 2014 and 2015 and maintenance of financial stability. The Central Bank will continue developing the banking sector and banking supervision, in particular, in the following directions:

- Improvement of instruments for refinancing of lending organisations;
- Implementation of the international standards for banking regulation contained in Basel II (as to the assessment of risks) and Basel III (as to the calculation of banks' capital and assessment of capital adequacy);
- Graded supervision over different banks depending on their significance, transparency, complexity of business and compliance with banking regulations; and
- Development of tools for evaluating banks' owners' and managers' business reputations.

The Central Bank plans to take part in the implementation of an action plan to create an international financial center in Moscow and to attend to improvement of the national payment system.

The Guidelines are available on the Central Bank's website, www.cbr.ru.

Banking

On 28 September 2012 the Central Bank issued Regulation No. 387-P "On the Procedure for Calculating by Lending Organizations of a Market Risk Amount."

The Regulation was registered with the Ministry of Justice on 9 November 2012.

The Regulation represents an updated version of the November 2007 Regulation No. 313-P. It tightens the requirements for the evaluation of market risk by lending organizations (i.e., risk of financial loss due to the change of a current (fair) value of financial instruments, as well as foreign currency exchange rates and book prices for precious metals). In particular, the coefficients used for calculating the market risk amount will be increased and the requirement to calculate the risk will apply irrespective of the significance of the lending organization's investments in the relevant financial instruments.

The Regulation will enter into force on 1 February 2013.

Anti-money Laundering

On 3 September 2012 the Federal Service for Financial Monitoring issued Order No. 301 amending its Order No. 59 dated 17 February 2011 "On Approval of Regulation on Requirements for Identification of Clients and Beneficiaries […]".

The Order was registered with the Ministry of Justice on 16 October 2012.

Order No. 59 establishes requirements for the identification of clients by companies (other than lending organizations) that conduct operations with money or other property of their clients and perform a number of anti-money laundering functions. The amendments recommend that such companies ascertain the amount of the charter capital of, and the shareholding and management structure of, their corporate clients (subject to their consent).

The Order entered into force on 6 November 2012.

Environment

On 8 November 2012 the Government issued Resolution No. 1148 in relation to payments to be made for the emission of polluting substances caused by associated petroleum gas flaring.

The Resolution establishes a procedure for calculating payments to be made for the emission of polluting substances caused by the flaring of associated gasses at flare units. Under this Resolution, if the amount of flaring gas exceeds the target level (*the target level shall not increase by more than five percent of the volume of the associated gas released*), starting from 1 January 2013 an additional

index will apply to such payments. In particular, by 2013 the index will be set at 12 and by 2014 at 25, as opposed to the current index, which is set at 4.5. If flare units are not equipped with associated gas metering devices, an additional index will be set at 120, as opposed to the current index, which is set at 6. The Resolution also sets out measures designed to encourage producing companies to increase useful utilization of associated gasses.

The Resolution will enter into force on 1 January 2013.

First Reading

Bankruptcy

On 14 November 2012 the State Duma adopted in the first reading Draft Law No. 105976-6 amending the Bankruptcy Law and some other laws with respect to the bankruptcy of individuals.

The Draft Law seeks to introduce bankruptcy proceedings with respect to individuals. Creditors will be able to ask a court to declare an individual bankrupt if their claims are no less than RUB 50,000 (about US$1,600) in total and are overdue for three months. In some cases, the debtor will be able to file an application for self-bankruptcy. The debtor may get an opportunity to develop a plan for restructuring his/her debts, which may then be implemented within up to five years. If the debts are not discharged as provided for by the plan, the debtor will be declared bankrupt and his/her property will be sold at an auction to discharge the creditors' claims as per the established order of priority, and the debtor will be released from his/her outstanding debts.

Concession agreements

On 26 October 2012 the State Duma adopted in the first reading Draft Law No. 79657-6 on the amendments to the Concession Law and certain other legislative acts in relation to concession and rental agreements for public infrastructure facilities.

The Draft Law proposes amendments to the following federal laws: "On Concession Agreements", "On Heating Supply" and "On Water Supply and Water Disposal" and seeks to specify the procedures for the conclusion of concession and rental agreements relating to heat, power, water supply and sewage treatment facilities. In particular, the proposed amendments introduce additional criteria for defining a concessionaire for the (re)construction of these public infrastructure facilities and expand a list of terms and conditions to be reflected in concession agreements for such facilities. The amendments also propose additions to the list of statutory requirements of lessees of state and municipally owned public infrastructure facilities, including, with respect to targeted indicators of reliability, quality and energy, the efficiency of services rendered.

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

Court Practice

Publicity in Commercial Litigation

On 8 October 2012 the Plenum of the Supreme Commercial Court adopted Resolution No. 61 "On Guaranteeing Publicity during Commercial Litigation."

The Resolution was published on the Court's official website on 25 October 2012.

The Russian Constitution and the Commercial Courts Procedural Code envisage that a hearing in the commercial courts is public. The Plenum clarified that an individual cannot be prohibited from attending a hearing solely due to the fact that the courtroom is full.

Furthermore, the principle of publicity in a commercial litigation presumes that all attendees of a public court session may (i) make notes, audio recordings during the session and publish, in a text format, information about the session in social networks and other electronic mass media without the need for permission; (ii) make photos and video recordings with the presiding judge's permission, and (iii) use audio and video recordings of the session afterwards without the consent of the presiding judge or the parties to the case. The presiding judge may prohibit, in particular, video recording of a session if it may breach the fundamental rights, freedoms and legitimate interests of an individual. However, the judge may not prohibit recordings simply because the involved parties object to information about the case being made public.

If the parties to the case apply for a closed session, they must prove that (i) the information that they consider confidential is duly protected and (ii) such information does not belong to data which may not constitute a commercial secret (e.g., a financial statement).

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