

Insight

10 February – 2 March 2014

Russian Legislation Update

Banking

On 25 October 2013 the Bank of Russia approved Regulation No. 408-P “On the Procedure for Assessing Compliance with the Requirements to Qualification and Business Reputation...”

The Regulation was registered by the Ministry of Justice on 26 December 2013.

The Regulation was issued following the recent legislative changes (introduced by Federal Law No. 146-FZ of 2 July 2013) requiring bank’s managers, members of the board of directors, shareholders owning more than 10 percent of bank’s shares, controlling persons of such shareholders and managers of such shareholders/controllers persons to comply with certain requirements to qualification and/or business reputation, as applicable (for more details please see our Special Alert of September 2013 on Changes in Banking Laws, available on: www.whitecase.com).

The Regulation contains updated rules on the procedures for coordinating the appointment of bank’s managers with the Bank of Russia and notifying it of any appointment/selection and dismissal of managers and members of the board of directors. It also sets out the procedures for the Bank of Russia to check the business reputation of the banks’ shareholders, their controlling persons and managers of such shareholders/controllers persons (e.g., at the time when a bank is being established, when the consent of the Bank of Russia is sought for acquisition of a bank’s shares or when a bank’s charter capital is being increased).

It is important to note that by no later than 60 days after the Regulation’s entry into force (that is, **by 1 April 2014**) all of the above persons must notify the Central Bank, in writing, of their compliance (or noncompliance) with the established requirements. If the bank’s managers or members of the board are noncompliant, the bank is to take measures to dismiss them and notify the Bank of Russia to that effect. If the bank’s shareholders/controllers persons or their managers are noncompliant, the Bank of Russia will request that the breach is cured, that the stake is decreased to no more than 10 percent of shares or that the control is terminated.

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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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The information of the above persons who do not meet the established requirements to business reputation will be maintained by the Bank of Russia in a centralized database.

The Regulation entered into force on 31 January 2014.

On 26 November 2013 the Bank of Russia adopted Directive No. 3124-U, amending its Instruction No. 135-I “On the Procedure for the Adoption by the Bank of Russia of Decisions on the State Registration of Credit Organizations and on the Issuance of Banking Licenses.”

The Directive was registered by the Ministry of Justice on 25 December 2013.

The previous rules of the Instruction on assessment of compliance of a bank’s managers and members of the board of directors in relation to the established requirements, both at the time when a bank is being established and when the managers/directors are further changed, were either removed or replaced with references to a Central Bank regulation regarding assessment of business reputation (i.e., effectively, to Regulation No. 408-P; please see above). It was also supplemented with the rules on assessment of business reputation of bank’s shareholders owning more than 10 percent of shares (and their managers) at the time when a bank is being established or when the bank’s charter capital is being increased, with reference to the same regulation.

The Regulation entered into force on 31 January 2014.

On 25 October 2013 the Bank of Russia issued Instruction No. 146-I “On the Procedure for Obtaining Consent of the Bank of Russia for Acquisition of Shares (Participation Interests) of a Credit Organization.”

The Instruction was registered by the Ministry of Justice on 27 December 2013.

Instruction No. 146-I represents an updated version of the previous Instruction No. 130-I. It establishes the procedure for obtaining a prior or subsequent consent of the Bank of Russia for acquisition of more than 10 percent of a bank’s shares or establishing control over a shareholder owning more than 10 percent of shares, as well as the procedure for curing breaches that occur at the time of the acquisition/establishing control. One of the grounds for refusal of granting consent is unsatisfactory business reputation of an acquirer/a person establishing control or their managers (note: the procedure for assessment of their reputation is set out in Regulation No. 408-P).

The Instruction entered into force on 2 February 2014.

Anti-Money Laundering

On 28 January 2014 the Bank of Russia issued Letter No. 14-T, with clarifications regarding identification of beneficial owners.

The Letter is issued following the recent legislative changes (introduced by Federal Law No. 134-FZ of 28 June 2013) which obliged “controlling organizations,” including banks, to take measures to identify beneficial owners of their clients (for more details, please see our Special Alert on Combating Illegal Financial Operations of August 2013, available at: www.whitecase.com). The Letter clarifies, among other things that:

- the notion of a beneficial owner of a client is applicable not only to clients that are companies, but also to individuals;
- there may be one or several individuals being beneficial owners;
- if a client refuses to provide information about its beneficial owners, a bank can refuse to open a bank account/conduct the client’s business.

The Letter was published in the Central Bank Herald on 5 February 2014.

Concession Agreements

On 19 December 2013 the Government issued Resolution No. 1188 approving requirements to a bank guarantee provided by a concessionaire under a concession agreement with respect to utility infrastructure facilities.

Following recent amendments to the Federal Law “On Concession Agreements,” a concessionaire’s obligations under a concession agreement with respect to heat, water supply and/or water disposal facilities may only be secured through an irrevocable non-transferrable bank guarantee. The Resolution now sets forth a list of organizations which may act as guarantors and requirements as to the content of such bank guarantee.

The Resolution entered into force on 1 January 2014.

On 18 January 2014 the Government issued Resolution No. 37 amending a model concession agreement with respect to utility infrastructure systems and other public facilities.

Pursuant to the Federal Law "On Concession Agreements," concession agreements with respect to utility infrastructure systems and other public facilities (e.g., water, heat, gas and power supply facilities, water and waste disposal/processing facilities) must be concluded in accordance with a model agreement approved by Government Resolution No. 748 dated 5 December 2006. Following recent amendments to the concession legislation and water and heat supply related legislation, the terms of a model concession agreement with respect to these facilities are also amended, in particular, to include: (i) a concessionaire's obligation to achieve planned targets of its works (e.g., the level of reliability, quality and energy efficiency of the built facilities); (ii) the maximum amount of a concessionaire's expenses for the (re)construction of the facility; (iii) a procedure for reimbursement of concessionaire's expenses which are subject to reimbursement. In addition, a model agreement may also provide for a "grandfathering clause" with respect to tariff regulation.

The Resolution entered into force on 30 January 2014.

Public Procurement

On 28 November 2013 the Government issued Resolution No. 1087 defining cases as to when life cycle contracts may be concluded.

Pursuant to Federal Law No. 44-FZ "On Contractual System for the Procurement of Goods, Works and Services for Public and Municipal Needs" the Government defines cases of concluding life cycle contracts for procurement of goods or works, subsequent maintenance, repair and operation and/or utilization of the goods or a built facility as a result of the works. The new Resolution establishes such cases. In particular, life cycle contracts may be concluded for the design and construction of things such as automobile roads, airfields, railway transportation and sea and river port infrastructure, utility infrastructure systems facilities, unique capital construction facilities and procurement of aircraft, marine and river vessels.

The Resolution entered into force on 1 January 2014.

Employment/Foreign Citizens

On 28 December 2013 the President signed Federal Law No. 390-FZ, amending a number of federal laws related to employment of foreign citizens in Russia.

Pursuant to newly enacted Article 13.5 of the Law on Legal Status of Foreigners in Russia, foreign companies originating from countries that are WTO members can now enjoy the simplified procedure for hiring key (highly skilled) employees to work in their Russian representative offices, branches and subsidiaries. Such representative offices, branches and subsidiaries can now engage highly skilled employees, without getting permission to attract/hire foreigners, and beyond the general quotes set by the Russian Government.

Such employees are to meet the following criteria: (i) having worked with the assigning foreign company for at least one year prior to their assignment to work in Russia; (ii) be assigned to a managerial position or (with respect to branches and subsidiaries only) if assigned to another position, being paid a salary in an amount of at least RUB 2 million per annum (more than EUR 40,000), being highly qualified specialists and/or having specialized knowledge required to render the relevant services. In addition, the services the employee is to render are to be included in the list of services determined according to Russia's WTO obligations. The requirements for the qualification of a foreign employee for the rendering of the relevant services are established by the Russian Government. For a foreign employee assigned to the position of chief accountant or other officer who keeps accounts, the Law provides for specific requirements.

The foreign company may engage, for work in its Russian representative office, up to five employees (two for banks).

The Russian Federal Migration Service shall issue a work permit (or prolong an existing work permit) within 30 days from the day when the application by a foreign company was filed for its foreign employee to work in its Russian representative office, branch or subsidiary. The permit is issued for the period indicated in its application but cannot be for more than three years. The permit may be prolonged repeatedly.

The Law entered into force on 10 January 2014.

On 28 December 2013 the President signed Federal Law No. 389-FZ amending certain federal laws as related to the duration of stay of foreign citizens who enter Russia visa-free.

The amendments are introduced to Federal Law No. 114-FZ "On the Entry into and Departure from the Russian Federation" and Federal Law No. 115-FZ "On the Legal Status of Foreign Citizens in the Russian Federation."

Presently, as a general rule, the duration of the temporary stay of foreign citizens who enter Russia visa-free, may not exceed 90 days in the aggregate during each 180-day period. If a foreign citizen violates this duration of stay, he/she will be prohibited from entering Russia for three years from the date of his/her departure. Prior to the amendments, such limitations have already been applying to the citizens of, in particular, Argentina, Brazil, Venezuela, and Turkey.

Special conditions of stay of foreign citizens in Russia may be established by international treaties of the Russian Federation. In particular, the above limitations do not apply to the citizens of the CIS member-states and Ukraine, under the bilateral agreements between the Russian and relevant governments. Consolidated information on the conditions of visa-free entry into Russia by foreign citizens is posted at the official website of the Russian Ministry of Foreign Affairs (the "MFA") under the tab "Information about the Current MFA Operations."

The Law entered into force on 1 January 2014.

Court Practice: Bankruptcy

On 6 December 2013 the Plenum of the Supreme Commercial Court (SCC) issued Resolution No. 88 "On Accrual and Payment of Interest on Creditors' Claims in Bankruptcy."

The SCC Plenum clarified, among other things, the following:

- the interest due under the terms of an obligation shall not accrue during the supervision stage;
- if a creditor submits its claims during the stages other than supervision, the amount of interest due will nevertheless be determined as of the date of the introduction of the supervision;
- during the bankruptcy stages, including the supervision, a so called "moratorium interest" shall accrue on the principal debt (but not on the interest) at the CBR refinancing rate;
- moratorium interest shall be paid to creditors simultaneously with payments towards discharge of a principal debt, before payments discharging sanctions;
- moratorium interest shall form part of interest due to a secured creditor, which is to be discharged in priority to the claims of other creditors.

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