

Insight

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Russian Legislation Update

Civil Code Reform

On 7 May 2013, the President signed Federal Law No. 100-FZ amending Subsections 4 and 5 of Section 1 of Part I and Article 1153 of Part III of the Russian Civil Code.

This Law is the second set of the amendments to the Russian Civil Code within the framework of the civil legislation reform. Overall the amendments aim at stabilization of civil (in particular, contractual) relations and promotion of good faith and due care principles. One of the main purposes of the amendments is to provide for the instruments that would allow the court and contracting parties to keep, where possible, a transaction even if it has defects. In particular, such instruments are the following:

- **Institution of the approval of a transaction by a third party (body).** Now the Civil Code explicitly allows subsequent approval of a transaction; and this instrument will become a general rule rather than a specific exception (e.g., subsequent approval of a major or interested party transaction by the shareholders' (participants') general meeting or the board of directors as required by the JSC Law and the LLC Law, or subsequent approval of a transaction by a represented person) – *Article 157*¹.
- **Limitation of void transactions.** A transaction is void if it infringes upon principles of public order or morality. The court is only entitled to apply consequences of invalidity of a transaction on its own initiative to protect public interests and where the law so provides. In all other events, the relevant claim is required from the aggrieved party or a person whose legitimate interest has been violated– *Articles 163, 165, 166, 169, 173*¹.



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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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■ **Limitation to apply consequences of invalidity of a transaction.** A transaction is voidable if it breaches the law or another legal act (before the amendments, such transactions were always void). The Civil Code now explicitly demands the aggrieved contracting party or a third party to prove that the transaction entailed for them an unfavourable outcome. This is a mandatory, among the others, criterion to declare a transaction invalid and apply the corresponding consequences – *Articles 166, 168, 173¹, 174.*

■ **Good faith, reasonableness and due care principles.** A transaction may *not* be declared invalid if, in particular, (i) a party challenging the transaction, knew or should have known, when willing to keep the contract, about a circumstance on which ground it now challenges the transaction; (ii) a purchaser acquired property though such property could not be disposed (e.g., arrested), but the purchaser did not know and should not have known about such prohibition; (iii) a transaction was concluded under the influence of a substantial mistake, but the party was mistaken about common conditions and circumstances of the transaction (i.e., a person would not be able to distinguish a mistake acting with reasonable care, due consideration of the scope of the transaction, concurrent circumstances and specific features of the parties), or the other party agrees to keep the transaction on the terms which the mistaken party assumed when entering into the transaction – *Articles 166, 174¹, 178.*

The court may refuse to apply the consequences of invalidity of a transaction if their application contradicts the principles of public order or morality – *Clause 4 of Article 167.*

New instruments of stabilization of civil relations are, in particular, the following:

■ **Meeting's Decisions.** The Civil Code now establishes general requirements for corporate meeting and its minutes, conditions for voidability and voidness of a meeting's decision and the terms for its challenge. These provisions cover, in particular, corporate relations, creditors' meetings in bankruptcy and general meetings of proprietors. However these general provisions of the Civil Code apply unless a special law provides for otherwise – *Chapter 9¹.*

■ **Non-revocable power of attorney.** This is a new instrument that may be used by entrepreneurs to guarantee the performance of an obligation. It ceases at the expiration of its term, or after the relevant obligation has been performed, or at any time if a representative abuses his/her power – *Article 188¹.* Also the amendments (i) remove a three-years-period restriction for the term of a general power of attorney: now it may be issued for any time period – *Article 186;* and (ii) clarify that a power of attorney is a written empowerment that may be issued by a single person or *jointly by several persons* and empower a single person or several persons in the form of a separate document or

by its incorporation in a contract or a meeting's decision; a jointly issued power of attorney ceases if at least one of the principals has revoked it – *Articles 185, 188.*

Also the new version of the Civil Code includes the institution of *legally significant messages* that are applications, notices, notifications, claims which entail civil consequences for another person – *Article 165¹* and develops the provisions establishing limitation periods – *Articles 196-207.* Mandatory written form for a foreign business transactions was removed – *Article 162 (3).*

These provisions of the Civil Code will enter into force on 1 September 2013.

Concessions

7 May 2013 the President signed Federal Law No. 103-FZ amending the Federal Law "On Concession Agreements" and certain other legislative acts.

The Law amends the federal laws "On Concession Agreements," "On Heating Supply" and "On Water Supply and Water Disposal" in order to specify the procedure for the conclusion of concession and lease agreements in relation to state and municipally owned heat and water supply and water disposal facilities. Pursuant to the Law, the transfer of rights for possession and (or) use of the respective facilities may be only implemented on a basis of a concession agreement if over five years have passed from the moment of putting such facilities into operation.

The Law expands a list of mandatory terms to be included in concession agreements in relation to public infrastructure facilities. It establishes additional statutory requirements to concessionaries and lessees of these facilities, including, with respect to targeted indicators of reliability, quality and energy efficiency of the facilities and volume of investments. A failure to reach the targeted indicators may lead to reduction of the established tariffs.

In order to protect concessionaries and lessees from the changes of tariff regulation rules, the rules in force at the time a concession or lease agreement was concluded shall apply. At the same time, the Law allows to use the procedure for changing the tariffs according to the rules in force at the time such changes occurred but only by the agreement of the parties to the concession or lease agreement and in coordination with the relevant authority.

In addition, the Law requires obtaining preliminary consent of the anti-monopoly authority in order to change the terms of a concession agreement. The procedure and terms for obtaining of the consent are yet to be defined by the Government. The Law also specifies the procedure for implementing control over performance of concessionaire's activities under a concession agreement. Information on results of such control must be published on the official website of the grantor.

The Law will enter into force on 1 January 2014 save for certain provisions.

Banking

On 7 May 2013 the President signed Federal Law No. 89-FZ amending the Federal Law “On the Use of Cash Registers [...]”

According to the amendments, banks are not required to use cash registers, save for cases of processing cash payment settlements via payment terminals when (i) such settlements are not recorded on a daily basis in books of account, or (ii) a terminal is located outside the bank's location, or (iii) is not owned by the bank.

The Law entered into force on 10 May 2014.

Anti-Corruption Practices

On 7 May 2013 the President signed Federal Law No. 79-FZ setting forth a ban for certain individuals to hold bank accounts abroad.

The Law establishes a ban for a number of public officials and heads of state corporations (companies) to open and hold bank accounts (deposits), store cash and valuables in overseas banks, as well as own and use foreign financial instruments. The ban equally extends to spouses and minors of those officials. The breach of the ban will result in the official's dismissal.

The Law entered into force on 19 May 2013.

Personal Data

On 7 May 2013 the President signed Federal Law No. 99-FZ amending certain legislative acts of the Russian Federation following the adoption of the Federal Laws “On Ratification of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data” and “On Personal Data.”

Among other things, the Law amends the Russian Labour Code, Federal Law No. 126-FZ “On Communications” and the Russian Code of Civil Procedure.

A definition of personal data has now been removed from the Labour Code. Thus, the contradiction between the Labour Code and a special provision of the Personal Data Law providing for such definition has been eliminated. Also the Labour Code has been adjusted in accordance with Article 10 of the Personal Data Law. The amendments establish that, as a general rule, an employer may not acquire and process information about its employee regarding race, nationality, political views, religious and philosophical beliefs, health and intimacies (i.e., information referred to specific categories of personal data in the Personal Data Law).

The Communications Law, among other things, has been supplemented with the obligation of the communications operator, unless otherwise provided for by the law, to obtain a permission of an individual subscriber to provide his/her personal data to the third parties (except for the purpose of concluding/performing a communications services contract with such individual, or in

order to exercise an individual's or operator's rights and legitimate interests). Also the amendments clarify that if a communications operator included an individual subscriber's surname, middle name, first name and number in the public database of its subscribers, it must immediately change such data upon the individual's written request and exclude them from the database at any time upon the individual's request or a court's or another competent state authority's decision.

The provisions of the Code of Civil Procedure on court jurisdiction have been expanded. The amendments stipulate that a lawsuit for protection of the rights of a personal data subject (including for the compensation of damages, moral harm) may be filed with the court of the plaintiff's residence (as a general rule, a lawsuit should be filed with the court of the defendant's residence).

The Law entered into force on 19 May 2013.

Advertising

On 7 May 2013 the President signed Federal Law No. 98-FZ amending the Federal Law “On Advertising” and certain other legislative acts.

The Law amends, in particular, the Federal Law “On Advertising” and Administrative Offences Code of the Russian Federation regarding installation, use and removal of an advertising structure.

Basically, the amendments clarify the powers of local authorities with regard to installation and use of advertising structures. Among other things, local authorities (i) establish plans for the allocation of advertising structures; (ii) hold tenders for the right to conclude a contract for installing and using advertising structures; and (iii) issue an order to remove an advertising structure. The owner of an advertising structure must remove it within one month after the order's issuance date. If the owner has not removed it on time or is unknown, local authorities will address a removal order to the owner of an immovable property beneath the advertising structure or remove it at the local budget's expense. The owner of an advertising structure must compensate the owner of an immovable property beneath the advertising structure, upon its request, its expenses related to the removal, storage or, where necessary, destruction of an advertising structure. If the advertising structure was removed at the local budget's expense, the owner of an immovable property beneath the advertising structure must compensate all relevant expense upon the local authorities' request.

The amendments (i) forbid modernizing a vehicle in order to create a transportable advertising structure as well as using such structure, and impose an administrative fine of up to RUB 1 million (approx. US\$32,000) for such modernizing, as well as for unlawful installation/use of an advertising structure (before the amendments – RUB 200,000) and (ii) provide that the term of a contract for the installation and use of an advertising structure may not be less than five and more than ten years (before the amendments – five years).

The Law entered into force on 8 May 2013.

Business Ombudsman

On 7 May 2013 the President signed Federal Law No. 78-FZ “On Business Ombudsmen in the Russian Federation.”

The Law establishes a position of the Business Ombudsman under the President of the Russian Federation. The President nominates the Ombudsman (taking the opinion of the business community into consideration) for a five-year term and supervises him/her. The same individual may not hold the office for more than two consecutive terms. The Ombudsman may not be a member of the Federation Council Chambers or of a legislative body of a constituent entity of the Russian Federation or be engaged in other paid or unpaid activities except for teaching, science or another creative activity. The Law also allows establishing regional offices of business ombudsmen.

The Ombudsman, among other things, (i) considers complaints of entrepreneurs regarding breach of their rights and legitimate interests and, in particular, clarifies to the claimant available remedies and forwards the claim to the authority which is competent to resolve it (however the claim may not go to the authority whose decision or action (failure to act) is being appealed); (ii) requests at court invalidity of the acts and decisions of authorities which illegally impose on the entrepreneurs obligations, create other illegal encumbrances for business activities; (iii) files lawsuits to protect entrepreneurs’ rights and legitimate interests; (iv) challenges the effective acts of the commercial courts; (v) provides comments on draft legislative acts, and the Government and federal executive authorities are obliged to consider such comments.

The information on the activities of the Business Ombudsman under the President is available at www.ombudsmanbiz.ru. Currently Boris Titov holds the office.

The Law entered into force on 8 May 2013.

Employment

Remote Work

On 5 April 2013 the President signed Federal Law No. 60-FZ amending certain legislative acts of the Russian Federation with regard to specifics of remote work.

The most important amendments are made to the Labour Code (new Section 49.1 introduced). Among other things, the Law establishes that remote work means an employee’s performance of his/her working duties outside the employer’s premises by means of telecommunications and information networks (e.g., Internet) by virtue of the employment agreement on remote work. Such agreement may be concluded by exchanging electronic documents. It may include any specific conditions regarding the employee’s performance, his/her work, rest and recreation hours provided that such conditions do not limit any employees’ rights provided for by the Labour Code.

The Law entered into force on 19 April 2013.

Securities

On 2 May 2013 the Russian Government adopted Resolution No. 732-r allowing securities of the International Investment Bank (“IIB”) to be placed and publicly traded in Russia.

The Securities Market Law entitles the Government to approve the list of international financial organizations whose securities are allowed to be placed and publicly traded in Russia. The Resolution now qualifies the IIB as one of those organizations. Until recently, only securities of the International Financial Corporation, the European Bank of Reconstruction and Development, the Eurasian Development Bank, the Eurasian Investment Bank and the Black Sea Trade and Development Bank were included in the above list.

The Resolution opens IIB the door to the Russian financial market. IIB is planning to make a Rouble bonds issuance until the end of 2013 following its strategic course of actions towards the increase in assets, including through borrowings on the financial markets of the IIB’s member-states (to date, IIB’s member-states include: Bulgaria, Vietnam, Russia, Cuba, Mongolia, Romania, Slovakia and the Czech Republic).

The Resolution entered into force on 2 May 2013.

Court Practice

Credit obligations

On 22 May 2013 the Presidium of the Supreme Court approved an overview of court practice related to cases on performance of credit obligations (the "Overview").

The Overview clarifies a number of issues related to the performance of credit obligations by *individuals*, in particular:

- disputes on recovering debt from a surety being an individual (not an entrepreneur) who secured obligations of a legal entity are to be considered by the courts of common jurisdiction rather than commercial courts (including if a debtor undergoes bankruptcy proceedings);
- a bank may file a claim for the recovery of debt from an individual debtor to a court at its location if so agreed in a credit agreement and no one challenged or invalidated that contractual term;
- a rule providing that disputes over title to immovable property are to be considered at its location does not apply to claims for levying execution on mortgaged immovable property;
- terms of a credit agreement with an individual setting forth fees for opening and maintaining a loan account (*ssudniy schet*), as well as other payments due for standard acts that a bank would anyway need to perform in connection with entering into and implementing a credit agreement, are illegal;
- terms of a credit agreement requiring a borrower to insure his/her life and health are legal if the borrower had an opportunity to enter into the agreement even without this term (e.g., with a higher interest rate);
- terms of a credit agreement allowing a bank to accelerate a credit on the grounds other than those envisaged by law, are illegal if the borrower has no opportunity to influence the terms of the agreement;
- if a credit agreement is changed so that to increase the surety's liability without the surety's consent, the suretyship would terminate;
- a suretyship agreement may provide for an advance consent of the surety to be liable on the changed terms if the secured obligation changes (including without specifying any limits as to the terms or amounts of such acceptable changes);
- if a secured debt is increased, the pledge will not terminate, but will rather secure the debt in a previous amount, unless the parties have previously agreed that the secured debt could be increased by a specified amount;
- enforcement of a pledge securing obligations of an individual (not an entrepreneur), is allowed, as a rule, only if the debtor is at fault for breach of the obligations; and
- a starting sale price of the pledged property indicated in a court decision on levying execution may be later changed by the court upon application of an interested party at the stage of enforcement proceedings (if there is evidence that the market price of the property has changed).

Note that the position of the Supreme Court on some of the issues mentioned above differs from that of the Supreme Commercial Court (in particular, as to the impact of changes in secured obligations on the suretyship). Please refer to our special June alert discussing these differences.

The Overview will serve as guidance for lower courts considering similar issues.