

# Insight

8 – 28 September 2014

## Russian Legislation Update

### Concession Agreements

**On 21 July 2014 the President issued Federal Law No. 265-FZ amending the Federal Law “On Concession Agreements” and certain other legislative acts (the “Law”).**

The Law aims to ensure a more favourable environment for attracting private investments in projects carried out in Russia on the basis of concession agreements concluded between a private investor (concessionaire) and a public partner (grantor). It establishes additional measures to protect the rights of the concessionaire and any creditors financing the concession project. This legal update provides a summary of the most significant changes.

#### Objects of the Concession

The Law obliges Russian state, regional and local authorities to determine lists of facilities subject to concession annually before 1 February. The lists are to be published on the tender websites (*i.e.* [torgi.gov.ru](http://torgi.gov.ru)) as well as on the grantor’s websites. The lists are for information purposes. The absence of the facility from the published list does not preclude interested parties (potential concessionaires) from initiating steps with the grantor towards entering into a concession in respect of the proposed facility. The Law establishes additional requirements for such parties (e.g. it must not be under liquidation, in bankruptcy or have any indebtedness in relation to mandatory payments to the budget).

The concessionaire may exercise a pre-emptive right to purchase a concession facility if it is included in the forecast privatization plan (programme) after expiry of the term of the concession agreement. This right is subject to the faithful performance by the concessionaire of the terms of the concession agreement, and the assignment of the right is prohibited.



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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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### Forms of Concession Agreements

The Law changes the status of mandatory model concession agreements to guidelines, thereby cancelling their mandatory application. This is due to the fact that concession agreements can be concluded in respect of a wide range of facilities, and it may not be possible to reflect the specifics of a particular industry in the model concession agreement.

### Grantor's Payment

Under the current concession legislation a grantor may either partially finance the (re)construction of the concession facility or provide the grantor's payment in favour of the concessionaire. Such payment is only available with respect to highways and related infrastructure facilities.

The Law now allows a provision on grantor's payment to be included in a concession agreement with respect to any concession facility if this is determined among the tender criteria. Moreover, the Law abolishes a previously existing provision according to which a concessionaire is not allowed to charge the ultimate users of the concession facility if the grantor's payment applies.

### Assignment/Pledge of Rights Under a Concession Agreement

The Law allows assignment of a concessionaire's rights under a concession, with prior consent of the grantor at any stage of the implementation of the concession agreement. Prior to the amendments, this was only possible after putting the concession facility into operation.

It is now also clearly stated that a concessionaire has the right to pledge its rights under a concession agreement if it attracts financing to perform its obligations under the concession agreement. For this purpose a separate tripartite agreement is to be concluded among the grantor, the concessionaire and its lenders. Pursuant to the Law, such tripartite agreement may be concluded with respect to any concession facility. Prior to the amendments, this was only possible for highways and related infrastructure facilities and public utility facilities.

The Law provides that replacement of the concessionaire under the tripartite agreement is to be made with the consent of the public authority that made the decision on the conclusion of a concession agreement. Previously, the decision could only be taken by the Russian Government.

### Term of a Concession Agreement

Pursuant to the Law, the term of a concession agreement may be extended upon the parties' approval but for *no longer* than five years. Grounds for extension are to be defined by the Russian Government. The term of a concession agreement with the grantor being a Russian region or a municipal entity is to be extended with the consent of the antimonopoly authority.

### Concessionaire Guarantees

The scope of concessionaire guarantees is now expanded. In particular, the Law obliges the grantor to consider concessionaire's request to change the material terms of the concession in certain cases that deteriorate the position of the concessionaire. Moreover, the grantor must take measures to ensure the return on concessionaire's investments and receipt of gross revenue, in the amount not less than as originally defined in the concession agreement, if there are changes to the applicable legislation that lead to the increase of a tax burden on the concessionaire or otherwise deteriorate the position of the concessionaire.

*The Law will enter into force on 1 February 2015 save for certain provisions which will enter into force on 1 May 2015.*

## Energy

**On 5 August 2014 the Government issued Resolution No. 770 amending the rules on licensing in the sphere of foreign trade, approved by Government Resolution No. 364 dated 9 June 2005.**

Following the recent amendments to the laws "On Export of Gas" and "On the Grounds of State Regulation of Foreign Trade", the Resolution specifies the powers of licensing authorities in the sphere of foreign trade. In particular, the Ministry of Energy is now empowered to issue licenses for the export and/or import of liquefied natural gas. Before the amendments, this was under the competence of the Ministry of Industry and Trade.

*The Resolution entered into force on 15 August 2014.*

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**On 9 August 2014 the Government issued Resolution No. 785 “On Approval of Rules on Submission of Information on Gas Export.”**

Pursuant to the Federal Law “On Export of Gas,” companies with the exclusive right to export gas in gaseous form as well as liquefied natural gas outside the Russian Federation must submit information on gas export to the Ministry of Energy. The Resolution defines the scope of the required information, including data on gas production volumes, export destination, counterparties, formation of gas prices, and establishes the procedure for its submission to the Ministry.

*The Resolution entered into force on 22 August 2014.*

## Corporate/Civil Code Reform

*Notarial Certification on the Decisions by the General Meeting of a Company’s Participants and the List of the Attended Participants is required*

**On 1 September 2014 the Federal Notary Chamber issued Letter No. 2405/03-16-3 providing for the Guidelines on the procedure for the notarial certification of the adoption of decisions by the general meeting of a company’s participants and the list of the attended participants.**

Pursuant to the May 2014 amendments to the Civil Code, introduced by Federal Law No. 99-FZ, from 1 September 2014, non-public companies (limited liability companies and joint-stock companies) shall confirm by notarial certification the adoption of decisions by the general meeting of the company’s participants (shareholders) and the list of the participants present at the meeting. The guidelines clarify that:

- the notarial certification is not required in the companies with a sole participant (shareholder), however, such companies may approach the notary to do so;
- the persons who are entitled to approach the notary for the certification, as a general rule, are those who, under the company laws, arrange for the preparation, convocation and conduct of the participants’ (shareholders’) general meeting, including the chairman of the board of directors, the company’s participant (shareholder) and the company’s internal and external auditor;

- together with the application for the certification, the applicant must submit to the notary a number of documents including: (i) the company’s charter; (ii) the documents confirming the powers of the applicant; (iii) the list of the LLC participants or the list of persons entitled to participate in the general shareholders’ meeting; (iv) a copy of the notification on the convocation of the meeting circulated to the participants (shareholders), together with agenda of the meeting; (v) the corporate (or shareholders) agreement, if exists;
- the notary must be present at the meeting and record the necessary information (including details of which participants attended and the quorum for the adoption of a decision or decisions specified in the agenda) by the most effective method at his/her discretion; the notary shall not certify the adoption of the decision and the list of the participants if the decision has been adopted by absentee voting;
- following the results of the general meeting the notary issues the document (in the form of a certificate) confirming the adoption of the decision(s) by the general meeting of the company’s participants and the list of the participants who attended;
- the notary cannot issue the certificate if neither of the decisions has been adopted (including due to the absence of the quorum) or the adopted decision is null.

Among other things, the Guidelines provide for the jurisdictional items of the general meeting of a company’s participants (shareholders) and the amount of votes needed for their adoption, as well as the samples of an application for the certification and the confirmation certificate.

*The Guidelines are recommended for notaries in all Russian regions and were published in “Official Documents” to “Uchet, Nalogi, Pravo” newspaper, No. 34 for 16 – 22 September 2014.*

