

Insight

18 November 2013 – 12 January 2014

Russian Legislation Update

Judicial Reform

On 27 November 2013 the Federation Council of the Federal Assembly of the Russian Federation approved a Law to amend the Russian Constitution with regard to the Supreme Court of the Russian Federation and the Prosecutor's Office of the Russian Federation (originally – Draft Law No. 352924-6).

The amendment abolishes the Supreme Commercial Court of the Russian Federation (the "Commercial Court") and transfers its jurisdictional powers, *i.e.* resolution of commercial disputes, to the Supreme Court of the Russian Federation (the "Supreme Court"). According to the Explanatory Note, the aim of the reform is to ensure a uniform approach to dispute resolution by the supreme courts and to avoid disputes on jurisdiction.

The bench of the new Supreme Court will consist of 170 judges. The Law introduces a procedure for the selection of applicants for positions on the Supreme Court. Acting judges of both courts who will continue to exercise their powers until the newly formed Supreme Court is launched. It is expected that the reorganization of the court system will take place within six months.

To implement this reform, the President has submitted to the State Duma a package of draft laws¹ that, among other things, provide for (i) the requirements for the applicants for the positions of Supreme Court judges and a procedure for their selection (these differ for Russian citizens who have the status of a judge and those who do not), and (ii) the structure and functioning of the Supreme Court.



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¹ Draft Federal Constitutional Law **No. 390470-6** "On the Supreme Court of the Russian Federation," Draft Law **No. 390479-6** "On the Procedure for the Judicial Selection for the Initial Bench of the Supreme Court of the Russian Federation Composed According to the Law of the Russian Federation "On Amending the Russian Constitution with regard to the Supreme Court of the Russian Federation and the Prosecutor's Office of the Russian Federation," Draft Law **No. 390478-6** "On Amending the Federal Constitutional Law "On the Judicial System of the Russian Federation." The draft laws were adopted by the State Duma in the second reading on 18 December 2013.

In This Issue...

- Judicial Reform
- National Payment System/
Anti-Money Laundering
- Insurance of Bank Deposits/
Banks' Economic Position
- Banking (other)
- Financial Markets
- Energy/LNG
- Subsoil

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The amendment to the Constitution will result in the need to make amendments to dozens of federal laws and regulations. Principal clarifications are expected with regard to the issue of how the supervisory review of the lower court's decisions will be exercised and what legal relevance the Commercial Court's clarifications will have after the court is abolished.

The legislative bodies of at least two-thirds of the constituent entities of the Russian Federation are to approve this constitutional amendment before it applies. It also needs to be signed by the President and officially published.

National Payment System/ Anti-Money Laundering

On 28 December 2013 the President signed Federal Law No. 403-FZ amending the Law on the National Payment System and the Anti-Money Laundering Law.

The amendments to the Law on the National Payment System relate to the use of electronic money, including via prepaid cards. In particular, "personified" electronic means of payment may be used provided the balance of electronic money does not exceed RUB 600,000 (as opposed to RUB 100,000 previously).

The amendments to the Anti-Money Laundering Law relate to the freezing of money of persons involved in terrorist activities: they introduce a list of operations allowed to be performed by such persons by way of an exception (for survival purposes). In addition, they increase the period of suspension of operations involving companies controlled by persons whose money is frozen to five days (as opposed to two days previously).

The amendments to the Anti-Money Laundering Law entered into force on 30 December 2013; the amendments to the National Payment System Law will enter into force on 1 August 2014.

Insurance of Bank Deposits/Banks' Economic Position

On 2 December 2013 the President signed Federal Law No. 335-FZ amending the Individual Deposits Insurance Law and some other laws.

According to the amendments, unsatisfactory results of the evaluation of a bank's capital, assets and liquidity will not serve as a basis for barring the bank from attracting individual deposits. Instead, unreliable reporting will serve as a basis for such a ban if it takes place repeatedly within a year (previously – within three months). Moreover, the amendments remove a set of instances in which the Central Bank is entitled (rather than obliged) to impose the ban.

The information on the application of the ban to a bank will need to be published on the websites of the Central Bank, the Agency for Deposit Insurance and the bank itself.

The amendments also lift the ban on the founders of a bank withdrawing from the bank's charter capital within the first three years of the bank's registration.

The amendments will enter into force on 3 April 2014.

On 25 October 2013 the Bank of Russia issued Directive No. 3091-U amending Directive No. 1379-U "On the Evaluation of the Financial Stability of a Bank for the Purpose of its Sufficiency for Participation in the System of Bank Deposits Insurance" and Directive No. 2005-U "On the Evaluation of Banks' Economic Position."

The Directives were registered with the Ministry of Justice on 2 and 17 December 2013, respectively.

The Directives specify that the evaluation of banks' capital is to be based on capital indicators calculated as per Regulation No. 395-P. However, under certain circumstances within a year, *i.e.*, until 1 January 2015, the use of capital indicators calculated as per Regulation No. 215-P will be possible.

The Directives also specify that the evaluation of the availability of information about persons controlling a bank will be based on an evaluation of disclosure of information on persons controlling or significantly influencing the bank (before – persons significantly influencing, directly or indirectly, the decisions taken by the bank's management). The terms "control" and "significant influence" have the same meanings as assigned to them in IFRS.

In addition, Directive No. 3091-U allows the Bank of Russia to assign a bank to the second classification group (rather than groups three – five) in certain cases despite the issues with capital, assets or liquidity or breaches of mandatory ratios.

The Directives entered into force on 1 January 2014.

Banking (other)

Banking Holdings and Banking Groups

On 25 October 2013 the Bank of Russia issued Directive No. 3080-U "On Forms, Procedure and Terms of Disclosure by Parent Banks of Banking Groups of Information on Incurred Risks and Procedures for the Assessment of Management of Risks and Capital."

The Directive was registered with the Ministry of Justice on 2 December 2013.

Parent banks of banking groups are to disclose information on risks on a consolidated basis annually and semiannually (or quarterly, as applicable). The information is to be disclosed separately or as part of annual (interim) consolidated financial statements as per the procedure set forth by Directive No. 2923-U of 3 December 2012 for the disclosure of consolidated financial statements.

The Directive entered into force on 1 January 2014.

On 25 October 2013 the Bank of Russia issued Directive No. 3090-U “On the Calculation of the Amount of Net Worth (Capital), Mandatory Ratios and Amounts (Limits) of Open Currency Positions of Banking Groups.”

The Directive was registered with the Ministry of Justice on 11 December 2013.

The Directive describes salient features of the calculation of the net worth (capital) of a banking group, establishes the amounts (limits) of open currency positions of a banking group and the mandatory ratios of a banking group. A parent bank is to comply with the following ratios of a banking group:

- common equity ratio of a banking group (N20.1) – no less than 5%;
- core capital ratio of a banking group (N20.2) – no less than 5,5% (as of 1 January 2015 – no less than 6%);
- net worth (capital) ratio of a banking group (N20.0) – no less than 10%;
- maximum exposure to a single borrower or group of related borrowers of a banking group (N21) – 25%;
- maximum amount of major credit risks of a banking group (N22) – 800%;
- ratio for the use of a banking group’s net worth (capital) for the parent bank and participants of the banking group to acquire shares (participation interests) in other legal entities (N23) – 25%.

A parent bank is to submit information on the calculation of the mandatory ratios to the Bank of Russia on a quarterly basis.

The Directive entered into force on 1 January 2014.

On 25 October 2013 the Bank of Russia issued Directive No. 3100-U amending Regulation No. 197-P “On the Procedure for the Submission of Information on Banking Holding Companies.”

The Directive was registered with the Ministry of Justice on 6 December 2013.

The Directive specifies the requirements to the list of participants of a banking holding companies to be submitted to the Bank of Russia by the parent company. If the list is not submitted, the Bank of Russia will so notify the parent company of a banking holding company and within no more than 30 days it will need to respond with a notice of the creation of a banking holding company or an explanation of non-notification.

The Directive entered into force on 1 January 2014.

On 25 October 2013 the Bank of Russia issued Directive No. 3089-U “On the Procedures for Supervision over Banking Groups.”

The Directive was registered with the Ministry of Justice on 30 December 2013.

The Directive establishes procedures for interaction between various departments of the Bank of Russia for supervision over banking groups. A banking group’s compliance with the mandatory ratios and situations that threaten the interests of its creditors and depositors will be evaluated on a quarterly basis, and a comprehensive analysis of the banking group’s performance and incurred risks will be conducted on at least a semiannual basis.

The Directive entered into force on 1 January 2014.

On 25 October 2013 the Central Bank issued Directive No. 3083-U “On the Preparation and Submission to the Bank of Russia of Information about the Risks of a Banking Holding Company.”

The Directive was registered with the Ministry of Justice on 2 December 2013.

Parent holding companies of banking holding companies are to submit to the Bank of Russia data about the banking holding company’s risks: 1) as of 1 January – no later than three months after the reporting date and 2) as of 1 July – no later than two months after the reporting date. The data are to be prepared based on the consolidated financial statements of a banking holding company and submitted in a form set under the Directive.

The Directive entered into force on 1 January 2014.

On 25 October 2013 the Central Bank issued Directive No. 3087-U “On Disclosure and Submission by Banking Holding Companies of Consolidated Financial Statements.”

The Directive was registered with the Ministry of Justice on 2 December 2013.

Under the Directive, parent holding companies are required to disclose annual financial statements (together with an audit report) no later than 150 days after the end of a reporting year. The financial statements are to be disclosed via publication on the Internet and/or in the mass media and/or are to be made available to all interested persons otherwise. In addition, the data are to be submitted to the Bank of Russia no later than three days after their disclosure but no later than 1 July of the year following the reporting year.

The Directive entered into force on 1 January 2014.

On 25 October 2013 the Central Bank issued Directive No. 3084-U amending Directive No. 2923-U, which, as amended, will be named “On Disclosure and Submission by Parent Banks of Banking Groups of Consolidated Financial Statements.”

The Directive was registered with the Ministry of Justice on 29 November 2013.

Under the Directive, parent banks are required to disclose both annual consolidated financial statements (together with an audit report) and interim statements (semiannually, together with an audit report, if any).

The Directive entered into force on 1 January 2014 and will apply starting from financial statements as of 1 July 2014.

On 25 October 2013 the Central Bank issued Directive No. 3086-U “On the Method for Defining the Value of Assets and Profits of Lending Organizations Being Members of a Banking Holding Company and the Banking Holding Company Itself.”

The Directive was registered with the Ministry of Justice on 29 November 2013.

Under the law, a group of companies is considered as a banking holding company, provided that at least 40 percent of the holding company's activities constitute banking activities. The share of banking activities is defined as the ratio between the amount of assets and/or profits of the banks within the banking holding company and the aggregate amount of assets and/or profits of the holding company itself. Therefore, the Directive specifies the method for defining the amount of such assets and profits.

The Directive entered into force on 1 January 2014.

Basel III

Following CBR Regulation No. 395-P “On the Method of Calculation of the Amount and Assessment of Adequacy of the Net Worth (Capital) of Lending Organizations (Basel III)” (“**CBR Regulation No. 395-P**”) the Central Bank has issued a number of other regulations to implement Basel III standards in the Russian banking practice.

On 25 October 2013 the Central Bank issued Directive No. 3096-U amending CBR Regulation No. 395-P.

Please see our Special Update “Basel III: Subordinated Debt Regulation Amended” of 5 December 2013 (available at: www.whitecase.com)

On 25 October 2013 the Central Bank issued Directive No. 3097-U amending Instruction No. 139-I “On Mandatory Economic Ratios for Banks.”

The Directive was registered with the Ministry of Justice on 29 November 2013.

The Directive replaces single net (worth) capital ratio N1 with a set of the following capital adequacy ratios: the common equity ratio (N 1.1), the core capital ratio (N 1.2) and the net worth (capital) ratio (N 1.0). The minimum thresholds are set at the following levels:

- common equity ratio (N 1.1) – no less than 5%;
- core capital ratio (N 1.2) – no less than 5.5% (as of 1 January 2015 – no less than 6%);
- net worth (capital) ratio (N 1.0) – no less than 10%.

Banks are to calculate the capital adequacy and other ratios involving the capital indicator with regard to the method for calculating capital as per CBR Regulation No. 395-P.

The Directive provides for high-risk indices for a bank's material contributions to other companies' shares.

The Directive also provides for a revised method for defining the level of risk for syndicated loans. The original lender's credit risk will be reduced by the amount of funding obtained from a third party.

The Directive entered into force on 1 January 2014 (save for a few provisions that will enter into force at a later date).

On 25 October 2013 the Central Bank issued Directives Nos. 3094-U and 3095-U amending Instructions Nos. 129-I and 137-I with respect to the mandatory economic ratios for non-banking lending organizations.

The Directives were registered with the Ministry of Justice on 29 November 2013.

According to the amendments, non-banking lending organizations will need to calculate the net worth (capital) ratio with regard to the method for calculating capital as per CBR Regulation No. 395-P.

The amendments entered into force on 1 January 2014.

On 25 October 2013 the Central Bank issued Directive No. 3093-U amending Regulation No. 215 P “On the Method of Calculation of the Net Worth (Capital) of Lending Organizations.”

The Directive was registered with the Ministry of Justice on 29 November 2013.

As it follows from the amendments, the capital indicator calculated as per CBR Regulation No. 215-P will not be used for the calculation of mandatory ratios. (As described above, for this purpose, the capital indicators calculated as per CBR Regulation No. 395-P shall be used.)

It is specified that the capital indicator calculated as per CBR Regulation No. 215-P shall be used for the application of statutory grounds for the revocation of banking licenses, as well as for the application of the Central Bank's directives regarding the evaluation of a bank's economic position and financial stability (notably, CBR Directive No. 3091-U of 25 October 2013 provides for the possibility of using CBR Regulation No. 215-P for the evaluation of a bank's financial stability before 1 January 2015).

The Directive entered into force on 1 January 2014.

Disclosure of Financial Statements/Reporting

On 25 October 2013 the Bank of Russia issued Directive No. 3081-U "On Disclosure by Lending Organizations of Information about Their Performance."

The Directive was registered with the Ministry of Justice on 9 December 2013.

Lending organizations are to disclose: (i) annually – annual financial statements together with an audit report (no later than 10 business days after the annual shareholders' meeting which approved the statements), and (ii) on a quarterly basis – interim statements (the terms for disclosure differ depending on whether an audit report is available and whether a lending organization is large). The executive summary to the annual statements is to be disclosed to the extent defined by the Directive (the data about the existence of the banking group, the amount and changes of the charter capital, capital adequacy and incurred risks, total payments to the lending organization's management, etc.).

The financial statements are to be publicized on the lending organization's website and (or) published in the mass media or booklets, brochures and other publications. It is also to be disclosed at client service points.

The Directive entered into force on 1 January 2014 and abrogated Directives No. 2172-U and No. 2925-U. The Directive applies starting from disclosure of annual statements for 2013.

On 3 December 2013 the Bank of Russia issued Directive No. 3129-U amending Directive No. 2332-U on reporting forms for lending organizations.

The Directive was registered with the Ministry of Justice on 11 December 2013.

The Directive amends a number of reporting forms to be submitted by lending organizations to the Bank of Russia, and the procedures for their preparation and submission (in particular, this relates to reports regarding the calculation of the net worth and mandatory ratios). A new reporting form has also been introduced about "the interest rate risk" (quarterly).

The Directive entered into force on 1 January 2014, save for certain provisions that will enter into force on other dates.

Authorized Representatives of the Bank of Russia

On 25 November 2013 the Bank of Russia issued Directive No. 3122-U amending Directive No. 2181-U on providing information to authorized representatives of the Bank of Russia.

The Directive was registered with the Ministry of Justice on 18 December 2013.

The Bank of Russia appoints its authorized representatives to banks that received state support and largest banks. Upon request, such banks are to furnish an authorized representative of the Bank of Russia with information on the receipt and provision of loans, issues of guarantees, deals with interested parties and some other deals irrespective of the amount of such deals (previously, such information was to be provided concerning deals exceeding certain thresholds).

The Directive entered into force on 10 January 2014.

Provisions for Potential Losses in Loans

On 25 October 2013 the Central Bank issued Directive No. 3098-U amending its Regulation No. 254-P "On the Formation of Provisions by Lending Organizations to Cover Potential Losses in Loans, Loan Indebtedness and Other Similar Indebtedness."

The Directive was registered with the Ministry of Justice on 29 November 2013.

The Directive tightens the requirements concerning provisions for portfolios of unsecured consumer loans. It increases the amount of provisions to be formed for portfolios of overdue loans and loans overdue for up to 30 days (other than loans granted to salaried clients). This applies to loans granted starting from 1 January 2014.

The amendments will enter into force on 1 March 2014.

Provisions for Potential Losses

On 3 December 2013 the Bank of Russia issued Directive No. 3130-U amending Regulation No. 283-P “On the Procedure for the Formation by Lending Organizations of Provisions for Potential Losses.”

The Directive was registered with the Ministry of Justice on 11 December 2013.

The Directive, among other things, increases to RUB 1 million the amount of conditional obligations that may form part of a portfolio of similar claims irrespective of individual indicia of depreciation.

The Directive entered into force on 1 January 2014, save for certain provisions that will enter into force on 1 July 2014.

Order of Priority for Debiting Funds

On 13 December 2013 the Bank of Russia issued Letter No. 239-T “On Performing Payment Instructions following Federal Law No. 345-FZ of 2 December 2013.”

The Letter was issued following the adoption of a Law which amended the order of priority for debiting funds in instances where available funds are insufficient to satisfy all the claims submitted to an account (as established by the Civil Code) as follows:

- third-priority payments include labor payments, as well as payments due under the relevant state bodies’ debiting instructions for tax arrears and insurance payments to state non budgetary funds.

The Letter clarified that payment instructions not performed before the Law’s entry into force are to be performed as per the order of priority established under the Law. The rules of Regulation No. 383-P “On the Rules for the Transfer of Funds” regarding the order of priority for debiting funds shall apply with due account for the Law.

The Letter was published in the Central Bank Herald on 18 December 2013.

Financial Markets

On 29 November 2013 the Bank of Russia announced the upcoming reorganization of the Bank of Russia’s Service for Financial Markets.

According to the announcement, as of 3 March 2014 the Bank of Russia’s Service for Financial Markets will be liquidated and replaced with a number of new departments within the Bank of Russia which will be responsible for the development and functioning of the financial markets (in particular, the Department for the Functioning of the Financial Markets, the Department for Accessing the Financing Markets, the Department for the Insurance Market, the Department for the Securities and Commodities Markets).

The announcement was published on the Bank of Russia’s website www.cbr.ru.

Energy/LNG

On 30 November 2013 the President signed Federal Law No. 318-FZ amending the federal laws “On the Fundamentals of State Regulation of Foreign Trade Activities” and “On Exports of Gas” with respect to liberalization of exports of liquefied natural gas (“LNG”).

Before the adoption of the Law, the owner of the Unified Gas Supply System (Gazprom) or its fully owned subsidiary (Gazexport) had exclusive rights to export gas (both in gaseous form and in the form of LNG) outside the Russian Federation. In accordance with the Law, Gazprom and Gazexport retain the monopoly over exports of gas in gaseous form while the exclusive right to export LNG extends to:

- companies holding licenses for the development of subsoil blocks of federal significance (e.g., those containing gas reserves of no less than 50 billion cubic meters) where such licenses, as of 1 January 2013, provide either for (i) the construction of facilities to produce LNG or (ii) the dispatch of natural gas for liquidation to a facility for the production of LNG;
- state-owned companies (e.g., those in which the Russian Federation holds more than 50 percent of the total votes represented by the share capital of such company) and their controlled subsidiaries, which produce LNG based on gaseous gas which they produce from offshore fields in relation to which they are the subsoil users, or gas produced under production sharing agreements.

The Law imposes an obligation on these companies to submit information related to exports of gas to the Ministry of Energy. The list of such information and the procedure for its submission are yet to be established by the Government. The Ministry of Energy is also authorized to issue licenses for exports of LNG.

The Law entered into force on 1 December 2013.

Subsoil

On 30 September 2013 the President signed Federal Law No. 268-FZ concerning measures to encourage “offshore” hydrocarbon deposits production.

The Law amends the Russian Tax Code, the Federal Laws “On Customs Tariffs” and “On the Continental Shelf” with the purpose of establishing a favorable investment environment for the development of new offshore hydrocarbon fields. The Law, in particular, establishes tax and customs-related incentives available to companies engaged in offshore hydrocarbon production, and improves the legal framework related to the construction, operation and use of artificial islands, installations and facilities.

Notably, the amendments introduce a definition of an operator of a new offshore hydrocarbon field (*i.e.*, those with commercial operations beginning from 1 January 2016) and provide a legal basis for cooperation between license holders for the development of new offshore hydrocarbon fields and such operators for conducting works related to the production of the respective field on a contractual basis.

Under the Law, in order to qualify as an operator, a company (including a foreign company) is to meet all of the following criteria:

- a subsoil license holder of an “offshore” deposit (or one of its affiliates) is to have a direct or indirect equity participation in such company;
- a company conducts operations (either itself or by hiring contractors) at a new “offshore” hydrocarbon field (*i.e.*, those with commercial operations beginning from 1 January 2016); and
- a company conducts works at a new “offshore” hydrocarbon field on the basis of an agreement with the relevant license holder (*i.e.*, operations agreement), and such agreement provides for a fee to be paid to the operator in an amount based on volumes of extracted hydrocarbons and/or income earned from the sale of such hydrocarbons (*i.e.*, these agreements are “risk service agreements”).

Pursuant to the Law, a company is qualified as an operator from the date of entering into an operations agreement, provided that a tax authority is duly notified of this. For the purposes of application of a special tax framework, only one company may hold the status of an operator with respect to a given new offshore hydrocarbon agreement filed.

The Law entered into force on 1 January 2014, save for certain provisions.