

ClientInsight

24 December 2012 – 13 January 2013

Russian Legislation Update

Civil Code Reform

On 30 December 2012 the President signed Federal Law No. 302-FZ amending Chapters 1, 2, 3 and 4 of Part I of the Russian Civil Code.

The Law, among other things, provides for the specifics of state registration of property rights, in particular: (i) a person may request entry in the Unified State Register of Rights to Immovable Property and Transactions Therewith ("Property Register") of its objection with respect to the registered right, provided that such person was previously indicated in the Property Register as the right's holder; and (ii) a person challenging the registered right in court may request that notice about the dispute be included in the Property Register.

The Law abolishes the requirement for state registration in relation to the following agreements with immovable property, executed after 1 March 2013: residential premises sale and purchase agreement, enterprises sale and purchase agreement, donation agreement, annuity agreement and immovable property lease agreements.

The amendments aim to avoid the current duplicate state registration – registration of an agreement and of a right to real estate (or an encumbrance of such right) - and to keep only the latter (whereas the requirement to register transfer of title to real estate remains unchanged). At the same time due to the literal wording of the Law and current legal framework, starting from 1 March 2013, long-term lease agreements and long-term lease as an encumbrance of rights to real estate are allegedly no longer subject to state registration. Such legal effect does not seem to meet the initially intended purpose of the Law (to abolish the state registration of agreements but to keep the state registration of encumbrances to real estate), thus, further amendments to applicable laws and/or official clarifications are expected in this regard before 1 March 2013.

The Law also establishes compensation for damages caused by *lawful* actions of state and municipal bodies and restates the *concept of good faith* as a guiding principle of civil relations.

The Law will enter into force on 1 March 2013 (save for a number of provisions which enter into force on other dates).

It is expected that Draft Laws No. 47538-6/2 (seeks to incorporate numerous revisions into the provisions regulating legal entities), No. 47538-6/3 (includes, among other things, changes to the provisions on registration of rights to the real estate – Article 131 and securities Chapter 7) and No. 47538-6/4 (seeks to amend, among other things, the provisions on state registration and notarial certification of transactions – Articles 164 and 165) will be reviewed in the second reading in February 2013. Their texts are available on the official website of the State Duma.

In This Issue...

- Civil Code Reform
- Insurance/National Payment System
- Banking
- Securities/Derivatives
- Procurement
- NGOs

For more information, please contact:

Igor Ostapets

Partner

iostapets@whitecase.com

Irina Dmitrieva

Partner (Tax)

idmitrieva@whitecase.com

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.

ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.

White & Case LLC
Tel + 7 495 787 3000
Fax + 7 495 787 3001
whitecase.com

Insurance/National Payment System

On 25 December 2012 the President signed Federal Law No. 267-FZ amending the Law on the Organization of Insurance Business in Russia, the Law on the National Payment System and some other laws.

The Law increases from 25 to 50 percent the maximum amount (quota) for the participation of foreign capital in the charter capital of Russian insurance companies.

The Law also postpones for one more year (i.e., until 1 January 2014) the entry into force of some provisions of the Law on the National Payment System regarding electronic means of payment. In particular, this is relevant for provisions requiring banks to reimburse individual clients where a bank card was used without their consent.

The Law entered into force on 26 December 2012.

Banking

Provisions for potential losses

On 3 and 24 December 2012 the Central Bank issued Directives No. 2920-U, No. 2947-U and 2948-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 Directives were registered with the Ministry of Justice on 13 and 28 December 2012.

The Directives tighten the requirements concerning the provisions for portfolios of unsecured consumer loans. They increase twofold the number of provisions to be formed for portfolios of undue loans and loans overdue for up to 30 days (other than loans granted to salaried clients). This applies to loans granted after 1 January 2013.

Moreover, the Directives require 100 percent provisioning for portfolios of secured and unsecured consumer loans and loans granted to small and medium-size businesses which are overdue for more than 360 days. This applies to loans granted after 1 January 2013 and, subject to certain transitory provisions, to loans granted earlier.

Directive No. 2920-U provides for 100 percent provisioning with respect to consumer and corporate loans where the underlying credit documentation is missing. It also allows banks to refrain from increasing, for one year, provisions for loans granted to companies whose financial position or service of debt worsened due to an emergency situation (recently a similar rule was introduced for loans granted to individuals).

Finally, the Directive allows banks, when forming provisions, to account as top quality security the agreements insuring export credits and investments backed by a state or Vnesheconombank guarantee.

Directive No. 2920-U entered into force on 19 December 2012 (save for a few provisions that entered into force on 1 January 2013). Directives No. 2947-U and No. 2948-U entered into force on 29 December 2012.

On 3 December 2012 the Central Bank issued Directive No. 2922-U "On the Formation of Provisions by Lending Organizations to Cover Potential Losses."

The Directive was registered with the Ministry of Justice on 18 December 2012.

The Directive, among other things, provides for 100 percent provisioning in cases where documents underlying the lending organization's transactions with its counterparties or funds reflected in its books of account are missing. It also amends the rules on provisions to be formed with respect to assets that are not used for banking business.

The Directive entered into force on 1 January 2013.

Economic ratios

On 3 December 2012 the Central Bank issued Instruction No. 139-I "On Mandatory Economic Ratios for Banks."

The Instruction was registered with the Ministry of Justice on 13 December 2012.

The Instruction represents an updated version of Instruction No. 110-I. In particular, with respect to a bank's net worth (capital) ratio (N1) the Instruction: (i) provides for increased indexes of risk for unsecured consumer loans that are granted after 1 July 2013 and have a high "total cost of borrowing"; (ii) increases risk indexes for credit claims to foreign banks which have no international credit rating; and (iii) establishes reduced risk indexes for credit claims secured with agreements on insuring export credits and investments backed by a Vnesheconombank guarantee.

With respect to liquidity ratios (N2, N3 and N4) the Instruction: (i) toughens the requirements concerning banks' liquidity in cases where certain contractual terms (terms of the securities issue) trigger their obligation to discharge the debt ahead of time; and (ii) softens the requirements concerning the long-term liquidity of banks that entered into an agreement for the sale of mortgage bonds with the Agency for Housing Mortgage Lending.

The Instruction entered into force on 1 January 2013 and abolished Instruction No. 110-I of 16 January 2004.

On 14 November 2012 the Central Bank issued Directive No. 2910-U amending Instruction No. 112-I "On the Mandatory Economic Ratios of Lending Organizations Issuing Mortgage-Backed Bonds."

The Directive was registered with the Ministry of Justice on 17 December 2012.

Following the June 2012 Federal Law No. 83-FZ, the Directive removes the requirement that lending organizations that issue mortgage-backed bonds comply with the following mandatory economic ratios: (i) the minimum correlation of the granted mortgage-backed loans with the bank's net worth (capital) (N17) and (ii) the maximum correlation of the bank's total liabilities to creditors having a priority over the holders of mortgage-backed bonds with the bank's net worth (capital) (N19).

The Directive entered into force on 26 December 2012.

Reporting

On 3 December 2012 the Central Bank issued Directive No. 2926-U amending its Directive No. 2332-U regarding reporting forms of lending organizations.

The Directive was registered with the Ministry of Justice on 20 December 2012.

The Directive amends a number of reporting forms of lending organizations, including, among others, a report on assets and liabilities by currencies and countries (according to Central Bank Letter No. 186-T of 27 December 2012, until 1 July 2013 no sanctions will be applied to lending organizations for breaches made when completing this report).

In addition, it introduces a number of new reporting forms related to the Law on the National Payment System (e.g., a report regarding transfers of e-money and a report on ATMs and terminals intended for rendering payment services) and the Law on Consolidated Financial Statements (e.g., a report on a financial position and a report on the total revenues of a lending organization).

The Directive entered into force on 31 December 2012 (save for certain provisions that enter into force on later dates).

Financial statements

On 3 December 2012 the Central Bank issued Directive No. 2923-U "On Publication and Submission by Lending Organizations of Consolidated Financial Statements."

The Directive was registered with the Ministry of Justice on 20 December 2012.

The Directive replaces the provisions on the same matter previously contained in the June 2009 Central Bank Directive No. 2172-U. Under the Directive, lending organizations are to publish annual consolidated financial statements and, if so decided, the interim statements, on the Internet and/or in mass media and/or make them otherwise available to all interested persons.

The Directive entered into force on 1 January 2013.

Cashless payment settlements

In December 2012 the Central Bank placed on its website the Central Bank's answers to questions regarding the application of Regulation No. 383-P "On the Rules for the Transfer of Funds."

In particular, the Central Bank clarified that for cashless settlement the parties to a contract may use, among others, payment demands backed with a payer's acceptance granted in advance, as well as the collection orders; the notion of "acceptance" is applicable only with respect to direct debiting (i.e., transfer of funds at the request of a payee) and, therefore, no acceptance is needed for settlements by collection orders.

The answers are available in Russian at: www.cbr.ru (go to the Section "Bank of Russia Today" on top of the screen, then click on "Payment System of the Russian Federation" on left-hand side of the screen, then choose the Section "Regulation in the Payment System of the Russian Federation").

Securities/Derivatives

On 20 November 2012 the Federal Service for Financial Markets ("FSFM") issued Order No. 12-95/pz-n amending FSFM Order No. 06-95/pz-n regarding the procedure for rendering services facilitating the making of agreements-derivative financial instruments.

The Order was registered with the Ministry of Justice on 29 December 2012.

The amendments, among other things, stipulate that foreign financial instruments can be used as a basic asset of agreements qualified as derivative financial instruments, if:

- these are qualified under Russian law as shares, depositary receipts on shares, shares or units of foreign investment funds, bonds or depositary receipts on bonds and meet certain criteria, such as the assigned long-term international credit rating not lower than the level specified in the Order (this criteria does not apply to foreign financial instruments qualified under Russian law as shares or units of foreign investment funds); and
- their issuers are: (i) the International Finance Corporation, the European Bank for Reconstruction and Development, the Eurasian Development Bank, the Eurasian Investment Bank, and the Black Sea Trade and Development Bank; (ii) legal entities incorporated in a member state of the OECD, members or observers of FATF and/or members of MONEYVAL; (iii) legal entities incorporated in a jurisdiction whose securities market regulator has entered into a cooperation agreement with the FSFM; (iv) the foreign states referred to in items (ii) and (iii) above or their central (national) banks and administrative-territorial entities; and (v) foreign states whose securities are listed on a foreign stock exchange included in the list approved by the FSFM.

Russian stock exchanges will monitor compliance of foreign financial instruments with these requirements based on information disclosed by foreign stock exchanges in respect thereof.

The Order entered into force on 2 February 2013.

Procurement

On 30 December 2012 the President signed Federal Law No. 324-FZ amending Federal Law No. 223-FZ “On Procurement of Goods, Works, Services for Certain Types of Legal Entities.”

According to Federal Law No. 223-FZ, Russian companies specified therein are required to procure goods, works and services in accordance with their internal procurement regulations and to comply with some other requirements related to such procurement. Those companies include, among others, natural monopolies, companies performing regulated types of activities in the areas of power, gas, heating and water supply, water disposal, sewage treatment and waste disposal, as well as subsidiaries of those companies and subsidiaries of those subsidiaries.

The amendments seek to exempt from this Law: (i) natural monopolies, the power supply and other companies mentioned above, if their revenues from natural monopoly and regulated activities amount to no more than ten percent of their overall revenues for the previous year; and (ii) subsidiaries of such companies and subsidiaries of such subsidiaries, if their revenues from the supply of goods and services to their parent companies amount to no more than five percent of their overall revenues for the previous year.

The Law entered into force on 31 December 2012.

NGOs

On 28 December 2012 the President signed Federal Law No. 272-FZ “On Measures Affecting Persons Involved in the Breach of Fundamental Human Rights and Freedoms, the Citizens’ of the Russian Federation Rights and Freedoms.”

According to the Law, a Russian NGO's activities may be suspended if the NGO: (i) participates in a political activity in the Russian Federation and receives funding (other property) from citizens (organizations) of the United States; or (ii) is engaged in any activities (programs, projects) threatening the interests of the Russian Federation. (Political activity is defined in the July 2012 Foreign Agent Law, for more details check our update for 9-22 July 2012).

A Russian NGO (its affiliates) and a subdivision of a foreign or international NGO involved in a political activity in Russia may not have, as a leader, a Russian national also possessing United States citizenship; otherwise their activity will be suspended.

Suspension of an NGO's activities entails: (i) suspension of the NGO's rights to establish mass media; (ii) prohibition of the conduct of mass actions and public events; and (iii) prohibition to use bank deposits (with minor exceptions). An NGO's activities may be resumed if such NGO ceases to receive money (other funding) from US sources or ceases its activities threatening the interests of the Russian Federation.

The Ministry of Justice is to decide on the suspension and resumption of activities.

The Law entered into force on 1 January 2013.