WHITE & CASE

Insight

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Russian Legislation Update

Corporate

NGOs

On 20 July 2012 the President signed Federal Law No. 121-FZ amending certain legislative acts regulating activity of non-commercial organizations acting as foreign agents.

The Law introduces the definition of a foreign agent: a non-commercial non-governmental organization (NGO) is considered a foreign agent if (i) its financing comes from foreign sources (e.g. foreign states and/or citizens, international and/or foreign organizations, Russian entities which are financed from abroad, etc.) and (ii) it performs political activity in the Russian Federation (which is defined by the Law as *organizing and carrying out political actions aiming to influence state authorities in their decision making and change their state policy except activities in the areas of science, culture, art, public health, social support and protection, protection of maternity and childhood, sport, protection of plants and animals, charitable activity and volunteerism).*

All existing NGOs which fall within the described parameters are to apply to be registered as foreign agents in the special Register of Foreign Agents (most likely to be maintained by the Ministry of Justice). Failure to apply for registration as a foreign agent may result in holding up the NGO's activity. Persistent failure to report on the NGO's activities may result in a criminal liability of up to two years' imprisonment.

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The Law imposes additional state reporting requirements on NGOs-foreign agents; these are also subject to unscheduled check-out (review) on the additional grounds introduced by the Law. The regular reporting obligations include, in particular: (i) reports on activities and staffing of their management bodies – every six months; (ii) information on the amount of received financing, the purposes of income spending and the disposition of property – quarterly; and (iii) audit reports by Russian auditors – annually. If the received financing equals to or exceeds RUB 200,000, it is subject to control by the Federal Service for Financial Monitoring.

The new rules do not apply to NGOs of state-owned corporations, state or municipal budget NGOs, employers' unions, duly registered commercial chambers, and religious organizations.

The Law amends, in particular, Federal Law No. 7-FZ "On Non-commercial Organizations" and Federal Law No. 115-FZ "On Countermeasures with Respect to Laundering Revenue Derived from Criminal Activity and Terrorism Financing" and the Russian Criminal Code.

The Law will enter into force on 21 November 2012.

WTO

On 21 July 2012 the President signed Federal Law No. 126-FZ "On Ratification of the Protocol on the Accession of the Russian Federation to Marrakesh Treaty Establishing the World Trade Organization, dated 15 April 1994."

Now the Russian Federation has completed all steps to join the WTO and will become a full member on 22 August 2012. From this date all WTO regulations will apply to Russia, including regulations on tariffs, export duties and licenses. However, certain transitional periods in areas of particular sensitivity are envisaged.

For more information please see our July 2012 special alerts which are published on our web-site.

Public Procurement

On 30 June 2012 the Government adopted Resolution No. 662 regarding the publishing of internal procurement regulations by certain legal entities.

The Resolution extends, from 1 July 2012 to **1 October 2012**, the date by which Russian state companies (e.g., corporations, natural monopolies, companies in which state shareholding exceeds 50 percent) must develop internal procurement regulations and have them published on their websites. After 1 October 2012, the regulations shall also be published on the official state procurement website *(www.zakupki.gov.ru)*.

This requirement was established by the July 2011 Federal Law No. 223-FZ "On Procurement of Goods, Works, Services for Certain Types of Legal Entities." If such regulations are not so developed and published, the legal entity shall abide by the procurement rules established by Federal Law No. 94-FZ "On Placement of Orders for Delivery of Goods, Performance of Works and Rendering Services for State and Municipal Needs" of 21 July 2005.

The Resolution entered into force on 21 July 2012.

Banking/National Payment System

On 29 June 2012 the Central Bank issued Regulation No. 384-P "On the Payment System of the Bank of Russia."

The Regulation was registered with the Ministry of Justice on 4 July 2012.

The Regulation was adopted following Federal Law No. 161-FZ "On the National Payment System" dated 27 June 2011 (please see our update for 20 June – 10 July 2011). It establishes the rules for the functioning of the payment system of the Bank of Russia, in particular:

- in order to make transfers, a lending organization located in the territory of Russia must have one correspondent account with a subdivision of a settlement network of the Bank of Russia at its location; in order to make transfers via its branch, the lending organization may have one correspondent subaccount with a subdivision of a settlement network of the Bank of Russia at the location of each of its branches;
- the Bank of Russia functions as the operator of services for the payment system infrastructure and the operator for the transfer of funds; and
- transfers of funds are made via the following forms of cashless settlement: settlements by payment orders, by collection orders and by transfers upon request of a payee (direct debiting); the Bank of Russia provides services of urgent and non-urgent transfers; the instructions for transfers are drawn up in an electronic or paper form.

The Regulation also establishes the time schedule of the functioning of the payment system of the Bank of Russia.

The Regulation entered into force on 22 July 2012 (save for a few provisions that will enter into force later) and abolished a number of Central Bank regulations on the same matter, including rules regarding settlements via correspondent accounts opened with the Central Bank contained in Regulation No. 2-P "On Cashless Payment Settlements in the Russian Federation."

Banking

On 21 June 2012 the Central Bank issued Directive No. 2839-U amending its Regulation No. 337-P "On the Procedure and Criteria for Evaluation of Financial Standing of Legal Entities that are Founders (Participants) of Lending Organizations."

The Directive was registered with the Ministry of Justice on 13 July 2012.

The Regulation sets forth the procedure and criteria for evaluating the financial standing of legal entities that acquire shares in a Russian lending organization (e.g., in the course of its establishment, as a result of an increase in its charter capital or as a result of a share purchase on the secondary market).

The changes introduced by the Directive allow acquirers who have a certain credit rating to submit fewer documents to the Central Bank for evaluation of their financial standing. The Directive also removes specific levels of ratings assigned by the national rating agencies, which are used for the above purposes, and provides that the list of such agencies and the minimum required levels of ratings shall be established by the Central Bank and published on its website *(www.cbr.ru)* and in the Central Bank Herald.

The Directive will enter into force on 5 August 2012.

Court Practice

Corporate

On 24 May 2012 Presidium of the Supreme Commercial Court issued Information Letter No. 151 with an overview of the court practice on expulsion of a participant from a limited liability company (LLC).

According to Article 10 of the LLC Law No. 14-FZ, the LLC participants may demand (through court proceedings) that a participant be expelled from the LLC if he fails to duly perform his obligations, including if he grossly breaks his duties or if his actions/inactions make it impossible for the LLC to perform its activities. The Letter clarifies a number of issues in this regard.

A participant may be expelled from the LLC if he, in particular:

- performs activities which are known to be detrimental to the company (even if a LLC participant performs such activities irrespective of exercising his rights) and thus offends trust among the company's participants and impedes its normal activity;
- knowingly distributes inadequate information about the company and thus grossly impedes its activity;
- performed activities which were known to be detrimental to the company when functioning as a sole executive body or by power of attorney, if such activities caused huge damages to the company and (or) resulted in depriving the company of its activity or grossly impeded such activity; or
- voted at the general meeting or, on the contrary, systematically deviated from participating in a general meeting without a reasonable excuse, and such actions (inaction) caused huge damages to the company (resulted in adverse consequences for the company), or resulted in depriving the company of its activity or grossly impeded such activity.

The Letter also addresses some specific situations, such as:

- a participant owning more than 50 percent of the LLC's charter capital may only be expelled if the participants may not withdraw from the company at any time according to the company's charter (Article 26 of the LLC Law); and
- if a participant hasn't paid his participatory interest in full, he may not be expelled on this ground because the Law specifically provides as a consequence of a participant's failure to pay his interest in due time that the unpaid participatory interest may be transferred to the company (Article 16 of the LLC Law).

Exclusion of a participant is an independent remedy and may be applied irrespective of other remedies envisaged by the law (e.g., early termination of the powers of the company's sole executive body or liability prescribed by labor legislation).

The Information letter will serve as a guideline for lower commercial courts when considering similar issues.

Bankruptcy

On 22 June 2012 the Plenum of the Supreme Commercial Court approved Resolution No. 35 "On Certain Procedural Aspects Related to Consideration of Bankruptcy Cases."

The Resolution clarifies a number of procedural issues related to considering an application on the debtor's bankruptcy, some separate disputes within the bankruptcy case and the creditors' claims, as well as to challenging court acts on the bankruptcy case, in particular:

- the creditor's application on the debtor's bankruptcy shall be accompanied by a copy of the relevant court decision certified by the court or a copy of the decision printed out from the catalogue of commercial cases available on the Supreme Commercial Court's website *(www.arbitr.ru)*;
- the publication of information on the commencement of the relevant bankruptcy procedure (certain terms for submission of creditors' claims run depending on that date) stands for the publication in an official print media (currently Kommersant) rather than entering that information in the Unified State Register of Information on Bankruptcy;
- the court considering a bankruptcy case shall set aside a claim which is already being considered in a contentious proceeding outside of bankruptcy (save for cases where the creditor has applied in such proceeding for its suspension or termination);

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- if necessary and with due regard for judges' workload and specialization, creditors' claims and claims to challenge transactions may be considered not only by the judges who consider the bankruptcy case, but also by any other judge of the same court; and
- in exceptional cases, the term of receivership may be extended more than once, in particular, if this is necessary to realize the debtor's assets, to complete settlements with the creditors or to consider an application for subsidiary liability of the debtor's controlling persons (under the Bankruptcy Law, the term of receivership is six months and may be extended for no more than six months); the law does not require publication of information on extension of receivership.

Further, the Plenum introduced the concept of a *separate dispute* in a bankruptcy case and, accordingly, clarified the following:

- the main parties to a bankruptcy dispute, namely (i) a debtor; (ii) a bankruptcy manager; (iii) a representative of the creditors' committee; and (iv) a representative of the owner of a debtor's property or a representative of the founders (participants) of the debtor, are also the *direct parties* to all separate disputes; also the Court clarified who else, depending on the circumstances, may be direct parties to a separate dispute;
- all direct parties to a separate dispute are to be officially notified about the time and place of the court hearings and in other circumstances prescribed by the Commercial Court Procedural Code; and
- the costs in a bankruptcy case are distributed among the parties subject to the results of the separate disputes.

In relation to the creditors' demands, the Court, in particular, pointed out that the bankruptcy creditors and the bankruptcy manager may contest a court ruling that, in their opinion, infringes their rights and legitimate interests even if (i) this ruling has been issued irrespective of the bankruptcy case and (ii) they were not parties to that litigation.

Among other things, the Plenum clarified the reasons for the court to refuse to confirm the appointment of a bankruptcy manager or to remove him either on its own initiative or satisfying the request of the parties to the case. In particular, this is allowed if (i) a bankruptcy manager performs his obligations improperly (i.e., breaches the law when performing his obligations) and (ii) the court has substantial and well-founded doubts in such bankruptcy manager's qualification, good faith or independence (e.g., repeated willful gross violations in bankruptcy cases). However, the Court clarified that a bankruptcy manager's violations which were careless, not substantial, devoid of huge damages and occurred several years ago may not be grounds either to refuse the appointment of a bankruptcy manager or to remove him.

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

Oil Export Duty

On 23 July 2012 the Government adopted Resolution No. 758 approving new rates of export customs duty on crude oil and crude-oil products exported beyond the borders of the Russian Federation to countries outside the Customs Union.

The Resolution reduces the rate of customs duty payable on crude oil and crude-oil products extracted from bituminous formations (TN VED 2709 00) exported outside the countries that are members of the Customs Union (i.e., Russia, Belarus, Kazakhstan). The new rate is set at USD 336,6 per ton (the previous rate was USD 369,3 per ton).

The new rate applies as of 1 August 2012.