

Insight

19 January – 1 March 2015

Russian Legislation Update

Investments

On 31 December 2014 the President signed Federal Law No. 488-FZ “On Industrial Policy in the Russian Federation.”

The Law sets out the rules, principles and objectives of industrial policy in Russia and provides detail on state support measures aimed at promoting the development of a competitive domestic industry.

As a key support measure, the Law provides for the possibility of concluding special investment contracts pursuant to which investors will commit to building or developing industrial production on the territory of Russia. Such contracts would be concluded for up to ten years in compliance with a procedure and on the basis of industry-specific model forms to be approved by the government. In turn, the state will guarantee investors’ stability of doing business.

In addition, the Law establishes the possibility of providing industrial enterprises with financial support through specifically established state funds for development of industry (e.g., by way of loans, grants and contributions to charter capital). In addition, the Law includes measures aimed at promoting scientific, technical and innovation activities and activities related to the export of Russian industrial products, as well as measures in support of industrial parks and clusters.

For the purpose of enhancing access to information, there is a plan to create a state information system for industries which will contain data on, *inter alia*, the release of industrial products, the volume of industrial products imported to Russia, state programs, measures of support of industrial development and forecast of industry development. The list of data and the procedure for its submission and the scope of data to be placed in the public domain via the Internet will be determined by the government.

The Law will enter into force on 30 June 2015.



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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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Project Finance

On 21 February 2015 the Government issued Resolution No. 154 amending the Program to support investment projects implemented in Russia on the basis of project finance.

The Resolution amends the Program to support investment projects in Russia on the basis of project finance, approved by Government Resolution No. 1044 dated 11 October 2014 (see our special update "On Supporting Investments on the Basis of Project Finance in Russia" of 29 January 2015).

In particular, Vnesheconombank is now authorized to provide loans to the borrowers selected to participate in the Program.

The Resolution amends the interest rate on loans to be provided to ultimate borrowers. Now the rate must not exceed the interest rate set by the Bank of Russia for refinancing the loan provided by authorized banks to the borrowers, plus 2.5% per annum (previously – at a rate not exceeding the key rate of the Bank of Russia plus 1% per annum).

The Program is also supplemented with a provision that if the Bank of Russia refuses to provide a loan to the authorized bank in order to refinance the loan granted by the authorized bank to the borrower, such bank may change its interest rate on the loan only if it terminates an agreement on provision of a state guarantee.

Additionally, the Resolution specifies a list of priority sectors of Russia's economy, in which implementation of investment projects under the Program is possible and the procedure for granting in 2015 of state guarantees for loans provided for the implementation of investment projects selected under the Program.

The Resolution entered into force on 6 March 2015.

Financial System Stability

On 13 January 2015 the Deposit Insurance Agency approved "The Procedure and Terms for Placement of Contribution of the Russian Federation in Property of the Deposit Insurance Agency to Banks' Subordinated Obligations."

The document establishes the criteria to be met by banks in respect of which measures aimed at increasing capitalization may be taken. In particular, a bank's net worth (capital) should be more than RUB 25 billion and loans granted to individuals should not exceed 40% of the bank's assets. Also, the bank's involvement in financing of business related to its shareholders will be taken into account.

The Deposit Insurance Agency is to send to banks which meet the criteria (and are included in the relevant list) a proposal to provide funds for increasing capitalization.

The amount of funds used for increasing capitalization may not exceed 25% of the bank's net worth (capital) as of 1 January 2015. In addition, banks that receive such support must comply with a number of obligations; in particular: gradually increase the volume of lending in certain sectors; abstain from increasing remuneration of bank's top managers as compared to the 1 January 2015 level; and increase its net (worth) capital (at the expense of the shareholders' funds or the bank's profits) in an amount not less than 50% of the bank's subordinated obligation acquired by the Agency.

The document was published in the Central Bank Herald on 9 February 2015.

Banking

On 23 January 2015 the Central Bank issued Directive No. 3542-U on amending Regulation No. 345-P on disclosure by banks participating in the system of bank deposits insurance of information on persons that control or significantly influence the bank.

The Directive was registered with the Ministry of Justice on 19 February 2015.

Previously banks could perform their duty to disclose information on their controlling persons by publication of this information on the website of the Central Bank or on the bank's own website. According to the amendments, publication on the bank's website can now be done only along with the publication on the website of the Central Bank.

Banks that published the above information only on their own websites are obliged, within 90 days after the Directive's entry into force, to submit it to the Central Bank for the publication on the Central Bank's website.

The Directive will enter into force on 15 March 2015.

On 4 December 2014 the Bank of Russia issued Regulation No. 443-P on the procedure for notifying by credit and other organizations of Rosfinmonitoring of opening accounts to strategic companies.

The Regulation was issued following Federal Law No. 213-FZ of 21 July 2014. It establishes the procedure for credit and non-credit financial organizations to notify Rosfinmonitoring (the anti-money laundering body) of the opening to a strategic company of a bank account/deposit, covered letter of credit, depo/securities owner personal account, as well as of the acquisition of securities by a strategic company. The notice is to be sent in an electronic form.

The Regulation entered into force on 1 March 2015.

Financial Organizations

On 28 December 2014 the Bank of Russia issued Directive No. 3510-U on the procedure and terms for sending a notice on acquisition of 10% or more of shares of a non-credit financial organization.

The Directive was registered with the Ministry of Justice on 20 February 2015.

An individual or a company which acquires the right to dispose of 10% or more of shares (participation interests) of a non-credit financial organization (insurance company, professional participant in the securities market, management company, etc.) is obliged to notify the Central Bank thereof within five business days of acquiring such right. At the same time, the notice must be sent to the relevant financial organization.

Persons that have not performed their duty to send a notice as of 15 March 2015 (the date of the Directive's entry into force), are to send the notice to the Central Bank and the relevant non-credit financial organization no later than 30 business days after the Directive's entry into force.

The Directive will enter into force on 15 March 2015.

Environment

On 29 December 2014 the President signed Federal Law No. 458-FZ amending the Federal Law "On Production and Consumption Waste" and certain other legislative acts.

The Law introduces significant changes to Russian legislation related to waste management and sets forth measures designed to encourage organizations to recycle industrial waste. Below is a summary of the most significant changes.

Obligation to recycle waste

In particular, the Law requires that producers and importers of goods recycle waste resulting from their goods in compliance with the established recycling quotas. This obligation can be performed through: (i) using one's own facilities related to collection, processing and disposal of waste; (ii) entering into a contract with a solid waste management operator (including a regional operator); and (iii) setting up associations (unions) of producers and importers of goods that may enter into contracts directly with such operators.

The list of specific goods subject to recycling (including packaging) and recycling quotas are to be established by the government. In addition, the Law envisages the creation of the unified state waste record-keeping system with the purpose to control compliance to the established recycling quotas. Organizations involved in waste management must submit necessary information to the system. The procedure for creation and use of the system is to be established by the government.

Environmental fee

Producers and importers of goods, who are unable to ensure waste recycling as outlined above, must pay an environmental fee to the federal budget instead. The amount of the environmental fee for each category of goods and a payment procedure are to be determined by the government. It is presumed that collected environmental fees will be used for granting subsidies to the constituent entities of the Russian Federation for implementing measures related to waste management as well as the construction and equipment of the associated infrastructure.

Licensing waste management activities

Currently, activities related to decontamination and disposal of waste of I – IV classes of hazard are subject to licensing. Pursuant to the Law, effective from 1 July 2015 the activities related to collection, transportation, processing, recycling, decontamination and disposal of waste of I – IV classes of hazard will be subject to licensing. As a result, all previously issued licenses will be valid until 30 June 2015 and must be reissued. In addition, following the Law, it will be prohibited to conduct activities related to decontamination and disposal of the waste of I – IV classes of hazard at one facility by several organizations holding relevant licenses.

Objects subject to environmental expert review

The Law clarifies the list of objects subject to a state environmental expert review (SEER) at the federal level. In particular, effective from 1 July 2015 the following objects will be subject to SEER: project documentation for facilities related to disposal and/or decontamination of waste I – V classes of hazard including project documentation for (re) construction of these facilities as well as projects for decommissioning of these facilities, projects for reclamation of land contaminated as a result of disposal of waste I – V classes of hazard and land that was not designated for disposal of waste of I – V classes of hazard.

Payments for an adverse environmental impact

Starting from 1 January 2016 organizations that generate waste as a result of its economic activities shall make payments for waste disposal (now – such payments are made by organizations that dispose of waste). In addition, reduction coefficients will apply to payments on adverse environmental impact in order to encourage organizations to decontaminate waste (reduce their class of hazard to mitigate an adverse impact) prior to its disposal. Moreover, starting from 1 January 2019 payments for waste disposal will not apply if waste is disposed at facilities that do not cause adverse environmental impact. A procedure for confirming that the facilities do not cause an adverse impact is to be established by the government.

The Law entered into force on 1 January 2015 (save for certain provisions).

First Reading

Personal data processing

On 24 February 2015 the State Duma adopted in the first reading Draft Law No. 683952-6 amending the Administrative Offences Code of the Russian Federation.

The amendments propose to differentiate various offences of the personal data legislation and establish the corresponding administrative penalties. In particular, it provides for the following offences and penalties:

- processing of personal data in breach of the requirements related to the individual's written consent for such processing (entails an administrative fine of up to RUB 50,000);
- processing of personal data without the individual's consent and in the absence of other grounds for data processing (entails an administrative fine of up to RUB 50,000);
- an operator's breach of its obligation to: (i) provide unlimited access to information about an operator's policy regarding personal data processing and the requirements to its protection; (ii) provide individuals with information about the processing of their personal data; (iii) adjust, lock or destroy personal data at a stated term at the individual's request (entails an administrative fine of up to RUB 45,000).

The Draft Law does not directly establish the administrative liability for the breach of the Personal Data Law requirements to process personal data of Russian citizens in Russia, established by Federal Law No. 242-FZ dated 21 July 2014.

State Procurement/Deoffshorization

On 24 February 2015 the State Duma adopted in the first reading Draft Law No. 694962-6 amending the Federal Law "On Contractual System for the Procurement of Goods, Works and Services for Public and Municipal Needs."

The Draft Law seeks to prohibit state customers from purchasing goods and services from offshore companies. It therefore amends the notion of the "contractor" – now it does not extend to legal entities registered in the offshore zones¹ (the offshore companies), and directly prohibits the purchase of goods and services from such legal entities.

The amendments do not establish any limitations for individuals, including individual entrepreneurs.

The provisions of the Draft Laws will apply if adopted by the State Duma in three readings, approved by the Federation Council, signed by the President and officially published.

¹ For a list of the offshore zones, refer to the Order of the Ministry of Finance No. 108n dated 13 November 2007 (as amended).