

Insight

18 May – 21 June 2015

Russian Legislation Update

Undesirable organizations

On 23 May 2015 the Russian President signed Federal Law No. 129-FZ “On Amending Certain Legislative Acts of the Russian Federation.”

The Law amends, in particular, Federal Law No. 272-FZ, dated 28 December 2012 “On Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation,” the Criminal Code and the Administrative Offences Code of the Russian Federation.

The 2012 Law No. 272-FZ¹ (broadly known as the “Dima Yakovlev Law”) is supplemented with a provision under which the operation (activity) of a foreign or international non-governmental organization (NGO) may be recognized as *undesirable if such operation poses a risk to the Russian constitutional system, national defense or the safety of the state*. The decision on the recognition of an NGO’s activity as undesirable in Russia (as well as the cancellation of such a decision) can be rendered by the Chief Prosecutor of the Russian Federation, with the approval of the Ministry of Foreign Affairs of the Russian Federation. A list of undesirable NGOs will be maintained by the Ministry of Justice of the Russian Federation.²



Igor Ostapets Partner

+ 7 495 787 3019
iostapets@whitecase.com

Irina Dmitrieva Partner (Tax)

+ 7 495 787 3003
idmitrieva@whitecase.com

¹ Please refer to our Legal Update for 24 December 2012 – 13 January 2013.

² The state executive body responsible for setting and applying state policy and regulations in the sphere of the registration of non-commercial organizations.

In This Issue...

- Undesirable organizations
- Banking
- Employment / Court Practice:
a Company’s CEO and Members of the BOD

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

The recognition of an NGO's operations as undesirable results in: (i) a prohibition on opening Russian subdivisions of such NGO; (ii) a prohibition on distributing the informational materials which it produces; (iii) a prohibition on carrying out projects and activities; and also (iv) credit and non-credit financial organizations in Russia are prohibited from conducting operations with funds and other assets involving such NGO.

The Law does not directly stipulate that its provisions apply to non-commercial organizations only. The wording of the law (together with the commentaries on its adoption process) can be interpreted, if necessary, broadly enough to apply to foreign commercial entities.

The Law establishes administrative liability of a fine of up to RUB 15,000 (for individuals) and RUB 100,000 (for legal entities) for operating such NGOs. Individuals who have been convicted of this administrative offence twice in one year may bear criminal responsibility, including up to six years' imprisonment, for managing such NGOs. Foreign citizens and stateless persons may be prohibited from entering Russia if they participate in the operation of a foreign or international NGO whose operations have been recognized as undesirable in Russia.

The Law entered into force on 3 June 2015.

Banking

On 11 March 2015 the Bank of Russia issued Regulation No. 462-P regarding the procedure for preparing reporting forms for the supervision of credit organizations on a consolidated basis.

The Regulation was registered with the Ministry of Justice on 8 May 2015.

The Regulation sets forth the procedure for preparing consolidated reporting forms and other information regarding the activity of a banking group (including the procedure for recording in such reports reserves for potential losses of assets of a banking group).

The Regulation will enter into force on 1 July 2015 (save for rules regarding provisions for potential losses, which will enter into force later), and will abolish Regulations Nos. 191-P of 30 July 2002 and 246-P of 5 January 2004 on similar matters.

Employment/Court Practice

A Company's CEO and Members of the BOD

On 2 June 2015 the Supreme Court of the Russian Federation adopted at a plenary session Resolution No. 21 "On Certain Issues Courts Face When Applying Laws Regulating the Work of Company CEOs and Members of Collective Executive Bodies" (further – Directors).

The Resolution clarifies, in particular, the following specific features of the application of certain provisions of the Russian Labour Code to the relations between a legal entity and its directors:

- the provisions of the Labour Code apply to the company managers, including temporary executive bodies, except for (i) CEOs who are the company's sole shareholder (founder) or the owner of a company's property; (ii) the managing company or an individual manager; and (iii) the manager of a company's subdivision, including a branch or a representative office, who is not simultaneously the CEO;
- the courts of general jurisdiction have the competence to resolve disputes between an employed director and an employer, except for bankruptcy and recovery of damages cases,³ which commercial courts may resolve according to the jurisdiction rules established in the Civil Procedure Code and the Commercial Procedure Code of the Russian Federation;
- the courts of general jurisdiction, when hearing cases regarding the recovery of retirement benefits, compensation and/or other payments related to the termination of a labour contract, may dismiss the claim or reduce the payment amount if the terms and payment conditions of the labour contract breach the law, including the general legal principle of the inadmissibility of the abuse of rights, or the legitimate interests of an organization, other employees and/or other persons (e.g., the owner of a company's property);⁴

³ For details, please refer to Resolution No. 62 of the Plenary Session of the Supreme Commercial Court, dated 30 July 2013 "On Certain Matters of Indemnification for Damage Caused by Members of a Company's Governing Bodies," which still applies.

⁴ The commercial courts must apply these criteria when hearing cases by company shareholders regarding the invalidation of decisions of the general meeting and/or a company's bodies approving the payment of specific benefits or compensation to the directors.

- if there is a dispute regarding the amount of a retirement benefit, the court establishes it based on the purpose of that payment as protection from negative consequences for directors which may result from the loss of employment; it shall also take into account the facts of the case, such as the duration of the director's employment, the remaining term of the contract, the amount of money the dismissed director would have received if he/she had continued to work and any additional expenses which the termination of the contract could entail for the director.⁵

This Resolution replaces Resolution No. 17 of the Plenary Session of the Supreme Court of the Russian Federation dated 20 November 2003.

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

⁵ Under the Labour Code, the managers of state companies and corporations, as well as companies in which the state owns more than 50% of the shares, receive payment in the amount of three times their monthly salary.