

ClientInsight

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Russian Legislation Update

Securities

On 23 July 2013 the President signed Federal Law No. 210-FZ amending Federal Law No. 39-FZ "On Securities Market" and certain other legislative acts of the Russian Federation.

The Law, among other things, introduces to the Securities Market Law new Articles 17.1 (*Early Redemption of Bonds*) and 17.2 (*Acquisition of Bonds by the Issuer*) and a new section 6.1 (*Representative of Bondholders. General Meeting of Bondholders*), together targeting the development of a mechanism for the protection of rights of the holders of bonds issued by Russian issuers.

Early Redemption of Bonds and the Acquisition of Bonds by the Issuer

The new Article 17.1 of the Securities Market Law establishes a procedure for the early redemption of bonds, either partial or full, at the issuer's option or at the request of the bondholders.

In case of a material breach of the obligations under the bonds, bondholders have the right to demand early redemption of bonds before their stated maturity whether such right is provided for or not by the terms of the bond issue. Such *material breaches* include (i) delay in the payment of the coupon beyond the period of ten business days, unless a shorter period is provided for by the bond terms; (ii) in case the repayment of the bond principal is made in installments, delay in the partial repayment beyond the period of ten business



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days, unless a shorter period is provided for by the bond terms; (iii) in case the issuer's obligation to acquire the bonds is provided for by the bond terms, delay in the performance of such obligation to acquire the bonds beyond the period of ten business days, unless a shorter period is provided for by the bond's terms; and (iv) loss of security provided for with respect to the bonds or material deterioration of the terms of such security.

Pursuant to the new Article 17.2 of the Securities Market Law, the acquisition by the issuer of bonds of the same issue must be made on equal terms. The acquired bonds can be paid for with cash only and do not provide any rights to the issuer. The issuer can either redeem or sell such bonds before their stated maturity.

Representative of the Bondholders

The Law introduces to the Russian securities legislation the new concept of the bondholders' representative (the "Representative").

Pursuant to the new section 6.1 of the Securities Market Law, the issuer of the bonds is now required to appoint a special Representative in the following cases: (i) the bonds are being placed by open subscription or by closed subscription among more than 500 investors, excluding qualified investors, or (ii) the bonds are admitted to trading on a stock exchange, save for bonds intended for qualified investors only. The candidacy of the Representative appointed by the issuer of the bonds after their placement must be approved by a general meeting of bondholders, which also has the right to appoint another Representative at any time instead of the one appointed by the issuer of the bonds. The Representative is paid for its services by, and acts pursuant to an agreement with, the issuer of the bonds. The Representative can unilaterally terminate the agreement with the issuer by giving a three-month notice, unless a shorter term is provided for in the agreement.

The Law sets out in detail the rights and obligations of the Representative, mechanisms for the transfer of funds received by the Representative for bondholders, as well as the procedure for the appointment and replacement of the Representative.

Pursuant to the Law, the following persons can be appointed by the issuer of the bonds or by the general meeting of bondholders to act as Representatives:

- brokers, dealers, depositaries, securities managers, management companies of joint stock investment funds, mutual investment funds and non-governmental pension funds or credit institutions. Any of these entities can be appointed to act as Representative on the condition that it is included in an official list maintained by the securities market authority and published on its website on the Internet (the rules for the inclusion in and exclusion from such list are to be detailed in the legal acts of the securities market authority yet to be adopted); and

- other Russian legal entities being in existence for not less than three years.

The Law specifically mentions that the following persons *cannot* act as Representatives: (i) the issuer of the bonds, its controlling and controlled entities; (ii) the security provider, its controlling and controlled entities; (iii) persons providing services in connection with the placement of the bond issue, their controlling and controlled entities, unless appointed or approved by decision of the general meeting of bondholders; (iv) legal entities in which more than 50 percent of votes in the collective management body are controlled by any of the persons listed in (i)-(iii) above; and (v) legal entities which have any other conflicts of interest preventing them from acting as Representative.

General Meeting of Bondholders

The bondholders acquired the right by way of conducting a general meeting of bondholders (the "General Meeting") to adopt certain decisions with respect to the bond issue, including: appointment of a Representative, approval of amendments to the issuance decision and the prospectus of the bonds (or granting the right to approve such amendments to the Representative), waiving the right to request an early redemption of the bonds or to file claims in court against the issuer of the bonds or the security provider, and approval of an agreement on the early termination of the bonds by way of novation or provision of substitute consideration (*otstupnoye*) from the issuer. The General Meeting cannot adopt decisions on matters which are beyond its competence pursuant to the Securities Market Law.

General Meetings can be held by the issuer of the bonds upon its decision, a request from the Representative or the holder(s) of not less than 10 percent of the bonds of a particular issue and can be conducted separately with respect of each issue of bonds. Each bond gives only one vote at the General Meeting. Decisions of the General Meeting are binding on all bondholders, including those who voted against the items of the agenda. Under the general rules, decisions of the General Meeting are adopted by majority vote; however, pursuant to the Law, some decisions require a super-majority of 3/4 or even 9/10 of all bondholders.

A bondholder has the right to challenge the General Meeting's decisions in commercial courts, in case (i) he did not participate in the respective meeting, or (ii) voted against the decision in question, and the decision of the General Meeting violated his rights and legitimate interests. The limitation period for challenging the General Meeting's decisions is three months from the day the claimant knew or should have known about the decision adopted by the General Meeting. The commercial court can uphold the decision of the General Meeting if it determines that the violation was immaterial and the voting of the claimant could not affect the results of voting.

The Law will enter into force on 1 July 2014, save for the provisions regarding mandatory appointment of Representatives, which will enter into force on 1 July 2016.

On 4 July 2013 the Federal Service for Financial Markets (the "FSFM") issued Information Letter No. 13-DP-03/24677 on the entry into force of certain provisions of the Securities Market Law regulating the procedure for the issuance of securities.

The Letter clarifies certain provisions of the Securities Market Law introduced by Federal Law No. 282-FZ dated 29 December 2012 which entered into force on 2 July 2013.

In particular, the Letter contains the following clarifications from the FSFM. Article 22(1) of the Securities Market Law provides for a number of exceptions from the requirement of the state registration of a securities prospectus in the course of the issuance (additional issuance) of securities. The Letter clarifies that (i) compliance with any one of these exceptions can serve as a basis for the release from the obligation to prepare and register a securities prospectus, and (ii) it is recommended to the issuers to file a separate notice confirming compliance with the exceptions listed in Article 22(1) of the Securities Market Law along with other documents in connection with the state registration of the issuance of securities.

Pursuant to Article 22(3) of the Securities Market Law, the securities prospectus must include, *inter alia*, the consolidated financial statements of the issuer and the group of companies controlled by the issuer. The FSFM clarified that (i) such financial statements must be prepared based on the IFRS, and (ii) since the IFRS were recognized in the Russian Federation only in 2011, 2012 should be the first financial year which must be reflected in the financial statements included in a securities prospectus.

The FSFM further clarified that in case of the issuance of securities in the course of reorganization (merger, separation, division or transformation) of a legal entity, (i) the authorized body of the reorganized legal entity which is entitled to approve the decision on the issuance of securities is the board of directors (supervisory board) or other body which performs the duties of the board of directors (supervisory board) of the legal entity; and (ii) the report on the placement results must be filed for state registration no later than 30 days after the reorganization is complete (the reorganized entity is registered with the state authorities).

Pursuant to the Letter, the Standards for the Issue of Securities and Registration of Securities Prospectuses approved by the FSFM Order No. 07-4/pz-n dated 25 January 2007 apply to the extent they do not conflict with the new provisions of the Securities Market Law.

The Letter is addressed to the participants of the Russian securities market and will serve as guidelines for issuers of securities.

On 25 July 2013 the President issued Decree No. 645 abolishing the Federal Service for Financial Markets (FSFM).

Following the adoption of Federal Law No. 251-FZ on 23 July 2013 which establishes a "mega-regulator" of the financial markets (see below), the President issued the Decree abolishing the FSFM from 1 September 2013 and amending or annulling a number of earlier decrees. In accordance with the Decree, the Government is authorized to, *inter alia*, perform the required liquidation procedures with respect to the FSFM, ensure the continuity of Russian financial market regulation in the course of the FSFM's liquidation and the delegation of its authority to the Central Bank, and the transfer of the FSFM's property, including immovable property, to the Central Bank.

The Decree entered into force on 25 July 2013, save for certain provisions that entered into force on 1 September 2013.

Banking

On 23 July 2013 the President signed Federal Law No. 251-FZ amending a number of laws due to the creation of a so called "mega-regulator" of the financial markets.

According to the Law, as of 1 September 2013 the powers to regulate, control and supervise the banking sphere and the financial markets belong to a single body- the Bank of Russia (the "Central Bank"). It is expected that this measure will contribute to the increase of stability in the Russian financial market as a whole as it will secure a more thorough analysis of systemic risks.

The Central Bank has taken over the powers of the FSFM in relation to a number of non-credit financial organizations, including, among others, professional participants in the securities market, management companies of investment and pension funds, insurance organizations and credit history' bureaus.

Moreover, the Central Bank is now in charge of regulation and control of combating usage of insider information, voluntary and mandatory offers, disclosure of information and maintaining shareholders' registers and will also register securities' issuances. The licenses issued previously will stay in force (no need to apply for new licenses); the regulations issued previously will apply until the relevant regulations are issued by the Central Bank.

To fulfill the new functions, the Central Bank has established a new subdivision called the Service of the Central Bank for Financial Markets (according to the information published at www.cbr.ru on 12 and 22 August 2013).

The Law entered into force on 1 September 2013 (save for a few provisions that will enter into force later).

On 4 June 2013 the Central Bank issued Order No. OD-286 regarding securing loans granted by the Central Bank with the rights under loan agreements.

According to the Order, banks may secure loans from the Central Bank with the rights under loan agreements that are governed by English law (provided the rights meet the other criteria specified in Regulation No. 312-P of 12 November 2007). This possibility is available for banks whose net worth (capital) exceeds RUB 300 billion.

The Order entered into force on 11 August 2013.

On 30 July 2013 the Central Bank issued Letter No. 142-T "On Calculation of the Leverage Ratio."

The Central Bank provides recommendations to banks on the calculation of the leverage ratio in accordance with the international banking standards envisaged in Basel III. The ratio is intended to limit the accumulation of risks by banks. It shall be calculated as the ratio of the bank's core capital to its aggregate assets (that are not risk-weighted), conditional obligations and a credit risk under forward deals and derivatives.

The Central Bank plans to determine the date when banks will be required to publicly disclose the results of calculating the ratio in 2014. However, banks may decide to start the disclosure before that date.

The Letter was published in the Central Bank Herald on 7 August 2013.

On 9 August 2013 the Central Bank published information statements about organizational changes within the Central Bank.

- The main branches of the Central Bank for federal districts will be set up and the Central Bank's territorial departments will become sub-branches of the main branches. The Moscow Main Territorial Department will be transformed into the Main Branch of the Bank of Russia for the Central Federal District (until 1 February 2014).
- The Department of Supervision over Systematically Important Banks will be established within the Central Bank (as of 1 October 2013). It is planned that eventually the Department will supervise banking groups and banking holdings.

The information statements are available at the Central Bank's website at www.cbr.ru.

Currency Control

On 21 June 2013 the Central Bank adopted Regulation No. 402-P on the procedure for the transfer of deal passports by the banks to tax authorities.

The Regulation was registered with the Ministry of Justice on 26 July 2013.

According to the Regulation, the banks shall transfer deal passports (for both foreign trade contracts and loan agreements) to tax authorities in an electronic form via the Central Bank's territorial departments. Notably, the deal passports for foreign trade contracts shall be transferred to the tax authorities at the same time that they are transferred to the customs authorities in accordance with Regulation No. 364-P of 29 December 2010.

The Regulation will enter into force on 6 November 2013.

On 14 June 2013 the Central Bank issued Directive No. 3016-U amending its Instruction No. 138-I "On the Procedure for the Submission by Residents and Non-Residents to Authorized Banks of Documents and Information Related to Currency Operations, the Procedure for Filing Transaction Passports [...]."

The Instruction was registered with the Ministry of Justice on 15 August 2013.

According to the amendments:

- it will be necessary to file deal passports not only for lease agreements with respect to immovable property, but also for lease agreements with respect to movable property;
- if an agreement provides for payments using a resident's overseas account, then (i) the term for processing of a deal passport with respect to such agreement by a bank may take up to ten business days (as opposed to three business days in other cases) and (ii) when filing documents for opening a deal passport with a bank, a resident is to provide to the bank a notice sent to, and accepted by, the tax authorities of the opening of the overseas account;
- residents will no longer need to provide customs declarations to banks (given the data on the customs declarations registered by the customs authorities is to be transferred to banks by the customs authorities as per Government Resolution No. 1459 of 28 December 2012).

In addition, the changes relate to the procedure of submission of the so-called 'confirming documents' to banks, codes of currency operations, the procedure for changing, by residents, of currency control related documents drawn up by banks and the procedure for keeping banking control records.

The Directive entered into force on 1 September 2013, save for a number of provisions that will enter into force later (the majority of the provisions will enter into force on 1 October 2013).

Intellectual Property

On 23 July 2013 the President signed Federal Law No. 222-FZ “On amending Part IV of the Russian Civil Code.”

The amendments specify the rights of the Russian Government with regard to the regulation of payment of royalties for the creation and use of copyrighted materials. According to the amendments, the Government has now the right to establish, in addition to the minimum royalties rates, (i) the procedure and the terms for the payment of royalty for the creation of an employee's inventions, utility models and industrial designs (before the amendments – Clause 4 of Article 1370 of the Civil Code) and (ii) the procedure for the collection, distribution and payment of royalties for certain types of use of copyrighted and neighboring rights' materials (before the amendments – Clause 4 of Article 1286 of the Civil Code).

The Law entered into force on 3 August 2013.

Concession Agreements

On 2 July 2013 the President signed Federal Law № 181-FZ amending the provisions of the Russian Budgetary Code in relation to granting subsidies to concessionaries.

As a general rule, subsidies may be granted to legal entities for a period not exceeding the term on limits for budgetary obligations (i.e. normally – three years). The adopted amendments, among other things, provide the possibility for granting subsidies to concessionaries for a period to be defined in concession agreements (i.e. possibly for a period of more than three years) on a basis of a decision of the relevant executive body.

The Law entered into force on 3 July 2013.

State Secrets

On 5 July 2013 the Government issued Resolution No. 569 removing hydrocarbons from the list of strategic natural resources, information in respect of which is considered a state secret.

Pursuant to the Federal Law “On State Secrecy”, the Government approved a list of strategic natural resources, information in respect of which is considered a state secret (Government Resolution No. 210 dated 2 April 2002). The adopted Resolution amends the respective list providing that information on the amount of reserves of oil and gas dissolved in oil contained in the subsoil is no longer considered as a state secret.

The Resolution entered into force on 17 July 2013.

Privatization

On 25 July 2013 the Federal Agency for State Property Management (Rosimush'estvo) issued Order No. 218 approving the methodology for revealing a company's non-core assets.

The Order is aimed at developing the procedure for the valuation of non-core assets of companies where the Russian Federation owns more than 50 percent of shares, in order to determine whether it is necessary to dispose of them. According to the Order, non-core assets are assets beneficially owned by the company, availability/unavailability/disposal of which cannot influence the implementation of the company's strategic objectives.

The Order, among other things, (i) establishes the procedure for the valuation of each of the company's assets with respect to it being core (i.e., in terms of its influence on strategic objectives and tasks); (ii) introduces the mandatory course of actions if it is decided to dispose of the non-core asset (e.g., analyzing the profitability of the asset and circumstances when professional appraisers are to be involved); and (iii) provides for the general recommendations regarding the manner of disposal of the non-core assets. The Order recommends drafting quarterly plans of sale contracts of non-core assets that are subject to disposal.

According to the Order, the board of directors of the mother company supports the disposal of non-core assets of its subsidiaries both in Russia and abroad.

The Order was placed at the official website of Rosimush'estvo on 29 July 2013.

Advertising

On 13 June 2013 the Federal Antimonopoly Service (the “FAS”) issued Letter No. AK/22976/13 “On Considering SMS-messages from Communications Operator an Advertisement.”

According to the Advertising Law and the Resolution of the Plenary Session of the Supreme Commercial Court No. 58 dated 8 October 2012 “On Certain Issues in Connection with the Application of the Federal Law “On Advertising” by Commercial Courts” (see our Special Alert for February 2013), distribution of advertising is allowed only with the subscriber's prior consent. The FAS has now clarified when information about the services of the communications provider rendered under the contract with the subscriber constitutes advertising. Thus, for the purposes of the Letter, the services are nominally divided into “basic” and optional. The distribution of information about “basic” services is not advertising, while the distribution of information about optional services is.

“Basic” services include, in particular, services providing (including the roaming area) voice communication, exchange of messages, and Internet connection. In this regard, the distribution of information about, among other things, (i) the change of the service price in the subscriber’s tariff and the change of the procedure for the payment for the services if such change is not related to the attachment of optional services for an additional price; (ii) supporting the services with free tools (e.g., “Missed Call,” “Check Balance,” “I Am Available”); and (iii) the subscriber’s entering the roaming area, may not be considered advertising.

The distribution of information about optional services may constitute advertising if an SMS-message contains, in particular, an offer to (i) purchase for additional payment mobile content (tunes for ringtones or tones, subscription for the news, the weather forecast, etc.); (ii) change the tariff; and (iii) refer to the mobile tool (portal) if this would allow the subscriber to purchase for an additional payment mobile content or optional services.

According to the Letter, SMS-messages sent by the communications operator to the subscribers of another communications operator, if such messages include an advertising item, should be considered advertising in any case.

The Letter is available at www.consultant.ru

Court Practice

Company’s Address of Registration

On 30 July 2013 the Plenary Session of the Supreme Commercial Court adopted Resolution No. 61 “On Certain Issues of the Court Practice with Regard to Disputes Relating to the Reliability of the Address of a Legal Entity.”

According to Federal Law No. 129-FZ “On the State Registration of Legal Entities and Individual Entrepreneurs” (the “Registration Law”), the address of the continuing executive body of a legal entity (further – the company) or, where the company has no such body, the address of another body or person who is entitled to act on behalf of the company without a power of attorney is included in the Unified State Register for Legal Entities (the “EGRUL”) for the purposes of communication with the company. In this regard, the Plenum clarified, in particular, the following.

The company bears the risk of non-delivery of legally significant messages and of the absence of its permanent representative at the address provided in the EGRUL and may not refer to any other information about its address except when the wrong information was written in without the company’s permission, – *Clause 1 of the Resolution.*

The Plenum clarified that, for registration purposes, the company may indicate the address of the property that is unfit for its business activities, including the address of a residential property. In this case, the consent of the owner of the residential property is required. However, such consent is presumed if the provided address is the address of the residence of the company’s participant or individual who may act on the company’s behalf without a power of attorney. The transfer of powers of the company’s bodies (e.g., to the liquidating committee) or the change of the person who may act on the company’s behalf without a power of attorney do not by themselves entail the change of the company’s residence, – *Clauses 4, 8 of the Resolution.*

According to the Resolution, the Federal Tax Service (the “FTS”) may withhold the company’s state registration if it has reliable information that there is no intention to use the provided address for communication with the company: e.g., if (i) it is the mass registration address used by legal entities and there is information that it is not possible to contact them at this address; (ii) the address or the property at the provided address does not exist, or this is the address of the unfinished construction facility; (iii) this is the address of public authorities, military units or similar public institutions, or (iv) there is the prohibition of the property’s owner to register the company at the property’s address, – *Clause 2 of the Resolution.*

The property owner may file a lawsuit against the company requesting to stop using the property for the purposes of communication with the company, but the owner may not request the FTS to emend the EGRUL entry: the ground for the FTS to change the address in the company’s EGRUL entry is the court decision satisfying the claim of the property owner against the company to stop using the property. The only exception is when the FTS was aware at the moment of the company’s registration, of the notification of the property owner prohibiting registration of the company at the address of the property, – *Clause 5 of the Resolution.*

The FTS may also file a lawsuit requesting the company’s liquidation if the company, at the FTS’s request, fails to provide within a reasonable time its reliable address. The court decides on the company’s liquidation, taking into account that failure to submit the reliable address is a fundamental breach of the Registration Law, – *Clause 6 of the Resolution.*

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