

Insight

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Russian Legislation Update

Foreign Investments

Mass Media

On 14 October 2014 the President signed Federal Law No. 305-FZ amending the Mass Media Law (the “Law”).

The Law provides for additional limitations regarding the establishment in Russia of a *mass media*, *editors of mass media* and *legal entities engaged in broadcasting* (hereinafter, **the “Mass Media”**).

Under the Law, (i) a foreign state and an organization under its control; (ii) an international organization and an organization under its control; (iii) a Russian legal entity with foreign capital; (iv) a foreign citizen; or (v) a Russian citizen having the citizenship of another state, as far as the Mass Media are concerned, are not allowed to:

- establish (participate in) the Mass Media;
- own, manage and control directly or indirectly¹ more than 20% of stock (shares) in the charter capital of their founder’s participant (member, shareholder)²;
- establish any other forms of control resulting in the direct or indirect ownership, management, control and actual determination of decisions adopted by the Mass Media and their founders.

All transactions resulting in the breach of the above mentioned requirements are null.

¹ Including through the entities under their control or by owning more than 20% of stock (shares) of any type.

² With regard to Russian legal entities with foreign capital, this limitation applies to the Russian legal entities with more than 20% of foreign capital in their charter capital.

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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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In case of non-conformity with the mentioned requirements the participants (founders) of the Mass Media' founders will not be able to perform the corporate rights set forth in the Russian Civil Code (such as, participation in the management of the Mass Media; receiving information about its operations and review its accounting documents; appealing the decisions of its bodies; requesting the indemnification of damages caused to the Mass Media; as well as challenging the transactions of the Mass Media, etc).

The charters of the Mass Media must be adjusted to the requirements of the Law **by 1 February 2016**.

Pursuant to the Law, these requirements apply from 1 January 2017 to legal entities (Russian and foreign) that directly or indirectly own, manage or control more than 20% of stock (shares) in the charter capital of the founders of the Mass Media, if

- one or several Russian entities own *directly or through the third parties* more than 80% of the stock (shares) in such *foreign* legal entities; or
- one or several Russian legal entities own more than 80% of stock (shares) *through the third parties* in such Russian legal entities with more than 20% of foreign capital in their charter capital.

The Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) must apply to the court asking to suspend the operation of the relevant mass media its founders fail to submit the information of their conformity with the above mentioned requirements before 15 February 2016, or if the requirements are not obeyed.

The Law will enter into force on 1 January 2016.

Project Finance

On 11 October 2014 the Government adopted Resolution No. 1044 on the support of the investment projects to be implemented on project finance basis.

The Resolution approves the Program to support the investment projects to be implemented in Russia on a project finance basis. It is expected that the Program will help to increase the amount of funding to be provided to organizations on long-term and favorable terms.

In order to participate in the Program, the Resolution sets out the criteria and procedure for selecting investment projects, the Russian credit organizations and international financial organizations and the procedure for granting state guarantees on loans for the projects. It also specifies the requirements applicable to the ultimate borrowers. Selection of investment projects and financing organizations will be carried out by the Interdepartmental Commission under the Ministry of Economic Development.

In particular, in order to receive a loan at a rate that does not exceed the level of the key rate of the Bank of Russia (currently – 9,5%) plus one percent per annum and the state guarantees of up to 25%, an investment project is to be implemented in the priority sectors for Russia's economic development with the total cost of the project not less than RUB 1 billion or more than RUB 20 billion. The amount of borrowed funds may not exceed 80%.

The Resolution entered into force on 23 October 2014.

Environment

On 21 July 2014 the President signed Federal Law No. 219-FZ amending the Federal Law "On Environmental Protection" and certain other legislative acts (the "Law").

The Law makes significant changes to the Federal Law "On Environmental Protection" and other related laws, including "On Protection of Air," "Production and Consumption Waste" and "Environmental Expert Review." Such changes aim to gradually improve the environmental impact evaluation system and establish economic incentives for industrial organizations to integrate best available technologies ("BAT") into their production processes and reduce emissions (discharge) of polluting substances.

Classification of the facilities

The Law classifies industrial facilities depending on the level of adverse environmental impact. The requirements applicable to industrial facilities will depend on their category which is to be assigned upon the facility's state registration. However, the category may be changed if information on its profile is updated. Categorization criteria are established by the Russian Government.

In particular, organizations, operating industrial **facilities of 1st category** (with a significant level of environmental adverse impact) are to obtain a complex environmental permit (currently, individual permits are to be obtained). Such permit will be issued for seven years and will detail the maximum permissible level of emissions of pollutants, the maximum permissible level of physical impact and limits for waste disposal. The Law also provides that such facilities are to be equipped with automatic devices to measure the volume of emissions and the concentration of pollutants and technical means to transfer such information to the unified state ecological monitoring system. Moreover, a state ecological expert review may be carried out with respect to materials justifying the complex environmental permit and project documentation related to such facilities.

Organizations operating **facilities of 2nd category** (with a medium level of adverse environmental impact) are to submit a declaration on environmental impact every seven years. Such declaration must provide information, including on planned emissions of pollutants as well as generated and disposed waste. Calculations on maximum permissible levels of emissions of pollutants are to be submitted together with the declaration.

Organizations operating **facilities of 3rd category** (with insignificant negative environmental impact) must submit a report notifying about actual emissions of pollutants into the air and waste related activities. Maximum permissible levels of emissions for such facilities are to be established only with respect to radioactive, highly toxic substances and chemicals that are carcinogens and mutagens.

The Law significantly removes administrative barriers for organizations operating **facilities of 4th category** (with minimum adverse environmental impact). In particular, such organizations are to be released from an obligation to (i) develop maximum permissible levels of emissions of pollutants; (ii) approve limits for waste disposal; and (iii) develop a programme on industrial ecological control. Moreover, such organizations are not subject to scheduled inspections conducted by controlling authorities.

Best available technology (BAT)

For the purposes of ecological modernization, the Law provides state support for investment activity for the integration of BAT in Russia. In particular, organizations using BAT may be provided with tax incentives, benefits in payments for the adverse environmental impact or allocated with budgetary funds. Equipment, technical means and methods to be used in capacity of BAT are yet to be determined by the authorized executive authority. Also, information and technical references on BAT are to be developed to provide information on technological processes which are least harmful for the environment.

Payments for adverse environmental impact

The Law specifies the procedure for calculating and making payments for the adverse environmental impact. Such payments are to be made only for the emissions of pollutants and waste disposal (now such payments are also made for other types of impact (e.g. noise, vibration). In order to encourage organization to integrate BAT and reduce emissions of pollutants, additional indexes 25 and 100 are to apply (e.g. now the payment is 5 times the base rate for emission in excess of the established limits). However, the amount of payments may be reduced due to possible deduction of costs if organizations undertake environmental protection measures. Organizations operating facilities of 4th category are to be released from the obligation to make such payments.

Administrative liability

The Law also introduces new administrative sanctions for a failure to comply with the newly established requirements in the forms of administrative fines in the amount up to RUB 100,000 (approx. US\$2,600).

The Law enters into force on 1 January 2015 save for certain provisions.

Electric Power

On 11 August 2014 the Ministry of Industry and Trade issued Order No. 1556 on the procedure for defining a degree of localization of a generating facility functioning on a basis of the renewable sources of energy (RSE).

The Order was registered with the Ministry of Justice on 6 October 2014.

In order to support the use of RES in Russia, an annual competitive selection of investment projects is conducted for the construction of generating facilities operating on a basis of RSE. Renewable generation projects selected through this process qualify for long-term agreements on the delivery of renewable capacity under which the project investor is entitled to capacity payments over a 15-year supply period. This has been accompanied by the requirement that such projects must guarantee a degree of localisation of generating facilities (i.e. the extent to which renewable generating equipment is produced domestically within Russia). The target levels for the degree of localization are already established. The Order now establishes the procedure for determining the degree of localisation of such facilities. In particular, after commissioning of the renewable generating facility, an organization must submit to the Ministry of Industry and Trade an application supported by the documents listed in the Order to receive a conclusion about the degree of localization. Upon review of the documents, a conclusion is to be sent to the organization with its copy to be sent to the Market Council.

The Order will enter into force on 2 November 2014.

Banking

On 4 October 2014 the President signed Federal Law No. 286-FZ regarding the application of a statutory ban on banks to engage in trading activities.

The Law specifies that a ban on credit organizations engaging in trading activities shall not apply to the sale of property (i) acquired by a credit organization for its operation, (ii) being realised upon enforcement of a pledge or (iii) received by way of compensation (*otstupnoye*).

The Law entered into force on 17 October 2014.

On 21 October 2014 the Central Bank issued Letter No. 184-T.

According to the Letter, a bank can decide not to worsen the quality of debt if the payment arrears of a company borrower are related to the restriction measures (sanctions) applied by foreign states.

The Letter is available on the Central Bank's website at <http://www.cbr.ru/>

On 14 August 2014 the Bank of Russia issued Directive No. 3361-U amending Regulation No. 382-P regarding protection of information related to money transfers.

The Directive was registered with the Ministry of Justice on 10 September 2014.

The Directive provides for a number of duties to be performed by operators for transfer of funds, banking payment agents and operators of services for the payment system infrastructure to ensure protection of information related to money transfers made with the use of Internet, mobile banking, ATMs and payment terminals and payment cards.

The Directive will enter into force on 16 March 2015.

National Payment System

On 22 October 2014 the President signed Federal Law No. 319-FZ amending the Law on the National Payment System.

According to the amendments, the national system of payment cards (NSPC) is to be used not only for effecting transfers using national payment instruments, but also its infrastructure shall be used for effecting transfers with international payment cards on the territory of Russia.

Operators of payment systems that are not regarded as “nationally important” are to make a first quarterly payment being part of a security deposit (as envisaged by the Law on the National Payment System) based on the amount of transfers on the territory of Russia in the first quarter of 2015. At the same time, the security deposit does not need to be paid if the instructions for transfers on the territory of Russia with the use of international payment cards are presented by 31 March 2015 to the operational and payment clearing centres of NSPC.

The Law entered into force on 23 October 2014.

Securities

New Issue Standards

On 11 August 2014 the Central Bank issued Regulation No. 428-P on the standards of issues of securities, the procedure for the state registration of an issue (additional issue) of serial securities, state registration of reports on the results of an issue (additional issue) of serial securities and registration of prospectuses (hereinafter, the “Regulation”).

The Regulation was registered with the Ministry of Justice on 9 September 2014.

The Regulation is issued in connection with the recent amendments made to the Securities Market Law (and in force from 1 July 2014), specifically, with respect to the regulation of issues of bonds with pledge-based security and with security provided by a specialized company as issuer.³

The Regulation establishes a list of data to be contained in a resolution on an issue and of additional documents to be submitted for the state registration of an issue of the following types of bonds:

- bonds with pledge-based security (including pledge-based security with cash claims);
- bonds secured by a specialized company as issuer;
- bonds secured by claims with a different order of priorities; and
- bonds the resolution on whose issue contains information on the representative of their holders (if the issuer identified the representative of the bondholder prior to the date of approval of the issue resolution).

The Regulation also contains the updated standard forms of documents to be submitted to the Central Bank in connection with an issue of securities.

The Regulation does not apply to issues of government and municipal securities and the Central Bank bonds.

The Regulation entered into force on 16 October 2014 and replaced the then applicable issue standards approved under FSFM Order No. 13-55/pz-n dated 4 July 2013.

³ Specialized financial company and project finance specialized company (Chapter 3.1 of the Securities Market Law).