

# ClientInsight

25 – 31 July 2011

## Russian Legislation Update

### Personal Data

**On 25 July 2011 the President signed Federal Law No. 261-FZ “On Amending the Federal Law on Personal Data”.**

The amendments to the 2006 Personal Data Law aim at strengthening the legality and safety of personal data processing. The amendments suggest an extensive list of additional – organizational and technical - measures to be taken by companies that belong to the category of operators of personal data to ensure protection of personal data they process. In particular, companies are required to appoint employee(s) responsible for personal data processing and to exercise internal control over data protection. Personal data processing shall correspond and be limited to specific and defined goals and purposes of such data processing articulated by the operator.

If personal data are obtained from a third party, the amendments list circumstances (Para 4 of Article 18) where the operator is not obliged to notify relevant individuals on the processing of their personal data (e.g., where the data were obtained for statistical purposes, or where such notification violates third-party rights, for the purposes of money laundering control, etc).

As a general rule, pursuant to the Personal Data Law, cross-border transmission of personal data is possible if the foreign state ensures adequate protection of the rights of individuals in respect of their personal data, being a signatory to the 1981 European Convention for the Protection of Individuals with Regard to Automatic Personal Data. Pursuant to the amendments, the Federal Service on Supervision in the Area of Communications, Information Technologies and Mass Media (*Roskomnadzor*) is entitled to maintain a list of countries that are not signatories to the Convention but are otherwise regarded as “providing adequate protection of rights of individuals in respect of their personal data”.

Pursuant to the amendments, compensation of moral harm to an individual resulting from an infringement on his/her rights related to personal data processing and protection shall be provided irrespective of compensation for property damage and other losses.

Companies - operators of personal data are required to submit certain information defined by the Law (Items 5, 7.1, 10 and 11 of Article 22(3)) to Roskomnadzor no later than 1 January 2013.

*The Law entered into force on 25 July 2011 and applies retroactively as of 1 July 2011.*

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## Innovations

**On 21 July 2011 the President signed Federal Law No. 254-FZ “On Amendments to 1996 Federal Law №127-FZ “On Science and State Research and Technology Policy”.**

The amendments introduce new concepts, such as innovations, “commercialization” of scientific and sci-tech results, innovative project, innovative infrastructure and innovative activities. They set forth fundamental principles and forms of state support for innovation activities. State support may be provided by way of: exemptions from tax and customs duties, consulting, financial support (grants, loans, guaranties, direct investments, etc.), facilitation of design of project documentation, facilitation of demand for innovation products, export support, infrastructure support, and other measures.

The amendments set forth a number of guarantees for innovation activities. In particular, no specific innovation project in progress (implemented with state support) shall be audited with the purpose of assessing budget spending unless there are legal violations in the provision of state support, lack of state support or lack of statutorily required documents. The high-risk character of innovation activities and the uncertainty or market or technology prospects – which may lead to a loss of financial and other resources invested in the project – all these shall be taken into account when assessing the effectiveness of state support for innovation activities.

*The Law entered into force on 26 July 2011.*

## Employment

**On 18 July 2011 the President signed Federal Law No. 238-FZ amending the Russian Labor Code.**

The Law introduces new concepts – “occupational risk” and “occupational risk management”. In particular, occupational risk is a probability of bodily injury as a result of exposure to harmful and/or hazardous factors during the performance of an employee’s duties under an employment agreement or in other instances provided for under the Labor Code and other federal laws.

Occupational risk management is a set of measures to identify, assess and reduce occupational risks. Employers are obliged to implement measures to improve working conditions and labor protection and to reduce occupational risks. The Law sets forth a list of measures employers are to take to improve labor conditions and protection and to reduce occupational risks. The risk evaluation procedure is to be established by the Ministry of Public Health and Social Development.

The Law also establishes certain requirements to organizations rendering labor protection services, including with respect to activities subject to accreditation.

*The Law entered into force on 1 August 2011.*

## Securities/Insider Information

**On 12 May 2011 the Federal Service for Financial Markets (“FSFM”) issued Order No. 11-18/pz-n approving a list of information relating to insider information and a procedure for and terms of disclosure of such information by persons specified in Federal Law No. 224-FZ “On Combating Unlawful Use of Insider Information and Market Manipulation and on Amending Certain Legislative Acts of the Russian Federation” dated 27 July 2010.**

*The Order was registered with the Ministry of Justice on 22 July 2011.*

The Order sets out an exhaustive list of information relating to insider information of the following entities: (i) issuers; (ii) management companies; (iii) entities with a dominant position on the market; (iv) organizers of trades; (v) clearing houses, depositaries and lending organizations performing payment settlements in respect of transactions made at stock exchanges; (vi) professional players on the securities market, and (vii) information and rating agencies.

A notification with respect to insider information is to be published on the newsfeeds no later than one day in and on the Internet no later than two days from the date of the occurrence of the respective fact (event, action) or from the date when the insider knew or should have known of its occurrence.

*The Order (save for certain provisions) entered into force on 31 July 2011.*

**On 28 June 2011, FSFM issued Order No. 11-28/pz-n amending FSFM Order No. 11-3/pz-n approving certain regulations for the implementation of the provisions of Federal Law No. 224-FZ “On Combating Unlawful Use of Insider Information and Market Manipulation and on Amending Certain Legislative Acts of the Russian Federation” dated 27 July 2010 (the “Law”).**

*The Order was registered with the Ministry of Justice on 22 July 2011.*

Pursuant to the Law, issuers and management companies, entities with a dominant position on the market, professional players on the securities market, members of the boards of directors and management boards, information and rating agencies are to maintain lists of insiders and notify persons of their inclusion in and deletion from such lists. They are also to deliver such lists of insiders to organizers of trades.

Insiders included in insider lists of issuers and management companies are to notify these companies and FSFM of their transactions with securities of the issuer or management company. By its January 2011 Order No. 11-3/pz-n, FSFM determined a procedure for: (i) notifying companies and individuals of their inclusion in/deletion from insider lists; (ii) a transfer of insider lists to organizers of trades; and (iii) notifications by insiders of transactions they perform.

The new Order now sets the term for: (i) the transfer of insider lists (and amendments thereto) to organizers of trades (that is, no later than 6 pm Moscow time on 30 December 2011); and (ii) notifications by insiders to the issuer and FSFM of transactions they perform with financial instruments, foreign currency and/or commodities (to be done as relevant transactions are being performed but no later than 31 December 2011).

Legal entities passing insider lists to organizers of trade no longer need to obtain consents from individual insiders included in the lists on personal data processing.

*The Order entered into force on 31 July 2011.*

## Real Estate/Court Practice

### **On 11 July 2011 the Plenary Session of the Russian Supreme Commercial (Arbitrazh) Court issued Resolution No. 54 "On Certain Matters of Resolving Future Contractual Disputes."**

The Resolution clarifies a number of issues arising in court practice in relation to future real estate items. In particular, if the seller does not own the real estate item as the contract is signed, this alone may not be regarded as grounds for declaring the deal null and void. However, a transfer of a property right to the purchaser may only be registered if the seller holds title.

To identify the real estate subject matter under a sale and purchase contract, it is sufficient to indicate the cadastre number (if any) of such property. As to a "future real estate property," it may be identified based on other details such as location, approximate area and other parameters in accordance with the project documentation. The contract price in such instances may be determined based on the price per square meter (as indicated in the contract) or otherwise.

A sale and purchase contract not containing enough details to identify the property may not be declared unexecuted if the necessary details can be found in the accompanying acknowledgment of delivery and acceptance. A sale and purchase contract with respect to future residential premises does not need to be registered and is deemed executed as of the moment of execution. The clarifications also extend to contracts on the sale and purchase of future land plots.

The Resolution also clarifies a number of issues related to the financing of real estate construction (reconstruction) and failure to perform contracts on the sale and purchase of future real estate properties. The clarifications do not extend to disputes arising from the construction of future real estate properties under Law No. 214-FZ "On Shared Participation in Construction."

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