

Insight

23 June – 20 July 2014

Russian Legislation Update

Judicial Reform

On 28 June 2014 the President signed Federal Law No. 186-FZ amending the Commercial Court Procedure Code of the Russian Federation (the "CCPC").

The amendments relate to the forthcoming – as of 6 August 2014 – abolishment of the Russian Supreme Commercial Court (the "**SCC**") and the transfer of its jurisdiction issues to the Russian Supreme Court (the "**Supreme Court**"), which will operate in a new structure. The amended CCPC rules are in many ways similar to the current civil procedure rules.

The status of the SCC's and the Supreme Court's clarifications with regard to the issues of court practice

According to the amendments, the rationale of court decisions may contain references not only to the resolutions of the Plenum and Presidium of the newly merged Supreme Court but also to the resolutions of the SCC Plenum and Presidium that remain in force after the abolishment of the SCC (amended Para. 7 of Article 170 (4) of the CCPC). Consequently, the legal positions of the SCC Plenum and Presidium remain in force until they are reviewed by the newly merged Supreme Court.

The supervisory courts' resolutions remain binding upon lower commercial courts. The determination or change of interpretation of a legal norm by a resolution of the Plenum or Presidium of the Supreme Court may serve as a ground for the review of effective lower courts' decisions due to new facts (amended Article 311 (3)(5) of the CCPC).



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The second cassation appeal level for review of commercial courts' decisions

The amendments introduce a two-level cassation appeal into the commercial courts proceedings. The first cassation appeal is represented by the circuits commercial courts (the new name for the federal commercial courts); the second cassation appeal is represented by the Panel of the Supreme Court of the relevant jurisdiction. The case can be referred to the second cassation appeal after it is reviewed by the first cassation appeal (amended Article 291.1 (1) of the CCPC). The time limit for applying to the second cassation appeal shall, as a rule, not exceed two months from the day on which the last decision being appealed becomes effective (amended Article 291.2 of the CCPC).

A Judge of the Supreme Court shall render the ruling on the transfer of the cassation appeal to the second cassation appeal or on denial of such a transfer. The Chairman of the Supreme Court or his Deputy can also initiate the review of the case by the second cassation appeal: they can oppose a decision to deny transfer, reverse it and refer the cassation appeal for consideration by the Panel of the Supreme Court (amended Article 291.6 of the CCPC).

The time limit for rendering or denying a transfer of the cassation appeal to the consideration of the Panel of the Supreme Court shall be, as a rule, between two to three months (amended Article 291.7 of the CCPC). The Panel of the Supreme Court will consider the case within two months from the date on which the ruling on the transfer of the cassation appeal is rendered (amended Article 291.12 (1) of the CCPC).

The Panel of the Supreme Court- as a second cassation appeal level – can apply the following grounds for the reversal or amendment of lower courts' decisions: substantial breach of substantive and/or procedural rules which affected the outcome of the case and threaten the restoration and protection of violated rights, freedoms and legitimate interests in the area of entrepreneurial and other commercial activity, as well as the protection of public interests (amended Article 291.11 of the CCPC).¹

Proceedings in the order of supervision

The ruling of the second cassation appeal can be reviewed by the supervisory court – the Presidium of the Supreme Court. The time limit for submission of the supervisory appeal, as a rule, shall not exceed three months from the day on which the ruling being appealed becomes effective (amended Article 308.1 (4) of the CCPC).

The rules of transfer of a case for consideration by the supervisory court are similar to the rules of transfer to the second cassation appeal. A Judge of the Supreme Court shall render the ruling on the transfer of the supervisory appeal for consideration by the Presidium of the Supreme Court or on the denial of such a transfer.

The Chairman of the Supreme Court or his Deputy can also initiate the review of the case by the supervisory court: they can oppose a decision to deny transfer, reverse it and refer the supervisory appeal for consideration by the Presidium of the Supreme Court (amended Article 308.4 of the CCPC).

The time limit for rendering or denying a transfer of the supervisory appeal to the Presidium of the Supreme Court shall be, as a rule, between two or three months (amended Article 308.5 of the CCPC). The Presidium of the Supreme Court will consider the case within two months from the date of rendering a transfer of the supervisory appeal to the Presidium of the Supreme Court (amended Article 308.9 (5) of the CCPC).

Similar to the civil procedure rules, the CCPC is amended to include the provision that the Chairman of the Supreme Court or his Deputy can refer court decisions for review by the supervisory court on the basis of the interested persons' appeal. This remedy is intended to eliminate the fundamental breach of legal norms that influenced the lawfulness of certain decisions and infringed or restricted the right of the parties in a dispute to a fair trial. The revision of a case under these circumstances can be initiated no later than four months after the decision being appealed becomes effective (amended Article 308.10 (1) of the CCPC).

The grounds for the reversal or amendment of decisions in the supervisory instance did not undergo many changes. The following are the grounds for reversal or amendment: (i) the infringement of rights and freedoms of a person and citizen; (ii) the infringement of rights and legitimate interests of an unlimited number of persons or other public interests; and (iii) the breach of uniform application and/or interpretation of legal rules by courts (amended Article 308.8 of the CCPC).

Other amendments to the CCPC

Cases on challenge of normative legal acts are transferred from the jurisdiction of commercial courts to courts of general jurisdiction. This does not affect cases falling under the jurisdiction of the Intellectual Property Rights Court (amended Chapter 23 of the CCPC).

The option allowing the electronic submission of documents to commercial courts remains unchanged. This option is also available for the submission of documents to the Supreme Court (amended Articles 291.3 (6)(1) and, 308.2 (6) of the CCPC).

Pursuant to the transitional provisions, in particular, cases transferred for review by the SCC Presidium but not reviewed by the time of abolishment of the SCC, shall be transferred for consideration by the Presidium of the Supreme Court.

The amendments will enter into force on 6 August 2014 (the first working day of the newly merged Supreme Court).

¹ Compared with the grounds for reversal or amendment of decisions applied by the first cassation appeal, the grounds for reversal or amendment of decisions applied by the second cassation appeal are more limited. In particular, the courts of first cassation appeal review the decisions not only for breach of substantive or procedural rules, but also for the failure of the findings to correspond to the facts and evidence of the case (Art. 288 of the CCPC).

Personal Data

On 21 July 2014 the Russian President signed Federal Law No. 242-FZ amending certain Russian laws regarding the procedure for processing personal data on the Internet.

The Law amends the Personal Data Law and the Law on Information, Information Technologies and Protection of Information and provides for the following restrictions in relation to the processing of personal data:

- when collecting personal data (including on the Internet) personal data operators² shall use databases located in Russia to procure recording, systematization, accumulation, storage, amending and extracting of personal data of Russian citizens (save for certain exceptions defined in the Personal Data Law);
- an individual, upon the receipt of the relevant court decision acknowledging the unlawful processing of his/her data, may request the Russian Federal Service for Supervision of Communications, Information Technology and Mass Media (*Roskomnadzor*) to limit the access to his/her personal data which has been unlawfully processed.

Based on this court decision, Roskomnadzor determines the hosting provider or any other person processing the individual's personal data and serves that person with an official notification requesting to cure the breach named in the court decision. If the unlawful processing of personal data continues after expiration of three business days from the date of receipt of Roskomnadzor's notification, the telecommunications services provider may restrict access to the Internet resource on which such personal data has been unlawfully processed, including by way of blocking the relevant domain name or website.

The Law will enter into force on 1 September 2016.

Banking

On 21 July 2014 the President signed Federal Law No. 213-FZ relating to the opening of bank accounts by strategic enterprises.

According to the Law, companies of strategic importance for military-industrial complex and security of the Russian Federation (as well as companies being directly or indirectly controlled by them) can open bank accounts, deposits and covered letters of credit:

- (i) in rubles – only in credit organizations which meet certain criteria;
- (ii) in foreign currency – only in credit organizations which meet certain criteria, as well as in overseas banks (no special requirements are set with respect to such overseas banks).

Similar requirements apply to the acquisition by such companies of securities of credit organizations or overseas banks denominated in rubles or foreign currency.

The list of eligible credit organizations will be published by the Central Bank on its website. Accounts opened in credit organizations that are not in the list must be closed within one year upon its publication; crediting of funds to such accounts is not allowed as of the date of publication of the list.

The Law entered into force on 22 July 2014.

On 21 July 2014 the President signed Federal Law No. 275-FZ amending the Law "On Additional Measures for the Support of Financial System of the Russian Federation."

According to the amendments, funds returned by credit organizations that received state support in the form of subordinated loans from Vnesheconombank may be used for acquiring preferred shares of such credit organizations.

The amendments also provide for the possibility of the Central Bank granting subordinated loans to Sberbank for a term of up to 50 years or for a term of no less than 50 years. The returned funds may be used by the Central Bank to acquire preferred shares of Sberbank.

The Law entered into force on 22 July 2014.

On 30 May 2014 the Bank of Russia issued Instruction No. 153-I "On Opening Bank Accounts [...]."

The Instruction was registered with the Ministry of Justice on 19 June 2014.

Instruction No. 153-I represents an updated version of Instruction No. 28-I.

The amendments relate, among others, to so-called sample signature cards presented by client companies to the banks when opening accounts. There is no longer a division between "first signature" and "second signature" on such a card. As a rule, the card is to contain at least two signatures required for signing of instructions of a client company (a bank and a client may agree on a different number of the required signatures). Possible combinations of the required signatures are to be agreed between the bank and the client. As a rule, the right of signature belongs to a company's director and to employees vested with this right.

Sample signature cards accepted by banks before 1 July 2014 do not need to be re-filed.

² State or municipal authorities, legal entities or individuals that solely or jointly organize and/or perform the processing of personal data and determine the purposes and scope of such processing.

The Instruction also briefly mentions some specifics of opening bank accounts recently introduced to the Civil Code (nominal, escrow and pledge accounts).

Banks are to bring their internal documents in compliance with Instruction No. 153-I within three months from the date of its entry into force.

The Instruction entered into force on 1 July 2014.

On 30 May 2014 the Bank of Russia issued Regulation No. 421-P “On the Procedure for Calculation of the Liquidity Coverage Ratio (Basel III).”

The Regulation was registered with the Ministry of Justice on 25 June 2014.

The Regulation sets out the procedure for calculation of the liquidity coverage ratio (LCR) in line with the international standards (Basel III). LCR is to be calculated by a bank if (i) its net assets amount to RUB 50 billion or more and/or (ii) the amount of funds attracted from individuals under bank deposit and bank account agreements is RUB 10 billion or more.

LCR is to be calculated on a daily basis and is needed to assess the ability of a bank to ensure timely and complete performance of its obligations and to continue its operation under unstable conditions within the nearest 30 days.

The data on LCR is to be submitted to the Bank of Russia as per the established reporting form (established by Directive No. 3269-U of 31 May 2014).

The Regulation entered into force on 1 July 2014.

On 24 April 2014 the Bank of Russia issued Directive No. 3241-U amending Directive No. 242-P “On Internal Control in Credit Organizations and Banking Groups.”

The Directive was registered with the Ministry of Justice on 30 June 2014.

According to the Directive, the internal control is to be performed by an internal control (compliance) department along with an internal audit department. The compliance department is to detect risks of losses which a credit organization may incur in the case of a breach of law and imposition of sanctions by supervision authorities and take part in managing the risks.

The Directive also describes in detail the issues which must be scrutinized by an internal audit department when auditing the various departments of a credit organization (in relation to lending, taking deposits, maintaining bank accounts, etc.).

Credit organizations are to bring their constituent and internal documents in compliance with the Directive by 1 October 2014.

The Directive entered into force on 20 July 2014.

Payment Systems

On 15 June 2014 the Government adopted Resolution No. 661 relating to payment of a security deposit by operators of payment systems that are not considered “nationally important.”

The Resolution provides for a legal basis that would allow international payment systems to transfer of the processing of money in the Russian territory to an operator of services of payment infrastructure of a nationally important payment system – by 31 October 2014 – without placing a security deposit.

The Resolution will enter into force on 1 August 2014.

Credit Histories

On 28 June 2014 the President signed Federal Law No. 189-FZ amending Credit Histories Law and some other laws.

According to the amendments, credit histories will be produced not only in relation to borrowers under loan agreements, but also sureties and principals under bank guarantees. They also provide for the possibility of producing credit histories in relation to debtors owing payments for housing and utilities, communication services and alimony (provided there is a court decision not performed within 10 days).

The amendments also provide that, in case of assignment of loan or other indebtedness, a new creditor is to submit information to a credit history bureau on the same terms as the previous one.

The Law will enter into force as of 1 March 2015, save for some provisions entering into force on different dates.

Concession Agreements

On 23 June 2014 the Russian President signed Federal Law No. 171-FZ amending the Land Code and certain other legislative acts of the Russian Federation.

The Law, *inter alia*, establishes the procedure for granting state or municipally owned land plots for the implementation of projects on the basis of concession agreements. In particular, it is envisaged that a land plot lease agreement may be signed with a concessionaire without a tender for the period of a concession agreement.

The Law will enter into force on 1 March 2015.