

ClientInsight

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Russian Legislation Update

Banking

Cashless payment settlements

On 12 December 2011 the Central Bank issued Directive No. 2749-U amending Regulation No.2 -P “On Cashless Payment Settlements in the Russian Federation.”

The Directive was registered with the Ministry of Justice on 16 December 2011.

The changes are being made as a follow-up on the Law on the National Payment System, which provides for the possibility of direct debiting of a payer’s account either with its consent (acceptance) or based on an acceptance granted in advance. Under the amendments, payment demands are now divided into those 1) payable with the payer’s acceptance and 2) payable with an acceptance granted in advance (as opposed to payment demands payable with or without acceptance, previously). The amendments do not specify a procedure for the using of the latter payment demands (the previous rules on settlements with payment demands payable without the payer’s acceptance, have been removed).

The Directive will enter into force on 29 December 2011.

On 12 December 2011 the Central Bank issued Directive No. 2748-U amending Regulation No. 222-P “On the Procedure for Cashless Payments of Individuals in the Russian Federation.”

The Directive was registered with the Ministry of Justice on 16 December 2011.

According to the amendments, individuals wishing to withdraw funds from accounts of other individuals may use not only collection orders but also payment demands.

The Directive will enter into force on 29 December 2011.

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For more information, please contact:

Igor Ostapets

Partner

iostapets@whitecase.com

Irina Dmitrieva

Partner (Tax)

idmitrieva@whitecase.com

White & Case LLC
Tel + 7 495 787 3000
Fax + 7 495 787 3001
www.whitecase.com

Bank cards

On 15 November 2011 the Central Bank issued Directive No. 2730-U amending its Regulation No. 266-P "On the Issuance of Bank Cards and Transactions with Bank Cards."

The Directive was registered with the Ministry of Justice on 9 December 2011.

The Directive provides that funds required for payments with a prepaid card may be granted by the individual holder of such card, as well as by third parties (provided the possibility of receiving funds from third parties is envisaged under an agreement between a lending organization and the card holder). Further, the limit of a prepaid card, which is established by a lending organization, may not exceed RUB 100,000 (or its equivalent in foreign currency). The replenishment of funds credited to the card (if such an opportunity is envisaged in an agreement between a lending organization and the card holder) is allowed within the limit of the prepaid card and may not exceed RUB 40,000 within a calendar month.

Lending organizations may engage bank payment agents to distribute bank cards they issue.

The Directive will enter into force on 30 December 2011.

Reporting

On 9 December 2011 the Central Bank issued Directive No. 2742-U amending its Directive No. 2332-U dated 12 November 2009, regarding reporting forms of lending organizations.

The Directive was registered with the Ministry of Justice on 16 December 2011.

The Directive amends a number of reporting forms to be submitted by lending organizations to the Central Bank (in particular, data on the quality of assets, data on the mandatory economic ratios and other indicators of a lending organization's operation, report on foreign operations) and introduces some new reporting forms (in particular, data on a bank's assets and liabilities by currency and country).

The Directive will enter into force on 1 January 2012 (save for a few provisions that enter into force on different dates).

Refinancing Rate

On 23 December 2011 the Central Bank issued Directive No. 2758-U reducing the refinancing rate.

The Central Bank reduced the refinancing rate from 8.25% to 8% per annum. The new rate applies as of 26 December 2011.

The Central Bank sets the refinancing rate for its financing of commercial banks. The rate is also used for calculating interest on commercial loans (if the rate is not specified in an agreement), tax payments and in other instances provided for under the law.

The Directive entered into force on 23 December 2011.

Anti-Money Laundering

On 10 November 2011 the Federal Service for Financial Monitoring issued Order No. 361 approving the list of countries that do not comply with the recommendations of the Financial Action Task Force on Money Laundering (FATF).

The Order was registered with the Ministry of Justice on 13 December 2011.

Under the Anti-Money Laundering Law, transfers of money are subject to mandatory anti-money laundering control if the counterparty is an individual or an entity residing or located in a country that does not comply with the FATF recommendations, or the operations are made through an account opened with a bank registered in such country.

The Federal Service for Financial Monitoring has approved the list of such countries. It includes two countries - the Islamic Republic of Iran and the Democratic People's Republic of Korea.

The Order will enter into force on 1 January 2012.

Real Estate

Urban Development

On 28 November 2011 the President signed Federal Law No. 337-FZ amending the Town Planning Code of the Russian Federation and certain other legislative acts.

The amendments now add operation of buildings and facilities to the list of urban development activities. The amendments introduce: (i) requirements to the operation of buildings (facilities) and their proper technical condition, (ii) operational supervision. The amendments also specify liability of a building's (facility's) owner for harm caused due to the destruction of or damage to a building (facility), or breach of rules on safe operation of a building (facility). In particular, the amendments envisage instances where individuals are to be paid compensation in addition to the damages and its amount.

Further, the amendments establish minimum requirements to organizations that wish to obtain accreditation to conduct non-state expert review of design documentation and the engineering survey results. Pursuant to the amendments, organizations that got accredited before 1 April 2012 are allowed to conduct expert review if they meet the requirements specified in the amendments.

The amendments on the operation of buildings and facilities will enter into force on 1 January 2013, on non-state expert review – on 1 April 2012.

Land

On 12 December 2011 the President signed Federal Law No. 427-FZ amending the Federal Law “On the Enactment of the Russian Federation Land Code” and certain other legislative acts.

In particular, the Law amends the Federal Laws “On Direct Investment Activities in the Russian Federation”; “On the Enactment of the Russian Federation Forestry Code”; “On State Registration of Title to Immovable Property and Transactions Therewith”

According to the amendments, the owners of buildings, facilities and structures located on state and municipal land plots may buy out these land plots for a reduced price until 1 July 2012 (before the amendments – until 1 January 2012). The amendments envisage that the owner of an unfinished construction project may lease the state or municipal land plot where such project is located without a tender if title to the project was registered before 1 January 2012.

Among others, the amendments introduce share ownership of an investor and the state (or municipality) of an object of joint investment activities until the registration of title to such object.

The amendments stipulate that the state or municipal authorities may unilaterally early terminate a contract on the lease of a land plot made for the purpose of (re)construction of an immovable property before 1 January 2011, in particular, if: (i) the contractual obligations on (re)construction of a property are not performed when due or (re)construction of a property has been completed by less than 40%, (ii) a permit for (re)construction of an object has not been obtained after the expiration of five years from the day of the contract, or (iii) another contract on (re)construction of a property located on a leased land plot has been terminated and the parties to the lease contract proceeded from such (re)construction contract when making the lease contract.

These provisions apply to lease contracts for land plots in state or municipal ownership and located in Moscow and St. Petersburg.

The amendments: 1) on the extension of the period for buying out and leasing land plots entered into force on 14 December 2011, 2) on unilateral early termination of a lease contract will enter into force on 1 April 2012, and 3) on share ownership – on 1 February 2012.

Electric Power

On 6 December 2011 the President signed Federal Law No. 394-FZ amending the Federal Law “On the Electric Power Industry.”

The Law aims to improve mechanisms for state regulation of prices of electric power (capacity) on the wholesale power (capacity) market. In particular, it specifies a procedure for calculating payments for electric power (capacity) by OJSC “Administrator of the Trading System of the Wholesale Electricity Market”. The Law also specifies a regime for tariff regulation, including within “non-pricing” zones for imports and exports of electric power (capacity).

In addition, the Law specifies a procedure for cooperation between JSC Federal Grid Company of the Unified Energy System (“JSC FGC EUS”), the manager of the unified national (all-Russia) power grid (“UNPG”) and companies owning or possessing facilities which are part of the UNPG. In particular, the Law assures JSC FSK EUS’s pre-emptive right to purchase such facilities if these companies decide to sell them, and defines a procedure for the exercise of such right.

The Law entered into force on 6 December 2011, save for certain provisions.

Energy

On 3 December 2011 the President signed Federal Law No. 382-FZ “On the State Information System of the Fuel and Energy Complex.”

The Law sets out a legal framework for the establishment and use of a state information system of the fuel and energy complex (“FEC”). Such system is to assure information exchange between state authorities and energy companies in order to develop an efficient state policy and a legal framework for regulating FEC. The operator of the information system of FEC is the Ministry of Energy.

The Law, in particular, lists information to be submitted for such purposes to include, information on the quality of energy resources, volumes of their production and transportation, tariffs and prices, environmental aspects of energy companies’ operation, etc. Breach of this rule entails liability. The procedure for the establishment and use of the information system of FEC, submission of this information to the system and access to such information is to be established by the Government.

The Law will enter into force on 1 January 2012.

Subsoil

On 30 November 2011 the President signed Federal Law No. 364-FZ amending the Law "On Subsoil" in relation to subsoil plots of local importance.

According to the Law "On Subsoil", the powers for the allocation of subsoil plots of local importance come under the joint jurisdiction of federal and regional authorities. However, criteria for allocating and the procedure for granting such plots have not been established. The amendments specify the definition of subsoil plots of local importance to include subsoil plots containing commonly occurring natural resources and those used for the construction and use of underground facilities of local importance not related to the production of natural resources. The amendments also authorize regional authorities to grant such plots for use but with the approval of the Federal Agency for Subsoil Use or its territorial departments.

The Law entered into force on 12 December 2011.

Court Practice on Leases

On 17 December 2011 a Plenary Session of the Supreme Commercial Court approved Resolution No. 73 "On Certain Aspects of the Application of the Russian Civil Code Provisions on Lease Contracts."

In particular, the Court clarified that a contract on the lease of state or municipal property may only be made based on a tender. This requirement does not interfere with the current lessee's pre-emptive right to make a new lease contract in circumstances provided for under the Civil Code. If the lessor infringed on this right of the lessee by conducting a tender and entering into a contract with the winner, the lessee may claim in court the transfer to it of the rights and obligations under such contract. If the lessee's claim is satisfied, the winner of the tender may demand payment of compensation for losses incurred in relation to its participation in the tender.

The Court further clarified that unless otherwise provided for under the law or a contract, the purchaser (lessee) shall terminate the obligation to pay rent from the moment of execution of the contract on the purchase of the leased property. However, in the event a land plot's purchase, the purchaser has to refund the seller's land tax payment expenses because the seller carries this obligation until the transfer of title to the land plot is registered.

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