

ClientInsight

21 – 27 November 2011

Russian Legislation Update

Anti-Corruption Practices

On 21 November 2011 the President signed Federal Law No. 329-FZ amending certain legislative acts of the Russian Federation due to the development of anti-corruption practices.

In particular, amendments are made to the Federal Law "On Combating Corruption", the Civil Code, the Administrative Offences Code, and the Federal Law "On Banks and Banking Activity".

Among others, the amendments introduce *loss of trust* as a reason for the dismissal of state and municipal officials. Loss of trust occurs if an official: (i) fails to take measures to prevent (settle) a conflict of interests that she/he is involved in; (ii) fails to submit information about her/his (or her/his spouse's and under-aged children's) income, property and obligations involving property; (iii) receives payment for membership in a company's governing body; (iv) is running a business, and (v) is a member of a governing or supervisory body, or a board of trustees, or other bodies of a foreign non-profit non-governmental organization, and its departments in Russia.

Also the amendments set forth that if state, regional or municipal authorities (and their officials) have acted or failed to act, thus causing damages, and the Russian Federation, one of its regions, or municipality has had to pay these damages, they are entitled to the right of regress to the offender.

The amendments entered into force on 3 December 2011.

Environment

On 21 November 2011 the President signed Federal Law No. 331-FZ amending the Federal Law "On Environmental Protection" and certain other legislative acts of the Russian Federation.

The Law primarily amends the Federal Law "On Environmental Protection" with the intent to increase effectiveness of the state ecological monitoring management in Russia. The Law proposes to establish a unified state ecological monitoring system to include all existing types of monitoring in the sphere of environmental protection (e.g., air, forest, land, subsoil, radiation conditions). Information support for the system will be achieved by introducing a unified state monitoring database.

The database will contain information on the condition of the environment and the results of state control and registration of facilities adversely affecting the environment. This information may be provided to legal entities for planning and implementing business activities.

The Law will enter into force on 1 January 2012.

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.

In This Issue...

- Anti-Corruption Practices
- Environment
- Insurance of Export Credits
- Banking
- National Payment System
- Securities
- Oil Export Duty

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Insurance of Export Credits

On 22 November 2011 the Government adopted Resolution No. 964 “On the Procedure of Insuring Export Credits and Investments Against Commercial and Political Risks.”

Recent amendments to the Federal Law “On the Bank for Development” (please see our legal update for 18 – 24 July 2011) envisaged the establishment of a specialized company for insuring export credits and investments (Export Insurance Agency of Russia, EXIAR). The Resolution sets forth the procedures for such insurance activities (including coinsurance and reinsurance).

According to the Resolution, insurance may be obtained by:

- 1) a Russian exporter;
- 2) a Russian investor investing abroad;
- 3) a foreign company with property interests relating to Russian export or investment;
- 4) a Russian lending organization or Vnesheconombank granting financial support relating to export or investment; and
- 5) a foreign lending organization granting financial support to a foreign company to enable its performance to a Russian exporter or investor.

Commercial risks covered by EXIAR include, for example, the insolvency of a Russian exporter’s foreign counterparty or its unsubstantiated refusal to make payments; political risks include, for example, the expropriation of a Russian investor’s property by a foreign state or a delay in payments due to a Russian exporter due to legislative measures taken abroad.

The insurance rates will be determined by EXIAR based on a number of criteria specified in the Resolution, in particular, the amount and term of an export credit or investment. The insurance sum (the limit of insurance liability) may not exceed 90% of an insured value under an export credit or investment if commercial risks are insured, and 95% – for political risks. The total limit of EXIAR’s insurance liabilities may not exceed at a time the larger of RUB 300 billion (about US\$ 10 billion) or a tenfold amount of its own funds.

The Resolution entered into force on 6 December 2011.

Banking

IFRS

On 24 November 2011 the Central Bank issued Letter No. 169-T approving the “Methodical Recommendations for the Preparation and Submission of Financial Reports by Lending Organizations.”

The Letter details the procedure lending organizations should follow when preparing and submitting 2011 financial reports in accordance with international financial reporting standards (IFRS). (Lending organizations have been required to prepare financial reports in line with IFRS since 1 January 2004.)

The Letter abolishes Central Bank Letter No. 183-T, dated 30 December 2010, and is to be published in the Central Bank Herald.

Provisions to cover potential losses in operations with offshore residents

On 21 November 2011 the Central Bank issued Letter No. 15-1-3-6/5075 regarding provisions to cover potential losses related to letters of credit opened in favor of residents of offshore zones.

The Letter was issued in response to the query of the Association of Russian Banks. It clarifies the need for double provisioning for letters of credit opened by Russian banks in favor of residents of offshore zones. The provisions are to be formed 1) in accordance with Directive No. 1584-U “On the Formation and Amount of Provisions to Cover Potential Losses in Operations of Lending Organizations with Residents of Offshore Zones” – to cover a country risk, and 2) in accordance with Regulation No. 254-P “On the Formation of Provisions by Lending Organizations to Cover Potential Losses in Loans, Loan Indebtedness and Other Similar Indebtedness” – to cover a credit risk.

The Letter was published at www.arb.ru on 30 November 2011.

National Payment System

On 21 November 2011 the Central Bank issued Letters Nos. 166-T and 167-T regarding the application of the Law on the National Payment System.

Letter 166-T clarifies that banks are entitled to transfer funds to a supplier or its authorized person (including a payment agent) upon the instructions of an individual; moreover, banks may effect such transfer irrespective of whether there is an agreement with such a supplier (authorized person).

Letter 167-T clarifies that the acceptance by banks of cash funds from payment agents and banking payment agents (sub-agents) is subject to the procedures established by Regulation No. 318-P “On the Procedure for the Performance of Cash Operations [...] by Lending Organizations in the Russian Federation.”

The Letters were published on 30 November 2011.

Securities

On 14 October 2011 the Federal Service for Financial Markets (“FSFM”) issued an Information Letter on certain issues in connection with examining the applications of issuers on their release from the obligation to disclose or deliver information.

According to Article 30.1 of Federal Law “On the Securities Market,” an issuer that is a joint-stock company may be released from the obligation to disclose or deliver information by a decision of the FSFM. In order to obtain such release, the issuer is to submit certain documents. Aiming to make a reasonable decision, the FSFM now recommends that the following information be additionally submitted:

- On the type of offering of each issue (additional issue) with respect to which the prospectus was registered and, in the event of a private offering, on the number of persons with which such securities may be placed;
- On the number of persons entitled to acquire shares in accordance with the privatization plan if the joint-stock company was created via privatization.

Also the FSFM has clarified that nominee holders (in particular, depositories and brokers) may be involved in drawing up a certificate on the number of shareholders of the issuer that has made the decision to apply to the FSFM.

Oil Export Duty

On 24 November 2011 the Government adopted Resolution No. 970 approving new rates of export customs duty on crude oil and crude-oil products exported beyond the borders of the Russian Federation to countries outside the Customs Union.

The Resolution increases the rate of customs duty payable on crude oil and crude-oil products extracted from bituminous formations (TN VED 2709 00) exported outside the countries that are members of the Customs Union (i.e., Russia, Belarus, Kazakhstan). The new rate is set at USD 406,6 per ton (the previous rate was USD 393 per ton).

The new rate applies as of 1 December 2011.