

Insight

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Russian Legislation Update

Civil Code Reform: Escrow Accounts

On 21 December 2013 the President signed Federal Law No. 379-FZ amending certain legislative acts of the Russian Federation.

The Law amends a number of Russian laws and, in particular, the Russian Civil Code (Chapter 45). It introduces new types of financial structures – the escrow account and the nominee account.

Escrow Account (Articles 860.7 – 860.10)

Under an escrow account agreement, a bank (the escrow agent) opens a special account at the request of a person (the depositor) to hold and block the funds of the depositor for a subsequent transfer of such funds to a third party (the beneficiary). The bank, the depositor and the beneficiary enter into an agreement where they provide for the grounds for the release of the funds to the beneficiary. An escrow account agreement is to provide for, among other things, (i) the amount of the escrow funds; (ii) the time period for the escrow agent to release the funds to the beneficiary upon the satisfaction of relevant terms (by default – ten days); and (iii) the term of the escrow account agreement or conditions for its termination. Unless otherwise provided for under the agreement between the depositor and the beneficiary, in the event the escrow account agreement is terminated, the funds left are to be (i) returned to the depositor or (ii) released to the beneficiary, if there grounds for such a release.

Unless otherwise provided for under the agreement, the law prohibits (i) use of escrow funds unless grounds for release have arisen and (ii) deposit of other funds in the escrow account aside from the escrow funds.

The introduction of the escrow instrument into Russian law will promote, in particular, simplification and improvement of payment mechanics in contracts of the sale and purchase of shares and sale (supply) of goods.



For more information, please contact:

Igor Ostapets

Partner

+ 7 495 787 3019

iostapets@whitecase.com

Irina Dmitrieva

Partner (Tax)

+ 7 495 787 3003

idmitrieva@whitecase.com

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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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White & Case LLC

Tel + 7 495 787 3000

Fax + 7 495 787 3001

whitecase.com

Nominee Account (Articles 860.1 – 860.6)

Under a nominee account agreement, a bank opens a nominee account at the request of a person (the owner of the account) to conduct financial operations where all the rights to the funds belong to a third party – the beneficiary. The owner of a nominee account is to use the funds in the interests of the beneficiary. The law or the nominee account agreement may limit the range of operations available for the owner of a nominee account. As a general rule, a nominee account agreement may only be modified or terminated with the beneficiary's consent. If the agreement is terminated, the funds left are transferred to another nominee account of the owner or paid to the beneficiary.

These provisions will enter into force on 1 July 2014.

We will issue Special Alert covering other novelties introduced by Federal Law No. 379-FZ in the following Russian laws: "On Banks and Banking Activities," "On the Securities Market," "On Mortgage-Backed Securities," "On Joint Stock Companies," "On Limited Liability Companies," "On Investment Funds," "On the State Registration of Rights to Immovable Property," "On Bankruptcy (Insolvency)," laws related to the notarial activity and certain other laws.

Judicial Reform: abolishment of the Supreme Commercial Court

On 5 February 2014 the President signed Law No. 2-FKZ amending the Russian Constitution with regard to the Supreme Court of the Russian Federation and the Prosecutor's Office of the Russian Federation.

According to the amendment, the jurisdictional powers of the Supreme Commercial Court of the Russian Federation (the "Commercial Court"), including with respect to the resolution of commercial disputes, are transferred to the Supreme Court of the Russian Federation (the "Supreme Court") and the Commercial Court is abolished. The system of lower commercial courts however continues to exist. The aim of the reform is to ensure a uniform approach to dispute resolution and to avoid disputes on jurisdictional matters.

Simultaneously, the President signed several laws implementing the reform and establishing the status of the newly formed Supreme Court, in particular: Federal Constitutional Law No. 3-FKZ "On the Supreme Court of the Russian Federation" (**the "Law on the Supreme Court"**), Federal Constitutional Law No. 4-FKZ amending the Law "On the Judicial System of the Russian Federation", and Federal Law No. 16-FZ "On the Procedure for the Judicial Selection for the Initial Bench of the Supreme Court of the Russian Federation Composed According to the Law of the Russian Federation "On Amending the Russian Constitution with regard to the Supreme Court of the Russian Federation and the Prosecutor's Office of the Russian Federation" (**the "Judicial Bench Law"**).

Time Frames of the Reform

The amendment to the Russian Constitution and the Judicial Bench Law entered into force on 6 February 2014. The Law on the Supreme Court and the amendments to the Law "On the Judicial System" will enter into force on 6 August 2014. This conforms to the transitional period of six months established under the Law on Amending the Russian Constitution. Accordingly, the joint Supreme Court is expected to start considering commercial disputes **from 6 August 2014**.

Functions of the Supreme Court in the System of Commercial Courts and Its Bench

The system of commercial courts of the first instance, as well as circuit commercial courts of the appellate and cassation instances will continue to exist. Supervisory functions, consideration of disputes at the court of the first instance, where so required by the law, and retrial due to new or newly discovered circumstances, conducted by the Supreme Commercial Court prior to the reform, are now transferred to the Supreme Court. According to the Law on the Supreme Court, the system and structure of the Supreme Court bodies and their powers will be kept as they were within the Supreme Court prior to the reform, except for several new special boards (in particular, on commercial disputes) established due to the expansion of its jurisdiction. Therefore, it is expected that the Court will articulate its clarifications in the forms of Plenum and Presidium resolutions and information letters. The Supreme Court will be permanently located in St. Petersburg with a representative office in Moscow. The Court's clarifications will be officially published in "The Supreme Court Bulletin."

The bench of the new Supreme Court will consist of 170 judges. The Judicial Bench Law establishes a procedure for the selection of applicants for positions of chair, deputies' chair and judges of the Supreme Court. The chair, his or her deputies and judges of the current Supreme Court and Supreme Commercial Court may apply for open positions on the new Supreme Court on a common basis. Acting judges of both Courts will continue to exercise their powers until the newly formed Supreme Court is launched.

Succession of the Clarifications of the Supreme Court and the Supreme Commercial Court

The future status of the Courts' clarifications is currently unclear. The laws enacted and the pending draft laws supporting the reform do not cover this issue. Presumably, a special regulatory act will be approved in this regard during the transitional period or the newly launched Supreme Court will issue relevant clarifications.

We are monitoring the judicial reform and will highlight the key events in our future updates.

Concession Agreements

On 28 December 2013 the President signed Federal Law No. 438-FZ, amending the Federal Laws “On Concession Agreements” and “On Auto Roads and Road-Related Activities.”

The Law establishes a procedure for the determination of the maximum amount of payment for driving vehicles on the toll roads built (renovated) under concession agreements. The maximum amount of such payment may not exceed the threshold established by the Government, the regional executive authority or the local authority, respectively.

Pursuant to the Law, the terms of a concession agreement concerning the maximum charge may not be changed except when Russian law introduces provisions adversely affecting the position of the concessionaire. In such instances, a decision of the aforementioned authorities is required in order to make the change. The Law also provides for possible adjustment of the maximum charge given that concession agreements are long-term contracts.

The Law entered into force on 10 January 2014.

Subsoil Use

On 1 November 2013, the Ministry of Natural Resources issued Order No. 477 approving the Classifier of Reserves and Resources of Oil and Combustible Gases (the “Classifier”).

The Order was registered with the Ministry of Justice on 31 December 2013.

The Classifier establishes uniform principles for the estimation and state records of reserves and resources of oil, combustible gases and gas condensate in Russia. It provides for a clearer gradation between reserves of categories A, B and C and resources of category D, with a slight revision of indexation of categories. The principal difference is that the new Classifier will also take into account the economic viability of the extraction of reserves based on the effective project decisions with respect to field development.

The Order will enter into force on 1 January 2016.

Court Practice

State Registration of Lease Agreements

On 25 December 2013 the Plenary Session of the Supreme Commercial Court (the “SCC Plenum”) approved Resolution No. 98 amending the November 2011 SCC Plenum Resolution No. 73 “On Certain Aspects of the Application of Russian Civil Code Provisions on Lease Agreements”.

According to the amendments to the Russian Civil Code introduced by Federal Laws No. 302-FZ dated 30 December 2012 and No. 21-FZ dated 4 March 2013, agreements on the lease of real estate entered into on 2 and 3 March 2013 are not subject to state registration (please refer to our Special Update for March 2013, available on [our website](#)).

The SCC Plenum has now clarified that as the courts consider disputes arising out of **unregistered agreements** on the lease of real estate for a period not less than one year entered into on 2 and 3 March, they are to be guided by the following.

If the owner transferred property for use and the other party (the lessee) accepted it without reservations, the parties agreed on the price and the terms of the use of the property and commence performance, the parties are to perform such agreement according to its terms (including payment of liquidated damages), and the provisions of the Civil Code on unjust enrichment shall not apply.

However, the lessee may not oppose its rights under such agreement to the rights of third parties. In particular, the lessee loses its preferential right to renew the lease agreement as established under Article 621 of the Civil Code. The transfer of title (right of economic management, operational administration, lifetime inheritable possession) to the leased property to another person may constitute grounds for a change to or termination of the lease agreement (despite the contrary general rule established by Article 617 of the Civil Code).

The Resolution is mandatory for lower commercial courts when considering similar cases.