

Insight

16 September – 17 November 2013

Russian Legislation Update

Civil Code Reform: Choice of Laws Rules

On 30 September 2013 the President signed Federal Law No. 260-FZ amending Part III of the Civil Code of the Russian Federation.

The Law is the sixth set of amendments to the Russian Civil Code within the civil law reform framework. The aim of the amendments is to remove the legislative uncertainties and legal gaps when it comes to regulating relations involving a foreign element regarding (i) the European experience of harmonizing private international law provisions; (ii) amendments made to other sections of the Russian Civil Code and (iii) prevalent court practice. The new provisions of the Civil Code are drafted with due regard for the provisions of the EC Regulations “Rome I” and “Rome II” governing contractual and non-contractual obligations. In this context, the amendments resolve the following matters: (i) they introduce rules on conflict of laws applicable to certain types of relations that were not regulated in Part III of the Civil Code; (ii) they specify the scope of the application of rules on conflict of laws; and (iii) they replace the criterion of a real connection between a contract and the specific country with the broader criterion of circumstances material to the parties’ relations and the circumstances of the case.

The Law entered into force on 1 November 2013. The provisions of the Civil Code, as amended by the Law, apply to relations that have occurred after 1 November 2013. Relations that occurred prior to this date will remain governed by the Civil Code provisions effective as of the moment of such relations’ occurrence.

Please refer to our Special Update for November 2013 discussing in detail the new choice of laws rules, at: www.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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Actuary Activities

On 2 November 2013 the President signed Federal Law No. 293-FZ "On Actuary Activities."

The aim of the Law is to unify legal regulation of and establish general requirements for actuarial activities in Russia. These include analysis and quantitative financial assessment of risks and/or financial obligations arising out of such risks as well as elaboration and assessment of the effectiveness of methods of managing financial risks. Actuarial activities are conducted by individuals participating in a self-regulating organization of actuaries.

The Central Bank maintains the register of so-called responsible actuaries and the register of self-regulating organizations of actuaries.

The activities of, in particular, non-state pension funds and insurance companies are subject to the mandatory actuarial appraisal. Actuarial activities are performed by virtue of the employment agreement between the employing entity and the employed actuary or by virtue of the contract on performance of actuarial activities.

The Central Bank regulates and controls activities of actuaries and self-regulating organizations of actuaries, and approves the federal standards of actuarial activities.

The Law will enter into force on 1 January 2015.

Anti-Money Laundering

Following the adoption of Federal Law No. 134-FZ of 28 June 2013 on combating illegal financial operations (the "Law") (please refer to our Special Alert of August 2013), the Bank of Russia issued a number of the related regulations.

On 23 August 2013 the Bank of Russia issued Directive No. 3041-U regarding notification by banks to the Federal Service for Financial Monitoring (Rosfinmonitoring) of their refusals to open bank accounts.

The Directive was registered with the Ministry of Justice on 6 November 2013.

The Directive sets forth the procedure for banks to notify Rosfinmonitoring about instances where they 1) refused to open a bank account; 2) refused to perform a client's instruction; or 3) terminated a bank account agreement on the grounds established by the Anti-Money Laundering Law. Banks must notify of these actions no later than the working day following the day on which it happened, subject to the requirements of the relevant electronic message set forth by the Directive.

Within one month after the Directive's entry into force, banks are obliged to notify Rosfinmonitoring of all such instances occurring between 30 June 2013 (the date when the Law entered into force) and 25 November 2013 (the Directive's entry into force).

The Directive entered into force on 25 November 2013.

On 2 September 2013 the Bank of Russia issued Regulation No. 407-P regarding the submission by banks of information about clients' operations at the request of Rosfinmonitoring.

The Regulation was registered with the Ministry of Justice on 14 November 2013.

The Regulation describes the procedure for banks to submit to Rosfinmonitoring, upon its request, the information about: 1) clients' operations; 2) beneficial owners of the clients; and 3) the movement of funds in the clients' accounts. Banks must provide the information in an electronic form no later than five working days upon receipt of the request, subject to the requirements of the relevant electronic message set forth by the Regulation. A bank may ask that this term to be prolonged (save for the requests regarding movement of funds in the client's accounts and the balance on the client's accounts as of a certain date).

Upon the expiry of 60 days after the Regulation's entry into force and before 31 March 2014, banks are entitled to provide the requested information in an electronic form as per the Regulation, or in a paper or electronic form as per Rosfinmonitoring Order No. 149 of 26 October 2005. After that date banks will be able to provide the information in a paper form only in certain cases as agreed upon with Rosfinmonitoring.

The Regulation will enter into force on 6 December 2013.

On 19 September 2013 the Bank of Russia issued Directive No. 3063-U regarding notification by banks to Rosfinmonitoring of freezing clients' funds.

The Directive was registered with the Ministry of Justice on 6 November 2013.

The Directive describes the procedure for banks to notify Rosfinmonitoring about 1) freezing (blocking) money and property of clients involved in terrorist activity and 2) the results of checks as to whether there are clients in relation to whom blocking measures were applied or should apply (the Law requires that such checks be conducted no less than once every three months). Banks are obliged to notify about blocking measures immediately on the same day when they are applied and, with respect to the results of checks, – no later than three working days upon completion of the check, in an electronic form, subject to the requirements of the relevant electronic message set forth by the Directive.

Banks are obliged to notify Rosfinmonitoring about the above measures applied or checks conducted between 30 June 2013 and 15 December 2013 (the Directive's entry into force), any time but no later than the term when: 1) the first check (after the Directive's entry into force) is to be conducted (in relation to notice of the measures previously applied), or 2) the results of such first check are to be notified (in relation to notice of the results of the previously conducted checks).

The Directive will enter into force on 15 December 2013.

On 13 November 2013 the Bank of Russia issued Letters No. 223-T and No. 224-T regarding checking the compliance of non-credit financial organizations with anti-money laundering laws.

According to the Letters, the territorial departments of the Central Bank are to conduct periodic checks of the compliance of non-credit financial organizations (e.g. insurance companies, professional participants in the securities market, management companies of investment and non-governmental pension funds) with anti-money laundering laws. The checks are to cover a wide scope of issues ranging from checking compliance with the requirement to appoint a special official responsible for the implementation of internal control rules and ending with checking the quality of internal control rules (as per the criteria described in Letter No. 223-T) and checking the practical implementation of the requirements of the Law.

The Letters were published in the Central Bank Herald on 20 November 2013.

Banking

On 22 July 2013 the Bank of Russia issued Directive No. 3029-U on amending its Instruction No. 135-I on the state registration of credit organizations.

The Directive was registered with the Ministry of Justice on 5 November 2013.

The Directive, among other things, allows banks to open additional offices in mobile constructions that are not immovable objects. It also extends the list of circumstances when the Central Bank does not check the source of the origin of funds paid for bank's shares, these now include the circumstances when a bank's charter capital is increased at the expense of its assets and when a notification (rather than a report) of the results of the issue is prepared in connection with the increase of the bank's charter capital.

The Directive entered into force on 24 November 2013.

On 4 September 2013 the Bank of Russia issued Directive No. 3054-U "On the Procedure for Preparation by Credit Organizations of Annual Financial Statements".

The Directive was registered with the Ministry of Justice on 1 November 2013.

The Directive establishes the procedure for the preparation of annual financial statements based on the forms set forth by Central Bank Regulation No. 385-P.

The Directive will enter into force on 1 January 2014 and will apply starting from preparation of annual statements for 2013.

On 8 November 2013 the Board of Directors of the Bank of Russia approved the Guidelines for Unified State Monetary Policy for 2014–2016.

The Guidelines set forth an overview of economic development in Russia in 2013 and plans for 2014 – 2016. The principal goals include the reduction of rates of growth of consumer prices (to 4% in 2016) and maintenance of financial stability. The Central Bank will continue refining its instruments for refinancing credit organizations and apply measures for developing the infrastructure of the financial markets.

The Guidelines were published in the Central Bank Herald on 26 November 2013.

Securities

On 18 June 2013 the Federal Service for Financial Markets ("FSFM") issued Order No. 13-51/pz-n approving certain Regulations under 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 30 August 2013.

According to the Law, companies that are insiders under the Law are to notify individuals on their inclusion in (exclusion from) the list of insiders and deliver the list of insiders to organizers of trades. It also requires that individual insiders included in the list of insiders of an issuer, management company, market participant, organizer of trades, depository, credit organization and other companies are to notify these companies of their transactions with securities, commodities and financial instruments, etc. The Order develops new procedure in this respect and sets forth the procedure and terms for providing notifications by insiders of transactions they have made.

The term for providing notification on inclusion in (exclusion from) the list of insiders of a person is seven business days from the date of inclusion in (exclusion from) the list. The Order also specifies in detail the content and form of such notification.

The Order entered into force on 4 October 2013 and replaced the FSFM Order No. 11-3/pz-n, dated 21 January 2011 on the same.

On 30 July 2013 FSFM issued Order No. 13-62/pz-n “On the Procedure for Admission of Securities to the Organized Trades” (the “Procedure”).

The Order was registered with the Ministry of Justice on 30 August 2013.

FSFM has adopted a separate legal act regulating the procedure for the admission of securities to organized trades. Currently this procedure is regulated by Chapter IV of the Regulation on Activities for Organizing Trades on the Securities Market, approved by the December 2010 FSFM Order No. 10-78/pz-n, which will cease to be in force on 30 September 2014.

The Order aims to enhance the Procedure for admission of securities to organized trades and sets out (i) rules for inclusion of securities to (and exclusion from) a list of securities admitted to trades; (ii) obligations of the organizer of trades on the disclosure of information and control; (iii) more detailed rules for inclusion of shares and bonds of Russian issuers, Russian depositary receipts, investment units and mortgage participation certificates as well as shares, bonds and depositary receipts of foreign issuers, to quotations lists and their exclusion from such lists.

The Procedure simplifies the structure of the list of securities admitted to trades, establishing three sections instead of six and entitling the organizers of trades to set up additional measures for the listing.

Before 30 September 2014, the organizers of trades are to bring their rules for admission of securities to organized trades into compliance with the Procedure and are to set up a list of securities admitted to trades as of the date of the redrafted rules.

The Order entered into force on 30 September 2013.

Environment

On 30 September 2013 the President issued Decree No. 752 “On Reduction of Greenhouse Gases Emission.”

Russia decided not to undertake new quantitative commitments on reduction of greenhouse gases (“GHG”) emission under the Kyoto Protocol but instead chose to set a national target for limiting the level of GHG emission in the country. Accordingly, for the purpose of implementation of its national Climate Doctrine (approved by Presidential Decree No. 861-rp on 17 December 2009), the President issued the Order establishing a national goal to keep the level of GHG emission to 75 percent at most of the level of such emission in 1990 (the base year for the Kyoto Protocol) by 2020. The specific national action plan and targets for emission reduction by industry is to be adopted by the Government within next six months.

The Order entered into force on 1 October 2013.