



Commercial Concession (Franchise)

Federal Law on Amendment of Part Two of the **Civil Code** of the Russian Federation, dated July 18, 2011, No. 216-FZ, introduces changes in the Civil Code provisions on commercial concession (franchise), namely Article 1033 concerning limitation of rights of the parties to a franchise agreement, Article 1035 concerning the franchisee's primary right to renew the agreement for another term, and Article 1037 concerning termination of the agreement.

In particular, accordingly to the new rules, the agreement may set forth: the franchisee's obligation to sell products (perform work/services) at prices indicated by the franchisor and/or in a certain territory only; the franchisee's obligation not to sell similar products (not to perform similar work/services) with the use of trademarks and trade names of other right holders.

In general, the changes are aimed at giving the parties broader possibilities for contractual regulation of limitation of rights. In particular, expressly permitted are certain limitations which previously could make the agreement void. Removed are stringent rules regarding renewal of the agreement on the same terms and conditions. Provisions on early termination of a fixed-term franchise agreement and a termless franchise agreement, including due to its breach by the franchisee, can be more flexible. The events of a breach are expressly set forth and include a breach by the franchisee of the provisions regarding the quality of products (work/services), a failure to pay the franchisor its fee within the set term, a failure to follow the franchisor's instructions regarding the use of the complex of exclusive rights. For the franchisor to exercise its right to terminate the agreement unilaterally, a set procedure for remedying the breach should be followed. The agreement may provide for the possibility of its early termination by payment of smart money – in this case the term for giving a notice of termination is reduced from the general one of 6 months to 30 days.

The Law will come into force 90 days after its official promulgation.

Legal Entities. Charter Capital

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation to the Extent of Revision of the **Remedies for Creditors' Rights Protection in the Event of Decrease of the Charter Capital**, Change of Requirements to Companies Whose Charter Capital is Inconsistent with the Net Assets Value, dated July 18, 2011, No. 228-FZ.

Now, a limited liability company (LLC), same as a joint stock company (JSC), is obligated to inform about a decrease of its charter capital by a notification to the registering authority and a publication. The Law sets a term and a procedure for making such notification and publication. LLC's creditors are entitled to claim early performance of obligations and, if this is not possible, claim termination of the obligations and compensation of losses. The Law also sets a special (reduced) limitation period for such claims and specifies events in which a court may dismiss such claims.

Requirements in the event of a reduction of LLC's net assets entailing a decrease of the charter capital or liquidation of the company have become less strict: the company must make a corresponding decision upon expiration of its fiscal year if the value of its net assets remains less than its charter capital *after the end of the fiscal year following the second* fiscal year (previously – after the end of the second fiscal year) or each other fiscal year after the end of which the value of the net assets happened to be less than the charter capital (previously – after the end of each other fiscal year).

The Law introduces new provisions concerning LLC's annual report and its contents, and prescribes the manner of determination of the company's net assets. Both JSC and LLC have the same obligation to grant any interested person access to the information about the value of the company's net assets. The value of JSC's net assets will no longer be quarterly recorded in the Consolidated State Register of Legal Entities.

Starting January 1, 2013, the Consolidated Federal Register of Information on the Activity of Legal Entities will begin functioning. It will include information published in accordance with the laws on state registration of organizations and some other data. The information from the register will be placed in Internet and, with some exceptions, will be open to general use.

The Law will come into force on January 1, 2012, except for some provisions for which other effective dates are set.

Construction

Federal Laws on Amendment of the RF **Town-Planning Code** and Certain Legislative Acts of the Russian Federation, dated July 18, 2011, No. 215-FZ and No. 243-FZ, and Federal Law on Amendment of Articles 51 and 56 of the RF Town-Planning Code and Certain Legislative Acts of the Russian Federation, dated July 18, 2011, No. 224-FZ.

The Laws define the terms "reconstruction of capital construction projects", "capital repairs" and "capital repairs of linear projects". Obtainment of a permit for capital repairs is no longer required. State expert examination is no longer required for design documentation prepared for capital repairs of capital construction projects, except for design documentation prepared for capital repairs of public motor roads.

The Laws determine authorities that are competent to issue and revoke construction permits. Such competent authorities must be notified in writing about any transfer of rights to use land plots, use subsoil and about formation of a land plot.

The changes came into force on July 18, 2011 except for some provisions for which other effective dates are set.

Taxation

1. Federal Law on Amendment of Certain Legislative Acts of the Russian Federation in Connection with Improvement of the Principles of Price Determination for Taxation Purposes, dated July 18, 2011, No. 227-FZ, introduces changes in the RF Tax Code with respect to **control over transfer prices**.

The Law stipulates 11 grounds for recognizing persons as interdependent, however courts retain the right to recognize persons as interdependent on other grounds, not expressly

set forth in the law. The Law contains new provisions on taxation of transactions between interdependent persons and fixes methods which tax authorities use for determination of taxable income in such transactions: method of compatible market prices; method of further sale price; cost-based method; method of compatible profitability; method of profit distribution. The main method is the method of compatible market prices.

The Law determines the signs of controllable transactions and transactions that are not recognized as controllable which include transactions between interdependent persons registered in Russia if the total income from transactions made in a calendar year exceeds 1 billion rubles. Controllable transactions include those made with respect to oil, precious metals, ferrous and non-ferrous metals, fertilizers. The Law sets a procedure for determination of a threshold for recognition of transactions as controllable.

The Law also determines specifics of recognition of prices as market prices; sets forth rules for comparison of transactions between interdependent persons and their results with transactions between persons that are not interdependent; specifies the sources of information for determining whether transaction prices correspond to market prices.

A taxpayer is obligated to notify tax authorities about its controllable transactions and, on request of the tax authority, to provide documents and information confirming that the transaction price corresponds to market prices. A tax payer bears liability for, *inter alia*, a failure to pay the tax because of the use of a price not corresponding to market prices, a failure to notify tax authorities about controllable transactions, or a notification containing false information.

The Law will come into force on January 1, 2012. Fines upon adjustments will not be collected with respect to the periods before 2014, a 20% fine will be collected in 2014-2016 and a 40% will be collected starting from 2017.

2. Federal Law on Amendment of Parts One and Two of the RF **Tax Code** and Certain Legislative Acts of the Russian Federation on Taxes and Duties, dated July 19, 2011. No. 245-FZ, corrects and supplements provisions on the **VAT**.

Among other things, the Law broadens the list of operations exempt from taxation, in particular, services such as insurance, co-insurance and reinsurance of export credits and investments against entrepreneurial and (or) political risks; makes more specific the list of products (work/services) to which 0% rate is applied; changes the list of documents to be submitted to tax authorities for confirmation of the application of 0% rate and tax deductions.

The Law will come into force on August 19, 2011 and no earlier than the 1st day of the next taxation period of the corresponding tax.

Personal Data

Federal Law on Amendment of the Personal Data Law, dated July 25, 2011, No. 261-FZ, introduces **significant corrections** in the existing regulation of personal data.

In particular, the Law defines more exactly the terms “personal data”, “operator”, “processing of personal data”. Processing of personal data is allowed in two cases: with consent of the personal data subject and if personal data processing is necessary for the achievement of purposes stipulated by an international treaty of Russia or by the law, for the achievement and

performance functions, powers and obligations imposed on operators by Russian laws and regulations.

Special attention is paid to the operator's obligations in the processing of personal data, cross-border transmission of personal data and the personal data subject's right to have access to his/her personal data. The operator is obligated to make more specific, block and destroy personal data, and to remedy any violations of law committed during their processing. The operator is also obligated to interact with personal data subjects, inform them that the operator has their personal data and make it possible for each of them to read his/her personal data.

The Law came into force on July 25, 2011.

Employment Issues

In July 2011, a number of federal laws introduced changes to correct the provisions of the Labor Code on the organization of labor protection. In particular, Federal Law on Amendment of the RF Labor Code, dated July 18, 2011, No. 283-FZ, introduces new terms "professional risk" and "management of professional risks". The procedure for evaluation of the level of a professional risk and a model list of annual measures for improvement of conditions and protection of labor, and lowering the levels of professional risks are to be established by a competent federal body of executive power.

Execution process

Federal Law on Amendment of the Execution Process Law and Article 8 of the Court Bailiffs Law, dated July 11, 2011, No. 196-FZ, entrusts the court bailiffs service with formation and keeping of a **data bank** containing information necessary for enforcement of judicial acts, acts of other authorities and officials.

The data bank is to contain the following information: date of issuance of a judicial act, the act of other authority or official; number of the writ of execution; date of initiation of the execution process; number of the execution process; name of the debtor; requirement of the writ of execution; name and address of the division of court bailiffs in which the execution process is initiated (conducted); information about a search for the debtor and the debtor's property. The above data are open to public until the day of completion or termination of the execution process.

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