

Unit Investment Funds

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation, dated July 28, 2012, No. 145-FZ, introduces the institution of stock exchange unit investment funds.

The Law stipulates that the owner of a share in the stock exchange unit investment fund has not only the right to claim that the managing company redeem the share with payment of a compensation or single out the share in the mutual ownership of the fund's property, but also has the right to claim on any business day purchase of an investment share at a price commensurate to the value of his share in the mutual ownership of the fund's property and the right to sell it at a stock exchange indicated in the rules on the trust management of the unit investment fund on the conditions set forth in the said rules.

The Law changes the term for reporting on the completion of formation of a unit investment fund to the Federal Service for Financial Markets. The term has changed from 3 business days following issuance of investment shares to 5 business days.

The Law also specifies the legal regime of fractional investment shares, including the rules of their circulation.

Non-Commercial Organizations

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation to the Extent of Regulation of the Activity of Non-Commercial Organizations Performing the Functions of a Foreign Agent, dated July 20, 2012, No. 121-FZ.

The Law fixates the notion and the basic functions of a non-commercial organization performing the function of a foreign agent. In particular, it is a legal entity receiving money and other property from foreign sources and participating in political activity in the territory of Russia. The definition does not extend to religious organizations, state corporations and municipal institutions. The Law specifies separately that political activity does not include activity in the field of culture, art, public health, prophylaxis and protection of people's health, social support and protection of people, protection of maternity and childhood, social support to invalids, propagation of a healthy lifestyle, physical culture and sport, protection of vegetable and animal world, philanthropic activity and activity in the field of assistance to charity and volunteering.

A non-commercial organization performing the functions of a foreign agent must submit documents on its activity and personal composition of its governing bodies to a competent authority every 6 months; documents on the purposes of money expenditure and use of other property, including those received from foreign sources, every 3 months; auditor's reports – annually. The Law regulates the procedure for notification of competent authorities and submission of information for entering such legal entity in a register.

Violation of the laws regulating the activity of non-commercial organizations performing the functions of a foreign agent entail criminal liability.

The Law will come into force 120 days after its official promulgation.

Currency Laws. Administrative Liability

Federal Law on Amendment of Article 15.25 of the RF Code of Administrative Offences, dated July 28, 2012, No. 140-FZ.

The Law sets forth a new version of the Code of Administrative Offences provisions concerning violation of Russian currency laws and the acts of currency regulation authorities stipulating liability for untimely and improperly documented notification about the opening (closing) of bank accounts or about a change of the details of accounts opened in banks located outside Russia.

The Law establishes a new type of liability for a failure to notify tax authorities about the opening (closing) of a bank account or about a change of the details of accounts opened in banks located outside Russia. Such violation is punished by an administrative fine imposed on individuals in the amount of 4,000 rubles to 5,000 rubles, on officials in the amount of 40,000 rubles to 50,000 rubles, on legal entities in the amount of 80,000 rubles to 1,000,000 rubles.

The Law will come into force 90 days after its official promulgation which is yet to take place.

Expulsion of a Participant from LLC – Court Practice

Informative Letter of the Presidium of the Supreme Arbitration Court No. 151 of May 24, 2012, entitled Overview of Consideration by Arbitration Courts of Disputes Connected with Expulsion of a Participant from a Limited Liability Company. Giving as an example specific court decisions, the SAC explains under what conditions expulsion of a participant from LLC is proper, in particular:

- Where the participant commits a gross violation of the duty not to cause any damage to the company, inter alia, not to perform any action (omission) that makes the company's activity impossible or significantly hampers it;
- Where the participant, being the sole executive body of the company, commits actions knowingly contrary to the interests of the company, provided that such actions caused the company considerable damage and/or made the company's activity impossible or significantly hampered it;

- Where the participant's voting at the general meeting knowingly entailed considerable negative consequences for the company.

The court may dismiss the claim for expulsion if it has been established that there is no causative link between the participant's absenteeism in the general meetings and the unfavorable consequences for the company such as impossibility to pass a resolution of vital economic importance for the company.

Consumer Rights Protection – Court Practice

1. Resolution of the Plenum of the RF Supreme Court on Consideration by the Courts of Civil Cases on Protection of Consumer Rights, dated June 28, 2012, No. 17, adopted for ensuring uniformity of application of law by courts.

The Resolution outlines the segment of relationships regulated by the laws on consumer rights protection (the "Law"). In particular, the relationships connected with the actions of a notary public and professional legal assistance of attorneys are beyond the regulation of the Law. As a separate matter, the Resolution states that the Law does not regulate the relationships of citizens and homeowners' communities, house-buildings cooperatives, housing accumulative cooperatives, gardening and suburban non-commercial associations of citizens, if such relationships arise in connection with the membership of citizens in such organizations. However, the Law extends to relationships connected with provision by such organizations of paid services (work) to citizens, including the members of such organizations, as well as to relationships connected with provision of medical services by medical organizations under voluntary and obligatory medical insurance policies.

The Resolution explains that in the determination of losses caused to a consumer the court, being guided by Article 393(3) of the Civil Code, should take into consideration the prices existing at the place where the consumer's demand should have been satisfied as of the date of the court's judgment, unless the Law or the contract provides otherwise.

In the determination of a reasonable time term under Article 12(1) of the Law during which the consumer is entitled to refuse to perform the contract and claim return of the sum paid for the product and compensation of other losses it is necessary to take into consideration the shelf life of the product, the season in which it is used, consumer qualities, etc.

When deciding on the matter of compensation of moral harm, the established fact of violation of consumer rights is sufficient for satisfaction of the claim. The amount of compensation for moral harm is determined by the court independent of the amount of compensation of property damage, therefore the amount of money to be recovered as a compensation of moral harm may not depend on the value of the product (work, service) or the amount of penalty subject to recovery. The amount of compensation for moral harm in each specific case should be determined by the court with regard for moral and physical sufferings caused to the consumer on the basis of the principle of reasonableness and fairness.

2. The Letter of Rospotrebnadzor, dated July 23, 2012, No. 01/8179-12-32, on the Resolution of the Plenum of the RF Supreme Court on Consideration by Court of Civil Cases in Disputes Over Consumer Rights Protection, dated June 28, 2012, No. 17, sets forth and supplements the most important explanations of the Law given by the Supreme Court.

The Letter notes that the subject of the relationships regulated by the Law are quite certain objects of civil rights. Since the product is a thing, in the consumer relationships it is subject to application of the general provisions of the Civil Code on movable and immovable things, on indivisible and complex things, on the main thing and appurtenance, on the manner of calculation of warranty time terms for completing parts and components of the main product.

The Letter touches upon the matter of correlation of different law rules concerning consumer rights, in particular the law rules regulating bank credit and insurance. For example, the need to check all factors associated with a loan agreement and a personal insurance contract in favor of a person not being the insured person, if the loan agreement is encumbered by insurance (in the context of compliance by the bank with Article 16 of the Law).

The Letter specifically notes the discrepancy between the approaches of the Supreme Court Plenum and Rospotrebnadzor to the matter of propriety of transfer by the banks of individual's loan debts to collecting agencies. In the opinion of the Supreme Court, it is permissible with the borrower's consent, if such condition is set forth in the loan agreement at the time of its signing. Rospotrebnadzor believes that it is not proper to include into the loan agreement with an individual the provision on the bank's right to transfer the right of claim to persons having no license to carry out bank activity.

If administrative proceedings are instituted against a credit organization that included such provision in the loan agreement, it is necessary to find out the real will of the borrower by inviting it as an aggrieved party. It is the bank that guarantees the secret of a bank account and a bank deposit, operations with the account and the details of the client. In the opinion of Rospotrebnadzor, any "understanding" leading to the violation of the said provision is in principle void.

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This newsletter is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru



Znamenka 13, bldg. 3, 3rd floor, Moscow, 119019, Russia.
Tel.: +7 (495) 933-75-67, 691-98-13, 697-48-31, 697-63-94.
Mobile: +7 (495) 999-63-85. Fax: +7 (495) 697-92-26.
E-mails: darian@agp.ru, office@agp.ru.
Internet: <http://www.agp.ru>.