

Changes in the Civil Code

The Federal Law on Amendment of Subsections 4 and 5 of Section I of Part One and Article 1153 of Part Three of the RF Civil Code (the “CC”).

As part of the civil law reform, the CC is amended with respect to the issues concerning the making of transactions, invalidity of transactions, representation in

civil-law relationships, and limitation periods. All those matters are discussed in more detail in our special Informative Memorandum of June 3, 2012.

Joint stock companies

Federal Law on Amendment of Article 41 of the Federal Law on Joint Stock Companies, dated April 5, 2013, No. 47-FZ (the “JSC Law”).

Changes are made in the article concerning the procedure for the exercise of the preemptive right to acquire shares and securities convertible into shares.

The general rule on the 45-day validity of the preemptive right does not cover any longer joint stock companies acting as credit organizations in which the Russian Federation owns 50% and more of common shares. Where the price of placement (or the manner of its determination) is established by the resolution on placement, and

additional shares or securities convertible into shares are placed by an open subscription and are paid for with money, there is introduced a shortened minimum period of the preemptive right validity – at least 8 business days from the moment of disclosure of the information contained in the notice of exercise of the preemptive right.

The changes came into force on April 18, 2013.

Government purchases

Federal Law on the Contractual System in the Sphere of Purchases of Goods, Work, Services for Governmental and Municipal Needs, dated April 5, 2013, No. 44-FZ (the “Law”).

The purpose of the Law is to create an organizational foundation of a contractual

system in Russia, enhance transparency and prevent abuses in the system of planning

government purchases, placement of government orders and performance of government contracts. Once the Law came into force, it replaced effective Federal Law of July 21, 2005, No. 94-FZ.

The new Law establishes requirements to the preparation and justification of purchase plans, plans-schedules of purchases for a fiscal year, standardization of the volumes of goods, work, services, etc. Described are the methods for determination of the starting minimum price of government purchases. The Law prescribes measures for fighting underbidding: if a bidder cuts down the starting price for more than 25%, a contract is signed with such bidder exclusively on the condition that it provides security of the contract performance which exceeds by more than 1.5 times the amount of security set in the tender documentation. In some cases it is possible to submit a proof of the contractor's good faith instead of a more valuable security.

The means of government purchases organization – auctions, tenders, quotation requests, purchases from the sole supplier – are supplemented with other means, such as requests for offers and holding of joint tenders/auctions. If an auction is held on an electronic site, the latter must return both the security received from the bidders and any income from the security. The Law allows making of centralized purchases through newly set up or existing authorized governmental bodies or state-owned institutions. The Law fixates the right to sign contracts simultaneously both for supply of products and for their further operation and servicing. There is established a special procedure for signing government contracts for supply of high-tech and innovative products (work, services). As an exclusion from the national regime principle with respect to the purchases of foreign-made products (work, services), the Russian Government may ban or limit availability of such products (work, services) or set

conditions for availability of such products (work, services).

The express rule on admissibility of unilateral termination of government contract (if it sets forth the corresponding right) is a novel. Thus various approaches to the issue of a mere possibility of unilateral termination in the system of government contracts have come to the end. In the event of unilateral termination the counterpart is only entitled to the compensation of “the actually sustained damage directly caused by the circumstances which serve as the ground for making the decision to terminate the contract unilaterally”. The new Law describes in detail the specifics of amendment and termination of government contracts.

Unlike the effective Federal Law No. 94-FZ, the Law provides for monitoring and audit in the sphere of government purchases. After monitoring or audit, this or that purchase may be found unjustified, which entails an order to remedy the violation and hold the violator administratively liable. The Law introduces the institution of public control – formation of a public council for control over government purchases, and fixates other requirements. For example, government purchases for an amount exceeding 1 billion rubles are subject to a public discussion.

To ensure transparency of government purchases, a single information system is created for recording data about all signed government contracts, bad-faith suppliers, purchase plans, results of purchases monitoring, register of bank guarantees securing applications for participation in tenders and performance of contracts, etc.

Also introduced is the institution of contract services set up by customers with the annual volume of purchases exceeding 100 million rubles and of contract managers – for other customers. Contract services/managers are responsible for preparation of documents on

government contracts and an exchange with the single information system.

The majority of the Law provisions will come into force on January 1, 2014, except for certain provisions that will come into force later.

Court procedures

Federal Law on Amendment of the RF Code of Civil Procedure and Article 143 of the RF Code of Arbitration Procedure, dated April 22, 2013, No. 61-FZ (the “CCP” and the “CAP” respectively).

According to the changes in the CC, the reorganization of a legal entity which is a party in the case or a third person with independent claims no longer serves as the ground for an *obligatory* suspension of the proceedings by the court. Now, the court *may* suspend the proceedings until it determines the legal entity’s successor.

According to the changes in the CAP, a court must suspend the proceedings in the event of death of the party-individual or the third party-individual with independent claims. Thus the changes unify the rule on suspension of court proceedings in cases considered by common and arbitration courts.

Labor law. Remote employees

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation, dated April 5, 2013, No. 60-FZ.

The Labor Code (the “LC”) is supplemented with Article 49.1 “Specifics of Regulation of Remote Employees Work”.

Remote work is performance by an employee of the work functions stipulated by the employment contract outside the place of location of the employer or the facility being directly or indirectly under the employer’s control, provided the employee interacts with the employer through a public information-telecommunication system. The remote nature of the work must be expressly indicated in the employment contract.

The employment contract with a remote employee may be entered into by an exchange of electronic documents. However,

a hard copy of the duly formalized employment contract must be sent by registered mail receipt acknowledged. The employer communicates to the employee the employer’s internal local documents electronically. If it is the first employment contract for the remote employee, the parties may agree that a work book will not be issued. In that case the employment contract is the document confirming labor activity and employment history.

An employment contract indicates, inter alia, the manner of and time terms for the provision of requisite equipment and means of work or the manner of compensation for the use by the remote employee of his own equipment and means, the obligation to use the means of information protection, mode

of operation, procedure for granting holidays.

Personal data

Federal Law on Amendment of Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law on Ratification of the Convention of the Council of Europe on Protection of Individuals in the Automated Processing of Personal Data and the Federal Law on Personal Data, dated May 7, 2013, No. 99-FZ (the “Law” and the “Council of Europe Convention” respectively).

For effective execution of the Personal Data Law and the Council of Europe Convention, corresponding changes are made in the LC, CCP, Communication Law, Law on Civil Status Acts, Law on Non-Governmental Pension Funds, Law on the RF Prosecutor’s Office, etc. The changes are aimed at

protecting the subjects of personal data in the processing of their personal data by different bodies, organizations, individuals and legal entities, and compliance with the Personal Data Law.

On April 19, 2013, the Ministry of Justice registered Order of the Federal Service for Supervision in the Sphere of Communication, Information Technologies and Mass Communications, entitled “On Approval of the List of Foreign States Not Being the Parties to the Convention of the Council of Europe on Protection of Individuals in the Automated Processing of Personal Data but Ensuring Adequate Protection of the Personal Data Subjects, dated March 15, 2013, No. 274 (the “List”).

The List was approved for the purpose of compliance with the law in the cross-border transmission of personal data. We remind that before a cross-border transmission the personal data operator must make sure that the corresponding foreign state ensures an adequate protection of the rights of personal data subjects. Otherwise, the personal data operator must additionally request for a

written consent to such transmission from the personal data subject. Before the approval of the List, there arose the question whether the subject’s general consent to the processing of his/her personal data was sufficient or it is necessary to obtain a special consent in writing for a cross-border transmission of his/her personal data.

Lawmaking. Public-law companies

On April 4, 2013, the RF Government submitted to the State Duma a **draft** Federal Law on Public-Law Companies in the Russian Federation and on Amendment of Certain Legislative Acts of the Russian Federation, No. 252441-6 (the “Draft Law”).

For enhancing the transparency of the activity of state-owned companies, it is proposed to introduce a new legal form for

companies – a public-law company (the “Company”).

According to the Draft Law, a public-law company is a non-commercial unitary organization with public-law functions and powers which carries out its activity in the interests of the state and society. The objectives of the Company are:

- pursuance of the state policy;
- rendering of state services and management of the state property;
- procurement of modernization and innovative development of economy;
- carrying out of management and controlling functions in certain spheres of economy;
- implementation of especially important state programs and projects;
- exercise of other public-law powers.

The Company is liable for its obligations by all its property except property which may not be subject to the levy of execution in accordance with the federal law. The Russian Federation is not liable for the obligations of the Company, and the Company is not liable for the obligations of the Russian Federation. The Company's property being in its ownership is composed of the property contribution of the Russian Federation, property transferred as a matter of succession, voluntary property contributions, income from the Company's

own activity, other income, and is used for the attainment of the objectives of its activity.

The Company may be set up on the basis of: the federal law, RF Government resolution, upon a reorganization of a state company (corporation) or a joint stock company in which the sole shareholder is the Russian Federation.

The Company has the following management bodies: the supervisory board, management board and the general director.

The Company carries out its activity in accordance with the strategy of activity – a planning document setting the guidelines of the Company's activity for at least three years. Besides, the Company is empowered to invest temporarily free money into the investment objects permitted by the Government. The procedure for making certain types of transactions (including major transactions and interested-party transactions) is determined by the charter of the Company or the decision on its setting up.

Court practice. Foreign entities

The Presidium of the RF SAC has prepared a ***draft*** Informative Letter entitled “The Overview of Court Practice on Certain Issues Connected with Consideration of Cases Involving Foreign Entities” (the “Draft”).

The Draft gives explanations on certain issues concerning the competence of arbitration courts, peculiarities of determination of applicable law, establishment of the contents of foreign law rules, establishment of the status of foreign entities and specifics of application of interim measures in cases involving foreign entities.

The Presidium is of the opinion that an arbitration court is competent to consider disputes between two foreign legal entities, if their agreement on the choice of competent court does not affect the exclusive competence of foreign courts of the plaintiff or the defendant. If the prorogation agreement does not indicate a specific Russian court, then the general

imperative rules of the Code of Arbitration Procedure on jurisdiction have effect. The Presidium notes that a dispute resolution agreement in which only one party is granted the right to choose arbitration court or competent common court does not deprive the other party of the right to make a similar choice, which follows from the general principles of civil rights protection.

It is suggested to use the following approach: if the parties in the justification of their respective case in court rely on the same applicable law, this should be regarded as the parties' agreement on the choice of applicable substantive law. In the establishment of the contents of foreign law rules, when a party obligated to provide information on the contents of such rules fails to do so, such party forfeits the right to claim that the arbitration court did not establish the contents of foreign law rules (if the court took sufficient measures to do so). The arbitration court may regard the foreign law rules as established if the party submitted a corresponding legal opinion and the other party did not refute it.

In the establishment of the legal status and procedural legal personality of the foreign entity, the arbitration court applies the "rules on its personal law". The proofs confirming the permanent location of the

foreign entity for the purposes of taxation are not proper for the purpose of determination of its personal law. The Presidium also notes that the legalization notation or the apostille confirming the authenticity of the documents and the legal entity's status should be affixed on the original documents. Powers of attorney issued by the foreign entity and made in a simple written form in the territory of a foreign state do not require obligatory legalization by a consulate or apostille.

With respect to interim measures, the Presidium explains that the court's jurisdiction to apply interim measures may differ from the jurisdiction over the main agreement. Interim measures may be used by a court of effective jurisdiction within which interim measures will be effectively enforced (i.e., at the place of location of the plaintiff, money or property or at the place of violation of the plaintiff's rights). Application by the foreign court of interim measures such as, e.g., prohibition to participate in the consideration of the dispute by a competent Russian court (i.e., in another jurisdiction), does not prevent consideration of the dispute by the latter by virtue of the principle of sovereign equality of the states and does not entail legal consequences in Russia.

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