

## FAS RULES EASED FOR SMALL BUSINESSES

The State Duma adopted in the second reading the draft law which shall decrease the administrative burden from the FAS requirements on small businesses by seeking to liberate small businesses from some antitrust restrictions.

For example, the position of any legal entity established by one or more individuals will not be considered to be dominant if the annual revenues of such legal entity do not exceed RUB 400 mln. This threshold will not be applied to the cases when such legal entity is affiliated with a group of other legal entities as well as to financial institutions, natural monopolies and in some other cases.

Similar conditions will apply to individual entrepreneurs. Moreover, some agreements prohibited by the anti-trust legislation (i.e. agreements on hindering access of business subjects to the market, agreements on unsubstantiated pricing of the same products etc.) will be permissible for such small businesses. Furthermore, the draft law will introduce some amendments specifying procedure of prosecution for some violations of anti-trust legislation.

[Draft Law No. 817991-6](#)

### Banking

#### Changes to client identification procedure

The Bank of Russia updated the procedure applied by credit institutions for identification of clients, their representatives, and beneficiaries.

Earlier, performing banking operations with foreign currency in cash provided

for a simplified identification of individuals (presentation of passport or driving license was sufficient).

Now, the identification is required when a client – an individual – is performing any transaction with cash or other assets for an amount exceeding RUB 15,000; such identification procedure includes filling in a statement, an assessment of client risks, client profiling, and updating client information.

It has also been established that client identification is not conducted when an individual buys jewellery made of precious metals and stones for an amount not exceeding RUB 40,000 as well as when an individual uses an individual electronic payment instrument for retail purchasing of jewellery made of precious metals and stones for less than RUB 100,000.

The law took effect on 10 January 2016.

*Federal Law No. 423  
dated 30.12.2015*

*Regulation of Bank of Russia  
No. 499-P dated 15.10. 2015*

#### Cash flow statement in respect of foreign accounts

Starting from 1 January 2016, an individual resident who failed to provide cash flow statements in respect of accounts (deposits) opened with any foreign banks will be brought to administrative liability in the form of a fine.

The failure to provide statements will lead to a fine in an amount from RUB 2,000 to 3,000. In the event of delayed submission of such statements the fine will be from RUB 300 to 3,000 (depending on the number of overdue days). On the second occasion a fine is imposed on an individual for violation, the amount may be up to RUB 20,000.

Resident individuals who opened accounts with any banks located within the territories of OECD and FATF members may also credit such accounts with money funds from non-residents gained from transfer of cash and security papers in trust to a non-resident trustee as well as from sale of foreign securities admitted to trading on Russian stock exchange or on a foreign stock exchange which is in the list adopted by the Central Bank of Russia.

*Federal Law No. 350-FZ  
dated 28.11.2015*

#### Direct debiting for repayment of consumer credit is illegal

A bank has no right without a deck to debt the account of a client for repaying the overdue amount on consumer credit. The inclusion of such a condition into the agreement infringes the right of a client as a consumer and can subject the bank to administrative responsibility with a fine up to RUB 20,000.

*Resolution of the Supreme Court  
No. AD15-12206 dated 4.12.2015*

#### Extract from the Unified State Register of Legal Entities does not confirm the exercising of due diligence

While choosing a supplier the whole set of criteria for tax risks measurement related to its activity shall be taken into account. The documentary confirmation of the powers of the head and provision of the physical address of the company are examples of these criteria. The extract from the Unified State Register of Legal Entities allows to check the state registration of the supplier as a legal entity. Another way of confirming the state registration of a supplier is to obtain the registration certificate.

Legal precedents do not provide an unambiguous answer if due diligence is exercised when the production of documents on supplier's registration is demanded. The final decision depends on particular circumstances of the case. Some courts consider that the entity, which obtained only these documents, has not exercised due diligence.

*Letter of the Ministry of Finance  
No. 03-02-07/1/59422  
dated 16.10.2015*

### **No fee shall be charged for overdraft**

A bank has the right to receive remuneration in the form of interest while providing independent services to clients. However, an overdraft is not considered to be an independent service, as in this case, its provision is due to the provision of standard bank loan service. If the contract provides for an additional fee for overdraft, then such provision is void.

*Resolution of the Arbitration Court  
of West Siberian District  
No A03-14084/2014 dated 18.11.2015*

### **The share of foreign participation in a credit institution is limited**

The maximum amount of foreign capital in the share capital of a credit institution is limited to 50%.

The amount of the participation share is annually verified by the Central Bank of Russia as of 1 January. When the quota limit is reached the Central Bank of Russia performs the following actions – refuses banks with foreign investments for registration and licensing, places a ban on increase of the share capital at the expense of foreigners and prohibits the disposal of shares (participations shares) of the bank for the benefit of non-residents.

The amendments came into force on 26 December 2015.

*Federal Law No. 372-FZ  
dated 14.12.15*

## **Bankruptcy**

### **Indebtedness of the legal entity**

Currently for initiation of bankruptcy proceedings against a legal entity it is required that the claims against the debtor in the aggregate amount to no less than RUB 300,000. At the same time a higher amount of indebtedness, no less than RUB 500,000, is foreseen for initiation of the same procedure against an individual.

A draft bill was introduced into the State Duma which will increase the amount of indebtedness of a legal entity for initiation of bankruptcy proceedings to RUB 500,000. The explanatory notes reveal that the enactment of this bill seeks to reduce the number of negligent debtors at initiation of bankruptcy proceedings.

[Draft Bill No. 939781-6](#)

## **Corporate**

### **Alienation and pledge agreement of shares of an LLC**

Amendments are made to the Federal Law "On Limited liability companies". The following provisions may be highlighted:

- The alienation of a share for exercise of option for conclusion of a contract can be executed by way of a separate notarization of the irrevocable offer and the following notarization of the acceptance. In this case the irrevocable offer is considered accepted as from the notarization of the acceptance;
- The share is transferred to the purchaser as from making an entry to the Unified State Register of Legal Entities and not after the notarization of the transaction for its alienation as before;
- Regarding a share pledge agreement, it is determined that the notary who notarized the agreement

shall file the application on making amendments to the Unified State Register of Legal Entities with the registering authority within two business days (and not three as before). For cancellation of the entry on pledge it is required to file the application of the pledgee with the registering authority (before the application was to be signed jointly by the pledger and the pledgee).

The amendments entered into force on 15 January 2016.

*Federal Law No. 391-FZ  
dated 29.12.2015*

## **Employment**

### **Dismissal of director**

A bill proposing amendments to the Russian Labour Code related to termination of employment with a company's director is pending at the State Duma.

According to the amendments the decision on termination of the employment agreement with a company's director shall be made in compliance with the procedure specified in the company's charter.

The bill does not provide for an obligation to mandatory introduction of changes to the charters of already existing companies. We suppose that, if amendments are adopted, only newly incorporated companies are obliged to explicitly describe the procedure for termination of an employment agreement with its director in their charter.

[Draft Bill No. 908156-6](#)

### **Federal Social Security Fund will fulfil obligations of a bankrupt employer**

A bill allowing employees to receive benefits even in the event of bankruptcy of the employer has been adopted in the first reading.

[Draft Bill No. 922482-6](#)

## Accreditation of employment agencies

Due to the fact that from 1 January 2016 secondment of employees is only allowed for private employment agencies and in some cases – for other legal entities, the Government approved the requirements to be met by such an agency.

The Resolution came into force on 1 January 2016.

*Resolution of the Government of the Russian Federation No. 1165 dated 29.10.2015*

## Employer's liability for the delays in salary payment

It is proposed to increase the amount of compensation payable by the employer for any delay in the payment of salaries and other employee benefits from 1/300 to 1/220 of the key interest rate of the Bank of Russia for each day of delay.

It is also proposed to differentiate the proportion of the key interest rate for calculation of compensation, depending on the number of days of delay. So, for the first 90 days of the delay the employer shall pay compensation in the amount of 1/220 of the key interest rate of the Bank of Russia on the unpaid amount for each day, and from 91st day – 1/130 of the key interest rate of the Bank of Russia.

[Draft Bill No. 973135-6](#)

## Litigation

### The law on arbitration

The Federal Law "On Arbitration in the Russian Federation" is adopted. The Law will cover the procedure for formation of arbitral tribunal and permanent arbitration institutions, as well as their operation.

For a more thorough overview of the Law, please, see our special newsletter.

The Law comes into force on 1 September 2016.

*Federal Law No. 382-FZ dated 29.12.2015*

## Clarifications on certain aspects of enforcement proceedings

The Supreme Court clarified certain issues arising during the enforcement proceedings.

For instance, it is clarified that enforcement orders are not issued for court judgments on coercion to conclusion of a contract.

The Supreme Court's resolution clarified the grounds and procedure for seizure of the pledge upon the claims of non-pledged creditor of the debtor: this is possible only when the debtor has no other assets which could be seized. At the same time, when the assets are sold on the public auction, the pledge is preserved.

The Supreme Court's Resolution confirms that the list of enforcement actions envisaged by the Federal Law "On Enforcement Proceedings" is not exhaustive and the bailiff is entitled to undertake other actions necessary for performance of enforcement documents, including to prohibit the disposal of the debtor's assets (e.g., through the prohibition to undertake registration actions with assets).

*Resolution of the Supreme Court No. 50 dated 17.11.2015*

## Pre-court order of resolution of disputes over rights to intellectual property

A draft law is developed envisaging obligatory pre-court order of resolution of disputes over violation of intellectual property rights.

It is intended to supplement the Civil Code with provisions under which if the rights holder and violator are legal entities, the rights holder before submitting the claim has to send to the violator a pre-court notice. The claim may be submitted in case of full or partial refusal from satisfaction of the pre-court claim or non-receipt of reply within 15 days.

It is assumed that such procedure will lower the caseload of judges. Currently the rights holders start court proceedings seeking redress for violations of the intellectual property rights

without trying to resolve a dispute in an out-of-court manner.

At the same time, it is envisaged that with no connection to sending the pre-court notice, the court upon the rights holder's request may adopt security measures.

[Draft Bill](#)

## Real Estate and Construction

### Project documentation shall describe the details on access of disabled people to the object

Amendments are made to the Urban Development Code according to which the project building documentation shall contain the details on access of disabled people to the objects of social infrastructure in respect of building of the designed project. These project documentation materials shall be provided for obtaining the building permission.

The law came into force on 1 January 2016.

*Federal Law No. 339-FZ dated 28.11.2015*

### Requirements of building self-regulatory organizations will be tightened

A bill has been introduced to the State Duma tightening the requirements of self-regulatory organizations in the sphere of building. In particular, the bill establishes administrative responsibility for violation of the information provision procedure with intent to keep a register of self-regulatory organizations. In the event of repeated violation of this demand the responsibility of juridical persons can reach RUB 200,000.

The procedure of consideration by self-regulatory organizations of complaints about their members, the order of fee payment to the indemnification fund as well as the procedure of provision by self-regulatory organizations of data to *Rostekhnadzor* are established.

According to the authors of the bill self-regulatory organizations are currently only registering but not exercising control over members of self-regulatory organizations. These changes will help improve the quality of execution and safety of building work.

[Draft Bill No. 938845-6](#)

### **More business transactions shall be notarized**

On 29 December 2015 the provisions of the Federal Law No 391-FZ on Amendments to Certain Legislative Acts of the Russian Federation became effective, which provide for various amendments in regard to real estate transactions which require notarization.

In particular, notarization of disposition of real estate units shall be executed at the location of the property.

The Law also requires obligatory notarization for:

- transactions on interest sale to a third person in co-ownership title to real property;
- transactions on land share sale;
- transactions in regard to immovable property disposition subject to conditions of trust management or custody;
- transactions on sale of immovable property owned by minors or a citizen adjudged to be partially incapacitated.

*Federal Law No. 391-FZ  
dated 29.12.2015*

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