

## Federal Laws on LLCs and JSCs to be in line with the Russian Civil Code



The draft Federal Bill on bringing the Federal Laws on Limited Liability Companies, on Joint-Stock Companies, on the Securities Market, and on the State Registration of Legal Entities and Individual Entrepreneurs in line with the changes made to the Civil Code concerning legal entities has been published for public discussion. If passed, it will take effect on 1 July 2015. Among other things, it proposes to make the following changes:

- 1) An equity interest being acquired in the authorized capital of a company will pass to the acquirer after a relevant entry is made into the Unified State Register of Legal Entities, except for the cases described by law. Currently, an equity interest passes to the acquirer after the relevant transaction is certified by a notary.
- 2) In the articles of association, a shareholder's right to file an application for withdrawal from a company is conditional upon the occurrence or non-occurrence of certain circumstances, a time limit, or a combination of these circumstances.
- 3) The provisions concerning contributions to the assets of a company have been set out—*i.e.*, property rights may not serve as such a contribution.
- 4) A detailed regulation was introduced to distribute the powers of two or more sole executive bodies. Several directors may act:
  - independently of one another in all or some matters falling within the competence of sole executive bodies;
  - independently only in the matters falling within the competence of sole executive bodies vested by the articles of association of a company in a certain director; and
  - jointly in some matters specified by the articles of association.

Dear readers,

We are pleased to bring you the new issue of our Legal Express, covering the most significant legislative changes related to entrepreneurial activities that took place in Russia in January 2015.

A draft bill that introduces numerous changes to the Federal Law on the Protection of Competition was introduced for public discussion. In particular, it proposes to list nine types of unfair competition – for example, “creating the impression of being involved in the operations of another firm“, misrepresentation and incorrect comparison.

Official business trips are now administratively easier. The only remaining mandatory document is an order to send an employee on a business trip.

Another draft bill introduced for public discussion brings the Federal Laws on Limited Liability Companies and on Joint-Stock Companies and the Law on the State Registration of Legal Entities in line with the new provisions of the Civil Code that came into effect on 1 September 2014.

You can find these and other news stories in the current issue of our Legal Express.

We hope you enjoy reading it.

Yours faithfully,  
Noerr OOO

Details of several directors must be entered into the Unified State Register of Legal Entities. There still remains a question of whether or not all the powers and authority of directors are to be listed in the Unified State Register of Legal Entities, including limitations on those powers and authority.

- 5) A procedure has been set out for confirming resolutions adopted by the general meeting of shareholders. The articles of association of a company may provide that the functions of confirming a resolution adopted by the general meeting of shareholders and the list of persons in attendance at the time the resolution was adopted may be performed by a foreign notary from the countries listed in the articles of association.
- 6) Special considerations related to the regulation of a shareholders' agreement the parties to which are all shareholders of a non-public company or participants of a limited liability company have been provided.
- 7) A procedure has been set out for the trust management of equity interests in the authorized capital of a company.

[Draft Bill](#)

## Antitrust

### FAS to clarify the types of unfair competition

On 15 January 2015 a draft bill was introduced for public discussion that introduces numerous changes to the Federal Law on the Protection of Competition. These modifications have been proposed by the Federal Antimonopoly Service of Russia.

One of the most significant changes is listing individual types of unfair competition. It has been proposed to introduce nine new articles specifying individual types of unfair competition (defamation, misrepresentation, incorrect comparison, disorganization of

the operations of a business entity, etc.).

Another material change is that the Federal Antimonopoly Service of Russia may review decisions made by the local antimonopoly bodies. For this purpose, the Federal Antimonopoly Service of Russia will form special collective bodies that will be in charge of summarizing the practice of antimonopoly bodies, give clarifications, as well as review decisions made by the local bodies. A complaint may be filed against a decision made by a local body within a month after it is made. The procedure for examining antimonopoly cases will also be modified.

Along with tightening administrative liability for unfair competition, these modifications are aimed at facilitating the more effective investigation of violations of antitrust laws.

[Draft Bill](#)

### Investments in strategic companies

Amendments have been passed to the Federal Law on the Procedure for Making Foreign Investments in Business Entities of Strategic Importance to Ensure National Defence and State Security.

According to these amendments, transactions are excluded from the scope of application of the law in equity interests (shares) in strategic companies that use federal plots of subsoil resources where a foreign investor or a group of persons may dispose of more than 75 percent of the votes, whether directly or indirectly.

However, an obligation has been imposed to obtain the prior consent of the Government Commission on Control over Foreign Investments in Transactions Involving the Acquisition, Possession, or Use of the Fixed Production Assets of a Strategic Company where the value of such assets is 25 percent or more of the book value of its assets.

These modifications came into force on 6 December 2014.

*Federal Law No. 343-FZ dated 4 November 2014*

## Banking

### Indemnity for bank deposits held by individuals

A law has been passed that provides for a two-fold increase in the insurance indemnity for bank deposits held by individuals – from RUB 700,000 to RUB 1,400,000. This increased insurance indemnity will apply if an insured event occurs after 29 December 2014. The Deposit Insurance Agency has also been granted new powers to take measures aimed at increasing the capitalization of banks by transferring federal loan bonds that it holds and/or by paying with these bonds for subordinated bonded loans made by banks.

The law came into force on 29 December 2014.

*Federal Law No. 451-FZ dated 29 December 2014*

### Procedure for issuing a transaction certificate has been updated

The Bank of Russia has introduced an additional ground for refusing to issue a transaction certificate (“*passport sdelki*”) for a contract — *i.e.*, a reason to believe that a foreign exchange transaction may be performed with a view to legalize proceeds of crime.

The regulation will come into force on 23 February 2015.

*Regulation of the Bank of Russia No. 3438-U dated 6 November 2014*

### Ceiling on a consumer's total cost of borrowing

The Bank of Russia has cancelled the upper limit on a consumer's total cost of borrowing effective from 1 January 2015 to 30 June 2015.

According to the applicable laws, when a consumer loan agreement is entered into, the total cost of borrowing may not be exceeded by more than one third the average market value of the total cost of borrowing as calculated by the Bank of Russia for a consumer loan of a relevant category.

The regulation came into force on 1 January 2015.

*Regulation of the Bank of Russia  
No. 3495-U dated 18 December 2014*

## Bankruptcy

### Amendments to bankruptcy laws

Modifications were made to the bankruptcy laws at the end of 2014. Important changes include:

- The total amount of claims at which bankruptcy proceedings may be initiated will increase to RUB 300,000 (previously it was RUB 100,000);
- A person filing a petition for initiating a bankruptcy case will be obligated to publish information in the Unified State Register (of Activities) of Legal Entities;
- Provisions have been introduced concerning the liability of electronic trading platform operators, insurance against such liability, and self-regulatory organizations of electronic trading platform operators;
- The Russian Code of Administrative Offenses has been amended to include a provision concerning the administrative liability of chief executive officers of organizations where they fail to perform the obligation to give notice of bankruptcy criteria being present with respect to persons that have the right to convene a general meeting of shareholders;
- The procedure for substituting a debtor's assets in the course of a receivership has been updated.

The law came into force on 29 January 2015.

*Federal Law No. 482-FZ  
dated 29 December 2014*

## Corporate

### Disclosure of Beneficial Owners

The draft amendments to the Federal Law on Counteraction to the Legalization (Laundering) of the Proceeds of Crime and the Financing of Terrorism that have been developed by the Federal Financial Monitoring Service of Russia are undergoing public discussion. It has been proposed to obligate all companies to disclose their beneficial owners as requested by competent authorities. The procedure and the time limits for disclosing beneficial owners and for the measures taken to establish beneficial owners will be determined by the Russian Government. A company may be fined up to RUB 500,000 for failing to disclose its beneficial owners. As set forth in the draft bill, companies will be obligated to take every possible measure to establish their beneficial owners (including requesting these details from their shareholders) and to constantly update and store this information.

#### [Draft Bill](#)

### Abuse of rights in corporate legal relations

The Presidium of the Supreme Court of the Russian Federation has approved the Judicial Practice Review of the Supreme Court of the Russian Federation. For the purposes of application of civil and corporate laws, the position of the Supreme Court on the application of the provisions concerning the abuse of rights in challenging major transactions is of practical interest.

Thus, the Supreme Court ruled that where the circumstances are established that evidence the abuse by a person of its rights in challenging a major transaction, in particular, in using the corporate rules of approval solely for the purpose of causing harm to the counterparty to that transaction, the *arbitrazh* court will dismiss a claim seeking to pronounce that transaction invalid.

In the case in question, the evidence of abuse was established when a shareholder of a company that was a surety challenged a suretyship agreement entered into with a view to secure the obligations of a debtor that was a buyer under a supply agreement, specifically – (a) the debtor and the surety were located at the same address and shared two major shareholders (participants); (b) the shareholder that was the plaintiff, based on the amount of his shareholding in the authorized capital of the company, could not have been unaware of large supplies of goods, and (c) did not challenge, did not doubt their appropriateness, nor did he notify the supplier of violation of his rights and legitimate interests when agreeing to the acceptance of goods; (d) the company and the plaintiff himself had issued similar suretyships to the supplier; and (e) the plaintiff, the surety, and the buyer had a consolidated position in the dispute.

### Criminal liability for entering false information into the Unified State Register of Legal Entities

A bill has been drafted that proposes establishing criminal liability for submitting to the registration authority documents that contain knowingly false information where the submitting party is aware of the invalidity. These offences will be punished by imprisonment for up to one and a half years and a fine of up to RUB 50,000.

In addition, it has been proposed that the Criminal Code be amended to include the definition of a “straw party”, meaning a party that is a shareholder or a management body of a legal entity that has no purpose of managing that legal entity or receiving profits from its lawful operations.

The amendments to the Russian Code of Administrative Offenses will introduce liability (the disqualification of an official for up to three years) for a repeated failure to submit or the submission of false details of a legal entity or an individual entrepreneur.

#### [Draft Bill No. 613254-6](#)

## Employment

### New rules for formalizing official business trips

Business trip certificates and business assignments have been abolished, meaning the only mandatory document required is the order authorising the employee to go on a business trip.

The duration of the employee's stay at the destination of his/her business trip will be determined according to the travel documents submitted by the employee when he/she returns from his/her business trip. Where the employee travels to the destination of his/her business trip or back to his/her place of work using his/her personal car, the duration of the employee's stay at the destination of his/her business trip will be indicated in a memorandum that the employee submits when he/she returns from his/her business trip alongside with supporting documents (a motor vehicle trip ticket, bills, receipts, cash register receipts, etc.).

Form T-10 was used in the past to report on travelling on a business trip, which was required to bear stamps affixed by hotels or other places at the destination of the business trip. To report on all business trips, the employee will need to submit his/her travel documents and, if it is a foreign business trip, the employee will still be required to submit his/her foreign passport bearing stamps to confirm crossing the border.

The modifications came into force on 8 January 2015.

*Resolution of the Russian Government No. 1595 dated 29 December 2014*

### Foreign employees - Notices

There have been approved new forms of notices of entering into and terminating of an employment or a civil-law agreement for the performance of work (services) with a foreign citizen, and the procedure for serving these notices on the Russian Federal Migration Service. It has been provided that such a notice must be given to a local

body of the Russian Federal Migration Service within three business days after an agreement is entered into or terminated.

The order came into force on 3 February 2015.

*Order of the Russian Federal Migration Service No. 640 dd 8 December 2014 Registered with the Ministry of Justice of the Russian Federation under No. 35511 on 31 December 2014*

## Litigation

### Changes in the Russian Code of Arbitrazh Procedure

Draft amendments to the Russian Code of the *Arbitrazh* Procedure have been presented to the State Duma that provide, among other things, for a mandatory pre-trial dispute settlement procedure. The general rule is that the parties may appeal to an *arbitrazh* court after they have taken measures to settle a dispute on a pre-trial basis upon the expiration of 30 calendar days after a claim is filed. The exception to that rule includes cases involving the establishment of legally relevant facts, the awarding of compensation the violation of the right to court proceedings (enforcement of a judicial act) within a reasonable period of time, insolvency (bankruptcy), corporate disputes, and the protection of rights and the legitimate interest of a group of persons. As to disputes arising out of public legal relations, the pre-trial dispute settlement procedure is only required if it is expressly prescribed by law. The modifications are aimed at implementing and developing alternative dispute settlement methods.

There are also plans to introduce into the Russian Code of *Arbitrazh* Procedure institutions of civil procedural laws, such as a court order and a special court ruling. The reason behind these plans is the harmonization of courts of general jurisdiction and of *arbitrazh* courts by adopting the institutions that have already proven their efficiency in civil litigation. A court or-

der will be rendered solely by a judge upon a petition seeking to collect a monetary sum claimed by the plaintiff.

These must be undisputable claims, a limited list of which is specified by law, and the sum to be collected may not exceed RUB 300,000 for legal entities, and RUB 100,000 for individual entrepreneurs.

[Draft Bill No. 638178-6](#)

## Real Estate and Construction

### Supreme Court has clarified matters relating to reclaiming possession of residential property

On 1 October 2014, the Presidium of the Supreme Court of the Russian Federation approved the Judicial Practice Review in Cases related to Reclaiming Possession of Residential Property from Bona Fide Acquirers in Claims filed by Government Agencies and Local Government Authorities, which clarifies such significant matters as the criteria for determining whether an acquirer is bona fide, the instances where residential property is disposed of beyond the owner's will, etc.

Deciding whether an acquirer of residential property is bona fide, the court must take into account whether the acquirer was aware of the seller's title to the residential property, as well as whether the acquirer had taken reasonable measures to verify the seller's powers to dispose of the residential property. Furthermore, the court ruled that taking "reasonable measures" means not only familiarizing oneself with the relevant entries in the Unified State Register of Titles to Immovable Property and Transactions Therein, but also exercising reasonable care when entering into the transaction, such as familiarizing oneself with the seller's documents, a personal inspection of the residential property, etc.

The Judicial Practice Review covers the judicial practice concerning residential property only, but it is highly probable that the approaches described in it will

also be applied to other immovable property.

*The Judicial Practice Review, as approved by the Presidium of the SC on 1 October 2014*

### **Time limit for the registration of titles has been reduced**

Amendments have been made to the land legislation, reducing the time limit for the state registration of title to real estate property to ten business days (previously 18 calendar days). The time limit for state cadastral registration has also been reduced from 18 calendar days to ten business days.

These amendments have enabled cadastral registration bodies to correct cadastral errors (in particular the location of the borders and the areas of land plots) without the consent of the relevant titleholders. Such a correction can be made if the titleholder fails to correct an error within six months after he is notified by the cadastral registration body of the need to correct a cadastral error.

These amendments continue the general trend towards reducing the time limits for the state registration of titles and cadastral registration and are aimed at updating cadastral registration data.

The main provision of the law came into force on 1 January 2015.

*Federal Law No. 447-FZ dated 22 December 2014*

### **Procedure for seizing land plots has been altered**

A law has been passed that alters the procedure for seizing land plots for federal government and municipal needs. In particular, it sets forth:

- a new procedure for seizing land plots for federal government and municipal needs;
- special considerations related to the state cadastral registration and the state registration of titles to real estate property where lands are seized; and

- the competence of the bodies in charge of deciding on land seizure.

The titleholder will receive reimbursement for his land plot that is seized for federal government or municipal needs. This reimbursement must cover the market value of the land plot, the losses caused by the seizure of the land plot, and lost profits.

The law will take effect on 1 April 2015.

*Federal Law No. 499-FZ dated 31 December 2014*

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