

## POSITION OF THE SUPREME COURT ON THE APPLICATION OF THE CIVIL CODE

The plenum of the Supreme Court of the Russian Federation issued a resolution on the application and interpretation of the general provisions of Part One of the Civil Code of the RF

### General provisions of the Civil Code

The resolution of the Plenum addresses a number of issues regarding the use of customs, registration of real estate objects and notes of objection, validity of contracts, resolutions of meetings, representation and power of attorney, etc. It has been specifically stated in law that a transaction effected through avoidance of the law and for an illegal purpose is subject to civil legislation norms in violation of which such transaction was effected.

A claim for damages cannot be dismissed based on the sole ground that the exact amount of damages cannot be determined.

### General provision on transactions

The resolution also addresses some issues related to the regulation of transactions: authorization of transactions, legal notices etc. The Court in particular indicated that unless otherwise provided by the law or by a contract, or by customary or legal practice, a legal notice may be sent by e-mail, fax or by any other means of communication where the sender and the recipient of the message can be accurately identified. The burden of proof in respect of sending and receiving the notice lies with the sender.

### Invalidity of legal transactions

A significant part of the resolution deals with the invalidity of legal transactions. Amongst other things the Court explained the circumstances where a contract can be considered

void, being a contract the terms of which contradict with the essence of legislative regulation in respect of the corresponding part of an obligation (for example, a term of a property trust management agreement stipulating that transferred assets become the property of a trustee is void). Also covered in depth are the consequences of the invalidity of transactions. In particular, when considering a claim regarding the return of specified thing, the claimant is not obliged to prove his ownership right to the disputed property. A specified thing is to be returned when it remains with the new owner.

### Signing authority

The Supreme Court of the RF established new restrictions which can be applied to who has signing authority for a legal entity in transactions. Thus, the general provisions of the Civil Code of the RF on representation can be only partially applied to a body of a legal entity. When a body of a legal entity exceeds the restrictions defined by constitutive corporate documents or internal documents, or a representative goes beyond the restrictions specified in the contract or in branch / representative office regulations, the provisions of Article 174 (1) of the Civil Code of the RF are to be applied, i.e. the transaction can be declared invalid by the court based on the claim of a person benefiting from these restrictions only in cases where the other party to the transaction knew or should have known about such restrictions.

The burden of proof that the third party knew or should have known about restrictions lies with the persons benefiting from such restrictions.

The Court has also stated that regardless of the subsequent approval form provided by a principal of the transaction effected with abuse of authorities, the approval must come from a body or another person authorized to effect such transactions or to provide approvals. Actions of employees of the principal regarding fulfillment of the obligation may also be deemed as subsequent approval provided that the employees have powers of attorney or the employees' authorities to carry out these actions are evident from the circumstances.

### A power of attorney issued to several persons

When a power of attorney is issued to several persons which all are entitled to act independently, refusal of one of the attorneys from his/her authorities or his/her release from them result in cancelling of power of attorney only in respect of this attorney. When powers provided under the power of attorney must be exercised jointly, the refusal of one of the attorneys shall result in total revocation of the power of attorney. Revocation of the power of attorney in respect of one attorney shall result in termination of the power of attorney only in respect of this person.

*Resolution of Plenum of Arbitration Court of the RF No. 25 dated 23 June 2015*

## Antitrust

### On vertical agreements

The *Arbitrazh* Court of Moscow District upheld the judgment of the Federal *Arbitrazh* Court of the RF (FAS) in respect of prohibited vertical agreements. In this judgment FAS declared the following provisions of the agreements between the distributor and the dealers as inconsistent with antitrust law:

- Setting any resale price of goods,
- Binding dealers to a specific territory,
- Non-competition of dealers with each other.

*Resolution of the Arbitrazh Court of Moscow District No. F05-8183/2015 dated 8 July 2015 case No. A40-181711/13*

## Banking

### International factoring made available to residents

According to amendments to the Federal Law "On currency regulation and control", residents are entitled to conduct currency transactions within the context of factoring agreements concluded by such residents. Previously, Russian factoring companies could not provide international factoring services due to currency restrictions.

The list of permitted transactions does not include currency transactions between Russian factoring companies and resident exporters. The amendments also helped to solve the problem of performing the obligation to repatriate the currency profit while concluding the currency transaction. Before adoption of these amendments, performance of this obligation was impossible as money was transferred from residents (factors) under the factoring agreement and was accounted for as a currency profit from export for the resident exporter. Such an obligation of the resident is

deemed to be performed if the resident ensured the receipt of the currency from the resident to the bank account of the financial agent at the authorized bank or to the corresponding account of the bank acting as a financial agent.

The amendments are in force as of 28 December 2015.

*Federal Law No. 181-FZ dated 29 June 2015*

### Procedure for registering amendments to the bank charter determined

The Bank of Russia has determined the procedure for registering amendments to the charter of a bank in the following cases: increase of charter capital by means of conversion of the creditors' claims under subordinated instruments into ordinary shares, as well as at the acquisition by the Agency for insurance of deposits of shares of banks participating in the system of insurance of deposits.

The Instruction of the Bank of Russia came into force as of 22 June 2015.

*The instruction of the Bank of Russia No. 3647-Y as of 24 May 2015*

### Mobile payments

A draft bill has been introduced into the State Duma which proposes the lifting of restrictions on payments via mobile phones. An abolition of the necessity to confirm the transaction if the payment does not include a commission fee or its amount is conveyed to the client in advance (e.g., when paying for parking, travelling by public transport, payments of state penalties) is being considered; the introduction of the possibility of payments by corporate clients; payments by clients paying for services by means of deferred payment.

[\*Draft bill No. 841348-6\*](#)

### Penalties increased: advertisement of financial services

For infringements of the legislation on the advertisement of financial services without indication of their full amount, the penalty has been increased from 20,000 to 50,000 roubles for officials (previously it was from 4,000 to 20,000 roubles) and for legal entities from 3,000 to 800,000 roubles (previously it was from 100,000 to 500,000 roubles).

The Law entered into force as of 11 July 2015.

*The Federal Law No.175-FZ dated 29 June 2015*

### The procedure for the execution of transaction passports amended

The Bank of Russia has made changes to the procedure for the execution of passports for transactions connected with conducting currency operations via accounts of residents in banks abroad.

In particular, certain provisions of Instruction No. 138-И (including chapter 11) lay down the particularities of the execution of transaction passports and submission by residents of documents and information while conducting the currency operations via the residents' accounts. Contrary to what was previously in force, the resident is entitled to submit the documents and information to any Russian bank where it holds a settlement account (and not only the bank where the transaction passport has been created).

The Instruction is in force as of 2 August 2015.

*Instruction of the Bank of Russian No. 3671-Y dated 11 June 2015*

### Credit rating agencies now regulated by law

This newly adopted law defines rating activities and conditions for their fulfillment. It is envisaged that rating ac

tivities may be conducted by legal entities included by the Bank of Russia in the register of rating agencies. The minimum capital requirements amount to 50 million roubles; at the same time, the share of the bank, the members in a bank group, bank holding, non-credit financial organization or member of an insurance group in the charter capital of such rating agency may not exceed 20%.

Russian branches of foreign rating agencies are to be included in this register, after which such branches will be entitled to conduct certain rating activities. The ratings and their forecasts (as well as their confirmation, appropriation, review and recall) may only be made on behalf of the foreign rating agency. The Bank of Russia is authorized to accredit rating agencies and maintain its register, conduct inspections, review complaints and applications, and assess the ratings.

The Law entered into force as of 13 July 2015.

*Federal Law No. 222-FZ  
dated 13 July 2015*

## Corporate

### Small and medium-sized businesses

The limit of shares owned by foreign legal entities in small and medium-sized businesses has been increased from 25% to 49%.

These amendments entered into force on 30 June 2015.

*Federal Law No. 156-FZ  
dated 29.06.2015*

### Provision of documents of a joint-stock company

The Bank of Russia has explained the procedure for the provision of documents to the shareholders of a joint-stock company. In particular, information on the person who opened a personal account, as well as information on the number of securities of

the issuer in a specified personal account may be granted by the registrar to the issuer if this is necessary for the fulfilment of legal requirements.

Accordingly, in order to confirm that a person who filed a request for provision of documents of a joint-stock company has the status of shareholder, the joint-stock company is entitled to request the information on the number of shares in the personal account of this person from the registrar.

If documents of the joint-stock company are requested and the extract is missing from the register of shareholders, this does not constitute grounds for refusal to provide the requested information to the shareholder.

*Letter of the Central Bank  
No. 06-59/5740 dated 7 July 2015*

### Liability of parent companies

The wording of Art. 105 of the Civil Code in force until 1 September 2014 stated that a parent company which has the right to issue obligatory instructions to a subsidiary is jointly and severally liable with the subsidiary company for the transactions effected by the latter by executing such instructions.

Art. 67.3 of the Civil Code, which entered into force on 1 September 2014, greatly simplified the procedure for holding the parent company liable: the parent company may be held jointly and severally liable for the obligations of the subsidiary regardless of whether the right to issue binding instructions to the subsidiary is fixed anywhere; and not only for transactions that occurred during the execution of binding instructions, but also for the transactions approved by the parent company.

However, new amendments have again been introduced to the Civil Code, which exclude cases of voting of the parent business partnership on the approval of the transaction at the

general participants' meeting of the subsidiary, as well as the approval of the transaction by the management body of the parent company if the need for such approval is provided for by the charter of the subsidiary and (or) the parent company, as the grounds for being held liable.

Amendments entered into force on 1 July 2015.

*Federal Law No. 210-FZ  
dated 29 June 2015*

### LLC entitled to use standard charter

Standard charters are subject to approval by the federal executive body authorized by the Government of the Russian Federation.

The general participants' meeting of an LLC is entitled to decide whether the company will operate on the basis of such a standard charter or not. For the purposes of the registration of a legal entity which operates on the basis of a standard charter, it is not necessary to submit the charter to the registration authority.

The company may change the standard charter to the individual charter and vice versa at any time during its activities.

*Federal Law No. 209-FZ  
dated 29 June 2015*

## Employment

### Leave for individuals with disabled children

Amendments have been made to the Labour Code whereby individuals with disabled children under eighteen years old (parent, foster parent, adopting parent) are granted annual paid leave at their will at any convenient time.

Amendments came into force on 24 July 2015.

*Federal Law No. 242-FZ  
dated 07 July 2015*

## Supplementary guarantee for pregnant women

Amendments have also been made to the Labour Code whereby pregnant women are granted a supplementary guarantee. The amendments, amongst other things, provide that in case of expiry of fixed-term employment contract during pregnancy, the employer must upon written application and submission of a medical certificate confirming pregnancy extend the employment contract until the end of the pregnancy and, if granting maternity leave is applicable, until the end of this leave.

*Federal Law No. 201-FZ  
dated 29 June 2015*

## Illegal activities of foreign citizens

Administrative liability has been introduced for the practice of an occupation or profession by foreign citizens or persons without citizenship in the Russian Federation which is not stated in work permit or license if the work permit or license contain information about the profession. A fine of 2,000 – 5,000 roubles can now be imposed with or without administrative expulsion from the Russian Federation.

These amendments came into force on 30 June 2015.

*Federal Law No. 199-FZ  
dated 29 June 2015*

## Litigation

### Reform of law of commercial (*Arbitrazh*) procedure

The State Duma adopted in their first reading the amendments to the Federal Law on arbitration and the Federal Law on the introduction of amendments to the Code of Commercial Procedure, the Code of Civil Procedure (“GPK”), and the Law on international commercial arbitration.

One the most important amendments concerns the list of not arbitrable disputes. In particular, once these amendments are adopted, the following disputes will be not arbitrable: disputes on bankruptcy; disputes concerning refusal of registration; disputes arising out of state procurement. Corporate disputes will be arbitrable in a restricted manner. Thus, the following corporate disputes will not be arbitrable:

- Concerning rights to shares;
- Procedure of convocation of the general meeting of shareholders;
- Connected with the notarial certification of transactions with shares in the charter capital of LLCs;
- Concerning the acquisition and repurchase by the company of offered shares;
- Concerning the acquisition of more than 30% of the shares of a public company;
- Concerning the exclusion of a participant from a company.

All other corporate disputes are arbitrable provided that the following requirements are met:

- The company, all participants in the company, as well as other people acting as claimants or respondents are parties to the arbitration agreement;
- The arbitral proceedings are administered by a permanent arbitration institution which has its own rules of arbitral procedure;
- The place of arbitration is the Russian Federation.

The corresponding amendments are to be introduced into the GPK, too. In particular, under the GPK the following disputes will not be arbitrable: disputes arising from family, labour and inheritance cases.

[Draft Bill No. 788159-6](#)

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