THE FOURTH ANTIMONOPOLY PACKAGE

The Federal Law "On the Protection of Competition" will undergo significant changes.

One of the most important changes is the requirement to obtain prior antimonopoly clearance for certain types of joint venture agreements.

A procedure of prior notification to the Federal Antimonopoly Service of Russia ("FAS") (prior to submission of the application or notification) on the planned transaction (action) is introduced. Companies are entitled to propose additional conditions for ensuring competition when using the new procedure.

Another significant change is the abolishment of the register of companies with a market share exceeding 35% or with a dominant position on the market. Companies included in this register were subject to requirements for provision of information and obtaining prior antimonopoly clearance for certain types of transactions, which are therefore no longer applicable.

The legislative package extends the ban on conclusion of cartel agreements between the sellers-competitors also to cover such agreements between the buyers.

It also provides for a separate chapter disclosing certain types of unfair competition and differentiates them in detail.

A substantial amount of the amendments refer to the abuse of dominance, control over trading, procedure of legal investigation within FAS, as well as the administrative liability for breaches of the antimonopoly legislation.

The Fourth Antimonopoly Package will enter into force on 5 January 2016.

Federal Law No. 275-FZ
dated 5 October 2015

Antimonopoly

FAS will more rarely pursue small business

Under the legislative initiative of the Russian Government on 15 September 2015 the State Duma of the Russian Federation has adopted at first hearing the draft bill aimed to decrease administrative burden on small business.

According to this draft bill a legal entity cannot be deemed as taking a dominant position in case its founders are one or more individuals and annual revenues of this legal entity does not exceed RUB 400 million. The aforesaid provision shall not apply to a legal entity, which is a part of group of persons with other legal entities, financial organizations, natural monopoly entities and other cases.

Similar provision is applicable to individual entrepreneurs. An individual entrepreneur cannot be deemed as taking a dominant position (which is not a part of group of persons with other business entities) in case its annual revenues are less than RUB 400 million.

Such legal entities (and individual entrepreneurs) are also entitled to enter into certain agreements which are normally prohibited by the antimonopoly legislation (e.g. agreements on establishing of barriers for other business entities to enter into the market, agreements on groundless establishing of diverse prices on the same goods, etc.).

Draft Bill No. 817991-6

Banking

Liability for violation of the time limits of repatriation

By order of the Federal Financial and Budgetary Supervision Service the facts are substantiated, whereby the administrative liability is excluded for untimely repatriation of the currency earnings by p. 4 art. 15.25 of the Administrative Offences Code of the Russian Federation (untimely receiving of currency earnings for goods and services).

The exporter is not liable to amenability if the delay was caused by action (inaction) of the lender and (or) Vnesheconombank. The exporter may also be deemed to have fulfilled his repatriation liability in the event of receiving insurance compensation from the Russian EXAR Insurance Agency being the insuring party or the beneficiary party under the insurance agreement.

Order of Federal Financial and Budgetary Supervision Service
dated 28 September 2015 No. 369

Court practice on provision of the bank guarantee

The beneficiary of the bank guarantee filed a debt claim against the Bank (guarantor). The Bank refused to pay referring to the fact that the demand was received by the Bank after the expiration of the guarantee. According to the beneficiary as the demand was raised within the guarantee coverage

period the Bank is obliged to pay the debt on the bank guarantee.

The Supreme Court came to the conclusion that the terms of the agreement were developed by the Bank as the professional participant, therefore, the terms of the agreement shall be interpreted in favor of the counterpart (the beneficiary). Hereby the court found that the Bank is obliged to comply with the requirements of the beneficiary as the payment demand was sent by the beneficiary within the guarantee coverage period.

Decision of the Supreme Court of the R dated 22 June 2015 No. 305-ЭС15-2155

Bankruptcy

Resolution of the Plenum of the Supreme Court on bankruptcy of individuals

Amendments to the Law on Bankruptcy entered into force on 1 October 2015. According to these amendments bankruptcy proceeding are now applicable to all individuals. Consequently, the Supreme Court has given its clarifications on the application of this law.

In particular, it was clarified that creditors' claims which have arose prior to 1 October 2015 can be considered for initiation of the relevant court proceedings. However, in case the debtor is an individual entrepreneur it is allowed to consider only one bankruptcy case.

To eliminate the preemptive satisfaction of claims of some creditors before others the Supreme Court stated that the court shall not approve the plan of debt restructuring if by the end of the term of its implementation the debtor is not able to fulfill his obligations.

The Supreme Court has also specified that unlike the general rules applicable to legal entities, an applicant has no obligation to publish a notice of intention to file a bankruptcy petition against an individual. Moreover, during preparation of the case for trial the court may independently request information on the place of residence of individual in order to avoid possible conflicts of jurisdiction.

Resolution of the Plenum of the Supreme Court of the RF No. 45 dated 13 October 2015

Civil Procedure

On 29 September 2015 the Plenum of the Supreme Court adopted resolution No. 43 "On certain questions connected with the application of the Civil Code's provisions regarding the period of limitations" which substituted the joint resolution of Plenums of the Supreme Court and the High Arbitrazh Court dated 12/15 November 2001 No. 15/18.

The following provisions may be highlighted:

1. The calculation of period of limitations in disputes with participation of under aged and deprived of legal capacity persons is clarified. In particular, it is indicated that in case of violation of such person's rights the period of limitations starts at the moment when their legitimate representative learned about the violation and the proper defendant. If the violation was committed by the legitimate representative, the period of limitations starts at the moment when another (acting in good faith) representative learned about the violation or at the moment when the represented person himself learned about the violation and became capable of defending his rights in the court;

2. The rules of application of preclusive period of limitations equal to ten years are clarified. Such period of limitations starts on the day of violation and does not depend on when the claimant learned about the violation or proper defendant. The period of ten years applies only if a party itself required its application and does not apply to claims which are not subject to the period of limitations;

3. The calculation of period of limitations for the claims of public authorities is clarified: such period starts on the day when public authorities learned about the violation. For cases when public authorities file a claim on behalf of other persons, it is indicated that the period of limitations shall be determined based on when the person of whose behalf the claim is filed knew about the violation and proper defendant.

Resolution of Plenum of the Supreme Court of the RF dated 29 September 2015 No. 43

The Code on Administrative Procedure Entered into Force

As of 15 September 2015 the Code of administrative procedure (the "Code") entered into force. The Code applies to administrative cases arising out of public relationships and those connected with judicial oversight over the execution of public powers. They will be within the jurisdiction of the Supreme Court and courts of general jurisdiction. In particular, this concerns the categories of disputes concerning:

- state secret;
- invalidation of normative and non-normative legal acts of state and municipal authorities;
- invalidation of decisions of qualification boards of judges;
- activities of mass media;
- invalidation of results of determination of cadastral value;
- protection of voting rights;
- compensation for violation of right to a trial within reasonable time limits.

The following disputes do not fall into the scope of the Code: those concerning administrative violations; arising out of public relations and subject to jurisdiction of arbitrazh courts; subject to jurisdiction of the Supreme Court and courts of general jurisdiction but

which need to be considered in another procedural order.

The Code introduces a mandatory requirement of higher legal education for the court representative.

In general, citizens may litigate by themselves. For certain categories of disputes, however, the participation of the court representative is mandatorily envisaged (e.g., disputes concerning invalidation of normative legal acts in a regional court, Supreme Court).

The Code introduces the notion of measures of preliminary protection which may be adopted by the court in two cases:

- First, if before adoption of the decision by the court there is a manifest threat of violation of rights, liberties and legitimate interests of administrative claimant;
- Second, if the protection of rights, liberties and legitimate interests of the administrative claimant will become impossible or cumbersome without their adoption.

In a manner of adoption of measures of preliminary protection the court may suspend the enforcement of the disputed judgment, prohibit taking certain actions, as well as adopt other measures at its discretion. The list is not exhaustive.

The Code of Administrative Procedure of the RF dated 08 March 2015 No. 21-FZ

Corporate

Duty of disclosure of the beneficiaries

According to the bill drafted by the Federal Service for Fiscal Monitoring legal entities will be obliged to have, document and provide information on their beneficiaries or information on measures taken on their determination upon request of the authorized bodies defined by the Government. The bill obliges the companies to record such information, store it during five years and update it every year.

For violation of this responsibility there is administrative liability to a penalty at the rate from RUB 100,000 to RUB 500,000 for companies and from RUB 30,000 to RUB 40,000 for the director.

Liability disclaimer shall be taking reasonable and accessible measures on determination of the beneficiaries of the company.

Draft Bill

Bribery: new developments in administrative liability of legal entities

A bill was introduced to the State Duma, which offers to expand the administrative liability to foreign legal entities for bribery (including bribery of foreign office holders), to the general director, to the member of the board of directors of the company or office holders of an international company.

The condition for the administrative liability for a foreign legal entity to come into force is illegal delivery, promise or offer of a reward on behalf or in favor of a legal entity carried out outside the Russian Federation and orientation against the Russian Federation.

It is clarified that Russian legal entities committing such an offence in other countries are also subject to administrative liability. The condition for it to come into force is committing an offence outside the Russian Federation, orientation against the Russian Federation and presence of an intention to deliver a reward – certain action (inaction) of a person who received illegal reward.

For violation of this responsibility there is administrative liability to a penalty at the rate from RUB 1 mln. to RUB 100 mln. with confiscation of money and other property delivered as bribe. The amount of penalty depends on the sum of the delivered illegal reward.

Bill No. 865589-6

Employment

Subsistence allowance can be canceled

The Ministry of Finance proposes to cancel subsistence allowance for business trips within the territory of the Russian Federation.

It is proposed to reimburse the employee for other business trip expenses. These expenses include, inter alia, public transport expenses, meal expenses of an employee in the place of temporary residence and while travelling to a business trip destination and other similar expenses related to a business trip. Specification of the procedure and the amount of the reimbursement in collective agreement or employer's local regulatory document as well as documentary evidence of incurred expenses are the necessary conditions for reimbursement of these expenses. The subsistence allowance will remain for foreign business trips.

Draft Bill

Vacation payments to employees can become profitable

A draft bill providing for tax preferences to employers paying for holidays of their employees and employees' families being spent in Russia was introduced to the State Duma. Upon calculation of the amount of income tax these employers will have the right not to include such expenses into labour costs provided that the amount spent on each holidaymaker does not exceed RUB 50,000.

Should this draft bill be adopted, the amendments are proposed to come into force as of 1 January 2016.

Draft Bill No. 871036-6

Real Estate and Construction

The legalization of unauthorized construction will become easier

As of 1 September 2015 the amendments to the Civil Code of the Russian Federation entered into force (Civil Code) which significantly changed provisions regarding unauthorized structures. Certain conditions are determined fulfillment of which makes it possible to acquire ownership title to unauthorized structure. Those conditions are: (1) a person who effected the construction must be entitled to carry out construction works on the land plot; (2) as of the day of submission of claim to the court the structure must comply with all legislative requirements; (3) preservation of the structure neither violates third parties' rights nor threatens life and health of citizens.

Federal Law dated 13 July 2015 No. 258-FZ

Premature termination of the lease agreement

A draft bill was introduced into the State Duma which will allow state and municipal authorities to prematurely terminate agreements for lease of land plots with investors unilaterally in case of material breach by investors of agreements or fundamental change of circumstances.

In particular, the unilateral termination will be possible in respect of agreements concluded before 1 January 2011 for construction or reconstruction of facilities. This concerns facilities construction of which is carried out by means of attraction of non-budget funds and subsequent allocation of areas of constructed facility between the parties to the agreement.

Previously, this clause was in force only in Moscow and Saint-Petersburg; now, it is proposed to extend its application to all other territorial units of the Russian Federation. According to the authors of the draft bill, this would allow to administer the state and municipal land plots in a more effective way.

Draft Bill No. 891088-6

Securities market

Form of notification provision

Notifications of appointment (dismissal) of a member of board of directors, collegial executive body, sole executive body of a professional participant of securities market and other persons specified in par. 1 art. 1 of the Federal Law On Securities Market are to be provided to the Bank of Russia in the form of electronic document with an enhanced digital signature.

Information of the Bank of Russia dated 28 September 2015

Requirement to approval of repo transactions

The Bank of Russia clarified that conclusion of repo transactions requires provision of notification upon acquisition of more than 1 % of shares (participation interests) of a credit institution and the consent of the Bank of Russia to acquire more than 10 % of shares (participation interests) of a credit institution.

This conclusion is based on the fact that there are no exceptions regarding the necessity of the corresponding notification or consent stipulated by Instruction of the Bank of Russia No. 146-I dated 25 October 2013 and Instruction of the Bank of Russia No. 135-I dated 2 April 2010.

Letter of the Bank of Russia No. 33-7-10/8997 dated 18 September 2015

Licensing of professional participants of securities market

Amendments into the procedure of issuance of a license to carry out activities on securities market have been made by Regulations of the Bank of Russia; and the procedure to suspend, renew and cancel such licenses have been determined.

The Regulations contain restrictions to combination of broker, depository, dealer activities as well as activities on management of securities on securities market. Moreover, requirements aimed at prevention of conflict of interests, as well as terms and procedure of provision of reports on termination of obligations related to carrying out of professional activities on securities market have been specified.

Regulations of the Bank of Russia No. 481-P dated 27 July 2015

Acquisition of large blocks of shares

The Bank of Russia determined operating procedures and terms for provision of voluntary and forced proposal regarding the right to claim the buyout and claim to buy out equity securities.

In accordance with the Regulations of the Bank of Russia, new forms of documents related to acquisition of more than 30 % of shares of a joint-stock company, in particular, voluntary and forced proposal, are approved.

The Regulations entered into force on 22 September 2015.

Regulation of the Bank of Russia No. 477-P dated 5 July 2015

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