

Insight

14 April – 25 May 2014

Russian Legislation Update

National Payment System

On 5 May 2014 the President signed Federal Law No. 112-FZ “On Amendments to the Federal Law ‘On the National Payment System’ and Certain Legislative Acts of the Russian Federation.”

The amendments aim to ensure uninterrupted money transfers on the territory of Russia.

Amendments regarding the national payment system

First of all, the amendments envisage the creation of a national system of payment cards (NSPC): it will be operated by an open joint stock company, with 100% of its shares initially held by the Central Bank (it will be possible to sell those shares afterwards, but subject to certain limitations). The banks participating in NSPC are required to provide NSPC payment cards to their clients for the drawing of salaries and social payments from the treasury and state extrabudgetary funds. In addition, sellers (save for microenterprises) are required to ensure that consumers can pay for goods (works or services) with NSPC cards or in cash at their choice.

Further, *as of 1 July 2014* there will be severe liability for unilateral suspension or termination of the rendering of payment infrastructure services to the participants of a payment system and their clients: for each day of suspension (termination) the Central Bank will impose a fine in an amount of up to RUB 10 million on an operator of a payment system, which is regarded as “nationally important” and up to 10% of a security deposit on an operator of a payment system which is not considered “nationally important” (a security deposit must be deposited in a special account with the Central Bank in a two days’ amount of transfers on the territory of Russia within the payment system).

There is now a rule that new or increased rates of a payment system can take effect no sooner than 120 days after the Central Bank is notified of them by the operator of the payment system.



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This update is a general summary of recent developments in Russian legislation and should not be treated as legal advice. Readers should seek the advice of legal counsel on any specific question. All translations of terminology in this update are unofficial.

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Further, *as of 1 July 2016*: (i) where transfers are made by operators located in Russia, it is also necessary to engage operators of payment infrastructure services that are located and perform all the functions on the territory of Russia and comply with the requirements of the Law on the National Payment System; (ii) operators of payment infrastructure services are not allowed to transfer abroad information on transfers made within a payment system on the territory of Russia or grant access to such information from the territory of a foreign state. These rules will not apply to cross-border transfers.

Operators of payment systems are required to bring their rules of payment systems into conformity with the new rules of the Law on the National Payment System within 60 calendar days of the amendments' entry into force.

Other changes

The Law on Banks has been supplemented with a rule allowing Russian banks to refuse opening a bank account or close an account of a foreign individual or foreign legal entity if the laws of the relevant foreign state require Russian banks' entry into a special agreement in order to exercise control over bank accounts opened by taxpayers of such foreign state in Russia and the operations conducted through such accounts. This rule may be relevant, in particular, with respect to FATCA.

The Currency Control Law has been supplemented with an important rule regarding foreign trade proceeds of Russian residents: residents are required to ensure receipt in their accounts of proceeds in rubles in an amount specified by the Government. The Government is also entitled to specify the relevant types of goods (works, services) and the relevant foreign states of the residents' counterparties under foreign trade contracts.

The Law entered into force on 5 May 2014, save for some provisions that will enter into force on other dates.

Anti-Money Laundering

On 5 May 2014 the President signed Federal Law No. 110-FZ on amendments to the Law on the National Payment System, the Law on Combating Money Laundering and some other laws.

Previously, the law did not require banks to identify a client being an individual in connection with a money transfer through a credit organization without the opening of a bank account, including an e money transfer, if the amount of the transfer did not exceed RUB 15,000. Following the changes the identification procedure would be required irrespective of the amount for transfers to individuals, non-profit organizations (save for religious and charitable funds) and non-resident companies, as well as payments for goods (works, services) specified by the Government.

The amendments allow a simplified identification procedure with respect to clients being individuals for transfers without the opening of a bank account, including e-money transfers (provided there are no suspicions that the transaction is made for money laundering or financing of terrorism purposes). It means identifying only the first name, patronymic and surname, series and number of the identity document by one of the methods specified in the Directive (in particular, with the use of the state information systems that must be prepared for such use until 1 October 2014).

Subject to the simplified identification procedure, individuals can transfer e money to legal entities and entrepreneurs provided that the balance of e-money in any given moment is no more than RUB 60,000 and the total amount of funds transferred within one month is no more than RUB 200,000.

The Law entered into force on 16 May 2014, save for some provisions that will take effect later.

Corporate

LLC Charter Capital

On 5 May 2014 the president signed Federal Law No. 129-FZ establishing a new procedure for the payment of an LLC charter capital.

The Law introduces amendments to the Civil Code and the LLC Law according to which: (i) the founders of an LLC are no longer obliged to pay 50% of the LLC charter capital prior to its registration; and (ii) the founders are now obliged to pay the LLC's charter capital in full within four months of the day of the company's registration (before the amendments – within one year of the moment of registration).

The amendments are expected to simplify and speed up the LLC registration procedure.

The Law entered into force on 5 May 2014.

Personal Law of the Companies in the Republic of the Crimea and the Federal City of Sevastopol

On 5 May 2014 the president signed Federal Law No. 124-FZ establishing the status of the companies existing in the Crimea and Sevastopol as at the day of their admission into the Russian Federation.

The Law establishes the legal basis for the companies' operation in the Republic of the Crimea and the Federal City of Sevastopol whose executive body or person entitled to act on their behalf without a power of attorney according to their foundation documents was located in these territories as at the day of their accession to the Russian Federation, and, accordingly, whose personal law was Ukrainian law.

According to the Law, the companies, before 1 January 2015, may opt to (i) bring their foundation documents in line with Russian law and apply to be entered in the Unified State Register of Legal Entities and thus fall under Russian jurisdiction (i.e. Russian law becomes their personal law), or (ii) acquire the status of a branch or representative office of a foreign company in Russia. The switch to the Russian jurisdiction is not a company's reorganization and does not entail its liquidation.

The Law will enter into force on 1 July 2014.

Accreditation of Representative Offices and Branches of Foreign Companies

On 5 May 2014 the President signed Federal Law No. 106-FZ amending certain legislative acts of the Russian Federation regarding the accreditation of representative offices and branches of foreign companies.

The amendments provide for certain requirements to the establishment and operation of a foreign company's branch and representative office in Russia.

As a general rule, according to the amendments, a company will be entitled to operate in Russia through a branch or representative office strictly as of the day of their accreditation (i.e. their inclusion in the state register of accredited branches, representative offices of foreign companies). The accreditation will be granted by an executive authority appointed by the Russian Government (it is expected that it will be the Federal Tax Service; currently the Registration Chamber of the Russian Ministry of Justice is performing these functions).

Furthermore, pursuant to the amendments, the Russian Chamber of Commerce and Industry (the "CCI") (i) issues permits for the opening of representative offices and branches of foreign companies (before the amendments – for representative offices only); (ii) effects personal accreditation of foreign citizens – employees of branches and representative offices, and (iii) may represent foreign companies while effecting accreditation of their branches and representative offices.

Given that accreditation of both branches and representative offices of foreign companies by the new competent executive authority will become mandatory after the amendments take effect, the power of the CCI to issue permits for the opening of a branch or representative office and the legal effect of such permits remain unclear (before the amendments, a foreign company could obtain a permit for the opening of a representative office either from the CCI or the Registration Chamber of the Ministry of Justice, and these permissions had equal power, at the same time branches only were required to be accredited by the Ministry Justice).

By 1 April 2015, all existing branches and representative offices are required to obtain accreditation according to this Law.

The Law will enter into force on 1 January 2015.

Corporate Governance Code

On 10 April 2014 the Bank of Russia issued Letter 06-52/2463 "On the Corporate Governance Code."

The Code develops and broadens the principles and provisions of the 2002 Code of Corporate Conduct taking into account the modern corporate laws and court practice formed as relevant disputes were resolved. The Code is of an advisory nature and is recommended, first, for joint stock companies with shares admitted to organized trades.

The Code includes, among other things, the following sections:

1. *Shareholders' rights and equality of conditions for shareholders when exercising their rights*

The Code, in particular, points to the need to ensure secure and effective means of recording shareholders' rights and to provide for shareholders' ability to dispose of their shares quickly, without limitations. A company may assure such rights by choosing a registrar with a good reputation and possessing reliable technologies, as well as by establishing cooperation with the registrar regarding prompt updates of the shareholder information.

The Code provides for the recommendations on improving the procedure for the convocation and holding the general meeting of shareholders and the provision of shareholders with relevant information.

The Code includes recommendations on establishing a transparent and clear mechanism of determining the amount of dividends and their payment. It stresses that a company should refrain from detracting from the existing shareholders' dividend-related rights and from diluting their stocks when conducting corporate actions.

2. *Board of directors; company's executive bodies, liability of the members of the board and the company's executive bodies*

The Code reflects the approach established by the Supreme Commercial Court in its Plenum Resolution No. 62 dated 30 July 2013 "On Certain Matters of Indemnification of Damages by Members of a Company's Governing Bodies" (please refer to our Special Alert for August 2013).

The Code clarifies in detail the rules of procedure and functions of the board of directors that are meant to ensure progress of the company and effective control over its operation.

The Code establishes requirements for an independent director¹. Pursuant to the Code, an independent director should be a person who (i) is not related to the company; (ii) is not related to a significant shareholder of the company; (iii) is not related to a significant counterparty of the company; (iv) is not related to

¹ These requirements are developed and broadened as compared to the similar provisions of the 2002 Code of Corporate Conduct.

the state (the Russian Federation or its constituent entity) or a municipal body. The Code clarifies these categories in detail and recommends that independent directors make up at least one-third of the board of directors.

According to the Code, the board of directors must establish committees for the preliminary consideration of the more important aspects of the company's operation: (i) an audit committee; (ii) a remuneration committee; (iii) a strategy committee; (iv) a nominees' committee; (v) a corporate governance committee; and (vi) an ethics committee.

3. Remuneration for members of the board of directors, executive bodies and other senior employees of the company

The Code establishes basic attitudes to the calculation of the amount of fixed remuneration and retirement benefit, recommends ways of short-term and long-term motivation for members of the board of directors and other corporate managers.

4. Disclosure of information

Among other things, the Code recommends that the company disclose significant information about its operation even where the law does not require such disclosure. The company should disclose, in particular, information about the structure of the company's capital; the system of corporate governance; the company's investment and information memoranda; information about all significant risks that may affect the company's operation.

5. Significant activities

Among other things, the Code contains recommendations for a company's entry into major transactions, reorganization or acquisition of the company, listing and delisting of shares, the company's charter capital increase, splitting, consolidation and conversion of shares.

The Government approved the draft Code on 13 February 2014. The Board of Directors of the Central Bank approved the Code on 21 March 2014.

Banking

On 18 February 2014 the Central Bank issued Directive No. 3192-U on amendments to Directive No. 1317-U on correspondent relations with banks resident in offshore zones.

The Directive was registered with the Ministry of Justice on 24 April 2014.

Under the Directive, the Principality of Liechtenstein has been moved from the third to the first group of offshore zones. It means that Russian banks can set up correspondent relations with banks registered in the Principality of Liechtenstein without the limitations that apply if a non-resident bank's country is in the second or third

group. This change should also be taken into account for making provisions for losses related to transactions of residents of offshore zones as per Directive No. 1584-U of 22 June 2005.

The Directive entered into force on 19 May 2014.

On 1 April 2014 the Central Bank issued Directive No. 3223-U "On the Requirements to the Heads of the Risk Management Department, Internal Control Department and Internal Audit Department of a Credit Organization."

The Directive was registered with the Ministry of Justice on 23 April 2014.

Under the Directive, a bank's head of the risk management department, head of the internal audit department and head of internal control department are to meet certain qualification requirements (to their education and professional experience) and requirements as to the business reputation.

Banks are required (i) to notify the Central Bank of appointments to and dismissals from the above positions, as well as of changes in the data submitted earlier within the terms specified in the Directive, and (ii) no later than 90 days after the Directive's entry into force send to the Central Bank the data about persons who currently hold such positions.

The Directive will enter into force ten days after the date of its official publication.

On 27 February 2014 the Central Bank issued Directive No. 3194-U "On the Disclosure by Credit Organizations of Information on Interest Rates for Individual Deposits."

The Directive was registered with the Ministry of Justice on 29 April 2014.

Under the Directive banks are required to disclose monthly interest rates they offer for individual deposits on their website or a newswire of one of the Russian information agencies. The rates must be indicated separately for different terms and currencies (rubles, US dollars and Euros).

The Directive entered into force as of 1 June 2014.

Factoring

On 5 May 2014 the President signed Federal Law No. 86-FZ "On Accession of the Russian Federation to the UNIDROIT Convention on International Factoring."

Russia has acceded to the UNIDROIT Convention on International Factoring of 28 May 1988. It is expected that accession to this Convention will contribute to further development of Russian laws in the sphere of factoring and, eventually, to the promotion of factoring in Russia.

The Law entered into force on 16 May 2014. The Convention will enter into force for Russia on the first day of the month following the expiration of six months after the date of the deposit of its instrument of accession.

Concessions

On 24 April 2014 the Government approved Resolution No. 368 on amendments to concession agreement terms with respect to the public utility infrastructure.

Following the recent amendments to the Federal Law "On Concession Agreements," an approval from the Federal Antimonopoly Service (its territorial department) is required in order to change the terms of a concession agreement with respect to heat-, water supply and (or) water disposal facilities. The Resolution determines the procedure and conditions for the granting (refusal) of such approval. In particular, the parties to a concession agreement may apply for such approval in the following instances:

- change of federal or regional law making it impossible for the parties to perform their obligations;
- force majeure; or
- changes made to the pattern of heat-, water supply and (or) water disposal also making it impossible for the parties to perform their obligations. In such instances, the concessionaire's costs of building or renovating a concession facility may not be reduced.

Please note that approval of changes to the terms of a concession agreement may be applied for if such agreement was signed at least three years prior to the date of such application.

The Resolution entered into force on 6 May 2014.

