



Amendments to the Russian Laws to Enter into Effect in 2016

Newsletter

24 December 2015

In early 2016, numerous amendments into various branches of law will enter into full force and effect. We have selected a number of new rules that appear to us to be the most notable, as well as some projects for 2016 relevant for businesses:

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1. NOTARIZATION OF NEW TRANSACTIONS

Starting from 1 January 2016, the following transactions will be subject to mandatory notarization:

- LLC decisions to increase charter capital;
- offers to sell participatory shares in the charter capital of LLCs to third parties;
- applications of LLC participants on withdrawal from the company;
- LLC participants' demands on buy-back of their participatory shares by the company.

Please see our Newsletter dated 16 October 2015 for details.

2. NEW PROCEDURE FOR CHANGING THE COMPANY'S LOCATION

The new rules have complicated the procedure for changing a legal entity's location. Now, the procedure will (generally) comprise two steps:

- “notification” of the Federal Tax Service of the decision to change the location;
- registration of the change of location (upon twenty days after notification).

Please see our Newsletter dated 25 September 2015 for details.

3. INTRODUCTION OF VERIFICATION OF USRLE DATA BY THE TAX AUTHORITIES

Starting from 1 January 2016, the tax authorities will be vested with powers to verify the accuracy of information already entered or to be entered into the Unified State Register for Legal Entities (**USRLE**).

Thus, when entering information on the USRLE, the tax authority may decide to **suspend registration for up to a month** (until the verification is complete). If the information is found to be unreliable, the tax authority **refuses to register it**.

The information already entered into the USRLE may also be verified, including on the basis of an individual's application. If the information is found to be unreliable during the verification process, the legal entity will have to submit the accurate data within 30 days. Otherwise, the tax authority makes **an entry on the unreliability** of the USRLE data on the legal entity.

Please see our Newsletter dated 25 September 2015 for details.

4. NEW GROUNDS FOR REFUSAL OF REGISTRATION IN THE USRLE

Starting from 1 January 2016, registration may be denied if the tax authorities receive documents for the inclusion of information on the legal entity's participant or the person entitled to act on behalf of the legal entity without a power of attorney, with respect to one of the following persons:

- LLC participants (with shares of at least 50%), that had been excluded from the USRLE as inactive and at the same time had outstanding debt to the budget;
- CEOs of legal entities who had been excluded from the USRLE as inactive and at the same time had outstanding debt to the budget;
- LLC participants (with shares of at least 50%), with respect to which the USRLE contains an entry on the unreliability of information on the legal entity, or an unexecuted judgment to liquidate the legal entity in question;
- CEOs of legal entities, with respect to whom the USRLE contains an entry on the unreliability of information on the legal entity, or an unexecuted judgment to liquidate the legal entity in question.

Exception: these grounds do not apply if the documents are submitted to the tax authority upon expiry of 3 years after the respective entry had been made into the USRLE.

5. LAW ON PUBLIC-PRIVATE PARTNERSHIPS

Starting from 1 January 2016, the Law on Public-Private Partnerships and Municipal-Private Partnerships in the Russian Federation (hereinafter – **PPPs** and **MPPs**, respectively) enters into full force and effect.

Pursuant to the Law, a Russian legal entity may act as a private partner. Exception is made for legal entities controlled by the state and municipal authorities. The Law sets out a list of qualifications for private partners.

Agreements on PPPs and MPPs must provide that the private partner shall:

- construct/reconstruct the subject matter of the agreement;
- finance, in full or in part, the creation of the subject matter of the agreement;
- operate and/or maintain the subject matter of the agreement;
- obtain ownership title to the subject matter of the agreement subject to an encumbrance thereof.

Agreements shall be made for the term of at least 3 years.

Starting from 1 January 2016, the information on open tenders for the right to enter into a PPP or an MPP contract, as well as on the decisions to implement a PPP or an MPP project, will be published at torgi.gov.ru for the purposes of collection of bids for participation in tenders for the right to enter into agreements on such partnerships.

Please be reminded, that prior to the aforesaid Law, PPPs and MPPs were essentially only governed by Federal Law No. 115-FZ dated 21 July 2005 “On Concession Agreements”. The PPP and MPP Law introduces legal instruments that will not affect the institute of concession agreements.

6. KEY RATE INSTEAD OF THE REFINANCING RATE

Starting from 1 January 2016, **the refinancing rate will be replaced by the key rate**. The change is technically connected with the adoption of two acts:

- the Bank of Russia's equating the refinancing rate to the key rate.
- the Russian Government's establishing that all relations governed by the acts of the Government will be subject to the key rate instead of the refinancing rate, unless the federal laws provide otherwise.

Please see our Newsletter dated 14 December 2015 for details.

7. QUOTA ON FOREIGN PARTICIPATION IN RUSSIAN BANKS

A new Law setting forth a **50% quota on the participation of foreign capital in the aggregate charter capital of Russian banks** (to be calculated as of the 1st of January every year), has been adopted. When evaluating foreign investments into Russian banks, the foreign investments financed from the profit generated in Russia and repatriated to Russia from abroad, will not be taken into account. In addition, these calculations will not include the foreign investments of subsidiaries of foreign banks into the charter capitals of Russian banks.

When the quota is reached, the Bank of Russia will be entitled to deny registration to banks with foreign participation or prohibit increases of capital at the expense of non-resident funds.

8. THE FOURTH ANTIMONOPOLY SET

In January 2016, the "fourth antimonopoly set", providing for a complex of measures aimed at the liberalization and improvement of the Russian competition law, will enter into force. These measures include, in particular:

- the Russian Government will be vested with the right to determine, in case of violations of the competition law, the rules for non-discriminatory access to commodities in highly-concentrated commodity markets;
- the rule stipulating that the market participant with a share less than 35% in a certain market may be considered as holding a dominant position, will be repealed;
- agreements made between market participants – now, not only the sellers, but also the buyers of commodities in the market – may be declared cartels;
- the market participants will need to obtain prior approval of the antimonopoly authority before entering into joint venture agreements;
- no notification will be required for transactions between natural monopoly entities;
- the register of entities with shares in the market of over 35% will be abolished;
- the institute of prior opinions of the committee of the antimonopoly body on the circumstances of the case, determination of the types of evidence in antimonopoly violations, the criteria of their admissibility and relevance, will be introduced;

- the functions of the FAS of Russia will now include review of rulings of the territorial antimonopoly authorities.

9. EXCISE DUTIES

Starting from 1 January 2016, **there will be an increase of excise duties** for light spirits, tobacco products and automobiles. The excise duty rates for straight-run petrol and motor oils will decrease. Wines with protected designation of origin or name of the place of origin will be subject to a lower excise duty rate.

This measure is to support the Russian producers of wine, who are using their own wine stock; primarily, the producers of wine in the territory of the Crimean Federal District and the Krasnodar Krai (*Art. 193(1) of the Russian Tax Code*).

10. PERSONAL INCOME TAX

Employers will have to **file reports on personal income taxes paid on a quarterly basis**. Each complete or incomplete month of the violation of the prescribed term for filing of the calculation of assessed and withheld amounts of the personal income tax will be punishable by a fine of RUB 1,000 (*Art. 126(1.2) of the Russian Tax Code*).

In case of a 10-day delay of filing of the personal income tax calculation, the tax authority may issue a decision **suspending operations in the bank account** and transfers of electronic money by the company (*Art. 76(3.2) of the Russian Tax Code*).

The largest taxpayer with separate divisions will be able to file the calculation of assessed and withheld amounts of the personal income tax and the information on the income received by individuals from such divisions according to form 2-NDFL at the place of its registration or at the place of registration of each division (*Art. 230(2)(5) of the Russian Tax Code*).

If one of the participants withdraws from the company, the taxable personal income may be reduced by the amount of expenses (*Art. 220(2)(2) of the Russian Tax Code*). The issue of reporting of expenses in such cases remains moot.

The term of ownership of real estate necessary for exemption of the personal income tax when the property is sold, has been increased from three to five years. The minimum ownership period for real estate may amount to three years in case of sale of an apartment, received from a family member through donation, succession, or acquired *via* privatization (*Art. 217.1 of the Russian Tax Code*). The constituent entities of the Russian Federation may adopt laws decreasing the five-year period of ownership of real estate prescribed by the Russian Tax Code. They may also lower the percentage of the cadastral value of the property, which serves as the basis for comparison of the income received by the seller for the purposes of assessment of the personal income tax.

11. CORPORATE INCOME TAX

Starting from 1 January 2016, the property whose initial value exceeds RUB 100 thousand will be viewed as subject to depreciation (*Art. 256(1) of the Russian Tax Code*). The same procedure applies to the calculation of fixed assets for the purposes of qualifying it as depreciable property (*Art. 257(1) of the Russian Tax Code*).

12. CONTROLLED TRANSACTIONS

The threshold interest rates under obligations arising from controlled transactions are also going to change. Thus, if the rouble-denominated indebtedness arose from controlled transactions, the threshold interest under such obligations shall amount to 75% and 125% of the key rate of the Bank of Russia for the purposes of calculating the income tax (*Art. 269(1.2) of the Russian Tax Code*).

13. SIMPLIFIED TAX SYSTEM

Starting from 1 January 2016, the deflator coefficient for STS in 2016 shall be set at 1,329. The taxpayers whose income exceeds RUB 79.74 million, will lose their right to apply the STS. To apply the special regime starting from 2017, the income for the first nine months of the year 2016 shall not exceed RUB 59.805 million (*Order of the Ministry of Economic Development of Russia No. 772 dated 20 October 2015*).

14. CORPORATE PROPERTY TAX

Unitary enterprises will calculate the property tax based on the cadastral value of their real estate. At present, only the owners of the property shall calculate the corporate property tax using the cadastral value. If the real estate with the tax base determined subject to the specific requirements of Art. 378.2 of the Russian Tax Code belongs to the company under the economic management title and is recognized on its balance sheet as part of the fixed assets, the tax shall be calculated based on the average annual value of the property.

15. EXPANSION OF E-DOCUMENT USE BY NOTARIES

Starting from 1 January 2016, at the applicant's request, the notary shall file applications and other necessary documents in electronic form with the tax authority, then receive the documents issued and deliver them to the applicant – according to the applicant's preference, in the form of e-documents or in hard copy, based on the certificate of equal authenticity of hard copies and e-documents.

16. PROHIBITION OF AGENCY WORK

Starting from 1 January 2016, the so-called “agency work” will be prohibited. Leasing staff will now be available only to private employment agencies, whose business is regulated by law, and select categories of legal entities in case of their affiliation or based on a shareholders’ agreement. Violations may entail administrative liability.

Please see our Newsletter dated 10 August 2015 for details.

17. NEW MINIMUM WAGE

Starting from 1 January 2016, the minimum wage will be set at RUB 6,204 per month.

Please be reminded that from 1 January 2015 the minimum wage amounted to RUB 5,965 per month.

18. JURISDICTIONAL IMMUNITIES

Starting from 1 January 2016, the Law regulating matters related to jurisdictional immunities of foreign States and their property in Russia, will enter into full force and effect.

Jurisdictional immunities of foreign States and their property include immunity from jurisdiction, immunity from pre-trial provisional measures and immunity from enforcement, that is, the Russian court’s obligation to abstain from joining foreign States to legal proceedings.

The Law vests Russian courts with the right to proceed from the same scope of jurisdictional immunities that Russia possesses in the respective foreign State. Jurisdictional immunities of a foreign State and its property may be limited, if the court identifies restrictions of jurisdictional immunities for Russia in such a State.

The Law also sets forth a list of disputes where the jurisdictional immunities do not apply; in particular, disputes related to commercial activities, labour disputes, disputes for compensation, disputes concerning intellectual property or property rights.

19. DRAFT LAW ON SUCCESSION

A draft law amending the rules of the Russian Civil Code on succession is currently pending review in the State Duma of the Russian Federation (*draft Federal Law No. 801269-6*).

According to the draft law, starting from 1 September 2016, spouses will be able to draw a **joint will**, which will, *inter alia*, define the procedure for transfer of rights to common property of the spouses or the property of each of them in case of their death, to the surviving spouse (or other persons).

The draft law also introduces the **contract of succession**. Its terms will determine the procedure of transfer of rights to the testator’s property after his/her death. The contract of

succession may also impose on the parties thereto, who may be candidates for succession, obligations to perform certain actions related or unrelated to property, after the testator's death. The obligations stipulated in the contract of succession may be enforced by successors, the executor, the surviving parties thereto, as well as the notary who keeps the inheritance case.

The draft law also introduces into the first part of the Russian Civil Code the rules on creation by individuals of **special funds**, to be managed indefinitely or for a specific term in accordance with the terms and conditions of management set forth in the charter of the fund or another by-law. The terms and conditions of management of the fund may include provisions on transfer of the fund's property, in full or in part, to third parties, including after the events, whose occurrence is uncertain. At that, the terms and conditions of management of the fund may not be amended after the death of the individual who acted as the fund's founder. Thus, after this institute is implemented, individuals will be able to transfer property to such a fund for certain purposes listed in the charter of the fund (for instance, for aiding children), and the property of such an individual will be directed at achieving the aims thus set after his/her death.

20. DRAFT LAW ON FINANCIAL ADVISERS

The State Duma of the Russian Federation is discussing a draft law,¹ establishing a unified approach to the definition and regulation of the operations of the participants of the financial market who render financial consulting services.

The draft law introduces the notion of a “financial consulting contract”, as well as defines the parties and subject matter thereof.

Under such a contract, a financial adviser (a commercial company or an individual entrepreneur) undertakes to take steps to engage and consult third parties as the principal instructs. These steps shall be taken in the interests of the principal, on his/her behalf and at his/her expense (such contracts are subject to the rules applicable to agency contracts, unless those rules contradict the essence and provisions of the financial consulting contract).

Pursuant to the draft law, financial services may be rendered by persons and entities holding the necessary licenses, permits, accreditation certificates, included on the respective register and being members of the respective self-regulated organizations.

21. PROJECT ON ADVOCATE MONOPOLY

The Government of the Russian Federation is currently reviewing the Concept of Development of the Regulation of the Professional Legal Assistance Market, prepared by the Russian Ministry of Justice, to be approved by the end of 2015. The Concept stipulates that in order to provide legal services, almost all lawyers will need to be admitted to the bar (obtain the status of advocates) – only state officials, in-house corporate lawyers, notaries and patent attorneys will be exempt from the requirement.

¹ Draft Federal Law No. 928356-6.

The new rules will start applying after the transition period that will last through the end of 2017. Proposals have been made to grant the legal consultants a special procedure for admission to the bar, as well as establish civil, criminal and commercial specializations within the bar, with different examinations.

According to the media, several law firms and private lawyers from Chelyabinsk, Pyatigorsk, Yaroslavl and Saint Petersburg have already filed a complaint with the FAS of Russia against the suggestions of the working group charged with the project.

The complaint states that the working group's functions are aimed at creating an artificial monopoly for one of the providers of professional legal services. Furthermore, it is noted that advocate monopoly in representation in courts precludes all other businesses from doing the same, which inevitably violates the constitutional rights of Russian nationals.

22. DRAFT LAWS ON INSOLVENCY (BANKRUPTCY)

The State Duma of the Russian Federation is currently reviewing the following draft laws:

- on increasing the amount of indebtedness of legal entities required for initiating a bankruptcy case against them, from RUB 300 thousand to RUB 500 thousand;²
- on increasing the amount of indebtedness of agricultural producers required for initiating bankruptcy proceedings against them, from RUB 500 thousand to RUB 1 million, and on extending the term for performance of creditor claims from the three months currently set in the legislation, to six months.³

23. DRAFT LAW ON LIFTING TAX SECRECY FROM CERTAIN INFORMATION ON TAXPAYERS

The State Duma of the Russian Federation is currently reviewing a draft law that enables the taxpayer to lift the tax secrecy regime from all or a part of its information as a taxpayer, and make it public.⁴

Moreover, the draft law suggests lifting tax secrecy regime from the following information of corporate taxpayers:

- the average number of employees of the organization for the calendar year;
- the total income of the employees of the organization for the preceding calendar year;
- the amount of taxes and duties paid in the preceding year; and
- the amount of income and expenses of the taxpayer according to its accounting (financial) reports.

According to the drafters of the law, making this information public will enhance the transparency of the economy, and will grant the businesses a real opportunity to verify

² Draft Federal Law No. 939781-6.

³ Draft Federal Law No. 938561-6.

⁴ Draft Federal Law No. 911054-6.

whether their counterparties are acting in good faith.

24. DRAFT NEW VERSION OF THE ADMINISTRATIVE OFFENSES CODE

The new version of the Administrative Offenses Code of the Russian Federation has been prepared this year.⁵ The first draft faced serious criticism on the part of academia and practitioners, primarily for its generally oppressive attitude towards businesses and its narrowing down the competence of commercial (arbitrazh) courts.

The draft is currently pending discussion.

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⁵ Draft Federal Law No. 957620-6.