



Russia Newsletter

Recent developments of Russian law

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Head of the Moscow office

This month our Moscow office has started an exciting new project - a monthly newsletter where our Moscow lawyers will be publishing articles and updates on the most recent developments of Russian legislation and their practical implications for companies and individuals operating in Russia.

Our first newsletter covers a broad range of interesting and significant developments of Russian law and includes a brief article on the recent amendments to the insurance legislation, a piece on the new legislation governing the status of foreign individuals living and working in Russia, an update on the new permitting regime for companies operating in the construction sector, and a summary of new legislation aimed at tackling one of Russia's acute problems - corporate raiding.

We trust the newsletter will prove to be useful to our clients and are happy to answer any questions you may have.

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New permitting regime for construction works in Russia



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On 1 January 2009 the Russian Federation cancelled the construction licensing system whereby construction firms had to obtain licenses to perform construction work. Licenses that had been issued to construction companies prior to that date remained valid until 1 January 2010. From this date on any company wishing to perform construction activities, i.e. works that affect the safety of capital construction projects must be a member of a self-regulating organisation (SRO) and hold a certificate allowing it to carry on such works.

An SRO is a non-governmental non-profit organisation whose members are legal entities and individual entrepreneurs who operate within the same line of business. SROs operate on the basis of voluntary membership. SROs develop their own professional standards and rules that are binding for their respective members, and monitor their compliance with the requirements set out in these documents. The major objective of the SRO's operation is to prevent any personal injuries and damage to property and environment caused by defects in the work of SRO members, as well as to generally improve the quality of construction work performed.

It is for the first time that self-regulation is introduced in the Russian construction sector and therefore the transition process to self-regulation involves many difficulties. Self-regulation standards and rules currently contain a number of requirements relating to the manning of a construction company, education and qualifications of its employees, availability of certain technology required to perform respective construction work as well as civil liability insurance and many other aspects. Consequently joining an SRO is a laborious process for any company, involving a large amount of work collecting the necessary documentation and training staff.

A company performing construction works without the compulsory certificate permitting such works, will face legal implications including administrative penalties and in certain cases criminal prosecution.

According to a number of experts, the new system is likely to have a beneficial effect on the quality of works and services in the construction industry. At the same time some negative implications of introducing SROs to the construction industry are discussed. One of the biggest issues is that the construction market becomes monopolised and small and medium-sized construction firms, which currently account for a substantial volume of construction work performed in Russia, are driven out of the market. One factor that is seen to bar these companies from the market is the prohibitively high level of membership fees and payments payable to the SRO.

New legislation on countermeasures to corporate raid in Russia



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The Russian Parliament passed the legislation on countermeasures to corporate raiding

On 16 June 2010 during the third and final reading the Russian State Duma passed the legislation (the draft legislation was introduced by the president of Russia on 6 April 2010), which purports to amend the Criminal Code and the Criminal Procedure Code of the Russian Federation and is aimed at implementing countermeasures to "corporate raids" of Russian companies.

In particular, the legislation stipulates criminal responsibility for falsification of the Unified State Register of Legal Entities, the register of securities holders, resolutions of general meetings of shareholders and resolutions of boards of directors.

First, the responsibility is envisaged for submission of documents with false statements to the entity responsible for the state registration of legal entities; punishments range from fines of RUR100k to RUR300k, to prison sentences of up to 2 years, which may be combined with a fine of up to RUR100k, or, alternatively, a fine equal to the criminal's earnings over a period of up to 6 months.

Second, similar punishments (a fine or a prison sentence of up to 2 years with or without a fine) are envisaged for entering knowingly inaccurate information into the register of securities holders or a securities depository system.

Where a crime similar to those described above involves violence or threat of violence, the envisaged sanctions are more severe: confinement of 3 to 7 years that may be combined with a fine of up to RUR500k or a fine equal to the criminal's earnings over a period up to 3 years. Third, the responsibility is envisaged for company officers who deliberately enter knowingly inaccurate information into one of the unified state registers, destroy or forge the documents on the basis of which entries were made in those state registers. The offence is punishable by a fine of up to RUR80k with a possible ban on holding offices for up to 5 years, or confinement for up to 4 years. The same acts, if they led to grave consequences, can be punished by confinement for up to 10 years.

Finally, the responsibility is also envisaged for the fabrication of resolutions of general meetings of shareholders or resolutions of the boards of directors (or supervisory boards). This is punishable by a fine or a prison sentence with or without a fine. For instance, if a resolution was fabricated by way of undue influence exerted upon a shareholder or a member of the board of directors to vote in a certain manner or refrain from voting, the fine will range from RUR100k to RUR500k, and the prison sentence may reach up to 5 years and be combined with a fine.

The main aim of the above mentioned amendments (as it follows from the explanatory material to the draft legislation) is to ensure that corporate raiders can be brought to criminal responsibility at an early stage of a corporate raid by way of criminalising those acts which lead to such raids.

Practicing lawyers have given a mixed response to the amendments in point. It is hard to say if these rules will be applied on a wide scale and how the new rules will be approached by law enforcement practice. Thus far, it can be noted that the law enforcement bodies have been provided with additional tools which, apparently, take into account the specific features of offences that involve gaining control over companies' assets and companies themselves against the will of their owners. Time will show how effective will these tools be, whether they would help to cope with the "raiding practices" or whether, on the contrary, they would be abused.

New legislation concerning certain insurance matters



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New law to raise charter capital requirements and regulate insolvency of insurers comes into force in Russia

On 27 July 2010 the general provisions of Federal Law No.65-FZ "On Amending the Law of the Russian Federation "On Organisation of Insurance Business in the Russian Federation" and Certain Other Legislative Acts of the Russian Federation" (the Law or the Federal Law) will take effect.

On 14 April 2010 the Law was approved by the Federation Council in the third (and final) reading. In accordance with applicable laws, the Law will come into force ninety days after its official publication, except for provisions relating to the charter capital of insurers, which will become effective on 1 January 2012.

The Federal Law amends the following legislative acts:

- Law of the Russian Federation "On Organisation of Insurance Business in the Russian Federation";
- Federal Law "On the Securities Market";
- Federal Law "On Non-governmental Pension Funds";
- Federal Law "On Investment Funds";
- Federal Law "On Compulsory Third-Party Liability Motor Insurance";
- Federal Law "On Insolvency (bankruptcy)"; and
- Federal Law "On Protection of Rights of Legal Entities and Individuals in the Exercise of Governmental Control (Supervision) and Municipal Control".

This overview will focus on the major changes in the law that affect the insurance sector.

The Federal Law in question quadruples the minimum charter capital requirements increasing the minimum charter capital of an insurer from RUR30 million to RUR 120 million (approximately USD3,750,000 at the exchange rate of RUR32 per USD1). At the same time, the law does not amend the old scale of multipliers which increase the minimum charter capital requirements for insurers/reinsurers offering selected types of insurance. Thus, taking into account the new charter capital requirements, the minimum charter capital of a life insurance company (whose multiplier is 2) will amount to RUR240 million, and for a reinsurer (multiplier equal to 4) the minimum charter capital requirement will reach RUR480 million.

Those insurers who provide only medical insurance (whether voluntary or compulsory) will keep the current level of minimum charter capital, which is RUR30 million.

The above provisions amending the minimum charter capital requirements for insurers will come into force on 1 January 2012.

According to analysts, as at the end of 2009 27,6% of all insurers in the general insurance business had a charter capital between RUR120 million and RUR240million; 6.5% of all insurers without a reinsurance license had a charter capital between RUR240 million and RUR480million; and 12.7% of companies had a charter capital of over RUR480 million.

According to expert projections only 45-50% of Russian insurance companies will be able to continue its activity on the insurance services market after the charter capital increase requirements become effective.

Starting 27 July 2010 the Russian insurance supervision authority will be given a longer period - 120 days rather than 60 - to review an insurance license application and decide on issuing an insurance license to a company. The 60 days period which applied

previously will now apply only to licenses for additional types of insurance and reinsurance licenses.

Where a company has its respective insurance license suspended or revoked, the Insurance Supervision Authority is entitled to appoint temporary administration to such company on the basis of and according to the procedure provided by applicable bankruptcy laws (as amended and by the Federal Law).

The Federal Law has introduced significant amendments to the Russian insolvency (bankruptcy) laws. These amendments were designed to regulate the bankruptcy of financial organisations (which are seen to include insurance companies), and to introduce temporary administration procedures which were formerly reserved to bankruptcy of credit institutions only.

Temporary administration is seen as a special temporary management body of a financial organisation that is appointed by the regulatory agency. For insurance companies such regulatory agency is the Insurance Supervision Authority.

Temporary administration is appointed for the purpose of restoring the solvency and/or preserving the assets of the financial organisation. The appointment of temporary administration results in the powers of the organisation's executive bodies being suspended or restricted.

Temporary administration is appointed for a term of three to six months. This term can be extended by decision of the regulatory agency by no more than 3 months to the extent that the entire term of temporary administration shall not exceed 9 months.

The Federal Law sets out a procedure for financial organisations to take preventive measures against bankruptcy, including

- financial assistance from shareholders (founders) and other entities;
- changing the structure of assets and liabilities of the financial organisation;
- increasing the amount of charter capital and equity of the financial organisation;
- reorganisation of the financial organisation; and
- other measures not prohibited by law;

The Law further provides the basis for financial organisations to take insolvency prevention measures. These prevention measures are taken where a financial organisation (a) has refused, more than once in the course of any 1 month, to satisfy creditors' claims under its payment obligations; or (b) is in default of any of its compulsory payment obligations for more than 10 days, or (c) has insufficient funds to perform its obligations in due time.

In respect of insurance companies the Law sets out an additional list of events each of which constitutes grounds for introducing bankruptcy prevention measures. In particular, an insurance company will be subjected to bankruptcy preventive measures if it breached any of the following requirements more than once within one year of the date on which the respective breach by such company was first detected: (a) the normative ratio of the company's equity to incurred liabilities, and (b) requirements relating to the composition and structure of assets that cover the insurer's statutory reserves and equity. Other events triggering bankruptcy prevention measures include revocation and/or suspension of an insurance license, and restriction of compulsory insurance license.

The Law lists a number of insolvency indicators of a financial organisation. These include one or more of the following events: a financial organisation

- has at least RUR 100,000 worth of creditors' claims unpaid 14 days after their due payment date;
- has not paid a court judgement or an arbitration award within 14 days of their effective date, regardless of the amount claimed by the creditor;
- has insufficient assets to meet its payment obligations;
- has not restored its solvency in the course of temporary administration procedures.

Such procedures as the financial rehabilitation and external administration will not be applied where insolvency proceedings are opened in relation to a financial organisation. Where the bankruptcy proceedings are initiated by the temporary administration that is satisfied that the relevant financial organisation has no prospect of restoring its solvency, the supervision procedure will not be applied.

When an insurance company is undergoing bankruptcy prevention measures or the procedures applied in the framework of bankruptcy proceedings, the insurance portfolio of the company may be sold or transferred to another insurance company subject to an agreement with the regulating agency.

It is the legislator's view that the focus of the Law is on prevention of bankruptcy rather than on company bankruptcy as such.

Further information

If you would like to have further information on any issue raised in this update please contact:

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Amendments to legislation on legal status of foreign nationals in Russia



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The Federal Law "On the legal status of foreign nationals in the Russian Federation" has been amended with effect from 1 July 2010. The amendments introduce a special immigration regime governing the stay of highly qualified foreign professionals in the Russian Federation.

Eligibility criteria for this immigration category include extensive work experience or achievements in a certain profession as well as the level of salary paid to the highly qualified foreign professional that should be at least RUR2 million per year. The income earned by such highly qualified foreign professionals in Russia will be taxed at the general income tax rate of 13%.

It should be noted that according to the new rules the number of highly qualified professionals granted entry to and work permit in Russia will not be limited by the quotas imposed on invitations to enter Russia for employment purposes or quotas for work permits. Once a highly qualified professional receives a work permit (which will be valid for the duration of his/her employment agreement) he/she and their family members will be granted a Russian residence permit for the same period of time.

Apart from that, the amendments introduce a set of rules for migrant workers who enjoy a visa-free entrance regime.

When such workers intend to work on contract with private individuals (nationals of the Russian Federation), they will have to obtain a "patent to work" from the respective territorial office of the Russian Migration Service and pay RUR1,000 a month in advance as a non-refundable fixed fee towards their income tax liability. However such patent does not authorize its holder to perform any work which falls outside of their scope of employment by a private individual and such worker must obtain the work permit in accordance with the relevant laws. It is also envisaged that biometric data (photographs and fingerprints) shall be collected from such workers as part of patent or work permit application process.

The amendments discussed above are intended to simplify and streamline the existing immigration regime for foreign professionals wishing to work in Russia.

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