

CLIENT ALERT

FURTHER AMENDMENTS TO THE RUSSIAN CIVIL CODE

FOLLOWING THE FIRST SET OF AMENDMENTS TO THE RUSSIAN CIVIL CODE WHICH WAS ADOPTED ON 30 DECEMBER 2012, THE SECOND AND THIRD SETS OF AMENDMENTS TO THE CIVIL CODE HAVE NOW ALSO BEEN SIGNED INTO LAW.

The second set of amendments ("**Second Amendment Law**") which was published on 7 May 2013 and the major part of which will enter into force on 1 September 2013 contains, among other things, rules on the invalidity of transactions and limitation periods, provisions relating to decisions of various corporate and other meetings and more flexible regulations in respect of powers of attorney. The third set of amendments to the Civil Code ("**Third Amendment Law**") which was published on 2 July 2013 and enters into force on 1 October 2013 primarily deals with securities and protection of honour, dignity and individual's privacy. Finally, further changes to the Civil Code which came into force on 30 June 2013 were made by a law passed on 28 June 2013, these changes elaborate on existing anti-money laundering legislation ("**AML Amendment Law**").

Changes to other parts of the Civil Code are expected to be introduced during the course of this year.

The most notable amendments to the Civil Code contained in the Second Amendment Law are as follows:

- Prior to the Second Amendment Law a **transaction not corresponding to the**

requirements of a statute or another legal act was deemed to be void *ab initio* which, in practice, undermined the principle of freedom of contract. This has now been replaced with a rule which provides that such a transaction is voidable (ie a court decision is required to invalidate the transaction) unless the law provides otherwise. However, a transaction made in violation of a law or another legislative act is still void *ab initio* if it is detrimental to the public interest or third party rights. In addition, if it may be concluded from the conduct of a party to a voidable transaction that it intends to keep the transaction in force, the same party is not entitled to challenge the transaction afterwards based on a legal ground which the party was aware or should have been aware of while demonstrating its intention to keep the transaction in force. Therefore, it will now be more difficult to invalidate a transaction, because the courts having more discretionary powers will need to consider appropriately the interests, intentions and behaviour of the parties to a transaction, public interests and interests of third parties. The new rules should strengthen the freedom of contract and ensure the stability of contractual

relationships.

- The general **limitation period** of three years remains unchanged. Currently, a party whose rights were breached has three years to bring a claim starting from the date such party learned or should have learned of the breach. As introduced by the Second Amendment Law, now the limitation period only starts if in addition to the above the party whose rights were breached also learned or should have learned about the identity of a defendant, i.e. a person who committed the breach.

More importantly, the Second Amendment Law introduces a **10-year cut-off period for bringing a claim** starting from the actual breach of rights. The purpose of this is to eliminate uncertainty as currently in many instances it is often unclear when the limitation period begins and therefore the expiry of the limitation period is open.

- A new chapter in the Civil Code has been created which codifies rules in relation to the **decisions of meetings** (eg meetings of shareholders, meetings of creditors of an entity undergoing an insolvency procedure and meetings of other persons). Such provisions deal with the decision-making process, the decision's voidness and contestability, etc. Generally, the chapter codifies general principles already contained in other laws. However, it is worth noting that under the new law a person challenging the decision of a meeting must first notify all the other participants of the meeting of his intention to make a claim in court so that other participants can decide whether they should join the claim or not. The participants of the meeting who decide not to join the claim (including on other grounds for challenging the decision) shall not be entitled to contest the same decision at a later date, unless the court finds reasonable grounds for bringing a delayed claim.

The Second Amendment Law also sets out the required contents of the meeting minutes and the persons who are entitled to sign them. In practical terms the implementation of these new rules may require a company's charter to be amended (mostly in relation to limited liability companies) if its provisions do not comply with

the new statutory requirements.

- The provisions relating to powers of attorney now explicitly provide for the possibility of granting a **power of attorney** to several representatives each of whom may act severally (unless the power of attorney provides that the representatives shall act jointly). This was not entirely clear in the past. In addition, the rule that a maximum term of validity of a power of attorney may not be more than three years has been abolished. Further, the Second Amendment Law introduced rules in relation to irrevocable powers of attorney, which were not possible under Russian law previously but which will now be possible for commercial purposes.
- The mandatory rule that the failure to document a **cross-border transaction** in writing results in that transaction being void is now abolished.

The most notable amendments to the Civil Code contained in the Third Amendment Law are as follows:

- The concept of a **unified (single) immovable property complex** has been introduced in the Civil Code. A unified (single) immovable property complex is a complex which is deemed to be indivisible and may be comprised of buildings, constructions and/or other structures with a unified purpose and connected physically or technologically or located on a single land plot. The essential criteria for a complex to be classified as a unified (single) immovable property complex is that the ownership rights of such a complex must be registered in its entirety as one item. This new concept should amend the rarely used concept of enterprise (as unified property complex) and simplify registration of rights on and transactions with complex immovable assets, including power lines, pipelines and railways. The practical importance of these new rules will depend on further laws and legal acts implementing them.
- The provisions of the Civil Code relating to **securities** were significantly amended, including the introduction of a new definition of non-documentary (paperless) securities and

quite extensive rules applicable to documentary and non-documentary securities. Therefore, the Civil Code now contains rules on the procedure for protecting violated rights to securities, more detailed provisions on the transfer of securities, consequences of the non-documentary securities' return to its owner and the loss of registration entries on rights to non-documentary securities etc. In addition, joint stock companies maintaining shareholder registers themselves shall transfer such registers to professional registrars by 2 October 2014.

- Certain other provisions of the Civil Code, including **indivisible things, protection of honour and dignity, and protection of an individual's privacy**, have been further elaborated. For example, following the implementation of the changes, collection, storage, distribution and use of any information on an individual's privacy made in breach of law (in particular, in the absence of such individual's consent) may result in a court ruling requiring to destroy the relevant print media and other material objects or erase information from the source of its publication, including Internet.

The AML Amendment Law, among many other things, has revised the provisions of the Civil Code relating to the state registration of legal entities. The principle of public accuracy of the state register of legal entities has been codified which means, inter alia, that a person acting in good faith can rely on the information contained in the register in respect of a Russian company. At the same time, such Russian company dealing with a person who has relied on the state register generally cannot refer to inaccurate information contained in the register or information which is not included. If information in the register concerning a Russian company is wrong, a person relying on such information can claim compensation of damages from such Russian company or from the Russian state depending on who is liable for the

inaccurate record. Pursuant to other changes introduced to the Civil Code by the AML Amendment Law, banks are now authorised to unilaterally terminate bank account agreements in the cases specified by law.

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