

**RECENT UPDATES IN RUSSIAN LAW
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1. CORPORATE LAW

1.1. Board of directors' reference to distribute dividends

General meeting of shareholders in joint stock companies (JSC) may not decide to pay dividends without recommendation of the board of directors as prescribed by the Moscow Arbitrazh court ruling [1].

The court of cassation agreed with the lower courts, which did not allow the sole shareholder to distribute dividends. The shareholder's claim was based only on his decision on dividends' distribution. Meanwhile, the shareholder had not appointed the board of directors, the competence of which includes (both under the company's charter and the law) giving recommendations to the general shareholders meeting on the amount of dividends and the manner of their payment. It was not proved that the board of directors made such recommendations.

This approach to such shareholders' claims should help JSCs to retain their assets in situations, when the actions of the shareholder may worsen the financial state of the company.

[1] Moscow Arbitrazh court ruling dated 5 April 2017 № a40-84096/2016

2. BANKING AND FINANCE

2.1. The Bank of Russia is planning to simplify foreign currency control

The Central Bank of the Russian Federation developed [draft directive establishing the order of executing currency operations\[1\]](#) (the Draft Directive) for the purposes of liberalization of foreign exchange control in Russia.

The Draft Directive is a new edition of the effective Directive of the Bank of Russia dated 4 June 2012 No. 138 (Directive No. 138) and is aimed at reducing documentary filing burden on residents and improving the efficiency of exporters' operation.

The Draft Directive provides for the following novelties for residents performing foreign exchange operations:

- requirement to formalize a transaction passport is abolished, instead, registration of contracts with assignment of unique numbers is introduced;
- requirement to submit reports on currency transactions is abolished;
- there is no need to submit currency transaction documents if the price of a contract with non-resident amounts less than USD 1,000;
- simplified (one-day) procedure of contracts' registration for residents-exporters is introduced.

However, current revision of the Draft Directive contains almost the same list of documents related to export contracts established by the effective Directive No. 138.

In the course of preparation of draft plan of measures aimed at increasing economy growth the Russian Government considered rising threshold for formation of transaction passport (registration of contract according to the Draft Directive) from USD 50,000 to USD 75,000. However, this initiative has not been introduced to the Draft Directive yet.

The Draft Directive is currently passing public discussion stage. In case of its adoption, it will come into force on 1 December 2017.

[\[1\]](#) Draft Directive of the Bank of Russia "On the procedure for submission of documents and information by residents and non-residents to authorized banks, related to conducting of currency transactions, the procedure for processing of transactions passports, and the accounting procedure of currency transactions by authorized banks and supervision of their conduct"

3. FOREIGN INVESTMENTS

3.1. Tightening control over foreign investments in strategic spheres in Russia

On 5 July 2017 the State Duma of the Russian Federation passed the law aimed at strengthening control over foreign investments in Russian companies of strategic importance for national defense and state security (strategic companies) (the Law)[\[1\]](#).

Amendments are introduced to the Federal laws dated 9 July 1999 No. 160-FZ[2] and 29 April 2008 No. 57-FZ[3].

The Law provides for the following amendments:

- preliminary approval under the Law No. 57-FZ may be required for foreign investments into non-strategic Russian entities upon the decision of Chairman of the Government Commission on Monitoring Foreign Investments (the Commission);
- the term “foreign investor” may be extended to Russian citizens with foreign citizenship and companies controlled by foreign investors upon the decision of Chairman of the Commission;
- upon preliminary approval of a transaction, the Commission may impose additional obligations related to national defense and state security on a foreign investor;
- the list of strategic activities is supplemented by:
 - activities related to usage of nuclear energy for peaceful purposes;
 - activity of electronic trading platform operators within the contracting system of public procurements;
 - production and sale of special metals and alloys used in weapons and military equipment manufacturing;
- failure of a foreign investor to provide information on acquisition of 5 or more percent of shares of a strategic company may result in deprivation of voting right at the general shareholders’ meeting upon a court decision.

The Law is expected to enter into force in August 2017 after its approval by the Federation Council and execution by the President of the Russian Federation.

[1] The Federal law “On Amending Article 6 of the Federal Law “On foreign investments in the Russian Federation” and the Federal Law “On the procedure of performing foreign investments in business companies of strategic importance for national defense and state security”

[2] Federal law dated 9 July 1999 No. 160-FZ “On foreign investments in the Russian Federation”

[3] Federal law dated 29 April 2008 No. 57-FZ “On procedure of performing foreign investments in business companies of strategic importance for national defense and state security”

3.2. Russian Government clarifies utilization duties of importers and manufacturers of goods

The Federal law “On Production and Consumption Waste” (the Waste Law) provides for a duty of manufacturers and importers of goods to ensure utilization of waste (including packaging) arising from use of such goods due to loss of their consumer value (extended manufacturers’ liability) since 1 January 2015^[1].

Herewith, there exists certain ambiguity regarding many requirements imposed by this new legal framework. One may note that this is caused by possibility of very broad interpretation of Waste Law provisions and long-term process of adoption of all necessary bylaws. Many concerns relate to extended manufacturers’ liability in terms of utilization of packaging.

In late May 2017, the Russian Ministry of Natural Resources published [clarifications on certain issues regarding manufacturers’ liability](#). The document clarifies the procedure of performing utilization standards and declaration of goods, especially in relation of packaging.

Performing utilization standards

Depending on the use and sale model, responsibly for performing utilization standards for packaging material may be distributed as follows.

1. Packaging as a commodity itself (e.g. glass jars or cardboard boxes) sold to end consumer (e.g. individuals or companies rendering services using packaging). In this case, responsibility is born by manufacturers and importers of the packaging as a good.
2. Packaging is used in goods’ production by order of a third party, providing raw materials and holding title (or trademark) to the produced goods, where such third party then organizes sales of these products. In this case, such third party will be responsible for utilization of produced goods including packaging.

The Ministry of Natural Resources pays attention to the fact that duty to comply with utilization standards is not applicable to companies rendering services using goods produced by third parties (e.g. catering companies, postal or transport organizations). In this case, responsibility to perform utilization of packaging lies with producers and importers of such packaging.

Declaring goods and packaging

If goods and packaging are imported for personal needs rather than for their further realization, importers shall not pay environmental fee and provide declaration reports. Moreover, manufacturer or importer shall not declare spare parts or raw materials supplied for production of other goods among their own goods released into circulation.

The Ministry of Natural Resources has also prepared [draft amendments](#) to the Regulation on the order of declaring by manufacturers and importers of number of goods subject to utilization including packaging released into circulation in Russia^[2].

The clarifications and draft amendments are aimed at elimination of ambiguity in application of the Waste Law in terms of extended manufacturers' liability and minimization of duplication when declaring goods and packaging.

However, certain issues remain unsolved. For instance, it is not possible to determine the moment of release of goods into circulation for the purposes of the Waste Law. Information exchange regime between the Federal Service for Supervision in Sphere of Natural Resource Use and the Federal Tax Service has not been established as well.

We will keep you updated on any new lawmaking initiatives in this sphere.

[\[1\]](#) When the Federal law dated 29 December 2014 No. 458-FZ "On introduction of amendments to the Federal law "On Production and Consumption Waste" came into force.

[\[2\]](#) Approved by the Decree of the Russian Government dated 24 December 2015 No. 1417.

3.3. New initiative on convertible loans conception in Russia

On 31 May 2017 a draft law introducing a concept of convertible loan agreement into companies' and securities laws was submitted to the State Duma [1].

(1) Convertible loan provides for opportunity to conclude a loan agreement between an investor (lender) and non-public company (borrower), pursuant to which the investor may by his own choice either demand repayment of a loan or set-off the relevant monetary claims and purchase the company's shares.

Similar mechanism is also available for limited liability companies.

The draft law provides for the following guarantees of investor's rights in the event of breaching convertible loan agreement:

- if a decision on placement of shares contradicts with the terms of the agreement, investor is entitled to claim that the issue was unsuccessful and that the placement shall be performed in full compliance with the agreement;
- if the company avoids placement of shares, investor may file a lawsuit seeking registration of the issue and of the investor's title to such shares.

(2) Convertible loan agreement must be approved by unanimous decision of a general shareholders' meeting.

Such decision may be enforced through a shareholders' agreement providing for obligation of its parties to vote in a certain manner on issues related to conclusion and performance of a convertible loan agreement.

In case of breaching the shareholders' agreement by particular shareholders, the court upon a lawsuit filed by a non-breaching party may recognize the decision of general shareholders' meeting as made on initial terms and conditions stipulated by such agreement.

(3) Convertible loan will allow a company to promptly receive monetary funds, and an investor – to minimize risks related to the company’s activity and liquidity of its shares. It is especially important for start-ups because investors are generally reluctant to immediate acquisition of shares of newly established companies.

It is worth noting that set-off of monetary claims against a company as payment of shares is actually available under existing legal framework. However, an investor has no right to claim issuance of a decision on placement of shares and transfer of title to such shares setting-off relevant monetary claims. That is why such transactions are usually governed by foreign law.

It is believed that adoption of the draft law will facilitate the growth of Russian law governed transactions involving foreign investors, which will receive a new and convenient investment instrument in Russia.

[1] Draft law No. 189256-7 “On introduction of amendments into certain legislative acts of the Russian Federation”

4. LABOUR LAW

4.1. Restrictions for Turkish companies' operation in Russia have been lifted

On 31 May 2017 the Russian President signed the Decree^[1] lifting previously imposed restrictions for Turkish companies on operation in Russia and ban on hiring Turkish nationals by Russian and foreign companies within Russian jurisdiction.

After the incident involving the Russian aircraft, on 28 November 2015 the Russian President Vladimir Putin signed the Decree^[2] that put:

- prohibition of importing certain Turkish goods to Russia;
- restrictions on performance by Turkish companies of certain works/services in Russia; and
- a ban for Russian and foreign companies operating in Russia on employing Turkish nationals (exceptions were made for (a) companies that have already entered into labor agreements with Turkish nationals as of the date of introducing restrictions, and (b) companies directly listed in resolutions of the Russian Government).

The Decree lifting most sanctions came into force on 31 May 2017.

Please note that the import ban on Turkish tomatoes is still in place.

^[1] Russian Federation Presidential Decree dated 31 May 2017 No. 244 “On cancellation of certain special economic measures for the Republic of Turkey”

^[2] Russian Federation Presidential Decree dated 28 November 2015 No. 583 “On measures to ensure the Russian Federation national security and defend citizens of the Russian

Federation from criminal and other unlawful acts and on the application of special economic measures for the Republic of Turkey”

5. DIGITAL LAW

5.1. Mandatory identification of instant messaging users

On 14 June 2017 the State Duma of the Russian Federation approved in a first reading a new [draft law](#) aimed at further development of counterterrorist legislation. The draft law proposes to introduce preliminarily identification of instant messaging (IM) users before transmitting of messages^[1].

Identification procedure will be based on special identification agreement concluded between IM operator and communications provider. According to such agreements IM users will be identified by their mobile phone numbers. Identification procedure and standard form of the agreement shall be passed by the Russian Government.

The following obligations are expected to be imposed on IM operators:

- ensuring technical capability for IM users to refuse from receiving messages from other users;
- ensuring confidentiality of correspondence;
- assisting public authorities in transmitting news and updates;
- limiting IM performed with violations of law.

Failure to comply with such requirements will lead to restriction by communications provider of access to IM service under a court’s decision.

These requirements will apply to messengers included by the Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor) in the official [Register of information distribution operators](#). Currently not all popular IM services are present in the mentioned Register. For instance, it does not include WhatsApp, Telegram and Viber; however, VKontakte and WeChat are present in the Register.

If the draft law is passed, it will come into force on 1 January 2018.

^[1] Draft Federal Law No. 184222-7 “On amending Federal Law “On Information, Information Technologies and Data Protection”

5.2. Russian legal framework for the internet of things

The Internet of Things (IoT) is the self-organizing network of connected and identified devices allowing data collection and transfer.

Development of digital economy will result in changing effective business models through providing worldwide access to the modern services in the IoT sphere. The number of devices connected to the Internet is estimated to reach 40 – 50 billion devices by 2020 (AIG). The economic impact of the IoT will grow to \$14.4 trillion (RAND Europe). To unlock the potential of the IoT sector apart from many technical and technology issues it is necessary to establish and update relevant legal framework including legal regime of personal data, information security, information exchange, etc.

Information as Object of Civil Rights

Information is a key concept of digital economy facilitated by the IoT. Despite the importance of information as an object of civil rights, there is still no development legal regulation in Russia. In 2006 information was excluded from the list of objects of civil rights stipulated by the Russian Civil Code. Existing Federal law dated 27 July 2006 No.149-FZ “On information” only provides for certain terms regarding turnover of information and some rights of the owner of information. It is obvious that this is not sufficient for regulation of information turnover.

Legal Regime of User Data

Difference between personal data and technical data is narrowing. According to the Federal law dated 27 July 2006 № 152-FZ “On personal data” personal data constitutes any information relating directly or indirectly to the defined or definable individual (subject of personal data).

According to a draft law aimed at regulation of Big Data “big user data” is defined as a mass of depersonalized user information allowing identification of an individual (e.g. geolocation, biometrics, behavior on websites). It is anticipated that the draft law will solve a number of issues introducing new forms of giving consent to user data processing and providing for concept of transferring depersonalized user data, liability for unauthorized use of data, etc.

Information Security

Cybersecurity is a serious concern for the IoT development. Federal law “On safety of critical data infrastructure of the Russian Federation” (passed in first reading on 27 January 2017 by the State Duma) determines “objects of critical infrastructure” as information systems and process control systems, which will function in the sphere of defense industry, transport, communication, financial sector, energy, nuclear industry, etc.

The proposed regulation also provides for requirements to critical data infrastructure safety, prevention of illegal access to critical data infrastructure, interaction with the state detection system, prevention and mitigation of consequences of the computer attacks to data resources of the Russian Federation.

New Data Operators` Duties

Antiterrorism legislation brings new challenges to the industry. From 1 July 2018 telecom operators in Russia will be obliged to store text messages, voice information, images, sounds, video, other messages of communication services users up to 6 months from the moment of

information collection/processing in accordance with the amendments introduced by the Federal law dated 6 July 2016 No.374-FZ.

Russian Union of Industrialists and Entrepreneurs estimates that after coming into force of the abovementioned law the volume of data collected by each telecom operator will reach 20 exabytes (billions of gigabytes). In this case, costs of each market member will rise dramatically. The total amount of the stored data will be equal to more than 157 exabytes, and total expenses — more than 100 billion USD that will lead to increase of telecom service pricing.

However, the particular procedure, terms and storage volume have not been established by the Russian Government yet.

Apart from the mentioned above, there are some other initiatives to pursue digital economy and IoT. For instance, the Russian Government is working on the state program "Digital economy of the Russian Federation". There is no doubt that development of the IoT sector regulation will demand both creating new rules and amending existing legislation.