

LEGAL NEWSLETTER



Moscow, October 2018

NEW REGIME FOR UNAUTHORIZED CONSTRUCTIONS

Federal Law “On Amendments to Part One of the Civil Code of the Russian Federation and Article 22 of the Federal Law “On Enactment of Part One of the Civil Code of the Russian Federation” No. 339-FZ dated 3 August 2018 provides a more detailed regulation of unauthorized construction.

Namely, the law now provides that if a building has been constructed in violation of restrictions set forth for the land plot, and the owner has not or could not have been aware of such restrictions, the building cannot be qualified as an unauthorized construction.

Moreover, the law now allows the legalization of unauthorized constructions by bringing them into compliance with the set requirements upon decision of a respective court or local authority. Once legalized, the owner of the land plot or a person who acquired the land plot for temporary use from the government for construction purposes may acquire property rights on the construction.

Additionally, the law provides for new terms: three months to a year for demolition of a construction and six months to three years for bringing the construction into compliance.

AMENDMENTS TO CORPORATE LEGISLATION

Federal Law “On Amending the Federal Law “On Joint-Stock Companies” No. 209-FZ dated 19 July 2018 provides for several major modifications.

General meeting of shareholders. The law specifies a list of information to be communicated to the shareholders during preparation for the general meeting:



- + Drafts of internal documents to be approved by the general meeting;
- + Inspector's ('*revizor*') opinion and information on candidates to the inspection commission ('*revizionnaya komissiya*') shall be provided solely when the establishment of such commission is provided by the company's charter;
- + Report on internal audit for public companies (such audit will become obligatory starting from 1 July, 2020).

The term for informing on the upcoming general meeting has been extended and is now 21 days.

Moreover, it has been specified that when the general meeting resolves to transfer its authorities to the board of directors, the shareholders will not be entitled to demand repurchase of shares.

Additionally, the law now provides that when approving an interested-party transaction a general meeting is considered duly constituted irrespective of the number of disinterested voting shareholders participating in the general meeting.

Preferred shareholders. The law now allows to provide for the amount of the dividend in the charter solely by indicating the minimum amount of the dividend possible. At the same time, the charter cannot contain solely indication of the maximum amount of the dividend to be paid to the preferred shareholders.

Board of directors. The law sets forth that the annual report shall be approved not later than 30 days before the general meeting, if such approval is in the competence of the board.

The board may now establish committees for preliminary examination of the issues that fall within the competence of the board.

Moreover, starting from 1 September 2018 the boards of public companies shall approve internal documents on the company's policy in risk management and internal control.

Additionally, the Ministry of Economic Development of the Russian Federation published Order "On Approving Model Charters on the Basis of Which Limited Liability Companies May Act" No. 411 dated 1 August 2018 providing for thirty-six model charters for limited liability companies. Model charters, *inter alia*, vary by the following criteria:

- + Possibility to withdraw from the company;
- + Pre-emptive right of the company for share purchase;
- + Prior consent of the shareholders for sale of the share to other shareholders or third parties;

The document will become effective on 24 June 2019.

AMENDMENTS TO LABOR LEGISLATION

Federal Law "On Amending the Labor Code of the Russian Federation for the Purposes of Participation of Representatives of Employees in the Meetings of the Collegial Management Body of an Organization" No. 315-FZ dated 3 August 2018 entered into force on 14 August 2018. The law now provides that employees may participate in the meetings of the board of directors or other collegiate authority of the employer according to the Russian Labor Code, other federal laws, constituent documents of the company, internal documents or collective agreement. Employees will act in a consultative capacity being able to express their opinion on the relevant issues. They will not, however, be able to vote.

A primary trade union organization or other representative body will be entitled to appoint its representatives to the board.

Moreover, such representatives will be bound by commercial or other legally protected secret bearing full material liability for disclosure.

Additionally, the Russian State Duma on 25 September 2018 adopted in the third (final) reading Federal Law "On Amending the Criminal Code of the Russian Federation" No. 544570-7. The law provides for criminal liability for



unreasonable denial of employment or unreasonable termination of persons due to their pre-retirement age (5 years or less prior to the retirement). The law stipulates the following liability for responsible individuals:

- + Penalty amounting to RUB 200 000;
- + Penalty in the amount of the infringer's income for up to eighteen months;
- + Obligatory works for up to 360 hours.

The law was first introduced to the State Duma on 6 September 2018. After the adoption of the law by the State Duma it is to be approved by the Federation Council and signed by the President.

DEPOSIT INSURANCE SYSTEM EXTENDS TO DEPOSITS OF SMALL ENTERPRISES

Pursuant to Federal Law "On Amending the Federal Law "On Deposit Insurance of Individuals in the Banks of the Russian Federation" and Certain Legislative Acts of the Russian Federation" No. 322-FZ dated 3 August 2018, the deposit insurance system will extend to deposits of small enterprises. Currently this scheme covers solely the deposits of individuals and individual entrepreneurs.

Thus, if the Russian Central Bank revokes a bank's license, a company included into the register of small and medium enterprises will be able to recover funds in the amount not exceeding RUB 1 400 000.

However, currently there is a list of exceptions for such insurance recovery, which will extend to the small enterprises as well. Namely, insurance will not cover assets deposited outside of the Russian Federation, assets that are digital currency, that are deposited in nominal accounts, etc.

The law becomes effective on 1 January 2019.

NOTARIES WILL SERVE AS ESCROW AGENTS

Federal Law "On Amending Parts 1 and 2 of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" No. 212-FZ dated 26 July 2017 introduces the possibility for a notary to act as an escrow agent. Particularly, the new law provides that rules for escrow will apply when movable property (including cash, certified securities and documents), non-cash money and dematerialized securities are deposited with a notary through a joint application of a creditor and a debtor.

The law became effective on 1 June 2018.

NEW RUSSIAN OFF-SHORE ZONES FOR INTERNATIONAL COMPANIES

Several federal laws were published on 3 August 2018 providing for a new legal regime for international companies, namely, Federal Law "On International Companies" No. 290-FZ, Federal Law "On Special Administrative Regions on the Territories of the Kaliningrad Oblast and Primorsky Krai" No. 291-FZ, and Federal Law "On Amending Part 1 and Chapter 25 of Part Two of the Fiscal Code of the Russian Federation (in part regarding tax imposition on international holding companies)" No. 294-FZ. Particularly, new regulation provides that an international company is a foreign commercial corporate entity that has resolved to change its personal law through re-domiciliation. Simultaneously, in order to receive the status of an international company it shall:

- + Conduct its activities in several jurisdictions including Russia;
- + Undertake to invest a minimum of RUB 50 million into the Russian economy;



- + Be established in a state that is a member of or an observer of the Financial Action Task Force on Money Laundering (FATF) or a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval).

Such international companies will receive certain tax incentives:

- + Dividends received by an international company will be subject to income tax at a zero rate;
- + Dividends paid by an international company to foreign persons will be subject to income tax at a 5% rate;
- + Share sale revenue will be subject to income tax at a zero rate;
- + Profit of the international company will not be considered when calculating the profit of its controlling person;
- + The international company will not have to account profits of its controlling persons as taxable income.

Such international companies shall be established in administrative regions on the territories of Russky Island (Primorsky Krai) and Oktyabrsky Island (Kaliningrad Oblast).

OVERVIEW OF THE COURTS' PRACTICE

→ Resolution of the Constitutional Court of the Russian Federation No. 28-П dated 3 July 2018 (trademark registration in the event of legal succession)

An entity, the owner of a trademark, was acquired by another entity, which, in its turn was acquired by a third entity — «Testato», LLC. The Russian Federal Service for Intellectual Property (the '*Rospatent*') refused to extend the validity of the trademark without having registered its transfer. «Testato», LLC filed a claim to the Court for Intellectual Rights. The Court for Intellectual Rights discovered a conflict in the Russian Civil Code: on the one hand, a legal successor assumes the rights and obligations of the acquired entity after reorganization. On the other hand, exclusive right can be transferred solely upon registration.

The Constitutional Court clarified that in case of acquisition the right to a trademark shall be considered transferred to the acquiring company once an entry on termination of the acquired company has been made in the Unified Register of Legal Persons (the '*EGRUL*').

Moreover, the Constitutional Court stated that the Russian Civil Code does not prohibit the registration of the transfer and prolongation of the validity to be completed simultaneously.

→ Resolution of the Plenum of the Supreme Court of the Russian Federation No. 27 dated 26 June 2018 (major and interested party transactions)

The Supreme Court of the Russian Federation provided clarifications regarding the contestation of significant and interested party transactions.

Major transactions. A transaction shall be considered as significant if:

- + The price or book value of the subject-matter of the transaction equals or exceeds 25% of the company's book value;
- + The claimant has proven that the transaction will lead to the termination of the company or to a significant transformation of the scale of the company's activity.

Additionally, the resolution of the Plenum provides that if a transaction is both significant and an interested party transaction, regulations applicable to both categories shall be observed.

Interested party transactions. A party can be considered as interested when it or persons affiliated with it are:

- + Beneficiaries of the deal;
- + Controlling persons of the beneficiary;
- + Members of the management body of the beneficiary or the managing company of the beneficiary.

A beneficiary is a person who is not party to the deal, but:

- + As a result, may be relieved of certain obligations towards the company or a third party;
- + Acquires rights under the transaction;
- + Acquires other material advantage under the transaction.



Moreover, in order to contest a transaction a claimant should prove that a third party was aware that the transaction was a major or an interested party transaction for the company. At the same time, according to the Supreme Court, third parties are not obligated to verify, whether the transaction is considered as major or an interested party transaction and whether it has been duly approved. Additionally, a third party may presume that persons stipulated in the Unified State Register of Legal Entities as entitled to act on behalf of the company have authority to perform any transactions. Thus, the burden of proof of a third party's awareness of the nature of the deal lies with the claimant.



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