

LEGAL NEWSLETTER



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New Legal Initiative On Promotion and Protection of Investments

The Draft Law “On Investment Promotion and Protection and on Amending Certain Legislative Acts of the Russian Federation” has been elaborated by the Ministry of Finance of the Russian Federation (the “Minfin”). The draft law proposes regulation for investment promotion and protection agreements, i.e. agreements on the realization of investment projects, and guarantees of the stability for their realization concluded between the Russian Federation, or a region thereof, and the investor.

The draft law proposes a variation of a “*grandfather clause*”, i.e. a provision that allows persons or entities to continue with activities or operations that were approved before the implementation of new rules, regulations or laws.

Particularly, it is provided that from the moment the investment agreement becomes effective and for its entire duration, the organization realizing the investment project will not be subject to new regulations of the Russian Federation or its regions related to the investment project that worsen the conditions for its realization (as opposed to the conditions that are effective on the date of conclusion of the investment agreement).

Additionally, it is proposed that companies performing investment projects be exempt from new regulations related to taxes and modifying the tax rates.

The draft law provides that such agreements can be concluded for a term of 6 years if the proprietary investments do not exceed 30 billion rubles, and for a term of 12 years for proprietary investments amounting to 30 billion rubles and over.

Apart from special investment contracts, the draft law extends, *inter alia*, to “environmental projects”, a complex of measures aimed at the creation, modernization or reconstruction of objects for the purposes of prevention or minimization of adverse environmental impact.



A similar draft law “On Amendments to the Federal Law “On Industrial Policy”” has been elaborated by the Ministry of Industry and Trade (the “Minpromtorg”). This draft law, unofficially called *SPIK 2.0*, extends solely to special investment contracts. *SPIK 2.0* amends the subject-matter of the special investment contracts establishing that the manufactured product is to be competitive in the world market and not have analogues in Russia. Additionally, the investment threshold for investment is proposed to be increased from 750 million rubles to 1 billion rubles.

Neither draft law has been introduced to the State Duma yet and are subject to further discussions.

Non-Residents Will Stop Paying Taxes on the Sale of Real Property

Federal Law “On Amending Parts I and II of the Tax Code of the Russian Federation and Certain Legislative Acts on Taxes and Fees” dated 27 November 2018 No. 424-FZ amends the requirements for taxes on real estate sale.

Particularly, the law provides that non-residents (i.e., Russian or foreign citizens who are not physically present on the Russian territory for 183 days a year) as a general rule shall pay a 30% tax on sale of real estate in Russia.

However, now it is provided that a non-resident will be exempt from this obligation if the sold real estate has been in property of the non-resident for more than 3 years (for real estate purchased before 2016 or real estate that has been inherited or received as a gift, etc.) or 5 years (for real estate purchased after 1 January 2016).

These provisions became effective on 1 January 2019.

Draft Law on Legalization of Parallel Import Elaborated by the FAS

The Russian Federal Antimonopoly Service (the “**FAS**”) elaborated Draft Law on amendments to the Civil Code on legalization of import without authorization of the trademark holders (parallel import). The draft law entitles the Government to authorize parallel import of certain goods for five years starting from 2021.

According to publicly available information, the draft law establishes four cases for authorizing parallel import:

- + Unavailability of products in Russia;
- + Insufficiency of products in Russia;
- + Overestimated prices for the products;
- + The products differ from those sold in other countries quality-wise.

The draft law provides an exception for products with localized production.

The draft law has been submitted to the Russian Ministry of Economic Development for further coordination and approval. It has not been published yet.

New Anti-Laundering Rules Proposed

Two related draft laws were introduced to the State Duma on 8 November 2018:

- + Draft law “On Amending the Federal Law “On Countering Legalization of Proceeds of Crime and the Financing of Terrorism” for the purposes of improvement of mandatory control” No. 582426-7; and
- + Draft law “On Amending the Federal Law “On Countering Legalization of Proceeds of Crime and the Financing of Terrorism” for the purposes of establishing the principles of control (supervision) in law enforcement” No. 582466-7.

The first draft law provides regulation for banks, insurance companies and others, and proposes facilitation of the companies’ obligation to control monetary and other assets transactions.



The second draft law proposes changing the whole law enforcement approach related to the matter. Particularly, this legal initiative establishes a risk-oriented approach in law enforcement. The companies will be categorized depending on their “risk level”. This risk level will determine the frequency of inspections. Rules and criteria for qualifying a company as of certain risk level will be further determined by a respective control authority.

The draft laws are scheduled to be considered by the Duma for March 2019.

Additionally, the Ministry of Justice notified on the start of elaboration of the Draft Law “On Amending Certain Legislative Acts of the Russian Federation in Part Relating to Improvement of Liability Provisions for Corruption Offences” on 25 January 2018. This draft law exempts from liability individuals who failed to comply with the anti-corruptions legislation restrictions due to circumstances that made compliance with said restrictions impossible (*force majeure*).

Law on the Labelling System Became Effective in January

Federal Law “On Amending Article 4.7 of the Federal Law “On Using Cash Register Equipment in the Context of Cash or Electronic Settlements” and Articles 5 and 8 of the Federal Law “On the Principles of State Regulation of Commerce”” dated 31 December 2017 No. 487-FZ entitles the Russian Government to establish a list of products subject to labelling. The Government, according to the law will be able to establish a new special requisite for cash register receipts that would allow the identification of the product or the goods nomenclature code.

The law became effective on 1 January 2019. As a reminder, currently there are several projects on labelling effective in Russia, including medicines.

New Rules for Food Retailers

Federal Law “On Amendments to Article 5 of the Federal Law “On Development of Agriculture” and Federal Law “On the Principles of State Regulation of Commerce”” dated 28 November 2018 No. 446-FZ restricts retailers’ right to return products to the suppliers. Particularly, the new law prohibits contractual clauses that allow returning products whose expiration date is less than 30 days. Equally, the law prohibits contractual provisions stipulating substitution or reimbursement of such expired products.

Additionally, the contracts that contain such provisions shall be brought into compliance of the law within 180 days from the date the law became effective (on 9 December 2018).

Reform of Courts System and Procedural Rules

Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation” No. 451-FZ was signed by the President on 28 November 2018. The law, *inter alia*, establishes a set of new rules for civil and arbitration procedure.

First, the law provides for new regulation for courts of appeal and cassation courts of common jurisdiction, since the new version of Federal Constitutional Law “On Courts of Common Jurisdiction” No. 1-FKZ provides that courts of appeal and cassation courts within the common jurisdiction be created as separate institutions (much like in the arbitration courts system).

Moreover, for the majority of situations solely persons with higher legal education or a law degree can serve as parties’ representatives both in civil and arbitration procedure.

Additionally, the law establishes new thresholds for fast-track (the “*uproschennoye*”) and writ (the “*prikaznoye*”) proceedings. Namely, a case shall be considered under a fast-track procedure if the claim amount does not exceed



RUB 800,000 for entities (as opposed to RUB 500 000 now) and RUB 400,000 for individual entrepreneurs (as opposed to RUB 250,000 now); a case shall be considered within the writ proceedings for claims not exceeding RUB 500,000 (as opposed to RUB 400,000 now).

The law will become effective on the date when courts of appeal and cassation courts of common jurisdiction start functioning (Plenum of the Russian Supreme Court shall decide on this date by 1 October 2019).



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