

DRAFT AMENDMENTS TO CIVIL CODE OF THE RUSSIAN FEDERATION PUBLISHED

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To Our Clients and Friends:

The Higher Arbitrazh Court has published the proposed draft amendments to Section I (General Provisions), Section III (General Part of the Law of Obligation) and Section VI (Private International Law) of the Civil Code of the Russian Federation on its website <http://www.arbitr.ru/press-centr/news/31202.html> for discussion purposes. Draft amendments to Section II (Right of Ownership and Other Rights in Rem) and Section VII (Rights to Intellectual Property and Means of Individualization) of the Civil Code will be published at a later date.

The draft federal law on amendments to the Civil Code of the Russian Federation is being drawn up by the Council of the President of the Russian Federation on the Codification and Enhancement of Civil Legislation in furtherance of Decree of the President of the Russian Federation No. 1108 dated July 18, 2008 on Improvement of Civil Legislation.

Work on the draft law on amendment of the Civil Code grew out of the Concept for the Development of Civil Legislation, also elaborated by the Presidential Council, which was disseminated in various publications, widely discussed and finally approved in broad terms by the Council on Codification at a meeting on October 7, 2009 chaired by the President of the Russian Federation.

SOME EXAMPLES OF AMENDMENTS

Many of the proposed amendments are quite substantial and are geared towards making fundamental changes to existing legal institutions, as well as the creation of new legal institutions previously not known in Russian civil legislation. Following is a list that is not exhaustive but that sets forth examples of some of the important changes:

- amendment of provisions on pledge, introduction of special regulation of pledge of bank accounts – from Art. 358;
- concept of bank guarantee replaced by concept of independent guarantee (performance bond) that may be issued by any commercial entity – Art. 368;
- introduction of concept of “actions in circumvention of the law” – Art. 10;

- changes to some forms of incorporation of legal entities (*e.g.*, concept of closed joint-stock company abolished), introduction of concept of public company – Chapter 4;
- amendment of provisions on establishment, reorganization and liquidation of legal entities and management within a legal entity – Chapter 4;
- introduction of special detailed regulation of uncertificated securities – from Art. 128;
- introduction of concept of a framework agreement (open term agreement) and option agreement – Art. 429¹ and Art. 429²;
- introduction of concept of “representation of facts,” somewhat similar to the “representations and warranties” common in English law – Art. 431²; and
- introduction of special regulation of the procedure for execution of a contract in the course of negotiations (including prohibition on unreasonable refusal to continue negotiations, liability for bad-faith negotiations, etc.) – Art. 434¹.

It is expressly permitted that shareholders’ agreements executed in respect of Russian companies be governed by foreign law, provided they are not in breach of mandatory Russian law provisions (Art. 1214), and many other changes.

We will be following developments on the draft law and giving clients progress updates. We would also be happy to discuss any questions you may have in relation to the proposed amendments to the Russian Civil Code.

Alyona N. Kucher
+7 495 956 3858
ankucher@debevoise.com

Alan V. Kartashkin
+7 495 956 3858
avkartashkin@debevoise.com

Dmitri V. Nikiforov
+7 495 956 3858
dvnikiforov@debevoise.com