

Dear Sirs,

Please be informed about the adoption of **Federal Law dated 24 April 2013 No. 100-FZ on Amending Subsections 4 and 5 of Section I of Part One and Article 1154 of Part Three of the Civil Code of the Russian Federation** (hereinafter referred to as the “**Law**”).

The Law constitutes the second set of amendments to the Civil Code of the Russian Federation (hereinafter – “**CC of RF**”) that are prepared and adopted under the reform of the civil legislation.

The Law provides for making amendments in respect of legal regulation of transactions, their validity, representatives and statute of limitations. The CC of RF introduces a separate chapter on resolutions of meetings.

Please note the most substantial amendments introduced by the Law:

1 NEW RULES IN RESPECT OF TRANSACTIONS

1.1 Consent to enter into a transaction

The Law introduces to the CC of RF an article devoted to general rules of giving a prior or subsequent consent to enter into a transaction and establishes a general rule saying that silence shall not be treated as consent.

1.2 Form of a foreign trade transaction

A binding written form of a foreign trade transaction is no longer required. From now on, the parties to such transactions may refer to other evidence (except for witness statements) in confirmation of such transaction and its terms and conditions, such as the correspondence.

1.3 Notarized certification of transactions and state registration

The CC of RF, as amended and restated, specifies what exactly a notary public verifies when certifying a transaction and establishes the general rule of nullity of a transaction in absence of notarized certification if such certification is binding by virtue of the law.

In respect of state registration of transactions, the Law introduces a rule saying that any legal implications of a transaction requiring such registration shall come into force upon its registration.

In addition, general rules are established providing for protection of a party when the second party to a transaction avoids notarized certification or state registration. The statute of limitations based on such rules amounts to one year.

1.4 Legally binding communications

Another novelty of the CC of RF is an article devoted to legally binding communications. Among others, this provision is about the moment from which a message is deemed to be delivered and resolves this issue for any communication that was not delivered to the person through its fault.

1.5 Provisions on invalid transactions

The CC of RF, as amended and restated, contains significant amendments as regards regulation of recognition of transactions as invalid and effects of such recognition.

Major amendments:

- (A) list of eligible claimants in respect of claims to recognize a transaction as invalid is narrowed;
- (B) a transaction entered into in violation of the law is now recognized as voidable unless the law provides for any other implications thereof;
- (C) implications of a transaction that is obviously in contravention of the public policy or morality are mitigated – from now on, the court may confiscate, for the benefit of the Russian Federation, any items obtained by the parties committing willful misconduct or apply any other consequences;
- (D) it is specified that a sham transaction may cover a transaction, among others, on different terms and conditions;
- (E) transaction entered into by a legal entity in contravention of the purposes of its registration is voidable (previously, the CC of RF used wider concepts on falling outside the limits of a legal entity's legal capacity);
- (F) a new ground to challenge a transaction is introduced – absence of consent required by virtue of the law;
- (G) to challenge the transaction falling outside the limits of the powers and to the detriment of a represented person or a legal entity on whose behalf its body is acting, the other party should be aware of obvious damage or there should exist any other circumstances evidencing the conspiracy between the representative / body of a legal entity and the other party;
- (H) transactions with the property in respect of which there are restrictions or prohibition of disposal if entered into in violation of such limitations are void to the extent of such disposal;
- (I) a new rule is introduced for the protection of a *bona fide* purchaser of the property that has been disposed of despite of a court order or any other statutory prohibition for such disposal;
- (J) the rules in respect of recognition as invalid of transactions entered into under the influence of material misrepresentation as well as under the influence of fraud, violence, threat or adverse consequences are adjusted;
- (K) amended are the rules in respect of calculating the statute of limitations under the claims on recognition of transactions as invalid.

2 CHAPTER ON RESOLUTIONS OF MEETINGS

The Law supplements the Civil Code of the Russian Federation with a new chapter on resolutions of meetings. The main rules provisions are the following:

2.1 Effects of adopting resolutions of meetings

In accordance with the Law, resolutions of meetings lead to legal implications at which such resolutions are aimed for all persons entitled to participate in such meeting and for the other persons as provided for by the laws or arises out of the essence of relations.

2.2 Rules for adopting and drafting resolutions

There are general rules in respect of the number of votes and the number of those participating necessary to adopt the relevant resolution and a possibility to adopt resolutions through absentee voting.

2.3 Voidable and void resolutions

The Law distinguishes between voidable and void resolutions of meetings by analogy with transactions; it determines the list of persons entitled to challenge such resolutions and the timing for such challenging in court.

In addition, a new rule is introduced to prevent multiple and parallel legal proceedings on recognition of resolutions as invalid: the person that challenges any resolutions of meeting should notify the other participants of its intent to apply to court. Any participants not joining the claim, including where there are other grounds for challenging the resolution, as general rule lose their right to apply to court with a claim to challenge a resolution.

3 NEW RULES FOR REPRESENTATIVES

3.1 Status of a representative

The Law clarifies who shall not be deemed as a representative: in particular, a person that only transfers the duly formalized will of another person shall not be treated as a representative.

A representative may not enter into transactions on behalf of the person represented in respect of itself and in respect of any other person whose interests he represents, unless otherwise provided by the law. Such transactions, if executed without consent of the person represented, may be held by the court as invalid under the claim of the person represented if it is in violation of its interests (provided that violations of interests is presumed).

3.2 Commercial representatives

The Law singles out special rules provided for by the CC of RF that established requirements to relations between a commercial representative and those represented (for example, a rule of payment of remuneration in equal parts by the parties to any agreement, a requirement to keep secret any information on transactions).

The Law introduces the presumption of consent of persons represented to concurrent representation in respect of transactions at organized auctions.

3.3 Entry into a transaction by an unauthorized person

The rules on the consequences of entering into transactions by a representative having no relevant powers are supplemented by the following new provisions:

- (A) Prior to approval of any transaction by the person represented, the other party to a transaction may rescind it unilaterally, except where, in entering into such transaction, it was or should have been aware on the lack of powers or their misuse;
- (B) If the other party was not and should not have been aware of the lack of such powers, it shall be entitled to require the unauthorized person to perform the transaction or claim damages incurred.

3.4 Documenting representative's powers

The Law introduces important amendments as regards issuance and effect of the power of attorney:

- (A) The representative's powers may now be incorporated into an agreement or shareholders' resolution;
- (B) The rule on fixing the seal to the power of attorney of a legal entity is cancelled – from now on, the signature of the relevant person authorized to issue the power of attorney is sufficient;
- (C) The new rules on the powers of several representatives acting under the same power of attorney and on the powers of attorney issued by several persons are established;
- (D) The previously effective maximum term of a power of attorney (3 years) is cancelled. From now on, the term shall be determined in the power of attorney itself;
- (E) A power of attorney may specifically establish a prohibition on the transfer of powers arising thereunder in the form of substitution;
- (F) There is a new exception to the rule on notarized certification of the powers of attorney issued by way of substitution: legal entities, heads of the branches and representative offices of legal entities may transfer their powers by way of substitution without notarization;
- (G) The Law introduces an additional ground to terminate a power of attorney – introduction, in respect of represented / representative, of the bankruptcy procedures under which the eligible person loses its right to issue powers of attorney;
- (H) The Law introduces a new opportunity to notify any parties concerned of revocation of a power of attorney: information on such revocation may be published in the official paper that normally publishes information related to bankruptcy. The signature on the application on revoking a power of attorney should be notarized. Any third parties shall be deemed notified of revocation of a power of attorney upon the expiry of 1 month from the date of such publication, unless not notified thereof earlier.

3.5 Irrevocable power of attorney

Another new provision of the CC of RF is the rule on the right to issue irrevocable power of attorney. As a general rule, it may not be revoked prior to the expiry of its term or may only be terminated in cases provided for by such power of attorney.

Such power of attorney may be issued in order to perform or to secure the performance of obligations related to carrying out entrepreneurial activities.

An irrevocable power of attorney should be notarized.

4 NEW RULES ON STATUTE OF LIMITATIONS

4.1 Calculating the statute of limitations

The Law introduces new rules:

- (A) From now on, the statute of limitations will commence from the date when a person became aware and should have become aware not only of the violation of its right, but also of who is the proper defendant in the claim to protect such right. In the current version of the CC of RF the commencement of the statute of limitations is not connected with the determination of the proper defendant;

- (B) The maximum statute of limitations may not exceed 10 years from the date on which the respective right was violated.

The majority of amendments provided for by the Law shall come into effect on 1 September 2013.

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For more detailed information, please visit our [website](#) or contact **ALRUD Senior Partner Vassily Rudomino: vrudomino@alrud.com**.

Kind regards,

ALRUD Law Firm

Note: Please bear in mind that this letter is intended only for information purposes and may not constitute a ground for decision-making on any particular matter. In preparing this letter, we made use of information derived from the open sources.