

August 21, 2014

Dear Sirs,

Following our previous newsletters regarding the requirement on personal data storage of Russian nationals in the databases located in Russia as of 2016 we would like to inform you of some other changes that have occurred recently in Russian data protection legislation.

MODERATORS OF INFORMATION DISTRIBUTION IN THE INTERNET

The Federal Law № 97-FZ dated May 5, 2014 (**Law**) has introduced obligations of organizers of the information distribution in the Internet (**moderators**) in the Federal Law “On information, information technologies and information protection”. The moderators are defined as those maintaining information systems and/or software which are designed and/or used for the reception, transfer, delivery and/or processing of e-messages in Internet. Thus, the law is addressed mainly to instant messaging, blogging, social media, public e-mails, etc. However, the broad and ambiguous definition makes it possible to apply the law to every web-site having forum or option of providing feedback for its users. The definition as it is might also apply to E-commerce, services of cloud storage, etc.

IMPOSED OBLIGATIONS ON MODERATORS

The considered amendments have imposed several obligations on the moderators.

First of all, moderator must file notification to the state authorities on commencement of activity on maintaining information systems and/or software which are designed and/or used for the reception, transfer, delivery and/or processing of electronic messages in the Internet. The entity shall file notification upon respective request of competent state authority or at its own initiative. The entity will be qualified as moderator after its inclusion into special Register of moderators. The particular procedure of notification is specified in the **Governmental Regulation №746 dated July 31, 2014** which have come into force on August 12, 2014.

Secondly, moderators are obliged to store for not less than 6 months information in the territory of Russia on the facts of reception, transfer, delivery, processing of electronic messages of users and the data of such users. The types of information to be stored are determined in recently published **Governmental Regulation № 759 dated July 31, 2014** which has been elaborated for implementation of the Law and *has come into force on August 14, 2014*. The Regulation also specifies categories of the users whose e-messages and data should be stored.

Also moderators are under obligation to transfer such information to competent state authorities upon their request. The requested information should be provided by the moderator within the specified term which is under general rule 30 days. However, there might be urgent requests which imply requirement to provide information within 3 days.

Thirdly, the moderators are obliged to comply with requirements to technical equipment as well as software and hardware tools established by the state authorities responsible to ensure security (for example, Federal Security Service) as well as those conducting criminal investigation in order to let them perform their functions. For example, if the state authority cannot decrypt requested information in the information systems used by the moderator the latter should assist the

authorities by taking required steps to let the authority perceive the information it needs. The detailed procedure on liaising of moderators with the state authorities on requirements to technical equipment is specified in ***the Governmental Regulations №743 dated July 31, 2014 which have come into force on August 12, 2014.***

The outlined obligations are not applicable to operators of state (municipal) information systems, communications operators (i.e. legal entities rendering communications services under the respective license) as well as to the individuals acting as moderators for private (personal) purposes.

LIABILITY ISSUES

If a moderator fails to perform the said obligations competent state authority is entitled to restrict access to the informational resources of the moderator following statutory specified procedure. This procedure implies the following steps:

- filling by the competent state authority the notification to the moderator on non-performance of imposed obligations; The said notification shall set the term for moderator to comply with its statutory obligations and shall be not less than 15 days;
- if the moderator fails to perform imposed obligations the competent state authorities are entitled to bring it to administrative liability (please see the details below);
- based on the decision on imposition of administrative liability the competent state authority is entitled to restrict the access to moderator's information resource.

The detailed procedure on restriction the access to the information resources of the moderators is set forth in the ***Governmental Regulation №745 dated July 31, 2014 which have come into force on August 12, 2014.***

The violation of the said obligations also entails administration liability:

- for failure to notify the state authorities on commencement of activity on maintaining information systems and/or software which are designed and/or used for the reception, transfer, delivery and/or processing of electronic messages in Internet in the form of fine for the company ranged from 100 000 up to 300 000 RUR and for company's officers from 10 000 to 30 000 RUR;
- for failure to store certain categories of information and provide it upon request of competent state authorities in the form of fine for the company ranged from 300 000 up to 500 000 RUR, for company's officers – from 30 000 up to 50 000 RUR;
- for failure to comply with requirements to technical equipment as well as software and hardware tools of the state authorities responsible to ensure security as well as those conducting criminal investigation in the form of fine ranged from 300 000 up to 500 000 RUR and for company's officers – from 30 000 up to 50 000 RUR.

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We hope that you will find this information helpful. Should you have any questions, please contact our Partner **Irina Anyukhina** (ianyukhina@alrud.com).

Kind regards,

A·L·R·U·D

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