

Newsletter

New Law on Personal Foundations

February 25, 2022

Dear Ladies and Gentlemen,

Amendments to the Russian Civil Code that provide the ability to create a new type of non-commercial organization – a **personal foundation** – will take effect on **March 1, 2022**.

Purposes of using personal foundations

The personal foundation will become a new **asset planning** instrument. The foundation can operate both while the founder is alive and in the event of force majeure (for example, loss of legal capacity). A personal foundation can be created to achieve the **following goals**:

- To structure the consolidated ownership and professional management of wealth
- To transfer family assets to future generations
- To arrange for the financial support of family members and philanthropic activity.

The new rules stipulate that personal foundations can be created for a certain period or indefinitely by an individual while alive or by a notary following the founder's death, if the creation of such a foundation is provided for in a will. If it is created after death, the personal foundation will be regarded as an inheritance foundation (the rules on inheritance foundations took effect on September 1, 2018). A foundation established during the life of the founder may either continue or terminate its activities if the founder dies, depending on the provisions of the foundation's constituent documents.

A **personal foundation** may be established **by only one person**, except for **spouses** who transfer common property to the foundation.

The foundation shall have ownership rights over any property transferred to it by the founder.

The value of the founder's property transferred to the personal foundation must be at least **RUB 100 million**. This value shall be confirmed by an independent appraiser's report.

Management of the personal foundation

The founder shall determine the structure(s) of the governing bodies, their competence, and the procedure for appointing members of the governing bodies. The founder shall not be entitled to act as the sole executive body, nor as a member of the collegial executive body of the personal foundation. However, the founder may become a member of the supreme collegial body and/or the fiduciary board, if the foundation's Articles of Association provide for the creation of these bodies.

Unlike an inheritance foundation, for which management bodies are formed after the testator's death, the management bodies of the personal foundation will work during the founder's lifetime. This means that the founder will have opportunity to amend the management procedure of the personal foundation, if necessary.

Beneficiaries

Individuals/legal entities, except commercial organizations, or certain categories of

persons may be appointed as beneficiaries of the personal foundation.

The beneficiaries of the foundation have the right to receive property from the foundation (income from its activities) according to the procedure, terms and conditions determined by the founder. They also have the right to receive property from the foundation in the event of its liquidation. The rights of a beneficiary of a personal foundation (including an inheritance foundation) cannot be subject to foreclosure on the obligations of such beneficiary.

To protect the rights of creditors, the new amendments stipulate that the founder of a

personal foundation shall bear **subsidiary liability** for its obligations, if its property is insufficient, and the personal foundation, excluding inheritance foundations, shall bear subsidiary liability with its property for the obligations of the founder of the personal foundation for three years following the date of its creation. In exceptional cases, this period may be extended up to five years.

The personal foundation is expected to be of interest to owners of Russian private capital as an alternative to both foreign trusts/funds and a will. This will create new opportunities for lifetime property arrangement, estate planning and asset management.

We hope that this information is useful to you.

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If you have any questions, please, do not hesitate to contact ALRUD Private Clients practice's experts:



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Kind regards,
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