

## Legal Alert

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## Amendments to Russian Trade Activity Law: New Rules for Retail Chains and Suppliers

### Recent Developments

On 3 July 2016, the President of Russia signed the law (the "Law") amending Federal Law No. 381-FZ dated 28 December 2009 "On the Fundamentals of State Regulation of Trade Activity in the Russian Federation" (the "Trade Activity Law") and the Code of Administrative Offences. The Law will enter into force from 15 July 2016. Agreements concluded before the amendments' effective date will have to be brought into compliance with the amended provisions by 1 January 2017, otherwise any contradicting provisions shall become null and void from 1 January 2017.

The Law introduces a number of amendments to the Trade Activity Law that are of particular significance for Russia-based suppliers of foodstuffs.

### Implications for retail chains and suppliers of foodstuffs

Retail chains and suppliers of foodstuff will have to observe numerous extra prohibitions and requirements when entering into supply agreements and foodstuff-related contracts. The Law introduces tighter payment-related provisions that will need to be taken into account when negotiating with commercial partners and observed at all times.

### What the law says

#### 1. Maximum volume bonus payments and service fees decreased

The aggregate cap of 5% of the purchase price (exclusive of VAT and excise tax) is introduced for both volume bonus payments and service fees payable by a particular foodstuff supplier to a particular reseller of food products for (i) all services rendered to such supplier by retail chains related to advertising, merchandising, market research, reporting services or other services for the promotion of goods ("promotional services"), (ii) logistics services, (iii) services related to the preparing, processing and packaging of goods, and (iv) any other similar services. The provision of such services may not be included into a supply contract and may only be rendered under a separate service contract. At the same time, the Law is not clear on whether this requirement applies to persons who are not formally parties to a "supply contract" and who do not belong to a parties' group of persons.

#### 2. Any additional remuneration to retail chains prohibited

Foodstuff suppliers and members of their groups of persons are prohibited from paying retail chains any remuneration that is not expressly provided in the Trade Activity Law. At the same time, the Law is also not clear on whether

such payments can be made by persons who are not formally considered "suppliers" of foodstuffs and who do not belong to a supplier's group of persons.

### **3. Mandatory publication of commercial partners' selection criteria**

Retail chains and foodstuff suppliers must place information regarding the selection of their counterparties and essential terms of their supply contracts (and for suppliers, information on the quality and safety of the products) on their websites. The provision of such information only upon demand instead of placing it on a website, as permitted by the current version by the Trade Activity Law, will no longer be possible.

### **4. Tighter payment- and documentation-related provisions**

The Law reduces the maximum period for deferred payments for goods, in accordance with the goods' shelf life. Such period starts from the date of actual receipt of the goods by the reseller.

The delivery documents for the goods must be provided by the supplier and accepted by the reseller within three business days of delivery.

### **5. Broader scope of arrangements prohibited for retail chains and suppliers**

The following arrangements between retail chains and their suppliers are prohibited:

- payments for the right to supply existing or newly opening stores (such as entrance/listing fees);
- payments for changing the assortment of supplied goods;
- reimbursement of costs for damaged/lost goods after the title has passed to the reseller unless such damage/loss occurred due to the supplier's fault;
- reimbursement of expenses not connected with performance of the supply contract and further sale of a certain batch of goods.

### **6. Whole group of persons caught within the scope of prohibitions of the Law**

The criteria for recognition of a retail chain are adjusted to include two or more retail facilities lawfully owned by one or several members of the same group of persons.

The requirements and restrictions of the Trade Activity Law are expressly expanded and will apply to the whole group of persons of a business entity, as well as all of the business entity's members.

At the same time, agency/commission agreements with respect to food products will become permissible between members of the same group of persons.

### **7. Administrative liability is expanded to performance of a prohibited arrangement**

Some restrictive provisions of the Trade Activity Law now mean that, in addition to entering into a prohibited arrangement (as in the current version of the Trade Activity Law), the performance (and each event of performance) of a prohibited arrangement will now also be treated as an independent violation of the Trade Activity Law, with each violation entailing a possible administrative sanction. At the same time, the amendments to the Code of Administrative Offences do not provide for a transition period, i.e. one may argue that the amendments apply to the remuneration payable under existing contracts that must be brought in compliance with the new requirements by 1 January 2017.

## Actions to consider

- Check all valid contracts for the supply of foodstuffs and for the provisions of related services for compliance with the new legal requirements and, if necessary, amend by 31 December 2016.
- Consider amending or terminating by 31 December 2016 any agreements associated with payments for changes of assortment of goods, reimbursement costs for damages or lost foodstuffs and other types of contracts outlined in item 5 above, or providing for payment of remuneration and service fees in excess of 5% of the purchase price, exclusive of VAT and excise tax.
- Adopt uniform criteria for: (i) the selection of commercial partners; (ii) the terms and conditions of supply; and (iii) information on quality and safety of the products, and publish such criteria on your official website.

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