16. Civil Legislation

The adoption of the Civil Code of the Russian Federation in 1994 was one of the landmarks in Russia’s transition to a market economy and a fundamental work which followed the example of the civil codes of Germany, the Netherlands, Italy and Switzerland. However, unlike many other continental European jurisdictions where civil codes are equal in their legal status with any other civil laws, the Russian Civil Code prevails over other laws (including other federal laws) in the case of inconsistencies.

The Civil Code regulates virtually all elements of private law, with the notable exceptions of family law, housing law and transportation law, and consists of four parts.

Part I of the Civil Code came into effect on 1 January 1995 and Part II on 1 March 1996. Together these two parts serve as the legal basis for virtually every transaction in the Russian Federation.

Part I of the Civil Code provides the basics of Russian civil law and for such rights as the rights to own and inherit property; to engage in entrepreneurial activity; to establish independent legal entities, and provides for the protection of non-material attributes, in particular, defense of honor, dignity and business reputation. Part I also defines basic concepts of civil law such as a legal entity, securities, transaction, obligation, power of attorney and contract. Part I of the code provides that parties are free to enter into a contract, whether or not such type of contract is expressly recognized by law. Parties are free to conclude contracts containing elements of different types of contracts. Parties are free to agree on the terms of the contract they enter into unless the contractual terms are mandatory under Russian law. Part I further provides the rules for entering into contracts, such as an offer to make a contract and acceptance of the offer, conditional acceptance, option to enter into an agreement, late acceptance, conclusion of contracts at an auction and contract negotiations. The parties to an agreement may use contractual representations,
warranties and indemnities in business-to-business transactions, shareholders’ and share purchase agreements.

Part I also provides for various instruments to secure the proper performance of a contract, such as pledge, surety, independent guaranty, earnest money, security deposit, withholding of property, and penalty (fine). The parties to a contract may agree to any of the above to secure the performance of the contract, as well as other security not specifically listed in the Civil Code. Part I of the code also provides for the general grounds for alteration and termination of contracts. A contract may be altered or terminated by mutual agreement. If there is no agreement, a contract may be altered or terminated if there is either a material breach of the contract or if there is a substantial change in those circumstances that were the basis for the parties to enter into that contract. A party to a contract may also unilaterally refuse to perform its obligations if such right is established by law or the contract. The use of such right may result in the need to pay compensation to the other party.

Part II of the Civil Code further expands on the law of obligations. It contains provisions governing certain types of contracts: sale and purchase; swap contract; donation; annuity; rent; contractor’s agreement; provision of services; transportation; forwarding; loan; bank deposit; bank account; settlement; storage; insurance; agency; trust management; franchising and simple partnership contracts. In addition, Part II of the Civil Code provides for non-contractual obligations such as agency without authority, torts (including product liability), unjust enrichment, public contest, and public promise of a reward.

Many provisions of the Civil Code required the adoption of additional legislation. Such legislation includes the Federal Law On Joint Stock Companies, the Federal Law On Limited Liability Companies, the Federal Law On State Registration of Legal Entities and many other laws. Instances remain, however, where appropriate lower level legislation has not been adopted - the absence of a direct multimodal transport law being one such example.
Part III of the Civil Code entered into force on 1 March 2002, covering the law of succession and conflict-of-law rules. Part III, Chapter V of the Civil Code (the Inheritance Law) details the rights of citizens to dispose of their property by devise, establishes priority categories of heirs-at-law (i.e. those who inherit absent a devise), and provides for other forms of inheritance. Legal entities and the state may act as heirs. In addition to regular wills (which should be executed in writing and notarized), Chapter V provides for confidential wills and wills made in a simple written form.

Part III, Chapter VI (International Private Law) regulates transactions “complicated by a foreign element” i.e. transactions with a foreign citizen or with a foreign legal entity, or otherwise involving a “foreign element”. Generally, the parties to a transaction that is complicated by a foreign element are free to choose any law (either Russian or foreign) as the law governing their transaction; however, the law so chosen will not apply if it contravenes the public order of the Russian Federation or so called ‘super-mandatory rules’ of Russian law.

Part III, Chapter VI of the code recognizes that foreign law may be applicable in Russia regardless of whether or not the choice of Russian law as applicable is honored in the respective foreign country. If the application of foreign law depends upon reciprocity, it shall be presumed that reciprocity exists. If the parties did not choose the law applicable to their transaction, the applicable law will be determined on the basis of the default rules of the Civil Code (Part III, Chapter VI). Generally, these conflict-of-law rules are based on the idea that a transaction should be regulated by the law of the country that has the closest connection to the transaction. The code contains conflict-of-law rules relating to both contractual and non-contractual (e.g. tort) obligations. Special provisions in the code determine the law applicable to international consumer transactions; assignment of rights; obligations arising from unilateral transactions; interest accrued on monetary liabilities; product and service liability; liability for unfair competition; unjust enrichment.
Part IV of the Civil Code, covering various intellectual property issues, came into force on 1 January 2008. These issues are discussed in more detail in a separate chapter of this brochure on IP.

In 2008 the President of the Russian Federation by decree launched a full-scale reform of the Civil Code aimed at making the code more flexible, up-to-date and attractive to foreign investors. As mentioned earlier, the Civil Code is one of the fundamental Russian laws underlying other Russian legislation and will therefore affect all companies doing business in Russia.

A lot of important changes were introduced into the code in 2013-2015.

By way of example, on 1 March 2013 the law introducing the first set of changes to the Civil Code, which concern in particular the state registration of property, the principle of good faith in business and abuse of rights, came into force. According to these changes, from March 2013 there is no need to register transactions with real estate, instead only rights to real estate will require state registration. These changes were designed to end a burdensome system of double registration under which, for instance, the sale of an apartment required simultaneous registration of the sale and purchase contract as well as of the transfer of title to the new owner.

The principle of good faith in conducting business affairs was introduced into the Civil Code as one of the main principles of civil legislation. This is aimed at bringing Russian law closer to European rules where courts have greater flexibility in evaluating the business conduct of the parties. This will mean that bona fide participants of commerce should be better protected. For instance if a company’s rights are violated by the bad faith actions of a counterparty, the company will be able to seek protection even if that counterparty did not formally breach the terms of the relevant contract.

Acting in circumvention of the law is now to be classed as an abuse of rights. From now on such abuse of rights may result in the need to pay
damages to those whose own rights are violated by such abuse as well as possibly more serious consequences such as invalidation of transactions concluded with an abuse of rights.

Other significant changes of 2013 include abolishment of the mandatory requirement for an international transaction to be in writing, change in rules on challenging transactions making it less easy to challenge a transaction purely on formal grounds, and introduction of new rules which envisage that a power of attorney can be irrevocable.

In 2015 several new concepts were introduced, such as insolvency of a citizen, alternative and optional obligations, a fine for failure to perform under a court ruling (“astrent”), the so-called option agreement, inter-creditor and framework agreements.

Further changes to property rights and rules of succession are expected to follow.