Russian Law Essentials Series

RUSSIAN BUSINESS LAW

Essentials

Evgeny Gubin

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Alexander Molotnikov

Russian business law: the essentials

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Аннотация

This publication is intended to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication is not a substitute for the advice of an attorney. If you require a legal or other expert advice, you should seek the services of a competent attorney or other professional.

Содержание

Russian business law: the essentials Edited by Evgeny Gubin and Alexander Molotnikov

Lomonosov Moscow State University Faculty of Law Business Law Department

Editors – *Evgeny Gubin* and *Alexander Molotnikov*

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* * *

"This work clearly explains the sources of business law in Russia and the way in which the law supports entrepreneurial activity. It will be an important tool of understanding for Western scholars and testimony to the importance given to the law as a mode of business regulation in contemporary Russia."

Professor Simon F. Deakin

University of Cambridge Faculty of Law

"This book fills a gap in the English language literature

on Russian business law. It provides an important starting point for comparative corporate law scholars and corporate lawyers by making the foundational rules on Russian business law easily accessible in English. Hopefully, this book will inspire more comparative legal research on Russian Business Law in the future."

Dr. Dan W. Puchniak

Associate Professor of Law, National University of Singapore (NUS) Director of Corporate Law, NUS Centre for Law & Business

"This book demonstrates to the world the business law of Russia and may promote economic and commercial engagement between Russia and other countries. Meanwhile, the book has great significance to the international trade and investment, and economic globalization. Therefore, we really look forward to the publication of this book."

Professor Ciyun Zhu

Tsinghua University School of Law

"The chapter on "Business Litigation" includes a useful section on the Russian judicial system, including the jurisdiction and functions of the Arbitration Courts. The chapter also looks into the arbitral tribunal system (which is not the same as the Arbitration Courts) in the Russian Federation. The chapter on "Contracts" can function as a convenient starting point for anyone seeking a comprehensive summary of the law relating to commercial and other contracts. I especially benefitted from the section

on sale of goods contracts in the Russian Federation."
Professor Anselmo Reyes
University of Hong Kong Faculty of Law

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Glossary

Anti-Money Laundering Law	Federal Law No. 115-FZ "On Combating Money Laundering and the Financing of Terrorism" dated August 07, 2001
Arbitration Courts of Subjects	Arbitration courts of first instance in the Republics, in the regions, in the districts, in the cities of federal significance, in autonomous regions, autonomous districts
Arbitration Procedural Code of the RF	Arbitration Procedural Code of RF No. 95-FZ dated July 24, 2002
Banking Law	Federal Law No. 395-1 "On Banks and Banking Activities", dated December 2, 1990
Bankruptcy Law	Federal Law No. 127-FZ "On the Insolvency (Bankruptcy)", dated October 26, 2002
BIT	a bilateral investment treaty
CBR Law	Federal Law No. 86-FZ "On the Central Bank of the Russian Federation (Bank of Russia)", dated July 10, 2002
CBR or Bank of Russia	The Central Bank of the Russian Federation
CC of the RF	Civil Code of Russian Federation (First Part) No. 51-FZ dated November 30, 1994 Civil Code of Russian Federation (Second Part) No. 14-FZ dated January 26, 1996 Civil Code of Russian Federation (Third Part) No.146-FZ dated November 26, 2001 Civil Code of Russian Federation (Fourth Part) No. 230-FZ dated December 18, 2006
Civil Procedure Code of the RF	Civil Procedure Code of Russian Federation No.138-FL as of November 14, 2002
CO	Commercial operator of wholesale market
Code of Administrative Offences of the RF	Code of Administrative Offences of Russian Federation No. 195-FZ dated December 30, 2001
Constitutional Court of the RF	Constitutional Court of Russian Federation
Criminal Code of the RF	Criminal Code of Russian Federation No. 63-FZ dated June 13, 1996

Criminal Procedure Code of the RF	Criminal Procedure Code of Russian Federation No. 174-FZ dated December 18, 2001
DIA	Deposit Insurance Agency
Deposit Insurance Law	Federal Law No. 177-FZ "On the Insurance of Deposits of Individuals in the Banks of the Russian Federation", dated December 23, 2003
Decision On Providing Access To Gas Transmission System	Decision of the Government of the RF No. 858 "On Approving of the Rules on Providing Access to Open JSC "Gasprom" Gas Transmission System for Independent Organizations".
Decision on the Terms of the Oil Refinery Connection to the Oil Pipelines	Decision of the Government of RF No. 1039 "On the Procedure of Connection of Oil Refinery to Main Oil Pipelines and (or) Oil Refineries and Registration of Oil Refineries in the RF" dated December 21, 2009
FAS	The Federal Antimonopoly Service
FCL on Arbitration Courts of the RF	Federal Constitutional Law No. 1-FCL "On Arbitration Courts in the Russian Federation" dated April 28, 1995
FCL on Constitutional Court of the RF	Federal Constitutional Law No. 1-FCL "On Constitutional Court of the Russian Federation" dated July 27, 1994
FCL on Judicial System of the RF	Federal Constitutional Law No. 1-FCL "On Judicial System of the Russian Federation" dated December 31, 1996
FCL on Supreme Court of the RF	Federal Constitutional Law No. 3-FCL "On Supreme Court of the Russian Federation" dated February 5, 2014 (edited on November 4, 2014)
FL on Advertising	Federal Law No. 38-FZ "On Advertising" dated March 13, 2006
FL on Arbitral Courts	Federal Law No. 102-FZ "On Arbitral Courts in the Russian Federation" dated July 24,2002
FL on Electric Power Industry	Federal Law No. 35-FZ "On Electric Power Industry" dated 26 March, 2003

FL on International Treaties	Federal Law No. 101-FZ "On International Treaties of the Russian Federation" dated 15 July, 1995
FL on Joint Stock Companies	Federal Law No. 208-FZ "On Joint Stock Companies" dated 26 December, 1995
FL on Licensing	Federal Law No. 99-FZ "On Licensing of Separate Types of Activities" dated 4 May, 2011
FL on Limited Liability Companies	Federal Law No. 14-FZ "On Limited Liability Companies" dated 08 February, 1998
FL on Natural Monopolies	Federal Law No. 147-FZ "On Natural Monopolies" dated 17 August, 1995
FL on Non-Profit Organizations	Federal Law No. 7-FZ "On Non-Profit Organizations" dated 12 January, 1996
FL on Organized Trading	Federal Law No. 325-FZ "On Organized Trading" dated November 21, 2011
FL on Protection of Competition	Federal Law No. 135-FZ "On the Protection of Competition" dated July 26, 2006
FL on Rosatom	Federal Law No. 317-FZ "On Rosatom State Corporation on Atomic Energy" dated December 1, 2007
FL on Securities Market	Federal Law No. 39-FZ "On Securities Market" dated April 22, 1996
FL on State Registration of Legal Entities	Federal Law No. 129-FZ "On State Registration of Legal Entities and Individual Entrepreneurs" dated August 08, 2001
FL on Transportation-Forwarding Activities	Federal Law No. 87-FZ "On Transportation-Forwarding Activities " dated June 30, 2003
Foreign Investment Law	Federal Law No. 160-FZ "On Foreign Investments in the Russian Federation" dated July 9, 1999
FTS	Federal Tariff Service
FTS of Russia	Federal Tax Service of Russia
Fundamental Principles of Legislation on Notariat	"Fundamental Principles of Legislation of Russian Federation on the Notariat" (approved by the Supreme Court of the RF on February 11, 1993, under number 4462-1)

JSC	Joint Stock Company. There used to be 2 types of JSC: Open and Closed. As a part of the reform of the CC of the RF after September 1, 2014, these types of JSC were substituted with Public and Non-Public JSC. Companies have to change their names with the first change of their charters (no deadline for this change was set). Thus, currently in Russia still exist all 4 types of JSC: Open, Closed, Public and Non-Public.
Labor Code of the RF	Labor Code of Russian Federation No. 197-FZ dated December 30, 2001
Land Code of the RF	Land Code of Russian Federation No. 136-FZ dated October 25, 2001
Law on Concessions	Federal Law No. 115-FZ "On Concession Agreements" dated July 21, 2005
Law on Consumer Rights	Law of the Russian Federation No. 2300-I "On Protection of Consumer Rights" dated February 7, 1992
Law on Investment Funds	Federal Law No. 156-FZ "On Investment Funds" dated November 29, 2001
Law on Mass Media	Law of the Russian Federation No. 2124-1 "On Mass Media" dated 27 February, 1991
Law on PSAs	Federal Law No. 225-FZ "On Production Sharing Agreements" dated December 30, 1995
Law on SEZs	Federal Law No. 116-FZ "On Special Economic Zones in the Russian Federation" dated July 22, 2005
Law on Skolkovo	Federal Law No. 244-FZ "On the Skolkovo Innovation Center" dated September 28, 2010
Law on Subsoil	RF Law No. 2395-1 "On Subsoil" dated February 21, 1992
Law on the TRDs	Federal Law No. 473-FZ "On the Territories of Rapid Social and Economic Development" dated December 29, 2014
LLC	A limited liability company
Main provisions of retail	Main provisions of the operation of retail

MSU	Lomonosov Moscow State University
ODM	Operative Dispatching Management
Open JSC "SO UES"	Open JSC "System Operator of Unified Energy System"
PSA	Production Sharing Agreement
Public JSC "FGC UES" or managing company	Public JSC "Federal Grid Company of Unified Energy System"
RJSC "UES of Russia"	Russian Open Joint Stock Company of Power and Electrification "UES of Russia"
Rosnedra	Federal agency on subsoil use
Rosteckhnadzor	Federal Service of Ecological, Technological and Atomic Monitoring
Rules on Gas Supply	Rules on gas supply in the Russian Federation, approved by the Decision of Government of RF No. 162, dated February 05, 1998
SEZ	Special economic zone
SPIMEX	St. Petersburg International Mercantile Exchange
Standards of Issue of Securities	Rules on standards of issue of securities, on procedure for state registration of issue (additional issue) of emissive securities, on state registration of the report on the results of issue (additional issue) of emissive securities and on registration of prospectus of securities (approved by the Bank of Russia under No. 428-P as of August 11, 2014)
Strategic Company	Company engaged in activities of "strategic significance" listed in the Strategic Investment Law *
Strategic Investment Law	Federal Law No. 57-FZ "On the Procedure for Foreign Investments into the Business Entities of Strategic Significance for Ensuring National Defense and State Security" dated April 29, 2008
Supreme Court of Arbitration of the RF	Supreme Court of Arbitration of Russian Federation

Tax Code of the RF	First Part of Tax Code of the Russian Federation No. 146-FZ dated July 31, 1998 Second Part of Tax Code of the Russian Federation No. 117-FZ dated August 5, 2000
The 35 % Register	Register of entities whose share in a given market exceeds 35 %
The Competition Law	Law of Russian Soviet Federative Socialist Republic No. 948-I "On Competition and Limitation of Monopolistic Activities on Trade Markets" dated March 22, 1991
UES of Russia	Unified Energy System of Russia
UMC	Unified Monitoring Control
UNEG	Unified National Electricity Grid
Urban Planning Code of the RF	Urban Planning Code of RF No. 190-FZ dated December 29, 2004
UGSS	Unified Gas Supply System
USRLE	United State Register of Legal Entities
VIOC	Vertically integrated oil companies

Foreword

We've not had the pleasure of meeting in person, but Professors Evgeny Gubin and Alexander Molotnikov have done me a great service in assembling this thorough and readable text along with Levon Garslian, my former student at the University of Pennsylvania, who excellently managed all the book edition process and co-authored its introduction. As a teacher of "Private Equity in Emerging Markets" at the Wharton School of the University of Pennsylvania and a vocal advocate for global entrepreneurship and private sector approaches to economic development, I am often asked the question when promoting activity in a given country, "What about the rule of law?" As it relates to many countries, it is a fair question. In the case of Russia it is not. On the surface, it might seem an appropriate question but it originates from a cascade of misinformation and misunderstanding about the Russian system and an ignorance of the vast progress that has been made since the Russian Federation was established just a quarter-century ago. Every question, of course, is a statement. The Russian rule of law question is indicative of a reluctance to invest within Russia or collaborate with a Russian company. This reticence is born not of experience, but from past echoes of geopolitical tensions and misguided assumptions about how Russia administers business law and adjudicates legal conflicts

between parties, perhaps reinforced by prevailing international concerns. This book provides any individual or company with the insights necessary to do business in Russia on a foundation of knowledge and with confidence that a sophisticated system of commercial justice will apply.

The book is rich in examples that support my enthusiasm. For example, the overview of business legislation chapter successfully guides the reader through how Russia's Continental legal tradition is driven by statutes and how these statutes are assembled as a hierarchy reflecting the principles of law at the federal level and, then, the regional level. The authors describe the system for originating, testing and promulgating law in a way that suggests society-wide consideration of the principles and their application. Enlightening to me is the discussion of the Constitutional basis for the oversight, and essentially promotion, of entrepreneurship. Few countries originate sets of laws out of specific consideration of the need to drive entrepreneurial activity by providing a set of statutes to serve as a guide on the one hand, and a set of assurances on the other. In fact, Russian law assembles in definable provisions a suite of identifiable statutes addressing a vast array of circumstances and possibilities.

It appears to me as a foreigner that Russia has successfully sought to leapfrog its system of commercially related laws through careful study, analysis and adoption of the experiences of countries under the Continental legal tradition, as well as

the British-American tradition. As such, while there are specific differences, foreign business people will find the underpinnings of modern Russian law intuitive with respect to the traditions of their native countries. This is not to suggest that there are not differences, but to assure readers that there is an internal logic to Russian law that is rooted in the practical experiences of countries with longer capitalist heritages.

As a practical guide, the book provides the information necessary to distinguish the individual and entities with legal standing. In addition, the book provides a comprehensive view of the available legal structures for profit and nonprofit organizations in detail that is sufficient for the lay reader to understand the options, and discuss these knowledgeably with competent legal counsel. Attorneys tell us that the best clients are informed clients. With respect to the choice of entity, any reader will be an informed reader and can make the most of their relationship with legal counsel.

I found the discussion of Russian Securities Laws and Regulations particularly enlightening. Here again, it is obvious that modern Russian law has leapfrogged over a century's worth of missteps in the evolution and enforcement of securities laws in other countries. It has done so for a wide-variety of financial instruments and products. While Russia has its own complexities and special requirements in this arena, the book presents the overall structure in an understandable way that inspires confidence. There is a clear message that there are

severe penalties for stepping outside the regulations. From that I infer that the Russian government is serious about building and maintaining confidence in its capital markets.

The book also offers a concise but thorough discussion of the Constitutional basis for litigation, arbitration and other means of legal protection. In any jurisdiction, this aspect of law represents a maze of due process and procedure that is mastered only by the most dedicated and diligent legal practitioner. Here again, however, the notion that the best client is an informed client applies.

This chapter should be read and digested by any business person contemplating commercial activity in Russia as a means of deriving confidence in the Russian legal system on the one hand, and as a guide for enhancing their negotiation of business terms in a contract. Too often, business people will leave the legal provisions to attorneys without taking the time to arm themselves with insights that will allow them to craft an investment or business relationship that considers the universe of issues. The book's accessible treatment of protections is a must read for anyone venturing in Russia or into Russia for the first time.

Finally, in every jurisdiction in every country, whether national, regional or local, there are principles of contract law that have their own nuances when applied in negotiation, commercial activity and adjudication. While these are, again, the province of a dedicated jurist, the book provides a valuable oversight into the realities of contract law in Russia and in so

doing, arms the lay reader with the information and insights necessary to structure the most satisfactory investment or commercial relationship.

As I said in my opening paragraph, Levon Garslian and Professors Gubin and Molotnikov have done me a great service. Now when I am asked about the rule of business law in Russia, I can honestly reply "Read *Russian Business Law: The Essentials*" and you will have your answer.

Stephen M. Sammut,
Senior Fellow, Health Care Management Lecturer,
Entrepreneurship Wharton School, University of Pennsylvania,
December 20, 2015

Preface

"You will not grasp her with your mind
Or cover with a common label,
For Russia is one of a kind —
Believe in her, if you are able..."[1]

Fyodor Tyutchev[2] *(November 28, 1866)*

These insightful and, in some way, mysterious words, written by F. Tyutchev almost more than 150 years ago, could be also applied today to various spheres of the Russian life. This could even be applied to the way we do business or so-called "entrepreneurship." Furthermore, it seems that one could have such a perception not only in relation to doing business, but also the law around it. Our attempt here is to show that this is not the case. Certainly, Russian law, especially business law, could hardly be covered "with a common label;" if anything related to Russia could be done so at all. However, you can definitely "grasp" the Russian business law "with your mind," at a high-

[1] Translated by Anatoly Liberman, available at http://www.ruthenia.ru/tiutcheviana/publications/trans/umomrossiju.html#en.

[2] Fyodor Ivanovich Tyutchev (Russian: Фёдор Иванович Тютчев; December 5, 1803 – July 27, 1873) is generally considered the last of three great Romantic poets of Russia, following Alexander Pushkin and Mikhail Lermontov. See https://en.wikipedia.org/wiki/Fyodor_Tyutchev.

level, even without having a legal background. Our main goal is to help you to achieve such an understanding.

The study of business law is an essential requirement for a business lawyer, businesspersons (including managers and entrepreneurs), as well as for academics. Consider this – what would you do if (1) your client or company has a legal issue in Russia, or (2) you want to tell your students about recent law developments in business transactions in Russia, or (3) you are simply interested in learning about the new Russian law system regulating business relations and conditions of the market economy? Whom would you ask, or where would you look up first? Answers may vary according to the situation: one could hire a law firm, call a friend, or just "google" it. However, it would be much more convenient to have something to use that is reliable, concise, and comprehensive. The absence of a helpful resource in English encouraged our team mainly of professors, PhD students, and graduates of the Lomonosov Moscow State University Business Law Department to prepare this book, which tells about the regulation of business in Russia. However, one should not consider that its main purpose is to simply retell the content of legal acts related to the regulation of business relations. Our team strove to resolve a much more complex problem: on the one hand, to show in what way particular areas of business are regulated, and on the other, to define the fundamentals of business regulation in Russia.

This book covers the following areas of the Russian business

law:

1. Business Legislation
2. Business Association Forms
3. Core Business Contracts
4. Securities Regulation
5. Banking Regulation
6. Competition
7. Bankruptcy
8. Regulation of Natural Resources
9. Investment Regulation
10. Business Litigation, Arbitration and Other Remedies

Thus, this book provides a comprehensive overview of the ten core areas of Russian business law; in other words, its essentials.

Prof. Dr. Evgeny P. Gubin,
Head of Business Law Department Faculty of Law,
Lomonosov Moscow State University,
Moscow, January, 2016
Alexander Molotnikov,
PhD, Associate Professor at Business Law Department,
Faculty of Law, Lomonosov Moscow State University,
Moscow, January, 2016

Alexander Molotnikov,[3] Levon Garslian,[4] Andrei Gabov[5] Introduction to Business Law in Russia

Before getting too deep into regulatory details, it seems appropriate and necessary to give a concise historical and conceptual background of Russian business and business law, in order to enable our reader to better understand the current developments.

[3] PhD, Associate Professor, Lomonosov Moscow State University Business Law Department

[4] University of Pennsylvania Law School, LL. M. 2015; University of Pennsylvania Wharton School, WBLC 2015; Lomonosov Moscow State University, PhD candidate, LL. B. 2012.

[5] Doctor of Legal Sciences, Acting Deputy Director of ILCL, Head of the ILCL Civil Legislation and Process Department.

1. Entrepreneurship Revival

For almost 70 years[6] during the existence of the USSR, entrepreneurship was impossible and even illegal. The key feature of the economy in the Soviet period was the "leading role" of the Communist Party. The Soviet economic system had to comply with the principles that the Party proclaimed: one-party leadership, planned economy, state ownership, and high rates of accumulation. To uphold these principals, the use of non-economic coercion could be possible. Thus, the Soviet economy itself was like one large corporation owned by the state and managed by the Communist Party. Only after the fall of the Soviet Union in late 1991 and the transition to the free market economy, one could start thinking about doing business.

The first legal developments towards the revival of entrepreneurship in the Soviet Union took place even earlier, and are related to the passing of such laws of the USSR as "On individual labor activity" (1986), "On cooperation in the USSR" (1988), and "On general fundamentals of citizen entrepreneurship in the USSR" (1991). Entrepreneurship received the most developed legal regulation in legislation of the Russian Federation – in laws of the RSFSR "On companies and enterprise" (1990), "On registration fee for natural persons carrying out entrepreneurship and a procedure of

[6] From 1921 to 1991.

their registration" (1991), “On property in the RSFSR” (1990), the Constitution of 1993, and the Civil Code of the RF.

For a revival of entrepreneurship in the Russian Federation, one had to create corresponding economic-legal prerequisites. They were created stage-by-stage via reformation of the economic system at the legislative level. The core change related to the transformation of property ownership. In conditions of a socialist property domination, where state ownership constituted the basis of the economic system of the USSR. With this form of socialist property,[7] the revival and development of entrepreneurship was simply impossible, due to a lack of proprietary forms' variety, lack of private property, a lack of a market and its participants, and competition.

A new approach to a system of forms of ownership that developed in our country was expressed by passing the law of the USSR of March 6, 1990, "On property in the USSR," and by passing respective version of the Constitution of the USSR. The law of the USSR "On property in the USSR," (article 2.1.) for the first time directly permitted all the owners and so, even citizens to use property belonging to them for any economical or other activity not prohibited by a law. Furthermore, in combination with the right to use the labor of other citizens during exercise of property rights (article 1, paragraph 4), this law essentially opened a way to a revival of entrepreneurship.

Therefore, the adoption of the law of the USSR, "On General

[7] Article 10, 11 of the USSR Constitution of 1977.

Fundamentals of Citizen Entrepreneurship in the USSR," seems very appropriate. Enterprises, buildings, equipment, and other means of production, and any other property have become the objects of the private property.

In the Russian Federation, the Law of the RSFSR of December 24, 1990, "On Property in the RSFSR" in art. 2, paragraph 3, the right of private, state, municipal ownership, as well as of ownership of public associations (organizations) were enshrined. This was the fundamental law which regulated ownership in this period.

The Constitution of 1993 RF recognized and protected in an equal way private, state, municipal and other forms of ownership (part 2 of art. 8); in the Russian Federation, “land and other natural resources can be in a private, state, municipal and other forms of ownership” (part 2 of art. 9).

This provision has been developed in the Civil Code RF, article 18, which is devoted to the legal capacity of citizens, granting them the right "to own the property… to carry out business and other activities not prohibited by laws; create legal entities on their own or together with other citizens and legal entities; conduct any transactions not prohibited by laws." Hence, the Civil Code of the RF includes the key condition of entrepreneurship – the right to carry out business activity. Freedom of labor is another indispensable condition of entrepreneurship, granted by the Constitution of the RF (art. 37).

Thus, by the beginning of the 1990s, the following

fundamental conditions, necessary for the existence and development of entrepreneurship, were provided: (1) variety of proprietary ownership (first of all, private property); (2) right to carry out business activity; and (3) freedom of labor.

2. Economic Environment

One could think that after getting the necessary legal capacity for doing business in the early 1990s, nothing else was required for the development of entrepreneurship. In theory, this might be true, but of course, not in practice. The stability and strength of the national economy are the key drivers for the development of business, especially at a starting point. With regard to this, it is important to keep in mind that, in 1991, Russia was just getting into the complex process of transitioning to the market economy.

In the 1990s, the Russian economy experienced a deep recession, accompanied by extremely high inflation, low level of investment, growth of external debt, increase of barters, and many other negative processes. To improve the situation, a series of economic reforms took place, including the liberalization of prices and foreign trade, mass privatization, and other reforms. Nonetheless, in August 1998, Russia announced a default on its state obligations, and refused to support the ruble; in other words, the macroeconomic policy pursued since 1992 had failed.

During the 2000s, another series of reforms, this time with a positive effect, were made in various spheres, *inter alia*: (1) tax; (2) pension; (3) banking; (4) electricity; (5) railway. Even foreign experts at that time noticed the effectiveness of the reformation processes initiated by President Putin. For instance, the reform of the taxation system was considered a key factor of the economic

growth.[8] All these processes resulted in Russia finishing the year of 2007 as the seventh largest economy in the world, ahead of Italy and France.[9]

In the late 2000s, Russia experienced a situation that affected many other countries – the financial crisis of 2008, and the ensuing recovery. In March 2010, the World Bank report noted that the losses of the Russian economy were lower than expected at the beginning of the crisis, due to effective anti-crisis measures taken by the government.[10] However, the period of stability after the recovery from the financial crisis did not last long.

Since the beginning of 2014, the economy has been in stagnation. The outflow of capital from Russia in 2014 amounted to a record $151.5 billion.[11] Moreover, the Russian ruble experienced significant fluctuations and even collapsed against Euro and the US dollar. There were several reasons for this, but the primary reasons were low oil prices, and a political crisis in relations with Ukraine, followed by mass economic sanctions from the US and the EU.

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[8] The Putin Curve, Wall St. J. Online, Nov. 26, 2002, http://www.wsj.com/articles/SB10382715144507583 08.

[9] Russia is among the seven largest economies in the world (РФ вошла в «семёрку» крупнейших экономик мира), VZGLYAD (ВЗГЛЯД), Feb. 8, 2008, http://vz.ru/news/2008/2/8/143489.html.

[10] World Bank Believed In Russia (Всемирный банк поверил в Россию), RBK (РБК), March 24, 2010, http://top.rbc.ru/economics/24/03/2010/383833.shtml.

[11] Net capital outflow from Russia in 2014 amounted to $151.5 billion (Чистый отток капитала из России в 2014 году составил $151,5 млрд.), RBK(РБК), Jan. 16, 2015, http://top.rbc.ru/finances/16/01/2015/54b96c5e9a7947490508d8d2.

This brief description of the Russian economy development shows that in the last 25 years, the longest period of the economic stability was less than 5 years. Thus, entrepreneurship, being dependent on the overall economic conditions in the country, has always faced challenges during its development.

3. Business Law Evolution

After a brief historical background on the economy and entrepreneurship development in Russia, it is important to become familiarized with the evolution of Russian business law as a science.

The study of the Russian business law originated in the works of the most eminent Russian legal academics of the 18–19th centuries, who connected their lives with MSU. For instance, D. Ushinskiy, an MSU graduate, was the first person who argued for the necessity of defining business law as an independent branch of law. This was a crucial statement for the Russian legal tradition, where the division of law into different branches (areas) was important. This branch system continues to this day, and the reasons including the following: first, each legal scholar focuses his/her research on a specific area of law. The structure of law faculties at Russian universities is based on such a division of law. In 1876, professor N. Nersesov established a department of trade law at MSU, for the purposes of research in the area of business regulation.

Since 1925, the economic-legal department was created in the MSU faculty of USSR law. During the 1920s, the Civil and Land codes were adopted; also, drafts of the Economic, Commercial, Industrial, and Cooperative Codes were developed. The creation and tremendous development of business law was

explained by the combined nature of the Soviet economy, and the industrialization of civil law. Moreover, the idea of business law significantly correlated with socialist ideology and the idea of common good. However, the MSU faculty of USSR law was reorganized in 1931.

The revival of teaching business law related to a decree of the Communist Party, dated 1964.[12] The first textbook on business law was developed by a group of authors, supervised by a doctor of legal sciences, Professor V. V. Laptev in 1967.

The final concept of business law was developed by a group of authors from MSU and the Sverdlovsk law institute, supervised by V. P. Gribanov and O. A. Krasavchikov. According to that concept, the business legislation could be recognized as an integrated and complex formation, where norms of different branches of socialist law interacted with regulation of different areas of business activity.

The modern period of business law started after the establishment of the business law and foreign trade regulation department of MSU in 1989, and was later renamed into the business law department in 1992, and headed by Professor A. G. Bykov.[13] After the fall of the USSR and at the beginning of new economy system formation, it was vitally necessary to study business law as a separate branch of law that would regulate legal

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[12] "On Measures on Further Development of Legal Science and Improvement of Legal Education in the Country."

[13] Eu. P. Gubin, P. G. Lakhno, I. V. Savelyeva were also members of the department.

relationship in a new free market environment.

Currently, the development of Russian business law is led by the MSU Business Law Department with Professor Ev. Gubin, one of the authors of this book, as its Chairman.

4. Entrepreneurship as a Legal Concept, and Business Law Principles

Another important thing to understand regarding specific rules of business law, is the legal approach towards entrepreneurship, along with business law principles.

In the Russian legislation, entrepreneurship is defined as an independent activity, aimed at regular receipt of profit from use of property, product sale, implementation of works, or service delivery carried out at their own risk by persons registered according to the laws (article 2.1 of the Civil Code of the RF). Thus, any activity can be declared entrepreneurship if it has the aforementioned features, in other words, (1) independence, 2) risk character; 3) focus on regular receipt of profit. Although it is not directly indicated in a given definition of entrepreneurship, the word «activity» itself indicates it must be a continuous, regular, not a single act, and be carried out for a more or less a certain time period.

The principles of business law form the basis for being a separate area of law, and determine its unity. The principles of the market economy underlie business law principles, as market relations are the subject of business regulation.

The following principles of business law are usually

mentioned by legal scholars,[14] *inter alia*: (1) freedom of entrepreneurship, (2) variety and equality of ownership forms, (3) economic space integrity, (4) competition and limitation of monopolistic activity, and (5) state business regulation. These and other principles of business law are explained further in this book.

The principle of entrepreneurship freedom is enshrined by Article 34 of the Constitution of the RF, establishing that "each person has the right to freely use his abilities and property in order to carry out business and other economic activity not prohibited by a law." The same article of the Constitution bans economic activity aimed at monopolization and unfair competition.

Another important principle relates to state regulation of economy and entrepreneurship. For example, article 71 of the Constitution of the RF includes the following spheres into the jurisdiction of the Russian Federation, *inter alia*:

(1) federal policies and programs in the area of state, economic, ecological, social, cultural and national development of the Russian Federation;

(2) legal framework of a single market; financial, foreign exchange, credit, and customs regulation, monetization, pricing policy; federal economic services, including federal banks;

(3) federal budget; federal taxes duties; federal funds of regional development;

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[14] *See,* for example, I. V. Ershova, G. D. Otnykova, Russian Business Law, 2011.

(4) federal property and its management.

The principle of state regulation is enshrined not only in the Constitution of RF, but also in the constitutions or charters of the Russian Federation constituent territories, federal and local laws, and other legal acts.

Finally, the integrity of the economic space is another core principle of market economy and business law. In accordance with articles 8 and 74 of the Constitution of the RF, the integrity of economic space, free movement of goods, services and financial resources, support for competition, and the freedom of economic activity are guaranteed in the Russian Federation.

Now, our reader has the necessary background. Let your journey to the Russian business law begin! We hope you will enjoy it.

Evgeny Arkhipov[15]
Chapter 1 – Business Legislation

1. Business Legislation

Russia belongs to the Continental (Roman-German) legal family. Statutes (laws) are the main source of law.

1.1. The Hierarchy of Legal Acts Regulating Entrepreneurial Activities

The system of legislation of the Russian Federation consists of three levels: federal, regional (at the level of subjects of the Federation), and local (at the level of municipal entities). At the top of the pyramid of normative acts is the Constitution of the Russian Federation. Moreover, the Russian Federation is a party to several binding international treaties.

The Constitution of Russia sets the areas of competence and powers of the federal and regional governmental bodies in its Articles 71–73. Article 71 of the Russian Constitution lists the procedures by which legal acts can be adopted, solely at the federal level. Article 72 of the Constitution describes the areas

[15] Lomonosov Moscow State University, PhD candidate, LL. B. 2014.

in which the regulation can be carried out by both regional and federal acts. Meanwhile, the acts of the regional authorities on such matters shall comply with the acts of the federal authorities. The regional authorities "have full power" on matters not listed in the aforementioned two articles (Article 73 of the Russian Constitution).

Currently, no law on normative legal acts has been adopted in Russia, which is common in several countries. Therefore, the legislative system is not fixed in any act in a complete form. However, separate norms establishing the hierarchy of acts are still available in various sources. With regard to such norms, as well as provisions of the jurisprudence, the schematic system of the normative legal acts in Russia can be explained in the following chart.

The Constitution of the Russian Federation	
International legal acts	
Acts of federal level	Federal constitutional laws
	Federal laws
	Decrees and Orders of the President of the RF
	Decisions and Orders of the Government of the RF
	Acts of Ministries
	Acts of Federal Agencies and Services
Acts of regional level	Constitution (statute) of Subjects of the Federation
	Laws of Subjects of the Federation
	Acts of the Highest Official of a Subject of the Federation
	Acts of other State Authority Bodies of a Subject of the Federation
Acts of municipal level	Statute of a Municipal Formation
	Acts of the Representative Body of a Municipal Formation
	Acts of the Head of a Municipal Formation
	Acts of other Bodies of a Municipal Formation

An act with a lower legal force should not contradict an act with a higher legal force. If such a contradiction arises, the act with a higher legal force shall be applied.[16]

[16] Please see below for a more detailed on the correlation between federal and regional acts.

1.2. Requisites of Legal acts

In order to be able to precisely identify a specific legal act, the legal acts shall have the following requisites:[17]

i) The type of a legal act

Main types of legal acts: a federal law, a decree, a decision, an order, a command, an instruction, an informative letter.

ii) Adopting body

An adopting body for federal constitutional laws and federal laws is not specified; only the Parliament of the Russian Federation can adopt these acts. Similarly, an adopting body for regional laws is not specified.

iii) The name

Legal acts do not have official abbreviations in Russia. At the same time, in practice the acts that are widely used acquire informal short names. The short names can appear as abbreviations (for example, FL on Joint Stock Companies is called “FL on JSC”).

iv) The date of adoption

The date of adoption of the federal law is the date of the adoption of the law by the State Duma.

v) The number

[17] Legal Directory Systems "Consultant Plus" and «Garant» may be used for searching for the texts in Russian of the legal acts of the Russian Federation. The database of these systems is available on the official websites as well: http://www.consultant.ru/online/ and http://www.garant.ru/.

Sometimes federal laws are simply named by number, for example "law No. 99-FL". However, this method of naming the law does not allow accurate identification of the law. The issue is that the number 1-FZ is assigned to each law adopted, as the first in a row in the current year. The next law that is adopted is assigned the number 2-FZ, and so on. With this method, since 1993, 21 federal laws were adopted with the number 99-FZ. Therefore, for the unambiguous identification of the law, in addition to the number, it is also necessary to know the date (or at least the year) of its adoption. In practice, for reference on a concrete act, it is recommended to use five requisites at a time: the type of the act, the adopted body, the name, the date of adoption, and the number.

vi) The date of the last amendments (edition)

The date of the last amendments is usually specified in brackets.

vii) The source of official publication

The sources of official publication of the federal laws, the acts of the President of the Russian Federation and the Government of the Russian Federation are:

"The Russian Newspaper"

"The Collection of the Legislation of the Russian Federation"

"The Parliamentary Newspaper"

The official internet portal of legal information, at the following website: pravo.gov.ru

The international treaties within the EEU and decisions of the Eurasian Economic Commission are published on the following website: eaeunion.org

The source of official publication is usually separated from the other requisites with a double backslash. In practice, it is usually not indicated.

The reference on a legal act with the use of all its requisites looks like the following:

The Federal Law dated February 8, 1998 No. 14-FZ (edited on 05.05.2014) "On Limited Liability Companies" // "The Collection of the Legislation of the RF", 16.02.1998, No. 7, page 785.

2. The Constitutional Basics of Entrepreneurship

The Constitution of the Russian Federation is at the top of the pyramid of the acts, and it regulates entrepreneurship. It was adopted by national vote on December 12, 1993.

2.1. The Legal Features of the Constitution

The main legal features of the Constitution are specified in part 1 of Article 15 of the Constitution of Russia:

2.1.1. The Highest Legal Force

The highest legal force of the Constitution means that its norms have a priority over the norms of any other legal acts acting in the territory of Russia. All other acts shall correspond to the Constitution. If a norm enshrined in a federal law contradicts with the provisions of the Constitution, the norm of the Constitution shall apply.

2.1.2. The Direct operation

The direct operation of the Constitution means that it is possible to directly refer to its norms for the purposes of legally

justifying one's position.

2.1.3. The Application in the Whole Territory of Russia

Despite the fact that republics, which are also called «states» in the Constitution, are part of the Russian Federation, the Constitution also acts in the territory of these subjects of the federation, without any exceptions.

2.2. The Main Provisions of the Constitution, Regulating the Entrepreneurial Activities

In the Russian Federation:

i. Freedom of economic activity is provided (Article 8),

ii. The unity of economic space, free movement of goods, services, and financial means are guaranteed (Article 8),

iii. The support for competition is guaranteed (Article 8), the activity aimed at monopolization and unfair competition is forbidden (Article 34),

iv. The equality of private, state, municipal, and other forms of ownership is established (Article 8),

v. The possibility of finding of land and other natural resources in a private property is guaranteed (Article 9),

vi. The equality of all people before the law and the court is guaranteed (Article 19),

vii. Everyone has the right to free use of his abilities and property for entrepreneurial and other economic activity, not prohibited by law (Article 34),

viii. No one may be deprived of one's property, with the exception of a court decision. Forced confiscation of the property may be carried out only for state needs, on conditions of preliminary and complete compensation (Article 35),

ix. Everyone has the right to state compensation for the damage caused by unlawful actions (or inaction) of bodies of state authority and their officials (Article 53).

3. International Legal Acts

3.1. The Main International Treaties which the Russian Federation is a party to

According to the Constitution of the Russian Federation, the generally recognized principles and norms of international law, and the international treaties of the Russian Federation, are a component of its legal system. If an international treaty of the Russian Federation establishes other rules than those envisaged by law, the rules of the international treaty shall be applied (part 4 of Article 15).

The provisions of officially published international treaties of the Russian Federation, which do not require a publication of interstate acts for application thereof, operate directly in the Russian Federation (part 3 of Article 5 of FL on International Treaties). In the case of an absence of an appropriate norm of national legislation, it is permissible to directly refer to such an international treaty for the purposes of justifying one's position. For the implementation of other provisions of international treaties of the Russian Federation, relevant legal acts are being adopted. Additionally, in some cases, the international treaties of the Russian Federation are subject to ratification (Article 15 of FL on International Treaties). Ratification is a procedure by

which the international treaty acquires a legal force in Russia and becomes obligatory for all. Ratification is carried out by the federal law.

3.2. The Acts of the Customs Union

Russia is a member of the Eurasian Economic Union.[18] Within the EEU, the Customs Union (hereinafter – CU) functions, which includes bodies that carry out the uniform customs regulation in all participating countries of the CU. The fundamental act of the CU is the Customs Code of the CU.

[18] Besides Russia, as of today it also includes Belarus, Kazakhsatan, Armenia and Kyrgyzstan.

4. Laws

The two main types of laws in Russia are federal constitutional laws and federal laws.

4.1. Federal Constitutional Laws

In Russia, federal constitutional laws can be adopted only with respect to those matters which under the Constitution require an adoption of a federal constitutional law. In other cases, a federal law is adopted.

The main federal constitutional laws which entrepreneurs may encounter, while doing business in Russia are:

i) FCL on Constitutional Court of the RF;
ii) FCL on Judicial System of the RF;
iii) FCL on Supreme Court of the RF;
iv) FCL on Arbitration Courts in the RF.

4.2. Federal laws

In comparison with federal constitutional laws, the federal laws have a simpler adoption procedure and less legal force. Therefore, federal laws cannot contradict the federal constitutional laws. In case of a contradiction, the federal constitutional law shall be applied. This rule is not fixed in any

normative legal act, but it is generally accepted.

4.2.1. The Laws of the Russian Federation

The modern system of sources of law started to form in Russia after the adoption of the Constitution of the Russian Federation in 1993. Such terms like "the federal constitutional law" and "the federal law" were first set in the Constitution. At the same time, in the history of Russia there was a period of two years (from the end of 1991 till the end of 1993) when the Soviet Union had already collapsed, and the new constitution was not yet adopted. The laws being adopted at that time were called as laws of the Russian Federation (laws of the RF), and were not called federal laws.[19] Some of those continue to operate until today (for example, Law on Mass Media, Law on Consumer Rights Protection, and the Competition Law). The laws of the RF are of the same legal force as federal laws.

4.2.2. Codes

In Russia, the code is a form of a federal law, therefore in case of an absence of special instructions, it has the same legal force as federal laws. However, such instructions are contained in the majority of codes. For instance, paragraph 2 of Clause 2 of Article 3 of Civil Code of the Russian Federation (hereafter

[19] By the way, some legal acts of the USSR are still in force in Russia today (to the extent to which they do not contradict to the active Russian legislation).

CC of the RF) stipulates that the norms of civil law, which are contained in other laws, have to correspond with the CC of the RF. This rule finds confirmation thereof in the judicial practice.

An agreement was concluded by and between an organization (subscriber) and a telecommunication operator, according to which the telecommunication operator provided to the subscriber access to a telephone network. Despite the fact that the agreement was made for an indefinite term, the telecommunication operator refused to prolong its action for the recurrent year. Due to the disconnection from telecommunications, the subscriber addressed the court. The subscriber referred to the following: according to the CC of the RF the agreement of the provision of communication services is public, and therefore the operator could not have terminated it unilaterally. The telecommunication operator claimed that according to the federal law N 126-FZ dated July 7, 2003 "On Communication," such an agreement is public, provided that it has been concluded with a citizen.

The Supreme Court of Arbitration of the Russian Federation considered the case as a supervisory instance. In the Decision of the Supreme Court of Arbitration No. 9548/09, dated October 5, 2009, it was specified that by virtue of paragraph 2 of Clause 2 of Article 3 of the CC of the RF norms of civil law, as is contained in other laws, shall correspond with the CC of the RF. In this regard the provisions of the Federal Law N 126-FZ dated July 7, 2003, "On Communication," which stipulates that the agreement

for provision of communication services, concluded with a citizen, is public, and cannot be interpreted as a limiting norm of CC of the RF. Therefore, **any** agreement of the provision of communication services is public.

At the same time, courts do not always adhere to the rule about the supremacy of norms of the CC of the RF, over the civil norms that are contained in other sources. Thus, courts apply the norms of Articles 6–11 of FL on Transportation-Forwarding Activities, which contradict Article 803 of the CC of the RF. These articles state norms on the responsibility of the forwarding agent under the transportation-forwarding contract. Article 803 of the CC of the RF states that the basis and the extent of responsibility are defined explicitly by the norms of chapter 25 of the CC of the RF. In contradiction to this rule, clause 1 of Article 6 of FL on Transportation-Forwarding Activities, states that the basis and the extent of the responsibility of the forwarding agent are defined not only by the CC of the RF, but also by the FL on Transportation-Forwarding Activities. Furthermore, Clauses 3–5 of Article 6 and Articles 7–11 of the aforementioned law, set a different, more difficult order for bringing the forwarding agent to responsibility, than is provided by the CC of the RF.

The necessity for the application of the mentioned articles of FL on Transportation-Forwarding Activities is also confirmed by the supreme courts (see, for example, the Information Letter No. C5–7/UZ-886 dated March 5, 2003 of the Supreme Court of Arbitration of the RF "About the Federal Law On

Transportation-Forwarding Activities).

The core codes for conducting entrepreneurship in Russia are:

i) The Civil Code of the Russian Federation

The CC of the RF consists of four parts,[20] each of which is considered as a separate federal law. However, these four laws make a uniform code. Under the term "the civil code," all four parts thereof are regarded. The numbering of all articles of the code is continuous.

The CC of the RF is the basis of the civil legislation which "defines the legal status of the participants of the civil turnover, the grounds of emergence, and the procedure of the implementation of property rights and other real rights, rights for the results of intellectual activity, and means of individualization (of intellectual rights) equated to them, regulates the relations connected with the participation of corporate organizations or with their management (the corporate relations), contractual and other obligations, and also other property and personal non-

[20] In Russia, there is no uniform approach on how to name the components of the articles of legal acts. Usually the largest components of the articles are called "clauses, sections, or parts." Thus in the CC of the RF and the Tax Code of the RF, larger components are called "sections," (each «section» corresponds to one federal law, which in total forms these codes).Sections/parts or clauses of the articles of legal acts can be divided into sub-clauses and paragraphs. Meanwhile, the parts of the articles can also be divided into clauses (that is, both the whole article and the «part» of the article can also be divided into "clauses"). Additionally, many secondary legal acts are divided into clauses, and articles therein are missing.In order to define how the concrete element of the article is correctly named, it is necessary to find (in the same legal act), references to an element of an article of the same level (see, for example, Clause 2 of Article 3 of the CC of the RF).

property relations based on equality, an autonomy of will, and property independence of participants," (clause 1 of Article 2 of the Civil Code of the RF).

ii) The Civil Procedure Code of the RF

The Civil Procedure Code of the RF regulates the procedure of civil legal proceedings in the courts of general jurisdiction.

iii) The Arbitration Procedural Code of the RF

The Arbitration Procedural Code of the RF regulates the legal proceedings form in the arbitration courts. The arbitration courts in the Russian Federation administer jurisdiction in the sphere of entrepreneurial and other economic activity (Article of 1 Arbitration Procedural Code of the RF).

iv) The Tax Code of the RF

The Tax Code of the RF, as well as the CC of the RF, consists of several parts which represent separate federal laws, but collectively form a uniform code. However, unlike the CC of the RF, there are two parts (not four parts) in the Tax Code of the RF.

The Tax Code of the RF stipulates the basis of the legislation on taxes and levies which regulates "relations of power with respect to the establishment, introduction, and collection of taxes and levies in the Russian Federation, as well as the relations which arise in the process of exercising tax control, and appealing against acts of tax authorities and the actions (and inaction) of their officials, and imposing sanctions for the tax offences," (Article 2 of the Tax Code of the RF).

Other federal laws on taxes and levies have to correspond with the Tax Code of the RF (Clause 1 of Article 1 of the Tax Code of the RF).

v) The Land Code of the RF

The Land Code of the RF regulates the relations on the use and protection of lands in the Russian Federation.

The norm of the land law, as contained in other federal laws, in laws of the subjects of the Russian Federation have to correspond with the Land Code of the RF (paragraph 2, Clause 1 of Article 2 of the Land Code of the RF).

vi) The Labor Code of the RF

The Labor Code of the RF is the basic law regulating the relations between the employee and the employer, as well as between the employer and the state.

The norms of the labor law, as contained in other federal laws, have to correspond with the Labor Code of the RF (Part 3 of Article 5 of the Labor Code of the RF).

vii) The Criminal Code of the RF

The Criminal Code of the RF provides for criminal liability for serious offenses/crimes. The criminal liability for different deeds can be established only by the Criminal Code of the RF.

viii) The Criminal Procedure Code of the RF

The Criminal Procedure Code of the RF regulates the procedure for criminal legal proceedings in the courts.

ix) The Code of Administrative Offences of the RF

The Code of Administrative Offences of the RF provides

for administrative responsibility for the deeds listed therein, and lists the bodies which are authorized to consider cases of administrative offenses. It also regulates the proceedings, as well as the execution of decisions on cases of administrative offenses.

Unlike the Criminal Code of the RF, the Code of Administrative Offences of the RF does not contain an exhaustive list of deeds which result in administrative responsibility. The structures of administrative offenses and sanctions thereof are fixed in other legal acts as well. Thus, part 1 of Article 34 of the FL on Protection of Competition provides for the possibility of compulsory liquidation of the organization, in case it was created without receiving a prior consent of antimonopoly authority, provided that the necessity of receiving such consent is defined by the law. Additionally, the administrative responsibility can be established by the laws of the subjects of the Russian Federation.

4.2.3. The Federal Laws

In addition to the codes which contain most general norms, the activities of the entrepreneurs in Russia are also regulated by the federal laws. Some of them are listed below:

i) The Federal Law on Joint Stock Companies,
ii) The FL on Limited Liability Companies,
iii) The FL on Registration,
iv) The FL on Advertising,

v) The FL on Licensing,

vi) Foreign Investment Law.

Sometimes, the word «legislation» does not only refer to laws, but also to any other legal acts. For example, Clause 6 of Article 1 of the Tax Code of the RF directly states: "The laws and other normative legal acts which are referred to in this Article shall hereafter in the text of this code be referred to as 'tax and levy legislation.' "

Moreover, it is necessary to remember that legal acts such as the "On Railway Transport Charter of the Russian Federation," (RTC) and the "The Charter of Motor and Urban Surface Electric Transport," (MUSETC) are also federal laws, despite the existence of the word «charter» in their names. This type of a legal act as the charter, does not exist in Russia, whereas this word sometimes occurs in names of various acts (not only in federal laws). When determining the legal nature of a legal act, it is always necessary to refer to its type (federal law, decree, decision, etc.) and the adopting body thereof (The President of the RF, the Government of the RF, etc.). This determination is not made by the name of the legal act.

5. The Subordinate Legislation

5.1. Subordinate Legal Acts of Public Authorities

5.1.1. Acts of the President of the Russian Federation

The legal acts of the President of Russia follow federal laws in the hierarchy of legal acts. The acts of the President of Russia should not contradict to the Constitution of Russia and the federal laws (part 3 of Article 90 of the Constitution of Russia).

The president of Russia issues acts of two types: decrees and orders.[21] As a rule, orders, unlike decrees, do not possess a normative character. Currently, the President of Russia has issued a few acts which regulate entrepreneurial activities.

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[21] Additionally, this type of an act of the President of Russia as an assignment/ order has recently been widely adopted. The orders of the President do not contain norms obligatory for legal entities and citizens. These documents contain provisions obligatory for subordinate governmental authorities reflecting, as a rule, the most accurate directions of the development of the legislation and the state policy in general. An understanding of some orders of the President of Russia can be useful for entrepreneurs.

5.1.2. Acts of the Government of the Russian Federation

The Government of Russia issues decisions and orders. They should not contradict the Constitution of Russia, federal laws, and decrees of the President of Russia (Article 115 of the Constitution of the Russian Federation).

5.1.3. Acts of the Ministries

The federal ministries adopt acts (generally those are commands and orders), on the basis and in accordance with the Constitution of Russia, the federal laws, the acts of the President and the Government of Russia.

5.1.4. Acts of Federal Agencies and Services

In the Russian Federation, all federal executive authorities, except for the Government of Russia and the Ministries, are two types: agencies and services. Agencies carry out the functions of providing state services, of management of the state property, and law-enforcement functions. The main function of the services is the exercising of control and supervision in the established field of activity. Both agencies and services issue law-enforcement acts, as well as normative legal acts in certain cases.

Federal agencies and services issue a large number of legal

acts, which regulate some issues of entrepreneurial activities in detail.

5.2. Other Subordinate Legal Acts

Apart from government bodies, the power of adoption of obligatory acts in Russia is possessed by such formations of sui generis, including:

5.2.1. Central Bank of the Russian Federation (Hereafter CBR)

The CBR carries out the regulation of banking activities, the financial markets, monetary, and currency regulation. Thus, the Bank of Russia in particular establishes the rules of the implementation of calculations within the Russian Federation, rules on carrying out banking operations, exercises regulation, control, and supervision in the sphere of the corporate relations in joint stock companies, defines the procedure of calculations with international organizations, foreign states, as well as with legal entities and individuals.

On matters relevant to the CBR Law and other federal laws, the Bank of Russia issues normative acts in the form of orders, rules, and instructions that are obligatory for federal public authorities, public authorities of the subjects of the Russian Federation, local authorities, individuals, and all legal entities.

5.2.2. State Corporations

State corporations, being structures of sui generis, can be provided with various powers, including powers on the adoption of normative legal acts (see, for example, Article 8 of FL on Rosatom).

Thus, Rosatom State Corporation on Atomic Energy adopted an order No. 1/19-NPA (as of December 6, 2013), which stipulates the obligatory forms of reports in the field of state registration and control over radioactive materials and radioactive waste, as well as the order and terms of providing reports.

6. Acts of the Subjects of the Federation

So far we have addressed only the federal legislation, that is the acts which are adopted by government authorities at the level of the federation. The subjects of the Russian Federation have the right to adopt legal acts on the matters listed in Article 72 of the Constitution, as well as on any other matters, except for those listed in Article 71 of the Constitution.

Russia is an asymmetric federation; it is composed of different types of subjects. There are six such types in total: the republics (the republic is a name of the subject of a part of Russia), the territories, the regions, the cities of federal importance, the autonomous region, and the autonomous areas. The subjects of all types possess almost identical legal status.

There are three cities of federal importance in Russia: Moscow, St. Petersburg, and Sevastopol. The aforementioned cities are separate subjects of the federation and, respectively, their bodies adopt legal acts of regional level.

6.1. The Competence of the Subjects of the Federation

According to Article 72 of the Constitution of the RF, the subjects of federation can adopt legal acts, particularly on the following matters:

i) possession, use and disposal of land, subsoil, water and other natural resources;

ii) demarcation of state property;

iii) nature utilization, protection of the environment and ensuring ecological safety; specially protected natural territories;

iv) establishment of common principles of taxation and levies in the Russian Federation;

v) administrative, administrative procedure, labor, family, housing, land, water, and forest legislation; legislation on subsoil and environmental protection.

Moreover, subjects of the federation can adopt legal acts on any other matter, except for those listed in Article 71 of the Constitution of the RF.

6.2. The System of Acts of the Subjects of Federation

6.2.1. Constitution (charter) of the Federation Subject

The system of legal acts of each subject of the federation also represents a pyramid, at the top of which is the charter or the constitution of the subject.

6.2.2. Laws of the Subject of the Federation

Thereafter, the laws of the subject of federation are located. The laws of the subjects often play an important role in the legal regulation of entrepreneurial activities in the given region. Thus, in many subjects, separate laws (codes) on administrative offenses are adopted. These laws provide sanctions for offenses. Moreover, the laws of the subjects establish the structures of administrative offenses which are not provided by the Code of Administrative Offences of the RF.

Such an act in Moscow is the Law of Moscow city No. 45 (as of November 21, 2007), "The Code of the City of Moscow on Administrative Offenses." In particular, it provides liability for such offenses, such as:

i) the implementation of small retail trade without documents confirming the right to placement of trade objects;

ii) illegal destruction of green plantations;

iii) excess in terms of design of the objects, and other excesses.

Moreover, in many subjects of the federation, legal acts are adopted with the purpose of supporting of small and medium businesses. The Law of City of Moscow No. 60 (as of November 26, 2008), "On Support of Small and Medium Businesses in the City of Moscow," is such an act in Moscow. This law regulates, in particular:

i) the procedure for providing to the subjects of small and

medium businesses property, financial, information, consulting, legal, and other types of support (chapter 4 of the law);

ii) the procedure for rendering additional support to the subjects of small and medium businesses, which are carrying out activities in the field of innovation, industrial production, and other spheres (chapter 6 of the law).

The subjects of the federation adopt another set of laws, somehow affecting the interests of entrepreneurs.

6.2.3. Acts of the Highest Official of the Subject of Federation

The highest official is the head of the subject of the federation. In Moscow, the highest official is the mayor of Moscow. The legal acts adopted by the Mayor of Moscow (decrees) can not contradict the charter and the laws of the city of Moscow (part 8 of Article 41 of the Charter of the city of Moscow).

6.2.4. Acts of Other Public Authorities of the Subject of Federation

Other public authorities of subjects of the federation are the highest executive body of the public authority, as well as various departments, commissions, and similar bodies.

In Moscow, the highest executive body of the power is the Government of Moscow. Decisions and orders of the

Government of Moscow can also affect the interests of businesses.

Other bodies of the city of Moscow, such as the Department of Trade and Services, can also adopt acts, which are significant for representatives of businesses.

Finally, in the administrative districts and areas of the city of Moscow, territorial authorities of executive power are formed – this includes the prefecture of administrative districts and councils of areas, which also adopt acts that are obligatory for execution.

7. The Municipal Acts Regulating Entrepreneurial Activities

Acts at the municipal level in the Russian Federation are also built in a certain hierarchy. The charter of municipality stands at the top of the system, the acts of the representative body (local parliament) are located a step below, the acts of the head of municipality are another step below, and finally the acts of other authorities are at the lowest level.

8. Customs

A special source of law in Russia is customs. The custom "is a rule of conduct which has taken shape and is widely applied in a certain sphere of business and other activities, and which has not been stipulated by legislation, regardless of whether it has or has not been fixed in any one document," (Clause 1 of Article 5 of the Civil Code of the RF). The customs cannot contradict the norms of legislation or provisions of contracts (Clause 2 of Article 5 of the Civil Code of the RF). In Russia, customs are sources of civil law only.

9. The Judicial Practice

The legal system of the Russian Federation belongs to the Continental (Roman-German) type. One of the consequences of this system is that there are no judicial precedents in Russia: the courts are obliged to make decisions, being guided by laws and other legal acts, but not by other judicial decisions. The courts can not create new legal norms.

In practice, one should consider the following:

i) The generalization of judicial practice

The highest instance of the judicial system of Russia is the Supreme Court of the RF.[22] The Supreme Court of the RF is given the right to make explanations to inferior courts, concerning judicial practice on matters, with the basis of study and generalization (Clause 1 part 7 of Article 2 of FCL on Supreme Court of the RF). Such explanations are given in the decisions of the Plenum of the Supreme Court of the RF,[23] and informational letters of the Supreme Court of the RF.

In the decisions of its Plenum, the Supreme Court of the RF, expresses positions on the most important issues,

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[22] The Supreme Court of Arbitration of the RF, which previously headed the system of arbitration courts, became part of the Supreme Court of the RF. For details, please, see Chapter on Litigation, Arbitration and Other Means of Legal Protection.

[23] The Plenum of the Supreme Court of the RF is a part of the Supreme Court of the RF.

as well as on those problems regarding which there were serious contradictions among inferior courts (for the purposes of correcting such contradictions and making the practice uniform).

Informational letters are descriptions of concrete cases; a short narrative of the court decisions made on the given cases, and the comments of the Supreme Court of the RF concerning whether the inferior court adjudicated the case correctly or not.

It should be noted that the Decisions of the Plenum of the Supreme Court of the RF, and the information letters of the Supreme Court of the RF, are the result of the generalization of judicial practice, and not the revision of the decision of the inferior court.

However, while interpreting a norm in the decisions of the Plenum the Supreme Court of the RF, it sometimes gives a meaning which is absolutely different from the one resulting from the literal interpretation of the writing.

Formally, the positions stated in the decisions of the Plenum of the Supreme Court of the RF and the information letters of the RF are not obligatory for other courts. However, in practice the situation is very different. The inferior courts strictly follow the decisions of the Supreme Court of the RF, therefore the specified acts have an obligatory character. Thus, the Supreme Court of the RF can actually change the meaning of this or that norm, and sometimes change it quite substantially.

ii) References to the court decisions on analogue cases

While preparing a position on a specific case, it is

recommended to refer (whenever possible) to the court decisions on analogue cases. The judges listen to such arguments, and even in the final decision on the case, they sometimes indicate how a similar dispute was previously solved by another court. Moreover, the references should be made to the decisions of the Supreme Court of the RF, the courts of the subjects, and the arbitration courts of cessation. The court decisions, standing below, are seldom cited as an example. Practice shows that the party, whose position is supported with the court decisions on analogue cases, has a much better chance of winning the case.

Thus, while studying any aspect, one should analyze not only the federal laws and other legal acts, but also the acts of the courts on relevant issues.

Evgeny Arkhipov[24]
Chapter 2 – Business Association Forms

1. Persons Conducting Entrepreneurial Activities

1.1. Entrepreneurial Activities

The Civil Code of the Russian Federation includes the following definition of entrepreneurial activities: "independent activity, performed at one's own risk, aimed at systematically deriving a profit from the use of the property, the sale of commodities, the performance of work, or the rendering of services by the persons, registered in this capacity in conformity with the law-established procedure," (Clause 1 of Article 2 of the CC of the RF). Judicial practice clarifies the given definition. Thus, on February 24, 2004 Constitutional Court of the Russian Federation rendered decision No. 3-P on the matter of the verification of the constitutionality of separate provisions of

[24] Lomonosov Moscow State University, PhD candidate, LL. B. 2014.

Articles 74 and 77 of the Federal Law on Joint Stock Companies, regulating the consolidation order of the placed stocks of a joint stock company and redemption of fractional shares. This decision was related to the complaints of citizens and the "Cadet Establishment" company, and as per the inquiry of Oktyaberski District Court of the city of Penza, specified the following:

> *The right to free use of one's abilities and property for entrepreneurial and other economic activities, not forbidden by law, serves as a basis for constitutional legal status of the participants of business companies, in particular of shareholders of joint stock companies being legal entities, as well as natural persons, including those who are not entrepreneurs, and who exercise their rights through holding stocks, certifying the rights to obligation of its owners, towards the joint stock company.*

Proceeding from the aforementioned position of the Constitutional Court of the Russian Federation, the activities of shareholders shall be recognized as entrepreneurial.

1.2. The Right to Engagement in Entrepreneurial Activities

Natural persons (people) and legal entities (organizations) can be engaged in entrepreneurial activities in Russia.

1.2.1. Natural Persons

Another name given to natural persons in Russian law is "citizens." One should take into account that in civil and business legislation the word «citizens» means all "natural persons," and not only the citizens of the Russian Federation. While referring to citizens of Russia, one shall specifically indicate this, by saying "citizens of the Russian Federation." The word «people» in the civil and business legislation is not used.

Every person can be engaged in entrepreneurial activities in Russia. Such right is fixed in the Constitution of the RF under Clause 1 of Article 34.

It is important to note that there are exceptions to this rule. The primary exceptions are related to the legal capacity of citizens, e.g. the ability of citizens to acquire and exercise civil rights by their actions, to create civil duties for themselves and perform those duties. The legal capacity of citizens is defined by the CC of the RF. As a general rule, citizens gain full legal capacity at 18 years of age. Before reaching this age, citizens cannot independently exercise most transactions.

1.2.2. Legal Entities

Profit organizations[25] have the right to be engaged in

[25] *See* Section 3.3 of the present chapter for the classification of legal entities.

entrepreneurial activities. Non-Profit organizations may conduct income generating activities, as long as this is established in their charters, and only to the extent that this serves the purposes for which they have been established, and corresponds to such purposes (Clause 4 of Article 50 of the CC of the RF).

1.2.3. Participation of the Russian Federation, its subjects and Municipalities in the Civil Legal Relations

State and municipal organs (being expressly authorized), participate in civil legal relations on behalf of the Russian Federation, its subjects, and the municipalities. State authorities can be legal entities (see, for instance, clause 15 of the Rules on the Ministry of Justice of the Russian Federation, approved by Decree No. 1313 of the Russian President, dated October 13, 2004).

The Russian Federation, its subjects, and municipalities do not exercise entrepreneurial activities.

2. Individual Entrepreneurs

2.1. Registration as an Individual Entrepreneur

The citizen conducting entrepreneurial activities must be registered as an individual entrepreneur (Clause 1 of Article 23 of the CC of the RF). The registration procedure is regulated by the Federal Law on Registration. The Federal Tax Service (hereinafter FTS) of Russia is the body carrying out the state registration of individual entrepreneurs. For the purposes of being registered, the citizen needs to inform the FTS of Russia of his/her place of residence (Clause 3 of Article 8 of the Federal Law on Registration). The set of documents required for submission to the territorial body of the FTS of Russia, is indicated in Clause 1 of Article 22.1 of the Federal Law on Registration.

The absence of state registration shall result in administrative or criminal liability for illegal entrepreneurship. Moreover, despite the absence of registration, entrepreneurial activities of the citizen can be regulated by the norms of the CC of the RF. These norms are also applicable to individual entrepreneurs and legal entities who are already registered (Clause 4 of Article 23 of the CC of the RF).

2.2. Status of an Individual Entrepreneur

The activities of individual entrepreneurs are regulated by the same norms which establish rights and duties for commercial organizations. A possible exception is in a case when the law states otherwise, or based on the nature of the individual entrepreneur.

2.3. The Responsibility of an Individual Entrepreneur

The individual entrepreneur is liable for his obligations with all of his/her property (Article 24 of the CC of the RF). In other words, for the repayment of the debt of the individual entrepreneur, anything belonging to him/her may be levied to repay the debt. An exception to this rule is contained in Article 446 of the Civil Procedure Code of the RF. The levy cannot be executed on certain property owned by the citizen, particularly:

i) living premises, if it is the only suitable permanent residence for the citizen and the members of his family for residing together (if such premises are not objects of mortgage);

ii) the land plot which such living premises are situated on;

iii) the objects of habitual household furniture and utensils, and items of personal use (except for jewelry and other items of luxury);

iv) the property necessary for professional occupation of the citizen being the debtor, except for items which cost 10,000 rubles or more;

v) foodstuffs and money to the total sum of not less than the living wage (around 10,000 rubles).

2.4. Employees of an Individual Entrepreneur

The individual entrepreneur has the right to hire employees as per the labor contracts. Features of the legal regulation of work of the employees hired by the individual entrepreneur are established by Chapter 48 of the Labor Code of the RF.

3. General Provisions on Legal Entities

3.1. Classification of Legal Entities

Legal entities can only be created in those organizational and legal forms which are listed in the CC of the RF. State corporations and state companies, which are not mentioned in the CC of the RF, are an exception to this rule.[26] In total, 22 organizational and legal forms of legal entities exist in Russia.

All legal entities are divided into:

i) profit and non-profit organizations;

ii) corporations and unitary legal entities.

All types of legal entities can be schematically displayed as followes:

[26] *See* section 5.2 for more information about state corporations and state companies.

	Profit Organizations	Non-Profit Organizations
Corporations	Economic Partnerships Economic Companies Peasant (Farmer) Economies Economic Partnerships Industrial Cooperatives	Consumer Cooperatives Public Organizations Public Movements Associations (Unions) Fellowships of Real Estate Owners Cossack Communities Communities of Aboriginal Smaller Peoples of the Russian federation Chambers of Advocates
Unitary Legal Entities	State and Municipal Unitary Enterprises	Funds Institutions Autonomous Non-Profit Organizations Religious Organizations Public Legal Companies State Corporations State Companies

Moreover, there is one more organizational-legal form – advocacy formations (being legal entities). Legal entities of this type are non-profit organizations, however in the CC of the RF, they are not assigned to either corporations or to unitary organizations. Obviously, this is an omission of the legislator. At the same time, the analysis of the legislation allows the claim that Bar Associations (variety of formations of advocates which are legal entities) are referred to corporations.

3.2. Profit Organizations and Non-Profit Organizations

There are 6 types of profit organizations and 16 types of non-profit organizations in Russia (see above).

3.2.1. Legal Status of Profit Organizations and Non-Profit Organizations

Organizations, which activities' main purpose is to generate profit, are considered as profit organizations. Non-profit organizations can be created for social, charitable, cultural, educational, scientific, and managerial purposes, for the purposes of the health of citizens, the development of physical culture and sports, the satisfying of spiritual and other non-material needs of citizens, the protection of rights and legitimate interests of the citizens and organizations, the settlement of disputes and conflicts, providing legal aid, as well as other purposes aimed at the achievement of public benefits (Clause 2 of Article 2 of Federal Law on Non-Profit Organizations).[27]

As a general rule, profit organizations[28] have general legal

[27] *See* section 1.B.b of the present chapter for the right of a non-profit organization to generate profit from its activities.

[28] Commercial organization can be created for certain purposes which are listed in its charter. In such an event, it will have a limited legal capacity.

capacity.[29] This means that they can be engaged in any activity, if this activity does not contradict with the legislation. Non-profit organizations, on the contrary, possess only special legal capacity. This means that they can be engaged only in the activities which correspond to the subject and purpose of the activities fixed in their charters.

3.3. Corporations and Unitary legal entities

The CC of the RF allocates 13 types of corporations and 8 types of unitary organizations.[30]

A corporation consists of members. Members of any corporation form the highest body of the management of the corporation, and due to this, have certain rights and duties in relation to the legal entity.

Basic rights of members are (Article 65.2 of the CC of the RF):

i) the right to manage a corporation;

ii) the right to receive information on the corporation's activities. The principal duties of members are:

i) participation in the formation of the corporation's property,

ii) participation in the adoption of decisions required for the company to continue its existence.

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[29] State and municipal unitary enterprises are given an exception to this rule.

[30] As mentioned above, the CC of the RF does not contain any indication to which type of enterprises the advocates formations being legal entities, shall be referred to.

The following rights are also attributed to profit corporations' members:

i) the right to receive income from the activities of the corporation,

ii) the right to receive a part of the property that is remaining after the liquidation of organization.

Other rights and duties of corporations' participants are established in special laws (Federal Law on Limited Liability Companies, FL on Joint Stock Companies, FL on Non-Profit Organizations, and others).

The participants of a corporation are named members, shareholders or just participants depending on a specific type.

Unitary legal entities have no members.

3.4. Establishment of Legal Entities

The legal entity is considered established from the moment the record is entered into the Unified State Register of Legal Entities (USRLE).

The procedure for the establishment of any legal entity consists of the following steps:

i) drawing up necessary documents,

ii) submission of documents to the registering body,

iii) receipt of documents confirming registration of the legal entity.

Below we will consider each of these three stages in more

detail.

3.5. Preparation of Necessary Documents

The list of documents which should be submitted to the registering body is established in Article 12 of Federal Law on Registration. These documents are:

i) a statement on state registration,

ii) a decision on the establishment of a legal entity,

iii) constituent documents,

iv) an extract from the register of foreign legal entities of the respective country of origin (or any other proof of equal legal force) of the legal status of the foreign legal entity being a founder,

v) a document confirming the payment of the state fee.

In addition, the following shall be submitted at the establishment of a non-profit organization in the appropriate body:

i) information on founders in duplicate,

ii) a statement for the inclusion of a non-profit organization in the register of non-profit organizations which are carrying out the functions of a foreign agent, as for non-profit organizations which are carrying out functions of a foreign agent.

3.5.1. Application of State Registration

The application form for the state registration of a legal entity is approved by Order No. MMB-7–6/25, at the Federal Tariff Service (FTS) of Russia, dated January 25, 2012 (appendix No. 1 to this order, form No. P11001). The application form shall be filled out strictly in accordance with the registration requirements, which are approved by the specified order of the FTS of Russia (Appendix No. 20, sections I and II).

3.5.2. Decision on the Establishment of a Legal Entity

The decision on the establishment of a legal entity is made, as a rule, by a protocol which is formed in the results of the meeting of founders. The protocol is composed in a written form, made in a single document and is signed by all of the participants of the meeting.

Provisions of Chapter 9.1 of the CC of the RF shall be complied while holding a shareholder meeting. This chapter is devoted to the decision-making at the meetings, as well as the invalidity of such decisions. This chapter refers to the meetings, including the meetings of the legal entity's founders.

If the legal entity has only one founder, the decision on the establishment of a legal entity is made by him/her individually,

and is not formalized in the form of a protocol. Such a document will be called, for example, “The Decision on the Formation of the Joint Stock Company ‘Alfa’.”

At the establishment of a non-profit organization, the decision on the establishment is provided in duplicate.

3.5.3. Constituent Documents

One of the constituent document of any legal entity is its charter. An exception is the fellowships constituent document, which is the foundation agreement. Rules of the CC of the RF on charters (clause 1 of Art. 52 of the Civil Code of the RF) are applicable to the foundation agreement of the association/ fellowship.

The charter of the legal entity must necessarily contain the following information:

i) The Name

Legal entities have full and/or reduced names. The name must contain an indication on the organizational-legal form of the legal entity. Some federal laws establish additional requirements for the name of the legal entity. For instance, the Federal Law on Education establishes that the educational organization must have an indication on type of the educational organization in its name (Clause 5 of Article 23).

ii) The Organizational-Legal Form

iii) The Location

The location is a locality where the legal entity was registered (Clause 2 of Article 54 of the CC of the RF). There is no need to indicate the full address of the legal entity in the charter.

iv) The order of management of the legal entity's activities

Under the management order in the CC of the RF, there is a list of the managing bodies of the legal entity, with an indication of their powers.

Additionally, in the charters of non-profit organizations, and in cases provided by law, as well as in the charters of profit organizations, the subject and the purposes of legal entities' activities have to be defined (Clause 4 of Article 52 of the CC of the RF). The subject means the list of the variety of the activities of the organization. The legislation sets other requirements on the content of the charter, depending on its organizational-legal form, and the variety of conducted activities.

The charter of legal entity may contain any provisions which do not contradict to the legislation of Russia.

The CC of the RF allows the possible use of sample charters. However, currently the state authorities have not approved of any sample form of a charter.

Constituent documents are provided to the registering body in duplicate (in triplicate in case of establishing a non-profit organization).

3.5.4. An extract from the register of foreign legal entities of the respective country of origin of the founder (or any other proof of equal legal force), as to the legal status of the foreign legal entity

This document is formalized according to the legislation of the foreign state in which a founder (the given legal entity), is registered.

3.5.5. A Document Confirming the Payment of the State Fee

The document confirming the payment of the state fee is issued by the bank or other organization which paid the state fee. Currently, the fee for the state registration for the creation of most legal entities is 4000 rubles (Article 333.33 of the Tax Code of the RF).

3.6. Submission of Documents to the Registering Body

While establishing a profit organization, documents shall be submitted to the territorial authorities of the Federal Tax

Service of Russia. The concrete office of the FTS of Russia is defined depending on the planned location of the sole executive body of the establishing legal entity. If the founders plan to place this body in Moscow, documents must be submitted to the Interdistrict Inspectorate of the FTS of Russia No. 46 for Moscow.[31]

Documents can be submitted personally, by mail, or via the internet (the latter requires an electronic signature).

While creating a non-profit organization, documents shall be submitted to the territorial authority of the Ministry of Justice of Russia, which makes decisions on the state registration of the non-profit organization.

3.7. Receipt of the Documents by the Registering Body, Confirming the Registration of the Establishment of the Legal Entity

The state registration of the establishment of profit organizations is carried out in a period of no more than 5 business days from the date of submission of the documents to the FTS of Russia. After the specified period, the applicant can use the same address of the territorial FTS of Russia, where he/she shall be

[31] The FTS of Russia No. 46 of the city of Moscow is located at the address: 125373, Moscow, Walking Passage, household 3, building 2.

provided with certificates on state registration, and the statement on tax accounting.

At the registration of a non-profit organization, the territorial body of the Ministry of Justice is obliged to make a decision on registration within 14 business days from the date of the submission of documents. After the adoption of this decision, the territorial authority of the Ministry of Justice of Russia sends the documents independently to the FTS of Russia, which is obliged to register the organization within 5 business days. The territorial authority of the Ministry of Justice of Russia issues a certificate of state registration within three business days from the date of receipt of information from the registering body, and enters this information of the non-profit organization into the USRLE.

3.8. Reorganization and Liquidation of Legal Entities

3.8.1. Reorganization

Clause 1 of Article 57 of the CC of the Russian Federation provides 5 possible forms of reorganization:

i) Merger

At a merger of two organizations, a third, new organization is formed (formula A+B→C). Thus, the rights and duties of the existing organizations are transferred to the newly created one.

ii) Accession

One organization is absorbed by the second, thus the second continues to exist in the updated form (formula A+B→B). Thus, the rights and duties of first organization are transferred to the second one.

iii) Division

The organization ceases its existence, and with its assets, new organizations are created (formula A→B, C). Thus, the rights and duties of the existing organization are transferred to the newly created ones, according to the Transfer Act.

iv) Spin-off

A new organization is spinned from the organization, therefore the old organization continues to exist (formula A→A, B). Thus, some rights and duties of the existing organization are transferred to the newly created one, according to the Transfer Act.

v) Transformation

The organization changes its organizational-legal form (formula A→A). Thus, the rights and duties of this legal entity do not change (except for the corporate rights and duties).

The combination of various forms in the course of reorganization is allowed (for example, merger plus transformation).

The decision on reorganization is made by a general meeting of the legal entity's participants, or the legal entity's other managing body which is authorized to act in this way as per the charter. In addition to the aforementioned decision, this body

sets the conditions of reorganization and implementation, and approves of the transfer act.

After entering into the USRLE a record about the commencement of the reorganization procedure, a notice about the reorganization is published twice in mass media (once a month). The creditor of the legal entity, whose claim rights have been established before the publication of the first notice of the reorganization of the legal entity, has the right to (1) demand early payment of the corresponding obligation by the debtor in a judicial proceeding, or (2) at the impossibility of early payment, demand a termination of the obligation, and compensation for the related losses (Clause 2 of Article 60 of the CC of the RF).

3.9. Liquidation

The decision on liquidation is made by the general meeting of legal entity's participants, or the legal entity's other managing body which is authorized to do so, as per the charter. This body appoints a liquidation commission (or an individual liquidator), to establish the order and terms of liquidation. From the moment of the appointment of the liquidation commission, all powers of management of the liquidated legal entity are thereby transferred.

The liquidation commission publishes a message in mass media about the legal entity's liquidation, as well as about the procedure and term of the claims application made by its

creditors.

In the event that the liquidated organization has insufficient property to satisfy all creditors' claims, the liquidating commission is obliged to appeal to the arbitration court with an application for bankruptcy. The Civil Code of the RF establishes the priority order for the satisfaction of creditors' claims in Article 64.

A legal entity which hasn't submitted documents on reporting, and has not carried out transactions on bank accounts within 12 months, is subject to liquidation (Article 64.2 of the CC of the RF).

3.10. State Registration of Reorganization and Liquidation

A legal entity is considered reorganized from the moment of the state registration of legal entities that have been created as a result of reorganization. At the reorganization of a legal entity, for matters of accession, the first entity is considered reorganized from the moment the record is entered into the USRLE, concerning the termination of the activities of the acceded legal entity (Clause 4 of Article 57 of the CC of the RF). The legal entity is considered liquidated from the moment the corresponding record is entered into the USRLE.

State registration procedures of reorganization and liquidation are established in the Federal Law on Registration. In general,

they are similar to the registration procedure of the legal entity's establishment.

3.11. Managing Bodies; Responsibility of Authorized Officers; Branches and Representations

3.11.1. Managing Bodies of the Legal Entity

Legal entities of various organizational-legal forms have various managing bodies. As a rule, among the managing bodies of a legal entity, the following are included:

i) the highest collegial body (in corporate organizations, this is the general meeting of participants),

ii) the sole executive body,

iii) the executive board,

iv) a revision commission.

The instructions for the obligatory formation of bodies are contained not only in federal laws dedicated to separate organizational-legal forms, but also in laws regulating different types of activities. Thus, Article 26 of the Federal Law on Education stipulates that the educational organization, regardless of its organizational-legal form, must form a collegial management body, which is a general meeting of the employees of the organization.

The corporation's charter may stipulate that the powers of the sole executive body are given to several persons. Additionally, it is possible to create several sole executive bodies that act independently from each other in a corporation. These rules have been introduced in the CC of the RF recently, therefore the practical application of these rules is still in development.

The natural person (general director, president, chairman), individual entrepreneur (managing director), and legal entity (management company) can act as the sole executive body of the corporation.

3.11.2. Responsibilities of the Person Authorized to Act on Behalf of a Legal Entity; Responsibilities of the Members of the Executive Board of the Legal Entity; and Persons Determining the Actions of the Legal Entity (so-called "removal of a corporate veil")

A person who is granted with the right to act on behalf of a legal entity, as per a legal act or a constituent document, bears liability for losses caused to this legal entity by his/her fault. Conditions of the responsibility of the named person are dishonesty or unreasonableness of its actions. In similar cases, responsibility is also incurred by members of executive board who voted for the decisions of the legal entity which led

to losses; or dishonestly evaded from participation in voting. Finally, persons, who have the opportunity to determine the actions of the organization, are liable for losses of the legal entity caused by their guilty actions (Article 53.1 of the CC of the RF).

3.11.3. Representations and Branches of the Legal Entity

Any legal entity has the right to have representations and/or branches. According to the CC of the RF, the representation is a separate division of the legal entity, and is located outside of its primary address. The representation can:

i) represent interests of the legal entity,

ii) exercise their protection.

The branch differs from representation by exercising any functions of the legal entity, including the functions of representation (Article 55 of the CC of the RF).

4. Certain Types of Legal Entities

4.1. Corporate Profit Organizations

4.1.1. General Provisions on Economic Partnership and Companies

Economic partnerships and companies have many features in common. Paragraph 2 of chapter 4 of the CC of the RF contains the general provisions on partnerships and companies. These norms appeared in the CC of the RF recently, and they should be taken into account when dealing with partnerships and companies.

4.1.1.1. Charter (Share) Capital of Economic Partnership and Companies

The charter (share)[32] capital of economic partnerships and companies is divided into parts (shares in a limited liability company and economic partnerships, stocks in the joint stock companies), which give corporate rights to the owners of these

[32] Economic companies have charter capital, and economic partnerships have share capital. Everything written in the present chapter on charter capital applies to the joint capital as well.

shares. Charter capital is the minimum possible size of property of the legal entity expressed in a monetary equivalent. The size of charter capital is established by the legal entity itself and is specified in its charter. Besides, information on the size of legal entity's charter capital is contained in USRLE, and anyone can receive information on it, having ordered an extract from the register.[33]

The share size (number of stocks) at the stage of the creation of the legal entity depends on the cost of the property which the participant brought to the charter capital of the legal entity.

4.1.1.2. Contributions to Property of Economic Partnerships and Companies

Unless otherwise stated in law, as a contribution to the property of the company, participants can bring:

i) money,

ii) goods,

iii) shares (stocks) in the charter (joint) capitals of other economic partnerships and companies,

iv) state and municipal bonds,

v) exclusive rights, other intellectual rights, and rights by license contracts, which are subject to a monetary assessment.

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[33] It is possible to receive information on legal entity from official source on the site of the FTS of Russia at: http://egrul.nalog.ru/

4.1.2. Economic Companies

4.1.2.1. General Provisions on Economic Companies

Issues of interaction of economic companies' participants (among themselves and with the company), issues of management of economic companies, receiving of profits by participants, establishment, reorganizations, and liquidations of economic companies (corporate-legal issues of economic company's activities) are regulated by norms of the CC of the RF, as well as by the Federal Law on Limited Liability Companies and the Federal Law on Joint Stock Companies. Currently, Russian corporate law is in a period of deep reformation. Recently the norms of the CC of the RF devoted to legal entities (chapter 4 of the CC of the RF) were essentially changed. The main changes were made by the Federal law No. 99-FZ (as of May 5, 2014), and came into force on September 1, 2014. According to Clause 4 of Article 3 of Federal Law No. 99-FZ (as of May 5, 2014), legal acts (all laws and subordinate legislation) apply only to the extent that they do not contradict with the changes made to the CC of the RF by the present federal law. This should be taken into account when dealing with the FL on Limited Liability Companies and the FL on Joint Stock Companies.

4.1.2.1.1. Types of Legal Entities

In the Russian Federation, the following types of the legal entities exist:

i) Limited Liability Company (LLC),

ii) Joint Stock Company (JSC).

The joint stock companies, in turn, may be public and non-public.

4.1.2.1.2. Public and Non-public Legal Entities

An LLC is a non-publicnon-public legal entity. The JSCs may be both public and non-public. The JSC is deemed public when its shares (or securities convertible into shares) have been publicly placed by an open subscription, or have been publicly converted on the conditions established by the laws on the securities. If the charter and the firm name of the legal entity indicate that the company is public, then the rules on public companies are applied (Clause 1 of Article 66.3 of the CC of the RF).

Many of the issues concerning the activities of the public and non-publicnon-public JSCs are regulated in different ways. This must be considered while conducting business.[34]

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[34] For example, a public JSC, is obliged to disclose the annual report, annual financial statements, announcement of the shareholders' general meeting, and other information. A non-public JSC is obliged to do so only if the number of its participant exceeds 50. Furthermore, shareholders of a non-public JSC may have the privilege of stock acquisition, as well as have the ability (if it is provided by a charter) to prohibit the alienation of the stock to a third party. Public JSC shareholders may not have such rights. There are also other differences between public and non-public JSCs.

4.1.2.1.3. The Legal Entities' Charter Capital

The charter capital cannot be less than the established minimal threshold (the minimum amount of the charter capital), and this is different for the various organizational-legal forms of legal entities. It is established by the federal laws on the profit of legal entities' separate organizational-legal forms (FL on Limited Liability Companies, FL on Joint Stock Companies). Moreover, the federal laws regulating the implementation of separate types of activities (for example, banking, insurance and others) may establish increased requirements as to the minimum amount of the company's charter capital.

The minimum amount for the charter capital of LLCs and non-public JSCs is 10000 rubles; and 100000 rubles for public JSCs (the second paragraph of the Clause 1 of Article 14 of the FL on Limited Liability Companies, Article 26 of FL on Joint Stock Companies).

If at the end of the second and each subsequent fiscal year, the legal entity's net assets value is less than its charter capital, the company is obliged to reduce its charter capital. If the net assets value is less than the minimum amount of the charter capital, it is subject to liquidation.

At a vote on various issues, the number of votes of the company's participants depends on the size of their shares in the charter capital (for LLC) or the stock number (for JSC). There are few exceptions to this rule.

4.1.2.1.4. Corporate Agreement

Some or all of the company's members may sign a corporate agreement/shareholders agreement,[35] which will regulate the implementation of the participants' various corporate rights (in addition to the law provisions). Such an agreement may contain, in particular, provisions obliging the members to:

i) vote in a certain way at the general meeting of the company's participants,

ii) concertedly implement other actions on the company's management,

iii) acquire or alienate shares in the charter capital (stocks) at a certain price or upon the occurrence of certain circumstances,

iv) abstain from the alienation of shares (stocks) before the occurrence of certain circumstances.

A corporate agreement is executed in writing by drawing up a single document. The terms of the corporate agreement concluded by the members of non-public company are deemed confidential and are not subject to discloser, unless otherwise provided for by the law. The shareholders' agreement concluded by the shareholders of public JSC shall be publicly disnon-public to the extent necessary, in accordance with the Federal law on JSC. Currently, the norms establishing the terms of the relevant information disclosure are absent in the Federal Law on JSC.

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[35] A corporate contract concluded by LLC participants is called "a contract on the implementation of the shareholders' rights". A similar contract signed by JSC shareholders is called "a joint stock agreement".

A company must be notified about the execution of a corporate agreement.

4.1.2.1.5. Affiliates

The company is considered as an affiliate if another company (or economic partnership) has an opportunity to govern a company's decisions. Such an opportunity may arise, for example, from the participation of the main company in the affiliate's charter capital, or from a contract between the main and affiliate companies.

The main company of the partnership, in some cases, bears a joint liability for the affiliate's transactions. Such liability arises from the transactions signed by the affiliate in pursuance of the instructions, or with the consent of the main company or economic partnership (there are exceptions from this rule). Furthermore, in case of the affiliate's insolvency (bankruptcy) due to the fault of the main economic partnership or the company, the main company bears the subsidiary liability for the affiliate's debts (Article 67.3 of the CC of the RF).

4.1.2.2. LLC

4.1.2.2.1. The Legal Nature of LLC

A LLC is one of the most common organizational legal forms of legal entities in Russia. One of the main reasons for this is that the Federal Law on Limited Liability Companies regulates many aspects on facultative basis, allowing the legal entity's bodies

to resolve various issues at its discretion. This work is done internally at the company.

Charter capital[36] is divided into participatory interests belonging to the LLC participants. The company is not liable for its participants' obligations. As a general rule, the participants are not liable for the company's obligations either.

Generally, a LLC is not obliged to publish its reports.

4.1.2.2.2. The Features of the Establishment of A Limited Liability Company

In accordance with Clause 1 of Article 89 of the CC of the RF, the LLC founders are obliged to sign an LLC foundation agreement in writing, which shall define some aspects of the company's foundation.

This contract is not a constituent document of the LLC.

The term for the payment of shares in the charter capital (that has been established by the agreement) may not exceed 4 months. Within this period, the founders are obliged to pay the shares fully.

4.1.2.2.3. LLC Participants

Both individuals and legal entities can be participants to an LLC. The number of LLC participants shall not exceed 50. At the excess of this limit, the LLC must be transformed into a JSC. The LLC may have a single participant (a company having a single participant cannot appear as such a participant, according

[36] For more information about the minimum amount of an LLC Charter Capital, see chapter 4.1.2.1.C.

to Article 7 of the FL on Limited Liability Companies).

4.1.2.2.4. The Transfer of Participatory Interest in LLC's Charter Capital

As a general rule, the transfer of an LLC's participatory interest from one person to another is allowed. Upon alienation of the entire participatory interest, this person ceases to be the company's participant. In case a participatory interest is sold to a third party, the other participants of an LLC have the priority to buy the share or part of the share (the seller must first offer its share to the other participants). An LLC charter may include the necessity to obtain the consent of all participants for the alienation of a share. Furthermore, the charter may establish a ban on the shares' alienation.

4.1.2.2.5. LLC Profit Distribution Among the Participants

At the general meeting of an LLC, participants may decide to distribute the company's net profit among its participants quarterly, biannually, or annually. Distribution is made in proportion to the participant's interest in the charter capital. The company's charter may provide other proportions of profit distribution. The FL on Limited Liability Companies contains a list of circumstances under which profit distribution is prohibited.

4.1.2.2.6. Increase and Reduction of LLC Charter Capital

An increase of LLC charter capital may be implemented:

i) at the expense of the company's assets (without the implementation of additional deposits),

ii) at the expense of LLC participants' additional deposits,

iii) at the expense of the deposits of the persons entering the company as a participant, if it is not prohibited by the company's charter.

A reduction of LLC charter capital is implemented by:

i) the reduction of the shares par value for all participants of the company,

ii) the redemption of the company's shares.

4.1.2.2.7. Contributions to the Company's Assets

The general meeting of participants may oblige all of the participants of an LLC to make contributions to the company's assets; these contributions do not change the sizes and par value of the participants' shares in the charter capital (and do not increase the company's Charter Capital). Such contributions are made by all participants in proportion to their shares, unless otherwise stated in the charter.

4.1.2.2.8. LLC Management Bodies

LLC Management Bodies are:

i) The General Participants Meeting

The general participants meeting is the highest management body of an LLC. All of the company's participants have the right to participate in it. During the general participants meeting, most of the important issues concerning the LLC's activities can be addressed and resolved.

ii) Board of Directors (Supervisory Board)

The terms "board of directors" and "supervisory board" are

synonyms. The formation of a board of directors (supervisory board) in an LLC is not obligatory.

The company's charter determines the competence of the board of directors (supervisory board), taking into consideration the Federal Law on Limited Liability Companies.

iii) A Sole Executive Body

The sole executive body manages the company's current activities. The general meeting of shareholders or the board of directors (supervisory board) elects a sole executive body, which shall be accountable to them.

iv) Executive Board

Forming an executive board is not obligatory for an LLC. The appointment of executive board members is within the competence of the general participants meeting or the board of directors (supervisory board). The chairman of this body is a person holding a position in the sole executive body.

v) An Audit Committee (Auditor)

Forming an audit committee is obligatory for a company which has more than 15 participants. The general participants meeting of the LLC appoints a member to the audit committee. The company's audit committee (auditor) has the right to carry out inspections of company's financial and economic activities, and has access to all documentation concerning a company's activities at any time. The company's audit committee (auditor) shall carry out an inspection of company's annual reports and balance sheets, before their approval by the general meeting of

participants of the company.

4.1.2.3. Joint Stock Company (JSC)

4.1.2.3.1. The Legal Nature of a JSC

The JSC is one of the most common organizational-legal forms of legal entities in Russia. Its charter capital[37] is divided into shares belonging to the JSC's participants. The company is not liable for the shareholder's obligations. The shareholders are usually not liable for the company's obligations either, except in a situation when they have not fully paid for their shares.

Public JSC, as well as a non-public JSC with more than 50 shareholders, are obliged to disclose information in accordance with the Federal Law on Joint Stock Companies.

4.1.2.3.2. The Features of the Establishment of a JSC

In accordance with the Clause 1 of Article 98 of the CC of the RF, founders of a JSC are obliged to execute a contract among themselves upon the founding a JSC, which shall define some aspects of the company's creation. Such a contract must be concluded in writing.

This contract is not a constituent document of the JSC.

4.1.2.3.3. The Shareholders

Both individuals and legal entities may be JSC participants. The JSC may have a single shareholder (another company having a single participant cannot appear as such a shareholder, in

[37] *See* chapter 4.1.2.1.C for the minimum amount of JSC charter capital.

accordance with Clause 6 of Article 98 of the CC of the RF).

4.1.2.3.4. The Shares

A public company has the right to allocate shares, and issue securities which are convertible to shares, through open subscription. A non-public company does not have the right to offer (to an unlimited group of persons) such securities for acquisition.

A non-public company may provide for in its charter the pre-emptive rights of the shareholders to the acquisition of shares being alienated by another shareholder (on paid transactions). Additionally, the charter may include a requirement to obtain the consent of stockholders for the alienation of the shares.

The JSC has the right to allocate several types of shares, as well as special types such as preferred shares. The JSC charter specifies the dividend amount and/or the cost paid, in the event of a company's liquidation of preferred shares. The preferred shares do not grant the right to vote at the general shareholders' meeting. An exception to this rule is for meetings when certain issues are being considered, such as making amendments and additions to the company's charter, limiting the rights of the preferred share owners, as well as other issues.

4.1.2.3.5. The Payment of Dividends

The general shareholders' meeting may decide to pay dividends to the shareholders on a quarterly, biannually, or annual basis.

4.1.2.3.6. The Increase and the Reduction of JSC Charter Capital

The increase of charter capital may be implemented:

i) by increasing the share's par value, or

ii) by issuing additional shares.

A reduction of the charter capital is implemented by:

i) the reduction of the share's par value, or

ii) the acquisition of a part of the shares, with the purpose of reducing their total number.

4.1.2.3.7. JSC Management Bodies

JSC management bodies are:

i) The General Shareholders' Meeting

The general shareholders' meeting is the highest management body of a JSC. All shareholders have the right to participate in it. The most important issues of the JSC's activities are addressed by the general shareholders' meeting.

ii) Board of Directors (supervisory board).

Forming a board of directors is not obligatory for a JSC, which has less than 50 shareholders with voting shares. The general shareholders' meeting elects the members of the board of directors (supervisory board) by a cumulative vote. The responsibilities of a company's board of directors (supervisory board) includes the resolution of issues of the general management of company's activities, except for the issues that federal law assigns to the responsibility of the general meeting of shareholders.

iii) A Sole Executive Body

The sole executive body manages the company's current activities. The general shareholders' meeting or the board of directors (supervisory board) elect the sole executive body, which is accountable to them.

iv) Executive Board

The forming of a executive board is not obligatory for a JSC. If a executive board has been formed, it shall manage the current activities of the JSC together with the sole executive body. The general shareholders' meeting or the board of directors (supervisory board) elect the executive board, which is accountable to them.

v) An Audit Committee

The general meeting of shareholders elects an audit committee. It controls the company's financial-economic activities.

4.1.3. Economic Partnership

There are two types of economic partnerships in Russia:

i) general partnerships,[38]

ii) limited partnerships (special partnership)

Only individual entrepreneurs and profit organizations can be participants (partners) of the partnerships. The partners carry out

[38] The general partnership should not be confused with the simple partnership, which is not a legal entity.

entrepreneurial activities on behalf of the partnership.

The participants jointly bear subsidiary liability for the obligations of the partnership. The person can be a participant of only one general partnership. Management of the general partnership's activities is carried out with the consensus of all partners, unless otherwise provided by the founding agreement. Due to the aforementioned features, Russian entrepreneurs rarely create economic partnerships.

A founding agreement may provide the following models for the management of general partnership:

i) by all partners jointly (decision-making requires the consent of all partners),

ii) by each partner separately,

iii) by individual partners.

In accordance with Clause 3 of Article 73 of the CC of the RF, the participant of a general partnership has no right to execute transactions on its behalf, for the benefit of the third parties without the consent of the remaining participants if such transactions are similar to the subject of general partnership's activities. The profit and losses are distributed among the partners in proportion to their contributions, unless otherwise specified by the founding agreement.

The partner has the right to transfer his share to the third party only with the consent of all partners.

In the case when a single participant remains in a partnership, the partnership is subject to liquidation, if the last partner does

not transform the partnership into an economic company.

4.1.3.1. Limited Partnership

A limited partnership, along with the general partners, includes the investors (limited partners) therein, who do not participate in the management of the partnership, as well as in conducting its affairs, and bear the risk of the losses from the partnership's activities, within the limits of their contributions to the capital. Any individuals and legal entities can be investors to a limited partnership. Their number may not exceed 20.

4.1.4. Peasant (Farmer) Economies[39]

Currently in the Russian legislation peasant (farmer) economy refers to:

i) the association of citizens (the citizens can conclude an agreement on the establishment of a peasant (farmer) economy, and carry out joint entrepreneurial activities without the formation of a legal entity),

ii) a legal entity.

4.1.4.1. The Peasant (Farmer) Economy as an Association of Citizens

The Federal Law on Peasant (Farmer) Economies determines

[39] The words «peasant» and «farm» are synonym in this entitlement.

a peasant (farmer) economy (or simply “farming”) solely as an association of citizens, and not as a legal entity. In accordance with Clause 1 of Article 1 of the aforementioned law, a peasant (farmer) economy includes “the citizens bound by the alliance and/or property, having property goods in common and jointly performing production and other economic activities (production, conversion, storage, transportation and implementation of agricultural products), based on their personal participation.” At the same time, the norms intended for the profit organizations are applied to the peasant economy, without the formation of a legal entity.

In accordance with Article 6 of the Federal Law on Peasant (Farmer) Economies, the property of the peasant economy may include a land plot, farm improvements, ameliorative and other constructions, productive and working cattle, birds, agricultural and other machinery and the equipment, vehicles, stock, and other property, necessary for the implementation of the economy’s activities. The property of the economy belongs to its members on the right of joint ownership, unless otherwise provided by an agreement between them. The shares of the economy’s members, in terms of share property, are established by an agreement between the economy members. Fruits, production, and incomes gained by the economy as a result of its property's use are considered as common property of all members.

4.1.4.2. The Peasant (Farmer) Economy as a Legal Entity

The CC of the RF establishes that the persons who have concluded an economy founding agreement have the right to create a legal entity. The property of such an economy is determined by the right to ownership. Members bear a subsidiary liability for the obligations of the economy.

The peasant economy is a highly unpopular form of entrepreneurial activities in Russia, due to the personal liability of its participants and undeveloped legislation.

4.1.5. Industrial Cooperative

An industrial cooperative is a legal entity created by its participants, for joint industrial and other economic activities, based on their personal labor and other participation. The participants of industrial cooperatives contribute shares to the organization's property. The number of participants cannot be less than five.

The profits of the industrial cooperative are divided among its participants based on the labor participation of each of them in the activities of the organization. The law and the charter can provide another order for profit division. Industrial cooperative members bear subsidiary liability for the obligations of the cooperative, in accordance with the Federal Law on Industrial

Cooperatives.

The industrial cooperative is also an unpopular organizational-legal form of legal entity in Russia due to personal liability of its participants, and the need for their labor participation in the affairs of the legal entity.

4.2. The State and Municipal Unitary Enterprises

The state and municipal unitary enterprises (or simply "the unitary enterprises") are legal entities, which may be founded only by a state[40] or the municipalities. Their property is respectively in a state or municipal ownership. The unitary enterprises have special rights to such property (see below).

There are two types of unitary enterprises:

i) a state enterprise

A state enterprise has the economic management rights of the property assigned to it. Generally, the right to economic management grants the state enterprise with an opportunity to independently dispose of the movable property. For the disposal of real estate, the consent of the owner shall be obtained (state or municipality).

ii) a treasury enterprise

A treasury enterprise has the operational management rights of the property assigned to it. This means that a treasury

[40] In this case, both the Russian Federation and its subjects are considered as a state.

enterprise must obtain the owner's consent for the disposition of any property. The production made by the treasury enterprise is an exception (it can independently dispose of it, unless otherwise provided by the legal acts).

The legal capacity of unitary enterprises is limited to the purposes of the activities stated in their charters.

Unitary enterprises are created mainly for rendering services to the population in those spheres where the activities of individual entrepreneurs are inadmissible or impossible (for example, public transportation, the production of goods being important for the state and society, etc.).

5. The Non-profit Organizations

A minimum amount of charter capital for non-profit organizations is not established, except for those organizations whose charter provides for a possibility of exercising activities which may generate income. The minimum amount of the charter capital for this kind of legal entity is 10,000 rubles (Clause 5 of Article 50 of the CC of the RF). In any case, private institutions have no restrictions set by the law on the size of the charter capital.

5.1. The Non-Profit Corporate Organizations

i) A consumer cooperative is a membership-based, voluntary association of citizens and legal entities, aimed at satisfying their material and other needs, being carried out by way of assembling their share contributions.

ii) A public organization is a voluntary association of citizens, who have united in the order stipulated by law on the basis of common interests, for the purposes of satisfying spiritual or other non-material needs, representing and protecting common interests and to achieve other purposes, which are not contradictory to the law.

iii) A public movement is a public association consisting of participants who are pursuing social, political and other socially

useful purposes, supported by the participants of the public movement.

iv) An association (union) is an association of legal entities and/or citizens based on voluntary or, in the cases established by the law, on obligatory membership, and are created to represent and protect the common interests, including professional interests, to achieve socially useful purposes, as well as other purposes which are not contradictory with the law, and are of a non-commercial nature. Non-commercial partnerships are also referred to as associations (unions).

v) A fellowship of real estate owners is a voluntary association of real estate owners, created by them for the purposes of joint ownership, use, and within the limits set by law, disposal of the property, which by virtue of the law are under their common property or in common use, as well as the achievement of other goals which are not contradictory with the law.

vi) The Cossack communities are an association of citizens, entered in the state register of the Cossack societies in the Russian Federation, created to preserve a traditional way of life, and manage the culture of the Russian Cossacks, as well as for other purposes stipulated by law, with obligations of carrying out state or other services, as undertaken in accordance with the law.

vii) The communities of Aboriginal Smaller Peoples of the Russian Federation are voluntary associations of the citizens belonging to the Aboriginal Smaller Peoples of the Russian Federation, and are united by kinship and/or territorial

and neighborhood principles, aiming at the protection of the primordial habitat, preservation and development of the traditional way of life, housekeeping, crafts and culture.

viii) The Chambers of Advocates are non-profit organizations based on obligatory membership, and are created in the form of the Chamber of Advocates of the Subject of the Russian Federation, or the Chamber of Advocates of the Russian Federation Federal, for the realization of the purposes provided by the legislation on advocacy.

ix) The advocacy formations, being legal entities[41] are non-profit organizations, created in accordance with the advocacy legislation aiming at the implementation of advocacy by the participants.

5.2. Non-Profit Unitary Organizations

i) A fund is a unitary non-profit and non-membership organization, founded by the citizens and/or legal entities, on the basis of voluntary property contributions and pursuing charitable, cultural, educational, or other social or socially useful purposes.

ii) An institution is a unitary non-profit organization created by the owners for the implementation of managerial, socio-cultural, or other functions of a non-commercial nature. A

[41] In the section on corporations, we consider advocacy formations that are legal entities.

founder is the owner of the property of an established institution. It gets the right to operational management of the property assigned by an owner to an institution, and is acquired by an institution on other bases in accordance with the CC of the RF.

iii) An autonomous non-profit organization is a unitary non-profit and non-membership organization, established on the basis of property contributions of citizens and/or legal entities, aiming at the rendering of services in the spheres of education, health care, culture, science, and other non-commercial activities.

iv) A religious organization is a voluntary association of the citizens of the Russian Federation, permanently and lawfully residing in the territory of the Russian Federation, or other persons, formed by them, aimed at joint confession and spreading of the faith, and registered as a legal entity in accordance with the law (a local religious organization), unions of these organizations (the centralized religious organization), as well as an organization, created by the given union and/or managing or coordinating body of the union. This is in accordance with the law on freedom of conscience and religious associations, and these organizations are aiming at the joint confession and spreading of the faith.

v) The Public-Legal Companies

The public-legal companies are an organizational-legal form of legal entities, which are new to Russia, that appeared in the CC of the RF in 2014. However, currently neither the CC of the RF, nor other laws, contain any norms establishing the legal

status of these organizations. This shortcoming is expected to be corrected soon.

vi) The State Corporations

The possibility to create state corporations is provided in Article 3 of the Federal Law No. 99-FZ dated May 5, 2014. State corporations are created for the purposes of the implementation of social, managerial or other socially useful functions. Each state corporation is created on the basis of a separate federal law that establishes features of the legal status thereof.

Currently the following state corporations are operating in Russia:

– Rosatom State Corporation of Atomic Energy;

– State Corporation for the Promotion of the Development, Production and Export of Hi-Tech Industrial Products “Rostec”;

– State Corporation “Bank for Development and Foreign Affairs (Vnesheconombank)”

vii) The State Companies.

The only state company currently operating in Russia is the State Company "Russian Highways.” It operates under ad hoc federal law. The legislation does not provide a possibility for the creation of new legal entities in the form of state companies.

Svetlana Popova[42]
Chapter 3 – Core Business Contracts

1. The Contract As a Basis for Creating Obligations

1.1. The definition of a contract under Russian law

Under Clause 1 of Article 420 of the Civil Code of the Russian Federation, a contract shall be recognized as an agreement, concluded by two or more persons of the institution, upon modification or termination of civil rights and duties. The general provisions on obligations (Articles 307–419 of the CC of the RF) shall be applied towards the obligations, arising from the contract, unless otherwise provided in the provisions of the CC of the RF, governing individual types of contracts or in the general provisions on contracts set forth in the CC of the RF.

The contract is also a bilateral or multilateral transaction.

[42] Legal analyst, Consultant Plus; Lomonosov Moscow State University, LL. B. 2013.

Therefore, as a general rule, the provisions on transactions set forth in Chapter 9 of CC of RF are applicable to contractual relations. Nevertheless, two exceptions to this rule have been implemented as a result of the amendments to the CC of the RF, which have been in force since July 1, 2015.[43]

The first exception concerns the application of the provisions on the invalidity of contractual transactions, which are related to entrepreneurial activity undertaken by the parties. Thus, as a general rule, the party which accepted the performance of the business contract from the counterparty, and fully or partially failed to ensure reciprocal performance of that contract, cannot claim the invalidity of the contract. The second exception pertains to the application of general consequences of the invalidity of transactions within business contracts. The parties of such a contract, which is a voidable transaction, may agree on additional consequences of invalidity, other than those provided in Article 167 of the CC of the RF. Furthermore, such an agreement should be concluded after the declaration of the contract as invalid, should not affect the rights of third parties, and should not violate the public interest.

Consequently, the following provisions of the CC of the RF need to be taken into account upon conclusion of the contract:

– Subsection 1 of Section 3 of Part 1 of the CC of the RF (general provisions on obligations);

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[43] *See* Federal law No. 42-FZ, dated March 8, 2015, "On Amending Part One of the Civil Code of the Russian Federation," // "ConsultantPlus" Legal Directory System

– Subsection 2 of Section 3 of Part 1 of the CC of the RF (general provisions on contracts);

– Part 2 of the CC of the RF (individual types of obligations);

– Chapter 9 of the CC of the RF (transactions) – with some exceptions to be discussed below.

Specific regulation of individual types of contracts can be found not only in the CC of the RF, but also in other laws and regulations (e.g. the Urban Planning Code of the RF).

1.2. General Provisions on Contracts

The CC of the RF contains general provisions pertaining to every type of contract, and provisions regulating certain types of contracts (public contract, contract of adhesion, etc.), as well as provisions on individual types of contracts (purchase and sale contracts, rental agreements, etc.). The provisions on individual types of contracts cover the main rights and obligations of the parties, the rules of concluding a contract, formal requirements of a contract, etc.

Furthermore, the parties can conclude not only the types of contracts which are named directly in the CC of the RF, but also contracts which are not specified therein. The latter category can include contracts containing elements of several named contracts (mixed contracts), and special contracts, which do not contain elements of named contracts (unnamed contracts). Depending on the type of concluded contract, different principles can be

distinguished with respect to the regulation of the contractual relationships of the parties.

Relationships under named contracts are defined by the parties, taking into consideration the rules on those contracts provided in the CC of the RF. The imperative norms governing the contract cannot be changed by the parties. When there are dispositive rules governing the contract, the parties can agree not to apply those provisions, or to establish different rules. The criteria for imperative norms have been identified in the Decision No. 16 of the Plenum of the Supreme Court of Arbitration of the RF, dated March 14, 2014.[44]

> The Decision No. 16 of the Plenum of the Supreme Court of Arbitration of the RF, dated March 14, 2014, "On the Freedom of Contracts and Its Limits," was the first decision to establish the presumption of the dispositive nature of the norms governing individual types of contracts. According to the Plenum of the Supreme Court of Arbitration of the RF, the legal norms governing the rights and obligations under the contract shall be considered to be imperative, if those include a clear prohibition on adding different clauses to the contract. The norm is also of an imperative nature, if it is necessary for the purposes of safeguarding special interests protected by law (interests of the weakest party of the contract, third parties, public

[44] See Decision No. 16, dated March 14, 2014, of the Plenum of the Supreme Arbitration Court of the RF, "On the Freedom of Contract and Its Limits," // "ConsultantPlus" Legal Directory System.

interest, etc.), for avoiding a great disparity between the parties' interests. In addition, the imperative nature of a legal norm can be implied from the nature of the legislative regulation pertaining to a certain type of contract. In other scenarios, the norm should be considered to be of a dispositive nature.

With respect to the relationship under mixed contracts, or contracts which have elements of a mixed contract, the rules governing these contracts apply in respective portions, unless the parties agreed otherwise, or the rules are implied based on the nature of the mixed contract.

As for unnamed contracts, the rules on individual types of contracts provided in the CC of the RF do not apply directly. However, if the parties do not set in the contract the rules governing a particular aspect of their relationship, then the provisions on the individual types of contracts of the CC of the RF may apply by analogy (analogy of the law – Clause 1 of Article 6 of the CC of the RF).

In any of the aforementioned scenarios, the parties have the right to agree that the individual terms of the contract shall be determined by standard terms developed for contracts pertaining to the respective type, and published in the press (Article 427 of the CC of the RF). In the event that the contract does not contain a reference to such standard terms, they can be applied to the relationship of the parties as customs of trade.

The general stipulations of contract law in the CC of the

RF includes provisions applicable to certain types of contracts: public contract, contract of adhesion, preliminary contract, framework agreement, option agreement, subscription contract, and the contract for the benefit of third persons.

1.2.1. The Rules for Concluding Contracts

1.2.1.1. General rules for concluding a contract

As a general rule, a contract is concluded by the means of one party sending an offer, and the other party accepting it. The contract shall be considered to be concluded from the moment of receiving the acceptance by the party which has sent the offer.

Furthermore, a contract shall be considered to be concluded, if an agreement in the required form has been reached between the parties on all of the essential terms of the contract (Article 432 of the CC of the RF). The essential terms of the contract are:

– the subject matter of the contract;

– the terms that are named in a statute, or in other legal acts, as essential or necessary for contracts of the given type;

– the terms with respect to which, by declaration of one of the parties, an agreement must be reached.

1.2.1.2. Declaring the contact as unconcluded

If any of the essential terms of the contract have not been

agreed on, the contract, as a general rule, shall be deemed to be unconcluded. In this respect, the following factors shall be considered:

– the party cannot claim that the contract is unconcluded if: first, that the party has accepted the performance of the contract or otherwise acknowledged the validity of the contract; second, considering the particular circumstances, such a claim will contradict the good faith principle (Clause 3 of Article 432 of the CC of the RF);

– the contract shall not be considered as unconcluded, if the essential term, with respect to which an agreement has not been reached, can be covered by the general rules on obligations, or by a framework agreement. The application thereof shall not, however, be in conflict with the nature of the specific contract.[45]

1.2.1.3. State registration of contracts

Some contracts require state registration. Such registration is required, for example, for real estate rental agreements concluded for a period of not less than one year (Clause 2 of Article 609 of the CC of the RF), and for commercial concession contracts (Clause 2 Article 1028 of the CC of the RF). For third parties, the contracts which by law require state registration, shall

[45] See Informative letter No. 165 of the Presidium of the Supreme Court of Arbitration of the RF, dated February 25, 2014, "On the Overview of the Judicial Practice Regarding the Disputes Related to the Declaration of Contracts as Unconcluded," // "ConsultantPlus" Legal Directory System

be considered concluded from the moment of such registration.[46] Such a contract creates obligations for its parties, and cannot be declared by the courts as an unconcluded contract.

> In its informative letter No. 165, dated February 25, 2014, the Presidium of the Supreme Court of Arbitration of the RF noted that the contract, which has not been duly registered, does not bear all of the consequences of the contract. Such a contract does not bear consequences which can affect the rights and interests of third parties who are unaware of the conclusion and the content of that contract. On the other hand, all legal consequences arise for the parties of the contract, from the moment an agreement has been reached in relation to all the essential terms. The full range of the consequences of the contract are enforced upon its state registration.[47] Such an interpretation of the provision has previously been conveyed by Decision No. 73 of the Plenum of the Supreme Court of Arbitration of the RF, dated November 17, 2011.[48]

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[46] The finding that the contract, which has not undergone state registration, shall be deemed concluded for third parties and not for the parties of the contract, has been determined in Federal law No. 42-FZ, dated March 8, 2015, "On Amending Part One of the Civil Code of the Russian Federation," which came into effect on July 1, 2015.

[47] See Clauses 2 and 3 of the Informative letter No. 165 of the Presidium of the Supreme Court of Arbitration of the RF, dated February 2, 2014, "On the Overview of the Judicial Practice Regarding Disputes Related to the Declaration of Contracts as Unconcluded," // "ConsultantPlus" Legal Directory System

[48] See Clause 14 of the Decision No. 73 of the Plenum of the Supreme Court of Arbitration of the RF, dated November 17, 2011, "On Some Issues of the Application of the Rules on Rent Contracts, Provided in the Civil Code of the Russian

1.2.1.4. Obligatory conclusion of a contract

In certain scenarios, the CC of the RF and other laws provide for an obligation of a party to conclude a contract. For example, such an obligation is set forth for organizations supplying energy, regarding the conclusion of power supply contracts.[49] In case the party/parties have an obligation to conclude a contract, it has to be concluded, in accordance with Article 445 of the CC of the RF. In the event of disagreements regarding the individual terms of the contract, the parties have the right to bring the case to the court, within six months from the moment the conflict arose.

If the party obligated to conclude a contract avoids its conclusion, the counterparty has the right to ask the court to coerce the party to conclude the contract. In this case, the contract is deemed to be concluded with the terms that are determined by the decision of the court, and from the moment that decision has come into force.

1.2.1.5. Conclusion of a Contract at an Auction

Unless otherwise implied from the nature of the contract, it can be concluded at an auction. General provisions on the conclusion of a contract at an auction can be found in Articles

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Federation," // "ConsultantPlus" Legal Directory System

[49] See Clause 3 of Article 15 of the Federal Law No. 190-FZ "On Power Supply," dated July 27, 2010, // "ConsultantPlus" Legal Directory System.

447–449.1 of the CC of the RF. The order of organizing auctions in different domains is regulated in specific legislation.[50]

The auctions shall be held in the form of a tender, auction by bidding, or in another form prescribed by law. The latter category includes, for example, "reverse auctions" (reductions).[51] It can be organized for acquiring goods and services for state, municipal, and private needs.

The contract is concluded with the winner of the auction. Some laws and regulations provide the possibility (or obligation) to conclude a contract with the second place winner, in case the first place winner avoids the conclusion of the contract.

An auction conducted in violation of the rules may be declared invalid by a court, based on a complaint brought by an interested party, or in certain cases by the competition authorities. The declaration of an auction as invalid shall entail the invalidity of the contract concluded with the winner of the auction.

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[50] See for example, Bankruptcy Law // "ConsultantPlus" Legal Directory System; Federal Law No. 229-FZ "On Enforcement Proceedings," dated October 2, 2007, // "ConsultantPlus" Legal Directory System;

[51] The terms "reverse auction" or "reduction" are not used in Russian legislation. These forms of auctions, however, are prescribed in Federal Law No. 44-FZ, "On the System of Public Procurement Contracts for Products, Works, Services for State and Municipal Needs" dated April 5, 2013, and in Federal Law No. 223-FZ, "On Purchases of Goods, Works and Services by Certain Types of Legal Entities," dated July 18, 2011. In these laws the term "auction" is used for the identification of such procedures.

1.2.2. The Rules on the Amendment and Termination of a Contract

1.2.2.1. The grounds for the amendment or termination of a contract

The amendment and termination of a contract are possible by an agreement of the parties, or by a court decision.

An agreement to amend or terminate a contract shall be made in the same form as the contract that has been concluded, unless otherwise implied by the laws, regulations, customs of trade, or by the contract.

Upon one of the parties' request, a contract may be amended or terminated by a decision of a court in case of:

– a substantial breach of the contract by the counterparty (Article 450 of the CC of the RF). A breach of a contract by one party shall be recognized as substantial, if it entails damages for the counterparty that significantly deprive the party from what they had the right to expect upon conclusion of the contract;

– a substantial change of circumstances (Article 451 of CC of the RF). A change of circumstances shall be recognized as substantial when they have changed the contract to the extent that the contract would not have been concluded, or it would have been concluded on significantly different terms, if the parties could have reasonably foreseen these changes;

– or in other cases provided by law or contract.

Before applying to the court, the party intending to amend or terminate the contract shall comply with the rules of pre-trial procedures, which includes the submission of a proposal to the counterparty to amend or terminate the contract. The court shall consider the request to amend or terminate the contract, if the counterparty rejected such a proposal, or the response has not been received in due course. Non-compliance with the rules of pre-trial procedures shall result in leaving the claim without consideration (Article 148 of the Arbitration Procedural Code of the RF). This, however, does not deprive the claimant from the right to apply again after complying with those rules.

1.2.2.2. Unilateral refusal to perform the contract

The law or the contract may allow the parties to unilaterally refuse to perform the contract (or to exercise relevant rights). In this case, the party may inform the counterparty of its refusal to perform the contract (Article 450.1 of the CC of the RF). The contract is terminated from the moment such notice has been received, unless otherwise provided by law or stipulated in the contract. From that moment forward, the contract shall be deemed to be terminated or amended.

1.2.2.3. The consequences of contract termination

Upon termination of a contract, the obligations of the parties

shall be terminated unless otherwise provided by law, or implied from the nature of the obligations (Article 453 of the CC of the RF). The parties do not have the right to demand the return of what was performed by them under an obligation, before the time of amendment or termination of a contract, unless otherwise provided by law, or agreed by the parties. In a situation where before the termination of the contract, one of the parties has performed its obligations but the counterparty has not, the rules of unjust enrichment apply to the relationship.

The Opinion of the Plenum of the Supreme Court of Arbitration of the RF, ruled on the following stipulations, in clause 5 of Resolution No. 35, dated June 6, 2014.[52] According to this ruling, upon the termination of a contract, a party has the right to demand the return of property in the following circumstances:

– the party has transferred some property to the counterparty's property as a performance of the contract;

– the counterparty has not performed its obligations properly or at all;

– in this respect, the court has found the parties to be in violation of the equality of their performance.

Moreover, all of the encumbrances (e.g. mortgage) of the returned property shall persist, which were existing at the time

[52] Resolution No. 35 of the Plenum of the Supreme Court of Arbitration of the RF, dated June 6, 2014, "On Consequences of the Termination of a Contract," // "ConsultantPlus" Legal Directory System

of being in the possession of the counterparty.

1.2.3. Formal Requirements to the Contract

According to Article 158 and Article 434 of the CC of the RF, all transactions, and particularly contracts, may be concluded in oral or written forms (simple or notarial). Contracts, in which at least one party is a legal person, shall be concluded in written form (Article 161 of CC of the RF), with the exception of the contracts which are performed at the moment of conclusion, or those directed at the performance of a written contract. These contracts may be concluded orally (Article 159 of CC of the RF).

1.2.3.1. Simple written form of a contract

A written contract may be concluded by the means of drawing up a document or exchanging several documents (letters, electronic communication, etc.). In the latter case, the channels of communication must allow for the exact determination that the documents come from the party of the contract. The written form of the contract is also deemed to be observed if the party receiving the offer has taken steps towards the performance of the contract.

1.2.3.2. Contracts certified by notary

For a range of contracts the legislation sets forth a requirement

for notarial certification. Such a requirement, for example, exists for transactions related to the alienation of a share, or a portion of a share, in the charter capital of a limited liability company. The requirement of notarial certification of contracts may also be stipulated by the agreement of the parties. Transactions shall be certified by the notary, or an official having the right to take such notarial action. The procedure of notarial certification is set forth in theFundamental Principles of Legislation on Notariat dated February 11, 2003 No. 4462-.1.

If the notarial certification of a transaction is required, the nonobservance thereof results in the transaction being void. If one of the parties to the transaction, however, fully or partially performed the contract, and the counterparty avoided notarial certification, the court may, upon the party's request, declare the transaction as valid (Article 165 of the CC of RF).

1.2.4. Security for the Performance of Contracts

The main methods of securing the performance of obligations are set forth in the CC of the RF. Those methods include penalty, pledge, retention of property, surety, guarantee, earnest money, and security deposit. This list is non-exhaustive, and the parties have the right to stipulate in the contract other means of securing the performance of obligations.

1.2.4.1. Penalty (Article 330–333 of the CC of the RF)

A penalty is a monetary sum, determined by law or contract, that a debtor must pay to the creditor, in case of nonperformance or improper performance of an obligation.

If a penalty subject to payment is clearly disproportionate to the consequences of the violation of an obligation, the court has the right to reduce the penalty. If the debtor is an entrepreneur, the court may reduce the amount of the penalty, only upon that person's request. Furthermore, such a debtor must prove that the amount of the penalty stipulated in the contract may result in an unfair advantage to the creditor.

The creditor is entitled to claim damages for the portion not covered by the penalty (Article 394 of CC of RF). The law or the contract may identify the following scenarios:

– when only the penalty may be claimed and not the damages;

– when in addition to the penalty the damages may be claimed in the full amount;

– when the creditor may choose to claim either the penalty or the damages.

1.2.4.2. Pledge (Articles 334–358.18 of CC of the RF)

In the event of debtor's nonperformance, or the improper performance of its obligations, the creditor (pledgee) has the right to receive satisfaction from the value of the pledged

property, with priority over other creditors of the pledger.

In cases defined by law, and according to the procedure prescribed therein, the pledgee may have his/her claim satisfied by means of transferring the pledged property to the pledgee. A pledge arises by virtue of a contract between the pledger and the pledgee, or on the basis of law.

In the event that the rights on the pledged property have been transferred by the pledger to a third party, as a general rule, the pledge remains valid, with the exception of the following cases:

– when the pledged property has been acquired for compensation by a person who did not know and could not have known that the property was the subject of a pledge (No. 2 of Clause 1 of Article 352 of the CC of the RF);

– of the alienation of goods in commerce being the subject of a pledge (Clause 2 of Article 357of the CC of the RF).

The CC of the RF contains general provisions on pledges, and provisions regulating specific types of pledge (pledge of goods in commerce, pledge of securities, pledge of the rights of the shareholders of legal persons, etc.). A mortgage (pledge of real estate) is regulated by a special federal law.[53]

[53] Federal Law No. 102-FZ "On Mortgage (pledge of real estate)," dated July 16, 1998, // "ConsultantPlus" Legal Directory System

1.2.4.3. Retention of property (Article 359–360 of CC of the RF)

In case of nonperformance by the debtor, a creditor who has property subject to transfer to a debtor, or a person indicated by a debtor, shall have the right to retain the property until the performance of the obligations. If the parties are not entrepreneurs, the retention of property is allowed only for the purposes of securing the obligation to pay for that property, or for the compensation for the creditor's losses in relation to that property. If, however, the parties to the contract are entrepreneurs, other obligations may also be secured by retention of property.

1.2.4.4. Surety (Article 361–367 of CC of the RF)

Under the contract of "suretyship," the surety undertakes the duty to the creditor of another person to be fully or partially liable for the performance of its obligations.

The terms of the suretyship, as related to the main obligation, are deemed to be agreed on if the suretyship contract refers to the contract from which the secured obligation arose or will arise. If the surety is an entrepreneur, then the suretyship contract may secure all existing and/or future obligations of the debtor, in a predefined amount.

As a general rule, the debtor and surety are jointly and

severally liable towards the creditor. The law or the contract may also establish subsidiary liability of the surety.

The surety who has performed the obligation, obtains the rights of the creditor in relation to this obligation and the rights of the creditor as a pledgee, to the extent that the surety has satisfied the initial creditors' demands.

1.2.4.5. Guarantee (Article 368–379 of CC of the RF)

By virtue of a guarantee, the guarantor, upon the principal's request, undertakes an obligation to pay, to the person indicated by the principal (the beneficiary), a monetary sum in accordance with the terms of an obligation set by the guarantor. This is irrespective of the validity of an underlying secured obligation.

The obligations of the guarantor towards the beneficiary do not depend on the main obligation for the security of which the guarantee was issued, as well as on the relationship between the principal and the guarantor, or any other obligations, even if a reference to such obligations is made in the guarantee.

A guarantee may be issued by banks or other credit organizations (bank guarantees), as well as by other commercial organizations. Before June 1, 2015, the CC of the RF only regulated bank guarantees. Guarantees issued by other commercial organizations are new to Russian law.

1.2.4.6. Earnest money (Article 380–381 of CC of the RF)

Earnest money is a monetary sum given by one of the contracting parties to the other towards payments due under the contract. If the party giving the earnest money is liable for the nonperformance of the contract, the earnest money remains with the other party. If the party receiving the earnest money is liable for nonperformance of the contract, it has the duty to pay the other party twice the amount of the earnest money.

1.2.4.7. Security deposit (Article 381.1–381.2 of CC of the RF)

Monetary obligations may be secured by a security deposit given from one party to the other (security deposit). When the circumstances described in the contract arise, the amount of the security deposit is set off towards the performance of the corresponding obligation. If such circumstances do not arise in the period stipulated in the contract, or if the secured obligation is terminated, the security deposit has to be returned, unless the parties agreed otherwise.

2. Types of Contracts under the Russian Law

2.1. Contracts of Alienation of Property

The CC of the RF identifies a variety of contracts, which allow the transfer of property, by its owner or another person legally holding that property, to a third person. Such contracts include contracts of sale, barter, donation, and rent. These contracts are regulated in Chapters 30–33 of the CC of the RF.

Under the contract of sale, one party (the seller) undertakes an obligation to transfer property (goods) to the ownership of the other party (the buyer), and the buyer undertakes the obligation to accept these goods, and to pay a defined monetary sum (the price) (Article 454 of CC of the RF). Chapter 30 of the CC of the RF includes general provisions on purchase and sale, as well as specific provisions pertaining to individual types of this contract. Those types include contracts of retail sale, supply of goods, supply of goods for state needs, sale of agricultural produce, power supply, real estate sale, and sale of enterprises.

Under barter contract each party undertakes the duty to transfer certain goods to the ownership of the other, in exchange for other goods (Article 567 of CC of the RF).

Under the contract of rent, one party (the rent recipient)

provides the other party (the rent payer) with property, and the rent payer undertakes the duty to periodically pay the recipient a certain amount, or to provide money for its maintenance in a different form (Article 583 of the CC of the RF).

Under donation contract the donor shall, without consideration:

– transfer, or undertake to transfer something to the ownership of the recipient;

– transfer, or undertake to transfer to the recipient, property rights of the donor or a third person;

– release, or undertake to release the recipient from the property obligation towards the donor or a third person (Article 572 of CC of the RF).

The contracts of sale, barter, and rent are compensated contracts. The only uncompensated contract in this category is the contract of donation. It should be taken into account that donations between commercial organizations are expressly prohibited under Clause 1 of Article 575 of the CC of the RF.

2.2. Contracts of Transferring the Property for Use

The CC of the RF specifies the following contracts of property use: lease, rental of housing premises, and gratuitous use. With the transfer of the property under these contracts, the lessee obtains the legal title to that property. The rights of the rent

payer are protected by proprietorial means – through vindicative and negatory claims (Article 301–304 of the CC of the RF). Furthermore, the rent payer has the right to protect the property, even from its owner (Article 305 of the CC of the RF).

Chapter 34 of the CC of the RF is dedicated to the regulation of the lease. Under the lease agreement (contract for the lease of property), the lessor shall undertake to furnish (for a charge) the leaseholder with property, for temporary possession and use, or for temporary use (Article 606 of the CC of the RF).

The provisions governing the rent of premises can be found in Chapter 35 of the CC of the RF. Under a rent contract of housing premises, one party – the owner of the housing premises or an authorized person (the lessor), undertakes the duty to provide (for payment) the other party (the lessee) with housing premises for possession and use for housing purposes (Article 671 of the CC of the RF). The difference between this contract and the lease contract is the object, which is being transferred to the possession of the counterparty. In this contract the object can only be used as housing premises.

The gratuitous use is governed by Chapter 36 of the CC of the RF. Under the contract for gratuitous use, one party (the lender) undertakes to transfer, or transfers something for gratuitous use by the other party (the borrower). The latter undertakes to return the object of the contract in the same condition with due account for normal depreciation, or in the condition stipulated in the contract (Article 689 of the CC of

the RF). Commercial organizations do not have the right to lend property for gratuitous use to their founders, shareholders, directors, members of management, or control bodies.

2.3. Contracts on Providing Services and Performing Works

2.3.1. Contracts on Performing Works

The CC of the RF regulates two types of work contracts: contracts of work for hire (Chapter 37 of the CC of the RF), and contracts of scientific research works, experimental designs, and technological works (Chapter 38 of the CC of the RF).

Under the contract of work for hire, one party (the contractor) undertakes the duty to do certain work at the order of the other party (the customer), and to transfer the results to the customer within the established period of time. The customer, on the other hand, undertakes the duty to accept the results of the work, and to pay for it (Article 702 of the CC of the RF). There are several types of work for hire contracts: consumer work, construction work, design and exploratory work, and work for state and municipal needs. These specific types of contracts are regulated in Chapter 37 of the CC of the RF.

Chapter 38 of the CC of the RF incorporates the regulation of two types of contracts: contracts of scientific research,

and contracts of experimental designs and technological works. Under a contract for the performance of scientific research work, the performer undertakes the duty to conduct scientific research, based on a technical order of the customer. Under a contract for the performance of experimental design and technological work, the performer undertakes the duty to develop a model of a new manufacture, draft documentation for it, or for a new technology. In both contracts, the customer undertakes the duty to accept the work and to pay for it.

2.3.2. Contracts on Providing Services

Several chapters of CC of the RF govern the contracts of providing different kinds of services: carriage, freight forwarding, insurance, storage, delegation, commission, entrusted management of property, bank deposits, bank accounts, and agency.

The rules of Chapter 39 of the CC of the RF (contracts of compensated services) apply to the contracts which are not specifically regulated in the code. In particular, the rules of this chapter apply to the provision of medical, auditing, consulting, and information services, as well as to the services related to education and tourism.

3. Common Types of Contracts

3.1. Contract of Sale

3.1.1. General Rules

The general provisions on the contract of sale can be found in Articles 454–491 of the CC of the RF. These provisions subsidiarily apply to individual types of contracts of sale, if the CC of the RF does not provide specific rules for those contracts. The general provisions govern the main rights and obligations of the parties, the quality and assortment requirements, transfer of the right of ownership, and the risk of accidental loss of goods.

The description of goods is an essential term in the contract of sale. This term is deemed to be agreed on if the contract allows for the determination of the name and quantity of goods. According to Article 455 of the CC of the RF, a contract may be concluded for the purchase and sale of goods that the seller has on hand, at the time of the conclusion of the contract, as well as of goods which will be made or acquired by the seller in the future. Furthermore, the general rules on the ability of goods to be circulated, provided in Article 129 of the CC of the RF, shall also be complied with. According to Article 456 of the CC of the

RF, the quantity of the goods subject to transfer to the buyer can be stipulated in units or with monetary expression. The term on the quantity of goods can be agreed on by means of establishing in the contract a procedure for such a determination.

The price of the contract is not an essential term for contracts of sale (with the exception of contracts of real estate sale). If the price of the contract is not stipulated in the contract and cannot be implied from the other terms of the contract, the payment of goods shall be made in the amount that is usually paid in comparable circumstances for similar products (Clause 1 of Article 485 of the CC of the RF, Clause 3 of Article 424 of the CC of the RF).

The quality of goods shall correspond to the terms of the contract. In the absence of such terms, the seller shall transfer to the buyer goods that are appropriate for the use which that sort of goods is typically intended for. The consequences of the transfer of goods of improper quality are set forth in Article 475 of the CC of the RF. If the defects of goods are not substantial, the buyer shall have the right, at their choice, to demand either proportionate reduction of the purchase price, or uncompensated elimination of the defects of goods within a reasonable period of time, or compensation of expenses for the elimination of such defects. In case of a substantial breach of the requirements on the quality of goods, the buyer shall have the right, at their choice, to refuse to perform the contract of sale and to demand the return of the amount paid for the goods, or to demand the replacement

of goods of improper quality with those corresponding to the terms of the contract.

The seller has the duty to transfer goods that are free from the rights of third parties, with the exception of cases when the buyer agreed to accept goods which are burdened with the rights of third parties (Article 460 of the CC of the RF). The breach of this duty gives the buyer the right to demand a reduction of the price of goods, or the termination of the contract of sale, unless it is proven that the buyer knew or should have known of the rights of third parties to these goods.

In case the third parties have withdrawn the goods from the buyer on the grounds that arose before the performance of the contract of sale, the seller shall be obligated to compensate the buyer for inflicted losses, unless the seller proves that the buyer knew or should have known of the existence of these grounds.

3.1.2. Contract of Retail Sale

The contract of retail sale is governed by Articles 492–505 of the CC of the RF. This contract is distinguished by the following characteristics:

1) the seller is a person conducting entrepreneurial activity in the sphere of retail sale of goods;

2) the purchased goods are meant for personal, family, domestic, or another use that is not connected with entrepreneurial activity.

The contract of retail sale is a public contract. Therefore, the seller does not have the right to give preference to one person over another with respect to the conclusion of a public contract. The price and the other terms of the contract shall be identical for all buyers.

Конец ознакомительного фрагмента.