



LT Digest

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Clarifications from government bodies

Russian Federal Tax Service (FTS) clarifies provisions of Federal Law No. 266-FZ on secondary liability in bankruptcy proceedings

On 29 July 2017, the President of the Russian Federation signed Federal Law No. [266-FZ](#) aimed at streamlining the regulation of secondary liability in bankruptcy proceedings.

In its letter, the FTS has clarified the applicability of new provisions.

According to the FTS, holding a nominal company head accountable in the bankruptcy proceedings is not a strategic objective, as it does not bring the desirable results, i.e. the revenues for the budget, therefore, such nominal company head shall be treated as a secondary defendant along with the debtor's controlling person.

Commercial courts are for the first time entitled to grant concessions (similar to the plea bargain in criminal proceedings), if the disclosures made by the defendant (e.g. by the nominal company head) enable the court to establish the actual controlling person or discover assets concealed by the debtor or its controlling person.

[Russian Federal Tax Service \(FTS\) clarifies provisions of Federal Law No. 266-FZ on secondary liability in bankruptcy proceedings](#)

[Russian Ministry of Finance clarifies procedure for EAEU's requirements compliance check](#)

[Russian Government approves new tax treaty with Japan](#)

[Draft law introducing film distribution duty released](#)

[Draft law developed to streamline recycling compliance reporting by manufacturers and importers](#)

[Draft law excluding movables from taxable property developed](#)

[CBR to expand scope of insider information](#)

[Customs duties on certain goods imported from Russia outside Customs Union member states reduced](#)

[Draft law introducing added income tax for oil industry to be adopted by end of 2017](#)

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[Russian Ministry of Finance calls for repealing preferences for government procurement of miscellaneous goods from EAEU and other countries](#)

[CBR to create common biometrics database](#)

[Initiative to introduce footwear recycling duty](#)

[Central Bank of Russia develops cyber security outsourcing standard](#)

[Retailers caught breaching commerce laws](#)

[Russian Federal Tax Service holds international workshop on customer-oriented approach to design and development of mobile services in tax administration](#)

[Yandex pilots big data analytics for FMCG producers and sellers](#)

[Draft law on differentiated revenue-based retailer regulation developed](#)

[Six banking giants to partner in creation of new cryptocurrency](#)

The letter pays special attention to the issue of identification the debtor's controlling person. The key criteria remained the same: the controlling person of a debtor is a person that was authorised to issue mandatory instructions to the debtor or otherwise influence its business operations, including the transactions and their terms. However, there are certain differences that the letter outlines:

- The authorities shall take into account the controlling powers that were exercised during the three years preceding the critical point in time when a debtor turned incapable of settling the creditors' claims due to the decrease in net asset value
- The new version sets forth a number of direct controlling person attributes: for instance, the chief accountant, the CFO or other officers that exercise corporate control over the debtor (e.g., the head of a parent company) may be treated as controlling persons by virtue of their official capacity
- It shall be taken into account that, apart from the debtor's controlling person, the employees in charge of accounting and bookkeeping (i.e. accountants), legal counsels, and other persons according to their functional competences can also be subject to secondary liability
- A person may qualify as a debtor's controlling person based on other criteria, like any informal personal relationships, including those identified during the investigation, e.g., the cohabitation (including a civil marriage), a long-term collegueship (including in the military or civil service), or the "old boy network" (classmates and schoolmates)
- Two new disputable presumptions of proof of grounds for imposing secondary liability: for loss or misrepresentation of corporate records or inaccuracy of data in the Unified State Register of Legal Entities or the Unified Federal Register of Corporate Data.

A special focus is made on the presumption of benefit: "Unless proven otherwise, a person will be deemed a debtor's controlling person if it benefited from an illegitimate or non-compliant conduct of its director".

The FTS illustrates a non-compliant conduct by giving an example of a business model that encompasses both the risk-bearing (i.e. loss centres) and non-risk bearing (i.e. profit centres) entities, which, in case of default, enables promptly re-establishing the risk-bearing entities (by bankrupting former ones) and continuing the business without losing any assets. According to the

regulator, such business model evidences that the control over risk-bearing and non-risk operations was exercised by the same management.

Furthermore, any revenues generated in excess of a standard turnover can also be treated as a benefit. For instance, a person (a group of associated persons) that receives certain income (revenue) from the debtor's operations and/or the debtor's property for no consistent consideration can be treated as a debtor's controlling person.

The FTS requires that the debtor's controlling person be identified in all bankruptcy proceedings. If no data are unavailable, information should be requested from the authorities, credit institutions, legal entities or individuals, as well as from foreign competent authorities.

According to the letter, the secondary defendant's mandatory appearance in court shall be requested or enforced in case of non-appearance.

The FTS clarifications are a clear evidence of an increasing trend towards imposing secondary liability on the company's beneficiaries in bankruptcy cases.

[Consultant Plus](#)

Russian Ministry of Finance clarifies procedure for EAEU's requirements compliance check

The Ministry has advised that, according to the EAEU's Technical Regulations Protocol, only producers or sellers of goods registered in and under the laws of an EAEU member state or the entities authorised by a foreign producer can apply for the assessment of goods for compliance with the EAEU's technical regulations.

However, the provisions of the EAEU Agreement imply that after the Agreement enters into force, only a legal entity or an individual entrepreneur registered in an EAEU member state may act as an applicant.

Therefore, the permits filed by non-EAEU applicants after 1 January 2015 are not accepted by the customs authorities.

[Consultant Plus](#)

Legislative initiatives

Russian Government approves new tax treaty with Japan

The Russian Ministry of Finance has been tasked with negotiating and signing the double taxation Convention with Japan and the Protocol thereto on behalf of the Russian Government. The Ministry was authorised to amend the drafts at its own discretion, provided they are immaterial.

The Convention will replace the existing double taxation Convention between the governments of the USSR and Japan and the Protocol dated 18 April 1986.

Learn more about the new Convention in our LT in Focus of [7 September 2017](#).

[Official website of the Russian Government](#)

Draft law introducing film distribution duty released

In particular, the document calls for the following measures:

- To introduce a duty of RUB 5 million for the companies that obtained a film distribution permit or a multi-use film licence, which covers film screening
- To set forth that the duty must be paid during 30 calendar days of the date when the total film screenings in Russia exceed 100
- To introduce liability for failure to (fully) pay the duty in the form of revoking the film distribution permit or denying distribution permits for other films
- The revenues will be allocated to the domestic film production and distribution industry support fund.

[Federal draft legislation portal](#)

Draft law developed to streamline recycling compliance reporting by manufacturers and importers

The following amendments are proposed:

- To oblige Russian suppliers of goods originating from the EAEU to report the recycling of goods and packaging imported into Russia or pay the environmental duty, starting from 2018
- To authorise the producers and importers of goods and packaging to delegate the filing of recycling reports to their nominated agents
- To repeal the legal entities' obligation to sign contracts with regional municipal solid waste (MSW) operators, if such entities provide a commitment letter, undertaking to set up MSW recycling on their own sites

Learn more about the draft law in our next LT in Focus that will follow shortly.

[Federal draft legislation portal](#)

Draft law excluding movables from taxable property developed

The anti-trust watchdog recommends accepting bids

Media review

Draft law introducing added income tax for oil industry to be adopted by end of 2017

The Russian Ministry of Finance is planning to amend the Russian Budgetary Code to change the timeline of passing tax bills, which will enable the adoption of the added income tax law by the end of 2017.

from foreign producers of medical equipment and pharmaceuticals at federal and municipal procurement auctions, provided they go down on the initial price more than 25 percent.

FAS will suggest respective amendments to the government resolutions that regulate admitting certain groups of goods to auctions.

As a reminder, according to the current legislation, a foreign provider is not admitted to the state procurement auction, if at least two companies from the Customs Union member states are bidding.

[Federal draft legislation portal](#)

CBR to expand scope of insider information

The regulator proposes expanding the list of insider information to include:

- The information on the CBR's decisions with respect to credit and non-credit financial institutions, such as microfinance organisations, private pension funds, credit rating agencies, and asset management companies
- The information on the CBR's decisions concerning the key rate
- The information on introducing provisional administration and payout moratoriums in banks.

[Federal legislation portal](#)

Customs duties on certain goods imported from Russia outside Customs Union member states reduced

In particular, the import duties on untreated hides, ferrous metals waste and scrap, refined copper and copper alloys, and base metals will be reduced starting from 1 September 2017.

[Garant: legislative tracking](#)

The draft is pending approval of the Russian Government and is expected to be adopted during the Russian State Duma's autumn session.

The document has not been officially published yet.

[Economica i Zhizn](#)

Russian Ministry of Finance calls for repealing preferences for government procurement of miscellaneous goods from EAEU and other countries

The Russian Ministry of Finance is working on an order that is planned to change the rules of granting price preferences to the government procurement participants offering goods from the EAEU countries.

According to the document, the 15-percent price preference will only be preserved for the bidders that do not sell foreign-made goods, irrespective of whether the share of such foreign-made goods is lower than that of the goods produced in the EAEU.

The order prohibits combining in one procurement RFP the goods from the list and the goods that are not on the list in an effort to prevent the customer from circumventing the provisions of the order by forming a mixed procurement.

[Kommersant](#)

CBR to create common biometrics database

The Central Bank of Russia has drafted a law that will oblige the banks to collect their customers' biometrics, including the facial images and voice records, which will further be used to create a common biometric database, enabling the remote customer identification.

The data will be entered in the biometric database integrated with the common identification and authentication system, facilitating the remote signing of new clients.

The biometric system is expected to be a joint effort of such major players as Sberbank, VTB, Binbank, and Rosselkhozbank.

The remote identification mechanism will also enable the individuals' remote access to other public services.

[Izvestiya](#)

Initiative to introduce footwear recycling duty

The Russian Union of Tanners and Shoemakers has put forward an initiative to introduce a footwear recycling duty.

The initiative was supported by Minister of Finance Anton Siluanov, who proposed investing the collected revenues in the development of the light industry.

[Rossiyskaya gazeta](#)

Central Bank of Russia develops cyber security outsourcing standard

According to the new standard, the credit institutions that do not have the capacities to implementing the

information security systems must outsource the function to a specialised service provider.

Such outsourced provider may assist the bank with the creation of a cyber security system within up to six weeks, continuing to provide anti-hacking services on a 24/7 basis and deliver respective staff trainings afterwards. These services are currently rendered by 30 companies.

The banks are offered three outsourcing models:

- The long-term model: an outsourcer is monitoring and responding to hacker attacks on an on-going basis
- The mid-term model: an outsourcer is engaged for an ad-hoc IT security project
- The short-term model: an outsourcer is engaged for the period of increased cyber security risks

[Izvestiya](#)

Retailers caught breaching commerce laws

The Moscow Region's Anti-Monopoly Service Department filed cases against 12 major retailers over breaches of the Law on Trade.

Having studied over 700 supply contracts, the regulator found retailer chains to have set different penalties, bonuses, and pricing mechanisms for different suppliers.

The audit revealed other regulatory breaches as well, such as excessive payment timelines, failure to comply with the statutory volume bonus limits, and the absence of information on the supplier selection criteria.

[Vedomosti](#)

Russian Federal Tax Service holds international workshop on customer-oriented approach to design and development of mobile services in tax administration

The Russian Federal Tax Service (FTS) and the Intra-European Organisation of Tax Administrations (IOTA) have hosted an international workshop on client-oriented design and development of mobile services in tax administration.

This year's workshop welcomed a record 70+ participants from 35 countries.

Speaking at the workshop, the FTS Director Mikhail Mishustin underlined that all digital solutions and tools employed by the FTS are in line with the international tax agenda and facilitate a successful implementation of many BEPS tasks.

Mr. Mishustin provided an overview of advanced digital projects run by the FTS, such as the automated VAT system (NDS-2), the product labelling solution, and the

implementation of online cash registers.

[Official Russian Federal Tax Service website](#)

Yandex pilots big data analytics for FMCG producers and sellers

The Yandex.OFD (fiscal data operator) project is based on the purchase data transmitted directly from cash registers in stores: starting from 1 July 2017, the information is sent online to the FTS via the fiscal data operators.

The pilot is designed for 12 months; such major players as PepsiCo, Procter & Gamble (P&G), Unilever, and several retail chains already joined it.

The analytics based on cash register data will enable effective inventory management, sales and marketing planning, etc.

Yandex also offers data from its other services, such as Weather, Maps, Traffic, and search queries. For instance, the weather may affect the sales of certain categories of goods, while PoS traffic is largely dependent on the road situation.

[Vedomosti](#)

Draft law on differentiated revenue-based retailer regulation developed

The draft differentiates among small retail chains (with annual revenues of up to RUB 4 billion), medium retail chains (up to RUB 40 billion), and major retailers with revenues exceeding RUB 40 billion.

According to the draft, the small chains shall not be subject to Articles 9, 13, 14 and the medium chains - to Articles 13, 14 of the Federal Law "On the regulation of retail trade in the Russian Federation".

Article 9 of the above-mentioned Law bans retailers from charging fees to suppliers for admitting food products to stores and changing the product range and introduces supplier bonus restrictions. Article 13 bans discriminating market access conditions or setting restrictive conditions for suppliers. Article 14 limits a retailer's maximum market share in a region.

The draft does not grant any preferences to major chains.

The document has not been officially published yet.

[Kommersant](#)

Six banking giants to partner in creation of new cryptocurrency

Six of the world's largest banks – Barclays, Credit Suisse, Canadian Imperial Bank of Commerce, HSBC, MUFG, and State Street – joined efforts to create a new digital currency, the Utility Settlement Coin ('USC').

The project was started in 2016 by Swiss UBS and Clearmatics Technologies and was further joined by BNY Mellon (NY), Deutsche Bank and Spanish Santander.

According to the Financial Times, the project team is now in discussions with central banks and regulators and works on protecting the new currency against hacker attacks.

The USC is expected to go-live in 2018.

[Vedomosti](#)

Deloitte publications

As implementation of greenhouse gas emissions reporting is under way, guidelines on determining absorption volume approved

As part of the Roadmap towards reducing the greenhouse gas emissions by 75 percent of 1990 levels by 2020, Guidelines on determining the absorption volume of greenhouse gases have been approved.

For more details, please refer to Legislative Tracking in Focus of [10 August 2017](#).

Automotive news, August 2017

Automotive [news](#) for August 2017 have been released.

In this issue you will find an update on the key changes of the federal legislation, clarifications from the Ministry of Finance and the Federal Tax Service, and court cases involving companies of the sector.

The Russian Investigation Committee and the Russian Federal Tax Service developed guidelines for establishing tax evasion

In its Letter No. [ED-4-2/13650@](#) of 13 July 2017, the Russian Federal Tax Service released the Guidelines for establishing the taxpayers' officers' tax evasion intent (the Guidelines). The document was prepared jointly with the Russian Investigation Committee and is meant to be used by the lower tax authorities.

For more details please refer to LT in Focus of [3 August 2017](#).

US Securities and Exchange Commission (SEC) followed by Monetary Authority of Singapore (MAS) clarified its stance on ICO and token sales

According to its recent rulings, certain types of tokens can be treated as securities and, therefore, are regulated by the federal securities law.

For more details please refer to LT in Focus of [3 August 2017](#).

We hope that you will find this edition interesting and informative. Should you have any questions on this subject, please do not hesitate to contact us.

Best regards,
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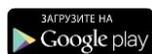


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