

LT in Focus

The Russian Ministry of Justice releases draft concept of professional legal services market

The introduction of the 'monopoly' of advocates has been discussed in Russia for the past few years. The Ministry of Justice set to prepare a reform of the professional legal services market in 2015. The key idea behind the reform was to restrict the right of non-advocates to render paid legal services and act as court representatives.

On 24 October 2017, the Ministry released an updated version of the professional legal services market concept (the "Concept"). The concept envisages a three-stage reform of the market to be completed by 2023.

Read on for an overview of the Concept's key provisions and the changes facing the legal services market participants.

[Who will be affected](#)

[Key changes](#)

[Advocate's services under employment contract](#)

[Transformation of non-profit status of advocacy](#)

[Foreign legal firms banned from advising on Russian law matters](#)

[Tax regime for advocates and firms of advocates](#)

[Recommendations](#)

Who will be affected

The Russian legal services market is represented by the following participants:

- Advocates, providing legal services under the Law on Advocacy
- Non-advocates (lawyers), rendering legal services to an indefinite scope of customers, such as:
 - Branches and representative offices of international law firms
 - Russian for-profit law firms
- Lawyers, practicing individually or as part of not-for-profit organisations
- In-house lawyers.

If the 'monopoly' concept is approved and implemented, all law firms will have to receive the status of a firm of advocates to continue rendering professional legal services.

Starting from 2023, only advocates and firms of advocates will be entitled to render paid legal services. Legal representation in court will be permitted only to advocates and firms of advocates as well as extended family members, legal representatives of individuals, company CEOs, and in-house lawyers.

Therefore, the 'monopoly' concept will affect all providers of legal services, except in-house lawyers. In the first place, it means that in-house lawyers will continue representing their employers in court.

To facilitate obtaining of advocate's status by lawyers during the transitional period (until 2023), admission to practice will be based on a simplified procedure: the applicants will only have their knowledge of the laws on advocacy tested. Only those that meet the requirements of the Law on Advocacy and some other criteria will be eligible for the simplified test.

The existing procedure for obtaining advocate's status requires passing a full-scale qualification exam, which additionally tests the knowledge of the history of Russian advocacy, civil, criminal, labour, family, international and tax laws. The list of questions is approved by the Russian Federal Chamber of Lawyers.

Key changes

Advocate's services under employment contract

The first stage of the Concept (2018) will focus on the development of regulations entitling advocates to work under employment contracts.

The existing regulations prohibit the provision of advocate's services under an employment contract or the employment of one advocate by another.

The Concept implies amending the Law on Advocacy and the Labour Code of Russia to enable advocates to work under employment contracts and be hired by other advocates, subject to independence guarantee.

If working under employment contracts is allowed, the laws will have to be amended:

- To reflect the specific features of the advocate's practice, in particular, the obligation to observe the advocate's ethics and secrecy, report conflicts of interest to the employer, and hand cases over upon termination of employment
- To release the advocates of the obligation to choose one of the prescribed organisation types, obliging them to duly notify the Chamber of Lawyers of signing an employment contract

Permitting the advocates to work under employment contracts will enable a formal distribution of functions in a firm of advocates among partners and employed advocates.

Transformation of non-profit status of advocacy

According to the existing version of the Law on Advocacy, the services rendered by advocates are non-profit. However, advocates are not prohibited to engage in for-profit activities by pooling with other advocates.

The Concept sets forth a special for-profit status of the firms of advocates, subject to certain restrictions (provision of legal services as the principal activity, specific membership criteria, etc).

According to the proposed amendments, advocacy will remain non-profit, but advocates will be allowed to establish firms with a legal structure of for-profit entities envisaged by the Russian Civil Code (limited liability company, non-public joint-stock company, full partnership, production cooperative).

The existing limited liability companies, non-public joint-stock companies, full partnerships, production cooperatives rendering legal services will be allowed to receive the status of a firm of advocates.

The firms of advocates established and operating in the form of a bar association, advocates' bureau or legal aid office will preserve their current legal status.

New organisational forms of advocates' collective activities will ensure a proper distribution of revenues from such collective activities.

In a firm of advocates the fees are now distributed pro rata to one's professional contribution to a particular case. However, such distribution cannot be formalised and is made in breach of the statutory requirements set for non-profit entities. If entitled to choose a for-profit business model, advocates will no longer have to breach the law when distributing fees.

The new arrangement will allow signing a contract either with a particular advocate or with the firm as a whole (which is relevant when a case requires a large number of lawyers).

Foreign legal firms banned from advising on Russian law matters

The Russian professional legal services market is currently dominated by foreign legal firms. The Concept imposes significant restrictions on such firms.

Foreign lawyers can now act as advocates only if registered by the Russian Ministry of Justice (unless they provide legal advice on the applicability of foreign laws). Furthermore, foreign lawyers and advocates can render legal aid with respect to matters pertaining to the foreign law only.

According to the Concept, foreign advocates and lawyers will be able to assist with the Russian law-related matters provided they graduated from a Russian (USSR) law school or from a foreign law school recognised in Russia.

Admission of foreign lawyers and advocates to the Russian

legal services market will be allowed subject to the mutuality principle.

The restrictions envisaged for foreign firms are much stricter: only the firms registered under the Russian law as firms of advocates will be permitted to render legal services relating to the Russian law, including court representation. Firms of advocates cannot be directly or indirectly controlled by a foreign entity.

Therefore, if the Concept is approved, foreign law firms doing business in Russia via their branches, representative offices or subsidiaries will not be able to operate through the existing business arrangement and will have to consider restructuring.

Tax regime for advocates and firms of advocates

VAT

According to the Russian Tax Code, advocate's services are exempt from VAT as advocates are neither individual entrepreneurs nor legal entities.

Once a firm of advocates is enabled to render services on its own behalf, such services would be typically subject to

VAT, which will entail an increase of service fees for the clients. The Concept proposes amending the Russian Tax Code and exempting either the entire scope of professional services rendered by advocates or the services rendered to individuals from VAT.

Profit tax

If a legal services contract is made on behalf of a firm of advocates, the service fees will be deemed its taxable income. In this regard, the Concept proposes amending the Russian Tax Code to envisage the deductibility of service fees distributed by a firm among member advocates under a respective internal agreement or the fees paid to employed advocates working under employment contracts.

The firms structured as for-profit entities will be able to apply the simplified tax system.

Other

An advocate's individual tax regime will not depend on the firm structure and the type of legal relationship with the firm (a partnership agreement, a services contract or an employment contract).

The Concept does not envisage any significant changes regarding the individual income tax and social contributions.

Recommendations

Taking into account the key provisions of the Concept, we recommend reviewing your existing corporate structure and legal arrangements with the advocates and be prepared to possible legislative changes.

We hope that you will find this newsletter interesting and informative. Please feel welcome to contact us for more information on the topics covered.

Best regards,

Deloitte CIS Partners

Contacts

Business Solutions



Yulia Orlova
Partner
yorlova@deloitte.ru



Nikita Soshnikov
Manager
nsoshnikov@deloitte.ru



Oxana Kozhina
Senior Manager
okozhina@deloitte.ru



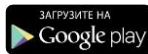
Irina Kulikova
Senior Consultant
ikulikova@deloitte.ru

Legal services



Anastasia Matveeva
Senior Manager
amatveeva@deloitte.ru

TaxSmart App



deloitte.ru

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, including their affiliates (DTTL), each of which is a legally separate and independent entity. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please visit www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. Deloitte is a globally connected network of member firms which, according to Fortune, comprises 400 of the largest 500 companies in the world among its clients. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 244,000 professionals are committed to becoming the standard of excellence. Please connect with us on [Facebook](#), [LinkedIn](#) or [Twitter](#).

This communication contains general information only. None of Deloitte Touche Tohmatsu Limited, its member firms, or its and their affiliates (the "Deloitte Network"), are, by means of this publication, rendering any professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.