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Take Heed of Dynamic Legislative Environment

By Mark H. Gay

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Entrepreneurs of all sizes are affected by ongoing changes to the laws. **Igor Tabakov**

The proposed laws on the financial activities of government officials, such as prohibiting them from owning assets abroad, mark a general evolution toward additional controls on compliance and business ethics of which companies need to be aware, according to Delphine Nougayrede, a partner at DLA Piper.

"Changes to the code of administrative violations restrict the ability for Russian residents to receive sums of money on foreign bank accounts and impose severe penalties in the event the statute is breached. These amendments mark a return to increased capital controls."

Amendments to anti-corruption laws now oblige Russian companies to implement anti-corruption policies and procedures similar to those in place in other countries. Other legislative changes are aimed at making Russian law more competitive with foreign law. There is a greater emphasis on compliance, in terms of corporate governance, registration

of companies and reporting obligations, and, of course, anti-corruption rules.

On the other hand, the Russian Civil Code is being overhauled, allowing for more complex financial instruments that are common to the Western corporate world but still foreign to the Russian market. These include warranties, options, indemnities and escrow arrangements.

Companies are keen not to put a foot wrong as Russia updates its legislation. The government has also introduced several new structures for entrepreneurial ventures. The Investment Partnership Agreement has since July 2012 allowed investors to carry out joint investment activity without establishing a legal entity. It is intended for investors in securities or who take stakes in businesses, but it differs from one other structure introduced at the same time, economic partnerships, which allow for investment in innovative business projects but may not be used to buy or hold shares in other companies. Another category, the public joint-stock company is also expected to be introduced soon.

Corporate governance is a broader issue and the government has in the past year introduced new regulations on the calling and holding of general meetings of shareholders. These include rules on voting, quorums and counting. Lawyers with Pepeliaev Group, Nikolai Solodovnikov, head of corporate practice, and Vladimir Sokov, senior partner and head of corporate division, wrote in e-mailed comments that the most substantial changes affect the election of management boards.

Entrepreneurs considering the establishment of new companies should be aware of a new law, "On the State Registration of Legal Entities and Sole Entrepreneurs," which came into force this year. This includes not just the names of those responsible for tax declarations but numbers, such as the net asset value of companies.

The continued updating of the Russian Civil Code has implications for commercial law. These include penalties for debtors and for the breaching of obligations, while future changes will require that more transactions are notarized, and changes to the law on guarantors will allow individuals and not just banks to act as guarantor.

The new anti-monopoly laws include three major areas of which companies need to be aware, said Raisa Alexakhina, head of legal services at Deloitte CIS. These are restriction of abuses of dominant position, prohibition of anti-competitive agreements and control over an economic concentration. "All of them were significantly modernized in response to experience stemming from the enforcement practice and in response to the comments by the Organization for Economic Developments in the process of Russian accession, as well as recommendations from major competition jurisdictions such as the EU.

"However, there are significant differences in basic concepts between Russian and EU antitrust legislation caused by the different nature of the sources of legislation. This is due to a trend of departure from the assessment characteristics to the strict overregulating of all the criteria that existed in the Russian legislation."

PwC legal associates Vladimir Krupin and Artur Oganesyan commented by e-mail that Russian antitrust law is now more closely aligned to European standards, but foreign companies could face surprises. "In some key aspects, like identification of level of competition in different segments of the Russian market, state control over economic

concentration and others, Russian law concentrates on the formal approach stated in law rather than on deep analysis of economical grounds of actions of market participants.

"As we see from our practice, foreign companies entering the Russian market are not well-informed about the peculiarities of Russian anti-monopoly legislation and its differences from European standards. This can be seen both in the course of M&A and regular transactions. For example, Russian law provides for less flexible approach to non-compete clauses, exclusivity agreements and the provision of raised standards for partners among other things."

Ernst & Young's legal team highlighted changes to the Russian Civil Code. The notion of "fair practices" was present and implicit before, but now the code specifically prohibits corporate actions that intentionally inflict damage on another party.

However, the law and the courts are still developing their definition of fairness and what constitutes circumvention of the law.

Turning to fair play within companies, they now require a designated person in charge of anti-corruption compliance. Companies are obliged to check that their counterparties are following these anti-corruption regulations as well.

Bookkeeping regulations have been tightened up, according to Ernst & Young, and accounts can no longer enjoy the status of commercial secrets.

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