

# B2B: Changes to the Civil Code: Myths and Reality

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A great debate over the Russian Civil Code was set in motion on July 18, 2008, with the signing of the Presidential Decree on



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Improving the Civil Code of the Russian Federation. Five and a half years later, the disputes surrounding the Civil Code have not subsided, changes are still being made, and there is no end in sight.

Early on, in implementation of the edict, a "Concept for Development of the Civil Legislation of the Russian Federation" was developed. The Concept envisaged systematic changes in all major divisions of the civil law. In 2009, after the Concept was approved, work began on making it a reality. The result of that labor was more than 200 pages of draft amendments covering all four parts of the Civil Code. In that form—amendments to all four parts—a bill passed the first reading on April 27, 2012.

At that time, in April 2012, it was expected that the bill would swiftly be implemented; second and third readings were planned in the coming weeks, with entry into force targeted for Sept. 1, 2012. But nothing went according to schedule; so many comments were submitted concerning the April bill that the second reading was first postponed to the autumn session and then pushed back several times. Finally, in November 2012, an unprecedented decision was made: to split the bill into several parts and consider them separately at the second reading.

And so it happens that now, instead of one big law on amendments to the Civil Code, we have several small laws: some that have taken effect, some partially passed but not in force, and some not yet passed. The small laws that have been passed often differ greatly from what was originally proposed in the first big bill. To complicate matters further, the small laws have been approved not in the order of the parts of the Civil Code, but rather based on where the fewest disputes arose, with the result that the amended parts in the Civil Code alternate with those that remained unchanged. Furthermore, some articles of the Civil Code have been

changed more than once.

Of course, the situation is not a simple one, and there are numerous questions and uncertainties. Practice shows that many are confused about what has changed in the Civil Code and what hasn't, and if something has changed, then in what way—as set out in the first bill, or in some other way? Some mistaken opinions have been repeated so often that they already qualify as myths about the Civil Code. Here are some of them:

**Myth #1.** The Civil Code has changed completely. Forget everything you have learned. First, it has not changed completely—the changes mainly affect parts 1 and 3 (despite the original plan to amend all four parts of the Civil Code). Parts 2 (contractual obligations) and 4 (intellectual property) are nearly untouched. Second, two very important sections of Part 1 have been left unaltered: legal entities and real rights (rights in rem). And it is currently unknown when they will be changed or whether they will be changed at all. Third, in comparison with the first big bill (which was not adopted), the small laws (which have been) are less radical in terms of the number and quality of the changes.

**Myth #2.** Corporate relations have been included in the sphere of civil law. On the one hand, this is correct — this is now expressly indicated in article 2 of the Civil Code. On the other hand, before the Civil Code was amended, many aspects of corporate relations, although not referred to directly in the Civil Code, were nevertheless effectively regulated by it (such as activities of companies, rules of corporate governance, rights and obligations of participants and shareholders, etc.). Thus the amendments have not changed the status of these issues under the Civil Code, but rather fixed the prevailing view and eliminated grounds for disputes.

**Myth #3.** All CJSCs have to reorganize immediately! Shareholders in closed joint-stock companies can rest easy — there is no need to reregister or reorganize. First, legislators' desire to replace closed and open JSCs with public and nonpublic companies was never accompanied by a requirement to reorganize or reregister existing JSCs. On the contrary, it was stated in the transitional provisions that CJSCs could at their option convert to LLCs or production cooperatives or (note!) retain the legal form of a joint-stock company. Second, the chapter on Legal Entities, which contains the articles on joint-stock companies, not only remains unchanged, but is not even included in the State Duma's discussion outline. When these chapters of the Civil Code will change, or whether they will change at all, is still unclear.

**Myth #4.** The period of limitation of actions has changed. In fact, the general limitation period remains unchanged, at three years from the time defined in article 200 of the Civil Code (i.e., when a person learned or ought to have learned about a violation of his rights). However, a period of repose has been introduced: the maximum period for judicial protection of a violated right is now 10 years from the date of violation of a right. Interestingly, article 196 was changed twice in 2013: first a 10-year limit was established, and then the 10-year limit was lifted for circumstances involving terrorist activity (which are established by the Law on Counteracting Terrorism).

**Myth #5.** Everything has changed with powers of attorney: they can be irrevocable, open-ended, and not certified with a seal. There are indeed innovations that affect powers of attorney, but not as many as there may seem to be. Irrevocable powers of attorney are permitted only in connection with business activity. Moreover, they can still be revoked: first,

if a representative abuses his or her powers and, second, if such abuse may occur.

The three-year time limit on a power of attorney has been removed, but, as before, attention should be paid when specifying the date and duration in a power of attorney, because if the duration is not specified, it automatically lasts for one year, and if the date of issuance is not specified, it is null and void.

What prompted lawmakers to abolish the requirement of a seal on a power of attorney from a legal entity? The answer is unknown, but time will tell whether that innovation will stand the test of practice. At present, common practice continues to be that legal entities put stamps in all documents that they issue.

**Myth #6.** New rules for holding meetings of shareholders or participants have been established. Superficially, this is true; the Civil Code now contains a new chapter 9.1 entitled "Resolutions of meetings." However, the rules of this new chapter apply only to the extent applicable laws or the procedures established thereby do not provide otherwise. Because there are special laws on joint stock companies and limited liability companies, the meetings of participants and shareholders remain the same, without significant changes.

Of course, it would be completely incorrect if, after having read the above, one thinks that nothing has significantly changed in the Civil Code and continues living as before. To the contrary — many things have changed! Indeed so many things that lawyers, the authors of draft laws, representatives of the Supreme Arbitration Court and other interested persons keep discussing the innovations and jointly endeavor to develop practical recommendations for their implementation. Further, the work on the Civil Code continues — two more laws which historically were parts of the initial big bill are in the State Duma's discussion outline. So, as of today, the Civil Code is in transitional status, and the changes thereto can only be evaluated as of the current moment, without long-term recommendations.

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